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Subject: EUROPEAN UNION COMMON POSITION
Chapter 4: Free movement of capital

EUROPEAN UNION COMMON POSITION

(Revision of CONF-HR 9/09)

Chapter 4: Free movement of capital

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 23/10) to the negotiating position on chapter 4 (CONF- HR 11/08) accepts the *acquis* under chapter 4 - Free movement of capital as in force on 1 June 2010, and that Croatia declares that it will be ready to implement it by the date of its accession to the European Union, while requesting a transitional measure on acquisition of agricultural land by EU/EEA legal and natural persons. Moreover, Croatia confirmed its request that 31 December 2002 be taken as applicable to the Republic of Croatia with respect to the application to third countries of the restrictions existing under national law referred to in Article 64(1) of the Treaty on the Functioning of the European Union.

Capital movements and payments

The EU notes that the great majority of capital transactions have been liberalised. The EU underlines the importance of ensuring that any remaining restrictions are removed by implementing the corresponding legislation and of ensuring an appropriate strengthening of the financial sector so that the freedom of all categories of capital transactions as listed in the nomenclature contained in Annex 1 of Directive 88/361/EEC are guaranteed.

The EU notes the adoption in December 2009 of a Regulation on Amendments to the Foreign Exchange Act which abolished prohibitions on the granting to non-residents of short-term financial loans with maturity between three and twelve months and abolished the restrictions on taking cash and checks in and out of the country as well as on payments and collections in cash and checks between residents and non-residents as of 1 January 2010. The Regulation abolished also prohibitions on the granting to non-residents of short term financial loans with a maturity of less than three months as of 1 July 2010. The Regulation abolishes restrictions for residents to open and maintain foreign exchange accounts abroad as of 1 January 2011.

As regards reserve requirements of banks, in October 2008 Croatia aligned with the *acquis* its Decision on the marginal reserve requirement and the respective implementing Instruction.

The EU notes the adoption of amendments to the Insurance Act (July 2009), amendments to the Deposit Insurance Act (January 2009) and to the Act on the Fund for Croatian Homeland War Veterans and Members of their Families (April 2008), which eliminated privileged access of the public sector to financial institutions as of 1 January 2009 (Deposit Insurance Act) or by the date of accession (Insurance Act and Act on the Fund for Croatian Homeland War Veterans and Members of their Families). The EU notes that Croatia has eliminated also the discriminatory provisions concerning the use of assets in building societies, by adopting the Act on Amendments to the Act on Housing Savings and State Incentive to Housing Savings (February 2010) which will enter into force upon accession.

As regards special rights of the State in privatised companies, the EU takes note of the adoption of the Act repealing the Act on Privatisation of Croatian Electric Power Company (February 2010) and of Croatia's commitment to achieve alignment with the *acquis* through the adoption of amendments to the Act on Privatisation of INA Oil Company and the Act on Privatisation of Croatian Telecom in the second half of 2010. The EU notes the existence also of certain rights of the State stemming from documents that are not part of national legislation, namely those rights set out in contracts on the sale and transfer of shares. In this regard, the EU notes Croatia's commitment to abolish all provisions of the existing contracts that are not aligned with the *acquis* by the date of Croatia's accession to the EU. Taking into account that such rights are due to only gradually expire in the coming years depending on individual contracts, the EU invites Croatia to ensure alignment also in the event that Croatia's accession to the EU occurs before the date by which all existing rights are due to expire.

The above-described amendments and legislative measures and actions fulfil the requirements of the first closing benchmark as set out in the EU common position (CONF-HR 9/09).

The EU takes note of the amendment to the Act on Ownership and other Real Rights which entered into force in February 2009. According to this Act and in line with the obligations under the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their Member States, EU nationals are now entitled to acquire ownership rights over real estate under the same conditions as Croatian nationals. Moreover, procedures which had been initiated by citizens of EU Members States for acquiring property ownership in Croatia but were not finalised before 1 February 2009 have been discontinued *ex officio* and have been treated thereafter on the basis of equal treatment. However, restrictions on acquisition of areas and matters listed in Annex VII of the SAA (agricultural land and areas protected by the Nature Protection Act) remain in place. While a transition period is requested by Croatia for acquisition of agricultural land, the Nature Protection Act already foresees that should provisions of international treaties signed by Croatia contradict the Act, the international treaty would prevail. The EU invites Croatia to amend by accession the provisions for acquisition of areas covered by the Nature Protection Act in order to explicitly eliminate restrictions. This fulfils the requirements of the second closing benchmark as set out in the EU common position (CONF-HR 9/09).

The EU notes that Croatia has reduced its request for a transitional measure from twelve to seven years from the date of its accession to the EU, during which it would maintain the existing restrictions on the acquisition of agricultural land for EU/EEA legal and natural persons (with the possibility of an extension of additional three years, possibly limited to selected geographical areas particularly affected). The EU considers the request acceptable and to this effect the Accession Treaty with Croatia shall include point (1) of the Annex to this document. A general review of this transitional measure shall be held in the third year following the date of accession. To this effect, the Commission shall submit a report to the Council. The Council may, acting unanimously on a proposal from the Commission, decide to shorten or terminate the transitional period mentioned above. The EU takes note of Croatia's decision to attach to the future Accession Treaty a declaration according to which, in case it might be granted a prolongation of the transitional period, it will endeavour to carry out the necessary steps to liberalise the acquisition of agricultural land in the specified areas before expiry of the fixed 3-year term (as per draft text annexed to the addendum (CONF-HR 23/10) to its negotiating position (CONF-HR 11/08)).

The EU notes that Croatia intends to maintain restrictions on the acquisition of real estate in relation to third countries that were in force in national legislation on 31 December 2002. The EU recalls that Article 64 of the TFEU grants Member States the right to retain vis-à-vis third countries restrictions pertaining notably to direct investment in real estate which existed on 31 December 1993 and are still in force. The EU can accept that the Accession Treaty with Croatia will set the date of 31 December 2002 for the reference date contained in Article 64(1) of the TFEU as regards acquisition of real estate in Croatia by natural and legal persons from third countries, as per point (2) of the Annex to this document. The EU notes that the differential treatment vis-à-vis third countries, which the adoption of a revised date for Croatia entails, is limited and represents an overall liberalisation, thus fulfilling the spirit of the Treaty with respect to freedom of movement of capital and payments, not only within the EU, but also in respect to operations with third countries.

Payment systems

The EU takes note of the adoption of a new Act on Payment Services (October 2009) and of the accompanying subordinate legislation aligning Croatian legislation with the provisions of Directive 2007/64/EC on payment services in the internal market. The EU also notes that Croatia will ensure all pre-conditions for the direct application upon Croatia's accession to the EU of the provisions of Regulation (EC) No 924/2009 on cross-border payments.

Fight against money laundering

The EU notes that with the adoption of the Act on Prevention of Money Laundering and Terrorist Financing and its entry into force in January 2009, amendments to the Criminal Code (including provisions on terrorism financing), Games of Chance Act, Court Rule of Procedures, and the Act on Police Duties and Authorities, Croatia has aligned its legislation with the *acquis* on anti-money laundering. The EU notes the progress achieved in the implementation of the Anti-Money Laundering Action Plan adopted in January 2008. The Anti-Money Laundering Office, which is the Croatian Financial Intelligence Unit (FIU), has been staffed with 22 positions and has been structured around a strategic analysis and information system department, a financial intelligence analysis, a prevention and supervision department and an inter-institutional and international cooperation department. The Financial Inspectorate has a total of 24 employees. Numerous trainings were provided by the FIU to reporting entities. The specialised Office for the Fight Against Corruption and Organised Crime (USKOK) and the National Police Office for the Fight against Corruption and Organised Crime (PNUSKOK) were established to speed up the judicial proceedings of organised crime cases, including - among others – money laundering cases. The EU notes the establishment of a Financial Investigation and Money Laundering Section within PNUSKOK, which has assumed the function of the Asset Recovery Office in accordance with the Council Decision 2007/845/JHA. Regular statistics and information have been provided by Croatia on the enforcement of the existing legislation, showing an upward trend in reporting and convictions, although it has to be noted that there has been recently a gradual reduction in the number of suspicious transactions reported to the Croatian FIU. This followed changes in the reporting system aimed at providing the FIU with notifications of a higher quality. Croatia has thus demonstrated through a track record an adequate administrative capacity to properly implement and enforce the relevant legislation in all areas related to anti-money laundering. In view of the above developments, the EU considers that the requirements of the third closing benchmark as set out in the EU common position (CONF-HR 9/09) are fulfilled.

The EU invites Croatia to continue its efforts to implement the Action Plan, in particular with regard to strengthening awareness of the reporting bodies, with special focus on the non-banking sector, strengthening supervision, strengthening of the police, the State Attorney's Office and the judiciary as well as cooperation of all competent bodies within the system for the prevention of and fight against money laundering. The EU invites Croatia to continue providing information and statistics on the enforcement of anti-money laundering legislation on a bi-annual basis until accession.

In general terms, the EU recalls that the principle of free movement of capital and payments is one of the cornerstones of the single market. For a proper functioning of the markets from the date of accession, a timely and orderly removal of remaining restrictions on capital movements, together with an appropriate strengthening of the financial sector and its supervision, will be required before accession. This will allow economic agents and macro-economic policies to adapt in good time to the new framework, thus averting the risk of sudden disruptions on the financial markets upon accession.

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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 free movement of capital. 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 regularly provide 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 2010 and the conclusion of the negotiations.

TRANSITIONAL PERIOD AND AMENDMENT TO THE TFEU TREATY NECESSARY FOR THE IMPLEMENTATION OF THE EUCP:

1. Transitional Period (text to be included in the Accession Treaty)

Notwithstanding the obligations under the Treaties on which the European Union is founded, Croatia may maintain in force for seven years from the date of its accession to the European Union the prohibitions laid down in its Agricultural Land Act (OG 152/08, 21/10) on the acquisition of agricultural land by nationals of another Member State and by legal persons formed in accordance with the laws of another Member State. In no instance may a national of a Member State or a legal person formed in accordance with the laws of another Member State be treated less favourably in respect of the acquisition of agricultural land than at the date of signature of the Accession Treaty or be treated in a more restrictive way than a national or a legal person of a third country.

Self-employed farmers, who are nationals of another Member State and who wish to establish themselves and reside in Croatia, shall not be subject to the provisions of the preceding subparagraph or to any rules and procedures other than those to which nationals of Croatia are subject.

A general review of this transitional measure shall be held in the third year following the date of accession. To this effect, the Commission shall submit a report to the Council. The Council may, acting unanimously on a proposal from the Commission, decide to shorten or terminate the transitional period indicated in the first subparagraph.

If there is sufficient evidence that, upon expiry of the transitional period, there will be serious disturbances or a threat of serious disturbances on the agricultural land market of Croatia, the Commission, at the request of Croatia, shall decide upon the extension of the transitional period for three years. This extension might be limited to selected geographical areas particularly affected.

2. Amendment to the Treaty on the Functioning of the European Union

In Article 64(1) TFEU the following is added:

In respect of restrictions existing under national law in Croatia, the relevant date shall be 31 December 2002.
