

Croatia and Serbia on their road to EU accession – halfway there?

Introduction

After Romania and Bulgaria joined the European Union on 1 January 2007, the EU grew to 27 member states. By affiliating Romania and Bulgaria, the EU has demonstrated its opinion on Balkan countries in general: they are regarded as part of Europe. The states of the former Yugoslavia, amongst them Croatia and Serbia, now find themselves surrounded by EU member states to the north, south and east. Consequently, their expectations towards co-operation with the EU are rising, a co-operation which might, in the end, lead to another expansion of the EU.

This article analyses the progress of Croatia and Serbia on their way to becoming a member of the European Union and illustrates the chances of these two countries for a speedy accession.

The Copenhagen criteria – what the EU expects from its potential member states

Any state must fulfil a certain set of criteria before it can join the EU. There are also unwritten criteria which result from the necessary common basic understandings. However, more important are the written criteria of Article 49 of the Treaty on European Union: Article 49 explicitly states that only European states can apply for membership and refers to the principles of the same Treaty's Article 6 Paragraph 1.

This reference was incorporated in the 1997 Amsterdam Treaty and relates to the criteria laid down in 1993 in Copenhagen:¹ the so-called Copenhagen criteria. There are three sub-categories to the Copenhagen criteria: political, economic and legislative.

Political criteria

Every candidate country must meet the political standards of the EU.

Form of government

The EU is a community of parliamentary democracies which respects the rule of law. Every new member state must follow these principles which do not forbid national divergences – such as a presidential democracy.² The rule of law is inseparable from the separation of powers.³ A potential member state must, therefore, strictly disjoin the executive from the legislature and the judiciary, thereby ensuring their independence of each other and their mutual control.⁴

1 Oppermann (2005) *Europarecht* 3rd edition, Munich, § 32 para. 9.

2 Oppermann § 32 para. 10.

3 Oppermann § 32 para. 10.

4 On the purpose of the separation of powers, see Ipsen (2006) *Staatsrecht I* 18th edition, Neuwied and Kriftel, para. 769 *et seq.*

Human rights and protection of minorities

As long as the EU itself cannot become a party to the European Convention on Human Rights,⁵ every candidate country must ratify this treaty of the Council of Europe.⁶

Institutional stability

The political stability of the candidate country is determined in part by the stability of its institutions.⁷ Only a state which can guarantee the continued existence and efficiency of its institutions will be able to transfer European legislation into national legislation and to co-operate with the European institutions on a sustained basis.

Economic criteria

The candidate countries must also meet economic criteria.

Free market economy

Article 4 of the Treaty establishing the European Community commits all member states to the principles of a free market economy, including free competition. Therefore, candidate countries must also adopt this principle.

Competitiveness on the European market

It is the economic aim of the EU to form a common market in order to achieve further aims such as sustainable and non-inflationary growth and a high level of employment (Article 2 of the Treaty establishing the European Community). This common market mainly serves internal trade between the member states.⁸ Economic life in the EU is based on the 'four freedoms' which define the internal market and which are contained in Article 14 Paragraph 2 of the Treaty establishing the European Community: the free movement of goods, services, capital and labour.

Any new member state must be able to join this free market and stand up to its stresses of competition. It is not mandatory, however, to join the European Monetary Union.⁹

Support for fulfilling the economic criteria

The economic criteria are more flexible than the political criteria, which leave little room to negotiate.¹⁰ The EU intensively supports a candidate country prior to its accession. One method is to open the common market faster for the export industry of the candidate country than is expected from the candidate country the other way round. This asymmetrical opening was the basis of the eastern enlargement in 2004.¹¹ It prepares the internal market for the powers of the common market without expos-

5 On the legal nature of the EU, see: Herdegen (2006) *Europarecht* 8th edition, Munich, § 6 para. 12 *et seq.*

6 Haratsch, Koenig and Pechstein (2006) *Europarecht* 3rd edition, Tübingen, para. 67.

7 Borhardt (2006) *Die rechtlichen Grundlagen der EU* 3rd edition, Heidelberg, para. 65.

8 Hailbronner and Jochum (2005) *Europarecht II* Stuttgart, para. 3.

9 Oppermann *op. cit.* § 32 para. 11.

10 Oppermann *op. cit.* § 32 para. 11.

11 Schön (2003) *Der rechtliche Rahmen für Assoziierungen der Europäischen Gemeinschaft* Freiburg, p. 140/141.

ing it to direct competition. In addition to this, rules governing the transition allow the candidate's economy a gradual adjustment to European business standards.¹²

Legislative criteria

To join the EU, the candidate countries must bring their legislation to the standard of the *acquis communautaire*; that is, they must absorb the entire body of European legislation into national law. As a rule, this requirement is not open to negotiation. However, the transformation of the extensive body of secondary EU law is a challenge even at the strictly technical level. Therefore, rules governing the transition are also an accepted option for the legislative criteria.¹³

Development as regards western Balkans countries

The term 'western Balkans' is used only at the EU level and means the sovereign states which evolved from the former Yugoslavia.¹⁴ It stands for a special development process.

In the years after 1991, the EU has been heavily supporting the western Balkans both financially and militarily. Furthermore, the EU is striving to stabilise the area permanently and to prepare its countries for possible accession to the EU. For that purpose, the European Commission has developed the Stabilisation and Association Process (SAP) which supports, amongst others, Serbia and Croatia.

The concept of the Stabilisation and Association Process (SAP)

The EU and the western Balkans countries formally agreed the SAP on 24 November 2000 in Zagreb.

The SAP is similar to the European Agreements by which the EU prepared the countries of central and eastern Europe for their accession to the EU. It is made more complex in that some western Balkans countries have not long been independent and, therefore, have problems which were less common or unknown in countries at the time of the European Agreements: unresolved questions of status; a lack of political stability; structural problems; difficulties in social questions; and a continuing lack of safety.¹⁵

So for now, with the help of the SAP, the EU intends to promote peace, stability and economic development. In the long run, the former Yugoslav countries are to be given the chance of accession to the EU. This had already been affirmed in Feira in June 2000¹⁶ and, for Croatia, this perspective became tangible with the opening of accession negotiations on 3 October 2005.

12 Oppermann *op. cit.* § 32 para. 11.

13 Oppermann *op. cit.* § 32 para. 13.

14 Pervan (2005) in: Gießmann and Schneider (eds.) *Akademisches Netzwerk Südosteuropa: Konzept und Masterarbeiten 2002/2003* issue No. 139, Hamburg, p. 10.

15 Džihić (2005) in: Daxner and Jordan et al. (Bilanz Balkans Vienna, p. 249 (258)).

16 With reference to Feira, this was re-affirmed by the European Commission in the Communication from the Commission to the Council and the European Parliament of 21 May 2003, COM(2003)285 final.

The instruments of the Stabilisation and Association Process (SAP)

The SAP rests on three important instruments: the Stabilisation and Association Agreements (SAA); autonomous trade relations; and financial help.

Stabilisation and Association Agreements

Stabilisation and Association Agreements are concluded between the EU and single Balkan countries on the basis of Article 310 of the Treaty establishing the European Community.

A support process is there to prepare countries for the conclusion of an SAA. This support can comprise the reconstruction of destroyed cities, the return of refugees and the reconciliation of ethnicities. An SAA can be negotiated only if the political basis for such negotiations is prepared.

SAAs are already in place for the Republic of Macedonia¹⁷ and for Croatia.¹⁸ Another SAA has been negotiated with Albania but is not yet in force.¹⁹ The SAA defines the precise criteria which the country must fulfil in order to achieve further concessions from the EU. Like the European Agreements, the SAA provides for a gradual adoption of the *acquis communautaire* and aims for the expansion as regards the contracting party of the four freedoms of the Treaty establishing the European Community.²⁰

Special trade relations

By way of preparation for an SAA, the EU granted special trade advantages to the western Balkans countries in September 2000.²¹ Goods from that region have full and free access to the European market and, therefore, an important unilateral trade advantage. Preferential treatment of that magnitude has so far been unique and shows the special interest the EU has in stabilising its neighbouring region.

Financial help

Financial help, as the third instrument of the EU for the region, stems mostly from the CARDS Programme (Community Assistance for Reconstruction, Development and Stabilisation).²² This Programme supports the reforms and the constitution of state institutions in the western Balkans with strategies designed for the respective target country and with perennial programmes.

European integration by way of the SAP

Even if EU membership of the Balkans countries is the long-term goal of the SAP, the process is not intended as a shortcut to membership but as a means of providing support along the way.²³ This support is completed by the ‘Thessaloniki Agenda’.

17 In force since 1 April 2004.

18 In force since 1 February 2005.

19 Signed on 12 June 2006.

20 European Commission, in the Communication mentioned above: COM(99)235.

21 Council Regulation (EC) No. 2007/2000 of 18 September 2000.

22 Council Regulation (EC) No. 2666/2000 of 5 December 2000.

23 Pervan *op. cit.* p. 22.

Development and content of the Thessaloniki Agenda

On 21 May 2003, the European Commission affirmed its intent to integrate the western Balkans in a formal Note to the European Council and the European Parliament.²⁴ The Agenda was then affirmed at Thessaloniki on 19 and 20 June 2003.²⁵

This clarifies that the SAP aims for the accession of the contracting countries to the EU.²⁶ It lays down new goals in co-operation between the western Balkans and the EU and shows the ways in which these goals might be achieved. By introducing European Partnerships, co-operation with the Balkan countries is intended to be deepened so as to intensify the privileged relationships.²⁷

Dialogue between the EU and the western Balkans

The summit between the EU heads of state with those of the Balkan countries on 21 June 2003, which took place in Thessaloniki, made the Thessaloniki Agenda and its contents the common strategy of the western Balkans and the EU for the integration of Balkan countries into the EU. The SAP remains the framework for the co-operation but is substantiated and completed by the Thessaloniki Agenda.

In addition, the participants of this summit agreed on meeting at an EU-western Balkans Forum every two years. That way, progress in the *rapprochement* between the EU and the western Balkans may be verified and the dialogue intensified. The Forum serves to discuss common interests and to exchange views on developments within the EU and in its relationship with the western Balkan neighbours.²⁸

Croatia's progress on its road to the EU

Croatia's status in relation to the EU

An SAA between the EU and Croatia was signed as early as 29 October 2001.²⁹ An application for accession followed on 21 February 2003. Following a recommendation of the Commission, Croatia was declared an official candidate on 18 June 2004.³⁰ On 13 September 2004, the European Council concluded a European Partnership within the sense of the Thessaloniki Agenda with Croatia.³¹

Accession negotiations did not begin immediately. In December 2004, the European Council decided to begin negotiations on 17 March 2005³² on the condition that Croatia

- 24 European Commission, Communication from the Commission to the Council and the European Parliament from 21 May 2003, COM(2003)285.
- 25 *Presidency Conclusions* European Council (Thessaloniki) of 19 and 20 June 2003.
- 26 van Meurs, in: Hayoz, Jesi n and van Meurs (2005) *Enlarged EU – Enlarged Neighbourhood* Bern, p. 98.
- 27 *Presidency Conclusions* European Council (Thessaloniki) of 19 and 20 June 2003, p. 13.
- 28 Declaration from the summit EU-western Balkans of 21 June 2003, p. 5.
- 29 Council and Commission Decision of 13 December 2003 concerning the conclusion of the 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 26/1.
- 30 *Presidency Conclusions*, European Council from 17 and 18 June 2004 in Brussels, para. 31.
- 31 Council Decision of 13 September 2004 on the principles, priorities and conditions contained in the European Partnership with Croatia (2004/648/EC).
- 32 *Presidency Conclusions*, European Council (Brussels) 16 and 17 December 2004, para. 16.

co-operated unreservedly with the International Criminal Tribunal for the Former Yugoslavia (ICTY).³³ That did not happen and, on 16 March 2005, the General Affairs Council delayed the opening of accession negotiations. After that, Croatia co-operated better with the ICTY so that, on 3 October 2005, accession negotiations began.³⁴

On 20 February 2006, the European Council decided on an accession partnership with Croatia³⁵ which replaces the existing European partnership and which sets new priorities in the relationship between Croatia and the EU.

How Croatia measures up against the Copenhagen criteria

During the accession negotiations, it will be verified whether Croatia is fulfilling the conditions of accession to the EU, i.e. the Copenhagen criteria referred to above. Only then can the negotiations turn to the particular modalities of accession.

Political criteria

Each country's political development must have attained the standard of EU member states.

a. The Croatian Constitution

Due to the struggle for independence, the Croatian Constitution of 22 December 1990 put a focus on national values but it also laid the foundation for a modern democracy.³⁶ Article 1 of the Constitution decreed that all the power belonged to the people but it also set down a so-called half-presidential democracy.³⁷ In practice, the President had a very strong position without being controlled in the sense of there being checks and balances.³⁸

However, the Constitution has been changed repeatedly since 1990. The amendments of 2000 and 2001 in particular served to strengthen the positions of government and parliament³⁹ so that Croatia can today be called a parliamentary democracy.⁴⁰

b. The Croatian parliament

The Croatian parliament (the *Sabor*) shares its right to legislative initiative with the government.⁴¹ The parliament consists of only one chamber, whose members are elected every four years (Art. 72).

The electoral system provides for proportional representation, bound to party lists.⁴² According to Article 71, the elections must be general, equal, direct and secret.

33 *ibid.* para. 15/16.

34 For details of the course of events at the decisive meeting, see: Kušić 'Ende der Warteschleife' *Südosteuropa Mitteilungen* 46(2), p. 2.

35 Council Decision of 20 February 2006 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2004/648/EC (2006/145/EG).

36 Grubisa (2002) in: Staničić and Mladen (eds.) *Croatia on its way to the EU* Baden-Baden, p. 34.

37 *ibid.* p. 41.

38 *ibid.*

39 European Commission, Communication of 20 April 2004, COM(2004)257 final, p. 14.

40 Grubisa *op. cit.* p. 43.

41 European Commission, Communication of 20 April 2004, COM(2004)257 final, p. 16.

42 European Commission, Communication of 20 April 2004, COM(2004)257 final, p. 15.

Freedom of election is not explicitly mentioned but was emphasised as long ago as 1990 when the ‘first free elections’ were celebrated.

However, it is difficult to implement these election principles. A permanent and independent electoral commission was set up in March 2006 with the aim of guaranteeing such implementation.⁴³ Deficits still remain in the area of the financing of electoral campaigns and parties, voting from abroad and the updating of electoral registers.⁴⁴

For a democracy, it is essential that parliament can work free of conflicts of interests. In Croatia, parliamentary boards of enquiry have investigated two cases of an alleged conflict of interests. In one case, the suspicion was confirmed, although no adequate consequences were drawn.⁴⁵ It is, therefore, not certain that such conflicts within the parliament can be avoided in the future or handled appropriately.

c. The civil service

The civil service shares the problem of conflicts of interests, which are reflected by the politically-motivated attitudes of civil service personnel. A statute of January 2006 seeks to combat this grievance.⁴⁶

The main problem of the civil service, however, is its complexity and lack of transparency. Besides a general law on administration, there are numerous special administrative procedures laid down in special laws. In addition, the administration has considerable discretionary power. Therefore, citizens can hardly comprehend administrative decisions and courts have difficulties in controlling them, which leads to an overload of cases at the Supreme Administrative Court.

d. Croatia as a constitutional state

In principle, the Croatian Constitution follows the principle of the separation of powers (Art. 4 of the Constitution). However, under the presidency of Franjo Tuđman, the President dominated the other organs of state.⁴⁷ After Tuđman’s death in 1999 and the election victories of the moderate opposition in the parliamentary and presidential elections of 2000, Croatia finally had the chance to change from an authoritarian president to a constitutional state.⁴⁸ The constitutional amendments of 2000 and 2001 facilitated the separation of legislative and executive powers.

However, the conflicts of interests mentioned above and the influence of politicians in many areas⁴⁹ show that the separation of powers in Croatia is still at the outset.

In addition, the separation of powers demands an independent judiciary. The Croatian judiciary suffers not only from an overload of cases⁵⁰ but also from legal de-

43 European Commission *Progress Report Croatia* of 8 November 2006, p. 6.

44 *ibid.*

45 *ibid.*

46 *ibid.*

47 Libal and Kohl (2000) *Der Balkan – Stabilität oder Chaos in Europa* Hamburg/Vienna, p. 75; Grubisa *op. cit.* p. 41.

48 Staničić *op. cit.* p. 24.

49 See, for instance, European Commission *Progress Report Croatia* of 8 November 2006, p. 8.

50 *ibid.*

iciencies. It is necessary, for instance, to speed up judicial proceedings and to improve the conduct of cases to guarantee a fair trial of an appropriate duration.⁵¹ Furthermore, the independence and impartiality of the courts are in doubt. To provide for these, the appointment system must be changed, as must also the training and the disciplinary supervision.⁵²

Croatia is, therefore, on its way to becoming a constitutional state but is still some steps away from perfection.

e. Human rights and the protection of minorities

In Article 3 of the Constitution, Croatia acknowledges human rights. However, this is not the same as actually implementing and protecting them, which is necessary to become a member of the EU. On the other hand, some things that are seen as oppression in western Europe might be understood by people used to authoritarian regimes as protection or security.⁵³ Therefore, it must be closely reviewed as to how Croatia deals with the protection of human rights and minorities.

i. Freedom of speech

A human right of paramount importance is freedom of speech. The media in Croatia is not censored and contributes to the free exchange of views. Especially at the local level, however, they are not completely free of political influence.⁵⁴ This shows once again the considerable influence of politicians in all areas.

ii. Protection of minorities

For historical reasons, Croatia is a country with important minorities. Therefore, even the Constitution mentions in its first chapter the different descent of the citizens of Croatia.

In particular, the protection of the Serbian minority presents problems. During the war of 1991 to 1995, some 300 000 to 350 000 Croatian Serbs were driven from Croatia⁵⁵ and who are now enabled to return. The Croatian political class is honestly engaged in this task, but acceptance in the population varies.⁵⁶ The return of Croatian Serbs presents the country with problems regarding housing space and jobs.⁵⁷ Croatia must do its best to reintegrate displaced Serbs and to mollify the population's hostility towards them. Outbreaks of violence like in 2006 must be prevented or, at least, denounced by the government.⁵⁸

Important for the representation of minorities is their involvement in public institutions. To improve the situation, a new statute regulates appointment policies.⁵⁹ The

51 Patsch *op. cit.* p. 21; European Commission *Progress Report Croatia* of 8 November 2006, p. 9.

52 European Commission *Progress Report Croatia* of 8 November 2006, p. 9; Patsch *op. cit.* p. 21.

53 Libal and Kohl *op. cit.* p. 19.

54 European Commission *Progress Report Croatia* of 8 November 2006, p. 10.

55 Human Rights Watch *World Report 2007* p. 370.

56 European Commission *Progress Report Croatia* of 8 November 2006, p. 14.

57 European Commission *Progress Report Croatia* of 8 November 2006, p. 14; Human Rights Watch *op. cit.* pp. 370, 372.

58 *European Commission Progress Report Croatia* of 8 November 2006, p. 14; Human Rights Watch *op. cit.* p. 372.

59 European Commission *Progress Report Croatia* of 8 November 2006, p. 12.

effect may already be felt: for instance, minorities have a right to eight seats in the parliament. However, a law on how these seats may be filled proportionally is still lacking. Therefore, more must be done here as well.⁶⁰

f. Stability of institutions

Political stability is marked by the stability of the institutions. Croatia has the institutions necessary to implement a democratic constitutional state, but these institutions are rather young. Setbacks are, therefore, possible and the new institutions are still to demonstrate their stability.⁶¹

In particular, their operational capability is weakened by corruption. To combat this problem, Croatia has developed an anti-corruption programme which seeks to ban corruption (especially from the executive), subject it to consequent prosecution and present it to the public as a negative element.⁶²

Nevertheless, Croatia must still make considerable progress in stabilising its institutions and reducing corruption before it can join the EU without the risk of destabilising it.

g. Assessment concerning political criteria

Croatia's political system fulfils the basic preconditions for EU membership. However, many principles are not yet fully implemented. Before joining the EU, Croatian democracy must prove its ability to function as a constitutional state. This can happen during a stabilisation process which places emphasis on European values and standards.

Economic criteria

To join the EU, Croatia must have a free market economy and be able to stand up to the stresses of competition within the EU. This necessitates a close look at the structure of the Croatian market, its stability and its connection with the European market.

a. Government influence on the Croatian market

A free market economy is based on free competition without dominating governmental interventions. For the Croatian market, monopolistic and oligopolistic structures have long been formative.⁶³ These must be abolished during the accession process, which means not only the consequent application of bankruptcy proceedings but also the reduction of governmental interventions.⁶⁴ With the help of the EU, the Croatian system of governmental aid has already been made more transparent, but Croatia still subsidises unprofitable companies, especially in the dockyards, steel, aluminium and railway industries.⁶⁵ This way, government influence remains considerable.

b. Progress in deregulation

In addition, Croatia is in the middle of a process of deregulation which is addressed to its internal levels of competition.⁶⁶ Substantial progress has been made in the deregu-

60 European Commission *Progress Report Croatia* of 8 November 2006, p. 12.

61 Grubisa *op. cit.* p. 43.

62 European Commission *Progress Report Croatia* of 8 November 2006, p. 9.

63 Kučić (2002) 'EU-Beitritt, Verheißung oder Bedrohung?' *Jahrbuch für Europa und Nordamerika-Studien* Göttingen, p. 12.

64 *ibid.*

65 European Commission *Progress Report Croatia* of 8 November 2006, p. 29.

66 See also Jurlin (2002) in Staničić and Mladen, *op. cit.* p. 47.

lation of the telecommunications market.⁶⁷ However, this sector in particular lacks competition standards. The Competition Law of 2003 defines such standards but is not applicable to all the sectors which require them.⁶⁸

Apart from that, the privatisation of state-owned enterprises is proceeding only slowly. It is inhibited not only by the low interest of the government in privatisation but also by legal problems, a lack of investors and terms of sale that are frequently unrealistic.⁶⁹

Therefore, the market is not yet free enough to be completely put on a par with EU member states.

c. Economic growth

The war of 1991-1995 destroyed one-third of Croatian industry but, today, Croatia is on its way to becoming a strong economy.⁷⁰ Economic growth is stable, due mainly to strong private investment activities.⁷¹

d. Monetary stability

The Croatian currency is the kuna. A stable economy needs stable exchange rates. In relation to the Euro, the kuna gained 1.4 percentage points between August 2005 and August 2006.⁷² The kuna suffers from pressure due to currency over-valuation from time to time⁷³ but it has gained some kind of stability which must be monitored closely.

e. Trade relations with the EU

The EU is Croatia's most important export partner. However, exports are one-sided as the majority of export revenues come from the tourism industry.⁷⁴ Many Croatian tourism companies belong to foreign investors so the Treasury does not profit from this development.⁷⁵

Croatia needs, therefore, to diversify its export industry. This requires a rise in quality but, on the other hand, it is likely that even a more intense marketing would alone bring export advantages. This would enable Croatia to make better use of the unilateral trade advantages afforded via the SAP.⁷⁶

With regard to imports, Croatia is also much involved in trade with EU member states. The gradual decrease in Croatian import tariffs will lead to another increase in imports from the EU⁷⁷ which will increase the stresses of competition for the Croatian mar-

67 European Commission *Progress Report Croatia* of 8 November 2006, p. 28.

68 European Commission *Progress Report Croatia* of 8 November 2006, p. 38.

69 European Commission *Progress Report Croatia* of 8 November 2006, p. 25.

70 *ibid.*

71 *ibid.* p. 22.

72 *ibid.* p. 23.

73 Oschlies *et al.* Abs. 7; European Commission *Progress Report Croatia* of 8 November 2006, p. 23.

74 European Commission *Progress Report Croatia* of 8 November 2006, p. 29.

75 Oschlies (2005) 'Kroatien – ein ökonomischer Versager' *Eurasisches Magazin* Issue 10, para. 11.

76 About these advantages, see above, p. 10.

77 Kučić (2002) 'EU-Beitritt, Verheißung oder Bedrohung?' *Jahrbuch für Europa und Nordamerika-Studien* Göttingen, p. 12.

ket. Croatia must prepare for this development by proceeding with deregulation, shutting down unprofitable factories and striving for a more efficient use of its resources.⁷⁸

f. Assessment concerning economic criteria

Croatia follows the principles of a free market economy. The Croatian market is increasingly stable although operating on a comparatively low level. The existing levels of integration with the European market must be expanded, taking into account the economic strength of the country. From an economic point of view, Croatia has already taken considerable steps towards joining the EU. This progress now needs to be optimised in its details and stabilised before further steps can be taken.

The legislative criterion

If Croatia joins the EU, it must bring its legislation up to the standard of the *acquis communautaire*, at least with the help of rules governing the transition which provide for a step-by-step adoption. Under the SAP, Croatia is already endeavouring to adopt the *acquis*. Progress differs depending on the area.

a. Less developed areas of the *acquis communautaire*

Besides the problems of the judiciary mentioned above,⁷⁹ Croatia still has a lot to accomplish in the following areas: freedom of movement; public contract placement; taxes; welfare policies; employment; regional policies; co-ordination of structural policy instruments; and the protection of consumers and health.⁸⁰ The main problem in most of these areas is a limited administrative capacity, the improvement of which is essential in order to co-ordinate member states' systems of social security under the conditions of freedom of movement within the EU.⁸¹ A positive development is the creation of new administrative capacities in the area of taxes, where a department for international co-operation and European integration has been created.⁸² However, especially in this area, it is obvious that the adjustment of Croatian law to EU law is still at the outset.⁸³ This adjustment is problematic for Croatia with regard to the protection both of consumers and of health; here, a positive development has been the creation of consumer information centres.⁸⁴

b. More developed areas of the *acquis communautaire*

Croatia's substantial economic progress has already been described. In addition, Croatia has also made progress in the area of company law, science and research.

c. Assessment of the legislative criterion

In the light of the differences in progress in different areas, it is likely that Croatia will still need some time to adopt the entire *acquis communautaire* of the EU. However, the country has the will to reform its laws and fulfils the necessary preconditions so that adoption will proceed steadily.

78 *ibid.*

79 See above, page 7.

80 European Commission *Progress Report Croatia* of 8 November 2006, p. 30ff.

81 *ibid.* p. 33.

82 *ibid.* p. 50.

83 *ibid.* p. 50.

84 *ibid.* p. 71.

The state of relations between Serbia and the EU

Serbia's status in relation to the EU

Serbia is also included in the SAP. In 2004, prior to the start of negotiations about an SAA, the EU concluded a European Partnership with Serbia and Montenegro,⁸⁵ which was re-affirmed in 2006.⁸⁶ After Montenegro declared independence on 3 June 2006, Serbia declared itself the independent sovereign successor to the Union of Serbia and Montenegro on 5 June 2006, since which time the EU has continued its relationship with both countries separately.⁸⁷

Negotiations for an SAA with Serbia started on 10 October 2005 but were suspended on 3 May 2006 because Serbia was not co-operating sufficiently with the ICTY.⁸⁸ The EU continues to communicate with Serbia in the Enhanced Permanent Dialogue process and is willing to resume negotiations on an SAA as soon as Serbia co-operates with the ICTY.⁸⁹

How Serbia measures up against the Copenhagen criteria

In principle, Serbia has the chance, via the SAP, to become a member of the EU if and when it fulfils the Copenhagen criteria.

Political criteria

Serbia has undergone a dramatic political change since it declared independence last year and held new elections in January 2007.

At these elections, ultra-nationalists came out on top but a bloc of four democratic parties won a stable majority sufficient to form a government.⁹⁰ The EU expects a pro-European course from such a government⁹¹ and hopes that the new Serbian government will try to fulfil the Copenhagen criteria.

a. The Serbian Constitution

On 30 October 2006, the Serbian people adopted a new constitution by referendum. This replaced the Constitution of 1990 which had been adopted under Milošević's influence.

However, the new Constitution is particularly controversial and cannot guarantee stability or *rapprochement* with the west. Article 1 of the new Constitution refers explicitly to the principle of democracy but, in terms of democracy, the Constitution is

85 Council Decision of 14 June 2004 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999, 2004/520/EC.

86 2006/56/EC: Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC.

87 European Commission *Progress Report Serbia* of 8 November 2006, p. 5.

88 *ibid.*

89 *ibid.*

90 Flottau (2007) 'Trägerischer Erfolg für Europa' *Spiegel-Online* 22 January 2007, available at: <http://www.spiegel.de/politik/ausland/0,1518,461432,00.html> [accessed 29 April 2007], p. 1.

91 *ibid.*

regarded as a step backwards.⁹² In that regard, Article 105 is particularly problematic, giving as it does to parliament the power to declare a state of emergency by a simple majority, thereby restricting democracy and civil rights.⁹³

b. The Serbian parliament

According to Article 98, parliament is the only legislative body. It has 250 members (Art. 100), with duties as defined in Article 99.

Extended legislative activity in 2006 was accompanied by heightened transparency.⁹⁴ Another positive aspect is the existence of a parliamentary committee on European integration which aims to promote harmonisation with EU standards.⁹⁵

However, the Serbian parliament lacks specialised personnel. In addition, the legislative process is heavily criticised for not complying with international standards. Moreover, parliamentary debate is sometimes less than objective, culminating in diatribes being neither prevented nor sanctioned.⁹⁶

In terms of its electoral law, Serbia still needs extensive reform to meet European standards.⁹⁷

c. The civil service

In some areas, the Serbian administration has capacities which are comparable to that of EU member states; in others, however, it still needs to be extended considerably. The general administrative law must also be revised.

In addition, the administration must become more transparent for the people and – as in Croatia – there remains a danger of conflicts of interests. There has been some progress in that regard but further efforts must be made.⁹⁸

d. Serbia as a constitutional state

Article 4 of the new Constitution adopts the principle of the separation of powers but, in reality, the mutual influence of powers in Serbia is strong.

In particular, an independent judiciary has become a distant prospect under the new Constitution. Article 142 provides for the independent functioning of courts but this principle is qualified in subsequent Articles. Government and parliament can deeply influence the courts,⁹⁹ a fact which became visible last year when the parliament blocked, for political reasons, qualified applicants from accessing judicial posts.¹⁰⁰

Furthermore, the courts have neither the funds nor the capacity to work efficiently. The right to a fair trial is not always respected. Procedural errors and decisions made without regard to precedent are undermining the credibility of the Serbian

92 International Crisis Group *Serbia's new constitution – democracy going backwards* p. 14.

93 *ibid.*

94 European Commission *Progress Report Serbia* of 8 November 2006, p. 6.

95 *ibid.*

96 For a response to all these criticisms, see *ibid.* p. 7.

97 *ibid.*

98 On the Serbian administration, see *ibid.* p. 8.

99 International Crisis Group *op. cit.* p. 14.

100 Human Rights Watch *op. cit.* p. 413.

judiciary.¹⁰¹ For criminal procedures, there is a new Law on Procedures but the protection of witnesses is still insufficient.¹⁰²

Therefore, the judicial system needs still to be profoundly reformed before Serbia is able to meet EU standards for a constitutional state.

e. Human rights and the protection of minorities

The new Constitution guarantees human and minority rights in Article 1 and in Chapter 2.

One must bear in mind that Serbian understanding of such rights is not necessarily identical to European understanding.¹⁰³ In addition, the Constitution provides many possibilities in which these rights may be temporarily suspended. In particular, Article 20 carries a complicated and contradictory clause which gives the government the power to suspend human rights almost at will.¹⁰⁴

In principle, freedom of speech is guaranteed. It is doubtful, however, whether that will still be the case in times of crisis. In the past, the murder of journalists has not been pursued, which shows the government's lack of interest in the protection and enforcement of that human right which is so fundamental for a functioning democracy.¹⁰⁵

The representation of minorities in public service has been improved. Laws on the status of minorities and the election of representatives for them are still, however, lacking.¹⁰⁶

f. The status of Kosovo

The status of Kosovo is probably the greatest political point of conflict for the future. Under the so-called Kosovo Resolution of the UN in 1999, Kosovo was awarded the status of autonomous territory within Yugoslavia, now Serbia. Kosovo remains under UN administration.

Kosovo Albanians demand the independence of Kosovo while Serbia regards the area as an integral part of its own territory. Martti Ahtissari has been leading official negotiations on the status of Kosovo since 20 February 2006.

In the preamble of its new Constitution, Serbia reaffirmed its claim to Kosovo. This Serbian provocation is impeding the negotiations and promoting instability; Serbia will have to change its Constitution if the status of Kosovo is to be resolved amicably.¹⁰⁷

The EU has promised Serbia that the Kosovo question shall have no influence on the European integration of Serbia,¹⁰⁸ but this unresolved conflict is casting a cloud over the country's political stability.

101 European Commission *Progress Report Serbia* of 8 November 2006, p. 10.

102 Human Rights Watch *op. cit.* p. 412.

103 Libal and Kohl *op. cit.* p. 19.

104 International Crisis Group *op. cit.* p. 13.

105 European Commission *Progress Report Serbia* of 8 November 2006, p. 13.

106 European Commission *Progress Report Serbia* of 8 November 2006, p. 14.

107 International Crisis Group *op. cit.* p. 14.

108 European Commission, Communication from the Commission *A European Future for Kosovo* 20 April 2005, COM(2005)156 final, p. 11.

g. Stability of institutions

Serbia lacks established institutions that engage for a democratic constitutional state. Existing capacities must be set to work to implement the democratic parameters of the Constitution and other laws.

A major problem amongst Serbian institutions – as in Croatia – is corruption. The implementation of Serbia's existing anti-corruption laws is insufficient.¹⁰⁹

It remains to be seen how Serbia will use its institutions in the future as the constitution remains new and as the formation of the government after the elections of January 2007 is not yet finished. Only if changes are made is stabilisation, which is a precondition of accession to the EU, going to be possible.

h. Assessment concerning political criteria

Serbia is in a politically explosive situation. The foundations of a parliamentary and democratic constitutional state have been laid but the Serbian Constitution can also be misused to reverse the progress made thus far.¹¹⁰

The formation of a democratic government would be advantageous for relations between Serbia and the EU although such a government would have to make a major effort to adjust Serbian institutions to EU standards. In addition, future political development depends on a solution to the status of Kosovo being found.

Economic criteria

Serbia's economy must be a free market economy able to withstand the stresses of competition within the EU.

a. Government influence on the market and deregulation

Serbia's economic policy suffers from disagreements between the Ministry of Finance and the National Bank of Serbia.¹¹¹ They agree that Serbia is directed towards a free market economy, but the implementation of this goal requires the government to withdraw from the economy. The government – as in Croatia – must reduce its interventions and privatise many enterprises to promote free competition.¹¹²

The deregulation process in Serbia has only just begun and is currently hampered by a lack of institutional and legal preconditions while politicians are not interested in, or disagree on, the course of action.¹¹³ Consequently, both deregulation and the reduction of government intervention need still to be promoted strongly.

b. Economic growth

Serbia's economic growth, which has been strong in the last few years, has been continuing in recent times at a lesser pace. The sectors where privatisation is most advanced are achieving the highest growth rates.¹¹⁴

To promote economic growth in the next few years, the process of deregulation must therefore be continued with dedication.

109 European Commission *Progress Report Serbia* of 8 November 2006, p. 11.

110 International Crisis Group, *op. cit.* p. 13.

111 European Commission *Progress Report Serbia* of 8 November 2006, p. 18.

112 *ibid.* p. 22.

113 *ibid.*

114 *ibid.* p. 19.

c. Monetary and price stability

The Serbian currency is the dinar. It lost much of its value in the 90s but has become more stable at the moment. Within the last year, the dinar has been revalued against the Euro by 7.9%.¹¹⁵

However, Serbia has a high inflation rate due to rising oil import prices, the introduction of value added tax, high domestic demand meeting low supply and weak competition on the Serbian market.¹¹⁶ An economic policy directed towards a free market economy which meets European standards should be able to manage these problems.

d. Trade relations with the EU

Serbia conducts about half its trade with the EU (exports are slightly higher than imports).¹¹⁷ This good connection is based on EU support via the existing European Partnership. Even if negotiations on an SAA remain suspended, trade between the EU and its south-eastern neighbour is continuing. This must be further promoted and expanded.

e. Assessment concerning economic criteria

The Serbian economy is on the rise. One must take into account, however, the low base after the economic crisis which followed the wars of the 1990s.

Serbia's economy is still influenced by unresolved political problems although the promotion of political stability will bring about economic stability. Foreign investors, for instance, are likely rather to invest in a politically stable country, thereby boosting its economy.

The legislative criterion

Even if an SAA has not yet been concluded, Serbia has already begun to prepare for the adoption of the *acquis communautaire*.

It was described above that Serbia is still at the outset of its approach to the EU. Nevertheless, in some parts of the *acquis* there has already been considerable progress while, in others, Serbia is still far from the standard.

a. Less developed areas of the *acquis communautaire*

Concerning the information society and the media, financial control, the fight against organised crime and in the area of data protection in particular, Serbia's development is still at an early stage.

The Serbian information society lacks a legal foundation. The Law on Telecommunications was extended in April 2006 but the telecommunications market suffers from a lack of deregulation and administrative capacities.¹¹⁸

Equally problematic is data protection, which essentially exists only on paper: the Serbian law must be adjusted to the EU directive on data protection. It is further necessary to create an administrative authority which effectively enforces data protection.¹¹⁹

115 *ibid.* p. 20.

116 *ibid.*

117 *ibid.* p. 23.

118 *ibid.* p. 33.

119 *ibid.* p. 39.

b. More developed areas of the *acquis communautaire*

In the area of freedom of establishment, Serbia already had quite a liberal system without the need for specific improvements but, in other areas, the country has made significant progress. It has introduced new framework legislation in the field of the free movement of goods, for instance on technical standards for products and conformity assessment.¹²⁰ Serbia can also show improvements in banking law,¹²¹ corporate law,¹²² intellectual property law¹²³ and labour law.¹²⁴

Serbia's adjustment to EU standards has been furthered by the creation of institutions which monitor particular processes, implement laws and collect and disperse information. Competition, for instance, is monitored by a newly-created independent agency for the protection of competition. At the same time, additional capacities must be created in this sector for the monitoring of government aid.¹²⁵

c. Outcome concerning the legislative criterion

Regarding the adoption of the *acquis communautaire*, Serbia is far from the standard of EU member states. If major improvements have been achieved on occasion, one has to take into account the starting point. Serbia is not striving for the complete adoption of the *acquis* for the time being, but it is trying to prepare for the conclusion of an SAA. Then, with precisely formulated goals, fresh progress can be made.

Croatia's and Serbia's perspectives for accession to the EU – a comparison

Comparison of political development

As regards political development, both Croatia and Serbia have made progress towards EU standards, albeit not at the same pace.

Political stability

Croatia and Serbia both become politically unstable in the 1990s. Croatia declared independence earlier, so its stabilisation also began earlier. Serbia still suffers from uncertainty about its political direction and there is a danger that its pro-European course will be hampered by nationalist interests.

This uncertainty also stems from the Serbian Constitution. The democratic principles laid down in this document can be derogated too easily, as shown above. Croatia, on the other hand, has consequently oriented itself towards a constitutional democracy so that a setback seems unlikely at the moment.

However, both countries need to stabilise their newly-created institutions. They lack sufficient administrative capacities to establish a citizen-friendly public administration and to implement in practice their comprehensive new legislation. The judiciary must also be profoundly reformed.

120 *ibid.* p. 24.

121 *ibid.* p. 25.

122 *ibid.*

123 *ibid.* p. 28.

124 *ibid.*

125 *ibid.* p. 27.

Last but not least, both countries must still win the hard fight against corruption before they can join the EU.

The political will for accession

Croatia co-operates with the ICTY and accession negotiations have begun, so the country's will to become an EU member state is clear.

Serbia, on the other hand, refuses co-operation with the ICTY.¹²⁶ Milošević's arrest stirred up many negative feelings in Serbia and the country has still not assisted in the arrest of Ratko Mladić.¹²⁷

Serbia is equally unco-operative in respect of the Kosovo conflict and here the Serbian constitution is an outright provocation.

Obviously, a belief in authority and nationalism are still strong amongst Serbia's population and its politicians.¹²⁸ Without a re-orientation which is clearly committed to western values, Serbia's further integration into the EU will be difficult.

Comparison of economic development

In the 1990s, the Croatian and Serbian economies both suffered severe setbacks but have been growing ever since. In this respect, both countries have profited from the trade advantages awarded by the EU under the SAP.

Croatia's economy has recovered far better than Serbia's. However, even if the EU commends the countries' economic progress, one has to keep in mind the low base. Croatia's per capita income has increased, but it has still not reached half the standard of the EU.

Therefore, both economies must stabilise further before accession to the EU is possible.

Comparison of legislative development

Croatia and Serbia are both striving to adopt the *acquis communautaire*. The *acquis* is a comprehensive opus of standards and regulations which, however, can be adopted only on a step-by-step basis. In addition, formal adoption is not sufficient – it has to be implemented as well. This step is difficult for both countries, particularly as a result of the lack of administrative capacities.

Croatia's efforts are intended to facilitate its planned accession to the EU but Serbia is still striving to adopt the necessary parts of the *acquis* to enable the conclusion of an SAA.

Prognosis for the accession of Croatia and Serbia to the EU

For a prognosis on the question as to when Croatia or Serbia might join the EU, what matters is not only the countries' progress as described above but also the EU's absorption capacity.

126 Editor's Note: this article was written prior to the arrest in Serbia on 1 June 2007 of General Zdravko Tolimir and his subsequent transfer to The Hague via Republika Srpska.

127 Walkembach (2006) *Extremfall Serbien: In schlechter Verfassung* article from 28 October 2006, available at: <http://www.heute.de/ZDFheute/inhalt/27/0,3672,3992859,00.html> [accessed on 29 April 2007].

128 International Crisis Group *op. cit.* p. 1.

The EU's absorption capacity

The EU must prepare for the accession of a new member state very carefully. It means new voices in decision-making proceedings and it also changes the identity of the EU.¹²⁹

The functioning of the EU is based, as long as no European constitution is in force, on the Treaty of Nice. Here, the procedures laid down reach their limit in an EU of 27 members, as far as the speed and transparency of decision-making are concerned. The EU draft constitution introduced the possibility of majority decisions in many areas where a unanimous decision was required,¹³⁰ although some member states saw their national interests threatened by this reform. In effect, it is the old issue of the EU's democracy deficit. This, on the other hand, should have been alleviated by the EU Constitution since the position of the elected European parliament was to have been enhanced.¹³¹

Following the negative referenda on the Constitution in France and the Netherlands, however, many commentators saw a crisis of the EU. Such a discussion turns on the distance between administration and population, the democracy deficit and the identity or finality of the EU. Future accessions depend on the outcome of this discussion.

Before the EU accepts any more members, it needs time to find a common understanding about its future direction, although it should not reject its neighbouring states in the meantime.

An expansion strategy which respects the EU's absorption capacity needs, therefore, to rest on two principles: one, existing obligations must be observed and existing accession efforts supported; two, the EU must deliver its internal and external capacity to act, and enhance that capacity.¹³²

Croatia's perspective on accession

An official candidate country, Croatia has a clear perspective on accession to the EU. The country has made substantial progress in adjusting to EU standards, but further efforts are required to fulfil the strict Copenhagen criteria.

In view of the internal problems of the EU explained above, the accession process should not be accelerated unnecessarily; both sides need time to prepare for the further expansion of the EU. If both sides commit to accession with equal engagement Croatia will be ready, under these circumstances, to join the EU in 2010.

Serbia's perspective on accession

In many regards, Serbia is far from meeting EU standards. At the moment, its development after the formation of the new government remains to be seen although it is to be hoped that the country will stabilise and commit itself to a pro-European course.

Via the SAP, Serbia has a perspective on becoming an EU member state. However, Serbia's lack of co-operation with the ICTY has seen its negotiations on an SAA currently suspended. Consequently, Serbia still has a long way to go before it can join the EU and, therefore, a realistic date for accession cannot yet be given.

129 Meier (2004) in: Leggewie *Die Türkei und Europa* Frankfurt/Main, p. 32.

130 Streinz (2005) in: Delbrück, Hofmann and Zimmermann (eds.) *Eine Verfassung für Europa* Berlin, p. 71.

131 Streinz *ibid.* p. 77.

132 Rehn (2006) *Elaborer un nouveau consensus sur l'élargissement* speech/06/345, Paris, 6 June, p. 3.