

MEMORANDUM OF UNDERSTANDING

between the European Community and the Republic of Croatia

on the association of the Republic of Croatia

to the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006)

The Commission of the European Communities, on behalf of the European Community, hereinafter referred to as “the Commission”,

on the one part, and

the Government of the Republic of Croatia, on behalf of the Republic of Croatia, hereinafter referred to as "Croatia",

on the other part,

hereinafter jointly referred to as “the Parties”.

WHEREAS:

- (1) The Framework Agreement between the European Community and the Republic of Croatia on the general principles for the participation of the Republic of Croatia in Community programmes was adopted on 22 November 2004¹, and entered into force on 22 August 2005 (hereinafter called “the Framework Agreement”), leaving the Commission and the competent authorities of Croatia to determine the specific terms and conditions, including the financial contribution, with regard to such participation in each particular programme;

¹ OJ L 192, p.16 of 22/07/2005

- (2) The European Parliament and the Council adopted on 27 June 2002 Decision N°2002/1513/EC concerning the Sixth Framework Programme for research, technological development and demonstration activities, contributing to the creation of the European Research Area and Innovation (2002-2006)² (hereinafter called “the Sixth Framework Programme”).

HAVE AGREED AS FOLLOWS:

Article 1

Research Programme

Croatia shall participate in the Sixth Framework Programme including the following specific programmes and rules of participation:

Council Decision N°2002/834/EC adopted on 30 September 2002 concerning a specific programme for research, technological development and demonstration: "Integrating and strengthening the European Research Area" (2002-2006)³;

Council Decision N° 2002/835/EC adopted on 30 September 2002 concerning a specific programme for research, technological development and demonstration: "Structuring the European Research Area" (2002-2006);⁴

Council Decision N° 2002/836/EC adopted on 30 September 2002 concerning a specific programme of research, technological development and demonstrative activities to be carried out by means of direct actions by the Joint Research Centre (2002-2006)⁵; and Regulation N°2002/2321/EC of the European Parliament and of the Council adopted on 16 December 2002 concerning the rules for the participation of undertakings, research centres and universities and for the dissemination of research results, for the implementation of the European Community Sixth Framework Programme (2002-2006)⁶

Article 2

Terms and conditions with respect to participation in the Programme

1. Croatia shall participate in the activities of the Sixth Framework Programme in accordance with the conditions laid down in the Framework Agreement and in conformity with the objectives, terms and conditions specified in this Memorandum of Understanding and the Annexes thereto.

² OJ L 232, p.1 of 29/8/2002

³ OJ L 294, p.1 of 29/10/2002

⁴ OJ L 294, p.44 of 29/10/2002

⁵ OJ L 294, p. 60 of 29/10/2002

⁶ OJ L 355, p. 23 of 30/12/2002

2. Legal entities established in Croatia shall participate in indirect actions of the Sixth Framework Programme under the same conditions as those applicable to the legal entities of Member States of the European Union, subject to the terms and conditions established by, or referred to in this Memorandum of Understanding and as specified in Annex 1.
3. To participate in the Sixth Framework Programme, Croatia shall pay its financial contribution to the General Budget of the European Union in accordance with Article 3 hereunder and Annex II.
4. Representatives of Croatia shall be allowed to take part, as observers and for points which concern Croatia, in the management committees responsible for monitoring the specific programmes under the Sixth Framework Programme for which Croatia contributes financially.

These committees shall meet without the presence of representatives of Croatia at the time of voting. Croatia will be informed of the result.

Participation as referred to in this paragraph shall take the same form, including procedures for receipt of information and documentation, as that applicable to representatives from Member States of the European Union.

5. Representatives of Croatia shall be allowed to take part, as observers and for the points which concern Croatia and for which Croatia contributes financially, in the Board of Governors of the Joint Research Centre.⁷

Participation as referred to in this paragraph shall take the same form, including procedures for receipt of information and documentation, as that applicable to representatives from Member States of the European Union.

6. Travel costs and subsistence costs incurred by representatives of Croatia participating in meetings of the committees and bodies referred to in this Memorandum of Understanding, or to meetings related to the implementation of the Sixth Framework Programme or of this Memorandum of Understanding, shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for representatives of the Member States of the European Union.
7. One of the official languages of the Community shall be used for the procedures related to requests, contracts and reports, as well as for other administrative aspects of the Sixth Framework Programme.

⁷ OJ L 107, p.12 of 30/4/1996

Article 3

Financial contribution of Croatia

1. The rules governing the calculation and the payment of the financial contribution of Croatia are set out in Annex II.
2. The financial contribution of Croatia shall be added to the amount earmarked each year in the General Budget of the European Union for commitment appropriations to meet the financial obligations arising out of different forms of measures necessary for the execution, management and operation of the Sixth Framework Programme.
3. Part of the financial contribution of Croatia may be financed under the relevant Community external aid instrument, if Croatia so requests.

Article 4

Reporting and Evaluation

Croatia shall submit to the Commission relevant reports and take part in other specific activities provided for by the Community in the context of the Sixth Framework Programme.

Without prejudice to the responsibilities of the Commission and the Court of Auditors of the European Communities in relation to the monitoring and evaluation of the Sixth Framework Programme, the participation of Croatia in the Sixth Framework Programme shall be continuously monitored on a partnership basis involving the Commission and Croatia.

The rules concerning the financial control, recovery and other antifraud measures are laid down in Annex III.

Article 5

Intellectual property rights

“Intellectual property” has the meaning given in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm on 14 July 1967.

Intellectual Property Rights created or furnished under this Memorandum of Understanding shall be allocated in accordance with the rules of participation and the provisions of the Sixth Framework Programme model contract.

Article 6

Final provisions

This Memorandum of Understanding shall apply for the duration of the Sixth Framework Programme, as from 1 January 2006.

Projects and activities in progress at the time of termination and/or expiry of this Memorandum of Understanding shall continue until their completion under the conditions laid down in this Memorandum of Understanding.

The Annexes form an integral part of this Memorandum of Understanding.

This Memorandum of Understanding may only be amended in writing by common consent of the Parties.

Croatia's association to the Seventh Framework Programme, if Croatia so requests, shall be the subject to a new Memorandum of Understanding to be agreed among the Parties.

Article 7

Entry into force

This Memorandum of Understanding shall enter into force on the date of signature or on a later date when Croatia has notified the Commission that all necessary internal conditions for entry into force of this Memorandum of Understanding have been fulfilled.

This Memorandum of Understanding shall take effect on 1 January 2006.

Done at Zagreb, on 18 November 2005, in two originals, in English and Croatian language.

*For the Commission,
on behalf of the European Community*

*For the Government of Croatia,
on behalf of the Republic of Croatia*

*Janez Potočnik
Member of the European Commission
for Science and Research*

*Dragan Primorac
Minister of Science, Education and Sports*

ANNEX I

Terms and conditions for the participation of legal entities of Croatia in the “Sixth Framework Programme”

1. For the purpose of the participation of Croatia in the Sixth Framework Programme, a legal entity of Croatia is defined as any natural person, or any legal person created under the law of Croatia, having legal personality and being entitled to have rights and obligations of any kind in its own name.
2. Participation of legal entities of Croatia in the Sixth Framework Programme shall follow the conditions laid down for “candidate associated countries” as specified in the Rules of participation.
3. Legal entities of Croatia shall be taken into consideration, alongside Community’s ones, for the selection of independent experts for the tasks and under the conditions foreseen in the Rules of participation.
4. In conformity with the Rules of participation in the Sixth Framework Programme and the Community's Financial Regulation, contracts concluded by the Community with any legal entity of Croatia in order to perform an indirect action shall provide for controls and audits to be carried out by, or under the authority of, the Commission, including the European Anti Fraud Office (hereinafter called OLAF), and the Court of Auditors of the European Communities. In a spirit of cooperation and mutual interest, the relevant Authorities of Croatia shall provide any reasonable and feasible assistance as may be necessary or helpful or requested under the circumstances to perform such controls and audits.
5. The Parties will make every effort, within the framework of the existing provisions, to facilitate the free movement and residence of research workers participating in the activities covered by this Memorandum of Understanding and to facilitate cross-border movement of goods intended for use in such activities.
6. A joint committee shall be established under this Memorandum of Understanding, to be called "EC-Croatia Research Committee", whose functions shall include:
 - reviewing, evaluating and discussing measures to ensure the implementation of this Memorandum of Understanding,
 - examining any measure of a nature to improve and develop cooperation.

It shall meet at the request of any of the Parties and at least once a year.

ANNEX II

Rules governing the financial contribution of Croatia to the Sixth Framework Programme

I. Calculation of Croatia's financial contribution

1. The financial contribution of Croatia to the Sixth Framework Programme in 2006 shall be established in proportion to, and in addition to, the amount available that year in the general budget of the European Union for commitment appropriations needed for the implementation, management and operation of the Sixth Framework Programme.
2. The proportionality factor governing the contribution of Croatia shall be obtained by establishing the ratio between the gross domestic product of Croatia, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union and Croatia. This ratio shall be calculated on the basis of the latest statistical data pertaining to the same year from the Statistical Office of the European Communities (Eurostat), available at the time of publication of the preliminary draft budget of the European Union.
3. In order to facilitate its participation in the specific programmes, the contribution of Croatia will be implemented as follows for the financial year 2006:
 - contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0, 5.
4. The Commission shall communicate to Croatia, as soon as possible after the entry into force of the Memorandum of Understanding, the following information together with relevant background material:
 - the amounts in commitment appropriations in the statement of expenditure of the preliminary draft budget of the European Communities corresponding to the Sixth Framework Programme;
 - the estimated amount of the contributions derived from the preliminary draft budget, corresponding to the participation of Croatia in the Sixth Framework Programme according to paragraphs 1, 2 and 3.

Once the general budget has been finally adopted, the Commission shall communicate to Croatia, in the statement of expenditure corresponding to Croatia's participation, the final amounts referred to in the first subparagraph.

II. Payment of Croatia's financial contribution

1. The Commission shall issue, at the latest on 30 January and on 15 June of 2006, a call for funds to Croatia corresponding to its contribution under this Memorandum of Understanding.

2. These calls for funds shall provide, respectively, for the payment of:
 - six-twelfths of Croatia's contribution not later than 15 March; and
 - six-twelfths of Croatia's contribution not later than 20 July.

However, given the last year of the framework programme, the full amount of Croatia's contribution shall be paid by no later than 20 July 2006.

3. The contribution of Croatia shall be expressed and paid in euros.
4. Payment by Croatia shall be credited to the Community programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Communities. The Financial Regulation applicable to the general budget of the European Communities shall apply to the management of the appropriations.
5. Croatia shall pay its contribution under this Memorandum of Understanding according to the schedule in this paragraph.

Any delay in the payment of the contribution shall give rise to the payment of default interest by Croatia on the outstanding amount from the due date. The interest rate for amounts receivable not paid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Communities, in force on the first calendar day of the month in which the due date falls, increased by three and a half percentage points.

In case the delay in the payment of the contribution is such that it may significantly jeopardise the implementation and management of the programme, participation in the Sixth Framework Programme of Croatia will be suspended by the Commission following the absence of payment 20 working days after a formal letter of reminder sent to, without prejudice to the Community's obligations according to contracts already concluded pertaining to the implementation of selected indirect actions.

6. At the latest on 31 May of the year 2007, the statement of appropriations for the Sixth Framework Programme of that financial year, shall be prepared and transmitted to Croatia for information, according to the format of the Commission's revenue and expenditure account.
7. The Commission, at the time of the closure of the accounts relating to the 2006 financial year, within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Croatia.

This regularisation shall take into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, de-commitments, or by supplementary and amending budgets during the financial year.

This regularisation shall occur in July 2007. Further regularisation shall occur every year until July 2010.

ANNEX III

FINANCIAL CONTROL, RECOVERY AND OTHER ANTIFRAUD MEASURES

I. CONTROLS AND ANTIFRAUD MEASURES BY THE COMMUNITY

1. In accordance with Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁸, Commission Regulation N° 1261/2005 of 20 July 2005⁹ amending Regulation N° 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation and any future amendments (hereafter called Financial Regulation), Council Regulation (EC, Euratom) N° 2988/95 of 18 December 1995¹⁰ on the protection of the European Communities financial interests and with the other rules referred to in this Memorandum of Understanding, the contracts concluded with beneficiaries of the programmes established in Croatia, shall provide for financial or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Commission agents or by other persons mandated by the Commission.
2. Commission agents and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts concluded to implement the instruments referred to in this Memorandum of Understanding. The European Court of Auditors shall have the same rights as the Commission.
3. On the basis of this Memorandum of Understanding, the Commission, including OLAF, shall be authorised to carry out on-the-spot checks and inspections on Croatia's territory, in accordance with the procedural provisions of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996¹¹, in order to protect the European Communities financial interests against fraud and other irregularities and Regulation (EC) N° 1073/1999 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (OLAF)¹².

These checks and inspections shall be prepared and conducted in close collaboration with the competent Croatian authorities designated by the Croatian authorities, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections so that they can provide all the requisite help.

If the Croatian authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly with them.

⁸ OJ L 248, p.1 of 16/09/2002

⁹ OJ L 201, p.3 of 02/08/2005

¹⁰ OJ L 312, p.1 of 23/12/1995

¹¹ OJ L 136, p.1 of 31/05/1999

¹² OJ L 292, p.2 of 15/11/1996

Where the participants in the programmes resist an on-the-spot check or inspection, the Croatian authorities, acting in accordance with national rules, shall give the Commission, including OLAF, inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

The Commission, including OLAF, shall report as soon as possible to the Croatian authorities any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event Commission, including OLAF, shall be required to inform the above-mentioned authority of the result of such checks and inspections.

II. INFORMATION AND CONSULTATION

1. For the purposes of proper implementation of this Annex, the competent Croatian and Community authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.
2. The competent Croatian authorities shall inform the Commission without delay of any irregularity or any suspicion thereof, as regards the conclusion or implementation of the contracts concluded under this Memorandum of Understanding and implementation of the contracts concluded in application of the instruments referred to in this Memorandum of Understanding.

III. ADMINISTRATIVE MEASURES AND PENALTIES

Without prejudice to application of Croatia's criminal law, administrative measures and penalties may be imposed by the Commission in accordance with the Communities Financial Regulation.

Appropriate measures shall also be taken by Croatia to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used.

Croatia shall also take all necessary measures to ensure that the European Commission, OLAF and the Court of Auditors of the European Communities are granted powers to carry out financial control and audits by or under the authority of the European Commission, OLAF and the Court of Auditors of the European Communities, with regard to beneficiaries or contractors established in Croatia.

IV. RECOVERY

Decisions taken by the Commission within the scope of this Memorandum of Understanding which impose a pecuniary obligation on persons other than States shall be enforceable in Croatia. The enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of Croatia shall designate for this purpose and shall make known to the Commission. When these formalities have been completed on application by the Commission, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority. The legality of the Commission decision shall be subject to control by the Court of Justice of the European

Communities.

Judgments given by the Court of Justice of the European Communities pursuant to an arbitration clause in a contract within the scope of this Memorandum of Understanding shall be enforceable on the same terms.

V. DIRECT COMMUNICATION

The Commission shall communicate directly with any participant in the Sixth Framework Programme established in Croatia and with their subcontractors. They may submit directly to the Commission all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Memorandum of Understanding and of the contracts concluded to implement them.