

19 July 2006

Screening report

Croatia

Chapter 3 – Freedom to provide services

Date of screening meetings:

Explanatory meeting: 21 and 22 November 2005

Bilateral meeting: 15 and 16 December 2005

I. CHAPTER CONTENT

Member States must ensure that the right of establishment of EU nationals and legal persons in any Member State and the freedom to provide cross-border services as laid down in the EC Treaty is not hampered by national legislation subject to the exceptions set out in the Treaty. The case law of the European Court of Justice regarding Article 43 EC et seq. and 49 EC et seq. is part of the *acquis* and needs to be respected. This requires a continuous examination of the Member State's current and future legal order with the aim of identifying legal or administrative obstacles on national, regional or local level not compatible with the Community law. The *acquis* under this chapter is of a horizontal nature covering a large variety of fields and professions and involving many public and/or semi-public institutions and bodies.

The *acquis* also harmonises the rules concerning regulated professions to ensure the mutual recognition of qualifications and diplomas between Member States; for certain regulated professions a common minimum training curriculum must be followed in order to have the qualification automatically recognised in an EU Member State. Directive 2005/36/EC, adopted on 7 September 2005, is the key piece of legislation in this field. On 20 October 2007, at the end of the transposition period, this Directive will replace fifteen existing Directives in the field of the recognition of professional qualifications. It was taken thus as the basis for the screening exercise in this subchapter. Community legislation in this field requires thorough transposition by Croatia and implementation by the Croatian institutions dealing with academic and professional training. In some cases upgrading programmes for persons not fulfilling the minimum training requirements might be considered.

As regards postal services, the *acquis* aims at opening up the postal services sector to competition in a gradual and controlled way, within a regulatory framework which assures a universal service. Main pieces of *acquis* are the Framework Postal Directive (Directive 97/67/EC) and the New Postal Directive (Directive 2002/39/EC). The establishment of an independent National Regulatory Authority (NRA) in this field is crucial for the proper implementation of the Community legislation.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Croatia and the discussion at the screening meeting.

Croatia stated that it is aware of the obligations resulting from the *acquis* under this chapter and that it accepts this *acquis*. Croatia indicated that it does not expect difficulties to implement the *acquis* by accession. Croatia informed about plans to align its legislation by the end of 2008.

The Commission stated that the degree of fulfilment of obligations under the EU-Croatia Stabilisation- and Association Agreement (SAA) will be taken into consideration by the Commission when recommending on the opening of negotiations for this chapter.

II.a. Mutual recognition of professional qualifications

The current legal basis in Croatia for the recognition of qualifications is the Act on the Recognition of Foreign Educational Qualifications. This Act does not differentiate between academic and professional recognition.

Croatia plans to align this act in the fourth quarter of 2006 taking into account the difference between academic and professional qualifications. There are also bilateral agreements with several Member States on academic recognition which will have to be assessed in due course.

Professions in the health sector

The alignment of all relevant acts of legislation for health professions is planned for the fourth quarter of 2007. The current situation concerning particular regulated professions in the health sector is as follows:

Nurses: For the first category of nurses (called nurses/medical technicians) the graduation from a 4-year secondary medical school is required. This is followed by a 12-months internship which ends with a state exam. Realising the non-compatibility of this professional qualification with the requirements of the Directive 2005/36/EC, Croatia intends to introduce a 2 year -upgrading scheme in 2006 in order to allow those nurses to migrate after accession.

There is a second category of nurses (called senior nurses). Until to 2005, a 2-year post secondary school qualification was required in this category; since the academic year 2005/6, a 3-year university education is required ending with a bachelor degree.

In order to work as an independent nurse one needs to have a licence which is issued by the Croatian Nursing Council. Knowledge of Croatian language is required.

Legislation involved: Healthcare Act, Nursing Act, Bylaws of the Croatian Nursing Council

Midwives: The specific profession of "midwife" does not exist; the profession is executed by nurses of the above mentioned first category. The training requirements are thus much lower than provided for in the *acquis*. An upgrading might be considered in consultation with the Commission, if required by Croatia.

Doctors: The basic academic education is six years of university studies, followed by a 12-month internship ending with a state exam. The option of additional specialist training exists and lasts between 3 and 6 years.

Knowledge of Croatian language is required to exercise this profession. Another condition is the membership in the Croatian Medical Chamber and a licence issued by this Chamber. The licence needs to be renewed on a regular basis. An interruption of professional activity for 6 months leads to a withdrawal of the licence. One doctor may have only one practice. Foreigners may exercise their profession only with a special permit. The right of establishment cannot be exercised by foreigners since this is limited to Croatian nationals.

Legislation involved: Healthcare Act, Act on Medical Practice, Statutes of the Croatian Medical Chamber

Dentists: The profession of a dentist is legally different from the profession of a medical doctor.

Since the academic year 2005/6, a 5- or 6-year university education (depending on the university) is required followed by a 12-months internship ending with a state exam giving the title of a doctor of dental medicine. Before 2005/2006 the required university studies covered only 4 years. There is an option for a 3-year specialisation.

In order to execute the profession the enrolment in the Croatian Chamber of Dentists is required as well as the obtaining of a licence. Evidence of fluency in Croatian is required. Foreign citizens with a valid working or business permit are allowed to work as dentists. The licence has to be renewed every six years. Permanent engagement in professional training is obligatory. This means that the licence holder must collect at least 60 training points during a 6 year period, every year at least 10. Dentists are not allowed to have more than one dental practice.

Legislation involved: Healthcare Act, Dental Care Act, Bylaws of the Croatian Chamber of Dentists, Ordinance on the types and conditions for the issuance, renewal and revocation of approvals for independent work of dental doctors, Ordinance on the professional training of doctors

Veterinarians: Six years of university studies are required followed by a 12-months internship ending with a state exam. Until the academic year 2004/5 a 5-year cycle applied.

In order to execute the profession a licence issued by the Croatian Veterinary Chamber is required. This licence has to be renewed every six years and can be withdrawn *inter alia* if the professional activity is interrupted for more than 6 months. Fluency in Croatian language is required to obtain a licence. Croatian citizenship and permanent engagement in professional training is obligatory (see above).

Legislation involved: Veterinary Act, Statute of the Croatian Veterinary Chamber, Ordinance on the requirements, manner and procedure for issuing, renewing and withdrawing of veterinary licence, Ordinance on professional training of veterinarians

Pharmacists: At present, 5 years of university studies are required followed by a 12-months internship. The option of an additional 2-years specialisation in certain areas exists. Previously a 3-years cycle of studies was sufficient; an upgrading in training would be necessary for these persons to enjoy free movement on the EU labour market after accession. Otherwise they would only be able to work as pharmacist assistants in other EU Member States.

Croatian citizenship and fluency in the Croatian language are among the requirements for exercising the profession. Exceptionally foreigners may exercise the profession under very restrictive rules. Membership in the Croatian Chamber of Pharmacists is obligatory. A licence issued by the Chamber under similar rules to the ones for doctors is a precondition for exercising the profession. A pharmacy cannot be run as a company, but has a *sui generis* status. An individual pharmacist is not allowed to run more than one

pharmacy. The only exception to this rule would apply if the pharmacist would establish an "institution" according to Croatian Law. This would allow a pharmacist to run more than one pharmacy.

Legislation involved: Healthcare Act, Pharmacy Act 2005, Statute of the Croatian Chamber of Pharmacists, Ordinance on issuing, renewing and revoking licences for independent operation, Ordinance on the content, deadlines, and procedures for testing of professional skills

Professions outside the health sector

Craftsmen: With respect to professional qualifications there are 3 types of crafts: those not requiring any specific qualification (free craft), those requiring specific skills (qualified craft) and those that require a privilege granted by the competent state authority.

Specific skills or a masters craftsman's exam is required to carry out activities in the field of qualified crafts; there are three educational tracks to acquire specific skills for qualified crafts.

In order to execute any craft profession the entry into the register of crafts is obligatory which leads to the Membership in the Chamber of Crafts. There is no requirement to hold Croatian citizenship. At the end of 2005, 701 foreign persons were registered as craftsmen in the Register of Crafts. To be registered the proof of lease of premises is required. Foreigners need a business permit linked with a residence requirement. The business permit is only issued once the professional qualification has been recognised. This is done automatically e.g. in case of the German "Meister". For professional qualifications from some other EU Member States it is more complicated.

Legislation involved: Crafts Act, which needs to be harmonised to address the issue of mutual recognition of professional qualifications in this field. No tentative date was given.

General system: for professions not specifically covered by specific directives the general principle is that if one is qualified to practice a given profession in his home state, he/she should be allowed to practice the same profession in the host state. In case of substantial differences in the length and content of the education and training in the host state and in the home state the authorities of the host state may impose a compensation measure which may be, at the applicant's choice a period of supervised practice or an aptitude test. The Commission underlined that this is an important point since it became evident during the screening that Croatia does regulate a good deal of professions to which this system will have to be applied.

Professions governed by specific sectoral Directives

Main pieces of *acquis*: Directive 85/384/EEC (architects), Directive 77/249/EEC, Directive 98/5/EC (Lawyers); Directive 86/653/EEC (commercial agents); Directive 74/556/EEC, Directive 74/557/EEC (professional use of toxic products).

Architects: There is a 3-year bachelor academic education (bachelor of architecture and urbanism) followed by a 2-year graduate course (master of architecture and urbanism). Croatia claims that the programme is compatible with the requirements of Directive

2005/36/EC. Harmonisation is foreseen by the end of 2008. Croatian citizenship is required to exercise this profession as well as the registry with the Croatian Chamber of Architects and Civil Engineers. An authorised architect may only have one office. Foreigners may execute the profession of an architect only if they acquired the right to execute tender work or have a contract with a person registered for the performance of these activities and have received the approval of the Chamber. Additionally, a foreign architect may work in Croatia if invited by the Croatian government.

Legislation involved: Building Act, Act on Croatian Chamber of Architects and Civil Engineers, statute of the latter Chamber, ordinance on the professional exam, knowledge enrichment and knowledge enhancement of persons working in construction

Lawyers: From the academic year 2005/2006 on a 5-year university education is required ending with a "Master of Law". This is followed by at least 18 months of work experience in the judiciary or 4 years in state bodies and other legal persons before a judicial exam can be taken at the Ministry of Justice.

In order to execute the profession membership in the Croatian Bar Association is mandatory. This membership requires *inter alia* Croatian citizenship and fluency in Croatian language. As in other mentioned professions an interruption in professional work for longer than 6 months has the consequence of losing the status of a member of the Chamber. An attorney may have only one office. Only Croatian nationals are allowed to represent clients before Croatian courts.

Foreign lawyers included in the lists of associations in their countries of origin may provide consultant services in relation to the national law for a foreign service provider as well as foreign and international law. However, they are neither permitted to become Members of the Croatian Bar Association nor do they enjoy the right to establish a law firm.

Legislation involved: Law Practice Act, Statute of the Croatian Bar association, attorneys' Code of ethics.

Croatia is aware that the Law Practice Act needs to be amended, but has not yet elaborated a transposition schedule.

Commercial agents: Croatia presented Articles 804-834 of the Civil Obligations Act (COA) in application as from 1 January 2006 together with a Table of Concordance and stated that it is fully harmonised with the *acquis*.

Professional use of toxic products: Legal persons involved in manufacture, usage or disposal of poisons must have employees holding a university degree in agriculture, pharmacy and biochemistry, medicine, food technology, science (chemistry), forestry, technology, veterinary medicine, or a diploma in occupational and environmental health. There are no rules on recognition of periods of work experience. There will be recognition rules in the future act on chemicals.

Legislation involved: Poisons Act, Act on Transport of hazardous substances and secondary legislation.

Implementation and administrative capacity

At present the main body involved in the recognition procedure is the National ENIC/NARIC office (Centre for academic mobility and recognition of higher education qualifications) with 6 staff members. Croatia considers the possibility of attributing the role of a contact point in the meaning of Article 57 of Directive 05/36 to the national ENIC/NARIC office. This office works closely together with various expert bodies within the educational system and gives recommendations to the Agency for Science and Higher Education which is the body deciding on the recognition of a foreign academic diploma. Various chambers, ministries and other public or semi public bodies are also involved in the process of granting licences to foreign service providers.

No concrete plans regarding the strengthening of the existing administrative capacity were disclosed.

II.b. Right of establishment (Art. 43 EC et seq.)

The right of establishment is mainly regulated by the Companies Act, the Institutions Act, the Cooperatives Act, Crafts Act and the Foreigners Act. Service providers may become established either as legal persons or natural persons.

As regards legal persons established under the Companies Act, there is, in principle, no distinction between primary and secondary establishment (new company, subsidiary, branch). Any company established in Croatia is considered a Croatian company, regardless of the nationality of its members or shareholders or owners. The legal personality is acquired upon entry in the court register, a branch is not considered a legal person. Croatia considers the Companies Act fully compatible with the requirements of the *acquis* under this chapter.

The Croatian legal system knows a very specific legal person called "institution". These "institutions" are legal persons established in certain areas such as education, science, culture, health care or social welfare. They are, in principle, non-profit organisations. If an institution is profit oriented, the regulations on companies shall apply to it. Certain institutions such as kindergartens or museums cannot be set up by foreigners. The Institutions Act needs to be aligned with the *acquis*. No date was given.

Another particular legal person is the "cooperative". It also is registered in the court register. Foreign legal and/or natural persons may be members of cooperatives without limitations. Cooperatives are mandatory members in the Croatian Association of Cooperatives.

All service providers established in Croatia are mandatory members of the Chamber of Economy. Membership is quasi automatically linked to the act of registration in the court register without additional administrative procedure. This Membership is additional to the obligatory Membership in Chambers in charge of the relevant profession.

As regards establishment of foreign natural persons the main law applying is the Foreigners Act. A foreign self employed service provider needs a business permit issued by the Police station in the place of residence. It has a validity of 2 years and can be renewed. It can be issued to foreigners with registered craft or similar activities, those

performing a free profession, those managing their own business or a company in which they have the majority of shares or finally those performing services for a foreign employer. Evidence of registration of the company, craft, free profession or the services contract on behalf of the foreign company must be provided. An applicant needs to prove that certain conditions are met such as existence of a health insurance, sufficient means to live etc. The granting of the business permit includes the right of temporary residence. If a foreigner has a permanent residency status he/she needs no business permit.

In view of its prominent role in the case law of the ECJ the tourist sector (*inter alia* tourist guides and tourist escorts) was discussed. At present foreigners possessing real estate in Croatia are not allowed to let a private room (“bed and breakfast”) as the provision of tourist services are reserved for Croatian nationals. This is also the case for tourist guides. The only exception is made for foreign tourist escorts who may assist a tourist group concerning logistics. Croatia noted that the current rules need to be aligned with the *acquis*. Croatia plans to align the relevant legislation in the tourist sector in 2006.

The Commission explained that specific issues linked to the establishment of companies in the field of auditing will be dealt with under chapter 6 (Company Law).

On the basis of the information given by Croatia on the professions mentioned in part II.a., the following topics have been *inter alia* identified jointly by Croatia and the Commission during the screening meeting as obstacles to the right of establishment in some of those professions for natural and legal persons: the citizenship and residence requirements, restrictions to purchase property¹, the language requirement as long as it is not proportionate to requirements for the specific job to be taken up, the one office rule (certain professionals are not allowed to have more than one office), the six months rule (automatic exclusion from the Chamber in case of more than six months interruption of executing certain professions), the permanent training rule (exclusion from Chamber unless proof of participation in a certain number of further training events submitted).

II.c. Freedom to provide cross border services (Art. 49 EC et seq.)

At present Croatian legislation does not provide for the cross-border provision of services as only companies established in Croatia may provide services on Croatian territory. Croatia explained that the provision of such services would be considered a misdemeanour and noted that this situation is not compatible with the *acquis*. Alignment requires a considerable amount of legislative amendments, in particular as regards the Foreigners Act. Croatia informed that a special working group will decide whether there will be a separate act for EU nationals or one act for both, EU nationals and third country nationals. No information was given when alignment is planned.

Implementation and administrative capacity (regarding II b and II c)

Croatia is considering setting up a coordination system (“network of functionally linked bodies”) between all ministries and institutions involved in implementing the *acquis* of this chapter. The purpose would be to screen current legislation with the aim of recommending the removal of obstacles to the freedom to provide services. This is also valid for proposed pieces of legislation which need to be checked on their compatibility

¹ Restrictions on purchasing real property are being dealt with in Chapter 4 (Free movement of capital), but can also affect the right of establishment. Therefore they are also mentioned in this report.

with Community law. In this context the Legislation Office which already exists as a separate body of the Croatian Government would ensure additional verification of alignment of new regulations with the *acquis*. Croatia considers it necessary in the medium term to significantly strengthen the administrative capacity to cope with the challenges linked to this part of the chapter. No concrete figures were given. Croatia is considering if the County offices for European Integration also could play a role in the process of examining legislation at regional and local level.

II.d. Postal services

Postal services are regulated by the Postal Act, passed by the Croatian Parliament at the end of 2003 and the Act on Amendments to the Postal Act, passed by the Croatian Parliament in July 2005 as well as six pieces of subordinate legislation. According to Croatia, its legislation is fully aligned with the *acquis* as it was in force until 31 December 2005. From 1 January 2006 on the *acquis* provides for a further reduction of the monopoly of the Universal Service Provider (USP) to postal items up to 50 gr. Croatia has decided to maintain the 100 gr level for still some time, but is ready to fully align before accession.

The USP is Croatian Post (Hrvatska posta d.d.) operating on the basis of direct authorisation by law. There are 18 other providers of postal and courier services on the market.

Postal services which are outside the reserved area but inside the universal service area can be provided by private operators (legal persons only) on the basis of a licence to be issued by the Council for Postal Services which is the National Regulatory Authority (NRA) in this field. The issuing (or withdrawal) of a licence is an administrative act. The licence holder needs to pay an annual licence fee. The USP is exempt from paying such fee. For the provision of courier services no licence is necessary; instead a notification is sufficient.

Apart from issuing licences the Council in its capacity of NRA is in charge of setting the prices for the reserved postal services upon a proposal of the USP. It also determines the amount of state subsidies to the USP in case of losses. Croatia is aware that such state aid needs to be assessed under Article 86 (2) EC. Furthermore the Council settles disputes related to the access to the public postal network and carries out a number of other tasks mentioned in the Postal Act.

The USP has to guarantee a minimum delivery of five days per week for narrower delivery areas, for wider delivery areas at least on every second workday and in sparsely populated areas at least twice a week. Network access has to be ensured by the USP. The latter has been obliged since 1 January 2005 to ensure a separation of accounting for the reserved postal services from the one for the non-reserved postal services. Within the non-reserved postal services the accounting for universal postal services needs to be kept separate from the one for non-universal postal services and courier services. Pursuant to the Postal Act, the public operator must not subsidize postal services under free market conditions with revenues generated from reserved services. Croatia indicated that this rule is not always fully respected.

As concerns the notice on competition in the postal services Croatia stated that it has not yet been tested in the practice of the Croatian Competition Authority. Croatia informed

that certain issues such as the mentioned cross subsidisation or the exemption of the USP from the annual licence fee need to be further looked at internally. Croatia informed that services of the USP are subject to Value Added Tax (VAT).

Croatia identified the following issues as problematic regarding compatibility with the *acquis*: the “inspectional supervision” of the providers of postal services, the public financing of the USP, the maintenance of the 100 gr. weight limit after 1 January 2006 and the insufficient administrative capacity of the Council for Postal Services as NRA. Croatia is aware that the issue of the "maintenance of the 100 gr. weight limit after 1 January 2006" still needs to be aligned with the *acquis*.

Implementation and administrative capacity

There are three supervising institutions linked to the implementation of the Postal Act: Tariff supervision of postal and courier services is done by the State Inspector's Office. The supervision on the implementation of the Postal Act (technical control of the service providers) is in the hands of the Ministry of the Sea, Tourism, Transport and Development. Within the Ministry a Post Office and Telecommunication Inspection Service is operating, which is outside the Directorate for Telecommunications and Post Office of the Ministry. Two out of three posts are filled in the postal field. 25 inspections were carried out in 2005.

Finally, the Council for Postal Services in its capacity of National Regulatory Authority has also some supervising powers which are, however, reduced to advising the inspectors carrying out their supervision tasks and to recommending legal actions in case of certain violations of the Postal Act. According to the Postal Act the Council is an autonomous, independent and non-profit legal person exercising public authority. It is, however, under the administrative supervision of the Ministry. The Council consists of 5 members elected by the Croatian Parliament for a period of 5 years. It is financed from the State budget and submits annual reports to the Croatian Parliament.

At present the Council has only 5 staff members (employees) whereas 16 posts in total are deemed necessary. Croatia considers that only in 2006 six new recruitments should take place to cope with the given tasks. According to Croatia the present level of financing (HRK 2 million) does not correspond to these needs. A request by the Council to raise this to HRK 3 million has not been granted by the budgetary authorities. There is no clear plan on how financing will improve which would allow for further recruitments.

Croatia is fully aware that administrative capacity of the Council for Postal Services needs to be further strengthened and that additional funding is necessary.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

As regards the *acquis* under this chapter Croatia has a reasonable level of alignment. It has identified itself most of the problematic issues and seems determined to align its legislation falling under this chapter until the end of 2008. This aim seems very ambitious but not unachievable, taking into account the high degree of self awareness about what needs to be done to fulfil the requirements of the *acquis*.

III.a. Mutual recognition of professional qualifications

Croatia is on its way to meet the requirements of the *acquis* in the area of mutual recognition of professional qualifications, especially as regards the minimum training requirements for certain professions (see below). However, Croatian legislation diverges from the *acquis* on two essential points:

- Croatian legislation, in particular the Act on the recognition of foreign educational qualifications, does not distinguish between recognition of academic and professional qualifications. Alignment of this Act is foreseen in the 4th quarter of 2006.
- Croatian legislation contains nationality requirements which restrict access to certain professions to Croatian citizens.

As regards the professions whose minimal training requirements are set by Directive 2005/36/EC most of the training requirements under Community law are already met. In some fields where the requirements have only been changed recently an upgrading could be considered in consultation with the Commission if required by Croatia. There is a need to develop separate professional training programmes for midwives and to establish this profession as a profession of its own.

Linguistic skills cannot be *a priori* a condition for recognising professional qualifications of EU nationals from other EU Member States. They can only be taken into account at a later stage with regard to the specific requirements of the concrete position to be taken by the EU national. The citizenship requirement as well as other requirements listed under III.b. will have to be lifted.

In some cases Croatian legislation requires the proof of work experience before granting a licence to a foreigner for exercising a profession. This is not in line with Directive 2005/36/EC.

The national ENIC/NARIC office needs administrative strengthening before becoming the contact point in the meaning of the Directive. Other bodies involved such as the professional Chambers seem well equipped to cope with the upcoming tasks. These structures do need, however, to be strengthened and furthermore need to clearly distinguish between professional and academic recognition and apply a professional recognition procedure.

III.b. Right of establishment

Overall, Croatia is well aware of most of the mentioned incompatibilities with the *acquis* in the area of right of establishment and has presented a precise timetable for alignment concerning a considerable part of relevant acts.

There is a number of requirements under current legislation which are not compatible with the EC Treaty and the relevant case law of the European Court of Justice in respect to the right of establishment in Croatia by EU legal and natural persons: *inter alia* the citizenship and residence requirements, non-proportionate language requirements, restrictions to purchase immovable property² or the "one office rule". The "6-months

² See footnote 1

rule" and the "permanent training rule" applicable in a number of regulated professions are hardly compatible with the *acquis* as they impose requirements which are more difficult to meet for a EU national from another Member State than for a Croatian national. Furthermore certain age limits for starting specialised training will have to be lifted. The same is true for the condition that foreigners can exercise certain professions only as an employee, but not as self employed.

Croatia needs to completely review its Foreigners Act and make it compatible with the *acquis*. There could be a special act only dealing with EU nationals and a separate Act on third country nationals or one act for both groups of nationals. This is for Croatia to decide.

Croatia has only started to set up the necessary inter-service coordination structure to ensure that current and new legislation is examined on its compatibility with Articles 43 and 49 EC. A considerable effort is needed to ensure the smooth functioning of such a structure which should also involve regional and local bodies. Knowledge of the case law of the ECJ needs to be more widespread among the relevant services including the judiciary.

The nationality requirements included in a number of sectoral acts, particularly in the field of regulated professions, restrict the right of establishment of natural and legal persons from the Community in certain sectors which raises doubts as to their compatibility with Article 49 of the Stabilisation and Association Agreement (SAA) between the EU and Croatia.³ As Croatia so far has not generally refused Community companies to become established, but only refused to become established in a certain legal form (e.g. as Law Firm in the meaning of the Law on Legal professions), a breach of the SAA cannot be stated unambiguously.

III.c. Freedom to provide cross border services

Croatia has currently no provisions in place allowing for the cross border provision of services.

Such provisions need to be introduced in the Croatian legal framework. According to the case law of the European Court of Justice requirements which have already been fulfilled by the service provider in the Member State of establishment cannot be imposed again by the Member State where the service is provided (e.g. obligation to have an establishment, obligation to enter into a register).

III.d. Postal services

In the area of postal services Croatia has already achieved a good level of alignment with the *acquis* but needs to strengthen the position of the Council for Postal Services as National Regulatory Authority.

The Postal Act reflects to a large degree the *acquis* as in force on 31 December 2005. The weight level of the reserved area needs to be in line with the *acquis* before accession. The provision according to which only legal persons can apply for a licence needs to be removed. Certain provisions linked to the quality of service should be amended.

³ For specific problems concerning the establishment of companies in the field of auditing see chapter 6 – Company Law

Certain competition related issues need to be addressed such as the cross subsidisation, exemption of the USP from an annual licence fee and the public financing of the USP in case of losses.

The supervision structure is a problematic issue. It seems advisable that the role played by the State Inspector's Office as concerns tariff control be taken over by the Council for postal services as NRA.

At present the Council for postal services is not yet sufficiently prepared to play the crucial role of a NRA as provided for in the *acquis*. Firstly, it needs urgent strengthening as far as financial and human resources are concerned. Secondly, it needs to have more supervising and regulatory powers than is actually the case. The Council should not only have the power to recommend legal actions against certain service providers but also to impose sanctions. Apart from its power to issue and withdraw licences it resembles a “toothless tiger” as regulator. A solution could be that the State inspectorate cedes certain powers such as the price control to the Council as the latter’s relevant powers are otherwise “empty”. The current overlap of competences needs to be abolished. Thirdly, the operational independence of the Council needs a stronger safeguard by a stricter separation of the State's ownership and regulatory roles.