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ALEX DE RUYTER

Preface

Crises are not a new phenomenon in the context of European integration. Additional integration steps could often only be achieved under the pressure of crises. As early as the 1970s, for example, there were talks of “Eurosclerosis” before Jacques Delors brought new dynamics to the European project with his proposal for a single European market. At present, however, the EU is characterised by multiple crises, so that the integration process as a whole is sometimes being questioned:

In 2015, the crisis in the eurozone had escalated to such an extent that for the first time a member state was threatened to leave the eurozone – and could barely be averted. This does not alter the fact that the common monetary union is a half-finished integration project; among the member states there is disagreement on the further development of the euro zone. Furthermore, the massive influx of refugees into the EU has revealed the shortcomings of the Schengen area and the common asylum policy. Finally, with the majority vote of the British in the referendum of 23 June 2016 in favour of the Brexit, the withdrawal of a member state became a reality for the first time.

Even in the words of the European Commission, the EU has reached a crossroads. Against this background, the Commission published a White Paper on the Future of Europe in March 2017. The White Paper explored how the EU might change over the next years, taking into account the impact of new technologies on society and employment to concerns about globalisation, security issues and growing populism. At the same time, the EU’s external relations with neighbouring countries in the East are subject to broad consultation processes to reflect on the future strategic direction. In particular, the crisis in Ukraine, which started in 2014, has raised doubts about the efficiency of the European Neighbourhood Policy of the last years.

The twelfth *Network Europe* conference included talks on the numerous challenges and future integration scenarios in Europe.

Zurich, July 2021

Andreas Kellerhals
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Experiences and Challenges of Croatia as EU Member State

Ivana Kunda

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I. Introduction

While Croatia became a European Union Member State on 1 July 2013, and as such remains the last state hereto to be integrated in it, the EU topics had already become a significant part of the political discourse in Croatia a quarter of century prior to this along with the growing importance of ideas on Croatian democracy and independence. During the first multiparty elections held in spring 1990 while Croatia was still a republic within the Socialist Federative Republic of Yugoslavia (SFRY),¹ the most important topics were the end of the communist regime and Croatia's future in relation to what was then Yugoslavia, each of which entailed the overall transformation of the existing social and political system.² Irrespective of whether they put an emphasis on one or the other topic, the political parties loudly evoked European democratic values, market economy and freedom to join or leave state integrations. Those in favour of Croatia's independence pointed to the then European Economic Community (EEC) as an example of a free integration model which Croatia should aspire to join. This orientation was symbolically expressed by decorating their pre-election meetings not only with Croatian flags, but also with the then EEC flag.³

¹ Among the six federal republics, Croatia and Slovenia held their first multiparty elections in spring 1990, while the other four republics did so half a year later.

² Zakošek (2002), 11.

³ Picula/Žnidarić, 10.

The Croatian ambition to become one of the yellow stars on that flag was articulated clearly also in the political speeches at the highest government levels from the early starts of the new country. Thus, on 30 May 1990 in his speech at the Croatian Parliament after being elected the first Croatian President, Franjo Tuđman stated that in parallel with the internal democratic transformation, steps needed to be taken to join Croatia to the then EEC. Thus, the Croatian path towards the EU was politically determined at the first session of the Croatian Parliament following the independence.⁴ As much as this was the determination at the time, it was of course not a completely new idea in Croatia or even the former Yugoslavia. The path towards the EU, however, was a “thorny”⁵ one for Croatia due to many factors, some of which were shared with other countries undergoing democratic transitions and some of which were very peculiar to the Croatian situation. In the following chapter the analysis is focused on the developments in the period preceding the Croatian accession to the EU, which need to be briefly addressed in order to enable better understanding its delay in accession and to appreciate the later effects of it.

II. Transformation prior to the accession to the EU

Important to stress at the outset is the essential difference between the process of social modernisation which led to the development of the liberal democracies in West Europe and the process of democratic transition in the postcommunist societies. Whereas the former process entails gradual and systematic evolution of values, social structures and political institutions, the latter one brings about an abrupt discontinuity in the social, political and economic development. Despite the three main shared tasks within the transition process in postcommunist societies (constituting political community, establishing democracy and establishing market economy),⁶ there remains a huge difference from one society to another in the degree to which the actual transformation has taken place. The fastest in the process were the Eastern European countries included in the fifth wave in 2004, followed by those in the 2007 extension, with Croatia catching up in 2013 as a single acceding state in the sixth EU integration wave. Despite an excellent starting position as a very economically developed country and as one that was not nearly as suppressed as the countries behind the Iron Curtain,⁷ Croatia nevertheless ended up low on the entrance list.

⁴ Vukas, 183 et seqq.

⁵ Vukas/Dagen, 425.

⁶ Maldini, 380.

⁷ See Vukas/Dagen, 427; Jurčić/Vojnić, 800.

Circumstances in which Croatia commenced its transition in 1990 were exceptionally difficult. Unlike in nearly all other postcommunist countries, the transition in Croatia was occurring in parallel with becoming an independent state as a result of the dissolution of the former Yugoslavia,⁸ and fighting the Homeland War caused by Serbian aggression disguised under the then Yugoslav Army forces.⁹ The first decade was hence intensely affected by complexities connected to leaving the former Yugoslavia, including the five years of war which brought about human losses, refugees, and material damage. Instead of taking steps to democratise the political system, the political government in that period was preoccupied with building a national state and national integration, as a precondition of democratisation.¹⁰ Domination of national over democratic elements in social transition enabled concentration of political power in the hands of one party, which won the first democratic elections (Croatian Democratic Union, *Hrvatska demokratska zajednica* – HDZ), the inability to apply democratic control over the government, the neutralisation of opposition, and the political intolerance and political influence over the economic transformation, all of which leading to authoritarian regression.¹¹ Although constituted on a normative and institutional level,¹² the democratic system was not materialised in practice. The institutional structures were tailored to uphold the authoritarian and populist features of the political system,¹³ including the “Cesar-like character of the government system”¹⁴ with prevailing powers of the President of the Republic,¹⁵ gerrymandering and a frequently changing electoral system.¹⁶ The self-governing socialism was replaced by another ideological mixture consisting of nationalism, and social conservatism with authoritarian elements, while liberalism was present mainly in the economic aspects (privatisation and market economy) and in the moderate political multiparty system.¹⁷ Viewed through the lens of the traditional

⁸ For analysis of an extensive early literature on the causes of the dissolution of the former Yugoslavia and the resulting wars see Ramet.

⁹ Maldini, 65 et seq.

¹⁰ Maldini, 85.

¹¹ Maldini, 67.

¹² This was first established by the so-called Christmas Constitution. *Ustav Republike Hrvatske*, Narodne novine 56/1990. The Constitutions was amended in several occasions: Narodne novine 135/1997, 08/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010, 05/2014.

¹³ Zakošek (1992), 90 et seq.

¹⁴ Boban, 163.

¹⁵ Puhovski, 20.

¹⁶ Kasapović, 777 et seqq.

¹⁷ Sekulić, 211; see also Zakošek (2008), 588 et seqq. when drawing comparisons between democratisation processed in Croatia and Serbia.

ideal identity models, the first decade of independency in Croatia thus produced strong primordial ethnic identity among the Croatian citizens as an antipode to the civic identity reflecting also the Croatian/European dichotomy.¹⁸

At the end of the second decade following the Croatian independence and turbulent changes to its political system,¹⁹ the genuine social transition finally materialised. In 2000, the coalition of opposition parties (Social Democratic Party, *Socijalnodemokratska partija Hrvatske – SDP* and Croatian Social Liberal Party, *Hrvatska socijalno-liberalna stranka – HSLŠ*) won the elections which put an end to the most acute non-democratic elements in the political system.²⁰ The Constitution was amended to lessen the powers of the President of the Republic, altering the system from a semi-presidential into a parliamentary one,²¹ but due to this political moment the “duckbilled constitutional platypus”²² was created leaving some functions shared between the President of the Republic and the President of the Government.²³ With the gradual reduction of the authoritarian tendencies and detotalisation, the democratic system was stabilised.²⁴ Maldini described the Croatian political culture of that period as one of a mixed type with parochial, submissive and participative elements. He notes that, despite the presence of values of individualism, liberalism, post-materialism and openness, collectivism, egalitarianism, religiousness and authoritarian inclinations still dominate the society as a whole.²⁵

The Croatian economic transition was yet another stumbling block, inextricably linked to the political, social and cultural aspects thereof. In order to build the liberal democratic system, it was necessary to switch from state control to market economy and from social to private ownership. State control

¹⁸ Sekulić, 88 et seqq.

¹⁹ Smerdel (2011), 7 et seqq.

²⁰ For an analysis of the formation, functioning and termination of the first coalition see Kasapović, 52 et seqq.

²¹ Promjena Ustava Republike Hrvatske, *Narodne novine* 113/2000.

²² Simonetti, 3 and 22.

²³ These functions are co-creation of the foreign policy and care for orderly and harmonious functioning and stability of the state government. This is still the source of debates in Croatia and political calls for the amendments to finally reduce the functions of the President of the Republic are ongoing. See Toma Ivanka, Šeks: “Treba smanjiti ovlasti predsjedniku i birati ga u Saboru, po njemačkom modelu”, *Jutarnji list* of 23 December 2020, <<https://www.jutarnji.hr/vijesti/hrvatska/seks-treba-smanjiti-ovlasti-predsjedniku-i-birati-ga-u-saboru-po-njemackom-modelu-15038646>>.

²⁴ Sekulić, 211.

²⁵ Maldini, 388.

and social ownership were formative elements of not only the economic but also the political and social system in the period before 1990.²⁶ Timid changes already started in the 1980s, including the 1988 amendments to the Constitution of the former Yugoslavia which laid bases for later introduction of private ownership.²⁷ Despite actual preconditions for a socially fair privatisation in the form of distribution among workers of the socially owned companies, the privatisation model was fully state-controlled, i.e. politically controlled. The aftermath of the ownership transformation and privatisation model in Croatia with its politically selected “two hundred families” was deindustrialisation and destruction of a major part of the production by bankrupting hundreds of companies, and the devastation of human capital by lay-offs causing a large increase in the unemployment rate and early retirements.²⁸ Consequently, a threefold monopoly had been instituted: over the ownership, over the market and over the politics.²⁹ Although it was disappointing for most Croatians, this process could not have been reversed without further social and political disturbances. Before accession to the EU, the country’s economy was additionally hit by the 2008 crisis and was on a very slow recovery path. During the protracted recession which ended only in 2015, the general government debt more than doubled, driven by deficits and costs related to state-owned enterprises. Croatia’s net liabilities to foreign creditors and investors peaked in 2011, well above the sustainable level.³⁰ The ability to make use of the EU funding available to Croatia at the time was in huge part hindered by the “lack of a well-trained and experienced administration to cope with time-consuming tasks, stringent and rigid EU procedures”.³¹

Under the above-described circumstances a low significance was ascribed to the development of the judiciary, which in the early 1990s suffered from a sudden reduction of human capacities caused by the decisions of many judges to change their career path for various reasons including extremely low wages

²⁶ Čepulo, 314 et seqq.

²⁷ Simonetti, 3 and 22.

²⁸ See Županov, 27 et seqq.

²⁹ Vojnić, 41.

³⁰ Commission Staff Working Document: Country Report Croatia 2019 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances Accompanying the document Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank and the Eurogroup 2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, Brussels, 27 February 2019, SWD/2019/1010 final, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019SC1010&from=EN>>, 5 et seq.

³¹ Ott, 21.

in the public sector. The War also contributed to huge case backlogs which remained largely unresolved up to the present time, while the political system facilitated stagnation in judiciary reorganisation. With Croatia's exit from insolation at the verge of the millennia, its judiciary was kept under the careful watch of the EU which resulted in continuous assessment reports and recommendations as to its reforms. A diligent assessment on the part of the EU revealed a number of ruptures in the system, the important one being the judiciary which is – all at once – the ultimate foundation of the rule of law and democracy and the weakest branch of government. Hence, the EU had to hammer home the need for judicial reforms to the Croatian government, as the problems were not easily mended. The judiciary demonstrated particular resilience to modernisation and reforms to both organisational and legislative aspects of the judiciary which were not sufficiently precise, properly financed, politically supported or consistent, as indicated in the 2007 Screening Report. The critical points were closely connected to the values already rooted in a sufficiently large part of Croatian society to create an overall system failure, manifesting in: proneness to corruption due to the lack of (clear) standards for appointment and evaluation of judges; cases demonstrating inefficiency of the judiciary unable to guarantee fair trial (resulting in lengthily criminal and civil proceedings) or protection from discrimination; instances of racist and xenophobic sentiment and intolerance towards some minorities without proper responses on the legislative or enforcement levels; situations of inadequate conditions and supervision of social institutions and prison system; delays in returning the possession of property to refugees; occasional political pressure over the public television and incomplete privatisation of local media.³²

III. Setting the stage for accession

The path to the EU consists of many stages, Croatia being a prominent example. Although the crisis in the former Yugoslavia was not the EEC's priority given the partial dissolution of the Soviet Union, unification of Germany and crisis in the Persian Gulf region, it is submitted that the then EEC was following and was well-acquainted with the situation there and with the critical issues on the rise.³³ While the former Yugoslavia had established diplomatic relations with the EEC in the later 1960s, the international recognition of Croatia by all EU Member States in January 1992 marked the official com-

³² Screening report, Croatia, Chapter 23 – Judiciary and fundamental rights, 27 June 2007, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/croatia/screening_reports/screening_report_23_hr_internet_en.pdf>.

³³ Vukas/Dagen, 440.

mencement of their international relations. The relationship since has been one of a delicate balance or of a “carrot and stick” strategy which the EU exercised towards Croatia. A case in point is the inclusion of Croatia in the PHARE programme. In its 1992 opinion, the Council, agreeing with the European Parliament, held that Croatia could not sufficiently guarantee the respect of human rights and thus the European Commission’s proposal to include Croatia in the PHARE programme was rejected. Because Croatia subsequently demonstrated its constructive approach towards improving the political situation, in particular the respect of human and minority rights, and assuring progress in economic reforms, and because it cooperated in the resolution of the war in Bosnia and Herzegovina, the opinions were reversed to extend the PHARE programme to Croatia in 1994. This was a positive political message sent to the Croatian authorities. In 1996 Croatia joined the Council of Europe, which was an important step on the road to the EU.

The turn of the millennia was also a turn in the position which the EU had vis-à-vis Croatia. In June 2000 the Council decided that Croatia fulfilled the requirements of a potential candidate³⁴ and Croatia responded right away by establishing the Parliamentary Committee for European Integration and the Ministry of European Integration. In October 2001 the Stabilisation and Association Agreement (SAA) between Croatia and the EU³⁵ was signed leading to the 21 February 2003 Croatian application for membership in the EU presented at the Athens meeting. The following year the European Commission issued a positive *avis* on this application and recommended the opening of accession negotiations.³⁶ This recommendation was endorsed by the June 2004 European Council who decided that Croatia was a candidate country and that the accession process should be launched. The accession negotiations were opened with Croatia in 2005 following checks as to the full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). The Commission adopted an overall enlargement strategy applicable to Croatia, which meant applying a fair and rigorous conditionality – the Copenhagen criteria. In 2005, the SAA entered into force, and pre-accession negotiation com-

³⁴ European Council - Presidency Conclusions, Santa Maria da Feira, 19 and 20 June 2000, <https://www.cvce.eu/en/obj/conclusions_of_the_santa_maria_da_feira_european_council_19_20_june_2000-en-042a8da3-def7-44ac-9011-130fed885052.html>.

³⁵ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, OJ L 26 of 28 January 2005, 1 et seqq.

³⁶ See European Commission, Croatia: Commission recommends opening of accession negotiations, IP/04/507, Brussels 20 April 2004, <https://ec.europa.eu/commission/press-corner/detail/en/IP_04_507>.

menced consisting of 35 chapters. By the end of 2006, the screening process was completed. However, negotiations on several chapters were blocked by Slovenia because of the unresolved border dispute between the two countries and by the Netherlands and the UK who believed that there was no full cooperation with the ICTY on the part of Croatia. In April 2009 Croatia joins NATO,³⁷ raising its international rating and making an important step on the way to EU. In November 2009, the Arbitration Agreement between Croatia and Slovenia was signed³⁸ enabling closure of the pre-accession negotiations on 30 June 2011, a decade after the SAA was signed. On 9 December 2011, the Treaty of Accession was signed between Croatia and the EU,³⁹ and was followed by the January 2012 referendum on Croatia's accession to the EU, with 66% of the votes in favour. On 1 July 2013 Croatia acceded to the EU.

IV. Post-accession developments

The accession of Croatia to the EU is perceived by the Croatian public as being a “good thing”, much more so at the end of 2020 (63%) than it was at the time of accession (50%).⁴⁰ Many Croatians have understood the accession to the EU as returning to where they belong. This was not only one of the first messages from the EU officials addressed to Croatians,⁴¹ but was also part of the political, even doctrinal discourse in Croatia.⁴² It was of course intended to appeal to the sense of European identity in Croatians, with Europe being perceived in Croatia mainly in positive terms and the European identity being seen as an expansion of the national one.⁴³ The sense of belonging to Europe was further pushed with the benefits that Croatians started enjoying as a consequence of the accession. It was perceived as generating benefits to Croa-

³⁷ Zakon o potvrđivanju sjevernoatlantskog ugovora, Narodne novine – međunarodni govori, 3/2009.

³⁸ Zakon o potvrđivanju Sporazuma o arbitraži između Vlade Republike Hrvatske i Vlade Republike Slovenije, Narodne novine – međunarodni govori, 12/2009.

³⁹ Treaty between the Member States of the European Union and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union, OJ L 112 of 24 April 2012, 10 et seqq.

⁴⁰ Eurobarometer, Socio-demographic trends in national public opinion – Edition 7, <<https://www.europarl.europa.eu/at-your-service/hr/be-heard/eurobarometer/socio-demographic-trends-edition-7>>, 16.

⁴¹ In his speech in Zagreb on 1 July 2013, President of the European Parliament Martin Schulz stated: “Welcome to European Union, welcome home!”.

⁴² See Vukas/Dagen, 426.

⁴³ On the perception of European Union see Sekulić, 113 et seq. and 346.

tia by 78% of the public, somewhat strongly by those below 40 years old.⁴⁴ The immediate effects were felt at several levels, yet the public has mostly recognised the economic benefits in new work opportunities (55%), economic growth (34%), and in an improved standard of living (31%). This is not surprising given that, according to the 2014 public opinion survey, the majority of respondents in Croatia (51%) felt that their household's financial situation was "bad" and they were convinced that their job situation was "totally bad" (48%), while their most pressing concern was unemployment (28%).⁴⁵ In the most recent pre-epidemic public opinion survey in November 2019, Croatians were most worried about issues of rising prices, cost of living and inflation (36%), while their second most pressing concern is the financial situation in their household (22%) about which they are also the third most concerned nation in EU.⁴⁶ These percentages largely correspond to the actual figures.

Prior to the COVID-19 crisis, Croatia documented a stable economic growth of close to 3%,⁴⁷ and its GDP has been steadily growing. In 2018, Croatia finally reached its pre-crisis GDP although still quite low under the EU average,⁴⁸ which means that the economic transformation was not particularly successful. Exports increased each year since the accession until 2019, especially to the EU Member States; while it fell somewhat in 2020 due to the outbreak of the COVID-19 epidemic.⁴⁹ Furthermore, an already quite successful tourism industry which prospered since 2013 reached its peak in 2019⁵⁰ and dropped in 2020 consistently with global trends. Accession also enabled access to various sources of funding private investment and, even more so, public development, mainly through structural and investment funds. It opened opportuni-

⁴⁴ Eurobarometer, Socio-demographic trends in national public opinion – Edition 7, 20 et seqq.

⁴⁵ Standard Eurobarometer 81, Public opinion in the European Union, Spring 2014 Report, <<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/standard/yearFrom/1974/yearTo/2014/surveyKy/2040>>, 17 and 21.

⁴⁶ Standard Eurobarometer 92, Public opinion in the European Union, November 2019 Report, <<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/standard/yearFrom/1974/yearTo/2020/surveyKy/2255>>, 24.

⁴⁷ World Bank, GDP growth – Croatia, <<https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=HR>>.

⁴⁸ World Bank, GDP – Croatia, <<https://data.worldbank.org/indicator/NY.GDP.MKTP.KD?locations=HR>>.

⁴⁹ See yearly figures presented at the Government web pages according to the State Statistics Institute. O hrvatskom izvozu, <<https://izvoz.gov.hr/o-hrvatskom-izvozu/9>>.

⁵⁰ See, for instance, figures and comparison for 2019, Croatian Bureau of Statistics, Tourist arrivals and nights in 2019, <https://www.dzs.hr/Hrv_Eng/publication/2019/04-03-02_01_2019.htm> .

ties for, *inter alia*, investment in innovative research and for the development and intensification EU-wide of international research collaborations, an increased participation in labour markets and a rise in the quality of education and training, reform of the public administration including digitalisation of the public sector and services for citizens, the preservation of cultural heritage and natural resources, building and equipping student dormitories and health institutions, and carrying out large infrastructural projects for the development of the road, railway, ports and communal infrastructure.⁵¹ Despite ample opportunities, Croatia failed to take much advantage in joining the EU internal market. Some of the causes of this failure derive from the unfair and state-controlled type of privatisation producing the above-described detrimental aftereffects of an evaporating industry, reducing agricultural production and increasing the need to import goods, as well as the lack of diversification with tourism as the main revenue-generating sector.

However, a couple of projects will bring about the desired economic effects: the EU is co-funding a huge energy project related to LNG Terminal Omišalj and the building of the Pelješac Bridge.⁵² Besides greatly benefiting tourism and trade as well as the everyday life of the population in the region, by significantly reducing the need to use the Neum corridor, the latter will reinforce the territorial cohesion of the most southern parts of Croatia with the rest of the country. As such, this Commission decision has also a symbolic value for many Croatian citizens. According to the available data, it may be concluded that the benefits which Croatia is realising from these EU funds could indeed

⁵¹ Vlada Republike Hrvatske, Ministarstvo regionalnog razvoja i fondova Europske unije, EU fondovi mijenjaju Hrvatsku, <<https://razvoj.gov.hr/eu-fondovi-mijenjaju-hrvatsku/4212>>.

⁵² European Commission, Commission approves EU financing of the Pelješac bridge in Croatia, 7 June 2017, <https://ec.europa.eu/regional_policy/en/newsroom/news/2017/06/06-07-2017-commission-approves-eu-financing-of-the-peljesac-bridge-in-croatia>.

be much higher,⁵³ which may be explained by the fact that Croatian applicants have lesser experience and may further improve the respective administrative and management capacities which should raise the chances of a more effective use of the funds.

Important improvements were made with regard to unemployment. The unemployment rate was 6.4% in November 2019⁵⁴ which was slightly better than the EU average and way better than the 17.4% rate in 2013. The youth unemployment rate (from 15 to 24 years) was 16.6% in December 2019, which is a remarkable improvement in comparison to December 2013 when it reached a record high of 50%.⁵⁵ Without a doubt, the EU accession brought about a considerable decrease in the unemployment rate, especially in the youth segment. As much as one would assume this to be a consequence of improvement of business conditions in Croatia, the reality is that the decrease in the unemployment rates is actually resulting from the massive emigration from Croatia to several other Member States, especially of the young population. What seems to be a sad reality for Croatian society as a whole, especially its demographic prospects and growth potential, is in fact a window of opportunity for individual Croatian emigrants exercising their freedom of movement to Germany, Austria, Ireland etc.

⁵³ From the pre-accession funds available in the period of 2007–2013, Croatia contracted for 1,27 billion EUR, or 99,70% of the allocated funds, while payments until the end of 2018 were in the amount of 1,12 billion EUR which equals 88,33% of the allocated funds. With respect to the EU funds available for the period of 2014–2020, Croatian Government reported that Croatia contracted for the total of 6,63 billion EUR (61,85% of the total funds allocated to Croatia) until the end of 2018, and payments in the same period were made to the end users in the amount of 1,98 billion EUR which equals 18,48% of the total allocated funds. Vlada Republike Hrvatske, Izvješće o korištenju europskih strukturnih i investicijskih fondova i pretpristupnih programa pomoći Europske unije za razdoblje od 1. srpnja do 31. prosinca 2018. godine, Zagreb, 2 May 2019. The updated figures from the EU show that by the end of 2020, Croatia realised 15,43 billion EUR decided funding, out of 12,65 billion EUR allocated funds (122%). The amount spent is nearly half – 6,67 billion EUR. Thus, in nearly all aspects Croatia's performance is below EU average. See European Commission, European Structural and Investment Funds, Country Data for: Croatia, <<https://cohesion-data.ec.europa.eu/countries/HR>>.

⁵⁴ Table Seasonally adjusted unemployment, totals, in Eurostat, News Release – Euroindicators, 4/2021 – 8 January 2021, <https://ec.europa.eu/eurostat/documents/portlet_file_entry/2995521/3-08012021-AP-EN.pdf/fc360f72-ff0d-ecc0-df77-2bd9c7549825>.

⁵⁵ Trading Economics, Croatia - Unemployment rate: From 15 to 24 years (last updated from the Eurostat on March of 2021), <<https://tradingeconomics.com/croatia/unemployment-rate-all-iscsed-2011-levels-from-15-to-24-years-eurostat-data.html>>.

The possibility to increase employment chances or improve employment status by immigrating to another Member State is both an advantage and a challenge. Manifested in the lack of quality labour of certain qualifications (such as workers in health, construction and tourist sectors⁵⁶), challenges threaten the Croatian business sector, but also affect its demographic structure and ability to cope with the effects of an abruptly aging population. Positive effects should transpire in the form of higher wages for the workers who remained in Croatia as the demand for employees of their qualifications increases.⁵⁷ It should be remembered that the relatively recent mass emigration wave from Croatia had already occurred in the 1990s and continued since due to emigration as well as to natural depopulation. Studies show that emigration patterns from Croatia intensified significantly as of 2014, due to the perception of Croatians about the higher economic development and better quality of life in destination Member States.⁵⁸ It has also been in strong correlation with the lifting of the temporary derogations from EU rules on free access of Croatian workers to the labour markets of the other Member States that were inserted in the Annex V of the Accession Treaty.⁵⁹ Meanwhile, estimates for the total number of Croatian citizens who have emigrated are still uncertain. According to the Croatian Bureau of Statistics, subsequent to accession to the EU the annual number of emigrants grew from 15,262 in 2013 to 40,148 in 2019, peaking with 47,532 in 2017.⁶⁰ Some research demonstrates that the official figures do not represent the true magnitude of emigration from Croatia which is actually 62% higher than officially reported.⁶¹ A valuable tool to collect reliable data would be the public census, the last of which dating back to 2011 and the new one planned for 2021.

Next to the economic motives, the Croatians see the greatest advantage of joining the EU in maintaining peace and strengthening stability (25%) and improved international relations between Croatia and other Member States (25%).⁶² One of the certainly positive effects of accession is the improved political positioning of Croatia, both internationally and even more so in a regional context. In 2020, Croatia presided over the Council of the EU for the first time.

⁵⁶ Jerić, 28.

⁵⁷ Along these lines see also Knežević.

⁵⁸ Vidovic/Mara, 13.

⁵⁹ Draženović/Kunovac/Pripuzić, 433.

⁶⁰ Croatian Bureau of Statistics, Migration of Population of the Republic of Croatia, 2019, <https://www.dzs.hr/Hrv_Eng/publication/2020/07-01-02_01_2020.htm>, in particular table 1. International Migration of Population of the Republic Of Croatia.

⁶¹ Jerić, 26.

⁶² Eurobarometer, Socio-demographic trends in national public opinion – Edition 7, 24.

Unable to fully proceed as planned due to the COVID-19 epidemic, its activities nevertheless resulted in the adoption of 33 legal acts, 27 dialogues and 54 Council's conclusions, where the progress in the implementation of the agenda is measured by the document output. This was the opportunity for Croatia to take a stand in the regional enlargement process and to bring the Western Balkan enlargement up on the EU agenda. Important steps taken in that respect were: the launch of the accession talks with Albania and North Macedonia, the adoption of the May 2020 Zagreb Declaration at the Zagreb Summit, and the opening of the last negotiating chapter on competition law with Montenegro. On a purely EU level, the presidency was crucial in the setting up of joint crisis response mechanisms and in orderly proceedings with Brexit.

A long and meticulous accession negotiation within Chapter 23: Judiciary and Fundamental Rights, reflected many of the difficulties encountered in the social transition explained above.⁶³ Despite closing the chapter, some inadequacies were pointed out immediately before the accession was decided on.⁶⁴ One of the weaknesses related to the lack of a convincing track record of recruiting and appointing judges and state prosecutors based on the application of uniform, transparent, objective and nationally applicable criteria. Under the strategic documents,⁶⁵ in 2018 Croatia amended its substantive and procedural rules on the appointment of judges and state attorneys⁶⁶ with the aim of strengthening objectivity and transparency regarding the former and improving the quality of their service, their professionalism and accountability. Failing

⁶³ Judiciary and state administration remain weak points in Croatia, as is repeatedly stressed in the various Commission reports, see Communication from the Commission, Opinion on Croatia's Application for Membership of the European Union Brussels, 20 April 2004, COM(2004) 257 final,

<<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0257:FIN:EN:PDF>>, 18 et seqq.; European Commission, Croatia 2007 Progress Report, Brussels, 6 November 2007, SEC(2007) 1431, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2007/nov/croatia_progress_reports_en.pdf>, 7 et seqq.

⁶⁴ 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), Brussels, 2 March 2011, COM(2011) 110, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/hp/interim_report_hr_ch23_en.pdf>.

⁶⁵ See Strategija razvoja pravosuđa, za razdoblje od 2013. do 2018. godine, Narodne novine 144/2012.

⁶⁶ See Zakon o izmjenama i dopunama Zakona o sudovima, Narodne novine 67/2018; Zakon o izmjenama i dopunama Zakona o Državnom sudbenom vijeću, Narodne novine 67/2018; Zakon o državnom odvjetništvu, Narodne novine 67/2018; Zakon o Državnoodvjetničkom vijeću, Narodne novine broj 67/2018.

to properly address the question of their appointment which is decided on by the councils made up partially of members of the Croatian Parliament, Croatia is ignoring the obvious objections which may be raised with respect to the impartiality of the thus appointed judges and state attorneys.⁶⁷

A long record of cosmetic rather than fundamental reforms of judiciary without tangible and substantial effects on its efficiency and transparency is reflected in the tendency of Croatians not to trust their judiciary. It thus equally appalling as it is expected that only 20% of Croatians trust their judiciary and legal system, which is by far the lowest rate among the EU Member States.⁶⁸ As this paper was being completed, the National Development Strategy 2030⁶⁹ was passed at the Parliament. Absent any actual activities, projects, finances or parameters, the Strategy 2030 was described by the opposition parties as a wish list and lacked their support in the Parliament receiving only a tight majority vote. It lists 13 goals, one of which being “an efficient judiciary, public administration and state property management”. Among important reform measures that need to be taken, which are essential for the protection of the fundamental right to a fair trial, are those to deal with protracted court proceedings and inefficient remedies against courts in these situations. As the European Court of Human Rights (ECtHR) recently confirmed in three cases against Croatia,⁷⁰ Croatia has neither efficient guarantees to prevent trials taking longer than reasonable time under Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms (ECHR) nor an efficient legal remedy to protect that right pursuant to Article 13 of the ECHR. In reaction to this, the Constitutional Court of the Republic of Croatia issued a Report on the Protection of the Right to a Trial within the Reasonable Period of Time Regulated under Articles 63–70 of the Courts Act,⁷¹ to urge the legislator to amend the respective provisions. Not only does this “courtroom episode” clearly reveal insufficiencies in the legislation, but it also serves as a reminder

⁶⁷ Vasiljević, 111.

⁶⁸ Standard Eurobarometer 92, Public opinion in the European Union, November 2019 Report, <<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/standard/yearFrom/1974/yearTo/2020/surveyKy/2255>>, 60.

⁶⁹ Nacionalna razvojna strategija Republike Hrvatske do 2030. godine, Narodne novine 13/2021.

⁷⁰ ECtHR, Decision of 30 July 2020 in Case No. 9849/15 - Mirjana Marić/Croatia; ECtHR, Decision of 30 July 2020 in Case No. 11388/15 and 25605/15 - Glavinić and Marković/Croatia; ECtHR, Decision of 30 July 2020 in Case No. 31386/17 - Kirinčić and others/Croatia.

⁷¹ Izvješće o zaštiti prava na suđenje u razumnom roku uređenoj člancima 63. - 70. Zakona o sudovima (“Narodne novine” broj 28/13., 33/15., 82/15. i 67/18.), Narodne novine 21/2001 of 1 March 2021.

of the chronic disease of the Croatian judiciary – the overlong proceedings.⁷² In our view, another important step towards the transparency would be of a different nature and would entail the creation of a single database in which all court decisions (at least those of the Supreme Court and the second instance courts) would be accessible to the public by means of an efficiently searchable database available free of charge. At this point in time, the existing databases are either equipped with “lost engine” instead of the search engine, or contain a selection of decisions without transparent criteria and are accessible on a subscription basis.⁷³

With respect to the capacity of the Croatian judiciary to properly enforce EU law, a 2017 evaluation study commissioned by the European Commission revealed that “Croatian courts, including the Supreme Court still do not see themselves as European courts.”⁷⁴ Siding mainly with this assessment, a study published two years later analysing the requests for a preliminary ruling which Croatian courts referred to the Court of Justice of the European Union (CJEU), concludes that “Croatian courts started to take responsibility for enforcement of Union law”.⁷⁵ Noted prevalence of lowest instance courts in communicating with CJEU (which may also partially be due to the time needed for a case to reach the highest instance), has recently been counterbalanced by the first request from the Supreme Court of the Republic of Croatia.⁷⁶ Entrusting selected judges with the function of monitoring the developments in EU law, including the CJEU case law (along with case law of the European Court of Human Rights), is intended to institutionalise the continuous updating of judges in the most important areas.⁷⁷ However, not all risks of misapplication of

⁷² On this and some other problems see Vasiljević, 110 et seqq.

⁷³ See database of the Supreme Court of the Republic of Croatia available at <<https://sud-skapraksa.csp.vsrh.hr/home>>, which basically has to be browsed if anything is to be accidentally found, while the other databases are available for a charge but their selection of cases is subject to non-transparent policy and their search engines are also very basic (without categories or alike), <<https://www.iusinfo.hr/>>.

⁷⁴ European Commission, An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law, Report prepared by a Consortium of European universities led by the MPI Luxembourg for Procedural Law as commissioned by the European Commission, JUST/2014/RCON/PR/CIVI/0082, Strand 2, Procedural Protection of Consumers, Bruxelles 2017, 61, FN 106.

⁷⁵ Materljan, 264.

⁷⁶ See Request for a preliminary ruling from the Vrhovni sud Republike Hrvatske (Croatia) lodged on 30 September 2020 in *I.D. v Z. b. d.d., Z.*, C-474/20.

⁷⁷ See Article 41a of the Courts Act, introduced by the 2018 Amendments to the Courts Act. *Zakon o izmjenama i dopunama Zakona o sudovima*, Narodne novine 67/2018.

EU law are borne by the national courts. The EU needs to make its own efforts towards assuring better translation given the complications which arise therefrom. A case in point was the erroneous translation of the Regulation 1/2003,⁷⁸ which misled the High Administrative Court to render decisions in contravention of the EU competition law, when judicially reviewing the decisions of the Croatian Competition Agency in 2016. Instead of deciding that there were no grounds for action on the part of the national competition agency where the conditions for prohibition are not met and consequently suspending the proceedings, the High Commercial Court insisted that a decision to the merits always has to be made, even when no violation of the law took place. In view of the reluctance of the Court to interpret the erroneous wording to allow for the *effet utile* of the EU law as established in the case law, the only solution was to request that the Commission issues a corrigendum.⁷⁹ There are a number of other such instances craving for corrections,⁸⁰ however, the Commission is not inclined to do so on a regular basis.

The situation in the judiciary is mirroring the overall situation in which Croatian institutions find themselves right now, including the large and inefficient public administration sector. The reform of public administration is constantly being delayed, whereas the entirely “new administrative paradigm” is considered indispensable.⁸¹ The institutions in general are in need of modernisation and professionalization, while anti-corruption tools ought to be implemented with a true political will, not to formally satisfy the expectations of external actors. Functioning democratic institutions and the market economy built in the last three decades, along with the external actors, both the international community and the EU, keep on being crucial factors in assuring that the value system and overall political culture in Croatia continue developing. Croatia is still largely an “immature democracy”⁸² and democratisation is an ongoing process, as is apparent from the recent developments, such as the crisis of constitutionalism which almost paralysed the functioning of the Consti-

⁷⁸ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4 January 2003, 1 et seqq.

⁷⁹ This corrigendum contains many corrections to the translated text in addition to the one mentioned. See *Ispravak Uredbe Vijeća (EZ) br. 1/2003* from 16.12.2002 on the implementation of the competition rules laid down in Art. 81 and 82; *Ugovora o EZ-u* (SL L 1, 4.1.2003); Special Edition of the Official Journal of European Communities 08/Sv. 01 od 13. veljače 2013; OJ L 173, 30 June 2016, 108 et seqq.

⁸⁰ See Kunda, 13 et seqq.

⁸¹ Koprić, 1 et seqq.

⁸² Smerdel (2019), 5 et seqq.

tutional Court of the Republic of Croatia⁸³ and the disputes surrounding the constitutionality of the measures introduced by the government as a response to the epidemic caused by COVID-19.⁸⁴ It is thus not surprising to learn that Croatians are still utterly distrustful towards their government: with 82% of population tending not to trust the Croatian Government is on the very bottom of the EU Member State list.⁸⁵

Challenges for Croatia also remain in respect to the Schengen area and Eurozone. Admission to the Schengen area is one of the integrative elements which has the potential to positively affect many individuals and business sectors. Croatia still remaining outside the Schengen system is largely owed to the unresolved territorial dispute with Slovenia, yet attributable also to the migration crisis which revealed the complexities in surveillance of the long Croatian border with Bosnia and Herzegovina. Furthermore, entering the Eurozone could assure economic benefits such as reduced currency and credit risk, cheaper borrowing, and liquidity of mandatory pension funds assets. So far Croatia has been successful in participating in the Exchange Rate Mechanism (ERM-II). It has to maintain the record of fulfilment of the Maastricht convergence criteria, implementation of anti-money laundering measures, and take further efforts in improving the business climate and the management of the public sector and the judiciary. Whereas the Government has announced that Croatia will join the Eurozone with the commencement of 2023, the achievement of this goal, now that the COVID-19 epidemic coupled with severe earthquakes hit the country's economy and public finances hard, reversing the economic growth, will depend on many circumstances some of which are unforeseeable at the present time.

Despite the hopes for a better future which many Croatians sensed when Croatia acceded to EU, the overall sentiment at the end of 2019 is rather depressing as Croatia again hits the bottom of the list of with the highest percentage (72%) of population among EU Member States believing that “things

⁸³ Smerdel (2016), 1 et seqq.; Smerdel (2017), 1 et seqq.

⁸⁴ The unconstitutionality of some of the measures rendered by the Headquarters for Civil Protection has been raised in the political debates and supported in the statements by the President of the Republic of Croatia thus directly opposing the positions of the Government. The legal issue was resolved in favour of the Government position by the Constitutional Court of the Republic of Croatia Decree number U-I-1372/2020 et al. of 14 September 2020, with three judges adopting the opposing views and the Constitutional Court of the Republic of Croatia Decree number U-II-2379/2020 of 14 September 2019, with five judges expressing different opinions. See Smerdel (2020), 129.

⁸⁵ Standard Eurobarometer 92, Public opinion in the European Union, November 2019 Report, 63.

are going in the wrong direction in our country”⁸⁶ Negative events dominated the political arena. In 2019, a long and exhausting teacher’s strike caused huge problems to children and parents threatening the education aims and results. Furthermore, the same year no less than five ministers from HDZ were ousted from the Government because they were exposed in the media to be associated with possible clientelism and corruption. In addition, ideological and obsolete political discourse during the EU parliamentary elections campaign resulting in only 29.9% voter turnout, which was topped in 2020 by an abuse of position by the newly elected President of the Republic of Croatia when engaging in an awfully inappropriate discourse, especially with the co-habitee, the President of the Government. Furthermore, the Government and the Civil Protection Headquarters’ loss of their political and professional credibility due to inconsistencies in implementing the COVID-19 restriction measures when certain political interests were at stake, such as with regard to the intra-party elections or the incident with violation of measures by the hospital personnel. Likewise, a couple of SDP prominent members or candidates in the local elections left the party upon suspicion of criminal offences. These instances demonstrate that many high-positioned Croatian politicians are still inclined to maintain low levels of responsibility towards citizens. Despite few moderately positive events in the political life in Croatia, the mentioned ones stay strongly imprinted in the people’s minds, damaging their appreciation for politics. The overall feeling will be hard to improve especially following various detriments sustained as a consequence of the COVID-19 epidemic with huge uncertainty about the future. The earthquakes have made things even more desperate for many families, businesses and municipalities, and people in general tend to be disillusioned about the honest intentions of the government and present-day political elites. As the local elections are under way, the situation will unfold to reveal whether and to what extent Croatians are prepared and willing to assume risk by replacing the long-established and dominating political parties and for what, if at all.

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⁸⁶ Ibid., 85.

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