
ACCESS TO LEGAL INFORMATION AND THE POLICY PROCESS REPORT

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Prepared by:



USAID COMMERCIAL LAW TEAM

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I. EXECUTIVE SUMMARY

As part of the U.S. Agency for International Development ("USAID") assistance to the Government of Croatia ("GOC") in its efforts to improve the environment for economic growth, USAID has contracted Booz·Allen & Hamilton Inc. ("Booz·Allen") to provide technical assistance in commercial law reform. In March 2000, Booz & Allen completed an assessment of Croatia's progress in commercial law reform and recommended areas for improvement. In this assessment, Booz & Allen's approach focused on analysis of the following four specific perspectives:

- *Legal Framework*: the laws and regulations governing the respective registries, and recommendations for reform thereof
- *Implementing Institutions*: the legal and other institutions that implement the respective laws
- *Supporting Institutions*: the official and unofficial offices, organizations, and individuals that have an interest (stake) in the respective registries
- *Market for Reform*: the "supply" side of the current situation for each registry (rules, practical problems of enforcement, e.g.) and the "demand" side (the institutions and individuals who want the procedures modernized and reformed).

Based on the provided analysis, USAID and the GOC decided to focus subsequent commercial law technical assistance in three priority areas:

- *Modernizing registries* for land, collateral, and companies in order to strengthen the overall framework for the creation and protection of property rights;
- *Strengthening judicial administration* through institutional and administrative reforms designed to increase efficiency, transparency, and predictability in the application and interpretation of important commercial and economic laws; and
- *Increasing legal information, knowledge, and access to the policy process* in key areas of commercial and economic law (e.g., bankruptcy, companies, competition, contracts, intellectual property, international trade, government procurement, secured transactions, and others).

This report summarizes the findings and recommendations regarding the public's access to legal information and the policy process through which laws and regulations affecting economic growth and commercial activity are enacted. The findings reported below are based on assumptions and recommendations made in the March 2000 report, which supported the following two priority activities:

- 1) improving the quality of available legal information, and
- 2) improving the public's participation in and access to the policy process.

The overall purpose of the analysis was to assist the commercial legal community of Croatia to increase the quantity and quality of available information and improve legal knowledge in priority areas of commercial law. Without dissemination of the rules of the game (information) and a solid understanding of how they are applied (knowledge), it is not possible to adjust to the rapid and fundamental changes that Croatia must undergo to achieve its economic capacity or to establish a rule of law in commercial transactions. Keeping this in mind, from June 12 through June 30, the legal information Team:

1. Performed an in-depth analysis of the current state of availability of legal information, the adequacy of that information for Croatia's transition to a market-oriented economy, and the level of knowledge on priority areas of law; and, based on that analysis,
2. Prepared and presented recommendations for improving the access to information and accumulation of a practical body of knowledge for applying laws properly.

By concentrating on available commercial law related publications and speaking with publishers about current subscription levels, issues covered, and future expansion plans, this Team compared what information currently is available to address the concerns of the legal and business communities expressed during the March assessment.

Private publishers have indicated plans to expand coverage in the near future to include commercial legal issues and commentaries—an area the March 2000 report suggested was at that time insufficiently covered. Therefore, the legal information Team suggests for the time being de-emphasizing activities to improve legal information, but monitoring the quality and availability of legal information. If market demands are not being answered, the Team could assist in identifying critical cases and economic issues which are complex or new to publishers, and the legal community (such as a complicated bankruptcy case or the establishment of a collateral registry and its benefits).

The second priority area of improving and institutionalizing public access to the policy process affecting economic growth and commercial activity is where the legal information Team believes technical assistance should be concentrated. Working with the private sector and Parliamentary economic and commercial law committees to develop more user-friendly procedures will result in increased transparency and responsiveness to constituent concerns. The establishment of formal mechanisms for private sector and parliamentary communication and participation in developing commercial legislation is a necessity to ensuring legislation and regulations that support economic growth. Coordinating with the USAID Democracy and Governance (USAID/DG) office and projects would be helpful, particularly since this office is working on strengthening public participation in the democratic process but is not focusing on economic growth and commercial law issues. While USAID/DG is assisting in strengthening the relationships between Parliamentarians and their individual constituents, the Commercial Law Team would work with economic and commercial groups and associations and corresponding Parliament committees.

The legal information Team has learned that Parliamentary committees' rules leave open the possibility for developing user-friendly procedures and for increasing public participation. The

legal framework (committee rules) for openness exists and does function, but may be unclear to those using them (implementing and supporting institutions). Since many Parliamentarians are new not only to their positions and roles but also to a democratic political system and market oriented economy, methods of responding to and engaging their constituents—in this case the commercial legal and business communities—need to be clarified or introduced. For example, mechanisms such as formal notice and comment periods could be a useful and structured way for discussions between Parliament and users.

In the same regard, the market is interested in seeking greater participation in the draft process for commercial related legislation, but has little practice in this area. The demand needs to be focused better and participants trained to initiate participation instead of waiting to be approached. There are sporadic attempts by individuals and organization in the business and legal communities to advocate for their particular interests, but the capacity to do so in an organized and more effective manner needs to be strengthened.

Improving the business and legal communities' access to and participation in the policy process requires not only familiarity with the legislative process at the government and Parliament level, but also an intimate knowledge of business concerns and operations. Specifically, technical advisors should be familiar with the preparation and impact on business and the commercial environment of commercial and economic laws, regulations, and government and ministry acts. Experience in the evaluation of the economic consequences of commercial legislation is also critical.

The access to legal information and public policy component of the overall Commercial Law Reform program should be a strategic priority that can lead to results achieved in the short-term. Over the longer term, improving access to legal information and the policy process—as well as the other areas of the Commercial Law Reform program—are at the heart of creating an environment that is conducive to international and domestic investment in Croatia's economic future.

II. PRINCIPAL FINDINGS

A. JURISPRUDENCE—AVAILABILITY OF LEGAL INFORMATION

In March 2000 and during subsequent analyses, members of the Croatian legal and judicial communities complained about the lack of informative publications on legal commentary, key cases and judicial opinions, etc. The major complaint was that judges did not have legal information to which they could refer in preparing their opinions and judgements. The legal and business communities argued that there was insufficient information to help them better understand the legal context and implications of court decisions. Based on these discussions, Booz & Allen concluded that technical assistance in developing an institutionalized body of legal precedence and knowledge specifically related to commercial activity was warranted. Consequently, recommendations included improving the guidelines by which cases are selected for publication and developing detailed commentary on the practical interpretation, application, and enforcement of commercial laws. Other recommendations ranged from modernizing the curricula for training judges and for providing continuing legal education in interpreting and applying complex economic and commercial laws; to strengthening and creating training programs for para-professionals in judicial management and administration.

1. LEGISLATION

During the current analysis and workplan development phase, the legal information Team found that the availability and quality of legal information was improving. The public sector and to a greater extent the private sector are answering the need for legal information, and have plans to expand coverage of legal—including commercial law—issues. *Narodne Novine* is a state-owned publishing house, which in the last several years has developed some commercial activities. The prime task of the enterprise is to publish *Narodne Novine*, the official gazette. By law, all Croatian laws and related regulations must be published in *Narodne Novine*. This is not applicable to other government acts (such as decisions, conclusions, and resolutions, which are discussed below). The gazette has 17,000 subscribers and prints 26,000 copies several times a week, depending on the volume of the material needing to be published. The annual subscription cost is 640 kuna (approximately \$80), which is affordable for businesses and state institutions.

Narodne Novine also maintains an excellent web site (www.nn.hr), which has been recently upgraded. All legislation adopted since the independence of Croatia is available online free of charge. The gazette's publishing house also issued two CDs, which contain the full content of the printed editions up to the year 2000. A new registration system for the entire legal database is under development and the plans are to complete it by the end of the year. A private company developed the necessary software.

Despite these successes, *Narodne Novine* faces some practical problems, which are typical for in transition countries. Since the publication has been available online, the number of subscribers dropped, resulting in some financial losses for the enterprise. The publication of the CD version resulted in numerous copyright violations that go unsanctioned. The next edition will be better protected against the use from more than one location and will be

covered by more detailed licensing agreements. Long-term plans include the transformation of the existing web site into a fee-based service, which might be remain free for certain government users or the courts. *Narodne Novine* made several proposals for the development of a similar system for court decisions, but the Ministry of Justice has not responded so far, primarily because of the lack of funding for that purpose.

In addition to *Narodne Novine*, the other large and universal reference publication for the legislation of Croatia is ING Registar, which is a complete collection of Croatian laws. The Registar contains reference to all legislation published in post-World War II Yugoslavia. It is currently published and maintained by Inženerski Biro (ING Biro), a private company for technical and business services. The company was established in 1952 as a public enterprise and its publications covered the whole of the former Yugoslavia. Even for several years after the disintegration of Yugoslavia, the company maintained the services for Bosnia-Herzegovina and Slovenia until local capacity was built in those countries. ING Biro also has international experience in the establishing of similar services in other countries, primarily in Southeast Asia (India and Indonesia). In 1958, ING Biro began publishing ING Registar, a system of registering Croatian laws, which remains the indisputable leading legal publication of its kind in Croatia. ING Registar currently is a virtual monopoly, and has entered into agreements with the Parliament, the government, and the local authorities for the publication of all issued legal acts.

The ING Registar was designed as a loose-leaf publication, which permits the replacement of the outdated legislation with the new one. It includes all amendments and corrections in pre-determined sections in the collection. Prior to the introduction of computers and electronic databases the Registar was undoubtedly an indispensable service. Even now it is very important and useful tool for all practicing lawyers. Compared to the existing electronic databases (of *Narodne Novine* for example), the hard copy of the Registar has certain deficiencies, which are to great extent corrected by the availability of electronic updates. The updates are delivered to customers at the same time and under the same contract as the hard copies. The Registar is organized as an index, permitting the user to identify all available legislation, applicable to certain legal concepts. Legislation is divided into several categories, including Constitutional law, Commercial Law, Criminal, Family, Administrative, etc. References include the Basic Law and the relevant implementing regulations issued by the government or the ministries in charge.

Finally, for the search of pre-World War legislation or international agreements, some of which are still in force, assistance is available from the Library of the Law Faculty of the Zagreb University. This area of law has no implications for the Commercial Law Reform program and therefore has not been explored in detail.

2. COURT DECISIONS

In 1992, ING was privatized. In 1996 it started a court decisions publication, called *Pregled Sudske Prakse* (Review of Judicial Practice) which contains selected court decisions organized in 9 categories—including Property Law, Obligations, Trade, and Competition laws; Securities, Civil Procedure, and several non-business categories. Published decisions are selected by a committee of judges, who are elected on rotating basis for a specific period of time. The President of the High Commercial Court, Judge Nenad Šepić, is a member of the

selection committee for the current term. Since the institution of this practice 4 years ago, there has not been a rotation of committee members. The goal of the Review is to achieve fair representation of the courts at all levels and from all geographic areas, and to represent all areas of law. In fact, every court in Croatia is represented at least once a year in the Review.

The Review is well-organized and contains a search index, which permits searching for decisions by the legal provision on which they are based, and by the level of court that issued the decision. Currently there is no formalized method of or criteria for case selection. An improvement would be a formal selection criteria of the decisions of the Supreme Court and other courts of appeal (in particular the High Commercial Court) because of the importance of those decisions for lower courts. The national court administration and the Ministry of Justice (MOJ) should participate in deciding what should be published. Such participation would be in line with the MOJ's constitutional obligation to secure the equal application of the laws by all courts and institutions in the country. Judges at several levels are aware of the problem and are working on proposals for the improvement of the system.

The cost of the Review does not appear to be prohibitively expensive and the offered technical services seem adequate. The subscription is less than \$200 per year and payments may be made incrementally, which should be particularly helpful for smaller law offices. Special subscription incentives are offered to young attorneys, students, and academic institutions. If subscribers can not locate a particular court decision, ING will locate the decision and provide a copy at no extra cost. There is no limit to this service. Currently, there are 12,000 subscribers to the Review, which includes most courts in Croatia. The team has seen at least one copy of the Review in several courts, generally in the president's office. Apparently other judges have access to it upon request.

In addition to the Review, subscribers receive a monthly magazine on a variety of topics. ING indicated that in October it plans to change the format of this magazine into one that focuses only on legal issues. This format would follow in the tradition of legal journals in that it would provide legal commentary and articles on key legal issues. It will also give advance notice for legislative proposals, and serve as a forum for discussions. Several smaller local private firms are also involved in the publication of legislative materials, and the competition in this sector is growing.

The supply of law books, including comments of the judicial practice is adequate. The chief complaint is the high prices of the books, which is especially burdensome for students. So far there is no system for redistribution of secondhand books. International publications are widely available from the National Library. Due to limited funds, the Law Faculty in Zagreb has difficulty obtaining books, but does try to keep current on periodicals. The National Library is very modern facility with extensive research capacities. Both these institutions are widely used by students and less by government agencies. However, one recent law graduate remarked that the National Library is more frequently used as it has greater resources, both in terms of space and literature.

3. GOVERNMENT REGULATIONS AND ACTS

The Constitution of Croatia does not contain direct provisions requiring the publication of all regulations (other than laws) prior to their entry into force. This has significance with respect

to certain regulations of the government and ministries, which might have important implications. The rules for operation of the government require that only the regulations (*uprava*)¹ based on the Constitution itself and the laws must be published prior to entry into force—but this does not apply to regulations or other acts. Besides regulations, the government might also issue decisions (*odluka*), conclusions (*zaključak*) and rulings (*rešenje*). Only the regulations are applicable to general issues. The other three are acts, applicable to individual issues, personnel matters such as appointments and dismissals, and statements of the government regarding issues of the competence of the government. Their publication is not a requirement for entry into force.

Article 47 of the Regulations for the Operations of the Government directs the Secretary of the Government to submit for publication all acts of the Government, which are issued based on the laws and decisions of the Government and signed by the Prime Minister. This text is an indirect requirement for publication of all acts of the government, but does not make such publication mandatory. In theory it is possible for the government to issue an act with universal application, yet such an act might remain unpublished. A future clarification of the issue (in the sense that all acts must be published and can only enter in force upon publication or in specific term thereafter) would contribute to the strengthening of the rule of law principle.

The two major databases of legislation (*Narodne Novine* and ING Registar) in Croatia have resolved in a different way the access to government regulations. All regulations (*uprava*) based on laws or the Constitution are published in *Narodne Novine* in chronological order. At this time it is possible to search for those via the Internet. The users of the print copy of *Narodne Novine* must review the index provided at the end of the year in order to find the necessary regulation, or must monitor all issues at the time of their publication and search for regulations of interest to them. Even in this situation some uncertainty remains because decisions, which are not regulations, would not be included in the index. The electronic database permits various ways of search, including the identification of all acts of certain type, and therefore resolves the problem.

ING Registar users can search for regulations by particular term, concept, or an issue of *Narodne Novine*. The ING Registar does not contain a single index of all government acts; thus access to government regulations is less well-organized than searching for laws, which by their very nature are easier to search. In the ING Registar, government regulations might be found only if the user knows the subject matter covered by the regulation, and this subject matter is included in the index. The index does not permit the contemporaneous identification of all regulations issued by the government.

While it would be a misrepresentation to state that the government issues unpublished legal acts, the existing system certainly provides the opportunity for this to happen. This problem could be resolved by the introduction of a more clearly formulated requirement to publish all laws, regulations, and related legal acts with common application prior to their entry in force. Such a solution would prevent miscommunications in the legal process and would lessen the chance that the public is acting contrary to government acts of which they are unaware.

¹ The names of the respective acts are given in Croatian in brackets for reference, in singular infinitive form.

Having seen the available material and discussed expansion plans with private and public sector publishers, the legal information Team suggests that the private sector is sufficiently managing the development of a body of useful legal information—a priority area suggested in the March 2000 report. USAID assistance may be appropriate in the future as the legal and economic communities respond to the quality of additional material, specifically commentaries and articles, and the selection of cases that are relevant to commercial activity. In any event, current analysis suggests emphasizing the second priority area described in the March recommendations—improving access to legal information and the policy process.

B. ACCESS TO LEGAL INFORMATION AND THE POLICY PROCESS (ALIPP)

While the quality of legal information is improving, increasing access to the policy-makers and draft legislation is an area where attention is needed. Currently, there is insufficient dialogue between the business community and Parliament during the legislation and policy drafting stage. This lack of access and participation of the business community in developing relevant commercial legislation has resulted in the passage of laws that hinder rather than support economic growth. (Even the Zagreb Land Registry has expressed concern that laws are passed which that affect their business operations and the Registry functions but in which they had no opportunity to comment.) Also, the level and quality of participation of the business community in the development process is inconsistent and unfocused. There is no history or culture of taking the initiative to engage Parliament representatives on issues of business interests. And, Members of Parliament new to their roles and the current political and economic systems are not familiar with methods of responding to constituent concerns or the legal procedures that allow Parliament to be open to public participation. It is in this area of improving access to legal information and participation in the policy process where the Team believes where the greatest possibility for immediate impact lies.

1. DRAFT LEGISLATION

Following independence, the volume and complexity of legislative work increased significantly; yet, most of the representatives in Parliament were with little or no political and legislative experience. Such experience was gained with time, and the opportunities for the public to influence the content of the new legislation did increase following independence. Important non-government institutions, such as the Chamber of Commerce or the Bar Association are consulted on new laws though not on a regular basis, and instead the process depends primarily on the good will of the proponents of the law. Draft laws are available to interested public groups and are not held in secret. For all practical purposes current public involvement in the legislative process is a new phenomenon.

a) GOVERNMENT-PROPOSED LEGISLATION

Most opportunities for the public to comment on possible legislative acts are at the draft preparation stage by the government—before the draft reaches Parliament committees where they can be significantly changed. The government Legislative Committee (*Ured za zakonodavstvo*) gives opinions for every bill submitted by the government to the Parliament. In this process the Committee may seek the opinion of the public if the proponent of the law has not done this previously, but there is no requirement to do so. The rules of procedure

(*Poslovnik Vlade Republike Hrvatske*) provide the possibility for the government to seek the opinion of certain non-government institutions in the process. Article 28 directs the government “as a matter of rule to seek the opinion of the Croatian Chamber of Commerce, Croatian Chamber of Crafts, Croatian Union of Employers, and other associations in matters related to their activities.” This possibility is used, but it is not formalized and depends completely on the good will and interest of the proponent of the law. In earlier interviews, comments were made by these and other commercially oriented organizations that they did not always have an opportunity to review draft laws that related to their activities.

The situation is different for the human rights community, which enjoys wide public support and has been successful in working with the government and Parliament on draft legislation. Individual human rights are something to which almost everyone relates (developing a system for the trading of securities for instance requires longer consideration from much narrower segment of informed professionals), and the agenda of the human rights community has been clear since the earliest stage of the democratization process. Further, human rights are widely supported by the international community. In contrast, the business community is traditionally a narrower segment of the population, especially in a country that only recently started building a true private sector economy. And, the business community represents a sector affected by players with conflicting agendas (the employers, trade unions, banks and other creditors, foreign investors, the tax authorities, etc.).

With the establishment of the governmental Office for Associations (*Ured za udruge*), which deals with all non-governmental institutions in Croatia (ranging from sports clubs to human rights protection), the government attempted to increase the involvement of the public in the preparation of laws other than those concerning human rights. The Office sent the draft Law on Associations to more than 17,000 registered associations and received comments from many of them. Yet, this was a single attempt to reach the public in such a massive scale, and it is certainly not feasible for every piece of legislation. A mechanism or process should be developed to ensure that the public has consistent access to draft legislation and realistic opportunities to comment. The present conditions in Croatia seem to represent an excellent opportunity for successful USAID intervention.

b) LEGISLATION IN PARLIAMENT

(1) BASIC PROVISIONS

After a draft law proposed by the government is submitted to Parliament, the opportunities for comment decrease. Similarly, legislation that originates in Parliament is equally difficult to access. The main role in the preparation of final draft legislation lies within the 20 Committees of the Chamber of Representatives (the Chamber). Chapter V of the Standing Orders of the House of Representatives of the Croatian National Parliament outlines the Basic Provisions of the Working Bodies of the House of Representatives (Committees), which speaks to Parliament's commitment to openness. The first Article of the Chapter, Article 43, allows for committees to discuss "submissions and proposals which the citizens submit to the House of Representatives." Article 49 obligates the Committees to "consider every question from their scope of activities and which has been submitted for consideration." Articles 50 and 51 allow for the inclusion of scientific and other organizations, expert and public associates, and

representatives of interested parties and organizations to be involved in "the preparation of acts or for the study of an individual question from their [the Committee's] scope of activities" (Article 50) at the Committee and Subcommittee levels. Even minority opinions have the opportunity to be considered (Article 52). Under Article 55, Committees are allowed to invite experts and others to give their opinion on discussion topics. Government representatives must be present at sessions during which government proposals or questions relating to their [the government or governmental agency] scope of activities are being considered (Article 54).

Despite professed ideals towards openness and public participation in Parliament's Standing Orders, there is no formal system or consistent approach. In Croatia, there is no system of mandatory notification to the public, nor time limits within which comments can be incorporated into Parliament drafts. The lack of an established system means that the involvement of the public is dependent upon the interest of the Parliament proponents of the law to receive comments from outside. As of now, most comments made by the public are incorporated in the draft preparation stage by the government, but even this process is not formalized.

Regarding increasing public participation, the Committee for Constitution, Standing Orders and Political System has activities for "determining and monitoring of policies, and in the procedure for passing laws." It also is the primary Committee "in areas relating to "merging, gathering and public protests of citizens,... [and] public information." Mr. Mate Arlovic is the president of this Committee (and also occupies a key role in the Croatian Law Center), which has been involved more with human rights and political legislation, and perhaps less with commercial or economic related legislation. The Team confirmed public participation in the areas of human rights but did not see strong indications of participation by the business community. A necessity for successful cooperation with the Parliament would be the demonstration of the advantages of establishing formal mechanisms for wide public discussion of economic and business related legislation. This can be done with the Committee for Constitution, Standing Orders and Political System or the other Committees, all of which are able to establish their own rules and procedures, albeit within Parliamentary regulations.

The quality of the process and the ability to build public consensus around proposed legislation would greatly benefit if Parliament interaction with the public were improved. This is a complex matter demanding careful consideration of the sovereign rights of the Parliament to pass legislation. It may be useful to provide Parliament with examples from other countries that such rights would not be affected by public participation. For instance, several countries in the region have established interactive web-sites that list all draft laws included in the legislative plan of the Parliament or submitted for consideration (the selection criteria depends on the rules for submission of drafts). The public has the opportunity to review the drafts and send proposals for amendment or opinions to the respective service in the Parliament. The advantages of such systems are obvious, yet at the same time it does not affect the sovereign rights of the Parliament to pass laws as it deems fit. The final responsibility remains with the members of Parliament and their considerations during the parliamentary sessions, which remain completely free and out of the control of the public. The establishment of a system for formal notification to the public about proposed legislation would be a step towards the improvement of the legislative process. Such a system would notify the public of proposed laws and would give an opportunity for comments within a time period prescribed by law. For

more complex legislative acts this period might be increased appropriately, but all draft laws should be subject to mandatory review.

(2) CURRENT PARTICIPATION IN PARLIAMENTARY COMMITTEES

Most Committees have a president, vice president, and a certain number of members from the Chamber of Representatives. The following Committees include 6 members from outside the Chamber Constitution, Standing Orders and Political System; Legislation; and Justice. The outside members have no voting rights, as it is Parliament's sovereign right to pass legislation, however, they do participate in discussion sessions.

The membership of the Committee for Human Rights and the Rights of National Minorities (Human Rights Committee) is interesting. This Committee has 15 members from the Chamber and is required to have "at least one representative elected from the ranks of every ethnic and national community or minority that has a representative in the [Chamber]." (Article 73). Article 72 on the Human Rights Committee is the only Article that specifically states that the Committee:

"cooperates with scientific and expert, and Governmental and non-governmental organizations which operate in the area of the protection of human and ethnic rights, with corresponding bodies of other countries as well as with foreign and international bodies which operate in the area of protection of human and ethnic rights."

That the Article pertaining to the Human Rights Committee is specific underscores the importance accorded to this area, and also highlights the lack of attention paid to economic matters. For example, the Committee for Economy, Development and Reconstruction, whose scope of activities directly impacts the economy and affects the business community, does not state such cooperation, nor involve members outside the Chamber. Such representation is specific to Croatia and does contribute to the inclusion of outside opinions in the legislative process. Still, much remains to be done to make the process more orderly and to secure all benefits which wider public discussion can provide.

(3) PARTICIPATION IN ECONOMIC AND COMMERCIAL LAW COMMITTEES

Committees relating to commercial enterprise and the economy do not appear to take advantage of the currently available legalities allowing it to engage the public in discussions about economic issues and commercial legislation. The impression is that the drafters of the rules were not familiar with some of the technical aspects of public involvement and as a result the rules are more of a political statement rather than a working document. The rules also provide the possibility of drafts to be published in the News of the Parliament of Croatia (*Izvješća hrvatskoga Sabora*), but publication is not a pre-condition for approval of the law. The section on the proposed public presence and participation in the work of the Parliament contains no reference to the possibility for the public to comment on the proposed legislation.

The most important committees regarding economic legislation are the Committee for Legislation (*Odbor za zakonodavstvo*), the Committee for Economy, Development and Reconstruction (*Odbor za gospodarstvo, razvoj i obnovu*), and the Committee for Justice (*Odbor za pravosuđe*).

- **The Committee for Legislation** has decisive influence over the quality of the legislative process as it reviews all bills prior to their discussion by the Chamber, and gives opinion as to their consistency with the Constitution and the legal system of Croatia. The Committee also "looks after the unity of the legal system and provides opinions on...the unified application of the law," and "prescribes and issues final drafts of law and other acts of the [Chamber]," and "considers proposals for giving a credible interpretation of the law or other act."

- **The Committee for Economy, Development and Reconstruction** has within its scope, activities relating to "the establishing and monitoring of the implementation of policy." It also is the primary Committee for the procedure for passing laws and other regulations in areas pertaining to, among others:
 - "the concept and strategy of economic development in [Croatia]...
 - the basis for the economic system and the securing of conditions for the functioning of the market, commodity reserves, current economic trends, economic development of all the areas of [Croatia]...,
 - restructuring and ownership transformation,
 - economic factors, the development of entrepreneurship,...
 - securing of conditions for investments by foreign partners...
 - questions of particular economic activities as well as other questions of economic policy, reconstruction and development.

- The scope of **the Committee for Justice** includes, among other areas,:
 - "the establishment, organization, scope of activities and mode of operation of work of courts
 - the organization, scope of activities, and method of work of notary public office
 - organization and the method of work of attorneys
 - questions regarding ownership, obligations and other property-rights relations
 - others questions related to justice."

All these Committees cover areas relating to the overall Commercial Law Reform program, and they are logical Committees in which to focus public access issues for each of the three areas of recommendations (registries, judicial/court administration, and public access to policy). In that the Committee for Constitution, Standing Orders and Political System is concerned with the process of passing laws and providing information to the public, it may be a useful Committee to engage in general discussions about improving public access overall. In concentrating on improving public access to the legislative development of specific areas of the Commercial Law Reform program, other Committees may be more important. For example, the Committee for Justice covers court operations, an area of focus for the Judicial/Court Administration activities, and property rights, which falls in the purview of Registries Modernization activities. The Committee for Economy, Development and Reconstruction seems to be the right place in which to emphasize the business community's role in economic development as a whole.

It is in these three Committees where the legal information Team sees where the most impact could be gained in a short timeframe. The Team proposes to begin developing relationships and strategies with key Committee members towards the objective of improving methods of public participation—particularly the business community—in developing commercial legislation.

(4) BUSINESS INTERESTS—THE MISSING ELEMENT IN PUBLIC PARTICIPATION

The goal of seeing established formal and informal methods of participation are within reach for the business community. Other organizations have had success in forging relationships with their parliamentary representatives. For example, while their focus is not in the economic or commercial realms, USAID implementers National Democratic Institute (NDI) and the International Republican Institute (IRI) have had success in assisting Parliament develop stronger relationships with their constituents. In fact, NDI is sponsoring a late June conference for Members of Parliament on topics such as how to be an ombudsman, how to advocate for district constituents, how to establish regional/local offices, and how to work with trade unions. There might be appropriate opportunities during other NDI conferences for the Commercial Law Team to present briefly on the impact of economic and commercial legislation on the private sector. Such presentations could complement the work that the USAID/DG office is doing with its implementers. In any event, since their work with parliament members has been successful, the Team would like to discuss with NDI and IRI their approaches—not to dilute or shift the focus of their Parliament counterparts—to strengthening Parliament-constituent relations. While the Team has ideas of how to get Parliament and the business community working together, it would be interesting and cost effective to see how other USAID implementers have been successful in this regard. Therefore, the Team proposes coordinating efforts with USAID/DG office that oversees these implementers.

In addition to the business community—including both domestic and foreign investors—there are other non-governmental organizations that are interested in developing closer ties with Parliament. Academic experts currently work with both the government and Parliament on draft legislation, but often academics have not had the opportunity to be involved in a business and therefore lack that perspective, which is sometimes evident in new legislation. Naturally, the Croatian Chamber of Commerce, the Employer's Association, and the Bar Association are interested in working with decision-makers on draft commercial legislation. Other organizations such as the Croatian Law Center and the Small and Medium Enterprises Association (SMEA) are also interested.

SMEA is an association of small entrepreneurs, which only started building the membership base and is trying to expand its activities not only in Zagreb, but also all over the country. The plans of the Association include the establishment of a center in every county and the development of a program for registration and consultation of small companies, but this process is only in the beginning. Currently the association is working on the development and distribution of a proprietary methodology for development of small businesses, which is viewed as tool for socio-economic development. The still narrow membership base, limited for the time being to the Zagreb area reduces the current possibilities to use the Association as

a lobbying tool, but with the increase of the number of members there is certainly a role for it in this area.

It seems that the democratic process in Croatia has gained enough momentum and is mature enough for a notice and comment system to be introduced. During the initial stages of transformation, such a system might have been too cumbersome because of the large number of laws which had to be passed in a very short time, but now it can only increase the quality of the adopted laws. A notice and comment period will provide an opportunity for careful evaluation of the financial and economic consequences of proposed legislation and will decrease the complaints by various groups that their opinions could not be expressed. The present lack of such a system causes part of the public not to seek access to proposed laws because of the well-established perception that public opinion does not matter. In the same vein, the Team found that often non-government institutions made no attempt to obtain proposed draft laws.

In the natural sequence of development of the democratic process, when transition countries have fundamental human rights laws in place, the time comes to adopt more and more complex economic legislation. At this point also, emphasis shifts towards the way in which legislation is adopted. The content of legislation remains of primary importance, but building public consensus requires more time because of increased complexities and the need to evaluate more diverse public interest on less familiar issues. For instance, individual human rights are something to which almost everyone relates, but developing a system for trading of securities for example requires more consideration from a much narrower segment of informed professionals. This opinion was shared by Croatian professionals with extensive international experience and long years of participation in international commercial legislation task forces. In their opinion one reason for limited public and expert participation is short deadlines imposed for the adoption of certain laws and the lack of a well-established policy formulation process in the area of economic legislation. The present conditions in Croatia represent an excellent opportunity for successful USAID intervention in improving the environment for public participation in the development of positive economic growth legislation.

c) RECOMMENDATIONS AND IMPACT

1. Assist Parliament economic committees to develop more transparent and user-friendly procedures. The Team proposes working with Parliament to review existing rules allowing public participation in policy development and to introduce methods used in other countries to engage and respond to economic and commercial constituents.

This activity would result in increased transparency and responsiveness of Parliament to commercial and economic constituent concerns. A system through which Parliament and the public discuss the impact of economic legislation would be established and thus more economic and commercial laws that support the growth of the economy and private sector would be adopted. Further, the credibility of the political system independent of the government in power will be strengthened, and the sense of responsibility and involvement of the general public will increase.

2. PUBLIC ADVOCACY CAPACITY

On the other side of the coin from the openness of Parliament is the advocacy capacity of the private sector, which is currently weak. From earlier discussions with the Croatian Chamber of Economy, the Employers Association, and others, while these organizations do provide some comments on some draft legislation they do not have consistent input nor do they regularly take the initiative to participate in the policy process. The impression is that these organizations generally wait to be approached by the government and Parliament, which, as discussed above, is not guaranteed.

In other areas, specifically in human rights and the media, associations and non-governmental organizations have had success in working with the government and Parliament in developing relevant legislation. According to IREX's (International Research & Exchanges Board) ProMedia project, local media associations have had successes in engaging—mostly on their own initiative—their respective Members of Parliament in discussions on draft legislation of interest to the media, e.g., the Telecommunications Bill. These associations have held town hall type meetings and invited Members of Parliament to participate in discussions. Further, these organizations have developed their own draft proposals in the proper government format and spoken with Members of Parliament one-on-one about their concerns. This is the type of focused effort and initiative that the business community needs assistance in developing.

Another USAID implementer, ABA/CEELI, sponsored a professional dialogue series between the government and the legal and human rights communities. For one session regarding media coverage of relevant issues, journalists and the legal community discussed important topics. One area that has not been sufficiently covered is commercial legal issues, and a discussion program between the government, Parliament, and the business community is one way to get the dialogue started.

a) RECOMMENDATIONS AND IMPACT

2. Develop tools to increase public access and input to pending legislation and proposed Ministerial regulations.
3. Publicize and train associations, NGOs, and other organizations on gaining access to the public policy process.
4. Implement public awareness campaign.

Working directly with associations and commercial related NGOs in improving their efforts to work with government and Parliament on key economic issues, would increase and focus public access to policy and decision-makers. Also, the capacity of existing local organizations and the public to advocate for their own constituents would be increased.