

# **EUROPEAN UNION (CROATIAN ACCESSION AND IRISH PROTOCOL) ACT 2013**

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## **EXPLANATORY NOTES**

### **BACKGROUND**

#### ***The Accession Treaty***

4. The Accession Treaty, signed by the Member States of the EU and the Republic of Croatia on 9 December 2011, provides for the accession of Croatia to the European Union on 1 July 2013. The Treaty falls into four parts:
  - a) Treaty between the twenty-seven existing Member States and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union;
  - b) Act concerning the conditions of accession and the adjustments to the Treaties on which the European Union is founded (“the Act of Accession”);
  - c) Protocol on certain arrangements concerning a possible one-off transfer of assigned amount units issued under the Kyoto Protocol; and
  - d) Final Act of the parties to the Treaty.
5. The text of the Accession Treaty was deposited in the Libraries of the House on 2 February 2012 to accompany the statement relating to the Treaty which was laid before Parliament under section 5 of the EU Act 2011.

#### ***Implementation in UK law of the Accession Treaty***

6. In order to give effect in UK law to the Accession Treaty, the Act amends the definitions of “the Treaties” and “the EU Treaties” in the European Communities Act 1972 (“the 1972 Act”). In broad terms, this grants automatic effect to directly applicable Treaty provisions, and otherwise allows designated Ministers, under section 2(2) of the 1972 Act, to make regulations amending existing UK legislation, to the extent necessary to implement the Treaty.

#### ***Freedom of movement for workers***

7. The Accession Treaty sets out the transitional provisions in relation to the free movement of workers that will apply to Croatian nationals. These provisions are as follows:
  - a) for the first two years after accession, Member States are required to apply national measures or bilateral agreements regulating the rights of nationals from Croatia to work in their territories;
  - b) from the third year, Member States must either grant nationals from Croatia the right to move and work freely in accordance with EU law, or continue to apply national measures or bilateral agreements for a further three years; and

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- c) from the sixth year, Member States must either grant nationals from Croatia the right to move and work freely in accordance with EU law, or, in cases of serious disturbances in its labour market or threat thereof, continue to apply national measures or bilateral agreements for a further two years.
8. **Section 4** of the Act provides a power to make regulations implementing these transitional arrangements concerning the free movement of Croatian workers. Regulations made under section 4 of the Act would, in effect, constitute the “national measures” anticipated in the Accession Treaty.
9. **Section 5** requires the first set of Regulations made under section 4 to follow the affirmative parliamentary procedure. Any further Regulations will be subject to either the negative or affirmative procedure.

### ***Irish Protocol***

10. In December 2008, the European Council agreed that the concerns of the Irish people in respect of the Lisbon Treaty relating to taxation policy, the right to life, education and the family, and Ireland's traditional policy of military neutrality would be addressed to the mutual satisfaction of Ireland and the other Member States, by way of legal guarantees. In June 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, adopted a Decision on the concerns of the Irish people on the Treaty of Lisbon (“the Decision”). The Decision gave a legal guarantee that certain matters of concern to the Irish people would be unaffected by the entry into force of the Treaty of Lisbon. Its content was fully compatible with the Treaty of Lisbon and would not necessitate any re-ratification of that Treaty.
11. The Heads of State or Government also agreed that at the time of the conclusion of the next accession Treaty, the provisions of the Decision would be set out in a Protocol, to be attached to the TEU and TFEU. The Irish Protocol clarifies, but does not change either the content or the application of the TEU and the TFEU and in no way alters the relationship between the EU and its Member States. Its sole purpose is to enshrine in the Treaties, by means of a new Protocol, the guarantees set down in the Decision. The Treaty of Lisbon came into force on 1st December 2009.
12. On 12 October 2011, the draft Irish Protocol was submitted by the Council to the European Council and notified to national Parliaments in accordance with Article 48(2) TEU. At its meeting of 23 October 2011, the European Council consulted the European Parliament and the Commission on the proposed Protocol to the Treaties under the first sub-paragraph of Article 48(3) TEU. It also requested the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposals. On 18 April 2012, the European Parliament gave a favourable opinion on the proposed Protocol and gave its consent to a Convention not being required. On 4 May 2012, the European Commission issued a favourable opinion on the proposed Protocol. The European Council agreed, on 10 May 2012, by means of a written procedure, not to convene a Convention and defined the terms of reference for a conference of representatives of the governments of the Member States (IGC). The IGC was convened on 16 May 2012 and the proposed Irish Protocol was agreed then signed by all 27 Member States. The Protocol has to be ratified by all 27 Member States before it can enter into force.

### ***Requirements under the European Union Act 2011***

13. Section 2 of the 2011 Act sets out three requirements for the approval, by the UK, of a treaty amending the TEU or the TFEU: a Ministerial statement as to whether the treaty triggers a referendum under section 4 of the Act; an Act of Parliament approving the treaty; and compliance with either the referendum condition or exemption condition. The exemption condition is that the Act approving the treaty states that the treaty does

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not fall within section 4 of the 2011 Act. Section 4 of the 2011 Act sets out the cases in which a treaty attracts a referendum.

14. In relation to the Accession Treaty, section 4(4)(c) of the 2011 Act sets out an exemption to the referendum requirement and provides that a treaty does not fall within section 4 merely because it involves the accession of a new Member State.
15. None of the matters covered in the Irish Protocol would constitute a transfer of competence or power from the UK to the EU as set out in section 4(1)(a)-(m) of the Act. The Irish Protocol therefore does not attract a referendum as it does not fall within section 4 of the 2011 Act.
16. Under section 5 of the 2011 Act, the Minister must lay a statement before Parliament setting out his or her opinion as to whether a referendum is required under section 4 of the Act within two months of the date on which the treaty is agreed. The Foreign Secretary laid a statement before Parliament on 2 February 2012 to the effect that, in his opinion, the Accession Treaty does not fall within section 4 of the 2011 Act. A separate statement was laid before Parliament on 5 July 2012 to the effect that the Irish Protocol does not fall within section 4 of the 2011 Act.