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Subject : EUROPEAN UNION COMMON POSITION
Chapter 2: Freedom of movement for workers

EUROPEAN UNION COMMON POSITION

(Revision of CONF-HR 12/08)

Chapter 2: Freedom of movement for workers

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 3/09) to the negotiating position on Chapter 2 (CONF-HR 23/07), accepts the *acquis* under chapter 2 as in force on 1 June 2009, and declares that it will be ready to implement it by the date of its accession to the European Union.

Access to labour market

The EU takes note of the adoption of the amendments to the Act on Foreigners which aim, *inter alia*, at abolishing *work permits* as a condition for EU nationals and their family members to work in Croatia. The EU takes note that these amendments will enter into force by accession.

The EU takes note of the confirmation by Croatia that its implementation of Directive 2004/38/EC on the Right of Citizens of the Union and their Family Members will not impose a health insurance requirement as an administrative formality for the registration of residence of EU nationals working in Croatia.

As regards *access to public sector posts*, the EU takes note of the confirmation by Croatia that it is aware of the requirements of the *acquis* in this field, allowing the possibility to restrict access to its own nationals only to those public sector posts that involve the exercise of public authority and the responsibility for safeguarding the general interest of the State. The EU takes note of the Croatian statement that the fact that employment of foreigners is possible for all posts in the Croatian civil service upon approval of the competent central State administration allows a case-by-case approach on the basis of the nature of the tasks and responsibilities covered by the post in question. In this respect, the EU recalls that authorisations by the relevant State administration of Croatia will need to be granted automatically for those public sector posts which do not involve the exercise of public authority and the responsibility for safeguarding the general interest of the State (eg. positions such as accountants and IT staff), in line with the jurisprudence of the European Court of Justice.

The EU takes note of the Croatian statement that Croatian legislation prohibits discrimination against EU citizens in relation to access to employment on the basis of nationality, even if they are not residing in Croatia. The EU also takes note that Croatia is aware that, under the *acquis*, mandatory requirements for *language proficiency* can only be applied in certain circumstances, on a case-by-case basis, and that Croatia will comply with the *acquis* in this respect as of the date of accession.

As regards *supplementary pension rights of employed and self-employed persons moving within the Community*, the EU takes note of the adoption of the amendments to the Act on Compulsory and Voluntary Pension Funds in July 2007. These amendments aim at introducing provisions in the field of supplementary pension schemes. The EU also takes note of the adoption, in October 2007, of the amendments to the Act on Pension Insurance Companies and the Payment of Pensions Based on Individualised Capital Savings aiming at enabling cross-border payment of pension benefits in the supplementary pension scheme.

The EU reminds Croatia that Directive 98/49/EC on Safeguarding the Supplementary Pension Rights of Employed and Self-employed Persons Moving within the Community concerns those second pillar pension schemes not covered by Council Regulation (EEC) No 1408/71 on the Application of Social Security Schemes to Employed Persons and Their Families Moving within the Community; third pillar schemes are only covered if an employer is involved in payment of contributions. The EU notes that Croatia has provided more details on its third pillar supplementary pension scheme.

The EU recalls the political and practical importance of this area of the *acquis* and notes that there are sensitivities over the issue of mobility of workers.

The EU considers that transitional measures will be required vis-à-vis Croatia with regard to Article 1 to 6 of Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community, as well as to the freedom to provide services involving temporary movement of workers as defined in Article 1 of Directive 96/71/EC, in line with the transitional measures applied to Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. These transitional measures will concern the free movement of workers as set out in Article 39 EC Treaty and Articles 1 to 6 of the Council Regulation (EEC) No 1612/68, as well as the first paragraph of Article 49 EC Treaty in relation to the freedom to provide services involving temporary movement of workers as defined in Article 1 of Directive 96/71/EC. It will consist, *mutatis mutandis*, of the same time-limits, procedures, mechanisms and conditions as set out in the transitional arrangement on free movement of workers of the 2003 and 2005 Accession Treaties (see Annex hereafter).

However, the EU underlines that Croatian nationals and their family members shall not be treated any less favourably than third country nationals when the latter are exercising their rights under the *acquis*.

The EU takes note of Croatia's acceptance of the above transitional measures.

EURES

The EU takes note of the Croatian statement that the present structure and the territorial coverage and availability of the Croatian Employment Service largely satisfy the conditions for participation in the EURES network.

The EU takes note of the adoption, in July 2008, of the amendments to the Act on Employment Mediation and Unemployment Rights aiming at ensuring equal treatment of EU migrant workers and Croatian citizens as regards assistance by the national employment office, *inter alia* in providing free counselling and mediation in employment to EEA nationals.

The EU takes note that technical and organisational adjustments and strengthening of administrative capacity within the Croatian Employment Service is ongoing in view of the future participation in the EURES network. The EU also takes note that efforts are ongoing to improve the language skills of potential EURES advisers, as well as preparations for connection to the European Job Mobility Portal to ensure that all job vacancies displayed on the Public Employment Services website will be available for publication on the Portal upon accession.

On the basis of this assessment, the EU notes that efforts are ongoing in view of putting in place adequate administrative structures and enforcement capacity in this area.

In view of the above, the EU notes that the requirements of the closing benchmark set out in the EU common position (CONF-HR 12/08) have been fulfilled.

Co-ordination of social security systems

The EU takes note of the Croatian statement that Croatia will be ready for the application of the *acquis* relating to the co-ordination of social security systems as from the date of accession.

The EU takes note of the Croatian statement that Croatia is fully aware that, as regards health insurance benefits, the efficient application of the *acquis* in this field depends on ensuring additional funds to cover provisionally the costs in the healthcare area, and that measures will be taken in order to estimate the level of additional costs and to assure the funds.

The EU underlines the importance for Croatia to ensure that necessary administrative capacity is developed in view of correct application of the *acquis* on co-ordination of social security systems as from the date of accession.

In view of the above, the EU takes note of the information provided by Croatia on all the measures taken and planned in this field, including organisational changes, training and structural projects and IT adaptation, demonstrating that, by the time of accession, adequate administrative structures and enforcement capacity will be effectively in place to implement correctly the *acquis* in this field. Particularly, the EU takes note that Croatia intends to take advantage of IPA support in order to further strengthen the administrative capacity in this field.

The EU notes that the requirements of the closing benchmark set out in the EU common position (CONF-HR 12/08) have been fulfilled.

European Health Insurance Card

The EU takes note of the information provided by Croatia in relation to the continuous preparations for the introduction of the European Health Insurance Card. The EU underlines the need for Croatia to continue these preparations and takes note of the Croatian statement that it will be ready to introduce the card as from accession without any special further technical and organisational adjustments.

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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, particularly in the field of co-ordination of social security systems, and its capacity to abolish any discriminatory measures towards EU migrant workers. 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 June 2009 and the conclusion of the negotiations.

Annex

Transitional measure on freedom of movement for workers for Croatia

1. Article 39 and the first paragraph of Article 49 of the EC Treaty shall fully apply only, in relation to the freedom of movement of workers and the freedom to provide services involving temporary movement of workers as defined in Article 1 of Directive 96/71/EC between Croatia on the one hand, and each of the present Member States on the other hand, subject to the transitional provisions laid down in paragraphs 2 to 13.
2. By way of derogation from Articles 1 to 6 of Regulation (EEC) No 1612/68 and until the end of the two year period following the date of accession, the present Member States will apply national measures, or those resulting from bilateral agreements, regulating access to their labour markets by Croatian nationals. The present Member States may continue to apply such measures until the end of the five year period following the date of accession.

Croatian nationals legally working in a present Member State at the date of accession and admitted to the labour market of that Member State for an uninterrupted period of 12 months or longer will enjoy access to the labour market of that Member State but not to the labour market of other Member States applying national measures.

Croatian nationals admitted to the labour market of a present Member State following accession for an uninterrupted period of 12 months or longer shall also enjoy the same rights.

The Croatian nationals mentioned in the second and third subparagraphs above shall cease to enjoy the rights contained in those subparagraphs if they voluntarily leave the labour market of the present Member State in question.

Croatian nationals legally working in a present Member State at the date of accession, or during a period when national measures are applied, and who were admitted to the labour market of that Member State for a period of less than 12 months shall not enjoy these rights.

3. Before the end of the two year period following the date of accession, the Council shall review the functioning of the transitional provisions laid down in paragraph 2, on the basis of a report from the Commission.

On completion of this review, and no later than at the end of the two year period following the date of accession, the present Member States shall notify the Commission whether they will continue applying national measures or measures resulting from bilateral agreements, or whether they will apply Articles 1 to 6 of Regulation (EEC) No 1612/68 henceforth. In the absence of such notification, Articles 1 to 6 of Regulation (EEC) No 1612/68 shall apply.

4. Upon the request of Croatia, one further review may be held. The procedure referred to in paragraph 3 shall apply and shall be completed within six months of receipt of the request from Croatia.
5. A Member State maintaining national measures or measures resulting from bilateral agreements at the end of the five year period indicated in paragraph 2 may, in case of serious disturbances of its labour market or threat thereof and after notifying the Commission, continue to apply these measures until the end of the seven year period following the date of accession. In the absence of such notification, Articles 1 to 6 of Regulation (EEC) No 1612/68 shall apply.
6. During the seven year period following the date of accession, those Member States in which, by virtue of paragraphs 3, 4 or 5, Articles 1 to 6 of Regulation (EEC) No 1612/68 apply as regards Croatian nationals, and which are issuing work permits to nationals of Croatia for monitoring purposes during this period, will do so automatically.
7. Those Member States in which, by virtue of paragraphs 3, 4 or 5, Articles 1 to 6 of Regulation (EEC) No 1612/68 apply as regards Croatian nationals, may resort to the procedures set out in the subparagraphs below until the end of the seven year period following the date of accession.

When a Member State referred to in the first subparagraph undergoes or foresees disturbances on its labour market which could seriously threaten the standard of living or level of employment in a given region or occupation, that Member State shall inform the Commission and the other Member States thereof and shall supply them with all relevant particulars. On the basis of this information, the Member State may request the Commission to state that the application of Articles 1 to 6 of Regulation (EEC) No 1612/68 be wholly or partially suspended in order to restore to normal the situation in that region or occupation. The Commission shall decide on the suspension and on the duration and scope thereof not later than two weeks after receiving such a request and shall notify the Council of such a decision. Any Member State may, within two weeks from the date of the Commission's Decision, request the Council to annul or amend the Decision. The Council shall act on such a request within two weeks, by qualified majority.

A Member State referred to in the first subparagraph may, in urgent and exceptional cases, suspend the application of Articles 1 to 6 of Regulation (EEC) No 1612/68, followed by a reasoned ex-post notification to the Commission.

8. As long as the application of Articles 1 to 6 of Regulation (EEC) No 1612/68 is suspended by virtue of paragraphs 2 to 5 and 7 above, Article 23 of Directive 2004/38/EC shall apply in Croatia with regard to nationals of the present Member States, and in the present Member States with regard to Croatian nationals, under the following conditions, so far as the right of family members of workers to take up employment is concerned:
 - the spouse of a worker and their descendants who are under 21 years of age or are dependants, legally residing with the worker in the territory of a Member State at the date of accession, shall have, upon accession, immediate access to the labour market of that Member State. This does not apply to family members of a worker legally admitted to the labour market of that Member State for a period of less than 12 months;

- the spouse of a worker and their descendants who are under 21 years of age or are dependants, legally residing with the worker in the territory of a Member State from a date later than the date of accession, but during the period of application of the transitional provisions laid down above, shall have access to the labour market of the Member State concerned once they have been resident in the Member State concerned for at least eighteen months or from the third year following the date of accession, whichever is the earlier.

These provisions shall be without prejudice to more favourable measures whether national or resulting from bilateral agreements.

9. Insofar as provisions of Directive 2004/38/EC which take over provisions of Directive 68/360/EEC¹ may not be dissociated from those of Regulation (EEC) No 1612/68 whose application is deferred pursuant to paragraphs 2 to 5 and 7 and 8, Croatia and the present Member States may derogate from those provisions to the extent necessary for the application of paragraphs 2 to 5 and 7 and 8.
10. Whenever national measures, or those resulting from bilateral agreements, are applied by the present Member States by virtue of the transitional provisions laid down above, Croatia may maintain in force equivalent measures with regard to the nationals of the Member State or States in question.
11. Any present Member State applying national measures in accordance with paragraphs 2 to 5 and 7 to 9, may introduce, under national law, greater freedom of movement than that existing at the date of accession, including full labour market access. From the third year following the date of accession, any present Member State applying national measures may at any time decide to apply Articles 1 to 6 of Regulation (EEC) No 1612/68 instead. The Commission shall be informed of any such decision.

¹ Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ L 257, 19.10.1968, p. 13). Directive as last amended by the 2003 Act of Accession (OJ L 236, 23.9.2003, p. 33) and repealed with effect from 30 April 2006 by Directive 2004/38/EC of the European Parliament and of the Council (OJ L 158, 30.4.2004, p. 77).

12. In order to address serious disturbances or the threat thereof in specific sensitive service sectors on their labour markets, which could arise in certain regions from the transnational provision of services, as defined in Article 1 of Directive 96/71/EC, and as long as they apply, by virtue of the transitional provisions laid down above, national measures or those resulting from bilateral agreements to the free movement of Croatian workers, Germany and Austria may, after notifying the Commission, derogate from the first paragraph of Article 49 of the EC Treaty with a view to limit in the context of the provision of services by companies established in Croatia, the temporary movement of workers whose right to take up work in Germany and Austria is subject to national measures.

The list of service sectors which may be covered by this derogation is as follows:

– in Germany:

Sector	NACE [*] code, unless otherwise specified
Construction, including related branches	45.1 to 4, Activities listed in the Annex to Directive 96/71/EC
Industrial cleaning	74.70 Industrial cleaning
Other Services	74.87 Only activities of interior decorators

(*) NACE: see 31990 R 3037: Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as last amended by 32003 R 1882: Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29.9.2003 (OJ L 284, 31.10.2003, p. 1).

– in Austria:

Sector	NACE ^(*) code, unless otherwise specified
Horticultural service activities	01.41
Cutting, shaping and finishing of stone	26.7
Manufacture of metal structures and parts of structures	28.11
Construction, including related branches	45.1 to 4, Activities listed in the Annex to Directive 96/71/EC
Security activities	74.60
Industrial cleaning	74.70
Home nursing	85.14
Social work and activities without accommodations	85.32

(*) NACE: see 31990 R 3037: Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as last amended by 32003 R 1882: Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29.9.2003 (OJ L 284, 31.10.2003, p. 1).

To the extent that Germany or Austria derogate from the first paragraph of Article 49 of the EC Treaty in accordance with the preceding subparagraphs, Croatia may, after notifying the Commission, take equivalent measures.

The effect of the application of this paragraph shall not result in conditions for the temporary movement of workers in the context of the transnational provision of services between Germany or Austria and Croatia which are more restrictive than those prevailing on the date of signature of the Treaty of Accession.

13. The effect of the application of paragraphs 2 to 5 and 7 to 11 shall not result in conditions for access of Croatian nationals to the labour markets of the present Member States which are more restrictive than those prevailing on the date of signature of the Treaty of Accession.

Notwithstanding the application of the provisions laid down in paragraphs 1 to 12, the present Member States shall, during any period when national measures or those resulting from bilateral agreements are applied, give preference to workers who are nationals of the Member States over workers who are nationals of third countries as regards access to their labour market.

Croatian migrant workers and their families legally resident and working in another Member State or migrant workers from other Member States and their families legally resident and working in Croatia shall not be treated in a more restrictive way than those from third countries resident and working in that Member State or Croatia respectively. Furthermore, in application of the principle of Community preference, migrant workers from third countries resident and working in Croatia shall not be treated more favourably than nationals of Croatia.
