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Subject : EUROPEAN UNION COMMON POSITION
Chapter 3: Right of establishment and freedom to provide services

EUROPEAN UNION COMMON POSITION

(Revision of CONF-HR 14/07)

Chapter 3: Right of establishment and freedom to provide services

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 addendum (CONF-HR 2/09) to the negotiating position on chapter 3 (CONF-HR 8/06) accepts the *acquis* under chapter 3 as in force on 1 June 2009, and that it will be ready to implement it by the date of its accession to the European Union, with the exception of the *Third Postal Directive 2008/6/EC* for the implementation of which Croatia requests a specific transitional measure.

Mutual recognition of professional qualifications

The EU notes the alignment of Croatia's legislation with the requirements of Directive 2005/36/EC as of the date of accession. The EU takes note of the adoption of the Act on the Regulated Professions and the Recognition of Foreign Professional Qualifications in October 2009, which meets the requirements of the first closing benchmark as set out in the EU common position (CONF-HR 14/07).

The EU notes the adoption of a separate Midwifery Act. The EU invites Croatia to further align this law with the Directive before the date of accession and clarify the role of the future midwives and midwife assistants in order to ensure full compliance with the requirements of Directive 2005/36/EC.

The EU takes note that Croatia (in the addendum CONF-HR19/09 to its negotiating position CONF-HR 8/06) has withdrawn its requests concerning the recognition of sub-specialisations for medical doctors and the recognition of acquired rights for midwives.

The EU takes note of Croatia's request regarding the recognition of qualifications, in accordance with the Directive 2005/36/EC, that nurses responsible for general care, who have completed secondary education in Croatia, can benefit from acquired rights under the Directive, if they fulfil the conditions laid down in Art. 23 (1) in conjunction with Art. 33 (1) of Directive 2005/36/EC. The EU notes that this request is acceptable. The EU takes note of Croatia's commitment to bring the education in question in full compliance with the Directive as from 2010. The EU further notes that Croatia will provide for a new professional title which allows distinguishing the future medical secondary school graduate nurses from the nurses who have completed secondary education under the current system.

As regards the request on acquired rights for qualifications acquired on the territory of the former Yugoslavia before 8 October 1991, the EU considers the request acceptable, with the exception of professional qualifications for midwives with secondary education.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards the strengthening of administrative capacities in this area.

Right of establishment

The EU notes the progress made by Croatia in aligning its legislation on aliens with the *acquis*. In particular, the EU welcomes that, as of the date of accession, the requirement to have a business permit for EU service providers has been abolished, regardless of whether service activities in Croatia are carried out directly by self-employed persons or by employees of a service provider established in a Member State. The EU notes that the amended Aliens Act fulfils the requirements of the fourth closing benchmark as set out in the EU common position (CONF-HR 14/07).

The EU takes note of the introduction of amendments to a number of different Croatian legal Acts which eliminate certain requirements that were contrary to the right of establishment and the freedom to provide services. In particular, the EU notes that Croatia has repealed nationality and non-proportionate language requirements *inter alia* in the following national laws: the Veterinary Act, the Building Act, the Act on State Cadastral Survey and Real Estate Cadastre, the Act on the Croatian Chamber of Architects and Civil Engineers, the (old) Catering Industry Act and the Tourist Industry Act, the Transport of Hazardous Substances Act and the Chemicals Act. The EU notes that the adoption of the above-described legislative provisions fulfils the requirements of the second closing benchmark as set out in the position of the EU (CONF-HR 14/07).

The EU underlines that compliance with the second closing benchmark does not ensure full compliance with Articles 49 and 56 of the Treaty on the Functioning of the European Union in all instances. The implementation of Directive 2006/123/EC before the date of accession should contribute to achieving full alignment with these provisions.

The EU notes that Croatia has brought its Law Practice Act in line with its commitments under Article 49 of the Stabilisation and Association Agreement. The EU notes that these amendments unambiguously allow, with immediate legal effect, for the establishment of branches of Community law firms providing those legal services to which Croatia under international agreements committed to grant market access. The EU notes that the amended Law Practice Act fulfils the requirements of the third closing benchmark as set out in the position of the EU (CONF-HR 14/07).

The EU underlines the importance that Croatia ensures that its national legislative or administrative provisions do not hamper the right of establishment and the freedom to provide services, in particular in view of restrictions such as the "one office rule" and the "6-months rule". The EU recalls that the alignment of these requirements with the internal market freedoms shall be completed before the date of accession within the context of the implementation of Directive 2006/123/EC as envisaged in the Croatian Implementation Plan for that Directive.

The EU takes note of Croatia's revision of the Residence Tax with a view to ensuring that both Croatian nationals and EU citizens will pay residence tax under the same conditions.

The EU notes that Croatia has amended its Institutions Act in order to ensure equal status of natural and legal persons from the EU and Croatia as regards the establishment of institutions under Croatian law.

The EU underlines the importance for Croatia to continue to build up its administrative capacities, in particular in view of the persistent need to detect and prevent administrative and legislative obstacles to the right of establishment and the freedom to provide services and to fulfil obligations on administrative cooperation imposed by EC law. In this context, the EU emphasises the need to create a fully functional network of interconnected bodies as early as possible and invites Croatia to provide regular and detailed information on the developments in this area.

Cross border provision of services

The EU notes that Croatia has amended its Company Act allowing the cross border provision of services on a temporary basis without the obligation for the service provider to establish a branch office under Croatian law. The EU notes that the amended Companies Act is already in force and fulfils the requirements of the fifth closing benchmark as set out in the EU common position (CONF-HR 14/07).

The EU takes note that Croatia has abolished the restriction that a foreign service provider can only deliver services to an economic operator, but not to a private consumer.

The EU notes Croatia's commitment to amend certain general and sectoral regulations to allow for the cross border provision of services without imposing conditions which the service provider has already met in the Member State of establishment. For services falling within the scope of the Directive 2006/123/EC, these amendments shall be carried out as part of the full and correct transposition of its Article 16 by the date of accession.

The EU takes note of Croatia's legal framework regulating the provision of cross border services by health care professionals in accordance with the provisions of Directive 2005/36/EC.

The EU underlines the importance of repealing by Croatia any other remaining requirements that may be against Art. 56 of the Treaty on the Functioning of the European Union and, in particular, the importance of the full and correct transposition of the Services Directive 2006/123/EC by the date of accession. The EU encourages Croatia to follow up its *Implementation Plan for Directive 2006/123/EC on Services in the Internal Market* adopted in October 2009 as a matter of high priority and to continue strengthening the administrative capacity of the various bodies involved in this process.

Postal services

The EU notes that Croatia has amended its Postal Act introducing the weight and price limit of the reserved area as required by the current postal *acquis*, namely Directive 97/67/EC as amended by Directive 2002/39/EC. The EU notes that this amendment which will enter into force on 1 January 2010 fulfils the requirements of the sixth closing benchmark as set out in the EU common position (CONF-HR 14/07).

The EU welcomes the adoption of Croatia's *Strategy for Postal Services Market Development until 2013* and the *Action Plan for the Implementation of the Strategy*. The EU encourages Croatia to effectively implement the Strategy and the corresponding Action Plan and to provide regular and detailed information on the developments in this area.

The EU takes note of Croatia's request to postpone the implementation of the Directive 2008/6/EC similarly to those Member States that were included in the list in Article 3 of this Directive and notified to the Commission its wish to postpone the full liberalisation of the postal market until 31 December 2012. The EU notes that this request is acceptable.

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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 right of establishment and freedom to provide services. 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 Accession 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 June 2009 and the conclusion of the negotiations.