

HUMAN RIGHTS ISSUES AT THE NEGOTIATIONS ON EU ACCESSION – THE CROATIAN EXPERIENCE

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ABSTRACT

As the first country of the so-called Western Balkans region and the second country from ex-Yugoslavia (after Slovenia), Croatia joined the European Union (EU) in 2013, remaining the last country to be accepted into the Union's membership. In this article, we shed light on Croatia's path to joining the EU, which was marked by important novelties concerning previous negotiations and accessions in the form of demands placed on Croatia by the Union. Introduction of the new Chapter 23 'Judiciary and Fundamental Rights' was the most important novelty, which also turned out to be the last major hurdle in Croatia's path towards the EU. Thus, negotiations on Chapter 23 and its content are the central interest of this article. Furthermore, the emergence of this new approach to enlargement and negotiating framework practically coincided with the formation of the EU Agency for Fundamental Rights (FRA), an institution created with the aim of strengthening EU's arsenal in the field of human rights. Croatia started to participate in the work of the FRA only in 2010/2011, that is during the final stage of accession when negotiations were almost closed. Taking the latter into consideration, we refer to the role of the first EU human rights agency in the Croatian negotiating process.

KEY WORDS

*accession negotiations
human rights
Croatia
Fundamental Rights Agency
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1. Introduction

In the Presidency Conclusions adopted by the European Council (EUCO) at the Madrid summit held in December 1995, the EUCO stated that enlargement was:

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Both a political necessity and a historic opportunity for Europe. It will ensure the stability and security of the continent and will thus offer both the applicant States and the current members of the Union new prospects for economic growth and general well-being. Enlargement must serve to strengthen the building of Europe in observance of the *acquis communautaire* which includes the common policies.²

To readily meet the moment of the expansion of its membership, which in a certain way became obvious since the political changes of 1989-1990, that is, the end of the Cold War and collapse of the communist/socialist regimes in Europe, the European Union (EU) member states had to determine the conditions that a country must meet to be allowed to join the Union.³ Thus, at the 1993 EUCO summit held in Copenhagen, Denmark, the following criteria were adopted:

1. Political criteria: Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
2. Economic criterion: A functioning market economy and the ability to cope with competitive pressure and market forces within the Union
3. Acquis criterion: The ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (*acquis*), and adherence to the aims of political, economic and monetary union.

The Madrid EUCO added another criterion – expansion of administrative structures for effective adoption of the *acquis*.⁴

On the wave of optimism regarding further enlargement, numerous European countries, with the former socialist countries forming the largest group, embarked on the path of integration into the EU. Thus, in 2004, 10 new countries – Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia – were admitted to the membership of the EU. After the aforementioned, largest enlargement so far, two more countries from Eastern Europe – Bulgaria and Romania – joined the EU in 2007.

Finally, in 2013, as the first country of the Western Balkans region and the second state from ex-Yugoslavia (after Slovenia), Croatia joined the EU, remaining the last country to be accepted in the EU. Croatia's path to joining the EU was marked by certain national specificities related primarily to the circumstances that preceded or succeeded the accession process. Furthermore, some important novelties in relation to previous

2 | See Madrid EUCO 15 and 16 December 1995, Presidency Conclusions, Part A, Chapter III, section A, [Online]. Available at: https://www.europarl.europa.eu/summits/mad1_en.htm#enlarge (Accessed: 2 April 2026).

3 | It is worth noting that the so-called European Agreements between the EU and former socialist states were signed in the early 1990s, establishing a legal basis for their mutual relationship. For example, such agreements were signed in 1991 with Czechoslovakia, Hungary and Poland. All three agreements had an identical structure. They, for the first time, in addition to the aspects concerning commercial and economic cooperation, accounted for the political dialogue dimension and a cultural cooperation component. See EC, European Agreements with Czechoslovakia, Hungary and Poland, IP/91/1033, 22 November 1991 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_91_1033 (Accessed: 2 April 2026).

4 | See more Marktler, 2006, pp. 343–363.

negotiations and accessions in the form of demands were placed on Croatia by the EU. This article will first shed light on some of the latter, while focusing on human rights issues.

2. On the Road to the EU

Croatia's path towards full EU membership took well over 10 years. It began in May 2001, with the signing of the Stabilisation and Association Agreement (SAA),⁵ as a part of the Stabilisation and Association Process (SAP). SAP was launched by the EU in 1999 with the aim of achieving overall stabilisation of transition countries of South-Eastern Europe, including Croatia.⁶ The agreements established a free trade area between the EU and the countries, identified common political and economic objectives and encouraged regional cooperation. In the context of accession to the EU, the agreement served as the basis for implementation of the accession process.⁷

Croatia requested to start the formal accession process, that is, applied for full EU membership on 21 February 2003 in Athens. According to the procedure, the request was submitted to the Council of the European Union (the Council), that is, to the EU member state that presided over the Council at the time – Greece. Shortly after the application was lodged, in fact already in April 2003, the Council instructed the European Commission (EC) to prepare an opinion on the Croatian request. At the Thessaloniki EUCO held in June same year it was also decided that the countries of the Western Balkans may become EU members once they fulfil the Copenhagen criteria (strengthened with the Madrid criterium) and the SAP conditions.⁸ Furthermore, the accession criteria were subsequently specified in details through the EU Treaties signed in Amsterdam (1997) and Lisbon (2007).

In July 2003, the EC sent Croatia the so-called questionnaire with 4,560 questions from various areas concerning the functioning of the state, institutions, economy, etc.

- 5 | The Croatian Parliament ratified the SAA on 5 December 2001, and the European Parliament confirmed it on 12 December of the same year. See full text of the Agreement: 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, Official Journal L 026, 28/01/2005.
- 6 | In May 1999, the EC proposed the creation of a SAP for Albania, Bosnia and Herzegovina, Croatia, Macedonia and FR Yugoslavia. In June of the same year, the Stability Pact was agreed upon. It is a political document whose strategic goal is stabilisation in Southeast Europe by bringing the countries of the region closer to Euro-Atlantic structures and strengthening mutual cooperation.
- 7 | Regarding Croatia, on 15 February 2000, the Croatia-EU Joint Consultative Working Group was established. In May of the same year, the EC published a positive Feasibility Report on the start of negotiations for the SAA. The turning point was the Zagreb summit held on 24 November 2000, called by France and co-hosted with Croatia. It included all EU member states and all republics of the former Yugoslav Federation. Albania, as the only state that was never part of the socialist Yugoslavia, was also present at the meeting. The purpose of the summit was for the EU to encourage integration between the Balkan countries. The Zagreb summit marked the beginning of negotiations between Croatia and the EU on the conclusion of the SAA.
- 8 | See Thessaloniki European Council, Presidency Conclusions, D/03/3, 19 and 20 June 2003 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/doc_03_3 (Accessed: 2 April 2026).

Answering the questionnaire was an extensive job that was nevertheless completed within the given deadline of three months. The answers were submitted to the EC on 9 October 2003. In December 2003 and January 2004, the EC sent additional 184 questions to which the Government of the Republic of Croatia answered. Based on the answers to the questionnaire,⁹ and relying on other sources (member states, international organisations and non-governmental organisations), on 20 April 2004, the EC issued a positive opinion (*avis*) on the request of the Republic of Croatia for EU membership and recommended that the EUCO open negotiations with Croatia for full membership. On 18 June 2004, the Republic of Croatia received the status of a candidate state for membership in the EU.

The negotiating structure for the accession of Croatia to the EU was established by the Decision of the Government of the Republic of Croatia on 7 April 2005.¹⁰ This Decision set down the composition and competences of the bodies that formed the structure for the negotiations and were entitled to sign the Accession Treaty of the Republic of Croatia to the EU. The Decision also assigned the role of competent and co-competent bodies of individual negotiating chapters to state administrative bodies and other bodies or institutions.¹¹ Hence, the following bodies were established:

1. State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union
2. Coordinating Committee for the Accession of the Republic of Croatia to the European Union
3. Negotiating Team for the Accession of the Republic of Croatia to the European Union
4. Working Groups for the Preparation of Negotiations on Individual Chapters of the *acquis communautaire*
5. Office of the Chief Negotiator
6. Secretariat of the Negotiating Team

The members of the bodies of the negotiating structure were appointed by the Decision. The working groups were formed in correspondence with 35 negotiating chapters and tasked to participate in the analytical review and evaluation of the compliance of the legislation of the Republic of Croatia with the EU *acquis* (screening) and in drafting proposals for negotiating positions.¹²

9 | See, for example, Hrvatske, Vlada Republike, 2004, pp. 193–220.

10 | Decision of the Government of the Republic of Croatia of 7 April 2005, Official Gazette Narodne novine No 49/05.

11 | Republic of Croatia [Online]. Available at: <https://mvep.gov.hr/en> (Accessed: 2 April 2026).

12 | Decisions of the Government of the Republic of Croatia of 15 April 2005 and of 12 October 2005 regarding the Appointment of Members of the State Delegation of the Republic of Croatia for Negotiations on the Accession of the Republic of Croatia to the European Union, Members of the Negotiating Team for the Accession of the Republic of Croatia to the European Union, Heads of the Working Groups for the Preparation of Negotiations on Individual Chapters of the *acquis communautaire*, Members of the Office of the Chief Negotiator, and Members of the Secretariat of the Negotiating Team, Official Gazette Narodne novine No 49/05 and 120/05.

Accession negotiations between Croatia and the EU were formally opened on 3 October 2005, after which the screening process began.¹³ As the first step in accession talks, the screening process analytically examined the EU acquis carried out by the EC and the candidate country. It evaluated the degree of preparedness of the candidate country, allowing it to familiarise itself with the EU acquis while indicating issues that would most likely come up during the negotiations. Institutions, internal market, external relations, economic and monetary policy and criteria, resources, agriculture and cohesion were a few of the areas being reviewed.¹⁴

| 2.1. On the Negotiating Framework for Croatia in brevis

It is important to point out that the negotiating framework agreed for Croatia was significantly strengthened in comparison with the one used for the accession of Central and Eastern Europe (CEE). While CEE countries had to negotiate 31 chapters of the acquis,¹⁵ Croatia had 35 chapters. In other words, in comparison with the CEE enlargement, four new chapters were added, out of which the new Chapter 23 - Judiciary and Fundamental Rights was the most important novelty. Although, in the previous enlargements, its content was partially covered by the chapter dealing with justice, freedom and security (kept in Croatian negotiations as well), it became very important for Croatian accession as a newly introduced chapter. Together with the previously existing and now renumbered Chapter 24 'Justice, Freedom and Security', it significantly determined the final stages of the negotiations. Finally, the increased number of chapters and the stronger focus on the rule of law and political criteria, as we shall demonstrate later, together with suspension clause, safeguard clause and the more intensive use of benchmarks, turned Croatia's negotiations into a more demanding negotiating process than all previous cases.¹⁶

Focus on the rule of law issues, particularly the reform of the judiciary and the fight against organised crime and corruption, was the result of the new enlargement approach agreed upon in 2006 after the accession negotiations with Bulgaria and Romania revealed obvious shortcomings in those key areas.¹⁷ One of the key elements in new negotiations

13 | European Commission, Croatia: 2005 Progress Report, COM (2005) 561 final, 9 November 2005 [Online]. Available at: https://enlargement.ec.europa.eu/croatia-progress-report-2005_en (Accessed: 20 September 2024).

14 | On 31 January and 1 February 2006, an explanatory screening was held in Brussels for the chapter 'Customs Union' (Chapter 29). The explanatory screening, carried out by the EC, marked the initial phase of accession negotiations and was followed by bilateral meetings, resulting in a screening report. Notably, the acquis was presented at a joint screening to representatives of the Republic of Croatia and the Republic of Turkey.

15 | Previously, the following were the negotiating chapters of the acquis: 1) free movement of goods, 2) free movement for persons, 3) freedom to provide services, 4) free movement of capital, 5) company law, 6) competition policy, 7) agriculture, 8) fisheries, 9) transport policy, 10) taxation, 11) economic and monetary union, 12) statistics, 13) employment and social policy, 14) energy, 15) industrial policy, 16) small and medium sized enterprises, 17) science and research, 18) education and training, 19) telecom and information technologies, 20) culture and audiovisual policy, 21) regional policy and co-ordination of structural elements, 22) environment, 23) consumers and health protection, 24) justice and home affairs, 25) customs union, 26) external relations, 27) common foreign and security policy, 28) financial control, 29) finance and budgetary provisions, 30) institutions, 31) other.

16 | Butković and Samardžija, 2014, pp. 91–108.

17 | See Nozar, 2012, pp. 87–90.

approach and methodology was extensive and more systematic use of benchmarks, providing concrete criteria for opening and closing individual chapters. Benchmarks are in fact measurable targets, linked to key elements of the *acquis* chapter, that must be fulfilled by the candidate states. Closing benchmarks primarily concern legislative measures, administrative or judicial bodies and a track record of implementation of the *acquis*. For chapters in the economic field, they include the criterion of being a functioning market economy.¹⁸

Furthermore, since human rights issues in the negotiations for EU accession are the focus of this work, it is important to point out that the emergence of this new enlargement strategy, adopted by the EC and supported by the EUCO, practically coincided with the formation of the new EU body, which was supposed to strengthen its arsenal in the field of human rights, that is, in the fundamental rights dimension. It is the EU Agency for Fundamental Rights (FRA), which starting from 1 March 2007, succeeded the European Monitoring Centre for Racism and Xenophobia. We will further analyze in more detail the issue of human rights as a new chapter of accession negotiations, and we will also refer to the role of the FRA and human rights in general in negotiations process, focusing on the Croatian experience.

3. Human Rights as a New Chapter of Accession Negotiations – the Case of Croatia

While respect for human rights has in fact always been a condition for the accession to the EU, since 1993 and with the introduction of the Copenhagen criteria, this conditionality has strengthened in three steps:

1. Human rights are eligibility condition subject to EU monitoring, as membership requires that the candidate country demonstrates 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (political criteria)
2. Human rights were introduced as a specific chapter in the negotiation process (starting with Croatia's accession)
3. Based on Croatia's experience, the Commission suggested the new approach introducing various adjustments to the negotiations of human rights chapter.¹⁹

It took Croatia six years to successfully conclude the negotiation process during which it was asked not only to adopt new laws and regulations to comply with EU standards, but also to implement them. Furthermore, in some areas, particularly regarding Chapter 23, besides the 'hard *acquis*', Croatia had to follow the best practices of the EU

18| See Communication from the Commission to the European Parliament and the Council - Enlargement Strategy and Main Challenges 2006 – 2007, COM (2006) 649 final, par. 3.1.

19| Hillion, 2013, pp. 1–13. According to Marktler, it is obvious that 'political criteria in particular have existed for a long time...The Copenhagen innovation consists only in the fact that membership obliges compliance with those conditions explicitly set forth by the European Council'. *Ibid.*, p. 346.

member states.²⁰ The first Intergovernmental Conference of the deputy heads of delegations/chief negotiators was held on 28 October 2005. Here, the principles and procedural arrangements for conducting accession negotiations were agreed upon, and the initial work program based on the screening program of individual chapters of the negotiations was discussed. A total of 13 meetings of the Intergovernmental Conference regarding the accession of Croatia to the EU were held at the ministerial level, and the negotiations formally concluded in 2011, with the closing of all negotiation chapters. These chapters, clustered into six groups, corresponded to the different areas of the *acquis* that were reviewed during its screening.

On 30 June 2011, EU member states decided to close the accession negotiations, which allowed the signature of the Accession Treaty, preceded by the ratification procedure. During his celebratory speech, EU Commissioner for Enlargement and European Neighbourhood Policy Stefan Füle recognised ‘the impressive progress’ made by Croatia towards meeting the EU membership criteria and praised the EC’s work which consistently supported Croatia on its path to accession.²¹ It was agreed by the member states that the EC would closely monitor Croatia’s fulfilment of the commitments undertaken in the negotiations. Finally, solutions were found to 33 negotiating chapters, covering a range of EU policies and rules, for Croatia to smoothly integrate in the EU. Why 33 and not 35 chapters as mentioned earlier? Namely, although the European legal *acquis* was divided into 35 chapters,²² negotiations were conducted in 33 chapters because in two chapters (Institutions and Other issues) there were no legislation for the candidate country to take over.

20 | See Turkalj, 2022, pp. 55–81.

21 | ‘We are celebrating this historic event with our Croatian friends: within 20 years as an independent republic, Croatia has changed tremendously. It has made impressive progress towards meeting the EU membership criteria. This is being rewarded today...The European Commission has consistently supported Croatia on this reform path’, said Stefan Füle, EU Commissioner for Enlargement and European Neighbourhood Policy. ‘...The Commission will continue this strict, transparent approach to monitor how Croatia delivers on the commitments so that it will be able to fully assume the responsibilities of membership from the first day of accession...What a great contribution to the credibility of enlargement process!’ he added. European Commission, EU closes accession negotiations with Croatia, Press Release, 30 June 2011 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_824 (Accessed: 21 October 2024).

22 | Negotiations for the accession of the Republic of Croatia into the EU comprised of the following 35 negotiating chapters: 1) free movement of goods, 2) freedom of movement for workers, 3) right of establishment and freedom to provide services, 4) free movement of capital, 5) public procurement, 6) company law, 7) intellectual property law, 8) competition policy, 9) financial services, 10) information society and media, 11) agriculture and rural development, 12) food safety, veterinary and phytosanitary policy, 13) fisheries, 14) transport policy, 15) energy, 16) taxation, 17) economic and monetary policy, 18) statistics, 19) social policy and employment, 20) enterprise and industrial policy, 21) trans-European networks, 22) regional policy and coordination of structural instruments, 23) judiciary and fundamental rights, 24) justice, freedom and security, 25) science and research, 26) education and culture, 27) environment, 28) consumer and health protection, 29) customs union, 30) external relations, 31) foreign, security and defence policy, 32) financial control, 33) financial and budgetary provisions, 34) institutions and 35) other issues.

However, following the final accession conference in Brussels, the EC stressed that EU member states agreed to close the remaining policy chapters under negotiations, including two key areas: judiciary and fundamental rights, and competition policy:

In the chapter on judiciary and fundamental rights, Croatia has launched reforms in critical areas, strengthening the independence and efficiency of the judiciary, in fight against corruption and protection of fundamental rights. These are essential to bringing results in the near future in support of the rule of law for the benefit of all citizens.²³

In other words, one might rightfully conclude that the new chapter 23, introduced after the accession of Bulgaria and Romania, was the last major hurdle for Croatia towards the EU, at least as it regards the negotiation process.²⁴ However, it is also true that although Croatia is the first country to have met new requirements and that it obviously completed the tasks successfully, there remain concerns regarding those issues as well as need for their further improvement, as witnessed in the 2011 EC's Interim Report and Progress Report. The concerns in particular included the following areas: judicial reform, the appointment of judges and state prosecutors, impunity for domestic war crimes, the fight against corruption (especially high-level one) and organised crime.

| 3.1. Negotiating Chapter 23

Negotiations on Chapter 23 – Judiciary and fundamental rights opened in June 2010, i.e. at the end of the process, once the EUCO concluded that Croatia met the opening benchmarks. It was also agreed that provisional closure of negotiations could be envisaged when several closing benchmarks were met. The latter included areas concerning judiciary, fight against corruption and organised crime, fundamental rights and cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). The screening meetings for the Chapter were held in September and October 2006, while the screening report was completed in June 2007. In the latter, Croatia indicated that it could accept the acquis in judiciary and human rights, and it did not expect any difficulties in the implementation.

In the Chapter 23 screening report published on 27 June 2007, the four main sectors were covered – judiciary, anti-corruption, fundamental rights and EU citizens' rights.²⁵ In fact, the EC, already in its 2004 Opinion on Croatia's application for membership, concluded that Croatia was a functioning democracy, with stable institutions guaranteeing the rule of law. Furthermore, although there were no major problems regarding respect for human rights, there were certain issues that required special attention and additional efforts for improvement – protection of the rights of minorities, particularly the Serb

23 | European Commission, EU closes accession negotiations with Croatia, Press Release, 30 June 2011 [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_824 (Accessed: 23 October 2024).

24 | Thorp, 2011, p. 3.

25 | Screening report Croatia, Chapter 23 – Judiciary and fundamental rights, 27 June 2007 [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/ba39613b-1486-42f1-b411-f526ddd277cd_en?filename=screening_report_23_hr_internet_en.pdf (Accessed: 2 April 2026).

minority and refugee returns, the fight against corruption and reform of the judicial system.²⁶

More precisely, in the 2007 report's assessment of the degree of alignment and implementing capacity (Report), concerning the judiciary, the EC concluded that judicial reform was at an early stage and severe shortcomings had to be tackled, such as corruption within judiciary, lack of transparency in the judges' appointment procedures and the excessive length of court proceedings. Regarding the fight against corruption, which was considered a serious problem that affected various aspects of society, especially high-profile corruption, it was rated as a matter of crucial importance. Regarding EU citizens' rights, different legislative measures were discussed, which Croatia would have to adopt upon accession.

Finally, the sector devoted to fundamental rights was divided into the following sections:

1. General: Broadly covering the legislative and institutional framework for the protection of human rights
2. Human rights: Presenting a short overview of constitutionally guaranteed human rights and fundamental freedoms
3. Procedural safeguards: Regarding the right to liberty and security and the right to a fair trial
4. Minority rights and cultural rights: Concerning constitutional and legislative framework and the international agreements ratified by Croatia, with detailed indications of the problematic aspects in this field
5. Measures against racism and xenophobia: Pointing out certain challenges, such as the need for full adoption of the anti-discrimination strategy
6. Protection of personal data: Pointing out the need for completion of full alignment with the respective EU and Council of Europe (CoE) legislation

At the end of this part of the Report, there is a short reference to the FRA. The FRA was established as the first EU human rights agency, a few months before the Report was adopted. Hence, the Report only stated that the 'nature, extent, and manner of Croatia's participation in the Agency's work will be decided by the EU-Croatia Association Council'.

4. FRA and Croatia Through the Accession Period

On 15 February 2007, the Council adopted a regulation by which the FRA was established.²⁷ According to its founding act, the FRA's main objective was to provide the relevant

26 | Another important element of Croatia's accession requirements regarding political criteria was cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). After the ICTY's Chief Prosecutor stated that Croatia started to fully cooperate with the Tribunal, the EC underlined that Croatia needs to maintain full cooperation and take all necessary steps to ensure that the remaining indictee was located and transferred to the ICTY.

27 | Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, pp. 1–14. The founding Regulation (EC) was revised and amended in April 2022.

institutions, bodies, offices and agencies of the EU, and of its member states when implementing EU law, with assistance and expertise relating to fundamental rights to support them in taking measures or formulating courses of action within their respective spheres of competence to fully respect fundamental rights (Art. 2). The FRA carried out its tasks for the purpose of meeting the aforementioned objective within the competencies of the Community as laid down in the Treaty establishing the European Community (Art. 3.1).

The FRA is tasked with collecting and analysing data on fundamental rights with reference to all rights listed in the EU Charter of Fundamental Rights, focusing particularly on the thematic areas within the scope of EU law. The thematic areas include access to justice, victims of crime, information society, Roma integration, judicial cooperation, rights of the child, discrimination, immigration and integration of migrants, racism and xenophobia. Besides publishing analysis and research-based thematic reports, in line with Art. 4. of the Regulation, its tasks include publishing an annual report on fundamental rights issues covered by its activities, collecting and analysing relevant law and data, highlighting examples of good practice, carrying out and encouraging scientific research and surveys, developing a communication strategy and promoting dialogue with civil society to raise public awareness of fundamental rights.²⁸

The FRA's establishment actually ended a long-term debate regarding the formation of a special EU body whose main task would be to collect and analyse data regarding the state of human rights.²⁹ This discussion took place in the EU institutions since 1999, when the EUCO, at its meeting in Cologne, presented the idea of establishing an 'Agency for human rights and democracy', as it was then called. However, this proposal was officially introduced a year earlier in the document called Human Rights Agenda for the European Union in 2000, whose authors, members of the Comité des Sages, proposed the creation of the Human Rights Monitoring Centre.³⁰ This proposal in fact followed the ideas of P. Alston and J.H.H. Weiler, who advocated a new institutional model for the EU's human rights dimension that would also include the development of a monitoring function, as follows:

To be achieved through the creation of a new agency or through a substantial expansion in the scope and power of the existing European Monitoring Centre on Racism and Xenophobia in Vienna; the latter should be transformed into a veritable Monitoring Agency, with monitoring jurisdiction over all human rights in the field of application of Community Law.³¹

The establishment of the FRA was successively advocated by other EU institutions and bodies, especially the European Parliament and the Network of Independent Experts of the European Union for Fundamental Rights. However, the FRA was not established as a true, strong human rights monitoring body, since it had not been granted with the authority to analyse complaints, decide on its own initiatives regarding the areas of its

28 | Ibid.

29 | See more in Bačić, 2006, pp. 105–122.

30 | *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000*, European University Institute, Florence, 1998. This document was the result of work done by the Comité des Sages, which consisted of four human rights experts – Antonio Cassese, Mary Robinson, Catherine Lalumiere and Peter Leuprecht.

31 | Alston and Weiler, 1998, pp. 676–677.

activities outside the Multiannual Framework adopted by the EUCO based on a proposal from the EC and with the consent of the Parliament or take part in the legislative process if not so requested by the EU institutions.³² Instead, its room for action, as defined with the 2007 Regulation, was limited by the legislator.³³

Acting primarily as an information providing and advisory agency, thus only indirectly influencing legislative process and policy making, the FRA achieved its objectives through collecting and analysing information and data relevant to developing and implementing fundamental rights' policies, providing advice to policymakers, raising fundamental rights' awareness and helping better law-making and implementation process, etc. In doing so, it works in close relation with EU institutions and other bodies, EU member states, the CoE, UN and other international organisations. It is also important to point out that the FRA closely cooperates with civil society organisations active in the field of human rights from across the EU and in states having observer status with FRA, especially via the Fundamental Rights Platform as the main cooperation channel.³⁴

| 4.1. *The Croatian Experience on the Cooperation with the FRA Between 2010–2013*

The possibility opened by the 2007 Regulation regarding the participation of the so-called third countries in the work of the FRA was of particular interest to this article. As mentioned earlier, this issue was emphasised already in the discussions that preceded the adoption of the Proposal for a Council Regulation establishing the FRA.³⁵ The aforementioned group of states consisted of three candidate countries for EU membership – Croatia, Macedonia and Turkey – and four Western Balkans countries – Albania, Bosnia and Herzegovina, Montenegro and Serbia – that would conclude the SAAs with the EU. The fundamental meaning of their participation is highlighted in the preamble of the Regulation (para. 28). It stipulates that the FRA should be open to the participation of candidate countries and countries with which a SAA has been concluded. This would enable the EU to support their efforts towards European integration by facilitating a gradual alignment of their legislation with EU law and the transfer of know-how and good practice, particularly in those areas of the *acquis* that would serve as a central reference point for the reform process in those countries.

Art. 28 of the Regulation further prescribes modalities of participation. Regarding candidate countries, the FRA is open to their participation in the capacity of observers,

32 | Sokhi-Bulley, 2011, pp. 683–706. According to Sokhi-Bulley, the FRA's 'governance-related role actually reveals a type of monitoring best understood as 'surveillance', which means that tactics of discipline and governmentality operate within the space of the FRA'.

33 | On limits, potentials and early expectations of the FRA, see more in Lazowski, 2009, p. 1388. See also De Schutter, 2009, pp. 93–136. Notably, the FRA's mandate was significantly enhanced in 2022 by adopting Council regulation (EU) 2022/555 of 5 April 2022 amending Regulation 168/2007. The FRA is now competent to undertake its own-initiative work on police and judicial cooperation in criminal matters. Furthermore, the Multiannual Framework programme defining the FRA's activities was replaced with a more operational annual and multiannual programme. Nevertheless, that period falls outside our scope of interest, as this study covers the period of Croatian accession to the EU, that is until 2013.

34 | See Fundamental Rights Platform – Terms of Reference, FRA, Decision of the Director, INST/001/2020; see also: FRA: Civil society and the Fundamental Rights Platform [Online]. Available at: <https://fra.europa.eu/en/cooperation/civil-society> (Accessed: 2 April 2026).

35 | Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights COM(2005)280 final of 30 June 2005.

with the participation and the respective modalities being determined by a decision of the relevant Association Council, taking into account the specific status of each country. Such decision shall also provide that the participating country may appoint an independent person as observer to the Management Board, though without the right to vote. Countries with which a SAA has been concluded, on the other hand, may be invited to participate in the FRA as an observer, following the decision of the EUCO, acting unanimously on a proposal by the EC.³⁶

It was already in November of 2007 the same year, the Croatian mission in Brussels received an informal invitation from the EC to express interest in participating in the FRA's work as an observer. Hence, in February 2008, Croatia sent a letter of intent to achieve observer status, which was prepared in 2009.³⁷ On 25 May 2010, the EU-Croatia Stabilisation and Association Council adopted the Decision on Croatia's participation as an observer in the FRA's work and respective modalities thereof. After receiving the Parliament's consent, the Croatian government adopted the Decision on accepting the position of an observer in the FRA's work and other activities. It was expected that, once the Parliament confirmed the Decision, Croatia would receive support for further harmonisation of legislation in the area of fundamental rights with the EU *acquis* through the FRA's activities.

However, Croatia was in fact approaching the very end of the negotiation process when it gained the possibility to participate in the FRA. Namely, on 1 July 2010 the Decision on participation of Croatia as an observer in the Agency's work entered into force.³⁸

36 | Council Regulation (EC) No. 168/2007, Art. 28 Participation and scope in respect of candidate countries and countries with which a Stabilisation and Association Agreement has been concluded: 1. The Agency shall be open to the participation of candidate countries as observers. 2. The participation and the respective modalities shall be determined by a decision of the relevant Association Council, considering the specific status of each country. The decision shall indicate in particular the nature, extent and manner in which these countries will participate in the Agency's work, within the framework set in Arts. 4 and 5, including provisions relating to participation in initiatives undertaken by the Agency, to the financial contribution and to staff. The decision shall be in line with this Regulation and with the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities. The decision shall provide that the participating country may appoint an independent person fulfilling the qualifications for persons referred to in Art. 12(1) (a) as observer to the Management Board without the right to vote. Upon the decision of the Association Council, the Agency may deal with fundamental rights issues within the scope of Art. 3(1) in the respective country, to the extent necessary for the gradual alignment to Community law of the country concerned. 3. The Council, acting unanimously on a proposal by the Commission, may decide to invite a country with which a Stabilisation and Association Agreement has been concluded by the European Community to participate in the Agency as an observer. In that case, para. 2 shall apply accordingly.

37 | See Proposal for a Council Decision on a Community position in the EC-Croatia Stabilisation and Association Council on the participation of Croatia as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities, within the framework set in Arts. 4 and 5 of Council Regulation (EC) No. 168/2007, including provisions relating to participation in initiatives undertaken by the Agency, to the financial contribution and to staff, COM(2008) 571 final, Brussels, 19 September 2008.

38 | See Zakon o potvrđivanju Odluke br. 1/2010 Vijeća za stabilizaciju i pridruživanje između EU i Hrvatske o sudjelovanju Hrvatske kao promatrača u radu i drugim aktivnostima Agencije Europske unije za temeljna prava of 15 June 2011, Official Gazette Narodne novine – Međunarodni ugovori, no. 10/2011.

It enabled the FRA to deal with Croatia's fundamental rights issues within the scope of the 2007 Regulation Art. 3.1. This was to the extent necessary for the gradual alignment to EU law and enable it to carry out the tasks. Croatia has undertaken the obligation to contribute financially to the FRA's activities, had to appoint persons who may participate as observer and alternate observer in the FRA Management Board (without a right to vote) and had to nominate a government official as a National Liaison Officer, all within four months of the Decision's entry into force.

Furthermore, there was still considerable misunderstanding regarding the position, role and powers of the new EU agency.³⁹ This was evident from the reaction of some parliamentarians in the debate held in the Croatian Parliament on 8 June 2011 regarding the adoption of the Law on the Confirmation of the Decision of the Stabilisation and Association Council. The then State Secretary in the Ministry of Foreign Affairs and European Integration, A. Plenković, emphasised that the FRA did not make binding decisions, therefore, it would not be involved in monitoring Croatia's obligations towards the EU. However, there were opinions that the actions and decisions of the Agency would threaten the sovereignty of the Croatian judiciary.⁴⁰

Available information about the meeting of the then director of the FRA with high-ranking representatives of the Ministry of the Interior, held at the beginning of July 2011, supports the claim, at least based on the data available to us, that the FRA did not have a prominent role in Croatia's accession to the EU. Furthermore, the Croatian institutions and state administration were yet to become fully familiar with their role.⁴¹ Nevertheless, the FRA started to include data concerning Croatia in its reports published already in 2012. Thus, the 2011 Annual Report 'covers developments that took place in the EU and in its 27 EU member states and the acceding country Croatia'. Croatia's case is explicitly referred to in several parts of the 2011 Annual Report. These included, for example, the rights of migrants (Aliens Act, Asylum Act and detention), equality and non-discrimination (access to social assistance, transgender persons and sex change), rights of crime victims (Criminal Procedure Act), actions of the Ombudsman concerning treatment of older persons and rights of children, then also in the part dealing with officially recorded racist crimes, especially the situation of Roma populations, and voting rights (the right to vote of persons with disabilities, Act on Voter Registers), etc.⁴²

39 | See *Sabor: Hrvatska kao promatrač u Agenciji za temeljna prava* (2011) *Ius Info*, 9 June [Online]. Available at: <https://www.iusinfo.hr/aktualno/dnevne-novosti/sabor-hrvatska-kao-promatrac-u-agenciji-eu-za-temeljna-prava-9992> (Accessed: 2 April 2026).

40 | *Ibid.* Speaking about the benefits that Croatia would have from the FRA's membership, State Secretary A. Plenković said that it was primarily the harmonisation of regulations with the EU *acquis* and the confirmation of Croatia's continuity in preserving and improving human rights standards.

41 | See *Posjet ravnatelja Agencije EU za temeljna prava* (2011) *Ministarstvo unutarnjih poslova*, 8 June [Online]. Available at: <https://mup.gov.hr/vijesti/posjet-ravnatelja-agencije-eu-za-temeljna-ljudska-prava/96351?big=1> (Accessed: 2 April 2026); see also *Furio Radin održao sastanak s ravnateljem Agencije za temeljna prava EU Mortenom Kjaerumom* (2011) *Hrvatski Sabor*, 7 July [Online]. Available at: <https://sabor.hr/hr/press/priopcenja/furio-radin-odrzao-sastanak-s-ravnateljem-agencije-eu-za-temeljna-prava-mortenom> (Accessed: 2 April 2026).

42 | European Union Agency for Fundamental Rights (2011) 'Annual Report 2011. Fundamental rights: challenges and achievements in 2011' *FRA*, June 2012. [Online]. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/2211-FRA-2012_Annual-Report-2011_EN.pdf (Accessed: 2 April 2026).

Hence, the Report mainly provided broad, general remarks related to the changes to existing or adoption of new legislation in the aforementioned areas. It is also evident from the Report that the FRA had already begun cooperating with national civil society organisations in Croatia. For example, based on the findings of the Mental Disability Advocacy Centre, a concern was raised regarding the living conditions of patients with intellectual and psycho-social disabilities in psychiatric institutions and social care homes, highlighting the need for urgent reforms in the field.⁴³ Further, the Report noted that the FRA started to collect and analyse data provided by the Croatian institutions. Thus, the Ombudsman of the Republic of Croatia signalled the involuntary placement of older persons in retirement homes at the national level, suggesting that further monitoring of the system of legal capacity restrictions was required.⁴⁴ We also noted a prominent example of good practice from Croatia. The part of the Report that discussed racism and ethnic discrimination, under the title Promising Practice – Teaching About the Holocaust and Preventing Crimes Against Humanity, based on the report of the Croatian Agency for Education published on its official website, highlighted that since 2003, the Agency for Education had been developing the school curriculum to include a teacher training programme to assist teachers in incorporating Holocaust education and the prevention of crimes against humanity.⁴⁵ Finally, there were thematic parts of the Report that did not provide any specific national data, which should be attributed to the fact that this was the first FRA report to include Croatia.

Further, as it regards the accession period, Croatia was also included in the thematic report on hate crime published in 2012⁴⁶ and in two reports published in 2013, which analysed the situation in the 2012 EU LGBT Survey,⁴⁷ and the 2012 Annual Report.⁴⁸ Notably, the 2012 Report on hate crime explicitly referred to one case that concerned racist violence by non-state actors. Thus, in the *Šečić* case (ECtHR, *Šečić v. Croatia*, no. 41106/02), the applicant, who was of Roma origin, alleged that the Croatian authorities had failed to undertake a thorough investigation of a skinhead attack on his person. Although it was undisputed that skinhead ideology was extremist and racist, the authorities mounted no effective investigation to establish whether ethnic hatred had motivated the attack, as stated by the European Court of Human Rights in its judgment of 31 May 2007.⁴⁹

The 2012 Annual Report already presented a more detailed analysis of the situation in Croatia and had more specific national references compared to the 2011 Annual Report, covering different areas: asylum, immigration and integration, the rights of the child and

43 | *Ibid.*, p. 141.

44 | *Ibid.*, p. 143.

45 | *Ibid.*, p. 160.

46 | European Union Agency for Fundamental Rights (2012) 'Making hate crime visible in the European Union: acknowledging victims' rights' *FRA*, 2012. [Online]. Available at: https://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf (Accessed: 2 April 2026).

47 | European Union Agency for Fundamental Rights (2013) 'EU LGBT Survey – European Union lesbian, gay, bisexual and transgender survey, Results at a glance' *FRA*, 2013. [Online]. Available at: https://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf (Accessed: 2 April 2026).

48 | European Union Agency for Fundamental Rights (2013) 'Annual Report 2012, Fundamental rights: challenges and achievements in 2012' *FRA*, 2013. [Online]. Available at: https://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf (Accessed: 2 April 2026).

49 | European Union Agency for Fundamental Rights (2012) 'Making hate crime visible in the European Union: acknowledging victims' rights' *FRA*, 2012. [Online]. Available at: https://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf (Accessed: 2 April 2026) p. 17.

protection of children, equality and non-discrimination, participation of EU citizens in the EU's democratic functioning and rights of crime victims. As it regards the analysis of the situation in Croatia, the 2012 Annual Report referred to different examples of legislative reforms and good practice. For example, it highlighted that Croatia harmonised its provisions of the Aliens Act regarding the eligibility of entry and residence of third-country citizens for the purposes of employment of highly qualified labour force with the EU *acquis*, which entered into force on the day Croatia acceded to the EU.

Concerning migrant rights, the Report evidenced several alternatives to detention, which were included in the 2012 national legislation, namely the duty to surrender documents, deposit sureties, designated residence and regular reporting. Regarding the integration of migrants, an example of good practice is particularly highlighted - namely, in September 2012, Croatia adopted a special programme – Croatian language curricula for asylum seekers, refugees and persons under subsidiary protection who are older than 15 years. The curriculum aimed at providing migrants with sufficient language competence to enable them to enrol in secondary schools and adult education programmes. The learning programme also included Croatian culture and history.⁵⁰

5. Closing of Negotiations

On 30 June 2011, the EU member states decided to close the negotiations, following the closure of the remaining chapters, and decided that Croatia would join the EU on 1 July 2013. However, it did not mean that the entire work regarding harmonisation and fulfilment of assumed obligations was complete. To ensure the supervision of the remaining obligations and further implementation of reforms, monitoring by the EU was introduced. Simultaneously, it is necessary to account for the fact that the *acquis* of Chapter 23 was, for the most part, not uniformly regulated by the EU legislative, as pointed out by one of the Croatian negotiators. It consisted of various international documents, such as the United Nations (UN) conventions and the CoE, and best practices, therefore of binding, but in large part also of the so-called soft *acquis*.⁵¹

Ten closing benchmarks for Croatia in Chapter 23, many of which were divided into sub-benchmarks focusing on the implementation of measures and establishment of track records, were grouped around the four main areas, i.e. thematic units we have mentioned earlier (reform of judiciary, fight against corruption, fundamental rights, and EU citizens' rights). Thus, the judiciary area had four benchmarks:

1. Updating Judicial Reform Strategy and Action Plan and ensuring effective implementation
2. Strengthening the independence, accountability, impartiality and professionalism of the judiciary
3. Improving the efficiency of the judiciary
4. Improving the handling of domestic war crimes cases

50 | European Union Agency for Fundamental Rights (2013) 'Annual Report 2012, Fundamental rights: challenges and achievements in 2012' *FRA*, 2013. [Online]. Available at: https://fra.europa.eu/sites/default/files/annual-report-2012_en.pdf (Accessed: 2 April 2026) pp. 47–61.

51 | See Turkalj, 2022.

Regarding the fight against corruption, there were two benchmarks:

1. Establishing a track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels, including high level corruption, and in vulnerable sectors, such as public procurement
2. Establishing a track record of strengthened prevention measures in the fight against corruption and conflict of interest

Regarding fundamental rights, there were three benchmarks:

1. Strengthening the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities
2. Settling outstanding refugee return issues
3. Improving the protection of human rights

Finally, regarding cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), there was one benchmark:

Full cooperation with the Tribunal:⁵² after the negotiations were formally closed, and before Croatia's accession to the EU, the EC adopted several Monitoring Reports.⁵³ Its final report on Croatia's preparations for joining the EU was adopted on 26 March 2013. The assessment was based on the information gathered and analysed by the EC, including inputs provided by Croatia, as well as information provided by member states and international and civil society organisations. Ten priority actions were identified in the report as requiring particular attention and their assessment was provided in separate thematic sections, out of which majority belonged to judiciary and fundamental rights.⁵⁴

However, the report stated that Croatia had completed all priority actions, it generally met the commitments and requirements arising from the accession negotiations in all chapters and had demonstrated its ability to fulfil all other commitments before accession. Furthermore, it stated that the EU membership was an additional incentive to carry on with reforms and Croatia was expected to continue developing its track record in the field of the rule of law, notably in the fight against corruption.⁵⁵

52 | European Commission, Interim report from the Commission to the Council and the European Parliament – On reforms in Croatia in the field of judiciary and fundamental rights (negotiation chapter 23), COM (2011) 110 final, Brussels 2 March 2011 [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52011DC0110> (Accessed: 2 April 2026).

53 | As an integral part of regular monitoring, in the period following the closure of the negotiations, the EC issued six-monthly assessments on the implementation of Croatia's commitments, focusing on the judiciary and fundamental rights, competition policy and justice, freedom and security.

54 | European Commission, Communication from the Commission to the European Parliament and the Council - Monitoring Report on Croatia's accession preparations, COM (2013) 171 final, Brussels, 26 March 2013 [Online]. Available at: https://ec.europa.eu/archives/commission_2010-2014/fule/docs/news/20130326_report_final.pdf (Accessed: 2 April 2026).

55 | Ibid.

6. Concluding Remarks

‘We have been fair but strict: no discount has been accorded, no shortcuts taken, no corners rounded’, the Commissioner for Enlargement and European Neighbourhood Policy Stefan Füle stated at the end of the negotiation process.⁵⁶ Although the accession negotiations with Croatia were specific in many respects compared to all previous negotiations, perhaps the most important fact is that they were the first to include a specific chapter on judiciary and fundamental rights. Regarding the respect for fundamental rights as a condition for accession, it is true that it is not new. However, Croatian negotiations demonstrated that its function in the enlargement process ‘evolved significantly, both as a result of the changing role of fundamental rights in the EU constitutional order, and also in view of the inherent needs of each wave of accession’.⁵⁷

In case of Croatia, this area had a broad coverage indeed, in the sense that the legal *acquis* included not only the EU Charter of Fundamental Rights, but also the human rights treaties adopted in the UN and the CoE.⁵⁸ Initially, the negotiations covered all issues related to human rights protection. However, as the negotiations progressed, focus was shifted to areas where the EU was not satisfied with Croatia’s progress, such as anti-discrimination, sanctioning of hate crimes, protection of national minorities, convalidation, strengthening the role of the people’s ombudsman, free legal aid and administrative proceedings. Furthermore, the EU did not accord rule of law and human rights issues the same attention before as it did during the negotiations with Croatia.

The FRA, as the first EU human rights agency, became involved in the process only in its final stage. Croatia in fact started to participate in the FRA’s work in 2010/2011, while its path towards full membership in the EU took well over 10 years, with negotiations being finally closed in June 2011. Although the latter did not mean that the entire work regarding harmonisation of national legislation with the *acquis communautaire* was complete, the FRA simply did not play a particularly significant role in the whole accession process. Nevertheless, we are of the opinion that even this limited engagement, evidenced by only a few reports that included Croatia in the accession period, indicated the FRA’s potential role in the accession process of new member states, particularly regarding the harmonisation of legislation with the EU *acquis* and the improvement of human rights standards at all levels.

The respect for human rights and for other values on which the EU is founded as stipulated in Art. 2 of the Treaty on European Union (TEU),⁵⁹ is, according to Art. 49 TEU, a

56 | European Commission (2011) ‘EU closes accession negotiations with Croatia’ *European Commission – Press Release*, 30 June. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_824 (Accessed: 2 April 2026).

57 | Ackermann et al., 2012, pp. 481–482.

58 | See more in Turkalj, 2022.

59 | Treaty on European Union, Art. 49(1): ‘Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into Account’.

prerequisite for starting accession negotiations.⁶⁰ However, after Croatia's accession, the respect for human rights also became an integral part of the EU acquis, which hopefully presents clear standards for all negotiating countries to fulfil in order to meet the accession criteria and become full EU members.

60 | Treaty on European Union, Art. 2: 'The Union is founded on the values of respect for human dignity, the rule of law and respect for human rights, including the rights of persons who belong to minorities. These values are common to the Member States in a society in which pluralism, anti-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

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