

EU Accession Guidelines

Sharing Croatia's Experience - Chapter 27

Environment

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Environment

Sarajevo, March 2012

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Croatia's accession timeline – Chapter 27: Environment

2003	<i>February 21:</i>	Croatia submitted a formal application for EU membership
	<i>July 10:</i>	European Commission presented Croatia with a questionnaire
	<i>October 9:</i>	Croatia submitted answers to the EC questionnaire
2004	<i>April 20:</i>	European Commission replies to the answers with a positive Avis
	<i>June 18:</i>	Croatia receives official candidate status
	<i>December 20:</i>	European Council sets March 16 2005 for beginning the negotiations
2005	<i>March 16:</i>	Negotiations postponed by the EU Council
	<i>October 4:</i>	Opening of negotiations
	<i>October 20:</i>	Beginning of the screening process
2006	<i>April 3 – 11:</i>	Screening I (EC – Croatia) – Explanatory Meetings
	<i>May 15 – 19:</i>	Screening II (Croatia – EC) – Bilateral Meetings
2007	<i>February 1:</i>	European Commission presented to the Member States, Screening Report for the chapter 27, and proposed one opening benchmark.
	<i>April 3:</i>	EU Council decides upon readiness of Croatia for the chapter opening or setting up additional benchmarks. Very same day, German presidency has officially informed Croatia regarding the opening benchmark for chapter 27.
2008	<i>February 29:</i>	Croatia officially presented all documentation on fulfilment of the benchmarks for the chapter opening, to the EU Commission.
	<i>June 25:</i>	EU Presidency invited Croatia to submit its Negotiations Positions for the chapter 27.
	<i>July 10:</i>	Croatia submits Negotiating Position for Chapter 27 to the EU presidency, in which it requested transitional periods and two technical adjustments of EU Council Directives.
2009		Croatia negotiates its positions with the EU
2010	<i>February 18:</i>	EU adopted its Common Position in chapter 27, that determined four closing benchmarks.
	<i>February 19:</i>	Formal chapter opening at the Intergovernmental conference.
	<i>September 9:</i>	Croatia adopted and submitted final Report on fulfilment of the obligations in chapter 27 to the EU.
	<i>November 11:</i>	Croatia adopted and submitted to the EU Presidency an Addendum to its Negotiations Position, in which it has altered its original requests for the Transitional Periods, but also introduced new Negotiations requests.
	<i>December 22:</i>	EU adopted Common Positions for chapter 27 closure, in which it has accepted Negotiation positions of Croatia. The same day chapter has been closed at the Intergovernmental session.

Introduction: the Purpose of these Guidelines

These guidelines are addressed to policy makers and policy analysts interested in better understanding the EU accession process pursued successfully by the most recent candidate completing accession negotiations, Croatia. We are convinced that Croatia's recent experience is extremely relevant to all future negotiating countries, in particular Croatia's neighbour, Bosnia and Herzegovina. This document addresses basic principles of chapter 27 –Environment and it serves as a contribution to understanding all the complexities of the process that Bosnia will face with in the future. It contains number of practical and useful examples anyone working in the public sector will come across.

Croatia's Accession Timeline: it took a decade

2001	Stabilization and Association Agreement
2003	Application for membership
2005	Opening of negotiations
2011	Concluding of negotiations

It took Croatia a decade to do so under a new and more demanding accession framework, defined in a number of recent EU core documents: the new framework for negotiations (Brussels European Council 2004), the renewed consensus on negotiations (Brussels European Council 2006) and the 2008 Council Conclusions on Enlargement Strategy. These guidelines explain in detail what these provisions actually meant in practice.

Bosnia has yet to submit its application. If Bosnian policy makers were to set an ambitious objective for their accession talks, it would be to conclude them as rapidly as Croatia.

Croatia template for Bosnian accession ambitions

2012	Application for membership
2014	Opening of negotiations
2020	Concluding of negotiations

These guidelines are based on the assumption that it would be useful for Bosnian policy makers to set themselves such a goal; ambitious yet not unrealistic. For this to be a meaningful exercise, however, it is important to develop a deeper understanding of the accession process. This requires the accession process to be broken down into different components. In this case, we do so by focusing in particular on one of the most comprehensive areas in the context of accession talks: environmental policy.

This involves particular understanding of the following key stages in the EU accession process:

- The questionnaire and the opinion (in the case of Croatia 2003 – 2004)
- The explanatory and bilateral meetings-*Screening* (2006)
- The opening and closing of a chapter, in this case Chapter 27 (2010)

These guidelines look at each of these three crucial steps in detail.

We first examine what the state of Croatian environmental policy was, as revealed by the first step (questionnaire and opinion): the starting position. We then look at how specific challenges for the environmental accession process were defined in the screening phase: defining the

specific hurdles and so-called opening benchmarks. Finally, we look at what it took to close this chapter, one of the last to be closed: reaching the finishing line.

These guidelines are based on a series of interviews with key individuals involved in the accession process in Croatia, including many key people working on Chapter 27 and all relevant documents regarding this area have been collected and made available at Popualri website.



Adopting the EU acquis

Acqui Communautaire

- In order to become an EU member state, a candidate country needs to accept the Community acquis or *acquis communautaire* of the EU. The term is French in origin and literally translates into English as “*that which has been agreed*”. It refers to the institutions, and legal rules of the European Union, and includes regulations, directives, decisions, guidance and is constantly being amended to improve the life of European citizens. As EU legislation grows the *acquis* expands. The adoption of the *acquis* into candidate state legislation involves the adoption of binding legal measures and country-specific decisions on these measures. Compliance with the *acquis* requires significant investment. Candidate countries must bring their institutions, management capacity and administrative and judicial systems up to EU standards at state level and lower administrative levels as well. ***How a country does this is ultimately its own decision. It must, however, convince the EU that it is able to implement and enforce the acquis. This will always involve coordination between many different institutions at national and lower levels of government.***

Chapter 27: Environment

- For accession negotiations with Croatia and Turkey the *acquis* was split into 35 chapters. Environmental policy is Chapter 27 and aims to promote sustainable development and protection of the environment for present and future generations in candidate and member states. The EU approach involves horizontal legislation and the introduction of the Framework Directives to better integrate laws for soil, water, air, biota, or any other parts of the environment that can contain contaminants.
- Chapter 27: The Environment consists of over 200 major legal acts covering eight broad categories: horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control, chemicals and noise. Except noise, each category is further divided into specific issues. For example, Waste Management deals with 11 separate issues: hazardous waste, packaging waste, sewerage sludge, waste oils disposal, PCBs/PCTs, battery disposal and labelling, landfill of waste, incineration of waste, disposal of vehicles, waste electronics disposal, and hazardous substances (See Annex 1)

Environment Directives

- One of the Directives is the Landfill Directive which defines different categories of waste which include municipal, hazardous, non-hazardous and inert waste and applies to all landfills. It further divides landfills into 3 classes: landfills for hazardous waste, non-hazardous waste and inert waste with a specific state acceptance procedure in place. It further outlines which wastes are not accepted at the landfill and sets up a system of operating permits for landfill sites with clear guidelines of what a permit application must entail. Member States must comply with the Directive, meaning all landfills will only continue to operate if they are aligned with EU standards set out in the Directive.
- Hazardous waste poses a great risk to both the environment and human health, therefore requiring stricter controls. Additional labelling, record keeping, monitoring and control obligations from the producer to the disposal site are required in order to properly manage hazardous waste, minimizing its risks on the environment and human health.
- Alternatively, if your business makes, fills, sells or handles packaging or packaging materials, you should keep the amount of packaging you use to a minimum, design your packaging so that it is easy to reuse and recycle, and minimize the amount of waste you have to dispose of.

Environmental Governance: Croatian Institutions and Legislation

With a population of 4.4 million, the Republic of Croatia is a unitary democratic parliamentary republic. The structure of its public administration is not overly complicated; one president and one prime minister, a government that in 2000 had 19 ministers in charge of particular sectors of activity with the help of four deputy prime ministers.

On paper, Environmental protection had started in Croatia as early as 1990 with the Constitution (December 22, 1990) which includes an obligation to protect the environment and nature and ensures the right of citizens to a healthy environment. In October 1994, the Law on Environmental Protection (EPL) was adopted¹. This, along with the Constitution, was the legal basis for regulating environmental protection in Croatia, and any other environmental by-laws had to be in line with the fundamental law². It was the mother of all laws addressing environmental issues. Adopted in '94 and revised in '99, it took into consideration EU directives, the experience of developed countries and universally accepted principles of environmental protection. Fortunately, the large majority of regulations on environmental protection in Croatia had been harmonized with the two. Additionally, National Environmental Strategies and Action Plans were already geared to fit within the framework of relevant EU Directives.

During the 1990's Croatia's environmental institutional structure lacked clear mandates and competencies. A single authority in charge of environmental policy did not exist. Instead, there were multiple ministries and institutions in charge of specific aspects of the environment. Coupled with a lack of cooperation between state institutions, this led to a very inefficient institutional set-up regarding environmental issues.

Prior to 2000 the structure changed a lot. The changes in competencies can be seen in the table below:

Year	Competent Authority
1990 – 1994	Ministry of Environmental Protection, Physical Planning & Construction
1995 – 1997	State Directorate for the Protection of Cultural and Natural Heritage
1997	Ministry of Culture (The Nature Protection Directorate has been an integral part of the Ministry since 2004)
1997 – 2000	State Directorate for Nature and Environmental Protection
2000 – 2004	Ministry of Environmental Protection and Physical Planning
2004–Present	Ministry of Environmental Protection, Physical Planning & Construction

In an attempt to centralize environmental protection, the Ministry of Environmental Protection and Physical Planning (MEPPP) was established in the year 2000 as the central body for general environmental policy, which would later become a focal point for EU negotiations in the area of environment. By 2003, the MEPPP had the following structure:

¹Prior to 2000, the Nature Protection Act, the Air Protection Act, the Waste Management Act, and the Water Act were adopted as well.

² Economic Commission for Europe, Committee on Environmental policy: Environmental Performance Reviews Croatia

MEPPP								
Cabinet of the Minister	Building Directorate	PR Department	Physical Planning Institute	Secretariat	Inspection Directorate	Nature Protection Directorate Inspection Departments for all counties and the city of Zagreb	Environmental Protection Directorate	Administrative-Legal Affairs Directorate sub-sections for marine, coastal and soil protection

In addition to centralizing environmental institutions and passing environmental legislation, Croatia was also taking note of the governing principles of EU environmental policies even prior to applying for membership to the EU. The main principle governing environmental regulation in Croatia at the time was the prevention principle, which called for all preliminary environmental protection measures to be applied and an obligation for enterprises to cause minimal environmental pollution. Other principles were the precautionary principle, the integrity principle, the public participation principle, and the polluter-pays principle; all very essential in their own right. These principles were already called for in many directives such as the Polluter Pays Principle³ in the Waste Directive⁴. They were already coming from European standards.

1. Starting Position: Environmental Policy on the Eve of Accession Talks (2003 – 2005)

1.1. Questionnaire

With the EU declaring its intention towards the Western Balkans in 1999, Croatia decided that it was ready to apply for EU membership in 2003. One of the initial mechanisms to prove to the EC that a candidate country has the capacity to implement the *Acquis* is the questionnaire. On July 10, 2003, the European Commission President, Romano Prodi, presented Croatian Prime Minister Ivica Račan with a *questionnaire*⁵ containing about 2,500 queries with a number of sub-questions and additional questions that Croatia needed to answer within the next three months.

The Croatian Ministry of Foreign Affairs and European Integration⁶, which had been coordinating activities and tasks emerging from Croatian obligations on the path towards the EU, performed

³ This principle stipulates that those who pollute bear the total cost of waste management, including adoption of preventive measures and elimination of damage caused by their activities.

⁴The Waste Directive establishes a legal framework for the treatment of waste within the Community. It aims at protecting the environment and human health through the prevention of the harmful effects of waste generation and waste management.

⁵The EC Questionnaire included both simple and extremely complex questions regarding all aspects of Croatian society; the legal system, the constitution, laws and regulations, statistics, foreign affairs, infrastructure, government subsidies to different branches of the economy, food safety, environment, and many more.

⁶ Ministry of European Integration formed within the Croatian Government in 2000.

the Questionnaire analysis and assigned chapters/questions to respective ministries and other state administration bodies in accordance with their competencies.

In the case of environment, the Croatian Ministry of Environmental Protection and Physical Planning (MEPPP) was responsible for administrative and other tasks related to general environmental protection policy and achieving necessary conditions for sustainable development. The Ministry was also responsible for the coordination of a number of ministries⁷ involved in environmental policy. MEPPP had 461 employees and officials performing activities and assignments falling within its sphere, 224 of whom were employed in the Inspection Directorate.

The Croatian questionnaire related to the environmental sector consisted of 77 questions in total. Some questions had sub-questions to further clarify issues. The group of questions regarding the environment was divided into two parts: general policy and sectoral policy. General policy consisted of 15 questions ranging from legislation and administrative capacity to training of civil servants in the environment sector. The following are examples of questions found in the questionnaire and answers given by Croatian officials:

Q2: Is there a general environmental protection framework act, serving as a basis for other environmental legislation?

A2: *“The Environmental Protection Act is the first environmental law in the Republic of Croatia. It governs the fundamental principles of the Croatian legal order on environmental protection and it systematically and fully regulates environmental protection. The Act was adopted in 1994 and revised in 1999 (Official Gazette No. 82/94 and 128/99). The then valid EU Directives, the experience of developed countries, as well as universally accepted principles of environmental protection, were used in the drafting of the Act...The Environmental Protection Act provides that certain matters be regulated by the implementation legislation, e.g. Ordinance on Environmental Impact Assessment (Official Gazette No. 59/00), Ordinance on Environmental Emission Inventory (Official Gazette No. 36/96), Regulation on Quality Standards for Liquid Oil Fuels (Official Gazette 83/02), Regulation on Beach Water Quality Standards (Official Gazette No. 33/96), Regulation on Environmental Protection Information System (Official Gazette No. 74/99 and 79/99), Ordinance on Environmental Label (Official Gazette No. 64/96), Contingency Plan for Accidental Marine Pollution in the Republic of Croatia (Official Gazette No. 8/97), Environmental Protection Contingency Plan (Official Gazette No. 82/99, 86/99 and 12/01), etc....A new Environmental Protection Act is currently being drafted in the Republic of Croatia for the purpose of further harmonization with the *acquis communautaire*.”*

Furthermore, the sectoral policy part of the questionnaire consisted of 10 sectoral sections⁸ with 62 questions altogether. These questions were specific:

Q6 (WASTE): Is there an administrative infrastructure in place? If yes, on which level (national, regional, local)?

A6: *“Pursuant to the Waste Act, the implementation of measures for the municipal waste management is provided by municipalities, i.e. cities (...).The implementation of measures for the non-hazardous industrial waste management is provided by counties, i.e. the City of Zagreb that has the status of a county (...).Several local and regional units of self-government may jointly*

⁷ Ministry of Culture, Ministry of Agriculture, Fisheries and Rural Development, Ministry of Regional Development, Forestry and Water Management, Ministry of the Sea, Transport and Infrastructure, Ministry of Tourism, Ministry of Health and Social Welfare, Ministry of the Economy, Labour and Entrepreneurship, etc.

⁸Horizontal legislation, air quality, waste management, water quality, nature protection, industrial pollution control and risk management, GMS and chemicals, noise, civil protection, nuclear safety: radiation protection

provide for implementation of measures for municipal, i.e. non-hazardous industrial waste management...The Ministry of Environmental Protection and Physical Planning performs legal supervision of enforcement of the Waste Act and regulations adopted pursuant to this Act. The Ministry provides for the implementation of measures specified in the Strategy, the monitoring of accomplishment of strategic objectives and completion of tasks, the issuing of waste management permits, etc. The inspection of enforcement of the Waste Act and by-laws is conducted by the inspection for environmental protection at the Ministry of Environmental Protection and Physical Planning....”

The answers to the questionnaire reflected the situation in Croatia at the time; and their drafting was a very extensive task. *“The answers provided a realistic image of Croatia, without any embellishments.”*⁹

The answers to the entire questionnaire, whose preparation involved all the bodies of state administration, were written on 3,000 pages and 4,000 pages of supplements. *“Some 350 experts participated in drawing up the answers and another 162 in translating them into English....Part of the questions remained unanswered due to differences in statistical methods, analyses which are yet to be carried out, and a lack of competent staff. Such questions accounted for slightly more than five percent of the questionnaire”*¹⁰

August 22, 2003 was the internal deadline for Croatian ministries to submit the answered questions, after which they were adjusted, edited and revised¹¹. It was by early October 2003 that the completed questionnaire, essential to EU membership, had to arrive in Brussels. Several days before the expiry of the deadline for the submission of answers, Croatian Prime Minister Ivica Racan presented European Commission President, Romano Prodi, with Croatia's answers to the EC Questionnaire. This happened on October 9, 2003, in Brussels.



Croatian Prime Minister Ivica Racan and the European Commission President, Romano Prodi, (Photo: Reuters)

⁹ Croatian Govt. adopts answers to EC questionnaire, NevenMimica, www.southeasteurope.org

¹⁰ Ibid.

¹¹ The answers were edited by a task force comprised of Minister Neven Mimica, Deputy Foreign Minister Ivan Simonovic, Deputy Labor Minister Boze Zaja, the head of the Office for Legislation, Boris Sprem, and Croatian National Bank vice-governor Boris Vujcic.

Learning from Montenegro's road to candidate status (2009)

In another former Yugoslav republic, Montenegro, we can see a very recent and relevant example. Montenegro completed the questionnaire in 2009 and it took the creation of an entire structure to respond to the “biggest administrative project ever organized by the Montenegrin administration.” The organization of answering the questionnaire was a very technical process organized by the Ministry of European Integration (MEI) and strongly supported by the Government and Parliament of Montenegro.

Montenegro received 5000 questions and sub-questions in total, which were answered during the four hot months of the summer of 2009. The result was impressive: 6000 pages and 11 000 pages of annexes. To compile such a massive document, IT support was necessary in order to facilitate everyday communication. Two local IT experts were employed by the MEI and were in charge of managing the information and the database. The database proved to be crucial considering the amount of input and level of coordination needed.

Apart from the database, the shared portal was developed for all stakeholders responsible to provide information, with 800 authorized addresses, protected by passwords, from which the info was coming. The provided info would be checked and forwarded to the verification commission and finally, to the Government. The MEI performed coordination of the portal and database. To prepare people to use the intended IT tool, the Ministry organized trainings to explain to 800 people how to enter information and use the database.

*“If I was to single out that one thing which made a difference in answering the questionnaire, it was this good software we designed. After collecting experiences from colleagues in the region and experts in the EU, we put them in one database after which we saw that there were too few people in our administration to handle all the questions. Therefore we needed IT support to help us with the organization of the content that was going in.”**

Another technical challenge in this process was the translation of this massive document in English. According to Montenegrin officials, their administration “was not doing great with English” and that is why Montenegro engaged a Slovenian translator who worked at the European Commission to help them organize a test for applicant translators. After the public tender and test based on EC criteria, “about 200 translators passed the exam” and they involved 120 of them. In the meantime, the Ministry set up a conference hall with 25 laptops, which acted as a translation HQ with two civil servants from MEI on call at all times. The translation center was open 24/7 and translators could work evening shifts and weekends and use translation support. Despite the fact that the financial incentive was not great, people were enthusiastic and the job was completed.

After Montenegro sent a first set of answers, they soon received an additional 673 questions.

In the meantime, a flood of experts came in to check whether Montenegro was answering things right. Between February and May, Montenegro had ten expert missions from the Commission who would come in and try to clarify some aspects of the work, and draw up additional questions. A way to check credibility of the submitted answers was to organize surprise visits to Montenegro, arrange close meetings with different stakeholders and consult various sources of information

*“The questionnaire process was very important. It prepared us for the screening exercise. This was a deep pre-screening mechanism. This is a recipe for future negotiations.”**

**Gordana Đurović, Minister for European integration, Montenegro*

1.2. The Avis – Opinion (2004)

Based on the analysis of the answers and other relevant information, on April 20, 2004 the European Commission announced its **positive opinion (Avis)** on Croatia's candidacy for full membership to the EU and recommended the European Council to approve its status of a candidate and enter into negotiations.

During the preparation of the Avis, the Commission had obtained a wealth of information on Croatia's situation not only from the Croatian authorities through their answers on the EC questionnaire, but also through the utilization of other sources of information such as member state and international organizations¹². They then found a middle point between what Croatia had reported and what other sources said.

The avis for Croatia was published in 2004 and divided into five sections¹³. It stated that the Croatian legal framework for environmental protection needed to be further aligned with the *Acquis*. Croatia was making progress, but it was not there yet. Some legislation was there but it was not translated into practical measures.

*“The 1994 Environmental Protection Act as amended in 1999 provides the legal framework for environmental protection. It needs to be further aligned with the *acquis*. The environmental sector was included in the National Programme for Integration into the EU in 2004 for the first time. Given the amount of environmental legislation in the *acquis*, significant extra priority needs to be given if approximation of legislation is to be timely.”*

There were many aspects of environmental policy that were stressed as problematic. Regarding administrative capacity:

“Staffing levels for environmental protection are low with a significant percentage of staff working on physical planning and construction...A number of other bodies are also responsible for aspects of environmental protection and in 2002 two new institutions (the Environment Agency and the State Institute for Nature Protection) were created but these are not yet fully operational.”

In addition, the Avis stated that the enforcement level was low, that public participation in environmental decision-making and public access to environmental information remained weak, and that investment in environmental infrastructure in Croatia was also low. Integration of environmental policy into other sectors was similarly unsatisfactory: *“On a practical level, indications are that the environment is still not given due consideration when development takes place in other sectors. A national strategy for sustainable development has not yet been developed.”*¹⁴

Specific sectors within Chapter 27 such as waste management were stressed in the Opinion as especially demanding:

¹²OSCE, UNHCR, ICTY, Stability Pact, IMF, World Bank, EBRD, EIB etc.

¹³The first one describes the relations between Croatia and the EU. The second part consists of analysis of the situation in respect to the political conditions mentioned by the European Council (democracy, rule of law, human rights, protection of minorities) including the fulfillment of the SAP conditionalities. The third part assesses Croatia's situation and prospects in respect to the economic conditions mentioned by the European Council (market economy, capacity to cope with competitive pressure), and the fourth addresses the question of Croatia's capacity to adopt the obligations of membership (*acquis*, the secondary legislation and the policies of the EU). The fifth and final part provides a general evaluation of Croatia's situation and prospects in respect of the conditions for membership of the EU, and a recommendation concerning accession negotiations.

¹⁴European Commission Opinion on the application of Croatia for membership of the European Union

“Waste management is the single biggest problem in the environment sector in Croatia. Not only does the legislative framework need to be aligned with EU requirements and standards, but existing Croatian regulations are not yet being implemented. A waste management plan 101 needs to be adopted. Recovery, recycling and disposal facilities are in scarce supply and fall considerably short of EU standards. Return and collection systems need to be established. Most waste is disposed of in landfills and unauthorized sites outnumber official sites by at least eight to one, while even many official sites do not operate in line with the Waste Law. There are no hazardous waste disposal sites. This sector poses a major challenge for Croatia and will require major efforts to align with the acquis.”

In the Summary and Conclusions of the Avis, the Commission stated that *“for the environment very significant efforts will be needed, including substantial investment and strengthening of administrative capacity for the enforcement of legislation. Full compliance with the acquis could be achieved only in the long term and would necessitate increased levels of investment.”*

During the development of the Avis, the Commission had also developed the Proposal for the European Partnership that defines, for each candidate country separately, priorities and conditions of the relations between itself and the EU. For Croatia it was adopted in 2004 with an aim to identify priorities for action in order to support approximation of Croatia to the EU, based on the analysis in the Commission's Opinion.

The environmental priorities determined within the European Partnership were divided into short and medium term priorities. Short-term priorities within environment policies listed the following four activities to be implemented in one to two years while medium term priorities were to be completed within four years:

Short term priorities	Mid-term priorities
Develop horizontal legislation, encompassing environmental impact assessment and public participation.	Ensure the integration of environmental protection requirements into the definition and implementation of other sectoral policies with a view of promoting sustainable development; implement horizontal legislation.
Strengthen the administrative capacity at national and regional levels to ensure planning, including preparation of financial strategies	Continue work on the transposition of the EU <i>acquis</i> , with particular emphasis on waste management, water quality, air quality, nature protection and integrated pollution prevention and control.
Strengthen the capacity of national and regional inspection services and enable them to effectively enforce environmental legislation.	Develop an environmental investment strategy based on estimations of the costs of alignment. Increase investments in environmental infrastructure, with particular emphasis on waste water collection and treatment, drinking water supply and waste management.
Adopt and start implementing a waste management plan.	

Croatia was expected to respond to the European Partnership by preparing a plan with a timeline and details, explaining how it intends to address these priorities. This was accomplished in 2004 by reviewing the National Programme for the Integration of the Republic of Croatia into the European Union 2004, and

by defining adequate measures in the National Programme for 2005. Among the institutional measures defined was:

“An increase in the overall number of the Ministry’s employees planned in 2005. The Environmental Protection Directorate will employ 20 new staff members (48% more than in 2004). The Inspection Directorate is planning to employ 25 environmental inspectors, both in the head office as well as in regional branches (which is an increase of 60% in relation to 2004)... In 2005, the Independent Service for Legislation will employ 3 new staff members (which is an increase of 50% in relation to 2004) for the performance of tasks related to the harmonization of legislation. In 2004, strengthening of the Environment Agency and the Environmental Protection and Energy Efficiency Fund, in terms of staff, was achieved. In 2005, the Environment Agency plans to employ 3 new staff members to perform tasks related to EU integration”.

In June 2004, the European Council concluded that Croatia is a candidate country with which accession negotiations will start in early 2005 and requested the European Commission to prepare a Pre-Accession Strategy for Croatia.¹⁵

Following the Pre-Accession Strategy, the first Progress Report on Croatia’s accession process was published by the EU covering the period between April 2004 to September 2005, and among other things assessed Croatia’s ability to assume responsibilities towards the EU and align itself with the *acquis*. In the environmental sector, the Progress Report disclosed a very poor reaction to the Opinion and its recommendations:

“The Opinion’s conclusion that Croatia needs to make considerable and sustained efforts in the environmental sector does not appear to have led to any significant change in the overall importance attached to environmental protection by the Croatian government.”¹⁶

However, with the positive *Avis* granted, the next stage Croatia expected was defining the date for accession talks, which again needed to be decided through the consensus of all EU member states.

On December 17, 2004, the European Council set the start date for accession negotiations with the Republic of Croatia – March 17, 2005 – if Croatia continued to cooperate fully with the ICTY.

One day before negotiations were to begin, on March 16, 2005 the Council of the European Union adopted the Negotiating Framework for Croatia¹⁷. Although the Framework was adopted, consensus was not reached on the opening of accession negotiations because the ICTY prosecution assessed Croatia’s efforts to capture fugitive general Ante Gotovina as insufficient. Only in October 2005 did negotiations officially begin.

¹⁵The Pre-Accession Strategy defines a framework for each candidate country’s accession process. It lists procedures and priorities and lays down the instruments on which the process is based: the bilateral agreements, the accession partnerships and the national programmes for the adoption of the *acquis*, participation in Community programmes, agencies and committees, political dialogue, the evaluation of the Commission (“monitoring”), pre-accession assistance, co-financing by international financial institutions. Some of the elements of the Pre-Accession Strategy were: drafting regular annual Progress Reports for Croatia of the Commission, starting 2005, opening the pre-accession financial programmes, adopting a Framework Agreement enabling Croatia to participate in Community programmes, etc.

¹⁶ European Commission Progress Report 2005

¹⁷This document determines the general guidelines for the accession negotiations between EU and Croatia and more specifically, it defines the reforms and adaptations that each candidate country must undertake in order to join the EU.

1.3. Preparing for Negotiations

Negotiating Structure

On January 19, 2005 within the framework of preparations for negotiations, the Croatian Parliament adopted the “*Declaration on the fundamental principles of negotiations for full membership of the Republic of Croatia in the European Union*” and the “*Decision on the establishment of the National Committee for Monitoring the Accession Negotiations*” as a working body of the Parliament. On that date, the Croatian Parliament and the Government of the Republic of Croatia also adopted the “*Statement on joint activities of the Government and the Parliament in the process of negotiations for EU membership*”.

The Croatian Parliament played an important role in the process of EU integration. The Parliament established a special working body, the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union, which was given considerable powers¹⁸. The Committee was agreed upon by the Prime Minister at the time, Ivo Sanader, and the leader of the social democrats, Ivica Racan, who was the first head of the Committee.

Based on the rules and procedures, the head of the Committee needed to be from a political party in opposition. The Committee also had an obligation to approve each of the 33 negotiating positions.

“Any negotiating position or change of the negotiating position could not be sent to Brussels without the approval of the National Committee, which the National Committee had to approve unanimously... In effect, it has veto power over the entire EU accession process of Croatia. A NO vote stops the process, only one NO vote... This was of course a big risk, but in our case, I think it paid off... To speak quite honestly, you have to be careful: the people who are in the Committee can disagree politically, but they have to agree on the fact that they want their country to become a member of the EU. There cannot be any kind of mavericks who will use their position in the committee to score political points here or there, playing short-term political games. If you have a sufficient number of people in opposition and Government who are seriously dedicated to this goal, then it is very useful...”¹⁹

The National Committee consisted of 15 Parliament members and 4 outside members without voting rights who most often came from the academic community, employers' associations and trade unions. The National Committee, led by the Chairperson of the Committee, held regular consultations and exchanged information with the President of the Republic of Croatia, the President of the Government, the President of the Croatian Parliament, as well as other negotiating bodies.

Vladimir Drobnjak, Head of the Croatian Negotiating Team, shares his opinion of the Committee:

“I think it was the first time applied in this specific format in Croatian negotiations and we are recommending all the countries that are following us to embrace this idea... It proved to be extremely valuable... I think that it keeps the Government confident that it has full backing from

¹⁸It supervises and evaluates the course of negotiations, gives opinions and guidelines on behalf of the Croatian Parliament on the prepared negotiating positions, considers information on the negotiation process, considers and gives its views on forthcoming questions on the agenda, analyses and assesses the performance of individual members of the Negotiating Team, and gives opinions, as required, on the harmonization of Croatian legislation with the EU regulations.

¹⁹Vesna Pusic, Chairman of the National Committee for Monitoring the Accession Negotiations

the Parliament, because this is the best way to receive support across the political line and without the support this work is impossible.”

To better prepare and facilitate the coming negotiating process, the Government of the Republic of Croatia adopted a decision to establish a structure for accession negotiations with the EU on April 7, 2005. The Decision defined the organization and competences of the newly established bodies that form the structure for negotiations and which are entitled to sign the Accession Treaty once the negotiations complete.

By this Decision, six institutions/bodies were to be established in Croatia:

State Delegation for negotiations on accession of the Republic of Croatia to the EU	<ul style="list-style-type: none"> • This body conducts direct political talks and negotiations with the EU and is responsible for the success of negotiations for each chapter of the <i>acquis</i>, while reporting on the progress of negotiations to the Croatian Government who they are directly responsible to.
Negotiating team for negotiations on the accession of Croatia to the European Union	<ul style="list-style-type: none"> • The Negotiating Team is responsible for negotiations at an expert and technical level with EU institutions and Member States on all negotiating chapters. It develops and adopts draft negotiating positions and has 16 team members responsible for the coordination of particular clusters of negotiating chapters. Nikola Ruzanski was the Negotiations Team member responsible for the Energy and Environment chapters of the <i>acquis</i>.
Coordinating Committee on the Accession of the Republic of Croatia to the European Union	<ul style="list-style-type: none"> • An interdepartmental working body of the Government of the Republic of Croatia that discusses all issues related to negotiations on the accession of the Republic of Croatia to the European Union. This body reviews draft proposals of negotiating positions submitted by the Negotiating Team before they are forwarded to the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union. It also reviews proposals of negotiating positions before they are forwarded to the Government of the Republic of Croatia for adoption.
Working Groups for the preparation of negotiations by individual negotiation chapters of the EU <i>acquis</i>	<ul style="list-style-type: none"> • Working Groups participated in the analytical review and assessment of the harmonisation of the legislation of Croatia with the <i>acquis</i> - screening. The Groups were also involved in developing the draft proposals of negotiating positions, in dialogue with the state administration bodies and the EU Coordinator of the relevant body. Working group for Environment was set up by the Coordination Committee of the Accession headed by the Minister of Foreign Affairs and Vice Prime Minister who decide on the composition of the working groups.
Office of the Chief Negotiator	<ul style="list-style-type: none"> • This office operates within the Government of Croatia and within the Mission of the Republic of Croatia to the European Communities. It provides expert, technical and administrative assistance to the Chief Negotiator.
Secretariat of the Negotiating Team	<ul style="list-style-type: none"> • The Secretariat assists the Secretary of the Negotiating Team in his/her work and provides expert, technical and administrative assistance to the State Delegation, the Negotiating Team and the Working Groups for preparing negotiations on the individual chapters. The Secretariat coordinates the tasks and duties arising from negotiations, conducts screening and makes reports on the progress of legislative harmonization, as well as on the progress of the negotiations. There are 35 members of the Secretariat, each representing one chapter of the <i>acquis</i>.

Establishing these institutions was not an easy task as Boris Vujcic, Deputy Negotiator, remembers:

“It was a challenge in the beginning and I think, I would say, the success of the process of technical negotiations depends very much on this initial phase, when you decide how to set up the Negotiating Team and who to choose for the Negotiating Team. We had this, I would say, wide approach whereby we did not only include people from the government, from the official sector, but also people from the private sector. If nothing else than as observers, so that they can inform their constituencies what changes will come through the screening process.”

Preparations Continue

Apart from preparation of the administrative negotiating structure, preparations in the sector itself continued based on the recommendations listed in the European Partnership and Avis. In the waste management sector, for example, Croatia drafted a Waste Management Strategy in October 2005 – an obligation that also stemmed from the Law on Waste adopted in 2004. Here, Croats described in detail all the areas they were falling behind in with regard to waste management. Pages 10 – 14 contained the chapter *Current Situation: Evaluation of situation – problems and obstacles*. It explicitly stated:

“The waste management system is not completely functional, which is inter alia due to partial and/or inadequate enforcement of prevailing regulations (non-respect and poor enforcement have been in fact identified as a significant problem). The following difficulties have also been noted: insufficient awareness of the legal persons that they are accountable for the waste they generate...insufficient knowledge of waste management practices and trends currently applied in the EU...excessive number of unorganized, uncontrolled and environmentally dangerous landfill sites...poor application of market based principles and insufficient use of ‘polluter pays’ principle...The problem is especially acute in the sphere of hazardous waste...no disposal site has so far been put in place for hazardous waste...All types of waste, including hazardous waste, are currently stored on almost all landfill sites in Croatia.”²⁰

This strategy was adopted on October 14, 2005, 11 days after the official opening of the negotiations. This strategy in detail talked about the problem with waste management in Croatia. It estimated that there were approximately 3000 uncontrolled dumpsites,²¹ which diminished the beauty of the natural landscape and polluted soil, water and air.²² It reflects on how much waste Croatia produced (~1.2 million tons in year 2000)²³ and how little of it was recycled: *“almost one half of the construction waste ends up on disposal sites destined for municipal waste.”²⁴* In addition, *“...as much as 80% of construction waste can be reused [but] only 7 percent is actually*

²⁰ Strategy of Waste Management in the Republic of Croatia

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

*recycled...*²⁵ Fines for polluters were inadequate, inspections scarce and education on the matter lacking.²⁶

Through examples such as these in the waste management sector, it can be seen that Croatia continued to prepare itself, showing its commitment to fulfilling obligations set out in the European Partnership and the Avis.

2. Screening (2005 – 2006)

The first part of the negotiating process is the “screening” of each of the 35 chapters of the *acquis*. On October 20, 2005, the screening officially began.

The Screening process is one of the key stages of the accession process. This is the moment when the Commission explains the *acquis* to the candidate countries, and then the countries have to use the same language to explain where they are in comparison to the highest standard, i.e. the *acquis*. In short, for Croatia, it meant looking inward and identifying all gaps that needed to be filled, as well as identifying possible needs for transitional periods for individual chapters. For the European Commission, screening is the opportunity to assess the readiness of Croatia for the opening of substantive negotiations on individual chapters. Screening is conducted for each chapter of the *acquis* separately. It is an extensive joint exercise involving both EU officials and the candidate country.

There are the following key stages in the screening process:

Stage 1: Explanatory meetings in Brussels

Explanatory meetings in which the candidate country (or countries) is explained the content of the acquis

Stage 2: Bilateral Meetings, or so-called Country Screening

Meetings with each of the candidate countries separately in which the country presents the level of alignment of their country with the acquis

Stage 3: Screening Report

The Commission reports to the Council on the screening of each chapter and provides a recommendation of whether to open negotiations or whether prior to opening negotiations the candidate country needs to fulfill additional conditions, all compiled into the Screening Report.

Eight days after screening began, the first Intergovernmental Conference, attended by the deputy heads of delegations/chief negotiators, was held in Brussels during which principles and procedures for accession negotiations were agreed upon and the initial working programme based on the programme for screening of individual chapters of negotiations was discussed.

²⁵Ibid.

²⁶Ibid.

Accession Partnership (2006)

On November 9, 2005, the European Commission released its Proposal for the Accession Partnership for Croatia, and on February 20, 2006, this was adopted by the Council. Since the accession negotiations with Croatia already started in 2005, the European Commission regarded it necessary to adopt the Accession Partnership, updating the former European Partnership (2004). Therefore, the Accession Partnership replaced the formerly adopted European Partnership as the central document by which the further progress of the Republic of Croatia in the process of integration into the European Union will be measured. It covered principles and priorities for accession preparations for the country with an emphasis on its capacity to implement the *acquis*. The Accession Partnership also defined the framework for determining different areas to which EU funds were to be allocated.

For Chapter 27, the Accession Partnership recommended:

- Continue work on transposition and implementation of the EU *acquis*, with particular emphasis on waste management, water quality, air quality, nature protection and integrated pollution prevention and control.
- Adopt and implement a comprehensive plan for putting in place the necessary administrative capacity and required financial resources to implement the environment *acquis*.
- Increase investments in environmental infrastructure, with particular emphasis on wastewater collection and treatment, drinking water supply and waste management.
- Start implementing the Kyoto Protocol.
- Ensure integration of environmental protection requirements into the definition and implementation of other sectoral policies and promote sustainable development.

As a response to the Accession Partnership and with priorities defined, Croatia reviewed and adopted the national programme for transposition of the *acquis* (NPAA) for 2006. It was Croatia's time and cost action plan for accession preparations. It reported achievements made in 2005 and a clear action plan for 2006.

*"We started with a lot of enthusiasm, which is what you need because people did not get payment for overtime... We were optimistic every year – we thought that we would be done much earlier. We made plans for joining in 2008. The commission did not react to this (overambitious) plan... There were consultants through CARDS projects who said: you cannot do this so quickly. But it was good that we thought every year that we will be joining soon because it drove us forward."**

The NPAA outlined priorities and goals for various sectors. Looking only at waste management, deemed as one of the most challenging, and what was achieved following the implementation of the Plan; Croatia achieved a lot during 2006. By adopting the Act on Amendments to the Waste Act in 2006, Croatia further signified its alignment with EU Waste Management legislation and consequently, passed seven implementing regulations in the waste management sector and drafted five more during 2006. An eight year (2007 – 2015) Waste Management Plan for the Republic of Croatia has been drafted and the Packaging Waste Management System was established under the 2005 Ordinance on packaging and packaging waste, which produced good results in recycling and disposal of packaging. In only nine months, Croatia managed to collect 12,000 tons of PET packaging, 42,000 tons of glass packaging and 1,100 tons of aluminum cans. In addition, administrative capacity of the Department for Waste Management of the MEPPPC was increased by three new employees in 2006.

**Mira Medic, Head of the Department for EU at the Croatian Ministry of Environmental and Nature Protection; member of the Working Group for the Chapter Environment*

Stage 1 – Explanatory meetings in Brussels, Belgium

Croatia attended the initial explanatory meeting held in Brussels together with Turkey between April 3 and 11 of 2006. In the explanatory sessions, the Commission explained the environmental *acquis* to the candidate countries. In the case of Croatia, all members of the Working Group for Environment went to Brussels and participated in the meetings in order to see exactly what was needed and how it would be developed.

Experts from the Commission's DGs, having analyzed the *acquis*, presented its substance chapter by chapter to Turkey and Croatia in the form of 76 explanatory presentations.

During the seven working days, intensive explanatory presentations²⁷ were held covering different aspects of the 27th chapter of the *acquis*: GMO's, horizontal legislation including climate change and civil protection, water quality, nature protection, forests and forestry, soil protection, air quality, noise, waste legislation, waste, and chemicals.

*“When we went to Brussels for 10 days for the first screening, we were just listening without being aware of the complexities of transposing the *acquis*. We were trying to absorb all the info thrown at us...But, there is no magic recipe. For us, it was about understanding the *acquis*, which cannot be done in one reading. It is about understanding the language and also where the flexibilities are to adapt it to Croatia’s situation.”*²⁸

Working Groups were smaller in the beginning of negotiations but grew over time as more and more work came up. Working Groups for the Environment Chapter initially consisted of some 30 people, but eventually the group ended up with some 109 members from the relevant ministries and other relevant governmental bodies/agencies, business sector, business associations, NGOs, the Chamber of Commerce, and different Agencies. Major contributions were coming from line ministries during the screening process. Officials overseeing the process explained that the idea was to gather as many stakeholders as possible into the Working Group. This way, all relevant actors were well informed of the reforms that needed to occur within their industry.

Stage 2 – Bilateral Meetings, or so-called, Country Screening

Following an intense week of meetings and extensive explanations of the *acquis* in Brussels, the working group members went back to Zagreb full of impressions. The next step required them to analyze how close Croatia was to the goal of harmonization with the *acquis*, and subsequently prepare presentations with that information.

All the collected findings were compiled into presentations by the Croatians that were given during the second meetings of the screening process conducted in May 2006, between 15th and the 19th, again in Brussels, with each of the candidate countries separately. Therefore, during the bilateral meetings, the Croatian Delegation presented a very thorough picture of the state of the country and explained the degree of preparedness of the country and its plans with regard to the chapter in question.

²⁷Some of these presentations can be found on the website of Turkey’s Ministry for EU integration

²⁸ Interview with Mira Medic, Head of the Department for EU at the Croatian Ministry of Environmental and Nature Protection; and member of the Working Group for the Chapter Environment

Overall, 89 people from Croatia went to Brussels to present Croatia's preparedness for negotiations of chapter 27. Around half of the participants were coming from Croatian sectoral ministries involved in the environmental sector, and the rest of the Croatian delegation was coming from different institutions such as the Chamber of Commerce, Environmental Fund, NGOs and other institutions. In addition, the representatives of the Mission of the Republic of Croatia to the EU attended the presentations.

During the four working days in Brussels around 40 presentations of the condition of Croatia's environment were given to 49 EU representatives, mainly coming from the Environment Directorate-General, and 2 DG Enlargement representatives.

The information gathered in these meetings served as a basis for member states to decide on the opening of accession negotiations on individual chapters.

*"Once a chapter has been screened, the Commission will, building on its recent Opinion on Croatia, recommend opening it for negotiations, provided Croatia is sufficiently prepared."*²⁹

2.1. Screening Report and Opening Benchmarks

The European Commission then wrote a screening report. In February 2007, the European Commission formally submitted the first two parts of the Screening Report on the Environment. These are factual documents that described where Croatia was. An additional two parts – an assessment of the level of harmonization with the *acquis* and a recommendation for either opening negotiations or fulfilling benchmarks prior to opening the negotiations – was sent to the EU member states and Croatia.

The assessment of the level of harmonization with the *acquis* in the Screening Report states that:

"Croatia has achieved a satisfactory level of legislative alignment with the acquis in the environment chapter. It has taken concrete steps in all fields within the chapter to prepare for the transposition of the remaining parts of the acquis... In general, the institutions responsible for implementation and enforcement are already in place at national, county and local level, though they need to be strengthened... The division of responsibilities for operational aspects of environmental protection amongst many different ministries and bodies at central and local level (including inspection activities) may impact negatively on effective implementation, monitoring, enforcement and reporting in this chapter."

²⁹Negotiating Framework, Luxembourg, October 3, 2005

However, in sectors such as waste management, the Screening Report acknowledged Croatia's efforts to align with EU standards but also stressed that serious work was yet to come: *"In 2005 Croatia adopted the Waste Management Strategy, according to which **21 regional waste management centers will be built until 2025**. It also foresees **the closure of all island landfills and transport of waste collected there to the chosen ports**. The Croatian authorities assessed that administrative structures for the implementation of the Directive and inspection are established both at national and local level. Croatia expects no problems with transposition of the remaining provisions of the Directive, however, some difficulties in the implementation phase, due to **high costs of investment needed** (notably establishment of waste management centers)."*

The assessment phase was of crucial importance for Croatia to understand the legislation it needed to transpose and to plan the implementation of that legislation. Most legislation, however, was drafted and passed – or amended – to better fit the *acquis* – between 2006 and 2008.³⁰ By July 2007, there were 26 pieces of legislation regulating the field of waste management, of which four were in place before 2004, three of which were passed in 2004 and three in 2005. Then in 2006 and first months of 2007, some 12 pieces of legislation were passed and another four remained in process, to be passed later that year.³¹

After screening was completed and the Screening Report submitted, the decision on the opening of negotiations for individual chapters, depending on the evaluated readiness of the candidate country, was made by the Member States within the Council of the European Union.

Within the Council, the Working Group for Enlargement discusses the screening report and determines Croatia's ability to begin formal negotiations. Representatives of all member states sit at this working group. In this meeting, member states either make a decision to open the chapters or set further benchmarks for opening of the chapter.

What are the accession negotiations?

In real-life situations, negotiation is a dialogue between two or more people/parties intended to reach an agreement or understanding, resolve point of difference or gain an advantage over a matter negotiated.

*In the EU context, the negotiations relate to the adoption and implementation of the *acquis communautaire* by the candidate country. However, the candidate country does not "negotiate" on the *acquis* itself because the *acquis* must be fully adopted by the candidate country. There is no wiggle room.*

*The negotiation aspect, however, is on the conditions for harmonisation and implementation of the *acquis*, that is, how the *acquis* is going to be applied and when. It is for this reason that accession negotiations are not considered to be negotiations in the classical sense.*

The accession negotiations are dealing with the adjustment to values, institutional, legal, and to the economic system of the EU. Negotiation process has three dimensions: Political, Policies and Technical. Most of the negotiation work is not done in Brussels, but at home.

³⁰ Every year, starting in 2004, the Croatian Government prepared a plan for the transposition of the *acquis* into Croatian legislation. These plans are called The National Programme for the Integration of the Republic of Croatia into the European Union (NPIEU) and can be found on the website of the Ministry of Foreign Affairs of Croatia.

³¹ For a list of legislation and years in which they were passed, please see Waste Management Plan in the Republic of Croatia for the Period from 2007 to 2015, adopted July 19, 2007, p. 2.

The next phase included the meeting of COREPER³², which made the final decision on opening chapters, or setting benchmarks. Following COREPER decision, the EU Presidency sent a letter to Croatia, inviting them to prepare a negotiating position or present them with opening benchmarks.

Opening and closing benchmarks are new instruments designed by the EU that were used for the first time during Croatia's accession negotiations. *“Benchmarks ... aim at drawing a candidate country's attention to the most important reforms on the path to the full alignment with the acquis. Benchmarks usually entail the adoption of new laws, strategies, action plans or fulfillment of obligations deriving from the Stabilization and Association Agreement (SAA).”*³³

According to Croatian officials, this tremendously changed the mechanics of the process. There were overall 127 benchmarks: 23 opening benchmarks in 11 chapters, and 104 closing benchmarks in 31 chapters.

For the Environment Chapter, there was one opening benchmark, communicated to the Croatian Government on April 3, 2007, in a letter from the German EU Presidency:

“Croatia should present to the Commission a comprehensive plan for putting in place the necessary administrative capacity and required financial resources to implement the environment acquis with targets and deadlines. This plan should be coherent with the process to complete the legislative alignment and the start of implementation”

The communicated benchmark sounded familiar to the Croats. This was an area that needed a lot more work, to both coordinate the various levels of government and all the ministries involved in environmental protection, but also to build the capacities needed to implement the new or amended laws. The growing frustration was shown in Mira Medic's account of their response:

*“The opening benchmark was imposed on us. We had no idea how to develop this... Maybe the EC had an idea what they wanted this document to look like, but they did not tell us... So, we applied an educated guess about how many people we need on different sectors. But we were not 100% correct. Our expressed needs were too low.... Therefore, we asked each ministry to come up with their plans for staff and their departments. And, this worked.”*³⁴

The result was an extensive 300-page document describing in detail administrative and financial capacities within the environmental sector. By February 2008, the Croatian Government had adopted this document titled *“Plan for Setting up Necessary Administrative Capacities at National, Regional and Local Level and Required Financial Resources for Implementing the Acquis.”*

³²The Permanent Representatives Committee or COREPER is responsible for preparing the work of the Council of the European Union. It consists of representatives from the Member States with the rank of Member States' ambassadors to the European Union and is chaired by the Member State, which holds the Council Presidency.

³³EU-Croatia accession negotiations — key dates at a glance, <http://eu.mfa.hr>

³⁴Interview with Mira Medic, Head of the Department for EU at the Croatian Ministry of Environmental and Nature Protection; and member of the Working Group for the Chapter Environment

To illustrate the magnitude of the document and reorganization that was about to take place within the Croatian environmental sector, let us look at their plan to improve the capacities of only one segment of environment – again, the waste management sector.

Most of the responsibilities in the field of environment, more specifically waste management, fell on the Ministry for Environmental Protection, Physical Planning and Construction (MEPPPC): legislation, drafting waste management strategy but also issuing permits for incineration of waste or hazardous waste management.³⁵ Below MEPPPC are counties and the City of Zagreb, as well as towns and municipalities. It is this very local level that has to implement waste management legislation since waste collection and management is done locally. MEPPPC also monitors two agencies that have played a key role in Waste Management in Croatia, the Environmental Protection and Energy Efficiency Fund (EPEEF)³⁶ and the Croatian Environmental Agency (CEA)³⁷.

Through the reorganization of the MEPPPC, a Waste Sector was established within the Directorate for Environmental Management. The Sector consists of the following departments: the Department for Waste Management and Department for Plans and Projects.³⁸ The Department for Waste Management had ten employees, and the idea was to hire three more by 2009.³⁹ The Environmental Protection and Energy Efficiency Fund had a staff of 27 on tasks related to waste management. The plan here was to increase this number to 30 by 2009.⁴⁰

One department that was found deficient of staff was the Environmental Inspection Services. As a response, the Plan foresaw hiring 22 new personnel by 2008, which would have been an increase of 35% from the baseline of 2006. This however proved problematic, since due to the financial crisis in 2008, the Government of Croatia had adopted a decision to stop recruitment. This was reversed a year later with another decision allowing the hiring of more staff if it is for the purpose of meeting EU criteria.⁴¹ In May 2008, the European Commission sent a team to verify the fulfillment of the opening benchmark for the Environment Chapter and in June 2008, Croatia was invited to present its Negotiating Position.

“After we fulfilled the opening benchmarks we started preparing our negotiating positions and then we started negotiating.”⁴²

³⁵ EPO IPA, p. 15

³⁶ The EPEEF played a crucial role in the implementation of the waste management legislation by financing projects that stem from the waste management strategy. It was established in 2003 but became operational only years later. It collects environmental charges through the ‘polluter pays principle’ as its revenue with which it then finances environmental projects.

³⁷ The CEA was established in 2002 and it coordinates the environmental information system, by collecting and analyzing data helpful to the implementation of environmental law.

³⁸ Plan for Setting up Necessary Administrative Capacities at National, Regional and Local Level and Required Financial Resources for Implementing the Acquis, p.131.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Interview with Ruzica Gelo, negotiator for chapters Agriculture and Rural Development, Food Safety, Veterinary and Phytosanitary Policy, Fisheries, Consumer Protection and Health and Dubravka Vlastic Plese, Secretary of the Croatian Negotiating Team

⁴² Interview with Dubravka Vlastic Plese, Secretary of the Croatian Negotiating Team

3. Negotiating Position

By 2008, Croatia had a very good idea of where it stood and what it still needed to do in order to meet criteria regarding the environment. During this phase, the subject of negotiations was the conditions under which Croatia would adopt and implement the *acquis communautaire* in the respective chapter, including transitional periods⁴³, which the candidate country might have requested.

“Starting the negotiations was a key turning point, because when you start something there is also an end. Then, it is a process where you fulfill the requirements, systematically. Then, it is a matter of planning, how and when to do this. This is what negotiations are about. It is not that you negotiate in a way that you can change the Union – no; you must change yourself. Finally, you negotiate the timing of such changes. Accession negotiations mean making a time schedule for your reforms.”⁴⁴

The negotiating position, prepared in line with the screening results for Chapter 27: Environment, served as the basis for substantive negotiations. This 90–page long document could have only been drafted once an assessment of the situation was already done and there was detailed knowledge about the field, including the administrative capacities, polluters, costs etc. As a candidate country, Croatia was the first to present its negotiating position, which in short, gave a description of what Croatia has done so far – the various EU Directives and Regulations adopted – and specified the plan and mode of adoption and implementation of the *acquis*, along with a description of its institutional capacity. The only thing, which was a true ‘negotiating position,’ in the literal sense of the word, was the request that Croatia put forward to obtain transitional periods for implementing the most difficult and costly bits of EU legislation it had adopted.

Croatia initially asked for 14 transitional periods and 2 requirements for technical adjustments: for Directive on the conservation of natural habitats and of wild fauna and flora, and for Directive on the conservation of wild birds.

The longest transitional period requested by Croatia was within the water sector. Croatia asked for a transitional period for the full implementation of Council Directive on Urban Waste Water until December 31, 2030, which referred to the deadline for construction of sewerage and wastewater treatment systems. The next longest transitional periods (until 2020) were asked for full implementation or application of the three following directives:

- Council Directive on the disposal of waste in regard to the reduction of biodegradable municipal waste
- Council Directive establishing framework for Community action in the area of water policy in relation to achieving good water status

⁴³ Transitional measures are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for the application of the *acquis*. They must not involve amendments to the rules or policies of the EU, disrupt their proper functioning, or lead to significant distortion of competition.

⁴⁴ Interview with Silvana Lyubenova, head of the European integration Department at the Ministry of Economy and Energy, Bulgaria

- Council Directive on the quality of water intended for human consumption, which transitional period referred to the periods of construction of public water supply to ensure supply of drinking water of appropriate quality.

The Negotiating Position was adopted by the Croatian Government on July 10, 2008 and presented to the EU on July 11, 2008. Five months later, the EU Council presented its opening Draft Common Position to Croatia.

However, despite Croatia's efforts towards continuity in negotiations, and willingness to fulfill all the imposed conditions, negotiations were held back from the end of 2008 until September 2009 due to the Slovenian border dispute.

"Chapter 27 was not opened because of the Slovenian blockade. Informally, the Commission told us that we fulfilled the opening benchmark and then they told us what our closing benchmarks would be, so we could work on it. This enabled us to finalize negotiations in time."⁴⁵

Therefore, Croatia continued to prepare and conduct necessary reforms in the environmental sector so as to be prepared once the arbitrary agreement of the border dispute between the two ex Yugoslav countries was resolved. Moreover, it explains how it was possible that some conditions defined in the DCP, and formally given to Croatia in February 2010, were reported as fulfilled in the draft of the Croatian Report on the Fulfillment of Obligations under Chapter 27 in March 2010.

3.1. DCP and Closing Benchmark

The EU's Draft Common Position took into account Croatia's negotiating position and defined the closing benchmarks to be fulfilled before negotiations on specific chapters can be temporarily closed. These closing benchmarks were intended to ensure that alignment with the *acquis* was completed.

The Position listed four closing benchmarks for Chapter 27: Environment:

⁴⁵ Interview with Dubravka Vlastic Plese, Secretary of the Croatian Negotiating Team

Croatia adopts legislation aimed at transposing the *acquis* in the field of water quality, notably the new Water Act and the new Water Management Financing Act and makes further significant progress in legislative alignment in this sector by adopting implementing legislation.

Croatia adopts legislation aimed at transposing the *acquis* in the field of industrial pollution control and risk management and ensures that definitions, notably related to installations, are aligned with the *acquis*.

Croatia continues its alignment with the *acquis* in the remaining sectors of this chapter and demonstrates that it will be fully prepared to ensure the implementation and enforcement of the EU requirements at the date of accession.

Croatia continues capacity building of the administrative bodies at all levels, including inspection services, in line with the Action Plan, further improves coordination of work and demonstrates that all appropriate administrative structures will be in place in good time before accession to enable implementation and enforcement of the *acquis* in all sectors of this chapter.

To fully transpose the *acquis* and improve the specific sectors within the chapter, especially water and industrial pollution control, Croatia adopted a vast number of laws and implementing legislation, during 2008 and 2009. This enabled Croatia to fulfill the first three closing benchmarks.

In order to fulfill the final closing benchmark, Croatia actively kept on working to strengthen environmental administrative capacities. Measures were taken at all administrative levels in line with the *“Plan for Setting up Necessary Administrative Capacities at National, Regional and Local Level and Required Financial Resources for Implementing the Acquis”* (2008). In this sense, most ministries and specialized institutions/agencies were reorganized during 2008 and early 2009 for the purpose of strengthening administrative capacities and effective enforcement of legislation on environmental protection.

On November 4, 2009, an Arbitration Agreement between Croatia and Slovenia was finally signed in Stockholm by both countries' prime ministers as well as the President of the EU. This enabled Croatia to continue negotiations. With the border dispute settled and having received the Croatian Negotiating Position in July of 2008, the Commission adopted its Draft Common Position on February 18, 2010. The Commission discussed the DCP with Croatia at the Accession

Conference⁴⁶ at the Deputy Level on February 19, 2010. Chapter 27: Environment was formally opened the same day in the presence of Ambassador, Carlos Bastarrech Sagües, EU Enlargement Director Michael Leigh and the Croatian delegation⁴⁷ led by the then Minister of Foreign Affairs and European Integration, Gordan Jandrokovic,

Croatia went into negotiations on the Environment chapter with a clear idea of where it stood, what it had achieved and what it still needed to achieve. The Secretary of the Negotiating Team, Dubravka Vlastic Plese, said:

“I always thought that when we start negotiations we will talk to bureaucrats and try to convince them about how Croatia is doing well. But then I would went to seminars in 2003-4 when I was faced with the notion that negotiations in fact happen internally here. I did not expect that. And not just in the chapter I was in charge of but in all chapters. The biggest challenge was to get then all the stakeholders (government officials, various agencies, business community and associations) to agree to one common position and go to Brussels with it.”

In its Draft Common Position, the EU encouraged Croatia to continue the process of aligning with the *acquis* and its effective implementation and enforcement, as well as compliance with the SAA and the Accession Partnership. The Position also stated:

*“The longest transitional period granted in the environmental sector is until 2023. This long transitional period was granted to Croatian water sector that has a minimum compliance with the *acquis* (15%), especially in water treatment and sewage. The sector requires huge investments that would only be possible if the foreign financial support is secured.”*

On September 9, 2010, the Croatian government adopted the Report on the Fulfillment of Obligations under Chapter 27, listing all the developments and achievements in the Environment sector since 2008. A couple of months later, in November 2010, Croatia submitted the Addendum to the Government’s Negotiation Position. The Addendum acted as a review of the Croatian Negotiating Position and set new (revised) transitional periods, the results of negotiations and technical consultations between the EU and Croatia.

For example, Croatia changed the above-mentioned longest transitional period request for the implementation of the Urban Waste Water Directive in a way that it negotiated with the EU the new transitional period until the end of 2023. In the waste management sector, Croatia asked for a new transitional period for the implementation of the Directive on waste disposal until December 31, 2018 compared to the initially proposed transitional period until the end of 2015. During the development of the Plan for this specific directive implementation, Croatia realized, based on new findings and detailed analysis, that 2018 was a more realistic deadline for establishing an integrated waste management system, i.e. construction of the waste management centers. Two transitional periods – for implementation of the quality of petrol and diesel fuel i.e. the reduction of the sulfur content in certain liquid fuels and the control of emissions of volatile organic compounds expire at the end of this year. In addition, Croatia withdrew four transitional periods completely.

⁴⁶EU accession negotiations with Croatia took place in a number of Inter Governmental Conferences (IGC), or Accession Conferences, i.e. meetings between representatives of the Croatian Government and representatives of the EU. They were headed by the rotating EU presidency and took place at the Ministerial and Deputy Ministerial level.

⁴⁷Chief negotiator Vladimir Drobnyak, two Deputy Chiefs – Boris Vujcic (Deputy Governor of the Croatian Central Bank since 2000) and Ivana Maletic (Ministry of Finance) and the Secretary of the Negotiating Team Dubravka Vlastic Plese.

Having set transitional periods and having fulfilled the closing benchmarks, Croatia was ready for the provisional closing of the Chapter 27.

“We were working through the chapters, closing benchmarks and when you think you have fulfilled the benchmarks, you send the documents. They have to be approved by the Commission. You can only close the chapter when you send the materials and there is an agreement that the closing benchmarks have been met.”⁴⁸

3.2. What changed in Croatia during negotiations

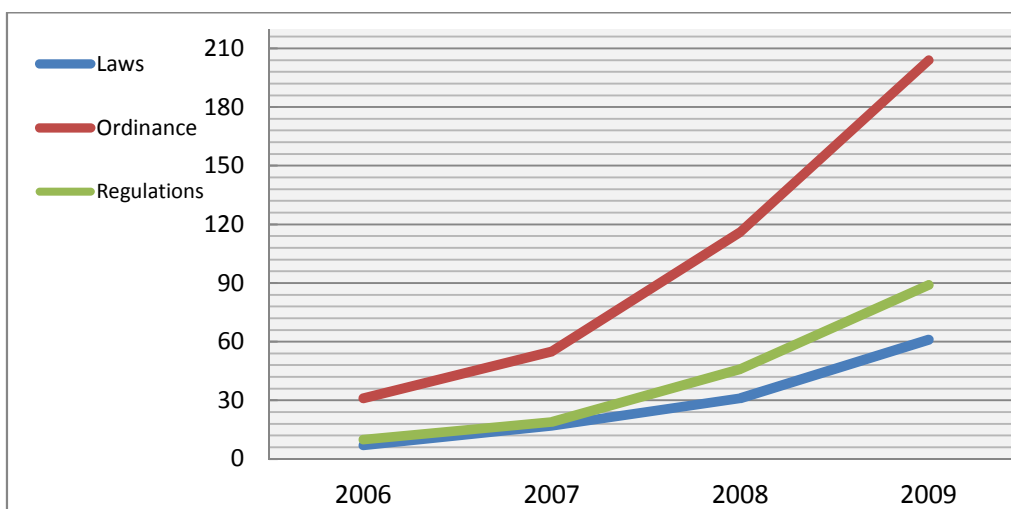


Table 1: Estimate of the number of laws and by-laws adopted between 2006 and 2010

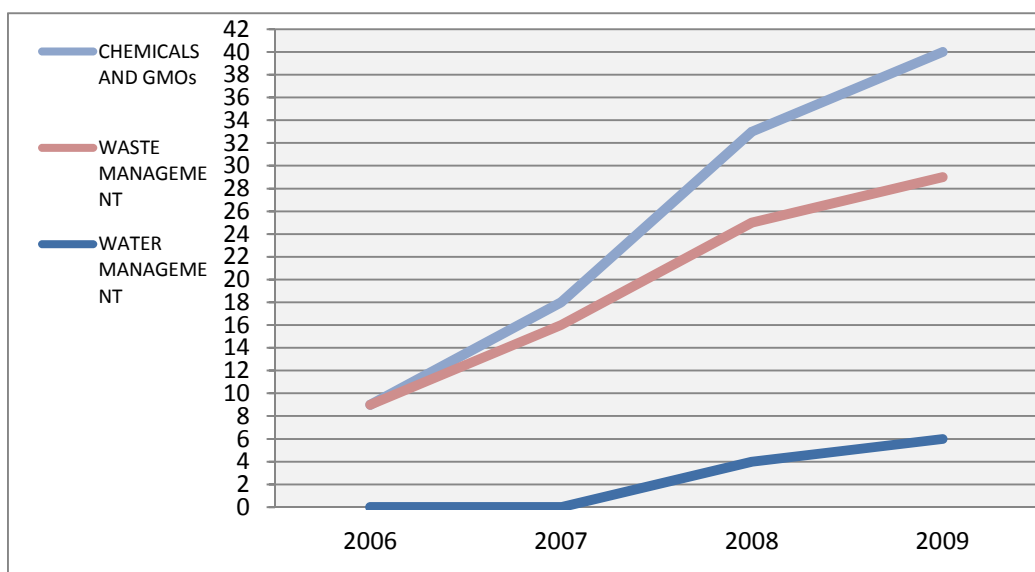


Table 2: Estimate of the number of laws and by-laws adopted between 2006 and 2010 in 3 environmental sub-chapters

⁴⁸Interview with Boris Vujcic, deputy chief negotiator

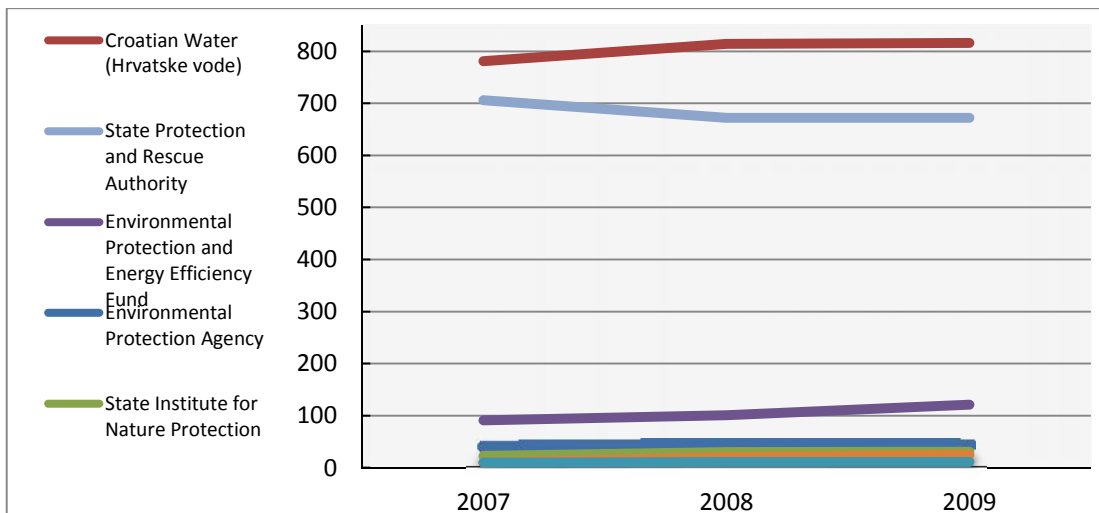


Table 3: Increase of the administrative capacities within Ministries involved in the Environment Sector

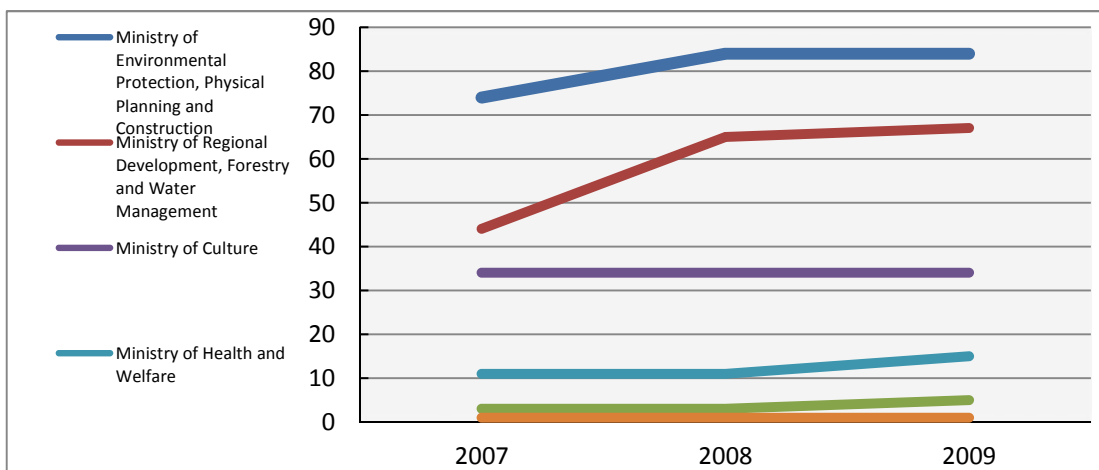


Table 4: Increase of the administrative capacities within other public institutions involved in the Environment Sector

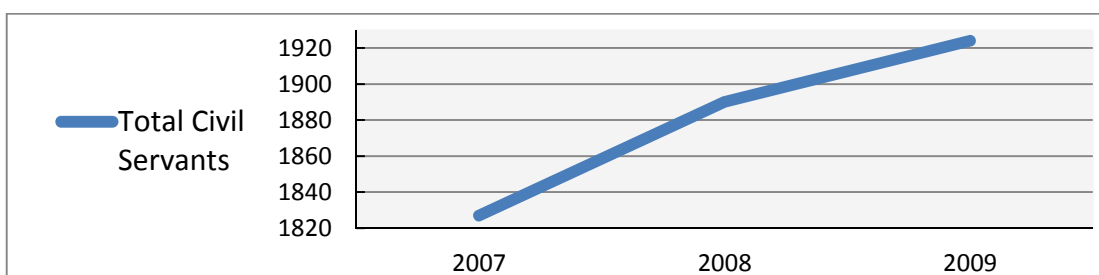


Table 5: Estimate of the total increase of the administrative capacities within the Environmental Sector (excl. inspections)

Sources: National Programme for Integration of the Republic of Croatia into EU (2007 – 2010), State of the Implementation of Plan for the Display of the Necessary Administrative Capacity at National, Regional and Local Level, 2010

3.3. Closing the Chapter

On December 22, 2010, the Environment Chapter was provisionally closed at the Intergovernmental Accession Conference. At first sight, the speed with which the negotiations on a single chapter were opened and closed (within eight months in this case) seems surprising. The Environment Chapter (chapter 27) is considered one of the most demanding due to the complex set of legislation it has and the very expensive reforms it demands. According to the Waste Management Strategy, *“the financing necessary for the realization of this Strategy over the next 20 years is estimated at 3.25 billion Euro,”*⁴⁹ and this is only for waste management, not counting the costs for the implementation of the other parts of this chapter⁵⁰

4. Conclusion

The Environmental Chapter may have been complex and large in scope, but the benefits of adopting the environmental *acquis* into national legislature is irrefutable: better public health, less damage to natural resources, promotion of tourism, support for employment and benefits, increased economic efficiency, and lastly, social benefits through greater learning and involvement. According to Croatian officials, the point of the integration process was not to check off boxes and appear aligned with the EU on paper, but rather the point was to push the country towards a more functional and regulated system.

Reforms may have been conditions for joining the EU, but: *“these are things that we were doing for ourselves, not for the EU. Reforms should be carried out regardless of the EU. The EU just came as an accelerator of the entire process.”*⁵¹

The accession process is a learning process. Chief Negotiator Drobniak gave an interview recently for the Croatian daily ‘Jutarnji List’ where he pointed out that over 3,000 people were involved in the accession process from the Croatian side. And that *“whoever went through this process from beginning to the end came out with far more knowledge of the EU and with far more understanding of what the EU is. They all know more today than they knew in 2005.”*⁵²

⁴⁹Strategy of Waste Management in the Republic of Croatia, p.77

⁵⁰In the Screening Report (p.11) only the cost for compliance with the Water Framework were estimated at 5 billion Euro.

⁵¹Interview with Mira Medic, Head of the Department for EU at the Croatian Ministry of Environmental and Nature Protection; member of the Working Group for the Chapter Environment

⁵²“Vladimir Drobniak: Ma kakva Jugoslavija? EU je nastala na drugoj ideji. Iz Jugoslavije, znamo, nije bilo lako izaći. Iz EU možemo kad poželimo”, Jutarnji list, <http://www.jutarnji.hr>

Annex 1 - Outline of Chapter 27 of the Acquis

HORIZONTAL LEGISLATION	Environmental Impact Assessments (EIA), Access to information, Strategic Environmental Assessment (SEA), Public participation, Environmental liability
WATER	Urban wastewater, Drinking water, Nitrates, Bathing water, Groundwater, Dangerous substances to water, Mercury, Cadmium, HCH discharges, Surface water abstraction, Shellfish water, Fish water
AIR	Ambient air, VOCs from petrol stations, SO ₂ , NO _x , particulate and lead emissions; Sulphur content in Fuel, Vehicle emissions, Emission Trading, Emission Ceilings, Ambient Ozone
WASTE MANAGEMENT	Hazardous waste, Packaging waste, Sewerage sludge, Waste oils disposal, PCBs/PCTs, Battery disposal and labeling, Landfill of waste, Incineration of waste, Disposal of vehicles, Waste electronics disposal, Hazardous substances
NATURE PROTECTION	Habitats, Wild Birds, Zoos
INDUSTRIAL POLLUTION CONTROL	Pollution Prevention and Control, Solvents, Large Combustion Plants
CHEMICALS	Dangerous Substances, Release of GMOs, Animal Experiments, Asbestos, Biocides
NOISE	



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