



# BULLETIN

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Editors: Sławomir Dębski (Editor-in-Chief), Łukasz Adamski, Bartosz Cichocki,  
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## The Croatian-Slovenian Border Dispute and Croatia's Accession Negotiations with the EU

by Tomasz Żornaczuk

*Croatia is the only candidate country with a genuine chance of becoming an EU member in the nearest future. However, this will not happen in 2010, as was believed until not long ago. Because of the Croatian-Slovenian border dispute Slovenia is blocking the opening of the successive chapters of negotiations. Even if the conflict is settled, the absence of EU institutional reform may hinder Croatia's accession. Moreover, the European Commission is still indicating spheres where the country must carry out further reforms, and it is becoming less and less likely that Croatia may join the EU before the end of the Polish presidency of the EU Council.*

**Status of Talks.** Croatia, which has been a candidate for EU membership since June 2004, succeeded in provisionally closing 7 out of the 35 chapters of membership negotiations, most of them in the last quarter of 2008. Fifteen chapters remain open while the 11 chapters that await for being opened include the most difficult ones, such as agriculture, the judiciary and fundamental rights or the area of justice, freedom and security.

In its latest November 2008 report on Croatia's progress on the road to EU membership, the Commission hailed the country's efforts to accelerate accession. Nevertheless, it pointed to many areas where the reforms have so far been insufficient, criticizing in particular Croatia's problems with the system of public administration and the judiciary, with the fight against corruption, respect of ethnic minority rights and the return of war refugees.

In December 2008 the government in Zagreb defined a national EU accession program for 2009 on the basis of an agenda drawn up by the European Commission. This plan calls for the conclusion of accession negotiations by the end of 2009.

**Border Dispute between Croatia and Slovenia.** Croatia's chances for EU membership depend largely on a settlement of the dispute with Slovenia over the maritime border in the Gulf of Piran. At present, Slovenian vessels have to cross Croatian or Italian territorial waters in order to get to the open sea. Therefore Slovenia insists that the Croatian-Slovenian maritime border in the Gulf of Piran be defined in such a way so as to safeguard its direct access to international waters.

The disputing countries refer to various interpretations of the UN Convention on the Law of the Sea. Croatia refers to that part of the Convention that defines the maritime border along the so-called "median line." That is the basis on which Croatia's maritime borders with Bosnia and Herzegovina and with Montenegro were delimited. Slovenia points to historical arguments and quotes that part of the Convention that concerns the right of geographically disadvantaged states.

**Consequences of the Dispute.** Regardless of the justification of the claims of the disputing countries, Slovenia's position is stronger than Croatia's. This is because of the fact that Slovenia's approval is needed for ratification Croatia's future accession treaty with the EU. Moreover, negotiation mechanism allow individual member states to block talks—a factor Slovenia took advantage of in December 2008, when it rallied the support of France, the Netherlands and the United Kingdom in order to keep closed for Croatia the chapter on the judiciary and fundamental rights (one of the most

difficult chapters for the Croatian government) and blocked the opening of successive chapters in Croatia's negotiations with the EU.

Due to its nature and the different positions of both countries, the dispute will be settled on the basis of not only legal instruments, but also political ones. The European Commission is trying to press the two countries and has offered to mediate in resolving the problem. In April 2009, EU Commissioner for Enlargement Olli Rehn proposed that the dispute be resolved by an *ad hoc* arbitration tribunal composed of five members (including one member each nominated by Croatia and Slovenia). In line with the proposal, the settlement would be binding on both parties, and both countries' consent to arbitration would result in unblocking Croatia's accession talks with the EU. The proposal was supported by the Czech Republic, France and Sweden, making up the EU Troika.

Croatia reiterates that the dispute is not a problem of the EU, but of two neighboring states, pointing to the International Court of Justice (ICJ) as the institution competent to rule on the case. The Croatian government is confident that the ICJ would resolve the dispute in Croatia's favor in keeping with the principle "the land dominates the sea" (a basic regulation introduced by the ICJ that applies to control over territorial waters and the continental shelf), a principle which the ICJ has applied in similar cases. Slovenia's reluctance to bring the dispute before the ICJ strengthens the Croatian government's belief in the soundness of its legal arguments, although Croatia has nonetheless taken a positive stand on the Rehn plan, which has to be interpreted as a significant step towards a compromise.

Slovenia, which sought to involve the EU in settling the dispute after it had joined the Union, has welcomed the Commission's mediation from the very outset. Nevertheless, the Slovenian government has rejected the Rehn proposal in its present shape, at the same time suggesting changes in the wording of the arbitration agreement. The most significant suggestion is the introduction of the *ex aequo et bono* principle. In practice, this rules out the principle of the rule of law proposed by Rehn, under which the Court would consider hitherto legal acts and rulings in similar cases. The application of the *ex aequo et bono* principle would mean that the border dispute between Croatia and Slovenia would be settled as *sui genesis*.

**The EU Institutional Crisis.** The EU's enlargement to include Croatia is also threatened by the EU's internal situation, especially the unresolved institutional crisis. Since not all member states have ratified the Treaty of Lisbon, Croatia's accession is difficult to pursue, because the Treaty of Nice that is currently in force is tailored to 27 countries. Moreover, some West European countries that are in favor of Croatia's integration make their support for the next enlargement contingent upon an institutional reform within the EU. This stance was reflected in the conclusions of the European Council of December 2006 preceding Bulgaria and Romania's accession and in the 2006 enlargement strategy, which underlines the need for the EU to be internally prepared for further enlargements.

**Conclusions.** Croatia's goal of completing the accession talks by the end of 2009 is unusually ambitious and hard to achieve, and it is clear now that Croatia is behind in the completion of actions set by the European Commission.

Slovenia-suggested changes in the arbitration agreement on a settlement to the Gulf of Piran border dispute reiterate the two countries' conflicting interests. Croatia prefers the dispute to be resolved on the basis of international law and thus it is unlikely to accept the proposed changes. This in turn could thwart all attempts to settle the dispute.

Even if Croatia does succeed in resolving the dispute with Slovenia soon and returns to its accession negotiations, and even if the EU carries out its institutional reform, the reforms by the Croatian government, followed by the accession procedure, will take several years to complete. Following the experience with Bulgaria, one can expect the European Commission to monitor very closely in particular any progress in combating corruption. Reforms in the scope of justice, freedom and security will also be judged very carefully. In the meantime, the Croatian government may take advantage of the maritime border issue to turn Croatian society's attention away from the real political and economic problems which the country must solve before it joins the EU. Even though the European Commission is in favor of Croatia's EU membership as quickly as possible, it is becoming increasingly unlikely that this will happen before the end of Poland's EU presidency in the second half of 2011.

The border dispute in the Gulf of Piran is also a dangerous precedent for further enlargements, especially with regard to the remaining Balkan states. The borders between the republics of the former Yugoslavia have not been finally delineated at many points. When further countries of the region begin their accession talks with the EU, those of their neighbors that are already EU members may capitalize on their position in resolving border disputes.