



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 June 2012

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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 June 2012
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No Cion doc.:	COM(2012) 255 final
Subject:	Recommendation for a Council decision authorising the opening of negotiations for the adaptation of the following agreements in view of the enlargement of the EU to Croatia: the Agreement on the European Economic Area, the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Agreement on Cooperation and Customs Union with San Marino

Delegations will find attached Commission document COM(2012) 255 final.

Encl.: COM(2012) 255 final



EUROPEAN COMMISSION

Brussels, 1.6.2012
COM(2012) 255 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for the adaptation of the following agreements in view of the enlargement of the EU to Croatia: the Agreement on the European Economic Area, the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Agreement on Cooperation and Customs Union with San Marino

EXPLANATORY MEMORANDUM

The Treaty concerning the accession of the Republic of Croatia to the European Union¹ was signed on 9 December 2011.

The European Union and its Member States have concluded agreements on the European Economic Area with Norway, Iceland and Liechtenstein, on a Norwegian Financial Mechanism for the period 2009-2014, on free movement of persons with Switzerland, and on a cooperation and customs union with San Marino.

These agreements need to be adapted to include Croatia as a contracting party upon its accession to the European Union. The terms of the adaptation are to be negotiated between the current contracting parties and the acceding country. The negotiations should be initiated in a timely fashion, in order to ensure that the instruments for the adaptation of these agreements will enter into force on the date of accession of Croatia to the EU.

In accordance with Article 6 of the Act concerning the conditions of accession of the Republic of Croatia (further on: Act of Accession), such negotiations should be carried out by the Commission on the basis of negotiation directives approved by the Council and in consultation with a committee comprised of the representatives of the Member States.

Negotiations on behalf of the European Union and its Member States should be launched on the basis of the following considerations:

1. Agreement on the European Economic Area

Pursuant to Article 6(5) of the Act of Accession concerning the conditions of accession of the Republic of Croatia, Croatia has undertaken to accede to the European Economic Area (EEA), under the conditions of that Act. In accordance with Article 128 of the Agreement on the EEA, Croatia will therefore submit its application to the EEA.

To that end, the Commission should be authorised to negotiate, on behalf of the EU and its Member States, with the contracting parties of the EEA and Croatia, an Agreement on the participation of Croatia in the EEA.

On the basis of the experience from the 2007 EEA enlargement negotiations, the following issues have been identified as possible subjects for negotiation:

- Derogations and transition periods: The derogations and transition periods agreed in the context of the Treaty of Accession should be taken over in the EEA Agreement. It is unlikely that Norway, Iceland and Liechtenstein will oppose this fundamental principle.

¹ [Treaty between the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union, OJ L 112 of 24 April 2012]

- Agricultural products and processed agricultural products: Croatia has a fairly limited share in EEA trade. However, it cannot be excluded that Norway and Iceland will request compensation for the termination of existing bilateral free trade agreements with Croatia from the date of accession. As for agricultural and processed agricultural products, such adaptations should be agreed within the framework of the regular negotiations on the basis of Article 19 and Protocol 3 to the Agreement on the EEA, respectively, with the objective of continued liberalisation of trade in these products.

- EEA and Norway Financial Mechanisms: In the 2007 EEA Enlargement Agreement, all three EEA EFTA States agreed to contribute an additional €72 million to social and economic cohesion in the enlarged EEA (€21.5 million for Bulgaria and €50.5 million for Romania) up to 30 April 2009, inclusive. Norway alone contributed an additional €68 million, through two bilateral cooperation programmes for promoting economic growth and sustainable development in Bulgaria (€20 million) and Romania (€48 million). From 2009-2014, through the Agreement between the European Union, Iceland, Liechtenstein and Norway on an EEA Financial Mechanism 2009-2014, all three EEA EFTA States will contribute, in total, €988.5 million to social and economic cohesion in the EEA. Through the Agreement between the European Union and Norway on a Norwegian Financial Mechanism for the period 2009-2014, Norway alone will contribute an additional €800 million in total. The EU point of departure for the negotiations was that the EEA EFTA States as part of the internal market would benefit as much as Member States from the enlarged internal market, and should therefore also participate to a sustainable and equitable development of the internal market by contributing to the alleviation of social and economic disparities in the EU/EEA. Considering that it is envisaged that the EEA and Norway will start negotiations with the EU on the financial contribution to the beneficiary states for the EEA / Norway financial mechanisms for the period 2015-2020 in 2013, it seems appropriate to apply the same logic used for Bulgaria and Romania for the negotiations concerning Croatia and that the EEA EFTA states should financially contribute to social and economic cohesion in the enlarged EU/EEA with the EEA/Norway financial mechanisms, but proportionally, until 2014 and without depriving the current beneficiary states of any of the previously agreed funds, based on the same criteria. The allocation of the additional funds to Croatia should be based on the same criteria as those applied for the two existing financial mechanisms. In the revision of the financial mechanisms, it should also be recalled that any existing bilateral assistance agreements between the EEA-EFTA countries and the new EU Member State will be terminated upon the accession of the latter to the EU.

During the enlargement process with Bulgaria and Romania, it was negotiated that the Commission 'may' screen the proposed projects, instead of 'shall'. This issue should be included again in the negotiations.

As a general rule, negotiations should be limited to the main subjects indispensable for EEA enlargement, in order to avoid lengthy procedures that would endanger simultaneous entry into force of the EU and EEA enlargements.

2. Switzerland and San Marino

In accordance with Articles 6(2) and 6(3) of the Act of Accession concerning the conditions of accession of the Republic of Croatia, Croatia has undertaken to accede to the agreements concluded or signed by the present Member States and the Union with one or more third countries or with an international organisation. Pursuant to this same provision, the accession of Croatia to such agreements shall be agreed by the conclusion of a protocol to such agreements between the Council, acting unanimously on behalf of the Member States, and the third country or countries or international organisation concerned. These protocols² are to be negotiated by the Commission on the basis of negotiating directives approved by the Council, acting unanimously, and in consultation with a committee comprised of the representatives of the Member States and concluded by the Council.

For that purpose, the Commission should submit to the Council a recommendation for the adoption of a decision authorising the Commission to open negotiations

Agreement on the Free Movement of Persons with Switzerland

With reference to Article 6(3) of the Act of Accession, the Agreement on the Free Movement of Persons with Switzerland needs to be adapted to include the new EU Member State. The following issues are possible subjects of negotiation:

Transition periods: The Agreement on Free Movement of Persons contains transition periods enabling Switzerland under certain conditions to enforce quantitative limits in respect of access to an economic activity for. They vary between 12 years after the entry into force of the Agreement (until 31 May 2014), 8 years after the entry into force of its Protocol of 2004 regarding the participation as contracting parties to the Agreement of the Member States that joined the EU in 2004 (until 31 May 2014), and 10 years after the entry into force of its Protocol of 2008 regarding the participation as contracting parties to the Agreement of Bulgaria and Romania (until 31 May 2019)³. As with the previous enlargement, Switzerland should be granted similar derogations and transition periods to those agreed in the context of the Treaty of Accession. Calculation of the Swiss quantitative limits should be obtained by taking account of existing migration from the acceding country, and of its population.

Agreement on Cooperation and Customs Union with San Marino

With reference to Article 6(2) of the Act of Accession of Croatia, this agreement also needs to be adapted to include the new EU Member State. No particular items of negotiation have been identified.

The Commission therefore recommends to the Council:

- to adopt the attached decision authorising the opening of negotiations to
 - adapt the Agreement on the European Economic Area in line with the enlargement of the European Union to Croatia,

² Unless those concerning agreement related exclusively or principally to the common foreign and security policy.

³ Article 10 of the Agreement as supplemented by the Protocols of 2004 and 2008.

- adapt the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014
- adapt the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons in line with the enlargement of the European Union to Croatia,
- adapt the Agreement on Cooperation and Customs Union with San Marino in line with the enlargement of the European Union to Croatia;
- to issue the negotiating directives attached to that decision;
- to designate a special committee in consultation with which the negotiations must be conducted.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for the adaptation of the following agreements in view of the enlargement of the EU to Croatia: the Agreement on the European Economic Area, the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Agreement on Cooperation and Customs Union with San Marino

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to Treaty between the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union⁴, signed on 9 December 2011, and in particular Article 3(4) thereof,

Having regard to the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community⁵, and in particular the second subparagraph of Article 6(2) and Article 6(5) thereof,

Having regard to the recommendation from the European Commission,

Whereas negotiations should be opened for the adaptation in view of the enlargement of the EU to Croatia of the Agreement on the European Economic Area, to the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Agreement on Cooperation and Customs Union with San Marino,

⁴ OJ L 112 of 24 April 2012.

⁵ OJ L 112. of 24 April 2012

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the European Union and its Member States, the amendments to the Agreement on the European Economic Area and to the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014 in view of the enlargement of the European Union to Croatia.

Article 2

The Commission is hereby authorised to negotiate, on behalf of the European Union and its Member States, including – subject to the entry into force of the Treaty of Accession – the Republic of Croatia, the amendments to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and to the Agreement on Cooperation and Customs Union with San Marino in view of the enlargement of the European Union to Croatia.

Article 3

The negotiating directives are set out in the Annex.

Article 4

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

ANNEX

DIRECTIVES FOR THE NEGOTIATION

for the adaptation in view of the enlargement of the EU to Croatia of the Agreement on the European Economic Area, the Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014, the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Agreement on Cooperation and Customs Union with San Marino

1. GENERAL OBJECTIVE

Adaptation of the above mentioned agreements to allow for the accession of Croatia to these agreements upon its accession to the EU and revision of the relevant financial contributions for the alleviation of economic and social disparities in the enlarged EU.

2. START OF THE NEGOTIATIONS

The negotiations on the adaptation of the above agreements with the acceding country, on the one hand, and Iceland, Liechtenstein, Norway / Switzerland / San Marino, respectively, on the other hand, should start as soon as possible.

3. CONTENT OF THE INSTRUMENTS ADAPTING THE EXISTING AGREEMENTS

The incoming new Member State of the EU is to accede to the agreements.

Agreement on the European Economic Area (EEA Agreement) and the Agreement on the Norwegian Financial Mechanism

The derogations and transition periods agreed in the Act concerning the conditions of accession of the Republic Croatia should be taken over in the EEA Agreement. A proportional increase in the existing EEA and Norwegian financial mechanisms until 2014 should be obtained for Croatia, based on the same criteria as those applied for the existing mechanisms. Negotiations should as much as possible be limited to the main subjects indispensable for EEA enlargement.

Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons

The derogations and transition periods agreed in the Act of Accession should be taken over where relevant. Calculation of the Swiss quantitative limits should be obtained by taking account of existing migration from the acceding country and of its population.

Agreement on Cooperation and Customs Union with San Marino

This agreement has to be adapted to include Croatia upon its accession to the EU. No particular subjects have been identified that require substantial negotiation.

4. RATIFICATION AND ENTRY INTO FORCE

Negotiations should be concluded as soon as possible in order to allow for the instruments of adaptation to enter into force on the date of and subject to accession of Croatia. In case the instruments of adaptation cannot enter into force at the date of accession, a provisional application should be envisaged, taking into account the respective procedures in the EU and in the third countries concerned.

FINANCIAL STATEMENT					
				DATE:	
1.	BUDGET HEADING: n.a.			APPROPRIATIONS:	
2.	TITLE: Adaptation of the following mixed agreements in view of the enlargement of the EU to include Croatia: Agreement on the European Economic Area, Agreement between the Kingdom of Norway and the European Union on a Norwegian Financial Mechanism for the period 2009-2014 Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on Free Movement of Persons, Agreement on Cooperation and Customs Union with San Marino				
3.	LEGAL BASIS: Articles 207, 217 and 218 TFEU				
4.	AIMS:				
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD	CURRENT FINANCIAL YEAR	FOLLOWING FINANCIAL YEAR	
	None	(EUR million)	[n] (EUR million)	[n+1] (EUR million)	
5.0	EXPENDITURE				
	- CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS)	None	None	None	
	- NATIONAL AUTHORITIES				
	- OTHER				
5.1	REVENUE				
	- OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES)	None	None	None	
	- NATIONAL				
		[n+2]	[n+3]	[n+4]	[n+5]
5.0.1	ESTIMATED EXPENDITURE				
5.1.1	ESTIMATED REVENUE				
5.2	METHOD OF CALCULATION:				
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?				YES
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?				NO
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?				NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?				NO
OBSERVATIONS:					