



## The Croatia Accession Bill: an introduction

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Croatia is expected to join the EU in July 2013 – the second former Yugoslav state to do so. A Croatia Accession Bill, announced in the Queen’s Speech, would allow the UK to ratify Croatia’s accession treaty. All existing EU Member States must ratify the accession treaty before Croatia can join the EU. There will not be a referendum in the UK.

The Bill would also cover the Protocols to the Lisbon Treaty put forward by the Czech and Irish Governments, and the proposed decision to maintain the number of EU Commissioners at one per Member State, although these are not part of the accession treaty.

The European Commission is still monitoring Croatia’s progress, with particular attention to the judiciary and corruption (dealt with under a new negotiating ‘chapter’) and privatising the shipbuilding industry. The UK and some other countries are likely to wait until they see the results of the Commission’s autumn 2012 report on Croatia before they ratify the treaty. Despite some political pressure for a speedy accession, the ‘conditional’ accession of Bulgaria and Romania before those countries were fully ready is still in people’s minds.

Although the European Commission is satisfied that Croatia’s reforms are now secure and that it will be ready to join the EU by July 2013, some questions remain for the UK and other Member States. Are issues around the judiciary and corruption sufficiently resolved? Can Croatia afford to join the EU – and can the EU afford Croatia? Should controls be placed on immigration from Croatia, and if so to what extent?

In the light of its experience with Croatia, the European Commission is thinking about how to improve the way it monitors how candidate countries implement reforms. But no other country is likely to join the EU in the next few years.

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# 1 Croatia's accession process

## 1.1 Outline

The EU has agreed that Croatia should join the EU in July 2013, as long as every existing Member State ratifies Croatia's [accession treaty](#).<sup>1</sup> Croatia is the second (after Slovenia) of the former Yugoslav states to have reached this stage.

Croatia formally applied to join the EU in February 2003 and completed negotiations in July 2011. Its accession treaty is almost the last stage of the 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. The treaty is now going through each state's domestic ratification processes. Croatia held a referendum on accession (even though it was not constitutionally required) in January 2012; a two-thirds majority approved.<sup>2</sup> No existing Member State (including the UK) is expected to hold a referendum on Croatia's accession.

Croatia now has "active observer status" in most of the Council working groups as well as in Commission committees. This is to allow it to become familiar with the EU institutions' working methods and to be involved in the decision-making process before its accession.<sup>3</sup>

## 1.2 Continuing concerns over the judiciary, corruption and shipyards

Croatia's accession negotiations encountered particular problems with a border dispute with Slovenia, corruption, refugee returns and war crimes prosecutions. Issues over the judiciary, corruption and shipyard privatisation remain.

The European Commission and the Member States were keen to avoid the 'conditional' accession that led to Bulgaria and Romania still being monitored by the European Commission after their accession in 2007 (the two countries have not yet fully met their obligations and have little incentive to do so). They therefore introduced a detailed new negotiating 'chapter' on judiciary and fundamental rights. This 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 war crimes tribunal in The Hague.<sup>4</sup>

The European Commission and Member States have been particularly concerned that Croatia show 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.<sup>5</sup>

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

<sup>2</sup> "Croatia EU referendum: Voters back membership", *BBC news online*, 22 January 2012

<sup>3</sup> European Commission, [Croatia - EU-Croatia relations](#) [undated; viewed 10 May 2012]

<sup>4</sup> See [European Scrutiny Committee, 1<sup>st</sup> Report, 21 September 2010, HC 428-I 2010-12, para 65.15](#)

Negotiations on chapter 23 were opened in June 2010, and closed in June 2011 when the Commission deemed Croatia's reforms to be sustainable. Despite much progress, it is clear that Croatia is expected to do more work to embed its recent reforms and to implement any outstanding reform requirements: the accession treaty mentions certain commitments in particular.<sup>6</sup>

There are also specific requirements for Croatia to privatise its shipbuilding industry<sup>7</sup> and steel sector.<sup>8</sup> If the shipyards are not privatised before accession, they will have to repay up to €2 billion in state aid.<sup>9</sup>

### 1.3 Post-treaty 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.<sup>10</sup>

The Commission's April 2012 interim report on Croatia's progress concluded that "Croatia has reached a considerable degree of alignment with the *acquis* [but] the Commission has identified a limited number of issues requiring further efforts".<sup>11</sup> It says that Croatia is "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. In addition, preparations are "almost complete" in other areas. But the report says that there are still many outstanding issues, for example war crimes prosecutions:

tackling impunity for war crimes remains a major challenge in Croatia, especially as the majority of crimes have yet to be successfully prosecuted. Measures need to be taken to facilitate the attendance of witnesses at trial, especially in cases relocated to the specialised chambers.<sup>12</sup>

A comprehensive monitoring report is due in the autumn of 2012.<sup>13</sup> Some countries – including the UK – are likely to wait for this report before ratifying Croatia's accession treaty.<sup>14</sup>

The implications of an unfavourable report on Croatia during this period are not clear. Some Member States would like to be able to delay the 2013 accession date, or cancel it altogether, if problems are identified. But there is no explicit mention in the treaty of allowing a delay.<sup>15</sup> It simply allows the Council to "take all appropriate measures".<sup>16</sup>

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<sup>5</sup> 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

<sup>6</sup> *Act concerning the conditions of accession of the Republic of Croatia*, 14409/11, 7 November 2011, Annex VII

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

<sup>8</sup> *Act concerning the conditions of accession of the Republic of Croatia*, 14409/11, 7 November 2011, Annex IX

<sup>9</sup> "Monitoring report: Croatia 'on track' for 2013 accession", *Europolitics*, 24 April 2012

<sup>10</sup> *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

<sup>11</sup> European Commission, *Monitoring report on Croatia's accession preparations*, 24 April 2012, p12

<sup>12</sup> European Commission, *Monitoring report on Croatia's accession preparations*, 24 April 2012, p5

<sup>13</sup> See HC Deb 22 November 2011 c238

<sup>14</sup> "Monitoring report: Croatia 'on track' for 2013 accession", *Europolitics*, 24 April 2012

<sup>15</sup> "Dobrodošli na Hrvatska/A warm EU welcome to Croatia", *Financial Times*, 30 June 2011

<sup>16</sup> *Act concerning the conditions of accession of the Republic of Croatia*, 14409/11, 7 November 2011, Article 36

Unlike Bulgaria and Romania, this monitoring will not continue after accession. There are nevertheless various “safeguard” and transitional provisions in Croatia’s accession treaty which can apply for several years after accession. A European Commission document<sup>17</sup> lists the transitional provisions for particular negotiating chapters, and explains about the three safeguard clauses.

#### **1.4 A new government**

The signing of Croatia’s accession treaty came just after Croatia had voted in a new government.

The centre-left ‘Kukuriku’ coalition, led by the Social Democratic Party of Croatia’s Zoran Milanović won parliamentary elections on 4 December 2011. It defeated the centre-right Croatian Democratic Union (HDZ) that had governed Croatia almost continuously since the country’s 1991 independence. Prime Minister Milanović’s new government has to deal with a bleak economic situation and tackle the corruption that is still a major problem for Croatia.

The election was preceded by months of anti-government demonstrations. These were largely about official corruption: the HDZ was a particular target. There is a series of corruption cases against HDZ members, including former Prime Minister Ivo Sanader.

All of Croatia’s main parties are in favour of EU accession.

## **2 How will the UK ratify Croatia’s accession treaty?**

Croatia’s accession treaty will have to be approved by an Act of Parliament in the UK. However, 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.

### **2.1 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.

### **2.2 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.<sup>18</sup>

Accession treaties do not in principle trigger a UK referendum under the 2011 Act.<sup>19</sup> 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 of Members of the European Parliament to accommodate a delegation from the new Member State”.<sup>20</sup>

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<sup>17</sup> See European Commission, *Information on the Results of the EU Accession Negotiations with Croatia*, November 2011.

<sup>18</sup> See [HC Deb 2 February 2012 c77WS](#)

<sup>19</sup> *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

<sup>20</sup> *European Union Act 2011 Explanatory Notes* para 64

However, the 2011 Act 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”.<sup>21</sup> For example, there was a suggestion in 2009 that the Czech and Irish concession that allowed these two countries to ratify the Lisbon Treaty might be incorporated into the next accession treaty, but this has not happened: the two protocols are to be ratified *alongside* Croatia’s accession treaty but are not part of it.

William Hague’s statement concludes that this 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.**<sup>22</sup>

### 2.3 UK scrutiny of Croatia’s accession

The UK has been involved in scrutinising Croatia’s accession both 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 European Scrutiny Committee is less sure.

David Lidington, the Minister for Europe, said in a House of Commons debate on Croatia’s accession on 22 November 2011 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.”<sup>23</sup>

Andrea Leadsom suggested that Parliament should scrutinise Croatia’s continued progress closely, for example in the Foreign Affairs Committee or the Justice Committee as well as the European Scrutiny Committee:

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.<sup>24</sup>

The House of Commons European Scrutiny Committee has published many reports sceptical about Croatia’s readiness for membership. For instance on [11 January 2012](#) the Committee suggested that Croatia’s accession had “loud and unwelcome echoes” of Bulgaria and Romania’s accession, despite its additional hurdles:

16.19 While the irreversibility of the changes was, we noted, a matter of judgement, they did not guarantee forward momentum. And it was plain that Croatia still had much to do over the next two years if, at the end, it could truly be said to have reached the point that the Commission is still seeking of both Bulgaria and Romania, viz:

- an autonomously functioning, stable judiciary, which is able to detect and sanction conflicts of interests, corruption and organised crime and preserve the rule of law;

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<sup>21</sup> [European Union Act 2011 Explanatory Notes](#) para 64

<sup>22</sup> William Hague, *Statement under Section 5 of the European Union Act 2011*, February 2012, UP2051 2012-12

<sup>23</sup> [HC Deb 22 November 2011 c239](#)

<sup>24</sup> [HC Deb 22 November 2011 c245](#)

- concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime; and
- a legal system capable of implementing the laws in an independent and efficient way.

16.20 The process of systematically tackling war crimes appeared to have barely begun. ICTY Chief Prosecutor Brammertz's latest report hardly sounded like a ringing endorsement of Croatian cooperation, which to us at least still fell some way short of "full". The overall case backlog might have fallen by a further 10,000, but there were still 785, 561 to go. In sum, it seemed that a great deal of further implementation would have to have been accomplished by July 2013 if Croatia was to be able to achieve a track record that demonstrated that she was truly ready for accession.

16.21 Moreover, at the end of this process, notwithstanding what the Minister said about having secured improvements to the EU Common Position, backed by strong language in the 24 June European Council Conclusions, any further "appropriate measures" would be subject to Qualified Majority Voting. Rather than providing reassurance, it strongly suggested to us at least that the deal was effectively done: and even if it was not, then the experience of the Cooperation and Verification Mechanism in Bulgaria and Romania was hardly encouraging. Chapter 23 notwithstanding, there appeared to us to be loud and unwelcome echoes of that earlier accession process, and further evidence that what was judged to be more important was the political imperative of giving (in the words of the European Council conclusions) "a new momentum to the European perspective of the Western Balkans".<sup>25</sup>

The Committee concluded that in its view, the progress Croatia has made is still not enough for membership:

16.48 The Government is therefore rightly looking for the practical implementation of new measures, the further development of a track record of handling corruption cases and continued progress; and for the Croatian authorities to maintain the momentum of reform and establish strong track records of implementation, so that we can all be confident that Croatia's judicial system will not relapse in any way. It may be pleasing to note the Commission's affirmation that Croatia can be considered on track in its preparations for membership in the field of judiciary and fundamental rights: but this is still far from being able to assume in full the obligations of EU membership or a track record of implementation across the board. We, too, therefore hope that the Commission's next report will reflect further progress.<sup>26</sup>

### **3 Issues for the UK**

#### **3.1 Has Croatia sufficiently met its commitments?**

The UK has long been supportive of EU enlargement.<sup>27</sup> However, it shares the European Commission's concerns about ensuring that Croatia is not admitted before it has a track record of implementing reforms.<sup>28</sup> These concerns follow the admission of Bulgaria and Romania before they were fully ready for membership.

The main focus of a House of Commons debate on [22 November 2011](#) was on whether Croatia had made enough progress on judicial reform and corruption.

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<sup>25</sup> [European Scrutiny Committee, Fifty-first report, 11 January 2012, HC428-xlvi 2010-12 ch 16](#)

<sup>26</sup> [European Scrutiny Committee, Fifty-first report, 11 January 2012, HC428-xlvi 2010-12 ch 16](#)

<sup>27</sup> See for example [HC Deb 22 November 2011 cc233, 242](#)

<sup>28</sup> See for example [House of Commons European Scrutiny Committee, Thirty-fourth report, HC 428-xxx 2010-12, 22 June 2011, ch. 18](#)

### 3.2 Immigration

A further concern for the UK is the impact of EU enlargement 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, establishes a seven-year transitional period during which the UK can choose whether or not to allow Croatians to work freely in the UK.<sup>29</sup>

The UK Government will be introducing transitional controls on immigration from Croatia through secondary legislation, “based on the likely volume and impact of migration from Croatia”.<sup>30</sup> These restrictions are likely to match the [controls placed on Bulgarians and Romanians](#) when their countries joined the EU.

### 3.3 Economic issues

Some argue that Croatia still needs major economic reforms, and could struggle to use all of its EU funding.

Although 62% of Croatia’s exports go to the EU, its economic growth has been among the slowest in Eastern Europe because of a narrow export base and weak competitiveness. The country also suffers from high unemployment (13.7%), weak growth prospects, and debt difficulties: debt owed to foreign creditors exceeded its GDP in 2010.<sup>31</sup>

The European Court of Auditors has warned that Croatia already has such difficulties in spending EU farm aid that it will struggle to make good use of the millions of euros that it will get from the Common Agriculture Policy when it joins the Union.<sup>32</sup> Croatia has a [Ministry of Regional Development and EU Funds](#) which is in charge of monitoring the implementation of projects and programmes financed from EU programmes.

The UK currently provides nearly £500,000 a year in bilateral assistance to Croatia, “carefully targeted in particular on some of the judicial and rule-of-law reforms where outstanding work is still needed”.<sup>33</sup> This is in addition to the EU’s pre-accession assistance to Croatia and other funding.

Since 2007, Croatia has been receiving EU financial aid under the Instrument for Pre-accession Assistance (IPA). Croatia has been allocated nearly €1 billion of pre-accession aid for 2007-13:<sup>34</sup>

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<sup>29</sup> [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’

<sup>30</sup> Cabinet Office, [The Queen’s Speech 2012 – Briefing Notes](#), 9 May 2012, p47

<sup>31</sup> [IMF \(2011\) Article IV Assessment – Croatia](#)

<sup>32</sup> “Auditors say Croatia will struggle to use CAP cash”, [European Voice](#), 2 February 2012

<sup>33</sup> [HC Deb 22 November 2011 c241](#)

<sup>34</sup> European Commission, [Croatia - Financial Assistance](#) [undated; viewed 10 May 2012]

## Croatia - Financial Assistance

Component	2007	2008	2009	2010	2011	2012	2013
■ Transition Assistance and Institution Building	49,611,775	45,374,274	45,601,430	39,483,458	39,959,128	39,969,161	17,437,969
■ Cross-border Co-operation	9,688,225	14,725,726	15,898,570	15,601,136	15,869,158	16,442,542	9,749,192
■ Regional Development	45,050,000	47,600,000	49,700,000	56,800,000	58,200,000	57,578,127	31,000,000
■ Human Resources Development	11,377,000	12,700,000	14,200,000	15,700,000	16,000,000	16,040,000	9,000,000
■ Rural Development	25,500,000	25,600,000	25,800,000	26,000,000	26,500,000	26,151,182	27,700,000
TOTAL	141,227,000	146,000,000	151,200,000	153,584,594	156,528,286	156,181,012	94,887,161

After accession, Croatia will be able to access various sources of EU funding:

In the second half of 2013, the total EU funds approved for Croatia amount to EUR 687.5 million. The most of this amount comes from the Structural Funds and Cohesion Fund (EUR 449.4 million) and European Fisheries Fund (EUR 8.7 million). Croatia will also have at its disposal the so-called Schengen Facility, intended for financing of the measures having to do with EU's outer border, i.e. for preparation of implementation of Schengen aquis (EUR 40 million). As part of the so-called 'Transitional Facility', intended for strengthening of administrative and judicial capacity, Croatia will receive EUR 29 million. Also, EUR 75 million from the 'Cash Flow Strengthening Facility' has been earmarked for Croatia. The funds earmarked for certain agricultural measures, the payment of which is to begin in 2014, can also be added to the overall amount.<sup>35</sup>

But it will also be contributing to the EU budget:

Croatia's payments to the European Union's budget in the second half of 2013 are estimated to the amount of EUR 267.7 million, which is three times less than the amount that Croatia has at its disposal in 2013.

## 4 Lessons learnt?

Croatia's accession has given the enlargement project a boost, but there are still lesson 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.<sup>36</sup> 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
- corrective measures including halting other negotiations if the candidate country is falling behind it requirements to implement chapter 23.<sup>37</sup>

<sup>35</sup> Delegation of the European Union to the Republic of Croatia, *Croatia and EU - prejudices and realities* [undated; viewed 10 May 2012]

<sup>36</sup> 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

<sup>37</sup> 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.

However, 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 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.