

**CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
– CROATIA –**

Brussels, 25 June 2010

AD 20/10

LIMITE

CONF-HR 19

ACCESSION DOCUMENT

Subject: EUROPEAN UNION COMMON POSITION
Chapter 5: Public procurement

EUROPEAN UNION COMMON POSITION
(Revision of CONF-HR 33/08)

Chapter 5: Public procurement

This position of the European Union is based on its general position for the Accession Conference with Croatia (CONF-HR 2/05), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-HR 5/05), in particular:

- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements - even partial agreements - reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established;

as well as to the requirements set out in points 13, 16 and 26 of the Negotiating Framework.

The EU underlines the importance for Croatia of compliance with the Stabilisation and Association Agreement as well as the Accession Partnership, which constitute basic elements of the pre-accession strategy.

The EU encourages Croatia to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general to develop already before accession, policies and instruments as close as possible to those of the EU.

The EU notes that Croatia, in its position CONF-HR 26/08, as amended by its additional position CONF-HR 13/10, accepts the *acquis* under chapter 5 as in force on 1 May 2010, and declares that it will be ready to implement it by the date of its accession to the European Union.

The EU notes that Croatia has been successfully implementing the Strategy for Development of the Public Procurement System in Croatia by completing the vast majority of actions foreseen in the accompanying Action Plan (2008-2009).

General principles

The EU notes that Croatia accepts and takes into account in its legislative framework the general principles deriving from the Treaties and from the case law of the European Court of Justice such as transparency, equal treatment, free competition, non-discrimination and proportionality.

Award of public contracts and concessions

The EU notes the entry into force of the Public Procurement Act as amended, on 1 January 2009, and of Croatia's plan to adopt by the end of 2011 amendments to the Act in order to simplify its implementation and bring the remaining inconsistencies with the *acquis*. The EU welcomes the entry into force of the act on Concessions on 1 January 2009, and the ordinance on the establishment and management of the concessions register on 15 January 2009, and the adoption of 17 out of 18 pieces of sector regulating legislation with the aim to adopt the last one by the second quarter of 2010. The EU notes that the Act on Public Private Partnerships is in force since 15 November 2008 and Croatia has meanwhile adopted a number of related implementing provisions.

In view of the above considerations, the EU considers that Croatia has met the requirements of the first closing benchmark set out in the EU common position (CONF-HR 33/08).

The EU underlines the need for Croatia to adopt and implement the final amendments to the Public Procurement Act, and to amend the regulation on the public procurement for defence and security purposes, in order to complete the alignment with the *acquis*. The EU invites Croatia to continue its work to enable a wider use of e-procurement, to continue timely implementation of the remaining items of the renewed Action Plan and to continue to pay special attention to reinforcing and upgrading the necessary administrative capacity for proper implementation of the public procurement legislation with a particular focus on the regional and local level. The EU invites Croatia to continue implementing its policies relating to prevention of corruption in public procurement system and prevention of the conflict of interest.

Remedies

The EU takes note of the alignment with the *acquis* that has been done so far in the legislation regarding legal protection. The EU takes note of the entry into force of the new Act on the State Commission for the Supervision of Public Procurement Procedure on 23 February 2010 regulating the competences of State Commission more clearly, improving transparency of State Commission procedures and providing better legal protection. The EU encourages Croatia to continue its work to ensure effective functioning of the remedies system.

Strengthening of administrative capacity

The EU takes note of Croatia's actions undertaken to improve administrative capacity at all levels, such as additional recruitments and provision of continuous training for the Directorate of Public Procurement System (in MELE), for the Concessions Department in the Ministry of Finance and for both the contracting authorities and tenderers. Extensive training efforts have been done on all levels and these are on-going. The EU takes note of the availability of the practical implementing tools on the website and as a part of the trainings provided tools to ensure appropriate implementation of the public procurement policy in Croatia. In addition EU notes that MELE has installed a telephone help-line and regularly organises open days where public procurement aspects are discussed with all interested stakeholders. MELE has carried out monitoring activities in order to promote proper enforcement of PP law. This has been done in particular by activities of prevention and instruction such as identification of irregularities, giving recommendations and initiation of misdemeanor procedures.

The EU takes note of the establishment of the Public Private Partnership (PPP) Agency on 15 November 2008 and its adequate staffing. The EU welcomes the steps taken to enforce the administrative capacities of the State Commission for the Supervision of Public Procurement such as recruitment of 9 new staff/ employees since September 2009 bringing the total number to 24 and four new openings being published. The EU notes the adoption of the Regulation on the Office for Central Public Procurement of the Government of the Republic of Croatia, on 12 November 2009, establishing of the Central Purchasing Body of the Government of Croatia, with the plan to have it fully operational in 2011.

The EU takes note of the actions taken related to the fight against corruption in the area of public procurement, including increasing transparency in public procurement procedures and public awareness of these, preventive monitoring of irregularities in public procurement procedures conducted by the Directorate of Public Procurement System (MELE) and the Ministry of Finance (in the field of concessions) training and awareness-raising and introduction of specific article to the public procurement law on conflict of interest (5c) and article 46 regarding exclusions of tenderers which have been involved in corruptive practises.

The EU notes that suppression measures and the work of law enforcement agencies in the fight against corruption, including in the area of public procurement, is dealt with in the context of chapter 23: Judiciary and fundamental rights. In this regard, the EU notes that Croatia has been undertaking cross-agency coordination and cooperation to counteract corruption in the public procurement system, in particular in the framework of Implementation Monitoring Committee chaired by the Prime Minister herself.

In view of the above considerations, the EU considers that Croatia has met the requirements of the second and third closing benchmarks set out in the EU common position (CONF-HR 33/08).

The EU encourages Croatia to continue its efforts towards full alignment with the *acquis* under this chapter and to continue upgrading its administrative capacities. In particular, the EU encourages Croatia to implement its updated Action Plan on activities to be undertaken in Chapter 5 and to continue reporting on this implementation covering the period till the date of accession to the EU. The EU notes that the internal financial control is in place, but that the quality controls of the different stages of the public procurement procedures could be further reinforced in some contracting entities.

The EU welcomes the extensive training efforts undertaken and encourages Croatia to continue in line with the updated action plan. Furthermore, the EU underlines the importance to ensure further training and awareness-raising as regards the conflict of interest and fight against corruption. In particular, the EU encourages Croatia to continue to develop further the training dealing with the prevention of corruption/ethics/conflict of interest in the public procurement system at all levels. The EU encourages Croatia to continue to ensure proper implementation of those specific provisions of the Public Procurement Act relating to the conflict of interest.

In light of the above, the EU considers that Croatia has met all the necessary requirements set out in the EU common position (CONF-HR 33/08).

* * *

In view of all of the above considerations, the EU notes that at this stage, this chapter does not require further negotiations.

Monitoring of progress in the alignment with and implementation of the *acquis* will continue throughout the negotiations. The EU underlines that it will devote particular attention to monitoring all the specific issues mentioned above with a view to ensuring Croatia's administrative capacity, its capacity to complete legal alignment in all sectors under this chapter, as well as further progress in implementation. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. A final assessment of the conformity of Croatia's legislation with the *acquis* and of its implementation capacity can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations in this chapter and which is to be provided to the Conference, the EU invites Croatia regularly to provide detailed written information to the Stabilisation and Association Council on progress in the implementation of the *acquis*.

In view of all the above considerations, the EU will, if necessary, return to this chapter at an appropriate moment.

As stated in the relevant sections above, the EU recalls that there may be new *acquis* between 1 May 2010 and the conclusion of the negotiations.
