

**CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
– CROATIA –**

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LIMITE

CONF-HR 10

ACCESSION DOCUMENT

Subject: EUROPEAN UNION COMMON POSITION
 Chapter 13: Fisheries

EUROPEAN UNION COMMON POSITION
(Revision of CONF-HR 4/10)

Chapter 13: Fisheries

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 prejudge 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 develop already before accession, policies and instruments as close as possible to those of the EU. Particular attention should be paid to the development of the inspection and control capacity to discharge properly its future responsibilities under the Common Fisheries Policy, the alignment of the use of its traditional fishing gears with the *acquis* as well as the phasing out of the specific category of the subsistence fisheries.

The EU recalls that under Article 3(1)(d) and 3(2) of the TFEU the Union has exclusive competence in the area of the conservation of marine biological resources under the common fisheries policy as well as for the conclusion of international agreements in that area.

The EU notes that Croatia, in its addendum CONF-HR 3/11 accepts the *acquis* under chapter 13 as in force on 1 March 2011, and that Croatia declares that it will be ready to implement it by the date of its accession to the EU, while requesting two transitional measures and two derogations.

As an overall response to Croatia's requests for transitional periods, the EU recalls its general negotiating position that transitional measures are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for the application of the *acquis*. They must not involve amendments to the rules or policies of the EU, disrupt their proper functioning, or lead to a significant distortion of competition.

The EU stresses that the fact that Croatia accepts the *acquis* implies its acceptance of the EU regime on access to waters and resources, including the provisions of Article 17 of Council Regulation (EC) No 2371/2002. The EU takes note of the Agreement on Border Traffic and Cooperation in place between Slovenia and Croatia. The EU further considers that this agreement constitutes a basis for mutual access to coastal waters within the meaning of Article 17(2) of Council Regulation (EC) No 2371/2002. The EU notes that Annex I of Council Regulation (EC) No 2371/2002 shall be amended, as set out in point A (1) of the Annex. The EU also notes that the above mentioned rules on mutual access to coastal waters shall apply from the full implementation of the arbitration award resulting from the Arbitration Agreement between Slovenia and Croatia, signed in Stockholm on 4 November 2009. In the meantime the EFF may contribute to the financing of a scheme of individual premiums for fishers who will benefit from the access regime as laid down in Part 11 of Annex I of Regulation (EC) No 2371/2002, as spelled out in the Annex of the EUCP.

In the light of the 4 June 2004 agreement and the relevant European Council and Council conclusions the EU calls on Croatia to continue to fully respect its commitment not to apply any aspect of the Croatian Ecological and Fisheries Protection Zone to the EU Member States until a common agreement in the EU spirit is found. The EU notes that the above mentioned commitment shall also be respected, *inter alia*, from the entry into force of the Arbitration Agreement between Slovenia and Croatia, signed in Stockholm on 4 November 2009, until the arbitration award has been fully implemented.

Resource and fleet management

The EU notes that Croatia further aligned its legislation with the *acquis*, including the adoption of the Marine Fisheries Act providing basic provisions for an entry/exit scheme, the fleet and resource management, the fleet register, and a system of surveillance, inspection and control. The EU also notes the adoption of implementing rules on landing of fish, first sales, and reporting. The EU further notes that Croatia adopted ordinances on commercial fishing licences prohibiting the issuing of new licences as well as on catch certificates for export of fisheries products to the EU.

The EU notes that Croatia has established the Croatian Fleet Register. The EU underlines that the Croatian Fleet Register must be fully in compliance with the *acquis*. The EU takes note of Croatia's plan to complete re-measurement of all vessels, together with the renewal of licences, on 1 September 2012. The EU invites Croatia to transmit to the Commission the exact fleet size figures (vessels, GT and kW) at the latest on the date of its accession to the EU and recalls the limits established by the General Fisheries Commission for the Mediterranean (GFCM¹) as far as the vessels longer than 15 m length overall are concerned. The EU notes that the Fisheries Monitoring Centre (FMC) has been established and is fully functional.

The EU takes note of Croatia's progress made to align its legal framework in order to ensure non-discriminatory conditions for obtaining licences for commercial fishing for all legal and natural persons of the EU wishing to operate fishing vessels flying the Croatian flag. Croatia shall ensure full alignment with the Treaties, the relevant EU Regulations, as from its accession to the EU.

¹ GFCM 34/2010/2

The EU takes note that Croatia currently establishes a new data collection system in line with Council Regulation (EC) No 199/2008. The EU notes Croatia's plan to implement the Data Gathering Programme in 2011. The EU notes that catch and landing data are collected through logbooks and landing declarations for all vessels over 10 meters. The EU also takes note that sales notes have been fully introduced.

The EU notes Croatia's request to maintain, during a transitional period of 5 years from the date of Croatia's accession, parts of its national regulatory framework in bottom trawl fishery pertaining to the minimum distance from the coast: The EU notes that, in this context, Croatia requests a derogation for the application during a transitional period of 5 years of the provisions of paragraphs 1 and 2 of Article 13 of Council Regulation (EC) No 1967/2006, in the manner that on depths less than 50 meters the usage of bottom trawls, for vessels registered and operating in the Western Istria region, is maintained at the minimum distance of 1.5 NM from the coast. The area designed as Western Istria is determined from the point with geographic coordinates $\varphi=44.52135$ and $\lambda=14.29244$ with a line due north and a line due west. The EU further notes that Croatia requests for all vessels of less than 15 meters length overall, that during the said transitional period, on depths over 50 meters the usage of bottom trawls is allowed at the minimum distance of 1 NM, maintaining all other spatial and temporal restrictions Croatia currently applies. The EU takes note of the information provided by Croatia with regard to traditional gears. The EU considers a transitional period until 30 June 2014 acceptable for both requests. The EU notes that during the transitional period, the relevant vessels will continue to operate according to the currently existing national rules. The EU invites Croatia to prepare in due time, and together with the Commission, the necessary management plans required by Council Regulation (EC) No 1967/2006 (the Mediterranean Regulation). The EU notes that Croatia could request derogations through such management plans to be applied after the above mentioned transitional period has expired. The EU notes that such derogations would be granted provided that the conditions under Council Regulation (EC) No 1967/2006, and in particular its article 13, are met.

The EU notes Croatia's revised request for a transitional period until 31 December 2014 for the phasing out of the specific category of non-commercial fisheries, the small scale artesanal fishing (subsistence fishing) for personal needs, by temporarily derogating from Article 17 (1) of Council Regulation (EC) No 1967/2006. The EU notes that the transitional measure will apply to a defined list of vessels to be communicated to the European Commission on the date of Croatia's accession to the EU. The EU takes note of the information provided by Croatia in this respect. The EU considers the request acceptable on condition that the number of subsistence vessels covered by the above mentioned transitional period shall not exceed 2,000 and the number of subsistence vessels to be entered into the Croatian Fleet Register before Croatia's accession to the EU does not exceed 3,500. Croatia shall submit to the Commission, on the date of its accession to the EU at the latest, the list of vessels covered by the transitional period and the list of vessels entering the Croatian Fleet Register, including their characteristics and capacity, expressed in terms of GT and kW.

The EU takes note that Croatia withdraws its requests with regard to permitting a margin of tolerance of 15 % in weight for hake and as regards the extension of the fleet capacity calculation in GT and kW. The EU underlines that Croatia's reference level for the fishing capacity of the fleet will be determined upon accession, applying *mutatis mutandis* the provisions of Article 6 of Commission Regulation (EC) No 1013/2010.

Inspection and control

The EU notes Croatia's plans to ensure sufficient administrative and operational capacities at all levels, in particular in order to discharge properly its future responsibilities in terms of inspection and control thus fulfilling the first closing benchmark as set out in EU common position (CONF-HR 4/10). The EU underlines the importance of Croatia implementing this plan in order to ensure sufficient control intensity as required by the Common Fisheries Policy after accession. The EU takes note of Croatia's plan to have 37 fisheries inspectors employed in 2012 and an additional patrol vessel operational in June 2011. The EU notes that the installation of an EU compliant satellite-based vessel monitoring system (VMS) has continued and that the installation of electronic logbooks on vessels over 24 meters should be finalized in 2011 and for vessels over 15 meters in 2012. The EU further notes that an electronic reporting system should be functional by mid-2011. The EU takes note that Croatia has established a list of designated landing places for commercial fishing vessels in 2009.

The EU notes that cooperation is needed in the Adriatic Sea at the sub-regional level. The EU invites Croatia to perform inspections and controls in line with Article 17 of Council Regulation (EC) No 2371/2002 and in accordance with the provisions of Council Regulation (EC) No 1224/2009 and of its implementing rules.

Structural measures

The EU takes note that Croatia further aligned its legislation with the *acquis*, including the adoption of the Act on structural support and market organisation in fisheries laying down conditions for the implementation structural policy, other aids and market measures. The EU also notes that Croatia adopted the institutional framework for the implementation of the European Fisheries Fund including the formal designation of the institutional structures for the operational programme thus fulfilling the third closing benchmark as set out in the EU common position (CONF-HR 4/10). The EU notes Croatia's plan to adopt a national strategic plan in 2011 and to subsequently prepare an operational programme. The EU invites Croatia to continue the effort in this respect.

The EU notes Croatia's revised request to set the co-financing rate on the islands Mljet, Vis, Dugi otok and Lastovo to 85% for investments of all sizes of companies in accordance to Articles 29, 35(3) and 53 of Council Regulation (EC) No 1198/2006. The EU takes note of the information provided by Croatia and considers the request acceptable.

Market policy

The EU takes note that Croatia further aligned its legislation with the *acquis* in the field of market policy, including the adoption of the Act on structural support and market organisation in fisheries as well as implementing rules on marketing standards for fisheries products, producer organisation, collection and information on prices and support to the fisheries sector.

The EU takes note that Croatia withdraws its request for a derogation to apply a dual system of categorisation and labelling of fisheries products.

State aid

The EU notes that Croatia further aligned its national legislation with the *acquis*, including the adoption of the Act on structural support and market organisation in fisheries providing the legal basis for state aid mechanism including *de minimis rules* and the assessment of state aid aligned with the *acquis* thus fulfilling the second benchmark as set out in the EU common position (CONF-HR 4/10). The EU further notes that Croatia has stopped the fleet modernization programme.

The EU notes Croatia's request to maintain certain aids already in place prior to its accession, and which Croatia would like to maintain in the status of existing aid within the meaning of Article 108(1) of the TFEU (ex-Article 88(1) TEC), with the obligation to provide the European Commission with a list of these aids four months after accession to the EU at the latest.

The EU considers that in order to classify upon accession certain aids as existing aid in the sense of Article 1(b) of Council Regulation (EC) No 659/1999 and to have an overview of all State aids applicable in Croatia, it should be provided for in the Act of Accession that Croatia shall hand over, within four months after accession, detailed information concerning all the State aid measures that are to be considered existing aid.

The EU also considers that to avoid a situation, in which State aids that have not yet been examined in detail by the Commission would continue to exist for a longer period of time, a specific clause should be introduced in the Act of Accession. The new provision on State aid should be included in the Act of Accession providing, with regard to Articles 107 and 108(1) of the TFEU, the following:

Without prejudice to the procedures concerning existing aid provided for in Article 108 of the TFEU, aid schemes and individual aid granted to activities linked to fisheries products and products derived therefrom listed in Annex I of the TEU and the TFEU, put into effect in a new Member State before the date of accession and still applicable after that date, shall be regarded as existing aid within the meaning of Article 108(1) of the TFEU subject to the following conditions:

- The aid measures shall be communicated to the Commission within four months of the date of accession. This communication shall include information on the legal basis for each measure.
- Existing aid measures and plans to grant or alter aids communicated to the Commission prior to the date of accession shall be deemed to have been communicated on the date of accession. The Commission shall publish a list of such aid.
- These aid measures shall be regarded as ‘existing’ aid within the meaning of Article 108(1) of the TFEU until the end of the third year from the date of accession.

The new Member State shall, where necessary, amend these aid measures in order to comply with the guidelines applied by the Commission by the end of the third year from the date of accession at the latest. After that date, any aid found to be incompatible with those guidelines shall be considered as new aid.

The EU takes note that Croatia withdraws the request for a transitional period of two years after accession regarding the date stipulated in Article 2 of Council Regulation (EC) No 744/2008.

International agreements

The EU recalls that agreements or other arrangements in the field of fisheries concluded by Croatia with third countries and within the context of international organisations will, as from the date of accession, be managed by the EU. The rights and obligations for Croatia resulting from those agreements will not be affected during the period in which the provisions of those agreements are provisionally maintained. As soon as possible, and in any case before the expiry of the agreements referred to above, appropriate decisions for the continuation of fishing activities shall be adopted in each case by the Council acting by qualified majority on a proposal from the Commission, including the possibility of extending certain agreements for periods not exceeding one year.

The EU recalls that Croatia will have to withdraw at the date of accession or the earliest possible date thereafter from international fisheries agreements and organisations to which the EU is also a party, unless Croatia's membership relates to matters other than fisheries.

Regarding the Agreement establishing the GFCM, the EU considers that Croatia will be able to maintain its right to participate in the GFCM, in accordance with Council Decision 98/416/EC of 16 June 1998 as amended by Council Decision 2004/815/EC of 19 November 2004.

Concerning the International Commission for the Conservation of Atlantic Tunas (ICCAT), the EU recalls that, given the exclusive EU competence in that area, Croatia's interest in ICCAT will be represented by the EU as from accession.

The EU takes note that Croatia will ratify the UN Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks at the latest by accession. The EU recalls that Croatia as well as all EU Member States are signatories to the 2002 Johannesburg Declaration on Sustainable Development and to the Plan of Implementation of the World Summit on Sustainable Development. Within this context, Croatia is committed to inter alia maintain or restore stocks to levels that can produce the maximum sustainable yield with the aim of achieving these goals for depleted stocks on an urgent basis and where possible not later than 2015.

* * *

In view of all these 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 stresses that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Croatia's administrative capacity, in particular with regard to its inspection and control obligations under the Common Fisheries Policy, the alignment of the use of its traditional fishing gears with the *acquis* as well as the phasing out of the specific category of the subsistence fisheries. Particular consideration needs to be given to the links between the present chapter and other chapters of the negotiations. 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 on this chapter and which must 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 all the above considerations, the Conference may return to this chapter at an appropriate moment.

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

ANNEX
LEGAL AMENDMENTS ARISING FROM THE DCP

A. AMENDMENTS

1. **32002 R 2371:** Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59):
 - (a) In Annex I, the following is added:

'11. COASTAL WATERS OF CROATIA*

| Geographical area | Member State | Species | Importance or particular characteristics |
|---|--------------|--|---|
| 12 miles limited to the sea area under the sovereignty of Croatia situated to the north of the 45 degrees and 10 minutes parallel north latitude along the west Istrian coast, from the outer limit of the territorial sea of Croatia, where this parallel touches the land of the west Istrian coast (the cape Grgatov rt Funtana) | Slovenia | Demersal and small pelagic species including sardine and anchovy | 100 tonnes for a maximum number of 25 fishing vessels which includes 5 fishing vessels equipped with trawl nets |

* The above mentioned regime shall apply from the full implementation of the arbitration award resulting from the Arbitration Agreement between Slovenia and Croatia, signed in Stockholm on 4 November 2009.

12. COASTAL WATERS OF SLOVENIA*

| Geographical area | Member State | Species | Importance or particular characteristics |
|--|--------------|--|---|
| 12 miles limited to the sea area under the sovereignty of Slovenia situated to the north of the 45 degrees and 10 minutes parallel north latitude along the west Istrian coast, from the outer limit of the territorial sea of Croatia, where this parallel touches the land of the west Istrian coast (the cape Grgatov rt Funtana) | Croatia | Demersal and small pelagic species including sardine and anchovy | 100 tonnes for a maximum number of 25 fishing vessels which includes 5 fishing vessels equipped with trawl nets |

* The above mentioned regime shall apply from the full implementation of the arbitration award resulting from the Arbitration Agreement between Slovenia and Croatia, signed in Stockholm on 4 November 2009.'

2. **32006 R 1198:** Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1).

(a) In Article 27, the following paragraph is added:

'5. The EFF may contribute to the financing of a scheme of individual premiums for fishers who will benefit from the access regime laid down in Part 11 of Annex I of Regulation (EC) No 2371/2002 as amended by the Act of Accession. The scheme may only apply during the period 2014 to 2015 or, if ever this occurred earlier, up until the date of the full implementation of the arbitration award resulting from the Arbitration Agreement between Slovenia and Croatia, signed in Stockholm on 4 November 2009.'

(b) Article 29(3) is replaced by the following:

'3. By way of derogation from paragraph 2, in the outermost regions and the outlying Greek islands as well as in the Croatian islands Dugi otok, Vis, Mljet and Lastovo, aid may be granted to all enterprises.'

(c) Article 35(4) is replaced by the following:

'4. By way of derogation from paragraph 3, in the outermost regions and the outlying Greek islands as well as in the Croatian islands Dugi otok, Vis, Mljet and Lastovo, aid may be granted to all enterprises.'

(d) In Article 53(9), the first subparagraph is replaced by the following:

'9. When operations are financed by the EFF in the outlying Greek islands which are under a handicap due to distant location and in the outermost regions as well as in the Croatian islands Dugi otok, Vis, Mljet and Lastovo, the ceiling for the contribution from the EFF for each priority axis shall be increased by up to 10 percentage points in the regions eligible under the Convergence objective and by up to 35 percentage points for the regions not eligible under the Convergence objective.'

(e) In Annex II (a), the table is replaced by the following:

| | Group 1 | Group 2 | Group 3 | Group 4 |
|--|----------------------|-------------------------------------|----------------------|----------------------------|
| Regions covered by the Convergence objective and outlying Greek islands and Croatian islands Dugi otok, Vis, Mljet and Lastovo | A ≤ 100 % B ≥ 0 % | A ≤ 40 % B ≥ 60 % (*) (**) (***) | A ≤ 80 % B ≥ 20 % | A ≤ 60 % B ≥ 40 % (***) |
| Regions not covered by the Convergence objective | A ≤ 100 % B ≥ 0 % | A ≤ 40 % B ≥ 60 % (*) (**) (***) | A ≤ 60 % B ≥ 40 % | A ≤ 40 % B ≥ 60 % (***) |
| Outermost regions | A ≤ 100 % B ≥ 0 % | A ≤ 50 % B ≥ 50 % (*) (**) (***) | A ≤ 80 % B ≥ 20 % | A ≤ 75 % B ≥ 25 % |

(*) In the case of operations referred to in Article 25(3) the (B) rates for Group 2 are increased by 20 percentage points. The (A) rates are reduced accordingly.

(**) In the case of operations referred to in Article 26(2) (investment on board within the meaning of Article 25 in small scale coastal fishing vessels), the (B) rates for Group 2 may be reduced by 20 percentage points. The (A) rates are increased accordingly.

(***) In case of operations referred to in Articles 29 and 35 when undertaken by enterprises not covered by the definition in Article 3(f) with less than 750 employees or with a turnover of less than EUR 200 million, the (B) rates are increased in the regions covered by the Convergence objective, with the exception of the outlying Greek islands and Croatian islands Dugi otok, Vis, Mljet and Lastovo, by 30 percentage points and in the regions not covered by the Convergence objective by 20 percentage points. The (A) rates are reduced accordingly.

- (f) In Annex II (a), the second sub-paragraph of sub-title "Group 2" is replaced by the following:

'Following the application of (*) and (**) where the EFF finances operations referred to in Article 25(3) in favour of small scale coastal fishing vessels, the (B) rates for Group 2 will be:

- for the regions covered by the Convergence objective, the outlying Greek islands and the Croatian islands Dugi otok, Vis, Mljet and Lastovo and the regions not covered by the Convergence objective equal or more than 60 percentage points ($B \geq 60\%$), and
- for the outermost regions equal or more than 50 percentage points ($B \geq 50\%$).'

B. TRANSITIONAL ARRANGEMENTS

1. Treaty on the functioning of the European Union, Part Three, Title VII, Chapter 1, Rules on competition

Without prejudice to the procedures concerning existing aid provided for in Article 108 of the TFEU, aid schemes and individual aid granted to activities linked to the production of and trade in fisheries products and products derived therefrom listed in Annex I to the TEU and the TFEU, put into effect in Croatia before the date of its accession and still applicable after that date, shall be regarded as existing aid within the meaning of Article 108(1) of the TFEU subject to the following conditions:

- the aid measures shall be communicated to the Commission within four months from the date of accession. This communication shall include information on the legal basis for each measure. Existing aid measures and plans to grant or alter aids communicated to the Commission prior to the date of accession shall be deemed to have been communicated on the date of accession. The Commission shall publish a list of such aids.

These aid measures shall be regarded as 'existing' aid within the meaning of Article 108(1) of the TFEU until the end of the third year from the date of accession.

Croatia shall, where necessary, amend these aid measures in order to comply with the guidelines applied by the Commission by the end of the third year from [DATE OF ACCESSION] at the latest. After that date, any aid found to be incompatible with those guidelines shall be considered as new aid.

2. **32006 R 1967:** Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11):
 - (a) By way of derogation from Article 13(1) and (2), on depths less than 50 meters vessels registered and operating only in the Western Istria region shall be temporarily allowed to use bottom trawls at the minimum distance of 1.5 NM from the coast until 30 June 2014.

The above shall apply in the area designated as Western Istria determined from the point with geographic coordinates $\varphi=44.52135$ and $\lambda=14.29244$ with a line due north and a line due west.

For vessels of less than 15 meters length overall, on depths over 50 meters Croatia shall be temporarily allowed to use bottom trawls at the minimum distance of 1 NM from the coast, maintaining all other spatial and temporal restrictions it currently applies until 30 June 2014.

- (b) By way of derogation from Article 17 (1), a limited number of vessels included in the specific category of non-commercial fisheries "small scale artisanal fishing for personal needs", which shall not exceed 2 000 vessels, shall be allowed to use maximum 200 meters of gillnets until 31 December 2014, provided that all other restrictions currently in place continue to apply. Croatia shall submit to the Commission on the date of accession, at the latest, the list of vessels covered by this transitional period, including their characteristics and capacity, expressed in terms of GT and kW.