Croatia: A look at the Strategic Investment Projects Act One Year after Implementation

Croatia's sixth consecutive year of recession

The European Commission's autumn forecasts¹, published on 4 November 2014, projects weak economic growth for the rest of 2014 within both the EU and the Eurozone. This applies in particular for Croatia, which ranked at the bottom end of the list and for which negative growth of 0.7% in 2014 and only marginally positive growth of 0.2% in 2015 is forecast. Real GDP growth in Croatia is expected to pick up only gradually, reaching around 1.1% in 2016 on the back of an expected rebound in investment.

Against this background, the Croatian Government has already for some time been looking for new and more active ways to attract new large-scale investments in the short term.

Current legal regime for projects of strategic importance

The new Act on Strategic Investment Projects of the Republic of Croatia (Zakon o strateškim investicijskim projektima Republike Hrvatske)², which entered into force on 14 November 2013, was expected to play a pivotal role in the Government's efforts to improve the investment climate in the country. The main aim of this law is the establishment of a one-stop-shop for projects of strategic importance to the Croatian state.

Announced major amendments

The current implementation of this law has revealed significant deficiencies, in particular in relation to the eligibility criteria for (private) projects whose financial closing has not yet been achieved, and exposed the need to strengthen the administrative capacity for the preliminary verification of project applications. The Croatian Government has recently proposed a number of amendments to the existing legislative framework in order to remedy these shortcomings and improve investment conditions in Croatia³.

The most important proposed amendments include:

- Introduction of new rules governing the 'potential strategic projects', as projects which could be implemented on predominantly state-owned real estate, on the real estate under majority co-ownership of the state and the local and regional self-government units, as well as on the maritime domain. Since the statutory language is rather vague and unclear, these possibilities have been highly criticized for – among other things -- enabling the Government to dispose of real estate properties under a special legal regime (e.g. forests and maritime domain) and thus open door to preferential treatment, personal gain and corruption.

² Published in the Official Gazette of the RoC 'Narodne Novine' No. 133/13
³ Croatian version of the published Draft Act on Amendments to the Act on Strategic Investment Projects of the Republic of Croatia as a final proposal together with a report on public consultation is available on the Croatian Parliament's website at [http://www.sabor.hr/prijedlog-zakona-o-izmjenama-i-dopunama-zakona0052](http://www.sabor.hr/prijedlog-zakona-o-izmjenama-i-dopunama-zakona0052)
In contrast to the current procedure, the proposed amendments envisage that the selection of a strategic investor for such projects must be conducted by way of a public invitation to tender.

- **Simplifying the requirements with regard to the verification of the financial capacity of the applicants.** So far, private investments projects were not in position to provide evidence on a financial close at this very early stage and hence could not be selected.

- **Introduction of an obligation for interested private investors to provide suitable collateral and evidence of secured sources of funding in the amount of at least 10% of the total project value within 60 days as of the adoption of the Government’s Decision on Designation of Strategic Investment Project.**

- **Administrative check of public-private and private investment projects will be handled by the Agency for Investments and Competitiveness (Agencija za investicije i konkurentnost; AIK)** or by the Center for Monitoring Business Activities in the Energy Sector and Investments (Centar za praćenje poslovanja energetskog sektora i investicija; CEI) for projects within the energy sector.

- Alongside the Ministry of Economy, both the AIK and CEI will be entrusted with new tasks at the operational level.

- **Involvement of the Croatian Ministry of Foreign and European Affairs (Ministarstvo vanjskih i europskih poslova) and the State’s Attorney Office of the Republic of Croatia (Državno odvjetništvo Republike Hrvatske) in the formal process of conclusion of the Agreement on the Preparation and Implementation of the Project with the private investors** in order to avoid potential state liability in case of a claim for breach of investors’ legitimate expectations.

**Which projects qualify for projects of strategic importance?**

These could include private, public or public-private investment projects. Further, the proposed project should consist of the construction of facilities in the areas of economy, energy, tourism, transport, infrastructure, electronic communications, postal services, environmental protection, public utilities, agriculture, forestry, water management, fisheries, health care, culture, science, defense, judiciary, technology or education.

The law lays down detailed criteria that the project must meet, as well as the procedure for assessing and selecting strategic investment projects. The key criteria relate to (i) the project value, and (ii) the type of investment.

**Project eligibility thresholds**

For instance, a project must meet a minimum eligibility threshold of:

- ca EUR 20 million; or
- ca EUR 10 million in case the project would be co-financed from the EU funds and programs; or

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4 Croatian version of the published Draft Act on Amendments to the Act on Strategic Investment Projects of the Republic of Croatia as a final proposal together with a report on public consultation is available on the Croatian Parliament’s website at [http://www.sabor.hr/prijedlog-zakona-o-izmjenama-i-dopunama-zakona0052](http://www.sabor.hr/prijedlog-zakona-o-izmjenama-i-dopunama-zakona0052)

5 [http://cei.hr/en/](http://cei.hr/en/)
• ca EUR 2.7 million in case the investment would be implemented in less-developed areas or falls within the area of agriculture and fisheries.

It should also be noted that the project’s implementation needs to meet a set of policy goals/objectives. Accordingly, the project should have material effects on inter alia the creation of employment, the development or improvement of conditions and standards for the production of goods and provision of services, the competitiveness and efficiency of the Croatian economy or public sector, the overall level of safety and quality of life of citizens and environmental protection, etc.

In addition, the particular project must comply with the relevant spatial planning documents.

In case of a private investment project, it should relate in particular to one of the following activities:
• production and processing activities;
• development and innovation activities;
• business support activities;
• activities of high added-value services;
• activities in the energy sector;
• infrastructure activities;
• activities related to agriculture and fisheries.

The one-stop-shop model

In order for a project to be labeled as a "strategic investment project", it must go through a multi-stage administrative process: (i) preliminary administrative check and verification of the received applications; (ii) analysis by the Assessment Commission; (iii) inclusion in the List of Strategic Projects; (iv) adoption of the Decision on Designation of Strategic Investment Projects by the Government and its publication in the Official Gazette, and (v) conclusion of the Agreement on the Preparation and Implementation of the Project.

Once a proposed project has obtained strategic investment status, all of the administrative procedures necessary for the preparation and implementation of the designated strategic project should be streamlined and accelerated. To this end and in particular with a view to avoiding situations in which local interests groups block the project development, the law has introduced competent bodies for assessing and implementing strategic investment projects, including:

• Assessment Commission (Povjerenstvo za procjenu i utvrđivanje prijedloga strateških projekata) composed of high-level government officials; and

• Operational Group (Operativna skupina za pripremu i provedbu strateških projekata) composed of officials from different state administration bodies at the central, regional and local level, as well as
the competent state agencies for investments (AIK, CEI, HAMAG-BICRO6) or competition authority and environmental protection agency, etc.

The specific tasks of these bodies are prescribed by the Act. Perhaps one of the most important roles of the operational group that is in charge for a selected project is to coordinate the activities of the different public bodies and to provide guidance and assistance to investors during project implementation, in particular with respect to permit procedures.

(Only) state projects in focus

Despite the high expectations held by both the Croatian Government and the private investors, the current law unfortunately still lacks positive results of its enforcement in practice.

Reportedly, out of a total of 54 proposed investment projects (of which 29 are public and 25 private), only five projects have so far been included into the list of strategic projects, and only three of these have obtained the official status of project of strategic importance. More importantly, only one private project has been included in the above list.

Among energy infrastructure projects, these projects of strategic importance involve the planned construction of the coal fired thermal power plant Plomin C in Istria and the construction of the LNG terminal on the Island of Krk in the North Adriatic. Other projects included in the list are the expansion of the container terminal in the port of Rijeka, the Piskornica regional waste management centre in the Koprivnica-Križevci County, and the runway expansion at the Mali Losinj airport in the North Adriatic.

Final remarks

The public consultation process on the amendments to the Act on Strategic Investment Projects of the Republic of Croatia ended on 22 October 2014. Despite both the many concerns that have been expressed by the stakeholders involved and the general perception that the proposed amendments are insufficient to tackle the country’s current economic crisis, the Croatian Government is keen to ensure the amendments’ adoption as soon possible. On its session held on 26 November 2014, the Croatian Government approved the final version of the proposed amendments to the Act. Reportedly, the amendments are expected to be adopted in the Parliament before the end of 2014.

Lastly, it remains to see if these announced amendments, once adopted, would finally boost large-scale investment projects in Croatia.

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6 Croatian Agency for SMEs, Innovations and Investments (Hrvatska agencija za malo gospodarstvo, inovacije i investicije; “HAMAG-BICRO”) (www.investcroatia.hr)