FURTHER WRITTEN SUBMISSION FROM CROATIA

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Class: 018-04/09-02/8
Reg.No.: 531-13-1-2-09-22
Zagreb, 12 November 2009

Mr. Feng Gao
Secretary to the Compliance Committee
Climate Change Secretariat
United Nations Framework Convention for Climate Change
D-53153 Bonn
GERMANY

Subject: Additional written submission

Related to the Notice of enforcement branch, dated 14 October 2009, and pursuant to section X paragraph 1(e) of the annex to decision 27/CMP.1, I would like to inform you that Croatia is sending additional written submission regarding consideration of the question of implementation relating to Croatia.

Yours sincerely,

Dr. Nikola Ružinski
State Secretary

Annex: Additional written submission

REPUBLIC OF CROATIA

MINISTRY OF ENVIRONMENTAL PROTECTION,

PHYSICAL PLANNING AND CONTRUCTION

COMPLIANCE COMMITTEE

Enforcement Branch

STATEMENT OF POSITION OF CROATIA

in relation to

Preliminary finding CC-2009-1-6/Croatia/EB

Zagreb, 12 November 2009

In accordance with section X, paragraph 1(e) of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1 and the Rules of procedure of the Compliance Committee contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4, the Republic of Croatia hereby contests the preliminary finding CC-2009-1-6/Croatia/EB of the enforcement branch of the Compliance Committee adopted on 13 October 2009 based on the following:

BACKGROUND

1. In its report FCCC/IRR/2008/HRV, regarding the review of the initial report of Croatia, the expert review team (ERT) raised two questions of implementation relating to (i) Croatia's calculation of its assigned amount and compliance with Article 3, paragraph 7 and 8 of the Kyoto Protocol (KP) to the United Nations Framework Convention on Climate Change (the Convention) and the modalities for accounting of assigned amounts under Article 7, paragraph 4 KP, as elaborated by decision 13/CMP.1, as well as (ii) Croatia's calculation of its commitment period reserves and its compliance with the mentioned modalities for accounting of the assigned amounts. The resolution of the second question of implementation follows from the resolution of the first, ie whether addition of 3.5 million tones (Mt) carbon dioxide equivalent (CO_2 eq) by Croatia to its base year level following decision 7/CP.12 is in accordance with KP.

2. The enforcement branch of the Compliance Committee (EBCC) proceeded with the respective questions of implementation regarding Croatia and upon evaluation of presented documents and facts adopted the preliminary finding CC-2009-1-6/Croatia/EB of non-compliance, disregarding decision 7/CP.12 adopted by the Conference of the Parties (COP) and suggested reverting issue to the Conference of the Parties serving as the meeting of the Parties (CMP).

3. Croatia is by way of this statement of position strongly opposing the arguments and conclusion of the preliminary finding CC-2009-1-6/Croatia/EB adopted by EBCC.

REASONING

4. In paragraph 20 of the preliminary finding EBCC recognizes the fact that decision 7/CP.12 was adopted in 2006, when Croatia was not yet a party to KP. Having in mind that Croatia has become a party to KP since, in EBCC opinion, Croatia should revert to the Conference of the Parties serving as the meeting of the Parties for consideration of its specific circumstances. In other words, EBCC assumed a standpoint that upon Croatia's becoming a party to KP, decision 7/CP.12 was actually invalidated and CMP became the only competent body to grant flexibility to Croatia.

EBCC entirely disregards historical circumstances leading to ratification of KP by Croatia. Contrary to EBCC understanding, decision 7/CP.12 was crucial precondition for Croatia to ratify KP, as Croatia and all parties to the Convention recognized the consequences arising from dissolution of the former Yugoslavia preventing Croatia from reaching the Convention's and KP greenhouse gas (GHG) emissions target. Those consequences are clearly indicated within the COP decision 7/CP.12.

7/CP.12

Level of emissions for the base year of Croatia

The Conference of the Parties,
Recalling Article 4, paragraph 6, of the Convention,
Responding to the request of the Government of Croatia that its base year greenhouse gas emissions be considered in accordance with Article 4, paragraph 6, of the Convention,
Recalling decisions 9/CP.2, 11/CP.4 and 10/CP.11,
Taking into account the submission from Croatia contained in FCCC/SBI/2006/MISC.1,
Noting the report of the individual review of the greenhouse gas inventory of Croatia submitted in 2004 and contained in FCCC/WEB/IRI/2004/HRV, which, inter alia, recognized that the greenhouse gas inventory of Croatia does not contain emissions from power plants outside the boundaries of Croatia for 1990 or subsequent years,
Noting that this decision has no implications for historical emission levels of any other Party, in particular for Bosnia and Herzegovina, Serbia, and Montenegro,1
Considering that the flexibility under Article 4, paragraph 6, of the Convention to choose a base year different from 1990, in order to take into account the economic circumstances of countries undergoing the process of transition to a market economy, has previously been invoked by five Parties,
Considering the specific circumstances of Croatia with regard to greenhouse gas emissions before and after 1990, and the structure of the electricity generation sector of the former Yugoslavia,
Noting the intention that the approach taken should be conservative, and that unduly high flexibility should not be provided,
1. *Notes* that the inventory reported in 2004 showed the total greenhouse gas emissions in 1990 to be 31.7 Mt CO2 equivalent;
2. *Decides* that Croatia, having invoked Article 4, paragraph 6, of the Convention, shall be allowed to add 3.5 Mt CO2 equivalent to its 1990 level of greenhouse gas emissions not controlled by the Montreal Protocol for the purpose of establishing the level of emissions for the base year for implementation of its commitments under Article 4, paragraph 2, of the Convention.

EBCC fails to take into consideration that without flexibility provided under decision 7/CP.12 Croatia has not been in compliance with GHG emissions targets under the Convention and KP as of year 2005 onwards, which was the exact reason why Croatia requested and COP approved flexibility regarding establishing the level of emissions for the base year of Croatia in the first place. Pursuant to EBCC quite illogical interpretation, Croatia supposedly ratified KP in 2007 despite then being fully aware of continuous inability to comply with KP targets. Quite contrary to EBCC standpoint, Croatia ratified KP following the adoption of COP decision 7/CP.12 thus ensuring it will be in the position to fulfil KP commitments to the full extent.

In addition, EBCC disregards the fact that decision 7/CP.12 was adopted by the Conference of the Parties in 2006 unanimously (including affirmative votes of all KP Parties), which was a year and a half after KP came into force and after first CMP was held in November and December 2005. If any KP Party would have had any objections pertaining to the competency of CMP over COP or to the procedure of awarding the respective flexibility in this matter, it would surely have indicated so during the decision making process in COP, which was not the case. Therefore, EBCC's proposal that opts for CMP decision for Croatia does not make sense, not only because such identical decision was already adopted by

COP, but also because all KP Parties already voted on the respective matter in COP as Parties of the Convention.

5. In paragraph 15 of the preliminary finding EBCC notes that under KP the degree of flexibility available to the Annex I Parties undergoing process of transition to a market economy is different in that: (a) Article 3, paragraph 5, of the Kyoto Protocol only addresses flexibility in the use of an historical base year or period other than 1990 for the implementation of commitments under Article 3 of the Kyoto Protocol by Annex I Parties undergoing process of transition to a market economy; (b) Article 3, paragraph 6, of the Kyoto Protocol provides that a certain degree of flexibility shall be allowed by CMP to the Parties included in Annex I undergoing the process of transition to a market economy, but only in the implementation of commitments under the Kyoto Protocol other than those under Article 3; (c) Neither paragraph 5 nor paragraph 6 of Article 3 of the Kyoto Protocol provides a basis for allowing the addition of tonnes CO_2 eq to the level of emissions for a base year or period in the implementation of commitments under Article 3 of the Kyoto Protocol.

When interpreting Article 3, paragraphs 5 and 6 KP, EBCC omitted to recognise dualism of regimes allowing flexibility regarding the establishing of the level of emissions for the base year for Annex I Parties undergoing process of transition to a market economy – one under the Convention and the other under KP, both of which EBCC is obligated to honour.

For Annex I Parties undergoing process of transition to a market economy the flexibility under the Convention was established according to Article 4, paragraph 6 of the Convention, further elaborated by decision 9/CP.2, paragraphs 5, 6 and 7. Pursuant to the Convention's regime, flexibility was allowed to Bulgaria, Hungary, Poland, Romania, Slovenia and Croatia. EBCC accepted flexibility allowed under the Convention for all aforementioned countries, except for Croatia.

> 9/CP.2
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> 5. Decides that the four Parties that have invoked Article 4.6 of the Convention, requesting in their first communications flexibility to use base years other than 1990, be allowed this degree of flexibility, as follows:
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> • Bulgaria: to use 1989 as a base year;
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> • Hungary: to use the average of the years 1985 to 1987 as a base year;
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> • Poland: to use 1988 as a base year;
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> • Romania: to use 1989 as a base year;
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> 6. Requests the Subsidiary Body for Implementation to consider any additional requests on the basis of Article 4.6 of the Convention and to take decisions as appropriate on its behalf, and to report thereon to the Conference of the Parties;
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> 7. Requests that the Annex I Parties with economies in transition invoking Article 4.6 of the Convention in the implementation of their commitments should do so by explicitly indicating the nature of this flexibility (e.g., choice of a base year other than 1990, use of the revised guidelines for the preparation of national communications, schedule of submission of national inventory data other than indicated in paragraph 4 (b) above, etc.), and should state clearly the special consideration they are seeking and provide an adequate explanation of their circumstances;

Croatia particularly emphasises paragraphs 6 and 7 above clearly indicating that nature of flexibility is in no way restricted and is under no circumstance limited to use of base year or period other then 1990. Therefore, Parties of the Convention beyond any doubt never intended to restrict the nature of the respective flexibility with respect of base year GHG emissions providing clear and obvious foundation for resolution of any Party's particularities, including Croatian. This standpoint is clearly put forward in principles of the Convention demanding 'common but differentiated responsibilities'. EBCC omitted to take note of all previous relevant factors in Croatian case. However, completely different approach was taken by EBCC in Bulgarian, Hungarian, Polish, Romanian and Slovenian case where ERT and EBCC immediately recognized flexibility under the Convention as set out above.

In addition to flexibility regime under the Convention awarded by COP, KP sets out its own flexibility regime awarded by CMP pursuant to Article 3, paragraphs 5 second and third sentence and paragraph 6 KP. Here it should be noted that flexibility regime under KP in no way invalidates or sets aside flexibility regime awarded under the Convention, as Bulgarian, Hungarian, Polish, Romanian and Slovenian case vividly show.

> Article 3 KP
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> 5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to **decision 9/CP.2** of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.
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> 6. Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.

Contrary to EBCC standpoint, Article 3, paragraph 5, first sentence is entirely applicable to Croatian case. The respective clause explicitly invokes decision 9/CP.2, pursuant to which exact decision Croatia was awarded flexibility, later unjustifiably denied by EBCC. EBCC claims that the aforementioned clause is not applicable to Croatia as its effects are supposedly restricted only to use of base year or period other than 1990. This assumption is not correct as explained hereinafter.

The error EBCC committed is primarily caused by *grammatical* interpretation of the clause, contradicting the Convention and COP decisions, 9/CP.2 in particular.

Instead of grammatical interpretation, EBCC should have used *teleological* interpretation focusing on the intention of the Parties of the Convention, respecting particular circumstances of each party. Such interpretation would enable EBCC to adopt fair and equitable decision with respect to Croatia honouring the Convention, decision 7/CP.12,

specific historical circumstances referring to Croatia, but also provisions of KP (as explained in paragraph 6 herein).

Contrary to EBCC opinion, the purpose of KP Article 3, paragraph 5, first sentence is not the use of base year or period (other than 1990) *per se*, but rather determining a historical base point for establishing the fair and just level of GHG emissions of Parties included in Annex I undergoing the process of transition to a market economy, such as Croatia. This principle was applied by EBCC without exemption to Bulgaria, Hungary, Poland, Romania and Slovenia. The same as in the aforementioned cases, in Croatian case EBCC should have taken into consideration any flexibility allowed pursuant to decisions 9/CP.2 and 7/CP.12, as prescribed by KP Article 3, paragraph 5, first sentence. Since Croatia was allowed to add 3.5 Mt CO_2 equivalent for the purpose of establishing the level of emissions for the base year under decision 9/CP.2 and 7/CP.12, EBCC is compelled to apply them identically with its (until now) consistent practise.

6. Beside incorrect application of KP Article 3, paragraph 5, first sentence (as described under paragraph 5 above), by adopting the preliminary finding CC-2009-1-6/Croatia/EB, EBCC has not complied with numerous obligatory provisions of KP and CMP decisions regulating accounting of the assigned amounts and commitment period reserve, as set out below.

> Article 7 KP
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> 1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.
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> 13/CMP.1
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> 7. Part one of the report referred to in paragraph 6 above shall contain the following information, or references to such information where it has been previously submitted to the secretariat:
> (a) Complete inventories of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for all years from 1990, or another approved base year or period under Article 3, paragraph 5, to the most recent year available, prepared in accordance with Article 5, paragraph 2, and relevant decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), taking into account any relevant decisions of the Conference of the Parties.
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> Article 8 KP
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> 1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7,

paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.

27/CMP.1, annex, section II

11. The Committee shall take into account any degree of flexibility allowed by the Conference of the Parties serving as the meeting of the Parties to the Protocol, pursuant to Article 3, paragraph 6, of the Protocol and taking into account Article 4, paragraph 6, of the Convention, to the Parties included in Annex I undergoing the process of transition to a market economy.

Pursuant to very clear KP (based) rules cited above, a Party is obligated to submit annual inventory of GHG emissions in accordance with the relevant COP decisions (including 9/CP.2 and 7/CP.12), annual inventory should be reviewed by ERT (again) in accordance with the relevant COP decisions (including 9/CP.2 and 7/CP.12) and finally the Compliance Committee is obligated to take into account Article 4, paragraph 6, of the Convention, ie flexibility regime under the Convention, when deciding on implementation of the commitments under KP. The preliminary finding CC-2009-1-6/Croatia/EB directly contradicts to the above provisions under KP, as it intentionally disregards both 9/CP.2 and 7/CP.12 decisions rendered by COP, instead of applying them.

7. In paragraph 21 of the preliminary finding EBCC concludes that, in the absence of a decision of the CMP on Croatia's specific circumstances, decision 7/CP.12 taken under the Convention does not provide a basis under the Kyoto Protocol for Croatia to add 3.5 Mt CO2 eq to its level of emissions for the base year for implementation of its commitments under Article 3 of the Kyoto Protocol and that accordingly the accounting of the assigned amounts is not in compliance with KP.

Pursuant to EBCC standpoint, decisions 9/CP.2 and 7/CP.12 referring to Croatia are for some reason not applicable to KP. Essentially EBCC believes that it is authorised and competent to invalidate COP decisions 9/CP.2 and 7/CP.12 for the purpose of KP application. This assumption is not correct as explained hereinafter.

Not only that the preliminary finding CC-2009-1-6/Croatia/EB contradicts Article 3, paragraph 5, first sentence KP, and violates Article 7, paragraph 1 KP, Article 8, paragraph 1 KP, decision 27/CMP.1, annex, section II, paragraph 11 and decision 13/CMP.1, annex, paragraph 7(a) (as described under paragraph 5 and 6 herein), rendering such decision is also not allowed under EBCC procedural rules under KP and CMP decisions.

EBCC, contrary to its opinion, does not have jurisdiction to set aside the COP decision on any grounds. COP is, according to Article 7, paragraph 2 of the Convention defined as the supreme body of the Convention and the highest decision-making authority. On the other hand, the Compliance Committee is a subsidiary body competent for implementation of KP. Under no circumstance and on no legal grounds one can conclude that the Compliance Committee, as a subsidiary body, can overturn (or decide not to apply) any decision of COP, as the supreme body, as EBCC does by explicitly setting aside relevant COP decisions referring to Croatia.

Further, decision 27/CMP.1, annex, section V, paragraphs 4 and 5, or any other provision designating competence of the enforcement branch of the Compliance Committee does not stipulate any responsibilities of the enforcement branch regarding application of Article 3,

paragraph 5 KP which is relevant for the Croatian case. In accordance with decision 27/CMP.1, annex, section V, paragraph 4(a), responsibilities of EBCC extend exclusively over Article 3, paragraph 1 KP, and do not include paragraph 5. Consequently, as Article 3, paragraph 5 is not explicitly foreseen within EBCC's responsibilities, EBCC is not competent to decide/overturn/interpret any COP decision referring to Article 3, paragraph 5 KP, also under its own procedural rules. This last mentioned argument is confirmed by the fact that the used flexibilities had always been adopted by COP and then implemented by the Compliance Committee. In other words, the Compliance Committee is responsible for implementation of COP decisions, not for dismissing them.

> 27/CMP.1, annex, section V
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> 4. The enforcement branch shall be responsible for determining whether a Party included in Annex I is not in compliance with:
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> (a) Its quantified emission limitation or reduction commitment under Article 3, paragraph 1, of the Protocol;
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> (b) The methodological and reporting requirements under Article 5, paragraphs 1 and 2, and Article 7, paragraphs 1 and 4, of the Protocol; and
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> (c) The eligibility requirements under Articles 6, 12 and 17 of the Protocol.
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> 5. The enforcement branch shall also determine whether to apply:
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> (a) Adjustments to inventories under Article 5, paragraph 2, of the Protocol, in the event of a disagreement between an expert review team under Article 8 of the Protocol and the Party involved; and
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> (b) A correction to the compilation and accounting database for the accounting of assigned amounts under Article 7, paragraph 4, of the Protocol, in the event of a disagreement between an expert review team under Article 8 of the Protocol and the Party involved concerning the validity of a transaction or such Party's failure to take corrective action.

Contrary to EBCC's standpoint, pursuant to decision 27/CMP.1, annex, section V, paragraph 5, EBCC has direct authority to adjust inventories and correct compilation and accounting database for the accounting of assigned amounts in the event of a disagreement between an expert review team and the Party. Since ERT disregarded its obligation under Article 8, paragraph 1 KP to perform expert review of Croatia's inventory data pursuant to the relevant decisions of the Conference of the Parties (decisions 9/CP.2 and 7/CP.12), EBCC should have exercised its authority under decision 27/CMP.1, annex, section V, paragraph 5 by applying the respective flexibility allowed to Croatia. Moreover so having in mind that application of COP decisions on flexibility falls outside ERT mandate as explicitly recognised by ERT in its Report of the review of the initial report of Croatia FCCC/IRR/2008/HRV, paragraph 159.Therefore, both ERT and the Compliance Committee are under KP (based) regulation obligated to apply decisions 9/CP.2 and 7/CP.12 to the case of Croatia.

8. EBCC offered no plausible explanation for different treatment of Croatia compared to the cases of Bulgaria, Hungary, Poland, Romania, Slovenia and Iceland. EBCC only notes in paragraph 16 and 17 of the preliminary finding CC-2009-1-6/Croatia/EB that flexibilities allowed to Slovenia (decision 11/CP.4) and Iceland (decision 14/CP.7) have been applied

without requiring confirmation by CMP, and that supposedly COP decisions referring to Slovenia and Iceland do not allow the additional tonnes of CO_2 eq. Croatia therefore concludes that EBCC finds the nature of flexibility allowed to Croatia by the supreme body of the Convention supposedly questionable in terms of implementation of its commitments under KP.

Contrary to EBCC standpoint, Iceland was directly allowed additional tonnes of CO_2 eq under decision 14/CP.7 (single project methodology), which was *nota bene* taylor-made specifically for Iceland. Pursuant to the respective decision, Iceland was entitled to exclude in national totals the amount to the extent that would cause Iceland to exceed its assigned amount, or in other words was allowed to add 1.6 Mt of CO_2 eq to its level of GHG emissions for implementation of its commitments under KP. Croatia emphasises that flexibility allowed under decision 14/CP.7 was never confirmed by CMP and was accepted by ERT and EBCC without objections, as it stands in the respective decision.

Contrary to EBCC standpoint, flexibility allowed to Bulgaria, Hungary, Poland, Romania and Slovenia was based on the Convention flexibility regime (Article 4, paragraph 6 and decision 9/CP.2), which is identical flexibility regime as applied to Croatia. All those flexibility related COP decisions were never confirmed by CMP and as such were accepted by ERT and EBCC without objections. The flexibility in the use of an historical base year or period other than 1990 for the implementation of commitments under Article 3 of the Kyoto Protocol by Annex I Parties undergoing process of transition to a market economy – the sole difference between Croatia and other mentioned countries –in no way prevents other means of flexibility allowed under decision 9/CP.2, including adding 3.5 Mt of CO_2 eq to its 1990 level granted to Croatia pursuant to decision 7/CP.12, as explained under paragraph 5 herein.

The fact that EBCC opts for confirmation of COP decision allowing flexibility to Croatia (7/CP.12) by CMP, which EBCC has not requested in the similar cases of Bulgaria, Hungary, Poland, Romania, Slovenia and Iceland, and which would constitute unprecedented practise, results in the preliminary finding CC-2009-1-6/Croatia/EB against Croatia's interest and grave violation of equal treatment principle.

CONCLUSION AND REQUEST

9. Croatia strongly believes that the preliminary finding CC-2009-1-6/Croatia/EB is not in line with the Convention, the Kyoto Protocol and relevant COP and CMP decisions according to all aforementioned arguments, particularly emphasising the following:

- The EBCC fails to take into consideration the consequences for Croatia arising from dissolution of former Yugoslavia
- The EBCC fails to recognize that that preliminary decision denies Croatia's ability to comply with 2012 emissions target
- The EBCC overlooks fundamental fact that decision 7/CP.12 was crucial precondition for Croatia to ratify the Kyoto Protocol, particularly having in mind compliance with 2012 emissions target

- The EBCC suggested that CMP should adopt a decision allowing flexibility to Croatia, although such identical decision was already adopted by COP, with affirmative votes of all parties to the Kyoto Protocol

- The EBCC fails to recognize that it should equally apply flexibility regimes regarding establishing the level of emissions for the base year for Annex I Parties undergoing process of transition to a market economy as provided under both, the Convention and the Kyoto Protocol

- The EBCC does not take into account that under applicable decision 9/CP.2 the nature of flexibility is in no way restricted, nor limited to use of base year or period other then 1990

- The preliminary finding overlooks the fact that the first sentence of Article 3, paragraph 5, of the Kyoto Protocol, invoking decision 9/CP.2, should be applied to Croatia using teleological interpretation

- Preliminary decision directly contradicts Article 7, paragraph 1 KP, Article 8, paragraph 1 KP, decision 27/CMP.1, annex, section II, paragraph 11 and decision 13/CMP.1, annex, paragraph 7(a)

- The EBCC does not recognize the fact that it is not competent for setting aside or denying application of any COP decisions, including decision 7/CP.12 referring to Croatia

- By its finding, The EBCC has contravened the equal treatment principle with respect to Croatia allowing flexibility in comparable cases of Bulgaria, Hungary, Poland, Romania, Slovenia and Iceland, without requiring CMP or any other additional confirmation

- By adopting the respective preliminary finding as a final the EBCC would neglect its obligation and crucial principle under the Convention to apply 'common but differentiated responsibilities' approach

10. Croatia would appreciate the opportunity to elaborate its position and answer any question that EBCC members might have on the matter at the meeting in Bonn, on 23- 24 November 2009.

11. Having said the above, Croatia kindly requests the EBCC, based on this statement of position and written submission CC-2009-1-5/Croatia/EB, to re-examine the provided arguments and its position expressed in the preliminary finding CC-2009-1-6/Croatia/EB, and to revise it by replacing it with a decision not to proceed with questions of implementation designated by the expert review team in the review of initial report of Croatia FCCC/IRR/2008/HRV, thereby allowing Croatia to add 3.5 Mt CO_2 eq to its 1990 GHG emissions not controlled by the Montreal Protocol for the purpose of establishing the level of emissions for the base year for implementation of its commitments under the Kyoto Protocol following decision 7/CP.12.

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