

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

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ACCESSION DOCUMENT

Subject : EUROPEAN UNION COMMON POSITION
 Chapter 6: Company law

EUROPEAN UNION COMMON POSITION

(Revision of CONF-HR 15/07)

Chapter 6: Company 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 encourages Croatia to continue the process of alignment with the *acquis* and its effective implementation and enforcement, and in general 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 1/07 and 28/08) accepts the *acquis* under chapter 6 as in force on 1 September 2008, and that Croatia declares that it will be ready to implement it by the date of its accession to the European Union.

Company law

The EU takes note of the progress made by Croatia as regards the transposition and implementation of the *acquis* in all fields covered by this chapter. The EU notes the adoption of the Act on Amendments to the Companies Act, which entered into force in April 2008 and completed alignment with the 1st, 2nd, 3rd, 6th and 11th Company Law Directives as well as with the 10th Company Law Directive on cross-border mergers of limited liability companies.

As regards the *disclosure requirements, validity of obligations and grounds for nullity* of public and private limited liability companies, the EU notes that Croatia has aligned its legislation with the 1st Company Law Directive through the above mentioned Act on Amendments to the Companies Act. The amendments ensure in particular the electronic access to company registers and the alignment with Article 3 paragraph 1, 2 and 4 of the 1st Company Law Directive. The EU notes that full alignment of the Companies Act with the 11th Company Law Directive, especially as regards *disclosure in respect of branches*, has also been achieved.

As regards *domestic mergers of public limited liability companies and domestic divisions of public limited liability companies*, the EU notes that Croatia has aligned the Companies Act with the provision on nullity rules for mergers under article 22 of the 3rd Company Law Directive and with the provisions on division by acquisition of the 6th Company Law Directive.

As regards *cross-borders mergers*, which were not regulated in Croatia, the EU notes that the Companies Act has been aligned with the 10th Company Law Directive.

As regards *take-over bids*, the EU notes that the new Act on Takeover of Joint Stock Companies adopted on 5 October 2007 has fully implemented the provisions of Directive 2004/25/EC on takeover bids. Some provisions will enter into force upon Croatia's accession to the EU.

As regards *the recognition of the statute for a European Company (SE) and of European economic interest groups (EEIG) in its domestic law*, the EU notes that Croatia has adopted on 3 October 2007 the relevant legislation so as to make possible the implementation of this part of the *acquis* as from the date of accession.

The EU notes that the above-described amendments and legislative measures fulfil the requirements of the first and second closing benchmarks set in the EU common position CONF-HR 15/07.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further alignment of its legislation on company law with the *acquis*.

Corporate accounting and auditing

As regards *annual accounts and consolidated accounts*, the EU takes note of the adoption on 3 October 2007 of the new Croatian Accounting Act which entered into force on 1 January 2008. This Act, as well as the relevant secondary legislation, including the Croatian Reporting Standards adopted on 28 February 2008, aligned the Croatian legislation in particular with the 4th and 7th Company Law Directives.

As regards *international accounting standards*, the EU takes note that Croatia intends to apply directly as from the date of accession, international financial reporting standards to all entities subject to its application, as prescribed in Regulation (EC) No 1606/2002 (the IAS Regulation). The EU notes that the new Accounting Act has been adapted so as to comply with Article 2 of the IAS Regulation, notably to ensure that no national interpretations are issued.

The EU notes that the above-described amendments and legislative measures fulfil the requirements of the third closing benchmark set in the EU Common Position CONF-HR 15/07.

As regards *statutory audits*, the EU takes note that the Act on Amendments to the Audit Act adopted by the Croatian Parliament on 21 November 2008 ensures full alignment with the 8th Company Law Directive. The EU further notes that the Act on Amendments ensures alignment in this area as regards the external audit quality control and public oversight methods. The EU notes that according to the Act, public oversight is entrusted to the Public Oversight Committee (POC), an independent body conducting oversight of the Chamber, auditing firms, independent auditors and certified auditors. This body shall become operational in the first quarter of 2009. The provisions of co-operation with third countries will enter into force upon Croatia's accession to the EU. The EU notes that Croatia has taken several steps in order to strengthen the administrative capacity in the field of auditing and accounting to allow the implementation of the amendments to the Audit Act. In this context the EU takes note of the submission by the Croatian authorities of an Action Plan regarding the administrative capacity in this area and, particularly, the commitment to recruit at least 5 additional staff members to work on quality assurance inspections by the end of the second quarter of 2009, as well as of the commitment that the Chamber of Auditors will reserve at least HRK 1,000,000 (circa EUR 150,000) for 2009 for carrying out these quality assurance inspections. In addition, an annual budgetary allowance of HRK 1,000,000 (circa EUR 150,000) is foreseen for financing the activities of the first Public Oversight Committee. Croatia has committed itself to making the first Public Oversight Committee operational in the course of 2009. The EU takes note that certified auditors are no longer obliged to fulfil conditions related to Croatian citizenship and knowledge of the Croatian language.

The EU notes that the above-described amendments and legislative measures and acts fulfil the requirements of the fourth closing benchmark set in the EU Common Position CONF-HR 15/07.

The EU further takes note of Croatia's commitment to align its legislation with Directive 2007/63/EC amending the 3rd and 6th Company Law Directive and Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies in the second half of 2009.

The EU invites Croatia to keep it regularly informed of the developments and steps undertaken as regards further alignment of its legislation concerning corporate accounting and auditing with the *acquis* and, in particular, of the strengthening of the relevant framework.

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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 an effective company law system. 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.