

A map of Croatia is shown in the background, with various cities and regions labeled. Overlaid on the map is the title 'COMMERCIAL LAWS OF CROATIA' in large, bold, blue capital letters. Below the title, the date 'April 2007' is written in black. At the bottom of the map, the text 'AN ASSESSMENT BY THE EBRD' is written in large, bold, blue capital letters.

# COMMERCIAL LAWS OF CROATIA

**April 2007**

**AN ASSESSMENT  
BY  
THE EBRD**

*This Assessment was last updated during the preparation of the 2007 EBRD Strategy for Croatia and reflects the situation at that time. It does not constitute legal advice. It was prepared by the Office of the General Counsel of the EBRD. For further information please contact [ltt@ebrd.com](mailto:ltt@ebrd.com)*

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**Basis of Assessment:** *This information is based on the experience of the Office of the General Counsel whilst conducting legal assessments on behalf of the Bank. It also draws on EBRD investment and legal reform activities in Croatia (see [www.ebrd.law](http://www.ebrd.law)).*

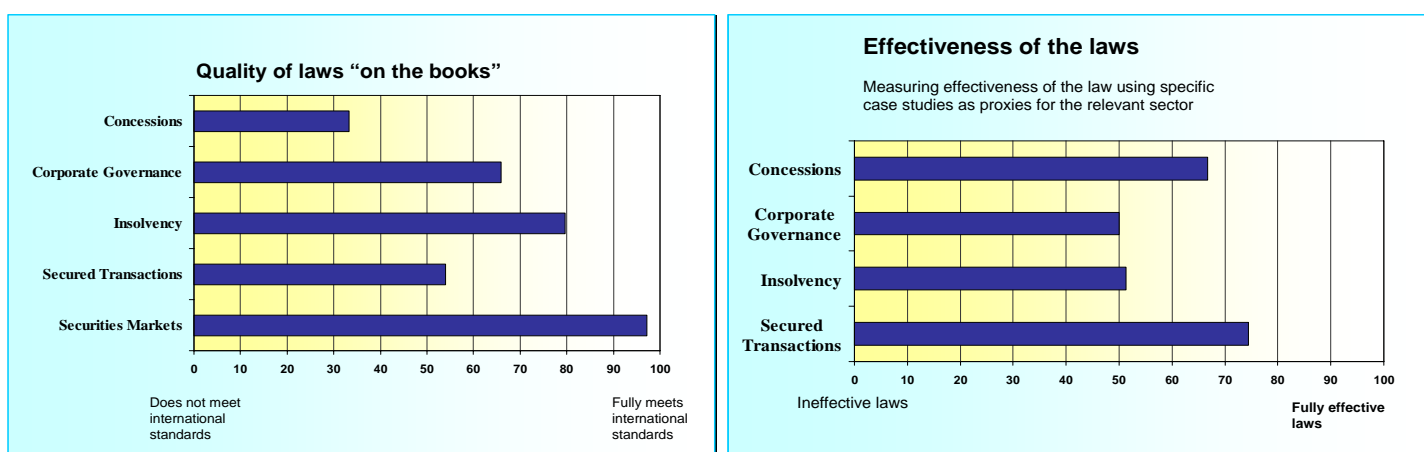
## 1. Overall Assessment

The prospect of Croatia joining the EU and the commencement of accession talks have been significant driving forces behind recent legislative reforms in Croatia. The capital markets framework has been extensively upgraded reaching a high compliance with international best standards. Amendments to the Bankruptcy law in July 2006 is expected to expedite and increase transparency of bankruptcy proceedings as well as boost protection of employee rights. Amendments to the Enforcement Act in July 2005 introduced measures to improve creditors' rights and efficiencies in enforcement proceedings. As to secured transactions, a new Law on the Register of Pledges over movable property and rights introduced the concept of floating liens and a register for recording security interests on movable assets and contractual rights.

Areas of company law also need to be further improved in line with international standards to foster foreign and domestic investments. In the area of corporate governance, particular attention should be paid to improving disclosure and transparency and protection of minority shareholders. Laws governing concessions need to be dramatically improved in order to meet requirements of a modern legal framework facilitating private sector participation, as the existing laws lack clarity on a number of fundamental matters. Despite some improvements made to the framework for secured transactions the suggested system is slow and overly complex and might need further improvements. The new telecommunications law needs to be harmonized with EU regulations in this sector.

Additionally, the authorities should focus on proper implementation of the existing legal framework. In some areas of commercial law a considerable implementation gap is noted (See Chart 1 for some examples). An inefficient judicial system has continued to undermine the enforcement of commercial laws. In order to improve the implementation of Croatian commercial laws overall, further advancement of reforms to establish a fair and predictable judicial system is essential.

**Chart 1 – Snapshot of country’s commercial laws**



Source: EBRD legal assessments 2002-2005

## 2. The Legal System

### 2.1. Constitution and courts

Croatia's Constitution, adopted after its first democratic elections in 1990, took shape as a reflection of strong Croatian national identity and consequent opposition to Serbian attempts at creating a Greater Serbia. It heralded the foundation of an independent democratic Republic, organised around a bicameral Parliament (or Sabor) consisting of the lower House of Representatives (or the Zastupnicki Dom) and the upper House of District Delegates (Županijski Dom). Its executive powers were shared between a powerful presidency and the Government, the latter's cabinet being formed by the Prime Minister who, upon distribution of Parliamentary seats, enjoys the confidence of a majority.

Changes to this organisational system came about as a consequence of the reorganisation of powers under former President Franjo Tudjman and the ruling Croatian Democratic Union (HDZ) during the 1990s. Following Tudjman's death in 1999, the opposition parties united against the HDZ and won both parliamentary and presidential elections in early 2000. The new Government amended the Constitution so as to curb presidential authority, largely shifting the power to dissolve Parliament into the Government's and Parliament's hands, thereby giving greater recognition to regional administration and minorities, as well as eliminating presidential control over the security services. To further democratise the system, the veto powers of the upper house were removed in November 2000, progressing naturally into a full abolition of the District Delegates in April 2001, thereby creating a unicameral legislative government.

There have not been any significant constitutional amendments as of 2007. However, accession negotiations opened with the EU in October 2005 with a view to potential membership in mid-2009. This has led to a batch of preparatory legislative and organisational changes, notably in its Administrative Procedures (September 2006), Intelligence Services (June 2006) and Data Protection (March 2006) operations. In its latest progress report on Croatia, the European Commission required further amendments particularly with a view to regulations on party/electoral financing, political conflicts of interest and decentralisation. The latter two are problematic in spite of concentrated government programmes aimed at combating them.

Croatia managed to maintain a largely independent court system despite being a constituent part of Yugoslavia. The judicial system consists of municipal and district courts, the Administrative Court, and the Supreme Court. An independent Constitutional court both determines the constitutionality of laws, governmental acts, and elections and is on guard of the constitutional freedoms and rights of the people.

The State Judicial Council is responsible for the administration of the judicial system (consisting of a president and 14 members, further referred to herein as the "DSV"). It is a body independent of both the judiciary and the Ministry of Justice which is charged with the appointment and discipline (including removal) of judges, court presidents, and public prosecutors. New legislation (introduced in December 2005) includes more elaborate and verifiable evaluation criteria for judges, allowing for easier review of DSV decisions, though this falls short of the uniform, objective and transparent assessment process which eventually needs to be implemented.

Reform of the judicial system appears to be a Government priority and has had some initial positive results. Though questions remain as to the impartiality and competence of the judiciary, the European Commission notes some significant developments in its efficiency and anti-corruption measures, although the latter relates to progress in the legal framework rather than implementation and monitoring. According to the *Transparency International Global Corruption Barometer 2006 – Report*, the judiciary is identified as the most corrupt sector in Croatia. Judicial reforms are being undertaken in a number of fronts with technical assistance from the international community,

including technical assistance from the EU for the training of judges. Recent and ongoing reforms include the establishment of a judicial inspection team to monitor court and judicial administration under the new Law on Courts, defining the minimum criteria for practicing law, consolidation of the municipal court system and reform of the land register.

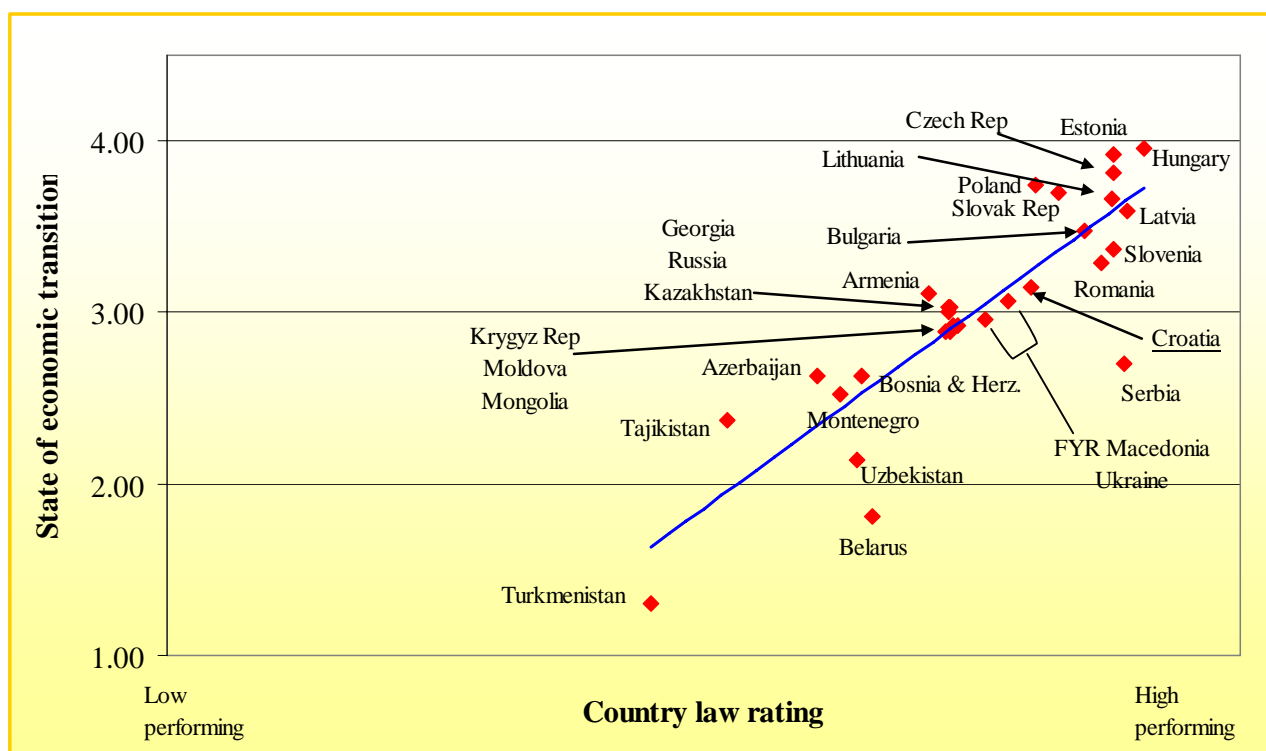
The improvements in efficiency, however, have been invaluable in dealing with some of the traditional problems suffered by the Croatian courts. In particular a chronic backlog of pending cases has been reduced by a quarter to 1.23 million as of June 2006. This has been facilitated by policies of case transfer between jurisdictions, overtime pay for judges and use of notaries for non-disputed enforcement cases, combined with the windfall arising from digitised land registries and an increased budget. Several outstanding planned reforms would take this progress even further, though the problem remains significant.

A new Law on Courts adopted in December 2006 has also introduced significant organisational changes in an attempt to rationalise the judicial system, though reluctance to implement the changes has led to few visible results at this time. It similarly attempted to combat difficulties with lengths of proceedings, introducing a right to be heard in reasonable time, though likewise the implementation of new Civil Procedure Code amendments, amongst others, has been slow.

## *2.2. Relationship between legal transition and economic progress.*

The conventional wisdom is that economic development and legal transition progress or regress hand in hand. Accordingly, it is fair to say that Croatia's future economic prosperity will be dependent in part on the country's ability to foster rule of law observance and to improve the efficiency of its court system. (Chart 2 below shows the relative position of the country on the two axes of legal and economic development).

**Chart 2 – Rule of law and progress in transition in the EBRD countries of operations**



Sources: EBRD Transition Report 2006, Table 1.1; EBRD Composite Country Law Index, 2006

Note: The **horizontal axis** measures the performance of commercial and financial law. The **vertical axis** displays the EBRD transition index as an average of transition indicators between 1997 and 2007, with 1 referring to very early transition stages, and 4 referring to an advanced transition level.

### 2.3. Implications for the investment climate

Croatia has demonstrated steady, stable growth since the beginning of the decade, GDP growth totalling nearly 30% between 2000 and 2005. This macroeconomic growth has been, in part, fuelled by the involvement of international organisations in the country, supporting local programmes of stabilisation and development, as well as the infusion of foreign capital and management that has recently entered the market, bestowing foreign investment with considerable confidence.

This is set to be bolstered even further as, following EU membership negotiations being successfully opened in October 2005, Croatia is also to receive, as part of the pre-accession strategy, 1.6 billion euro, provided by PHARE for assistance in institution building, together with associated investment and infrastructure development. Further, Croatia will be included in a regional free-trade agreement that will commence in summer 2007, uniting the non-EU countries of south-eastern Europe into a single market area. This potential access to both EU and non-EU European markets should prove a tempting prospect for investment.

To these incentives one can add the existence of a highly educated and skilled labour force, the lack of any significant regulatory barriers to trade and governmental efforts to tackle and improve areas that continue to pose difficulties.

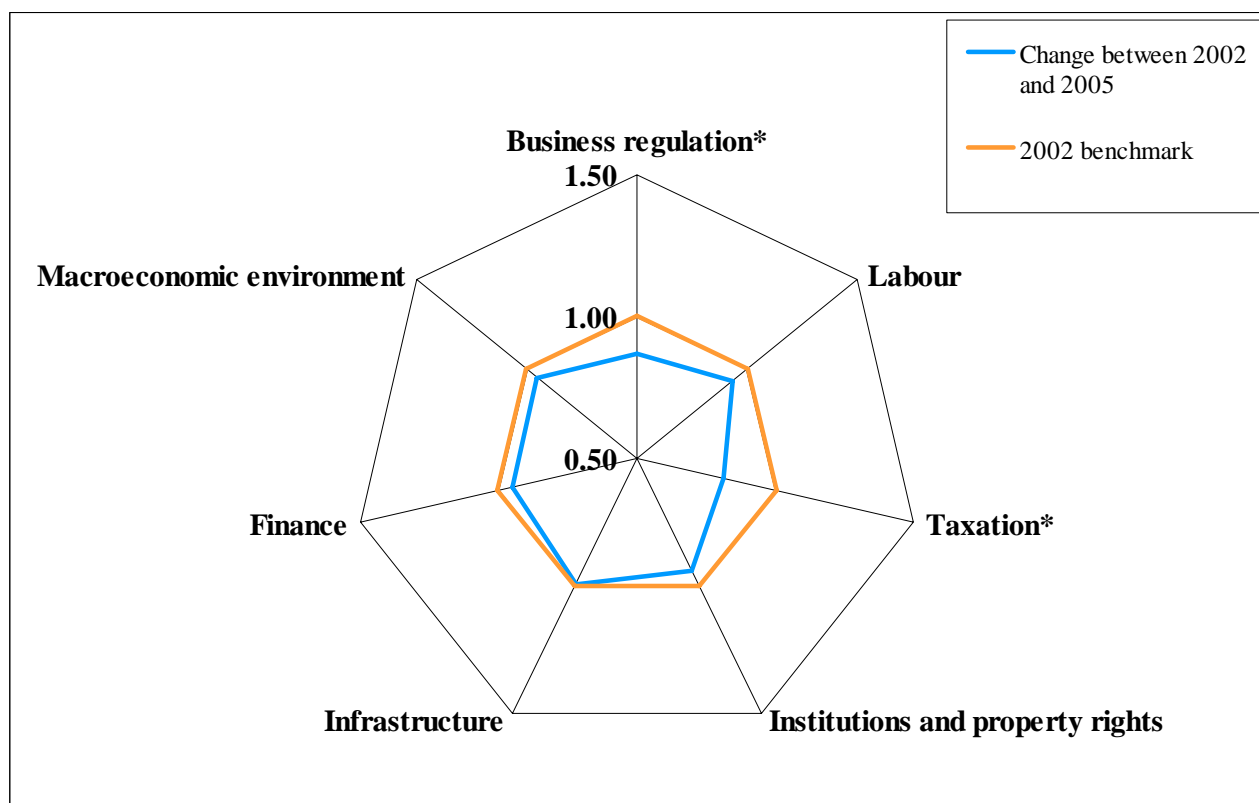
Complications do arise, however, when analysing the rule of law in Croatia. This has yet to be significantly entrenched, leading to minimal respect for personal and corporate rights and persisting, widespread corruption, while creating the conditions for the prevalence of economic and

organised crime. Anti-corruption policies have been met by entrenched interests and implementation has to date been unsuccessful.

Apart from the poor legal environment, there are other real matters of concern. Bureaucracy is a disincentive, the World Bank's *Doing Business* guide gauges that it takes 50 days to set up a business, with 13 separate procedures involved, while despite attempts to clamp down, tax evasion remains a widespread practice, with the grey economy estimated at 25% of GDP or more. Further, war damage to infrastructure has seen reconstruction limited by low availability of financing, a lack of availability mirrored by current-account deficit and large external debt.

Overall the macroeconomics of the country improved almost in all its key elements (see Chart 3). Major improvements were noted in the area of business regulations (weighted average of title and leasing of land, customs and trade regulations, business licensing and permits, and uncertainty about regulatory policies) and in the area of taxation (weighted average of tax rates and tax administration). Most other sectors also shifted towards a better system including: labour (weighted average of labour regulations, and skills and education of available workers); institutions and property rights (weighted average of functioning of the judiciary, corruption, street crime, theft and disorder, and organised crime); finance (weighted average of access to financing and cost of financing); macroeconomic environment (covering inflation and exchange rates). The situation in the infrastructure sector (the weighted average of telecommunications, electricity, transportation, and access to land) although it did not worsen seemed to stagnate.

Chart 3 – Changes in the business environment in transition countries, 2002-05



Sources: BEEPS 2002 and 2005

**Notes:** The spider charts show changes in seven aspect of the business environment between 2002 and 2005. The 2002 data represent a benchmark of no change. Where the line falls inside the benchmark, this represents an improvement in that aspect of the business environment. Where the line falls outside of the benchmark, this represents a deterioration in the business environment. Wherever the changes are statistically significant, the relevant categories are marked with an asterisk. The business environment was assessed on a scale from 1 (no obstacle) to 4 (major obstacle).

### 3. Evaluation of selected commercial laws

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities: capital markets, concessions, corporate governance, insolvency, secured transactions and telecommunications. The existing tools assess both the quality of the laws "on the books" (also referred to as "extensiveness") and the actual implementation of laws (also referred to as "effectiveness").

All available results of these assessments can be found at [www.ebrd.com/law](http://www.ebrd.com/law).

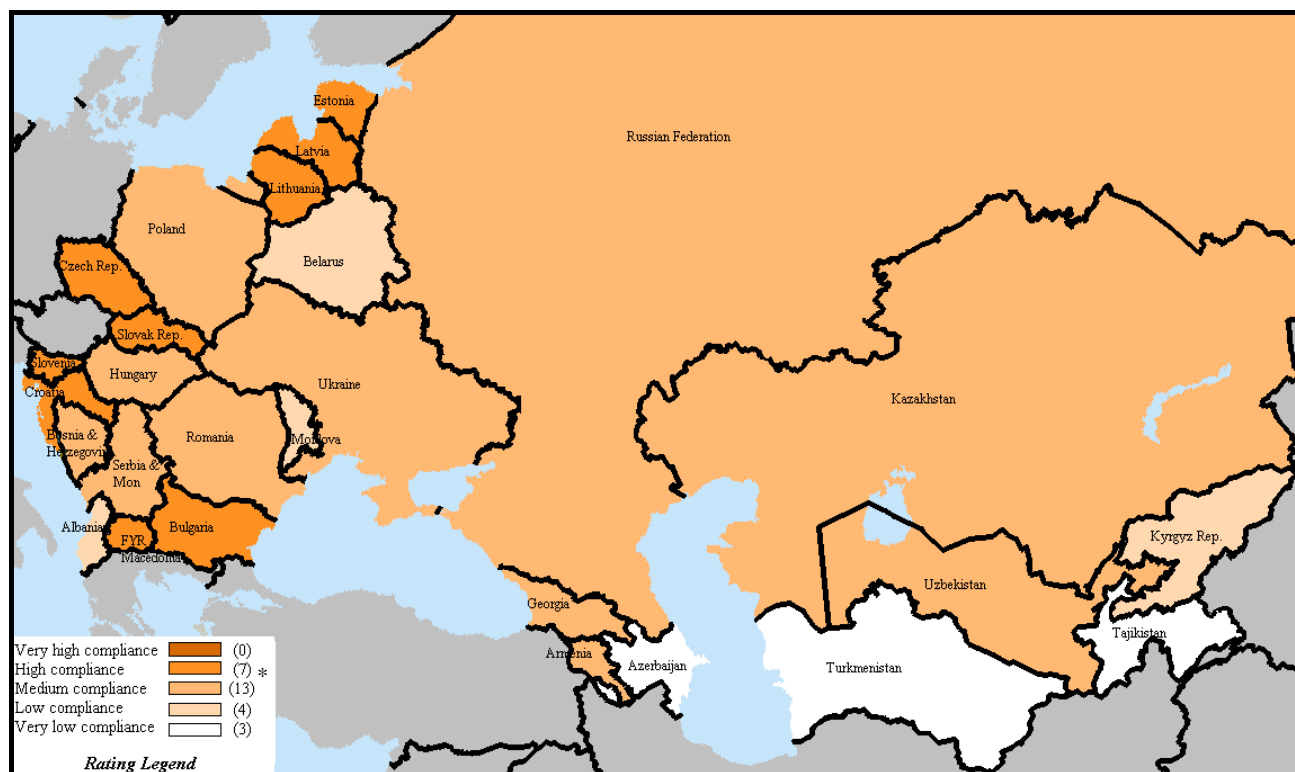
#### 3.1. Capital markets

Croatian legislation on capital market has been largely reformed in the past few years, mainly due to the transposition of the *Acquis Communautaire*. The primary legislation includes the Securities Market Law, the Law on Take-over of Joint Stock Companies, both issued in 2002, the Law on Investment Funds, enacted in December 2005 and the Act on Croatian Financial Services Supervisory Agency, which entered into force on 1 January 2006.

The oversight of the Croatian capital market is organised under two main bodies: credit institutions are supervised by the Croatian National Bank; the securities market, pension funds and insurance companies are under the supervision of the Croatian Financial Services Supervisory Agency (HANFA). The Agency was established on 1 January 2006 pursuant to the Act on Croatian Financial Services Supervisory Agency. The Act provides for the transfer of the competences of the Insurance Companies Supervisory Authority, the Croatian Securities Commission and the Agency for Supervision of Pension Funds and Insurance, to the new Agency and the dissolution of the three above mentioned bodies.

According to the 2005 EBRD's Securities Market Legislation Assessment, Croatia was found in "high compliance" with the Objectives and Principles of Securities Regulation published by the International Organization of Securities Commissions (IOSCO). (See Chart 4)

**Chart 4 – Quality of securities market legislation in the EBRD Countries of operation**

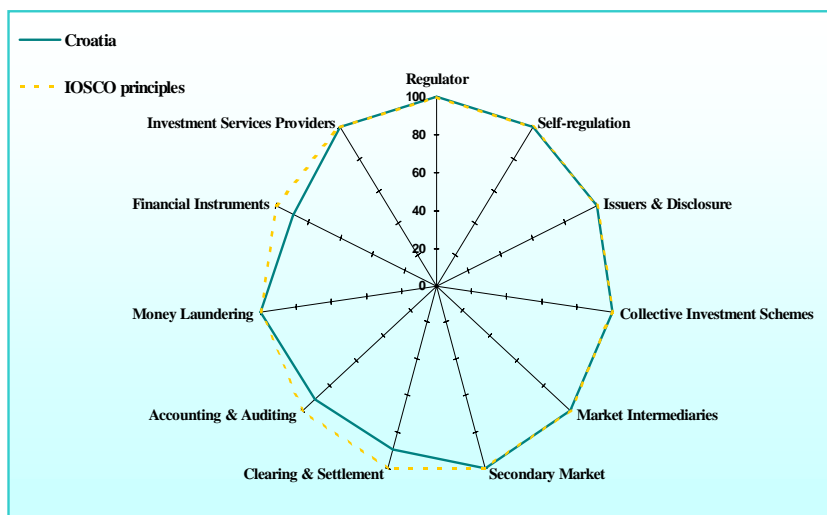


*Source: Securities Markets Legislation Assessment 2004*

**Note:** The various categories represent the level of compliance of a given country's legislation (the "laws on the books") with international standards such as the IOSCO Principles. The asterisk indicates in which category Croatia ranks.

The legislation was found to be sound in all areas under consideration (see Chart 5). Croatian authorities should now concentrate on improving effective implementation and enforcement issues, while continuing to refine current legislation.

**Chart 5 - Quality of securities market legislation – Croatia, 2005**



*Source: EBRD Securities Market Legislation Assessment 2005*

**Note:** The extremity of each axis represents an ideal score in line with international standards such as the IOSCO Principles. The fuller the ‘web,’ the more closely the country’s capital markets laws approximate these standards.

### 3.2. Concessions

In the last nine months there has been a significant move from the Government in promotion of PPPs (especially PFI models) and that has been supported through the policy and strategy papers produced by the Government. Furthermore the Government has recently introduced the PPP department within the Government Investment Promotion Agency with the prospect to become a separate PPP Agency that would promote and regulate the PPPs in communal infrastructure and public services. As part of the PPP initiative it has been announced that the Concession Law will be amended to secure more clarity and consistency in regulation of PPP initiatives.

Two laws govern the general concession legal framework in Croatia: the *Concession Law* of 1992 (the “Concession Law”) and the *Municipal Activities Law* of 1995 as amended (the “1995 Act”). In addition, concessions in the road and water sectors are regulated by various sector specific laws, such as the Public Roads Law and the Water Law. Both laws are very general and cover only a limited number of issues thus providing insufficient regulation. In fact, the Concession Law and the 1995 Act are considered as subsidiary pieces of legislation compared to the sector-specific legislation and the entire general framework needs to be reformed.

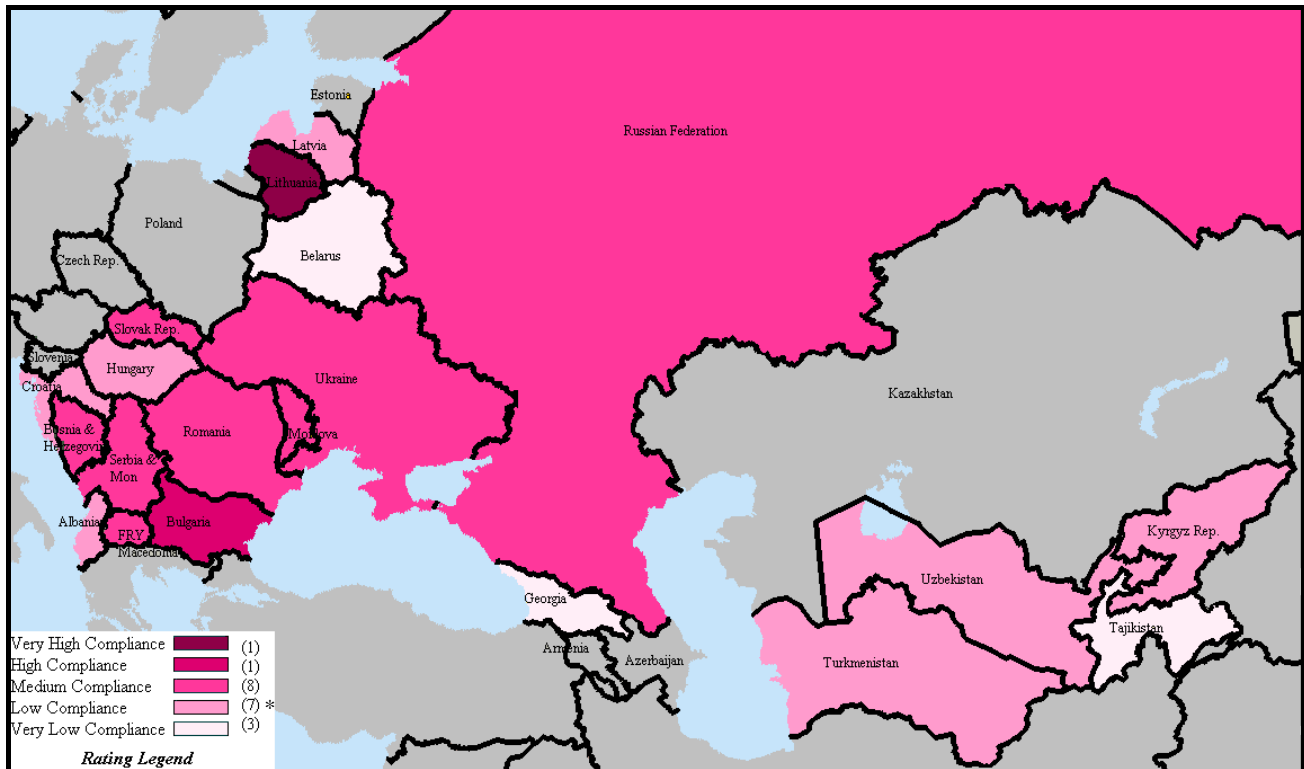
The scope of the application of the Concession Law is not clear. It refers only to resources, property and activities that are of “*interest to the Republic*”, such interest being defined by a separate law. The Concession Law does not include a clear definition of a concession as compared to a license or other similar contracts. There are no provisions in the Concession Law regarding tender procedures. The Concession Law does not define the responsibilities of government agencies/ministries in the development and implementation of concessions or licenses and the granting thereof.

The 1995 Act, is not entirely clear on some fundamental matters with regard to concessions, such as the authority to grant concessions, the type of services that may be granted through a concession, property rights of a concessionaire, the right to set tariffs and the rights of investors upon termination. The 1995 Act does cover procedural issues, although to a limited extent only. No

cross-reference is made in the 1995 Act to the Concession Law or to the various sector specific laws, such as the Public Roads Law or the Water Law.

The 2005 EBRD Concession Laws Assessment undertaken to evaluate laws in the EBRD’s 27 countries of operations (as they appear on the books only, rather than how they work in practice), revealed that Croatian laws are in “low compliance” with internationally accepted standards in this sector. (See Chart 6)

**Chart 6 – Quality of Concessions legislation in the EBRD Countries of operation**

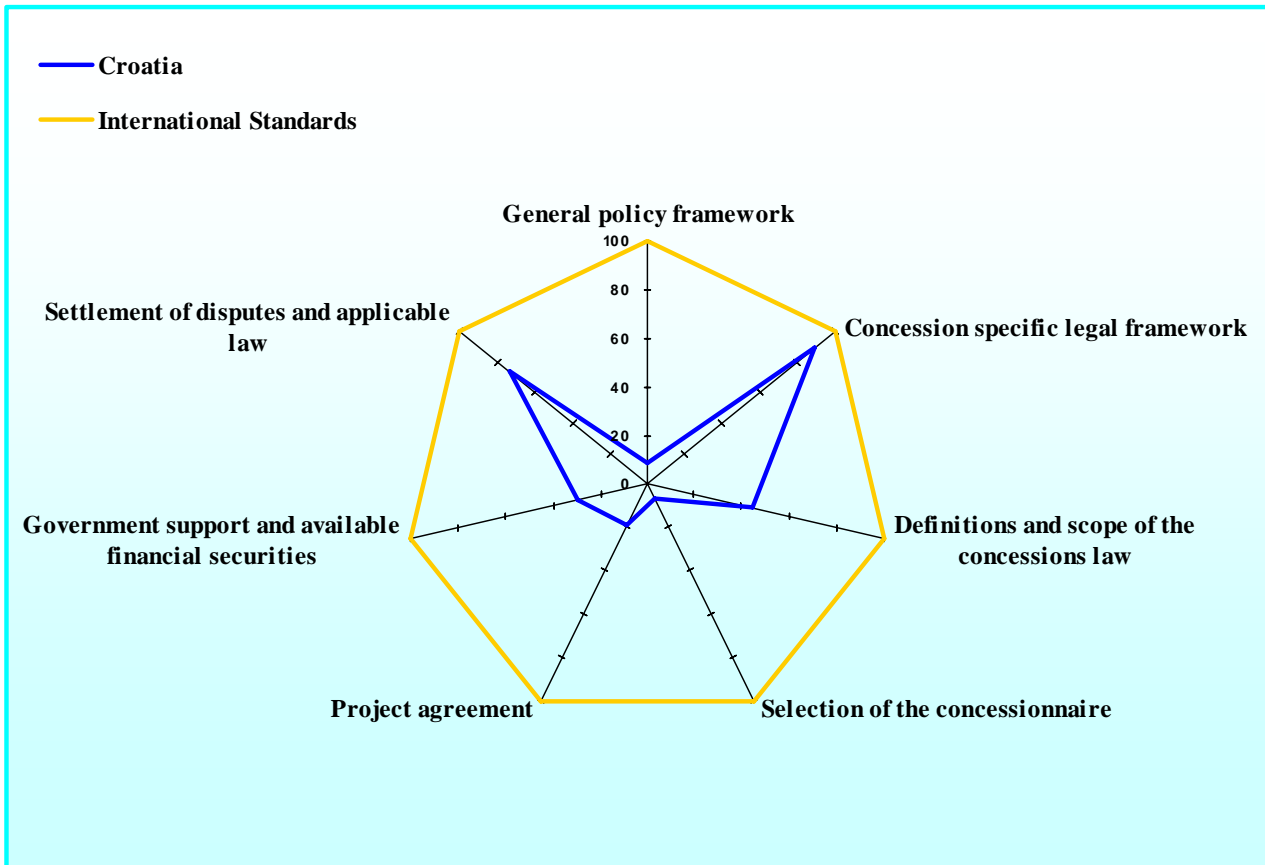


Source: EBRD Concessions Sector Assessment 2004

**Note:** The various categories represent the level of compliance of a given country’s legislation (“the laws on the books”) with international standards such as the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects. The asterisk indicates in which category Croatia ranks.

As can be seen from the chart below (see Chart 7), while settlement of disputes in concession-related arrangements, for instance, is regulated fairly extensively, most other areas, in particular, the selection of a concessionaire, project agreement and availability of security instruments and state support need to be dramatically improved in order to meet requirements of a modern legal framework facilitating private sector participation. The Croatian authorities have benefited from advice on the reform of its general concession framework under a World Bank sponsored review, but have not yet approved the proposed draft Law.

Chart 7 - Quality of Concessions legislation – Croatia, 2004



Source: EBRD Concessions Sector Assessment 2004

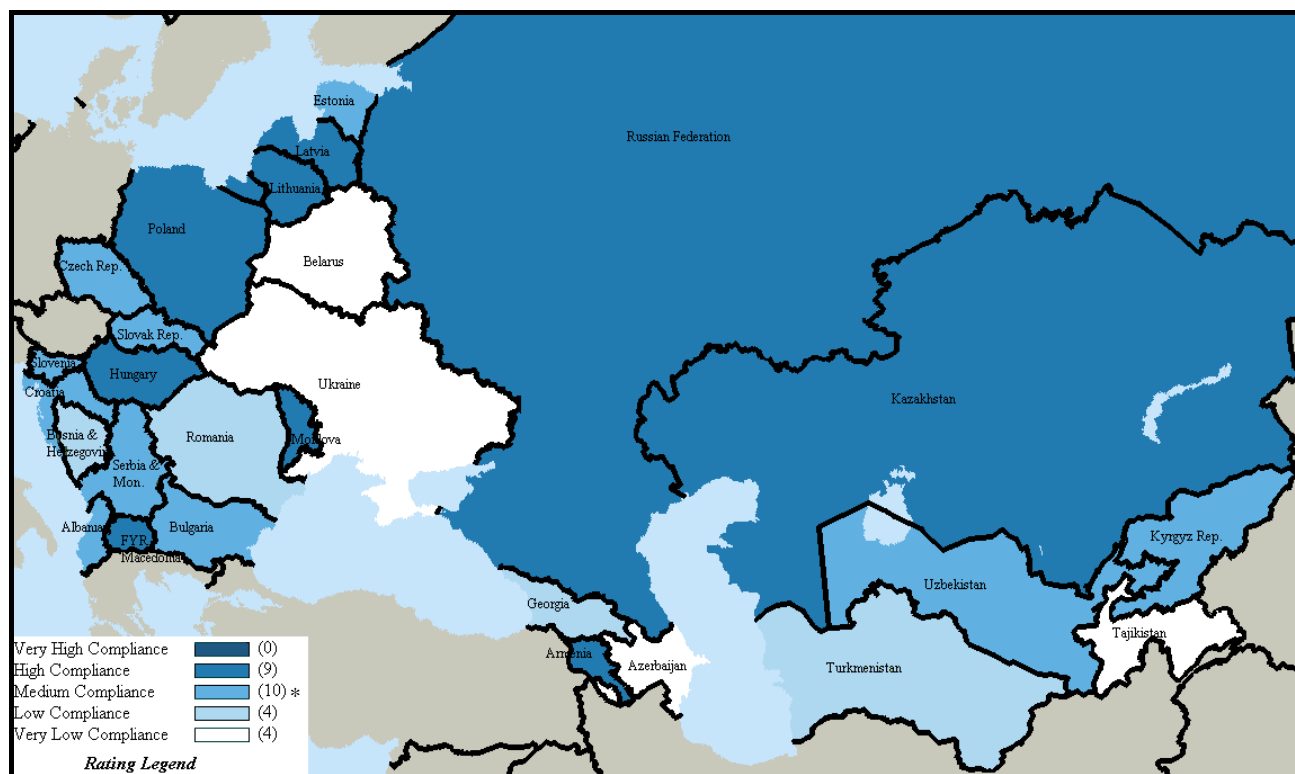
*Note:* The extremity of each axis represents an ideal score in line with international standards such as the UNCITRAL Legislative Guide for Privately Financed Infrastructure Projects. The fuller the ‘web,’ the more closely the country’s concessions laws approximate these standards.

### 3.3. Corporate Governance

The basic corporate governance standards and rules are detailed in the Law on Companies dated 1995 as amended. This law deals with the formation, functioning, transformation and winding-up of joint-stock companies and is based on the German two-tier model: the meeting of shareholders elects the members of the supervisory board which in turn appoints the management board.

According to the 2004 EBRD Corporate Governance Sector Assessment, Croatia’s legislation was found in medium compliance with the OECD Principles of Corporate Governance. (See Chart 8)

**Chart 8 – Quality of Corporate Governance legislation in the EBRD Countries of operation**

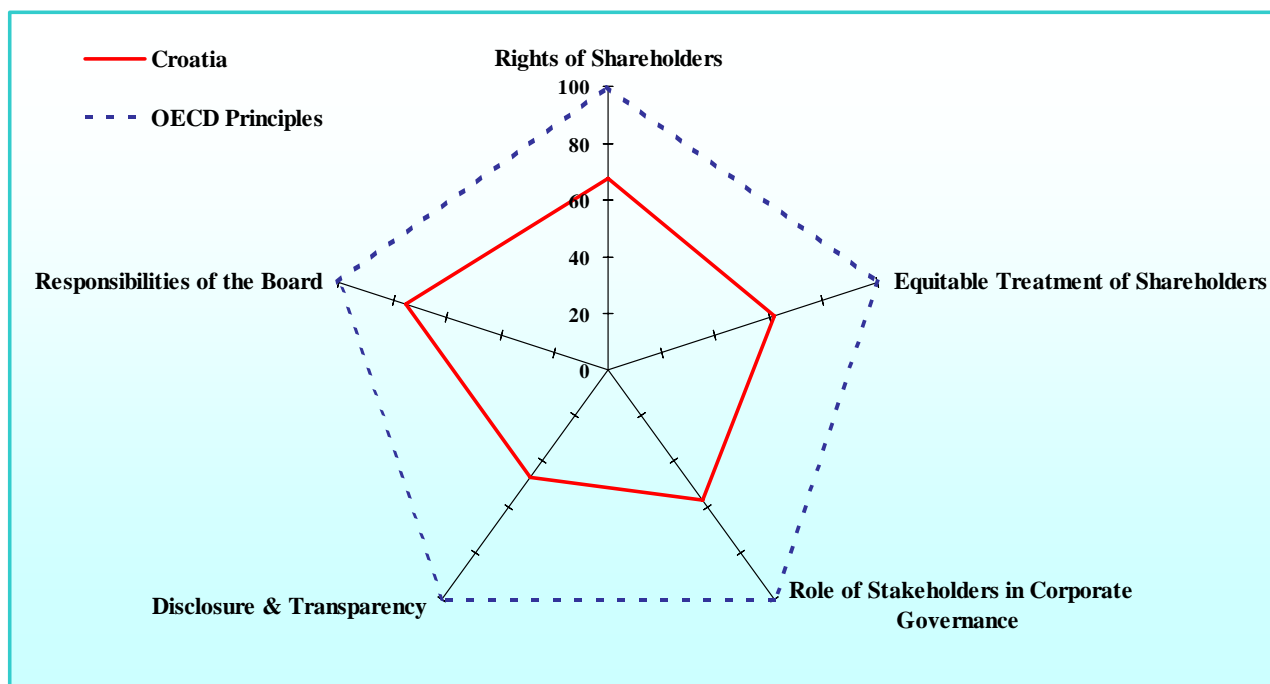


*Source: EBRD Corporate Governance Sector Assessment 2004*

**Note:** The various categories represent the level of compliance of a country’s legislation (the “laws on the books”) with international standards as set out in the OECD Principles of Corporate Governance. The asterisk indicates in which category Croatia ranks.

In particular, the assessment revealed the need to improve disclosure and transparency requirements, enhance shareholders access to information, better detail the functions of the board, introduce independent board members - and define the condition of independence - and establish board committees (e.g. audit committee). (See Chart 9) Finally, a Corporate Governance Code still needs to be introduced as per Art. 272 of the Law on Companies, which establishes the obligation for listed companies to report regarding their compliance with the Code.

**Chart 9 – Quality of Corporate Governance legislation – Croatia, 2004**



*Source: EBRD Corporate Governance Sector Assessment 2004*

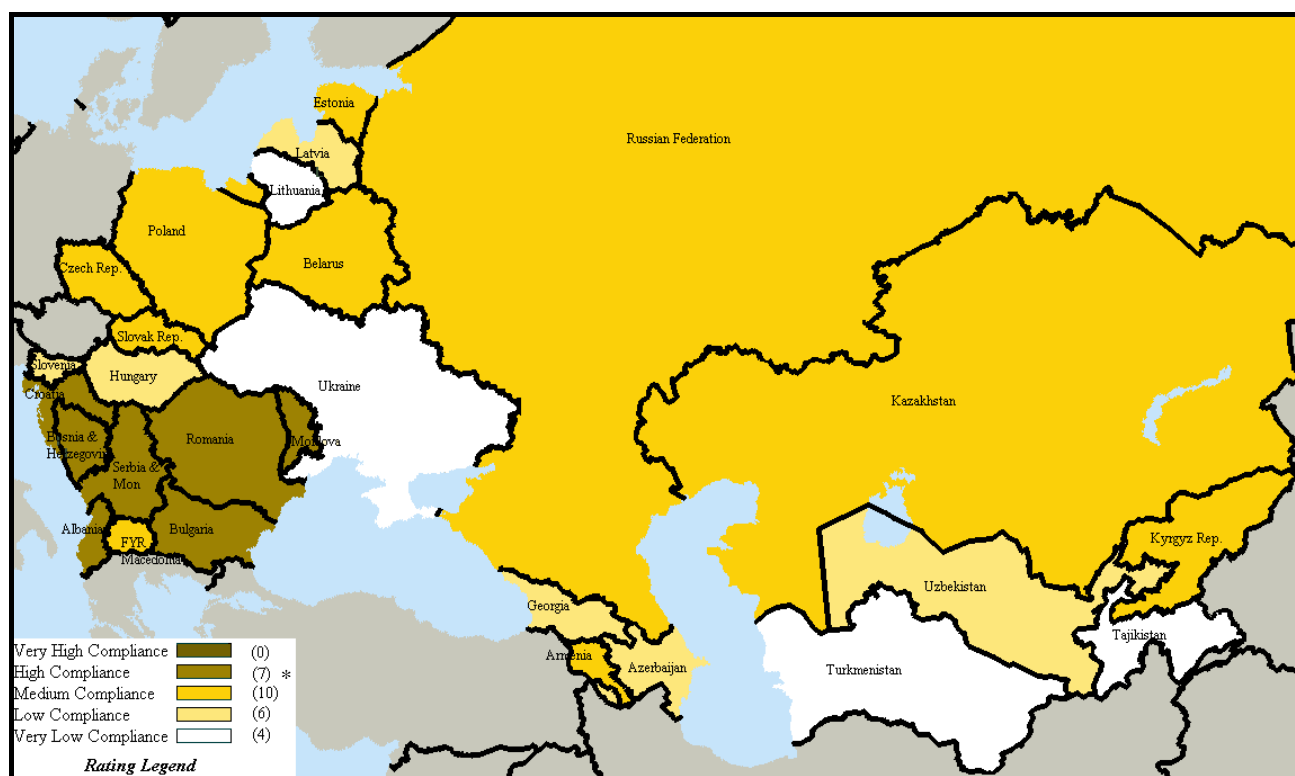
*Note: The extremity of each axis represents an ideal score in line with international standards such as the OECD Principles of Corporate Governance. The fuller the ‘web,’ the more closely the country’s corporate governance laws approximate these standards.*

According to the 2005 EBRD survey dealing with the rights of a minority shareholder vis-a-vis related-party transactions, the better avenue to obtain disclosure is to request an independent audit, but the action can be particularly complex and lengthy. This is also the case when seeking redress as it would take about 3-4 years to obtain an executable judgement. When turning to the institutional environment, the survey revealed that company books are considered reliable but statutory auditors might not be fully independent from management. The statutory background on related party transaction and the competence and experience of courts, prosecutors and market regulators should be improved. Courts and market regulators are considered impartial but corruption is still reported as a problem. Finally access to case law collections is problematic. As a result of these factors there is ample scope for improvement.

### *3.4. Insolvency*

Bankruptcy and insolvency in Croatia are governed primarily by the Bankruptcy Law (2000) (as amended) (the “Insolvency Law”), one of the leading insolvency laws in the EBRD’s countries of operations. In the EBRD’s Insolvency Sector Assessment 2004, which measured the compliance of insolvency legislation with international standards (extensiveness), Croatia was one of only 6 EBRD countries of operations to receive an overall score of “high compliance”. (See Chart 10) In July 2006, a significant number of amendments were made, the effects of which should do nothing to reduce this high level of compliance.

Chart 10 – Quality of Insolvency legislation in the EBRD Countries of operation



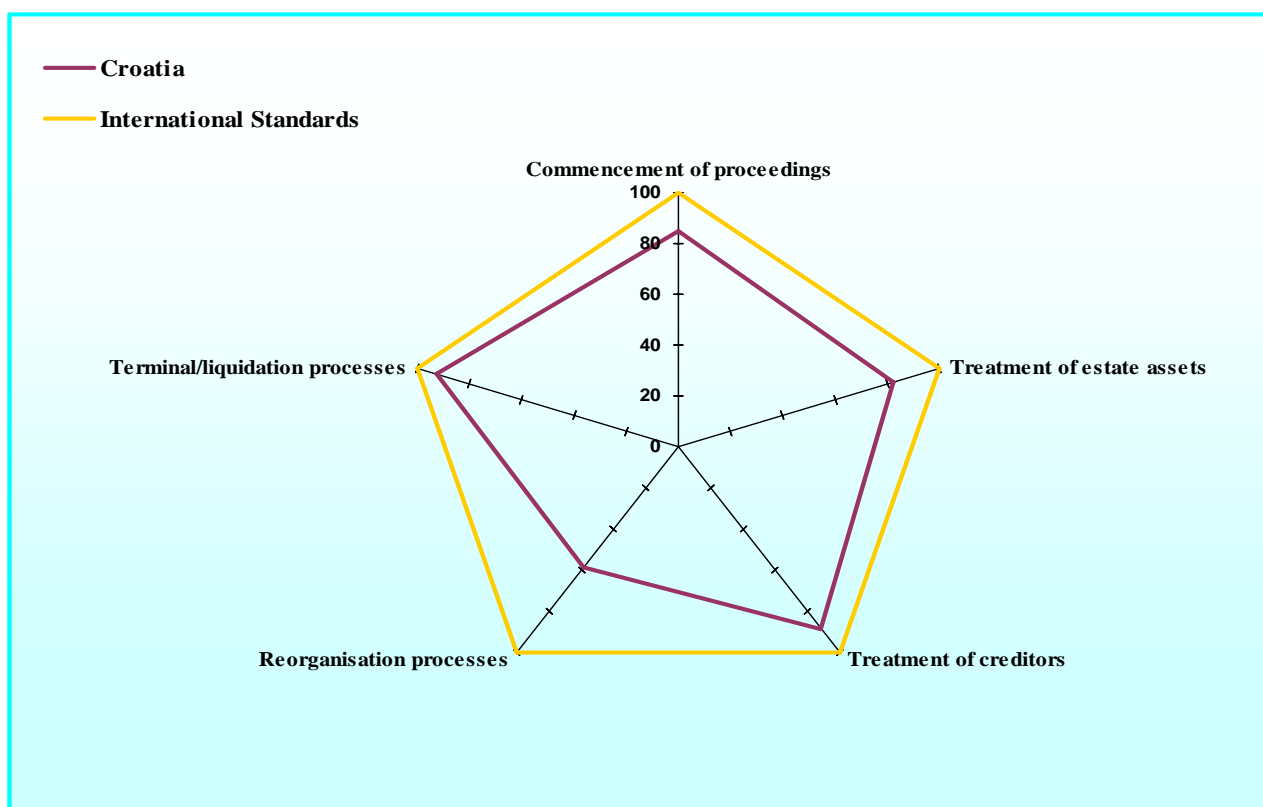
Source: EBRD Insolvency Sector Assessment 2004

*Note:* The various categories indicate the level of compliance of each country’s legislation (the “laws on the books”) with international standards, such as the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group on Legislative Guidelines for Insolvency Law, and others. The asterisk indicates in which category Croatia ranks.

The 2006 amendment addresses a number of key problems identified as part of the 2004 Assessment. Third parties can now be required to deliver to the insolvency administrator property, books and records relating to the entity being liquidated. The changes also further refine the test for proving insolvency with the effect being that it may be easier for creditors to establish a presumption that the debtor is insolvent. Creditors will now be required to identify their claims within a specified period, improving on the situation where creditors could identify claims well into the process of the bankruptcy. Additionally, the changes eliminate the requirement that proceedings be terminated when estate assets are insufficient to fund the cost of the liquidation by allowing creditors to advance the costs or, alternatively, allowing the insolvency administrator to charge his or her fees against a specially created fund while liquidating the estate’s assets and paying that money back into the fund.

The changes are less successful in addressing other problems identified by the 2004 Assessment. (See Chart 11) There is not a clear stay of proceeding provisions, no requirement for independent analysis of reorganisation plans, no provision for restructuring finance and no controls in respect of insider voting.

Chart 11 – Quality of Insolvency legislation – Croatia, 2004



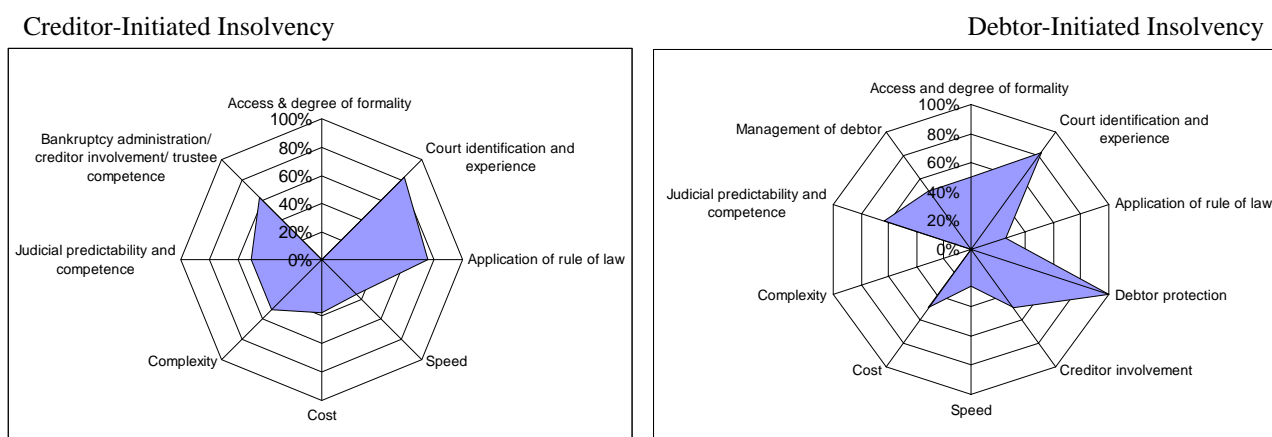
Source: EBRD Insolvency Sector Assessment 2004

*Note:* The extremity of each axis represents an ideal score in line with international standards, such as the World Bank’s Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, the UNCITRAL Working Group on Legislative Guidelines for Insolvency Law, and others. The fuller the ‘web,’ the more closely the country’s insolvency laws approximate these standards.

The 2006 changes make a number of other improvements, specifically in the areas of creditor rights and the oversight and training of insolvency administrators. The amendments allow creditors to appoint and replace administrators while allowing the judge a limited ability to overturn such an appointment, a significant positive step. Creditors are given the right to establish creditor committees and to decide whether or not to retain a committee established by the court. The changes also outline requirements for becoming an insolvency administrator, even requiring lawyers to pass the professional examination.

Clearly, the Insolvency Law is one of the most extensive insolvency laws in the EBRD countries of operations. The 2004 EBRD Legal Indicator Survey measured the effectiveness of insolvency regimes. The Survey demonstrated a large “effectiveness” gap (the difference between the quality of the legislation and the effectiveness of the insolvency regime in practice) in Croatia. (See Chart 12) This gap underscored the need for further reform work to be done to strengthen courts and other institutions that implement insolvency legislation. For debtors and creditors seeking to commence insolvency proceedings in Croatia, it is relatively easy to determine which court such proceedings should be commenced in and such court is likely to be reasonably adept at dealing with bankruptcy matters. The process, however, is seen as far too expensive, slow and unduly complicated to be truly effective.

**Chart 12 – Effectiveness of Croatia insolvency regime**



*Source: EBRD 2004 Legal Indicator Survey on Insolvency*

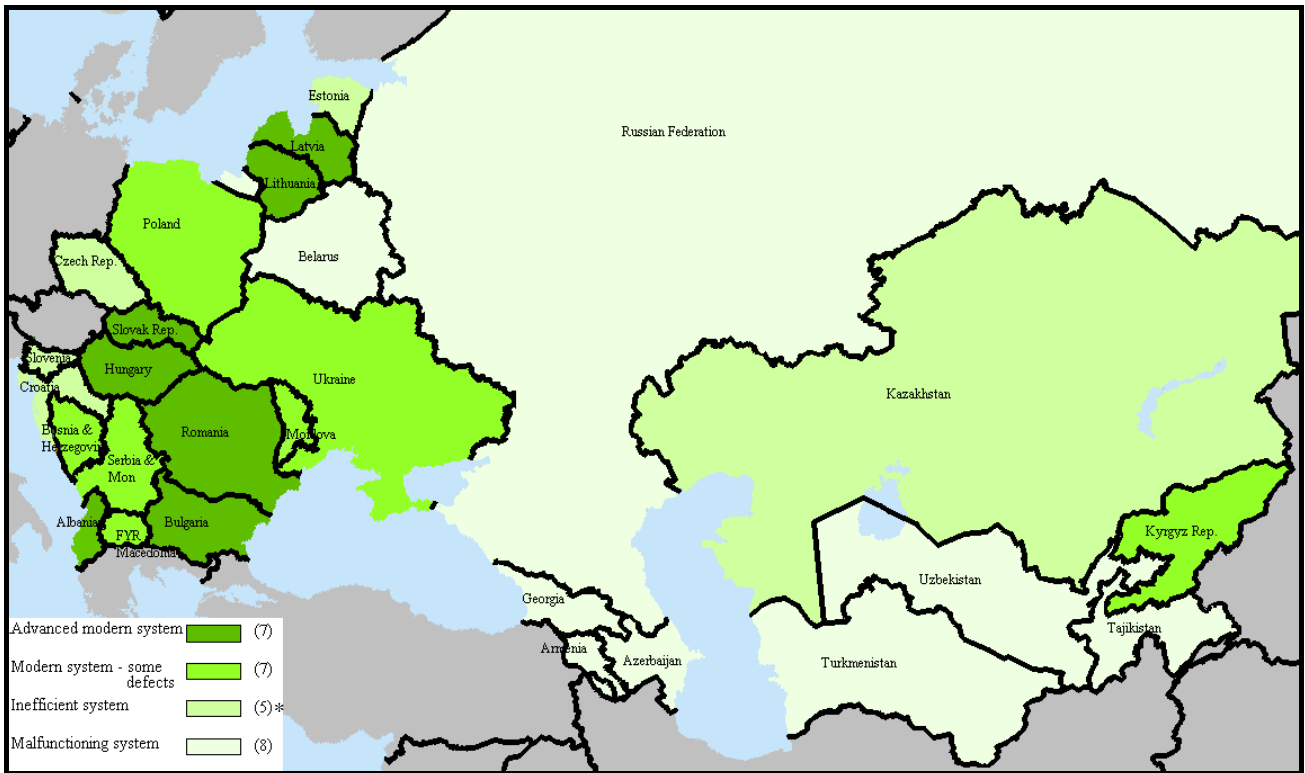
**Note:** The results have been derived from stakeholder responses to questions about the practical functioning of the insolvency regime. The fuller the “web,” the more effective the country’s insolvency regime is.

### 3.5. Secured Transactions

Taking security in Croatia is a process governed by a complex inter-relation of different acts. The 1996 Law on Ownership and Other Proprietary Rights provides for security rights over immovable and movable assets in a general sense, that is, the security can cover movable as well as immovable assets. In practice however, the transfer of ownership (title) of assets and rights for security purposes by a public notary under the 1996 Law on Execution is the most popular option.

According to the Regional Survey of Secured Transactions Legislation conducted by the EBRD 2004 the secured transactions legal framework ranked in the “inefficient system” category. (See Chart 12) Deficiencies were uncovered in most key elements of the framework. (See Chart 13)

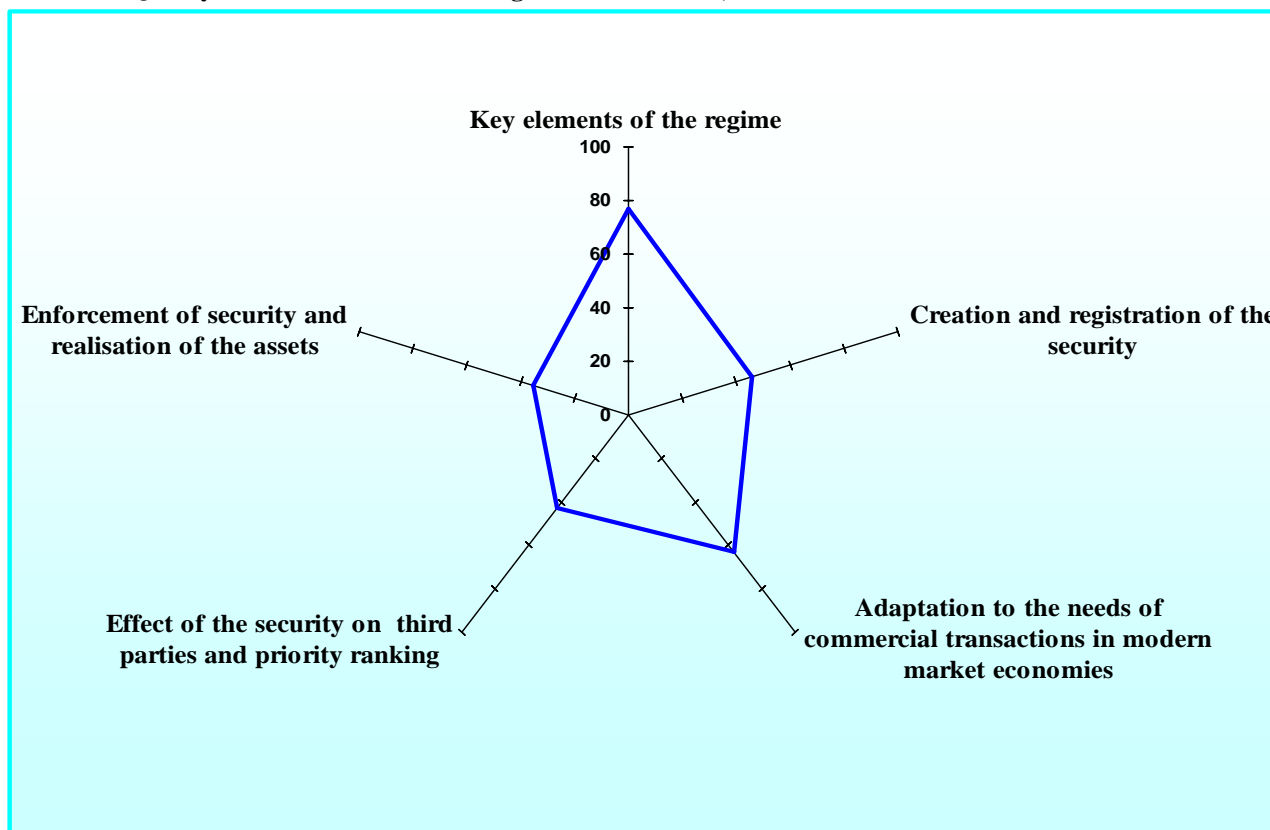
**Chart 12 – Quality of secured transactions legislation in the EBRD Countries of operation**



*Source: EBRD Regional Survey of Secured Transactions Legislation 2004*

**Note:** The level of reform referred to in the legend above is assessed in relation to the EBRD’s Model Law on Secured Transactions and the ‘ten core principles of secured transactions law.’ The asterisk indicates in which category Croatia ranks.

**Chart 13 – Quality of secured transactions legislation – Croatia, 2004**



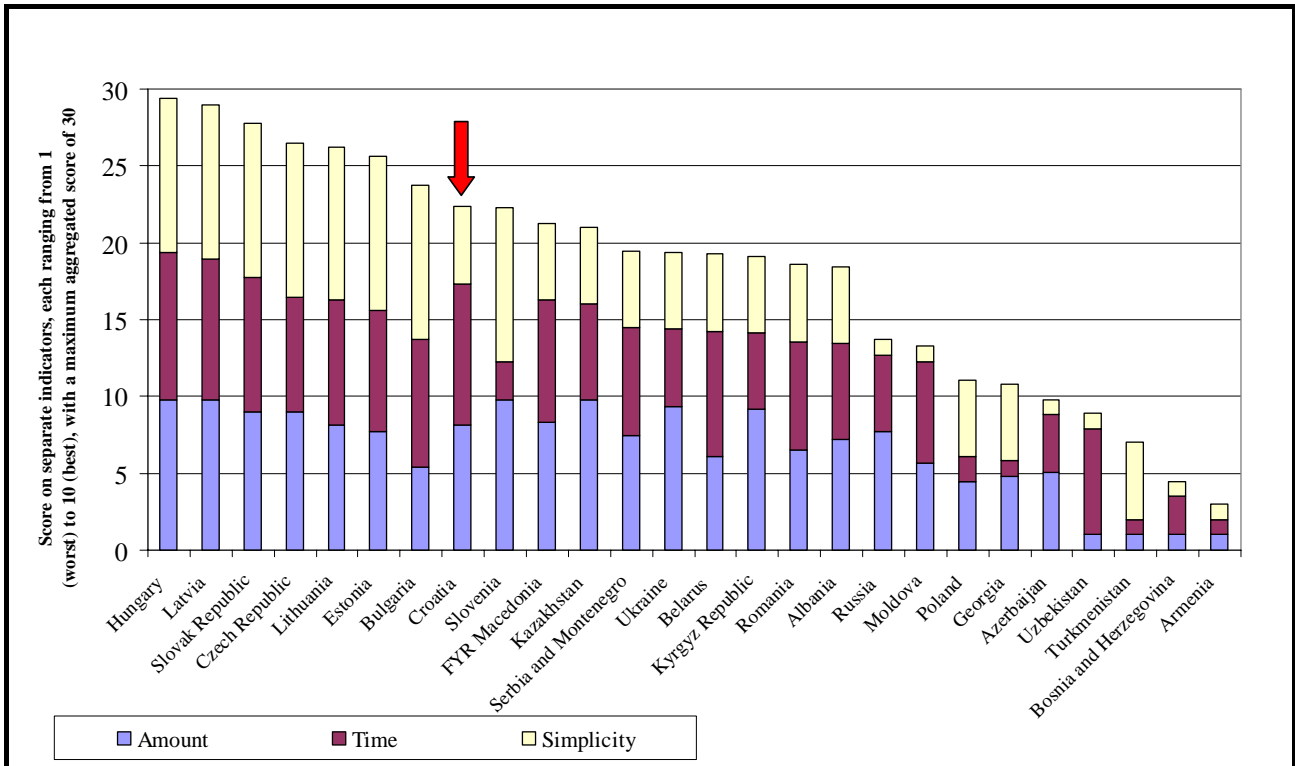
*Source: EBRD Regional Survey of Secured Transactions Legislation 2004*

**Note:** Scoring is done on a scale of 1 to 100, with 100 representing the most advanced legal regime. The fuller the ‘web,’ the more advanced the country’s secured transactions legal system is.

A new Act, the Law on the Register of Pledges (court-ordered and notarised) over movable property and rights was adopted on 11 October 2005 and entered into force 8 days later, but was to be applied only 6 months after this, meaning that the law became effective in mid-April 2006.

The Law provides the legal basis for a register where security rights (pledges) over movable (tangible) property and rights can be registered and made public to third parties. The Law completes the existing legal framework – it is not meant to fundamentally affect the existing system, although it will have important, practical consequences. By way of background, the Croatian legal system had been for some time under attack for not providing practical means by which security rights could be made public. The new Law on Register does not change the substantive law as outlined above (except it seems there is a possibility to take a charge over generally described assets); it however now provides a purpose-built institution, the register, where the security rights and transfers of title can be recorded and searched by third parties. See the graphs below (Charts 14, 15) for the results of the EBRD Legal Indicator Survey 2003 that measured the effectiveness of the secured transactions framework.

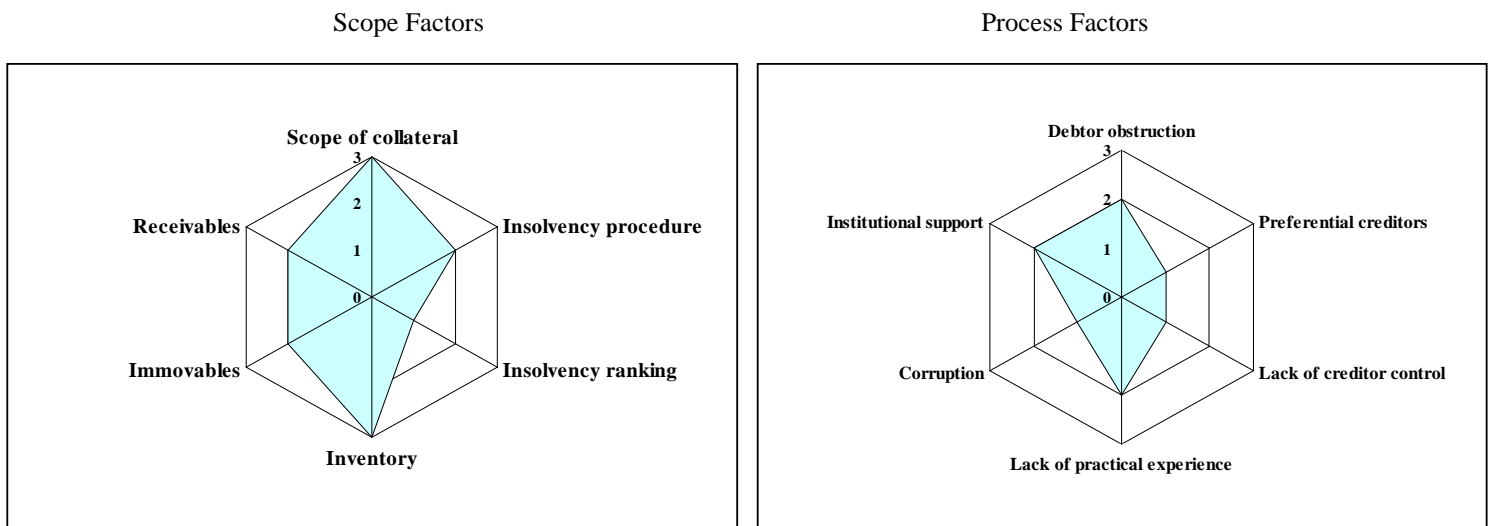
**Chart 14 – Effectiveness of the Charge Enforcement Process – Croatia (2003)**



Source: EBRD New Legal Indicator Survey 2003

Note: The chart shows how much a secured creditor can expect to recover (amount), how quickly (time), and how simply (simplicity). The higher the bar, the more efficient and creditor-friendly the system is.

**Chart 15 - Obstacles to Charge Enforcement Process – Croatia (2003)**



Source: EBRD Legal Indicator Survey 2003

Note: “Process” factors measure the impact that specific obstacles would have on the enforcement proceedings. “Scope” factors give an indication of how effective enforcement would be when conducted on various types of collateral and in the context of debtor insolvency. The fuller the coloured area, the more serious the problems are.

It is still too early to fully assess the effects of this reform on the Croatian secured credit market. Only a few general remarks can be made, which would need to be confirmed by further assessment from the users. On the one hand, the reform provides very welcome publicity and allows for

transparency in taking security in Croatia. This was long overdue and must be commended. On the other hand, this reform has not simplified or streamlined the substantive law, which is unnecessarily complicated and limited. Importantly, the register is construed in quite a bureaucratic fashion: in all likelihood, it will take some time to register and the rules provided are unnecessarily complicated (e.g. rules of jurisdiction of the registration office where registration must be made, which seems unnecessary since the information is entered into a central database). Compared to its neighbours (e.g. Slovakia, Hungary, Bulgaria, Romania, to a certain extent Serbia, and Bosnia), Croatia is setting up a system which is heavy and out-dated. The transitory period of one year will create uncertainty for a substantial period of time: indeed, searching the register will be inconclusive as to whether previous charges exist or not. So in effect, the benefits of the reform in terms of transparency and certainty should commence in April 2007.

### *3.6. Telecommunications*

The telecommunications sector in Croatia is currently governed by the Law on Telecommunications, 2003, as amended (the “2003 Telecoms Law”), and is regulated by the Croatian Telecommunications Agency (the “CTA”). CTA is an independent regulatory authority, established in 2004 on the basis of the 2003 Telecoms Law, and is responsible across the sector for the implementation of licensing, interconnection, tariff control, technical standards and other modern regulatory functions. The Ministry of the Sea, Tourism, Transport and Development is the sector policy maker.

Fixed-line teledensity in Croatia remains among the upper tier of central/southern European nations, with approximately 40%, along with 100% network digitisation. While formal liberalisation of the fixed market occurred in 2005, the incumbent, Hrvatski Telekom (HT), partially privatised to Deutsche Telekom, has maintained a strong hold on the market. Competition has, accordingly, been slow to develop. Nonetheless, recent decisions by CTA, such as the adoption of a new reference interconnection offer (RIO) and a reference unbundled offer (RUO) should boost competitive access to the incumbent’s network. Additionally, decisions by CTA identifying dominant operators in relevant individual markets of the sector should, where fully implemented, hasten further opening of the market. Similarly, continued reductions in licence fees to levels, which more mirror European Union (EU) levels, should help eliminate remaining barriers for entry to the market.

The Croatian mobile market has been liberalised since 1998 with healthy competition between the three licensed GSM operators - T-Mobile (the mobile arm of HT), VIP-Net (a consortium led by Mobilkom of Austria) and, more recently, Tele-2 of Sweden. All three operators have also secured 3G licences, launching 3G services during 2005. Mobile teledensity in Croatia is one of the most developed in the region and currently stands at almost 90%. The arrival of Tele-2 has seen relatively vigorous competition resulting in apparently genuine price reductions for consumers.

While significant efforts have been made by the authorities to implement an EU reflective competitive environment within the sector in recent years, a number of challenges remain before the full benefits of a competitive market can be reaped by the economy and the consumer. Notable positive developments include the establishment and continued enhancement of capacity at CTA, with CTA recently approving a new RIO and RUO, and declaring a number of operators dominant in the relevant markets, as well as critical tools in breaking the incumbent stranglehold of the local access market. Going forward, CTA should make every effort to ensure that the provisions of the law and the detail of the RIO and RUO are fully and constantly enforced. Additionally, the government, for its part, should ensure that CTA is provided with all necessary resources (financial, legislative and otherwise) to fully implement and enforce the regulatory framework. In the mobile sector, CTA should ensure that recently introduced number portability is fully enforced and that the

gains yielded from competition heretofore are not eroded by network roll-out issues. In the area of sector legislation, a completely new electronic communications law is necessary to harmonise with the latest EU *acquis* and provide a coherent and consistent regulatory base for the sector.