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# Croatia

## PPP Units and Related Institutional Framework





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October 2013

## **Context for this Publication**

This publication has been prepared as part of European PPP Expertise Centre's work on "PPP Units and Related Institutional Frameworks" and contributes to the Western Balkans Investment Framework's initiative on "PPP Institutional Strengthening in the Western Balkans". It responds to the need to understand the institutional structures that support PPPs in the countries of the Western Balkans.

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This publication has been prepared to contribute to and stimulate discussions on public-private partnerships (PPPs) as well as to foster the diffusion of best practice in this area.

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## 1. Introduction

The current institutional framework for PPPs in Croatia has been put in place over the past five years.<sup>1</sup> In a document called *A Strategic Framework for the Development of Public Private Partnerships*<sup>2</sup>, published in October 2008, the Croatian Government referenced a series of pre-conditions for successfully implementing PPPs. They included the implementation of a clear legislative framework and the strengthening of expertise and professional capacity to conduct PPPs in the public sector. An overview of the principal developments in the PPP institutional framework to date is provided in Figure 1 below.

**Figure 1: Key developments in the PPP framework in Croatia**

Jul. 2006	Publication of Guidelines for the Implementation of Contractual Forms of Public-Private Partnerships
Jun. 2008	Definition of a Strategy for the Development of the Public Procurement System
Oct. 2008	Publication of <i>A Strategic Framework for the Development of Public Private Partnerships</i>
Oct. 2008	Enactment of the Act on Public Private Partnership
Nov. 2008	Establishment of the Agency for Public Private Partnership
May 2009	Approval of Key Regulations for the Implementation of the PPP Act
Mar. 2012	Establishment of the Centre for Monitoring Business Activities in the Energy Sector and Investments
Jul. 2012	Enactment of a new Act on Public Private Partnership
Jul. 2012	Approval of new Regulations for the Implementation of PPP Projects

The legal and institutional framework established in 2008 was modified in 2012 with a view to simplifying the procedure for PPP project approval. However, since the adoption of the PPP law in 2008, no new PPP contract has reached financial close.

This report has the following structure:

- Section 2 provides an overview of the Croatian PPP market;

<sup>1</sup> In parallel to developing a PPP-specific institutional framework, the Croatian Government has progressed in the alignment of national procurement procedures with EU directives and regulations. Full membership of the EU is likely to be a driving force behind further legal and institutional changes.

<sup>2</sup> See <http://www.ajpp.hr/media/5108/stratframe.pdf>

- Section 3 describes the governance structure and operational framework of the Agency for Public Private Partnership;
- Section 4 presents the role of other key public sector entities in PPPs;
- Section 5 provides an overview of the legal and policy framework for PPPs; and
- Section 6 outlines the PPP project cycle in Croatia. It maps how PPPs are developed and the roles and responsibilities of the various public sector entities throughout the cycle.

The report contains two annexes:

- Annex 1 contains a table summarising the role and responsibilities of the Agency for Public Private Partnership; and
- Annex 2 provides an overview of key macroeconomic indicators for Croatia.

## 2. The PPP Market

Croatia has had some PPP experience. A number of transport projects such as the Istrian Y Highway (1995) were procured as concessions under an old piece of legislation. More recently (2006), the bundling of 30 schools in Varazdin and the construction of a high school in the city of Koprivnica were procured under availability-based PPP arrangements.

The Agency for Public Private Partnership (“APPP”) manages a registry of PPP projects and has made detailed project information available publicly since January 2012. The registry does not include concession-type PPPs.<sup>3</sup> Table 1 below sets out the key data contained in the registry.

**Table 1: PPPs in the APPP registry**

Project name	Closing date	Capital value	Contract duration (years)	Procuring authority
High School and Sports Hall in Koprivnica	2006	EUR 9.3 m	25	County and Town of Koprivnica
Reconstruction of the County Hall in Varazdin	2006	EUR 1.2 m	20	County of Varazdin
Upgrading of the School Facilities in Varazdin County	2006-2007	EUR 37 m	30	County of Varazdin
Central Bus Station in Osijek	2007	EUR 16 m	30	Town of Osijek
City Sports Hall in Varazdin	2007	EUR 23 m	24	Town of Varazdin
City Sport & Business Complex in Split	2007	EUR 67 m	30	Town of Split

Source: APPP, PPP Projects' Registry, <http://www.ajpp.hr/naslovnica/registar.aspx>

In addition to the above closed transactions, several projects were approved by the APPP in 2011: a residence for the elderly, a gymnastics centre and, more significantly, a bus terminal in the city of Rijeka and an extension of the Zagreb airport. Of these projects, the most mature is the concession for a new passenger terminal at the Zagreb airport. This 30-year DBFM contract was signed with a French-Croatian in April 2012 and financial close is expected towards the end of 2013.

The implementation of the new PPP initiative introduced with the 2012 PPP law has been hindered by the financial crisis, which has significantly affected the development of a PPP pipeline. In particular, Croatia suffered a significant setback in 2010 when Standard & Poor's lowered its sovereign rating from BBB to BBB- with negative outlook, the lowest

<sup>3</sup> The definition of concession in the Croatian legislation is given in § 5.3 below.



investment-grade rating. In December 2012, Croatia's long-term credit rating was lowered a further notch to BB+ (non-investment grade). This has made securing external financing more challenging and expensive for the Croatian Government.

Since elected in November 2011, the current Government has given significant political support to PPPs as it sees them as a powerful tool to foster economic growth.

In April 2012, the Government adopted the framework programme for construction, upgrading and reconstruction of public buildings under a contractual form of PPPs ("Framework Programme"). In this document, the launch of a new investment programme envisaging an extensive use of PPPs was announced. The Framework Programme contains a list of potential PPP projects for the construction, upgrading and reconstruction of a range of public buildings. The first group of projects, presented in Table 2 below, is expected to be ready for approval by the end of 2013.

**Table 2: Programme of PPPs for public buildings for approval in 2013**

Ministry	Estimated capital value (EUR million)	Number of projects	Total life cost for public sector (in EUR million over 25 yrs)
Ministry of Science, Education and Sports	831	338	2,910
Ministry of Culture	159	10	524
Ministry of Justice	161	5	532
Ministry of Health	39	3	151
Ministry of Defence	12	2	95
Ministry of Social Affairs and Youth	10	8	33
Government building complex	213	1	704
Other projects	560	22	1,848
<b>Total</b>	<b>1,985</b>	<b>389</b>	<b>6,797</b>

### **3. The PPP Unit**

#### **3.1. History**

Further to the Act on Public Private Partnership (“PPP Act”) of October 2008, the Agency for Public Private Partnership (“APPP”) entered into the Register of Legal Entities on 21 November 2008.

The scope, role and structure of the APPP, as defined in the PPP Act, was initially outlined by the Ministry of Economy, Labour and Entrepreneurship, in close collaboration with the Ministry of Finance, Trade and Investment Promotion Agency and the State Commission for the Supervision of Public Procurement Procedures. Members of the academic community and line ministries were also consulted in the process. SIGMA – a joint programme of the OECD and the EU – provided assistance in drafting the PPP Act and a guide for preparation, procurement and delivery of PPP projects. Staff (including the interim director) from the PPP department at the Trade and Investment Promotion Agency was transferred to the newly-established PPP agency.

#### **3.2. Tasks**

The APPP is the central national body in charge of the implementation of the PPP Act in Croatia. It assumes several key roles in the promotion and implementation of PPP projects, including that of information provider, promoter and educator. Its principal responsibilities are to:

- approve PPP project proposals. Without APPP’s approval a PPP cannot be launched;
- approve all amendments to existing PPP contracts;
- publish information on projects that intend to be implemented as PPPs;
- publish a list of approved PPP projects;
- advise the procuring authority on the procurement procedure for selecting the private partner;
- set up and update a registry of PPP contracts;
- monitor the implementation of PPP contracts;
- further international cooperation and study national and international good practice along with other related developments in the field;
- propose relevant amendments to the existing acts and regulations to further implement best practice in the preparation and implementation of PPP projects;
- issue guidelines and explanations on the preparation, contracting and implementation of PPP projects; and
- deliver educational programs on PPPs.

### 3.3. Coverage

The APPP approves PPP projects proposed at both national and sub-national levels (e.g. local and regional government entities and public sector-owned companies). It is currently the only PPP unit in Croatia.

### 3.4. Role of the PPP Unit in the Project Cycle

The APPP intervenes at several key stages of a PPP project such as:

- **Project assessment and approval phase:** a project cannot be qualified as a PPP without the APPP issuing a decree;
- **Pre-tendering and tendering phase:** the APPP cooperates with the procuring authority with regard to the choice of the private partner selection procedure; and
- **Implementation phase:** the APPP does not formally supervise the implementation of projects. Nevertheless, being in charge of managing the PPP project registry, it may identify concerns and approach relevant institutions, such as the State Audit Office, the Financial Police or the State Attorney in order to highlight deviation from good practice. Also, lessons learnt from the implementation of projects are incorporated into the educational and training programmes provided by the APPP.

The APPP can legally stop a PPP project at any of the above stages (see Section 6 for more detail) in both concession- and non-concession- type PPPs (for more information on this distinction, see Section 5).

### 3.5. Location

The APPP is an independent executive agency, reporting to the Croatian Government.

### 3.6. Staffing

There are currently 9 full-time employees at the APPP<sup>4</sup> who have legal, financial, technical and communication expertise. When the APPP was created in 2008, the original plan was to have 25 members of staff. This target was never reached due to the severity of the financial crisis, which has tightened the Government's budget and affected the number of PPP projects brought forward. The director of the APPP and his deputy are state officials, while the rest of the staff are civil servants. No staff member has been recruited on secondment from the private sector, even though this possibility exists.

The director of the APPP is, by law, proposed by the Administrative Council (see Section 3.9 below) and approved by Government. His/her appointment is for a period of four years with renewal possibilities.

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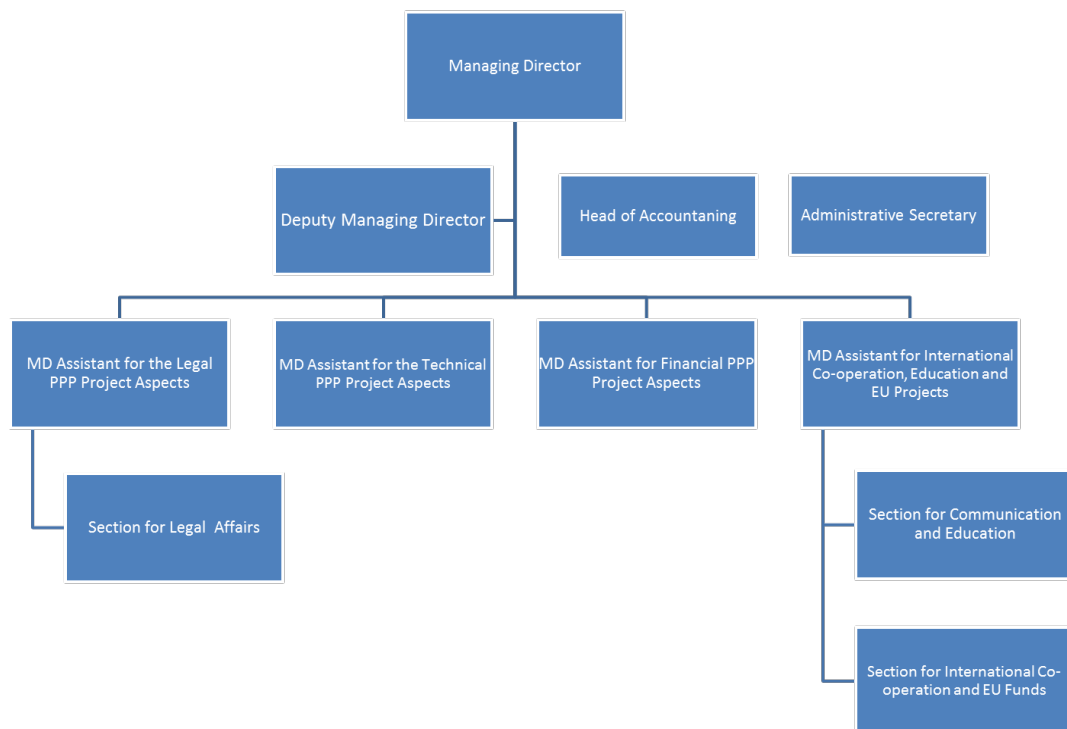
<sup>4</sup> At February 2013

The director organises and manages the work and operations of the APPP. (S)he undertakes all legal actions in the name and on behalf of the APPP and represents it in all procedures before courts, administrative and other state bodies. Within the limitations of his/her power, the director can empower another person to represent the APPP in legal transactions.

### 3.7. Organisational Structure

An overview of the organisation and structure of the APPP is provided in Figure 2 below.

**Figure 2: Organisational Structure of the APPP**



### 3.8. Funding

The APPP is funded through the Government's budget. It currently does not use EU funds to finance its costs.

### 3.9. Reporting and Accountability

The APPP answers to an Administrative Council composed of:

- the Deputy Prime Minister (President);
- the Minister responsible for Economy;
- the Minister responsible for Finance;

- the Minister responsible for Justice; and
- the Minister responsible for Construction.

The APPP Administrative Council reports direct to the Government on the activities of the agency. It meets two or three times per year and adopts decisions by majority vote. Its main roles are to:

- approve the annual work programme of the APPP which specifies in detail the activities and tasks for the next calendar year;
- supervise the implementation of the APPP's annual work programme; and
- decide upon the budget for the next year and sign off financial reports and accounts.

Furthermore, the Administrative Council is responsible for nominating the director and deputy director(s) of the APPP, whose appointments must then be approved by the Government. Once appointed, they may only be replaced on the basis of and under the circumstances stipulated in the PPP Act, preserving their independence.

## **4. Key Entities in the PPP Framework**

This section sets out the other areas of government involved in shaping PPP policy and/or implementing PPP projects. The four key institutions of the Croatian PPP institutional framework are the APPP, the Ministry of Finance (responsible for concession policy, budgetary plans and the appraisal of fiscal risk), the Ministry of Economy (responsible for the public procurement system) and the Centre for Monitoring Business Activities in the Energy Sector and Investments (responsible for the preparation of certain projects).

Other important institutions include the State Commission for the Supervision of Public Procurement and audit bodies (State Audit Office and departmental internal audit units), as well as the line ministries responsible for implementing PPP projects. Apart from the Ministry of Maritime Affairs, Transport and Infrastructure, which has gained some PPP project implementation experience, other line ministries are not familiar with PPPs. Similarly, only a few local authorities have developed practical PPP experience in the recent past. However, according to the PPP Framework Programme recently adopted, the demand for PPPs is expected to be mainly driven by local authorities.

### **4.1. The Ministry of Finance**

The Ministry of Finance enjoys several important roles in the PPP process and has potential leverage to promote or stop a PPP project or programme:

- it assumes the role of assessing the budgetary impact and fiscal risks associated with a PPP project;
- it undertakes an overall scrutinising role alongside the APPP. It must formally approve all PPP projects at the pre-tender phase and before contract close (together with the APPP); and
- it is responsible for developing the institutional framework and rules for concessions in Croatia.

The Ministry of Finance has a specific division covering concessions and PPPs. It currently has approximately ten employees, about half of whom are employed solely to deal with concessions.

### **4.2. The Ministry of Economy**

The Ministry of Economy has been a key institutional supporter of PPPs in Croatia and plays a significant role in the PPP process. The Minister of Economy is also a member of the Administrative Council of the APPP. The Ministry is responsible for developing economic policies, which include PPP investment projects.

The Ministry houses the Directorate for the Public Procurement System which currently has 20 employees. The Directorate is responsible for the development, improvement and co-ordination of the entire public procurement system, developing government

procurement policy, including the PPP Act and regulations. It supervises the implementation of regulations in the public procurement system and may file requests for the initiation of legal proceedings. It also prepares and implements training and professional development for those involved in public procurement.

The Directorate runs the *Forum for Public Procurement*, a platform for further development and implementation of public procurement system in Croatia. This body holds regular meetings with the business community, trade unions, non-governmental organisations and other important parties interested in public procurement system, including PPPs and concessions. It provides a forum for exchanging experience and proposals related to institutional and legislative changes.

#### **4.3. The Centre for Monitoring Business Activities in the Energy Sector and Investments**

The Centre for Monitoring Business Activities in the Energy Sector and Investments (CEI) is a new public body in the PPP institutional framework. It was established in April 2012 as an independent public person, reporting to the Government.

The role of the CEI is to coordinate and monitor investments in the energy sector and any other public investments exceeding EUR 1.5 million whatever the sector.

In practice, the CEI is responsible for:

- the preparation of PPP project proposals which are then passed to the APPP for approval;
- the selection of the private partners;
- the conclusion of the PPP contracts; and
- the implementation and monitoring of the PPP projects.

The CEI conducts activities as an operational body in the name of and on behalf of the central government bodies. Local and regional public entities and public sector-owned companies have the choice to ask the CEI to conduct one or more of the above-mentioned activities. The detailed rights and obligations of the CEI during the PPP project cycle are stated in a specific agreement with the relevant authority for every single project.

For delivering the above tasks, the CEI can mandate external legal, technical and financial advisers.

#### **4.4. The State Commission for Supervision of Public Procurement Procedure**

The State Commission for the Supervision of Public Procurement Procedure is a first-instance appellate body for public procurement disputes in the Croatian legal-institutional framework. It has jurisdiction over concessions and PPP procedures, adjudicating the

legality of actions, omissions and decisions.<sup>5</sup> Thus, it can play an important role in dealing with aggrieved bidders in PPP projects.

The State Commission reports to the Croatian Parliament on the work it performs. The Croatian Parliament, upon government recommendation, appoints its members.

#### **4.5. Audit Bodies**

The comprehensive and regular audit of PPP implementation is primarily the responsibility of the APPP and the Directorate for the Public Procurement System, but external and internal auditing bodies also play an important role. The State Audit Office is responsible for auditing the budgets of state and local bodies, legal entities being partly or completely financed from the state budget, and of public enterprises, companies and other legal entities in which the Republic of Croatia or the local entities have majority ownership. The State Audit Office assesses the financial statements of these bodies and checks that public revenues and expenditures were received/spent in accordance with legislation and efficiency. Audits of the budget of the state and local and regional government units are performed once a year.<sup>6</sup>

The State Audit Office is also responsible for auditing the use of EU funds and funds of other international organisations or institutions, used for financing public needs in Croatia.

Furthermore, according to the Public Internal Financial Control Act (2006), every public body must have internal control to mitigate mismanagement, promote cost-efficient and effective investment, and protect against unlawful or irregular activities. Therefore, all public bodies have a form of internal audit function to monitor expenditure.

#### **4.6. Line Ministries**

Line ministries are the principal entities responsible for project selection, development, procurement and implementation. Moreover, even where line ministries are not the procuring authorities behind projects (i.e. ones that are initiated at a local or regional level), they will be consulted to ensure projects are in line with sector strategies and goals. According to the new institutional framework, line ministries are obliged to empower the CEI as operational body for the preparation and implementation of the PPP project proposals.

The development of PPPs in Croatia depends on whether line ministries, which are responsible for identifying their own investment needs, see PPPs as an attractive and affordable option. The demand to increase capacity put on line ministries to use PPPs is considerable but, so far, the only one with significant experience with PPPs (which to date have been concessions) is the Ministry of Maritime Affairs, Transport and Infrastructure.

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<sup>5</sup> See Act on the State Commission for the Supervision of Public Procurement Procedure OG 21/10.

<sup>6</sup> See <http://www.revizija.hr/en/>



The Ministry of Maritime Affairs, Transport and Infrastructure has a long-dated experience in conducting concession projects, primarily in the transport sector. The first two successful attempts to implement road projects were the Istrian Y motorway (negotiated directly with one bidder) and the Zagreb-Macelj motorway. The latest transport project of the Ministry is the Zagreb airport extension for which the financing is currently negotiated.

#### **4.7. Regional and Local Authorities**

Regional and local authorities in Croatia bring together 20 counties, 428 municipalities and 128 towns. They are expected to be the main bodies proposing PPP projects in the forthcoming years under PPP Framework Programme. Their main remits are school buildings, health, culture, local security, but also street lightening, water supply and sanitation, waste management, public transport, parking, etc.

Regional and local authorities are free to implement their own projects autonomously of the central state provided these projects are in line with (i) the national sectorial strategies as defined by each line ministry and (ii) their financial capacity as assessed by the Ministry of Finance.

With the support of consultants (possibly from the CEI), the key responsibilities of regional and local authorities are to prepare and manage projects, and to submit the relevant documents to the APPP for monitoring/approval purposes.

## 5. Policy and Legal Framework

The *Strategic Framework for the Development of Public Private Partnerships*<sup>7</sup> is the principal document outlining the policy and legal framework for PPPs. It provides guidelines on the scope, principles and goals of PPPs in Croatia, and sets the structures for implementing PPP projects. It also highlights the roles of the Directorate for the System of Public Procurement of the Ministry of Economy, the APPP and the Ministry of Finance as the central bodies responsible for the implementation of PPPs in the country. These guidelines are formalised in subsequent Acts, most notably the PPP Act, the Concession Act and numerous related regulations.

**Table 3: Drivers for Using PPPs in Croatia According to the Croatian Strategic Framework for the Development of Public Private Partnerships**

Fast and cost-efficient preparation and award of projects
Better value for money for the tax payers
Optimum risk distribution and management
Exchange of skills and knowledge
Creation of new investment opportunities
Raising the competitive level of the economy by attracting new investors
Raising quality of construction and operation of public services
Reforming the public administration
Innovation in the provision of public services
Better capital spending

### 5.1. The Public Private Partnership Act<sup>8</sup>

The PPP Act defines a PPP as a long-term contract between a public and private partner the subject of which is the construction and/or reconstruction of a public infrastructure for the provision of public services, where:

<sup>7</sup> See <http://www.ajpp.hr/media/5108/stratframe.pdf>

<sup>8</sup> See [http://www.ajpp.hr/media/24883/zjpp-eng\\_final.pdf](http://www.ajpp.hr/media/24883/zjpp-eng_final.pdf)

**The Private Partner:**

- assumes obligations and risks regarding financing and construction process and assumes at least one of the following risks: (i) the availability risk and (ii) the demand risk

**The Public Partner:**

- determines required standard of services
- pays and/or collects remuneration
- supervises supplied services
- [can] grant[s] certain real estate rights and/or a concession to the private partner

The PPP Act regulates:

- the procedures for preparing, proposing and approving PPP proposals, as well as the core rights and obligations of public and private sector partners; and,
- the establishment and competences of the APPP.

These matters are set out in detail in the outline project cycle contained in Section 6.

The PPP Act also recognises ‘joint-venture-type institutionalised PPPs’.

The PPP Act differentiates between two types of procedures that can be used in awarding PPP contracts: a concession-granting procedure, as outlined in the Concession Act and the general procurement procedure as set out in the Public Procurement Act.

A first act passed in October 2008 was replaced by the PPP Act of July 2012 with a view of simplifying and shortening the procedure to prepare, approve and implement for PPP projects. For instance, the new Act foresees only one approval stage (“project proposal”) instead of the three stages required in the previous act.

## **5.2. The Concession Act<sup>9</sup>**

In the Croatian legislation, concessions include:

- concessions for the exploitation of common goods or goods of national interest, such as natural resources;
- concessions for performing public works; and
- concessions for operating public/utility services.

Only a part of the concessions enter in the legal definition of PPPs. A concession can be considered as a PPP only if:

- it is a public works concession or a public service concession and

<sup>9</sup> See [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_143\\_3027.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_143_3027.html)

- it has been explicitly recognised as a PPP-type concession by Expert Commission for Concessions (see box below).

The Concession Act regulates the procedures for the awarding and termination of concessions, as well as legal protection in concession procedures.<sup>10</sup> Concession Act from October 2008 was replaced by a new Concession Act in December 2012.

When a concession is a PPP, the award, termination, as well as the legal requirements and protection, must comply with both the PPP Act and the Concession Act and associated regulations. All the requirements of the PPP process governing project proposal, approval and implementation need to be met. These concessions, therefore, pass through APPP for approval.

### **Box 1 – The Role of the Expert Commission for Concessions**

Prior to the commencement of the procedure for the award of a concession, the concession grantor appoints an expert commission from the ranks of eminent experts in law, economy, technical and other relevant fields, depending on the object of the concession. If the object of the concession indicates that a concession could also fall into the definition of a PPP, one of the members of the expert commission must be a representative of the Ministry of Finance. As defined in the Concession Act, the principal tasks of this body are to:

- assist the concession grantor in the preparation of the (i) necessary analyses and/or studies for the award of the concession, (ii) tender documents, (iii) rules and conditions for the evaluation of bidders and bids and (iv) the tender selection criteria;
- analyse the concession project proposal to determine whether the project has characteristics of a PPP, as specified by the PPP Act (where the Expert Commission is obliged to cooperate with the APPP);
- review and evaluate the bids received;
- propose the selection of the most advantageous bidder or the cancellation of the concession award procedure; and
- notify the competent state attorney's office of the intention to award a concession for the exploitation of a common good.

### **5.3. The Public Procurement Act<sup>11</sup>**

The Public Procurement Act, passed in July 2011, regulates:

- public procurement procedures for public works, public supply and public service contracts;
- the roles of the Public Procurement Office and the State Commission for the Supervision of Public Procurement Procedure; and

<sup>10</sup> See [http://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_12\\_143\\_3027.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_143_3027.html)

<sup>11</sup> See <http://www.mvpei.hr/zakoni/pdf/461.pdf>

- the legal protection concerning public procurement procedures.

Croatia has adopted the main principles of EU Directives on procurement with the aim of rationalising state business activities and preventing corruption. The Public Procurement Act sets out the five public procurement methods available: (i) the open procedure, (ii) the restricted procedure, (iii) the negotiated procedure, (iv) the competitive dialogue and (v) bidding (i.e. auction for contract).

The Public Procurement Act is directly cited in numerous provisions of the PPP Act and Concession Act. The Directorate for Public Procurement of the Ministry of Economy is in charge of the development, improvement and co-ordination of the entire public procurement system, as well as remedying and eliminating irregularities in procedures.

#### **5.4. Regulation under the PPP Act**

The Croatian Government has enacted one regulation and one ordinance implementing the provisions of the PPP Act. They set out many of the details of the PPP operational framework such as<sup>12</sup>:

- the content of the information required for the Intention Statement<sup>13</sup> of the public body to implement a PPP project;
- the required PPP project proposal documentation;
- the structure of the public sector comparator ("PSC");
- the detailed criteria for the approval of the PPP project proposal;
- the definition of significant modifications of the approved PPP project proposal;
- the criteria for the selection of a private partner;
- the content of the semi-annual report on the implementation of a PPP project;
- the definition of the procedure to follow in order to pass amendments to a signed PPP contract; and
- the allocation of responsibilities in setting up and maintaining the registry of PPP projects.

No regulation has been enacted under the Concession Act to date.

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<sup>12</sup> These are available in English from <http://www.ajpp.hr/home-page/legal-framework/regulations.aspx>

<sup>13</sup> Intention statement is initial phase of the PPP Project Cycle in which the public body sends it information on intending to implement a PPP project to the APPP, before entire project documentation is sent for the approval of the project

## **6. The PPP Project Cycle**

This section sets out the outline of the PPP project cycle in Croatia, illustrating the relevant authority, functions and roles of the various public bodies as specified in Croatian law. An overview of the project cycle is provided in Figure 3 at the end of this section.

It should be noted that this recently-developed PPP framework remains to a large extent untested as Croatia has only signed one PPP-like concession contract since the adoption of the new PPP Act (i.e. Zagreb Airport Reconstruction).

### **6.1. Project Identification**

#### **Needs Analysis**

Line ministries and other public procuring authorities such as local or regional entities (the “Authorities”) are responsible for determining their investment needs.

When the project proposal is brought to the level of the line ministry(ies), the Authority, along with line ministry(ies), is then responsible for checking if project fits to related policy, strategy and statutory obligations.

#### **Project Selection**

Large projects that may be procured as PPPs may be identified by government as part of national strategic plans. Smaller PPPs will generally be identified by the Authorities, under the needs analysis mentioned above.

The Authority is responsible for identifying and appraising project options. It is likely that external technical and financial advisory support would be recruited for this purpose.

Having selected a project option/model for more detailed analysis and preparation, a feasibility study is prepared. The Authority must outline initial costs, benefits, risks, affordability and potential value for money (“VfM”). The VfM test must include the development of a PSC outline and assess any additional costs of procuring the project as a PPP compared to a more conventional method.

The Authority is responsible for identifying a project manager, advisers and budgets. It is however expected that in most of the large projects the operational role will be assumed by the CEI.

Projects that have been identified as potential PPPs have to be presented to the market. To perform this step, the Authority is obliged to issue an “intention statement” to announce the implementation of a PPP project to the APPP, which then publishes it. The information should contain the project purpose, its objectives, the private partner selection procedure, the estimated capital value and an estimated duration for the PPP contract.

## 6.2. Project Preparation

Project preparation is managed by the Authority itself. The APPP is not directly involved in this phase, but may be consulted. The CEI is available to assist the Authority on the following matters at this stage of the project cycle:

- bring together a project team and project management structures;
- develop a project management strategy;
- assess the legal, technical, environment and social issues of the project;
- identify project costs and revenues;
- identify project risks in more detail, propose a risk allocation and risk mitigation measures;
- assess potential interest from financiers and contractors and adjust the project scope and/or structure if necessary;
- develop project documents and contract terms;
- align the project with stakeholder objectives;
- assess the VFM;
- prepare the tender documentation and bidders' information; and
- prepare the business case.<sup>14</sup>

The APPP developed a series of guidance manuals aimed at helping Authorities in the preparation and procurement of PPP projects. The available guidance covers the following topics:

- discount rate;
- financial model;
- PSC;
- PPP contract;
- affordability calculation;
- VfM;
- procurement process;
- identification and allocation of risks;
- implementation of public investments; and
- combining PPPs with EU funds.

The APPP also translated and published the Croatian version of EPEC's PPP guide ("*The Guide to Guidance – How to Prepare, Procure and Deliver PPP Projects*").<sup>15</sup>

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<sup>14</sup> See World Bank, *How to engage with the Private Sector in Emerging Markets* (2011)

## 6.3. Project Approval

### Contents

All potential PPPs (whether concessions or not) must be presented to the APPP for assessment and approval. PPP project proposals must contain *inter alia*:

- the purpose, goal and description of the project;
- a presentation of the proposed PPP model and the private partner selection procedure to be followed;
- a feasibility study for the project, which includes a PSC and VfM assessment;
- the risk allocation matrix and the risk quantification approach; and
- draft PPP contract.

The project proposal must be accompanied by:

- documentation demonstrating that the proposed project falls within the legal competence of the Authority putting forward the proposal; and
- evidence that any possible hurdles arising from land property issues have been properly identified and will be overcome in due time.

### Assessment

A PPP project proposal is assessed from a legal, technical and financial perspective. The APPP is assessing:

- the accordance with the definition of the PPP;
- the competence of the proposing Authority;
- the relevance of the PPP option in comparison with the PSC;
- the quality of the draft PPP contract;
- the way to get clearance regarding possible land property issues on the project site; and
- the compliance with urban planning requirements.

### Process

Following the APPP assessment, the PPP project proposal is sent to the Ministry of Finance to verify that it is consistent with budgetary projections and plans. The Ministry of Finance is obliged to issue its consent on the project proposal within 30 days.

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<sup>15</sup> See [http://www.ajpp.hr/media/23539/guide%20to%20guidance\\_hr\\_finalna%20verzija\\_iva\\_2.pdf](http://www.ajpp.hr/media/23539/guide%20to%20guidance_hr_finalna%20verzija_iva_2.pdf)



When APPP determines that all of the project proposal approval criteria have been met and after the Ministry of Finance has granted its consent, the approval can be granted. By law, this approval process may not last more than 35 days.

The Authority is then allowed to initiate the procurement.

The APPP no longer approves tender documents, the preferred bidder selection and the final draft of the PPP contract before signing, as it did under the previous PPP Act.

#### **6.4. Procurement**

This responsibility rests with the Authority/CEI. Nevertheless, the APPP may be asked to cooperate with the Authority/CEI during the procurement process with a view to address specific PPP issues. The APPP issues written recommendations and opinions.

During the procurement process, the Authority/CEI is obliged to inform the APPP of modifications to PPP project proposals that have been approved.

In the case where the approved project proposal is substantially modified, the APPP will revoke its approval. Substantial modifications are those that affect the purpose and/or scope of the project, the risk allocation and the duration of the PPP contract.

By law, PPPs can be concluded as either public procurement contracts or concession contracts. The procedure governing each is different. Where the PPP does not involve a concession-type arrangement, it will be implemented in accordance with the procedures of the Public Procurement Act. Where the PPP is a concession, it will be procured as stipulated under the Concession Act, but it will also need to go through the additional checks and approvals set up for PPPs.

According to the PPP Act, the evaluation of bids is exclusively based on the economically most advantageous tender criterion.

According to the published information on PPP projects, it is expected that most PPPs will be procured under either the restricted procedure or the competitive dialogue procedure.

#### **Signature**

The PPP contract is signed between the Authority and the private partner. The CEI, the Ministry of Finance and the APPP are not parties to the agreement. After the contract is signed, the Authority is obliged to submit two copies of the contract and the related documentation to the APPP for the contract to be logged into the registry of signed PPP contracts. One copy of the contract is sent by the APPP to the Ministry of Finance.

## 6.5. Project Implementation

### Contract Management

Contract management will primarily rest with the Authority during the procurement, bid, construction and operational phases. Where the Authority does not have skills to find an appropriate contract manager, the CEI assistance is foreseen. The required training may also be provided by the APPP.<sup>16</sup> Contract management is expected to be covered in future guidance produced by the APPP.

### Renegotiation and Dispute Resolution

The approval of the APPP (following the same procedure as for an initial project approval) is necessary for any renegotiation materially changing the obligations of the parties to the contract, whether during construction or the operational period.

During procurement, disputes are heard by the State Commission as the first instance appellate body and the Administrative Court as the second instance appellate body.<sup>17</sup>

Disputes during the project execution phase are heard by the Commercial Court but parties are free to agree upon arbitration or mediation within the PPP contract.

### Monitoring

The responsibility for monitoring PPP projects rests primarily with the Authority. The APPP is, however, extensively involved in monitoring the implementation of the projects. Within six months of contract signature and every six months thereafter, Authorities must submit implementation reports to the APPP. The reports must *inter alia* answer the following points:

- Has the private partner met the agreed standard of service?
- Have there been any dispute?
- If so, which procedure was used to resolve them?
- Have liquidated damages or penalties been applied due to a failure to comply with the contractual obligations?

The APPP has the right to request additional explanations from the public authority on information contained in the implementation report.<sup>18</sup>

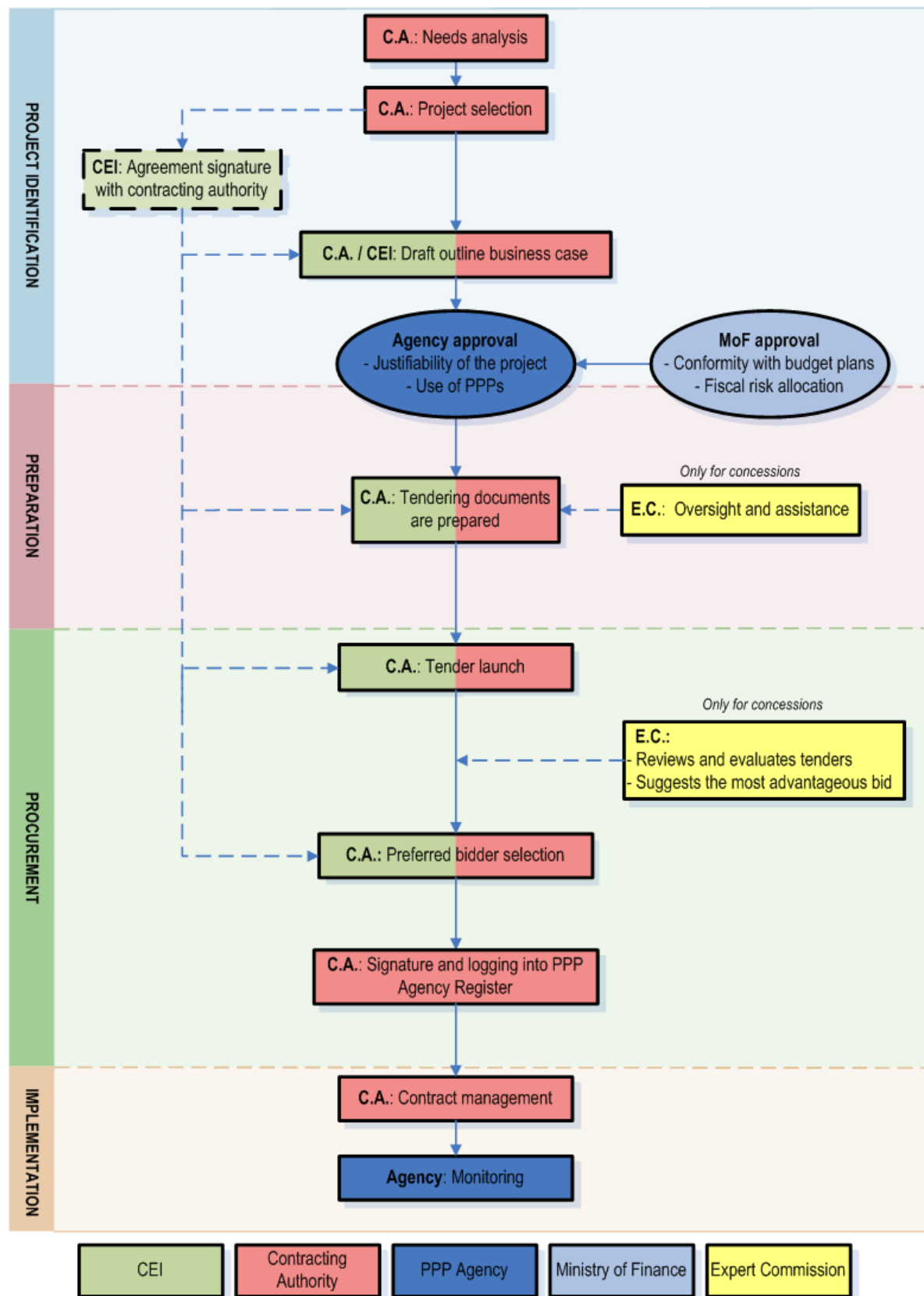
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<sup>16</sup> PPP Guides of APPP are available at <http://www.ajpp.hr/home-page/publications.aspx>. Also, announcements on the future trainings are available at: <http://www.ajpp.hr/home-page/education/seminars,-workshops.aspx>

<sup>17</sup> Ibid, p. 95.

<sup>18</sup> The main purpose of these requests, however, is to learn from project implementation and improve the legal and institutional environment for future PPPs.

**Figure 3: The PPP Project Cycle in Croatia**



## **ANNEX 1 – Overview of Croatia’s Agency for Public-Private Partnership and its Institutional Framework**

### **1. General structure of the APPP**

Location within Government	Independent executive agency
Reporting and accountability	To Government via the Administrative Council
Part of general procurement unit	No
Sectors	All economic sectors
Coverage	National and sub-national
Funding	Public sector budget
User fees	No
Success-based fees	No
EU funding	No
Staffing	9 full-time
Secondments	No
Public-private mix	All public sector civil servants
Difficulties in attracting staff with PPP expertise	Yes
Difficulties in retaining staff	No

## 2. Operational framework for the APPP

Project Planning	
Involvement in identification/planning	No
Develop business case/feasibility study	No
Assess feasibility	Yes
Approve <sup>19</sup> /qualify as PPP	Yes
If so, is this binding?	Yes
Provide recommendations to approval bodies	N/a
Assist in finding advisers	No
Sit on steering/oversight committee for the project	No
Sit on project team/group	No

Procurement Process	
Act as procuring authority for the project	No
Approve tender documentation	No
Sit on steering/oversight committee for the project	No
Sit on project team/group	No
Involvement in contract negotiation	No
Bid evaluation	No
Bid approval	No
Involvement in post-preferred bidder negotiations	No
Involvement in financial closing (e.g. closure of the swap)	No
Approve the final contract	No
Sign the final PPP contract	No
Approve the financing documentation	No

Project Implementation	
Approve renegotiation during construction	Yes
Approve renegotiation during operations	Yes
Payment oversight	No
Contract management	No
Monitor project implementation	Yes

Market Development	
Determine and share best practice (e.g. guidance material, lessons learned)	Yes, lead
Develop PPP policy	Yes, support
Develop standard documentation (e.g. RFPs, PPP contracts)	No
Promotion of PPPs (e.g. market awareness)	Yes, lead
Training	Yes, lead
Database development and management	Yes, lead

<sup>19</sup> Where approval is different to opinion. An approval requirement means that, without approval, a project cannot continue. An opinion on the other hand is a recommendation which is non-binding for the Authority.

## ANNEX 2 – Macroeconomic Indicators


The World Bank classifies Croatia as a high-income country. In 2013, its GDP was \$56.44 billion with GDP per capita reaching \$13,227. Croatia has a population of 4.3 million and a population density of 75 inhabitants per km<sup>2</sup>.

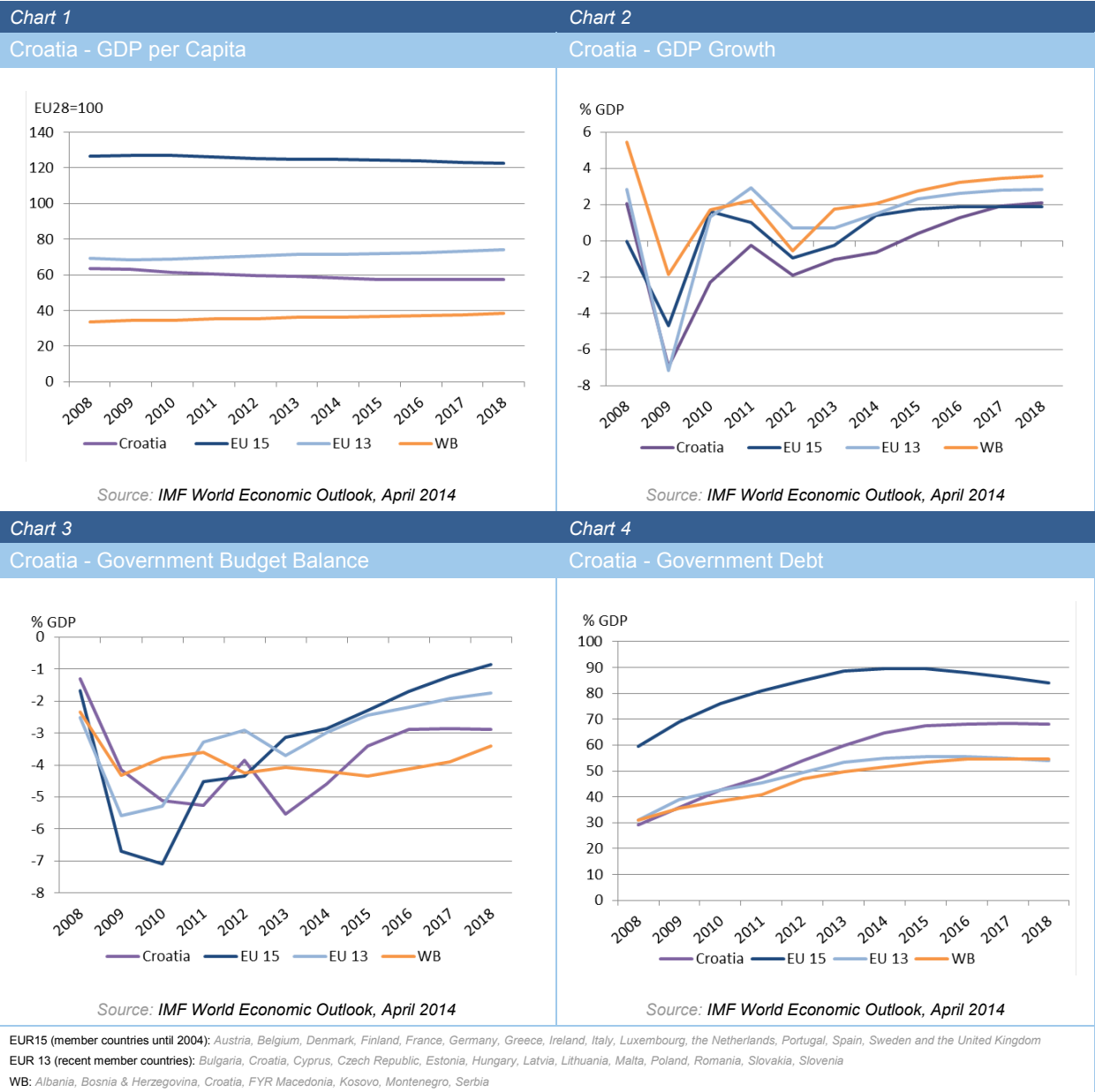
Chart 1 below shows GDP per capita expressed as a percentage of the average value for the EU28 group. Since 2008, Croatian GDP is facing a downturn, taking it below both EU15 and EU13 averages.

Since the onset of the economic crisis the economy has witnessed a sharp downturn to the point at which Croatia experienced significant negative growth in 2009 (-6.9%). Smaller negative growth rates occurred in the following five years, though slight positive rates are expected from 2015.

The Croatian Government budget (Chart 3) was almost balanced in 2008 but the deficit widened up to 5.5% of GDP during the crisis. Forecasts suggest a deficit of around 3.5% by 2015, much wider than the EU28 group. Government debt in Croatia (Chart 4) has proved low compared to the EU15 average. However, since 2008, debt has grown and is likely to continue doing so until 2015.

As far as sovereign debt is concerned, Croatia suffered a significant setback in December 2012 when Standard & Poor's lowered its sovereign rating to BB+ (with stable outlook). Fitch similarly downgraded Croatia in August 2012. These developments have made it more expensive for the Croatian Government to secure external finance from 2012.

Croatia Republika Hrvatska	
	<b>Capital:</b> Zagreb <b>Population:</b> 4.267 mil - <b>growth:</b> 0% - <b>density:</b> 75/km <sup>2</sup>
Macroeconomic and fiscal indicators	
<b>GDP:</b>	(Nominal, 2013, Eurostat estimate)
- total:	56.44 \$ bil
- per capita:	13,227 \$
<b>Real GDP growth:</b>	<b>-1.0 %</b>
<b>Government Budget</b> (% of GDP)	(07/2011, EIU estimate)
- revenue:	37.6
- expenditure:	42.4
- balance:	<b>-4.2</b>
<b>Public Debt:</b>	65.4 (2012)
Long-term Sovereign Debt Ratings (updated 03/09/2013)	
<b>Fitch:</b>	<b>BBB (Stable),</b> 05/08/2012
<b>Moody's:</b>	<b>Baa3 (Stable),</b> 05/08/2011
<b>Standard &amp; Poor's:</b>	<b>BB+ (Stable),</b> 14/12/2012
Rankings	
<b>WB Doing Business 2013 rank:</b>	<b>84</b>
- change in rank since 2012:	<b>-4</b>
<b>WEF Global Competitiveness 2011 rank:</b>	<b>75</b>
- Infrastructure subindex rank:	42











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