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**INTERIM REPORT FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**ON REFORMS IN CROATIA IN THE FIELD OF JUDICIARY AND
FUNDAMENTAL RIGHTS (NEGOTIATION CHAPTER 23)**

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1. INTRODUCTION

In its Communication "Enlargement Strategy and Main Challenges 2010-2011 adopted on 9 November 2010¹, the Commission stated that it would "closely monitor Croatia's progress in the field of judiciary and fundamental rights and take stock of the situation in the first quarter of 2011." It is for this reason that the Commission is presenting this report. The Commission noted that this chapter in the accession negotiations requires the establishment of convincing and credible track records and hence is likely to be among the last chapters to be provisionally closed.

Tangible results regarding the judiciary and the fight against corruption and organised crime are essential for the credibility of the EU's enlargement process. This is in accordance with the EU's renewed consensus on enlargement, adopted by the December 2006 European Council.

Accession negotiations with Croatia on judiciary and fundamental rights (chapter 23) were opened in June 2010, once the Council concluded that Croatia had met the opening benchmarks. In the opening EU Common Position, it was stated that the provisional closure of negotiations on this chapter could be envisaged once a number of closing benchmarks (CBMs) were met, covering the following four areas: (1) judiciary; (2) fight against corruption and organised crime; (3) fundamental rights and (4) ICTY co-operation. Most of the ten benchmarks were divided into sub-benchmarks which focus on the implementation of measures and the establishment of track records.

This report is part of the Commission's on-going monitoring of Croatia's progress in the area of judiciary and fundamental rights. It is based on information gathered and analysed by the Commission, in particular contributions from the Croatian authorities. The Commission has also drawn on several targeted peer assessment missions where senior judges, prosecutors and police officers from EU Member States have reviewed the situation in Croatia. Other sources have been used, including information from various international and non-governmental organisations.

The following sections review the steps taken by Croatia to meet the benchmarks in the field of judiciary and fundamental rights and draws attention to the main areas where shortcomings have been identified and need to be addressed.

¹ COM(2010) 660.

2. THE STATE OF PLAY BY AREA

2.1. Judiciary

CBM 1: Croatia updates its Judicial Reform Strategy and Action Plan and ensures effective implementation.
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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.

CBM 2: Croatia strengthens the independence, accountability, impartiality and professionalism of the judiciary.
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A number of measures have been taken to strengthen the independence of the judiciary, including through constitutional changes, such as the provisions which set out the new appointment procedure for the State Judicial Council (SJC) and the State Prosecutorial Council (SPC). Croatia is in the process of reforming and strengthening the SJC and SPC to ensure their professionalism, impartiality and independence from political or other interference, in particular in the appointment, career management and disciplining of judges and prosecutors. The State School for Judges and Prosecutors has begun effective operation.

However, Croatia has not yet established a convincing track record of recruiting and appointing judges and state prosecutors based on the application of uniform, transparent, objective and nationally applicable criteria. Since the State Judicial Council and State Prosecutorial Council have been established only recently, they could not yet demonstrate their ability for accountable self-regulation.

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.

CBM 3: Croatia improves the efficiency of the judiciary.

The backlog of cases before courts is an important parameter in this regard. From December 2009 to December 2010, Croatia has slightly reduced the overall case backlog before the courts from 795,722 to 785,561 cases (- 1.3%). The backlog of old criminal cases has been reduced by 10.6%. Measures are being put in place to prevent undue delay in court cases, including the gradual introduction of new methods of enforcement, the recruitment of additional judges, court advisors and court clerks in the most overburdened courts, and incentives to judges to ensure the speedy handling of older cases. A track record of implementation of the new criminal procedure has been established. Croatia has made some progress with the physical infrastructure and computerisation of courts, having introduced the Integrated Case Management System in a majority of courts. Croatia has continued to implement the rationalisation of municipal and misdemeanour courts, ensuring efficient operation of the merged courts and adopting a plan for rationalisation of county and commercial courts.

However, the backlog of old civil cases pending for 3 years or more has increased by 3.8%. A convincing track record of implementing the civil procedure code has not yet been established. The backlog of old enforcement decisions has also increased. A number of important courts, including Zagreb and Split, continue to suffer from high case backlogs.

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.

CBM 4: Croatia improves the handling of domestic war crimes cases.

Croatia has made progress towards establishing a track record of impartial handling of war crimes cases by the courts, by concluding a number of cases against accused persons of different ethnic background.

A strategy for addressing impunity was adopted in February 2011. Croatia has implemented its action plan for the review of in absentia cases. Engagement at the bilateral and regional level has continued.

However, the issue of impunity for cases which have not been investigated or prosecuted has not been properly addressed, and the new strategy to ensure the proper investigation and prosecution of such crimes has not yet been implemented.

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.

2.2. Fight Against corruption

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.

The operational capacity of the Office for the Suppression of Corruption and Organised Crime (USKOK), the specialised prosecution service for corruption and organised crime cases, has been reinforced, and the police have become more effective. In a number of high-level corruption cases investigations are underway or indictments have been issued. A considerable number of organised crime cases have been through each stage of the judicial procedure (investigations, prosecutions, court rulings). Dissuasive sanctions have been applied.

However, most high level corruption and public procurement cases have not yet reached the stage of court rulings. The capacity of the courts to handle cases adequately remains to be fully tested. Out of 436 posts available at the Police National Office for the Suppression of Corruption and Organised Crime (PNUSKOK), some 20% remain to be filled. Depoliticisation and improved professionalism of the police have not been fully addressed.

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.

CBM 6: Croatia establishes a track record of strengthened prevention measures in the fight against corruption and conflict of interest.

Improved legislation on access to information, on political party financing and on conflicts of interest was adopted in February 2011. The Conflict of Interest Commission has been strengthened by providing additional resources. Anti-corruption action plans in state owned companies are being implemented.

However, some provisions in the newly adopted legislation remain to be clarified and tested in practice, including in terms of consistency with other legislation. Implementing structures need to be strengthened. Not all implementing legislation necessary for full application of the General Administrative Procedures Act (GAPA) has been adopted. Transparency and integrity in public administration need to be further strengthened.

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.

2.3. Fundamental rights

CBM 7: Croatia strengthens the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities (CARNM).

The general protection of minorities has improved, and measures taken aimed at reconciliation and increased tolerance among citizens, including training of police and media. Some steps have been taken to improve monitoring of implementation of the employment provisions of the CARNM. Croatia has carried out a comprehensive study into the under-representation of minorities in the wider public sector.

However, there has been no tangible improvement in the level of employment of national minorities as required by the CARNM. There has been no review of the role of schooling in reconciliation efforts. A plan to tackle the shortcomings identified by the study in the wider public sector remains to be adopted.

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.

CBM 8: Croatia settles outstanding refugee return issues.

Croatia has partially implemented its Action Plan on the Housing Care Programme for returning refugees/former tenancy rights holders. It has met the targets for 2008. Croatia has improved the handling of appeals for rejected housing reconstruction applications. Progress has been made with the reconstruction of the remaining properties.

However, the target for 2009 under the action plan for the provision of 2,070 flats has not been met. Out of 1300 available housing units (62.8%) only 1024 (49.5%) have been handed over, while 276 have not. Croatia has not made progress in providing accommodation to other successful applicants beyond the 2009 target. The backlog of existing housing reconstruction appeals, standing at 4,000, has not been sufficiently tackled.

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.

CBM 9: Croatia improves the protection of human rights.

The general legal framework for the protection of human rights has been improved, notably through stronger constitutional provisions adopted in July 2010. Awareness raising of police, prosecutors and courts on human rights law has continued. Implementation of the strategy and action plan for the protection and integration of Roma is on-going. Freedom of expression should continue to be respected.

Croatia has improved access to justice, including by taking steps to ensure that, by the time of accession, the Administrative Court is made a court of full jurisdiction, and by ensuring improved implementation of the law on legal aid, in particular through simplified procedures and higher fees for lawyers. Croatia has begun to establish a track record of implementation of the Anti-Discrimination Law and the Law on Hate Crimes.

However, the Office of the Ombudsman is not sufficiently staffed because new tasks (e.g. implementation of anti-discrimination law) and competencies (e.g. in the field of prevention of torture) were allocated to the office without increase of resources.

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.

2.4. Cooperation with the International Criminal Tribunal for the former Yugoslavia

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.

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.

3. CONCLUSION

Croatia has made considerable progress in the field of judiciary and fundamental rights. However, further work remains to be done, in particular to establish convincing track-records in the field of the judiciary and the fight against corruption, to address impunity for war crimes and to settle the outstanding refugee return issues.

Accordingly, the Commission:

- encourages Croatia to redouble its efforts to meet all closing benchmarks set out in the EU's opening negotiating position for chapter 23 of June 2010, and in particular, to address the remaining issues set out in this communication;
- will continue to monitor Croatia's progress closely and to further support Croatia, through technical expertise and financial assistance, to enable it to meet the benchmarks in this chapter.

As soon as the Commission has ascertained that Croatia has met all closing benchmarks, it will submit a closing benchmark report and draft closing EU position to the Council, in line with established procedures.