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– CROATIA –**

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Subject : EUROPEAN UNION COMMON POSITION
Chapter 7: Intellectual property law

EUROPEAN UNION COMMON POSITION

(Revision of CONF-HR 3/07)

Chapter 7: Intellectual Property Law

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 stresses the need to improve the protection of intellectual, industrial and commercial property rights in order to provide a level of protection similar to that existing in the Community, including comparable means of enforcing such rights.

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 positions (CONF-HR 9/06 and 28/08), accepts the *acquis* under chapter 7 as in force on 1 September 2008, and that it will be ready to implement it by the date of its accession to the European Union.

Copyright and neighbouring rights

The EU notes the progress made by Croatia in aligning its legislation on copyright and related rights with the Community *acquis*.

The EU welcomes the introduction of Community exhaustion of rights in Croatia's legislation, with the entry into force as of the date of the accession to the EU, for copyright, related rights, protection of computer programmes, rental and lending rights, and databases.

As regards the terms of protection for author's rights, the EU takes note that Croatia's legislation is aligned with Directive 2006/116/EC.

Concerning collective management of rights, Croatia has adopted an interpretative statement on the application of collective rights, which has been published in the State Intellectual Property Office (SIPO)'s Official Journal and website.

As regards the information society directive, rental and lending rights, and certain related rights and the protection of databases the EU takes note that Croatia's legislation is aligned with Directives 2001/29/EC, 2006/115/EC and 96/9/EC. The relation between the application of technological protection measures and the content limitations of copyright and related rights has also been completely regulated based on the principles of the *acquis*.

Concerning the protection of topographies of semiconductors, Croatia has further aligned its legislation with the provisions of Directive 87/54/EEC. The EU also takes note of Croatia's commitment to complete alignment in this area by the second quarter of 2009.

The EU notes that the adoption of the above-described legislative provisions fulfils the requirements of the first closing benchmark set in document CONF-HR 3/07.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further alignment of its legislation on copyrights and related rights to the Community *acquis*.

Industrial property rights

The EU welcomes Croatia's accession to the European Patent Organisation.

The EU welcomes the introduction of Community exhaustion of rights in Croatia's legislation, with the entry into force as from its date of accession to the EU, for trademarks and industrial design.

Croatia has also adopted provisions for the automatic extension of Community trademarks' registration in Croatia upon accession. The EU takes note of Croatia's commitment to eliminate further discrepancies in its legislation by the second quarter of 2009.

In the field of biotechnological invention, with the adoption of the Act on the Protection of Plant varieties Croatia has aligned its legislation with the Community *acquis* and has introduced the necessary provisions on cross licensing.

The EU welcomes the adoption of legislation introducing the Supplementary Protection Certificate for pharmaceutical products in line with the Community *acquis* as of the date of accession, and the alignment of Croatia's legislation on compulsory licensing for pharmaceutical products.

The EU further notes that Croatia has accepted the EU proposal for a specific mechanism to be provided for in the Accession Treaty according to which the holder, or his beneficiary, of a patent or Supplementary Protection Certificate (SPC) for a pharmaceutical product filed in a Member State at the time when such protection could not be obtained in Croatia for that product, may rely on the rights granted by that patent or SPC in order to prevent the import and marketing of that product in the Member State or States where the product in question enjoys patent or SPC protection, even if this product was put in the market in Croatia for the first time by him or with his consent. Any person intending to import or market a pharmaceutical product covered by the above paragraph in a Member State where the product enjoys patent or supplementary protection shall demonstrate to the competent authorities in the application regarding that import that one month's prior notification has been given to the holder or beneficiary of such protection.

With regard to Regulations (EEC) No 1768/92 and (EC) No 1610/96 on SPCs for pharmaceutical and for plant protection products, respectively, the EU also notes that Croatia's legislation on the SPC regime, which will enter into force in Croatia upon accession, contains provisions according to which such regime will be applicable to any pharmaceutical or plant protection product which, on the date of Croatia's accession, is protected by a valid basic patent and for which the first marketing authorisation was obtained after 1 January 2003. An application for a certificate, as referred to above, will have to be submitted within six months from the date of Croatia's accession. The EU also notes Croatia's commitment to eliminate remaining discrepancies with Regulations (EEC) No 1768/92 and (EC) No 1610/96 by no later than the second quarter of 2009.

The EU notes that the adoption of the above-described legislative provisions fulfils the requirements of the first closing benchmark set in document CONF-HR 3/07.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further alignment of its legislation in the field of industrial property rights to the Community *acquis*.

Enforcement

The EU takes note of the harmonisation of Croatia's legal framework for the protection of intellectual property rights and of the creation of the Boards of Appeal for industrial property law. The EU encourages Croatia to complete the alignment of its legislation with the provisions on cyber-crime related to copyright and related rights.

The EU welcomes the strengthening of the SIPO, by means of additional staffing and the deployment of the European Patent Office information system for the examination procedure. It also notes the deployment of an IT-based centralised risk analysis system at the Customs Administration.

The EU notes the significant progress made by the relevant authorities in enforcing intellectual property rights, by seizing goods suspected of infringing such rights and prosecuting alleged violators of the legislation.

The EU notes that the implementation of the legislative framework, its proper enforcement, the actions undertaken by Croatia to strengthen the administrative capacity of the bodies involved and the results obtained in enforcing intellectual property rights, fulfil the requirements of the second closing benchmark set in document CONF-HR 3/07.

The EU invites Croatia to submit detailed statistics on enforcement on an annual basis and in accordance with a standard format, until the date of accession.

The EU encourages Croatia to continue strengthening the administrative capacity of the various bodies involved in the protection of intellectual property rights, i.e. SIPO, the State Inspectorate, the Customs Administration, as well as its judicial system, and to address the current need for specialised staff in those bodies. The EU encourages Croatia to continue the implementation of its National Strategy for Development of Intellectual Property System and work further on development of enforcement statistics.

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In view of all 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 specific issues mentioned above with a view to ensuring Croatia's administrative capacity to implement the legislation in the field of intellectual property law. 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 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.

Furthermore, the EU recalls that there may be new *acquis* between 1 September 2008 and the conclusion of the negotiations.

