

Environmental Policy and EU Accession in Croatia

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ABSTRACT

NATAVAN (MAMMADOVA) KHAN: Environmental Policy and EU Accession in
Croatia
(Under the direction of Dr. Robert M. Jenkins)

Croatia is one of the former-communist states that were reborn as a self-determined nation-state in 1991. Croatia is expected to join EU in July 2013. As a part of the EU accession process Croatia has closed European *acquis*, including chapter 27 on the Environment. The dynamics of the EU's environmental policy changed with each wave of enlargement and increased effectiveness of the implementation of the environmental *acquis* through the membership condition - the accession conditionality. The implementation of the environmental *acquis* became a mandatory for the EU membership of potential member states such as Croatia. Environmental *acquis* for Croatia was most demanding and difficult chapter in accession negotiations with EU due to its low administrative and financial capacity and almost non-existent horizontal cooperation between organizations responsible for the environmental protection. But Croatia could recognize long-term benefits of implementing the environmental chapter and made a great effort to harmonize with the EU's environmental legislative framework.

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LIST OF ACRONYMS

CARDS - Community Assistance for Reconstruction, Development and Stabilization

CEA - Croatian Environment Agency

CEE - Central and Eastern European

CEIS - Croatian Environmental Information System

DCP - Draft Common Positions

DEP - Directorate for Environmental Protection

DG ADMIN - Personnel and Administration Directorate-General

DG DIGIT - Informatics Directorate-General (DG DIGIT)

DG ENV - Environment Directorate-General

DSIPEP - Directorate for Strategic and Integration Processes in Environmental Protection

EAP - Environmental Action Program

ECJ - European Court of Justice

EEA - European Environment Agency

EEC - European Economic Community

EIA - Environmental Impact Assessment

EIONET - European Information and Observation Network

EMAS - Eco-Management and Audit Scheme

ENVIREG - Regional Action Programme on the Initiative of the Commission Concerning the Environment

EP - European Parliament

EPEEF - Environmental Protection and Energy Efficiency Fund

EPIS - Establishment of the Environmental Protection Information System

EU - European Union

GHG - Green House Gas

GMO - Genetically Modified Organisms

HDZ - Hrvatska Demokratska Zajednica

HNS - Hrvatska Narodna Stranka

HSLs - Hrvatska Socijalno Liberalna Stranka

HSS – Croatian Peasant Party

ICTY - International Criminal Tribunal for the former Yugoslavia

MEDSPA- General Framework of Guidelines for Community Action to Protect the Mediterranean Environment

MENP - Ministry of Environmental and Nature Protection

MEPPPC - Ministry of Environmental Protection, Physical Planning and Construction

LIFE - Financial Instrument Supporting Environmental and Nature Conservation Projects in EU

NATO - North Atlantic Treaty Organization

OIB - Office for Infrastructure and Logistics in Brussels (OIB)

PHARE - Poland and Hungary: Assistance for Restructuring their Economies

QMV - Qualified Majority Voting

SAA - Stabilization and Association Agreement

SAP - Stabilization and Association Process

SDS - Sustainable Development Strategy

SDP - Social Democratic Party of Croatia

SEA - Single European Act

SG - Secretariat-General

SORZO - Savjet za Održivi Razvoj i Zaštitu Okoliša

TEU - Treaty of European Union

UNFCCC - United Nations Framework Convention on Climate Change

INTRODUCTION

Croatia is one of the former-communist states that were reborn as a self-determined nation-state in 1991. Environmental policy issues are among several legal and social issues faced by the new sovereign society that can and should be researched and analyzed. Croatia is expected to join European Union on July 2013. As a part of the EU accession process in the European Union (EU) Croatia has closed the European *acquis*, which is divided into 35 chapters, including chapter 27 on the Environment. Croatia already ratified the Accession Treaty through referendum in January 2012.

In this work I argue that implementation of environmental policies in transitional states in accession to the EU is a challenging and demanding process. The EU has a long history of developing its legislative and organizational systems, which keep improving. Croatia is not only undergoing radical changes in all spheres, but also has had to bring itself in all means to EU standards, which are in constant motion. The challenge is due to differences between continuously improving systems in formation like those of the EU, and newly developing systems in applicant states, such as Croatia. The accession process is challenging for Croatia since adoption of the environmental *acquis*¹ has strict deadlines and obligatory costs for its implementation. The challenge is especially serious given that

¹ The *acquis* comprises legal instruments, mostly in the form of directives. In broad terms the *acquis* covers environmental protection, polluting and other activities, production processes, procedures and procedural rights as well as products.

Croatia, as any other candidate country, must rely mostly on its own resources to meet the EU's demands.

In meeting these challenges, Croatia has had to overcome the legacy of communist misgovernment. Decades of socialist regime led by inefficient and politically indifferent bureaucratic institutions left considerable environmental degradation. The quality of environmental laws and their implementation was poor. Public participation in the process of creation and enforcement of the environmental protection and access to information about environmental concerns were limited.

The war in Croatia, followed by dissolution of the former Yugoslavia, left a massive deficiency of resources available for improving environmental quality, as well as declining administrative capacity and socio-economical quality and low priority for development of environmental policies. A weak institutional base on environmental issues and strong political control over industrial development, which undermined concerns about environmental protection, and undeveloped civil movement in environmental politics, became significant obstacles in the process of Croatia's accession to the EU. For the entire 1990s, Croatian politics was piloted by President Franjo Tudjman (1990 – 1999) and his party, the Croatian Democratic Community (HDZ), which maintained an authoritarian style of governance. In the mid-1990s, Croatia was still resolving problems inherited from collapse of Yugoslavia, such as refugee return, war crimes, minority rights and etc., while neighboring Central East European states started on their accession to the EU. Additionally, nationalism developed by Franjo Tudjman became hostile to the EU and the idea of uniting with Europe (Jović, 2006).

By contrast, the EU has one of the most developed environmental protection systems in the world with the ongoing changes in norms in its environmental protection institutions. These policies are evident with EU's expansion to the east following the collapse of the socialist system. There have been significant institutional and policy-making changes. Currently the EU has very a unique system of relationships between international and national levels, creating opportunity for the existence of multilevel environmental governance and for the involvement for a number of state and non-state actors. My thesis explores some specific challenges and achievements met by the Croatian state.

This paper consists from two chapters. In the first chapter, I provide an historical overview of the institutional context of European Union environmental policy, with emphasis on Treaty revisions during last 50 years and increasing importance of the conditionality. A range of subjects related to environmental issues are addressed, such as the main players in environmental politics formation and development of policies and practices. More specifically, I focus on the EU Enlargement process and environmental accession issues, especially on challenges and opportunities of states with post-socialist past.

In the second chapter I present the main reasons for the development of environmental policy in Croatia from the time signing of the Stabilization and Association Agreement, with provisions for future EU membership (October 29, 2001). The environmental aspects of the transition toward EU membership require special skills, information, social and political institutions. Thus, the legal and institutional reforms no longer depend on the domestic base only. Environmental policy development becomes

one of the functions of Croatia's harmonization with the EU. The process of "Europeanization" of the national environmental policy focuses on the adaptation to the EU's requirements and the management of the process by EU institutions. I look at the legal basis of the environmental accession of Croatia and its harmonization with the EU's environmental statutes with an emphasis on agreements, strategies, action plans and progress reports.

As sources for my study I review available literature and also analyze EU Environmental Policies & Laws, Progress Reports on Croatia, specific agreements, and programs of the European Commission and Ministry of Foreign Affairs and European Integration of Croatia. I also reviewed the European Bank for Reconstruction and Development transition, the Ministry of Environmental and Nature Protection, the European Environmental Agency, the Croatian Environmental Agency, the Delegation of the European Union to the Republic of Croatia.

CHAPTER I

THE EU ENLARGEMENT AND ENVIRONMENTAL POLICY

Chapter 27: Environment

EU environment policy aims to promote sustainable development and protect the environment for present and future generations. It is based on preventive action; the polluter pays principle, fighting environmental damage at source, shared responsibility and the integration of environmental protection into other EU policies. The *acquis* comprises over 200 major legal acts covering horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms (GMOs), noise and forestry. Compliance with the *acquis* requires significant investment. A strong and well-equipped administration at national and local level is imperative for the application and enforcement of the environment *acquis*.

*European Commission – Enlargement
December 2004, European Council Conclusion*

Introduction

At its founding in 1957, the EU did not have any interest in developing and implementing environmental policy or environmental laws. The main focus of the new intergovernmental creation was to boost economic prosperity and repair political relations in post-war Europe through the establishment of the European Economic Community. By the beginning of the 1970s, a very limited number of the environmental policies were adopted, primary related to the safety of human health and supporting the elimination of the trade barriers. Only after the 1972 United Nations Environmental Conference in

Stockholm² the member states of the European Economic Community (EEC) were pushed to pay close attention to environmental effects of the European integration (Jordan, 2005, p.3).

The process of the enlargement of the European Union associated with Central and Eastern European (CEE) states started in 1998 and brought broader changes than previous enlargements. The focus of the CEE enlargement was not limited to the economic implications of trade liberalization, which mainly had been taking place between the EU and the transition countries in past. The EU enlargement went much beyond the elimination of trade barriers. The new accession states were expected to comply with a number of different community policies, including environmental policy.

The state of the environment in the new accession states differs significantly from the rest of the EU. The environmental policy in the EU, which consists of the series of standards and directives, has been developed during a long period of time and has an incredible capacity for a stable growth. In contrast, the environmental burden in the new accession states did not appear to be a real restraint on the economic production activities until the beginning of the 1990s. The transition states do not only have to implement the whole body of the EU directives but develop their own environmental policy strategies in compliance with this international agreement.

In this part of my work I argue that the EU gradually developed legislative and organizational system of its environmental policy and made significant changes in the

²The nations attending this conference agreed that they shared responsibility for the quality of the environment. The result of the conference was the example it set for international cooperation in addressing environmental degradation.

mechanism of adoption and implementation of environmental policies during the last enlargement. The EU's environmental policies aim to promote sustainable development and protect the environment for present and future generations, with primary focus on treating and disposing of all waste material without harming the environment. The goal of the EU is a significant cut in the amount of generated waste, through new prevention initiatives, better use of resources, and encouraging a shift to more sustainable consumption patterns.

The EU's environmental policy has gradually expanded over past decades. There are more than 300 environmental regulations and ongoing changes in the norms in the EU's environmental protection institutions. The policies are based on preventive actions and require significant investments as well as strong and well-equipped administration at the national and regional levels necessary for their application and enforcement.

In response to the enlargement there have been significant institutional and policy-making changes such as the creation of European Environmental Programs, official introduction of the Title VII by the Single European Act (SEA), the Copenhagen criteria, and the expanding *acquis* on environment. Currently the EU has a very unique system of relationships between international and national level, which creates opportunities for the existence of multilevel environmental governance and for involvement for a number of state and non-state actors.

The development of the European Integration and Environmental Policy

One of the recent policies of the EU, the environmental policy has steadily developed over the past three decades and was officially recognized with the adoption of the SEA in 1986.³ However, a number of environmental laws had been adopted prior to 1970s (Hildebrand , 2002, p 13), which complemented the evolvement of the EU's environmental policy. These early pieces of legislation were linked to the development and modernization of the industrial sector in Europe.

When the Treaty of Rome was established in 1957, the European Economic Community, it did not have any direct indication to initiate environmental protection policy.⁴ However, Article 36 referred to environmental protection by requiring trade restriction on imports, exports or goods harmful to the public health, humans, animals and plants. This reference was part of the creation of conditions for a common market and elimination of obstacles to merging the national markets into a single market. From the end of the 1960s to the First Action Program on the Environment (1973), the European Council passed some important environmental legislation on safety standards, establishing

³ The SEA, signed in Luxembourg on 17 February 1986 by the nine Member States and on 28 February 1986 by Denmark, Italy and Greece, is the first major amendment of the Treaty establishing the European Economic Community (EEC). It entered into force on 1 July 1987. The Single European Act (SEA) revises the Treaties of Rome in order to add new momentum to European integration and to complete the internal market. It amends the rules governing the operation of the European institutions and expands Community powers, notably in the field of research and development, the environment and common foreign policy.

⁴ The EEC Treaty or the Treaty of Rome, signed in Rome in 1957, brings together France, Germany, Italy and the Benelux countries in a community whose aim is to achieve integration via trade with a view to economic expansion.

a uniform system of classifications, regulating the labeling and packaging of hazardous materials, and agricultural practices, and similar issues (Jordan, 2005, p. 23).

While environmental measures were not completely missing in the beginning stages of the establishment of the European Community, they were limited and incidental and did not develop into a consistent policy. Environmental policy started developing as an explicit concept in the 1970s. It began with the Paris Summit Conference in 1972,⁵ which raised concerns about destructive effects of the economic development and growth on the environmental. At the Summit the heads of states and governments of EC member states decided to develop an official environmental policy. In response, the Commission created an action program for environmental protection. It was approved by the Council in 1973 and became the First European Environmental Program or Environmental Action Program (EAP), lasting until 1976.

The First EAP established the base of EU environmental policy in stipulations that economic development, improvement of the quality of life and protection of the environment are equally interdependent. It was argued that the protection of the environment is an important responsibility of the Community (UEAPME BSP, 2010, p. 5). The First EAP stated general principles of the environmental policy, such as prevention, reduction and containment of environmental damage, conservation of an ecological equilibrium, and rational use of natural resources. These were very progressive at that time and remain the essential principles of the EU's environmental policymaking process today.

⁵ The Heads of State or Government of the nine Member States of the enlarged European Community meet for the first time at the Paris European Summit held from 19 to 21 October 1972. During this meeting, the Heads of State or Government confirmed their wish to strengthen political cooperation.

The Second EAP (1977-1981) was basically a follow up to the First EAP. Its approach and objective were to address a greater range of problems. Special attention was paid to the preventive nature of the Community policy, rational use of natural resources, and reduction water and air pollution through quality approach. A number of framework directives, especially for water and waste, and quality values for water and air were decided and implemented during this period. The Second EAP was extended due to problems of the institutional transition related to Greece's accession, such as ineffectiveness and tardiness in transposing EU directives into national law, caused by corruption, administrative lethargy and malfunctioning policy co-ordination (Pridham , 2002, p.p. 81-84). Transformation of the Environment and Consumer Protection Services to a Directorate General for Environment, Consumer Protection and Nuclear Safety also contributed to the delayed adoption of the Second EAP, since additional time was required to make the essential adjustments (Jordan, 2002, p. 19).

The Third EAP (1982 - 1986) reflected a substantial shift in policy from a quality approach to an emission-oriented approach. It acknowledged the potential risks and benefits environmental policies have on the internal market. The connection between the internal market and environmental policies became a key driver for further developments and actions. Environmental emissions standards needed to be harmonized in order to avoid deformations due to industry competitiveness. The Commission also began developing “green policies”, as a response to the strategy for “Sustainable Development” created by the International Union for Conservation of Nature in 1980. As a result, waste prevention, recycling, efficient use of resources, and integrated environmental technologies became some of the objectives of the Third EAP (Hey, 2005, p.p. 19-20). Despite the fact

that between 1973 and 1985 were adopted more than 20 directives of environmental legislation, demonstrating Community involvement in environmental activity, the existing legal foundation remained restricted. There was no clear legislative order for environmental protection and the Community kept using Articles of the original EEC Treaty for its environmental efforts. Some of the directives were optional in the sense that no state was obligated to meet prescribed standards.

The Fourth EAP adopted in 1987 was initiated with the signing of the *Single European Act* (SEA) and became a turning point in EC environmental policy. By that time it was clear that environmental policy supposed to become an indisputably legitimate area of the Commission. Environmental protection received its own chapter in the new Treaty and was clearly identified as an official mission of the Community.⁶ With this step, uncertainty about the legal basis of EU environmental policy was removed. The previous legitimization of environmental policy actions based on economic integration goals was replaced with the basis of commitment to environmental policy goals themselves. Interestingly enough, motivations behind the adaptation of the SEA were far from environmental and were more related to economic issues.

The main aim of the *Act* was to revise the weakened original treaty (the Treaty of Rome), speed up the economic integration in the Community by freeing the internal

⁶ The SEA, signed in Luxembourg on 17 February by the nine member states and on 28 February 1986 by Denmark, Italy and Greece, was the first major amendment of the Treaty establishing the European Economic Community (EEC). It entered into force in 1987. The Single European Act (SEA) revised the Treaties of Rome in order to add new momentum to European integration and to complete the internal market. It amended the rules governing the operation of the European institutions and expanded Community powers, notably in the field of research and development, the environment and common foreign policy.

market from inter-state barriers and to complete the European Common Market. The provisions with regard to regional policy, environment and research, and institutional reform were secondary to that main aim. Christoph Knill and Duncan Liefferink state that establishment “of environmental policy, as an official domain of the Union took place to a certain extent, as a “by-product” of economically motivated reforms” (Knill and Liefferink, 2007, p. 12). The issue-linkage between environmental and market objectives became an important strategic option for the Commission to remove non-trade barriers between the EU Member States.

At the same time, necessity of the environmental regulations as an aspect of the Common Market and introduction of the new rules to accelerate economic integration served as a basis for proposing measures of European environmental policy. Thus, “the Commission and the European Parliament (EP), in particular, played a very active role in promoting the establishment of the environmental policy authority in the Treaty” (Knill and Liefferink, 2007, p. 13). Long term negotiations ended up with the statement in the SEA about the competency of the Community to regulate environmental matters in areas that affect the creation of the internal market.

The SEA not only presented fundamental features to develop the EU’s environmental policy but also affected Community environmental policy in three ways through

- general institutional changes: Qualified Majority Voting (QMV) and co-operational procedure;
- the objective of completing the internal market; and
- the new legal provision defining Community environmental policy.

Significance of the environmental protection in allowing public opinion, represented by the Parliament, impacted effectively on the course of environmental policy. The general institutional change was articulated in Article 149 of the EEC the Treaty of Rome (The Treaty of Rome, 1957, p. 51). QMV and co-operation procedure in the European Parliament (EP) were applied to single market-related measures. At the same time unanimity in the Council and consultation with the EP were required for environmental policy not linked with internal market. This contributed to a faster development of the environmental *acquis*, because the collaboration procedure enhanced the EP's right to participate in the legislative process by being directly involved in legislative decisions of the Council and receiving a strong veto right. In short, an environmental policy was taking shape.

Apart from laws that treated cross-cutting issues, such as environmental impact assessments, policy developments included access to information on the environment, combating climate change, quality and related emissions standards for air, waste management, water, nature protection, industrial pollution control, chemicals and genetically modified organisms, noise and nuclear safety and radiation protection (European Investment Bank). Additionally, more general and procedural measures were adopted, ranging from impact assessments to information rights.

In order to complete the objectives of the internal market, the SEA initiated Article 100a and Article 100b. These Articles addressed the necessity of achieving harmonization of national laws, including environmental ones. Member states were allowed to apply more strict national environmental standards or avoid harmonization efforts when appropriate. Articles stated that the Community should prepare inventory of such

measures and then the Council should decide, by QMV, which of them can be approved (Hildebrand, 2002, p. 28). The harmonization measures intended to complete internal market impacting the environmental protection measures to the point that most of them should be set at the EC level, since they affecting internal market.

The SEA added Title VII “Environment”, establishing environmental protection as one of the EEC's formal objectives. Article 100a, Article 130r, Article 130s and Article 130t (The Single European Act, 1986, p.p. 17-18) were created as tools for environmental protection. Article 100a stated that the Commission should visualize concerns about environmental protection (together with health, safety and consumer protection), as a base for a high level protection. Article 130r stated that the objectives of Community environmental policy and principles and guidelines had to be followed. It also identified the roles of the Community and member states in the process of implementation of the environmental protection measures and called for cooperation between them and third parties. Article 130s specified the legislative process to introduce more strict protective actions in line with the rest of the Treaty. Article 130t clearly allowed member states to maintain or introduce protective measures more stringent than EEC provisions. These provisions affected Community environmental policy in many ways, specifically (Jordan, 2005, p. 35):

- the importance of the environmental policy was acknowledged symbolically;
- a wide range of environmental issues was made subject to Community legislation;

- the existing principles gained legal form and new ones were introduced as a components of other policies;
- the basic factors to be considered for policy adoption were introduced; and
- the principle of subordination between the Community and the member states with regards to appropriate actions was described.

Needless to say, with introduction of the SEA the Community environmental policy changed dramatically. Despite the fact that many provisions were conceptual and flexible, environmental protection became formalized as one of the main objectives of the Community and sped up the process of the European integration.

The end of the 1980s saw a period of increasing environmentalism. The number of environmental organizations and membership in them grew significantly, which demonstrated increased public concern for the environment in general. Green parties gained popularity in several EU countries, and achieved good results at the national level and in the European Parliament. Capacity of the Green parties, their professionalism, networking and expertise increased greatly during the nineties. These developments were then clearly reflected in the Fifth Environmental Action Program (1992 – 1999).⁷

Among the most interesting and innovative elements of the Fifth Environmental Action Programme was the presentation of sustainable development as an explicit Community objective and the strengthening of the requirement to integrate environmental considerations in other policy sectors. The Fifth Environmental Action Program had its

⁷ Officially the Fifth EAP was named “Towards Sustainability, a European Community program of policy and action in relation to environmental protection and sustainable development.”

rational part and all the necessary elements of a policy toward structural ecological change. The program targeted the five most polluting sectors (industry, energy, transport, agriculture and tourism) and identified seven themes (climate change, acidification and air quality, urban environment, coastal zones, waste management, water resources, and biodiversity). Objectives were set for each area along with targets and general actions to meet each objective. The stress was put on new the market-oriented instruments, such as fiscal incentives or voluntary instruments, in order to strengthen producers and consumers' interests in environmental decision-making.

The LIFE Program,⁸ Structural Funds,⁹ Cohesion Fund,¹⁰ and European Investment Bank loans were used to financially support mechanisms for developing environmental protection. The new consensus-oriented approach took into account the crucial role of non-governmental actors and local/regional authorities to represent the general interest of the environment. This approach contributed to the development of innovative concepts, raising public awareness, and enforcing the implementation of the EU directives.

⁸ LIFE is the EU's 1991 financial instrument, supporting environmental and nature conservation projects through the EU, as well as in some candidate and acceding states.

⁹ The Structural Funds (1999) are EU's financial instruments to implement the drive for economic and social cohesion through EU. There are four types of funds: the European Regional Development Fund, the European Social Fund, the European Agricultural Guidance and Guarantee Fund and the Financial Instrument for Fisheries Guidance.

¹⁰ The Cohesion Fund (1994) is a financial instrument aimed at member states with Gross National Incomes (GNI) per inhabitant less than 90% of the Community average. It serves to reduce their economic and social shortfall, as well as to stabilize their economy.

The implementation of the Sixth EAP¹¹ (2001) was motivated by the development concerns of prospective member states (CEE states, plus Malta and Cyprus), a new wave of debate on European governance and the increasing relevance of economic considerations. It aimed to provide a ten year framework for EU action on the environment. The Sixth EAP set out key environmental objectives to be achieved in four priority areas: climate change, nature and biodiversity, environment and health, and natural resources and waste. Moreover, the necessity for the consolidation of existing legislation to minimize environmental impact increased, especially in the view of the Community's enlargement.

The Sixth EAP formulated a framework of general principles and objectives, outlined a series of priority actions in each thematic area (improving the implementation of existing legislation; integrating environmental concerns into other policies; working closer with the market; empowering people as private citizens and helping them to change behavior; and taking the environment into account in land-use planning and management decisions in the international context, and set out strategic approaches and governance mechanisms to improve the environmental policy-making process in the EU. The reform of chemicals policy and policies to reduce EU green house gas emissions also became the key policy priorities for the first decade of the new millennium.

The thematic strategies created an important link between the four priority areas (climate change, biological diversity, environment and health, and sustainable management of resources and wastes) of the Sixth EAP and its horizontal and governance provisions

¹¹ The Sixth EAP was entitled by the European Community "Environment 2010: Our Future, Our Choice."

such as broad stakeholder consultation and environmental policy integration. The Sixth EAP adopted a very cautious approach. The political strategy of the Sixth EAP proposed to postpone potentially contentious and controversial political decisions to later phases or to avoid them altogether by relying on cooperative approaches to environmental policy making. This strategy “is embedded in the broader context of EU policy-making. It is also considered to be the environmental pillar of the EU’s Sustainable Development Strategy, which in turn is meant to complete and form the overall framework for the EU’s Lisbon Strategy” (Strategic Orientations of EU Environmental Policy under the Sixth Environment Action Program and Implications for the Future, 2010, p. 9).

As the program was developing, the range of environmental and technical instruments accessible to the EU to execute Environmental Policy and Law was expanding. For now until 2013, the primary financial instrument is the LIFE + Programme. This instrument provides co-funding for environmental action in the EU and in some potential member states. More assistance is becoming available from the EIB and through national measures created by member states, which involves other state aid or environmental taxes.

One of the four priorities identified in the Sixth EAP was waste prevention and management. The primary objective here is to ensure achievement of “decoupling of resource use from economic growth through significantly improved resource efficiency and the reduction of waste” (The Sixth Environmental Action Program, 2002). This objective became a base for the development of a long-term strategy on waste, which

resulted in revision of the Waste Framework Directive in 2006.¹² As a new approach to waste management the revision became “a shift away from thinking about waste as an unwanted burden to seeing it as a valued resource” (The EU’s approach to waste management, 2010, p. 4). The Waste Framework Directive introduced a five-step waste hierarchy, where prevention is the best option, then comes preparing for re-use, recycling, followed by other forms of recovery and disposal as the last resort. The Waste Framework Directive was last revised in 2008 (The EU’s approach to waste management, 2010, p. 5). This revision made waste legislation more efficient and included number of new rules on issues such as the management of hazardous waste and waste oils.

If we sum up the developments of the EU’s environmental policy, we can conclude that there is a growing body of legislation with specific rules in the various areas of environmental protection. The EU’s environmental policy is oriented towards grouping different principles and guidelines in order to create policy measures in the form of environmental action programs. This legislation is based on explicit jurisdictions, which shape expectations and set up further actions beyond the current Community member states.

¹² EU directives lay down certain end results that must be achieved in every member state. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. Directives may concern one or more member states, or all of them. Each directive specifies the date by which the national laws must be adopted - giving national authorities room for maneuver within the deadlines to account for differing national situations. Directives are used to bring different national laws in line with each other, and are particularly common in matters affecting the operation of the single market (e.g. product safety standards).

Institutions and Actors

The development of the policy orientation and patterns of the EU's environmental policy can be explained by understanding the roles, motives and activities of the main institutions and actors in the environmental policy-making process. The EU is an exceptional federal organization. Power relations with regards to the degree of centralization vs. decentralization between federal structures, member states, and regional and local governments are in constant negotiations, which is desirable for environmental policymaking and implementation.

Each wave of the enlargement has brought changes to the EU's environmental institutions and policymaking procedures. Regular meetings of the heads of the member states were institutionalized in the European Council in 1974. At that time, the Council of Ministers of the Environment started gather regularly to tackle the EU's environmental concerns and to bargain for common agreements on the essential foreign environmental policy issues based on the broader policy directions of the European Council. In the past, the Council of Ministers of the Environment was making decisions mainly based on a unanimity principle. In the SEA the unanimity requirement for all environmental decisions was replaced with the Qualified Majority Voting. In the Treaty of Maastricht this rule was extended to most areas of environmental policy and worked for benefit of environmental policy-making (Schreurs, 2005; Knill and Liefferink, 2007).

The European Commission is responsible for the development and implementation of environmental action plans, regulations and directives. Overall the European Commission "is a distinct hybrid: the EU's largest administration and main policy

manager” (Peterson , 2006, p. 81), which is due to its diverse powers ranging from agenda-setting to monitoring roles. In terms of the environmental policy, the agenda-setting responsibilities are very important; they involve the planning and further explanation of the proposals for the Council. In this way the Commission has put its agenda-setting powers, which were already visible in the 1970s, when several successful projects for a common environmental policy were created, to good use.

Environmental work takes place in the environmental management system (EMAS),¹³ which is applied by five of the Commission’s 41 departments: the Secretariat-General (SG), the Environmental Directorate-General (DG¹⁴ ENV), the Personnel and Administration Directorate-General (DG ADMIN), the Informatics Directorate-General (DG DIGIT) and the Office for Infrastructure and Logistics in Brussels (OIB) (2009 EMAS Environmental Statement: Performance in 2008, p. 5). The objective of the Environmental Directorate-General is to protect, preserve and improve the environment for present and future generations by proposing policies that ensure a high level of environmental protection in the European Union and preserve the quality of life of EU citizens. The Environmental DG is generally responsible for (Knill and Liefferink, 2007, p. 59):

- drafting environmental policy initiatives,
- explaining and managing environmental policy measures,

¹³ The EU Eco-Management and Audit Scheme (EMAS) is a management tool for EU’s companies and other organizations to evaluate report and improve their environmental performance.

¹⁴ The Commission is divided into several departments and services known as Directorates-General (DGs). Each DG is classified according to the policy it deals with.

- supervising the proper application of EU environmental law by member states,
- coordinating incorporation of environmental policy into other policy areas.

The Environmental DG provides assistance for candidate and potential states in harmonizing their environmental legislation, implementing and enforcing capacities in order to meet the EU's environmental protection requirements. This assistance includes (European Commission, Enlargement):

- elaborating EU legislation to all stakeholders,
- monitoring the transposition and implementation' progress of the environmental *acquis*,
- providing technical consultations on papers prepared by a candidate or potential state,
- providing expertise to other DGs in evaluating project proposals or drafting annual progress reports on environment protection measures, and
- coordinating peer based assessments with member states of a country's administrative capacity.

However, the Environmental DG is not exclusively responsible for all environmental protection issues, which was acknowledged in the EMAS Environmental Statement notes: "The Commission mainstreams environmental issues into the drafting and revision of all EU policies" (2009 EMAS Environmental Statement: Performance in 2008, p. 7). During the initiation of environmental policies, the Environmental DG often relies on the collaboration of the DGs who are in charge of other areas, such as

liberalization of the Common Market, infrastructural measures, and investments. To ensure the quality of such cooperation in the recent decades “integration correspondents” that supposedly have to consider environmental policy concerns in proposals of other policy areas and in coordination with the Environmental DG were incorporated.

Although the European Parliament has relatively weak legislative authority, its involvement is often apparent in policy results. It is especially visible since the SEA introduced a “cooperation principle” into the EU’s policy-making. This principle expanded the EP’s abilities to object to the environmental policy proposals coming from the Council of Ministers of the Environment and to establish informal communication with other participating institutions, such as the Environmental DG, during the policy making (Schreurs, 2005; Knill and D. Liefferink, 2007).

Even though the European Court of Justice (ECJ) is not directly involved in the EU’s environmental policy-making, it influences the regulation of environmental policy in the EU. The ECJ has played a significant role in shaping EU environmental policy by confirming “the possibility that environmental measures could be upheld by Article 94 of the TEU [Treaty of European Union] or, if they were not relevant to the Common Market, by the general clause of Article 308” (Knill and Liefferink, 2007, p. 67). The ECJ assisted the growth of environmental policy by emphasizing the importance of environmental protection as one of the main objectives of the Community. After the SEA the ECJ gained an important role in developing measures for corresponding economic and environmental policy objectives. Basically, the ECJ confirmed that environmental concerns can validate import restrictions, if they are fitting and essential for targeted environmental protection goals. The decisions of the ECJ impacted the design of European environmental policies

through interpretation of the Treaties, which may play a significant role in the policy-making process, as well as through the application of juridical acts on intergovernmental and national levels (Knill and Liefferink, 2007, p. 68).

The European Environment Agency (EEA) does not have any regulatory authority in terms of developing or implementing of environmental policy. However, as a major information source it helps the Community and member states make informed decisions about improving the environment, integrating environmental considerations into economic policies and moving towards sustainability (European Environmental Agency). The EEA appears to cooperate very closely - on a daily basis - with the national environmental administrations on the daily base, which are incorporated into the European Information and Observation Network (EIONET). The business community, academia, non-governmental organizations and other parts of civil society are also important users of agency's information.

While the environmental interest groups in this sector have the same opportunities as other groups in the Community, it looks like they are weakly represented at the European level. Economic interest groups seem to overshadow environmental interest groups in terms of mobilization, capacity, numbers, finance and staff. The causes of this presumably can be traced back to the origins of the EU as an economic community. However, environmental interest groups have undeniable privileges, such as capability to build European-level coalitions - so-called Euro-feds - umbrella organizations and cross-national Euro-level networks (Mazey and Richardson, 2005; Knill and Liefferinkin, 2007). Due to their cross-national and federal nature, these coalitions of environmental interest groups are able to contribute to the European integration and are attractive to the

Commission, and due to their cross-sectoral nature they have input in the political agenda of the environmental sector in ways that place other interests at a disadvantage.

Following the EU's increasing involvement in international affairs, environmental interest groups are increasing their influence in international negotiations, even if they are not directly involved in them. This influence is possible through informal contacts of interest groups with European institutions, such as the Commission, the EP and the Council of Ministers. The main subject of the influence is the Commission which, because of its relatively weak personnel resources, relies on the expertise of the interest groups, for the elaboration of its proposals

The lack of conflict of interest between the environmental interest groups makes it possible for the environmental groups to be organized in greater networks of interests and links together Euro- and national-level organizations. Although the environmental interest groups "have different interests and emphasize different issues, ...they are essentially on the same fighting the same cause and have a common interest in better environmental regulation" (Mazey and Richardson, 2005, p. 114). Successful management of these networks may make them powerful players, providing considerable political and expertise resources for European institutions and industrial or commercial sectors. Lately, industry is becoming more active in this sector and taking environmental issues more seriously, partly in response to public pressure and partly out of commercial self-interest.

The EU Enlargement and Environmental Accession Challenges

The EU's enlargement is not an environmental project; it is an economic and foreign policy. However, environmental policy in the applicant countries has changed and

will continue to do so as direct result of the accession process. Environmental reasons are not one of the main motivations for the applicant countries' efforts to join the European Union. Even though environmental objectives may not play a significant role for the member states in inviting countries to apply for membership, environmental queries are important in the accession process and directly affect environmental policies of the applicant countries. This importance is clearly indicated by the European Commissioner for Environment, Margot Wallstrom. She stated that enlargement was one of the five priority themes of the EU and that the environment remained a central issue in the enlargement process. "The success of our approach is evident in the fact that the EU strategy for accession in environment is fully included in all negotiating positions, which have been endorsed by the Council." She emphasized that the environmental chapter would not be an easy one to close in the accession negotiations: "Taking on board the environmental EU legislation is a tremendous challenge for any national parliament and administration, not to mention the financial, administrative and technical aspects of putting it into practice"(Wallstrom , 2000).

According to Margareta E. Kulesa, there are three reasons behind the significance of the establishment of a satisfactory level of environmental policy (Kulesa, 2002, p. 284):

- the Copenhagen Criteria for accession stipulates the adoption of the body of the EU law (*acquis communautaire*). One of the parts of that body of law is the environmental *acquis*, which has roughly 300 acts. Ideally, all of them have to be transformed into the national legislation of the applicant states, and be implemented by the accession date;

- each and every prospect for trade distortion should be reduced to facilitate the successful integration of new members into the Common Market. The EU product standards have to be effectively in place. The prospective member states should act in accordance with European production process standards or else competitive disadvantage might occur as a result of an uneven development. This uneven development may lead to employment and investment losses in economies with standards. Perhaps the same reason will make the more environmentally advanced states demand from new members to fulfill all European environmental quality standards; and
- the environmental policies in the potential member states will transform as the EU is likely to increase its activity in global environmental negotiations and present interests all member states. Therefore, multilateral environmental agreements for the new members will be different from commitments that they would have negotiated by themselves.

For more than thirty years the EU has been developing an increasingly comprehensive environmental policy. The main focus of the EU has been building a common market and therefore it has been more interested in the removal of the trade-restraining environmental regulations, or at least reduction of their power. Despite this fact, the EU's environmental policy is continuing to enhance the level of protective measures and regulations in many occasions.

The EU has had several waves of enlargement and each of them is unique, with specific political dynamics and impacts. My focus is on two similar ones, the so-called

Southern and Central and Eastern European (CEE) enlargements, considering following the reasons:

- accession dramatically strengthened the processes of democratic and socio-economic transitions in Southern and Central and Eastern European states;
- for both groups of states obtaining EU membership meant a ‘return to Europe’;
- despite differences in the political systems, both groups of states had equally weak governance capacity and faced similar challenges through accession.

The Southern enlargements (Spain, Portugal, and Greece) demonstrated to the EU member states that socio-economic features of the new member states could slow down the ongoing EU environmental policy-making process. When Greece, Portugal and Spain joined the EC, there was not yet facilitating legislation related to the completion of the SEA, common currency, or the Common Foreign and Security Policy. Moreover, accession conditionality was not yet officially introduced. The economic, political, institutional and administrative constraints of the new applicants led to conflict with the objectives of economic and legal harmonization with the EC’s established member states. However, political concerns overcame concerns about the capacities of the newcomers to pull alongside with Europe. As a result, the EC decided to “set only some broad political criteria as conditions for membership, including respect for human rights and democracy” (Borzel, 2009, p.33).

At the time of joining the EC in the 1980s, the environmental policies of Greece, Portugal and Spain were very weak and their environmental legislations ineffective.

These states had cross-national differences, such as:

- accession negotiations and the transitional period for Greece were much shorter (around seven years) than for Spain and Portugal (up to ten years);
- Spain in general was more industrialized than Greece and Portugal; and
- environmental concerns differed from state to state. For example, Spain was more concern about soil erosion and natural habitats, while Greece's interest was in coastal water quality.

The EU was very liberal in granting temporary or partial revocations of the environmental standards to the applicant states. “Accession thus became the determining factor of their environmental regulatory structures, mainly through the downloading of EC [EU] policies. While the environmental *acquis* at the time was much smaller, it challenged the administrative traditions and regulatory structure of the three Southern European transition countries” (Borzel, 2009, p. 34). The environmental *acquis* became challenging to the administrative traditions and regulatory structure of these states. The Southern European states very quickly become known for being the ‘environmental laggards of Europe’ and the weakest cases with regard to the successful harmonization with EC standards (Borzel, 2003).

The effective adoption and legal revision of the environmental *acquis* by the Southern states were basically diminished for a long time because of the following reasons (Borzel, 2009, p. 34):

- restricted funding for building up environmental governance structure, because of strong preferences for generating economic growth and employment;
- insufficient administrative capacity, corruption and party-dominated policy;
- a deficit of potential states' policy expertise to guarantee the proper and absolute transposition of complex EU environmental legislation, to incorporate problem-solving approaches and policy instruments to command-and-control regulatory traditions; and
- public participation in environmental policy was almost absent.

Finally in the 1990s, Southern European states were able to follow the EU's member state's examples of setting up the distribution of environmental responsibilities across government sectors and levels. However, lack of the financial resources and administrative expertise limited their ability to adequately implement the EU's environmental regulations. The costs of applying EU environmental directives impacted the Southern European states harshly because they tended to be the poorer member states and also had to keep up with European environmental policy. This problem was recognized by EU and resulted in the development of special programs, such as MEDSPA,¹⁵ LIFE, and ENVIREG,¹⁶ to assist environmental development in the potential member states.

¹⁵ MEDSPA constitutes a general framework of guidelines for Community action to protect the Mediterranean environment.

¹⁶ EVIRENG is a program of regional measures geared to the environmental problems of a number of Community's regions.

The absence of public participation, a structure providing insufficient political opportunity together with low levels of socio-economic development, resulted in discouraging public mobilization in support of environmental protection and prevented Southern states from engaging sufficient in collective action to effectively adopt and adapt to the environmental *acquis* and made them linger behind Europe.

For the newly-established democracies of the CEE the process of the integration with EU became a powerful external influence over all aspects of political and economic life. Although, the adoption of EU's legislation considerably strengthened the process of democratic and socio-economic transition, it was critical for the CEE states. The EU's CEE enlargement was taking place under significantly more complex conditions than any previous enlargement. Such conditions included a relatively higher number of potential member states, their compromised economic situation, and increased security concerns since the breakdown of the Warsaw Pact, ongoing political and economic transformations in these states, the political developments and escalation of violence in the Balkans, and the decline of public concern for environmental quality.

The adoption of the EU's environmental policy by CEE states was associated with significant differences from the Southern enlargement conditions:

- the *acquis* communautaire had grown twice as large in the twenty year period between the two enlargements and now covered almost all areas of state activity;
- strict accession conditionality was introduced – as a nonnegotiable condition of future membership (Schimmelfenning, Engert, and Knobel, 2005, p.p. 30-31; Sedelmeier, 2010, p. 421; Borzel, 2009, p.36; Smith,

2003, p. 107). Accession conditionality required (and still does) the adoption of the whole body of the EU's law prior to the candidate's accession date; and

- the candidate countries also had to prove that they had the administrative capacity to adopt the *acquis* and demonstrate satisfactory progress in its implementation.

Over the fifty years that the EU established an enlargement policy, that consisted of a number of principles, including acceptance of the *acquis*,¹⁷ refusal to grant derogations or permanent opt-outs, and limitation of the time for transition. According to Desmond Dinan and Heather Grabbe (Dinan, 2006, p. 275; Grabbe, 2006, p. 10) with the CEE enlargement,¹⁸ the EU added the so-called Copenhagen criteria (1993), which were supposed to minimize the risk of new comers becoming political, economic and institutional burdens on the existing member states (Dinan, 2006, p.10). I would argue that with the CEE enlargement the EU's membership conditionality made its official entrance and became a cornerstone of the EU's accession policy. It was stated very clearly at the Copenhagen European Council that potential applicants should fulfill certain requirements, such as "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence a functioning market economy...Membership presupposes the candidate's ability to take on the obligations of

¹⁷ The *acquis* is the body of common rights and obligations that is binding on all the Member States of the European Union. Adoption and implementation of the *acquis* are the basis of the accession negotiation.

¹⁸ The Central and Eastern Europe enlargement included Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.

membership including adherence to the aims of political, economic and monetary union” (European Council in Copenhagen, 1993, Article 4).

In December 1994, the Essen European Council initiated ‘pre-accession strategy’. Most of the Single Market assistance focused on institution building. A year later the criteria were strengthened by the Madrid European Council (1995), which more clearly indicated that a candidate country should create conditions for integration through the adaptation of administrative structures and be able to put the EU rules and procedures into effect. “While it is important for EU legislation to be transposed into national legislation, it is even more important for the legislation to be implemented and enforced effectively through the appropriate administrative and judicial structures. This is a prerequisite of the mutual trust needed for EU membership” (European Commission). The Council called the Commission to prepare a new element of the strategy, the Single Market White Paper.¹⁹ The 1995 Single Market White Paper introduced measures in the large range of new policy areas and “allowed countries to take on aspects of the single market regulation selectively, and potentially after accession” (Grabbe , 2006, p.13).

Besides key legislation governing trade in goods and services in the EU’s Internal Market, the provision on environmental protection was specified in “Specific sectors” under provision 4.24. This provision stated that in general, environmental legislation of potential member states was very uneven and they were “aware of the likely costs of bringing their levels of protection up to those of the Community. In some cases, however,

¹⁹ White Papers are documents containing Commission’s proposals for Community action in a specific area. In some cases they follow a Green Paper published to launch a consultation process at European level. When a White Paper is favorably received by the Council, it can lead to an action programme for the Union in the area concerned.

including on specific products, their preparatory work on new legislation is relatively well advanced “(Grabbe , 2005, p. 12; White Paper, 1995, p. 28).

In July 1997, the Commission published its *Avis* (opinions) on the applicant states’ progress in taking on the measures to meet the Copenhagen criteria. By 1999, the CEE states achieved a satisfactory level on the substantive work and progress in accession negotiations, specifically on political conditions, which were set as pre-requisite to negotiations at the Helsinki European Council. Negotiations were open on the 31 chapters, including the chapter on the environment (Grabbe, 2006, p. 12). Transposition of the environmental *acquis* obligated potential member states to develop new environmental policies, laws and institutions in order to harmonize with the EU framework legislation, and implement and promote improvements of measures on international conventions regarding environmental protection.

Harmonization with the EU’s environmental policies required great efforts on the part of the new states, since they were going through tremendous changes and challenges following the fall of the communist regime and the formation and stabilization of the new economic and political systems. To assist the CEE states’ efforts to prioritize harmonization of their policy and practice with EU regulations, the EU offered help in the form of specific assistance programs, such as PHARE²⁰ and LIFE. Under the pre-accession strategy, the PHARE became an accession-driven rather than demand-driven form of assistance to the potential member states. Initially, funds were used on projects implementing the existing body of Community law according to priorities programmed by

²⁰ PHARE is the Program of Community Aid to the states of Central and Eastern Europe, the main financial instrument of the pre-accession strategy for the CEE states which have applied for membership of the European Union

the Accession Partnerships and economic transition, but over time they were used for environmental assistance. The LIFE program was one of the EU's essential environmental tools, aiding in implementation of Community environmental policies and nature conservation practices.

Harmonization with the EU's environmental *acquis* met with a complicated situation in the CEE states. Following the fall of the communist regime these states were left with a legacy of communist misrule where political indifference had resulted in massive degradation of the environment. The region was beset with widespread pollution, ecological disasters, poor environmental technology and serious threats to public health. The CEE countries came to the EU with huge areas of untouched nature and a great scale of biodiversity. Most CEE states went through a period of 'natural clean-up', caused by the change of the regime and breakdown of the state economy (Carmin and VanDeveer, 2005, p.p. 4-8). Market liberalization in previously centralized economies created new incentive structures, which encouraged reduction in energy and material consumption in all sectors of industry (Pavlinek and Pickles, 2000, p. 244). But pretty soon the CEE states caught up with environmental problems similar to ones, the established member states had confronted years before. Some of the CEE states had environmental regulations that dated to the communist regime. Because of their ineffectiveness, those regulations did not meet the requirements of the EU's environmental *acquis* (Borzel, 2009, p. 37).

In the accession process, the candidate states had to transpose the environmental chapter, containing more than 300 regulations and directives, which was accomplished reasonably quickly. By contrast, the implementation of this massive body of law proceeded more slowly. The transfer of the EU's environmental policy was challenging

for several reasons. First of all, it put serious burden on the Southern and CEE candidates' weak fiscal abilities. The challenge was especially acute given that the resources already were severely strained due to meeting numerous other demands of the accession process. Second, implementing regulations were mostly foreign to for CEE states' political and economic systems as they conflicted with legacies of the socialist period. Third, Southern and CEE candidate states lacked scientific and technical expertise necessary to ensure a practical application and enforcement of the directives on the ground. Finally, the implementation of the EU's environmental policy had also poor support of the civil society in both, Southern and CEE enlargements, which in many cases was undeveloped or weakly represented. The public was more concerned with socio-economic problems and was accustomed to being inactive in policymaking.

However, we should consider that some of the challenges for the Southern and Central and Eastern Europe enlargements may be constituted not as problems but as opportunities for the EU to improve. If the candidate states successfully overcame these challenges, they would benefit themselves and prospective candidates in future waves of EU enlargement by providing a better understanding of expectations of environmental accession by applicants. The EU itself can also profit from such experience by improving its policy-making mechanism and institutions for transforming its symbolic commitment to building a sustainable environment into reality.

Conclusion

I must conclude that over the years the environmental policy of the EU has made remarkable progress, starting off as a by-product of economic integration, turning into an

important area of EU's policy-making, operating within the political framework of the European integration as an independent policy and increasing its dynamics. Developing and implementing of EU's environmental policy is a dynamic process with a steady expansion of the issues and continuous adjustment of the policy instruments and regulatory approaches in use.

Environmental policies, regulation of the Common Market and the integration process are very closely linked. I note that the special role played the SEA, which helped place environmental policy on a solid legal base and created the necessary pillar for the next phase in its development. The SEA provided the institutional means to achieve higher standards by changing the decision rule in the Common Market from unanimity to QMV voting for proposals related to the single market. It also called for greater environmental policy integration and new standards to be based on a higher level of protection.

Environmental legislation of the EU, and the domestic and transnational politics around it, has been significantly transformed with each wave of the EU's enlargement. Special place belongs to the Southern and Central and Eastern European enlargements, because they showed that adoption and implementation of the EU's environmental policy dynamic may cause challenges in the process of complying with EU conditions of membership for states with limited governance capacity. However, these challenges provided an opportunity for the EU improve the accession mechanism in general and to increase the effectiveness of the implementation of the environmental *acquis* through the officially recognized membership condition known as the accession conditionality. As a result, implementation of the environmental *acquis* became a mandatory obligation for the EU membership of potential member states such as Croatia.

Environmental policies in the new member states are becoming more like those of older member states in terms of legislation and institutional systems. Going further, the EU should keep considering the institutional and economic inconsistency of incoming applicants and keep increasing its regulatory and institutional flexibility. This consideration may help EU and potential member states reduce complications during or after accession and more promptly establish similar environment protection systems.

CHAPTER II

ENVIRONMENTAL POLICY OF THE REPUBLIC OF CROATIA IN ACCESSION TO THE EU

Article 52

The sea, seashore and islands, waters, air space, mineral wealth and other natural resources, as well as land, forests, fauna and flora, other parts of nature, real estate and goods of special cultural, historic, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection...

Article 69

Everyone shall have the right to a healthy life.
The State shall ensure conditions for a healthy environment.
Everyone shall be bound, within their powers and activities, to pay special attention to the protection of public health, nature and environment.

*The Constitution of the Republic of Croatia
(Adopted 22 December 1990)*

Introduction

The integration of Croatia into the European Union is a great challenge requiring a significant amount of work, as it involves adjustments in local political, legal and economic systems, as well as in the administration and other areas of society. Integration is a long-term process, but necessary for achieving higher European standards in various fields and establishing a stable and strong Croatia. According to Dejan Jović, membership of the EU has been strategically important and may be compared

only with the 1992 international recognition of Croatia. Accession to the EU is seen as the conclusion of transition from nationalism and isolation in the 1990s to a new European state in 2000s, and as a chance to enhance a level of a genuine sovereignty of the new state over its internal affairs (Jović, 2006).

The starting point for the development of the relationship between Croatia and the European Union was the international recognition of the Republic of Croatia on 15 January 1992. However, up to the 2000 Croatia under Tudjman had troubled relations with the EU. Only after his death and some political changes Croatia was able to overcome stagnation with the EU by signing the *Stabilization and Association Agreement (SAA)*²¹ on October 29, 2001. Croatia became the second Western Balkan state after the Former Yugoslav Republic of Macedonia, to sign a *Stabilization and Association Agreement* with the EU. This agreement became the first formal step in making the relationship of Croatia with the EU official. In June 2004 the European Council granted the status of candidate country to Croatia. Accession negotiations with Croatia were opened in October 2005 and closed in June 2011. In the meantime, the European Partnership (2004) for potential candidate and Accession Partnership (2006) for candidate country set out the short- and medium- term priorities for Croatia to fulfill its approximation to the EU's norms and standards (Europa u Hrvatskoj, Project EUROPE in Croatia).

²¹ SAA is the framework of relations between the EU and the Western Balkan states for implementation of the stabilization and association process. The agreements are adapted to the specific situation of each partner country while establishing common political, economic and commercial objectives and encouraging regional co-operation. In the context of accession to the EU, the agreement presents the basis for implementation of the accession process.

After seven years of negotiations, the EU member states decided to close the accession negotiations with Croatia on 30 June 2011 and signed the Accession Treaty on 9 December 2011. The ceremony of signing the Treaty marked “the completion of a long process of negotiations and preparations for accession, which was launched by the European Council in Brussels in June 2004. Considerable efforts have been made by Croatia to bring its laws, regulatory frameworks and administrative practices into line with the *acquis* of the Union” (Council of European Union, 2011). A target date of July 1, 2013 has been set by European Commission for Croatia to join the EU (Croatian News Agency, 2011).

As a part of the accession process to the EU Croatia closed negotiations on the European *acquis*, including Chapter 27 on the Environment. This Chapter was opened in February 2010 (Mission of the Republic of Croatia to the European Union and to the European Atomic Energy Community, 2010) for negotiations once the targeted level of increasing administrative capacity and financial resources was fulfilled.

The environmental chapter states that the EU’s environment policy aims to support environmental protection and sustainable development not only for present but also for future generations. The EU’s environmental policy is “based on the preventive actions, such as the polluter pays principle; fighting environmental damage at source, shared responsibility and the integration of environmental protection into other EU policies” (European Council Conclusion, 2004). Considerable investments, as well as a well-equipped administration at the national and regional levels are very important requirements for the application and implementation of the environment *acquis*. Through step by step

transposition of the legislative framework and building up more sufficient administrative capacity Croatia has demonstrated that it can accept the *acquis* concerning environment.

In this part of the paper I present the background and context of Croatia environmental policy, with the emphasis on the process of fulfilling the pre-accession environmental conditions in the attempt to become an EU member. I argue that Croatia overcame the challenge of transposing and implementing satisfactory environmental policies through the establishment of legal frameworks and taking steps to update the legislation and addressing the execution of the environmental protection policies.

From Socialism to the EU

Following the World War II in 1945, the Yugoslav Communist Party, led by Josip Broz Tito, established a new state - the Federal Socialist Republic of Yugoslavia - as a socialist federation of six republics, one of which was Croatia. Tito broke with Stalin in 1948 and communist rule was gradually relaxed, with Yugoslavia becoming increasingly oriented towards the West. Following Tito's death and the fall of communism throughout Eastern Europe, the Yugoslav Federation began to loosen. In 1990 Croatia held its first multi-party elections since World War II, which brought the Croatian Democratic Community (HDZ) to the power. The party was led by a long-time Croatian nationalist, Franjo Tudjman, whom the Parliament elected President. A year later, Croats declared independence from Yugoslavia. The separation of Croatia and Slovenia in 1991 put an end to the Yugoslav Federation (Bartlett, 2003; Schuman, 2004).

Even before the declaration of independence, Croatia started to develop a new legal system that included new laws and regulations regarding the environment and protection of

nature. The 1990 Croatian constitution included an obligation to protect the environment and nature and ensure the right of citizens to a healthy environment (The Constitution of the Republic of Croatia, 1992, Article 52). The state, the public and economic entities were required to protect human health, nature and the environment (The Constitution of the Republic of Croatia, 1992, Article 52). The new state inherited some pieces of federal legislation that had privileged the development of the industrial sector. While Croatia did not suffer from a single case of massive environmental destruction, the environmental protection system, as elsewhere in the former Yugoslavia, still neglected environmental problems in general. Violation of environmental standards generally did not carry legal penalties. There was no civic environmental movement to protest or prevent environmental degradation. The country also lacked new technologies that would reduce environmental damage (Jordan, 2002, p. 333).

The 1991-1995 war following dissolution of Yugoslavia postponed institutional developments in the newly formed Republic of Croatia and sidelined the environmental protection agenda. However, in order to ensure effective and permanent environmental protection and create conditions for sustainable development, the Croatian Parliament passed the *Declaration on Environmental Protection* (Official Gazette 56/90, 1992) on June 5, 1992, which called for the establishment of a legislative system in accordance with international agreements and standards. In 1994 Croatia passed the Law on Environmental Protection and formed the State Directorate for the Environment (Bellinger, Lee, George, Paduret, 2000, p. 43).

Post-war environmental policy developments from 1995 to 1999 were marked by changes in the nature of reforms and a high level of attention from the domestic

government and international community through evaluation of the environmental consequences of the war. Strategic environmental considerations began to be included in the 1997's *Physical Planning Strategy* (1997). This *Strategy* was the basic document of physical planning and represented a basis for decision making that considering interventions in the environment and physical planning of smaller units and plans at local levels (Croatia, Country profile, United Nations Economic and Social Affairs, 2002).

To gain membership in the EU, Croatia has had to act in response to the challenge of harmonization with the EU's legislative framework. By the mid-1990s, the EU and NATO were emphasizing that countries without sound democratic rule would not be considered as new members. The "invitations to join the EU have been extended to those states regarded as well on their way towards realizing consolidation, but not to those in which democratization efforts have been stalled or reversed" (Carmin and VanDeveer, 2005, p.5). Thus, after Tudjman's 1992 re-election as president the EU decided not to invite Croatia to start membership talks, criticizing his regime as an authoritarian (Randal, Washington Post, 1997).

Tudjman himself did not help the situation by criticizing Europe for never being really supportive of Croatian independence and refusing to cooperate with the Hague Tribunal on war crimes issues. He created in Croatia an ideology, which was doubtful of all supra-national organizations and rejected 'the unfair demands' of the EU defined

through the Regional Approach policy,²² for the states of the Western Balkans as it was seen as an attempt to restore a neo-Yugoslavia. In response to the Regional Approach the Croatian Constitution was adjusted by adding an article banning membership to any association of states that could lead to a renewal of Yugoslavia. Moreover, Tudjman's ideology of nationalism insisted on belief in the Croatian nation-state, dominated by ethnic Croats, with little room for minorities and lack of understanding of cultural and political diversity in modern societies. The priorities of the Croatian political elites and society brought to the political transformations, which resulted in transition from the communist regime to creation of the "defective" democracy with curbed minority rights and the freedom of the press. Croatia was ruled by a semi-presidential system, which allowed the president to concentrate political power and become authoritarian. The EU replied to these developments by freezing its relationship with Croatia, which led to decade of unofficial isolation and absence of any formal agreements with the EU (Jović, 2006, p.p. 85-86, 92; Kasopović, 2009, p. 217).

The death of the President Tudjman in December 1999 and the election of a coalition government²³ in the early 2000 brought considerable ideological, political and

²² On 26 February 1996, the EU adopted a Regional Approach to the countries of South-Eastern Europe followed up by a Commission report on common principles for future contractual relations with certain states. On 29 April 1997, the Council established political and economic conditions to be fulfilled by these states, as the basis for a coherent and transparent policy towards the development of bilateral relations in the field of trade, financial assistance and economic cooperation, as well as of secured relations.

²³ Coalition consisted of six parties and led by Social-Democrats (SDP) and Social-Liberals (HSLs).

foreign policy changes to Croatia. In February 2000, Stjepan Mesić²⁴ of the former oppositional Croatian People's Party (HNS) won the presidency and declared that he wanted Croatia to join NATO and the EU (SPIEGEL Online International, 2007). Mesić had left HDZ in 1994 in protest against Tudjman's autocracy and Croatian participation in the war with Bosnian state forces. Ivica Račan, representing the Social Democratic Party (SDP) became the new prime minister. The coalition government started promoting the vision that isolation was not desirable and practical in the long run and if Croatia continued stay outside of the EU it may bring the state to economical, political, social regression and eventually to the state's insecurity. Within the new policy Croatia in November 2000 hosted the Zagreb Summit²⁵ of EU heads of State and Government and in October 2001 signed the Stabilization and Association Agreement with the EU.

The new government initiated constitutional reforms, replaced the semi-presidential system with a parliamentary system to promote consolidation of democracy, got more involved with the Hague Tribunal and initiated the reverse of negative economic developments. But soon the government became somewhat hesitant, weak and divided. However, Tudjman's followers (mainly the Croatia Social Liberal Party (HSLs)) and the Croatian Peasant Party (HSS), opposing cooperation with Hague Tribunal were able considerably slow down the new policy, especially in the areas of refugee return and

²⁴ Stjepan Mesić was The Former Prime Minister and representative in Presidency of the Yugoslav Federation in 1990-1991.

²⁵ The Zagreb Summit placed considerable emphasis on the central need for regional co-operation as part of the EU's "contract" with the Stabilization and Association Process countries.

cooperation with ICTY.²⁶ The internal disagreements in the coalition government over these issues, the disappointment with speed and results of reforms and deadlock on the issue of EU and NATO membership helped HDZ succeed in the 2003 election (Jović , 2006, p.p. 93-94, 97-98; Kasopović, 2009, p.218).

Next Prime Minister Ivo Sanader (2003-2009), leader of ideologically reformed HDZ, continued the pro-European policies of his predecessor and pursued a policy of the Euro-Atlantic integration. Sanader presented himself as a reformer, confirming it with his choice of coalition partners, such as HSLs and representatives of ethnic minorities, including the Independent Democratic Serb Party. To confirm its commitment to the process of the EU membership, the HDZ government continued to promote regional cooperation and full cooperation with the ICTY. Croatia's efforts resulted in support of its application for the EU membership by the conclusions of the Thessaloniki Summit²⁷ of the European Council in June 2003, which confirmed Croatia among other states of the Western Balkans "could look forward to the prospect of accession" (Jović , 2006, p. 100).

The death of the President Tudjman in December 1999 and the election of a coalition government in the early 2000 brought considerable changes to Croatia. Ivica Račan became the new Prime Minister. In February, Stjepan Mesic of the Croatian People's Party won the presidency and declared that he wanted Croatia to join NATO and the EU (SPIEGEL Online International, 2007). The next Prime Minister, Ivo Sanader

²⁶ Established in 1993, the International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990's.

²⁷ The Thessaloniki Summit confirmed the European perspective of the Western Balkans and the SAP as the policy framework of their EU course. New additional Instruments were introduced, such as the European Partnerships, inspired by the Accession Partnerships.

(2003-2009) of Croatian Democratic Union (HDZ), continued the pro-European policies of his predecessor and pursued a policy of Euro-Atlantic integration. In April 2003, after Croatia submitted a formal application for EU membership, the Commission prepared the *Opinion on Croatia's Application for Membership*, where the environment was acknowledged as a separate issue. The *Opinion* stated that for fulfilling the environmental *acquis* Croatia would need significant long-term efforts to bring its legislation in line and effectively implement and enforce it. Fulfillment of EU legislation involves a “high level of investment and considerable administrative effort (e.g. waste management, waste water treatment and drinking water) could be achieved only in the long term and will require a significant increase in environmental investment” (*Opinion on Croatia's Application for Membership*, 2004).

Croatia opened accession talks with the EU in 2005. Six months later, Croatia started negotiations on the environmental *acquis*. However, Croatia continued to face challenges, such as corruption, weak public administration, and unresolved border issue with Slovenia. On some point a row with EU member Slovenia blocked talks over Croatia's EU entry and contributed to Sanader's unexpected decision to resign. In July 2009, Prime Minister Sanader unexpectedly resigned and Deputy Prime Minister Jadranka Kosor took over the cabinet (Ministry of Foreign Affairs and European Integration, 2009). The priorities of this government were to tackle economic reforms and the issue of corruption at the domestic level, while at the international level it focused on overcoming barriers, such as resolving border disputes with Slovenia and unblocking negotiations with the EU to facilitate the completion of Croatia's accession in EU.

The environment is one of the most challenging areas in European Union policy and also is essential in the accession negotiation process. The implementation of the *acquis* is a challenging task for any candidate country. Croatia is not exclusive in this case and faced challenges in order to fulfill a great number of institutional, administrative and financial demands. One of the demands of the *acquis* is the establishment of environment protection that meets EU standards. The EU has created a number of legislative and policy documents pertaining to this issue. The EU accession process requires the candidate to make efforts to fulfill the conditions set by EU regulations to adopt the environmental *acquis*. The environmental *acquis* comprises approximately 300 legal instruments, mostly in the form of directives (Guide to the Approximation of European Union Environmental Legislation, 2012). In broad terms the *acquis* covers laws that treat cross-cutting issues, such as environmental impact assessments, access to information on the environment, nature legislation or framework legislation (waste framework legislation, water framework legislation etc.). Moreover, standards are set for the air and water quality, waste management, nature protection, industrial pollution control, chemicals and genetically modified organisms, noise, and nuclear safety and radiation protection.

Closing the environmental chapter in combination with building or rebuilding a transitional economy is especially challenging “if not close to impossible. It is of the utmost importance that the standards are adopted by the future members, not only for the benefit of the general state of the environment in Europe, but also to prevent “environmental dumping” in countries that have less rigorous legislative frameworks” (Vlašić and Vlašić Feketija, 2006, p. 328).

The Environmental DG provided assistance in complying with environmental legislation. This assistance included explaining the EU legislation, monitoring of the progress of transposition and implementation of the environmental *acquis*, technical support with paperwork and coordination of the assessments of the country's administrative capacity. In 1999 the EU initiated *Stabilization and Association Process* (SAP) as a framework policy for countries such as Croatia. It aimed to improve the environmental policies in applicant states for the longer term through:

- harmonization with the environmental norms and standards of the EU,
- increased importance of environmental issues at all levels of government,
- the exchange of experience with the new EU Member States who recently completed the transition,
- greater co-operation on transboundary environmental issues, and
- increased public access to environmental information.

The initial focus of transposition of environmental policies on physical reconstruction and rehabilitation was later shifted to institution-building with the aim of assisting reforms and bringing states closer to the EU. Croatia's Ministry of Foreign Affairs and European Integration had to prepare a *National Program for the Integration into the EU* with a timetable of specific legislative and non-legislative measures each year. The progress of implementing Chapters, including the Chapter on environment, was screened by the European Commission through the annual *Progress Report*.

Legislative Framework and Harmonization with EU

Croatia was developing the environmental legal framework even before the submission of application for the EU membership. The framework documents used as background documentation for other regulations were the 1992 *Declaration on the Environmental Protection* and the *Environmental Protection Act*. The *Declaration on Environmental Protection* initiated the development of a legal system pursuant to international treaties and standards, aimed to provide continual, systematic and efficient environmental protection. The law required the implementation of environmental impact assessment procedures and taking environmental measures within the framework of preparation and adoption of land-use plans. This requirement led to the passage of the *Environmental Protection Act* in 1994, which guarantees integral preservation of environmental quality and conservation of natural communities.

The *Environmental Protection Act* established a financing system, which combined central and local governance of environmental protection and specified the adoption of a national strategy and local programs, identified in-budget and extra-budget sources of financing and allowed for the imposition of local contributions and charges. The *Act* regulated environmental protection through tactical and planning documents at the national and local levels. In 1999, Croatia modified 1994's *Environmental Protection Act* and provided a legal framework for environmental protection. The Ministry of Environmental Protection and Physical Planning, which later became the Ministry of Environmental Protection, Physical Planning and Construction (MEPPPC), was created as a central body of the state administration in 2000. This ministry executed regulations issued by competent state authorities and enactments issued by the government, such as decree laws

and decisions (Croatia National Action Plan (NAP) for the Protection of the Mediterranean Sea against Pollution from Land-based Sources, 2005).

In addition to general and individual laws, there were a number of special administrative laws to regulate issues related to hazardous matters, chemicals, waste, noise and ionizing radiation. Environmental protection was also regulated under a number of subordinate pieces of legislation and other binding legislation. For example, the aim of the *Stabilization and Association Agreement*, signed by Croatia in 2001, was to prepare and induce reforms that eventually lead to EU membership. Specifically, in Title VIII *Cooperation Policies*, Article 103, the *Agreement* specified areas of environmental protection, with the aim of “combating the environmental degradation, with the view to promoting environmental sustainability” (Stabilization and Association Agreement, 2001). One of the activities along the way was the drafting of the Environmental Legislation Approximation Strategy, which has been elaborated with the support of the CARDS program.²⁸

The CARDS was a financial assistance program initiated by the EU in 2001 to support potential member states, such as Croatia, in strengthening institutional capacities. It lasted until 2006 (Vachudova, 2003, p. 153). The Commission set priorities for the CARDS assistance in each existing potential member state. One of the priority sectors for

²⁸ This program provides assistance to the Western Balkan states, participating in the stabilization and association process with the EU. The program allocated 10.5 million Euros for environmental sector in 2002-2006 in the region.

CARDS assistance in Croatia was environmental and nature resources.²⁹ CARDS assisted in implementing a number of environmental projects, such as the final report of the *Framework National Strategy for Waste Management with focus on Municipal Waste*, update of water management, developing the *Strategy for EU Environmental Law Approximation*, and executing the *Strategic Environmental Assessments* (Environmental Policy in South-Eastern Europe, 2007).

Other organizations responsible for environmental protection, such as the Environment Agency and the State Institute for Nature Protection, were formed in 2002. That same year the Croatian Parliament adopted the *National Environmental Action Strategy* and its executive document, the *National Environmental Action Plan*. The *National Environmental Protection Strategy* elaborated long-term national strategy for environmental protection and the *National Environmental Action Plan* became a concrete action program detailing long-term and short-term objectives. The *Strategy* was based on principles of sustainable development in managing the state of the environment, international obligations, key objectives, actions and priorities. The *Action Plan* contained complete action plans for specific environmental protection areas and economic sectors, including objectives, measures for achieving those objectives, the level of actions, responsible bodies, time tables, and possible sources of finance.

After Croatia submitted its application for EU membership in April 2003, the Commission prepared the *Opinion on Croatia's Application for Membership*, in which the environment was recognized as one of Croatia's weakest points. The *Opinion*

²⁹ Other priority areas for CARDS assistance in Croatia were refugee return; trade, investment climate and social cohesion; police system; integrated border management; public administration reforms.

acknowledged that Croatia's essential "elements of a legislative framework are in place to enable Croatia to pursue alignment with the *acquis*, although a significant increase in the priority given to environmental protection is necessary" preparations (Opinion on Croatia's Application for Membership, 2004). The Commission recommended initiating the negotiation process. The Council approved the *Decision on Principles, Priorities and Requirements Contained in the Accession Partnership* with Croatia in November 2005 in order to classify priorities of accession (European Commission, 2004c; European Commission, 2005a).

After this approval, Croatia moved to further develop and implement the legislative framework. Accordingly, Croatia was obligated to prepare an annual *National Program for the Integration into the EU* with a timetable of legislative and non-legislative measures (Ministry of Foreign Affairs and European Integration, News/Press Releases, 2006). The European Commission had been preparing an annual *Progress Report*³⁰ on Croatia since 2005 and used it for its regular statements to the Council and Parliament on the progress made by this potential member state. Through the annual *Progress Report*, the Commission monitored the progress of Croatia's realization of the priorities. Each report inspected if and how previously announced reforms had been carried out, examined new initiatives, and evaluated the overall level of implementation of the *acquis*. *Progress Reports* described the relations between Croatia and the Union, analyzed the situation in

³⁰ The Commission regularly submits to the Council reports on the progress made by candidate and potential candidate countries on their road towards the EU, including implementation and enforcement of EU standards. These reports serve as the basis for the findings and recommendations made by the Commission in the strategy paper and are aimed at allowing the European Council to take decisions on further steps.

Croatia in terms of the political and economic criteria for membership, and reviewed Croatia's capacity to assume the obligations of membership.

Progress on the environmental chapter was covered in each report as well. The report on the environment mainly focused on the creation of coordinating structures and mechanisms, which "have to be in place horizontally, between the national competent authority and other relevant line ministries and state administration bodies to overcome the high fragmentation of responsibilities, and vertically, between the national and local environment authorities" (Vlašić and Vlašić Feketija, 2006, p. 332). As a rule, legislation or measures which were being prepared or awaiting parliamentary approval were not taken into account. This approach ensured equal treatment across all reports and permitted an objective assessment.

The first reports from 2005 (Croatia Progress Report, 2005) indicated that during the reporting year most of the problems highlighted in the Opinion continued to threaten implementation of the *acquis*. The MEPPPC remained weak and hampered progress in harmonization and implementation of the environmental chapter. Poor implementation and enforcement of laws, such as public participation in environmental decisions or emissions trading directives, endured. The only progress made was made in the area of horizontal legislation, especially on air quality, water quality and waste management. Croatia was ordered to meet its Kyoto Protocol³¹ requirements, a draft timetable for transposition of the environmental *acquis* and strengthen the administrative capacities of

³¹ The Kyoto Protocol, adopted in 1997 is an international agreement linked to the United Nations Framework Convention on Climate Change.

the MEPPPS, the Directorate for Environmental Protection (DEP) and Directorate for Strategic and Integration Processes in Environmental Protection (DSIPEP).

In the following 2006 report (Croatia Progress Report, 2006) the Commission recognized strengthening administrative capacities of the MEPPPC, DEP and DSIPEP, which followed by their reorganization. However, staffing and enforcement/inspection systems were still insufficient, especially at the local level. Good progress continued in air and water quality. Croatia committed to ratify the Kyoto Protocol by the first quarter of 2007.

The 2007 report (Croatia Progress Report, 2007) recognized visible efforts to strengthen Croatia's environmental administrative capacity. However, further efforts were needed to ensure coordination between ministries and divisions responsible for issues related to the environment. Croatia was ordered to develop a comprehensive plan and timetable for allocating the necessary administrative capacity and financial resources to implement and enforce the *acquis* at national, regional and regional levels. Overall, good progress had been achieved in horizontal legislation, especially in climate change, air quality, waste management and chemicals. Croatia ratified the Kyoto Protocol and the Aarhus Convention, and adopted the new Environmental Protection Act. Significant improvements were noted in implementing legislation on monitoring greenhouse gas (GHG) emission. Croatia joined the United Nations Framework Convention on Climate

Change³² (UNFCCC) and presented its first inventory report on GHG emission. Progress began in nature protection, chemicals and GMOs.

The formal opening of Croatia's negotiating process in October 2005 was followed by the analytical overview and evaluation of the degree of harmonization of national legislation with the *acquis communautaire*, known as screening. The screening process started with the multilateral screening of Chapter 27 on Environment in April 2006, when the European Commission clarified details of the environmental *acquis* and its effects. In May 2006, bilateral screening was held (Ministry of Environmental and Nature Protection, Department of European Integration). Croatian representatives gave a summary of the status of transposition and implementation of the environmental *acquis*. In February 2007, the European Commission formally submitted the first two parts of the *Screening Report on Chapter 27 Environment* (Screening Report, Chapter 27 Environment, 2007) in Croatia. These documents described where Croatia was in the process and what it really had to do in order to achieve full legal harmonization with the *acquis*. Two additional parts, an assessment of the level of harmonization with the *acquis* and a recommendation for either opening negotiations or fulfilling benchmarks³³ prior to opening the negotiations, were sent to the member states.

³² The UN's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted on 25 June 1998 in Aarhus, Denmark at the Fourth Ministerial Conference in the 'Environment for Europe' process.

³³ Opening benchmarks, a new instrument designed by the EU, were used for the first time during Croatia's accession negotiations. They usually stipulate a law, strategy or action plan that the candidate country must adopt or some remaining obligation from the Stabilization and Association Agreement that the candidate country must fulfill.

The *Screening Report* stated that Croatia had achieved a satisfactory level of legislative alignment with the *acquis* in the environment chapter and taken concrete steps in all fields within the chapter to prepare for the transposition of the remaining parts of the *acquis*. Croatia had prepared a detailed analysis of remaining gaps and resources needed for an effective implementation of the environmental chapter. According to the report, the institutions responsible for implementation and enforcement were already in place at national, county and local levels, though they needed to be strengthened. Croatia indicated that the reinforcement and provision of financial resources would take place (*Screening Report*, Chapter 27 Environment, 2007, p. 20).

In June 2008 (Sopinska, 2008), after the European Commission verified the fulfillment of the opening benchmark, Croatia was invited to present its Negotiating Position, which had been adopted by the Croatian government. Meanwhile, the European Commission prepared Draft Common Positions (DCP), with recommendations for closing benchmarks.³⁴ The DCP was discussed and adopted by the European Council. Meanwhile, the *Progress Report* of 2008 (Croatia Progress Report, 2008) recognized the increase environmental administrative capacity. The *Action Plan* for creating administrative capacity and financial resources for implementing the *acquis* at national, regional and local levels was adopted, but further efforts were needed to strengthen implementation of the *acquis* and coordination between all institutions involved in environmental protection.

³⁴ Closing benchmarks are meant to finalize the harmonization with the *acquis* and must be fulfilled before the closing of the negotiations and/or prior to EU accession.

Progress continued in horizontal legislation, especially in the areas of air quality, chemicals and GMOs. Implementing regulations were adopted, which helped achieve full transposition of the Environmental Impact Assessment (EIA)³⁵ and the Strategic Environmental Assessment.³⁶ Establishment of the Environmental Protection Information System (EPIS) was on the way. Also, the Act on Ratification of the Memorandum of Understanding on Croatia's participation in the Community Civil Protection Mechanism was adopted.³⁷

The report of 2009 (Croatia Progress Report, 2009) discussed further progression of Croatia's environmental administrative capacity and improvement of coordination mechanisms between all institutions responsible for environmental protection. Horizontal legislation in terms of transposition process was progressing as well, especially in areas of air quality, industrial pollution control and risk management, and climate change. A Sustainable Development Strategy (SDS)³⁸ had been adopted and the protocol on SEA to

³⁵ The EU's EIA Directive (85/337/EEC) has been in force since 1985 and applies to a wide range of individual projects, as a part of the environmental assessment, which is a procedure ensuring that the environmental implications of decisions are taken into account before the decisions are made.

³⁶ Strategic Environmental Assessment is another part of the environmental assessment used by EU, which applies to assessment of policies of a wide range of public plans and programs (e.g. on land use, transport, energy, waste, agriculture, etc).

³⁷ The main role of the Community Mechanism for Civil Protection is to facilitate co-operation in civil protection assistance interventions in the event of major emergencies which may require urgent response actions. This applies also to situations where there may be an imminent threat of such major emergencies.

³⁸ SDS is long-term strategy to dovetail the policies for economically, socially and environmentally sustainable development, its goal being sustainable improvement of the well-being and standard of living of current and future generations.

the Convention on EIA in a Transboundary Context (ESPO Convention)³⁹ was ratified. However, implementation of provisions on public participation and access to justice in environmental issues remained weak.

According to the 2010 (Croatia Progress Report, 2010) and 2011 (Croatia Progress Report, 2011) reports Croatia made good progress in the environmental *acquis* regarding the transposition and implementation of the legislation. Both years' reports indicated that Croatia's environmental chapter preparations were nearing completion.

On February 18, 2010 the EU Common Position on Environment was adopted; and on February 19, 2010 Chapter 27 on Environment was formally opened. In the final draft of the EU Common Position presented to Croatia the following closing benchmarks (Delegation of the European Union to the Republic of Croatia, Press corner, 2010):

- adopt legislation to ensure transposition the *acquis* in the field of water quality, especially the new Water Act and the new Water Management Financing Act and continue further progress in legislative alignment in this sector by adopting implementing legislation,
- adopt legislation to ensure transposition of the *acquis* in the field of industrial pollution control and risk management and guarantees that classification, especially related to installations, are brought in the line with the *acquis*,
- continue alignment with the *acquis* in the remaining sectors of this chapter and exhibit full preparation to ensure the implementation and enforcement of the EU requirements at the date of accession, and

³⁹ The ESPO Convention is a key step to bringing together all stakeholders to prevent environmental damage before it occurs. The Convention entered into force in 1997.

- continue building administrative capacity at all levels, such as inspection services, in line with the Action Plan; improve coordination between all bodies responsible for environmental protection and exhibit readiness all appropriate administrative structures before accession to allow implementation and enforcement of the *acquis* in all sectors of this chapter.

The Croatian government adopted the Report on the Fulfillment of Obligations under Chapter 27 on September 9, 2010. A short time after, on December 22, 2010, it adopted the Addendum to the Government's Negotiation Position and provisionally closed Chapter 27 (Ministry of Foreign Affairs and European Integration, News/Press Release, 2010).

Who Does What?

Harmonization the candidate countries' legal and administrative systems to the large and complex body of EU law is an important task, requiring careful planning and ongoing management as well as completion by the time of accession. In terms of directives, the process of harmonization involves three elements: transposition (of legislation), implementation and enforcement. Candidate countries should have in place a framework for coordinating legislative and administrative practices across different ministries with a view to achieving full implementation in law and practice. The framework should incorporate consideration of regulatory activities. Candidate countries should also consider which areas of existing national law will be affected by the new legislation and require revision or cancellation (Guide to the Approximation of European Union Environmental Legislation, last update: 02/03/2012).

The value accorded to the environment, as evidenced by the size of its *acquis*, renders it one of the core areas for transposition, implementation and enforcement. Over the years, the EU has adopted a number of policies and initiatives regarding environmental issues and widened the scope of environmental policy from a regional approach to a global role in environmental governance.

Environmental protection largely happens at the national level. Most EU environmental laws set minimum standards but still may cause significant changes in laws of the candidate countries. It is important that the implementation process involve as many stakeholders as possible in discussing the pace at which change is introduced in candidate states and the manner in which it takes effect, as well as to how changes in regulatory practice are to be managed. Involvement of many stakeholders in the implementation process is important to candidate states and the EU because it may help the process of developing, monitoring and evaluating EU environmental policies.

The EU has provided continuity, with a firm output and growing number of environmental laws, in response to specific environmental challenges and conflicts with national sensitivities, specific economic developments and policies, and administrative challenges to achieving set targets. In response to the growing influence and ambition of EU environmental policies and the member states' own failure to deliver, member states have initiated attempts to renationalize environmental competencies and to introduce greater flexibility into EU laws.

The accession planning process is driven by the national program for the adoption of the *acquis*. The national plan provides a focal point for the overall co-ordination of

harmonization activities, such as adoption/transposition and enforcement, and is supported at the working level by a range of harmonization activities that prepare implementation plans at the directive level. Implementation plans set out actions required, draw up the timetable according to which activities are to be completed, and assign responsibilities and allocate resources.

The majority of the EU's environmental policy is agreed to at the community level, thus environmental priorities are no longer under exclusive domestic control. Member states are required to implement the EU's legislation or face fines for non-compliance. The legal basis for the EU's action on the environment is in the Union treaties, which set broad objectives for EU environmental policy (Articles 191–193, Title XX, 2008) and provide the Community with the competence to act in all areas of environmental policy.

The central government body responsible for environmental protection in Croatia is the Ministry of Environmental and Nature Protection (MENP).⁴⁰ The scope of the Ministry's responsibilities includes administrative and other tasks related to general environmental protection policy, sustainable development and also the fields of waste management, air quality protection, climate and ozone layer protection, environmental impact assessment, sea and coastal zone protection, and soil protection. This Ministry is also in charge of proposing, promoting and monitoring measures for environmental protection improvement, implementation of environmental impact assessment, developing proposals for environmental protection standards, and international environmental protection co-operation. It also performs tasks related to the participation of the Republic

⁴⁰ It is already the third reorganization of the ministry, which was known from 2000 as the Ministry of Environmental Protection and Physical Planning and later as the Ministry of Environmental Protection, Physical Planning and Construction.

of Croatia in the work of bodies of the European Union in the field of its responsibility by carrying out activities related to the process of EU integration in the environmental sector, environmental protection inspection, and promotion of environmental education and research in connection with environmental protection (Ministarstvo Zaštite Okolišta i Prirode, Scope of the Ministry).

An important role in the development and implementation of environment protection policies also belongs to the Croatian Council for Sustainable Development and Environmental Protection (SORZO) (Savjet za Održivi Razvoj i Zaštitu Okoliša c/o Ministry of Environmental Protection, Physical Planning and Construction), which in 2008 replaced Council for Environmental Protection (which was established in 2004) after the scope of the Council was widened to incorporate sustainable development issues. SORZO was established by the Croatian government for the purpose of achieving coordinated and harmonized economic development in the context of environmental protection and ensuring conditions for sustainable development, as well as for the continuity of professional and scientific bases for regulation of certain issues in environmental protection and sustainable development. The Council was requested to shape opinions, give suggestions for improvements and review documents regarding all aspects of environmental protection prior to their submission for approval to the Government and Parliament. The SORZO was also called to create a forum for discussion of questions on sustainable development and environmental policies, but not to directly initiate action.

The other important institutions for environment protection are the Croatian Environment Agency (CEA) and the Environmental Protection and Energy Efficiency

Fund (EPEEF). Established in 2002,⁴¹ the CEA is an independent public institution established by a decision of the government of the Republic of Croatia in the framework of the *Environment Protection Strategy of Croatia* to collect, integrate, process and provide environmental data and information necessary for efficient implementation of the environmental policy to the state government and parliament. In addition to these basic tasks, the CEA is pro-active in planning and developing new environmental protection forms, such as a landfill database, laboratory database, and air quality monitoring, and following up environmental action plans and projects. CEA harmonizes and co-ordinates the data flow and plans all parts of the national environmental information system (CEIS). The CEA uses the data from the CEIS for production of the State of the Environment Report of the Republic of Croatia and other various reports by individual topics (e.g., themes, regions, indicator impacts).

The EPEEF was established by the former Ministry of the Economy and the former Ministry of Environmental Protection and Physical Planning of the Republic of Croatia (Energy Institute of Hrvoje Pozar). From its founding in 2003, EPEEF has performed financing, preparation, implementation and development of programs, projects and related activities in conservation, sustainable use, protection and improvement of environment and in energy efficiency and renewable energy use. The Fund is financed by funds raised through different taxes imposed on environmental polluters. One part of the funds is used to achieve the goals of improving air, water and soil quality, protection of the sea, mitigation of climate change, and ozone layer protection through financing projects

⁴¹ European Network of the Heads of the Environment Protection Agencies: an informal grouping the heads and directors of environment protection agencies and similar bodies across Europe for exchanging views and experiences on issues of common interest in implementation of environmental policy.

dedicated to developing systems for measuring air quality and emissions, constructing filters for purifying emissions into the environment, reconstructing existing plants to reduce harmful emissions, transiting from solid fuels to gaseous fuels, improving the existing boilers and constructing eco heating plants. Certain funds have been invested in biological and landscape diversity in order to fulfil Croatia's obligations in its EU accession process. The second part of the fund is invested in energy efficiency projects which include the implementation of national energy programs and energy audits, promotion of renewable energy sources and sustainable building, promotion of educational, research and development studies and programs, promotion of cleaner transportation technologies and information campaigns like "Promoting Energy Efficiency in Croatia," "Energy Management in Cities and Counties," and governmental "Program for Energy Efficiency in Buildings Owned by the State - Bring Your House in Order" developed in collaboration with UNDP Croatia.

The MENP works closely with the CEA, EPEEF, and other government structures, and with different ministries responsible for environmental protection: the Croatian Parliament, the Government of the Republic of Croatia, the Ministries of Culture, Agriculture, Fisheries and Rural Development, Regional Development, Forestry and Water Management, the Sea, Transport and Infrastructure, Tourism, Health and Social Welfare, the Economy, Labour and Entrepreneurship, and so on. For example, if we look at waste management, the institutional responsibilities are divided across vertical sectors. The Croatian Parliament adopts relevant legislation and national strategies, such as the Waste Management Strategy. Parliamentary committees issue opinions on specific acts and documents. The Government adopts the waste management plan and implementing

legislation, proposes relevant legislation and strategies to Parliament and defines mandatory locations. Moreover, the Government ensures the capabilities and prescribes measures for hazardous waste management and waste incineration. As a state administrative body in waste management, MENP is responsible for preparing new primary legislation and standards, the National Waste Management Strategy and National Waste Management Implementation Plan, and implementing legislation. The Ministry approves reports on the state of the environment and the environmental protection programs and activities/interventions based on environmental impact assessments, issues permits for hazardous waste management and the incineration of waste, and makes concessions for specific waste category management (used tires, packaging waste, waste oils, etc.). Other responsibilities of MENP are the implementation of measures for hazardous waste management, inspection and supervision and enforcement of laws and secondary legislation, and monitoring the Croatian Environment Agency and Environmental Protection and Energy Efficiency Fund.

The EPEEF collects its own revenue from different environmental fees, including fees for burdening the environment with hazardous and non-hazardous industrial waste. The CEA primarily collects processes and provides data required for the efficient implementation of environmental protection policy. It performs tasks related to the development and coordination of the environmental protection information system. The CEA prepares the report on the state of the environment (reports on waste management are a component of that report), which is approved by the MENP.

Other stakeholders involved in waste management are companies registered and licensed for the collection and transport, recovery and/or disposal of waste, or for the

management of special categories of waste, consulting firms, professional and non-governmental organizations. The State is responsible for managing hazardous waste and waste incineration. Regional and local governments implement public policies in their own domains according to the waste management plans for each level. Towns and municipalities are local self-government units that are responsible for managing municipal waste, preparing waste management plans and determining locations in existing plans for their respective areas. Accordingly, on the regional level the Counties and the City of Zagreb are responsible for managing all other types of waste, excluding municipal waste which is under the jurisdiction of local government (municipalities and towns issue waste management plans for their respective areas and gather and submit data on waste, such as records of emissions into the environment). The state administration offices in the counties issue permits for non-hazardous waste management.

Conclusion

After long-term negotiations and the realization of the numerous programs and projects of Croatia's accession to the EU, the work on the finalization of the Treaty of Accession with Croatia was completed. On October 12, 2011 the Commission gave its formal favorable Opinion on Croatia's readiness for accession, in line with Article 49 of the Treaty on European Union. After the European Parliament had given its consent on December 1, 2011 the Council took a positive decision on the admission of Croatia. The target date for Croatia's accession to the EU, as agreed by Member States and included in the Accession Treaty, is July 1, 2013. In meantime, the Treaty must be ratified by the present member states in line with their constitutional requirements. These steps will make

Croatia the 28th member of the European Union from mid-2013 and the EU's second ex-Yugoslav member after Slovenia.

The negotiations between the EU and Croatia were demanding, with a central focus on the main challenges posed to Croatia by the Copenhagen criteria and reviews of the progress made towards fulfilling the Accession Partnership priorities. Under the Accession Partnership, the EU provided guidance on reform priorities to Croatia. Progress on these reform priorities was monitored by the SAA and demonstrated Croatia's increasing capability in the process of accession to EU. The Tudjman's authoritarian and isolated Croatia gradually moved toward becoming an equal in status and character to other European states. Croatia's elite was able identify that the prospect of joining the EU could significantly enhance chances to gain actual recognition and prosper in more secure space.

Overall, Croatia demonstrated great ability to assume obligations of EU membership, in particular, the *acquis*, as expressed in Treaties, legislation and policies of the Union. As regards the environment *acquis* there has been noticeable progress with improvements were made in strengthening Croatia's administrative capacity and coordination between ministries and bodies on environmental protection. As part of the improvements, the former Ministry of Environmental Protection, Physical Planning and Construction divided into separate Ministries with narrow specializations: the Ministry of Environmental and Nature Protection and the Ministry of Construction and Physical Planning.

Croatia has made good progress in horizontal legislation, especially in waste management. For example, the waste management plan for the period 2007-2015 has been adjusted to improve financing and implementation. Croatia has adopted all the necessary strategic and planning documents and all the by-laws that needed to be adopted the Waste Act. Implementation of activities aimed at remediation of existing landfills and the construction of new waste management centers are ongoing.

CONCLUSION

The EU's environmental policy has made a long journey from being just a supporting mechanism of the economic-political intergovernmental agreement at its start to its current status as an independent policy with demanding rules and an important role in the European integration process. Over the past 30 years, the EU has not only developed the main core of the environmental policy but also increasingly expanded its legislative framework. A special role in this development was played by the Single European Act: the main contributor to the enhanced importance of the environmental policy and becoming EU's independent policy-making instrument.

The dynamics of the EU's environmental policy significantly changed with each wave of the European enlargement. The Southern and Central and Eastern Europe enlargements have a very exceptional place in this matter. These enlargements triggered the introduction of more strict EU membership conditions by extending environmental considerations beyond just political criterion and imposing a rule for each potential member state to demonstrate ability to harmonize and implement the whole body of Community's *acquis* prior to accession. Accession to the EU became more challenging but not less desirable.

Croatia started its accession to the EU right at the time of the application of mandatory obligation for strict membership conditionality. Negotiations between Croatia

and the EU were long and demanding. Challenges were explicit due to the differences between Croatia and EU regarding administrative, political, economic, social and financial strengths but it was “an opportunity for a complete transformation of Croatian society” (Jović, 2006). Moreover, in the specific Croatian perspective, membership of the European Union became the ultimate way of recognition of Croatia as equal and trusted state.

Croatia also was the first potential member state which had to meet opening and closing benchmarks. However, Croatia demonstrated its commitment to become a next member of the EU through the challenging process of harmonization and implementation of the Union’s large legislative body. Implementation of the environmental *acquis* for Croatia was most demanding chapter of accession negotiations with EU. The adoption of the numerous directives and laws regarding environmental protection became a very difficult task for Croatia due to its low administrative and financial capacity and almost non-existent horizontal cooperation between organizations responsible for environmental protection. But Croatia could recognize long-term benefits of implementing the environmental chapter, such as better public health, more rational use of natural resources, and economic prosperity, and made a great effort to harmonize with EU’s environmental legislative framework.

Croatia is no longer an exception, but is a typical European state in terms of international law, international relations, its democratic credentials and administrative capacity. The Croatian political elite acknowledges that in the context of modern Europe, only states with recognized socio-economic, political and institutional credentials are to be members of the European Union. Accession in June 2013 is supposed to be the end of the

long journey in which Croatia has been observed, advised and often treated with some suspicion.

What comes next? Croatia should take over and implement the environmental chapter of the *acquis* from the date of accession. The potential transboundary impact of the transitional arrangements is limited. Member States have given a mandate to the European Commission to carefully monitor the progress Croatia is making in all the areas covered. The Accession Treaty includes provisions which allow for appropriate measures to be taken in case problems are identified during the monitoring process. To guarantee a controlled implementation during transition period, the transitional arrangements include a detailed legal binding of the closing benchmarks. The closing benchmarks are recorded in the Accession Treaty and the scope of transitional arrangements is specified for each field in horizontal legislation and backed up by detailed financing strategies.

The EU will maintain that the ‘enlargement door’ is open to any European state which is able to meet conditionality criteria for membership. Possible maintaining the strict rules of complete conditionality and more successful preparation of potential member states for the EU membership should continue to be an essential precondition for the EU’s future development. Meeting obligations of the environmental *acquis* is a minimum requirement in order to ensure greater reforms in those states interested in eventually joining the EU and the capacity of the EU to further develop environmental policy in the next enlargement.

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