



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 March 2000

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LIMITE

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"I" ITEM NOTE

from :	Enlargement Group
on :	24 March 2000
to :	Permanent Representatives Committee
Subject :	ENLARGEMENT
	- Preparation of the next Accession Conferences at Deputy level with Poland and Estonia
	= Chapter 1 : Free Movement of Goods

1. With a view to preparing the above-mentioned Accession Conferences, the Enlargement Group has reached agreement on the draft European Union common positions on Free Movement of Goods.
2. In this light, and in line with the internal arrangements for the negotiations (doc. 5361/00), the Permanent Representatives Committee is invited to define the common positions as set out in the Annex.

Following agreement by the Permanent Representatives Committee, the EU common positions will be made available to Poland and Estonia respectively before the next meetings of the Accession Conferences at Deputy level.

**CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- POLAND -**

DRAFT

**EUROPEAN UNION COMMON POSITION
(Replaces doc. 20164/99 CONF-PL 24/99)**

Chapter 1 : Free Movement of Goods ⁽¹⁾

This position of the European Union is based on its general position for the Accession Conference with Poland (CONF-PL 2/98), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-PL 6/98), in particular:

- "- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements – even if partial – reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been reached".

The EU underlines the importance for Poland of compliance with the Association Agreement as well as the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Poland to continue the process of alignment with the "acquis" and its effective implementation.

The EU notes that Poland, in its position (CONF-PL 4/99), accepts the "acquis" under chapter 1 as in force on 1 March 1998 and that Poland declares that it will be able to implement it by 1 January 2003, subject to certain reservations. The European Union notes that Poland indicates that for a certain category of electrical equipment it will implement the "acquis" only from 1 July 2003, in the sector of medical devices it attaches certain conditions to the acceptance of the "acquis", and it reserves its position on two aspects in the pharmaceutical sector, pending further clarification.

⁽¹⁾ Agricultural products are covered by Chapter 7 (Agriculture)

The EU recalls that the principle of free movement of goods is one of the cornerstones of the single market. For a proper functioning from the date of accession, timely and complete transposition and implementation of the "acquis" in this field will be required. This will allow enterprises, consumers and the institutions concerned to adapt in good time to the new framework, thus averting the risk of sudden economic or administrative difficulties upon accession. The transformation of the Polish legal system in this area, especially where it is based on technical regulations referring to obligatory standards, into a system where binding technical regulations are distinct from voluntary standards implies a basic change of the legislative approach. In addition, the related shift from mandatory certification to the conformity assessment system applying in the EU requires a different institutional infrastructure. This implies that a strong, well-equipped administration needs to be built up in order to ensure application and enforcement. Implementation plans should specify the planned institutional reforms with timetables for ensuring this. Upon accession, this infrastructure should have an equivalent level of competence to the one operating in the Community. Poland already has a clear understanding of the principles and legislation covered by EC directives on products and has started with the necessary adoption of its existing legal and institutional system.

The EU takes note of the additional information provided by Poland in its supplementary information to its negotiating position (CONF-PL 61/99 and CONF-PL 8/00).

The EU notes that the additional clarifications provided by Poland do not alter its original position (CONF-PL 4/99).

Nevertheless the EU would like to make the following remarks thereto:

Standardisation, general principles of the New and Global Approach

The EU takes note that Poland has set up a Task Force in the Polish standardisation body in order to accelerate the implementation of European standards. The EU also notes that a new law on standardisation is being prepared. However, this information does not allow to assess how Poland will go about the accelerated implementation of European standards. In particular, the EU has not yet received any information about the new law on standardisation and is therefore not in a position to evaluate the Polish plans. Therefore the EU reiterates its request to receive information about the Polish plans to adopt a new law on standardisation and to accelerate the implementation of European standards.

The EU notes that Poland intends to maintain for the moment mandatory standards concerning safety at work, protection of life, health, property and environment. The abolition of these mandatory standards is planned with the implementation of the new draft law on conformity assessment. However, the most recent draft of the law merely shows that the abolition of mandatory standards will be left to individual laws, which will transpose the relevant EU Directives. Therefore the EU again stresses that Poland should accelerate the elimination of those elements of the Polish mandatory certification system which are not compatible with the "acquis". It also invites the Polish authorities to provide detailed information about the plans to abolish mandatory certification concerning safety at work, protection of life, health, property and environment.

The EU notes that some of the provisions of the draft law on conformity assessment are not in conformity with the "acquis". The EU therefore invites Poland to reconsider this draft law so as to make it compatible with the "acquis". The EU stresses that progress in this area is urgently required if Poland is to be smoothly integrated into the internal market. The EU also underlines that the introduction of a product liability law compatible with the "acquis" and of an effective post market surveillance system is an important corollary to this legislative alignment.

The EU invites Poland to provide the implementation schedule for the draft laws transposing Directives 94/9/EC, 98/37/EC, 95/16/EC, 89/686/EC, 90/396/EC, 87/404/EC, 97/23/EC, 94/25/EC and 93/15/EC.

The EU takes note of the information received on market surveillance. It also notes Poland's statement that the Polish bodies which currently operate in the field of certification and inspection on the basis of the existing law are regarded as potential notified bodies. The EU will continue to monitor Poland's progress in the setting up of the market surveillance authorities when these authorities will be designated in the law implementing the specific directives, as well as the progress in finalising the setting up of the future notified bodies.

Sector specific legislation

The EU takes note of the information provided by Poland on its legislative plans concerning chemicals, foodstuffs, textiles and footwear, pre-packaging, and medical devices. However, Poland has not provided a detailed schedule for the implementation of these directives nor information on pressure vessels. The EU therefore reiterates its request to receive information on the adoption of legislation concerning pressure vessels and on a timetable for the transposition and implementation of legislation for all the sectors mentioned above.

The EU takes note of Poland's information regarding the legal basis for the transposition of the Directives on toys and electromagnetic compatibility. The EU recalls that the principles of the New and Global Approach have to be taken into account irrespective of the legal basis chosen for the transposition of individual directives.

As regards Polish legislation on chemicals (including fertilisers) and on legal metrology, which is, according to Poland, in some aspects stricter than the "acquis", the EU takes note of Poland's confirmation that it will ensure the free movement of goods in these sectors upon accession in accordance with the relevant provisions of the EC Treaty, in particular Articles 28 – 31.

As regards drug precursors, arms and ammunition, the EU takes note of the information provided by Poland on the authorities responsible for the implementation of the "acquis" and, in particular, the way co-operation between these authorities and the customs authorities will be ensured.

The EU takes note of Poland's information concerning the validity of certificates for medical devices issued under current legislation. However, the EU points out that the transitional period for the validity of existing certificates under EU legislation starts from the date of the adoption of the legislation, not from the date of entry into force as planned by the Polish authorities. The EU invites Poland to bring its planned legislation in line with the "acquis" in this respect. In addition, the EU draws Poland's attention to the fact that, during the transitional period, those medical devices, for which the certificates issued under the current legislation have not expired, can only be put on the Polish market and will not be able to move freely within the internal market.

The EU welcomes Poland's confirmation that it will not impede after accession the free movement of goods produced according to the three Old Approach Directives on equipment used in potentially explosive atmospheres (ATEX). The EU takes note of the information provided by Poland on the Polish ATEX industry.

Concerning pharmaceuticals the EU notes Poland's confirmation that it will shorten the existing time limits for marketing authorisations in order to meet the 210 days deadline as foreseen by the "acquis". However, the EU considers insufficient the information provided on the Polish strategy with regard to the implementation of the "acquis" on market authorisations and the associated timetable. The EU reiterates its request to receive this information. In addition, Poland is invited to report on progress made on institutional arrangements for the implementation of the "acquis" in this field, in particular as regards the setting up of the new Pharmaceutical Agency and the resources to be allocated to it.

The EU takes note of the information provided on the Polish plans for the implementation of the Transparency Directive (89/105/EEC). However, the EU reiterates its request to a precise timetable for the implementation of this legislation.

As regards cosmetics the EU notes Poland's confirmation that it will implement and ensure full alignment with the "acquis" in this sector by the date of accession.

Non-harmonised area

The EU notes that Poland is ready to repeal at the latest by the date of accession any provision of its law that would be contrary to Articles 28 to 31 of the EC Treaty. The EU recalls that Poland has to repeal all legislative, administrative and any other measures which prevent de jure or de facto the free movement of goods and would be contrary to Articles 28 to 31 of the EC Treaty by the date of accession.

The EU stresses that the introduction of mutual recognition clauses into Polish legislation is an essential element to allow for the free movement of goods within the internal market. The EU reiterates its request to receive information in the framework of the Europe Agreement on whether the introduction of mutual recognition clauses is envisaged and the way it intends in practice to apply the principle of mutual recognition in non-harmonised areas, including a detailed timetable.

The EU considers that the information provided by Poland on the implementation of Directive 339/93 on checks for conformity in the case of products imported from third countries is insufficient and reiterates its request to receive information on the way Poland intends to ensure the appropriate customs and market surveillance infrastructures as well as an effective administrative co-operation between competent authorities.

Public procurement

The EU notes that Poland will be able to achieve full transposition by 31 December 2000. The EU notes the announced amendments and invites Poland to provide the Commission with the finally agreed versions.

The EU invites Poland to provide information on its plans to conform to the "acquis" with regard to the use of technical specifications/standards.

The EU underlines the importance of the abolition of the domestic preference clause, in particular in the light of its elimination vis-à-vis the CEFTA-countries, Israel and Lithuania. The EU calls for the application of the Most Favoured Nation Treatment-Principle in this respect. The EU recalls that Article 67 of the Association Agreement stipulates the necessity to periodically examine the possibility for Poland to grant access to award procedures in Poland for all Community companies prior to the end of the transitional period foreseen under the Association Agreement.

The EU recalls that the general principles of the Treaty also apply to procurement below the thresholds established in the Directives.

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The EU will continue to monitor progress in the adoption and implementation of the "acquis" throughout the negotiations. Special attention will be dedicated to the monitoring of the capacity of Poland to enforce and apply the legislation. A final assessment of the conformity of Poland's legislation and policies with the "acquis" and its implementation can only be made at a later state of the negotiations. Particular consideration needs to be given to the links with other negotiations chapters, such as Company Law, Agriculture, Social Policy and Employment, Industrial Policy, Telecommunications and Information Technologies, Environment, Consumers and Health Protection, Customs Union and External Relations. In addition to all the information the EU may require for the negotiations on this chapter and which are to be provided to the Conference, the EU invites Poland to provide detailed written information regularly to the Association Council on progress in the implementation of the "acquis".

In view of the above considerations, the Conference will have to return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new "acquis" between 1 March 1998 and the conclusion of the negotiations.

**CONFERENCE ON ACCESSION
TO THE EUROPEAN UNION
- ESTONIA -**

DRAFT

**EUROPEAN UNION COMMON POSITION
(Replaces doc. 20358/99 CONF-EE 67/99)**

Chapter 1: Free Movement of Goods ⁽¹⁾

This position of the European Union is based on its general position for the Accession Conference with Estonia (CONF-EE 2/98), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-EE 6/98), in particular:

- "- any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements – even if partial – reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been reached".

The EU underlines the importance for Estonia of compliance with the Association Agreement as well as the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Estonia to continue the process of alignment with the "acquis" and its effective implementation.

The EU notes that Estonia, in its position (CONF-EE 15/98), accepts the "acquis" under chapter 1 as in force on 1 March 1998 and that Estonia declares that it will be able to implement it by 1 January 2003.

The EU recalls that the principle of the free movement of goods is one of the cornerstones of the single market. For a proper functioning from the date of accession, timely and complete transposition and implementation of the "acquis" in this field will be required. This will allow enterprises, consumers and the institutions concerned to adapt in good time to the new framework, thus averting the risk of sudden economic or administrative difficulties upon accession. The transformation of the Estonian legal system in this area, which in the past was largely based on technical regulations referring to obligatory standards, into a system where binding technical regulations are distinct from voluntary standards implies a basic change of the legislative approach. In addition, the related shift

⁽¹⁾ Agricultural products are covered by chapter 7 (Agriculture)

from mandatory certification to the conformity assessment system applying in the EU requires a different institutional infrastructure. This implies that a strong, well-equipped administration needs to be built up in order to ensure application and enforcement. Implementation plans should specify the planned institutional reforms with timetables for ensuring this. Upon accession, this infrastructure should have an equivalent level of competence to the one operating in the Community. Estonia already has a clear understanding of the principles and legislation covered by EC directives on products. However, the EU is of the opinion that continuing efforts are required to transpose and implement the "acquis" as far as possible prior to accession, as foreseen both in the Europe Agreement and the national programme for the adoption of the "acquis".

The EU notes the additional information provided by Estonia in the second addendum to its position paper (CONF-EE 74/99). It also notes that this additional information does not alter Estonia's aforementioned position on "acquis" acceptance.

Nevertheless, the EU would like to make the following remarks thereto.

Standardisation, Principles of the New and Global Approach

The EU takes note of the information provided by Estonia about the recent adoption of the Product Conformity Attestation Act. The EU notes that this Act will enter into force only in January 2001 and that during the year 2000 Estonia will have to adopt different implementing regulations in order to complete this alignment (regulations on the conformity marking, the designation of pre-notified bodies and the register of pre-notified bodies). The EU invites Estonia to provide information on the state of preparation of these implementing regulations and to subsequently confirm their adoption in the course of 2000.

The EU takes note of the information provided by Estonia on its recent efforts to accelerate the adoption of all EN standards and achieve full membership of the European Standardisation Bodies. However, the Estonian information does not mention a final date for adoption of all EN standards nor for full membership in the European Standardisation Bodies. The EU therefore invites Estonia to continue its efforts in accelerating the adoption of EN standards and to keep the EU informed about the steps to be taken in this field. It also invites Estonia to provide a target date for adoption of all EN standards and for full membership in the European Standardisation bodies.

Market surveillance authorities and conformity assessment bodies

The EU notes that the setting up of notified bodies by Estonia will not be effective until the entry into force, in 2001, of the new Product Conformity Attestation Act, which constitutes the legal framework for such bodies, and that the final assessment of this issue will only be possible after 1 January 2001. The EU will therefore continue to closely monitor the implementation of this Act.

Concerning market surveillance authorities, the EU takes note of Estonia's information, which completes the additional information already provided in June 1999. In particular, the EU takes note that the Pressure and Lifting Equipment Safety Act will be brought in line with the "acquis" by end 2000 and will continue to closely monitor developments concerning this Act.

Concerning standardisation and accreditation institutions, the EU notes Estonia's information that these institutions will be re-organised and start operating in the beginning of the year 2000, instead of the originally foreseen date at the end of 1999. The EU regrets the slippage in the deadline for the reorganisation of the standardisation and accreditation institutions and asks Estonia to keep the Conference informed about the progress in this field.

Sector specific legislation

The EU takes note of the information provided by Estonia on the timetable concerning the EC notified dangerous substances, on how it will identify dangerous substances submitted to the notification procedure and on the procedure for recording dangerous chemicals in enterprises. The EU intends to revert to the subject at the appropriate time.

The EU takes note of the information provided by Estonia on the dates for abolishing the system of pre-marketing authorisations in the fields of detergents, fertilisers and explosives.

Concerning arms and ammunition, the EU takes note of the new timetable provided by Estonia for the implementation of the Weapons Act and of the information on the cooperation between the authorities responsible for the implementation of the "acquis" on arms and ammunition. The EU requests to receive detailed information on the Estonian plans to establish certification procedures for arms and ammunition, and in particular to implement Directive 477/91/EC.

Concerning pharmaceuticals, the EU reiterates its request that Estonia should provide the Conference with information on the different works and steps for the effective renewal, according to EC criteria, of existing marketing authorisations. In addition, Estonia is invited to report on progress made on institutional arrangements for the implementation of the "acquis" in this area, including the directives on Good Laboratory Practices.

Non-harmonised areas

The EU takes note of Estonia's intention to provide information on the progress of its internal screening process of measures contrary to Articles 28 – 31 and on the legislative process related to the introduction of mutual recognition clauses into its legislation. The EU invites Estonia to give information in the framework of the Europe Agreement on the way it intends in practice to apply the principle of mutual recognition in non-harmonised areas, including a detailed timetable.

The EU takes note of Estonia's general information on how it intends to apply Regulation 339/93 on "checks for conformity with the rules on product safety in the case of products imported from third countries". The EU, however, invites Estonia to complete this information.

Public procurement

The EU notes Estonia's information that the revised Public Procurement Act was presented to government before the end 1999 and that a further revision, intended to assure full alignment with the "acquis", is planned in the course of 2000.

The EU regrets that the original timetable for full alignment with the public procurement "acquis" has slipped. It invites Estonia to provide information on the latest changes of the Public Procurement Act in order to be able to assess its conformity with the "acquis". The EU also invites Estonia to stick to the new timetable to achieve full alignment in the course of 2000.

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The EU will continue to monitor progress in the adoption and implementation of the "acquis" throughout the negotiations. Special attention will be dedicated to the monitoring of Estonia's capacity to enforce and apply the legislation. Particular consideration needs to be given to the links with other negotiations chapters, such as Company Law, Agriculture, Social Policy and Employment, Industrial Policy, Telecommunications and Information Technologies, Environment, Consumers and Health Protection, Customs Union and External Relations. A final assessment of the conformity of Estonia's legislation and policies with the "acquis" and its implementation can only be made at a later stage of the negotiations. In addition to all the information the EU may require for the negotiations on this chapter and which are to be provided to the Conference, the EU invites Estonia to provide detailed written information regularly to the Association Council on progress in the implementation of the "acquis".

In view of the above considerations, the Conference will have to return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new "acquis" between 1 March 1998 and the conclusion of the negotiations.