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Subject: EUROPEAN UNION COMMON POSITION  
Chapter 14: Transport policy

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**EUROPEAN UNION COMMON POSITION**  
**(revision of CONF-HR 6/08)**

**Chapter 14: Transport policy**

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 as regards road, rail, inland waterway, combined, air and maritime transport as well as state aid and satellite navigation.

In order to achieve a smooth integration of the road transport market, the EU requests a transitional arrangement as regards the implementation of Article 1 of Regulation (EEC) No. 3118/93 laying down the conditions under which non-resident carriers may operate national road haulage services (cabotage) within a Member State.

The EU notes that Croatia, in its addendum (CONF-HR 14/10) to its position (CONF-HR 13/07) accepts the *acquis* under chapter 14 as in force on 1 May 2010, and that Croatia declares that it will be ready to implement it by the date of accession to the European Union, while requesting some transitional measures.

### **Road transport**

The EU takes note that Croatia has aligned its legislation with the *acquis* in the field of road transport. The EU takes note of Croatia's efforts to ensure the implementation of this legislation, in particular as regards increased inspections, provision of specialised training and equipment for the inspectors.

The EU takes note that Croatia has made the necessary amendments to the Road Transport Act in May 2008 thus aligning its legislation with the *acquis* as regards access to the occupation and to the market in carriage of goods and passengers by road. The EU takes note of the adoption of the Amendments to the Public Roads Act in December 2008, which brings further alignment with the *acquis* as regards prices and fiscal conditions.

The EU takes note of the efforts undertaken by Croatia to accelerate the implementation of EU requirements as regards the social conditions in road transport. In this context the EU notes that in December 2008 the European Route Certification Authority (ERCA) selected the National Authority for digital tachographs and in March 2009 it approved the Croatian National Security Policy. The EU notes that as of 10 November 2009 Croatia is connected to TACHOnet thereby ensuring the timely implementation of the *acquis* regarding the digital tachograph.

The EU takes notes of the adoption of the subordinate acts to the 2007 Dangerous Goods Transport Act thus completing the transposition of the *acquis* on transport of dangerous goods.

As regards administrative capacity in the road transport sector, the EU takes note that Croatia increased staff, in particular in the inspection services. In addition, further training and adequate equipment have been provided for. The EU takes note of the actions Croatia has undertaken to perform the controls on technical and safety conditions in road transport, in particular as regards the use of safety belts, speed limitation devices, roadworthiness of vehicles and also inspection of the proper implementation of social *acquis* (road side and company premises).

In view of the above considerations, the EU notes that Croatia has met the requirements of the first closing benchmark as set out in the EU Common Position (CONF-HR 6/08).

The EU underlines the importance for Croatia to continue to enhance its administrative capacity in view of ensuring full implementation of the EU requirements, especially as regards the social conditions in road transport.

In order to achieve a smooth integration of the road transport market, the EU requests the following transitional arrangement as regards the implementation of Article 8 of Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market (see Annex):

By way of derogation from Article 8 of Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market the following transitional rules shall apply:

- for a period of two years after Croatia's accession undertakings established in Croatia are excluded from cabotage in the other Member States;

- for a period of two years after Croatia's accession other Member States may notify the Commission on whether they intend to prolong this transitional period mentioned in the first indent for a maximum of two years or whether they intend to apply Article 8 of Regulation (EC) No 1072/2009 in relation to undertakings established in Croatia. In the absence of such notification, Article 8 shall apply as mentioned.
- any of the present 27 Member States may at any time during the transitional period notify the Commission of its intention to apply Article 8 of Regulation (EC) No 1072/2009 in relation to undertakings established in Croatia.
- only carriers established in Member States where Article 8 of Regulation (EC) No 1072/2009 applies in relation to undertakings established in Croatia may perform cabotage in Croatia;
- for a period of four years after Croatia's accession, any Member State applying Article 8 of Regulation (EC) No 1072/2009 may, in case of serious disturbance of its national market or parts thereof due to or aggravated by cabotage, such as serious excess of supply over demand or a threat to the financial stability or survival of a significant number of road haulage undertakings, request the Commission to suspend in whole or in part the application of Article 8 of Regulation (EC) No 1072/2009 in relation to undertakings established in Croatia. In this case, Article 10 of Regulation (EC) No 1072/2009 shall apply.
- Member States that apply this transitional measure referred to in first and second indents may progressively exchange cabotage authorisations on the basis of bilateral agreements with Croatia.
- The above-mentioned transitional arrangement shall not lead to more restrictive access for Croatian carriers to cabotage in any Member State than that prevailing at the time of the signature of the Accession Treaty.

The EU notes that Croatia, in its addendum (CONF-HR 14/10) to its position (CONF-HR 13/07) has accepted the EU's proposal for this transitional arrangement in relation to Regulation (EEC) No 3118/93 laying down the conditions under which non-resident carriers may operate road haulage services within a Member State, which has been repealed and replaced by Regulation (EC) No 1072/2009.

## **Rail transport**

The EU takes note of the information provided by Croatia regarding the situation in the rail transport sector, in particular regarding the separation of essential functions of the national railway company.

The EU takes note of Croatia's amended negotiating position (CONF-HR 14/10) as regards Croatia's request for a transitional period until 31 December 2012 in relation to Article 10, paragraph 3 of Directive 91/440/EEC on the development of the Community's railways as amended (see Annex). The EU takes note that during this period Croatia would ensure that at least 20% of the annual total capacity of the railway network in Croatia shall be awarded with priority for railway undertakings other than "HŽ railway undertakings", and all origin-destinations shall allow for journey times comparable to those enjoyed by "HŽ railway undertakings". The actual capacity of each railway line shall be indicated by the infrastructure manager in the network statement in relation to Article 10, paragraph 3 of Council Directive 91/440/EEC.

The EU takes note of Croatia's commitment to apply Article 10(3) of Council Directive 91/440/EEC and considers this request acceptable.

As regards the railway network capacity, the EU notes Croatia's confirmation that railway undertakings, directly or indirectly controlled by or succeeding to "HŽ railway undertakings", shall cooperate with other railway undertakings to provide international rail freight for imports, exports and transit through Croatia in a non-discriminatory manner.

The EU recalls that access rights set out in Article 10(2) and (3a) of the Directive have to be granted without limitation.

The EU takes note of the establishment of the Railway Market Regulatory Agency as the railway regulatory body and that it has been endowed with the necessary competent staff. The EU takes note of the amendments to the Act on the Railway Market Regulatory Agency and the Act on Amendments to the Railway Act in 2009, which ensure the management independence of the infrastructure manager and the separation of the execution of essential functions from the provision of rail transport services.

The EU takes note of Croatia's steps taken to increase the administrative capacity in the field of rail transport and of the establishment of the safety and accident investigating bodies through the Act on the Railway Transport Safety Agency of October 2008 and the Ordinance on the internal order of the Ministry of the Sea, Transport and Infrastructure of May 2008.

In view of the above, the EU considers that Croatia has met the requirements of the second closing benchmark as set out in the EU Common Position (CONF-HR 6/08).

### **Inland waterway transport**

The EU takes note of the adoption of the new Act on Inland Navigation and Inland Ports, which is now aligned with the *acquis* as regards market access, access to the profession, recognition of boatmaster's and vessel certificates.

The EU takes note of the steps Croatia has taken in view of implementing the River Information System, and to strengthen the administrative capacity whilst it highlights the need for further work to accelerate its proper implementation.

## **Combined transport**

The EU takes note that Croatia has ratified in February 2009 the Memorandum of Understanding on the Participation of the Republic of Croatia in the Marco Polo II Community Programme to enhance and share the experience of this sector and contribute to a sustainable development of transport.

In addition the EU takes note that Croatia adopted the Act on Combined Transport in October 2009.

## **Air Transport**

The EU takes note of Croatia's progress in alignment of its legislation in the area of market access as regards air transport. The EU takes note that Croatia is applying the requirements of Directive 96/67/EC on ground-handling services in all airports that fall under the scope of the said directive by having adopted a new Ordinance on the provision of ground handling services and implementing measures. The EU takes note that Croatia ratified the European Common Aviation Area (ECAA) Agreement in September 2008, and completed the implementation of its first phase of the ECAA Agreement in the first quarter of 2010.

In view of the above considerations the EU considers that Croatia has met the requirements of the third closing benchmark as set out in the EU Common Position (CONF-HR 6/08).

The EU takes note that Croatia established the National Supervisory Authority (NSA) for air navigation services within the Civil Aviation Agency through the new Ordinance on the Requirements and Manner of Certification of an Air Navigation Service Provider.

Croatia has established an independent civil aviation accident investigation body, which ensures compliance with Directive 94/56/EC.



The EU takes note that Croatia signed the Declaration on the termination of the Central European Air Traffic Services (CEATS) Agreement and initiated, together with six other countries signatories of CEATS, the process of establishing the future Functional Airspace Block Central Europe (FAB CE) based on the results of the Feasibility Study on 12 June 2008, and that it participates in all current activities related to its creation. The EU takes note that Croatia signed in 18 November 2009 the Memorandum of Understanding between the participating states in the Functional Airspace Block Central Europe initiative in Bratislava.

The EU takes note of actions taken by Croatia to strengthen the administrative capacity as regards air safety issues. The EU takes note of the establishment of the Civil Aviation Agency in 2007, which is fully functioning.

The EU takes note that Croatia adopted in May 2008 the amendments to the Act on Obligatory and Proprietary Rights Relations in Air Transport and in October 2009, new amendments to the Act, thus fully aligning the national legislation with the remaining provisions of the *acquis* in the area of common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

The EU notes that the new Air Traffic Act, adopted in June 2009, is aligned with the EU *acquis* except for the issue of the competences of the European Aviation Safety Agency as provided in Regulation (EC) No 216/2008. To ensure full alignment, the EU notes that Croatia has committed to amend its Air Traffic Act in the course of 2011. The EU invites Croatia to provide regular information in this regard.

### **Maritime transport**

The EU takes note of Croatia's amended negotiating position (CONF-HR 14/10) as regards the request for a transitional period until 31 December 2016 in relation to Council Regulation (EEC) No 3577/92 on the freedom to provide services to maritime transport within Member States (maritime cabotage) (see Annex).

The EU takes note that the request concerns a temporary derogation from the Community rules as regards public coastal liner services and in particular the part concerning the Public Service Obligation. In light of the additional information provided by Croatia, and the request being limited in its scope and duration, the EU considers that the transitional period requested will not disturb the functioning of the internal market for maritime transport. The EU considers that the request is acceptable.

With regard to the potential impact of this request during the transitional period on the present Member States, the EU recalls that the acceptance of this request is without prejudice to the procedure for the adoption of safeguard measures provided for under the conditions of Art. 5 of Regulation (EC) No 3577/92.

The EU takes further note of Croatia's request for a transitional period until 31 December 2014 regarding occasional cruise services in cabotage in vessels up to 650 gross tonnes (see Annex). The request being limited in its scope will not disturb the functioning of the internal market for maritime transport. The EU considers that the request is acceptable.

By way of derogation from Article 1 (1), and for the transitional period until 31 December 2014, the Commission may, upon a substantiated request by a Member State, decide, within 30 working days of receipt of the relevant request, that ships benefiting from the derogation set out in the preceding paragraph shall not carry out cruise services between ports of certain areas of a Member State other than Croatia where it is demonstrated that the operation of these services seriously disturbs or threatens to seriously disturb the internal transport market in the areas concerned. If after the period of 30 working days the Commission has taken no decision, the Member State concerned shall be entitled to apply safeguard measures until the Commission has taken its decision. In the event of an emergency, the Member State may unilaterally adopt appropriate provisional measures which may remain in force for no more than three months. The Commission shall be immediately informed. The Commission may abrogate the measures or confirm them until it takes its final decision. Member States shall be kept informed.

The EU takes note that the national rules for seafarers' certificates have been brought into compliance with Directive 2008/106/EC on the minimum level of training of seafarers by the adoption in 2009, of the amendments to the Ordinance on ranks and certifications for seafarers.

The EU takes note of the adoption of the amendments to the Maritime Code in December 2008, which aligns it with the EU principles concerning the freedom of establishment in the part regulating the registration of ships in the Croatian register. This has removed restrictions regarding the registration system. The EU notes that Croatia established an electronic ship register and that the test phase for its operation was completed in 2010.

The EU takes note of Croatia's progress in improving the quality of ships under the Croatian flag resulting in the removal of its flag from the Grey list of the Paris Memorandum of Understanding (MoU) on Port State Control. The EU takes note of the adoption of the Action Plan to enhance the Croatian flag performance under the Paris Memorandum in 2008, and of the fact that no Croatian ship was detained in 2009.

Therefore, the EU considers that Croatia has complied with the fourth closing benchmark for this Chapter as set out in the EU Common Position (CONF-HR 6/08).

The EU takes note of actions undertaken to implement the Vessel Traffic Monitoring and Information System (VTMIS) such as upgrading the administrative capacity by further recruitment and training. The EU takes note of Croatia's plan to ensure full functionality of the system before accession.

The EU takes note of the adoption in 2008 of an Ordinance on places of refuge, which complies with the obligations under Article 20 of Directive 2002/59/EC establishing a Community vessel traffic monitoring and information. The EU takes note that on 7 May 2008, the Ordinance and the Plan for determining places of refuge were submitted to the European Commission and to the European Maritime Safety Agency (EMSA).

The EU takes note of the nomination of Port State Control Coordinators in 2008 and encourages Croatia to keep up with the implementation of the action plan under the Paris MoU and to continue its efforts to strengthen the administrative capacity in the maritime sector.

### **State aid**

The EU underlines the importance that any support granted to the transport sector, in particular to aviation and maritime transport, remains compatible with the *acquis*.

The EU takes note that Croatia published the rules on state aid in the form of public service compensation in 2008, aligning the definitions with the Altmark ruling and with the Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty and other relevant state aid rules. In addition the EU notes that in November 2008 Croatia adopted the Decision on the publication of rules on state aid in transport whereby the main rules on state aid were published.

### **Satellite navigation**

The EU takes note of Croatia's intention to take part in the activities of the European satellite navigation programme made of European Geostationary Navigation Overlay System (EGNOS) and Galileo.

The EU recalls that as an associated country in the Framework Research Programme, Croatia can already participate in the development of satellite navigation markets, downstream applications, receivers, etc. It can further make use of the operational augmentation system EGNOS which covers all countries of ECAC (European Civil Aviation Conference).

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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 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. 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 May 2010 and the conclusion of the negotiations.

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### **Transitional Arrangements**

1. By way of derogation from Article 8 of Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market the following transitional rules shall apply:
  - for a period of two years after Croatia's accession undertakings established in Croatia are excluded from cabotage in the other Member States;
  - for a period of two years after Croatia's accession other Member States may notify the Commission on whether they intend to prolong this transitional period mentioned in the first indent for a maximum of two years or whether they intend to apply Article 8 of Regulation (EC) No 1072/2009 in relation to undertakings established in Croatia. In the absence of such notification, Article 8 shall apply as mentioned.
  - any of the present 27 Member States may at any time during the transitional period notify the Commission of its intention to apply Article 8 of Regulation (EC) No 1072/2009 in relation to undertakings established in Croatia.
  - only carriers established in Member States where Article 8 of Regulation (EC) No 1072/2009 applies in relation to undertakings established in Croatia may perform cabotage in Croatia;

- for a period of four years after Croatia's accession, any Member State applying Article 8 of Regulation (EC) No 1072/2009 may, in case of serious disturbance of its national market or parts thereof due to or aggravated by cabotage, such as serious excess of supply over demand or a threat to the financial stability or survival of a significant number of road haulage undertakings, request the Commission to suspend in whole or in part the application of Article 8 of Regulation (EC) No 1072/2009 in relation to undertakings established in Croatia. In this case, Article Article 10 of Regulation (EC) No 1072/2009 shall apply.
- Member States that apply this transitional measure referred to in first and second indents may progressively exchange cabotage authorisations on the basis of bilateral agreements with Croatia.
- The above-mentioned transitional arrangement shall not lead to more restrictive access for Croatian carriers to cabotage in any Member State than that prevailing at the time of the signature of the Accession Treaty.

2. By way of derogation from Article 10, paragraph 3 of Directive 91/440/EEC on the development of the Community's railways as last amended.

- Until 31 December 2012, Article 10(3) of Council Directive 91/440/EEC shall only apply in Croatia subject to the following conditions:
  - Railway undertakings directly or indirectly controlled by or succeeding to Hrvatske Željeznice ("HZ railway undertakings") shall cooperate with other railway undertakings to provide international rail freight for imports, exports and transit through Croatia in a non-discriminatory manner. Access rights set out in Article 10(2) and (3a) of the Directive shall be granted without limitation.

- at least 20% of the annual total capacity of the railway network in Croatia shall be awarded with priority for railway undertakings other than HZ railway undertakings, and all origin-destinations shall allow for journey times comparable to those enjoyed by HZ railway undertakings. The actual capacity of each railway line shall be indicated by the infrastructure manager in the network statement.

### **LEGAL AMENDMENTS ARISING FROM THE DCP**

31992 R 3577: Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12/12/1992, p. 0007):

(a) In Article 6, the following paragraphs are added:

- "4. By way of derogation from the second subparagraph of Article 4(1), public service contracts concluded before the date of Croatia's accession to the EU may continue to be applied until 31 December 2016.
5. By way of derogation from Article 1(1), until 31 December 2014 cruise services carried out between Croatian ports by ships smaller than 650 gross tonnes shall be reserved to ships registered in, or flying the flag of Croatia, which are operated by shipping companies, established in accordance with Croatian law, and whose principal place of business is situated, and effective control exercised, in Croatia.



6. By way of derogation from Article 1 (1), and for the transitional period until 31 December 2014, the Commission may, upon a substantiated request by a Member State, decide, within 30 working days of receipt of the relevant request, that ships benefiting from the derogation set out in the preceding paragraph shall not carry out cruise services between ports of certain areas of a Member State other than Croatia where it is demonstrated that the operation of these services seriously disturbs or threatens to seriously disturb the internal transport market in the areas concerned. If after the period of 30 working days the Commission has taken no decision, the Member State concerned shall be entitled to apply safeguard measures until the Commission has taken its decision. In the event of an emergency, the Member State may unilaterally adopt appropriate provisional measures which may remain in force for no more than three months. The Commission shall be immediately informed. The Commission may abrogate the measures or confirm them until it takes its final decision. Member States shall be kept informed."
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