



European Union (Croatian Accession and Irish Protocol) Bill

[Bill 76 of 2012-13]

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Croatia is expected to join the EU in July 2013. Before that can happen, all existing EU Member States must ratify Croatia's accession treaty. This Bill would allow the UK to do so (there will not be a referendum) and to restrict the right of Croatians to work in the UK after accession. The fundamental questions are whether Croatia is ready to join the EU, and what impact its accession would have on the UK.

The Bill would also cover the Protocol to the Lisbon Treaty put forward by the Irish Government (giving guarantees over its concerns about the right to life, family and education, taxation and military neutrality) although this is not part of the accession treaty.

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Summary

Croatia is expected to join the EU on 1 July 2013 – the second former Yugoslav state to accede (the first was Slovenia). But is it ready? And what will the impact be on the UK?

The European Commission is satisfied that Croatia's reforms are for the most part secure and that it will (or in some areas "should") be ready to join the EU by July 2013. But the Commission is still monitoring Croatia's progress and issuing progress reports every six months. Its major concerns are around the judiciary and fundamental rights (given a new emphasis after the last accession), war crimes, corruption and shipyards, where it considers that increased efforts are needed.

On the one hand there is some political pressure for a speedy accession to give the enlargement project in the Western Balkans a boost, and on the other there is a desire to avoid admitting Croatia before it is fully ready – the accession of Bulgaria and Romania before those countries were fully ready is still in people's minds. Moreover, some regional tensions remain over border demarcation, refugee returns and war crimes prosecutions; and Slovenia is threatening once again to block Croatia's accession.

Croatia is one of the more prosperous of the former Yugoslav Republics. However, it was severely affected by the 2008 financial crisis and its recovery since then has been weak, even by Western European standards. As well as the major structural reforms required to make the most of its EU accession, Croatia will need to ensure it has the capacity to absorb the significant increase in funding it stands to receive from the EU budget. The impact on EU finances as a whole will be relatively small: the financial implications of Croatia's membership are expected to constitute less than 1.5% of EU spending for the period 2014-20.

The final stage of Croatia's long accession process is for all existing EU Member States to ratify its accession treaty. Several have already done so, but the UK and some other countries have waited until they saw the results of the Commission's autumn 2012 report on Croatia. The *European Union (Croatian Accession and Irish Protocol) Bill*, which would apply to the whole of the UK and is due to have its second reading debate on Tuesday 6 November, would allow the UK Government to ratify the accession treaty. There will not be a referendum in the UK. The European Scrutiny Committee continues to raise concerns about whether Croatia will be ready by July 2013.

As with previous EU enlargements, the extent to which free movement rights should apply to workers from the new Member State is a central issue for the UK. The Bill allows the UK Government to introduce transitional controls on immigration from Croatia through secondary legislation. The clause in the Bill is very similar to the equivalent section in the Act which preceded Bulgaria and Romania's accession in 2007. The restrictions will have the effect of continuing the employment restrictions which currently apply to Croatians.

The Government has not published an assessment of how many Croatian migrants will come to the UK, but its Impact Assessment of the Bill suggests that the extent of migration could be low in the short term. However, the case of Lithuania, which is less populous than Croatia, indicates that even relatively small countries can generate substantial migration flows: the number of Lithuanians resident in the UK has increased from 14,000 to 128,000 since accession. In presenting the case for transitional controls, the Home Office acknowledges that, with open or partial restrictions, there could be 'significant flows of potential workers', based on past experience. Research on the effects of past migration from new EU Member States to the UK generally finds little to no overall effects on non-migrant employment, wages and living standards. There is some evidence, however, that the greater willingness of migrants to undertake temporary work involving long or unsocial hours has led to employers offering more jobs under conditions that are not attractive to non-migrant low-skilled workers.

As the accession process nears completion, the EU is adapting its institutions for Croatia's accession, to give the new Member State equal representation.

In the light of its experiences with Croatia, the European Commission is thinking about how to improve the way it tests whether candidate countries are ready to join the EU. But no other country is likely to join in the next few years.

The Bill would also cover the Protocol to the Lisbon Treaty put forward by the Irish Government (giving guarantees over its concerns about the right to life, taxation and military neutrality) although this is not part of the accession treaty. Neither the Czech Protocol nor the provision on maintaining one Commissioner per Member State forms part of this Bill despite some suggestions that they would.

1 Is Croatia ready to join the EU?

1.1 Overview

The negotiations are complete, the [accession treaty](#)¹ signed, and the date set: Croatia is due to join the EU in July 2013. But is it really ready? And if it is not, what will be done?

The European Commission – which is still monitoring Croatia’s progress – considers that Croatia is ready in some areas, expected to be ready by July 2013 in others, and “should” be ready in further areas if it makes increased efforts.

The UK government agrees, and feels ready to start the process of ratifying Croatia’s accession treaty. It has long been supportive of EU enlargement,² and explicitly supports Croatia’s accession:

The UK and Croatia agree that Croatia’s accession as the European Union’s 28th Member State offers an unparalleled opportunity for both countries to forge stronger links between our governments, businesses and people. We are confident that Croatia’s accession will be a success, and once the last remaining issues as outlined in the European Commission’s October report have been addressed, Croatia’s accession will clearly demonstrate that, despite the economic crisis, EU enlargement remains as relevant as ever.³

However, others are concerned that Croatia – which has faced the toughest accession process so far – could be admitted before it has a track record of implementing reforms and is fully prepared to take on the obligations of EU membership.⁴ These concerns follow the admission of Bulgaria and Romania before they were fully ready for membership, and reflect the difficulties of enforcing reform once a country has joined the EU.

Croatia’s accession negotiations encountered particular problems over the judiciary, organised crime and corruption, competition policy particularly in steel and shipyards, refugee returns, war crimes prosecutions (both domestic and at The Hague), a border dispute with Slovenia, and using EU funds.

1.2 What is the test?

Croatia’s accession process – described on pages 20-24 below – has been tougher than for any previous candidate country. But the EU’s decision to close negotiations in June 2011 was not a sign that Croatia was ready at that point. Instead, it reflected a judgment that Croatia would (probably) be ready two years later. Croatia was given an accession date of July 2013, and lists of areas where further measures were needed before that date. Meanwhile its accession treaty was completed and signed.

Although to some extent Croatia’s accession is therefore a *fait accompli*, the Commission does have a power to impose “appropriate measures” if Croatia does not make enough progress (see pages 6-7 below); and many Member States have yet to ratify the accession treaty.

The UK’s Minister for Europe, David Lidington, has suggested several tests for whether it is appropriate to proceed:

¹ [Accession Treaty: Treaty concerning the accession of the Republic of Croatia](#), 14409/11, 7 November 2011

² See for example [HC Deb 22 November 2011 cc233, 242](#)

³ FCO, “[UK and Croatia welcome Croatia’s progress towards EU accession](#)”, 17 October 2012

⁴ See for example [House of Commons European Scrutiny Committee, Thirty-fourth report, HC 428-xxx 2010-12, 22 June 2011, ch 18](#)

- “whether Croatia will be able to assume in full the obligations of EU membership from the date of its accession”⁵
- “whether by July 2013, on the basis of the evidence that we have so far and the intent declared by the Croatian leadership so far, Croatia will be in a position to move smoothly towards accepting all the responsibilities of EU membership”⁶
- “Croatia should fully meet EU requirements across the board, and particularly over chapter 23, by the time of accession, and we are determined to see that there is no backsliding”⁷

He has also said that “It seems to me that Croatia knows that it must address thoroughly all the concerns of the member states if it is to secure ... full ratification.”⁸

A constant refrain is that Croatia should show a track record of practical implementation of new measures. This shows the desire to see sustainable, proven systems, implicitly acknowledging the difficulty of pushing for further reforms after accession.

1.3 Continued EU monitoring

Pre-accession monitoring

The accession treaty specifies that between the end of negotiations and Croatia’s accession, the European Commission will continue to monitor and report on how the country is implementing its commitments.⁹ It is clear that Croatia is expected to do more work to embed its recent reforms and to implement any outstanding reform requirements.

The treaty mentions certain commitments in particular:

1. To continue to ensure effective implementation of its Judicial Reform Strategy and Action Plan.
2. To continue to strengthen the independence, accountability, impartiality and professionalism of the judiciary.
3. To continue to improve the efficiency of the judiciary.
4. To continue to improve the handling of domestic war crimes cases.
5. To continue to ensure a sustained track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels including high level corruption, and in vulnerable sectors such as public procurement.
6. To continue to improve its track record of strengthened prevention measures in the fight against corruption and conflict of interest.
7. To continue to strengthen the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities (CARNM).

⁵ [HC Deb 22 November 2011 c238](#)

⁶ [HC Deb 22 November 2011 c255](#)

⁷ [HC Deb 22 November 2011 c238](#)

⁸ [HC Deb 22 November 2011 c239](#)

⁹ [Act concerning the conditions of accession of the Republic of Croatia](#), 14409/11, 7 November 2011. See also European Council, [Conclusions – 23/24 June 2011](#), EUCO 23/1/11, REV 1; CO EUR 14; CONCL 4, 29 September 2011

8. To continue to address outstanding refugee return issues.
9. To continue to improve the protection of human rights.
10. To continue to cooperate fully with the International Criminal Tribunal for the former Yugoslavia.

There are also specific requirements for Croatia to restructure its shipbuilding industry¹⁰ and steel sector.¹¹

The Commission is reporting every six months on Croatia's progress in these and other areas. Its latest report, published in October 2012, is described as 'comprehensive' (rather than interim), and will be followed by a final report in the spring of 2013. Some countries – including the UK – were waiting for the autumn report before ratifying Croatia's accession treaty.¹²

In May 2012 the UK's Minister for Europe, David Lidington, said that in the autumn report he would be looking for "significant further progress":¹³ "practical evidence of sustained reform across all areas" and "accelerated reform on the three chapters of particular importance" highlighted by the Commission's April 2012 interim report.¹⁴ The April report had concluded that Croatia had made good progress and was "broadly on track in its preparations for membership" in the three most controversial areas – competition policy, judiciary and fundamental rights, and freedom, security and justice – but that further effort was required.¹⁵

The [Commission's autumn report on Croatia's progress](#)¹⁶ confirms that Croatia continues to meet the political criteria for joining the EU, though continued efforts are needed in some areas. It describes Croatia as a functioning market economy which "should" be able to cope with EU competition and markets if it vigorously implements "urgently needed structural reforms". The report outlines the progress that has been made since the last monitoring reports, but identifies five areas where further or increased efforts are still needed:

- preparations for future EU structural funds in order to ensure their proper management;
- restructuring the Croatian shipbuilding industry to meet EU competition rules;
- strengthening the rule of law through continued implementation of Croatia's commitments to further improve public administration and the justice system;
- preventing and fighting corruption effectively; and
- managing external borders.

It also sets out twelve specific tasks in these areas for Croatia "in the coming months":

1. Sign the privatisation contract for Brodosplit shipyard and take the necessary decisions to find a viable solution for the shipyards 3.Maj and Brodotrogir in order to complete the restructuring of the Croatian shipbuilding industry.

¹⁰ [Act concerning the conditions of accession of the Republic of Croatia](#), 14409/11, 7 November 2011, Annex VIII

¹¹ *Ibid* Annex IX

¹² "[Monitoring report: Croatia 'on track' for 2013 accession](#)", *Europolitics*, 24 April 2012

¹³ Letter from the Secretary of State for Justice and the Minister for Europe, 9 May 2012, quoted in House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii, para 1.45

¹⁴ David Lidington, Explanatory Memorandum of 8 May 2012, quoted in House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii, para 1.44

¹⁵ European Commission, [Monitoring report on Croatia's accession preparations](#), 24 April 2012, p12

¹⁶ European Commission, [Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership](#), COM(2012) 601, 10 October 2012

2. Implement the immediate and advance on the short-term measures elaborated in September 2012 for increasing the efficiency of the judiciary and reducing the court backlog.
3. Adopt the new enforcement legislation, in order to ensure the execution of court decisions and reduce the backlog of enforcement cases.
4. Establish the Conflict of Interest Commission so that it starts its regular working activities.
5. Adopt the new law on access to information, in order to strengthen the legal and administrative framework in the area of access to information.
6. Complete the adoption of related by-laws, to ensure the implementation of the police law
7. Complete the construction of border crossing points at the Neum corridor.
8. Achieve the established recruitment target for border police for 2012.
9. Finalise and adopt the migration strategy, clearly defining measures for the integration of the most vulnerable groups of migrants.
10. Increase the capacity to translate and revise the acquis such that this task can be completed in time for accession.

In addition, particular attention should be paid by Croatia, in the field of agricultural and rural development, to complete the alignment of the legislation on direct payments and the accreditation of the paying agency for direct payments by the end of 2012 at the latest.

In view of the recent substantial restructuring of the public administration, and the additional responsibilities related to EU membership, Croatia should also take immediate steps to address administrative capacity constraints identified in the Comprehensive Monitoring Report and ensure that the completion of preparations for EU-membership is not affected.¹⁷

Both the Commission and the UK government still expect Croatia to be ready for accession on 1 July 2013. But by contrast the House of Commons European Scrutiny Committee considers it “doubtful” that Croatia will by July 2013 have reached the state which the Commission is still seeking of Bulgaria and Romania.¹⁸

“Appropriate measures”

The implications of an unfavourable report on Croatia in the run-up to accession are not clear.¹⁹ There is no explicit mention in the treaty of allowing a delay, for instance. It simply allows the Council to “take all appropriate measures”, and lift them when concerns have been “effectively addressed”:

The Council, acting by qualified majority on a proposal from the Commission, may take all appropriate measures if issues of concern are identified during the monitoring

¹⁷ European Commission, *Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership*, COM(2012) 601, 10 October 2012, p19

¹⁸ House of Commons European Scrutiny Committee, *Croatia: monitoring the accession process*, 26 October 2012, HC 86-xvii, para 1.86

¹⁹ See “Dobrodošli na Hrvatska/A warm EU welcome to Croatia”, *Financial Times Brussels blog*, 30 June 2011

process. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted by the Council, acting in accordance with the same procedure, when the relevant issues of concern have been effectively addressed.²⁰

The Commons European Scrutiny Committee argued that this was not reassuring:

the notion of further "appropriate measures", rather than providing reassurance, strongly suggested to us at least that the deal was effectively done.²¹

It felt that Croatia should not proceed until it was "ready beyond doubt" for accession:

In our estimation ... the need was not to see accession as a matter of saving face or sending a signal to the other Balkan countries, but about sending the right signal; and this would not be achieved were conditionality to be compromised in any way, as it had been in previous accessions. Post-accession measures had not worked hitherto, and we saw no reason to believe that they could be made to work in future. The need, and the best signal, was for Croatia to be ready beyond doubt for accession in 18 months' time.²²

Once a country has been admitted to the EU, there is much less incentive for it to meet EU demands, as can be seen for example in the cases of Bulgaria, Romania and Cyprus.

Post-accession safeguard clauses

Unlike with Bulgaria and Romania, the Commission's monitoring will not continue after Croatia's accession.

The 'co-operation and verification' system devised for Bulgaria and Romania has not been a success, according to Mr Lidington:

Whether one talks with political leaders in those countries or in some of the older member states, one finds a common recognition that that was a very unhappy way for those negotiations to turn out and that it left those two countries feeling that they are being treated as second-class members, even though their accession treaties have been negotiated, signed and ratified by everyone. It has left some of the older member states feeling that the decision to allow Romania and Bulgaria to accede was agreed without all the standards being adequately met.²³

The two countries have not yet fully met their obligations in the fields of judicial reform, corruption and organised crime; and have little incentive to do so despite continued monitoring.

Although Croatia will not have a specific monitoring mechanism like Bulgaria and Romania, there are three "safeguard clauses" and various transitional provisions in Croatia's accession treaty which can apply for several years after accession.

The safeguard clauses are designed to deal with difficulties that might be encountered as Croatia becomes a member of the EU. They could allow Member States to impose protective measures, or allow the EU to suspend specific rights for Croatia. They could be

²⁰ [Act concerning the conditions of accession of the Republic of Croatia](#), 14409/11, 7 November 2011, Article 36

²¹ House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii, para 1.15

²² House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii, para 1.21

²³ David Lidington, [HC Deb 22 November 2011 c240](#)

applied up to three years beyond accession, and continued for as long as strictly necessary. There are three safeguard clauses:

- General economic safeguard clause: aims to deal with adjustment difficulties which any sector of the economy, or the economy of a given area, in either old or new member states.
- Specific internal market safeguard clause: covers all sectoral policies involving economic activities that take place across borders, and can also be invoked in case of threats to the financial interests of the EU. Can be applied *vis-à-vis* Croatia only.
- Specific Justice and Home Affairs safeguard clause: covers mutual recognition in the area of criminal law and civil matters. Can be applied *vis-à-vis* Croatia only.²⁴

A European Commission guide describes the transitional provisions for each of the negotiating 'chapters' in detail. For instance Croatia can keep its restrictions on European citizens buying agricultural land for up to seven years from the date of accession, with the possibility of a three-year extension; and certain Croatian fishermen may continue to use bottom trawling²⁵ in specified waters until 30 June 2014.

1.4 Concerns over the judiciary, war crimes, corruption and shipyards

Judiciary and fundamental rights

Issues around the judiciary and fundamental rights have been particularly thorny, for Croatia and for previous accession countries.

One way in which the European Commission and the Member States sought to avoid Bulgaria and Romania's 'conditional' accession was to introduce a detailed new negotiating chapter on judiciary and fundamental rights. This applied for the first time to Croatia and Turkey. For Croatia the new chapter 23 had 31 'benchmarks' (compared with between three and six for most other chapters) covering:

- judicial transparency, impartiality and efficiency;
- corruption and organised crime;
- minority and other rights;
- refugee return issues; and
- full cooperation with the ICTY.²⁶

Although some of these were previously covered by the justice and home affairs chapter, the signal was that respect for fundamental rights was no longer just a prerequisite for starting accession negotiations, but would also be tested in the ongoing assessment of whether a candidate country was able to "take on the obligations of membership".²⁷ The European Commission and Member States have been particularly concerned that Croatia show

²⁴ European Commission Directorate General for Enlargement, *Information on the Results of the EU Accession Negotiations with Croatia*, November 2011, p28

²⁵ Bottom trawling is the technique of dragging a large net along the sea floor. The European Commission has proposed a ban on bottom trawling in certain deep sea fisheries in order to protect the fish stocks there and to protect the environment.

²⁶ See *European Scrutiny Committee, 1st Report, 21 September 2010, HC 428-I 2010-12, para 65.15*

²⁷ "Fundamental rights and EU membership: Do as I say, not as I do?", Editorial comment, *Common Market Law Review* vol 49, 2012, pp481-8

tangible and sustainable reforms in these areas, to protect the credibility of the EU's enlargement process in the face of other political pressures to make progress.²⁸

Negotiations on chapter 23 were opened in June 2010, and closed in June 2011 when the Commission deemed Croatia's reforms to be sustainable. But despite much progress, it is clear that Croatia is expected to do more work to embed its recent reforms and to implement the outstanding reform requirements.²⁹ The European Commission found in the spring of 2012 that Croatia was still behind in several important areas, although the new government was committed to reform. The House of Commons debated on [22 November 2011](#) whether Croatia had made enough progress on judicial reform and corruption. Specific reforms still needed in autumn 2012 are to:

- implement and advance on measures set out in September 2012 for increasing the efficiency of the judiciary and reducing the court backlog
- adopt the new enforcement legislation, in order to ensure the execution of court decisions and reduce the backlog of enforcement cases.

The number of civil, commercial and enforcement cases outstanding in the courts has increased in 2012³⁰ – not a good indication of sustainably implemented reforms.

There is a paradox here. Accession countries are now required to meet conditions which are not expected of existing Member States. The conditions of [chapter 23](#) (for accession countries) are broader than the list of fundamental rights connected to [Article 2 of the Treaty on European Union](#) or the EU Charter of Fundamental Rights (for existing Member States), and are monitored much more rigorously. Is the EU seeking to compensate for the lack of teeth in its internal fundamental rights policy by imposing conditions on accession countries, against whom it has more power? And to what extent are pre-accession achievements a guarantee against regressions by a new Member State once it has joined the EU?³¹

War crimes cases

The transfer of war crimes suspects to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague was a prerequisite for the formal start of the EU negotiations. Though they included Croats who were considered by many to be national heroes, all indicted suspects were extradited. In April 2011, the ICTY convicted two generals, Ante Gotovina and Mladen Markac. There was a public outcry, but no mass protests.

The ICTY Prosecutor's latest report to the UN Security Council does not show any dissatisfaction with Croatia's cooperation:

The Office of the Prosecutor continues to rely on Croatia's cooperation to efficiently complete trials and appeals. In the current reporting period (as at 14 May 2012), the Office sent 18 requests for assistance to Croatia. The Croatian authorities have given timely and adequate responses to the requests made and it has provided access to

²⁸ European Commission, *Interim report from the Commission to the Council and the European Parliament on reforms in Croatia in the field of Judiciary and Fundamental Rights (Negotiation Chapter 23)*, COM(2011) 110, 2 March 2011, p2

²⁹ See *Act concerning the conditions of accession of the Republic of Croatia*, 14409/11, 7 November 2011, Annex VII

³⁰ European Commission, *Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership*, COM(2012) 601, 10 October 2012, pp3 and 8

³¹ See "Fundamental rights and EU membership: Do as I say, not as I do?", Editorial comment, *Common Market Law Review* vol 49, 2012, pp481-8

witnesses and evidence as required. The Office will continue to rely on Croatia's cooperation in upcoming trials and appeals.³²

However, the European Scrutiny Committee disputes the Government's view that Croatia is fully cooperating with the ICTY.³³ Croatia has still not found a series of missing military documents repeatedly asked for by the ICTY.³⁴ And the ICTY Prosecutor has raised concerns about a law adopted by the previous government of Croatia³⁵ that would have the effect of annulling indictments for war crimes by citizens of Croatia. The Croatian constitutional court is reviewing the law.³⁶

The European Scrutiny Committee suggests that Croatia is falling well short of fully meeting EU requirements in its domestic prosecution of war crimes cases. The majority of war crimes have yet to be pursued, and "continuous attention" is needed on the issue of witness protection and attendance of witnesses in war crimes trials.³⁷

Corruption and organised crime

Although the Croatian government had started to take meaningful steps against corruption after Prime Minister Ivo Sanader's resignation in 2009 – described by the *Financial Times* as a "spectacular anti-corruption drive" – corruption remains a serious problem in Croatia. It was a major issue in the December 2011 elections, and popular anger over corruption was evident in the protests that preceded the elections. Both main parties pledged to fight corruption in their election campaigns.

Sanader's trial on charges of corruption has begun in Zagreb. The former prime minister pleaded not guilty and dismissed the charges against him as a "fabrication". He is alleged to have received over £400,000 for arranging a loan from the Austrian Hypo Bank in 1995.³⁸ However, the European Scrutiny Committee argues that this trial "does not necessarily, in and of itself, indicate progress (c.f. developments of a similar nature in the Ukraine)".³⁹

Croatia's office for fighting organised crime, USKOK, has reportedly begun an investigation into Sanader's HDZ party. The allegations concern money collected for parliamentary elections campaigns during the 2003 and 2007 elections and for the presidential election campaign in 2005, when the HDZ's subsequent leader, Jadranka Kosor (who later became Prime Minister of Croatia), was its presidential candidate.⁴⁰

³² [Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council](#) under paragraph 6 of Security Council resolution 1534 (2004), S/2012/354 Annex II, 23 May 2012, p31

³³ House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii, paras 1.53-1.54 and 1.77-1.81

³⁴ European Commission, [Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership](#), COM(2012) 601, 10 October 2012, p12

³⁵ [Law on invalidation of certain legal acts of the judicial bodies of the former Yugoslav National Army, the former Socialist Federal Republic of Yugoslavia and the Republic of Serbia](#)

³⁶ [Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council](#) under paragraph 6 of Security Council resolution 1534 (2004), S/2012/354 Annex II, 23 May 2012, p34

³⁷ European Commission, [Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership](#), COM(2012) 601, 10 October 2012, p9

³⁸ "Croatia ex-PM Ivo Sanader denies corruption at trial", *BBC news online*, 3 November 2011

³⁹ House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii, para 1.38

⁴⁰ "HDZ Probed Over Campaign Money Ahead of Elections", 27 October 2011

The Commission's latest monitoring report notes various practical improvements in its fight against corruption and organised crime, such as law enforcement bodies being active on higher-level corruption cases, and good police cooperation. But Croatia has not set up the promised Conflict of Interest Commission, and has overturned a previous reform. Moreover, the overall number of cases being handled is falling.⁴¹

A further issue is weaknesses in border management: Croatia's border with Bosnia and Herzegovina will be one of the longest in Europe, posing challenges to EU security, and Croatia has so far made only moderate progression.⁴²

Again, these make it harder for Croatia to show a good track record of implementing reforms.

Competition policy and Croatia's shipyards

The accession treaty includes specific requirements for Croatia to privatise its shipbuilding industry⁴³ and steel sector.⁴⁴ Whilst Croatia appears to be meeting the requirements for the steel sector, its ailing shipyards are in need of urgent attention.

If Croatia's shipyards are not privatised before accession, they will have to repay up to €2 billion of state aid,⁴⁵ in order to comply with EU competition law. The accession treaty specifies in some detail what it expects of Croatia, but progress has been mixed. The Croatian government – keen to keep shipyard workers employed as far as possible – is going ahead with the sale of one shipyard (*Brodosplit*) and has decided to initiate bankruptcy proceedings for another (*Kraljevica*). But bids for two other shipyards were either rejected by the government (*Brodotrogir*) or withdrawn (*3.Maj*). The Croatian government is looking for new privatisation and restructuring arrangements for these two shipyards, but time is running out. In its October 2012 accession monitoring report, the European Commission described the restructuring of these two shipyards as “a matter of urgency in order to fulfil the requirements of the Treaty Annex”.⁴⁶

Croatia has also asked for four additional aid measures to be considered as existing aid at the date of accession, but has not yet provided enough information for the Commission to complete its assessment.⁴⁷

1.5 Croatia's relations with its neighbours

Regional cooperation was one of the EU's requirements. Croatia has therefore had to improve relations with countries with which it was at war twenty years ago. It is now being hailed as a model to its Balkan neighbours, but several bilateral and regional issues remain.

⁴¹ European Commission, *Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership*, COM(2012) 601, 10 October 2012, pp9-10

⁴² See European Commission, *Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership*, COM(2012) 601, 10 October 2012, pp13-14

⁴³ *Act concerning the conditions of accession of the Republic of Croatia*, 14409/11, 7 November 2011, Annex VIII

⁴⁴ *Act concerning the conditions of accession of the Republic of Croatia*, 14409/11, 7 November 2011, Annex IX

⁴⁵ “Monitoring report: Croatia 'on track' for 2013 accession”, *Europolitics*, 24 April 2012

⁴⁶ European Commission *Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership*, COM(2012) 601, 10 Oct 2012

⁴⁷ European Commission, *Communication from the Commission to the European Parliament and the Council on the Main Findings of the Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership*, COM(2012) 601, 10 October 2012, pp6-7

War crimes prosecutions, refugee returns, missing persons and stolen property are still challenges to regional reconciliation.⁴⁸ Croatia has filed a lawsuit for genocide against Serbia before the ICJ based on the war crimes that took place in Vukovar in 1991; Belgrade answered with a countersuit based on the Croatian military operation 'Storm' in 1995. However, both Croatian and Serbian presidents have apologised for atrocities committed during the war in Croatia, and Croatia's president, Ivo Josipovic, spoke to the Bosnian parliament of his deep regret at Croatia's contribution to the destruction, killing and suffering in the war in Bosnia. Croatia has taken significant steps to remove obstacles to Serb refugees returning to Croatia, and Serbia and Croatia have announced they will sign a protocol in November 2012 on continuing bilateral cooperation over EU integration and other areas.⁴⁹



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Source: *University of Texas*

⁴⁸ See Lucia Vesnic-Alujevic, *European Integration of Western Balkans: From Reconciliation To European Future*, Centre for European Studies, 2012

⁴⁹ "Serbia, Croatia to Renew Cooperation Protocol", *Balkan Insight*, 22 October 2012

The maritime border dispute with Slovenia – which is already an EU Member State – that threatened to derail Croatia's EU accession is now being resolved. Croatia and Slovenia signed an agreement on 9 November 2009 to let international arbitrators rule on it, following which Slovenia stopped blocking Croatia's EU negotiations. The arbitration tribunal held its first meeting on 13 April 2012 and the first substantive hearing will be in the spring of 2014.⁵⁰ The result will be binding on both parties.

However, Slovenia has now threatened to block ratification of Croatia's accession treaty over the matter of Croatian savings accounts in the now-defunct Ljubljanska Banka. Ljubljanska Banka went bankrupt in the 1990s with €172 million belonging to Croatian savers. Two Croatian banks have filed lawsuits against Ljubljanska Banka's reincarnation, the Nova Ljubljanska Banka, to get the money back, but Slovenia says the case should be settled as part of a wider Yugoslav-break-up deal being brokered by the Bank of International Settlements in Switzerland. Croatia's Foreign and European Affairs Minister Vesna Pusić said after a meeting in London that Croatia was working with Slovenia to resolve the case: "It would be important for all-round relations with Slovenia that it not be the last of the 27 member countries to ratify the accession treaty".⁵¹

Croatia also has border demarcation issues with Serbia, Montenegro and Bosnia and Herzegovina, although Montenegro and Croatia have agreed to solve their sea border dispute by allowing the International Court of Justice (ICJ) to act as an intermediary. An additional issue with Bosnia concerns the Bosnian town of Neum, which splits the southernmost region of Croatia (containing the historic port of Dubrovnik) from the rest of the country. This creates border control issues, particularly following Croatia's EU accession; a Croatian plan to build a bridge from the area is on hold as it could block Bosnia's only access to the sea. There is also a dispute between Croatia and Serbia over control of navigation on the Danube.

The Croatian Parliament issued a declaration in October 2011 setting out its commitment to supporting the other countries of the region in the process of EU integration and stating that bilateral border disputes should not be used to block EU accession negotiations.⁵²

Croatian accession could have a negative impact on trade with countries that do not meet EU standards. In the spring of 2012 it was reported that Bosnia – which exports most of its milk to Croatia – might ask for special concessions to allow it to continue to export meat and dairy products to Croatia even though they do not yet meet EU hygiene standards.⁵³

⁵⁰ European Commission, *Comprehensive Monitoring Report on Croatia*, COM(2012) 601, 10 October 2012, p9

⁵¹ "Great Britain supports Croatia's accession to the European Union", Croatian Ministry of Foreign and European Affairs press release 349/2012, 17 October 2012

⁵² Croatian Parliament, *Declaration on the promotion of European values in south-eastern Europe*, Official Gazette No 121/11, 21 October 2011

⁵³ "Bosnia May Ask Croatia for Export Concessions", *Balkan Insight*, 4 April 2012. See also "BiH has to improve its standards if it wants to continue its goods export to Croatia", *South-east-Europe Business*, 28 March 2012

2 The Croatian economy⁵⁴

By Gavin Thompson

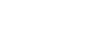
Although it is relatively prosperous by eastern European standards, some argue that Croatia still needs major economic reforms to reap the trade and investment benefits of EU accession. There are also concerns that it will struggle to use all the EU funding to which it will become entitled.

2.1 History

One of the more prosperous of the Yugoslav Republics, Croatia saw rapid industrial development in the decades following the Second World War. During the 1980s, however, uncontrolled wage increases and government borrowing led to inflation and high international indebtedness. These problems were exacerbated by the outbreak of war in 1991 and by the loss of markets and business connections following the disintegration of Yugoslavia. The replacement of the *dinar* with a new currency, the *kuna*, in 1994, and an IMF loans and stabilisation programme, brought about a degree of stability by the mid-1990s. This lasted only until 1998, when the pressures of the fixed exchange rate that underpinned the stabilisation policy, in the context of rapid trade liberalisation, became evident: Croatia's exports could not compete at the fixed rate, foreign debts again accumulated and demand-driven growth went into reverse.

Croatia's economy crisis also exposed the insolvency of parts of its banking sector. The collapse of seventeen small commercial banks in 1998-99 brought about regulatory reforms and a sell-off of most banks to foreign investors: by 2011, 91% of Croatia's financial sector was controlled by Austrian or Italian banks. Their access to international capital markets brought interest rates down, driving credit growth and economic expansion. The Social Democratic Party Government also stimulated growth during its period in office (2000 to 2003) through a large-scale road building programme, and during 2000-08, GDP growth averaged 4.3% per annum. Although political stability during this period helped the development of Croatia's tourism sector, the country's old problem of weak international competitiveness remained unresolved, and its trade and current account deficit increased rapidly during the 2000s, leading once again to growing external indebtedness.

Croatia in 2011: fast facts

GDP, \$bn	62	
Annual average change, %, 2001-11	2.2	
GDP per capita, \$PPP	18,014	
Annual average change, %, 2001-11	4.6	
Population	4.4	
Annual average change, %, 2001-11	-0.3	
Inflation, %	2.3	
Unemployment, %	13.7	
Current account balance, % GDP	-1.0	
Adult literacy, %	98.8	
Under-five mortality, per thousand	5.9	
Life expectancy, years	72.4	

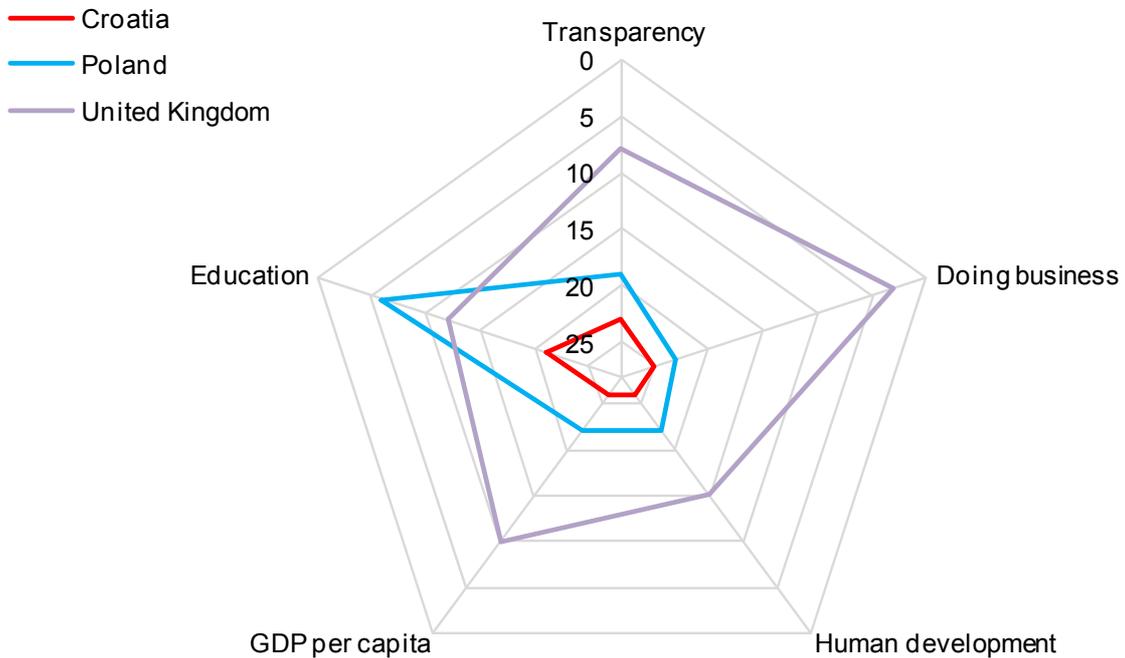
Note: charts show trends since 1993

Sources: IMF *World Economic Outlook* database, October 2012; World Bank *World Development Indicators* 2012

⁵⁴ Unless stated, analysis in this section is based on the staff reports of the IMF's [Article IV assessments](#) of the Croatian economy; the Europa World Plus [economic profile of Croatia](#); and the European Commission 2012 [review of the pre-accession economic programme of Croatia](#).

Key rankings within EU

Chart shows rankings against 27 EU countries plus Croatia, with '1' being the top/most favourably-assessed country

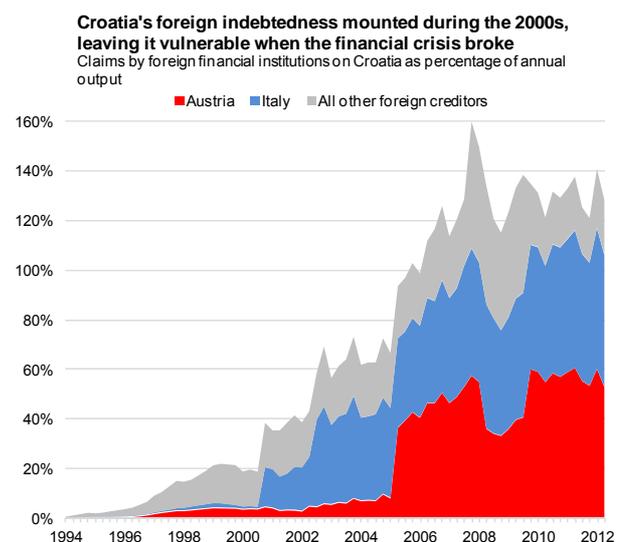


Notes and sources: *Transparency:* Transparency International Corruption Perceptions Index 2011; *Doing business:* World Bank Doing Business 2012; *Human development:* UN Human Development Index 2012 ranking; GDP per capita: ranking based on dollar at purchasing-power-parity; *Education:* OECD PISA 2009 assessment (competence of 15 year-olds in mathematics, reading and science – rank out of 65 countries)

2.2 Developments since the 2008 global financial crisis

Croatia was severely affected by the 2008 financial crisis and its recovery since then has been weaker even than most economies in Western Europe, and has lagged far behind its neighbours. With its past growth dependent partly on a credit boom and inflows of foreign capital, which in turn drove rapid growth in private consumption and construction investment, Croatia was particularly vulnerable to declining global economic confidence. Following the financial crisis, capital inflow turned to capital outflow, credit growth stalled and domestic demand collapsed. The economy shrank by 6.9% in 2009.

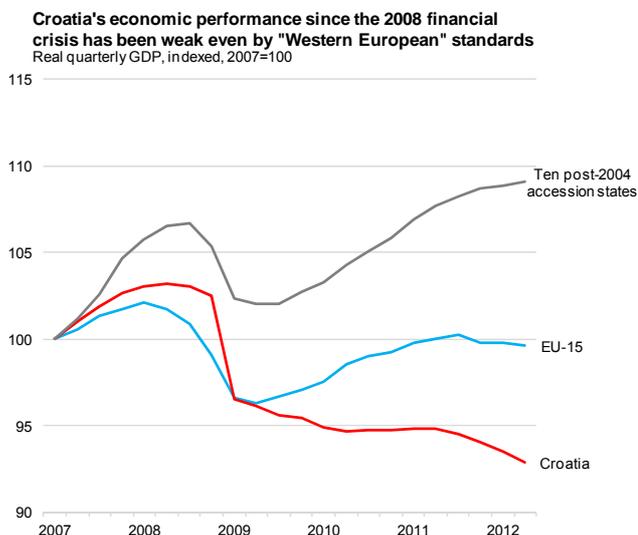
Since then, Croatia's recovery has been weak, as households and businesses continue to pay down the debt accumulated during the boom years, credit conditions remain tight, and the appetite for further investment remains limited by low levels of business and consumer confidence. The economy's deep-rooted competitiveness problems (see



Source: Bank for International Settlements *Consolidated Banking Statistics*

Selected Issues section below) hinder an export-led recovery. Of course, Croatia's economic prospects are further undermined by the eurozone crisis and declining economic activity among its major trading partners (notably Italy and Slovenia). Public sector deficits run throughout the 2000s have left Croatia with limited room to respond fiscally to this protracted stagnation; indeed, in an effort to shore-up confidence in public finances, the Croatian Parliament adopted a Fiscal Responsibility Law in November 2010, which requires continued reductions in public expenditure as a share of output until a budget balance has been reached.

Both the IMF and the European Commission expect the Croatian economy to contract by over 1% in 2012, and to make a slow recovery of 0.8%-1% growth in 2013. A substantial increase in funding from the EU following accession offers some cause for hope of a strong recovery from 2014, though there are concerns about the extent to which Croatia will be able to absorb these grants (see the *Potential benefits of EU accession* section on pages 17-20 below).



Source: Eurostat database

2.3 Key sectors

Two-thirds of Croatia's output is accounted for by services, similar to the average for the former Yugoslav republics and the eight central and eastern European countries that joined the EU in 2004. Tourism is a particularly important industry, accounting for 40% of export revenue and 14% of total output. Taking into account the industries that support the sector, tourism is estimated to contribute around 28% of output and support 20% of employment. Tourism revenues are expected to grow by 7% per year through to 2020, and a key challenge for the sector is to maintain its sustainability by limiting the environmental damage arising from overdevelopment of coastal regions. To counter this, the Government enacted legislation in 2004 to impose strict controls on coastal development, prohibiting new construction within 70 metres of the coastline. Croatia's manufacturing sector is dominated by shipbuilding, chemicals, pharmaceuticals and electrical machinery.

Croatia retains a smallholder agriculture sector that is significant in terms of its employment, accounting for 14% of the labour force, if not its contribution to output. 70% of agricultural land is owned by smallholder family farms, with an average size of 3 hectares, a legacy of socialist-era land reforms that limited the size of private holdings. Poor access to credit and a government subsidy policy that favours large state-owned farms has left this sector underdeveloped and technologically unsophisticated, and few smallholder farms produce a marketable surplus.

2.4 Selected issues

Trade, external competitiveness and foreign debt

By most assessments, Croatia's export industries are relatively uncompetitive and have been so for some time. The country's export growth and penetration into EU markets over the last

decade has been among the slowest in emerging Europe.⁵⁵ Some attribute this to the fact that Croatia's structural reforms have failed to keep pace with those elsewhere in the region.

In particular, the state continues to play a significant role in the parts of the economy (see subsequent section); and small and medium-sized enterprises (SMEs) have been disadvantaged by the subsidies afforded to large businesses, by administrative barriers to start-ups, and by difficulties in obtaining long-term finance. The government has made efforts to improve the business environment in recent years, making subsidised loans available to SMEs, with the help of the European Bank for Reconstruction and Development, implementing the EU Charter for Small Enterprise and reforming business regulation. This has been reflected in improvements in Croatia's rank in the World Bank's annual *Ease of Doing Business* index, which has risen from 118th (out of 155) for 2006, to 80th (out of 185) for 2013. However, in its most recent assessment, the IMF sees Croatia's competitiveness as being held back by high state subsidies hindering competition, by strict labour regulations, and by a welfare system that discourages workforce participation (the economic activity rate in Croatia is 61%, as compared with an EU average of 71%).⁵⁶

A report by the Croatian Competitiveness Council also identified failings in the education system as holding back international competitiveness. At 10% GDP, public expenditure on education is low by eastern European standards, as is tertiary-level enrolment.

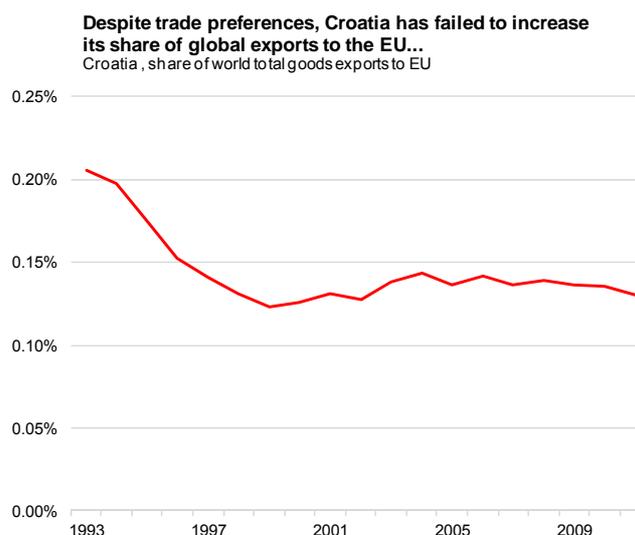
Privatisation and the role of the state

Tainted by high-level corruption in its early days, privatisation in Croatia has proceeded slowly, and the state retains a significant stake in certain sectors: at the start of 2012, the government had majority ownership of 64 companies and held minority stakes in 441. Though the process of privatisation has regained some momentum since 2009 under pressure from the EU, the fact that many of the state-held companies are in financial difficulty makes relinquishing government ownership challenging.

The restructuring of Croatia's state-owned shipyards, a crucial element of the EU accession requirements, has been a particularly drawn-out affair, exposing the difficulties attached to privatisation. It started in mid-2008, with final deadlines for privatisation set for the start of 2009, but is still far from complete (see page 11 above).

2.5 Potential benefits of EU accession

As well as receiving direct net transfers from the EU budget, Croatia can expect to see increased trade with the EU and higher levels of inward investment. However, in order to make the most of its membership, both the IMF and the European Commission believe structural reforms are necessary; these include reducing business regulation, proceeding with the restructuring and privatisation of loss-making state-owned enterprises, and education and public administration reform.



⁵⁵ See [UK/Croatia trade statistics](#), Library Standard Note 6458, 1 November 2012

⁵⁶ The economic activity rate measures the numbers that are employed or actively seeking employment as a percentage of those of working age. Source: Eurostat database

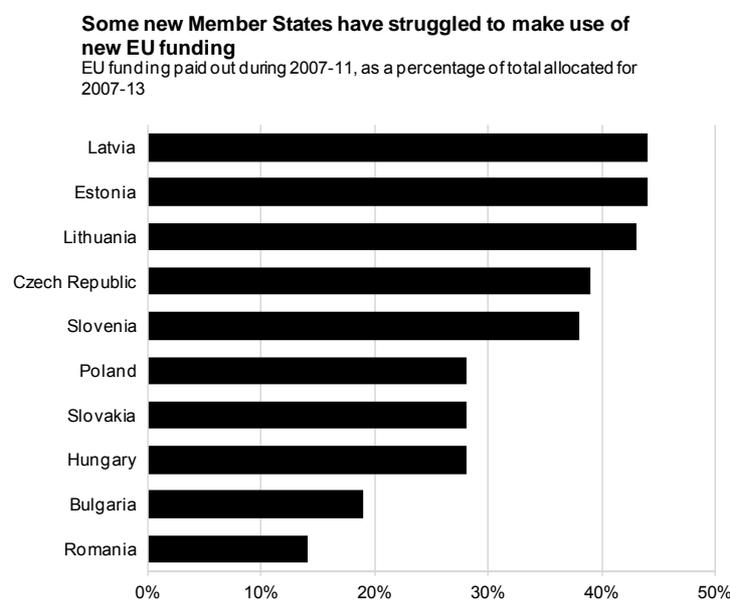
Trade barriers with the EU have already been lowered significantly through the Autonomous Trade Preferences granted by the EU in 2000, and under the trade provisions of the Stabilisation and Association Agreement since 2002. Duties on almost all Croatian exports, with the exception of agricultural products, textiles and steel have been eliminated. Despite this, Croatia's share of total exports to the EU has not increased, and it has run a large trade deficit with it. In the short-term, it is unlikely that this situation will change significantly when the outstanding trade barriers are removed.



Source: Eurostat database

The lower trade costs and greater harmonization that come with accession should also encourage further inward investment in Croatia, although as with the gains from trade, some of the benefits may have already been realised in process leading up to accession. Croatia's relatively high levels of foreign direct investment (FDI) in the past seem to belie the notion that it is uncompetitive and over-regulated: during the 2000s, it saw by far the largest share of FDI inflows to the Western Balkans. However, much of this investment went to 'non-tradable' service sectors (predominantly financial services), rather than tradable sectors like manufacturing. It is direct investment in tradable sectors that is seen as most sustainable and beneficial for export performance,⁵⁷ and it is this sort of FDI that Croatia will be hoping to attract following its accession.

The economic benefits of Croatia's accession will also depend critically on its ability to manage the significant inflow of agricultural, structural and cohesion funding it will receive from the EU after 2013. Indeed, much of the pre-accession EU funding Croatia has received (€150m per annum on average during 2007-13) has been directed towards developing the administrative capacity necessary to manage these funds. Direct funding to activities such as institution building, the setting up of management systems and civil service training, has been supplemented by a 'learning by doing' approach; that is, funding small-scale programmes similar to those Croatia will be implementing



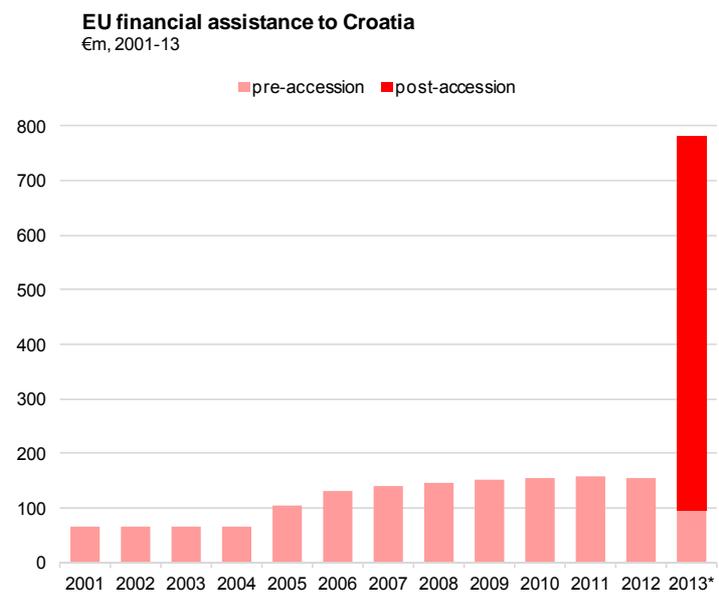
Source: KPMG EU funds in central and Eastern Europe 2011

⁵⁷ See, for instance, IMF Research Bulletin 13(1) *Foreign direct investment and the crisis: is this time different?*, March 2012

with EU funds in the future.⁵⁸ A report by the European Court of Auditors in 2011 concluded that this pre-accession assistance had made a significant contribution to improving Croatia's ability to utilise EU funds, but that further improvements were needed to improve its procurement capacity, and to strengthen anti-corruption processes.⁵⁹

Both Croatian and EU authorities will be keen not to repeat experiences in Bulgaria and Romania, which have experienced problems finding suitable projects for EU funding, complying with the complex requirements for their disbursement, and adhering to anti-corruption rules.⁶⁰ According to the UN Development Programme, the low absorption of EU funds in the post-2004 accession countries also reflects their inexperience in co-operating with the European Commission, NGOs and the private sector to achieve common development objectives and to attract the co-financing necessary to utilise EU funds.⁶¹

EU funding is allocated to regions according to their per capita GDP: those with less than 75% of the EU average count as 'less developed' regions and receive the highest concentration of money. Croatia has been divided into two so-called 'NUTS-2' regions for this purpose: Continental Croatia and Adriatic Croatia. Even though both regions count as less developed, the division has generated some controversy because it includes some areas that are prosperous by EU standards (the per capita GDP of the capital, Zagreb, for instance, is close to the EU average); and those that are very poor (Slavonia's per capita GDP just a third of the EU average). The greater capacity of wealthier regions *within* the NUTS-2 areas to attract EU funds has led to concerns that the money will go to those parts of Croatia best equipped to bid for it, rather than those in greatest need.⁶²



* 2013 figure refers to pre-accession assistance in the first six months and, in the second six months, the proposed financial package for Croatia under the Commission's 2013 draft budget

Sources: European Court of Auditors (2011), Special Report No.14; European Commission *Statement of estimates of the European Commission for the financial year 2013, Annex XI*

The amount of post-accession assistance Croatia will receive will be finalised only once negotiations on the 2014-20 multiannual financial framework (MFF) have been completed,⁶³ although it will unquestionably be a significant net beneficiary of the EU budget, provided it can absorb the funds. The financial implications of Croatia's membership on the 2014-20

⁵⁸ The World Bank has also funded projects to support Croatia's capacity to absorb EU funds. More information is contained in the World Bank's *Croatia country programme snapshot*, October 2012

⁵⁹ European Court of Auditors, *Has EU assistance improved Croatia's capacity to manage post-accession funding?*, Special Report No.14, 2011

⁶⁰ In 2008, the European Commission suspended the right of two Bulgarian agencies to manage EU funds due to failures in meeting EU anti-corruption standards. See, for instance, "EU suspends funding for Bulgaria", *BBC news online*, 23 Jul 2008

⁶¹ UNDP, *Structural funds and the new Member States: lessons learned*, 2006

⁶² See, for instance, "Miffed Croatian region fears unequal access to EU money", *EU Observer*, 15 October 2012

⁶³ The MFF is the EU's long-range financial planning mechanism; it sets the ceilings and priorities for each of the EU's annual budgets over a seven-year period. The current MFF runs from 2007-13.

framework under Commission proposals are shown in the table below; note these are not equivalent to the total transfers Croatia will receive as a result of EU membership, although the two are closely related. The implications of Croatia's membership will not exceed 1.5% of the EU's total spending.

Financial implications of Croatia's membership on the 2014-20 financial framework
€ million

	2014	2015	2016	2017	2018	2019	2020	Total 2014-20
Smart and inclusive growth	1,088	1,295	1,330	1,361	1,395	1,428	1,462	9,359
<i>of which economic, social and territorial cohesion</i>	<i>1,011</i>	<i>1,214</i>	<i>1,244</i>	<i>1,271</i>	<i>1,300</i>	<i>1,329</i>	<i>1,359</i>	8,728
Sustainable growth: natural resources	458	477	488	496	520	542	564	3,545
<i>of which market related expenditure and direct payments</i>	<i>118</i>	<i>134</i>	<i>148</i>	<i>163</i>	<i>193</i>	<i>222</i>	<i>249</i>	1,227
Security and citizenship	88	31	31	31	31	31	31	274
Global Europe	0	0	0	0	0	0	0	0
Administration	80	76	76	76	76	76	76	536
<i>of which administrative expenditure of the institutions</i>	<i>80</i>	<i>76</i>	<i>76</i>	<i>76</i>	<i>76</i>	<i>76</i>	<i>76</i>	536
Compensations	27	0	0	0	0	0	0	27
Total commitment appropriations^a	1,741	1,879	1,925	1,964	2,021	2,078	2,133	13,741
as % of total	1.2%	1.3%	1.3%	1.3%	1.4%	1.4%	1.4%	1.3%
Total payment appropriations^b	550	877	1,284	1,640	1,764	1,941	1,900	9,956
as % of total	0.4%	0.6%	0.9%	1.2%	1.2%	1.4%	1.4%	1.0%

^a Commitment appropriations are the cost of commitments entered into during the years (2014-20) in question (payment of which may arise in years to come)

^b Payment appropriations refer to transfers of cash made to honour commitments (which may have been entered into in previous years)

Source: European Commission *Amended proposal for a Council regulation laying down the 2014-20 financial framework* [COM(2012) 388, 6 Jul 2012]

2.6 Joining the euro

In spite of the euro crisis, Croatia's government has expressed a desire to join the single currency. Euro are already widely accepted in Croatia, and the central bank already intervenes to keep the kuna closely linked to the single currency, which would make for a smooth transition to ERM-II, the 'fixed' exchange rate arrangement that countries must participate in for at least two years prior to euro membership.

However, its public finances are not currently compliant with membership criteria, especially given that debt and deficit rules are likely to be more strictly enforced in the wake of the euro crisis. Indeed, the IMF does not expect Croatia to reduce its deficit below the 3% GDP required to join the euro before 2017. The situation led Croatia's finance minister to admit recently that it was "far" from membership; meanwhile, in an interview in September 2012 with the German magazine *Der Spiegel*, the Croatian Prime Minister said:

We will work our way towards the euro. But will we then introduce it in 10 years? I don't know. If we were to hold a referendum now on the issue, I'm not sure that we would get the support of the Croatians.⁶⁴

3 Croatia's accession process

3.1 Ten years of negotiations

It took four years for Croatia to get from signing a Stabilisation and Association Agreement (SAA) with the EU in 2001 to starting formal negotiations in 2005, and then another six years to complete the negotiations in 2011.

Croatia's 1991 declaration of independence was followed by several years of war that ended with the 1995 Dayton peace agreement. Initial moves towards EU membership were delayed over EU concerns about three main issues: the authoritarian nature of the rule of Croatia's President, Franjo Tudjman of the Croatian Democratic Union (HDZ); the right of

⁶⁴ "Germany Is a Role Model for Us", Interview with Croatian Prime Minister Milanovic, *Der Spiegel*, 17 September 2012

return for refugees; and insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

After Tudjman's death in 1999, a coalition led by the Social Democratic Party (SDP – formerly the League of Communists) came to power. The new government's willingness to cooperate with international agencies on refugee returns and suspected war criminals greatly improved the prospects for EU integration, and in October 2001 Croatia signed its SAA.

In February 2003 Croatia applied to start the formal accession process, a request the European Commission accepted in June 2004 after a satisfactory report from the ICTY on Croatia's cooperation. By now the HDZ was back in power, under Prime Minister Ivo Sanader, although with a centrist President. Accession talks were officially opened in October 2005.

[Croatia's negotiating framework](#) was more demanding than for any previous applicant.⁶⁵ Generally positive progress reports from the European Commission led to suggestions from the European Commission President that Croatia's accession talks might conclude in 2009, coinciding with Croatia's admission to NATO. However, a border dispute with Slovenia, and issues around the judiciary and state corruption, slowed progress. Then Sanader, who had resigned as Prime Minister in July 2009, was arrested in Austria in December 2010 and extradited on corruption charges. His successor, Jadranka Kosor, signed an arbitration agreement with the Prime Minister of Slovenia in November 2009 to resolve the border dispute. The process of opening and closing the 35 negotiating 'chapters' – which are the way the EU's *acquis communautaire*, or body of laws and rules, is divided up into policy areas – then proceeded relatively smoothly.

Timeline

1 July 2013	Croatia set to become EU member after all 27 EU member states ratify Croatia's Accession Treaty
22 January 2012	Croatians vote for Croatia's EU accession in referendum (66% support membership)
9 December 2011	Signing of the EU-Croatia Accession Treaty in Brussels
4 December 2011	Parliamentary elections see the centre-left SDP oust the centre-right HDZ
1 December 2011	European Parliament approves Croatia's accession as the 28th member of the EU
30 June 2011	EU closes association negotiations with Croatia
10 June 2011	European Commission proposes to EU Council of Ministers to close the last four chapters in the accession negotiations with Croatia
4 November 2009	Croatia and Slovenia sign agreement on international arbitration over border dispute; Slovenia lifts its blockade
19 December 2008	Slovenia blocks the closing of five and the opening of 10 of Croatia's negotiation chapters because of a border dispute
3 October 2005	Start of accession negotiations (following postponement due to insufficient cooperation with the ICTY)
1 February 2005	SAA enters into force
20 December 2004	European Council sets 17 March 2005 as launch of negotiations
18 June 2004	Candidate status granted (Brussels European Council)
20 April 2004	EC issues positive opinion ("avis") on Croatia's application
9 October 2003	Croatia submits answers to the EC questionnaire
21 February 2003	Croatia submits membership application
29 October 2001	Stabilisation and Association Agreement (SAA) signed

[Adapted from ESI, [Croatia: basic facts](#) - undated; accessed 31 October 2012]

⁶⁵ See Delegation of the EU to the Republic of Croatia, [EU-Croatia Negotiations](#), [undated; accessed 30 October 2012]

In June 2011 the European Commission recommended that the last four negotiating chapters – including chapter 23 on judiciary and fundamental rights – should be closed, but proposed a two-year delay before Croatia actually joined the EU. The chapters were formally closed on 12 July 2011, and the proposed date for Croatia's accession to the EU is 1 July 2013.

3.2 A new government

Croatia voted in a new governing coalition just before signing its accession treaty.

In parliamentary elections on 4 December 2011 a centre-left led coalition defeated the centre-right party that had governed Croatia for most of the time since the country's 1991 independence. The 'Kukuriku' coalition – led by the Social Democratic Party (SDP)'s Zoran Milanovic – won 80 of the 151 seats in Croatia's parliament, the Sabor. The SDP is the successor to Croatia's communist party, and is now a social democratic party. The other parties in the Kukuriku coalition are the (liberal) Croatian People's Party, the Istrian Democratic Assembly (a regional party), and the Croatian Pensioners' Party (HSU).⁶⁶

The centre-right Croatian Democratic Union (HDZ), and its coalition partners the Croatian Civic Party (HGS) and the Democratic Centre (DC), gained only 47 seats, down from the 66 they had held before. The HDZ is therefore in opposition for only the second time since Croatian independence: it had been in power from 1991 until 2011 (except from 2000 to 2003). In May 2012 it elected a new leader, Tomislav Karamarko, a former ally of Croatia's nationalist first President, Franjo Tudjman.

All the main parties support EU membership. For the last decade "all Croatian governments had proceeded on the assumption that there was no alternative to meeting the conditions put forward by the EU to become a full member".⁶⁷

The 2011 election was preceded by months of anti-government demonstrations. The demonstrations had largely been about official corruption, with the then governing party, the HDZ, being a particular target. The new government is having to deal with a bleak economic situation and tackle the corruption that is still a major problem for Croatia.

3.3 The accession treaty

Croatia's accession treaty⁶⁸ is almost the last stage of the accession process. Like other accession treaties, the main part of the treaty is quite short, providing for the Republic of Croatia to become a member of the EU and party to the EU treaties. The detailed conditions and arrangements for accession are set out in an act of accession and its annexes, which form part of the treaty.

The European Parliament approved the accession treaty on 1 December 2011, and Croatia and all 27 EU Member States signed it on 9 December 2011.

For any EU accession treaty to take effect, it has to be ratified by the accession state as well as by each of the existing EU Member States, according to their own domestic ratification processes:

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant

⁶⁶ "Croatia's Kukuriku Coalition Ousts HDZ", *Balkan Insight*, 5 December 2011

⁶⁷ *European Stability Initiative newsletter*, 26 January 2012

⁶⁸ *Accession Treaty: Treaty concerning the accession of the Republic of Croatia*, 14409/11, 7 November 2011

State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.⁶⁹

Croatia held a referendum on accession (even though it was not constitutionally required) in January 2012. A clear two-thirds majority approved,⁷⁰ although there were some issues about the percentage of eligible voters who participated in the referendum:

Some noted that less than half of all eligible voters participated in the referendum; in fact, given problems with a large number of "dead souls" in the voting registry, and the fact that a large number of Croatian citizens living abroad also did not care to vote, the [percentage of resident voters in Croatia who participated appears to have been above 61 percent and thus higher than in the referenda on EU accession in Hungary, Slovenia and Poland](#). Only 6,123 Bosnian Croats cast ballots - or 2.3 percent of all 413,000 Croatian voters supposedly resident there.⁷¹

As of 30 October 2012, Croatia and 17 of the EU's 27 Member States had completed at least the parliamentary stages of ratifying the accession treaty:

Austria	8 August 2012
Bulgaria	19 April 2012
Croatia	4 April 2012
Cyprus	11 June 2012
Czech Republic	4 July 2012
Estonia	24 October 2012
Hungary	22 March 2012
Italy	10 April 2012
Ireland	8 October 2012
Lithuania	20 June 2012
Luxembourg	10 October 2012
Latvia	6 June 2012
Malta	2 April 2012
Portugal	21 September 2012
Poland	14 September 2012
Romania	2 August 2012
Slovakia	19 March 2012
Spain	24 October 2012 ⁷²

⁶⁹ Article 49, *Treaty on European Union* (as amended by the *Treaty of Lisbon*)

⁷⁰ "Croatia EU referendum: Voters back membership", *BBC news online*, 22 January 2012

⁷¹ *European Stability Initiative newsletter*, 26 January 2012

⁷² [Council of the European Union](#) and [Croatian Ministry of Foreign and European Affairs](#)

This leaves Belgium, Germany, Denmark, France, Greece, Netherlands, Sweden, Finland Slovenia and the United Kingdom. No existing Member State (including the UK) is expected to hold a referendum on Croatia's accession.

Some German politicians are questioning whether Croatia is ready for accession. In October 2012 the President of the Bundestag, Norbert Lammert, told the German newspaper *Welt am Sonntag* that he supported halting the EU enlargement process, including Croatia's impending accession.⁷³ Germany's Foreign Minister Guido Westerwelle said in response to the Commission's autumn report on Croatia that Germany wanted to see Croatia as an EU member and that this decision had already been made, but that Croatia needed to satisfy all criteria and that the country would not be given any privileges.⁷⁴

4 How will the UK ratify Croatia's accession treaty?

Croatia's accession treaty has to be approved by an Act of Parliament in the UK before the Government ratifies it. The Government has stated that no referendum is required. The House of Commons European Scrutiny Committee is continuing its work of looking at Croatia's accession.

4.1 An Act of Parliament is needed

Since the last accession treaty, the UK has changed the way that it ratifies EU treaties. The *European Union Act 2011* continues the existing requirement of an Act of Parliament for ratifying EU treaties, but adds that a referendum is required if a measure seeks to transfer power or competence from the UK to the EU.

The *European Union (Croatian Accession and Irish Protocol) Bill* (Bill 76 2012-13) was announced in the Queen's Speech on 9 May 2012, had its first reading in the House of Commons on 18 October 2012, and is due to have its second reading debate there on 6 November 2012.

This short Bill would allow Parliament to approve Croatia's accession treaty (**clause 1**), and give effect to the treaty in UK law (**clause 3**). The largest section of the Bill (**clause 4**) concerns transitional restrictions to the right of Croatians to work in the UK, for up to seven years after accession (see the *Immigration and benefits* section on pages 26 to 37 below).

The provisions would apply to the whole of the UK from the date of Royal Assent.

4.2 There will not be a UK referendum

The Foreign Secretary, William Hague, made a statement on 2 February 2012 that no referendum is required for Croatia's accession treaty.⁷⁵

Accession treaties do not in principle trigger a UK referendum under the *European Union 2011 Act*.⁷⁶ The Government's explanatory notes on the 2011 Act suggest that there would be no referendum requirement where the only changes made by the accession treaty were those "necessary for and resulting from the accession, for example by amending the number

⁷³ "German MP Warns Croatia Not Ready for Europe", *Balkan Insight*, 15 October 2012

⁷⁴ "Croatia is capable of completing all the tasks set prior to joining the European Union", Croatian Ministry of Foreign and European Affairs press release 345/2012, 15 October 2012

⁷⁵ See [HC Deb 2 February 2012 c77WS](#)

⁷⁶ [European Union Act 2011 s4\(4\)\(c\)](#). See Oonagh Gay and Vaughne Miller, "European Union Bill: HC Bill 106 of 2010-11", House of Commons Library Research Paper 10/79, 2 December 2010, p36

of Members of the European Parliament to accommodate a delegation from the new Member State".⁷⁷

The 2011 Act nevertheless requires an assessment of whether there should be a referendum on an accession treaty, because "it is in theory possible that [an accession treaty] might be used to do more than allow for the accession of a Member State".⁷⁸ For example, there was a suggestion in 2009 that the concession that allowed Ireland to ratify the Lisbon Treaty might be incorporated into the next accession treaty, but this has not happened: the protocol is to be ratified *alongside* Croatia's accession treaty but is not part of it.

William Hague's February 2012 statement concludes that this accession treaty covers nothing other than Croatia's accession:

All of the provisions of the Croatia Accession Treaty relate to the accession of a new member State to the European Union and thus the Croatia Accession treaty as a whole is subject to the exemption provided for in section 4(4)(c) of the Act.

In my opinion the treaty concerning the accession of the Republic of Croatia to the European Union of 9 December 2011 does not fall within section 4 of the Act and no referendum is required in the UK.⁷⁹

4.3 UK scrutiny of Croatia's accession

The UK has been involved in scrutinising Croatia's accession at the EU level and in parliament. While ministers are confident that Croatia will be ready by July 2013 and that if it is not something can be done, the House of Commons European Scrutiny Committee and others are less sure.

The European Scrutiny Committee has published many reports sceptical about Croatia's readiness for membership. Its latest, published on 26 October 2012,⁸⁰ summarises its reports on Croatian accession, and criticises the Government for starting the ratification process before Croatia has been shown to be ready:

Logically, the House should not be asked to ratify the accession treaty until the pre-accession monitoring has been completed, and it has been demonstrated that Croatia is indeed fully prepared. In the meantime, we would have recommended that this latest monitoring report be debated on the Floor of the House, in order to help with that final judgement. That option, however, is not open to us, since the Government has already begun the ratification process.⁸¹

The Committee's reports prompted a Commons debate on the EU's common position on the judiciary and fundamental rights chapter – chapter 23 – of Croatia's accession negotiations.⁸² During that debate, Andrea Leadsom suggested that Parliament should scrutinise Croatia's continued progress more closely, for example in the Foreign Affairs Committee or the Justice Committee as well as the European Scrutiny Committee:

⁷⁷ [European Union Act 2011 Explanatory Notes](#) para 64

⁷⁸ [European Union Act 2011 Explanatory Notes](#) para 64

⁷⁹ William Hague, *Statement under Section 5 of the European Union Act 2011*, February 2012, UP2051 2012-12

⁸⁰ House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii

⁸¹ House of Commons European Scrutiny Committee, [Croatia: monitoring the accession process](#), 26 October 2012, HC 86-xvii, para 1.89. See also, for example, [European Scrutiny Committee, Fifty-first report, 11 January 2012, HC428-xlvi 2010-12 ch 16](#)

⁸² [HC Deb 22 November 2011 cc233-255](#)

There are all sorts of safeguards by which the EU could start to impose sanctions against Croatia if it does not continue in that work. It would be of enormous benefit to this House if the scrutiny of such scrutiny were to take place more broadly within Parliament prior to coming to the Chamber for a debate on a specific motion.⁸³

5 Immigration and benefits

By Pat Strickland

A central concern for the UK is the impact of Croatia's accession on the domestic labour market.

Croatian citizens will acquire EU citizenship – which entails free movement rights – on 1 July 2013 when Croatia joins the EU. But the Croatia accession treaty, like the last two EU accession treaties, allows Member States to continue their existing restrictions on the right to work of citizens of the new Member State for up to seven years.

The UK Government plans to introduce transitional controls on immigration from Croatia through secondary legislation, “based on the likely volume and impact of migration from Croatia”.⁸⁴ The clause in the Bill is very similar to the equivalent section in the Act which preceded Bulgaria and Romania's accession in 2007. The restrictions will have the effect of continuing the employment restrictions which Croatians have currently.

5.1 What free movement rights do EU citizens have?

EU citizens have the right of free movement within in the European Union: this is one of the Union's fundamental principles.⁸⁵ The detailed provisions on free movement and residence rights are set out in EC Directive [2004/38/EC](#),⁸⁶ commonly referred to as the ‘Citizens’ Directive’ or ‘Free Movement of Persons Directive’. It sets out the circumstances in which EU citizens and their family members may move and reside within other Member States; their rights to acquire permanent resident status there; and what restrictions Member States may impose. The Directive was incorporated into domestic legislation by the *Immigration (European Economic Area) Regulations 2006*.⁸⁷

Right to move and right of residence for up to three months

All Union citizens have the right to enter another Member State by virtue of having an identity card or valid passport. This can be for any purpose, and without any conditions or formalities such as entry or exit visas.

Right of residence for more than three months

In order to have certain guaranteed rights attached to their residence in the host country beyond three months (known as the ‘right to reside’), EU citizens must show that they fall into one of the following categories:

⁸³ [HC Deb 22 November 2011 c245](#)

⁸⁴ Cabinet Office, [The Queen's Speech 2012 – Briefing Notes](#), 9 May 2012, p47

⁸⁵ See [Treaty on the Functioning of the European Union](#), articles 20-21,45-48. Provisions relating to the free movement of persons between Member States can be traced back to the original version of the ‘Treaty of Rome’, as well as its subsequent amendments. E.g. Article 3(c) of the 1957 *Treaty Establishing the European Economic Community* identified the free movement of persons as one of the four cornerstones to the creation of a common market between Member States.

⁸⁶ [Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.](#)

⁸⁷ SI 2006/1003 (as amended)

- Worker
- Jobseeker
- Self-Employed person
- Student
- Self-sufficient person
- Permanent resident (a “permanent resident” is a person who has exercised free movement rights in the host EEA state, usually for a continuous period of five years)⁸⁸
- Family member of one of the above

5.2 What has happened in previous enlargements?

‘A8’ countries

Ten countries became Members of the European Union on 1 May 2004: Cyprus, Malta and eight Central and Eastern European accession countries (known as the ‘A8’ countries).⁸⁹ A derogation was included in the accession treaty to allow existing Member States to restrict A8 nationals’ right to work. This allowed existing EU Member States to impose transitional restrictions on the free movement rights of workers from the new Member States.⁹⁰ These transitional restrictions could last for up to five years, or up to seven years in the case of “serious disturbance” to the ‘old’ Member State’s labour market.

The UK did not apply transitional restrictions to A8 workers upon their joining the EU in 2004, but it did require them to comply with a worker registration scheme in order to have a ‘right to reside’ in the UK.⁹¹ Under this scheme, workers had to apply for registration within a month of finding work. After a full year of registered work, individuals would no longer have to register.⁹²

The requirement to register ended on 30 April 2011 (at the end of the seven year transitional period). Since this time, A8 national workers have had the same entitlements in the UK as other EU nationals.

The number of people coming from the A8 countries to the UK was vastly higher than estimated (see pages 30 to 33 below).

‘A2’ countries – Bulgaria and Romania

Romania and Bulgaria (the ‘A2’ countries) acceded to the EU in 2007, and once again, the treaty allowed for transitional restrictions for up to seven years.⁹³ This time the UK did apply transitional restrictions on Bulgarian and Romanian workers’ free movement rights,⁹⁴ with the result that they normally need authorisation *before* they start work. Put simply, highly skilled A2 workers are able to come to the UK if they qualify under the work permit or Highly Skilled Migrant schemes that were in place at the time of Bulgaria and Romania joining the EU. This is because the treaty stipulates that conditions cannot be more restrictive than those which applied when it was signed. Low-skilled A2 workers are limited to two quota-

⁸⁸ In certain circumstances an EEA national (or family member) may be entitled to permanent residence sooner than after five years.

⁸⁹ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia

⁹⁰ No such derogation applied to Cyprus or Malta

⁹¹ The *Accession (Immigration and Worker Registration) Regulations 2004* (SI 2004/1219), now repealed by the *Accession (Immigration and Worker Registration) (Revocation, Savings and Consequential Provisions) Regulations 2011/544*

⁹² Further detail is provided in Library Standard Note 3099, *EU enlargement: workers’ registration scheme*, 15 July 2004

⁹³ *Treaty of Accession for Bulgaria and Romania*, 2005

⁹⁴ Background is given in Library Standard Note 4206, *Immigration from Bulgaria and Romania*, January 2008

based schemes that were in existence at the time of accession to the EU – the Seasonal Agricultural Workers Scheme and the Sector Based Scheme.⁹⁵

As with the A8 nationals, after 12 months of continuous work in the UK, A2 nationals gain full free movement rights and are able to work in the UK without authorisation, on the same basis as nationals of the old Member States.

The UK must lift these restrictions by the end of December 2013 (i.e. within 7 years of their accession to the EU).

5.3 What transitional restrictions will there be for Croatia?

Overview

The overall approach is very similar to that taken for Bulgaria and Romania. The differences reflect the fact that, whilst the work permit scheme applied at the time of the A2 countries' accession, the scheme which will apply at the time of Croatia's accession is the Points-Based-System (PBS). Croatia's accession treaty, like earlier ones, establishes a seven-year transitional period during which the UK can choose whether or not to allow Croatians to work freely in the UK, and states that conditions cannot be more restrictive than those which applied when it was signed.⁹⁶

The Government's Statement of Intent

Once again, Croatia's accession treaty allows for transitional restrictions for up to seven years after accession (with the last two years permitted only in the case of "serious disturbance" to the labour market).⁹⁷ The Government published a [Statement of Intent](#) in October 2012 outlining what transitional restrictions it *expects* to apply, although the detail of the policy will be confirmed when the relevant regulations are made.

Croatians, like Bulgarians and Romanians, will generally have to get authorisation before they can take work. The Statement confirms that the restrictions will have the effect of continuing the employment restrictions which Croatians have currently under the PBS. They would normally need to qualify under Tier 2 of the PBS (skilled workers, who are subject to an overall limit on numbers) or Tier 5 (temporary workers).⁹⁸

There will be a number of exemptions, including for Croatian nationals who meet the criteria for entry in Tier 1 (Exceptional Talent) or the previous Tier 1 (Post Study work, for certain graduates who have studied in the UK). There will also be provision for Croatian students to do part-time and vacation work.

As with previous enlargements, the restrictions cannot apply to self-employed people.

The practical arrangements to achieve the Government's intentions will have to differ from the current ones to some extent to reflect the fact that Croatians will no longer be subject to immigration control. The details are set out in paragraphs 13-22 of the [Statement of Intent](#).

⁹⁵ Further detail is available from the [Bulgarian and Romanian Nationals](#) pages of the UK Border Agency website (accessed 30 October 2012)

⁹⁶ [Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty Establishing the European Atomic Energy Community](#), 14409/11, 7 November 2011, Annex V part 2, 'Free Movement of Persons'

⁹⁷ Annex V of the [Treaty on the Accession of Croatia to the European Union](#)

⁹⁸ Home Office, [Statement of Intent: Accession of Croatia to the European Union: Transitional restrictions on labour market access](#), October 2012, p3

5.4 The Bill

Clause 4 contains a regulation-making power which is very similar to the equivalent power in the Act which covered Bulgarian and Romanian accession.⁹⁹ The regulations may require a Croatian national to be authorised to work and pay a fee for their application. They may also make summary offences both for Croatian nationals and their employers in respect of unauthorised work.

5.5 Access to benefits

By Steven Kennedy

Overview

The situation as regards access to social security benefits and tax credits for Croatian nationals will be similar to that which applied (and which continues to apply) to Bulgarian and Romanian (A2) nationals following the accession of those countries to the European Union in January 2007. These differed slightly from the transitional provisions which formerly applied to A8 nationals between 2004 and April 2011.

A brief outline of the rules on access to UK benefits for nationals of other EU Member States is given below. This is followed by an outline of the rules which applied to A8 nationals, and the rules which still apply to A2 nationals.

“Habitual residence”

Since May 2004 the legislation governing entitlement to certain social security benefits and housing assistance was amended so that a person cannot be ‘habitually resident’ unless they have the ‘right to reside’ in the Common Travel Area (the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland). The benefits covered by the ‘right to reside’ requirement include Income Support, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Pension Credit, Housing Benefit, and Council Tax Benefit, Child Benefit, Child Tax Credit and housing assistance from local authorities.¹⁰⁰

As outlined above (see pages 26 to 27), a person who moves from one EU state to another has a right to reside if they are economically active, or are able to support themselves. This applies to people from the ‘old’ EU countries as well as those from the new ‘accession countries’.

Article 7 of the *Rights of Residence Directive* 2004/38/EC provides that certain groups have the “right of residence” after an initial period of three months. This includes:

- workers or self-employed persons in the host member state, and their families, and
- students attending institutions in the host member state and their families, provided they can support themselves

EU nationals may also have a right to reside straight away as a work seeker, if they can show that they are looking for work and have a “genuine chance of becoming engaged”.

All other groups only have the right to reside if they have enough resources for themselves and their family members not to become a burden on the social assistance system of the

⁹⁹ Section 2 of the *European Union (Accessions) Act 2006* as amended.

¹⁰⁰ Universal Credit is due to replace most means-tested benefits and tax credits for working age families, starting from April 2013. Entitlement to UC will also be subject to the right to reside requirement and the Habitual Residence Test.

host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State.¹⁰¹

A 'worker' has the right of residence – and with it access to benefits and tax credits – for as long as they are in “genuine and effective work”.¹⁰² A person can however retain worker status when they stop working in certain circumstances, e.g. if they are temporarily unable to work because of illness, or have been made unemployed and are looking for work.

EU nationals who have “resided legally” in the UK for a continuous period of five years (or less in certain circumstances) acquire a permanent right of residence and have access to benefits and tax credits on the same terms as UK nationals.

A8 countries

For most workers coming to the UK from one of the countries which joined the EU in 2004, until recently there were further conditions that had to be satisfied. To have a right of residence, most workers from A8 countries had to be in work and registered under the UK Border Agency's Worker Registration Scheme (WRS). They had the right of residence – and with it access to in-work benefits – for as long as they were in registered employment.

Once an A8 national had legally worked in the UK without interruption for 12 months they did not have to register with the WRS and had the same rights and access to means-tested benefits and tax credits as other EU nationals.

An A8 worker must not have been out of work for more than a total of 30 days in the 12-month period. If they had completed 12 months' uninterrupted work they could retain worker status only if they claimed Jobseeker's Allowance (JSA), unless they were temporarily sick or had had an accident which temporarily prevented them working.

As the Worker Registration Scheme ended on 1 May 2011, A8 nationals are now able to access benefits on the same basis as other EU nationals (apart from A2 nationals – see below). For A8 nationals who had already completed 12 months' registered work this change made no difference, as they already had the same rights as other EU nationals. Those who were in work and registered under the WRS at 30 April 2011 no longer needed to have worked for 12 months in order to access out-of-work benefits. A8 nationals who have not previously worked in the UK are also now able to register with Jobcentre Plus on arrival as a job seeker and, provided they meet the same requirements imposed on UK nationals, should be able to claim income-based Jobseeker's Allowance (giving entitlement to Housing Benefit and Council Tax Benefit) and, if relevant, Child Benefit and Child Tax Credit.

A2 nationals

As discussed above (see pages 27 to 28), A2 Nationals were not covered by the Worker Registration Scheme. However, A2 nationals wishing to work in the UK must, except where they are exempt from the requirement, obtain a “worker authorisation document” before they begin employment in the UK. To have a right to reside as a worker, an A2 national who is subject to worker authorisation must have a worker authorisation document and be working in accordance with the relevant conditions. An A2 national who has worked legally in the UK without interruption for a period of 12 months is exempt from worker authorisation and has the same rights and access to benefits and tax credits as other EU nationals. For practical purposes therefore, the rules closely mirror those which previously applied to A8 nationals.

For benefits purposes, the current rules mean that, with certain exceptions:

¹⁰¹ *Rights of Residence Directive* 2004/38/EC Article 7(1)(b)

¹⁰² CH/3314/2005, CIS/3315/2005 paras 21-30; Case C-357/89 *Raulin* (1992) ECR 1027

- An A2 national cannot come to the UK and claim benefits straight away as a job seeker, without having worked here first
- An A2 national who is subject to worker authorisation cannot retain worker status (and cannot therefore claim out of work benefits) if they stop working without having worked legally in the UK for a continuous period of 12 months
- An A2 national subject to worker authorisation who has legally worked in the UK for an uninterrupted period of 12 months is exempt from worker authorisation and is entitled to benefits on the same basis as other EU nationals. This means, for example, that they may claim out of work benefits if they are temporarily unable to work because of illness, or have been made unemployed and are looking for work.

As noted above, the transitional provisions do not however apply to A2 nationals who are self-employed. Bulgarian and Romanian nationals who are working in the UK in a self-employed capacity are not subject to worker authorisation while they are working, and have full access to in-work benefits and tax credits. However, if they subsequently become unemployed they will be subject to the same rules as other A2 nationals.

The transitional provisions restricting the right of A2 nationals to enter and reside as workers are to end on 31 December 2013.

5.6 What might the impact on the UK be?

By Oliver Hawkins and Gavin Thompson

Home Office Impact Assessment

The potential consequences for the UK of Croatia's accession to the EU are explored in the Home Office Impact Assessment on the "Accession of Croatia to the European Union".¹⁰³ But it does not calculate the numbers of Croatians who might come to the UK.

Given the country's comparatively small population, the small number of Croatians currently living in the UK (9,000), the restrictiveness of the transitional controls, and the relative proximity of Germany, the Impact Assessment suggests that the extent of migration would be 'probably low', even without transitional restrictions. But it also acknowledges that, based on past experience, there could be 'significant flows of potential workers' if the UK were to allow open migration or impose only partial restrictions. For instance, the case of Lithuania, which is less populous than Croatia, indicates that even relatively small countries can generate substantial migration flows: the number of Lithuanians resident in the UK has increased from 14,000 to 128,000 since accession.

The Impact Assessment notes that the attractiveness of the UK as a potential destination for Croatian migrants depends on the restrictiveness of transitional controls, both in the UK and in other EU countries.¹⁰⁴

The rules will apply to people with Croatian passports wherever they live. One recent survey has suggested that most Bosnian Croats living in Bosnia and Herzegovina would look for a job in the EU when Croatia joins.¹⁰⁵

The Home Office may also be reluctant to forecast migration to the UK by Croatian nationals because previous attempts to forecast migration by nationals of countries joining the EU

¹⁰³ Home Office, *Accession of Croatia to the European Union: transitional restrictions on access to the labour market*, IA No HO0072, 2 October 2012

¹⁰⁴ *ibid*, page 13

¹⁰⁵ "Survey: Bosnian Croats Would Try Their Luck in EU", *Eurasia press & news*, 10 August 2012

underestimated the resulting migration. In 2003, the Home Office estimated that the enlargement of the European Union in May 2004 would lead to an additional 5,000 to 13,000 net immigrants every year from the ten acceding countries.¹⁰⁶ ¹⁰⁷ As explained below, this was far below the number of people who actually came.

Migration flows to and from the A8 countries

Figure 1 overleaf shows immigration, emigration and net migration by nationals of the eight Eastern European countries that joined the EU in 2004 in each year since their accession up to 2011.¹⁰⁸ In the period 2004 to 2011, net immigration of A8 nationals averaged 50,000 a year, while total net migration by A8 nationals over the period was 393,000.

However, data from population surveys suggest that estimated migration of A8 nationals doesn't capture the full extent of population change due to A8 migration. This may be partly because some migrants will go on to have children in the UK, and partly because the migration estimates count only those who change their country of residence for at least a year; that is, they would not capture 'seasonal' migration for periods of less than twelve months. Figure 2 shows estimates of the number of A8 nationals resident in the UK in each quarter based on Labour Force Survey data. This data suggests that the number of A8 nationals resident in the UK has increased from around 94,000 in Q2 2004 to around 1,079,000 in Q2 2012, representing annual average growth of around 123,000 a year. Results from the 2011 Census also suggest that migration by nationals of all countries has been underestimated in years between the 2001 and 2011 Censuses.¹⁰⁹

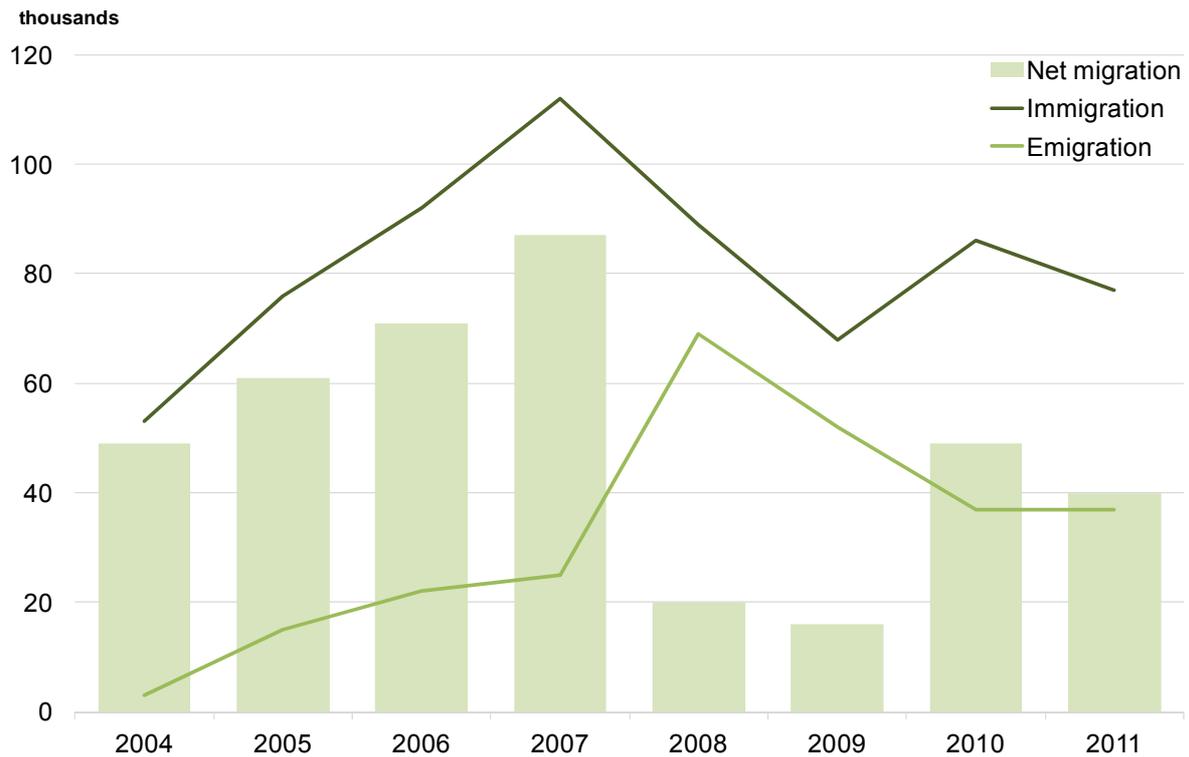
¹⁰⁶ Home Office, *The impact of EU enlargement on migration flows*, Home Office Online Report 25/03, 2003

¹⁰⁷ The ten countries which joined the EU in May 2004 were: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

¹⁰⁸ Migration data is only available for nationals in the A8 group of countries and is not available for the A10.

¹⁰⁹ ONS, *Explaining the Difference between the 2011 Census Estimates and the Rolled-Forward Population Estimates*, 16 July 2012.

Figure 1: Estimated migration to and from the UK by A8 nationals, 2004-2011



Source: [ONS Long-Term International Migration Estimates 2 series \(LTIM calendar year\)](#), [ONS Provisional LTIM estimates of Long Term International Migration](#)

Figure 2: Estimated number of A8 nationals resident in the UK, 2003-2011



Notes: 1. Data is not seasonally adjusted. Source: ONS Labour Force Survey

The A8 migrant population

Table 1 below shows the estimated number of A8 nationals living in the UK in Q2 2004 and Q2 2012, broken down by country of nationality. It also shows the estimated population of each A8 country in 2012. Table 2 makes a similar comparison of the number of Romanian and Bulgarian nationals living in the UK, at the time of the accession of those countries to the EU in Q1 2007 and in Q1 2012.¹¹⁰

While the total number of A8 nationals has grown by almost a million people in the eight years since accession, there is considerable variation in the extent of population growth for nationals of different countries. Two-thirds of the growth in the UK's population of A8 nationals is due to growth in the number of Polish nationals, from around 55,000 in Q2 2004 to around 714,000 in Q2 2012. By contrast, the population of Estonian and Slovenian nationals has not changed to any measurable extent over the same period

Table 1: Estimated number of A8 nationals resident in the UK, 2004 & 2012

	Nationals resident in UK		Change since accession		Population
	Q2 2004	Q2 2012	Total	Annual average	2012
Poland	55,000	714,000	+659,000	+82,000	38,538,000
Lithuania	14,000	128,000	+114,000	+14,000	3,008,000
Latvia	< 10,000	81,000	+79,000	+10,000	2,042,000
Slovakia	< 10,000	71,000	+63,000	+8,000	5,404,000
Hungary	< 10,000	48,000	+41,000	+5,000	9,958,000
Czech Republic	< 10,000	32,000	+24,000	+3,000	10,505,000
Estonia	< 10,000	< 10,000	-	-	1,340,000
Slovenia	< 10,000	< 10,000	-	-	2,055,000
Total A8	94,000	1,079,000	+985,000	+123,000	72,851,000

Notes: 1. Data is not seasonally adjusted so comparisons are made between the same quarters in each year.

Source: ONS Labour Force Survey

Table 2: Estimated number of A2 nationals resident in the UK, 2007 & 2012

	Nationals resident in UK		Change since accession		Population
	Q1 2007	Q1 2012	Total	Annual average	2012
Romania	14,000	99,000	+85,000	+17,000	21,356,000
Bulgaria	15,000	56,000	+41,000	+8,000	7,327,000
Total A2	29,000	155,000	+126,000	+25,000	28,683,000

Notes: 1. Data is not seasonally adjusted so comparisons are made between the same quarters in each year.

Source: ONS Labour Force Survey

Looking at both Tables 1 and 2, there appears to be some relationship between the size of the acceding country's population and the degree of growth in the number of nationals of that

¹¹⁰ LFS data is not seasonally adjusted, so comparisons are made between the same quarters in each year.

country living in the UK following accession. However, the relationship is not particularly strong.

The accession country with the second largest number of nationals living in the UK is Lithuania. The number of Lithuanian nationals living in the UK has grown from around 14,000 to around 128,000 since accession. But the population of Lithuania is among the smallest of the ten accession countries considered here. Equally, the extent of migration from the Czech Republic and Hungary and has been comparatively small, despite them being the third and fourth largest of all the accession countries.

Given this variation, it is difficult to predict the effect of Croatia's accession on the number of Croatian nationals living in the UK. As the Impact Assessment notes, there are an estimated 9,000 Croatian nationals currently living in the UK and the population of Croatia is around 4.5 million. Given the country's comparatively small population, the small number of Croatians currently living in the UK, the restrictiveness of the transitional controls, and the relative proximity of Germany, the Impact Assessment suggests that the extent of migration could be low:

Croatia has a population of about 4.5 million of which 68 per cent are aged 15 to 64 years of age (July 2012). The labour force is approximately 1.7 million and unemployment was close to 18 per cent in 2011 (considerably higher than the UK). There are an estimated 9,000 Croatian nationals living in the UK at present (<1% of all foreign citizens living in the UK) and approximately 750,000 living in other countries (source: World Bank Global Migrant Stocks Database, 2010). The number of Croatians who are resident in the UK is only about 5 per cent of the number living in Germany (~245,000). The top three spoken foreign languages for Croatian nationals are English (49%), German (39%) and Italian (14%). Perhaps because Germany is a closer neighbour and German is spoken in by a significant proportion of Croatians then Germany provides a stronger draw for migrant labour.¹¹¹

However, it also notes that Croatia is a larger country than Lithuania, so there is at least the potential for migration on a similar scale.

The economic impact of migration from eastern Europe – a summary of the evidence

Living standards

In terms of overall benefit to the economy, there is much debate about how one should measure this. Using simple change to overall economic output (GDP) does not take into account the change in living standards of individuals. Instead, it simply reflects the fact there are more people in the economy as a result of immigration, producing more output. To take this into account, one can use GDP per head instead. Although by no means a perfect measure, it does at least give some idea of the per capita change in economic output.

Evidence given to the House of Lords Economic Affairs Committee 2008 inquiry into [The Economic Impact of Immigration](#) from the then Labour Government estimated that migration contributed 0.15% per year to the GDP per capita of the native population in the decade to 2006.¹¹² The Lords Committee concluded that "the economic benefits to the resident population of net immigration are small".

Responding, the previous Government stated that any effect would necessarily not be very large given the relatively small change to the overall working population resulting from net

¹¹¹ *ibid*, page 7

¹¹² House of Lords Select Committee on Economic Affairs, [The Economic Impact of Immigration](#), 1 April 2008, HL 82-I, 2007-08

immigration in a given year.¹¹³ It also stated that the 0.15% figure is not as small as the Lords Committee believed, arguing that 0.15% may seem small but in the context of economic growth rates is quite substantial.

It is worth noting that these average figures disguise enormous variation. Young, highly skilled, employed immigrants without dependents who do not tend to save their income or send it home are likely to make a larger “contribution” in these crude terms than other types of immigrant.

The Lords Committee also identified those who it believed were economic winners (the migrants and their employers) and losers (those in low-paid jobs competing with migrants) from immigration:¹¹⁴

In the short term, immigration creates winners and losers in economic terms. The biggest winners include immigrants and their employers in the UK. Consumers may also benefit from immigration through lower prices. The losers are likely to include those employed in low-paid jobs and directly competing with new immigrant workers. This group includes some ethnic minorities and a significant share of immigrants already working in the UK.

Employment

Most studies find that immigration does not displace non-migrant (sometimes called ‘native’) workers.¹¹⁵ In general, the research shows that despite the increases in immigration in the UK over recent decades, this has had little or no impact on native employment or unemployment levels. Furthermore, most of the literature concludes that the rise in the number of migrant workers did not lead to lower average wages for native workers overall.¹¹⁶

However, looking beyond the headline conclusions of the literature, some studies find that migrants have a particular impact on the low-skilled native workforce, mostly via downward pressure on wages. Other studies find that migrants actually increased wages at the higher end of the wage distribution.

Recent research undertaken by the National Institute of Economic Research (NIESR) used National Insurance registrations of foreign nationals to investigate effects of immigration on local labour markets in the UK. They found that there is a “general lack of an aggregate impact of migration on unemployment”.¹¹⁷ In addition, they “find no evidence of a more adverse impact of immigration during the recent recession”.

A recent study by the Migration Advisory Committee, which advises government on immigration issues, found that EU migrants did not affect native employment, while a rise in non-EU migrants during periods of economic weakness could be associated with a decline in native employment.

¹¹³ [Government response](#) to House of Lords Select Committee on Economic Affairs report on *The Economic Impact of Immigration*, June 2008, Cm7414

¹¹⁴ House of Lords Select Committee on Economic Affairs, [The Economic Impact of Immigration](#), 1 April 2008, HL 82-I, 2007-08, p32, para 97

¹¹⁵ A good summary of existing research is available from: Migration Advisory Committee, [Analysis of the Impact of Migration](#), January 2012, [Chapter 4.2, page 57](#) and [table 4.2-4.5, page 66](#)

¹¹⁶ In theory, in the short term an increase in migrant workers would, all other factors remaining unchanged, lead to an increase in the labour supply and lower wages compared to a scenario where there was no increase in migrant workers.

¹¹⁷ NIESR Discussion Paper 386, [Examining the relationship between immigration and unemployment using national insurance number registration data](#), 9 January 2012

Finally, an August 2011 paper from the UK Commission for Employment and Skills (UKCES), tasked by government to research long-term employment and skills needs for the UK, looked at the impact of migration on opportunities for low-skilled people.¹¹⁸ It found evidence that migrants, in general, were more flexible in meeting employer demands. For example, migrants were more likely than non-migrant low-skilled workers to work longer hours, at more unsocial times and in temporary jobs. As a result, employers were offering more temporary jobs, which were not as attractive to native low-skilled workers. This has led to some segmentation of the lower-skilled labour market, with similar kinds of people recruited in existing low skilled jobs. Native lower-skilled workers were found to be less willing or unable to take temporary employment and had weaker social networks of family and friends to help them find work.

Public finances

The Office for Budget Responsibility (OBR), when looking at long-term public finance sustainability in July 2011, constructed a scenario with 'high migration' where inflows remained at the levels seen in recent years. The OBR's projections found that public sector net debt would remain fairly stable at around 60% of GDP up to 2060/61 under the high migration scenario, whereas under the central scenario debt would rise to over 100% of GDP in 2060/61.¹¹⁹ Such long-range projections are, however, highly uncertain; small changes in the underlying assumptions can have extremely large effects over the long term.

6 Adapting EU institutions on enlargement

By Vaughne Miller

When a country joins the EU, adaptations need to be made to the EU's institutional and procedural rules to give the new country equal representation in EU institutions (European Parliament, Council, Commission, Court of Justice) and other bodies, and make sure that other matters such as voting rights, official languages and elections to the European Parliament function properly.

There are also specific rules for the period between concluding negotiations and accession. An information and consultation procedure is put in place and, once the accession treaty is signed, the acceding country is granted active observer status in the European Parliament and Council as well as in Commission committees.

6.1 European Parliament

In March 2012 twelve Croatian observer MEPs were chosen on the basis of the Croatian general election held on 4 December 2011. These appointed MEPs have participated in the work of the European Parliament (EP) since 17 April 2012. In accordance with [Rule 11](#) of the EP's [Rules of Procedure](#), they do not have the right to vote or to stand for election to EP positions. They do not receive a salary or administrative allowances except for the daily attendance allowance and reimbursement of travel costs based on the actual costs incurred.¹²⁰ Five observer MEPs are from the centre-left Socialists and Democrats group, three are from the centre-right European People's Party, and one is a member of the Liberal group. Three are not members of any EP political group.

After Croatia joins the EU there will be elections for 12 Croatian MEPs (Article 19 of [Accession Treaty](#)), bringing the total number of MEPs to 766 for the remainder of the 2009-2014 term. The current EP, elected in June 2009 just before the Lisbon Treaty came into force, has 754 seats. The next EP elections in 2014 will take place under the Lisbon Treaty

¹¹⁸ UKCES, [The impact of student and migrant employment on opportunities for low skilled people](#), August 2011

¹¹⁹ Office for Budget Responsibility, [Fiscal Sustainability Report](#), July 2011

¹²⁰ See [European Parliament Members' expenses and allowances](#), Library Standard Note 5388, 18 March 2010

rules and Croatian MEPs will be included in the 751 seat cap, as set out in Article 14 TEU. The other conditions are that no Member State should have more than 96 seats (Germany currently has 99 MEPs) or fewer than six, and that the distribution of seats should be “degressively proportional” – i.e. MEPs elected in larger States will represent more citizens than MEPs elected in smaller States and smaller States will have fewer MEPs than larger ones.

6.2 Council

Until 31 October 2014 Croatia will have seven votes in the EU Council, the same as Denmark, Ireland, Lithuania, Slovakia and Finland. A qualified majority will be at least 260 votes in favour representing a majority of Member States on a proposal from the Commission, making the blocking minority 91; otherwise, at least 260 votes in favour representing at least two thirds of the Member States.

6.3 Commission

Under Article 21 of the Croatia Accession Treaty, a national of Croatia will be appointed to the Commission from the date of accession until 31 October 2014. His/her term of office will expire at the same time as those of the other Members in office at the time of accession.

The European Commission also aims to hire 249 new officials from Croatia over the next five years: 149 EU fully-fledged civil servants, one of them a director general, and 100 assistants.¹²¹

Under Lisbon the number of Commissioners was due to be reduced to two-thirds of the number of Member States after 2014. Lisbon provided the European Council with the right to decide the number of Commissioners, subject to unanimity under Article 17(5) TEU, which states:

As from 1 November 2014, the Commission shall consist of a number of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

Ireland made retaining the current formula of one Commissioner per Member State another condition of ratification of the Lisbon Treaty, and the concessions to Ireland included a guarantee in the form of a European Council Decision that would be taken “in accordance with the necessary legal procedures” that each Member State would keep a Commissioner. In the UK primary legislation will be needed to approve this Decision.

On [28 September 2012](#) the EU Council¹²² stated that the European Council¹²³ would adopt a Decision “based on Article 17(5) TEU, allowing it to alter the number of members of the Commission. The Decision would come into force once adopted by the European Council, “without the need for national ratifications”. The Council also stipulated that the European Council would adopt this decision at one of its meeting at the end of 2013 or early 2014, but that in order for Members States to prepare their national procedures, a final version of the draft European Council Decision would have to be endorsed by October 2012 at the latest. On 2 October 2012 the European Council adopted the draft [Decision concerning the number of members of the European Commission](#) from 1 November 2014.

¹²¹ “[EU commission hiring 249 Croatian officials](#)”, *EU observer.com*, 12 July 2012

¹²² where national ministers from each EU country meet to adopt laws and coordinate policies – formally called the Council of the European Union

¹²³ where EU leaders meet around 4 times a year to discuss the EU’s political priorities

The prevailing view is that the EU Treaty will not be altered by the Commissioner concession, as the TEU already provides for a unanimous decision on a different Commission arrangement. However, legal opinion has differed, with some arguing that the principle of a smaller Commission is enshrined in the TEU, which cannot be changed simply by a European Council Decision, and, furthermore, that Article 244 TFEU on the rotation of Commissioners might need to be amended if the system of rotation envisaged for a reduced Commission is not implemented from 2014.

6.4 Other bodies

Until Council decisions on the new composition of the Economic and Social Council and the Committee of the Regions enter into force, Croatia will be granted nine members in each committee.

The number of judges of the Court of Justice and the General Court will be increased by one to 28.¹²⁴

7 What's next for EU enlargement?

Croatia's accession is seen by many as giving the enlargement project a boost, showing that the EU can still attract its neighbours, and that the EU still sees enlargement as an important foreign policy tool for peace and stability in the region:

While this new episode of EU expansion has not hit the headlines with the same force as the "big bang" enlargement of 2004, it should not be snubbed. It illustrates that the Union is a polity that continues to attract, that it is helping to turn one of the darkest pages of Europe's recent history, and that it can still stick to its commitments.¹²⁵

A joint statement from the UK Foreign Secretary William Hague and Croatia's Minister of Foreign and European Affairs Vesna Pusić shows this view:

It is enlargement's ability to embed stability, security and the EU's values of rule of law, democracy and individual freedoms across Europe's borders that underlines our shared commitment to ensure the momentum on EU enlargement is maintained. We fully support the EU perspectives of all of the countries of the Western Balkans on the basis of strict but fair conditionality, where Croatia is well-placed and ready to share its accession expertise with her neighbours.¹²⁶

But there are lessons to be learnt. The European Commission has already suggested some changes to the way chapter 23 of the accession negotiations (on judiciary and fundamental rights) is applied. These suggestions are based on its experiences with Croatia, and are mainly about monitoring how reforms are implemented.¹²⁷ The proposals include:

- early opening and late closing of chapter 23 to allow the candidate country to produce a solid record of implementing reforms;
- 'interim benchmarks' in addition to opening and closing ones; and

¹²⁴ European Commission Directorate General for Enlargement, *Information on the Results of the EU Accession Negotiations with Croatia*, November 2011, pp26-27

¹²⁵ "Fundamental rights and EU membership: Do as I say, not as I do?", Editorial comment, *Common Market Law Review* vol 49, 2012, pp481-8

¹²⁶ FCO, "UK and Croatia welcome Croatia's progress towards EU accession", 17 October 2012

¹²⁷ See "Fundamental Rights and EU membership: Do as I say, not as I do!", Editorial comments, *Common Market Law Review* Vol 49 no 2, April 2012

- corrective measures including halting other negotiations if the candidate country is falling behind its requirements to implement chapter 23.¹²⁸

In June 2012 the Council endorsed the Commission's proposed new approach to judiciary and fundamental rights and justice, freedom and security and reflected them in the negotiating framework for Montenegro, which has just started its accession negotiations:

Given the challenges faced and the longer-term nature of the reforms, the chapters judiciary and fundamental rights and justice, freedom and security will be tackled early in the negotiations to allow maximum time to establish the necessary legislation, institutions, and solid track records of implementation before the negotiations are closed. They will be opened on the basis of action plans to be adopted by the national authorities. The Commission will provide substantial guidance in its screening reports to support the elaboration of these action plans by the candidate country. An innovation is the introduction of interim benchmarks which will be set when negotiations are opened. Only once these are met will the Council lay down closing benchmarks.

In this way, negotiations will be conducted in a structured framework that takes into account the time needed for reforms to be properly implemented and for solid track records to be developed. The process will be accompanied by safeguards and corrective measures, to allow for example the updating of benchmarks and to ensure an overall balance in the progress of negotiations across chapters. The new approach also foresees greater transparency and inclusiveness in the negotiations and reform process, with candidates encouraged to develop their reform priorities through a process of consultation with relevant stakeholders to ensure maximum support for their implementation. The Commission will further focus its monitoring on progress achieved in these areas. IPA funds will continue to be targeted to support reform implementation.

Strengthening the rule of law and public administration is essential for enlargement countries to come closer to the EU and eventually to fully assume the obligations of membership. Even before accession negotiations begin, increased focus is being put on rule of law in the spirit of the new approach. Screening of the key rule of law chapters was initiated even before overall negotiations with Montenegro began. The other candidate countries, the former Yugoslav Republic of Macedonia and Serbia, were also invited to the explanatory screening sessions. The key priorities set out as conditions for the opening of accession negotiations with Albania are heavily focused on the rule of law. Rule of law issues are central to the various country specific initiatives launched by the Commission in the last year which are set out under part 3 of this Communication.¹²⁹

The European Scrutiny Committee interprets these reforms as suggesting that "there remain systemic weaknesses that are now, in effect, being overlooked".¹³⁰

None of the remaining candidate and potential candidate countries is likely to join the EU soon. Perhaps the closest candidate country is Iceland, which (because it is a member of the European Economic Area) already complies with a large part of the EU's laws and

¹²⁸ European Commission, *Enlargement Strategy and Main Challenges 2011-12*, COM(2011)666 final, 12 October 2011, p5. See also General Affairs Council Conclusions on enlargement and stabilisation and association process, 5 December 2011, part 4.

¹²⁹ See European Commission, *Enlargement Strategy and Main Challenges 2012-13*, COM(2012)600 final, 10 October 2012, p6

¹³⁰ House of Commons European Scrutiny Committee, *Croatia: monitoring the accession process*, 26 October 2012, HC 86-xvii, para 1.88

policies. But fishing rights, compensation for debts incurred during the financial crisis, and waning popular support for accession in Iceland threaten progress on negotiations. Turkey's accession negotiations have largely ground to a halt, with progress blocked by the Cyprus issue. The other countries of the Western Balkans are still far from ready to meet the requirements for joining the EU, and there is no guarantee that further enlargement will replicate its previous achievements.¹³¹

The House of Lords Select Committee on the European Union has launched a new enquiry into EU enlargement.¹³² It will look at the motivations and prospects for further enlargement, in the light of the euro crisis, and its potential consequences for new and old Member States and for the EU itself. The Committee is looking for written evidence, after which it will hold hearings, and aims to finish its report and recommendations by the end of March 2013 – around the time of the final Commission report on Croatia. Its predecessor committee's 2006 report on the threats and opportunities of EU enlargement called for an increasing use of 'variable geometry' and enhanced cooperation as the EU grows, as well as institutional change and more efficient decision-making procedures.¹³³ In its view the economic impact of enlargement on both old and new Member States had been positive; it will be intriguing to see the 2013 assessment.

¹³¹ Tina Freyburg and Solveig Richter, "National identity matters: The limited impact of EU political conditionality in the Western Balkans", *Journal of European Public Policy* 17:2, march 2010, pp263-281

¹³² "EU enlargement", House of Lords Select Committee on the European Union, 10 October 2012

¹³³ House of Lords European Union Committee, *The Further Enlargement of the EU: threat or opportunity?*, HL 273, 2005-06, 23 November 2006

8 The Irish protocol

By Vaughne Miller

8.1 The Bill

Clause 2 of the Bill approves the Irish Protocol for the purposes of Section 2 of the [European Union Act 2011](#), which sets out the UK requirements for ratification of a treaty which amends or replaces the EU Treaties. Under the 2011 Act, approval of a Treaty amendment must be by primary legislation.

A statement must be laid by a Minister before Parliament under Section 5 of the Act as to whether the amendment falls within section 4 of the Act and therefore requires a referendum. Clause 2 confirms that the Protocol does not attract a referendum under the terms of the 2011 Act, because it does not transfer power or competence from the UK to the EU and does not change the content or application of the EU Treaties.

Clause 3 provides for the Protocol to be added to the list of EC/EU Treaties in Section 1(2) of the [European Communities Act 1972](#).

8.2 How did the Irish protocol come about?

In 2008 the European Council (Member State Heads of State or Government) agreed to certain ‘guarantees’ that would allow Ireland and the Czech Republic to ratify the Lisbon Treaty.¹³⁴ Ireland had voted against ratification in June 2008, and the Czech President, Václav Klaus, did not support it. Member States later agreed that the guarantees, initially contained in decisions of the European Council, should be ratified as protocols along with the [Croatia EU Accession Treaty](#). Thus, they would become part of the *acquis communautaire* and subject to the jurisdiction of the Court of Justice.

An agreement in the form of European Council declarations was reached at the summit on 11-12 December 2008, by which, in return for “legal guarantees” to remedy those matters of concern to the Irish electorate, the Irish Government would “seek ratification” of the Lisbon Treaty by the end of the Commission term (i.e. end October 2009). There was a pledge that the EU would neither impose rules on Ireland concerning taxation or “ethical issues” (e.g. abortion, euthanasia and gay marriages), nor interfere with its traditional neutrality. The European Council also agreed to maintain the composition of the Commission at one Commissioner per Member State. The Presidency Conclusions noted the Irish concerns, agreed to address them “to the mutual satisfaction of Ireland and the other Member States” and referred to “legal guarantees” on three points:

- nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the Union's competences in relation to taxation;
- the Treaty of Lisbon does not prejudice the security and defence policy of Member States, including Ireland's traditional policy of neutrality, and the obligations of most other Member States;
- a guarantee that the provisions of the Irish Constitution in relation to the right to life, education and the family are not in any way affected by the fact that the Treaty of

¹³⁴ For a full account of the Czech objections to Lisbon and the Czech Government's negotiations, see *Czech Yearbook of International Law* 1 2010 “[The Quest of the Lisbon Treaty in the Czech Republic and some of the Changes it Introduces in EU Primary Law](#)”, Emil Ruffer, Director of EU Law Department, Ministry of Foreign Affairs of the Czech Republic.

Lisbon attributes legal status to the EU Charter of Fundamental Rights or by the justice and home affairs provisions of the said Treaty.¹³⁵

Ireland thereby effectively agreed to hold a second referendum on the Lisbon Treaty in exchange for receiving concessions from the other EU Member States. On 2 November 2009 Ireland voted to ratify the Lisbon Treaty.

At the [June 2009 European Council](#) Heads of State and Government agreed to a 'Decision' on the Irish concessions to be incorporated into a protocol and ratified alongside the next EU accession treaty. The then UK Prime Minister, Gordon Brown, insisted on 23 June that the protocol offered "clarification"; would in no way alter the relationship between the EU and its Member States, would be specific to Irish concerns; that its status would be no different from the UK protocols and it would be subject to ratification in the British Parliament.¹³⁶

On 20 July 2011 the Irish Government submitted to the Council a draft for the revision of the Treaties with respect to the inclusion of a *Protocol on the concerns of the Irish people on the Treaty of Lisbon*. Three months later, on 12 October 2011, the Council submitted the draft Irish protocol to the European Council and notified to national Parliaments in accordance with Article 48(2) TEU (Treaty amendment using the Ordinary Legislative Procedure). On 23 October 2011, the European Council consulted the European Parliament (EP) and the Commission on the proposed protocol to the EU Treaties under the first sub-paragraph of Article 48(3) TEU, and also requested the EP's consent not to convene a Convention of the Member States.

The EP's Constitutional Affairs Committee (AFOC) debated the two draft protocols on 25-26 January 2012. Under Article 48(3) TEU the EP may be asked not to require a Convention of the Member States to discuss Treaty change, and the European Council made such a request. On 22 March 2012 AFOC voted by 21 in favour with one abstention to adopt the [report drafted by Paulo Rangel \(EPP, PT\)](#), consenting also to the addition of the protocol to the existing EU Treaties without calling a constitutional convention, and expressing a positive decision in favour of adding it to the existing EU Treaties. On 18 April 2012 the EP plenary [gave its consent](#) to the Irish protocol and to a Convention not being required. On 4 May 2012 the Commission also issued a favourable opinion. The European Council agreed on 10 May 2012 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 in the margins of Coreper,¹³⁷ and the proposed Irish protocol was agreed and signed by all 27 Member States. EU Member States must ratify the Protocol in accordance with their respective constitutional requirements.

There were no substantive differences between the draft Irish draft protocol and the 2009 agreement, except for aspirational dates for its entry into force.

8.3 The Irish Protocol guarantees

The [Protocol on the concerns of the Irish people on the Treaty of Lisbon](#) contains safeguards in relation to the right to life, family and education, taxation and Irish military neutrality. In the opinion of many analysts, the "legal guarantees" merely confirmed the status quo, as the Lisbon Treaty did not contain provisions on the three points in question.

Protocol Article 1 provides:

¹³⁵ [Presidency Conclusions, 11-12 December 2008](#)

¹³⁶ [HC Deb 23 June 2009 c 662](#)

¹³⁷ Committee of Permanent Representatives in the European Union: the head or deputy head of mission for each EU member state

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

Article 2 provides:

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

David Lidington told [European Committee B](#) on 21 February 2012 that “the Irish protocol makes it clear that not just in respect of the Irish Republic, but in respect of all member states, the question of taxation is primarily one that remains with the Governments and Parliaments of the individual member states and where the EU does not have competence”.

Article 3 concerns Ireland’s “traditional policy of military neutrality”. This Article contains general provisions about EU security and defence policies, as well as provisions relating specifically to Ireland. Thus, it states: “The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation”, and “It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities”.

Ireland’s tradition of military neutrality goes back to the Second World War.¹³⁸ The Tánaiste¹³⁹ and Minister for Foreign Affairs, Deputy Eamon Gilmore, has described the policy as “characterised by non-participation in military alliances” but added that “successive Governments have not interpreted neutrality as meaning that Ireland should avoid international engagement.”^{140 141} Ireland is one of the largest contributors of personnel to UN peacekeeping missions, and also contributes to EU missions, although its participation in military activities abroad requires the approval of the government, Dáil and UN authorisation (sometimes referred to as the Triple Lock). Ireland’s Minister for Justice, Equality and Defence, Alan Shatter, stated last year Ireland’s policy on the Triple Lock was reinforced by the adoption of the Lisbon Treaty in 2009.¹⁴²

Ireland also participates in the framework of the European Defence Agency (EDA) and makes an annual contribution to its budget. The European Defence Agency is coordinating a number of projects to ‘pool and share’ defence capabilities, some of which Ireland is involved in.^{143 144} However any participation in any specific project or programme is subject to Government and Dáil Eireann approval.

Article 4 of the Protocol provides for entry into force on 30 June 2013, conditional upon ratification by all Member States.

¹³⁸ Karen Devine argues “Governing parties’ positions on neutrality have shifted over the past 35 years of Ireland’s membership of the EC/EU” in her paper “[Irish neutrality and the Lisbon Treaty](#)”, May 2009

¹³⁹ Deputy Head of Government

¹⁴⁰ [Dáil Éireann Debate, Vol. 729 No. 4, page 31, no. 20 \(written answer\)](#)

¹⁴¹ [Dáil Éireann Debate, Vol. 729 No. 4, page 31, no. 20 \(written answer\)](#)

¹⁴² [Dáil Éireann Debate Vol. 730 No. 3, no. 41, 19 April 2011](#)

¹⁴³ For example, Ireland is leading a study into training for naval mariners, “[Speech by the Minister for Justice, Equality and Defence, Mr Alan Shatter, T.D, before the select committee on Justice, defence and equality 2012 estimates for defence and army pensions](#)”, *Department of Defence*, 23 May 2012

¹⁴⁴ The House of Lords European Union Committee produced a report examining European defence capabilities entitled ‘European Defence Capabilities: lessons from the past, signposts for the future’, HL Paper 292 2010-12, 4 May 2012

8.4 UK Government and Parliamentary views

The Government set out its policy on the draft protocol in an [Explanatory Memorandum on 2 December 2011](#). The Irish Protocol, it stated, was “helpful to the UK as it clarifies the limitations of the Lisbon Treaty consistent with our interpretation”. The Government was pleased that the Protocol confirmed no change in EU powers with regard to taxation, noting:

Writing this guarantee into a Protocol provides an even stronger point of reference in the event of any future disagreements than is provided by the political declaration of the European Council, as it is legally binding.

On 5 July 2012 the Government [laid a statement](#) before the House pursuant to section 5 of the EU Act 2011 as to whether the Irish Protocol fell within section 4 of the Act.

In December 2011 the [European Scrutiny Committee](#) considered the draft protocol and recommended further debate in European Committee. The Scrutiny Committee was particularly interested in the legal status of the Irish concessions:

2.12 We note that the Minister says that writing the taxation guarantees into a Protocol “provides an even stronger point of reference in the event of any future disagreements than is provided by the political declaration of the European Council, as it is legally binding”. This is a point the previous Committee repeatedly made to the previous Foreign Secretary when questioning whether the political declarations made in the June 2009 European Council could be described as “legal guarantees” for Ireland. (Ireland had sought these guaranteed as a pre-condition to putting the ratification of the Lisbon Treaty to a second referendum.) The previous Committee was repeatedly told that they could: in a letter of 14 October 2009, for example, the previous Foreign Secretary wrote: “the [European Council] Decision is legally binding on the Member States in international law”.

2.13 It seems the Foreign and Commonwealth Office has changed its view on this, which, though surprising given its previous stance, is welcome.

The draft protocol was debated in [European Committee B on 21 February 2012](#). The Committee questioned David Lidington about the legal status of the protocol. The Europe Minister assured the Committee that the protocol clarified “member states’ understanding of certain aspects of the EU treaties” and did “not change ... the content or application of the treaties”. He clarified the status of the protocol, compared with that of the European Council decision in June 2009:

There is a significant legal difference between the two. The guarantees provided to Ireland in June 2009 were adopted by a decision of the Heads of State and Government. That effectively creates an agreement in international law, which is binding on EU member states. The agreement entered into force on 1 December 2009 with the Lisbon treaty and, at that point, became legally binding in international law. Adding the guarantees to the treaties through the protocol puts them on an equal legal footing in EU law.

That is significant because, while a decision could always be repealed or modified by a later decision, once the protocol has entered into force its substance could only be changed, repealed or replaced by a subsequent treaty amendment which would have to be adopted in accordance with the ordinary revision procedure and ratified by all EU member states.

A Resolution on the draft protocol was agreed to in the House on 22 February 2012.

8.5 Further reading

Professor Steve Peers, "[Analysis: Lisbon Treaty guarantees for Ireland](#)" *Statewatch*, 19 June 2009

Research Paper 09/75, [The Treaty of Lisbon after the Second Irish Referendum](#), 8 October 2009

Laurent Pech blog, "[The European Union's Lisbon Treaty: Some thoughts on the 'Irish Legal Guarantees'](#)", 28 September 2009

8.6 What happened to the Czech Protocol?

The draft Czech Protocol would extend the [UK and Polish Protocol No. 30 on the Charter of Fundamental Rights](#) to the Czech Republic. The UK Government supported the proposed Czech protocol because it "is helpful to the UK as it recognises and, by association, further strengthens our understanding of the application of that charter".¹⁴⁵ The background to the Czech protocol is set out in a Library Standard Note, [The Lisbon Treaty: ratification by the Czech Republic](#).¹⁴⁶ The Czech President effectively signed off the Lisbon Treaty as it stood, without amendment, and thereby completed ratification with what appeared to be no more than a political commitment to a future protocol clarifying the Czech position vis-à-vis the Charter of Rights. In October 2011 the Czech Senate approved a resolution contradicting the eurosceptic Czech President Klaus, and did not recommend adoption of the protocol.

In January 2012 a tied vote in the EP Constitutional Affairs Committee (AFCO) meant that no decision was taken on Liberal Democrat MEP [Andrew Duff's draft report](#) recommending that the EU not agree to the former Czech government's request to add a protocol on the Charter to the Lisbon Treaty. A second [AFCO draft report in April 2012](#) called on the European Council not to examine the proposed Treaty amendment.

On 9 October 2012 the AFCO decided not to give a positive opinion on the accession of the Czech Republic to the Protocol on the Charter. [Andrew Duff hoped](#) the European Council would "draw the lesson from Parliament's protracted debate on this matter and quietly shelve the Czech proposal".

¹⁴⁵ David Lidington, [European Committee B, 21 February 2012](#)

¹⁴⁶ SN5214, 9 November 2009