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Proposal for a

COUNCIL DIRECTIVE

**adapting certain directives in the field of public procurement, by reason of the accession
of Croatia**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The proposal for a Council Directive adapting certain directives in the field of public procurement is necessitated by the upcoming accession of the Republic of Croatia to the European Union.

The Treaty concerning the accession of the Republic of Croatia to the European Union¹ was signed by all Member States of the European Union and the Republic of Croatia at Brussels on 9 December 2011.

Article 3 (3) of the Treaty of Accession provides that it shall enter into force on 1 July 2013 provided that all the instruments of ratification have been deposited before that date.

Article 3(4) of the Treaty of Accession enables the institutions of the Union to adopt before accession measures referred to, inter alia, in Article 50 of the Act concerning the conditions of accession of the Republic of Croatia². These measures shall enter into force only subject to and on the date of the entry into force of the Treaty of Accession.

Article 50 of the Act of Accession provides that where acts of the institutions adopted prior to accession require adaptation by reason of accession, and the necessary adaptations have not been provided for in this Act or its Annexes, the Council or the Commission (if the original acts were adopted by the Commission) shall adopt the necessary acts.

Point 2 of the Final Act³ refers to the political agreement on a set of adaptations to be adopted by the institutions which was reached between the Member States and Croatia in the context of the approval of the Treaty of Accession; the High Contracting parties of the Treaty of Accession invited the Council and the Commission to adopt these adaptations before accession in accordance with Article 50 of the Act of Accession, completed and updated where necessary to take account of the evolution of the law of the Union.

The present proposal for a Council Directive covers all European Parliament and Council directives which require technical adaptation by reason of the accession of Croatia in the field of public procurement – corresponding to negotiation chapter 5.

This proposal is part of a series of proposals for Council directives by the Commission to the Council which regroup the technical adaptations to Council directives as well as to European Parliament and Council directives corresponding to negotiation chapters into separate proposals for different Council directives. This structure is designed to facilitate the transposition of the directives concerned by Member States into their respective legal orders. The package of proposals for legal

¹ OJ L 112, 24.4.2012, p. 10.

² OJ L 112, 24.4.2012, p. 21.

³ OJ L 112, 24.4.2012, p. 95.

acts which the Commission has transmitted to the Council is composed of this series of proposals for Council directives on the one hand, as well as of a proposal for a single Council regulation which covers the relevant European Parliament and Council regulations and decisions as well as the relevant Council regulations and decisions on the other hand. This is in line with the approach which was taken in the past in view of the accession of Bulgaria and Romania⁴.

It is foreseen that all the legal acts included in this package will be published in the *Official Journal of the European Union* at the same date.

The present proposal and the other proposals included in this package will take into account technical adaptations to the *acquis* which were published in the Official Journal of the European Union until 1 September 2012. The reasons for this are to provide sufficient time for the legislative processes involved on the one hand, and for the fulfilment of the ensuing transposition and notification obligations by Member States as regards directives on the other hand. Adaptations which may be necessary to the *acquis* published in the Official Journal of the European Union after 1 September 2012 will be foreseen in the relevant acts themselves or done at a later stage through the appropriate procedure. In addition, the Commission intends to informally provide a list of such legislation to Member States in early July 2013.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

As this proposal is of a purely technical nature and does not involve any political choices, consultations with interested parties or impact assessments would not have made sense.

⁴ OJ L 363, 20.12.2006, p. 1.

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis for the proposal is Article 50 of the Act concerning the conditions of accession of the Republic of Croatia.

The principles of subsidiarity and proportionality are fully respected. The action of the Union is necessary under the principle of subsidiarity (Article 5 (3) TEU) because it concerns technical adaptations to legal acts which were enacted by the Union. The proposal respects the principle of proportionality (Article 5 (4) TEU) because it does not go beyond what is necessary to reach the objective pursued.

4. BUDGETARY IMPLICATION

The proposal has no Union budgetary implications.

Proposal for a

COUNCIL DIRECTIVE

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty of Accession of the Republic of Croatia, and in particular Article 3(4) thereof,

Having regard to the Act of Accession of the Republic of Croatia, and in particular Article 50 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Pursuant to Article 50 of the Act of Accession, where acts of the institutions adopted prior to accession require adaptation by reason of accession, and the necessary adaptations have not been provided for in the Act of Accession or its Annexes, the Council, acting by qualified majority on a proposal from the Commission, shall, to this end, adopt the necessary acts, if the original act was not adopted by the Commission.
- (2) The Final Act of the Conference which drew up the Treaty of Accession indicated that the High Contracting Parties had reached political agreement on a set of adaptations to acts adopted by the institutions required by reason of accession and invited the Council and the Commission to adopt these adaptations before accession, completed and updated where necessary to take account of the evolution of the law of the Union.
- (3) Directives 2004/17/EC¹, 2004/18/EC² and 2009/81/EC³ should therefore be amended accordingly,

¹ OJ L 134, 30.4.2004, p. 1.

² OJ L 134, 30.4.2004, p. 114

³ OJ L 216, 20.8.2009, p. 76.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directives 2004/17/EC, 2004/18/EC and 2009/81/EC shall be amended as set out in the Annex.

Article 2

1. Member States shall adopt and publish, by the date of accession of the Republic of Croatia to the European Union at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from the date of accession of the Republic of Croatia to the European Union.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force subject to, and as from the date of the entry into force of the Treaty of Accession of the Republic of Croatia.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX

PUBLIC PROCUREMENT

1. 32004 L 0017: Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ L 134, 30.4.2004, p. 1):

- (a) the following is inserted in Annex I 'Contracting entities in the sectors of transport or distribution of gas or heat' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activity of construction (provision) or operation of fixed networks intended to provide service to the public in connection with the production, transmission and distribution of gas and thermal energy and supply of gas or thermal energy to fixed networks, such as the entities engaging in the said activities based on the Licence for carrying out energy activities in accordance with the Energy Act (Official Gazette 120/12).'

- (b) the following is inserted in Annex II 'Contracting entities in the sectors of production, transport or distribution of electricity' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activity of construction (provision) or operation of fixed networks intended to provide service to the public in connection with the production, transmission and distribution of electricity and supply of electricity to fixed networks, such as the entities engaging in the said activities based on the Licence for carrying out energy activities in accordance with the Energy Act (Official Gazette 120/12).'

- (c) the following is inserted in Annex III 'Contracting entities in the sectors of production, transport or distribution of drinking water' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activity of construction (provision) or operation of fixed networks intended to provide service to the public in connection with the production, transmission and distribution of drinking water and supply of drinking water to fixed networks, such as the entities established by the local self-government units acting as the

public supplier of water supply services or drainage services in accordance with the Waters Act (Official Gazette 153/09 and 130/11).'

- (d) the following is inserted in Annex IV 'Contracting entities in the field of rail services' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activity of provision or operation of the networks providing service to the public in the field of railway transport.'

- (e) the following is inserted in Annex V 'Contracting entities in the field of urban railway, tramway, trolleybus or bus services' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activity of provision or operation of the networks providing service to the public in the field of urban railway, automated systems, tramway, bus, trolleybus and cable car (cableway) transport, such as the entities engaging in the said activities as a public service in accordance with the Utilities Act (Official Gazette 36/95, 70/97, 128/99, 57/00, 129/00, 59/01, 26/03, 82/04, 110/04, 178/04, 38/09, 79/09, 153/09, 49/11, 84/11, 90/11).'

- (f) the following is inserted in Annex VI 'Contracting entities in the postal services sector' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activity of provision of postal services and other services which do not include postal services under Article 112, paragraph 4 of the Act.'

- (g) the following is inserted in Annex VII 'Contracting entities in the sectors of exploration for and extraction of oil or gas' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activities relating to the exploitation of a geographical area with the aim of exploring and extracting oil and gas, such as the entities engaging in the said activities in accordance with the Mining Act (Official Gazette 75/09 and 49/11).'

- (h) the following is inserted in Annex VIII 'Contracting entities in the sectors of exploration for and extraction of coal and other solid fuels' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activities relating to the exploitation of a geographical area with the aim of exploring and extracting coal and other solid fuels, such as the entities engaging in the said activities in accordance with the Mining Act (Official Gazette 75/09 and 49/11).'

- (i) the following is inserted in Annex IX 'Contracting entities in the field of maritime or inland port or other terminal facilities' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activities relating to the exploitation of a geographical area with the aim of making available sea ports, river ports and other transport terminals to operators in sea or river transport, such as the entities engaging in the said activities in accordance with the Maritime Domain and Seaports Act (Official Gazette 158/03, 100/04, 141/06 and 38/09).'

- (j) the following is inserted in Annex X 'Contracting entities in the field of airport installations' after the entry for France:

'Croatia

Contracting entities referred to in Article 6 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11) which, in accordance with special regulations, engage in the activities relating to the exploitation of a geographical area with the aim of making available airports and other terminal equipment to air transport operators, such as the entities engaging in the said activities in accordance with the Airports Act (Official Gazette 19/98 and 14/11).'

2. 32004 L 0018: Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114):

- (a) the following is inserted in Annex III 'List of bodies and categories of bodies governed by public law as referred to in the second subparagraph of Article 1(9)' after the entry for France:

'XI - CROATIA

Contracting authorities referred to in Article 5, paragraph 1, item 3 of the Zakon o javnoj nabavi (Narodne novine broj 90/11) (Public Procurement Act, Official Gazette No. 90/11), i.e. legal persons established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which meet one of the following conditions:

- they are financed from the State Budget or the budget of local or the budget of regional self-government unit or other such legal persons in more than 50%, or
- they are subject to management supervision by state bodies, local and regional self-government units or other such legal, or
- they have supervisory board, an administrative or managerial board, more than half of whose members are appointed by the state bodies, local and regional self-government units or other such legal persons.

For example:

- Agency Alan d.o.o.;
- APIS IT d.o.o – Information Systems and Information Technologies Support Agency;
- National Folk Dance Ensemble of Croatia “Lado”;
- Autocesta Rijeka – Zagreb d.d. (Rijeka – Zagreb Motorway);
- CARnet (Croatian Academic and Research Network);
- Help and care centres;
- Social welfare centres;
- Social care homes;
- Health care centres;
- State archives;
- State Institute for Nature Protection;
- Fund for Financing the Decommissioning of the Krško Nuclear Power Plant and the Disposal of NEK Radioactive Waste and Spent Nuclear Fuel;
- Fund for Indemnification of Seized Property;
- Fund for Reconstruction and Development of Vukovar;
- Fund for Professional Rehabilitation and Employment of People with Disabilities;

- Environmental Protection and Energy Efficiency Fund;
- Croatian Academy of Science and Arts;
- Croatian Bank for Reconstruction and Development;
- Hrvatska kontrola zračne plovidbe d.o.o. (Croatia Control Ltd.);
- Hrvatska lutrija d.o.o. (Croatian Lottery);
- Croatian Heritage Foundation;
- Croatian Chamber of Agriculture;
- Croatian Radio Television;
- Croatian Association of Technological Culture;
- Hrvatske autoceste d.o.o. (Croatian Motorways Ltd.);
- Hrvatske ceste d.o.o. (Croatian Roads Ltd.);
- Hrvatske šume d.o.o. (Croatian Forests);
- Hrvatske vode (Croatian water management company);
- Croatian Audiovisual Centre;
- Croatian Centre for Horse Breeding – State Stud Farms Đakovo and Lipik;
- Croatian Centre for Agriculture, Food and Rural Affairs;
- Croatian Mine Action Centre;
- Croatian Memorial-Documentation Centre of the Homeland War;
- Croatian Olympic Committee;
- Croatian Energy Market Operator;
- Croatian Paralympic Committee;
- Croatian Register of Shipping;
- Croatian Conservation Institute;
- Croatian Deaf Sport Federation;
- Croatian Institute of Emergency Medicine;
- Croatian National Institute of Public Health;
- Croatian Institute for Mental Health;

- Croatian Institute for Pension Insurance;
- Croatian Standards Institute;
- Croatian Institute for Telemedicine;
- Croatian Institute for Toxicology and Anti-doping;
- Croatian National Institute of Transfusion Medicine;
- Croatian Employment Service;
- Croatian Institute for Health Protection and Safety at Work;
- Croatian Institute for Health Insurance;
- Croatian Institute for Health Insurance of Occupational Health;
- Jadrolinija (shipping company);
- Public Institution Croatian Olympic Centre;
- Higher education public institutions;
- National parks public institutions;
- Nature parks public institutions;
- Public scientific institutes;
- Theatres, museums, galleries, libraries and other institutions in the field of culture established by the Republic of Croatia or local and regional self-government units;
- Penitentiaries;
- Clinical hospitals;
- Clinical hospital centres;
- Clinics;
- “Miroslav Krleža” Institute of Lexicography;
- Port Authorities;
- Sanatoriums;
- Pharmacies founded by the units of regional self-government;
- Matica hrvatska (Matrix Croatia);
- International Centre for Underwater Archaeology;

- National and University Library;
- National Foundation for Support to the Pupil and Student Standard of Living;
- National Foundation for Civil Society Development;
- National Foundation for Science, Higher Education and Technological Development of the Republic of Croatia;
- National Centre for External Evaluation of Education;
- National Council for Higher Education;
- National Council for Science;
- Official Gazette (Narodne novine d.d.);
- educational/correctional institutes;
- Educational institutions founded by the Republic of Croatia or units of local and regional self-government;
- General hospitals;
- Plovput d.o.o. (State-owned company in charge of safety of navigation);
- Polyclinics;
- Special hospitals;
- Central Register of Insured Persons;
- University Computing Centre;
- Sports associations;
- Sports federations;
- Emergency medical treatment institutions;
- Palliative care institutions;
- Health care institutions;
- Foundation of Police Solidarity;
- Prisons;
- Institute for the Restoration of Dubrovnik;

- Institute for Seed and Seedlings;
- Public health institutes;
- Aeronautical Technical Centre (Zrakoplovno – tehnički centar d.d.);
- County road administrations.

(b) The following is inserted in Annex IV 'Central government authorities' after the entry for France:

'CROATIA

1. State bodies of the Republic of Croatia:

- Croatian Parliament;
- President of the Republic of Croatia;
- Office of the President of the Republic of Croatia;
- Office of the President of the Republic of Croatia after the expiry of the term of office;
- Government of the of the Republic of Croatia;
- Offices of the Government of the Republic of Croatia;
- Ministries;
- state offices;
- state administrative organisations;
- County state administration offices;
- Constitutional Court of the Republic of Croatia;
- Supreme Court of the Republic of Croatia;
- Courts;
- State Judiciary Council;
- State attorney's offices;
- State Prosecutor's Council;
- Ombudsman's offices;
- State Commission for the Supervision of Public Procurement Procedures;
- Croatian National Bank;

– State Audit Office;

2. State agencies and offices:

– Croatian Civil Aviation Agency;

– Electronic Media Agency;

– Aircraft Accident and Incident Investigation Agency;

– Agency for Public Private Partnership;

– Agency for Quality and Accreditation in Healthcare;

– Agency for Medicinal Products and Medical Devices;

– Agency for Mobility and EU Programmes;

– Agency for Coastal Lines and Maritime Traffic;

– Agency for the Reconstruction of Fort Tvrd̑a in Osijek;

– Education and Teacher Training Agency;

– Pressure Equipment Agency;

– Agency for Insurance of Workers' Claims in Case of Employer's Bankruptcy;

– Paying Agency for Agriculture, Fisheries and Rural Development;

– Agricultural Land Agency;

– Agency for Transactions and Mediation in Immovable Properties;

– Agency for Explosive Atmosphere Hazardous Areas;

– Agency for Regional Development of the Republic of Croatia;

– Railway Market Regulatory Agency;

– Agency for the Audit of European Union Programmes Implementation System;

– Railway Transport Safety Agency;

– Agency for Vocational Education and Training and Adult Education;

– Agency for State Property Management;

– Agency for Inland Waterways;

– Croatian Environment Agency;

– Personal Data Protection Agency;

- Croatian Competition Agency;
- Agency for Science and Higher Education;
- State Agency for Deposit Insurance and Bank Rehabilitation;
- Financial Agency;
- Croatian Food Agency;
- Croatian Agency for Small Business;
- Croatian Financial Services Supervisory Agency;
- Croatian Compulsory Oil Stocks Agency;
- Croatian Post and Electronic Communications Agency;
- Croatian Accreditation Agency;
- Croatian Energy Regulatory Agency;
- Croatian News Agency;
- Croatian Agricultural Agency;
- Central Finance and Contracting Agency.

- (c) The following is inserted in Annex IX A 'PUBLIC WORKS CONTRACTS' after the entry for France:

'- in Croatia, "Sudski registar trgovačkih društava u Republici Hrvatskoj or Obrtni registar Republike Hrvatske";'

- (d) The following is inserted in Annex IX B 'PUBLIC SUPPLY CONTRACTS' after the entry for France:

'- in Croatia, "Sudski registar trgovačkih društava u Republici Hrvatskoj or Obrtni registar Republike Hrvatske";'

- (e) The following is inserted in Annex IX C 'PUBLIC SERVICE CONTRACTS' after the entry for France:

'- in Croatia, "Sudski registar trgovačkih društava u Republici Hrvatskoj or Obrtni registar Republike Hrvatske";'

3. 32009 L 0081: Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76):

- (a) The following is inserted in Annex VII Part A 'WORKS CONTRACTS' after the entry for France:

'- in Croatia, "Sudski registar trgovačkih društava u Republici Hrvatskoj or Obrtni registar Republike Hrvatske";'

- (b) The following is inserted in Annex VII Part B 'SUPPLY CONTRACTS' after the entry for France:

'- in Croatia, "Sudski registar trgovačkih društava u Republici Hrvatskoj or Obrtni registar Republike Hrvatske";'

- (c) The following is inserted in Annex VII Part C 'SERVICE CONTRACTS' after the entry for France:

'- in Croatia, "Sudski registar trgovačkih društava u Republici Hrvatskoj or Obrtni registar Republike Hrvatske";'.