

### Croatian accession to the European Union: economic and legal challenges

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## Chapter 1

# **CROATIAN ACCESSION TO THE EUROPEAN UNION**

### *Economic and legal challenges*

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*There are two types of society: closed societies and open ... When we use the word democracy we do not or should not mean any particular form of political structure; such matters are secondary. What we mean or ought to mean is the completely open society... We may not know very much, but we do know something... and while we must always be prepared to change our minds, we must act as best we can in the light of what we do know.*

*(W. H. Auden, 1940, Criticism in a Mass Society)*

## **ABSTRACT**

This chapter aims to summarise and analyse the project that involves the work of a group of experts whose ambition it is to help those who make the political decisions, the media and interested readers to understand the requirements of the EU and the situation in Croatia, to draw concrete conclusions and make recommendations for essential measures. Part one raises the question of whether the EU is fiction or reality, part two puts Croatia in the context of the EU, while the third part concentrates on macroeconomics, banking and finances, taxes, government aid, trade policy, power, agriculture, employment and unemployment, the legal system, the non-governmental sector and

equality between men and women. Part four analyses key questions of Croatia's accession to the EU – regulation within the EU itself, the normative and real harmonisation of Croatia and the EU, Croatian advantages and its points of vulnerability, and a comparison of Croatia with member countries and candidate countries. The chapter also offers a number of recommendations for individual areas, while particular stress is placed upon recommendations that relate to the importance of the public administration and the independent agencies, the question of whether it is better to make adjustments at once or only when they are essential, and the attitude to regional initiatives. The message of the paper is that most of the criteria of Maastricht, Copenhagen and the Stabilisation and Association Agreement are posed in such a way that they can only be of benefit to the country. Our goal ought to be to live in a society that meets as many of these criteria as possible, and whether Croatia will, in so doing, be a member of the EU or of some other association, or an association with some other name that will be relevant at the time Croatia has achieved all this is less important. The EU may help Croatia in its economic and social development, but only the citizens of Croatia can achieve economic development, institutions that are more efficient, and a society that is going to respect the laws and the rights of individuals.

**Key words:**

European Union, Croatia, economic and legal adjustment

## **INTRODUCTION**

The objective of this chapter is to show the working of a group of people of various specialities gathered together in the Croatian accession to the EU project. We would like to be able to help the makers of political decisions, the media and other interested readers in understanding the requirements of the EU and the situation as it is in Croatia and to propose concrete conclusions and recommendations of necessary measures. We have focused on certain, in our opinion interesting and crucial, areas – macroeconomics, banking and finance, taxes, state aid, trade policy, energy, agriculture, employment, the legal system, the non-governmental sector and equality between men and women. Since this is a long-term project, in the coming years we shall renew and update our knowledge about some areas worked on this year, and also bring in certain new

topics. Our aim is in time to identify the most important areas in which the expectations and the real state of affairs diverge the most, and in which we might be able to contribute to the quality of public debate and, in the end, to Croatia's accession to the EU.

With a few divergences, each one of the chapters in this book is composed in more or less the same way. First of all the conditions for the accession of new members are analysed, that is, the basic framework that the EU has set for future members is put forward, for this is the goal to which Croatia needs to strive. In the second part, whenever it is possible, the condition in Croatia is compared with the state of affairs in selected other countries. Then the initial state of affairs in Croatia on the road towards the EU is determined, that is, an estimate is made of how much Croatia is lagging behind, or whether it has any initial advantage with respect to the criteria for membership in the EU. Then there is an endeavour to determine the realistic degree of stability and the main limitations which could stand in the way of Croatia's attaining the set objectives. At the end, we endeavour to draw concrete conclusions and recommendations of measures necessary for a fairly rapid adaptation of Croatia to the standards for membership in the EU.

We have attempted to write in as popular a way as possible, keeping in mind the well-informed and educated reader who is nevertheless not an expert in the area concerned. In addition, we have not adhered blindly to the currently set requirements of the EU; rather, according to our own research and understandings, we have drawn attention to any Croatian weaknesses and advantages there might be. In so doing, we have endeavoured to ignore current political problems (such as the relation with the ICTY, dangers of sanctions and so on), for these problems will inevitably be settled in the course of time, while the essential structural problems will remain, and it is with them that we shall have, sooner or later, to come to terms, irrespective of any accession to the EU. The Union may help Croatia in its economic and social development, but only the citizens of Croatia can make sure of continued economic growth, more effective institutions and a society capable of respecting both laws and the rights of the individual.

After the introduction, the first part of this chapter makes a brief reference to the EU, while the second puts Croatia in the context of the EU, and the third describes the economic and legal aspects of Croatian joining of the EU according to topics and authors, while the fourth deals problematically with the key questions of Croatian convergence with the EU; at the end comes a conclusion. This chapter is written with the objective of acquainting the reader with the contents of the

book as a whole and to encourage him or her to read the sections that are of particular interest. As a result of an approach of this kind, the text does have certain repetitions, but then, the whole of the book does not need to be read, nor does the whole of this chapter. Readers can simply opt for given sections or topics.

## THE EU – FICTION OR REALITY

We can start this chapter with a very simple table that paints the relative and absolute significance of Croatia and the EU. The area of Croatia occupies a mere 4.5% of the area of EU, its population is only a bit more than 1% of the EU population, the Croatian GDP is only 0.25% of the EU and Croatia's per capita GDP is only 21% of that in the EU. These are figures that we should constantly bear in mind.

*Table 1 Comparison of Croatia and the EU*

|                | Area<br>(000 km <sup>2</sup> ) | Population<br>(million) | GDP<br>(billion USD) | Per capita GDP<br>(000 USD) |
|----------------|--------------------------------|-------------------------|----------------------|-----------------------------|
| Croatia        | 56.5                           | 4.4                     | 19.5                 | 4.4                         |
| EU-15          | 1,249.0                        | 378.0                   | 7,894.5              | 20.9                        |
| Croatia/EU (%) | 4.5                            | 1.1                     | 0.2                  | 21.2                        |

*Source: DZS, EUROSTAT*

The area covered by today's EU has in the last fifty years passed through a number of phases, starting from irrepressible optimism and the feeling in the 1950s that everything was possible, moving to concern, vacillation and weighing of the costs and benefits in the nineties. Countries interested in EU membership today have to face many problems. The basic problem is the hesitation of the members because of financial reasons, particularly because of the vast amounts that the EU spends every year on regional and agricultural assistance. Secondly, a very large problem is the rise in the influence of populist parties (for example, in France, Austria, Holland and Denmark) which are panicking about a possible flood of immigrants from the poorer parts of Europe. Apart from that, the administrative obstacles are such that applicant countries have to adopt and apply more than eighty thousand pages of EU law. However, according to Gallup polls, more than 60% of EU citizens today support the enlargement of the EU. The only exceptions to this are Finland, Sweden and the UK.<sup>1</sup>

In principle, every European country that meets the conditions may become a member of the EU, the decision being made by the Council of Ministers and the European Parliament. These conditions relate to the principles of freedom, democracy, respect for human rights and fundamental liberties, and the rule of law. In the Copenhagen criteria, adopted in 1993 for the sake of the countries of Central and Eastern Europe (CEE), democracy, the rule of law, respect for human rights and protection of minorities, a functioning market economy and respect for the criteria of political, economic and monetary union were particularly stressed. The Copenhagen criteria relate to the development of the fundamental political, administrative and judicial institutions, their aim being the creation of the conditions for the adjustment of the CEE countries to the institutional structure of the EU in as short a time as possible (for more about the Copenhagen criteria, Mihaljek<sup>ii</sup>).

During the long history of the EU, new members have joined in various manners (for more about procedure, Rodin). In more recent times, the first step has been making an association agreement for an unspecified period of time. The association treaties are entered into between the EU (the Council and the Parliament) and the member states, and have to be ratified by all states members. The performance of the obligations defined in the treaties is monitored by the Commission and the Council, which publish their reports. If everything is in order, the next step is that the associated states submit applications for full membership. It does not have to be like this though. For example, since 1963, Turkey, not from its own free will, has kept the status of associate member, and Iceland and Norway do not wish to take this step, and are more satisfied with associate membership in order to be able to protect their own interest (Iceland its fisheries, Norway its oil) (for more about exceptions, Bartlett<sup>iii</sup>).

After an associate member has submitted its application for full membership, an accession partnership is entered into, defining the relation with a given applicant country and helping it to attain full membership. The final act is the change of the founding treaty, that is, constitutional changes in the EU in response to an accession treaty with the EU candidate country. Treaties have to be ratified by the EU and the national parliaments of all the members. The procedure is obviously very long, and there is no guarantee at all that one phase will come after another.

Candidate countries must adopt and apply the legal patrimony of the EU, the *acquis communautaire*. The *acquis* has 31 chapters, ranging from free movement of goods, persons and services, via taxation, statistics, culture and audiovisual policy, to finances and budgets.

In negotiations about adoption of the *acquis* there is a fair amount of leeway allowed, and individual legislative approaches can be adapted to specific interests. How much, during the taking on of the *acquis*, individual solutions will correspond to the interests of the candidate country depends on the expertise and capacity of the administration in its negotiations with the EU. Candidate countries adopt a national programme for implementing the *acquis*, and the EU monitors this implementation. For the time being Lithuania has agreed on the most chapters (28), Romania on the fewest (12). The EU provides pre-accession aid for meeting the requirements of the *acquis* (for more about the *acquis*, Mihaljek). Alas, the *acquis* is extremely complex and is becoming more and more complex day by day. As Bartlett points out (2002), it includes essential and crucial regulations, as well as entirely trivial rules. A particular problem resides in the many requirements that although desirable (ecological, for instance) and possibly very appropriate to highly developed economies are at the same time very expensive for poor countries, even unsuitable for the conditions and habits of some states. Nevertheless, it is assumed that the beneficial elements of the *acquis* will prevail, and that they will lead us in a correct long-term journey, irrespective of whether a country can join or intends to join the EU or not.

The EU association and membership process, although very complex, is not impossible to describe. However, it is very difficult to say something about the duration of this long and complex road. For quite a long time it has been expected that the first CEE countries will become EU members before elections for the European Parliament in 2004 but not even now, at the end of 2002, is it known with any certainty whether this will really happen, and if so, when. The only thing that is certain is that the number of such countries will be smaller than previously expected, and that Bulgaria and Romania have definitely dropped out of the running in the meantime. Of the CEE countries, at the moment Poland, Hungary, the Czech Republic, Slovakia and Slovenia are candidates. It is a very unrewarding activity to speculate about the possible date of Croatian entry. Eurosceptics, and we might well call them Eurorealists, do not believe this will occur in the first decade of this century. Of course, there are also more optimistic estimates, but it is not possible to say how realistic they are.

Vaclav Klaus<sup>iv</sup>, for example, is very sceptical when it comes to the rapid entry of a large number of new countries into the EU. In his view, the EU is not a charity organisation, which wishes to have as many new members as possible, but a cartel of countries with very well

defined interests. It is in the interest of the EU to extend the provisional status of applicant countries as long as possible, and in the interest of the applicant countries to be members as soon as possible. If the cost-benefit curves of member countries and applicant countries are looked at for the period after 1990, we shall see that the member countries have already used up most of the benefit that they can obtain from the applicant countries. The citizens of the EU are already in these countries. They are in Zagreb and Prague in the roles of tourists, merchants and bankers. The countries of the EU have already achieved almost all their objectives and cannot derive any more considerable benefit from the further process of convergence. In graphic terms, the difference between the member country benefit curve and the applicant country benefit curve is greatest in about 2000, and it is in the interest of the member countries to prolong this state of affairs as long as possible. Mencinger (2002)<sup>v</sup> speaks, in a similar context, of the hypocrisy of the EU, first of all inviting us, and now no longer wanting us.

Naturally, as with every topic, there are various views about EU accession, opposed views, from the Eurosceptics, who expect almost nothing, to the Eurooptimists, who think that joining the EU will solve all, or almost all, the problems of the transitional countries. Nevertheless, the Maastricht criteria, the Copenhagen criteria, most of the Stabilisation and Association Agreement (SAA) provisions are framed in such a way that they can only be of benefit to any country. It ought to be the aim of all of us to live in a society that meets as many of these criteria as possible, and whether we will the while become members of the EU or some other association or an association with some other name that will exist when we actually achieve all this is less important.

## **CROATIA ON THE ROAD TO THE EU**

The former socialist countries of CEE started the process of converging with the EU at the beginning, or in the middle, of the nineties. Croatia, unluckily, first of all because of the war, and then because of the unpopularity of the HDZ regime and President Franjo Tuđman, lost practically a whole decade on this journey. This falling behind has harmed Croatia in many areas such as science and education but, looked at economically, has been particularly detrimental to foreign trade (see Boromisa and Mikić; Bartlett, 2002).



As against the Europe Agreements that were made with the current applicant countries (CEE countries), in 1999 the EU adopted the Stabilisation and Association Process for the countries of SE Europe, i.e., for Croatia, BH, Macedonia, Albania and the FRY. This process is put into practice by the making of individual agreements with these countries. So far SAAs have been signed by Macedonia and Croatia. Unlike the Europe Agreements, these agreements contain an evolutionary clause and provisions about regional cooperation. Apart from that, while the Europe Agreements expressly mention that the basic objective is the integration of the countries of CEE into the EU, the SAAs speak about potential candidates for members of the EU, making this conditional not only on the Copenhagen criteria but also on the regional cooperation already mentioned.

Croatia signed its SAA with the EU in Luxembourg on the 29<sup>th</sup> of October 2001 and thus became a potential candidate for the EU. The SAA was to be ratified by the Croatian Parliament, the European Parliament and the parliaments of all EU members. By summer 2002 this had been done by the Croatian and European parliaments, as well as those of Austria, Denmark and Ireland. Until the SAA comes into force, which in some optimistic forecasts could be in about two years, an interim agreement is in force, since 1 January 2002. The First Report of the European Commission about the process in Croatia, dated 4 April 2002, is mainly positive. The report speaks of the meeting of the political criteria – strengthening of democracy and the rule of law, respect for human rights and the protection of minorities, as well as regional cooperation. The report has doubts about the situation in the judiciary, and priorities that need to be tackled in the next year are given (see Rodin).

In order to execute the obligations deriving from the SAA, the government has accepted the Implementation Plan of the Agreement, and should publish monthly reports about the results. Although there has been an endeavour to carry through numerous measures (of the 128 measures, 65 were carried out in time), there are obvious delays in the areas of minority protection, reform of justice (see Rodin), television, state aid (see Kesner-Škreb and Mikić) and consumer protection.

Since the SAA calls upon Croatia to take part in the process of regional cooperation with the countries of SEE, in the Croatian public, and in political circles as well, it has been greeted with a fair

amount of scepticism, indeed with resistance. The SAA constantly raises the doubt about whether Croatia should or could go into the association process on its own or part of a West Balkan package. Mihaljek, for example, says that in the SAA, as against the often expressed opinions that it is thrusting us into this group, there is a clearly expressed individual character in the convergence of Croatia with the EU. As the necessary grounds for making the transition from status of potential candidate to that of full candidate for EU membership and for further negotiations about full membership, the individual capacity of Croatia to make the legal, economic and political adjustments, as well as its readiness to contribute to regional cooperation and stability in South East Europe, will be considered.

It is a fact that more than three quarters of Croatian citizens have a positive opinion about the EU and support Croatian efforts to enter the EU.<sup>vi</sup> How much the citizens are at the same time aware of the benefits and costs of joining the EU, and how much this is simply an impressionist view of things brought about by the general climate, the influence of the media, the discontent with current conditions and the desire for a change is not really essential at this moment. It is essential that Croatia, even without EU pressures, has to launch and carry out many reforms. And these reforms will be the more successful the earlier and better we carry them out, fully aware that they are really necessary to us, and are not just being forced up on us. This book should make a contribution to the maturing of such viewpoints.

## **ECONOMIC AND LEGAL ASPECTS OF CROATIA'S ASSOCIATION WITH THE EU**

In this part we shall briefly outline the views of the authors of this book on certain economic and legal aspects of Croatia's joining of the EU – macroeconomics, banking and finance, taxes, state aid, trade policy, energy, agriculture, employment, the legal system, the non-governmental sector and equality between men and women.

## **Macroeconomics**

Dubravko Mihaljek analyses the economic criteria for membership in the EU and the European Monetary Union (EMU), attempting to compare the starting position of Croatia with that of other CEE countries. He concludes that Croatia does not lag behind the other countries in CEE and that it even has a certain advantage with respect to the main macroeconomic criteria (except for the budget deficit), efficacy of investment and potential growth. However, the lag in certain important microeconomic areas – the securities market and the policy of market competition, is estimated at almost four years of systematic reform efforts. For this reason it is necessary to persist in the implementation of reforms and run economic policy very circumspectly.

## **Banking and finance**

In connection with most of the criteria relating to banking and finance, Velimir Šonje concludes that Croatia has the character of an advanced country. A more considerable lag is observed in the area of the development of the capital market and openness to international financial flows, which in the future could turn out to be serious sources of vulnerability in the process of joining the EU.

## **Taxation**

Hrvoje Arbutina, Danijela Kuliš and Mihaela Pitarević conclude that the Croatian tax system is comparable with those of the members of the EU. The key difference is the considerably greater tax burden in Croatia than in the EU, relating, however, to contributions, which have to be gradually reduced, as the situation allows. All the essential taxes conceptually correspond to the same kind of taxes in the countries of the EU. Nevertheless, it is desirable to carry out certain adjustments to VAT as soon as possible, while the harmonisation of profit tax and of some excise taxes should be postponed until the moment when it becomes unavoidable because of accession to the EU. The maintenance of the current situation in the area of these taxes is not in line with the provisions of European tax regulations, but it is nevertheless in Croatia's interest.

## **State aid**

Marina Kesner-Škreb and Mia Mikić point out that in the EU it is considered that state aid distorts market competition and that it is a limiting factor in the functioning and development of the single market. The European Commission has the right to ban any state aid that distorts market competition by extending privileges to certain firms and sectors. In Croatia, government expenditure to promote the economy is considerable and mainly directed towards certain sectors: shipbuilding, tourism, transport and agriculture. Croatia will be able to use state aid in the future, but will gradually have to reduce it and redirect towards horizontal targets.

## **Trade policy**

Ana-Maria Boromisa and Mia Mikić state that during the transition period the reforms necessary for joining the EU were not carried out and that progress is slower than in the candidate countries. Croatia did, however, start the EU convergence process at a higher level of development than a number of other potential members, and the lag in the preparations for membership has not totally destroyed Croatia's initial advantages. It is a question, however, whether these advantages will not perhaps completely disappear in the first phase of the next expansion of the EU.

## **Energy**

Although the legal system in Croatia is very largely harmonised with the EU system, Ana-Maria Boromisa claims that the process of converging on the EU in the area of energy cannot be considered a success, because practice, that is, the manner in which the rules are interpreted and ultimately implemented, is developing in the opposite direction from the principles set up by the EU. Since the laws assume their final shape in the course of their application, and since it is much more difficult to change the way the rules are interpreted and implemented, particular attention needs to be devoted to practice during the harmonisation process.

## **Agriculture**

Ramona Franić and Tito Žimbrek point out that Croatian agriculture is behind that of the member countries. Since the signing of the SAA, the situation has been constantly improving, but Croatia will have to accept the liberalisation of EU-origin products and yet attempt to retain certain privileges. What is crucial is to improve the competitiveness of domestic agriculture, while making sure to preserve domestic natural resources. The harmonisation of the legislation is essential, but this technical task is less of a problem than the accommodation to be made by experts that will have to apply them. Of particular importance is that domestic experts should become thoroughly acquainted with the CAP, in order to be able to cope with the challenges in the long years of negotiation and adjustment that await us.

## **Employment**

In connection with employment or unemployment, Predrag Bejaković and Viktor Gotovac are concerned by Croatian labour policy and practice devoting more attention to the preservation of employment than to the creation of new job opportunities. For this reason it is necessary to encourage a more flexible labour legislation and remove the organisational and administrative barriers to the creation of new SMEs, which should help most in alleviating the problem of unemployment in Croatia.

## **The legal system**

Siniša Rodin, in his paper on the legal system in Croatia, points out that certain constitutional changes are required in Croatia not only for EU membership, but even for the implementation of the SAA. In this process, the measure of harmonisation of the legal system will not be just the substance of the legal norms, but also the economic and social contents that are being governed by them.

## **The non-governmental sector**

Igor Vidačak studies the relation between the non-governmental sector and the government, i.e., the civil dialogue. He claims that this relationship is behind EU standards, but not behind those of the candidate countries. Thanks to the high-quality work of the Office for NGOs, the first steps in the right direction have been made, but in order successfully to be able to meet the requirements of the SAA and for EU accession, the government still needs to take a number of measures as does, and more importantly, the non-governmental sector.

## **Equality between men and women**

Snježana Vasiljević concludes that gender equality in Croatia has not been sufficiently regulated. Except at the constitutional level, so far no legal solution has been adopted to guarantee gender equality, or freedom of sexual orientation. Since this is one of the obligations of the country according to international law and the SAA, it is necessary to keep a constant eye on the development of this part of European law, to take over the approaches of the more advanced members of the EU, and as soon as possible to pass a special law or to build the most essential provisions into already existing laws and, of course, to sensitise the public.

## **CROATIAN CONVERGENCE WITH THE EU: THE CRUCIAL ISSUES**

The authors of this book have adhered to a structure of work set in advance. Both because of this structure and because of the viewpoints and considerations of the authors, certain topics have run through all the papers here, such as the issue of legal regulation within the EU itself, the distinction between normative and the real conformity with the EU, the observation of Croatian advantages and failings, comparison with other countries, and in many of the recommendations the importance of the public administration and independent bodies is particularly highlighted, as is the question of whether adjustments need to be made at once or only when EU accession is impending, and a reference is made to our attitude to regional initiatives.

## **The issue of regulation within the EU**

As already mentioned, the candidate countries have to take over and apply the *acquis communautaire*, the legal patrimony of the EU. The *acquis* is above all of a normative nature, but a large number of conditions that are set up have a political and economic nature. The topics worked on in this book sometimes are and sometimes are not covered by the *acquis*, and the authors themselves have defined the criteria that seemed to them to be crucial for joining the EU. When, for example, it is macroeconomics, banking, finances, trade and agriculture that are concerned, certain chapters of the *acquis* affect them directly, but in addition it is also necessary to respect the Copenhagen and Maastricht criteria as well as the conditions of the SAA.

In agriculture, the CAP needs to be borne particularly in mind, for it is one of the most important and complicated mechanisms of the EU from a legal, economic, regulatory and financial point of view. There is a specific situation with, for example, taxes, which do not have a special chapter in the *acquis*, but do have directives, very concrete in the case of indirect taxes, and much more generalised for direct taxes, the taxation of income being left entirely to the members.

Although there are directives for the area of taxation, because of the great unevenness of approach among the EU members relatively poor results in the harmonisation of taxation have been achieved. The situation with state aid is similar; there is a certain system of rules about how it is used, with possible bans and a concrete orientation about its reduction and its redirection from vertical to horizontal objectives. There is also no *acquis* about employment, there are no direct EU demands, and yet the authors point out that it is important to keep an eye on what is happening. Although the unemployment issue is within the sphere of competence of the member countries, there is a European Employment Strategy, a single framework that members apply diversely with different results.

No clearly defined *acquis* exists for the issues of the non-governmental sector either, nor for equality between men and women, and yet there are numerous strategic documents, rules, recommendations and international treaties, including the SAA itself, which are certainly binding on us.

All of this leads us to the conclusion that it is essential to educate experts of all profiles to keep up with the many requirements that

derive from the *acquis* itself, and for tracking the various regulations, directives, international treaties, the practice of courts and institutions, the practice of the member countries and practice in relations between the EU and the candidate countries. And here it is necessary to achieve complementarity in the knowledge of experts from various areas, and also the involvement of non-government experts in the process.

## **Normative and real conformity with the EU**

Most of the authors in the book have stressed the need to distinguish the normative adoption of the conditions of the EU and putting them into practice. Rodin, for example, says that it is essential to create an appropriate environment, because conformity is not just the acceptance of norms, rather of functional and organic coalescence with them, the measure of conformity being not only the legal, but also the political, economic and social content of the adjustment. Concurring with this is Šonje, who is of the opinion that it is not enough to look only at the conformity of the legislation, for the real capacity of a country to meet the conditions depends on the structure and conduct of its institutions (in this case, of the banks, financial intermediaries and so on). Boromisa says the same thing, as do Franić and Žimbek, who at the same time stress that it is easy to make laws, the main challenge, however, lying in the adjustment of the administrative structures that are going to implement them.

What is the situation in individual areas? In finance and banking, for example, with certain exceptions, we can on the whole be satisfied with both the regulations and their implementation in practice. In energy we have achieved a relatively high level of formal conformity, but implementation lags behind, that is, the legal system has been adjusted, but practice (interpretation and implementation) are developing in ways opposite to the principles of the EU. Requirements for equality between men and women and concerning sexual harassment, also, have not even been normatively met. Except at the constitutional level, no legal solution has been adopted to guarantee gender equality or freedom of sexual orientation, and there are no suitable laws to protect the rights of individuals at the normative level.



## **Croatia's advantages**

Although we are all often more apt to point up the shortcomings, the bad side of the situation in Croatia, the authors in the book also draw attention to many Croatian advantages, that is, the good side. In terms of the economy, Mihaljek puts the stress on the favourable outlook for long-term growth and investment effectiveness, Šonje stresses the low rate of inflation, the harmonised interest rates, a stable rate of exchange, and a good banking system structure, while Arbutina, Kuliš and Pitarević note the advantages of the tax system, which is almost totally comparable with systems in the EU. Boromisa and Mikić, speaking of trade, state that Croatia started the convergence process at a higher level of development than some of the candidates, but also warn that these advantages could be lost after the first future enlargement of the EU.

Žimbrek and Franić note that in agriculture we can consider the relative richness of agricultural land an advantage, of course, with the many problems that need to be settled (the irrational management of it, the fragmentation of the land, the uncultivated and abandoned hectares and so on). As for measures for encouraging employment, Bejaković and Gotovac note that we are going in the right direction, albeit very slowly. Vidačak highlights the programme of cooperation between the government and the NGOs, which is a good take-off point for the development of a civil dialogue. The theoretical framework for this cooperation is excellently worked out, and it just needs to be applied in practice. Even in the area of gender equality there have been positive steps forward. Vasiljević notes that a provision concerning affirmative action was put into the 2001 Labour Law. A provision concerning sexual harassment was also proposed, but clearly this was too much for the legislator at one time.

Croatia, then, does have certain advantages. We have highlighted just a few of those stated in the book, and it is up to us to attempt first of all to recognise them, improve on them, and then make intelligent use of them.

## **Vulnerable points**

The authors of the book have also diagnosed of course various points of vulnerability. In macroeconomic terms, Mihaljek points to the

low level of participation of the private sector in GDP, the high budgetary deficit, the large amount of the public debt, with a rapid growth in indebtedness, and the undeveloped securities market. Šonje repeats some of the fears (e.g., the fiscal deficit, the undeveloped securities market) but in particular puts forward the restrictive foreign currency regulations, that is, the closure to international financial flows. Arbutina, Kuliš and Pitarević are concerned by the tax burden, which is higher than in the EU, primarily because of high contributions. The Croatian economy is highly dependent on state aid, particularly sectoral aid (Kesner-Škreb and Mikić). Žimbrek and Franić stress the large deficit in the balance of trade and the lack of competitiveness of Croatian agriculture, as well as the serious social and economic aspect, for agricultural policy is actually being used as social policy. Bejaković and Gotovac too put forward the large expenditures for social policy and welfare and the inclination towards an exaggerated preservation of existing employment rather than new job creation.

In brief, the lack of competitiveness of the economy and the inadequate involvement of the private sector have led to the great involvement of the government, which entails a high budgetary deficit, a high public debt, a large tax burden, great outgoings for social security and so on. Economically looked at, we seem to be in a vicious circle in which revenue constantly has to chase after expenditure, and expenditure is constantly on the rise, pulling a growth in revenue in its tail. Below we shall make certain recommendations that might perhaps help us to emerge from this closed circle.

From the legal point of view, Rodin is concerned by the jurisprudential optimism and the uncritical flood of regulations that are not connected organically and functionally with real life. Nevertheless, it would seem that the special points of vulnerability, those points in which we fall furthest and most visibly behind, because of which we can fail the test most easily, are matters of the construction of civil society and protection of the rights of individuals. These are topics that are increasingly important in the EU, to which increasing attention is being devoted. For this reason it is a matter of concern that there is not even the most essential, at least normative, legal solution for some of these questions in Croatia, such as equality between men and women and the right to free sexual orientation.

## **A comparison of Croatia with the EU members and applicant countries**

One of the objectives of the book was an attempt to compare the situation in Croatia with that in member countries and candidate countries. The most optimistic of our authors are Arbutina, Kuliš and Pitarević, who claim that the Croatian tax system is comparable with the system of the EU members and that, in the matter of taxation at least Croatia would easily join the EU. Mihaljek is also optimistic, stating that with respect to the Copenhagen criteria, Croatia is behind the member states, but not essentially behind the average for the CEE countries (being comparable, for instance, with Slovakia). Regarding the Maastricht criteria, Croatia has certain advantages to do with inflation, interest and exchange rates, and is worse off to do with the budgetary deficit. When looked at in the context of the SAA, however, it unfortunately is failing to meet the provisions about regional cooperation. According to Mihaljek, in the two areas where we are most behind, in the policy of market competition and the securities market, Croatia needs four years to catch up with the CEE average.

Kesner-Škreb and Mikić think that state aid in Croatia is not in harmony with the situation in EU members. Firstly, the amount of the aid given is considerably larger than in the EU and secondly it is mainly sectoral and not horizontal aid that is given. Also dissatisfied are Bejaković and Gotovac, for according to them the legal material dealing with unemployment is insufficiently harmonised with EU requirements, while the differences are still greater in practice. While in the EU the creation of new jobs is encouraged, Croatia looks more to the preservation of existing employment. And yet they do think that we are moving in the right direction, if only slowly.

There are also regions in which Croatia lags behind the members, but not essentially behind the candidate countries, or has similar problems. This can be said for the issues of gender equality and the development of the non-governmental sector, in which Croatia can even boast of a programme for cooperation between the government and the non-governmental sector of the kind that is a rarity even among EU members. The situation in trade and agriculture is particularly bad, here Croatia being slower and worse-off than both members and candidates.

Rodin is the most pessimistic, for he sees in Croatia a legal and cultural abyss created by decades-long separation from the European

and world mainstream. Of course, a break with traditional legal culture cannot be pulled off in a short period of time, but concentration on particular areas in which differences between Croatia on the one hand and member states and candidate states on the other is certainly possible.

## Recommendations

The series of recommendations for an improvement of the economic situation is on the whole linked and consistent. Thus Mihaljek and Šonje highlight the need for rapid and stable growth, low inflation, external stability, fiscal adjustment, reduction of the deficit, reduction of the debt, stimulation of domestic savings, reforms of the labour market and the civil service. Subject to the success of these measures, Arbutina, Kuliš and Pitarević suggest the reduction of the tax burden (particularly of contributions) and Kesner-Škreb and Mikić propose reducing state aid, its redirection from vertical to horizontal targets and the foundation of an independent body for the supervision and implementation of aid. And anyway, Croatia is bound to do this because of the SAA. The case with energy is similar, an independent body already having been founded, although Boromisa stresses that it is necessary to draw up concrete plans of implementation with deadlines and clear divisions of authority and responsibility, and to harmonise theory and practice, for the regulations are good, and yet are interpreted and applied poorly.

Agriculture is a story all by itself; Žimbrek and Franić recommend measures to improve competitiveness while at the same time preserving domestic resources. Here it is exceptionally important to educate CAP experts who will be able to keep up in this complex material with experts from the EU as well as from competitive applicant countries. A certain disagreement can be seen among the authors in the book. Žimbrek and Franić advise liberalisation of trade through bilateral free trade agreements, especially with the Balkan countries, while Boromisa and Mikić are against such agreements, and in fact advocate even turning existing bilateral agreements into multilateral deals in order to reduce the administrative costs of implementation and monitoring.

From the point of view of law, Rodin states that it is necessary to make a break with traditional legal culture and to institute concrete changes to provide the legal basis for EU membership, including the governing of the manner of using state sovereignty. Here it is necessary to settle the status of international and European law in the Croatian

legal system. For the development of the non-governmental sector, Vidačak recommends intensive involvement in exchange programmes with EU members, which are quite possible before accession. The government ought to undertake numerous measures, but, which is still more important, the non-governmental sector should not look for everything from the government, but has to work on its own, develop cooperation within organisations, among organisations and with foreign associations, train experts, become more democratic and itself contribute to the development, adoption and dissemination of knowledge about the European integration process and insist that the government treats it as a partner. Vasiljević on the other hand says that for any progress from the impasse in the area of gender equality it is necessary to keep a constant eye on the development of European law, to adopt solutions from more advanced members, to make a dedicated law as soon as possible, or to put new provisions into existing laws, and to sensitise the public. Both Vidačak and Vasiljević stress the need for democratisation and constructive and non-monopolistic behaviour on the part of the NGOs.

Along with the many concrete proposals, most of the authors also stress the need to think about adjustment to a future and expanded, and not the current, EU, the importance of implementing the SAA, the importance of reforms of the administration, the foundation of independent bodies, and the education, education and education of all those involved in the integration processes.

## **The importance of the public administration and independent bodies**

The question of the reform of the civil service runs through every chapter in the book and most of the authors (Mihaljek, Kesner-Škreb and Mikić, Boromisa, Žimbrek and Franić, Bejaković and Gotovac, Rodin, Vasiljević) think that in the process of adjustment and accession to the EU the main challenge is going to be the effectiveness of the administration. Boromisa, for example, describes an energy sector that is state owned, and will mostly remain so, state bodies thus being charged primarily with the implementation of energy reforms. This means that for a reform in energy, effective reform of the public administration is also necessary, or else a transfer of its authorities to an independent body.

Kesner-Škreb and Mikić also lay stress upon the importance of founding independent bodies to do with state aid, and Vasiljević for cases of sexual discrimination and violations of the principle of equality between men and women. Bejaković and Gotovac urge reform of the public administration if there is a wish successfully to put through an active employment policy, while Rodin also urges this when talking of the break with traditional legal culture. Žimbek and Franić also state that the main challenge to EU adjustment will be the adjustment of Croatian administrative structures and society. A key role will go here to domestic experts and the education of them, getting to know the CAP and mastering it in order to be able to carry out reforms and effectively negotiate with the EU. At all levels it will be necessary to invest in development divisions, research and education.

## **Adjustments at once or later**

Most of, or in fact all, the authors in the book lay stress on the need for Croatian adjustments to EU requirements that are as rapid as possible. Rodin says that some changes are necessary right away, in the context of the implementation of the SAA, while some are essential for the outlook for full membership. However, in his opinion, Croatia will best express its genuine desire for full membership if it creates the premises for full membership now at the constitutional level. With this viewpoint, Mihaljek, Šonje, Kesner-Škreb and Mikić, Boromisa and Mikić, Žimbek and Franić, Bejaković and Gotovac are in full agreement. Vasiljević adds that numerous treaties oblige us to act fast, and Vidačak points out that apart from adjustments to EU requirements, we should be vigorously involved right now in exchange programmes with members, this being possible before membership, because in this way we will be able to create the preconditions for the development of civil society and working for the general good.

Nevertheless, there are still some areas like the tax system where, Arbutina, Kuliš and Pitarević recommend, some of the adjustments need to be delayed right until the acquisition of the status of EU member. For although the situation in Croatia is currently not in line with EU requirements, it is nevertheless in the interests of Croatia, and adjustment would not anyway produce reciprocity. Thus each one of the areas needs separate and careful monitoring and studying, so that we shall know with certainty which adjustments need to be made as soon as possible, and which had better be deferred.

## **The attitude to regional initiatives**

Most of the authors in the book have a positive attitude to regional initiatives. It is mainly stressed that the implementation of the SAA can help us in the process of restructuring, meeting the conditions for full membership, modernisation of the infrastructure, the use of financial resources for regional projects and adjustment of the laws so that in some areas Croatia could emerge as the leading nation in the region. Boromisa and Mikić stress that along with the necessary implementation of the SAA it is essential to do everything possible to become a member of the EU as soon as possible, thus minimalising the costs of partial liberalisation forced on us by the SAA. Žimbrek and Franić are actually able to point to the improvement in agriculture that has occurred since the signing of the SAA, especially in the harmonisation of legislation, the incentives to sustainable development, while Vasiljević recalls that the SAA also obliges us to respect the right of the individual.

Croatia is charged in the report of the European Commission with being insufficiently regionally cooperative, and so we do not have a lot of room for choice. In brief, one should not a priori cold-shoulder regional initiatives, rather try to make use of the advantages that they furnish, and use them intelligently for as rapid accession to the EU as possible.

## **CONCLUSION**

In this book we have attempted to give a summary of some of the challenges of the economic and legal adjustment involved in Croatian accession to the EU. We have the while constantly borne in mind that negotiations with the EU are a politician's task, that our assignment is not to monitor the course of negotiations, rather to observe the state of affairs, to deal with given topics, even if they are currently not in line with government views, with EU demands or the actual course of negotiations. Politicians have tasks that they must do here and now, while independent experts can afford to observe and suggest, hoping to be useful in the long run. From this point of view, it is most important to be informed and expert, not only via keeping up with the literature, but also with events, in, for example, the world of business, in given branches of industry, in the media and so on.

We do not look at the EU as a set fact, rather as a construct, one that is constantly changing, and we consider adjustment to a future,

expanded, and not the present, Union. We point out that it is necessary to keep a constant eye on the development of conditions in the member countries and the applicant countries remaining after the next round of EU enlargement, because after they have joined we could well lose the advantages that we had. For this reason we have to concentrate on differences, on failures to keep up and adjust, and attempt to correct them.

In this text we have avoided speculations about any possible date of Croatian entry, a very unrewarding task, but do nevertheless mention the danger of a long period of lingering in the status of associated member with a very uncertain date of accession. This condemns us to many obligations without having a place at the table. Nevertheless, the criteria of Maastricht and Copenhagen, and most of the conditions of the SAA, can only be of use to us. It is our aim to meet as many as possible of these criteria, irrespective of whether we are or are not an EU member, or of some new creation that might exist when it is Croatia's turn.

Croatia has many *advantages*: a favourable outlook for long-term growth and efficient investment, a low rate of inflation, harmonised interest rates, a stable exchange rate, a good banking system structure, a tax system comparable with EU systems, rich agricultural land, even a good point of departure for civil dialogue. At the same time however it has a number of *drawbacks*: a low private sector involvement in GDP, a high budgetary deficit, a high public debt, an undeveloped securities market, closure to international financial flows, a high burden of taxation, dependence on state aid, large outgoings for social policy and welfare, an uncritical surge of regulations, and it often fails the test of constructing civil society and protecting the right of individuals. Our *objective* is to recognise and capitalise on the advantages, and also to identify and remove the shortcomings, and know how to make intelligent use of positive results, advances and improvements.

Although it would seem that political and legal conditions are crucial, in the long run, economic questions will also turn out to be decisive. For this reason our recommendations relate primarily to an improvement of the state of the economy, that is, for maintaining rapid and stable growth, low inflation, external stability, fiscal adjustment, deficit reduction, debt reduction, a rise in domestic savings, labour market reform, civil service reform, diminution of the tax burden, cutting state aid and greater influence from independent bodies.

Reforms have to be carried out before they are forced on us from outside, because if we do not start ourselves on time, perhaps the time will never come. Although adjustments have to be carried out as soon as



possible in most cases, nevertheless it is important to be careful, for there are areas in which it pays us better to wait until the moment of accession.

It is important to train experts for various areas capable of keeping up with EU specialists and those from current and future competitive applicant countries. It is necessary to keep our eye on the acquis as well as on the rules, regulations, directives, treaties, reports, decisions of courts and so on. Here it is important to distinguish the mere letter-of-the-law adoption of EU conditions and putting them into practice from putting them into the political, economic and social context. In all areas it is necessary to draw up concrete plans of implementation with deadlines and clear divisions of authority and responsibility. Whenever possible, it is worthwhile getting involved in exchange programmes with member states, and to make intelligent use of regional initiatives.

Although the government should undertake a great many measures, it is particularly important for the non-governmental sector not to expect everything from the government, but to work on its own, to cooperate, to get trained, to democratise itself, get rid of its monopoly, contribute to the development, adoption and dissemination of knowledge about integration and to make sure the government accepts it as a partner. We hope that this book will be a contribution to this and we shall go on working on the topics already started; in future projects we shall focus on additional topics such as the public administration, the courts, education, regional cooperation, political dialogue, human rights, democratisation and other topics that will arise in the course of time.

In short, our ideal ought to be to live in a country that meets the EU criteria, and if this is the case, being or not being a member will be of much less importance.

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<sup>i</sup> *The Economist*, 26 October 2002, p. 27.

<sup>ii</sup> Surnames without sources indicated refer to chapters of this book.

<sup>iii</sup> Bartlett, W., 2002, *The EU-Croatia Stabilisation and Association Agreement: A stepping Stone to Membership or Semi-Permanent Satellisation?*, paper given at the conference *Amadeus, European Enlargement to Eastern European Countries: Which Perspectives*, University of Marne-la-Valle, 13-14 June 2002.

<sup>iv</sup> A lecture given by Vaclav Klaus on 24 April 2001 in the Faculty of Economics, Zagreb University.

<sup>v</sup> Joze Mencinger at the conference: "A New Dialogue between Central Europe and Japan, Part Five, The South-East European Countries in Transition, Between Globalisation, Integration and Fragmentation", held 12-14 September 2002 in Zagreb.

<sup>vi</sup> See the excellent Internet site of the MEI, [www.mei.hr](http://www.mei.hr), and the very interesting, clear and popular publications such as *What the Stabilisation and Association Agreement means for Croatia, 100 Questions about European Integration and the Pocket Lexicon of European Integration*.