



'Strengthening the capacity of public authorities for the implementation of the Act on the Right of Access to Information'

Case study of a Croatian ESF project under the study 'Progress Assessment of the ESF Support to Public Administration' (PAPA)

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PROJECT BACKGROUND

Strengthening the capacity of public authorities for the implementation of the act on the Right of Access to Information

Operational Programme	The project was supported within the Priority Axis 'Good Governance' of the Operational Programme 'Effective Human Resources' for European Social Fund 2014-2020
Beneficiary organisation	Office of the Information Commissioner of the Republic of Croatia
Target groups	Key stakeholders in accessing information – public authorities (their information access officers) and users (associations, media, citizens).
Project duration	01/10/2017 – 30/09/2018
Budget	EUR 80,000 (ESF contribution EUR 68,000)
Project manager (email address)	Anamarija Musa, former Information Commissioner of the Republic of Croatia, Associate Professor of the Faculty of Law, University of Zagreb, ppi@pristupinfo.hr, amusa@pravo.hr
Partners	N/A
Project/organisation website	https://www.pristupinfo.hr/projekti/europski-socijalni-fond/ https://www.pristupinfo.hr/?lang=en

This case study was produced as part of the project 'Progress Assessment of ESF Support to Public Administration', contracted by DG Employment, Social Affairs and Inclusion of the European Commission. The purpose of the project was to present specific cases of ESF-funded public administration reform and capacity-building initiatives, as well as to show the role of ESF financial support to public administration, for the purposes of accountability. This report recounts the story of the project '**Strengthening the capacity of public authorities for the implementation of the Act on the Right of Access to Information**'. It discusses the context and purpose of the project; the characteristics of the team implementing it; the main challenges faced and difficulties encountered during its implementation; key developments during the implementation process; the results and impacts achieved; as well as the lessons learnt and the contribution of the ESF.

STRENGTHENING THE CAPACITY OF PUBLIC AUTHORITIES FOR THE IMPLEMENTATION OF THE ACT ON THE RIGHT OF ACCESS TO INFORMATION

Introduction: the context of the project

Ms. Anamarija Musa served as the project manager of the ESF-supported project '**Strengthening the capacity of public authorities for the implementation of the Act on the Right of Access to Information**', carried out between 1 October 2017 and 30 September 2018, in the last stage of her mandate as the first Croatian Information Commissioner (IC). During the IC mandate between 2013 and 2018, Ms. Musa and the IC's Office played a significant role in the process of affirming transparency policy. IC's Office activities have consolidated and strengthened the new culture of access to public information through information-sharing and training activities focused on technical and legal issues, public warnings to all bodies having a duty to give governmental information, reporting etc. Implementation of the ESF-supported project was an important conveyor bringing new cultural elements into the Croatian public administration. As a result of these constitutional, legal, and institutional developments, Croatia has significantly improved its international rankings in regard to policy on access to public information. For instance, Bertelsmann Stiftung's Sustainable Governance indicator on access to government information increased from 6 in 2014 to 7 in 2016, and 8 in 2017 and 2018. This improvement moved Croatia's ranking in this area among EU Member States from 23rd in 2014 to 9th in 2017¹.

In order to understand the challenges faced by the country's first IC during her tenure and the motives of the IC Office when deciding to apply for the ESF support, some background information is necessary on the history of policy on access to public information in Croatia. The first Act on Access to Public Sector Information was adopted in 2003, following several years of the lobbying by the policy community². Adopted as part of a broader set of anti-corruption measures, the Act failed to establish effective procedural mechanisms or any institutional arrangement to ensure its implementation.

Over the years that followed, discussion emerged as to whether Croatia's constitution ensured the right to access public information – and if so, how. One interpretation held was that the constitutional guarantee was only enjoyed by journalists (as explicitly stated in Article 38, Paragraph 3); however, the legal science interpreted this constitutional right in a much broader sense, claiming that it guaranteed the right to access information for all citizens³.

To resolve this dispute, constitutional amendments were adopted in 2010, including a guarantee of the right to access information to all citizens in the newly-added Paragraph 4 of Article 38⁴. This change was made possible because no political actor or politician was willing to publicly

¹ In 2018, having indicator on access to government information 8 as in 2017, Croatia fell from ninth to tenth place among EU Member States. Cf. https://www.sgi-network.org/2018/Democracy/Quality_of_Democracy/Access_to_Information (accessed: 19 August 2019).

² Rajko, A. (2000), *Osobni podaci, tajni podaci i pristup novinara informacijama* [Personal data, secret data, and access of journalists to public information]. *Hrvatska javna uprava* 2(4): 719-735.

Rajko, A. (2003), *The Right of Access to Public Sector Information and Its Limitations in a Democratic Society*. In: I. Koprić (ed.), *Modernisation of the Croatian Public Administration*. Zagreb: Faculty of Law & Konrad Adenauer Stiftung, pp. 429-476.

³ Smerdel, B. (2007), *Ustavna osnova prava javnosti na informaciju* [Constitutional base of the right to public sector information]. *Informator* 55(5527): 1-3.

⁴ Rajko, A. (2008), *Izričito ustavno normiranje prava na pristup informacijama* [Explicit constitutional regulation of the right to public sector information]. *Informator* 56(5646): 13.

oppose the ongoing public demands for transparent government. A favourable circumstance was that the political crisis coincided with the last phase of the Croatian EU accession negotiations.

An idea that the right to access of information has to be supported by an appropriate institutional solution emerged. Hence, in 2011, amendments were passed to the Act on Access to Public Sector Information, significantly strengthening the previous legislation. Among other new measures, the Personal Data Protection Agency was designated as the appeals body for cases involving access to public information. However, the Agency lacked sufficient organisational and personnel capacity to carry out its new role, and found it difficult to balance the tasks of data protection and access to public information.

A new Act on Access to Public Sector Information was adopted in 2013, incorporating a number of significant advances. It widened the circle of public bodies obliged to provide access to their information. In addition, the new Act better regulated the 'test of public interest and proportionality'⁵ in comparison to the previous legislation, providing a wider and easier access to public information. The obligation on public bodies to proactively disclose information was strengthened; procedural provisions were improved; the Information Commissioner was stipulated as the appeals body and was granted inspection powers and the competence to impose fines. Re-use of information was also regulated in line with the EU Directive on the Re-Use of Information (the PSI Directive of 2003)⁶. Eventually, in 2015, a series of amendments to the Act were adopted to fully transpose the PSI Directive, as amended in 2013⁷.

Although the right to access public sector information has been regulated since adoption of the first Act in 2003, independent institutional support to realisation of new transparency instrument was absent until 2011. Legal protection relied on the appeal to the head of the same body from which information was requested and on the lawsuit to the Administrative Court, if the appeal was refused. Separate Department for the Right to Access Public Information was established in 2011 within the Personal Data Protection Agency. The department had limited capacity and was affected by the already established culture of the agency, characterized by legalistic protection of personal data and not by a transparency-led wish to disclose government information in the interest of the public.

Two years later, at the end of October 2013, the Information Commissioner Office was established and Ms. Musa, the first Information Commissioner appointed by the Parliament, was responsible to establish it. However, she was not free to recruit new personnel, since the Office had to take over four civil servants from the Personal Data Protection Agency, in line with the transitional provisions of the 2013 Act on Access to Public Sector Information. Small personnel capacity was among the Office's limiting factors during 2014 and 2015. Recruitments began only in 2016 and continued during the following years. In 2019 the Office employs 15 civil servants, almost four times more than in the beginning⁸.

In addition to limited human resources, the IC's Office had to cope with an extremely small budget during the first budgetary year of its functioning (2014). Moreover, the Government of that time (2011-2016) intended to decrease the IC's Office budget over the period 2015-2017, in line with the governmental austerity measures. The budgetary reduction planned caused a

⁵ This test is an important legal tool for limiting the possibilities that public authorities arbitrarily deny access to public information. The 2013 Act defines it as 'assessment of proportionality between the reasons for access to information and the reasons for limiting it and for enabling access to public information if the public interest prevails' (Article 5, point 7), compare: https://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_25_403.html, (accessed: 29 August 2019).

⁶ Rajko, A. (2014), Novi Zakon o pravu na pristup informacijama – geneza i otvorena pitanja [The new Act on right to access public information – genesis and open issues]. *Zbornik Pravnog fakulteta u Splitu* 51(2): 415-427.

⁷ Musa, A. (2016), Europska regulacija ponovne uporabe informacija [European regulation of the re-use of public sector information]. *Sveske za javno pravo* 7(24): 76-85.

⁸ Cf. <https://www.pristupinfo.hr/o-povjereniku-za-informiranje/organizacijski-ustroj/?lang=en> (accessed: 19 August 2019).

first serious crisis in the functioning of the Office. Ms. Musa publicly announced that she felt deceived, since she had interrupted her university career to take on the role, but had been prevented from doing her job effectively due to a lack of funding. Even before announcing the reduction, the IC's Office had already lacked the most basic financial and human resources and equipment necessary to monitor and control roughly 6,000 public authorities⁹.

Despite Ms. Musa generating public support for her work via the media, the situation did not change significantly in the 2015 budget. The funds allocated to the Office's activities were insufficient for the improvements Ms. Musa planned to achieve by the end of her mandate. The Office's budget remained static between 2014 and 2015 (approximately EUR 250,000). Only after a change of government, the budget for the IC Office increased to EUR 310,000 in 2016, EUR 416,000 in 2017, and EUR 490,000 in 2018. The continuous increase in the IC Office's budget was approved by three different governments, indicating a growing importance of the IC Office in this period.

To sum up, the newly established IC's Office during the first few years of its functioning dealt with the personnel and budgetary limitations imposed by the Government. Under these limitations, it tried to overcome renitent bureaucracy reluctant to give timely information to beneficiaries, train citizens and representatives of organisations on effective use of their right to access to public sector information, and to contribute to a new transparency culture in Croatia. The lack of proper budgetary resources was decisive moment to apply for external support. As Ms. Musa explained during her interview, 'Our main motive when proposing the project for ESF support was to amplify the financial resources of the Information Commissioner's Office in order to significantly increase the capacity of the public sector, citizens, civil sector organisations, and the media for the effective implementation of the constitutional right of access to information.'

Design and execution of the ESF-funded project

Purpose of the ESF-supported project

Ever since its launch at the end of 2013, the IC's Office has needed to attract money from sources outside the state budget, after the then-Government announced a policy of austerity and the intention to reduce public spending over subsequent years. Between 2013 and 2015, the IC attempted to gain approval for an IPA 'Twinning Light' project worth around EUR 250,000, with Croatia as the recipient of assistance, but according to Ms. Musa, in almost two years the procedure 'did not move beyond the initial stage, and I withdrew from that proposal'. Ms. Musa regretted what she described as 'a heap of unreasonable preconditions set by the Croatian bodies competent for the EU funds and insisted upon in a rather rigid manner, regardless of the particular situation and needs of the IC Office'. In addition, Ms. Musa said during her interview that she had been of an opinion that such a project in the circumstances of small IC's Office capacity would not have created the necessary impact.

The first technical assistance was thus provided by the OECD-Sigma initiative in 2014, in the form of an analysis entitled 'Business Intelligence and Access to Information'. Financial and professional assistance was also given by the British Embassy, via the project 'Strengthening

⁹ 'I feel deceived', interview of Anamarija Musa. Available at: <https://www.h-alter.org/vijesti/osjecam-se-prevareno> (accessed: 19 June 2019).

the Capacity of the Information Commissioner'¹⁰. Cooperation with the French Institute and the French Embassy began in 2016¹¹.

'Moreover, we decided to prepare our first ESF project in parallel with working on a variety of other tasks,' Ms. Musa adds. 'Based on the perceived needs, we opted for a small-scale project in line with our financial possibilities, bearing in mind that 15 per cent of the total project money had to be covered by our national budget. That is why we proposed a two-year project, thus splitting our financial burden into two smaller parts.'

Excessive formalism and bureaucratisation was one of the first obstacles the IC's Office had to face with from the beginning of the project preparations. As Ms. Musa explains, the preparation procedure for the project was extremely bureaucratic and inflexible. 'We had to attach a detailed financial plan to our project submission in which even the smallest expense had to be precisely delineated, such as how many kilometres we would travel to Split, the exact toll amount, hotel accommodation prices, etc.,' says Ms. Musa. 'There must not be any deviation or flexibility in the activities or finances. In certain cases, my Office was in a position to pay for some minor extra expenses incurred during the implementation of the project activities only because they were not explicitly mentioned in the project's financial documents.'

The IC's Office established even previously that the version of the website for the IC's Office that existed at the time was incapable of effectively serving its new competences. It was also a little old-fashioned, both in technical terms and in terms of its content. The old version of the website consisted of some new elements added to an old page. The IC perceived various other problems, challenges and gaps in the implementation of the legal framework on access to information. For example, the private consultants offering to train information access officers and others frequently shared incorrect information; users were not informed about the possibility of requesting information, or the procedure for doing so; open data was not sufficiently emphasised as an issue; etc. Additional challenges identified during the implementation of the Right of Access to Information Act included: the huge number of public authorities (almost 6,000) subject to the Act; extremely frequent changes of the access to information officers in the public authorities obliged to implement the Act; the complexity of certain provisions of the Right of Access to Information Act; a lack of awareness among users about the right of access to information, and a lack of the necessary skills to realise that right; and insufficient capacities of a huge majority of public authorities for the effective implementation of the Act (cf. Presentation of the Project's Results, 2018). Presented bulk of problems, challenges and gaps directed the IC's Office towards selection of the main goal and the project activities.

The activities of the ESF-funded project aimed to build the capacity of the IC's Office, as well as those of stakeholders and beneficiaries of the right of access to public sector information, i.e. 'to contribute to strengthening the capacity of key stakeholders to access information – public authorities and users – associations, the media, citizens – to apply the Law on Access to Information as effectively as possible and thereby contribute to the transparent, open and responsive work of government and public administration in the Republic of Croatia'¹².

¹⁰ Between 2014 and 2016, the project provided financial support of EUR 29,000. It enabled the launch of the IC website in Croatian and English; the organisation of two conferences; the creation of a list of public authorities that are obliged to implement the Right of Access to Information Act; preparation of a study analysing how to better supervise inspection and improve compliance with the Act; the preparation of e-manuals; and the creation of the web applications 'Search Engine for Decisions and Opinions of the Information Commissioner and the High Administrative Court – TOM' and 'List of Open Government Bodies'.

¹¹ Cooperation resulted in the five-day Open Data Academy and the roundtable 'Open Data' held during 2016.

¹² 'Strengthening the Capacity of Public Authorities, Associations, Media and Citizens to Implement the Law on Access to Information', an official text about the Project at the IC's Office site, <https://www.pristupinfo.hr/projekti/europski-socijalni-fond/?lang=en>, (accessed: 21 June 2019).

The project comprised the following activities: a) the preparation of educational and promotional online video and audio materials for public authorities and beneficiaries; b) the launch of the new website with additional features and functionalities; c) an international conference; d) the preparation of various publications; e) a training programme consisting of workshops and webinars for access to information officers and beneficiaries; and f) visibility and the project promotion activities.

Over a period of 12 months, the project planned to implement various activities aimed at increasing transparency and openness in public governance. During this period, at least 150 public sector employees would be trained. The project was supported within the Priority Axis 'Good Governance' of the Croatian Operational Programme 'Effective Human Resources'; thematic objective (TO) 11, 'Enhancing institutional capacity of public authorities and stakeholders and efficient public administration'. The project contributed to the achievement of specific objective 4.1., 'Increase effectiveness and capacity in the public administration through improving service delivery and human resources management'. A budget was allocated to the project of approximately EUR 80,000 (of which ESF funding represented a share of 85 per cent or roughly EUR 68,000) Total funding for the project represents less than 0.27 per cent of the total finances programmed for TO 11 in Croatia (EUR 225,031,699) during the current 2014-2020 programming period.

Ms. Volmut, an advisor¹³ at the IC's Office and the project coordinator, highlighted the fact that 'many project activities were planned to be implemented in a short period, with a rather limited budget'. According to Ms. Volmut, the extremely low budget provoked amazement among the people from various ministries, project beneficiaries, and the consulting firms in the field. The team working on the project has managed to achieve considerable results.

The project team was led by Ms. Anamarija Musa, with a professorship in Administrative Science, the former Information Commissioner. She led all activities and was especially interested in creation of videos and publications, widening international cooperation, and visibility events. She had been appointed to the position by the Croatian Parliament as an independent candidate coming from academia. In her previous role as assistant professor of Administrative Science in the Faculty of Law at Zagreb University, Ms. Musa had already established a reputation as an advocate of public administration reform and policies favouring transparency and openness. She served as a deputy member of the Croatian Council of the Open Government Partnership (OGP) since 2012, and enjoyed good cooperation with civil sector. Her duties as Information Commissioner were to establish the office and implement a new and ambitious legal framework for access to public sector information. At the time Ms. Musa was interviewed for this case study she no longer held the position of Croatia's first Information Commissioner (IC), having completed her five-year mandate on 24 October 2018.

The project team was coordinated by Ms. Ina Volmut, an advisor at the IC's Office with abundant experience in public administration. Financial issues and design and implementation of educational activities were responsibilities of Dubravka Bevandić, former head of the Legal Department. Marko Kovačić, former head of the Department for Promotion and Education, former assistant to minister of public administration, was predominantly engaged with preparations of the new website and some educational activities. Hrvoje Vindakijević and Marija Bošković, advisors at the IC's Office, were mainly focused on preparation and delivery of educational activities. Daniel Herak, an experienced inspector-advisor at the Office, participated in preparation of open data manual and texts for the new website. Tanja Dvorski and Lucija

¹³ Compare the current list of civil servants employed by the IC's Office, <https://www.pristupinfo.hr/o-povjereniku-za-informiranje/organizacijski-ustroj/?lang=en>, (accessed: 21 August 2019).

Jadrijević, as the less experienced civil servants, also worked on educational activities and publications.

Ms. Musa praised the involvement and personal commitment of all team members in preparation and implementation of project activities, and ensuring its cohesion. She also elaborated on the flexible team structure saying that due to the short time span of the project and the limited capacity of the IC Office, the team members had to take on multiple tasks, additional to their regular responsibilities. According to her, only some segments of the project activities were entrusted to people outside the IC's Office, be they from Croatia or from abroad, such as to university professors (Josip Kregar, Neven Vrček, Margaret Kwoka, Polonca Kovač, Lana Ofak, Marko Jurić) and other experts (Helen Darbyshire, Zoran Luša).

Implementation of the ESF project: Main developments

The ESF-funded project did not start as planned because of a delay in the preparation of the Action Plan for the Implementation of the Public Administration Development Strategy. The original plan, Ms. Musa explains, was 'to begin with the technical steps during the second half of 2015, with the initial phase of the project in the second quarter of 2016'. However, the belated adoption of the Action Plan coordinated with the European Commission at the end of 2016 prevented the project's implementation from beginning on time. The team also mentioned the long time spent on evaluating the project's application as one of the obstacles. As Ms. Musa explained, 'It took months for the relevant Croatian bodies (the Ministry of Regional Development and the EU Funds, and the Croatian Employment Institute) to check every single word in our voluminous project proposal and attached financial plans. [...] Because of that, we began the project's implementation on 1 October 2017, without having a signed contract with the Ministry of Labour and Pension System as the competent body. We took the risk and implemented less expensive activities, in order to ensure the project was completed before the end of my mandate, relying on the rules that allow certain project activities to be implemented even before the project contract has been signed.'

As the Managing Authority of the Croatian Operational Programme 'Effective Human Resources' for the European Social Fund 2014-2020, the Ministry of Labour and Pension System approved the project on 6 February 2018. The project contract was eventually signed on 19 March 2018, almost six months after the actual beginning of the project.

The project was officially launched at a public event held on 11 April 2018 in Zagreb, and attended by 38 participants. An outline of the project and its significance was presented by representatives of the European Commission to Croatia and of Intermediate Body 2¹⁴, and by the Information Commissioner, Ms. Musa. The presentation was followed by a debate aimed at shedding some light on challenges in the policy sector. Participants involved information officers at the ministries of health and tourism, representatives of two NGOs, and three experts from the implementation and supervision authorities. They concluded that the key challenges were the following:

- Public awareness of and the interest of citizens in the right to access information were not at the desired levels.

¹⁴ For the role of the intermediate bodies, see Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1303&from=EN>, (accessed: 21 August 2019).

- Ministers and other managers of public authorities had not been sufficiently informed about the huge number of questions and requests concerning the right of access to information directed at their bodies, indicating poor internal communication and coordination within public bodies.
- There was a need for further training, improving the treatment of open data and sharing of knowledge and experiences.

The majority of the project's activities for beneficiaries began in December 2017, when the first set of educational activities (workshops and webinars) was held. The needs for further development established by the annual reports of the Information Commissioner adopted by the Parliament functioned as a guide to the project team when deciding about structure of educational activities. The team decided to organize not only webinars but also workshops, during which a richer debate could be organized to get relevant feedback from participants about the problems, needs and instruments in strengthening the transparency culture in Croatian public administration.

Given the small budget of the IC Office and that educational activities began before the project was officially contracted and money from the ESF was not available, the project team decided that procurement of any educational activity from external providers was not an option. Therefore, they decided to rely on internal expertise of the IC's Office to organise educational events. By the end of the project period, 10 webinars and 11 workshops had been completed, benefitting 482 people.

Between December 2017 and September 2018, the project team organized five workshops for access to information officers on the successful implementation of the Right of Access to Information Act. In the same period, five webinars were held for the access to information officers, entitled 'Handling requests to access information', 'Re-use of information and open data', 'Proactive disclosure of information', 'Personal data – how to treat an information access request' and 'Public consultations'. Ms. Musa estimates that out of 5,500 access to information officers in Croatia, between 5 and 10 percent participated in the training.

During the same period, six workshops aimed at users (citizens, associations and the media) and how they can obtain access to information were held twice in Zagreb, and once in Split, Rijeka, Osijek, and Dubrovnik. Five webinars for users on their rights of access to information were also held. Despite the focus of the ESF-funded project being on sharing information, and training associations, media and citizens about their right of access to public sector information, the training received a relatively poor response compared to the number of invitations sent. As many as 217 participants attended the regional workshops (54 in Zagreb; 29 in Split; 39 in Rijeka; 52 in Osijek; and 43 in Dubrovnik), while a further 265 participated in the webinars.

Two additional challenges related to the ESF-funded project were mentioned by Mr. Zdenko Holenko. He is an experienced information officer, serving basically as the head of Service for General Administration at the Office of State Administration for the Primorsko-goranska County in Rijeka¹⁵. Within the Project, he participated in the regional workshop in Rijeka, and at the international conference held in Zagreb. The first issue mentioned by Mr. Holenko was that the smaller the project, the harder it is to plan tailor-made educational activities. The second is that while one-way educational activities may be useful, the workshops could also have been used to gather the experiences of administrative practitioners, and to help prepare legal changes and

¹⁵ Conducting tasks connected with the access to public information according to the Access to Public Information Act is usually an additional duty for the appointed information officers. They regularly serve as the civil servants responsible for other administrative and managerial tasks in their public authorities, being entrusted with the access to public information tasks as their additional responsibilities.

institutional improvements. Again, the small size of the project, dictated by the circumstances mentioned above, limited opportunities to implement such improvements.

Another major problem, which imposed a considerable administrative burden on the IC's Office, relates to collecting data on training participants. Participants (public servants, citizens and representatives of media organisations and associations) had to fill in forms providing personal data and permitting for this data to be used for project's record-keeping. The IC's Office tried to solve this problem by repeatedly sending reminders to participants to fill in the necessary forms. In addition, entering participants' details into the monitoring application was also a challenge. The project team could not count the participants among the project's beneficiaries, if they did not have all the relevant data. This problem was detailed in the official Project Report submitted after the project was completed. As a result of these difficulties, the IC's Office ceased to enter data on participants from public administration after they had documented around 150 individuals – despite 482 users participating in the project's educational activities, as the Office reported at the closing event.

During the later project's implementation stage, five educational videos targeting access to information officers, as well as three videos targeting citizens and other users were made available online¹⁶. These short films inform viewers about their rights or obligations, the procedural steps, and are supposed to clarify the significance of transparency in public governance'. In 2018, one promotional film aimed at users was also created for television. In total, around 40 minutes of video were posted on the IC's Office website and YouTube channel. In procuring the creation of these videos to external providers the project team faced one of the most serious challenges associated to the high costs of private public procurement specialists. As Ms. Musa explains, 'there was an extremely heavy administrative and financial burden of public procurement procedure for video and audio materials, which costs more than 50 per cent of the total budget for the preparation of these films, because only certified public procurement specialists can prepare the procurement calls'. At that time, no civil servants, specialised in public procurement procedure and certified to prepare the public procurement documents, were employed at the IC's Office. The project team managed to solve this problem by engaging certified people from the state administration.

During 2018, the project produced five publications: two manuals, entitled 'Open data for all' (300 copies) and 'Access to information – a guide for the media, associations and citizens' (250 copies), as well as three leaflets¹⁷. Also, an international conference entitled '15 years of the right of access to information in Croatia' was held in Zagreb on 11 May 2018 and was attended by around 60 participants from Croatia. The conference's 15 presenters and panellists came from Albania, Croatia, Montenegro, North Macedonia, Scotland, Slovenia and the United States. Presentations were divided into three panels entitled 'The right of access to information: law, regulations, and protection', 'Access to information from the perspective of the Information Commissioner', and 'Access to information: challenges and implications'.

During the project, a new, user-oriented website was launched in Croatian and English. This contains much more content than its predecessor, as well as has a number of additional features. The new website is adapted for users with disabilities in line with the Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the

¹⁶ The videos aimed at public authorities/officials were: 'Proactive disclosure of information'; 'Access to information access requests'; 'Public relations'; 'The tests of proportionality and public interest'; and 'Transparency and openness in public authorities'. Videos intended for users were: 'Access to information for citizens'; 'Access to information for the media and associations'; and 'The role of the right of access to information in achieving transparent and open government and the prevention of corruption'.

¹⁷ The titles of the leaflets were: 'What the Information Commission is, and how it works'; 'Capacity building of public authorities, associations, the media and citizens for the implementation of the Law on Access to Information', and 'How to gain access to information – the Act on Access to Information in brief for journalists, associations and other users'.

websites and mobile applications of public sector bodies. It now contains detailed, user-oriented information about the following aspects of access to information (Figure 1).

Figure 1. New website of the Information Commissioner of the Republic of Croatia

INFORMATION COMMISSIONER
Republic of Croatia

ABOUT THE INFORMATION COMMISSIONER ▾ SCOPE OF WORK ▾ LEGAL FRAMEWORK ▾ DOCUMENTS AND PUBLICATIONS ▾ PROJECTS ▾ NEWS CONTACT EN ▾

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“Strengthening the Capacity of Public Authorities, Associations, Media and Citizens to Implement the Law on Access to Information”

Projekt je sufinancirala Europska unija sredstvima Europskog socijalnog fonda.

The Project of Information Commissioner is implemented within the European Social Fund, Priority Axis: Good Governance, Operational Program “Effective Human Resources” (2017-2018)

As part of the project financing of the European Social Fund, the Priority Axis “Good Governance” of the Operational Program “Effective Human Resources”, the project “Strengthening the Capacity of Public Authorities for the Implementation of the Law on Access to Information” was prepared, totaling HRK 599,922.0 with national co-financing of 15%. Project preparation started in 2015, and the project was implemented from 1 October 2017 to 30

« June 2019 »

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The website contains information on the Information Commissioner and their office (organisational structure, acts and decisions, plans and reports etc.); information about the scope of the work carried out by the IC’s Office (second-instance proceedings; inspection supervision; monitoring the implementation of the Right of Access to Information Act with several registries, including the searchable register of public authorities¹⁸ in open data form etc.); the legal framework for access to information (laws and regulations, instructions, guidelines etc.); documents and publications (reports on the implementation of the Right of Access to Information Act; access to information for public authorities; a ‘self-assessment questionnaire’ quality instrument etc.); information about projects (the Twinning Light project in Montenegro, the ESF-project, bilateral cooperation etc.); news; contact details; and information for the media.

Source: <https://www.pristupinfo.hr/>

¹⁸ See: <https://tjv.pristupinfo.hr/> (accessed: 21 June 2019).

During the whole project cycle, from planning to reporting, the project team faced some challenges with a culture of distrust among the national bodies responsible for the management of ESF funding. In other words, the project team felt an attitude and underlying implications that applicants want to avoid the rules or misuse/abuse the money provided by EU funds and the state budget. It is curious that such distrust existed even in relation to independent state bodies such as the IC, who was appointed by the Croatian Parliament and well known publicly for her advocacy of transparency and ethical conduct in the public sector. As Ms. Musa puts it: 'I know that the EU rules are strict, but our bureaucrats interpret them even more strictly.'

Ms. Musa and Ms. Volmut highlighted that implementation of the project also took its toll on the project team, as it was exhausting and stressful. Ms. Musa explains that: 'The main source of stress was the serious delay to the project launch, and the very short period between its official launch and the closing date. During this short period, we had to implement the most serious activities. [...] The project relied on the staff of the IC's Office, without engaging external experts except when it was unavoidable. [...] We had to complete all of the project's activities by the end of my mandate because of my concern that certain activities such as movies or manuals would not be done at all.' Ms. Volmut summarised her concerns by saying that, 'in planning new ESF-funded projects, it is important to learn from the fact that we planned numerous activities for a rather short project period, with a highly limited budget'.

However, the project team overcame the obstacles and successfully responded to challenges, leading to the project being complete within the planned period. The results of the ESF-funded project were presented just six months after its formal launch at a closing event held in Zagreb on 22 October 2018, attended by 53 people. In addition to media representatives and other stakeholders, the following were also invited – Mr. Branko Baričević, Head of the European Commission Representation to Croatia; Mr. Ante Lončar, Head of the Croatian Employment Institute; Ms. Anamarija Musa, the Croatian Information Commissioner; and Ms. Ina Volmut, advisor in the IC Office.

Ms. Musa expressed her full satisfaction with the project results. She mentioned that the project results, together with success indicators, problems perceived and the project team's responses to challenges faced, were reported to the Croatian ESF managing body in the official report submitted at the end of October 2018. One of project beneficiaries, Ms. Doris Šajn, who serves as an information officer at the City of Rijeka mentioned the usefulness of educational activities, new website, and publications for practitioners and continued that: 'even more training, seminars, and workshops with active participation of the information officers from various sectors of public administration are needed'.

Conclusion: results, lessons learnt and the role of ESF financial support for affirming policy on access to public sector information

Main results

The ESF-funded project, 'Strengthening the capacity of public authorities for the implementation of the Act on the Right of Access to Information' was the first project implemented within the Priority Axis 'Good Governance' of the Croatian Operational Programme 'Effective Human Resources' for the European Social Fund period 2014-2020. Despite the complexity of the situation in which the Croatian Information Commissioner commenced her mandate, and taking into account the obstacles and challenges faced during its lengthy project preparation, the ESF-funded project was implemented efficiently, and has delivered clearly visible, well-evaluated and sustainable results. All planned activities were realised during the project's implementation period, despite a substantial delay to the final approval and official launch of the project.

Educational activities (a total of 21 workshops and webinars) were carried out; nine educational and promotional videos were created; five publications were issued; a new website was launched for the Information Commissioner's Office; and an international conference was held. These activities have strengthened the capacities of the IC's Office and other stakeholders in relation to the implementation of the Right of Access to Information Act. About three-quarters of the personnel in the IC's Office were successfully involved in the project activities. According to Ms. Musa, among the bodies whose information officers participated in the workshops and webinars, immediate improvements were observed in the way in which access to information cases were handled. The new and improved educational and promotional tools generated by the project, such as publications, videos and the website, can continue to be used without any limitation, which means that their impact will continue to grow.

The project team successfully overcame the majority of obstacles it faced, including the biggest problem – how to achieve substantial steps in affirming access to public sector information with such a small budget. Strong leadership, engagement of the own personnel and reasonable prudence contributed to project's success. The IC Office staff improved their abilities and skills, including those in regard to implementation of the ESF projects. This will probably be an asset in the future work of the IC Office. All educational materials posted online are used by the media, associations, citizens and other interested subjects, contributing to the affirming of policy on access to public sector information.

In addition to implementing the ESF-funded project under discussion here, the IC's Office developed rich international cooperation, gaining support through various forms of technical and financial assistance from the OECD-Sigma initiative (in 2014), the British Embassy to Croatia (between 2014 and 2016), the French Institute (2016), and the Konrad Adenauer Foundation (2016-2017). These cooperative arrangements contributed, along with the ESF-supported project and better financial support from the Croatian State Budget, to an increase in the capacity of the IC's Office. Since commencing its operations with a staff of just four people¹⁹, in the five years since 2014 the Office has employed an additional ten civil servants. It has also developed an appropriate organisational structure, gained new premises and equipment, and now has an overall capacity that is almost proportional to its tasks, competences and workload²⁰.

The ESF-financed project and other capacity-building activities have enabled the Croatian Information Commissioner to influence the development policies on access to information in neighbouring countries. In August 2018, the Information Commissioner began a six-month 'Twinning Light' project, 'Capacity Development for the Agency for Personal Data Protection and Free Access to Information, funded by the EU IPA programme²¹. Under this programme, Croatia, as an EU Member State, provided assistance to Montenegro, an accession country. In addition, Ms. Musa has been very active in delivering expertise under the TAIEX instrument, as well as other forms of technical assistance to Albania, Montenegro, North Macedonia, Bosnia and Herzegovina, and Kosovo.

Lessons learnt and factors for success

The ESF-funded project has elicited several important lessons for the project team, and for others in the field. First, it has revealed the weaknesses of the current systems used to manage and monitor ESF funding in Croatia. These weaknesses include the limited capacity of institutions

¹⁹ Compare 'Information Commissioner Office in Position Similar to NGO's at the Beginning of 1990s?' <https://www.gong.hr/hr/dobra-vladavina/pristup-informacijama/ured-povjerenice-za-informiranje-na-razini-ngo-a-s/>, (accessed: 20 June 2019).

²⁰ Interview with the new Information Commissioner, Dr. Zoran Pičuljan, <https://www.vecernji.hr/premium/zoran-piculjan-povjereniku-treba-dati-ovlasti-za-kaznjavanje-1298911>, (accessed: 20 June 2019).

²¹ Instrument for Pre-Accession Assistance, cf. https://ec.europa.eu/regional_policy/en/funding/ipa/, (accessed: 20 August 2019).

managing ESF funds (the Ministry of Labour and Pension System) and acting as intermediate body (the Croatian Employment Service), as well as their slow responsiveness, formalism, lack of flexibility and cooperation, over-bureaucratisation, and distrust. Also, applicants for the ESF support lack competence and knowledge about the ESF funding and projects. As Ms. Musa put it, 'none of us from the IC Office had been trained in working with EU funds, and we were forced to learn during the project, perceiving a high level of uncertainty.'

Second, another important lesson learnt during this project is that greater efforts are necessary to ensure projects of this kind to have a stronger impact on the people using public sector's information. As Ms. Musa says, 'the first task is to motivate and educate potential users, the media, associations, and citizens. Their inertia and inactivity is a particularly urgent problem.' The project's limited impact on users also reveals a problem of poor communication and promotion policy in relation to access to public sector information. Many substantial project activities were squeezed into a short period between the official launch of the project and its closing event, leading to a neglect of promotional activities. The educational materials posted online did not attract a particularly large number of views²². Thus, future efforts deserve a much stronger promotional campaign.

Despite the fact that no follow up to this project has been instigated, the new Information Commissioner, Dr. Zoran Pičuljan, appointed by the Croatian Parliament in November 2018, announced that he would continue with efforts to improve implementation of the Access to Public Information Act.²³ The comments on his initial efforts will be possible only after submission of the IC's Office Report to the Croatian Parliament in spring 2020. In the Strategic Plan for 2020-2022 there are no new projects planned, but there are plans about continuous improvements of implementation of the Access to Public Information Act, including educational, reporting, and supervisory activities, establishment of a new network of public bodies' information officers, and educational and inspection measures for implementation of the Act on Accessibility of Web Site and Programming Solutions for Mobile Devices of Public Sector Bodies. Some serious public objections about the IC's Office functioning during 2019 have not been observed, witnessing that the results of the ESF project have been preserved. However, more energy needs to be invested if the Croatian information access ranking is to be improved.

Regarding the critical factors for success of this ESF project, they can be found in the personal characteristics of the project leader and the fact that it was a small-scale project. Ms. Musa explained in her interview that she is not used to accepting defeat, and was thus able to solve obstacles.

Another factor contributing to the success of the project was the small size of the IC's Office. In parallel with the preparation, adoption and implementation of the ESF-funded project, the staff of the IC's Office grew from four to just 15 people, while its financial capacity remained insufficient to consider a larger initiative. The small scale of the ESF-funded project made it easier to control, and expectations were lower than they might have been in the case of a larger team and a better-financed project. Having in mind the risk caused by the seriously belated signing of the project contract, in the regime of strict budgetary limits, the small scale of the project enabled realisation of certain project activities in the first stage (1 October 2017 – 19 March 2018) without getting the project money.

Although the small scope of the project made it easier to implement it, the project team acknowledged that it would have been better to have implemented a larger ESF-funded project, in order to make a more significant impact.

²² For example, on the IC's Office YouTube channel there are only four subscribers. All nine films created during the Project have attracted a total of 320 views. Compare: <https://www.youtube.com/channel/UCyJrZJTY5iDXwzwtKlhbhEg>, (accessed: 20 August 2019).

²³ See footnote 21.

A larger project might have also been able to take into account the suggestions made by project beneficiaries such as Mr. Zdenko Holenko, Ms. Doris Šajn, and Mr. Ivan Karalić. According to Mr. Holenko, 'it would have been better if the educational activities were tailor-made and obligatory for their type of public bodies'. Ms. Doris Šajn fully supports his proposals, mentioning that 'all public authorities do not have the same themes, issues and problems while implementing the Access to Public Information Act'. Mr. Ivan Karalić from Osječko-baranjska County added several proposals he considers important, such as engaging judges of administrative courts as trainers who would be able to analyse the cases in detail, and promoting highly-experienced information officers as trainers to colleagues at small local governments with weaker capacities for implementing the Access to Public Information Act.

Role of ESF support for the affirming of policy on access to public sector information in Croatia

Although the IC's Office tends to make use of various sources of technical and financial support, this ESF funded project has contributed significantly to the affirming of policy on access to public sector information in Croatia. First and foremost, this project has strengthened the capacity of the IC's Office. The engagement of the Information Commissioner and other IC Office staff in activities in other countries indicates that the improved capacity of the IC's Office is now recognised at EU level. In addition, the project has improved the work of public bodies whose representatives participated in its educational activities.

The project has turned the attention of the public towards the significance of policy related to the transparency of the public sector. Since the establishment of the IC's Office and appointment of the first Information Commissioner, Croatia has risen up in the score and rankings of EU Member States in relation to information access, from 23rd in 2014 (score 6) to 9th in 2017 (score 8). In 2019 the score has remained the same. Substantial advances will be achieved through the wider use of the new and improved educational tools produced by the project, as well as, the new website of the IC's Office, which includes upgraded functionalities such as a better search engine and several new registries and documentation databases.

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