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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL on the verification of the full  
application of the Schengen *acquis* by Croatia

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Delegations will find attached document COM(2019) 497 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT AND THE COUNCIL**

**on the verification of the full application of the Schengen *acquis* by Croatia**

## I. Introduction

The free movement of persons is a fundamental freedom guaranteed by the EU to its citizens. It entitles every EU citizen to travel, work and live in any Member State without special formalities. Schengen cooperation enhances this freedom by enabling more than 400 million EU citizens, as well as third-country nationals legally present on the EU territory, to go from one Member State to another without facing border checks. The Schengen Area without border control at internal borders currently consists of 26 States, with a common objective of sharing this achievement with more Member States.

For Member States to join the Schengen area in full, they must fulfil a number of conditions. They need to be prepared and to have the capacity to take responsibility for controlling the external borders on behalf of the other Schengen States and for issuing uniform Schengen visas. They need the capacity to efficiently cooperate with law enforcement agencies in other Schengen States, in order to maintain a high level of security once there are no internal border controls. They need to apply the common set of Schengen rules such as control of land, sea and air borders (airports), issuing of visas, police cooperation and protection of personal data. Finally, they need to be able to connect to and use the Schengen Information System.

To check that the necessary conditions for the application of all parts of the Schengen *acquis* are met, Member States wishing to join the Schengen area must undergo an evaluation<sup>1</sup>. Since 2013, the Member States and the Commission are jointly responsible for the Schengen evaluation and monitoring mechanism, supported by EU bodies, offices and agencies and with the Commission having an overall coordination role. The Commission prepares and plans the evaluation and adopts evaluation reports, whilst the Council has the responsibility to adopt recommendations for remedial actions.

This is the first time that a Schengen evaluation in all relevant policy fields has been initiated under the new mechanism to verify that the necessary conditions for the application of all relevant parts of the Schengen *acquis* have been met by a Member State wishing to join the Schengen area without internal border control. This process is based on on-site visits with experts from the Member States and the Commission, a series of evaluation reports containing findings, and recommendations for remedial actions by the Council, followed up by action plans by the Member State.

The 2011 Act of Accession<sup>2</sup> states that the full Schengen *acquis* will only apply in Croatia following a Council Decision to that effect, and that such a Decision should be taken after verification, in accordance with the applicable Schengen evaluation procedures, that the necessary conditions for the application of all parts of the relevant *acquis* have been met in Croatia, including the effective application of all Schengen rules in accordance with the agreed common standards and with fundamental principles. In taking that decision, the Council should also take into account a Commission report confirming that Croatia continues to fulfil the commitments undertaken in its accession negotiations that are relevant for the Schengen *acquis*, in particular commitments undertaken by Croatia in the area of the judiciary

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<sup>1</sup> Council Regulation (EU) No 1053/2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, OJ L295, 6.11.2013, p.27.

<sup>2</sup> First subparagraph of Article 4(2) of the Act of Accession of the Republic of Croatia ('the 2011 Act of Accession' (OJ L112, 24.4.2012, p.22).

and fundamental rights (Annex VII of the Act of Accession), including the continued development of track records on judicial reform and efficiency, and the fight against corruption<sup>3</sup>. Six commitments amongst the ten listed in Annex VII are relevant to the Schengen *acquis*.

The purpose of this communication is to take stock of the progress made by Croatia in meeting the necessary conditions for the application of all parts of the Schengen *acquis*, taking into account the results of the Schengen evaluations and the follow up undertaken by Croatia from the start of the evaluation in 2016 until October 2019. It also reports on Croatia's fulfilment of commitments undertaken in its accession negotiations that are relevant for the Schengen *acquis* from the date of accession (1 July 2013) until September 2019.

## II. Schengen evaluation

On 6 March 2015, Croatia declared its readiness to start the Schengen evaluation process in all relevant policy areas as of 1 July 2015 with a view to a Council Decision on the full application of the Schengen *acquis*. Following Croatia's 'Declaration of Readiness', the Schengen evaluation process started in 2016 in accordance with Council Regulation (EU) 1053/2013 by establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, under overall coordination of the Commission.

The Schengen evaluation of Croatia took place in accordance with Article 1(1)(b) of Regulation (EU) 1053/2013. Since June 2016 until May 2019, teams consisting of experts from the Commission and from the Member States verified the application of the Schengen *acquis* by Croatia in the fields of data protection, police cooperation, the common visa policy, the management of external borders, return, the Schengen Information System, firearms and judicial cooperation in criminal matters. During these evaluations, particular attention was paid to the respect for fundamental rights and to the functioning of the authorities that apply the relevant parts of the Schengen *acquis*. This process resulted in a series of evaluation reports adopted by the Commission in the period between 2016 and 2019, with findings and assessments, as well as recommendations for remedying the identified deficiencies adopted by the Council<sup>4</sup>. Following the Council recommendations and in line with Article 16 of Regulation (EU) 1053/2013, Croatia provided the Commission and the Council with action plans on how to remedy deficiencies identified in the relevant evaluation reports. Based on the follow-up reports received, the Commission assessed the full implementation of the action plans and informed the Council's Working Party for Schengen Matters about the implementation of the action plans on a regular basis.

### *Results of the Schengen evaluation process for each policy field*

The **data protection** evaluation took place in February 2016 and resulted in the general assessment that Croatia fulfils the conditions necessary for the application of the Schengen *acquis* in the field of data protection. There were no 'non-compliant' findings identified. Nevertheless, improvements were necessary, especially in relation to the independence of the Data Protection Authority and the strengthening of the position of the Data Protection Officer

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<sup>3</sup> Article 36(1), second subparagraph, of the 2011 Act of Accession.

<sup>4</sup> A list of the relevant Schengen evaluation reports and Council recommendations is annexed.

of the Ministry of Interior. On 30 January 2019, the Commission informed Croatia and the Council that the recommendations for improvement as given by means of a Council recommendation<sup>5</sup> were all sufficiently implemented by Croatia.

Also for the **police cooperation** evaluation, which took place in June 2016, the general assessment was made that Croatia fulfils the conditions necessary to apply the Schengen *acquis* in this policy field. No issues of non-compliance with the Schengen *acquis* in the field of police cooperation were found. Nonetheless, a number of areas were identified where improvement was considered necessary, such as for the implementation and modernisation of the police cooperation agreements with the neighbouring Member States, strengthening the police organisation in the area of international police cooperation and enhancing the exchange of information by taking specific technical measures. On 28 May 2019, after careful analysis of the follow-up reports provided by Croatia on the implementation of the recommendations of the Council<sup>6</sup> related to the improvements necessary, the Commission informed Croatia and the Council that the recommendations were considered having been generally implemented. However, the recommendation related to pursuing the renegotiation of the bilateral agreement with Slovenia on special forms of cross-border police cooperation for preventing crime is still to be fully implemented. Croatia has been requested to pursue its effort to swiftly sign and ratify the bilateral agreement with Slovenia and to keep the Commission informed about the progress made.

Regarding the **common visa policy** evaluation, for which on-site visits took place in June 2016 to the Croatian Embassies in Pristina (Kosovo) and Moscow (Russian Federation), the general assessment was made that Croatia fulfils the conditions necessary for the application of the Schengen *acquis* in the field of the common visa policy. No issues of non-compliance were observed. However, improvements were considered necessary in several areas, in particular regarding the workflow in the visa sections and the Croatian Visa Information System. After analysing the action plan and the follow-up reports related to the implementation of the Council recommendations<sup>7</sup> to remedy the identified points for improvement, as well as after the signing on 17 June 2019 of the amended “Agreement between the Government of the Republic of Croatia and the Government of the Russian Federation on Mutual Travelling of Nationals of the Republic of Croatia and Nationals of the Russian Federation”, the Commission considered the recommendations to be fully implemented. This was communicated to Croatia and the Council on 28 June 2019.

The Schengen evaluation in the field of **return** took place in June 2016. Based on the findings the general assessment was made that Croatia's fulfilment of the conditions necessary for the application of the Schengen *acquis* in the field of return is conditional on the further alignment and implementation of Croatia's Law on Foreigners<sup>8</sup> with the provisions of the Return Directive<sup>9</sup>. This concerns especially the issuance of entry bans and their EU-wide validity, the criminalisation of illegal stay which can risk delaying the return process and the lack of a definition of ‘risk of absconding’. According to the action plan and follow-up reports

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<sup>5</sup> Council document: 5725/17, SCH-EVAL 31, COMIX 66 of 27.1.2017.

<sup>6</sup> Council document: 11206/17, SCH-EVAL 197, ENFOPOL 355, COMIX 520 of 11.7.2017.

<sup>7</sup> Council document: 6359/17, SCH-EVAL 67, VISA 58, COMIX 130 of 17.2.2017.

<sup>8</sup> Official Gazette No 130/11 and 74/13.

<sup>9</sup> OJ L348, 24.12.2008, p.98.

provided for the implementation of the Council recommendations<sup>10</sup>, the necessary alignments of the Law on Foreigners with the Return Directive were made. On 18 March 2019, the Commission communicated to Croatia and the Council on the full implementation of the Council recommendations related to the return evaluation.

Following the positive Schengen evaluation of Croatia in the field of data protection in February 2016 and after verification that, from a technical point of view, the Croatian national **Schengen Information System** was ready to integrate into the Schengen Information System (SIS)<sup>11</sup>, the Council adopted a decision on the application of the provisions of the Schengen *acquis* relating to the SIS on 11 April 2017<sup>12</sup>. The SIS entered into full operation in Croatia on 27 June 2017, with the exception of issuance of refusal of entry or stay alerts for the Schengen area (until the controls at the internal border are lifted). The related Schengen evaluation took place in September 2017. The evaluation concluded that the implementation of the SIS is satisfactory and Croatia fulfils the conditions necessary to apply the *acquis* in this field. Croatia has put in place a solid, state of the art system architecture ensuring high availability and business continuity. Nevertheless, some fine-tuning was still considered necessary concerning the search functionalities and the SIRENE case management system. On 4 June 2019, after analysing the action plan and follow-up reports related to the Council recommendation<sup>13</sup> provided to ensure the necessary improvements, the Commission informed Croatia and the Council that the implementation of the actions related to the recommendations was fulfilled.

The evaluation related to the legislation on **firearms** was conducted based on a questionnaire in September 2016. The legal framework on firearms, administrative structures and police procedures on police cooperation were assessed to be in general compliance with the Schengen *acquis*. Some improvements were considered necessary in relation to EU legal requirements, such as bringing the classification for easily convertible gas weapons in line with Directive 91/477/EEC (part II of Annex I) and ensuring that the marking requirements on imported weapons comply in practice with Regulation (EU) 258/12 (Article 2(15)(c)). On 6 November 2018 the Commission communicated to Croatia and the Council that the implementation of the actions related to the Council recommendations<sup>14</sup> was fulfilled.

The evaluation in the field of **judicial cooperation in criminal matters** had been limited in scope, given that the vast majority of the provisions of the Schengen *acquis* in this field have been replaced in relations between Member States by non-Schengen legal instruments. For this reason, a questionnaire-based evaluation of the transposition and application by Croatia of those provisions of the Schengen *acquis* which have not been replaced was conducted in the course of July until October 2018. The general assessment was that Croatia's legal framework on judicial cooperation in criminal matters, in particular on mutual assistance in criminal matters and the '*ne bis in idem*' principle, fulfils the conditions necessary to apply the Schengen *acquis* in this field. No recommendations for improvement were identified. Instead

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<sup>10</sup> Council document: 11207/17, SCH-EVAL 198, MIGR 129, COMIX 521 of 11.7.2017.

<sup>11</sup> Article 1(1) of Commission Implementing Decision 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems (OJ L 74, 18.3.2015, p. 31).

<sup>12</sup> Council document: 5649/17, SCH-EVAL 28, SIRIS 14, COMIX 59 of 11.4.2017.

<sup>13</sup> Council document: 11185/18, SCH-EVAL 154, SIRIS 94, COMIX 409 of 16.7.2018.

<sup>14</sup> Council document: 13969/17, SCH-EVAL 265, ENFOPOL 508, COMIX 738 of 7.11.2017.

it was assessed that Croatia would fully comply with the Schengen *acquis* the moment it will become a party to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 20 May 2000 and the Additional Protocol thereto. This will be the case once the Council has taken a unanimous decision for determining the date for the entry into force of that Convention and its Protocol.

The **external border management** evaluation took place in May 2016 with on-site visits to Croatia's air, land and sea borders. The deficiencies identified during the visits related in particular to the surveillance of the land border, the number of personnel available to carry out operational border control and the infrastructure at the airports. Therefore, the evaluation report concluded that the Croatian external border management system did not at that stage meet the Schengen standards. A revisit to the air and land borders therefore took place in November-December 2017, with the aim to verify, based on the implementation of the action plan related to the 2016 evaluation, whether Croatia had fulfilled the necessary conditions for the application of the Schengen *acquis* in the field of external border management.

This 2017 revisit demonstrated that the infrastructural shortcomings at the airports had been properly remedied. However, given the deficiencies – including a series of ‘non-compliant’ findings that still existed at Croatia's external land borders –, the general assessment was made that Croatia did not yet fulfil the necessary conditions. The deficiencies at the land borders related to: the insufficient number of permanent staff; the technical surveillance system at the border with Bosnia and Herzegovina not yet being in place; the existence of a high number of ‘crossing places’ for local border traffic; several former crossing roads at this border still not closed and the low number of tracking dogs for land border surveillance. In its Communication to the Council on the assessment of the adequacy of Croatia's action plan to remedy the deficiencies identified in the 2017 revisit<sup>15</sup>, the Commission acknowledged the considerable progress made by Croatia and considered the action plan to be adequate. Nevertheless, the need was identified to organise another visit to the land border, with focus on the deficiencies and ‘non-compliant’ findings identified during the 2016 and 2017 on-site visits, especially in the field of land border surveillance.

The second revisit, with a special focus on Croatia's land border with Bosnia and Herzegovina, was carried out in May 2019. The on-site team verified the progress made on the implementation of the action plans to remedy the deficiencies identified during the 2016 and 2017 evaluations. No new ‘non-compliant’ findings were noted. However, some additional points which were considered as ‘compliant but improvement necessary’ were brought to light. The conclusion was drawn that there were a number of recommendations related to the ‘non-compliant findings’ identified during the 2016 and 2017 visits for which the implementation had not yet been completed at the time of the 2019 revisit. Those main outstanding issues concerned the further development and implementation of Croatia's concept for land border surveillance, the procurement and further development of technical land surveillance systems and surveillance equipment, the use of surveillance dogs, and staffing levels. It was also concluded that further and full implementation of these recommendations was needed to be able to confirm that the conditions necessary for the application of the Schengen *acquis* in the field of management of the external borders have

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<sup>15</sup> COM(2019) 127 final of 28 February 2019.

been fully met by Croatia. The draft evaluation report of the May 2019 revisit received a positive opinion from all the members of the Schengen Committee (consisting of Member States and chaired by the Commission) on 5 September 2019.

In line with the reporting obligation laid down in Article 16(3) of Council Regulation (EU) 1053/2013, and following the conclusions drawn during the 2019 revisit, Croatia provided the Commission with follow-up reports on the implementation of the action plans related to the 2016 and 2017 revisit as well as additional clarifications on 12 July, 6 August, 19 September and 2 October 2019. The following progress was reported by Croatia after the revisit of 2019, addressing the deficiencies related to the 2016 and 2017 visits:

- The Croatian authorities clarified the actions taken related to the recommendations on the current and foreseen staffing level for border control, including land border surveillance. According to the planning, Croatia will have 6 339 posts for border control (including 457 for compensatory measures) filled in line with the initial planning including by the redeployment of staff (6 300 border police officers by the time of accession). In addition, by the end of 2019, 100% of the working posts of police officers for border checks and border surveillance will be filled at the most vulnerable areas of the external border.
- The recommendation related to the training courses for staff responsible for the operational planning and tactical level management of border surveillance, training which should also cover operational tactics and planning of the border surveillance on the use of tracking dogs, tactical use of helicopters, technical surveillance systems, patrolling and interception technics, has been fully accepted by Croatia.
- The recommendations made to up-grade Croatia's concept for land border surveillance have been taken into account in the latest version of the concept (July 2019). This version includes the correlation between (new) technical capabilities and the use of border surveillance staff and other resources in line with the risk analysis. It also reflects the work methodology for the different levels responsible for land border surveillance, including the national, regional and local coordination centres.
- Regarding further improvement of the land border surveillance capacity and situational awareness and the recommendations made hereto to further develop technical surveillance systems at the external land border with Bosnia and Herzegovina and Montenegro and to increase the number of mobile thermo-vision vehicles, Croatia outlined the finalised and on-going procurement procedures for such systems and equipment as well as the planned delivery dates (the latest by the end of 2019). Information was also received on newly planned procurement and training of an additional 18 service dogs.

Having assessed the above-mentioned progress made by Croatia after the 2019 revisit, the Commission considers that Croatia has taken the measures needed to ensure that the necessary conditions for the application of the Schengen *acquis* in the field of management of the external borders are met. Croatia will need to continue working consistently on the implementation of all the ongoing actions in this field to ensure that these conditions continue to be met.



### III. Commitments relevant for the Schengen *acquis*

As required by the Act of Accession, Croatia made specific commitments in the area of the judiciary and of fundamental rights. Annex VII of the 2011 Act of Accession lists ten specific commitments, out of which the continued fulfilment of six commitments are relevant for the Schengen *acquis* as provided in Article 4(2) of the Act of Accession:

- To continue to ensure effective implementation of its Judicial Reform Strategy and Action Plan;
- To continue to strengthen the independence, accountability, impartiality and professionalism of the judiciary;
- To continue to improve the efficiency of the judiciary;
- To continue to ensure a sustained 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;
- To continue to improve its track record of strengthened prevention measures in the fight against corruption and conflict of interest; and
- To continue to improve the protection of human rights.

This section takes stock of fulfilment of these six commitments from the date of the accession (1 July 2013) until September 2019 and is limited to the aspects that are relevant for the Schengen *acquis* as provided in Article 4(2) of the Act of Accession.

#### *To continue to ensure effective implementation of its Judicial Reform Strategy and Action Plan*

As regards the commitment to continue to ensure effective implementation of the Judicial Reform Strategy and Action Plan, on 15 December 2010 the Croatian Parliament adopted the Judicial Reform Strategy for 2011-2015<sup>16</sup> and on 14 December 2012 the Judicial Development Strategy for 2013-2018<sup>17</sup>. In June 2013, the Ministry of Justice published the Action Plan for the Implementation of the Strategic Guidelines of the Judicial Development Strategy for the years 2013-2014<sup>18</sup>, which built upon the previous action plans.

The objective of both strategies was to improve the independence, impartiality, professionalism and efficiency of the judiciary, to better integrate the Croatian judiciary as part of the European judiciary, to improve access to justice and to reform the criminal justice system (2011-2015 strategy), to manage human resources in the judiciary in a better way and to make use of the potential of modern technologies (2013-2018 strategy).

Following the adoption of these strategies and action plans, a number of measures have been adopted during the reporting period to implement the mentioned objectives<sup>19</sup>, in particular:

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<sup>16</sup> NN 145/10.

<sup>17</sup> NN 144/12.

<sup>18</sup> <https://pravosudje.gov.hr/UserDocsImages/dokumenti/AP%20Startegije%20razvoja%20pravosuda.pdf>

<sup>19</sup> See Implemented measures and activities - Annex 1 to the Action Plan for the Implementation of the Strategic Guidelines of the Judicial Development Strategy for years 2013-2014, <https://pravosudje.gov.hr/UserDocsImages/dokumenti/Mjere%20I%20kvartal.pdf>.

- a reform of the criteria for the selection and promotion of judges<sup>20</sup>;
- a reform of the procedural laws and certain other laws mainly aimed at improving the efficiency of the justice system<sup>21</sup>;
- a reform aimed at strengthening the management by court presidents in the judiciary<sup>22</sup>;
- and a reform to increase the promotion of alternative dispute resolution methods<sup>23</sup>.

Croatia continues to fulfil this commitment.

*To continue to strengthen the independence, accountability, impartiality and professionalism of the judiciary*

The Croatian authorities introduced a series of measures to address these issues:

- (i) In order to strengthen the independence and impartiality of the judiciary, several measures have been taken during the reporting period, such as increasing the salaries for first instance court judges<sup>24</sup>. In order to minimise risks of improper political influence and to enhance objectivity and transparency of the selection process of the President of the Supreme Court and the State Attorney-General, respectively, legislation was changed<sup>25</sup>.

However, challenges remain particularly in relation to the perception of judicial independence, which, as shown by the 2019 EU Justice Scoreboard, ranks among the lowest in the EU<sup>26</sup>. In line with GRECO recommendations, in 2016 Croatian authorities have conducted a study to examine the reasons for the public distrust in the Croatian justice system<sup>27</sup>.

- (ii) To strengthen the accountability of the judiciary, a number of measures have been implemented in practice during the reporting period, such as greater transparency of financial declarations of judges and prosecutors<sup>28</sup>, the setting up of a harmonised financial reporting regime for judges and prosecutors (including an electronic database), and an enhanced tax and real-estate property information exchange among authorities<sup>29</sup>.

<sup>20</sup> Amendments to the Act on the State Judicial Council (NN 28/13), Act on Courts (NN 28/13).

<sup>21</sup> See in particular, amendments to the Act on Civil Procedure (NN 25/13, 89/14 and 70/19), Act on Administrative Disputes (NN 152/14, and 29/17), Act on Enforcement (NN 25/13, 93/14, and 73/17), Act on Criminal Procedure (NN 56/13, 145/13, 152/14), and to the Act on Courts (NN 28/13, 33/15, 82/15 and 67/18).

<sup>22</sup> Act on Courts (NN 28/13).

<sup>23</sup> Amendments to the Act on Civil Procedure (NN 25/13).

<sup>24</sup> Act on Salaries of Judges and Judicial Officials, NN 16/19.

<sup>25</sup> Courts Act, NN 67/18; new Act on the State Attorney's Office, NN 67/18; These measures helped to partly implement or dealt with in a satisfactory manner with GRECO recommendations relating to independence and impartiality of judges and prosecutors. See GRECO, GrecoRC4(2018)14, paras. 16-23 and 33-38.

<sup>26</sup> Eurobarometer surveys on the independence of courts and judges, see 2019 EU Justice Scoreboard, figures 47-50, and Country Report Croatia 2019, SWD(2019) 1010 final, p. 56.

<sup>27</sup> As recommended by GRECO, GrecoRC4(2016)5, paras. 18-21.

<sup>28</sup> Amendments to the Act on State Judicial Council (NN 28/13).

<sup>29</sup> The implemented measures were based on the Anti-Corruption Strategy (2015-2020). According to GRECO, these measures helped to partly implement its recommendations. See GRECO, GrecoRC4(2016)5, paras. 27-30, 43-46, and GRECO, GrecoRC4(2018)14, paras. 24-27. As regards the

- (iii) As regards the commitment to continue to strengthen the professionalism of the judiciary, several measures have been introduced, such as objectively verifiable criteria for the quantitative assessment of the work of judges and prosecutors<sup>30</sup>, ongoing education<sup>31</sup> and strengthened guidance on professional ethics<sup>32</sup>.

In addition to the efforts to improve the professionalism of the judiciary, measures have been taken to improve the quality of the justice system, such as the gradual reform of the judicial map, which led to the merging of smaller courts, and a more even distribution of workload<sup>33</sup>. Through increased investment in ICT, the electronic case management system has been gradually introduced to all courts, steps have been taken to improve electronic communication in courts, and online submission of claims and payment of fees has been incentivised<sup>34</sup>. However, as reflected in the European Semester, additional efforts are needed to further improve the quality of justice<sup>35</sup>.

Croatia continues to fulfil this commitment. To note that the effectiveness of the Croatian justice system is assessed in the context of the European Semester Country Reports of the Commission and has been subject to the country-specific recommendations as adopted by the Council addressed to Croatia.

*To continue to improve the efficiency of the judiciary*

As regards the commitment to continue to improve the efficiency of the judiciary, the court data show progress compared to the beginning of the reporting period in nearly all types of cases. However, any inefficiencies of the justice system, such as lengthy court proceedings, needs to be continuously addressed.

According to the 2019 EU Justice Scoreboard, the number of pending cases at first instance courts has decreased in the civil, commercial and administrative area by more than 20%<sup>36</sup>. However, backlogs remain substantial and the progress has been partly achieved on account of a lower caseload. In recent years, the pending criminal cases have increased, although these represent a smaller share. Measures have been implemented leading to a decrease by about 40% of the stock of cases older than 10 years compared to the situation at the end of 2016.

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financial declarations of judges and prosecutors, 2019-2020 Action Plan for the Prevention of Corruption envisages that the new electronic system for verification will become operational in 2020.

<sup>30</sup> Amendments to the Act on the State Judicial Council (NN 28/13) and the Framework Criteria for the Performance of Judges and Methodology for the Assessment of Judges' Performance; see also GRECO, Greco Eval IV Rep (2013) 7E, paras. 91, 150.

<sup>31</sup> Development Strategy for the Judicial Academy for 2011-2015; see also GRECO, Greco Eval IV Rep (2013) 7E paras. 128, 173.

<sup>32</sup> E.g.: Guidelines for the interpretation of ethical principles and the prevention of conflicts of interest were adopted on 4 February 2016; see also GRECO, GrecoRC4(2016)5, paras. 22-26, 39-42. According to GRECO, these measures helped to partly implement or satisfactorily implement its recommendations. See GRECO, GrecoRC4(2018)14, paras. 24-27, and GRECO, GrecoRC4(2016)5, paras. 27-30, 43-46.

<sup>33</sup> Country Report Croatia 2019, SWD(2019) 1010 final, p. 56.

<sup>34</sup> Council Recommendations to Croatia: 2.7.2019, 9935/19 - COM(2019) 511 final; 13.7.2018, 2018/C 320/10; 11.7.2017, 2017/C 261/10; 12.7.2016, 2016/C 299/23; 14.7.2015, 2015/C 272/15; 8.7.2014, 2014/C 247/10, and Country Reports Croatia: 27.2.2019, SWD(2019) 1010 final, p. 56; 7.3.2018, SWD(2018) 209 final, p. 50; 22.2.2017, SWD(2017) 76 final, p. 52; 13.3.2016, SWD(2016) 80 final/2, p. 2, 76; 16.2.2015, SWD(2015) 30 final, p. 25, 93; 2.6.2014, SWD(2014) 412 final, p. 37.

<sup>35</sup> See preceding footnote.

<sup>36</sup> 2019 EU Justice Scoreboard, figures 13-15. There was a more pronounced decrease in the last few years, particularly in administrative cases

The length of court proceedings has decreased in nearly all types of cases, particularly in administrative cases<sup>37</sup>. However, despite improvements, court proceedings remain long, particularly in first instance litigious civil cases (around 850 days on average), commercial cases (700 days), and first instance criminal proceedings (650 days at municipal courts)<sup>38</sup>.

According to the 2019 EU Justice Scoreboard, the courts have been able to cope with the incoming cases, with clearance rates<sup>39</sup> exceeding 100% in the last years in nearly all types of cases, often reaching or exceeding 120%<sup>40</sup>.

Whereas there is an ongoing need to further ensure the efficiency of the justice system, Croatia continues to fulfil its commitment to improve the efficiency of the judiciary.

*To continue to ensure a sustained 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.*

Croatia has a developed anti-corruption institutional framework with several anti-corruption committees and departments<sup>41</sup>. The Bureau for Combatting Corruption and Organised Crime (USKOK) and the specialised police for the fight against corruption and organised crime (PNUSKOK) carry out investigations. The USKOK has been praised for establishing a track record for proactive investigations and successful prosecutions including in notable cases concerning high level elected and appointed officials<sup>42</sup>. Statistics show a considerable number of investigations and indictments in cases related to organised crime and corruption in the last few years<sup>43</sup>.

Several high-level corruption cases are still subject to lengthy procedures and remain unresolved. Corruption is still perceived to be widespread<sup>44</sup>. Inefficiencies in the criminal justice system hamper the fight against economic and financial offences, and the Council has recommended reducing the duration of court proceedings<sup>45</sup>. The State Attorney's Office was

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<sup>37</sup> 2019 EU Justice Scoreboard, figures 5, 6, and 8, which show 'disposition time'.

<sup>38</sup> Country Report Croatia 2019, SWD(2019) 1010 final, p. 56, and Country Report Croatia 2018, 7.3.2018 SWD(2018) 209 final, p. 49.

<sup>39</sup> The clearance rate is the ratio of the number of resolved cases over the number of incoming cases. It measures whether a court is keeping up with its incoming caseload. When the clearance rate is about 100 % or higher, it means the judicial system is able to resolve at least as many cases as that come in. When the clearance rate is below 100 %, it means that the courts are resolving fewer cases than the number of incoming cases.

<sup>40</sup> 2019 EU Justice Scoreboard, figures 10-12.

<sup>41</sup> Monitoring Commission on the implementation of anti-corruption measures, Department for the suppression of corruption of the Ministry of Justice, Bureau for Combatting Corruption and Organised Crime (USKOK) and the specialised police for the fight against corruption and organised crime (PNUSKOK) and National Council for Monitoring the Implementation of the Corruption Strategy.

<sup>42</sup> Report from the European Commission to the Council and European Parliament, EU Anti-corruption report, 2014, COM(2014) 38 final.

<sup>43</sup> Croatian State Attorney's Office 2018 Annual report.

<sup>44</sup> Country Report Croatia 2019, SWD(2019) 1010 final; Statistics from 2017 Special Eurobarometer 470 on Corruption.

<sup>45</sup> Council Recommendation on the 2019 National Reform Programme of Croatia and delivering a Council opinion on the 2019 Convergence Programme of Croatia.

reinforced with additional human resources, but its capacity to fight economic and financial crime remains limited<sup>46</sup>.

A new public procurement law entered into force on 1 January 2017<sup>47</sup>, helping to address corruption through increased traceability and transparency of procurement procedures and by stronger investigating and sanctioning procedures for breaches. E-procurement in Croatia is advanced and provides the basis for enhanced transparency. Positive steps have also been taken with the development of the contract register and the possibility to lodge complaints electronically before the State Commission for Supervision of Public Procurement Procedures<sup>48</sup>.

The overall institutional setup for public procurement still needs strengthening, especially at the local level<sup>49</sup>, and there are delays and staff shortages in most institutions involved in public procurement<sup>50</sup>. Public procurement in the construction sector is vulnerable to corruption, mainly due to a large share of in-house contracting by state-owned entities, which are subject to weaker controls<sup>51</sup>. The adoption in May 2019 of an anti-corruption strategy for state-owned enterprises should address these issues<sup>52</sup>.

Overall, Croatia continues to fulfil its commitment to make progress in ensuring a sustained track record based on efficient, and effective investigation, prosecution and resulting in court rulings on organised crime and corruption cases.

*To continue to improve its track record of strengthened prevention measures in the fight against corruption and conflict of interest.*

Croatia's Anti-Corruption Strategy 2015-2020 and accompanying action plans aimed to improve the institutional and legislative frameworks, and to reinforce preventive actions to detect corruption risks. The Council for the Prevention of Corruption, a government advisory body composed of representatives of public institutions and NGOs, and the National Council for the monitoring of the implementation of the anticorruption programme, supervise the implementation of the anticorruption strategy<sup>53</sup>.

The adoption of the Law on the Right of Access to Information and the appointment of an Information Commissioner have increased transparency, and the adoption of the Law on Protection of Reporters of Irregularities has introduced a new system to report irregularities and protect whistle-blowers. Progress was made also as regards the regulation of political parties' finances and the financing of election campaigns<sup>54</sup>. The authorities continue efforts to strengthen the scrutiny of judges and prosecutors' financial declarations. However, according

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<sup>46</sup> Country Report Croatia 2019, SWD(2019) 1010 final, p. 56, and Country Report Croatia 2018, SWD(2018) 209 final, pp. 49-50.

<sup>47</sup> Public Procurement act, entered into force 1 January 2017.

<sup>48</sup> Country Report Croatia 2019, SWD(2019) 1010 final.

<sup>49</sup> Country Report Croatia 2018, SWD(2018) 209 final.

<sup>50</sup> Croatian State Audit report 2018 (State Audit Office, 2018).

<sup>51</sup> European Construction Sector Observatory Report 2018.

<sup>52</sup> Republic of Croatia, Anti-Corruption Program for State owned companies for the period 2019-2020.

<sup>53</sup> Croatian Ministry of Justice letter to DG HOME and DG JUST, 18 July 2019.

<sup>54</sup> Law on the Right of Access to Information in 2013, Amendments to the Act on the Right to Access Information July 2015, Law on Protection of Reporters of Irregularities in February 2019, 2013 act on Financing Political Activities and Election Campaigns.

to the latest available survey data, a majority of Croatians feel affected by corruption in their daily lives (59 %) and Croatia has the largest proportion of respondents (16 %) reporting to have been personally exposed to corruption of all EU Member States<sup>55</sup>. The latest European Semester monitoring has concluded that Croatia must improve corporate governance in state-owned enterprises and enhance the prevention and sanctioning of corruption, in particular at the local level<sup>56</sup>.

Concerns regarding conflicts of interest exist, notably at local level and within state-owned and state-controlled companies. The current Law on Local and Regional Self-Governance gives local officials considerable discretion and independence in decision-making on disposing of assets and finances of up to one million HRK and on the appointment of board members of public local companies.

A new legal act on the prevention of conflicts of interests is under preparation. Previous versions of the legal act did not address concerns such as excluding from its scope the chairmen and members of company boards of majority-owned local government units, as well as the presidents and members of boards of companies that are majority-owned by these companies. They also made it difficult for the Conflicts of Interest Commission to initiate proceedings to impose sanctions on officials who submit inaccurate asset declarations. Furthermore, for the envisaged preventive measures to be effective, the draft law would equally need to enlarge the circle of officials concerned and include effective sanctioning mechanisms. The need to ensure that the Conflicts of Interest Commission has sufficient powers to impose deterrent sanctions has already been highlighted<sup>57</sup> as has the necessity to provide more support for its essential preventive role<sup>58</sup>.

Several other planned legislative proposals need to continue advancing<sup>59</sup>. Movement from the private to the public sector (“revolving doors”) remains unregulated. Comprehensive codes of conduct for elected officials at central and local level should be developed, with corresponding accountability tools and dissuasive sanctions for potential violations of such codes<sup>60</sup>. A code of conduct for parliamentarians and the corresponding supervisory and enforcement arrangements, also recommended by GRECO<sup>61</sup>, is now pending adoption<sup>62</sup>.

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<sup>55</sup> Special Eurobarometer 470/2017 on Corruption.

<sup>56</sup> Council Recommendation on the 2019 National Reform Programme of Croatia and delivering a Council opinion on the 2019 Convergence Programme of Croatia.

<sup>57</sup> European Commission 2013 Monitoring Report on Croatia’s accession to the EU recommended Croatia to “ensure that immediate measures are taken to put in place a strong and effective mechanisms for preventing, detecting and sanctioning conflict of interest cases, based on thorough checks and deterrent sanctions.” In 2014, European Commission anti-corruption report stated that in spite of the existence of dedicated legislation, conflicts of interest and asset disclosures were again considered to be of concern. GRECO, GrecoRC4(2018)14.

<sup>59</sup> 53 of 126 actions of the 2015-2016 plan were implemented (42%). Some unimplemented actions were transferred to the following year’s plan. 87 of 126 actions in the 2017-2018 action plan were implemented (69%).

<sup>60</sup> Report from the European Commission to the Council and European Parliament, EU Anti-corruption report, 2014.

<sup>61</sup> GRECO, Greco RC4(2018)14.

<sup>62</sup> The 2019-2020 anti-corruption Action Plan foresees the adoption of these measures for the first quarter of 2020.

Whereas a number of elements of Croatia's preventive anticorruption legal framework need to be further reinforced<sup>63</sup>. Croatia continues to fulfil its commitment to make progress in continuing to improve its track record of strengthened prevention measures in the fight against corruption and conflict of interest.

*To continue to improve the protection of human rights*

As regards the commitment to continue to improve the protection of human rights, Croatia has taken a number of steps during the reporting period. According to the European Court of Human Rights, the Court's judgments have led to various reforms in Croatia, such as implementing a national strategy to improve quality and efficiency of schooling of Roma children<sup>64</sup>. In recent years, the Charter of Fundamental Rights of the EU (the Charter) has been applied by the Croatian Courts<sup>65</sup>. The institution of the Ombudsperson was awarded, in 2008, an 'A status' according to the UN Paris Principles, that was reaccredited in 2019<sup>66</sup>. Since 2013, the annual budget of the Ombudsperson increased from EUR 1.2 million to EUR 1.6 million in 2018<sup>67</sup>. In 2012 its mandate was extended,<sup>68</sup> and in 2014 and 2015, new regional offices were opened<sup>69</sup> in order to cope with the increasing number of national complaints<sup>70</sup>. Over the last years, the implementation of the Ombudsperson's recommendations by the competent bodies has increased<sup>71</sup>. Specialised human rights bodies, such as the Ombudspersons for the rights of the child and gender equality and for persons with disabilities are already established<sup>72</sup>.

The protection of human rights of asylum seekers and other migrants, and the allegations of denial of access to the asylum procedure and of use of force by law enforcement officials at the border remain a challenge. All the measures taken by Croatia for the control of its external borders must comply with the Charter, EU and international human rights obligations (including the principle of *non-refoulement* and effective access to the asylum procedure). Croatia has committed to investigate allegations of migrant and refugee mistreatment at its

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<sup>63</sup> These include effective verification mechanisms for conflicts of interests, asset disclosures of public officials, effective risk controls in public procurement, especially by contracting authorities with weaker control mechanisms as well as the introduction of a code of conduct for members of Parliament, and a strengthening of the Conflicts of Interest Commission's role.

<sup>64</sup> Supervision of the execution of judgments and decision of the European Court of Human Rights 2017, 11th Annual Report, p. 31; Council of Europe, The ECHR and Croatia, facts and figures, p. 5.

<sup>65</sup> E.g. Supreme Court of the Republic of Croatia (Vrhovni sud Republike Hrvatske), Case VSRH Kž eun5/2014-4, 6.3.2014, cited in the 2014 Report on the application of the EU Charter of Fundamental Rights, p. 146; Constitutional Court of the Republic of Croatia, case U-III-1095/2014, 21 September 2017, cited in the 2017 Report on the application of the EU Charter of Fundamental Rights, p. 16-17.

<sup>66</sup> Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), 2019, p. 2, 18.

<sup>67</sup> Annual report of the Ombudswoman of Croatia for 2018, p. 320.

<sup>68</sup> Act on the Ombudsman, NN 76/12.

<sup>69</sup> <http://ombudsman.hr/en/about-us/history>.

<sup>70</sup> 2275 resolved cases in 2013, Annual report of the Ombudswoman of Croatia for 2013, p. 5; 3632 resolved cases in 2017, Annual report of the Ombudswoman of Croatia for 2017, p. 11.

<sup>71</sup> In 2016, 29 % of the recommendations from 2015 were implemented; in 2018, the share increased to 65 % of the recommendations from 2017, see Annual report of the Ombudswoman of Croatia for 2018, p. 6.

<sup>72</sup> Act on the Ombudsperson for Children, NN 96/03; Act on Gender Equality, NN 116/03; Act on the Ombudsman for Persons with Disabilities, NN 107/07.

external borders, monitor this situation closely and keep the Commission informed on progress made.

The Commission has been actively supporting Croatian efforts to ensure full respect of fundamental rights at the border. In this respect, part of the EUR 6.8 million in emergency funding granted to Croatia in December 2018 to reinforce border management was dedicated to a new monitoring mechanism. This would help to ensure that border control activities by Croatian border guard officers remain fully compliant with EU law, international obligations and with the respect of fundamental rights and the rights resulting from the EU asylum *acquis*, including the principle of *non-refoulement*. This allows for independent monitoring of activities carried out by the Croatian border police, including through the review of procedures, operational arrangements and manuals, training and support of relevant staff and assistance with complaints and incidents reported. At the end of the project the results of the monitoring mechanism will be discussed with the European Commission, the Croatian Ombudsman's office and Civil Society Organisations.

Having regard to the measures taken by Croatia to improve the protection of human rights, including its commitment to investigate allegations of mistreatment of migrants and refugees at the external borders, Croatia continues to fulfil its commitment in relation to the protection of human rights.

#### **IV. Conclusion**

This Communication is the result of a long process of evaluation and cooperation to fulfil the objective of Croatia meeting the standards required to allow for full implementation of the Schengen *acquis*. The sequence of monitoring by the Commission and Member States, and response through action plans, has allowed a step-by-step improvement in the ability of Croatia to meet the necessary conditions for the application of all relevant parts of the Schengen *acquis*. The Commission has also continued to monitor the commitments made by Croatia on accession in the area of the judiciary and fundamental rights.

The Commission considers that Croatia has taken the measures needed to ensure that the necessary conditions for the application of all relevant parts of the Schengen *acquis* are met. Croatia will need to continue working consistently on the implementation of all the ongoing actions, in particular in the field of management of the external borders, to ensure that these conditions continue to be met. The Commission also confirms that Croatia continues to fulfil the commitments linked to the Schengen *acquis* as undertaken in its accession negotiations. The Commission invites the Council to discuss this communication with the aim of integrating Croatia into the Schengen area in line with the 2011 Act of Accession.