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– CROATIA –**

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Subject: EUROPEAN UNION COMMON POSITION
Chapter 35 - Other issues
Item 7: Monitoring and safeguards

EUROPEAN UNION COMMON POSITION

Chapter 35 – Other Issues

Item 7: Monitoring and safeguards

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 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.

Monitoring

The EU notes that the provisions for monitoring set out below will be inserted in the Accession Treaty and mentioned under those provisions of the Treaty which foresee that the institutions of the Union may adopt before accession the measures referred to in certain identified provisions of the Accession treaty. The Treaty provisions will specify that the measures referred to in the monitoring clause may, if necessary, enter into force before the date of the entry into force of the Treaty.

Accordingly, the EU recalls the importance it attaches to closely monitoring Croatia's fulfilment of all the commitments undertaken in the accession negotiations and its continued preparations to assume the responsibilities of membership upon accession. The EU notes that the Commission will be responsible for the monitoring and invites Croatia to cooperate with the Commission in this regard. The Commission's monitoring will consist of regularly updated monitoring tables, the dialogue under the Stabilisation and Association Agreement, peer assessment missions, the pre-accession economic programme, fiscal notifications and, when necessary, early warning letters to the Croatian authorities. A Progress Report and Comprehensive Monitoring Report will be presented to the Council and the European Parliament in autumn 2011 and 2012, respectively. The Commission will also draw on input from Member States and take into consideration input from international and civil society organisations as appropriate, throughout the monitoring process.

The Commission's monitoring shall focus in particular on commitments undertaken by Croatia in the area of the judiciary and fundamental rights (Annex XX), including the continued development of track records on judicial reform and efficiency, impartial handling of war crimes cases, and the fight against corruption.

In addition, the Commission's monitoring will focus on the area of justice, freedom and security, including the implementation and enforcement of EU requirements with respect to external border management, police cooperation, the fight against organised crime, and judicial cooperation in civil and criminal matters, as well as on commitments in the area of competition policy including the restructuring of the shipbuilding industry (Protocol X) and the restructuring of the steel sector (Protocol Y).

The Commission shall issue six-monthly assessments up to Croatia's accession on the commitments taken by Croatia in these chapters as an integral part of its regular monitoring tables and reports.

The Council, acting by qualified majority on a proposal from the Commission, may take all appropriate measures if issues of concern are identified during the monitoring process. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted by the Council, acting in accordance with the same procedure, when the relevant issues of concern have been effectively addressed.

The EU notes that Croatia's entry into the Schengen area will only take place following a Council decision on the full application of the Schengen *acquis* in Croatia, taken after verification in accordance with the applicable Schengen evaluation procedures, that the necessary conditions for the application of all parts of the relevant *acquis* concerned have been met, including the effective application of all Schengen rules in accordance with the agreed common standards and with fundamental principles. The EU underlines that all the Schengen *acquis* shall be binding on Croatia already from the date of its accession to the EU.

The EU further notes that this decision shall be taken by the Council, in accordance with the applicable Schengen procedures and while taking into account a Commission report confirming that Croatia continues to fulfil the commitments undertaken in its accession negotiations that are relevant for the Schengen *acquis*.

Safeguards

The EU notes that the provisions for safeguard clauses set out below will be inserted in the Accession Treaty and mentioned under those provisions of the Treaty which foresee that the institutions of the Union may adopt before accession the measures referred to in some identified provisions of the Accession treaty.

General safeguard clause

If, until the end of a period of up to three years after accession, difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, Croatia may apply for authorisation to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the internal market.

In the same circumstance, any present Member State may apply for authorisation to take protective measures with regard to Croatia.

Upon request by the State concerned, the Commission shall, by emergency procedure, determine the protective measure which it considers necessary, specifying the conditions and modalities in which they are to be put into effect.

In the event of serious economic difficulties at the express request of the Member State concerned, the Commission shall act within five working days of the receipt of the request accompanied by the relevant background information. The measures thus decided on shall be applicable forthwith, shall take into account the interest of all parties concerned and shall not entail frontier controls.

The measures authorised under this safeguard may involve derogations from the rules of the Treaty on European Union, the Treaty on the Functioning of the European Union and this Act to such an extent and for such periods as are strictly necessary in order to attain the objectives of this safeguard. Priority shall be given to such measures as will least disturb the functioning of the internal market.

Internal Market Safeguard Clause

If Croatia has failed to implement commitments undertaken in the context of the accession negotiations, including commitments in any sectoral policy which concerns economic activities with cross-border effect, causing a serious breach of the functioning of the internal market or a threat to the EU's financial interests or an imminent risk of such a breach or threat, the Commission may, until the end of a period of up to three years after accession, upon motivated request of a Member State or on its own initiative, take appropriate measures.

These measures shall be proportional and priority shall be given to measures which disturb least the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the date of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary, and, in any case, shall be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the above paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by Croatia in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking safeguard measures, and it shall take duly into account any observations of the Council in this respect.

Safeguard in the area of Freedom, Security and Justice

If there are serious shortcomings or any imminent risks of such shortcomings in Croatia in the transposition or state of implementation of acts adopted by the institutions pursuant to Part Three, Title V of the Treaty on the functioning of the European Union as well as of acts adopted before the entry into force of the Treaty of Lisbon by the institutions pursuant to Title VI of the Treaty on European Union or pursuant to Part Three, Title IV of the Treaty establishing the European Community, the Commission may, until the end of a period of up to three years after accession, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, adopt appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between Croatia and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the date of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by Croatia in rectifying the identified shortcomings, the Commission may adapt the measures as appropriate after consulting the Member States. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.

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Subject to Croatia's acceptance of the above considerations, the EU notes that, at this stage, the issue of safeguards does not require further negotiations.

Monitoring of progress in the alignment with and implementation of the *acquis* will continue throughout the negotiations and until Croatia's accession. The EU underlines that it will devote particular attention to monitoring all specific issues mentioned above with a view to ensuring Croatia's administrative capacity. Particular consideration needs to be given to the links between the present chapter and other negotiation chapters. The EU invites Croatia to provide regularly 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.

ANNEX

AMENDMENTS NECESSARY FOR THE IMPLEMENTATION OF THE DCP

ARTICLES

to be inserted into the Act of Accession in:

Part I

PRINCIPLES

ARTICLE [4]

1. The provisions of the Schengen *acquis* as referred to in the Protocol on the Schengen *acquis* integrated into the framework of the European Union (hereinafter referred to as the 'Schengen Protocol'), annexed to the TEU and the TFEU, and the acts building upon it or otherwise related to it, listed in Annex [II], as well as any further such acts adopted before the date of accession, shall be binding on and applicable in Croatia from the date of accession.
2. Those provisions of the Schengen *acquis* as integrated into the framework of the European Union and the acts building upon it or otherwise related to it not referred to in paragraph 1, while binding on Croatia from the date of accession, shall only apply in Croatia pursuant to a Council decision to that effect, after verification in accordance with the applicable Schengen evaluation procedures, that the necessary conditions for the application of all parts of the relevant *acquis* concerned have been met in that State, including the effective application of all Schengen rules in accordance with the agreed common standards and with fundamental principles. This decision shall be taken by the Council, in accordance with applicable Schengen procedures and while taking into account a Commission report confirming that Croatia continues to fulfil the commitments undertaken in its accession negotiations that are relevant for the Schengen *acquis*.

The Council shall take its decision, after consulting the European Parliament, acting with the unanimity of its members representing the Governments of the Member States in respect of which the provisions referred to in this paragraph have already been put into effect and of the representative of the Government of Croatia. The members of the Council representing the Governments of Ireland and of the United Kingdom of Great Britain and Northern Ireland shall take part in such a decision insofar as it relates to the provisions of the Schengen *acquis* and the acts building upon it or otherwise related to it in which these Member States participate.

Part IV
TEMPORARY PROVISIONS

TITLE IV
OTHER PROVISIONS

ARTICLE xx

The Commission shall closely monitor all commitments undertaken by Croatia in the accession negotiations, including those which must be achieved before or by the date of accession. The Commission's monitoring shall consist of regularly updated monitoring tables, the dialogue under the Stabilisation and Association Agreement, peer assessment missions, the pre-accession economic programme, fiscal notifications and, when necessary, early warning letters to the Croatian authorities. A Progress Report and Comprehensive Monitoring Report shall be presented to the Council and the European Parliament in autumn 2011 and 2012, respectively. The Commission shall also draw on input from Member States and take into consideration input from international and civil society organisations as appropriate, throughout the monitoring process.

The Commission's monitoring shall focus in particular on commitments undertaken by Croatia in the area of the judiciary and fundamental rights (Annex XX), including the continued development of track records on judicial reform and efficiency, impartial handling of war crimes cases, and the fight against corruption.

In addition, the Commission's monitoring will focus on the area of justice, freedom and security, including the implementation and enforcement of EU requirements with respect to external border management, police cooperation, the fight against organised crime, and judicial cooperation in civil and criminal matters, as well as on commitments in the area of competition policy including the restructuring of the shipbuilding industry (Protocol X) and the restructuring of the steel sector (Protocol Y).

The Commission shall issue six-monthly assessments up to Croatia's accession on the commitments taken by Croatia in these areas as an integral part of its regular monitoring tables and reports.

The Council, acting by qualified majority on a proposal from the Commission, may take all appropriate measures if issues of concern are identified during the monitoring process. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted by the Council, acting in accordance with the same procedure, when the relevant issues of concern have been effectively addressed.

ARTICLE xx

1. If, until the end of a period of up to three years after accession, difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, Croatia may apply for authorisation to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the internal market.

In the same circumstance, any present Member state may apply for authorisation to take protective measures with regard to Croatia.

2. Upon request by the State concerned, the Commission shall, by emergency procedure, determine the protective measure which it considers necessary, specifying the conditions and modalities in which they are to be put into effect.

In the event of serious economic difficulties at the express request of the Member state concerned, the Commission shall act within five working days of the receipt of the request accompanied by the relevant background information. The measures thus decided on shall be applicable forthwith, shall take into account of the interest of all parties concerned and shall not entail frontier controls.

3. The measures authorised under this safeguard may involve derogations from the rules of the Treaty on European Union, the Treaty on the Functioning of the European Union and this Act to such an extent and for such periods as are strictly necessary in order to attain the objectives of this safeguard. Priority shall be given to such measures as will least disturb the functioning of the internal market.

ARTICLE xx

If Croatia has failed to implement commitments undertaken in the context of the accession negotiations, including commitments in any sectoral policy which concerns economic activities with cross-border effect, causing a serious breach of the functioning of the internal market or a threat to the EU's financial interests or an imminent risk of such a breach or threat, the Commission may, up to three years after accession, upon motivated request of a Member State or on its own initiative, take appropriate measures.

These measures shall be proportional and priority shall be given to measures which disturb least the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the date of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary, and, in any case, shall be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the above paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by Croatia in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking safeguard measures, and it shall take duly into account any observations of the Council in this respect.

ARTICLE xx

If there are serious shortcomings or any imminent risks of such shortcomings in Croatia in the transposition or state of implementation of acts adopted by the institutions pursuant to Part Three, Title V of the Treaty on the functioning of the European Union as well as of acts adopted before the entry into force of the Treaty of Lisbon by the institutions pursuant to Title VI of the Treaty on European Union or pursuant to Part Three, Title IV of the Treaty establishing the European Community, the Commission may, until the end of a period of up to three years after accession, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, adopt appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between Croatia and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the date of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by Croatia in rectifying the identified shortcomings, the Commission may adapt the measures as appropriate after consulting the Member States. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.

Specific commitments undertaken by Croatia in its accession negotiations (referred to in Article xx of the Act of Accession)

- to continue to ensure effective implementation of its Judicial Reform Strategy and Action Plan.
- to continue to strengthen the independence, accountability, impartiality and professionalism of the judiciary.
- to continue to improve the efficiency of the judiciary.
- to continue to improve the handling of domestic war crimes cases.
- to continue to ensure a sustained track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels including high level corruption, and in vulnerable sectors such as public procurement.
- to continue to improve its track record of strengthened prevention measures in the fight against corruption and conflict of interest.
- to continue to strengthen the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities (CARNM).

- to continue to address outstanding refugee return issues.
 - to continue to improve the protection of human rights.
 - to continue to cooperate fully with the International Criminal Tribunal for the former Yugoslavia.
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