

Negotiation as a Method for Making Europe

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In Europe, accession negotiations to the EU, provisionally closed chapters and chapters still in negotiation, future positioning of a future Member State within an enlarged EU are more and more often subjects of interest. Of course, it is self-understood that accession negotiations are only a small part of the daily European negotiation process in Brussels or in the Member States' capitals. From this perspective, in media and in analytical and political circles, the way Europe will function in the European and global plan is a frequently discussed subject (Smith, 2004). Undoubtedly, this interest represents a positive aspect for the society involvement in the European integration process.

However, we also have to take into account the way the EU attitudes are built, and, from this point of view, the way a Member State will understand to make its presence felt in the European decision-making process. Finally, when we refer to the EU, do we have to take into account only rational or selfish interests? Are we speaking of a process of accommodating interests among Member States? The answer must be seen from the perspective of the EU as an enormous negotiation process (Meerts, 2003) in defining the European interest. Actually, what are the lessons offered by the European construction process until now and in what way could they

be utilised to optimise the state-institutional and Community behaviour after 2007?

When we refer to the EU as an enormous negotiation process, we take into account, mainly, negotiations over the EU nature, negotiations within the EU (internal negotiations) and negotiations of the EU (external negotiations). In other words, negotiations focusing on different national interests (with regard to the EU development or accession to the EU), internal negotiations that include comitology, multiple institutional framework, different sectoral coalitions, different cultural approaches and negotiations of the EU in the international framework, as a unitary actor (Pfetsch, 1998).

In this respect, this paper will not focus on identifying interests of each Member State or on the evolution of their interests in key moments of the European construction, but rather on identifying modalities, through which negotiation processes specific to the Union have influenced and still influence new developments in the European construction process.

In other words, attention will be paid to the interactions between negotiation processes and the EU's diachronic evolution, the interdependencies between processes of Member States' harmonising interests and processes of internal reflection on the functionality of the European construction.

Accommodating Interests Among the Founding Fathers

The European process is clear: in 50 years, from a sectoral bilateral cooperation, we deal at present with a political and economic structure with legal and political identity, in which Member States are willing to identify best possible European solutions. The starting point

in this European construction process was the plan conceived in 1950 by Jean Monet and proposed by the French Foreign Minister Robert Schuman. The plan implied the harmonisation of France's and Germany's interests in a sector considered essential for

their economic and political development: the coal and steel production. The sovereignty transfer toward taking common decision became an essential condition for membership.

Afterwards, other four states have immediately begun negotiations: the Benelux countries and Italy. Due to divergent perceptions over the future of this integration process, imports issues (trade patterns) and the conservative attitude toward the sovereignty transfer, the Great Britain refused France

invitation to participate to this project. For the same reasons, the UK did not participate to the negotiation of the Rome Treaties (1957).

In other words, from the start, the European integration process, practically the European construction bore the mark of evaluating the chances of harmonising the participants' interests, from national and Community perspectives.

The Classic Method of Enlargement – Applicability in EU Negotiations for Enlargement

To emphasize the role of negotiation in building Europe, special attention has to be paid to the enlargement process and the elements of continuity in the European construction – in other words, to the processes that suppose consensus of participants. Of course, the starting point of a general perspective might include “the Community method”, the continuous shift between “deepening” and “enlargement” or the “spillover” theory. From the negotiation perspective, the starting point in the diachronic analysis is the classic method of enlargement, an integrative part of the Community method.

As far as the logic of enlargement is concerned, a consistent pattern is registered not only with regard to the formal accession procedures, but also with regard to the implicit assumptions and the principles that shaped the expectations of participants in the negotiation process (Preston, 1997).

What do we mean by formal accession procedures? They represent an entire formalised process, which includes procedures referring to the accession negotiations (Art. 237 of the Rome Treaty), submitting the application for membership, preparing the Opinion by the European Commission, its adoption by the Council, taking into account the opinion expressed by the Commission (in the case of Greece, although the Commission recommended the extension of the pre-accession period, the Council decided for the immediate beginning of accession negotiations), the Conferences on Accession,

the accession negotiations, preparing and ratifying the Accession Treaty.

Generally, the basic rule is that of integrating new members into a club with an ongoing agenda. More concrete, the main idea looks to the way in which one part (the future Member State) will apply the rules of the club. This issue affects even the dynamics of the accession negotiations through the transfer of responsibility for adjustment (implementing the *acquis*) to the future Member State. The latter has a strong reason to finalise negotiations as soon as possible due to the benefits resulted from accession and the necessity to avoid “prolonged” costs of adjustment.

These benefits, according to Moravcsik and Vachudova (2002), are mainly economic and geopolitical. The costs dimension is a complex one, referring especially to costs from implementing the *acquis* and costs determined by the international strategic framework in which the candidate negotiates. In other words, the longer the accession negotiations last, the higher the costs of adjustment will be for the candidate. In the context, as a first conclusion, accession negotiations, as part of the EU internal negotiation process could be seen as a “waiting game” (Brücker, Schröder and Weise, 2003). That means the EU (and Member States in consequence) is willing to wait longer to accept a better-prepared member, while the candidate holds on to a faster accession without great internal costs (determined by the necessity to implement the *acquis*).

In this respect, beyond the unique institutional perspective (that concentrates a mix of supranational and intergovernmental organs, as well as policy networks), the EU can be seen also as a mechanism to define an adequate behaviour of the actors. Major disagreements in accession negotiations will be avoided until accession (Preston, 1997). Once the candidate is in "the club" and has full rights of vote and involvement in the decision-making process, these disagreements will be internalised.

Generally, a continuity of certain principles specific to the EU negotiation process and components of the classic method of enlargement is registered: the adoption of the entire *acquis* (derogations are not agreed), the establishment of new instrument policies to overlap the old ones (rather than reforming the existing instruments), use of enlargement by Member States to follow own interests (the decision to provisionally close a negotiation chapter must be voted unanimously by Member

States; some states use these opportunities to extract marginal concessions in the exchange of vote [for example, Greece received funds through the Integrated Mediterranean Programs in the exchange of de-blocking the 1986 enlargement]), exclusive focus of the accession negotiations on practical issues, preference for negotiating with groups of states that already have close relations, etc.

The process of accommodating the actors' interests regards, in the first place, the possibility of maintaining the existing formal or informal agreements in the same form. For example, the budgetary problems resulted from UK's trade relations resulted in the renegotiation of the accession terms in 1975, the budgetary debate being partially solved in 1984; the pressures of Member States on Spain over agriculture and fisheries have determined later a rigid position of Spain in these two sectors, in the context of other enlargement waves (Preston, 1997).

From the Founding Fathers to the EU of 25 Members

The first enlargement must be framed into the context of strategic interests of UK, France and Germany, of different visions over the economic development models, as well as of European projects (The European Coal and Steel Community [ECSC], The European Free Trade Association [EFTA]). Moreover, we must also take into account the harmonisation of interests of UK and the other three candidates (Ireland, Denmark and Norway) with the interests of "the six".

What is evident from the first enlargement is the fact that the negotiation process in the EU does not only mean interaction, at the negotiating table, between states on political or sectoral issues, but also internal negotiations, within states. In other words, consequences are found both in the external and internal negotiation environment. No matter how ingenious, the final agreement has to be sold to the internal environment (Puşcaş, 2003). In this respect, UK (which requested the renegotiation of accession due the negative economic impact) and Norway (where accession was blocked twice through referendum) are eloquent examples.

The first enlargement denotes the necessity of building a stable internal negotiation environment when negotiating accession (the case of Norway as regards the referendum) and the evident interaction of the closer interdependencies between Community rules and the interests of Member States and candidates as the European project registers progress (the case of UK over the contribution to the budget, the case of Ireland over its special economic problems, the case of Norway over fisheries). We must also take into account the external environment of negotiation (for example, discussions within the EC over the budget, Common Agricultural Policy or Common Fisheries Policy had direct effects over the accession negotiations of the four candidates. Practically, the interests of participants in the negotiation process become more and more coherently expressed and oriented as the European construction is developing.

Furthermore, Member States look for arrangements to match their interests before new members are admitted. In the case of the first enlargement (1973), France insisted for

the introduction of the "own resources" system in financing the EC budget, thus positioning itself as a net beneficiary (during the Georges Pompidou presidency).

The external (impact on accession negotiations and on candidates mainly) – internal (accommodating interests of Member States on special segments) interaction has become increasingly evident and sometimes, hard to distinguish. It is the case of Spain's accession to the EU, whose negotiating process was complicated by internal Community negotiations (the temporary framework to adopt the *acquis communautaire*) as well as the special interests of some Member States. More concretely, the position of France over agricultural sector, of Greece over Mediterranean issues, the budgetary correction in the case of UK.

In this respect, the rhythm in which the Union progresses with regard to the enlargement is directly related to the speed with which the deepening process takes place, and ultimately, to the speed of accession negotiations. Therefore, the determination of some candidates to postpone debates that are more heated until after accession.

The relation between transition periods and implementing the *acquis*, as element of the classic method of enlargement, proved its viability even in moments of uncertainty over the future of the European integration process. Greece is a clear example. Of course, delineating form internal European debates and the overall EC evolution has determined costs. These are visible both in the cases of Greece and the EC. As regards Greece, that meant a more flexible position in accession negotiations due to delay fears and eventually coupling with the group of Spain and Portugal. As regards the EC, that meant a stronger position in the negotiation. Moreover, the enlargement brought along the risk of internalising the Greek structural economic problems before developing adequate policy instruments, aimed to solve them.

The Greek request for financial compensations (in March 1984) through the Integrated Mediterranean Programmes as trade-off for accepting the accession of Spain

and Portugal (Preston, 1997) demonstrates how quickly Member States can learn to use their economic characteristics in their own advantage during internal European negotiations. Furthermore, that demonstrates inherent differentiations between Member States and candidates in the Community negotiation system. Comparing with the transitional aid of ecu 700 million for Portugal, the main Greek sector received ecu 2000 million especially for restructuring and coping with the competition on the Community market. The implications of this negotiating technique have been later understood by Spain (after becoming a Member State), which approached the next enlargement with a similar strategy (EEA, EFTA).

Furthermore, in the negotiations over the nature of the EU (related to enlargement), a tendency to establish new institutional mechanisms within the EC is registered, rather than revising the existing ones: for example, Greece's negotiations over the budget (in a first phase, Greece calculated [in December 1978] that during the transition period, it will be a net contributor). That conducted to the establishment of a transitional reimbursement mechanism, which ensured Greek position as net beneficiary, even in the context of the VAT contributions to the EC budget. Practically, the temporal framework of Greece's accession negotiation was not determined exclusively by the complexity of the *acquis* and the necessity to harmonise the interests of main Member States, but by the special attention the EC paid to the negotiations, due the precedents of Spain's and Portugal's accession negotiations. That denotes the attention of Member States for future EC orientations, in the context of maintaining own interests on the same coordinates in the European plan.

Spain's and Portugal's accession negotiations demonstrate the implementation by the EC of a dual transitional arrangement (two phases) meant to solve the complexities of negotiations. In other words, enlargement determined or constituted the opportunity to launch procedures to facilitate the EC

successful functionality, even in the context of structural changes. The final terms comprised elements of "classic" transition (up to seven years and involving mutual reductions of tariffs and quotes) and a second transition phase (extended up to ten years), covering sensible products (especially Mediterranean agricultural products).

The contribution to the EC budget had to be regulated into a period of more than six years, in which the contributions and funds received by Spain were equal, Portugal being a net beneficiary. Differentiation between Spain's and Portugal's terms of accession reflects the different impact of these states over the EC from the perspective of sensible economic sectors and implicitly, of the producers' internal lobby groups. Again, we might emphasize the importance of the internal-external relation in the European negotiations as well as of the modalities through which European decision and solutions are influenced by pressure groups.

According to Lisa Dominguez, the dual transition was used as mechanism to "protect the EC from Spain and Portugal from the EC". In other words, the longest transitional periods for Spain appeared in the sectors in which Spanish exports were highest (fruits and vegetables), and the shortest in the "Nordic" sectors: dairy products and cereals.

The 1995 enlargement with Austria, Finland and Sweden raised questions on the opportunity of EU enlargement, especially from the perspective of the impact of European integration over the national, internal, development processes. Practically, the program for completing the Internal Market (of 1985) and the plans for the EMU from the Maastricht Treaty, with elements of liberalisation and supranational coordination, could threaten the national policies' autonomy even more. In the case of the 1995 enlargement, these debates became more evident, especially in Austria and Sweden (liberalisation versus welfare and social protection programs, CFSP development versus neutrality).

In average, the EFTA group's accession negotiations lasted the shortest (comparing

with other enlargement waves). That is explainable, as the candidates have already adopted approximately 60% of the *acquis* during the negotiations for the EEA. Both technically (in term of the implementing structures of the *acquis*) as well as substantially (in terms of the overall policy alignment), a high level of convergence existed even before the start of negotiations. Moreover, Member States did not have special interests to protect (although it was appreciated that agriculture and fisheries could raise problems in the final phases of negotiations).

An exception from all other enlargement waves was the issue of environment standards. It was appreciated that the higher standards in the EFTA group could have effects on the free movement of services. The final compromise aimed to maintain the EFTA rules for a period of four years, while the enlarged Union would revise the sectoral *acquis* towards harmonisation. Practically, the EC demonstrated a greater flexibility in interpreting the *acquis* than in precedent cases (adapting structural funds, accepting the EFTA environment standards, continuing the state monopoly in the en-detail alcohol sale).

Preoccupation for the EU internal agenda has become more evident with the start of accession negotiations with twelve new candidates. Even if delimited in the first phase in two waves, differentiations in the rhythm of negotiations diluted gradually, as the internal preparation processes for accession have registered progress.

As regards the enlargement-deepening relation, the European Commission has adopted a new accession strategy (in October 1999). It stipulated the acceleration of the enlargement process, aiming to ensure the fact that accession negotiations would advance at the same time with candidate's preparation for accession. The new EU approach aimed to provide a better vision over the whole process, to stimulate candidates' preparation efforts and to allow each state to join, provided that Copenhagen criteria are fulfilled¹.

The same accession strategy brought important changes in the process of accession

negotiations. The Commission proposed that, instead of opening simultaneously an equal number of negotiation chapters, "the nature and the number of negotiating chapters to be successively opened with each candidate country will be determined by the EU applying the principle of differentiation, i.e., taking full account of each candidate's progress in preparing for membership under the Copenhagen criteria"². That meant that the EU could decide to start negotiations on a certain chapter only after the analysis of the progress registered by the candidate in the respective field (according to the Copenhagen criteria).

This new type of approach was meant to make sure that negotiations would progress at the same time with the internal preparation for accession. The same principle was applied to the ongoing negotiations: no chapter could be provisionally closed unless the preparation of candidates is according to commitments assumed. Practically, the objective was to avoid a situation in which political pressures for finalising negotiations overlapped the necessity of a systematic preparation.

Moreover, in the European Council Conclusions, the "catching up" principle (the possibility to catch up states that already started the negotiations) took the floor, provided that sufficient progress is registered in the preparations. In fact, "catching up" does not mean only progress in negotiations, but also in political, economic and administrative preparation – in other words, economic and social convergence (Delhey, 2001).

A common element with the classic method of enlargement was the emphasis on the fact that progress in negotiations must be accompanied not only by the progress in incorporating the *acquis* into the national legislation (legislative harmonisation) but also by the implementation of the *acquis*.

In what regards the transition periods, differentiation between this wave of enlargement and the precedent ones, was, after completing the Internal Market, the opportunity for the EU to operate without border restrictions (Andrews, 2000). In this respect, the Commission intention was to draw a clear distinction among sectors related to the Internal

Market functioning (the regulatory measures had to be rapidly implemented; transition periods should be, thus, only a few and quite short) and sectors where considerable adaptation is needed. The latter needed considerable efforts, including important financial expenses (such as environment, energy, infrastructure; the transition periods could cover limited periods provided that candidates can demonstrate that detailed and realist alignment plans are employed)³.

According to the classic method of enlargement, accession could take place when the EU was ready. Two sectors were particularly relevant for enlargement and deepening of the integration: agriculture and structural funds. In this respect, the agricultural production was concentrated on products already sensitive in the EU (meat, dairy products, cereals). The productivity was much lower than in the EU, so that the direct application of the CAP could have conducted, in the EU, to surpluses in products that were already a problem, and in the candidate countries to inflation due to higher costs for foodstuff. That, in the context in which the percent of foodstuff expenses exceeded those in the EU. The structural funds reform was automatically coupled with the refusal of the existent beneficiaries to give up funds for candidates in order to allow enlargement to take place in the same budgetary conditions (George and Baiche, 2001).

As specificity, in the accession negotiations of the twelve candidates with the EU, compromises in implementing the *acquis* are seen on both sides. In this respect, a novelty is the transition period requested by the EU (2+3+2 years) in the field of the free movement of workers. Furthermore, sustained efforts are registered from candidates for recognising their particular characteristics (for example, Estonia on energy, taxation, free movement of persons).

Another particular aspect, also visible in the framework of the Mediterranean enlargement, is the unitary character of the enlargement wave: Romania and Bulgaria are integral part of this enlargement. During the Greek presidency of the EU Council, Member States

declared their support for the accession of Romania and Bulgaria to the EU in 2007, Romania and Bulgaria being supported in their efforts of finalising the negotiations in 2004. The Strategy Paper accompanying the 2003 Country Report underlined the Commission support for signing the Accession Treaty with Romania and Bulgaria in 2005, and at the Brussels European Council in December 2003, the EU expressed its support for Romania to finalise negotiations in 2004 and join the EU in 2007. Differentiations from other enlargement waves are visible and are determined not only by the evolution of negotiations over the EU nature, but also by the internal negotiations, the way the EU progressed and imposed itself as an actor in the European and international arena.

Due to the European integration progress, demands from the future members are considerably higher than in precedent years (1973, 1981, 1986, 1995). From this perspective, the fact that the candidates manage to transpose most part of the *acquis* (consolidated along the decades) into the national legislation (in only few years) represents a great achievement. Comparing this enlargement with the precedent ones, a much-extended volume of *acquis* had to be negotiated (Ludlow, 2004). Many new policy areas were not approached when the EU was negotiating

with the Mediterranean wave: the Internal Market, the environment policy, CFSP, JHA etc. Practically, these twelve candidates had to fulfil much more complex criteria, while they were not democracies with a long tradition or with the experience of the market economy.

As a conclusion, keeping the "classical" negotiation positions by the EC / EU is not related to any principle to postulate the necessity of continuous actions within the European integration process. The main cause is linked to the importance of accession negotiations in the arena of EU negotiations: accession negotiations are in the first place (EU) internal negotiation processes, in the sense of the necessity for consensus among Member States.

Due the complexity and fragmentation of the issues in discussion and internal negotiation, the result is that of losing flexibility in the external phase of negotiation just because the EU negotiation positions cannot be changed easy. Of course, reconfiguring the EU negotiating position is possible, but the costs the candidates would register also remain important, according to the internal political and economic agendas and the time allotted to the reconfiguration. Negotiable are the transitional arrangements, the modalities to implement the *acquis*.

Projecting Europe as an Actor With 27 Members

In the evolution of the European integration process, negotiations clearly represent an essential instrument in the European construction, in making Europe. According to Frank Pfetsch, negotiations are central elements in the development and dynamic functioning of the EU, being regarded as the predominant policy method and the main source of the EU's successful functioning (Pfetsch, 1998). In fact, every enlargement of the EC / EU was not just a simple incorporation of the candidates into an exercise of respecting certain existing practices. The EU is much more than that. EU is presently the result of an integrated negotiation model.

Practically, to foresee the medium- or long-term evolution of the EU, not only the way in

which processes of coagulating interests and preferences of the multiple actors on the EU scene might suffer changes should receive special attention, but also the impact of the interactions among different governing levels. In other words, due to the complexity of the policies and processes within the EU, the scenarios could bring credible results only if focused on sectoral negotiation processes. That if we look especially to the context in which the European construction is directly related to the increasing importance of polyarchic networks (as formal and informal interactions between actors) and negotiations as defining elements of the EU (Pfetsch, 1998).

Beyond the EU institutional framework, the routine procedures, actors' competencies – elements that pre-determine the decision-

making process – negotiation is a central element of the EU. And that consists not only in daily diplomatic activities, mutual accommodation processes, diplomatic adaptation and anticipated convergence of the negotiating positions. The internal negotiation process has become more transparent in the 1990s (Pfetsch, 1998), once the EU opened more to the public, to the societal sphere. With this openness, the tendency to involve even more actors (state and non-state, public and private, at local, regional, national and international level) is much more visible. Clearly, interactions and relations established between these actors and around certain

Conclusions

The enlargement – deepening (of the European integration process) relation came into the attention of states and centres of strategic analysis not only due to the complexity of the accession negotiations, but also due to the effects within the EU: consolidating an Internal Market to comprise all EU and EFTA members, practically leading to the extension of the EU internal negotiation agenda. Simply, the interconnection looks for processes of negotiation over the nature of the EU and internal negotiations (within the EU).

In the context of the increasing number of Member States, the internal negotiation process will grow in complexity and the EU positioning in the following accession negotiations might become more rigid. According to Friis (1998), the development of the enlargement process denotes a clear delimitation between the EU low and high politics as regards the flexibility of EU membership (ever more reduced), accession negotiations (ever more technical), the possibility to postpone accession (ever more probable) etc. In this respect, the EU position in accession negotiations is in the first place the result of internal negotiations (within the EU), of accommodating and harmonising the interests of the Member States before the EU is coming to the negotiating table with an outsider. In fact, as the number of Member States increases, the attention of members for

sectoral issues determine the formation of networks that transcend the national borders.

Of course, these networks cannot ignore the Community spirit, the Community institutions, European values, the determination to build a Europe that is open and energetic in attitude and actions. We will continue to have a Europe where intergovernmental dynamics are correlated with the supranational ones, where the formation of coalitions continues to influence the EU internal and external agenda. But the EU enlargement brings also into attention the necessity to maintain flexibility in EU negotiations.

the Union functionality and the fulfilment of the accession criteria to not endanger EU's future, increases proportionally.

Clearly, negotiation as a form to obtain and transpose the results of interactions within and between networks will remain one the EU main characteristics for a long time. It is very probable for these networks, comprising civil society actors (parties, groups of interest), to have an increasing influence on the European decision, in the context of vertical and horizontal channels of negotiation and communication. In other words, beyond the phases of pre-negotiation and agenda-setting, their importance will increase in the phase of taking decisions and implementing them. Moreover, the balance between supranational and intergovernmental, transposed into the European institutional structure, will remain stable in the near future (Pfetsch, 1998).

An eventual simplistic interpretation of the Harvard 3D negotiation model described by D. Lax and J. Sebenius and transposed to the EU negotiations, indicates the fact that we need to extend the negotiation analysis beyond the preferences of the actors involved, to understand the perceptions and the institutionalised logic of actions that give sense to the enlargement-deepening binary relation.

From 2007, Romania will be part of a complex negotiation process in which the attention of Romanian diplomacy and society will have to be oriented not only toward

promoting national interests in distinct sectors, but also toward promoting European interest, overlapping the national one. We must pay attention not only to horizontal or vertical interactions, to formal or less formal negotiations (within European institutions, Member States, civil society) but also to the

substance of the ongoing process, the result of the European construction. After identifying the interests of actors involved, attention has to be focused on their sequencing process, to optimise our behaviour in the European and international framework.

NOTES:

¹ European Commission, Composite Paper, EC Cons Doc 12053/99, 13 October 1999, Introduction

² European Commission, Composite Paper, EC Cons Doc 12053/99, 13 October 1999

³ Commission Press Release IP/99/751

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