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Subject: EUROPEAN UNION COMMON POSITION  
Chapter 22: Regional Policy and coordination of structural instruments

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**EUROPEAN UNION Common Position**  
**(Revision of CONF-HR 16/09)**

**Chapter 22: Regional Policy and coordination of structural instruments**

This position of the European Union is based on its general position for the Accession Conference with Croatia (CONF-HR 2/05), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-HR 5/05), in particular:

- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements – even partial agreements – reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established;

as well as to the requirements set out in points 13, 16 and 26 of the Negotiating Framework.

The EU underlines the importance for Croatia of compliance with the Stabilisation and Association Agreement as well as the Accession Partnership, which constitute basic elements of the pre-accession strategy.

The EU encourages Croatia to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general to develop already before accession, policies and instruments as close as possible to those of the EU.

The EU notes that, in the addendum CONF-HR 1/11 to its Negotiating Positions CONF-HR 15/08, Croatia indicates that it accepts the *acquis* under chapter 22 as in force on 1 January 2011, and that it would be ready to implement it from the day of its accession to the European Union, with the exception of Article 93(1) of Council Regulation (EC) No 1083/2006 for the implementation of which Croatia requests a derogation.

The EU also takes note of the additional information provided by Croatia in the addendum CONF-HR 1/11 to its Negotiating Positions CONF-HR 15/08.

The EU underlines that the negotiations on this chapter are exclusively on the existing *acquis* until 2013 and do not prejudge future *acquis* under the programming period thereafter.

### **Legislative framework**

EU takes note of the progress Croatia made on its legislative framework. This includes completion of legislative and procedural changes on multi-annual budget programming and largely aligning framework and implementing legislation with the *acquis* in the area of public procurement as regards award of public contracts, concessions, public-private partnerships and remedies, as well as regards sustainable development/environment and principles of non-discrimination, gender equality, social dialogue and in the area of state aid.

The EU stresses the importance for Croatia to complete the alignment in the area of public procurement and to devote particular attention to establishing and fully implementing systems and procedures ensuring compliance of operations financed by the Structural Funds and the Cohesion Fund with EU policies and legislation.

The EU invites Croatia to continue reporting on legislative alignment and on the practical steps being taken to ensure full respect of EU rules at all levels, and underlines that it will carefully monitor Croatia's progress in this respect.

## **Institutional framework**

The EU takes note of Croatia's formal designation of institutional structures for the implementation of cohesion policy as established and confirmed by Government Decision on the Strategic Documents and Institutional Framework for the Utilisation of the Structural Instruments in Croatia in October 2010. The EU stresses the importance of guaranteeing adequate separation of functions in particular within ministries, as applicable between managing authorities and intermediate bodies.

The EU underlines that the decisions to be taken in terms of defining and setting up the detailed arrangements for ensuring the efficiency and correctness of management and implementation of the Structural and Cohesion Funds will be closely monitored.

## **Administrative capacity**

The EU takes note of the fact that Croatia's institutional framework for the implementation of EU cohesion policy builds directly on the existing implementation structures for IPA Components II, III and IV. In view of a smooth transition from IPA to Cohesion Policy, the EU underlines the importance of effectively implementing Croatia's commitment and plans to increase the staff numbers and to ensure a good retention of staff/teams currently operating under IPA for future cohesion policy implementation.

The EU takes note of Croatia's adoption by Government Decision in October 2010 of eight individual Organisational Development Strategies for three horizontal bodies and one per each of five operational programmes. It also takes note of the adoption by government decision in December 2010 of an Institutional Development and Capacity Building Strategy (together with an Action Plan), including a career planning and salaries strategy for civil servants involved in the management of EU funds. Furthermore, the EU takes note on one side of a Government Decision adopted in March 2011 providing for concrete staff increases in different bodies, and on the other of amendments to the Civil Service Regulation adopted in January 2011 establishing an appropriate rewarding mechanism for civil servants dealing with EU funds.

The EU stresses the importance of full and timely implementation of the government decisions related to building up and strengthening administrative capacity and to bringing the capacity of all the managing authorities, intermediate bodies and other relevant bodies to the required level in good time before accession. It also underlines that particular attention has to be given to strengthening the capacity of relevant bodies at local and regional level. The EU invites Croatia to regularly report to the Commission on development in this field, especially with regard to staffing levels and implementation of training plans. The EU will closely monitor developments in this field.

The EU underlines the importance of dedicating particular efforts to implementing an adequate career planning and salaries policy for civil servants involved in the management of EU funds in order to ensure the attracting and retaining of qualified staff.

### **Programming**

The EU takes note of Croatia's preparation of an advanced and comprehensive draft of the National Strategic Reference Framework (NSRF) for the programming period until the 31 December 2013, which has been discussed extensively with the Commission. The EU also takes note of the information provided in the addendum to the negotiation position on the planned preparation of 5 operational programmes (OP) under the Convergence objective (OP Transport, OP Environment and Energy, OP Regional Competitiveness, OP Human Resources Development, OP Administrative Capacity Development), 2 cross-border cooperation operational programmes (Slovenia – Croatia, Hungary – Croatia), 2 transnational cooperation programmes under the European territorial cooperation objective and 4 cross-Border cooperation operational programmes under the Instrument for Pre-Accession Assistance (IPA Adriatic, Croatia-Serbia, Croatia-Bosnia and Herzegovina and Croatia-Montenegro). The EU underlines the importance of a timely and effective preparation and/or completion of quality programming documents. The EU will carefully monitor progress in the preparation of OPs.

The EU takes note of Croatia's development of a project pipeline for IPA components III and IV, as a precursor to the Structural Funds and Cohesion Fund. The EU underlines the importance of timely preparing a pipeline of high quality and mature projects for the implementation of cohesion policy. Particular attention must be given to the preparation of proposals for major projects. The EU invites Croatia to continue informing the Commission regularly on progress with preparing the cohesion policy project pipeline. The EU will carefully monitor progress with regard to preparations in this area.

The EU takes note of progress with regard to the implementation and absorption of EU pre-accession funds in Croatia, including relevant Phare/ISPA projects and IPA programmes. The EU underlines the particular importance of ensuring a timely, sound and efficient implementation of procurement and payment plans in order to ensure the absorption of funds. The EU invites Croatia to continue regularly reporting to the Commission on the implementation of procurement plans and the absorption of funds.

The EU underlines the importance of an effective implementation of the partnership principle with regard to the preparation, financing, monitoring and evaluation of cohesion policy assistance.

Should accession take place under the current financial framework, the deadline for the submission of the NSRF needs to be adjusted to take account of the limited number of remaining years under the current legal framework. Specific and related provisions in this regard shall be reflected in the Accession Treaty as in points 1.2 - 1.6 and 1.12 of the Annex.

## **Monitoring and Evaluation**

The EU takes note of progress made with the setting up of an electronic Management and Information System (MIS) for IPA, which is close to being completed. It also takes note of the detailed plan and timetable for setting up a Monitoring and Evaluation System under the Structural Funds/Cohesion Fund, including an MIS, which has been submitted to the Commission. The EU underlines the importance of establishing a functional monitoring and evaluation system, including an adequate MIS, in time for the implementation of cohesion policy. The EU will continue to monitor progress in this area closely.

The EU takes note of Croatia's commitment and plan to launch *ex-ante* evaluations for the NSRF and operational programmes in mid 2011. The EU stresses the importance for Croatia to ensure the timely start of ex-ante evaluations and the delivery of quality and pertinent OPs.

The EU encourages Croatia to adopt, as planned in mid 2011, and start implementation of a strategy for the efficient and effective use of evaluations in the context of cohesion policy.

## **Financial management and control**

The EU takes note of progress Croatia made in establishing and implementing an adequate financial management and control system for the implementation of IPA pre-accession funding, as confirmed by Commission audits. Given the importance of financial control for the management of the Structural and Cohesion Funds, the EU recalls the need for Croatia to comply, upon accession, with the specific financial control provisions applicable to the Structural and Cohesion Funds.

The EU takes note of progress by Croatia as regards the legislative and administrative framework foreseen for ensuring multi-annual programming, co-financing and financial management of Structural Funds and Cohesion Fund.

The EU encourages Croatia to continue working closely with the Commission in preparing for the implementation of structural instruments during the period leading up to accession, in full respect of the commitments made by Croatia. The EU underlines that the Commission will not be able to approve EU funding until relevant conditions set out in the Structural and Cohesion Funds Regulations are satisfied.

Should accession take place under the current financial framework, deadlines for the submission of an audit strategy and an annual control report need to be adjusted to take account of the limited number of remaining years under the current legal framework. Specific provisions in this regard shall be reflected in the Accession Treaty as in point 1.9 of the Annex.

### **Eligibility**

From the date of accession, based on the current *acquis*, all of Croatia's 3 level 2 regions shall be eligible for assistance under the Convergence objective.

From the date of accession, Croatia shall also be eligible for Cohesion Fund assistance.

From the date of accession, based on the current *acquis*, all level 3 areas along Croatia's land borders and all level 3 maritime border areas shall be eligible areas for cross-border cooperation under the European territorial cooperation objective. All of Croatia's statistical regions at level 2 shall be included in a joint or in separate groupings of regions for the purpose of transnational cooperation and the whole of Croatia's territory shall be eligible for interregional cooperation. The EU invites Croatia to follow closely the evolution of the *acquis* in this area, given the need to develop administrative capacity with regard to cross-border and transnational cooperation.

The EU stresses the importance of the consistent availability of relevant and reliable statistics in the area of regional policy, both for determining eligibility matters and for programming and monitoring purposes.



Measures under the ISPA programme, which will not have been completed before accession will, on the date of accession of Croatia, be considered measures under the Cohesion Fund.

Operational programmes and major projects approved under the IPA components III Regional Development and IV Human Resources Development will, on the date of accession of Croatia, be considered to be operational programmes and major projects under the European Regional Development Fund, the European Social Fund and the Cohesion Fund. Programmes and projects under IPA component II Cross-border cooperation will be considered programmes and projects under the European Regional Development Fund, with the exception of the IPA cross-border co-operation programmes "Adriatic", Croatia – Bosnia and Herzegovina, Croatia – Montenegro and Croatia-Serbia which will continue to be governed by the IPA legal base.

Contributions made by the Commission under these measures or operational programmes will be considered as contribution from the Funds under Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund.

The provisions above shall be included in the Accession Treaty as in points 1.1, 1.7, 1.18 and 2 of the Annex.

The EU draws Croatia's attention to the fact that the validity of the current *acquis* in the area of the Structural Funds and Cohesion Fund ends on 31 December 2013 and invites Croatia to follow closely the evolution of the *acquis* in this area.

The EU underlines that eligibility for EU cohesion policy assistance for all EU members on 1 January 2014 will be determined through procedures established under the *acquis* applicable at that time.

## Financial issues

Should accession take place under the current financial framework, the actual amounts to be made available to Croatia for the remaining period of this framework will be set out in chapter 33 (*Financial and budgetary provisions*), based on application of the principles set out in this position. For the period covered by the next financial framework, Croatia's allocations for Structural and Cohesion Funds will be calculated based on then applicable *acquis*. These amounts should be adjusted to take into account the phasing-in schedule set out in this position.

In order to reflect the progressive increase of absorption capacity in Croatia, the EU considers that structural actions allocations for Croatia should be progressively phased-in. Accordingly, Croatia should be entitled to 60% and 80% of its normal allocations in the first and second years of accession respectively. Full phasing-in would be achieved by the third year of accession. The same phasing-in will apply to Croatia's allocations under Structural and Cohesion funding, rural development funding and the European Fisheries Fund.

Where the phasing-in continues into the new financial framework, an adjustment should be made to ensure, within the limits of the new *acquis*, an increase of funds for Croatia of 33.3% in the second year of accession as compared to the first. No such adjustment will be made in the third year of accession, when the then applicable *acquis* will apply in its entirety.

Based on application of current *acquis* and the latest available GNI figures, Croatia's maximum level of transfers from funds supporting cohesion in any one year under the current financial perspective would be capped at [3.524%] of GDP. In this context, the EU notes that the latest figures available at the time of closing chapter 33 (*Financial and budgetary provisions*) will be used to determine the capping level that will apply to Croatia.

Taking into account point 8 of Annex II of Council Regulation (EC) No 1083/2006, the overall capped amount will include contributions from the ERDF to the financing of the cross border strand of the Instrument for Pre-Accession Assistance, and the contributions from the part of the EAFRD originating from the Guidance Section of the European Agricultural Guidance and Guarantee Fund, and from the European Fisheries Fund. Should Croatia join under the current financial framework, 84.25% of Croatia's total capped cohesion envelope will be reserved for Structural and Cohesion Funds (SCF). 14.11% of this total capped cohesion envelope will be reserved as part of the overall funding for rural development measures (the "Guidance part") and 1.64% of this envelope will be reserved for funding participation in the European Fisheries Fund. Further detail concerning that part of rural development funding based on the guarantee part of the European Agricultural Guidance and Guarantee Fund (EAGGF) will be set out in chapter 11 (*Agriculture*).

Should Croatia join under the current financial framework, the EU considers that one third of the total Structural and Cohesion Funds envelope under the current financial framework should go towards the Cohesion Fund to reflect the significant needs in terms of transport and environment infrastructure.

Should Croatia not accede to the EU on the 1 January of a given year, an adjustment will be made to its financial allocations on a pro rata temporis basis. Similarly, provisions will be foreseen to take into account allocation of pre-accession funds for that year on a pro rata temporis basis.

Should Croatia join the EU in the course of an on-going programming period, the EU considers that pre-financing under the Structural and Cohesion Funds shall be paid in one instalment. The pre-financing rates will be set out in chapter 33, taking into account the principles of the fifth enlargement.

The EU requests that before any payment by the European Commission (for pre-financing or interim payments) is made, Croatia submits to the Commission a description of the management and control systems covering in particular the organisation and procedures of: (a) the managing and certifying authorities and intermediate bodies; (b) the audit authority and any other bodies carrying out audits under its responsibility. The description of the implementation systems shall be accompanied by a report setting out the results of an assessment of the systems set up and giving an opinion on their compliance with Articles 58 to 62 of Council Regulation (EC) No 1083/2006. If the opinion contains reservations, the report shall indicate the seriousness of the shortcomings and, where the shortcomings do not concern the whole programme, the priority axis or axes concerned. The report and opinion shall be drawn up by the audit authority or by a public or private body functionally independent of the managing and certifying authority, which shall carry out its work taking into account internationally accepted audit standards. Croatia shall inform the Commission of the corrective measures to be taken and the timetable for their implementation and subsequently provide confirmation of the implementation of the measures and the withdrawal of the corresponding reservations.

The provisions above shall be included in the Accession Treaty as in point 1.11 of the Annex.

The EU takes note of Croatia's request that the deadline for automatic de-commitment as established in Art 93 (1) of Council Regulation (EC) No 1083/2006 be moved for Croatia to the 31 December of the third year following the year of the annual budget commitment under its operational programmes. This should also apply to the annual budget commitment in operational programmes falling under the cross-border cooperation strand of the European territorial cooperation objective, which Croatia is participant of. Considering the information provided by Croatia, the EU can accept this request. The EU notes that the extension of de-commitment deadlines for operational programmes falling under the cross-border cooperation strand of the European territorial cooperation objective is also applicable to those Member States participating in the bilateral cross-border cooperation programmes with Croatia, i.e. Croatia-Slovenia and Croatia-Hungary. The EU agrees to extend the end date for eligibility of expenditures by one year for Croatia's programmes under convergence objective and the operational programmes falling under the cross-border cooperation component of the European territorial cooperation objective, where Croatia is one of the participants. In line with this, other relevant provisions of the *acquis* (e.g. on closure of the operational programme, submission of reports) and the respective reference dates shall be adapted accordingly. The EU recalls that its agreement to the extension of the deadline for de-commitment under the current *acquis* from "n+2" to "n+3" does not pre-judge any possible adaptations of Cohesion Policy and relevant regulations for the post-2014 financial perspectives.

The provisions above shall be included in the Accession Treaty as in points 1.8, 1.10, 1.13, 1.14, 1.15, 1.16 and 1.17 of the Annex.

Should accession take place under the current financial framework, additionality of programmes falling within this framework will be verified by the Commission.

The EU invites Croatia to continue regularly informing the European Commission about preparations for meeting cohesion policy requirements.

The EU underlines that the correct use, control, monitoring and evaluation of EU funding will constitute a key indicator of Croatia's ability to implement the financial control *acquis*.

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In view of all the above considerations, the EU notes that, at this stage, this chapter does not require further negotiations.

Monitoring of progress in the alignment with and implementation of the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Croatia's administrative capacity for a timely and efficient programming, implementation and monitoring of Structural Funds/Cohesion Fund programmes. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. A final assessment of the conformity of Croatia's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Croatia to provide regularly detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of the above, the EU will, if necessary, return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 January 2011 and the conclusion of the negotiations.

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## LEGAL AMENDMENTS ARISING FROM THE DCP

1. 32006 R 1083: Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25):

1. In Article 22, the following subparagraph is added:

'By way of derogation from the first subparagraph, Croatia may distribute its financial allocation under the European territorial cooperation objective among the three components referred to in Article 21(1)(a) to (c) with a view of a high level of efficiency and simplification.'

2. Article 28 is amended as follows:

(a) In paragraph 1, the following subparagraph is inserted between the first and second subparagraphs:

'For Croatia the national strategic reference framework shall cover the period from the date of accession to 31 December 2013.'

(b) In paragraph 2, the following subparagraph is inserted between the first and second subparagraphs:

'Croatia shall transmit its national strategic reference framework to the Commission within five months following the date of accession.'

3. In Article 29, the following paragraph is added:

'5. Paragraphs 1 to 4 shall not apply to Croatia.'

4. In Article 33(1), the following subparagraph is added:  
'For Croatia, programmes adopted before the date of accession may be revised in the sole view of a better alignment with this Regulation.'
5. In Article 49(3), the following subparagraph is added:  
'For Croatia's Operational Programmes *ex post* evaluation shall be completed by 31 December 2016.'
6. The following Article is added after Article 51:

*'Article 51a*

'Articles 50 and 51 shall not apply to Croatia.'

7. Article 53(3) is replaced by the following:  
  
'For operational programmes under the European territorial cooperation objective in which at least one participant belongs to a Member State whose average GDP per capita for the period 2001 to 2003 was below 85 % of the EU-25 average during the same period, or for such programmes where Croatia is a participating country, the contribution from the ERDF shall not be higher than 85 % of the eligible expenditure. For all other operational programmes, the contribution from the ERDF shall not be higher than 75 % of the eligible expenditure co- financed by the ERDF.'
8. In Article 56(1), the following subparagraph is added:  
  
'For Croatia expenditure shall be eligible for a contribution from the Funds between the starting date of eligibility of expenditure as fixed in accordance with the instruments adopted under Regulation (EC) No 1085/2006 and 31 December 2016.'



9. Article 62(1) is amended as follows:

- (a) In letter (c) , the following subparagraph is inserted between the first and second subparagraphs:

'For Croatia the audit authority of an operational programme shall submit to the Commission an up-date of the annual audit work plan as referred to in Article 29(2)(a) of Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (IPA)<sup>1</sup> within 3 months from the date of accession.'

- (b) In letter (d) (i) , the following subparagraph is added:

'For Croatia the first annual control report shall be submitted by 31 December 2013 covering the period from 1 October 2012 until 30 June 2013. The following reports covering the periods from 1 July 2013 to 30 June 2014, from 1 July 2014 to 30 June 2015 and from 1 July 2015 to 30 June 2016 shall be submitted to the Commission by 31 December 2014, 31 December 2015 and 31 December 2016 respectively. The information concerning the audits carried out after 1 July 2016 shall be included in the final control report supporting the closure declaration referred to in point (e);'

- (c) In letter (e), the following subparagraph is added:

'For Croatia a closure declaration supported by the final control report, shall be submitted to the Commission at the latest by 31 March 2018.'

10. In Article 67(1), the following subparagraph is added:

'Croatia shall send a final report on the implementation of the operational programme by 31 March 2018.'

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<sup>1</sup> OJ L 170, 29.6.2007, p. 1.

11. Article 71 is amended as follows:

(a) The following paragraph 1a is inserted after paragraph 1:

'1a. Notwithstanding paragraph 1, for Croatia, as soon as possible following the date of accession or, at the latest, before any payment by the Commission is made, Croatia shall submit to the Commission a description of the systems, covering the elements set in letters (a) and (b) of the first paragraph.'

(b) The following paragraph 2a is inserted after paragraph 2:

'2a. Paragraph 2 applies to Croatia *mutatis mutandis*. The report referred to in the first subparagraph shall be deemed to be accepted under the same conditions as set out in the second subparagraph. However, such acceptance shall be a pre-requisite for the pre-financing amount referred to in Article 82.'

12. In Article 75, the following paragraph 1a is inserted after paragraph 1:

1a. For Croatia the respective budget commitments from the ERDF, Cohesion Fund and ESF for the 2013 shall be made based on the decision referred to in Article 28(3) before any decision of the Commission on the revision of a programme adopted is taken. That decision shall constitute a financing decision in the meaning of Article 75 of Regulation (EC, Euratom) No 1605/2002 for any budget commitment in favour of Croatia.'

13. In Article 78(2)(c), the following subparagraph is added:

'For Croatia they shall be covered by expenditure paid by beneficiaries in implementing the project and supported by receipted invoices or accounting documents of equivalent probative value at the latest three years after the year of the payment of the advance or on 31 December 2016, whichever earlier; if they are not, the next statement of expenditure shall be corrected accordingly.'

14. In Article 89, paragraph 1 is replaced by the following:

'1. The Commission shall pay the final balance provided that:

(a) the Member State has sent an application for payment comprising the following documents by 31 March 2017:

(i) an application for payment of the final balance and a statement of expenditure in accordance with Article 78;

(ii) the final implementation report for the operational programme, including the information set out in Article 67;

(iii) a closure declaration referred to in Article 62(1)(e).

For Croatia an application for payment comprising the documents listed in letters (i) to (iii) must be sent by 31 March 2018.

(b) there is no reasoned opinion by the Commission in respect of an infringement under Article 226 of the Treaty as regards the operation(s) for which the expenditure is declared in the application for payment in question.'

15. In Article 93, the following paragraph 3a is added after paragraph 3:

'3a. By way of derogation from paragraphs 1 to 3, any part of commitments in favour of Croatia still open on 31 December 2015 shall be automatically decommitted if the Commission has not received an acceptable application for payment for it by 31 March 2018.'

16. In Article 95, the following subparagraph is inserted after the second subparagraph:

'For that part of commitments in favour of Croatia still open on 31 December 2015, the time limit referred to in Article 93(3a) shall be interrupted under the same conditions in respect of the amount relating to the operations concerned.'

17. In Article 98(2), the following subparagraph is added:

'3. For Croatia the resources from the Funds released in this way may be reused until 31 December 2016.'

18. The following Article 105a is inserted after Article 105:

*'Article 105a*

### **Specific provisions following Croatia's accession to the European Union**

1. Programmes and major projects which, on the date of accession of Croatia, have been approved under Council Regulation (EC) No 1085/2006 and the implementation of which has not been completed by that date, shall be considered to have been approved by the Commission under this Regulation, with the exception of programmes approved under the components referred to in Article 3, letters (a) and (e) of that Regulation.

In addition, the following programmes falling under the component referred to in Article 3, letter (b) of Regulation (EC) No 1085/2006 shall be excluded as well:

- a) the "IPA Adriatic cross-border co-operation programme";
- b) the cross-border programme "Croatia – Bosnia and Herzegovina of 2007, 2008, 2009 and 2010-2011";
- c) the cross-border programme "Croatia – Montenegro of 2007, 2008, 2009 and 2010-2011";
- d) the cross-border programme "Croatia-Serbia of 2007, 2008, 2009 and 2010-2011".

Save as otherwise provided in paragraphs 2 to 7, the provisions governing the implementation of operations and major projects approved pursuant to this Regulation shall apply to these operations and major projects.

2. Any procurement procedure relating to operations within the programmes or relating to major projects referred to in paragraph 1 which, on the date of accession, has already been the subject of an invitation to tender published in the *Official Journal of the European Union* shall be implemented in accordance with the rules laid down in that invitation to tender. The provisions contained in Article 165 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>1</sup> shall not apply.

Any procurement procedure relating to operations within the programmes or relating to major projects referred to in paragraph 1 which, on the date of accession, has not yet been the subject of an invitation to tender published in the *Official Journal of the European Union* shall be implemented in compliance with the provisions of the Treaties or of the acts adopted under them as well as in compliance with Article 9 of this Regulation.

3. Payments made by the Commission under programmes referred to in paragraph 1 shall be considered as a contribution from the Funds under this Regulation and shall be posted to the earliest open commitment including IPA commitments.

4. For the operations approved under Council Regulation (EC) No 1085/2006 or for major projects referred to in paragraph 1 for which the approval was given or for which the respective grant agreements with final beneficiaries or for which bilateral project agreements were signed before the date of accession, the rules governing the eligibility of expenditure in accordance with or based on Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (IPA)<sup>2</sup> shall remain applicable, except in duly justified cases to be decided on by the Commission at the request of Croatia.

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<sup>1</sup> OJ L 248, 16.9.2002, p. 1.

<sup>2</sup> OJ L 170, 29.6.2007, p. 1.

5. Concerning Croatia, any reference to the Funds as defined in the second sub-paragraph of Article 1 shall be construed as also including the Instrument for Pre-accession (IPA) as referred to in Council Regulation (EC) No 1085/2006.

6. Specific deadlines applicable to Croatia shall also apply to the following cross-border-programmes falling under the component referred to in letter (b) of Article 3 of Regulation (EC) No 1085/2006, where Croatia is a participating country:

a) The cross-border programme "Hungary-Croatia" and

b) The cross-border programme "Slovenia-Croatia".

Specific deadlines applicable to Croatia under this Regulation do not apply to operational programmes under the transnational and interregional components under the European territorial cooperation objective, where Croatia is a participating country."

7. If any measures are necessary to facilitate the transition of Croatia from the pre-accession regime to that resulting from the application of this Article, the Commission shall adopt the required measures.'

19. Annex III is replaced by the following:

*'ANNEX III*

Ceilings applicable to co-financing rates  
(referred to in Article 53)

Criteria	Member States	ERDF and ESF Percentage of eligible expenditure	Cohesion Fund Percentage of eligible expenditure
1. Member States whose average GDP per capita for the period 2001 to 2003 was below <b>85 %</b> of the EU-25 average during the same period	Bulgaria, Czech Republic, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia, Slovakia, Croatia	<b>85 %</b> for the Convergence and Regional competitiveness and employment objectives	<b>85 %</b>
2. Member States other than those under (1) and (2) eligible for the transitional regime of the Cohesion Fund on 1 January 2007	Spain	<b>80 %</b> for the Convergence and the phasing-in regions under the Regional competitiveness and employment objective <b>50 %</b> for the Regional competitiveness and employment objective outside phasing-in regions	<b>85 %</b>





2. 32006 R 1084: Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94 (OJ L 210, 31.7.2006, p. 79)

The following Article is added after Article 5:

*'Article 5a*

**Specific provisions following Croatia's accession to the European Union**

1. Measures which, on the date of accession of Croatia, have been the subject of Commission decisions on assistance under Council Regulation (EC) No 1267/1999 establishing an instrument for Structural Policies for Pre-accession (ISPA)<sup>1</sup> and the implementation of which has not been completed by that date shall be considered to have been approved by the Commission under this Regulation.

Unless stated otherwise in paragraphs 2 to 5, the provisions governing the implementation of actions approved pursuant to this Regulation and to Council Regulation (EC) No 1083/2006 shall apply to these measures.

2. Any procurement procedure relating to measures referred to in paragraph 1 which, on the date of accession, has already been the subject of an invitation to tender published in the *Official Journal of the European Union* shall be implemented in accordance with the rules laid down in that invitation to tender. The provisions contained in Article 165 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup> shall not apply.

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<sup>1</sup> OJ L 161, 26.6.1999, p. 73.

<sup>2</sup> OJ L 248, 16.9.2002, p. 1.

Any procurement procedure relating to a measure referred to in paragraph 1 which, on the date of accession, has not yet been the subject of an invitation to tender published in the *Official Journal of the European Union* shall be implemented in compliance with the provisions of the Treaties or of the acts adopted under them as well as in compliance with Article 9 of Council Regulation (EC) No 1083/2006.

3. Payments made by the Commission under a measure referred to in paragraph 1 shall be considered as a contribution from the Fund under this Regulation.

Payments made by the Commission under a measure referred to in paragraph 1 shall be posted to the earliest open commitment made in first instance pursuant to Council Regulation (EC) No 1267/1999, and then pursuant to this Regulation and to Council Regulation (EC) No 1083/2006.

The conditions for interim payments or for the final balance are those as set out in paragraph 2, letters (b) to (d) and paragraphs (3) to (5) of Article D in Annex II of Council Regulation (EC) No 1164/94.

4. For the measures referred to in paragraph 1, the rules governing the eligibility of expenditure pursuant to Council Regulation (EC) No 1267/1999 or specifically established in the relevant financing agreements shall remain applicable, except in duly justified cases to be decided on by the Commission at the request of Croatia.

5. If any measures are necessary to facilitate the transition of Croatia from the pre-accession regime to that resulting from the application of this Article, the Commission shall adopt the required measures.'

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