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2013/0040 (NLE)

Proposal for a

COUNCIL DIRECTIVE

**adapting certain directives in the field of company law, 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 company law 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 the technical adaptations to all Council directives as well as to European Parliament and Council directives which require technical adaptations by reason of the accession of Croatia in the field of company law – corresponding to negotiation chapter 6. All these adaptations are of a technical nature.

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

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.

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 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.

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adapting certain directives in the field of company law, 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 77/91/EEC¹, 78/660/EEC² 83/349/EEC³, 2009/101/EC⁴, 2009/102/EC⁵ and 2011/35/EU⁶ should therefore be amended accordingly,

¹ OJ L 26, 31.1.1977, p. 1.

² OJ L 222, 14.8.1978, p. 11

³ OJ L 193, 18.7.1983, p. 1.

⁴ OJ L 258, 1.10.2009, p.11.

⁵ OJ L 258, 1.10.2009, p. 20.

⁶ OJ L 110, 29.4.2011, p.1.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directives 77/91/EEC, 78/660/EEC 83/349/EEC, 2009/101/EC, 2009/102/EC and 2011/35/EU 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

COMPANY LAW

A. COMPANY LAW

1. 31977 L 0091: Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1):

The following is inserted in Article 1(1) between the entries for France and Germany

– 'in Croatia:

dioničko društvo.'

2. 32009 L 0101: Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11):

The following is inserted in Article 1 between the entries for France and Italy:

– 'Croatia:

dioničko društvo, društvo s ograničenom odgovornošću;'

3. 32009 L 0102: Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies (OJ L 258, 1.10.2009, p. 20):

In Annex I, the following is inserted between the entries for France and Italy:

– 'Croatia:

društvo s ograničenom odgovornošću, dioničko društvo,'

4. 32011 L 0035 Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies (OJ L 110, 29.4.2011, p.1):

The following is inserted in Article 1(1) between the entries for France and Italy:

'Croatia:

dioničko društvo.'

B. ACCOUNTING STANDARDS

1. 31978 L 0660: Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11):

(a) The following is added to Article 1(1), first subparagraph:

– 'in Croatia:

dioničko društvo, društvo s ograničenom odgovornošću.'

(b) The following is added to Article 1(1), second subparagraph:

'(bb) in Croatia:

javno trgovačko društvo, komanditno društvo'.

2. 31983 L 0349: Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ L 193, 18.7.1983, p. 1):

The following is added to Article 4(1) first subparagraph:

'(bb) in Croatia:

dioničko društvo, društvo s ograničenom odgovornošću.'