COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.2007
COM(2007) 789 final

Proposal for a

COUNCIL DECISION

on the position to be taken by the Community within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, with regard to the adoption of provisions on the co-ordination of the social security systems

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

Article 47 of the Stabilisation and Association Agreements (SAA) between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part,[1] lays down that the Stabilisation and Association Council shall by decision adopt the appropriate provisions to implement the objective set out in that Article.

• General context

At Community level, Member States' social security systems are coordinated by Regulation (EEC) No 1408/71[2] and its implementing Regulation (EEC) No 574/72[3]. Article 47 of the SAA with Croatia contains provisions for limited co-ordination between the social security systems of Member States and Croatia. A Decision of the Stabilisation and Association Council established by the SAA is required in order that these provisions can take effect.

A number of other Association Agreements with third countries contain similar provisions on the co-ordination of social security systems. This proposal is part of a package of proposals which includes similar proposals with regard to the agreements with Morocco, Algeria, Tunisia, the former Yugoslav Republic of Macedonia and Israel.

In order to establish the position to be taken by the Community in this Stabilisation and Association Council, a Council Decision is necessary.

• Existing provisions in the area of the proposal

Council Regulation (EC) No 859/2003[4] extends the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the grounds of their nationality. This Regulation already covers the principle of aggregation of insurance periods acquired by Croatian workers in the various Member States regarding entitlement to certain benefits, as set out in Article 47 (1), first indent, of the SAA with Croatia. However, as Regulation (EC) No 859/2003 is based on Title IV of the Treaty, Denmark is not bound by or subject to this Regulation, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community. It only applies to the United Kingdom and Ireland because, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and the Treaty establishing the European Community, both Member States gave notice that they wished to participate in the application of Regulation (EC) No 859/2003.

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1 OJ L 26, 28.1.2005, p. 3.

2 OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council (OJ L 392, 30.12.2006, p. 1).

3 OJ L 74, 27.3.1972, p. 1. Regulation as last amended by Commission Regulation (EC) No 311/2007 (OJ L 82, 23.3.2007, p. 6).

4 OJ L 124, 20.5.2003, p. 1.

- **Consistency with other policies and objectives of the Union**

Not applicable.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The main features of this proposal were discussed with Member States' delegations in the Administrative Commission on Social Security for Migrant Workers, a body established by Regulation (EEC) No 1408/71. Delegations had also the opportunity to submit notes on this subject.

Summary of responses and how they have been taken into account

Most of the comments of Member States were of a very general nature. Some of them, such as those referring to the need for provisions on administrative checks and medical examinations, have been taken into account in this proposal. Other issues, in particular provisions on the enforcement of administrative fines, were not considered appropriate for inclusion in the proposal because they fall outside the scope of Article 47 of the SAA with Croatia.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Article 47 of the SAA with Croatia contains provisions on a limited co-ordination between the social security systems of Member States and Croatia. A number of other Association Agreements with third countries contain similar provisions on the co-ordination of social security systems. All of them require a Decision of the relevant Association Council in order for these provisions to take effect.

The aim of these provisions in the social security field is that a worker from the associated country concerned can receive certain social security benefits provided under the legislation of the Member State(s) to which he is or has been subject. This also applies, by way of reciprocity, to an EU national working in the associated country.

As all the provisions in the proposals included in the current package of proposals with regard to six associated countries (Morocco, Algeria, Tunisia, the Former Yugoslav Republic of Macedonia, Croatia and Israel) are almost identical, this will facilitate the application of these provisions by Member States' social security institutions. There might be some financial implications for national social security institutions resulting from the application of these proposals, since they have to provide, for example, the benefits as described in Article 47 of the SAA with Croatia. However, this Article only concerns persons who are or have been contributing to the national social security system of the country concerned, as provided for under its national legislation. In any case, it may be difficult to gauge the precise impact of these proposals on the national social security systems at this stage.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

This proposal consists of a Council Decision on the position to be taken by the Community within the Stabilisation and Association Council established by the SAA with Croatia and, in the Annex, of a Decision of the Stabilisation and Association Council in the social security field.

The proposed Decision of the Stabilisation and Association Council fulfils the requirement of Article 47 of the SAA with Croatia for such a Decision, in order to put in place the social security principles contained in this Article. The Decision therefore contains implementing provisions with regard to those provisions of Article 47 of the SAA with Croatia which are not already covered by Regulation (EC) No 859/2003. This concerns, in particular, provisions in respect of Denmark on the aggregation of insurance periods acquired by Croatian workers in the various Member States, the export of certain benefits to Croatia as well as the granting of family benefits to Croatian workers for their family members legally resident in the same Member State as the worker concerned.

Moreover, the proposed Decision of the Stabilisation and Association Council ensures that the provisions on the export of benefits and the granting of family benefits also apply, by way of reciprocity, to EU workers legally employed in Croatia and to their family members legally resident in Croatia.

- **Legal basis**

Article 310 of the Treaty in conjunction with its Article 300 (2), first subparagraph, last sentence, and second subparagraph thereof.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

Member States continue to have exclusive competence in determining, organising and financing their national social security systems.

The proposal only facilitates the co-ordination of social security systems of Member States and Croatia, to the benefit of the citizens of these countries. Moreover, the proposal does not affect any rights and obligations arising from bilateral social security agreements concluded between the Member States and Croatia where the latter provide for more favourable treatment of the persons concerned.

The proposal minimises the financial and administrative burden for national authorities, as it is part of a package of similar proposals which ensure a uniform application of social security provisions contained in Association Agreements with third countries.

- **Choice of instruments**

Proposed instruments: Council Decision (containing in Annex a Draft Decision of the Stabilisation and Association Council).

Other means would not be adequate for the following reason(s).

There is no alternative option to the proposed action. Article 47 of the SAA requires a Decision of the respective Stabilisation and Association Council. Article 300 (2) of the Treaty provides for a Council Decision for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an Association Agreement, when that body is called upon to adopt decisions having legal effects.

4) BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

5) ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of administrative procedures for public authorities (EU or national), and simplification of administrative procedures for private parties.

The provisions in the proposal relating to the co-ordination of social security systems for Croatian nationals are almost identical to those for the nationals of the other associated countries. This will lead to a simplification of the procedures and fewer administrative burdens for national social security institutions.

Persons falling under the proposal are not confronted with different national provisions as regards the social security principles contained in Article 47 of the SAA with Croatia, and can therefore rely instead on uniform provisions within the Community.

- **Detailed explanation of the proposal**

A. Council Decision on the position to be taken by the Community within the Stabilisation and Association Council established by the SAA with Croatia with regard to the provisions for the co-ordination of the social security systems.

Article 1

This Article clarifies the legal relationship between this Council Decision and the annexed Decision of the Stabilisation and Association Council.

B. Annexed Decision of the Stabilisation and Association Council with regard to the provisions for the co-ordination of the social security systems contained in the SAA.

Part I: General provisions

Article 1

This Article defines, for the purposes of the legislation of a Member State and for the purpose of the legislation of Croatia, the terms "Agreement", "Regulation",

"implementing Regulation", "Member State", "worker", "member of the family", "legislation", "benefits" and "family benefits", and refers to the Regulation and implementing Regulation for the other terms used in the annexed Decision.

Article 2

In line with the wording of Article 47 of the SAA with Croatia, this Article defines the persons covered by the annexed Decision.

Part II

Relations between the Member States and Croatia

This Part of the annexed Decision covers the principles contained in Article 47 (1), second and third indents, of the SAA with Croatia as well as the reciprocity clause with regard to EU nationals and the members of their family, as provided for in the last paragraph of this Article.

Article 3

This Article lists the social security branches referred to in Article 47 (1), second and third indents, of the SAA with Croatia to which Part II of the annexed Decision applies.

Article 4

This Article contains the principle of the export of cash benefits as provided for by Article 47 (1), second indent, of the SAA with Croatia and makes it clear that this principle is limited to the benefits contained in Article 1 (h) of the annexed Decision which lists the benefits referred to in that indent.

Article 5

This Article specifies which persons covered by this proposal are entitled to family benefits on behalf of the competent state. It clearly follows from this Article that, in line with Article 47 of the SAA with Croatia, there is no entitlement to family benefits for family members of a Croatian worker, if these family members reside outside the territory of the European Union.

Part III

Application of social security provisions with regard to Denmark

Article 6

Regulation (EC) No 859/2003 already covers the principle of aggregation of insurance periods acquired by a Croatian worker within the Community with regard to the entitlement to certain benefits, as set out in Article 47 (1), first indent, of the SAA with Croatia. However, as this Regulation is based on Title IV of the Treaty, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty establishing the European Community, Denmark is not bound by or subject to it. This Article therefore clarifies that Denmark shall use the relevant provisions of Regulations (EEC) No 1408/71 and No 574/72 in order to implement the above aggregation principle.

Part IV

Miscellaneous provisions

Article 7

This Article contains general provisions for cooperation between Member States and

their institutions, of the one part, and Croatia and its institutions, of the other part, as well as between the beneficiaries and the institutions concerned. These provisions are similar to those of Article 84 (1), (2) and (3) of Regulation (EEC) No 1408/71 and Article 76 (3), (4), first and third sub-paragraphs, and (5) of Regulation (EC) No 883/2004.

Article 8

This Article lays down the procedures for administrative checks and medical examinations similar to those contained in Article 51 (1) of Regulation (EEC) No 574/72. Moreover, it provides for the possibility to adopt other implementing provisions in this area.

Article 9

This Article refers to Annex II to the annexed Decision which is similar to Annex VI to Regulation (EEC) No 1408/71 and to Annex XI to Regulation (EC) No 883/2004, and which is necessary in order to lay down the necessary special provisions for the application of Croatian legislation with regard to the annexed Decision.

Article 10

As provided for in Article 47 of the SAA with Croatia, this Article specifies that provisions of bilateral agreements providing for more favourable treatment remain in force.

Article 11

This Article provides for the possibility to conclude supplementary administrative agreements.

Article 12

The transitional provisions provided for under this Article correspond to the transitional provisions of Article 94 (1), (3), (4), (6) and (7) of Regulation (EEC) No 1408/71 as well as to the similar Article 87 (1), (3), (4), (6) and (7) of Regulation (EC) No 883/2004.

Article 13

This Article clarifies the legal status of the Annexes to the annexed Decision and the procedure for amending them.

Article 14

This Article contains a procedure to ensure that all the necessary measures to implement the annexed Decision are taken.

Article 15

This Article clarifies the date of entry into force of the annexed Decision.

Proposal for a

COUNCIL DECISION

on the position to be taken by the Community within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, with regard to the adoption of provisions on the co-ordination of the social security systems

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 310 in conjunction with Article 300 (2), first subparagraph, last sentence, and second subparagraph thereof,

Having regard to the proposal from the Commission[5],

Whereas Article 47 of the Stabilisation and Association Agreement creating an Association between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, lays down that the Stabilisation and Association Council shall by decision adopt the appropriate provisions to implement the objective set out in that Article,

HAS DECIDED AS FOLLOWS:

Article 1

The position to be taken by the Community within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, with regard to the provisions for the co-ordination of social security systems contained in the Stabilisation and Association Agreement shall be based on the draft decision of the Stabilisation and Association Council annexed to this Decision.

Done at Brussels,

For the Council
The President

[5] OJ C , , p. .

ANNEX

ASSOCIATION BETWEEN THE

EUROPEAN UNION

AND THE REPUBLIC OF CROATIA

- The Stabilisation and Association Council -

DECISION No.../…. OF THE STABILISATION AND ASSOCIATION COUNCIL

established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part,

of ...

with regard to the provisions for the co-ordination of social security systems contained in the Stabilisation and Association Agreement

THE STABILISATION AND ASSOCIATION COUNCIL,

Having regard to the Agreement creating an association between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, and in particular Article 47 thereof,

Whereas

(1) Article 47 of the said Agreement provides for the co-ordination of the social security systems of Croatia and the Member States and lays down the principles for such co-ordination.

(2) Article 47 of the said Agreement also provides that a Decision of the Stabilisation and Association Council shall put in place the provisions contained in that Article.

(3) In applying this Decision, the right of Croatian workers to family benefits is subject to the condition that their family members are legally resident with the worker concerned in the Member State where the worker is employed. The Decision does not give any entitlement to family benefits with respect to members of their family resident in another state, e.g. Croatia.

(4) Currently, Council Regulation (EC) No 859/2003 extends the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality. This Regulation is based on Title IV of the Treaty. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and to the Treaty establishing the European Community, Denmark did not take part in the adoption of Regulation (EC) No 859/2003 and is not therefore bound by or subject to it. It is therefore necessary to lay down specific provisions with regard to Denmark concerning those principles contained in Article 47 of the said Agreement which are already covered by this Regulation.

(5) It might be necessary to lay down special provisions which correspond to the specific characteristics of the Croatian national legislation, in order to facilitate the application of the co-ordination rules.

(6) This Decision is without prejudice to rights and obligations arising from bilateral agreements between the Member States and Croatia which afford advantages in terms of social security.

(7) In order to ensure a smooth functioning of the co-ordination of the social security systems of the Member States and Croatia, it is necessary to establish specific provisions on the cooperation between the Member States and Croatia as well as between the person concerned and the institution of the competent state.

(8) Transitional provisions should be adopted to protect the persons covered by this Decision and to ensure that they do not lose rights as a result of its entry into force,

HAS DECIDED AS FOLLOWS:

PART I

GENERAL PROVISIONS

Article 1

Definitions

1. For the purposes of this Decision:

(a) "Agreement" means the Stabilisation and Association Agreement creating an association between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part;

(b) "Regulation" means Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community as applying in the Member States of the European Communities;

(c) "implementing Regulation" means Council Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community;

(d) "Member State" means a Member State of the European Communities;

(e) "worker" means,

(i) for the purposes of the legislation of a Member State, an employed person within the meaning of Article 1 (a) of the Regulation;

(ii) for the purposes of the legislation of Croatia, an employed person within the meaning of that legislation;

(f) "member of the family" means,

(i) for the purposes of the legislation of a Member State, a member of the family within the meaning of Article 1 (f) of the Regulation;

(ii) for the purposes of the legislation of Croatia, a member of the family within the meaning of that legislation;

(g) "legislation" means,

(i) in relation to the Member States, legislation within the meaning of Article 1 (j) of the Regulation;

(ii) in relation to Croatia, the relevant legislation applying in Croatia relating to areas of social security concerning old-age and survivors' pensions,

benefits in respect of accidents at work and occupational diseases, or in respect of invalidity resulting therefrom, and family benefits;

(h) "benefits" means,

(i) in relation to the Member States:

– old-age or survivors' pensions,

– benefits in respect of accidents at work and occupational diseases, or of

– invalidity benefits resulting from accidents at work and occupational diseases,

within the meaning of the Regulation, with the exception of special non-contributory cash benefits as set out in Annex IIa to the Regulation;

(ii) in relation to Croatia, the corresponding benefits provided under Croatian legislation, with the exception of special non-contributory cash benefits as set out in Annex I to this Decision;

(i) "family benefits" means,

(i) in relation to the Member States, family benefits within the meaning of Article 1 (u) (i) of the Regulation;

(ii) in relation to Croatia, family benefits within the meaning of that legislation.

2. Other terms used in this Decision shall have the meaning which is assigned to them in the Regulation and the implementing Regulation.

Article 2

Persons covered

This Decision shall apply:

(a) to workers who are nationals of Croatia and who are or have been legally employed in the territory of a Member State and who are or have been subject to the legislation of one or more Member States, and their survivors,

(b) to the members of the family of workers referred to in paragraph (a) provided that they are legally resident with the worker concerned in the Member State where the worker is employed,

(c) to workers who are nationals of a Member State who are or have been legally employed in the territory of Croatia and who are or have been subject to the legislation of Croatia, and their survivors, and

(d) to the members of the family of workers referred to in paragraph (c) provided that they are legally resident with the worker concerned in Croatia.

PART II

RELATIONS BETWEEN THE MEMBER STATES AND CROATIA

Article 3

Matters covered

Part II of this Decision shall apply to all legislation of the Member States and Croatia concerning the following branches of social security:

(a) old-age benefits;

(b) survivors' benefits;

(c) benefits in respect of accidents at work and occupational diseases;

(d) invalidity benefits resulting from accidents at work and occupational diseases;

(e) family benefits.

Article 4

Waiving of Residence Clauses

Benefits within the meaning of Article 1 (h) shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the beneficiary is residing,

(i) for the purpose of a benefit under Croatian legislation, within the territory of a Member State, or

(ii) for the purpose of a benefit under the legislation of a Member State, within the territory of Croatia.

Article 5

Family Benefits

1. Workers as referred to in Article 2 (a) shall receive under the legislation of the competent Member State family benefits for the members of their family as referred to in Article 2 (b) in the same way as nationals of that Member State.

2. Workers as referred to in Article 2 (c) shall receive under the legislation of Croatia family benefits for the members of their family as referred to in Article 2 (d) in the same way as Croatian nationals.

PART III

APPLICATION OF SOCIAL SECURITY PROVISIONS WITH REGARD TO DENMARK

Article 6

General provision

For the purpose of implementing the Article 47 (1), first indent, of the Agreement, Denmark shall apply to persons referred to in Article 2 (a), to the extent necessary, the relevant provisions of the Regulation and the implementing Regulation.

PART IV

MISCELLANEOUS PROVISIONS

Article 7

Cooperation

1. The Member States and Croatia shall communicate to each other all information regarding:

   (a) measures taken to implement this Decision in accordance with the procedure set out in Article 14;

   (b) changes in their legislation which may affect the implementation of this Decision.

2. For the purposes of this Decision, the authorities and institutions of the Member States and of Croatia shall lend one another their good offices and act as though implementing their own legislation. The administrative assistance given by the said authorities and institutions shall, as a rule, be free of charge. However, the competent authorities of the Member States and of Croatia may agree to certain expenses being reimbursed.

3. The authorities and institutions of the Member States and of Croatia may, for the purposes of this Decision, communicate directly with one another and with the persons involved or their representatives.

4. The institutions and persons covered by this Decision shall have a duty of mutual information and cooperation to ensure the correct implementation of this Decision.

5. The persons concerned must inform the institutions of the competent Member State or Croatia, where the latter is the competent state, and of the Member State of residence or Croatia, where the latter is state of residence, as soon as possible of any change in their personal or family situation which affects their right to benefits under this Decision.

6. Failure to respect the obligation of information referred to in paragraph 5 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Decision.

Article 8

Administrative Checks and Medical Examinations

1. When a person covered by this Decision and in receipt of benefits referred to in Article 1 (h) is staying or residing

   (i) for the purpose of a benefit under Croatian legislation, within the territory of a Member State, or

   (ii) for the purpose of a benefit under the legislation of a Member State, within the territory of Croatia,

   administrative checks and medical examinations shall be carried out, at the request of the institution responsible for payment, by the institution of the place of stay or residence of the recipient in accordance with the procedures laid down by the legislation administered by the latter institution. The institution responsible for

payment shall, however, reserve the right to have the recipient examined by a doctor of its own choice.

2. One or more Member States and Croatia may, having informed the Stabilisation and Association Council, agree on other administrative provisions.

Article 9

Special provisions for the application of the legislation of Croatia

Special provisions for the application of the legislation of Croatia may, if necessary, be set out in Annex II.

Article 10

More favourable bilateral agreements

This Decision shall not affect any rights or obligations arising from bilateral agreements where the latter provide for more favourable treatment (of the persons concerned).

Article 11

Agreements supplementing the procedures for implementing this Decision

Two or more Member States, or Croatia and one or more Member States may, where necessary, conclude agreements designed to supplement the administrative procedures for implementing this Decision.

PART V

TRANSITIONAL AND FINAL PROVISIONS

Article 12

Transitional provisions

1. No rights shall be acquired pursuant to this Decision for the period before its date of entry into force.

2. Subject to paragraph 1, a right shall be acquired under this Decision even if it relates to a contingency arising before its date of entry into force.

3. Any benefit, including family benefits, which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, at the request of that person, be provided or resumed with effect from the date of entry into force of this Decision, provided that the rights for which benefits were previously provided have not given rise to a lump-sum payment.

4. If a request referred to in paragraph 3 is submitted within two years from the date of entry into force of this Decision, the rights acquired in accordance with this Decision shall have effect from that date, and the legislation of any Member State or Croatia concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.

5. If a request referred to in paragraph 3 is submitted after the expiry of the two-year period following the date of entry into force of this Decision, rights not forfeited or not time-barred shall have effect from the date on which the request was submitted,

subject to any more favourable provisions under the legislation of any Member State or Croatia.

Article 13

Annexes to this Decision

1. The Annexes to this Decision constitute an integral part thereof.

2. At the request of Croatia, the said Annexes may be amended by decision of the Stabilisation and Association Council.

Article 14

Implementing Measures

1. The Community and Croatia shall each take the necessary measures to implement this Decision and communicate them to the Stabilisation and Association Council.

2. The Stabilisation and Association Council shall take a decision confirming that all measures referred to in paragraph 1 have been taken.

Article 15

Entry into force

This Decision shall enter into force on the first day of the first month following the date of the publication in the *Official Journal of the European Union* of the Decision of Stabilisation and Association Council referred to in Article 14 (2).

ANNEX I

List of Croatian special non-contributory cash benefits

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ANNEX II

Special provisions for the application of the legislation of Croatia

…