

Klasa: 720-02/11-02/04

Urbroj: 5030106-12-1

Zagreb, 16. veljače 2012.

PREDSJEDNIKU HRVATSKOGA SABORA

Predmet: Prijedlog zakona o potvrđivanju Memoranduma o razumijevanju između Republike Hrvatske i Europske unije o sudjelovanju Republike Hrvatske u Programu Europske unije kazneno pravo, s Konačnim prijedlogom zakona

Na temelju članka 85. Ustava Republike Hrvatske (Narodne novine, broj 85/2010 – pročišćeni tekst) i članaka 129. i 159. Poslovnika Hrvatskoga sabora, Vlada Republike Hrvatske podnosi Prijedlog zakona o potvrđivanju Memoranduma o razumijevanju između Republike Hrvatske i Europske unije o sudjelovanju Republike Hrvatske u Programu Europske unije kazneno pravo, s Konačnim prijedlogom zakona za hitni postupak.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila Orsata Miljenića, ministra pravosuđa i Sandru Artuković Kunšt, zamjenicu ministra pravosuđa.

PREDSJEDNIK

Zoran Milanović

**PRIJEDLOG ZAKONA O POTVRĐIVANJU MEMORANDUMA
O RAZUMIJEVANJU IZMEĐU REPUBLIKE HRVATSKE I EUROPSKE UNIJE
O SUDJELOVANJU REPUBLIKE HRVATSKE U PROGRAMU EUROPSKE UNIJE
KAZNENO PRAVO, S KONAČNIM PRIJEDLOGOM ZAKONA**

**PRIJEDLOG ZAKONA O POTVRĐIVANJU MEMORANDUMA
O RAZUMIJEVANJU IZMEĐU REPUBLIKE HRVATSKE I EUROPSKE UNIJE
O SUDJELOVANJU REPUBLIKE HRVATSKE U PROGRAMU
EUROPSKE UNIJE KAZNENO PRAVO**

I. USTAVNA OSNOVA ZA DONOŠENJE ZAKONA

Ustavna osnova za donošenje Zakona o potvrđivanju Memoranduma o razumijevanju između Republike Hrvatske i Europske unije o sudjelovanju Republike Hrvatske u Programu Europske unije kazneno pravo (u daljnjem tekstu: Memorandum), sadržana je u članku 140. stavku 1. Ustava Republike Hrvatske (Narodne novine, broj 85/2010 – pročišćeni tekst).

II. OCJENA STANJA I CILJ KOJI SE DONOŠENJEM ZAKONA ŽELI POSTIĆI

Republika Hrvatska sudjeluje u programima Europske unije na temelju Okvirnog sporazuma između Republike Hrvatske i Europske zajednice o općim načelima sudjelovanja Republike Hrvatske u programima Zajednice (u daljnjem tekstu: Okvirni sporazum), od 22. studenoga 2004. godine (Narodne novine – Međunarodni ugovori, broj 6/2005). Okvirni sporazum uspostavio je opće uvjete sudjelovanja Republike Hrvatske u programima Europske unije, ostavljajući Europskoj uniji i nadležnim tijelima u Republici Hrvatskoj da odrede posebne odredbe i uvjete, uključujući financijsko upravljanje i sudjelovanje, u odnosu na sudjelovanje u svakom pojedinačnom programu.

Program kazneno pravo (u daljnjem tekstu: Program) dio je Općeg programa "Temeljna prava i pravda" i uspostavljen je Odlukom 2007/126/JHA Europskog parlamenta i Vijeća, od 12. veljače 2007. godine. Republika Hrvatska će sudjelovati u Programu, u skladu s uvjetima iz Okvirnog sporazuma i prema odredbama i uvjetima iz dodataka I. i II. ovoga Memoranduma. Potvrđivanjem ovoga Memoranduma omogućit će se sudjelovanje Republike Hrvatske u projektima namijenjenima edukaciji pravosudnih dužnosnika te promociji i jačanju pravosudne suradnje utemeljene na međusobnom priznanju sudskih odluka.

Vlada Republike Hrvatske je na sjednici održanoj 1. prosinca 2011. godine donijela Odluku o pokretanju postupka za sklapanje Memoranduma o razumijevanju između Europske unije i Republike Hrvatske o sudjelovanju Republike Hrvatske u Programu Europske unije kazneno pravo, klase: 720-02/11-02/04, urbroja: 5030106-11-1, a koji Memorandum su 15. prosinca 2011. godine potpisali Dražen Bošnjaković, tadašnji ministar pravosuđa, u ime Republike Hrvatske i Viviane Reding, potpredsjednica zadužena za pravosuđe, temeljna prava i državljanstvo, u ime Europske komisije.

III. OSNOVNA PITANJA KOJA SE PREDLAŽU UREDITI OVIM ZAKONOM

Zakonom se potvrđuje Memorandum kako bi njegove odredbe, u skladu s člankom 141. Ustava Republike Hrvatske, postale dio unutarnjeg pravnog poretka Republike Hrvatske.

Potvrđivanje Memoranduma predstavlja pravnu osnovu za sudjelovanje Republike Hrvatske u Programu. Predmetnim Memorandumom utvrđuju se opća načela, rokovi i uvjeti sudjelovanja Republike Hrvatske u Programu.

Memorandum sadrži Dodatak I. "Pravila o financijskom doprinosu Republike Hrvatske u posebnom programu kazneno pravo" i Dodatak II. "Financijski nadzor, plaćanje i druge mjere suzbijanja prijevара". U Dodatku I. navedena su pravila o određivanju godišnjeg financijskog doprinosa koji će Republika Hrvatska morati uplaćivati u glavni proračun Europske unije, način izračunavanja tog financijskog doprinosa i pravila isplate istog. U Dodatku II. navode se pravila o financijskom nadzoru, plaćanju i mjerama suzbijanja korupcije.

IV. OCJENA SREDSTAVA POTREBNIH ZA PROVEDBU ZAKONA

Provedba ovoga Zakona zahtijeva osiguranje dodatnih financijskih sredstava u državnom proračunu Republike Hrvatske.

Nacionalni doprinos za Program planiran je u razdjelu Ministarstva pravosuđa. Za sudjelovanje u Programu, Republika Hrvatska će svake godine uplatiti doprinos u glavni proračun Europske unije, u skladu s modalitetima u Dodatku I. Memoranduma. U proračunskoj 2012. godini, za izvršenje Memoranduma potrebno je izdvojiti ukupno 144.300,00 kuna, od čega će se 90% financirati iz IPA 2008 kontribucije, dok će se ostatak izdvojiti iz državnog proračuna Republike Hrvatske. U proračunskoj 2013. godini, za izvršenje Memoranduma potrebno je izdvojiti ukupno 148.000,00 kuna, od čega će se 85% financirati iz IPA 2008 kontribucije, dok će se ostatak izdvojiti iz državnog proračuna Republike Hrvatske. Sukladno odredbama Dodatka I. Memoranduma, Republika Hrvatska godišnji doprinos za 2012. i 2013. godinu plaćat će razmjerno proteku vremena sudjelovanja u Programu (pro rata temporis).

V. PRIJEDLOG ZA DONOŠENJE ZAKONA PO HITNOM POSTUPKU

Temelj za donošenje Zakona po hitnom postupku nalazi se u članku 159. stavku 1. Poslovnika Hrvatskoga sabora, i to u drugim osobito opravdanim državnim razlozima.

S obzirom na prirodu postupka potvrđivanja međunarodnih ugovora, kojim država i formalno izražava spremnost da bude vezena već potpisanim međunarodnim ugovorom, kao i na činjenicu da se u ovoj fazi postupka, u pravilu, ne mogu vršiti izmjene ili dopune teksta međunarodnog ugovora, predlaže se da se ovaj Prijedlog zakona raspravi i prihvati po hitnom postupku, objedinjavajući prvo i drugo čitanje.

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU MEMORANDUMA
O RAZUMIJEVANJU IZMEĐU REPUBLIKE HRVATSKE I EUROPSKE UNIJE
O SUDJELOVANJU REPUBLIKE HRVATSKE U PROGRAMU
EUROPSKE UNIJE KAZNENO PRAVO**

Članak 1.

Potvrđuje se Memorandum o razumijevanju između Republike Hrvatske i Europske unije o sudjelovanju Republike Hrvatske u Programu Europske unije kazneno pravo, potpisan u Bruxellesu 15. prosinca 2011. godine, u izvorniku na engleskom jeziku.

Članak 2.

Tekst Memoranduma iz članka 1. ovoga Zakona u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik, glasi:

**MEMORANDUM O RAZUMIJEVANJU
između Republike Hrvatske i Europske unije
o sudjelovanju Republike Hrvatske u Programu Europske unije kazneno pravo**

REPUBLIKA HRVATSKA, u daljnjem tekstu Hrvatska,

s jedne strane, i

EUROPSKA KOMISIJA, u daljnjem tekstu „Komisija“, u ime Europske unije,

s druge strane,

budući da:

- (1) Okvirni sporazum između Hrvatske i Europske zajednice kojim se utvrđuju opća načela za sudjelovanje Hrvatske u programima Zajednice, usvojen 22. studenoga 2004. i koji je stupio na snagu 22. kolovoza 2005.¹ (u daljnjem tekstu "Okvirni sporazum") ostavlja Komisiji i nadležnim tijelima Hrvatske da utvrde posebne odredbe i uvjete, uključujući financijski doprinos, u pogledu takvog sudjelovanja u svakom pojedinom programu;
- (2) Posebni program kazneno pravo utvrđen je Odlukom br. 2007/126/PUP Vijeća od 12. veljače 2007.²;

SPORAZUMIJELE SU SE KAKO SLIJEDI:

¹ [SL L 192 str. 16.](#) od 22.07.2005.

² [SL L 58 str.13.](#) od 24/02/2007.

Članak 1.

Program

Hrvatska sudjeluje u Posebnom programu kazneno pravo (u daljnjem tekstu "Program JPEN"), u skladu s uvjetima iz Okvirnog sporazuma te prema odredbama i uvjetima iz članka 2. - 6. ovog Memoranduma o razumijevanju.

Članak 2.

Odredbe i uvjeti vezani uz sudjelovanje u Programu JPEN

1. Hrvatska sudjeluje u aktivnostima Programa JPEN u skladu s ciljevima, kriterijima, postupcima i rokovima kako su utvrđeni u Odluci 2007/126/PUP, godišnjim programima rada koje je usvojila Komisija u provedbi Odluke i u skladu sa sljedećim uvjetima: od trenutka privremene primjene ovog Memoranduma o razumijevanju, sudjelovanje u aktivnostima provedbe ciljeva iz članka 2. i 3. Odluke biti će moguće pod uvjetom da se radi o aktivnostima koje su povezane sa europskom izobrazbom sudaca, razmjenama dobre prakse, ili sudjelovanjem hrvatskih državljana u europskim mrežama sukladno ciljevima od interesa za Europsko područje pravde.
2. Odredbe i uvjeti koji se primjenjuju na podnošenje, ocjenjivanje i odabir prijave institucija, organizacija i pojedinaca iz Hrvatske koji ispunjavaju uvjete isti su kao i oni koji se primjenjuju na institucije, organizacije i pojedince koji ispunjavaju uvjete iz država članica utvrđene u Odluci broj 2007/126/JHA.
3. Za sudjelovanje u Programu JPEN, Hrvatska plaća svake godine financijski doprinos u glavni proračun Europske unije u skladu s dolje navedenim člankom 3.
4. Predstavnici Hrvatske sudjeluju kao promatrači u upravnom odboru nadležnom za nadzor Programa JPEN.
5. Putni troškovi i dnevnice predstavnika Hrvatske naknađuju se sukladno pravilima utvrđenim u Dodatku I, točke 5.
6. Jedan od službenih jezika Europske unije koristi se u postupcima vezanim uz zahtjeve, ugovore i izvješća, kao i druge administrativne aspekte Programa JPEN.

Članak 3.

Financijski doprinos

Pravila o financijskom doprinosu Hrvatske navedena su u Dodatku I.

Financijski doprinos Hrvatske u pogledu sudjelovanja i provedbe Programa JPEN dodaje se iznosu koji je određen za svaku godinu u glavnom proračunu Europske unije za planirana izdvajanja za ispunjavanje onih financijskih obveza koje proizlaze iz različitih mjera potrebnih za izvršenje, upravljanje i vođenje Programa JPEN.

Dio tog financijskog doprinosa može se financirati u okviru odgovarajućih instrumenata pomoći Europske unije, ukoliko Hrvatska tako zatraži. U tom slučaju financiranje iz pretpristupnih fondova Europske unije navest će se u Memorandumu o financiranju godišnjeg programa u vezi te pomoći.

Članak 4.

Izvrješćivanje i ocjenjivanje

Ne dovodeći u pitanje odgovornosti Komisije i Revizorskog suda Europske unije u vezi nadzora i ocjenjivanja Programa JPEN, sudjelovanje Hrvatske u Programu JPEN bit će stalno nadzirano na partnerskim temeljima uključujući Komisiju i Hrvatsku. Hrvatska dostavlja Komisiji odgovarajuća izvješća i sudjeluje u drugim posebnim aktivnostima koje je u tom smislu predvidjela Europska unija.

Izvrješćivanje i ocjenjivanje provodit će se u skladu s pravilima određenim u Dodatku II.

Članak 5.

Završne odredbe

1. Ovaj Memorandum o razumijevanju se primjenjuje tijekom trajanja Programa ili do ulaska Hrvatske u Europsku uniju ukoliko se to dogodi prije završetka JPEN programa.
2. Projekti i aktivnosti koji su u tijeku u vrijeme prestanka nastavit će se do njihova završetka pod uvjetima iz ovog Memoranduma o razumijevanju, kao i ugovori koji se primjenjuju na te projekte i aktivnosti, te odredbe Dodatka II.
3. Dodaci čine sastavni dio ovog Memoranduma o razumijevanju.
4. Ovaj Memorandum o razumijevanju može se izmijeniti i dopuniti samo u pisanom obliku uz obostrani pristanak stranaka.
5. Do ispunjenja unutarnjih pravnih uvjeta u Hrvatskoj, ovaj Memorandum o razumijevanju privremeno će se primjenjivati počevši od proračunske godine 2012. Hrvatska će pisanom obavijesti diplomatskim putem izvijestiti da su ispunjeni njezini unutarnji pravni uvjeti za njegovo stupanje na snagu. U slučaju da Hrvatska obavijesti Komisiju da neće potvrditi potpisani Memorandum o razumijevanju, privremena primjena prestaje od proračunske godine koja slijedi nakon ove obavijesti. Obavijest o prestanku privremene primjene ne utječe na obveze stranaka koje se odnose na projekte i aktivnosti financirane u okviru općeg proračuna Europske unije u godini obavijesti, niti na obveze Hrvatske da plati svoj doprinos za godinu obavijesti.

Sastavljeno u Bruxellesu 15. prosinca 2011.

Za Republiku Hrvatsku

Za Europsku komisiju,

Dražen Bošnjaković,
ministar pravosuđa

Viviane Reding
potpredsjednica zadužena za
pravosuđe, temeljna prava i državljanstvo

Dodatak I**Pravila o financijskom doprinosu Republike Hrvatske
u Posebnom programu kazneno pravo**

1. Godišnji financijski doprinos Hrvatske za Program JPEN utvrđuje se u razmjeru sa i uz iznos koji je na raspolaganju za tu godinu za planirana izdvajanja za provedbu Programa JPEN.
2. Faktor proporcionalnosti temeljem kojeg se uređuje doprinos Hrvatske dobiva se utvrđivanjem omjera između hrvatskog bruto nacionalnog dohotka na tržištu cijena i ukupnog bruto nacionalnog dohotka na tržištu cijena u istoj godini država članica Europske unije i Hrvatske.
Ovaj se omjer izračunava na temelju najnovijih statističkih podataka za 2011. godinu Statističkog ureda Europske unije (Eurostat), dostupnih u vrijeme objave prijedloga proračuna Europske unije.
3. Uzimajući u obzir ograničene uvjete sudjelovanja iz članka 2. ovog Memoranduma o razumijevanju, financijski doprinos Hrvatske za određenu godinu izračunava se na sljedeći način:
godina 2012.: doprinos prema faktoru proporcionalnosti utvrđenim u skladu sa stavkom 2. pomnoženo sa 0,2.
godina 2013: doprinos prema faktoru proporcionalnosti utvrđenim u skladu sa stavkom 2. pomnoženo sa 0,2.
Ukoliko Hrvatska postane članicom Europske unije u 2013. iznos se utvrđuje prema proteku vremena (pro-rata temporis) broja mjeseci prije pristupanja.
Konačni iznosi zaokružuju se na 500 ili 1000, ovisno koji je iznos bliži.
4. Temeljem metode računanja iz stavka 3. okvirni iznos financijskog doprinosa koji Hrvatska treba uplatiti u glavni proračun Europske unije radi sudjelovanja u Programu JPEN je sljedeći:
EUR 19 500 za godinu 2012., prema proteku vremena (pro-rata temporis)
EUR 20 000 za godinu 2013., prema proteku vremena (pro-rata temporis)
5. Putni troškovi i dnevnice hrvatskih predstavnika i stručnjaka zbog sudjelovanja u svojstvu promatrača u radu odbora iz članaka 10. Odluke o usvajanju Programa JPEN ili drugih sastanaka koji se odnose na provedbu Programa JPEN, naknađuje Komisija na istoj osnovi i sukladno istim procedurama koje su na snazi za predstavnike država članica Europske unije.
6. Financijske uredbe koje se primjenjuju na glavni proračun Europske unije primjenjuju se na upravljanje doprinosom Hrvatske.
7. Po potpisu ovog Memoranduma o razumijevanju i početkom svake slijedeće proračunske godine, Komisija dostavlja Hrvatskoj poziv za sredstva koja odgovaraju doprinosu troškovima obuhvaćenim ovim Memorandumom o razumijevanju.
8. Ovaj se doprinos isplaćuje u eurima na bankovni račun Komisije izražen u eurima.

9. Hrvatska plaća svoj doprinos za godišnje troškove u skladu sa pozivom za isplatu sredstava najkasnije tri mjeseca od datuma poziva.

Svako kašnjenje u plaćanju doprinosa dovodi do plaćanja zateznih kamata za Hrvatsku na nenaplaćeni iznos od dana dospelja. Kamatna stopa je ona stopa koju primjenjuje Europska središnja banka na svoje glavne operacije refinanciranja, kako je objavljeno u seriji C Službenog lista Europske unije, koje su na snazi prvog kalendarskog dana mjeseca u kojem pada rok, uvećano za 3,5%. U slučaju da je kašnjenje u plaćanju doprinosa takvo da može ozbiljno ugroziti provedbu i upravljanje Programa JPEN, te kod izostanka plaćanja 20 radnih dana nakon što je Komisija poslala formalnu opomenu Hrvatskoj, obustavit će se sudjelovanje Hrvatske u programu za konkretnu godinu.

Dodatak II

FINANCIJSKI NADZOR, PLAĆANJE I DRUGE MJERE SUZBIJANJA PRIJEVARA

I. NADZOR I MJERE SUZBIJANJA PRIJEVARA ZAJEDNICE

1. U skladu s financijskom uredbom koja se primjenjuje na glavni proračun Europske unije te u skladu s drugim pravilima iz ovog Memoranduma o razumijevanju, ugovori sklopljeni s korisnicima programa nastalih u Hrvatskoj osigurat će provođenje financijske i druge revizije koje provode agenti Komisije ili druge osobe koje je Komisija zadužila, u svako doba u svojim prostorijama i prostorijama svojih podgovaratelja.
2. Agenti Komisije ili druge osobe koje je Komisija zadužila moraju imati odgovarajući pristup stranicama, radovima i dokumentima te svim informacijama potrebnim za provođenje te revizije, uključujući elektronički način. To se pravo pristupa izričito navodi u ugovorima sklopljenim radi provedbe instrumenata iz ovog Memoranduma. Europski Revizorski sud ima ista prava kao i Komisija.
3. U okviru ovog Memoranduma Komisija/OLAF (the European Anti Fraud Office - Europski ured za suzbijanje prijevvara) ovlaštenu su provoditi provjere na licu mjesta i inspekcije na državnom području Hrvatske u skladu s postupovnim odredbama Uredbe Vijeća (Euratom, EZ) br. 2185/96 od 11. studenog 1996. godine.

Te se provjere i inspekcije pripremaju i provode u uskoj suradnji s nadležnim hrvatskim tijelima koja će biti pravovremeno obaviještena o cilju, svrsi i pravnom temelju provjera i inspekcija, kako bi mogli pružiti svu potrebnu pomoć.

Ukoliko konkretne hrvatske vlasti žele, provjere na licu mjesta i inspekcije mogu se provesti zajedno s njima.

Ako se sudionici programa opiru provjerama na licu mjesta ili inspekcijama, hrvatske su vlasti, postupajući u skladu s nacionalnim pravilima, dužne dati inspektorima Komisije/OLAF-a svu potrebnu pomoć kako bi im omogućili obavljanje njihovih zadataka u provjerama na licu mjesta ili inspekcijama.

Komisija/OLAF izvještava što je moguće prije hrvatske vlasti o svakoj činjenici ili pretpostavci u vezi nezakonnosti koje su im postale poznate tijekom provjera na licu mjesta ili inspekcija. U svakom slučaju se od Komisije /OLAF-a zahtijeva da obavijeste navedena tijela o rezultatu takvih provjera i inspekcija.

II. INFORMACIJE I KONZULTACIJE

1. U cilju valjane provedbe ovog Dodatka, nadležna hrvatska tijela i tijela Europske unije redovno razmjenjuju informacije, te na zahtjev jedne od stranaka provode konzultacije.
2. Nadležna hrvatska tijela dužna su bez odgode obavijestiti Komisiju o svakoj činjenici ili pretpostavci koju su saznali o nezakonnosti u vezi sklapanja i provedbe ugovora zaključenih u primjeni instrumenata iz ovog Memoranduma.

III. ADMINISTRATIVNE MJERE I KAZNE

Ne dovodeći u pitanje primjenu hrvatskog kaznenog zakonodavstva, Komisija može odrediti administrativne mjere i kazne sukladno financijskoj uredbi koja se primjenjuje na glavni proračun Europske unije.

IV. PLAĆANJE

Odluke koje je Komisija donijela u okviru ovog Memoranduma kojima se određuju novčane obveze osobama koje nisu države, izvršne su u Hrvatskoj.

Izvršenje je regulirano pravilima važećeg parničnog postupka u državi na čijem se državnom području provodi. Nalog za izvršenje se prilaže odluci bez daljnjih formalnosti, osim ovjere vjerodostojnosti odluke od strane nacionalnog tijela koje hrvatska Vlada odredi u tu svrhu i o čemu obavijesti Komisiju.

Kada se te formalnosti obave na zahtjev Komisije, Komisija može nastaviti s izvršenjem u skladu s nacionalnim pravom pokretanjem pitanja izravno pred nadležnim tijelom. Zakonitost odluke Komisije podliježe kontroli Suda Europske unije.

Presude Suda Europske unije prema arbitražnoj klauzuli u ugovoru u okviru područja primjene ovog Memoranduma izvršne su pod istim uvjetima.

MEMORANDUM OF UNDERSTANDING
between the Republic of Croatia and the European Union
on the participation of the Republic of Croatia in the EU programme
Criminal Justice

THE REPUBLIC OF CROATIA, hereinafter referred to as Croatia,
of the one part, and

THE EUROPEAN COMMISSION, hereinafter referred to as “the Commission”, on behalf of
the European Union,

of the other part,

Whereas:

- (1) the Framework Agreement between Croatia and the European Community establishes the general principles for the participation of Croatia in Community programmes, was adopted on 22 November 2004 and entered into force on 22 August 2005¹ (hereinafter called "the Framework Agreement") leaving the Commission and the competent authorities of Croatia to determine the specific terms and conditions, including financial contribution, with regard to such participation in each particular programme,
- (2) the Specific Programme Criminal Justice was established by Decision No 2007/126/JHA of the Council of 12 February 2007²

HAVE AGREED AS FOLLOWS:

¹ OJ L 192 p. 16. of 22/07/2005

² OJ L 58 p. 13 of 24/02/2007

Article 1

Programme

Croatia shall participate in the Criminal Justice Specific Programme (hereinafter called "JPEN Programme"), in accordance with the conditions laid down in the Framework Agreement and under the terms and conditions referred to in Articles 2-6 of this Memorandum of Understanding.

Article 2

Terms and conditions with respect to participation in the JPEN Programme

1. Croatia shall participate in the activities of the JPEN Programme in conformity with the objectives, criteria, procedures and deadlines as defined in the Decision 2007/126/JHA, the annual work programme adopted by the Commission implementing the Decision and according to the following conditions: as from provisional application of this Memorandum of Understanding, participation in activities implementing the objectives indicated in Articles 2 and 3 of the Decision will be allowed with the condition that they are activities relative to European judicial training, exchanges of good practices, or participation of Croatian nationals in European networks pursuing objectives of interest for the European area of justice.
2. The terms and conditions applicable to the submission, assessment and selection of applications by eligible institutions, organisations and individuals of Croatia shall be the same as those applicable to eligible institutions, organisations and individuals of the Member States bound by Decision No 2007/126/JHA
3. To participate in the JPEN Programme, Croatia shall pay every year a financial contribution to the General Budget of the European Union in accordance with Article 3 below.
4. Representatives of Croatia shall participate, as observers in the management committee responsible for monitoring the JPEN Programme.
5. Travel costs and subsistence costs incurred by representatives of Croatia will be covered according to the rules established in Annex I, article 5.
6. One of the official languages of the EU shall be used for the procedures related to requests, contracts and reports, as well as for other administrative aspects of the JPEN Programme.

Article 3

Financial contribution

The rules governing the financial contribution of Croatia are set out in Annex I.

The financial contribution of Croatia in respect of its participation and implementation of the JPEN Programme shall be added to the amount earmarked each year in the General Budget of the European Union for commitment appropriations to meet the financial obligations arising out of different forms of measures necessary for the execution, management and operation of the JPEN Programme.

Part of that financial contribution may be financed under the relevant EU external aid instrument, if Croatia so requests. In such a case, the financing out of EU pre-accession funds will be specified in the Financing Memorandum on the Annual Programme regarding this assistance

Article 4
Reporting and evaluation

Without prejudice to the responsibilities of the Commission and the Court of Auditors of the European Union in relation to the monitoring and evaluation of the JPEN Programme, the participation of Croatia in the JPEN Programme shall be continuously monitored on a partnership basis involving the Commission and Croatia. Croatia shall submit to the Commission relevant reports and take part in other specific activities provided for by the EU in that context.

Reporting and evaluation shall be done according to the rules indicated in Annex II.

Article 5
Final provisions

1. This Memorandum of Understanding shall apply for the duration of the Programme or till the entry of Croatia in the European Union if this is prior to the end of the JPEN programme.
2. Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in this Memorandum of Understanding, as well as the contractual arrangements applying to these projects and activities and the provisions of Annex II.
3. The annexes form an integral part of this Memorandum of Understanding.
4. This Memorandum of Understanding may only be amended in writing by common consent of the parties.
5. Pending the fulfilment of Croatia's internal legal requirements, this Memorandum of Understanding shall apply provisionally, starting from the budget year 2012. Croatia will notify in writing through diplomatic channels that its internal legal requirements for its entry into force have been fulfilled. In the event of Croatia notifying the Commission that it will not ratify the signed Memorandum of Understanding, provisional application shall end from the budget year following this notification. Notification terminating provisional application shall not affect the Parties' obligations concerning the projects and activities financed under the general budget of the European Union of the year of notification, nor payment by Croatia of its contribution for the year of notification.

Done at Brussels on 15 December 2011.

For the Republic of Croatia

For the European Commission

Dražen Bošnjaković,
Minister of Justice

Viviane Reding
Vice-President in charge of

Justice, Fundamental Rights and Citizenship

Annex I**Rules governing the financial contribution of the Republic of Croatia in the Specific Programme Criminal Justice**

1. The yearly financial contribution of Croatia to the JPEN Programme shall be established in proportion to, and in addition to, the amount available that year for commitments appropriations for the implementation the JPEN programme.
2. The proportionality factor governing the contribution of Croatia shall be obtained by establishing the ratio between the gross domestic product of Croatia at market prices and the sum of gross domestic products at market prices of the same year of the Member States of the European Union and of Croatia.
This ratio shall be calculated on the basis of the latest statistical data pertaining to 2011 from the Statistical Office of the European Union (Eurostat), available at the time of publication of the draft budget of the European Union.
3. Taking into consideration the limited conditions for participation as described under Article 2 of this Memorandum of Understanding, the financial contribution of Croatia shall be calculated for the respective years as follows:
 - year 2012: contribution according to the proportionality factor fixed in accordance with paragraph 2 multiplied by 0,2.
 - year 2013: contribution according to the proportionality factor fixed in accordance with paragraph 2 multiplied by 0,2.
Should Croatia become a member of the European Union in 2013n, the amount for that year should be established pro rata temporis of the number of months before such accession.

The resulting figures will be rounded up or down to the nearest 500 or 1000.
4. Based on the calculation method in paragraph 3 the indicative amount for the financial contribution to be paid by Croatia to the General Budget of the European Union to participate in the JPEN Programme shall be the following:
 - EUR 19 500 for the year 2012, pro-rata temporis
 - EUR 20 000 for the year 2013, pro-rata temporis
5. Travel costs and subsistence costs incurred by representatives and experts of Croatia for the purposes of taking part as observers in the work of the committee referred to in Article 10 of the Decision adopting the JPEN Programme or other meetings related to the implementation of the Programme shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for representatives of the Member States of the European Union.
6. The Financial Regulation applicable to the General Budget of the European Union shall apply to the management of the contribution of Croatia.
7. After this Memorandum of Understanding is signed and at the beginning of each subsequent budgetary year, the Commission shall send to Croatia a call for funds corresponding to its contribution of the costs covered by this Memorandum of Understanding.
8. That contribution shall be paid in Euro to a Euro denominated bank account of the Commission.

9. Croatia shall pay its contribution to the annual costs in accordance with the call for funds request no later than three months after the date of the call.

Any delay in the payment of the contribution shall give rise to the payment of default interest by Croatia on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the months in which the deadline falls, increased by 3.5 percentage points. In case the delay in the payment of the contribution is such that it may significantly jeopardise the implementation and management of the JPEN programme, and in the absence of payment 20 working days after a formal letter of reminder has been sent by the Commission to Croatia, participation of Croatia in the programme for the concerned year will be suspended.

Annex II**FINANCIAL CONTROL, RECOVERY AND OTHER ANTIFRAUD MEASURES****I. CONTROLS AND ANTIFRAUD MEASURES BY THE UNION**

1. In accordance with the financial regulation applicable to the general budget of the European Union and with the other rules referred to in this Memorandum of Understanding, the contracts concluded with beneficiaries of the programmes established in Croatia shall provide for financial or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Commission agents or by other persons mandated by the Commission.
2. Commission agents and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts concluded to implement the instruments referred to in this Memorandum. The European Court of Auditors shall have the same rights as the Commission.
3. Within the framework of this Memorandum, the Commission/OLAF (the European Anti Fraud Office) shall be authorised to carry out on-the-spot checks and inspections on Croatian territory, in accordance with the procedural provisions of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996.

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

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

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

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

II. INFORMATION AND CONSULTATION

1. For the purposes of proper implementation of this Annex, the competent Croatian and EU authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.
2. The competent Croatian authorities shall inform the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts concluded in application of the instruments referred to in this Memorandum.

III. ADMINISTRATIVE MEASURES AND PENALTIES

Without prejudice to application of Croatian criminal law, administrative measures and penalties may be imposed by the Commission in accordance with the financial regulation applicable to the general budget of the European Union.

IV. RECOVERY

Decisions taken by the Commission within the scope of this Memorandum which impose a pecuniary obligation on persons other than States shall be enforceable in Croatia.

The enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of Croatia shall designate for this purpose and shall make known to the Commission.

When these formalities have been completed on application by the Commission, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority. The legality of the Commission decision shall be subject to control by the Court of Justice of the European Union.

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

Članak 3.

Sredstva za financijske obveze koje nastaju za Republiku Hrvatsku na temelju Memoranduma iz članka 1. ovoga Zakona planiraju se i podmiruju u okviru proračunskih sredstava za 2012. i 2013. godinu, na pozicijama Ministarstva pravosuđa.

Članak 4.

Za provedbu ovoga Zakona nadležno je središnje tijelo državne uprave nadležno za poslove pravosuđa.

Članak 5.

Na dan stupanja na snagu ovoga Zakona, Memorandum iz članka 1. ovoga Zakona nije na snazi te će se podaci o njegovom stupanju na snagu objaviti naknadno, u skladu s odredbom članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

Članak 6.

Ovaj Zakon stupa na snagu osmoga dana od dana objave u Narodnim novinama.

OBRAZLOŽENJE

Uz članak 1.

Člankom 1. propisano je da se potvrđuje Memorandum, sukladno odradbama članka 140. Ustava Republike Hrvatske, čime se iskazuje formalni pristanak Republike Hrvatske da bude vezana ovim međunarodnim ugovorom.

Uz članak 2.

U članku 2. sadržan je tekst Memoranduma iz članka 1. ovoga Zakona, i to u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik.

Uz članak 3.

Članak 3. propisuje da se sredstva za financijske obveze koje je Republika Hrvatska preuzela Memorandumom iz članka 1. ovoga Zakona, planiraju i podmiruju u okviru proračunskih sredstava na pozicijama Ministarstva pravosuđa.

Uz članak 4.

Članak 4. određuje tijelo nadležno za provedbu ovoga Zakona.

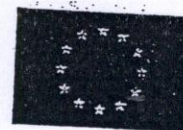
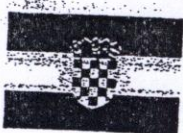
Uz članak 5.

Člankom 5. utvrđuje se da na dan stupanja na snagu ovoga Zakona, Memorandum iz članka 1. ovoga Zakona nije na snazi za Republiku Hrvatsku te da će se podaci o njegovom stupanju na snagu objaviti naknadno, u skladu sa člankom 30. stavkom 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

Uz članak 6.

Člankom 6. utvrđuje se stupanje Zakona na snagu.

**PRILOG – PRESLIKA TEKSTA MEMORANDUMA U IZVORNIKU
NA ENGLISKOM JEZIKU**



MEMORANDUM OF UNDERSTANDING

between the Republic of Croatia and the European Union on the participation of the Republic of Croatia in the EU programme Criminal Justice

THE REPUBLIC OF CROATIA, hereinafter referred to as Croatia,
of the one part, and

THE EUROPEAN COMMISSION, hereinafter referred to as "the Commission", on behalf of
the European Union,

of the other part,

Whereas:

- (1) the Framework Agreement between Croatia and the European Community establishes the general principles for the participation of Croatia in Community programmes, was adopted on 22 November 2004 and entered into force on 22 August 2005¹ (hereinafter called "the Framework Agreement") leaving the Commission and the competent authorities of Croatia to determine the specific terms and conditions, including financial contribution, with regard to such participation in each particular programme,
- (2) the Specific Programme Criminal Justice was established by Decision No 2007/126/JHA of the Council of 12 February 2007²

HAVE AGREED AS FOLLOWS:

¹ OJ L 192 p. 16 of 22/07/2005

² OJ L 58 p.13 of 24/02/2007

Article 1
Programme

Croatia shall participate in the Criminal Justice Specific Programme (hereinafter called "JPEN Programme"), in accordance with the conditions laid down in the Framework Agreement and under the terms and conditions referred to in Articles 2-6 of this Memorandum of Understanding.

Article 2
Terms and conditions with respect to participation in the JPEN Programme

1. Croatia shall participate in the activities of the JPEN Programme in conformity with the objectives, criteria, procedures and deadlines as defined in the Decision 2007/126/JHA, the annual work programme adopted by the Commission implementing the Decision and according to the following conditions: as from provisional application of this Memorandum of Understanding, participation in activities implementing the objectives indicated in Articles 2 and 3 of the Decision will be allowed with the condition that they are activities relative to European judicial training, exchanges of good practices, or participation of Croatian nationals in European networks pursuing objectives of interest for the European area of justice.
2. The terms and conditions applicable to the submission, assessment and selection of applications by eligible institutions, organisations and individuals of Croatia shall be the same as those applicable to eligible institutions, organisations and individuals of the Member States bound by Decision No 2007/126/JHA
3. To participate in the JPEN Programme, Croatia shall pay every year a financial contribution to the General Budget of the European Union in accordance with Article 3 below.
4. Representatives of Croatia shall participate, as observers in the management committee responsible for monitoring the JPEN Programme.
5. Travel costs and subsistence costs incurred by representatives of Croatia will be covered according to the rules established in Annex I, article 5.
6. One of the official languages of the EU shall be used for the procedures related to requests, contracts and reports, as well as for other administrative aspects of the JPEN Programme.

Article 3
Financial contribution

The rules governing the financial contribution of Croatia are set out in Annex I.

The financial contribution of Croatia in respect of its participation and implementation of the JPEN Programme shall be added to the amount earmarked each year in the General Budget of the European Union for commitment appropriations to meet the financial obligations arising out of different forms of measures necessary for the execution, management and operation of the JPEN Programme.

Part of that financial contribution may be financed under the relevant EU external aid instrument, if Croatia so requests. In such a case, the financing out of EU pre-accession funds will be specified in the Financing Memorandum on the Annual Programme regarding this assistance

Article 4
Reporting and evaluation

Without prejudice to the responsibilities of the Commission and the Court of Auditors of the European Union in relation to the monitoring and evaluation of the JPEN Programme, the participation of Croatia in the JPEN Programme shall be continuously monitored on a partnership basis involving the Commission and Croatia. Croatia shall submit to the Commission relevant reports and take part in other specific activities provided for by the EU in that context.

Reporting and evaluation shall be done according to the rules indicated in Annex II.

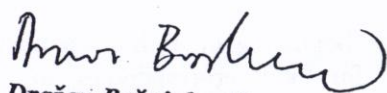
Article 5
Final provisions

1. This Memorandum of Understanding shall apply for the duration of the Programme or till the entry of Croatia in the European Union if this is prior to the end of the JPEN programme.
2. Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in this Memorandum of Understanding, as well as the contractual arrangements applying to these projects and activities and the provisions of Annex II.
3. The annexes form an integral part of this Memorandum of Understanding.
4. This Memorandum of Understanding may only be amended in writing by common consent of the parties.
5. Pending the fulfilment of Croatia's internal legal requirements, this Memorandum of Understanding shall apply provisionally, starting from the budget year 2012. Croatia will notify in writing through diplomatic channels that its internal legal requirements for its entry into force have been fulfilled. In the event of Croatia notifying the Commission that it will not ratify the signed Memorandum of Understanding, provisional application shall end from the budget year following this notification. Notification terminating provisional application shall not affect the Parties' obligations concerning the projects and activities financed under the general budget of the European Union of the year of notification, nor payment by Croatia of its contribution for the year of notification.

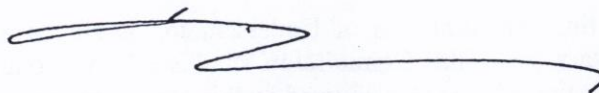
Done at Brussels on 15 December 2011.

For the Republic of Croatia

For the European Commission



Dražen Bošnjaković
Minister of Justice



Viviane Reding
Vice-President in charge of
Justice, Fundamental Rights and Citizenship

**Rules governing the financial contribution of the Republic of Croatia in
the Specific Programme Criminal Justice**

1. The yearly financial contribution of Croatia to the JPEN Programme shall be established in proportion to, and in addition to, the amount available that year for commitments appropriations for the implementation the JPEN programme.
2. The proportionality factor governing the contribution of Croatia shall be obtained by establishing the ratio between the gross domestic product of Croatia at market prices and the sum of gross domestic products at market prices of the same year of the Member States of the European Union and of Croatia.

This ratio shall be calculated on the basis of the latest statistical data pertaining to 2011 from the Statistical Office of the European Union (Eurostat), available at the time of publication of the draft budget of the European Union.

3. Taking into consideration the limited conditions for participation as described under Article 2 of this Memorandum of Understanding, the financial contribution of Croatia shall be calculated for the respective years as follows:

year 2012: contribution according to the proportionality factor fixed in accordance with paragraph 2 multiplied by 0,2.

year 2013: contribution according to the proportionality factor fixed in accordance with paragraph 2 multiplied by 0,2.

Should Croatia become a member of the European Union in 2013n, the amount for that year should be established pro-rata temporis of the number of months before such accession.

The resulting figures will be rounded up or down to the nearest 500 or 1000.

4. Based on the calculation method in paragraph 3 the indicative amount for the financial contribution to be paid by Croatia to the General Budget of the European Union to participate in the JPEN Programme shall be the following:
EUR 19 500 for the year 2012, pro-rata temporis
EUR 20 000 for the year 2013, pro-rata temporis
5. Travel costs and subsistence costs incurred by representatives and experts of Croatia for the purposes of taking part as observers in the work of the committee referred to in Article 10 of the Decision adopting the JPEN Programme or other meetings related to the implementation of the Programme shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for representatives of the Member States of the European Union.
6. The Financial Regulation applicable to the General Budget of the European Union shall apply to the management of the contribution of Croatia.
7. After this Memorandum of Understanding is signed and at the beginning of each subsequent budgetary year, the Commission shall send to Croatia a call for funds corresponding to its contribution of the costs covered by this Memorandum of Understanding.
8. That contribution shall be paid in Euro to a Euro denominated bank account of the Commission.

9. Croatia shall pay its contribution to the annual costs in accordance with the call for funds request no later than three months after the date of the call.

Any delay in the payment of the contribution shall give rise to the payment of default interest by Croatia on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the months in which the deadline falls, increased by 3.5 percentage points. In case the delay in the payment of the contribution is such that it may significantly jeopardise the implementation and management of the JPEN programme, and in the absence of payment 20 working days after a formal letter of reminder has been sent by the Commission to Croatia, participation of Croatia in the programme for the concerned year will be suspended.

FINANCIAL CONTROL, RECOVERY AND OTHER ANTIFRAUD MEASURES

I. CONTROLS AND ANTIFRAUD MEASURES BY THE UNION

1. In accordance with the financial regulation applicable to the general budget of the European Union and with the other rules referred to in this Memorandum of Understanding, the contracts concluded with beneficiaries of the programmes established in Croatia shall provide for financial or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Commission agents or by other persons mandated by the Commission.
2. Commission agents and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts concluded to implement the instruments referred to in this Memorandum. The European Court of Auditors shall have the same rights as the Commission.
3. Within the framework of this Memorandum, the Commission/OLAF (the European Anti Fraud Office) shall be authorised to carry out on-the-spot checks and inspections on Croatian territory, in accordance with the procedural provisions of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996.

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

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

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

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

II. INFORMATION AND CONSULTATION

1. For the purposes of proper implementation of this Annex, the competent Croatian and EU authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.
2. The competent Croatian authorities shall inform the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts concluded in application of the instruments referred to in this Memorandum.

III. ADMINISTRATIVE MEASURES AND PENALTIES

Without prejudice to application of Croatian criminal law, administrative measures and penalties may be imposed by the Commission in accordance with the financial regulation applicable to the general budget of the European Union.

IV. RECOVERY

Decisions taken by the Commission within the scope of this Memorandum which impose a pecuniary obligation on persons other than States shall be enforceable in Croatia.

The enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of Croatia shall designate for this purpose and shall make known to the Commission.

When these formalities have been completed on application by the Commission, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority. The legality of the Commission decision shall be subject to control by the Court of Justice of the European Union.

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