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2013/0038 (NLE)

Proposal for a

COUNCIL DIRECTIVE

**adapting certain Directives in the field of financial services, 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 financial services 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 of the Republic of Croatia 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 proposal covers all Council directives as well as European Parliament and Council directives which require technical adaptation by reason of the accession of Croatia in the field of financial services – corresponding to negotiation chapter 9.

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.

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis for this 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 budgetary implications.

⁴ OJ L 363, 20.12.2006, p. 1.

Proposal for a

COUNCIL DIRECTIVE

adapting certain Directives in the field of financial services, by reason of the accession of Croatia

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 73/239/EEC¹, 2002/83/EC², 2005/68/EC³ and 2009/138/EC⁴ should therefore be amended accordingly,

¹ OJ L 228, 16.8.1973, p. 3.

² OJ L 345, 19.12.2002, p. 1.

³ OJ L 323, 9.12.2005, p. 1.

⁴ OJ L 335, 17.12.2009, p. 1.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directives 73/239/EEC, 2002/83/EC, 2005/68/EC and 2009/138/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

FINANCIAL SERVICES

INSURANCE

1. 31973 L 0239: First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3):

The following is added to Article 8(1)(a):

'- in the case of the Republic of Croatia: "dioničko društvo", "društvo za uzajamno osiguranje".'

2. 32002 L 0083: Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p.1):

In Article 6(1)(a), the following is inserted after the entry for the French Republic:

'—in the case of the Republic of Croatia: "dioničko društvo", "društvo za uzajamno osiguranje",'

In Article 18(3), the following is inserted after the fifth indent:

'— 1 July 2013 for undertakings authorised in Croatia and,'

3. 32005 L 0068: Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (OJ L 323, 9.12.2005, p. 1):

In Annex I, the following is added:

'— in the case of the Republic of Croatia: "dioničko društvo".'

4. 32009 L 0138: Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1):

- (a) In Article 73, paragraph 5 is replaced by the following:

'5 Undertakings which on the following dates pursued simultaneously both life and non-life insurance activities covered by this Directive may continue to pursue those activities simultaneously, provided that each activity is separately managed in accordance with Article 74:

- (a) 1 January 1981 for undertakings authorised in Greece;
- (b) 1 January 1986 for undertakings authorised in Spain and Portugal;

- (c) 1 January 1995 for undertakings authorised in Austria, Finland and Sweden;
 - (d) 1 May 2004 for undertakings authorised in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, and Slovenia;
 - (e) 1 January 2007 for undertakings authorised in Bulgaria and Romania;
 - (f) 1 July 2013 for undertakings authorised in Croatia;
 - (g) 15 March 1979 for all other undertakings.'
- (b) In Annex III Point A, the following point is inserted after the entry for the French Republic:
- '(10a) in the case of the Republic of Croatia: 'dioničko društvo', 'društvo za uzajamno osiguranje';'
- (c) In Annex III Point B, the following point is inserted after the entry for the French Republic:
- '(10a) in the case of the Republic of Croatia: 'dioničko društvo', 'društvo za uzajamno osiguranje';'
- (d) In Annex III Point C, the following point is inserted after the entry for the French Republic:
- '(10a) in the case of the Republic of Croatia: 'dioničko društvo';'