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2013/0321 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of a Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, to take account of the accession of the Republic of Croatia to the European Union

EXPLANATORY MEMORANDUM

The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons hereinafter referred to as 'the Agreement', was signed on 21 June 1999 and entered into force on 1 June 2002.

This proposal constitutes the legal instruments for the conclusion of a Protocol to the Agreement on the free movement of persons between the European Community and its Member States and the Swiss Confederation to take account of the accession of the Republic of Croatia to the European Union (hereinafter referred to as 'the Protocol').

According to the Act of Accession of the Republic of Croatia, the Republic of Croatia shall accede to the international agreements signed or concluded by the European Union and its Member States by means of a protocol to those agreements.

On 24 September 2012[1], the Council authorised the Commission to open negotiations with the Swiss Confederation with a view to concluding the relevant protocol. The negotiations with the Swiss Confederation were successfully concluded by the initialling of the Protocol.

The proposed Protocol incorporates the Republic of Croatia as a contracting party to the Agreement and commits the EU to provide the authentic version of the Agreement in the new official language of the EU.

The Commission has judged the results of the negotiations to be satisfactory and requests the Council to adopt the attached Decision on the conclusion of the Protocol.

The Council is requested to conclude the Protocol after obtaining the consent of the European Parliament.

[1] Council decision authorising the Commission to open negotiations with the Swiss Confederation for the adaptation of the Agreement between the European Community and its Member States, of the one part, and the Swiss confederation, of the other, on the free movement of persons, regarding the participation of Croatia as contracting party, in view of the enlargement of the European Union (Council doc. 12864/12 LIMITED).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the Act of Accession of the Republic of Croatia, and in particular Article 6(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision XXX of [...][2], the Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons to take account of the accession of the Republic of Croatia to the European Union was signed on [ ], subject to its conclusion at a later date.

(2) Under the terms of Article 6(2) of the Act of Accession of the Republic of Croatia, the accession of the Republic of Croatia to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons is to be agreed by means of a Protocol to the Agreement concluded between the Council, acting on behalf of the Union and unanimously on behalf of the Member States, and by the Swiss Confederation.

(3) The Protocol should be approved on behalf of the European Union,

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[2] OJ L , , p. .

HAS ADOPTED THIS DECISION:

Article 1

The Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons to take account of the accession of the Republic of Croatia to the European Union is hereby approved on behalf of the European Union and its Member States.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union and its Member States, to the notification provided for in Article 6 of the Protocol, in order to express the consent of the European Union and its Member States to be bound by the Protocol.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

ANNEX

Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons regarding the participation of the Republic of Croatia as a Contracting Party following its accession to the European Union

The European Union

and

the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland;

hereinafter referred to as 'the Member States',

of the one part,

and

the Swiss Confederation,

hereinafter referred to as 'Switzerland',

of the other part,

hereinafter referred to as 'the Contracting Parties',

Having regard to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (hereinafter referred to as 'the Agreement'), which entered into force on 1 June 2002,

Having regard to the Protocol of 26 October 2004 to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons regarding the participation, as Contracting Parties, of the Czech Republic, the Republic of Estonia,

the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic pursuant to their accession to the European Union ('the 2004 Protocol'), which entered into force on 1 April 2006,

Having regard to the Protocol of 27 May 2008 to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons regarding the participation as Contracting Parties of the Republic of Bulgaria and Romania pursuant to their accession to the European Union ('the 2008 Protocol'), which entered into force on 1 June 2009,

Having regard to the accession of the Republic of Croatia to the European Union on 1 July 2013,

Whereas the Republic of Croatia should become a Contracting Party to the Agreement,

Have agreed upon the following provisions:

Article 1

1. The Republic of Croatia hereby becomes a Contracting Party to the Agreement.

2. From the entry into force of this Protocol the provisions of the Agreement shall be binding on Croatia under the same conditions as the present Contracting Parties and under the terms and conditions laid down in this Protocol.

Article 2

The following amendments shall be made to the main body of the Agreement and Annex I thereto:

a) Croatia is hereby added to the list of Contracting Parties together with the European Union and its Member States.

b) In Article 10 of the Agreement the following paragraphs 1c, 2c, 3c, 4d, 4e and 5c shall be inserted at the end of the corresponding paragraphs 1b, 2b, 3b, 4c and 5b:

'1c. Switzerland may maintain, until the end of the second year after the entry into force of the Protocol to this Agreement regarding the participation of the Republic of Croatia as a Contracting Party, quantitative limits in respect of access by workers employed in Switzerland and for self-employed persons who are nationals of Croatia for the following two categories of residence: residence for a period of more than four months and less than one year and

residence for a period equal to, or exceeding, one year. There shall be no restrictions on residence of less than four months.

Before the end of the transitional period mentioned above, the Joint Committee shall review the functioning of the transitional period applied to nationals of Croatia on the basis of a report from Switzerland. Upon completion of the review, and no later than at the end of the period mentioned above, Switzerland shall notify the Joint Committee whether it will continue applying quantitative limits to workers employed in Switzerland. Switzerland may continue to apply such measures for five years after the entry into force of the aforementioned Protocol. In the absence of such notification, the transitional period shall expire at the end of the two-year period specified in the first subparagraph.

At the end of the transitional period laid down in this paragraph all quantitative limits applicable to nationals of Croatia shall be abolished. Croatia is entitled to introduce the same quantitative limits for Swiss nationals for the same periods.'

'2c. Switzerland and Croatia may maintain, until the end of the second year after the entry into force of the Protocol to this Agreement regarding the participation of the Republic Croatia as a Contracting Party, for workers of one of these Contracting Parties employed in their own territory the controls on the priority of workers integrated into the regular labour market and the wage and working conditions applicable to nationals of the other Contracting Party concerned. The same controls may be maintained for persons providing services referred to in Article 5(1) of this Agreement in the following four sectors: horticulture; construction, including related branches; security activities; industrial cleaning (NACE codes[3] 01.41, 45.1 to 4, 74.60 and 74.70 respectively). Switzerland shall, during the transitional periods mentioned in paragraphs 1c, 2c, 3c and 4d, give preference to workers who are nationals of Croatia over workers who are nationals of non-EU and non-EFTA countries as regards access to its labour market. The controls on the priority of workers integrated into the regular labour market shall not apply to providers of services liberalised by a specific agreement between the Contracting Parties concerning the provision of services (including the Agreement on certain aspects of government procurement in so far as it covers the provision of services). Over this period qualification requirements may be maintained for residence permits of less than four months[4] and for persons providing services referred to in Article 5(1) of this Agreement in the four sectors mentioned above.

Within two years of the entry into force of the Protocol to this Agreement regarding the participation of the Republic of Croatia as a Contracting Party, the Joint Committee shall review the functioning of the transitional measures contained in this paragraph on the basis of a report prepared by each of the Contracting Parties implementing them. Upon completion of

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[3] NACE: 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).

[4] Workers may apply for short-term residence permits under the quotas mentioned in subparagraph 3c for periods of even less than four months.

the review, and no later than two years after the entry into force of the aforementioned Protocol, a Contracting Party which has implemented the transitional measures contained in this paragraph, and has notified the Joint Committee of its intention to continue applying them, may continue to do so until the end of the fifth year after the entry into force of the aforementioned Protocol. In the absence of such notification, the transitional period shall expire at the end of the two-year period specified in the first subparagraph.

At the end of the transitional period laid down in this paragraph all restrictions referred to in this paragraph shall be abolished.'

'3c. Upon entry into force of the Protocol to this Agreement regarding the participation of the Republic of Croatia as a Contracting Party, and until the end of the period described in paragraph 1c, Switzerland shall reserve on a yearly basis (*pro rata temporis*), within its overall quota for third countries for workers employed in Switzerland and for self-employed persons who are nationals of Croatia a minimum number of new residence permits[5] according to the following schedule:

Until	Number of permits for a period of one year or more	Number of permits for a period of more than four months and less than one year
First year	54	543
Second year	78	748
Third year	103	953
Fourth year	133	1158
Fifth year	250	2000

3d. If Switzerland and/or Croatia applies to workers employed on their own territory the measures described in paragraphs 1c, 2c and 3c as a result of serious disturbances on their labour markets or threat thereof, they shall notify the circumstances to the Joint Committee before the end of the period provided for in paragraph 1c.

[5] These permits will be granted in addition to the quotas referred to in Article 10 of this Agreement, which are reserved for employed and self-employed persons who are nationals of the Member States at the time of the signing of this Agreement (21 June 1999) and of the Member States that became Contracting Parties to this Agreement by virtue of the 2004 and 2008 Protocols. These permits are also additional to permits granted through existing bilateral trainee exchange agreements between Switzerland and the new Member States.

The Joint Committee will decide whether the notifying country may continue to apply transitional measures on the basis of this notification. If it issues a favourable opinion, the notifying country may continue to apply to workers employed on its own territory the measures described in paragraphs 1c, 2c and 3c until the end of the seventh year after the entry into force of the aforementioned Protocol. In this case, the annual number of residence permits referred to in paragraph 1c shall be:

Until	Number of permits for a period of one year or more	Number of permits for a period of more than four months and less than one year
Sixth year	260	2100
Seventh year	300	2300

.’

‘4d. At the end of the period described in paragraphs 1c and 3d, and up to the end of the tenth year after the entry into force of the Protocol to this Agreement regarding the participation of the Republic of Croatia as a Contracting Party the following provisions shall be applicable: If the number of new residence permits of one of the categories referred to in paragraph 1c issued to employed and self-employed persons of Croatia in a given year exceeds the average for the three years preceding the reference year by more than 10 %, Switzerland may, for the application year, unilaterally limit the number of new residence permits for periods of one year or more for employed and self-employed persons of Croatia to the average of the three years preceding the application year, plus 5 %, and the number of new residence permits for a period of more than four months and less than one year to the average of the three years preceding the application year, plus 10 %. Permits may be limited to the same number for the year following the application year.

By way of derogation from the preceding subparagraph, the following provisions may apply at the end of the sixth and seventh reference years: If the number of new residence permits of one of the categories referred to in paragraph 1c issued to employed and self-employed persons of Croatia in a given year exceeds the average for the year that precedes the reference year by more than 10 %, Switzerland may, for the application year, unilaterally limit the number of new residence permits for periods of one year or more for employed and self-employed persons of Croatia to the average of the three years preceding the application year, plus 5 %, and the number of new residence permits for a period of more than four months and less than one year to the average of the three years preceding the application year, plus 10 %. Permits may be limited to the same number for the year following the application year.

'4e. For the purposes of paragraph 4d:

(1) the term ‘reference year’ is a given year that is calculated from the first day of the month in which the Protocol enters into force;

(2) The term ‘application year’ refers to the year following the reference year.'

'5c. The transitional provisions of paragraphs 1c, 2c, 3c and 4d, and in particular those of paragraph 2c concerning the priority of workers integrated into the regular labour market and controls on wage and working conditions, shall not apply to employed and self-employed persons who, at the time of the entry into force of the Protocol to this Agreement regarding the participation of the Republic of Croatia as a Contracting Party, are authorised to pursue an economic activity on the territories of the Contracting Parties. In particular, such persons shall enjoy occupational and geographical mobility.

The holders of residence permits valid for less than one year shall be entitled to have their permits renewed; the exhaustion of quantitative limits may not be invoked against them. The holders of residence permits valid for a period of one year or more shall automatically be entitled to have their permits extended. Such employed and self-employed persons shall therefore enjoy the rights to free movement accorded to established persons by the basic provisions of this Agreement, and in particular Article 7 thereof, from the entry into force of the aforementioned Protocol.'

b) In Article 27(2) of Annex I to the Agreement, the reference to ‘Article 10(2), (2a), (2b), (4a), (4b) and (4c)’ shall be replaced by a reference to ‘Article 10(2b), (2c), (4c) and (4d).’

Article 3

By derogation from Article 25 of Annex I to the Agreement, the transitional periods of Annex 1 to this Protocol shall apply.

Article 4

Annexes II and III respectively to the Agreement shall be amended in accordance with Annexes 2 and 3 to this Protocol.

Article 5

1. Annexes 1, 2 and 3 to this Protocol shall form an integral part thereof.

2. This Protocol, together with the 2004 and 2008 Protocols, shall form an integral part of the Agreement.

Article 6

1. This Protocol shall be ratified or approved by the Contracting Parties in accordance with their own procedures.

2. The Contracting Parties shall notify each other of the completion of these procedures.

Article 7

This Protocol shall enter into force on the first day of the first month following the date of the last notification of ratification or approval.

Article 8

This Protocol shall remain in force for the same duration and in accordance with the same arrangements as the Agreement.

Article 9

1. This Protocol, as well as the Declarations annexed thereto, shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of those texts being equally authentic.

2. The Croatian language versions of the Agreement, including all Annexes and Protocols thereto and the Final Act shall be equally authentic. The Joint Committee established by Article 14 of the Agreement shall approve the authentic text of the Agreement in the Croatian language.

Done at

ANNEX 1

Transitional measures on the purchase of agricultural land

Croatia may maintain in force for seven years from the date of entry into force of this Protocol the restrictions laid down in its legislation, existing at the time of the signing of this Protocol, on the acquisition of agricultural land by Swiss nationals and by legal persons set up in accordance with the laws of Switzerland. In no instance may a Swiss national be treated less favourably in respect of the acquisition of agricultural land than at the date of the signing of this Protocol or be treated in a more restrictive way than a national of a country other than the contracting parties to the agreement or contracting parties to the Agreement on the European Economic Area.

Self-employed farmers who are Swiss nationals and who wish to establish themselves and reside in Croatia shall not be subject to the provisions of the preceding paragraph or to any procedures other than those to which the nationals of Croatia are subject.

A general review of these transitional measures shall be held in the third year following the date of entry into force of this Protocol. The Joint Committee may decide to shorten or terminate the transitional period indicated in the first paragraph.

If there is sufficient evidence that, upon expiry of the transitional period, there will be serious disturbances or threat of serious disturbances on Croatia's agricultural land market, Croatia shall notify such circumstances to the Joint Committee before the end of the seven-year transitional period specified in the first paragraph. In this case, Croatia may continue to apply the measures described in the first paragraph until ten years after the entry into force of this Protocol. This extension may be limited to selected geographical areas particularly affected.

ANNEX 2

Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons is hereby amended as follows:

1. In Section A: Legal acts referred to, Point 1, the following act is inserted:

   Council Regulation (EU) No 517/2013 of 13 May 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, transport policy, energy, taxation, statistics, trans-European networks, judiciary and fundamental rights, justice, freedom and security, environment, customs union, external relations, foreign, security and defence policy and institutions, by reason of the accession of the Republic of Croatia (OJ L 158, 10.06.2013, p. 1).

2. For workers who are nationals of the Republic of Croatia, the arrangements contained in paragraph 1 of the section Unemployment Insurance of the Protocol to Annex II shall apply until the end of the seventh year after the entry into force of this Protocol.

ANNEX 3

Annex III to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons is hereby amended as follows:

The two following indents are added to point 1a:

– Act of Accession of the Republic of Croatia (OJ L 112 of 24 April 2012, p. 10), Annex III (List referred to in Article 15 of the Act of Accession of the Republic of Croatia: adaptations to acts adopted by the institutions - OJ L 112 of 24 April 2012, p. 41) ,

Article 23, paragraph 5 of Directive 2005/36/EC is replaced by the following:

‘5. Without prejudice to Article 43b, each Member State shall recognise evidence of formal qualifications as doctor giving access to the professional activities of doctor with basic training and specialised doctor, as nurse responsible for general care, as dental practitioner, as specialised dental practitioner, as veterinary surgeon, as midwife, as pharmacist and as architect held by nationals of the Member States and issued by the former Yugoslavia, or whose training commenced,

(a) for Slovenia, before 25 June 1991, and

(b) for Croatia, before 8 October 1991,

where the authorities of the aforementioned Member States attest that such evidence has the same legal validity within their territory as the evidence which they issue and, with respect to architects, as the evidence of formal qualifications specified for those Member States in Annex VI, point 6, as regards access to the professional activities of doctor with basic training, specialised doctor, nurse responsible for general care, dental practitioner, specialised dental practitioner, veterinary surgeon, midwife, pharmacist with respect to the activities referred to in Article 45, paragraph 2, and architect with respect to the activities referred to in Article 48, and the pursuit of such activities.

Such an attestation must be accompanied by a certificate issued by those same authorities stating that such persons have effectively and lawfully been engaged in the activities in question within their territory for at least three consecutive years during the five years prior to the date of issue of the certificate.’

The following Article 43b is inserted into Directive 2005/36/EC:

‘Acquired rights in midwifery shall not apply to the following qualifications which were obtained in Croatia before 1 July 2013: viša medicinska sestra ginekološko-opstetričkog smjera (High Gynaecology-Obstetrical Nurse), medicinska sestra ginekološko-opstetričkog smjera (Gynaecology-Obstetrical Nurse), viša medicinska sestra primaljskog smjera (High Nurse with Midwifery Degree), medicinska sestra primaljskog smjera (Nurse with Midwifery Degree), ginekološko-opstetrička primalja (Gynaecology-Obstetrical Midwife) and primalja (Midwife).’

– Council Directive 2013/25/EU of 13 May 2013 adapting certain directives in the field of right of establishment and freedom to provide services, by reason of the accession of the Republic of Croatia (OJ L 158 of 10 June 2013, p. 368), Annex Part A

The following indent is added to point 2a:

– Council Directive 2013/25/EU of 13 May 2013 adapting certain directives in the field of right of establishment and freedom to provide services, by reason of the accession of the Republic of Croatia (OJ L 158 of 10 June 2013, p. 368), Annex Part B (1)

The following indent is added to point 3a:

– Council Directive 2013/25/EU of 13 May 2013 adapting certain directives in the field of right of establishment and freedom to provide services, by reason of the accession of the Republic of Croatia (OJ L 158 of 10 June 2013, p. 368), Annex Part B (2)

The following indent is added to point 5a:

– Council Directive 2013/25/EU of 13 May 2013 adapting certain directives in the field of right of establishment and freedom to provide services, by reason of the accession of the Republic of Croatia (OJ L 158 of 10 June 2013, p. 368), Annex Part C

DECLARATION BY SWITZERLAND ON AUTONOMOUS MEASURES AS OF THE DATE OF SIGNING

Switzerland will provide provisional access to its labour market for citizens of the Republic of Croatia, based on its national legislation, before the entry into force of the transitional arrangements contained in this Protocol. For this purpose, Switzerland will open specific quotas for short-term as well as long-term working permits, as defined in Article 10, paragraph 1 of the Agreement, in favour of citizens from the Republic of Croatia, as of the date of the signing of this Protocol. The quotas will consist of 50 long-term permits and 450 short-term permits per year. In addition, 1000 short-term workers per year will be admitted for a stay of less than four months.