

7 Regulatory compliance, enforcement and inspections

This chapter reviews Croatia's strategy for regulatory compliance, enforcement and inspections, including the appeals process. It points to the opportunities and challenges for the implementation of the new law on the State Inspectorate. Finally, the chapter makes recommendations for how Croatia could improve its enforcement and compliance regime.

Compliance with regulations

Regulations cannot be effective unless the regulated subjects and actors comply with those regulations. Some ministries and inspection bodies (e.g. the Sanitary Inspection, Agricultural Inspection) regularly monitor compliance rates in Croatia. The overall compliance rates seem to be standard and there are no major issues compared to most of the OECD countries. However, Croatia has the 3rd largest grey economy among 31 European countries (IMF, 2018^[1]) but, according to the data of the Labour Inspectorate, reports on conducted labour inspections indicate a gradual decrease of cases of undeclared work in Croatia (Bejaković, 2015^[2]).

In those cases where data on the level of compliance are being collected, reasons for non-compliance are also regularly analysed. The use of this information as inputs for the review of the legislation is, however, less frequent, also given the limited experience with systematic reviews of regulations in Croatia. For example, the Labour Inspectorate participates in working groups dealing with legislative changes in the areas the Inspectorate covers, using the information from the inspection process.

For most regulated subjects, it is generally difficult to understand what they need to do to be in compliance with applicable regulations. Providing information and assistance to regulated subjects with the aim of increasing compliance should be a part of the work of enforcement and inspection authorities.

In Croatia, these activities are not yet systematically embedded in the daily work of all inspectorates. This does not mean that individual inspections do not promote compliance, on the contrary. For example, regarding regulations of fisheries, the Ministry of Agriculture organises workshops for fishermen, traders and carriers in all major cities on the coast. These workshops include presenting regulations in place and obligations stemming from them. The ministry also publishes relevant information, contact details and where to direct queries related to fishing, sale, transport documents etc. on their website.

In the tax administration area, large taxpayers obtain a special status and extended services provided through the Large Taxpayers Office. The Sanitary Inspection provides instructions, guidelines and trainings developed in co-operation with relevant stakeholders, such as the Chamber of Commerce, Chamber of Crafts, etc.

Regulatory enforcement and inspections

Ensuring effective compliance with rules and regulations is an important factor in creating a well-functioning society and trust in government. If not properly enforced, regulations cannot effectively achieve the goals intended by the governments. Regulatory enforcement is therefore a major element in safeguarding health and safety, protecting the environment, securing stable state revenues and delivering other essential public goals. Inspections are the most visible and important among regulatory enforcement activities. For more information on the OECD's view on the issue of regulatory enforcement and inspections, see the OECD Best Practice Principles for Regulatory Enforcement and Inspections see (OECD, 2014^[3]) and (OECD, 2018^[4]).

Box 7.1. The OECD Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections

1. Evidence based enforcement. Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.
2. Selectivity. Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulations' objectives.
3. Risk focus and proportionality. Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.
4. Responsive regulation. Enforcement should be based on "responsive regulation" principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. Long term vision. Governments should adopt policies on regulatory enforcement and inspections: clear objectives should be set and institutional mechanisms set up with clear objectives and a long-term road-map.
6. Co-ordination and consolidation. Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.
7. Transparent governance. Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.
8. Information integration. Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. Clear and fair process. Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.
10. Compliance promotion. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. Professionalism. Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: (OECD, 2014^[3]) *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, Paris, <http://dx.doi.org/10.1787/9789264208117-en>.

The state of play of regulatory enforcement and inspections before 1 April 2019

Croatia was one of the first countries which decided to consolidate most of the inspection functions “under one roof” and create the State Inspectorate in 1997 competences of which were strengthened by a special law in 1999. The State Inspectorate assumed the former responsibilities of 12 various inspectorates (labour and workers safety and protection; trade and market surveillance; power, mining and equipment) that had been split between four ministries. Croatia reduced the number of inspections bodies from about 25 to less than 20 (for the 12 inspections moved to the Central Inspectorate, 4 inspectorates were established; but subsequently few inspections have been added) and the number of inspection units (representing different branches and departments in Croatia) from 100 to 49. This significantly reduced the number of inspections needed for an effective level of compliance, and has permitted the sharing of the reform’s benefits between the state administration and the business community.

The State Inspectorate was abolished on 1st January 2014 and currently, the inspection activities are regulated by several laws, such as the Law on Inspections in the Economy, the Tourist Inspection, the Labour Inspectorate, the Customs Service, the Law on Sanitary Inspection, as well as other laws regulating individual administrative areas and conducting inspection activities in that area. The inspections are carried out by several inspection authorities, such as the Tax Administration of the Ministry of Finance, Sanitary Inspection of the Ministry of Health, Market Inspection of the Ministry of Economy, Entrepreneurship and Crafts, Labour Inspectorate of the Ministry of Labour and Pension System, Agricultural Inspection, Fisheries Inspection and Veterinary Inspection of the Ministry of Agriculture, etc.

This created a need for horizontal, cross-sectoral co-operation between inspection bodies. Mechanisms for such co-ordination exist, such as various committees for co-operation between inspection authorities. For example in the area of non-food (technical) products, a co-ordination committee was established between the inspection authorities responsible for monitoring of the safety of products placed on the market, its work is co-ordinated by the Ministry of Economy, Entrepreneurship and Crafts. However, more co-ordination would be needed to ensure joint planning of inspections and exchange of information on inspection results to make risk analysis and targeting of inspections more effective.

Most of the inspections are planned, however, inspection authorities have to react and act upon complaints received from consumers and other stakeholders, in case they indicate potential violations. The Market Inspection develops annual inspection plans, based on indicators such as past inspections results, laboratory test results of products sampled from the market, inputs received from consumers, as well as information received through the RAPEX¹ and ICSMS² systems. The Labour Inspectorate adopts a strategic plan for a period of three years, which is revised annually. The Ministry of Agriculture and the Ministry of Health, the authorities involved in securing food safety, animal feed, animal health and welfare and plant health, jointly prepared the “The “Multi-annual national plan of official controls of the Republic of Croatia for the period from 1 July 2015 to 30 June 2020”.³ The plan is regularly updated in relation to the new legislation and the division of responsibilities and updates are published on the web page of Veterinary and Food Safety Directorate.⁴

Each Annual Work Report of the Labor Inspectorate is scrutinised with the representatives of employers’ association and representatives of trade unions as well as the National Labor Protection Council.

In some areas, regulatory enforcement based on the risk-based approach and sanctions. This is however still not a common practice. Risk-based approach is used for the planning of the frequency and of the objectives of the supervision, for example, in the area of food safety. The elements on which the risk-based approach is built on are: the size of the facility, activity of the facility, the size of the product market, previous checks that include the number and type of identified non-compliances. In case of the Veterinary Inspection, the frequency of on-site inspections is based on “high”, “medium” or “low” risk assessment. The parameters for the assessment as well as the algorithm for calculating the risk for different types of businesses/establishments are included in the annual plan.

Electronic tools for reporting on inspections are used only by some inspections. The “e-INSPECTOR” is an expert system developed as a generic solution for increasing efficiency and effectiveness of inspection functions. It improves inspector performance, and supports synchronised activities of different government bodies. It is used by the Ministries of Agriculture, Health and by Customs Inspection. It covers all phase of inspection work: Planning; Methodology and document standardisation; Risk Management; Registers of: subjects, objects, regulations; Operations; Inspector case preparation; On-field work (including on-line document creation and issuing); Post-inspection work; Document management, digital archive, digital signature; Controlling, escalations, alerts; Analysis and reporting, business activity monitoring; Internet based communication with clients.

In case of the Fisheries Inspection, all inspection reports are filled in an electronically form in the “e-INSPECTOR” module. The module monitors each infringement in control list and provides a percentage of non-compliance of each part of fisheries control. In case of infringements with high percentage of cases, more frequent controls are conducted.

New law on the State Inspectorate

The National Reform Programme for 2018 envisages measures for the unification of inspection services, and a plan to re-establish the State Inspectorate as an inspection body that will unify related inspection works in the economy. This should eliminate excessive differences within the competencies of different inspections, an issue that was identified by the European Commission as one of the limiting factors in the efficient implementation of EU legislation. Therefore, the new Law on the State Inspectorate (*Zakon o Državnom inspektoratu*) was developed by the government and approved by the Parliament in December 2018. It will enter into force on 1 April 2019.

The State Inspectorate takes over the inspection of pressure equipment and the inspection of the management of poisonous chemicals from the Ministry of Economy, Entrepreneurship and Crafts, the sanitary inspection from the Ministry of Health, veterinary, agricultural, hunting, forestry and phytosanitary inspection from the Ministry of Agriculture, tourist inspection by the Ministry of Tourism, energy inspection, environmental inspection, inspection of nature protection and water inspection from the Ministry of Environmental Protection and Energy, Labour Inspectorate from the Ministry of Labour and the Pension System, and construction inspection from the Ministry of Construction and Physical Planning. The State Inspectorate is established as an independent inspection body (a state administration body that will report directly to the Government). The central office will be based in Zagreb with five to six regional offices and departments across the country.

Concentration of inspection activities is, of course, not the only goal of the establishment of the State Inspectorate. According to the analysis in the explanatory memorandum to the draft law, the internal organisation of inspections will be regulated in a unique way, common provisions regulating the duties and powers of all inspectors with the aim of uniform handling of inspection inspections is provided, inspections will be better co-ordinated which will result in the avoidance of unnecessary repetition of inspections by different inspection authorities, thereby reducing administrative burdens.

In addition, the application of the “principle of opportunity” in the work of the inspectors of the State Inspectorate is introduced. By applying this principle, inspectors will not apply corrective measures for minor offenses if the supervised legal or physical persons eliminate the irregularities during the inspection supervision, or until the decision is taken, if they act upon the adopted decision or if they undertake to eliminate the irregularities within a certain period. This will help to support regulated subjects in complying with regulations rather than focusing on punishment and deterrence and, in the long term, should support economic growth.

Planning of inspections will be improved through systematic alignment of inspection plans, planning of joint inspections and development of common guidelines for inspections. In some cases, inspections will be announced to the inspected subjects in advance of the inspections.

Appeals

The right of appeal against individual legal decisions made in first-instance proceedings by courts or other authorised bodies is guaranteed by the Croatian Constitution. This right of appeal may be denied in exceptional cases specified by law if other legal protections are ensured. Individual acts of state administration and bodies with public authority must be based on the law. Judicial control of the legality of individual acts of administrative authorities and bodies with public authority is also ensured by the Constitution.

The rules of procedure in the field of administrative law are regulated by the Law of Administrative Disputes.⁵ The administrative dispute is initiated by a lawsuit which is filed within 30 days of delivery of the disputed individual decision or decision on objection to disputed proceedings.

Administrative disputes are solved by the administrative courts and the High Administrative Court of the Republic of Croatia. The court decides on the lawsuit ruling on the main and subsidiary claims. The verdict is issued and published on behalf of the Republic of Croatia.

The first instance verdict of the administrative court of a party may be appealed and the High Administrative Court examines the first instance verdict in the part in which it has been challenged by the appeal and within the limits of the reasons set out in the appeal.

Assessment and recommendations

The inspection framework in Croatia is going through a substantive reform in 2019 relating to the creation of the State Inspectorate. While there is no OECD recommendation on how to organise inspection authorities, the OECD Best Practice Principles on Regulatory Enforcement and Inspections certainly recommend that “inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.” (OECD, 2014^[3]) In this context, *the ongoing reforms in Croatia seem to be a move in the right direction.*

It is also positive that consolidation is not the only goal of the reform. The new framework should enable better planning of inspections and therefore reducing burdens stemming from inspections for the inspected subjects. The administration also wants to make enforcement and inspections more responsive, creating opportunities for assisting inspected subjects in complying with regulations rather than strict focus on deterrence.

Croatia should focus on successfully implementing the inspection reform in the following years. However, the reform should not stop there. **The use of risk-based approaches to enforcement should be bolstered.** A unified risk assessment system should be developed enabling better targeting of inspections. Also, the use of ICTs should be strengthened in conducting and reporting on inspections. **A central information system to share information between inspections should be developed** and the use of the “e-INSPECTOR” tool broadened. Last but not least, **inspectorates should focus more on providing advice, issuing guidance and inspection checklists to promote compliance** with regulations. Consolidating inspections in the new State Inspectorate should create the necessary conditions for moving this reform agenda forward.

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Notes

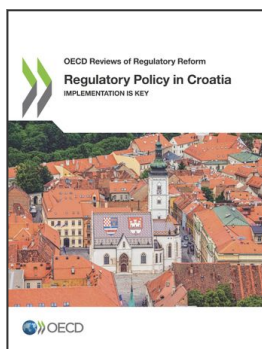
¹ The Rapid Exchange of Information System (RAPEX) is the EU rapid alert system for unsafe consumer products and consumer protection.

² The internet-supported information and communication system for the pan-European market surveillance.

³ <http://www.veterinarstvo.hr/default.aspx?id=1255>.

⁴ www.veterinarstvo.hr.

⁵ Official Gazette 20/10, 143/12, 152/14, 94/16, 29/17.



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