

Reflections on Accession Negotiations With the EU

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This paper attempts to make progress in clarifying issues related to the accession negotiations process, mostly with regard to the procedural and institutional – political mechanisms employed by candidate states to join the EU. In fact, an analysis of this process should comprise, at least at the preliminary level, elements related to the actors involved in the negotiation process, principles of negotiation (institutional, between the EU and candidates, in Brussels, within candidate countries), specificities in accession negotiations and strategies and negotiation tactics of the EU / Member States and candidate states. Moreover, data is required on fulfilling the accession criteria, assessing the internal preparation for chapters of negotiation and the results obtained by other candidates in negotiating their accession. Most efforts are directed towards preparing the external and internal environment of negotiations, harmonising interests with the Member States and the EU, as well as with non-governmental actors (interest groups, civil society). Furthermore, it is worth mentioning the impact of other events on the internal and external environment of negotiations, such as the Iraq crisis, the debate on the EU Constitution.

Accession negotiations: specificities

First, this complex, multi-level process can be seen as the sum of interdependencies among multiple dimensions, from the political, economic, social and cultural perspective, as it involves the sum of the interests of internal and external actors involved in negotiation. We should also consider the context in which the

Due to the complexity of the subject, this paper will focus on delineating key terminology dimensions and specificity of accession negotiations with the EU, comparing with other negotiation processes in the international plan.

Conceptual and pragmatic understanding of accession negotiations would favour further analytical evidence of the process and would avoid politicisation of the subject. Furthermore, short and long-term effects of the accession to the EU would be clearer emphasized both in the Member and candidate countries, in the benefit of the enlargement process.

Generally, over the long term, the EU enlargement will determine geoeconomic and geopolitical benefits (Moravcsik and Vachudova, 2002b; Grabbe, 2001). The perspective of prosperity and integration to an area of security, justice and freedom is strongly influencing the candidate countries policy options. From the start, accession to the EU becomes a better alternative of the Central and Eastern European candidates. In this respect, some may characterise accession negotiations as a win-win process.

EU enlargement process is viewed, as this context is strongly related to the convergent interests of potential and existing members (Moravcsik and Vachudova, 2002a). In this respect, accession negotiations are, as Robert Schumann pointed out, a process of harmonisation and then fusion of the interests

of actors involved (Puşcaş, 2003). Even looking from a rationalist or sociological perspective, accession negotiations can be seen as a process of accommodating and balancing interests of actors involved, to obtain a compromise.

Accession negotiations with the EU follow substantial *different rules* from those used by the traditional diplomacy (Andras Inotai, 2001, 2002). In traditional diplomacy, actors have clear differentiated initial positions. Generally, the end of negotiations is equal to a compromise, a mix solution satisfying actors involved and containing elements of each initial position. In the accession negotiations, the starting and ending point is the *acquis communautaire*, which has to be implemented by all candidates. In this respect, the "negotiation" concept is at least inadequate in the context of discussions between Brussels and applicants (Andras Inotai, 2001, 2002).

A specificity of the accession negotiations refers to the *asymmetric positions of the actors* in negotiation (the EU / Member States and candidate countries) (Inotai, 2002). Certain dimensions are emphasized (Friis and Jarosz, 2000): the applicant is in the classic *demandeur* position of an actor that is interested to join a club with strict rules. The applicant negotiates with an actor having more comprehensive and clearer vision and understanding; in other words, differentiation in information is evident; other issue contributing to this differentiation refers often to the secrecy kept by candidate countries on their negotiation. Differentiation in information also contributes to the differentiation in experience (Member States and the EU approaches indicate more pragmatism than candidate countries, which were not involved in negotiations of such complexity).

The asymmetry in accession negotiations determines special attention for other dimensions: power, negotiation results, and accession criteria. What we notice when we analyse power is the transfer of emphasis from power to strategic capacities, used as arguments in formulating positions and helping to coagulate internal interests.

In this respect, with regard to the negotiation results, the following question arises: if the *acquis* is not negotiable, what we negotiate? A simple answer would be transition periods. That would mean focusing on identifying areas, sectors where candidate countries can obtain transition periods (temporary exceptions from implementing the *acquis*) (Inotai, 2001, 2002; Friis and Jarosz, 2000). However, no rule is set to incapacitate only candidate countries to make efforts for obtaining transition periods. The present enlargement wave came along with changes in the EU attitude (transition period of 2+3+2 years to get a compromise in negotiations for chapter 2 [Free movement of persons], with regard to the free movement of labour force).

Of course, in negotiations with the EU, fulfilling the Copenhagen criteria is essential. However, efforts are considerable; requests are immense, non-negotiable, uniformly applied and strictly monitored; transition from former Communist states to functioning market economies (in Central and Eastern Europe), establishing the administrative capacity (much more substantial than in every other enlargement wave) determined considerable efforts from applicants. What should be also considered is the fact that Member States had almost 50 years to accommodate (Moravcsik and Vachudova, 2002b).

Another characteristic of the accession negotiations refers to its *multi-level dimension*. At present, the 25 Member States agree on a mandate for negotiations with the applicant (from the Commission technical level, the opinion is analysed by the Enlargement Group within the EU Council, then COREPER, following for Foreign Ministers to take a decision). Based on this mandate, the Presidency negotiates concrete/sectoral conditions of accession with the candidate (Friis and Jarosz-Friis, 2002).

Taking into account that an internal compromise in the EU requires accommodating interests of 25 Member States, the common position has great value for applicants. The candidate is less able to change the compromise and has to deal with a difficult choice: either accepts an option less

beneficial, either it keeps pressing for a new compromise (with the risk of obtaining a better alternative / result only after a long period of time). The difficulty of the choice comes with the tight schedule envisaged by the applicant for negotiations.

Not only Member States experience the process of harmonising positions and interests. The same process is visible within the candidate countries, where the need for a systematic preparation for accession (political and policy coordination, technical work) is acknowledged. That means economic and political reforms to sustain credibly the arguments brought at the table by the negotiation team. Furthermore, one should not forget the coordination of preparation for accession (legislative harmonisation, implementation of the *acquis*, unique voice in negotiations), harmonising interests of all society groups and open dialogue (to determine increased awareness of the effects of accession to the EU).

Moreover, accession negotiations are related to *systemic changes* determined in the EU by the enlargement waves: every accession means modification of the Treaties, as we take into account the weight of votes in the Council. That might reopen, theoretically, the discussion on already agreed compromises among Member States. In other words, accession negotiations can bring changes in the political investments made by the Member States (Avery, 1995). Furthermore, accession negotiations cannot be viewed only through the lenses of achieving a single compromise, or immediate geopolitical and geoeconomic benefits. The real result is a long-term mutual beneficial relationship. According to Graham Avery, accession negotiations do not strictly refer to the future relations between "you and us", but to the relations between "future us".

In this respect, what are the *effects of starting accession negotiations*? Firstly, it means that the candidate is fulfilling the political criteria (with regard the democratic system, institutions, state of law, minority rights). Secondly, it looks to the interrelation between the progress in fulfilling accession criteria and the status of the accession negotiation: the existence of the functioning

market economy determines the advancement in negotiations to the group of financial chapters or to the economic chapters with significant budgetary impact. Fulfilling these two criteria reduces significantly the possibility of accession for political and economic unstable states, which might bring long-term prejudices to the Union's objectives (for example, the Lisbon objectives).

If the two criteria pay special attention to the economic and political reforms necessary to ensure good governance as well as internal modernisation in convergence with the European model, the third criterion is a bit more complicated (Grabbe, 2001): the ability of a state to assume responsibilities deriving from EU membership. That supposes not only economic or foreign policy commitments, but also the necessity to implement the *acquis*. What should be remembered is that fulfilling economic criteria without respecting human rights will not ensure accession. Moreover, the legislative harmonisation is not sufficient, and full implementation of the *acquis* is equal to the development of an efficient administrative capacity.

Thus, to attain a certain level of credibility and predictability in the implementation of the *acquis*, governments have to pay special attention for institutions with sufficient openness (to cover the field of activity), transparency (for the public opinion), possibility to quantify the progress registered, power (to ensure the success in implementing the *acquis*), as well as independence in the decision-making process (Nicolaidis, 2002).

In conclusion, for governments and the public administration in general, the necessity of a *coordination process* in preparing for accession is evident, as the *acquis* represents a considerable volume of legal norms which do not correspond perfectly to the sectoral responsibilities between line ministers and the specialised state agencies (Brusis and Emmanouilidis, 2000). Coordination is tri-dimensionally developed, at political, policies and technical work levels. Political coordination regards selecting strategic objectives, defining the political priorities of the Government in the process of negotiation

and communicating them to the public opinion and the EU. In fact, this implies the main institutional coordination mechanism of the process of negotiation; while Romania, the Czech Republic, Poland and Estonia have decided to establish specialised committees for European integration in the Cabinet (at minister level), Hungary and Slovenia based their strategies on the Cabinet in general or on the coordination institutions at secretary of state level.

Coordinated policies ensure the transposition of the Government's strategic objectives into negotiation positions and the representation in the relations with the EU structures and the Member States. It means that the Ministry for Foreign Affairs or another specialised structure, not integrated in the respective ministry, is in charge with the preparation and unrolling of negotiations. Thus, Hungary, Estonia and the Czech Republic chose the first strategy (or, at least, in the Czech Republic, the deputy foreign minister runs the negotiation delegation), while Romania, Poland and Slovenia have decided for a special structure. The coordination of the technical work is translated into the management of formulating negotiation positions, facilitating optimal participation of all relevant actors in the process of negotiation. In this respect, internal experts on sectoral domains are important elements (working groups / sectoral delegations are established for 31 chapters of negotiation).

The coordination process is much more important as implementing the *acquis* (that is a crucial issue in accession negotiations, monitored by the European Commission) is taking place both at central and local level. In this way, harmonising interests at national level and clear articulation of the national interest through the best possible decision are part of a complex process.

In the external plan, the multitude and complexity of the interdependences connecting sectoral problems to specific behaviours is clearly shaped. Candidate states look for national interest, which is increasingly harmonised with the interests of the Member States. In fact, in preparing the

external environment of negotiation, the candidate has to consider the sensitivities of the Member States on certain sectoral domains, interdependences, assumptions, modified perceptions, initial negotiation positions and the probability of further modifications. Moreover, of special importance are subjective values (tangible and intangible elements in negotiation), idiosyncratic dimension, constituencies, interests and positions in the external plan, internal political evolutions and public opinion orientation in the Member States.

All these elements are put together into specific frames (the current presidency of the EU Council, bilateral or multilateral, impact issues in evaluating consultations and communication), institutional mechanisms of negotiations and major actors (the European Commission, COREPER, Councils of Ministers, the European Parliament, Member States). Moreover, this framework should be analysed from the perspectives of punctual dimensions and extraordinary international evolutions (such as the Iraq conflict).

In the analysis of accession negotiations, not only procedural mechanisms or the principles of negotiation with the candidate states should be taken into account. Special attention has to be also paid to the Brussels' perspectives on negotiation: from separation of powers in the EU structures to the internal institutional reconfigurations, balancing interests between institutions and negotiation levels. Negotiations in the EU are characterised, in general, by interstate concessions and compromises that tend to reflect the priorities of the key states in the EU (Moravcsik and Vachudova, 2002b).

Mainly, principles of negotiation in the accession process are already established: agreements in negotiations, even partial, will not be considered definitive until the final agreement is achieved (no chapter of negotiation is definitively closed until all 31 chapters are closed). In this way, the EU eradicates the possibility to definitively agree on a sectoral *acquis* that might be outmoded at the date of final Conference on Accession. Moreover, if the date of accession is postponed,

some of the transition periods requested by candidates should be re-analysed (the Hungarian case on chapter 19 is illustrative).

Furthermore, the opinion expressed by one party on one chapter of negotiation will influence position on other chapters of negotiation. Another principle is that all candidates are part of the enlargement process on equal basis and will join the EU respecting the same criteria.

Finally, preparation for accession is individually assessed; progress in preparation

is evaluated on own merits and will condition the advancement in negotiations, determining the date of accession; that makes possible the catching up process, even if the dates for the start of negotiations are different.

These principles were reiterated at the Copenhagen European Council (December 2002) in the declaration "One Europe", signed by the heads of states and government of the 15 Member States and the 10 candidate countries.

Negotiation Strategies: Elements

A brief analysis of the negotiation process would also emphasize the constraint elements on the negotiating team: time, resources, costs and benefits. Between these elements a high level of interdependence can be observed: *time* (the actor that will register higher costs will make concessions much faster) and *resources* (the tactical ability to persuade the negotiation partner to make changes);

Of course, these elements are also available for building an effective strategy in accession negotiations. For example, agreeing on the date of accession to the EU is strongly related to the negotiations, with impact on Member States and candidate countries. On one side, it imposes a deadline in terms of creating pressure instruments in terms of credibility both for the EU (unable to finalise "the negotiation game") and the candidate countries (forced to fulfil accession criteria in an accelerate manner).

In fact, the *national interest* does not translate only the sets of government policy options, but also the result of harmonising interests, positions and options of all internal society groups. In this respect, taking into account the long-term effects of European integration, the dialogue with the civil society is a crucial element in accession negotiations.

The relations between the temporal dimension and national interest in accession negotiations are evident. Fluctuations might appear, in the sense of possible changes in the sets of options: some interest groups lose influence in shaping the national interest, new

dimensions of analysis have to be taken into account or the staunchness on strict and inflexible pursuit of national interest can cause important temporal delays (Inotai, 2001).

From the Member States' perspective, the *benefits* of enlargement are mainly economic and geopolitical – creating trade opportunities and stabilising neighbouring states (Grabbe, 2001). For candidates, the benefits might include the possibility to access the biggest internal market in the international plan, strengthening relations with the Western Europe and internal democratic stabilisation (Moravcsik and Vachudova, 2002a). Comparatively, taking also into account the costs of exclusion from the accession process, these advantages become increasingly evident.

As the benefits of enlargement outweigh substantially *costs*, the candidate countries prefer naturally a compromise, which reduces their manoeuvre room in accession negotiations. In fact, accession to the EU delineates the net national interest from the perspectives of rational estimates between benefits and costs and of internal reforms (which will have a beneficial effect on the living standards and preparation for facing the competition on the Internal Market). Furthermore, position in the external plan (being part of a major international organisation) is also important. According to Moravcsik and Vachudova, this "asymmetric interdependence" will register subtle changes of nuance with the accession to the EU.

In the process of building the strategy of negotiation, the Member States' behaviour in the EU decision-making is another element of analysis. According to Schimmelfennig (1999), the *preferences* and the behaviour of Member States can be explained based on rationalist micro-fundaments: egoism and instrumentalism; from this perspective, actors seek material gains (maximising own power or wealth). Practically, with preferences determined exogenously by the egocentric collective behaviour, the Member States enter into a negotiation process in which they act strategically to maximise individual gains in an interdependent situation. Thus, the candidate states conceptualise the situation and, in a negotiation with no exception from the rules (derogations), their policy options can orient towards a positive attitude, such as requests on assistance in implementing the *acquis* (Nicolaidis, 1998).

Comparing with precedent enlargement waves, the negotiation strategies of the candidate states were re-dimensioned largely because derogations are unacceptable for the EU and Member States. In this respect, the general focus of the negotiation strategy on transition periods is a logic orientation. Here we identify a relationship between the transition periods and the flexibility of the negotiating team. Both dimensions are affected by the quality and strength of internal interests: a large number of transition periods indicate also a certain level of coagulating interests in the internal plan. In this case, some might highlight the fragility of the internal equilibrium (in the sense of permanent pressures) with regard to the intensity and the effects in following certain political options. Several countries (Hungary, Poland, the Czech Republic) opted out for a strategy concentrated on a large number of requests for transition periods (Inotai, 2001). Thus, Hungary, due to the strong support from the public opinion for accession to the EU and acknowledgement of the necessity of internal reforms and compromises in negotiations with the EU, drastically reduced its requests for transition periods. Other states insisted on identifying

"specificities" to ensure EU acknowledgement for special conditions.

The emphasis of candidates on temporary exceptions from implementing the *acquis* is also related to the status of internal preparation for accession to the EU and to the immense costs which the implementation of the *acquis* assumes in some domains (agriculture, environment, regional policy). In general, the transition periods are granted for technical reasons (the impossibility to enforce the *acquis* starting with the accession date), due to the necessity to protect the higher standards in the candidate countries (for example, the environment protection standards in the EFTA case), national interest (protecting the domestic market – land) or the necessity to help candidates to overcome the social and economic transition (Mayhew, 2000).

In building the negotiation strategy, candidate countries make use of several *tactics* (Friis and Jarosz, 2000; Friis and Jarosz-Friis, 2002): *tying hands* (their position in negotiation is improved through arguments with regard to the pressures made by the public opinion or the interest groups on the government), *threat* (the positioning is even more radical; however, it is strongly related to the alternatives the candidates have), *package deals* (reframing a compromise by coagulating several issues and treating them as a whole – that supposes "linkage creation" between chapters of negotiation), and *dead-weight catching* (the power of precedent in specific cases).

Of course, differentiations are registered with regard to the success with which these tactics are used; in this respect, the smaller degree of asymmetry in the EFTA case determined a larger room of manoeuvre for the EFTA countries; the EU took far more seriously the *threats* of the candidates due to the credible and realist alternatives in relation with the EU membership.

The issue of coordinated visions and negotiation strategies between candidate states remains controversial: the reduced cooperation level and the high confidentiality with which each candidate views the information on negotiations facilitates the use of the "icebreak" tactic, preferred by the EU. Taking into account

that some horizontal regulations concern all candidates, based on a single mandate of negotiation (the common position), the EU identifies a more cooperative candidate on a sensitive issue (for all candidates) to "break the ice". Thus, negotiations with the candidates continue afterwards largely in the framework of precedent agreements. Of course, the success of this tactic is more likely in the final phase of negotiation.

Another negotiation tactic can be identified in the provisional closure of chapters, if looking from the candidates' perspective. Nothing is agreed until all is agreed. That means the prolongation of a status on specific, sectoral domains, until the last moment. Thus, the EU can reopen discussion on certain issues to ensure the implementation of the *acquis* and furthermore, a more favourable compromise.

A tactic for accelerating negotiations and which enjoys high appreciations from the candidates regards the possibility to eliminate blockage points from negotiations on certain chapters (the *set aside approach*). On one side, that means less probability to block negotiations due to a sensitive issue and the advancement in negotiations, with significant impact on the candidates. On the other side, the costs of this tactic are to be seen more at the later moments (final negotiations), as the sensitive issues will have to be solved at the same with the final package, thus making them extremely difficult (Inotai, 2001).

The negotiation strategy illustrates not only the specific behaviour of an applicant in a certain moment, but also the way in which the candidate is thinking, predicting and implementing the negotiating rhythm. Generally, to rapidly advance in negotiation, the candidates approach firstly the easy chapters (the political chapters, which do not suppose implementation of large parts of the *acquis*), then chapters with moderate problems. Following are increasingly difficult chapters (regarding social and economic cohesion, chapters related to the internal market, as well as chapters with significant budgetary impact [competition, environment, JHA]). The final phase is linked to the financial chapters

(agriculture, regional policy and financial and budgetary provisions).

The complexity of the chapters of negotiation should not take into account only a profound descriptive approach (31 chapters), but also the strong connection between the progress in accession negotiations (from the perspective of the chapters of negotiation) and level of fulfilling the accession criteria. The level of preparation at chapters of negotiation indicates the level of preparation of the entire society for accession to the EU.

Furthermore, connections between chapters of negotiation are evident. For example, from the perspective of the necessity to create and develop a stable financial system, chapters 3 (Free movement of services) and 4 (Free movement of capital) are interdependent with the fulfilment of the criterion of functioning market economy. Opening negotiations for chapter 11 (Economic and Monetary Union) depends on the evolution of negotiations at chapter 4 (Free movement of capital), as the full liberalisation of the capital fluxes is a pre-condition for participating to the Economic and Monetary Union (the fundamental requests of the *acquis* at chapter 4 are the liberalisation of all capital operations and elimination of the authorisation procedures). Practically, the participation to the EMU cannot be made in the absence of full liberalisation of capital fluxes.

Concluding, in the context of the EU negotiation in the international plan, the accession negotiations represent only a small part of the institutional, economic, political and security mechanism represented by the EU. However, accession negotiations indicate a multi-faced process, developed at many levels, both internal and external; a simple definition would stand for an evolutionary process of accommodation, harmonisation and then fusion of the interests of actors involved.

Beyond the official and formal framework of the relations with the EU, of the costs and benefits of enlargement, of the decision-making process and the general framework of taking decisions with regard to enlargement, the accession negotiations are more than

assessments of the level of internal preparation, of necessary adjustments in implementing the acquis, or of mechanisms through which these adjustments are monitored and evaluated. That assessment remains valid even in the context of which certain normative, procedural and institutional rules, including specific aspects and different measures for obtaining more advantageous compromises, are emphasized by pursuing national interest. In fact, accession negotiations are the first comprehensive contacts and opinion exchanges with the Member States and EU structures on each chapter of negotiation and sectoral policy. In other words, accession negotiations indicate the final level of preparation of candidates for accession, the accommodation of the interests of candidate countries and Member States before the convergence and fusion of interests within the EU.

In the evaluation of the contemporary complexities in accession negotiations, substance elements regard the continuous evolution of the accession criteria and of the Union in itself, the increase in number of the candidate countries, as well as the impact of European integration in Member States and candidate countries. However, according to Moravcsik, an exact and detailed evaluation of

the effects of enlargement, in costs and benefits, is almost impossible).

Furthermore, we have to take into account national, European and international calendars, formal decision-making rules in European institutions and Member States, systematic preparation of the candidate states for accession to the EU as concomitant process with the transformation and modernisation process (Puşcaş, 2003), interactions among different negotiation levels (Brussels, national, regional and even local levels) and lobby to the European institutions and Member States.

The events of the last decade (1993-2003) emphasized the intrinsic relations between the international evolutions (Convention on the Future of Europe, fulfilling Lisbon objectives [from June 2000], or even conflict, such the Iraqi one) and the evolution of the process of accession negotiations. Thus, certain influences can be observed in the EU internal rhythm, the attention of the Member States for enlargement in general, and accession negotiations in particular, as well as in the possibility to bring into line the candidates with the evolution of the external environment of negotiation and continuation at the same pace, or even more accelerated, of the preparation for accession to the EU.

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