

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

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CONF-HR 14

ACCESSION DOCUMENT

Subject : EUROPEAN UNION COMMON POSITION
Chapter 8 - Competition Policy

EUROPEAN UNION COMMON POSITION

(Revision of CONF-HR 20/10)

Chapter 8 – Competition Policy

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 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 develop already before accession, policies and instruments as close as possible to those of the EU.

The EU notes that Croatia, in its addendum CONF-HR 12/11, accepts the *acquis* under chapter 8 as in force on 1 June 2011, and declares that it will be ready to implement it by the date of its accession to the European Union.

Antitrust and mergers

As regards the Croatian legislative framework for antitrust and mergers, the EU considers that the Competition Act (06/09), as amended in 2009, is in line with the EU antitrust and mergers rules.

The EU notes that Croatia has taken important measures to increase its administrative capacity, which can now be considered as sufficient. The EU also notes the positive trend in the antitrust and mergers enforcement record, which is considered as satisfactory and encourages Croatia to continue its efforts.

State aid

As regards Croatia's legislative framework for State aid, the EU considers that the State aid Act is in line with the State aid control requirements. The EU takes note of the recent amendments to the Croatian Radio-Television Act of 3 December 2010 bringing it in line with the *acquis*.

The EU notes that State aid in the agricultural and fisheries sectors does not fall under the scope of this chapter and has been addressed under the relevant Negotiating chapters.

The EU considers that Croatia's administrative capacity to ensure the implementation of the State aid *acquis* is satisfactory.

The EU notes that Croatia has reached a satisfactory enforcement record in this area and encourages Croatia to continue its efforts.

As regards the steel sector, the EU notes that bankruptcy proceedings have been initiated in the case of Željezara Split d.d. The EU also notes that the management of CMC Sisak d.o.o has decided to reimburse all the restructuring aid received. Croatia will have to inform the Commission every six months of the state of the recovery of the aid, plus compound interests, received by CMC Sisak d.o.o. The EU considers that a provision enabling the Commission to order the recovery of the restructuring aid received by CMC Sisak upon Croatia's accession in case the company has not reimbursed this aid, plus compound interests, by that date shall be added to the Accession Treaty.

In light of these developments, the EU considers that, the need for the National Restructuring Programme, as required by Protocol 2 of the Stabilisation and Association Agreement, has become obsolete.

As regards the shipbuilding sector, the EU considers that Croatia is now in compliance with its obligations both under the Stabilisation and Association Agreement and the *acquis* on State aid rules.

The EU notes that Croatia agreed to carry out the restructuring of the shipbuilding companies through their privatisation on the basis of a competitive tendering process. The EU also notes that the restructuring plans for Brodosplit and its subsidiary BSO were accepted both by the CCA and the Commission in February 2011. The EU further notes that the restructuring plans for 3 MAJ, Brodotrogir and Kraljevica were submitted to the Commission on 30 May 2011. The EU considers that these plans fulfil the conditions regarding the starting date of the restructuring, the level of own contribution and the compensatory measures. Finally, the EU notes that these plans should ensure the return of these companies to viability at the end of the restructuring period and that, on the basis of the above considerations, the Croatian Competition Agency and the Commission have accepted the restructuring plans.

The EU notes that Uljanik is no longer among the shipyards under restructuring and that the compensatory measures have to be adjusted as follows:

- The total production capacity for the five shipyards under restructuring is 471,324 C.G.T. It has to be reduced by 21% to 372,346 CGT
- The total annual production output for the five shipyards under restructuring is limited to 323,600 CGT for a 10 years period.

The EU notes that the restructuring plans specify the following key conditions to be respected in the restructuring process:

- The starting date of the restructuring process, and therefore the date from which all aid granted to the shipyards is to be considered as restructuring aid, is set at 1 March 2006.
- The own contribution by the buyers of the shipyards shall represent no less than 40% of the restructuring costs.
- The total production capacity for the five shipyards under restructuring is 471,324 C.G.T. It has to be reduced by 21% to 372,346 CGT.
- The total annual production output for the five shipyards under restructuring is limited to 323,600 CGT for a 10 years period. For this purpose, individual production limits are attributed to the shipyards. The companies may agree to review their individual production limits. On the basis of binding agreements, they can expressly establish which portion of their individual production quota (expressed in CGTs) they cede to each other. The overall yearly production limit of 323,600 CGTs shall be respected.

The EU notes that any subsequent change to the restructuring plans will have to respect the above mentioned conditions, and shall be submitted to the Croatian Competition Agency and to the Commission for acceptance.

The EU underlines that the restructuring plans that have been accepted by the Croatian Competition Agency and by the Commission shall be incorporated in the respective privatisation contracts to be concluded between Croatia and buyers of the companies. Furthermore, the EU also underlines that the privatisation contracts will have to be submitted to the Commission for acceptance and signed before Croatia's accession.

The EU notes that the companies shall not receive any new rescue or restructuring aid until at least 10 years have elapsed since the date of signing of the privatisation contract. The EU further notes that a provision enabling the Commission to order Croatia to recover any rescue or restructuring aid, with compound interest, granted in breach of this provision shall be added to the Accession Treaty.

The Commission will closely monitor the implementation of the restructuring plans, including the level of State aid, the implementation of the commitments and conditions concerning the own contribution, compensatory measures and the measures taken to ensure the return to viability until the end of the restructuring period as set out in the restructuring plans. It will also monitor the respect of the production limitation until the end of 2020.

Should this monitoring show that any of the commitments and conditions set out in this EUCP have not been fulfilled, the Commission shall order Croatia to recover any rescue and restructuring aid granted since 1 March 2006, plus compound interests. The EU considers that provisions enabling the Commission to order the recovery of any aid granted since 1 March 2006, plus compound interests, which does not respect the conditions set out in this EUCP, shall be added to the Accession Treaty. In particular, in the event that the reduction of the overall production capacity has not been implemented within twelve months after the signing of the privatisation contract, the recovery of the aid shall only be required from those companies that have not achieved their individual reductions of capacity. In the case when the overall production limitation for the shipyards has been exceeded, the recovery of the aid shall be required from those companies that have exceeded their individual production limits (if applicable, as amended by a legally binding agreement with another shipbuilding company).

As part of the monitoring process, Croatia shall submit six-monthly reports to the Commission until the end of the restructuring period. It shall also submit reports on the annual output of the shipyards under restructuring until the end of 2020. The first report is to be submitted on 15 January 2012. The monitoring will be carried out as in previous cases following the fifth enlargement process.

As regards the restructuring of the steel sector, the Commission shall closely monitor the reimbursement of the restructuring aid, plus compound interests, received by CMC Sisak d.o.o. Croatia shall inform the Commission every six months of the state of the recovery of the aid, plus compound interests, received by CMC Sisak. The first report is to be submitted by 15 December 2011. A provision enabling the Commission to order the recovery of the restructuring aid received by CMC Sisak d.o.o. upon Croatia's accession in case the company has not reimbursed this aid, plus compound interests, by that date shall be added to the Accession Treaty.

With regard to aid which falls under the scope of this Chapter and which Croatia wishes to continue to grant beyond the date of accession, the EU invites Croatia to draw up a list of those aid measures which the Croatian Competition Agency considers to be compatible with the *acquis* and to transmit this list to the Commission. The EU informs Croatia that it may continue to grant after accession any aid which is included in the list and against which the Commission has not objected for the period for which the aid was approved by the Croatian Competition Agency. A reference to the existing aid list and to the procedure for its establishment (the so-called "existing aid mechanism") will be included in the Accession Treaty.

The EU recalls that the existing aid measures are subject, in accordance with Article 108(1) TFEU, to the appropriate review procedure, under which the Commission can, in cooperation with the (future) Member State, propose changes to an aid measure for the future. To the extent that Croatia wants aid measures to be considered as existing aid upon accession within the meaning of Article 108(1) TFEU, the EU invites Croatia to present the following to the Commission, every six months, until the date of accession:

- a) A list of all aid measures (both schemes and *ad hoc* aid) (i) which have been put into effect before accession and which will be applicable after accession, (ii) which have been assessed by the CCA and (iii) which it found to be compatible with the *acquis*;
- b) Any other information which is essential for the assessment by the Commission of the compatibility of the aid measures referred to under (a).

The EU informs Croatia that aid measures put into effect before 1 March 2002 will always be considered as existing aid. It also underlines that all State aid measures in Croatia which have not been identified as existing aid on the basis of the existing aid mechanism described above shall be considered as new aid upon Croatia's accession. After accession, application of such an aid measure will be conditional upon Croatia's notification of it pursuant to Article 108 TFEU, and a decision of the Commission that the aid measure in question is compatible with the internal market. No aid measures which are applicable after accession and which are incompatible will be acceptable.

Liberalisation

The EU takes note that Croatia has no State monopolies of a commercial character and that it is in compliance with the *acquis* and that the Competition Act applies to public undertakings or undertakings with special or exclusive rights.

The EU invites Croatia to keep the Commission informed of the developments in this area.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken in this chapter.

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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 and until Croatia's accession. 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. 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 capacities can only be made at a later stage. In addition to all the information the EU may require for the negotiations on 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 all the above considerations, 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 June 2011 and the conclusion of the negotiations.

ACCESSION TREATY

Protocol n° [X] on the restructuring of the Croatian shipbuilding industry

The shipbuilding companies to be restructured (hereafter "the companies") are the following:

- Brodograđevna industrija 3 MAJ dioničko društvo, Rijeka (hereafter "3 MAJ")
- BRODOTROGIR d.d., Trogir (hereafter "Brodotrogir")
- BRODOGRAĐEVNA INDUSTRIJA SPLIT, dioničko društvo, Split (hereafter "Brodosplit")
- BRODOSPLIT-BRODOGRADILIŠTE SPECIJALNIH OBJEKATA društvo s ograničenom odgovornošću, Split (hereafter "BSO")
- BRODOGRADILIŠTE KRALJEVICA dioničko društvo za izgradnju i popravak brodova, Kraljevica (hereafter "Kraljevica").

Croatia agreed to carry out the restructuring of these companies through their privatisation on the basis of a competitive tendering process. Restructuring plans for these companies have been submitted by the bidders and accepted by the Croatian Competition Agency and the Commission. The restructuring plans will be incorporated in the respective privatisation contracts to be concluded between Croatia and the buyers of the companies.

The restructuring plans submitted for each of these companies specify the following key conditions to be respected in the restructuring process:

- All State aid received by these companies since 1 March 2006 must be counted as restructuring aid. The companies shall provide a contribution to the restructuring plan from their own resources which must be real, free of State aid and which represents at least 40% of the total restructuring costs.

- The overall production capacity of the companies shall be reduced compared to the levels of 1 June 2011 from 471,324 CGT to 372,346 CGT. The companies shall reduce their production capacities no later than twelve months after the signing of the privatisation contract. Capacity reduction shall be implemented through the permanent closure of slipways, through the designation of slipways for exclusive military production within the meaning of Article 346 TFEU and/or through surface area reduction. The CGTs are the units of measurement of output calculated according to the applicable OECD rules.

- The total annual production of the companies shall be limited to 323,600 CGT for a ten year period, starting on 1 January 2011. The companies' output will be limited to the following levels¹:
 - 3 MAJ: 109,570 CGT
 - Brodotrogir: 54,955 CGT
 - Brodosplit and BSO: 132,078 CGT
 - Kraljevica: 26,997 CGT

The companies may agree to review their individual production limits. On the basis of binding agreements, they can expressly establish which portion of their individual production quota (expressed in CGTs) they cede to each other. The overall yearly production limit of 323,600 CGT shall be respected.

- The restructuring plans also specify a number of other measures which each company will implement to ensure a return to long term viability.

Any subsequent change to these plans shall comply with the key conditions to be respected in the restructuring process listed above and shall be submitted to the Commission for acceptance.

¹ The annual production of a given company is calculated as follows. The start of production of a ship is the planned date of steel cutting and the end of production is the date of expected delivery of the ship as set out in the contract with the buyer (or the anticipated date of delivery of the incomplete ship when the construction of a ship is shared between two companies). The number of CGTs corresponding to a ship are linearly allocated to the calendar years covering the production period. The total output of a company in a given year is calculated by adding the number of CGTs produced over that year.

The companies shall not receive any new rescue or restructuring aid until at least 10 years have elapsed since the date of signing of the privatisation contract. Upon Croatia's accession, the Commission shall order Croatia to recover any rescue or restructuring aid granted in breach of this provision, with compound interest.

The restructuring plans that have been accepted by the Croatian Competition Agency and by Commission will be incorporated in the respective privatisation contracts to be concluded between Croatia and buyers of the companies. The privatisation contracts shall be submitted to the Commission for acceptance and shall be signed before Croatia's accession.

The Commission shall closely monitor the implementation of the restructuring plans and the respect of the conditions set out in this Protocol regarding the level of State aid, the own contribution, the capacity reductions, the production limitation and the measures taken to ensure a return to viability.

This monitoring shall be carried out each year of the restructuring period. Croatia shall cooperate fully with all the arrangements for monitoring. In particular:

- Croatia shall supply the Commission with six-monthly reports concerning the restructuring of the benefiting companies, no later than 15 January and 15 July of each year until the end of the restructuring period.
- The reports shall contain all the information necessary to monitor the restructuring process, the own contribution, the reduction of capacity, the production limitation and the measures taken to ensure a return to viability.
- Croatia shall submit reports on the annual output of the companies under restructuring no later than 15 July of each year, until the end of 2020.
- Croatia shall oblige the companies to disclose all relevant data which might, under other circumstances, be considered as confidential. The Commission shall ensure that the company-specific confidential information is not disclosed.

The Commission may at any time decide to mandate an independent expert to evaluate the monitoring results, undertake any research necessary and report to the Commission. Croatia will provide full cooperation to the independent expert appointed by the Commission and ensure that he has full access to all information he will need to carry out the tasks entrusted to him by the Commission.

Upon Croatia's accession, the Commission shall order Croatia to recover all rescue or restructuring aid granted since 1 March 2006 to a particular company, with compound interest if :

- the privatisation contract for this company has not yet been signed or does not fully incorporate the conditions set out in the restructuring plan accepted by the Croatian Competition Agency and by the Commission or
- the company has not provided a real, State aid free contribution from its own resources which represents at least 40% of the restructuring costs or
- the reduction of the overall production capacity has not been implemented within twelve months after the signing of the privatisation contract. In that case, the recovery of the aid shall only be required from those companies that have not achieved the following individual reductions of capacity:
 - 3 MAJ: by 46,543 CGT
 - Brodotrogir: by 15,101 CGT
 - Brodosplit and BSO: by 29,611 CGT
 - Kraljevica: by 9,636 CGT
- the overall production limitation for the shipyards (i.e. 323,600 CGT) has been exceeded in any individual calendar year between 2011 and 2020. In that case, the recovery of the aid shall be required from those companies that have exceeded their individual production limits (if applicable, as amended by a legally binding agreement with another shipbuilding company).

Protocol n° [X] on the restructuring of the steel sector

By letter dated 23 May 2011, Croatia informed the Commission that it received recognition of debt from the steel producer CMC Sisak d.o.o., corresponding to the restructuring aid, received by this company over the period from 1 March 2002 until 28 February 2007, plus compound interests.² The State aid received, without compound interests, amounts to HRK19.117.572,36.

Upon Croatia's accession, in case the total amount of this aid plus compound interests has not been reimbursed by CMC Sisak d.o.o., the Commission shall order Croatia to recover any rescue and restructuring aid granted to this company since 1 March 2006, with compound interests.

² To be calculated according to Articles 9-11 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.04.2004, p. 1), as last amended by Commission Regulation (EC) No 1125/2009 of 23 November 2009.