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EUROPEAN NEGOTIATIONS

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CONTENT

Chapter I
ABOUT NEGOTIATIONS

1.1. The negotiation- a social process (relationship and communication)

The etymology of the word "negotiation" is full of symbols. It emphasizes its origins in the trade field, the term coming from the Latin word "negotium". The antique perception of the negotiation was that it was a process which implied a lot of hard-work and effort, which provokes fatigue, which requests much preparation, research, analysis, an anticipatory way of thinking. According to the etymologic origin of the word, a good negotiator is the one who works continuously, not the one who improvise without training. In other words, the negotiator comes closer to the image of a diligent person, methodic and rational, rather than to the image of a western movie hero (Rojot, 2006).

The literature in the field of negotiations demonstrates that negotiation has become a necessity and a daily preoccupation (Puscas, 2007). It is a main component within the family, professional and social life. If we accept that negotiation is part of our daily life, it is because the today`s decision-making process (in business, politics, international relations, etc.) is increasingly taking place horizontally and not only traditionally- hierarchically, and the scope of the negotiation is not only closing a deal, but finding the optimal solution, the added value, maximizing the result of the transaction (Puscas, 2007). I agree with the authors who support the idea that, in the last decades, the significance and the relevance of the negotiations have considerably grown (Gherman, 1999), because of some economic and social factors, international and regional ones, state and organizational or managerial and civilizational factors etc.

Harvard Business Review on Negotiation and Conflict Resolution (2000), sees the negotiation process as a "management of differences" at an inter-group, inter-organizational and international level. We are reminding also about Proiectul de negociere Harvard (Fisher-Ury-Patton, 2007) which has launched the method of the main negotiations, suggesting that the parties involved in the negotiations could switch towards looking for common benefits.

The majority of the people are determined to utilize the negotiation process in order to influence the others and to reach their personal objectives. In fact, the negotiation process is not

only common, but also essential for living in a social environment. Exactly for this reason, the negotiators are perceived as partners and not opponent or enemy (Almăşan, 2013). However, here we have to add the remarks of Stark and Flaherty (2008): if you call partners the ones you are negotiating with, that mean you have chosen an approach where all the parts involved will succeed and this will create a situation which leads to reciprocal benefits. We all need resources, information, cooperation and support from the others which, in turn share the same needs like ours, sometimes compatible, or not with ours. In one of the most comprehensive contemporary treaties about negotiations it is believed that: "The negotiation is a process through which we intend to influence the others in order to help ourselves to fulfil our needs, at the same time, taking into consideration their needs, too. It is a fundamental ability not only for a successful management, but also for a successful individual and social life". (Lewicki at all, 2007: V).

Being a complex and widely elaborated process, the negotiation is applied to a certain situation, in an evolutionary context, using tactics, techniques, methods and specific procedures, in carefully selected moments. Krief (2008) supports the idea that those "windows of negotiation" are anticipated (favor maximum effectiveness), provoked (give a chance to effectiveness) and spontaneous (with minimal effectiveness). Therefore, the fact that a situation in which negotiation is needed appears does not mean that negotiation will have, at any time, a maximum level of effectiveness. It falls under the duty of the one interested in the negotiation-individual, organization, company, state etc. to take place- to create and to use the "window of negotiation" in an optimal way.

It is not hard to understand that the approach of the negotiation can have two perspectives: one pertaining to the theoretical analysis and the other referring to the strategies and tactics which have to be used in the negotiation practice (Rojot, 2006). The same author suggests a tridimensional approach to negotiation:

a. The negotiation takes place in a preexistent environment; therefore a pre-established structure can exist, at least in general terms.

b. The negotiation is relational process among divergent interests and oriented activities;

c. The negotiation is an interaction among individuals.

Jacques Rojot (2006:37-39) thinks that negotiation:

- is a dynamic process,
- which implies at least two parts,

- which takes place between these two parts or between the representatives of these two parts and who interact, most of the times, directly, verbally or through all the means they have at their service,
- in which the parts involved are in a state of conflict (active or latent) or they have opposing interests,
- through which they try to solve the conflict and finding an accord, explicitly or implicitly.

Traditionally, in the common perception also, negotiation is a means to intervene in divergent cases and situations and in finding a solution for the conflicts (Bogathy, 1999). At all this Fisher, Ury-Patton (2007), adds the decision-making process and the reaching of agreements. It is true that the management of solving crisis and conflicts has as an instrument the negotiation (Kohlirieser, 2007), but if the crisis and conflictuality are indissolubly linked to the reality of our existence, we must immediately add that we use negotiation also for cooperation, the latter being the way to follow for the states and companies partnerships in the context of regionalization and globalization. Usually, it is believed that the reason of negotiating is: (1) to agree on how to share/divide a limited resource; (2) to create a new value which only a single party cannot generate; (3) to solve a dispute/ conflict between the parties (Lewicki at all, 2006).

Popa (2006) thinks that negotiations are essential in the decision-making systems, in the interpersonal communication, but also in the international one, for obtaining optimal results from the partnerships.

The negotiation has a wide range of possible actions; it can be found in different situations. This process can imply two or more parts; can be applicable to a single part (the price of selling) or the questions that may appear (price, assurance, the delivery terms, payment conditions, credit, guarantee, penalties) or of a simple problem (unique transaction), a very complex one (the installation and delivery of a unit of production with equipment, financed by the World Bank or European Union). It can have a different duration, it can take place according to an official or informal ritual, open or closed, it can start, maintain modify or end a relation, it can be done directly or towards intermediaries, it can be between equal partners or not.

Lax and Sebenius (1986) affirms that the managers negotiate daily, not only with the clients or providers, but also with their seniors, with the administration, with their subordinates. However, it is wrong to assume that a conflict automatically leads to negotiation and at a negotiated agreement. There are multiple ways of settling a conflict, which may contain negotiation elements

and/or mediation, the process of negotiation having very complex manifestation, taking different shapes. Consequently, the parts involved in a conflict will adopt different models of solving the conflict, compatible with the existing conditions, but one way or another they will adopt elements pertaining to the negotiation process.

The negotiation, cf. Keenan (1998):

- takes place at an individual level, daily (sometimes like nonconscious activity);

-it is not only a method of reaching some business/political interests;

- is an efficient method for finding solution of any nature, for satisfying some necessities (solving a difficulty, the establishment of some contract terms)

-it enables the individuals to try to obtain what they want, offering at the same time, the others the chance to obtain what they want => the result of the negotiation process must please all the parts; Dawson (2007) supports the idea that the art of negotiation involves the capacity of the negotiator to make the others feel they have won something too;

- the entire decision-making process from private and public sphere, in social and business relations, involves the appeal to negotiation

* The acquirement and the practice of the art of negotiation (supported by rhetoric, linguistic, logic, argumentation, transactional analysis, neuro-linguistic programming etc.) enable:

• Avoidance situational blockages;

• (Mutual) fulfilment of the objectives;

* In the present economic and commercial context (global interdependence, the multiplication without precedent of the economic and commercial at a global level) = the negotiation process as an increasingly assertive role (eg. within a company, one skilled negotiator can bring as much added value in several hours of talks as tens of other employees during a month// vice-versa in the case of an unskilled negotiator);

* The global market and the complex interdependencies are concerning nowadays each manager or company leader, from multinationals to small and medium enterprises, which leads the business men and managers to be directly involved in local, regional, and international negotiations (according to the configuration of the market), to be able to answer to the daily challenges of the market.

* The technological progress and the accelerated circulation of commodities, persons, services, capital and knowledge, make the people of the 21st century to advance towards interconnectivities

and dynamics which were unconceivable some decades ago. States and non-state actors are permanently interacting in the contemporary system of international relations, in more and more complex ways. This international reality requests the negotiation (Plantey, 2002) to be not only an exercise of power in the international system, but mainly as management of the international system, which made the conception about international negotiations to change and gain importance.

* Within such a context, we must permanently assume the quality of a negotiator or systematically appeal to a professional negotiator (this profession has become an elite one, both in business and in diplomacy, and in the social life as well). In other words, negotiation is "not a mysterious art, accessible only to those initiated: it is an attitude towards life, a way of acting which enables us tell who we are and what we want" (Cabana, Massariol, 2005: 15).

1.2 Definitions and perceptions

The negotiation can be approached from the perspective of the game theory, of the decision theory, of sociology and of the social psychology (Rojot, 2006).The most simple and clear approaches to the negotiation process in business are the ones specific to the game theory (they are focused on maximizing the results the negotiation) and those based on solving the problem on a win-win basis (created for maximizing the results for both parts and maintenance of a positive relation) (Savage – Blair – Sorenson, 2003).

The negotiation is seen in multiples ways:

- "an activity very spread in the social practice, therefore often it is considered to be a natural capacity, not being subject to any competence barrier, taking place in a natural way and appearing as an unmediated consequence of the relations established between people". /…/ "The form of communication which involves a dynamic process, of adjustment, in case some conflicts of interest appear, in which two or more interested parts animated by different motives and having particular objectives mediate their positions to reach a mutual satisfactory agreement" (Deac, 2002).

-"The process through which we manage to obtain what we want from the ones that want to obtain something from us" (Kennedy, 1998)

-A process which “takes place between two or more parts, through which they attempt to establish who receives and who offers in a transaction” (Rubin, Brown, 1975).

-“a process which takes place between the representatives of two or more parts and which explicitly and jointly try to reach an agreement on the points of view that divide them (MacGrath, 1966).

- “The interaction which takes place when two or more persons tend to reach a new agreement on a mutually accepted result, in a situation” (Hamner, Yukl, 1977).

But also:

* A process of solving a conflict appeared between two or more parts and within which these modify their requests in order to reach a mutually acceptable compromise.

*A process of adjusting both parts opinions, in order to reach a real solution from an ideal solution for solving the problem.

Mentions:

- The communicational process of the negotiation looks for finding a concrete finality, operational, valid for both of the parts (Deac, 2002).

- The most important objective of the negotiation is that all the participants should perceive the agreement as being correct and honest (Keenan, 1998).

In the traditional sense, a market related one, the negotiation is an attribute of exchange (of goods between owners)

• No matter which is the nature of goods, in order to change the relationship of the individual with them you will appeal to a form of negotiation

• The most acknowledged place for exchanging goods and so of negotiating is the market

• In this context, the negotiation “is the action through which the demand faces the offer having as target obtaining an advantageous outcome for both”, “the deal which usually materializes through the signing of an agreement which establishes new relations and rights between participants” (Deac, 2002:9).

The existence of numerous definitions of what is negotiation shows how in the last decades is present an intense concern for assimilating and practicing these methods of negotiations. After all, as Saner (2005) and Rich (2013) affirm: all the definitions contain few basic elements of a negotiation:

• It is a complex and dynamic process,

• There are more than one players/participants,

• There is a Convergence and divergence of interests,

• It is a voluntary relation/interaction,

• It deals with the distribution and exchange of resources,

• It is achieved through elaboration of positions and values which can be modified through persuasion and influence

• The participants have to be ready to reach an agreement, inclusively through compromise

• Those who are involved in a negotiation have the right and liberty to achieve their own interests

The negotiation process contains more stages, according to Kennedy (1998) those are:

1. The preparation – establish a list of priorities, the evaluation of your own objectives;

2. The debate – which are the requests of the other side:

I. Discussions, opened questions;

II. The identification of possible obstacles which may occur during the negotiation and the availability of the other to make concessions and the nature of those;

3. The proposal – after your own interest are established and the interests of the other side are analyzed you have to formulate a "proposal" which represent the initial offer of one side;

4. The actual negotiation – there is an exchange of proposals/concessions, note the obtained results.

The essential negotiation guide of Financial Times (2012) presents the negotiation as an interactive process which consists in 3 major stages:

• The preparation – to acknowledge what is import and what it is not about the negotiation arena

• The interaction – on the negotiation table (the opening, the positions, the exploration, the closing)

• The implementation – the negotiation is considered to be completed only after the agreement enter into force

Also a simple model is proposed by Lewicki and Hiam (2006) and it consists in 5 stages:

• Preparation,

• The opening,

• The bargaining,

• The closing,

• The implementation.

Kohlrieser (2007: 243) makes a combination between positional negotiation and principal negotiation and suggests 10 steps in what regards the negotiation process:

• Creating a connection,
• The separation between the person and the person,
• The identification of your own needs, interests and wishes,
• The identification of the other's needs, interests and wishes,
• The utilization of a channeled dialogue,
• The proposal of an objective and the exploration of the common objectives,
• Discovering the existing options, create a list of proposals and the exchange of concessions,
• Deciding on a mutual beneficial solution
• Reaching an agreement
• Finalizing with the perspective of a future positive relation

Observations:

- The identification of the correct stage while negotiating enables a faster and more certain way of achieving your goals;
- The order of the stages may vary, oscillating between them is also possible (eg. You can come back to "the debate" after you formulate "the proposal").

1.3. Types of negotiation

The choice of the type of negotiation is essential for the success of the negotiation process, because:

• In order to predict the behavior of the other side;
• In order to prepare your own strategy;
• In order to minimize the risk of concluding a disadvantageous deal (Prutianu, 1996).

Generally there are promoted 2 types of negotiation:

• The distributive one (win-lose situation);.
• The integrative one (win-win situation)

a) The distributive/ competitive negotiation – corresponds to zero sum game -> it takes the form of a transaction in which the win of one partner means the loss oft he other; opting for this type each side wants to maximize their minimum win and minimize their maximum loss; in other words each of them wants to maximize their minimum win (Popa, 2006).

Zero sum game means:

• Every concession made in favor of your negotiating partner automatically mean a personal damage and will be perceived as a weakness;

• The sides have always opposing interests, existing the possibility to be perceived as "opponents" (Saner, 2005);

• The objective of a negotiation is an agreement which do not take in consideration the interests of the other side;

• The result of the negotiation is determined by the relation of side's forces and by the capability of negotiation of the negotiators.

The major disadvantage of this type:

- The losing part has no interest in respecting the terms of the deal and will constantly try to amend in order to favor his interest.

Characteristics of distributive negotiations:

- Usually used in resolving conflictual situations;
- Hard and tensioned;
- Possible when the opposition of interest is strong and the disequilibrium of forces is notable.

b) The integrative/ cooperative negotiation – implies the respect of the other interests and goals even when these are affecting our ones; it is based on the mutual respect, on understanding and tolerate each other differences; it is based on coordination and cooperation, both sides aspire to get the best possible outcome, "a better outcome together than separated" (Popa, 2006:124). A win-win negotiation despite the fact that it confers the partner the felling that he won it should take into consideration several aspects (Dawson, 2007):

• Generally this type it is not focused on only one aspect – if it gets to this situation it is recommended to introduce another theme in the negotiation process because it multiply the complexity and difficulty of the negotiation, but offer the chance of finding the better solution through a great number of alternatives;

• It requires creativity and willingness of creations of new value which will be part of the "packet" which is going to be negotiated, even the exchange of concessions can produce new values (Saner, 2005);

• To believe that the other side wants the same thing as you wan is false, as a negotiator you do not have only to obtain what you want, but also to make sure that the partner is also fulfilling his goals;

• To challenge yourself "to left nothing to be discussed on the negotiation table" implies to assume the risk of a great cost, it is better "to still leave some items to be discussed" with and for the partner;

• As long as "the win is just a perception" (Dawson, 2007:339) it is recommended, especially when you want to develop a partnership, at the end of negotiation to offer your partner "an extra good thing" like a bonus, this could transform in a decisive advantage for yourself in the future;

Advantages:

• It creates, keeps and consolidates interpersonal and business relations which are long lasting;

• It provides the framework for reaching the optimal solution as a result of consulting all the alternatives, and represent the outcome of the efficiency and equity of the negotiators;

• It makes both sides to adjust their interests in order to get common interests

• It generates partnerships;

• It avoids conflictual situation;

• It is characterized by trust, optimism, creativity;

• After you have reached the agreement the terms will surely be respected and put into force;

• The concessions are made mutually.

The principal negotiation is almost like integrative negotiation and it was promoted by Fisher and Ury and Harvard Negotiation project (Fisher-Ury-Patton, 2007). This type of negotiation (named by these authors the method) is compared with the positional negotiation in which each side adopt a certain position, is bargaining, fighting for this through concession and compromise, each wants to determine the other to change its position. In contrast to positional negotiation the principal negotiation is orientated towards fundamental interests, option which pleased all the parts, objective criteria and standards. The promoters of principal negotiation define this "method" through 4 fundamental aspects (Fisher-Ury-Patton, 2007):

• The separation of the person from the problem

• Focus on the objective not on the positions

• Proposing options which are in the benefit of each part

• Using objective criteria

c) The realist/ rational negotiation – it is another type of negotiation which combines characteristics from a) and b), being orientated towards the obligatory obtaining of a result, outcome:

• the parts do not only propose themselves to make an obtain consensual concessions from the subjective positions within a negotiation;

• They try to resolve background litigations from an objective position (which do not belong to any of them);

• Mutual interests must be clear defined (absolute transparency).

Stages:

• the formulation of the problems which must be resolved

• put a diagnostic on the initial situation

• looking for solutions (SWOT analysis)

• finding the most proper ways of implementing the solutions

Observations:

• every single time the negotiator is has to to identify and understand the stake, to fully understand the motivations, feelings and concerns of the other

• the points which remain unsolved -> will be solved through objective criteria like: legal norms, moral norms, unanimously accepted scientific criteria, arbitration, etc.

"The negotiator dilemma" (Raiffa, 2002) it is generated by the tension which appear when the negotiator has to decide for a cooperative approach (the integrative one) or for a competitive one (distributive), when he/ she has to opt for the solution which is favorable for every part or for a win-loss situation (Stimec, 2011). For Caire-Elias-Lakehal (2007:54) the negotiation itself is "a tensioned relation" between the will of conciliating in order to get to the wished outcome and the necessity of maintaining the relation and the trust. Starting from Fisher and Ury's advice for a reasonable negotiation, which has as a basic strategy cooperation, has be proposed that the negotiators should insist together through cooperation on creations of new values before having in mind the distribution of the optimal aspiration value or reserves value (Lempereur-Colson, 2004). In negotiation the risk factor is permanently present, so the adoption of the competitive logic may appear anytime between the options of the negotiator which follows all the time to minimize the risk and maximize the obtained outcome. In this way for the negotiators is very hard to maintain the cooperation equilibrium. That is why we support Fells'(2012) approach: the integrative and

distributive negotiation not to be seen as separate strategies, but as internal processes which are part of the whole negotiation process which intends to get an agreement between parts.

Observation:

Generally, for the negotiations which have as target partnerships is recommended cooperation. In practice, often we came across situation in which the negotiators start with a competitive formula and end up using the collaborative formula in order to bet optimal solutions. Also often the competitive and collaborative phases alternates, but the outcome comes from the cooperative negotiation. Raiffa (1982) emphasize that the empathy and cooperative attitude in the integrative negotiations can be as well of an utilitarian orientation, because on the long term these behaviors can be rewarded through calculated advantages.

Chapter 2
EUROPEAN NEGOTIATION

2.1. What is the European negotiation?

The European Union is the result of institutional, legal, political, economic and cultural construction that took place in the second half of the 20th century. The Schuman Declaration (9 May 1950) is a short guide for the accomplishment of that construction, targeting "an organized and vital Europe." The Declaration marked the negotiation path, to establish "the basis for a broader and deeper community among people long divided by bloody conflicts" (Declaration, 1082). The aim of these negotiations was the "construction of a common basis." From the very start of what we can refer to as European negotiation, Schuman suggests a multi-party formula (the invitation by the French and German parties of an arbitrator "appointed by common agreement"), and, in addition, the international environment characteristic (requesting evaluation from the UN).

Professor Paul Meerts noted that today's European Union is "an enormous international negotiation process", within a multilateral framework (Meerts in Puscas, 2003). This negotiation process has followed the groundwork of Schuman's scheme until today.

Thus, at the European Institute of Public Administration in Maastricht, negotiation is defined as "a process in which two or more parties try to obtain a solution on matters of common interest, in the situation where the parties are in an actual or potential disagreement or conflict" (Lavedoux et al., 2004). Before considering the European negotiation as an expression of exceptionalism, we will mention that Fred Charles Iklé, in his famous work How Nations Negotiate, was asserting a similar meaning when referring to negotiation in general terms -"a process in which clear proposals are made in order to reach an agreement, through an exchange or through the achievement of the common interest, in situations where conflicting interests are present" (Ikle, 1987). The negotiations for European construction developed some unique characteristics, of course in a multilateral framework, and even though we can't talk about a European style of negotiation, as the most prestigious national schools of negotiation achieved, we believe that a certain specificity or individuality of European negotiation can be sustained.

The literature on European negotiation has been enriched especially since the last decade of the past century. Certainly, the end of the Cold War, the major challenges of globalization and the progressively more visible tendencies of the European Union of imposing its legal recognition within the international system have stimulated theoretical and casuistic debates regarding European negotiation. Without any doubt, the most applied academic and political discussion on the subject of European negotiation was due to the internal reforming tendencies of the European Union (institutional and political), as well as the project of its extension in Central and South-Eastern Europe. In 2000, the Journal of European Public Policy dedicated a special issue to the European negotiations, the authors making interesting contributions to the theory of negotiation and proposing negotiation analysis for the most important aspects of the European policies. Paul Meerts and his contributions went even further, and created, in 2004, a systematic and comparative analysis on the European negotiation (Meerts&Cede, 2004). Ole Elgström and Christer Jönsson approached the concept and the practices of European negotiation from a procedural perspective, that of networks and institutions (Elgstrom&Jonsson, 2005) In recent years, the focus was on the descriptive and procedural analysis of the European negotiations, such as the intergovernmental conferences and treaties (Beach, 2005) or on the power aspects and leadership in the European negotiations (Tallberg, 2006). The provocative studies published by Franz Schimmelfennig (2005) in the area of European integration and EU Enlargement are truly very useful for the assessment of political methods applied in Brussels and Member (States0, including the European negotiations. The recent book published by Christina J, Schneider (2009) shows the role of European/accession negotiations in the European politics. In the last decade, the French periodical "Negotiations" issued several contributions on this topic and Lempereu&Colson published a historical analysis on the European negotiations (Lempereu&Colson, 2008). Finally, the training centers of European negotiations have proliferated (Brussels, Vienna, Maastricht etc.) and EIPA even published, in 2004, a "Handbook for the European Negotiator" (Lavedoux et al., 2004). And, of course, the enumeration may continue.

Mentioning this recent debate regarding the European negotiation, we must point out that it reflects what the authors call as a new "era of negotiations", which means a very different world from the one in which H. Kissinger used the term for the first time (in the '70s). To the new international context, it is mandatory to add the "three worlds" that compose the European arena of negotiations:

(a) borders (spaces and territories);

(b) layers (different objectives and various authorities);

(c) networks (connections, communications).

All these represent, according to Michael Smith, "the new European space of negotiation" (Smith, 2000). Consequently, the same author asserts that European negotiation must not be seen only as a process, but also as a system of negotiation. For such a perspective, as M. Smith claims, European negotiation is not only international, but also strongly conservative (Smith, 2000). And, because we mentioned the European negotiation considered as a process, we will add that Elgström and Smith align with those authors who perceive the European negotiation as a continuous activity, an inter-bureaucratic and political multilateral marathon. But the procedural character is also given by the fact that the European negotiation is "a process of communication where the actors send signals from one to the other to influence the expectations and/or the values of another party" (Jönsson, apud Elgstrom&Smith, 2000). In addition to these characteristics, the study of the two authors adds the following ones: the diversity of contexts and negotiation opportunities, the diversity of actors and preferences and the diversity of systemic analysis. But, most convincingly, in order to perceive the European negotiation as a system, one can invoke the arguments of the interdependence of actors, the regularity of interaction and the (formal or informal) presence of rules and institutions. Therefore, such multi-level negotiations (European negotiations) are highly institutionalized and permanent, the multiple parties have distinctive roles, formal negotiations are connected to the informal ones, creating a link between both the internal levels and sectors, as well as between the internal and external negotiation of the European Union.

Accession Negotiations to the EU

The topic of European negotiation has entered the public consciousness over the last decade and a half, primarily due to the process of enlargement of the European Union in Central and Eastern Europe. This is explained by the necessity to develop the profile expertise, together with the intense academic and scientific debate on this issue. Let us remember that, at the beginning of the last decade, the hypothesis of the states from this area adhering to the European Union (and NATO) was considered in geopolitical and geostrategic terms (Marer, 1994). Although this vision has maintained its mark, especially at the level of the Member State, by the end of the fifth

enlargement, as the decision to elaborate principles, strategies and application programs began to be shaped, the discussion regarding the ways in which European Union would negotiate with the candidate countries became clear.

For the Member States, the accession negotiations had a significantly different form, as compared to the other negotiations of the European Union on the international stage (Friis&Jarosz-Friis, 2002). The states which aspired to European Union membership considered the accession negotiation period to be a trust building process between the negotiating parties, so that a mutual perception was established regarding the way each candidate will be capable to cope with the accession challenges (Inotai, 2001). The political, economic, journalistic and academic environments in the European states, and not only those, had paid special attention towards the content and the progress of the accession negotiations. Each of these environments tried to explain and project their interests towards these negotiations, thus the attitudes and the communication paradigms had evolved during the last decade, at one point creating the perception that the process of enlargement was one of the most predominant activities of the European Union. Although it has also been said, at least during the mandate of the Prodi Commission, the purpose was to achieve a coherent enlargement and to deepen (by internal reforms) the integration to the European Union. For that reason, nowadays we benefit from an extremely rich scholarly and journalistic literature on the accession negotiations.

Many comments from the beginning of the accession negotiations, in the last enlargement wave, emphasized the disproportionate power ratio in negotiations. Andreás Inotai wrote that the accession negotiations took place between "parties as unequal as can be" (Inotai, 2001), this imbalance being the result of several factors: the Union represented one of the world's most powerful economic groups; they always negotiated the accession with one single country, even though there were more states negotiating at the same time; besides the fact that all accession negotiations took place in Brussels, the candidate states were the ones which had to come first with their positions and only after that they followed the position of the European Union. Other authors directly stated that the accession negotiations, even though were based on the win-win formula, were characterized by a high degree of asymmetry (Friis&Jarosz-Friis, 2002). Lykke and Anna Friis show that the European Union is an actor with a very high negotiation power, while the candidate state is out of the loop, soliciting to enter the "Club"; The Member States are more knowledgeable about the acquis – the object of the accession negotiations - than the candidate

state. And because the accession negotiation is, in fact, a "double negotiation", the advantage is enormous for the European Union, because it may constitute a pressure on the candidate state (The Presidency has the possibility to present a certain common position of the Member States, which the candidate state may intent to modify, but knowing that, it means taking a high risk and that it is time consuming).

The accession negotiation to the European Union has three fundamental characteristics (Bollen et al., 2000):

1.) it is a process of discovery = the two parties inform each other about what they want, what they intend, what they offer (information is, therefore, an essential negotiation instrument);

2.) it is a strategic interaction = the parties seek to influence each other, to shape their behaviors in order to obtain the best possible results;

3.) it is an exchange process = each party tries to configure the behavior of the other by offering something or making certain concessions.

We close this section by emphasizing that the Chief Negotiator has the task to provide the adequate data of accession preparation and to present them in a suitable position. Starting from the information preeminence and its veracity, but also from the domestic and external contextuality, the Chief Negotiators leads the negotiations according to the established strategies and tactics. While the negotiators of the European Union are expected to formulate the positions of the candidate state and to demonstrate the capacity of a complete and rapid compliance of the acquis, the Chief Negotiator of the candidate state seeks the most adequate harmonizing formulas.

2.2. Institutions and decision making process

Most of the studies of the EU concentrate and describe what happens in and through the special institutions of the EU, located in Brussels, Luxembourg and Strasbourg: the European Commission, the Council of the EU, the European Council, the European Parliament (EP) and the European Court of Justice (ECJ).

The EU has grown out of three originally separate Communities (ECSC, EEC and Euratom), each with its own institutions. These were formally merged in 1967. The main elements originally consisted of:

- A collective executive of sorts – European Commission;
- A collective forum for representatives of member governments – the Council (of Ministers);
- A mechanism for binding arbitration and legal interpretation – the European Court of Justice (ECJ);
- A parliamentary chamber – the European Parliament (EP originally "Assembly"), with members elected from political parties of the member states.

In addition, the Economic and Social Committee (ESC) provides a forum for consulting other sectors of society. Later, in the 1990s the Committee of the Regions (CoR) was created to allow for consultation with local and regional authorities.

The institutional design is subject to periodic revision, latterly with increasing contention (Wallace, Pollack, Young, 2010). The importance of EU institution is one of the most debated issues by the scholars of European studies (see details in Beach, 2005). The EU institutions matter in the intergovernmental negotiations, on both treaty reform and enlargement of the Union, being able to influence the outcomes of the major negotiations of the EU. In the supranational context of the EU framework, the leadership of EU institutions has been essential in the integration process, despite the weak formal role they played in intergovernmental negotiations. EU institutions matter in European negotiations (Beach, 2005) because:

- They have strong resources and informational advantages;
- They have a reputation for impartiality and expertise;
- They have a privileged institutional position;
- They are very helpful in technically complex negotiations;
- They have a valuable ability in complex negotiation situations;
- They can mediate in distribution and intensity of governmental preferences;
- They can present appropriate leadership strategies for the negotiating context .

European Commission

It is a secretariat and a proto-executive in the EU's institutional system.

The Commission:

- Exercises its responsibilities collectively; the Commissioners constitutes a "college" - their decisions and proposals to the Council and the EP have to be agreed by the entire college, voting (if necessary by simple majority) in its weekly meetings;
- Is chaired by a President, chosen under the Treaty of Nice (ToN) by qualified majority vote (QMV) in the European Council and subject to approval by the EP;
- The commissioners, each responsible for a policy portofolio, are nominated by member states' governments, endorsed by the Council, subject to the approval by the EP, which can lead to names being withdrawn;
- It is organized into Directorates-General (DGs), named after the main areas of policy activity, and historically known by their numbers;
- Its powers vary widely between policy domains (e.g. regarding competition policy, it operates many of the rules directly, in other domains it drafts the proposals for legislation, which then have to be approved by the Member States' governments, etc.);
- It has the power of initiative, which gave the opportunity to be the agenda-setter, thus having an entrepreneurial role;
- Its resources includes:
    - the capability to build up expertise;
    - the potential for developing policy networks and coalitions;
    - the scope for acquiring grateful or dependent clients;
    - the opportunity to help the governments of the Member States to resolve their own policy predicaments.
    - It needs regular channels for consultation and cooperation with relevant national offices (a network of advisory, regulatory and management committees has developed to provide these channels);
    - it has to compete for influence with other EU institutions and with the governments of the member states (Wallace, Pollack, Young, 2010).

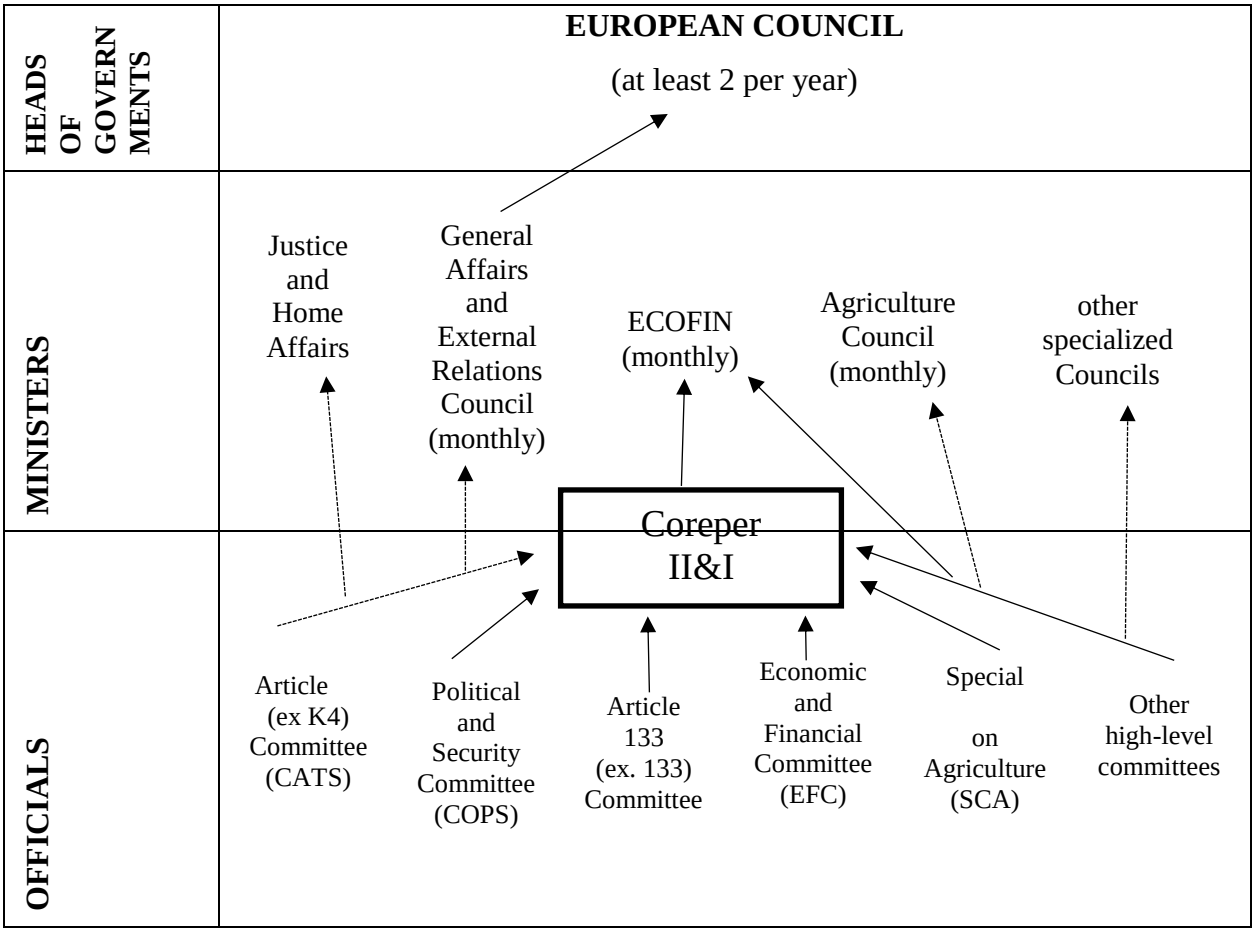
The Council of the European Union

It is:

- An institution with collective functions;
- A product of the member governments;

- Its members are usually ministers from incumbent governments of the member states, but ministers who attend meetings depending on the subjects being discussed, and on how the individual governments choose to be represented (Wallace);
- Passes EU laws;
- Coordinates the broad economic policies of the EU Member States;
- Signs agreements between the EU and other countries;
- Approves the annual EU budget;
- Develops the EU's common foreign and (defense) policies;
- Manages coordination between courts and police forces of Member States (see the Council of the European Union website).

The structure of the Council of EU could be figured as follows:



The meetings of ministers are prepared by national officials in the committees and working groups of the Council. The most important of these has been the Committee of Permanent Representatives (Coreper), composed of:

- The heads (Coreper II) of the Member States' Permanent Representation in Brusels;
- Deputies (Coreper I) of the Member States' permanent representations in Brussels.

These both COREPER meet at least weekly to agree with the items on the Council agenda and to identify those that need to be discussed by the ministers.

Numerous working groups constitute the backbone of the Council and perform the detailed negotiation of policy. Their members come from the Permanent Representations or national capitals. 70% of Council texts are agreed in working groups, another 10-15% in Coreper or other senior committees, and the rest of 10-15% are left for the ministries meetings.

What does the Council do in its various configurations?

- It negotiates over detailed proposals for EU action, often on the basis of a draft from Commission;
- Often, it might indicate to the Commission that it would welcome a draft on a particular subject. On most of the topics where the Commission is the primary drafter, the EP is co-legislator with the Council;
- An important role is played by Council's General Secretariat;
- The proceedings of the Council are managed by its Presidency. This rotates between member governments every six months. The Council presidency chairs meetings at all levels of ministers and officials.

The role of Council of EU Presidency:

- Preparing the agenda;
- Conducting the meetings;
- Speaking on behalf of the Council to other EU institutions and the outside partners on issues other than CFSP;
- Working closely with the Commission on specific issues, such as the external negotiations;
- Working with EP presidencies in the legislative fields to reconcile the Council and parliamentary views on legislative amendments.

The Council:

- Spends much of the time acting as the forum for discussion on the response of Member States governments' to the Commission proposals;
- This implies a continuous negotiation, in order to establish a consensus;
- The formal rules of decision-making vary according to the policy domain (Wallace, Pollack, Young, 2010):
- Unanimity;
- Qualified majority voting (QMV);
- Simple majority;
- When votes concern sensitive topics – such as security and external affairs or taxation - decisions by the Council have to be unanimous. This means that one single country can veto a decision (see Council of EU website: www.consilium.europa.eu/).

  In some policy domains, the Council is the decision-maker of last resort:
- Agriculture;
- New policy JHA and CFSP.

  What is the style of the Council – bargaining or deliberations?
- In some policy areas there are sharp disagreements and tough strategic bargaining (particular when new regimes are at issue);
- in other policy areas, as policy-making becomes more routinely or when the issues are more technical, there is evidence of a more deliberative style (Wallace, Pollack, Young, 2010).

The European Council

- It became an official European institution with the entry into operation of the Treaty of Lisbon at December 1st 2009;
- It consists of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy takes part in its works;
- It defines the general political direction and priorities of the European Union;
- Its President is elected by a qualified majority. The President's term of office is two and a half years, renewable just once (see European Council website: www.consilium.europa.eu/);

- Historically, once every semester a meeting was held in the country of the presidency, but under the new terms of ToN sessions are held in Brussels since the 2004 enlargement;
- The national delegations are restricted to : president or prime minister, foreign minister, finance minister (sometimes); there are parallel meetings of representatives of other ministers and officials, depending on the preoccupations of the moment;
- It is left to solve the periodic major arguments about EU revenue and expenditure;
- It became the key forum for determining treaty reforms in the closing stages of Intergovernmental Conferences (IGCs);
- It could be seen as the "main staging posts in the development of policy";
- The level of its activity has expanded, reflecting an increasing preoccupation of the national politicians to take control of the direction of EU;
- It exercises explicit political leadership in the EU process (Wallace, Pollack, Young, 2010);
- The decisions of the European Council are taken by consensus; in some cases, it adopts decisions by unanimity or by qualified majority, depending on what the Treaty provides for (European Council website: www.consilium.europa.eu/).

European Parliament

The structure of EP includes:

- President;
- MEPs - members of European Parliament;
- Political groups;
- Parliamentary committees;
- The Information Office;
- Conference of Presidents;
- Delegations.

European Parliament locations are:

- Strasbourg - for the twelve parliamentary sessions, including the session on budget;
- Brussels - for extraordinary sessions and parliamentary committees;
- Luxembourg - for General Secretariat and its services.

The competencies of European Parliament are:

- Legislative (Consultation procedure, Concentration procedure, Cooperation procedure, Co-decision procedure and Assent procedure);
- Budgetary (decides with the EU Council);
- Control (supervises the EU activities).

Consultation	Commission proposals to Council are passed to EP for an Opinion. EP may suggest alterations, delay passing a resolution to formalize its Opinion, or refer matters back to its relevant committees.
Cooperation	Commission proposals passed to Council for a "common position" and the EP for the first reading, in which may propose amendments. The EP may at its second reading seek to amend the Council's common position, or by an absolute majority reject it. Council can override the EP's rejection only by unanimity. Alternatively, the EP and the Council try to negotiate an agreement in a conciliation procedure.
Co-decision=ordinary legislative procedure	A bicameral legislative procedure in which the Council and EP adopt legislation by common agreement. Council and EP may both agree a proposal at first reading. If they disagree at second reading, the EP may reject the proposal (by absolute majority), which then falls. Or the EP may amend the Council's common position by an absolute majority, in which case conciliation takes place between the Council (usually Coreper I) and the EP. The result of conciliation may be approved in third reading

	by both Council (QMV) and EP (majority of votes casts). Proposals falls if not agreed.
Assent	On certain issues the EP must, in a single vote, give its assent by an absolute majority of its members. *Applies to*: certain international agreements, enlargements treaties, and framework agreements on the structural funds.
Budget	EP may try to modify "compulsory" expenditure, or to amend "non-compulsory" expenditure. It must approve the budget as a whole, and subsequently "discharge" the accounts of previous year's actual expenditure.
Installation of Commissioners	Since the ToA, the EP has the right to approve nomination of the Commission President. It holds individual hearings with nominated commissioners and passes a vote to approve the whole college.
Censure of Commission	EP may censure the college of commissioners by a two-thirds majority of its members.

European Court of Justice

It is:

- Located in Luxembourg;
- Composed of 27 judges and 8 advocates-general, who deliver preliminary opinions on cases;
- As a supreme court, it is able to provide an overarching framework of jurisprudence, and to deal with litigation, both on cases referred via the national courts and on those brought directly before it;
- Individuals, companies or organizations can also bring cases before the Court if they feel their rights have been infringed by an EU institution (ECJ website: curia.europa.eu/)

- The SEA (Single European Act) established in 1986 a second court, the Court of First Instance (CFI, the General Court after the ToL), composed nowadays of 27 judges, to help in handling the heavy load of cases in certain specified areas (ex.: competition policy) (Wallace, Pollack, Young, 2010);
- Interprets EU law to make sure it is applied in the same way in all EU countries;
- Settles legal disputes between member states governments and EU institutions (see Annex No.1);

The five most common types of cases are:

1. Requests for a preliminary ruling– when national courts ask the European Court of Justice to interpret a certain point of the EU law

2. Actions for failure to fulfil an obligation – brought against the EU Member States' governments for not applying the EU law

3. Actions for annulment – against the EU laws thought to violate the EU treaties or fundamental rights

4. Actions for failure to act – against the EU institutions for failing to make decisions required of them

5. Direct actions – brought by individuals, companies or organizations against the EU decisions or actions (ECJ website: curia.europa.eu/).

The important principles of European Law are:

- The supremacy of EC law over the law of the Member States;
- The direct effect of EC law in national legal orders;\
- A doctrine of proportionality and of non-discrimination on the basis of nationality among nationals of EU Member States.

The vigor of the European legal system:

- Is one of the most distinctive features of the EU;
- It has helped reinforce the powers and reach of the EU process (Wallace, Pollack, Young, 2010).

Decision-making in the E.U

What makes the EU "novel, interesting and worthy" for study is "its unique combination of national and supranational rules" (Begg, 1996).

A decision is not the same as a policy: action (or inaction) by public authorities facing choices between alternative courses of public action. When any choice is made, the result is a decision. All policies are a product of decisions about what to do, how to do it, and how to decide what to do. Decisions are the building blocks of policies.

European Union is a "unique system of multi-level governance". The term governance is rarely defined very clearly. It could be defined as "the imposition of overall direction or control on the allocation of valued resources". Synthetically, it is the result of a mix of factors: political leadership, state-society relations, institutional competition, electoral politics, etc. (Nugent, Paterson, Wright, 1999).

LEVEL	Decision type	Dominant actors	Example
Super-systemic	History-making	European Council; governments in IGCs; European Court of Justice	Endorse white paper on internal market
Systemic	Policy-setting	Council; COREPER; European Parliament (under co-decision/ ordinary legislative procedure)	Agree directives to create an internal market for motorbikes
Sub-systemic	Policy-shaping	Commission Council working groups; EP committees	Propose that all motorbikes licensed in the EU must observe specified power limits

Choosing What (not) to Do

Decision-making is linked to domestic contexts taking place through highly institutionalized procedures, including voting, while decision-making in international relations usually takes place by consensus:

- These differences are a boon when it comes to explaining decision-making in the EU;
- Are linked with the variation of policy-making across policy areas: from unanimous decision-making among Member States (in foreign and security policy) to decision taken on the basis of qualified majority voting (QMV), in conjunction with the EP on a proposal from the EC (with many combination between);
- Some aspects of EU decision-making have similar features to the executive and legislative politics of domestic policy-making, while others are similar to international negotiations (Wallace, Pollack, Young, 2010).

Following Allison models of decision-making, there are three competing models of decision-making:

- Intergovernmentalism (with Member States controlling decision-making);
- Pressure politics (with decisions determined by "grass-roots, interest group and parliamentary pressure");
- "Elite networks".

The analysis of decision-making in the EU :

- Is rooted primarily in "new institutionalism": historical institutionalism, rational-choice institutionalism and sociological institutionalism (Hall, Taylor, 1996, Aspinwall, Schneider, 1999, Peters, 1999, Pollack, 2004);
- The historical and rational choice variants tended to be applied more frequently to studies of policy-making;
- Sociological and rational-choice institutionalist approaches have been applied to analyses of decision-making in the Council of Ministers.

The main three politics are:

(a) Executive;

(b) Legislative;

(c) Judicial.

Executive Politics: Delegated Decision-Making

- Is more often associated with providing political leadership and overseeing the implementation of legislation;

- Comparative politics and international relations literature considers the decision to delegate responsibilities;
- The focus is on delegating the decision-making responsibility towards the executive bodies;
- The benefits of delegating decision-making are considered to be particularly pronounced under certain circumstances, significant need for policy-relevant expertise due to technical or scientifically complexity of a policy area (Wallace, Pollack, Young, 2010);
- The EU specialized agencies (for ex.: European Medicines Evaluation Agency) have been given the task of providing expert advice to the Commission, which formally takes decisions (Eberlein, Grande, 2005);
- The delegation of decision-making is more likely to happen where doubts about politicians' commitment to a policy could undermine its effectiveness;
- The problem of commitments not being credible is likely to be pronounced when there is a conflict between short-run costs and long-run benefits (such as monetary policy);
- Decision-making may also be delegated in order to make it harder for successors to reverse the policy;
- Sociological institutionalists contend that delegation occurs because it is perceived as a legitimate and appropriate institutional design. Thus, institutional designs are copied through processes of emulation and diffusion.

Where decision-making is delegated, the different views of bureaucratic decision-making prevail:

- One view stresses the importance of technical expertise and legal mandates and sees value in isolating decision-makers from political pressures, so that the decisions can be taken for the greater good rather than for the benefit of the powerful ones;
- The second view comes from the analysis of US foreign policy, which depicts bureaucratic politics as bargaining among different sections of the executive with different preferences. In this view, decisions reflect compromise and consensus among participants. Much of the European integration literature has treated the Commission as if it is a unitary actor focused on its influence relative to the Member States.

An important implication of the principal-agenda approach is that the bureaucratic agent is not completely free to take decisions, but it is constrained by the principals' preferences. Any

analysis of Commission decision-making must consider what authority has been delegated to it and how its preferences relate to those of the Member States on the issue in question (Wallace, Pollack, Young, 2010).

Legislative Politics or International Negotiations?

- the legislative politics of the EU, especially in the EP, is arguably more closely analogous to that of the US than those of most EU Member States (Hix, 2005, McElroy, 2007);
- despite its legislative role, the Council appears to operate in many respects like an international negotiation framework.

Legislative Politics in the European Parliament

- the theory of "minimum-winning coalition" is commonly applied to EU decision-making. A minimum-winning coalition, by involving a minimum number of votes needed to secure victory, means that there are fewer interests to accommodate and gives the members of the coalition, particularly those decisive in creating a winning majority, greater influence over the policy;
- the EP has had a tendency to form oversized voting coalitions, ostensibly to increase the EP's influence relative to Council;
- the EP is a supranational legislature, in which electoral connections are notably weak, much attention has been paid to what motivates parliamentarians' voting behavior (McElroy, 2007). The best predictor of MEP voting behavior is not nationality, but MEP's "party group" (Kreppel, 2001).

Decision-making in the Council

There is a great debate on how the Council takes decisions:

- theories of coalition formation have also been extensively applied to the Council of Ministers, at least when QMV applies;
- Some scholars have elaborated formal models of Council voting to establish the relative bargaining power of various Member States (Bueno de Mesquita, Stockman, 1994, Hosli, 1994, Felsenthal, Machover, 1997);
- The relative preferences of Member States' governments are relevant;
- Governments with preferences close to the center of the range of preferences on a given issue are more likely to be in a winning majority independent of their formal voting weight,

while other governments may be "preference outliners", and therefore more likely to be isolated in the EU decision-making;

- The Member States holding the presidency has extra influence, through its capacity to shape the agenda and by exploiting its superior information about the positions of the other Member States when the final decision is taken (Schals et al., 2007, Thompson, R, 2008);
- Only a minority of legislative decisions are taken by ministers in the Council, with most reached by consensus among officials;
- Even when QMV applies, the Council tends to seek consensus whenever possible, so that the models of procedures, such as minimum–winning coalitions, appear to provide a poor guide to understanding daily practice in the Council even in those policies in which voting occurs (Hayes-Renshaw, Wallace, 2006).

Bargaining models:

- Perform better at predicting decisions (Schneider et al., 2006);
- Policy is agreed through a process of identifying an outcome that makes none worse off or through the use of issue linkage, inducements or threats (Putman, 1988); bargaining outcomes, whether among Member States, among coalition partners, or in industrial relations, are expected to reflect the relative power of the actors, which, in turn, is shaped, by their "best alternative to negotiated agreement" (BATNA);
- A particular variant of bargaining analysis is Fritz Scharpf's (1988) "joint decision trap", in which there is no solution that all veto players prefer to the status quo;
- In international negotiations = highly institutionalized settings, of which EU is a prime example, cooperation is facilitated because the participants are aware that they will be interacting repeatedly in the future and as their experience of successful cooperation accumulates (Peters, 1997). This can generate "diffuse reciprocity", in which governments acquiesce in the short run in the expectations of favorable consideration of their concerns at some point in the future (Keohane, 1986);
- Being able to accommodate diffuse reciprocity may be one of the key reasons why bargaining models are better at predicting policy-making in the EU than procedural models, which are blind to iteration (Schneider et al., 2006).

Inter-institutional Power Dynamic

- There are a few policy areas (foreign and security policy, justice and home affairs) in which the Council is essentially the sole decision-maker (in the most areas of EU policy, the Commission and EP have decision-making roles);
- EP's influence in the decision-making process is much greater under the co-decision procedure than under the cooperation procedure, arguably to the extent that it is a co-legislator with the Council (Schneider et al., 2006);
- The Commission is considered to have lost influence as the EP has increased his own (Thompson, Hosli, 2006).
- The formal powers of the EU's institutions and the decision rules in the Council matter because the more actors there are that can block a decision ("veto players"), the harder it is to reach an agreement;
- If there is to be an agreement, it must be acceptable to all veto players, which means that it must accommodate the concerns of the actor that is least enthusiastic about change.

  In the EU there are many veto players:
- The Commission may choose not to advance a proposal;
- Under co-decision either the EP or the Council can block legislation;
- Under unanimity each member state is a veto player;
- And under QMV a minority of states can block decisions;
- The need to accommodate so many veto players in order to adopt a policy led Simon Hix (2008a) to characterize the EU's as a "hyper-consensus system of government".

In a high consensual process, securing agreement requires a potent coalition across the key decision-makers. This requires a coalition across two levels of governance:

- Among the EU's institutions
- Within the Member States.

  Constructing such coalitions is difficult and demanding (Wallace, Pollack, Young, 2010).

Judicial Politics

- In the EU, domestic political process of implementation is supervised by the Commission, aided and abetted by societal actors and member states' governments, and may be subject to adjudication before national or European courts (Tallberg, 2003);

- The European legal order is much more highly developed than those commonly found among states;
- Beyond the integration-centric question of the independence of the ECJ, there are a number of aspects of judicial politics that are more common to comparative politics than international relations (Conant, 2007);
- One concern is that actors are more able to take advantage of, is the opportunity to challenge national policies under EU law;
- An increasing number of powerful political actors have tended to make more and better use of litigations in order to challenge the policies which they dislike (Conant, 2007);
- The direct implication of Court ruling tends to be narrow, requiring from the Member State governments to accommodate only the specific requirements of the judgment (although the government may extend the implications to other similar circumstances);
- The implications of court judgments may be developed and exploited by political entrepreneurs, as the European Commission famously acted in developing the concept of "mutual recognition" on the basis of ECJ's Cassis de Dijon ruling (Alter and Meunier-Aitsahalia, 1994).

The student of EU decision-making must be concerned with explaining a range of different decisions taken at different levels in a multi-level system of governance.

Implementation of Decisions

Once a decision has been taken, further steps are usually required in order to put it into effect. There is a difficulty in reaching agreements in the EU, and that makes implementation important, because decisions often contain compromises and "vague language" (Wallace, Pollack, Young, 2010). Many EU decisions (in the form of directives) must be incorporated/transposed into national laws before they are translated into practice by national bureaucracies. Thus, there is a very significant component of decision-making in the implementation phase of EU policy-making.

The analysis of implementation in the EU context:

- Is concerned with EU's internal policies, which occur within a legal hierarchy;
- Different internal policies, target the behavior of different types of actors in different ways;

- For some policies (national or EU) taking the decision and implementing it, are essentially the same thing: no steps beyond taking the EU-level decision are required;
- In both EU-implementation and IR-compliance literatures there is an increasing attention given to the impact of domestic politics on whether and how international obligations are translated into policy change (Young, 2009);
- Whether and how implementation (compliance) occurs depends on the preferences of key societal actors and the governments regarding the new obligation relative to the status quo, whether any of those opposed to implementation are "veto players".

Three crucial implications emerge from the analysis of policy implementation in the EU:

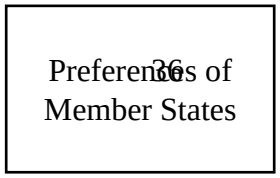
1. The impact of EU decisions, in terms of both costs and associated political and administrative challenges, varies among Member States (Borzel, Risse, 2007);

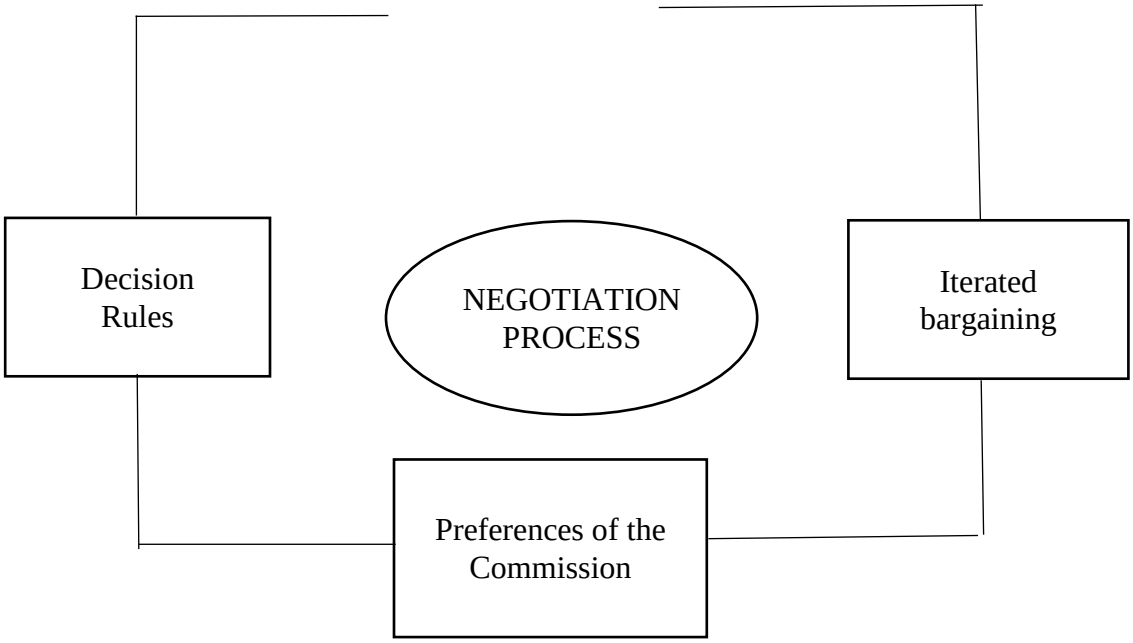
2. The Member States adopt very different national policies in order to implement "common" EU policies;

3. The Member States do not always comply with EU rules (Wallace, Pollack, Young, 2010).

2.3. Negotiating the European Union

- The European Union has been described as a "negotiated order" (Smith, 1996), a "permanent negotiation institute" (Bal, 1995) and a "negotiation marathon" (Kohler-Koch, 1996);
- The EU policy process is dependent on negotiations as a mode of reaching agreements on, and implementing common policies;
- The EU governance consists of negotiation and compromise among Member States, and European institutions. "It is possible to define almost everything that goes on in the EU as "negotiation" (Elgstrom, Smith, 2000);
- The European integration process is a product of negotiations. The European negotiation - as a process, as a system, as an order - deals with interdependence and the existence of both common and divergent interests. The EU as a community has its negotiation model – the European negotiation - which develops the consensus culture (Lempereur&Colson, 2008);





- The European negotiation process: ”a communication process, where actors send signals to each other in order to influence the expectations and/or the values of other party”(Elgstrom, Smith, 2000);

- The European negotiation system:
- Is highly institutionalized;
- Is permanently linked and continuous;
- The interdependence of actors, regularities of interactions, rules and procedures;
- Formal negotiations are linked to informal negotiations;
- Links between internal levels, sectors, and external negotiations.

  The European negotiation order:
- Problems shaped by the distribution of capabilities;
- Problems emerging from the institutional structure;
- Important role for “reigning ideas” in the form of elite consensus.
- The EU negotiation external game takes place in parallel with domestic oriented games;
- There are two main intergovernmental negotiations in the EU: treaty revision and enlargement negotiations - the Intergovernmental Conferences(IGCs) have been conducted at four different levels:

1) Heads of state and government;

2) Foreign ministers;

3) Ambassadors;

4) Technical meetings, but the negotiations were official only at the political levels of foreign ministers and heads of state and governments (Beach, 2005).

- The European negotiations "are not one-shot exercise, but a repeated game, in which the interaction between actors will continue in the future and is influenced by past choices"(da Canceicao-Heldt, 2002);

- Paul Meerts describes eight main characteristics that distinguish the European negotiations from other international negotiation processes (Meerts and Ced, 2004):

1. (Intervention) of national and international negotiation processes;

2. Most of the issues in the European negotiations are internal questions rather than external;

3. The complexity of the internal European negotiation process absorbs the attention of the Member States;

4. EU negotiation process-both within member states and with the outside world;

5. Continuity of the European negotiation process;

6. European negotiation process with so many actors and issues suffers from a lack of transparency;

7. European negotiation process creates an integrated-negotiation network;

8. The EU negotiation process is based on more than a community of interests;" it is based on a community of values as well".

- During the EU negotiation process, stakeholders change their initial positions into the positions they endorse in the final stage; the position shifts occur frequently because of compromise and exchange: "The compromise solution then approximates an outcome that optimally weights the different interests of all actors involved" and "the exchange deals involve one actor shifting its position on one issue in the direction of other actor, in exchange for a shift in the position of the other actor on the other issue towards its position"(Arregui et al., 2004);

- Moravchik and Vachudova (2003) underlines the aspect of "asymmetrical interdependence" of EU negotiations, and the fact that "specific interstate concessions and

compromises tend to reflect the priorities of the EU's core countries, and disproportionately the most powerful among them, even as more peripheral countries benefit as much or more overall.";

- Former French minister for European Affairs, Jean–Pierre Jouyet argues in favor of a dynamic convergence of national interests and European interest as being the first rule of European negotiation (Lempereur&Colson, 2008). According to Alain Lempereur (Lempereur&Colson, 2008), the characteristics of successful European negotiations are:

1) Communicating a clear strategically vision;

2) Preparation, establishing an agenda;

3) Excellency in communication at the table and beyond;

4) Elaboration of an effective mandate and discovering the one that the other party has;

5) Maintaining a relation of trust with the other negotiators;

6) Regardless to the cultural dimension;

7) Proceed by concentric cycles, like in multilateral negotiations;

8) Rely on the underlying motivation of the parties;

9) Searching the optimal solutions for all;

10) Using for all the valuable criteria for justification;

11) Consider solutions outside the table.

The same author recommends few "ingredients" to a successful European negotiator (Lempereur&Colson, 2008):

- The uniqueness of each situation;
- The relational competences;
- The search for common results;
- The knowledge of the file;
- A good system of economic intelligence;
- Key and secondary objectives;
- A basic strategy.

Former Minister of Foreign Affairs of the Kingdom of the Netherlands, Dr.Bernard Rudolf Bot suggests ten commandments for the European negotiator (see Meerts and Cede, 2004):

1. "Retain the trust of those you represent;

2. Make it clear that you appreciate the position of other negotiating parties;

3. Know your dossier well;

4. Maintain good networks;

5. Cultivate a feel for the balance of political power and the ability to spot a political bluff;

6. Guard against your opponents' losing face;

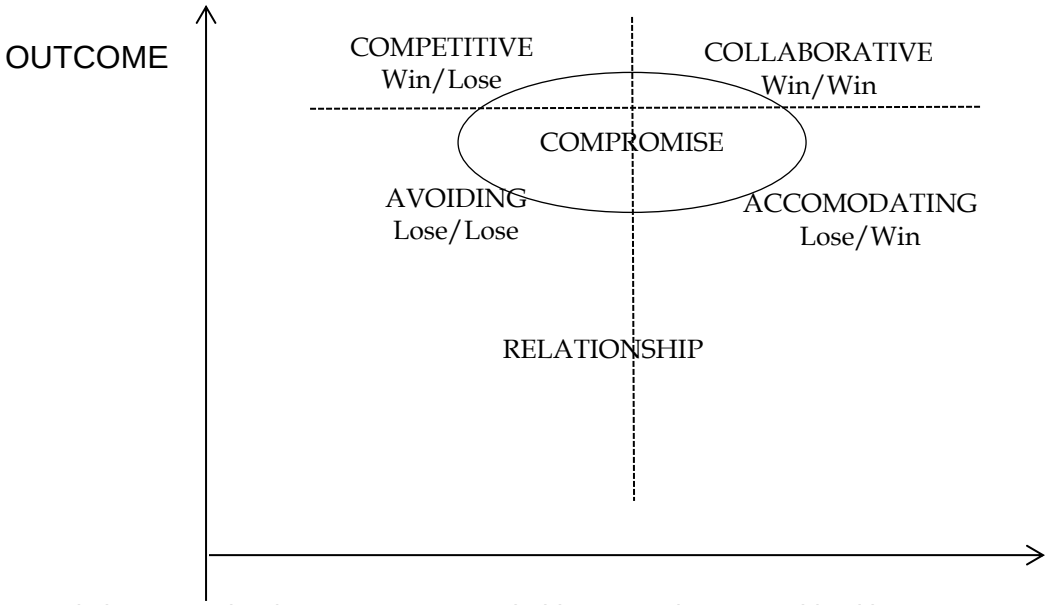
7. Learn to act a part;

8. Build up your stamina;

9. Make concessions in time to obtain a quid pro quo;

10. Be yourself; and always hold fast to your own style of negotiating."

2.4. Negotiations strategies



Negotiation strategies (Source: A. Guggenbuhl, F. Lavadoux, P.Goldsmith, European Institute of Public Administration, Programme on European Negotiations, 2004).

Strategy:

a. Define a clear objective;

b. Identify stakes and interests;

c. Plan positioning and moves;

d. Set attitude and climate;

e. Build argumentation;

f. Prepare for tactics.

a. <u>Define a clear objective</u> (ex.: Do you want to go?):

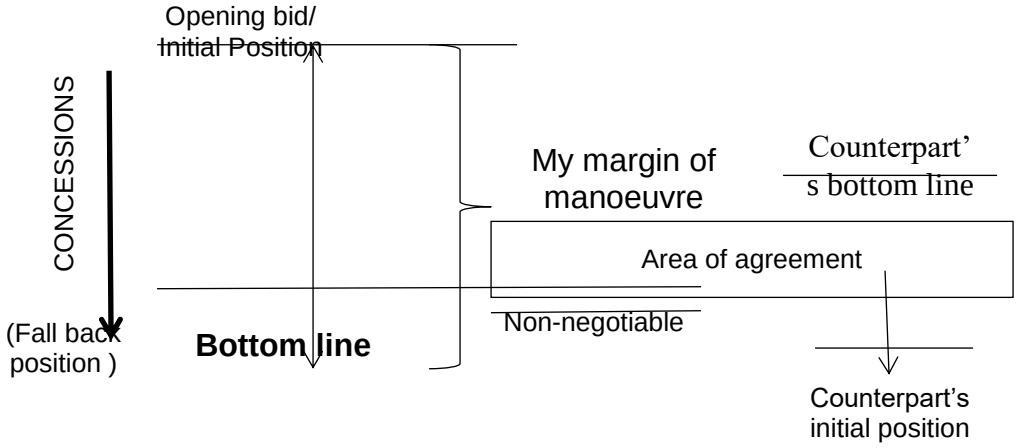
- **What** do you want to achieve (outcome)?
- **How** (action)?

- **What** if you get the minimum?
- **B.A.T.N.A.?** (assessing "Power")
- **When**? (the agenda of the meeting)
- **Who** do you meet? (trust and authority of the negotiator)

b. Identify interests and stakes (ex.: Why do you need it?)

- Needs analysis;
- Identify non-negotiable (vital interest)
- Hierarchy and prioritization (main interest vs. easy concessions
- Manage information (what to give, keep and ask).

c. Positioning and moves (e.g. How far and fast should you go?)



Source: A. Guggenbuhl, F. Lavadoux, P.Goldsmith, European Institute of Public Administration, Programme on European Negotiations, 2004

d. Attitude and climate:

- "I cannot be wrong"

Arguing for upper-hand
Blow-by-blow interaction
Emotions to lead

- "My solution first"

Coercitive argumentation
"No authority" argument

- "Trust me, I know what is good for you"

Manoeuvres, Seduction, Dissimulation, Distortion

- "Let's compromise"

Seek harmony of interests
Empathy and confidence

Tactics:

A.

- The good and the bad guy;
- The smokescreen;
- The phoney offer;
- The sphinx;
- Hardball (hairchested);
- The nibble;
- The foot in the door.

B.

- Playing on Information:
  - ✓ Scounting around;
  - ✓ Enigmatic Sphynx or blanket;
  - ✓ Feign ignorance;
  - ✓ Secret confidence;
  - ✓ Leaking.

- Playing with time:
    - ✓ Marathon discourse and smokescreen;
    - ✓ Stewing;
    - ✓ Columbo;
    - ✓ Sawing off or Bombarding.
- Playing with people:
    - ✓ Jack in the box;
    - ✓ Good or Bad guy;
    - ✓ Divide and conquer;
    - ✓ Connivance.
- Playing with pressure:
    - ✓ Withdrawal;
    - ✓ Painting it black;
    - ✓ Hairychested;
    - ✓ Calling in the bosses.
- Playing with the agenda:

✓ False trail;

✓ Nibbling;

✓ Canceled appointment;

✓ Foot in the door.

When we are talking about EU accession negotiation strategies, we must take in consideration the strategies of the European institutions, Member States and candidate states. Landau (in Meerts and Cede, 2004) said the Commission also pursued its own strategy, using issues of fragmentation and complexity as an opportunity to capture more power and to gain more involvement in this policy area. Coalition building and interstate bargaining represent the interest of the Council. Among Member States there are major players and net payers, and they must have a say in building coalitions or designing the most important European policies.

2.5. Negotiation Positions (Position Papers)

In multilateral negotiations, states prepare and present their negotiation position = **Position Papers** =>the accession negotiations to joining the EU are both multilateral and bilateral and the formal negotiations use the procedure of exchanging the position papers:

- The positions of the candidate country for each of the negotiating chapters are drawn up and sent to the Presidency of the Council as **Position Papers**=>it is the Commission which studies each Position Paper and drawn up a Draft Position Paper, as a reply of the EU to the Position Paper of the candidate country=>the Draft Position Paper is analyzed by each Member State, which in the Council meeting, decide on a **EU Common Position** (the Common Position presented by the Presidency is the result of negotiations within EU)**.** **Remark:** At this point, a chapter is "opened" and negotiations begin;

- Usually, the EU replies to the candidate's Position Paper with a long list of questions ("additional information") to which the candidate country is asked to reply with the same procedure used in a Position Paper, and this leads to a new EU Common Position.

2.5.1. Position Paper

- It is a written document on the negotiating positions which states the opinion of a candidate country on compliance with the *acquis* in a particular area defined by the negotiating chapter;

- The purpose of a position paper is to generate support from the Member States =>the need to carefully think about the best language to use and how to express points fairly and clearly (the capability of the candidate country to shape the EU's attitude through the provision of the correct/accurate information);

- The content of the Position Paper must respond both to the short-term and long-term interests of the country;

The Position Paper is based on the facts that it provides a solid foundation for the arguments and credibility, especially when there is a link between the Position Paper and the overall National Strategy on EU membership.

Nicolaides (1999) points out (at least) seven elements that make up credible a negotiating position:

1) The *acquis* to be adopted by the candidate country;
2) The objectives, opinions and attitudes of the Member State (and EU) on the future development of the policy covered by the negotiating chapter;
3) The situation of the candidate country on the same area;
4) The contribution of the sector presented by the negotiating chapter to the economy of the candidate country and - very important - the contribution it can make to the "common interest" of the EU;
5) The capacity of candidate's public administration to enforce the EU rules and policies;
6) The treatment provided to other candidate countries;
7) The precedents set by previous accession negotiations.

Remark: Professor Nicolaides advises the candidate countries to take the point no. 4 very seriously, because it appeals to the mutual interest/the common interest and it signals the candidate's approach to the accession negotiation.

- The Position Papers are very important with regards to transition periods and derogations, since the quality of the argumentation will determine the positive or negative decisions of the EU;

- The domestic political situation and the maintenance of population support for accession must be in minds of both the Government and the Negotiation Team (defending the "vital national interest");

- For contextual reasons, the countries of Eastern enlargement wave did not follow "the precautionary principle" =>it would be advisable to be taken in consideration for the future enlargement negotiations.

2.5.2. Background Dossiers

- It is advisable that both the Negotiation Delegation and the Government to add to each of the negotiating chapters of the Position Paper a "background dossier" with all relevant documents provided by the line ministries, social partners, civil society, interest groups which support/argue the statements written in the Position Paper;

- It contains the proposals, measures, commitments, programs discussed with political parties, local administration, social partners in order to request transitional periods;

- For technical reasons, candidate countries have adopted dates for accession;

- The formulation of the negotiation positions of the candidate country must be based on the general and sectoral, financial and social, economic and societal impact assessments:

  - ✓ Impact assessment of the conditions required for implementing each piece of the *acquis;*

  - ✓ Impact assessment of the necessary efforts from both the public and the private sector;

  - ✓ Impact assessment of the cost and benefits of the changes brought by the implementation the *acquis*;

  - ✓ Impact assessment of the financial resources of the candidate country in order to assume these changes;

  - ✓ Impact assessment of the administrative capacity and new institutions/agencies in charge *to* implement the *acquis*;

- The background dossier should contain both the point of agreements and the points of disagreements from major domestic sources of opinion and analysis.

HOW IS A POSITION PAPER DRAFTED?

- Preparation of a Position Paper must be based on commitments that the candidate country agrees and is able to assume the *acquis* for the respective negotiating chapter;
- Each institution of the Government provides its own contribution to the background dossier, and thus to the Position Paper;
- These institutional contributions are then analyzed, correlated and harmonized by the "integrative institution" and consultations are held with other institutions/agencies involved in the policy area of the negotiating chapter;
- Completion takes place in written procedure, by consulting the head of each institution prior to the submission for approval in the National Delegation for Accession Negotiation (at this moment it is advisable to consult various epistemic communities in order to identify the most sensitive issues in the particular area of the European policy and European interest);
- Once approved by the National Delegation, the Position Paper and the background dossier are subject to adoption by the Government;
- Depending on constitutional and legal national provisions, consultation with the relevant parliamentary committee may be held for each Position Paper of the negotiating chapter (these consultations can take place either before or after their adoption by the Government, according to the legislation of the candidate country).

2.5.3. The Structure of a Position Paper

The following structure is typical of a Position Paper (Xavier University, 2011):

- The **introduction** - should clearly identify the issue and state the author's position;
- The **body** of the Position Paper contains several paragraphs (or sub-chapters). Each paragraph should present an idea or a main concept that clarifies a portion of the position's statement and is supported by evidence of facts. Evidence can be either statistical data,

official documents, source quotations, interviews, or indisputable data / events. Evidence should lead, through inductive reasoning, to the main concept or idea presented in the mentioned paragraphs. The body may begin with some background information and should incorporate a discussion of both sides;

- The **conclusion** should summarize the main concepts and ideas and reinforce, without repeating, the introduction or the body of the Position Paper. It could include the main commitments and the suggested courses of actions and/or solutions.

  - ✓ **Remark**: The EU did not establish a standard format for such structure of Position Paper. In practice, there are several similarities between the negotiation positions prepared by candidate countries, but they do differ in scope and also with regards to the methods which candidate favors in arguing its way to accession (see Annex no. 6).

- Some general guidelines of the structure of a Position Paper are very useful in the preparation stage to be followed by all line ministries and integrative institutions of a candidate country, because the ministries should formulate precise proposals and provide sufficient reasoning that can serve as concrete basis and factual arguments for negotiations =>the final version of the Position Paper must be written by the Negotiating Team under the authority of the Chief Negotiator.

A Position Paper for accession negotiation, in general, includes the following parts:

A. The general summarized position of the candidate country on the negotiating chapter's *acquis* (in this section, a synthetic exposure of the exemptions requested can be made);
B. Candidate's detailed position on the *acquis* in the respective field, with a distinct indication of:

- The equivalent in the national legislation of the *acquis* already taken, or the provisions that are most significant;
- Timing and modalities of implementing the *acquis* that has not yet been adopted.

C. Presentation of the institutions of central government or otherwise required by the *acquis* of the matter:

- Existing institutions - in the case that statistics will be presented to prove the efficiency of the operations and the main measures to increase their efficiency;

- If necessary, a schedule and action plan/measures to create new institutions that are still required for implementing the *acquis*.

  D. Arguments for the transition periods or derogation in the area of negotiated chapter, where there is such a request.

Professor Nicolaides (1999) suggests the same manner of structuring a Position paper:

I. Acceptance of the *acquis:*

- State acceptance of the *acquis;*
- Explaining the national situation/capacity;

II. Insertion of national institutions and/or names into the *acquis:*

- State acceptance of the *acquis;*
- Explaining national situation/capacity;
- Identifying precise changes of the *acquis.*

III. Negotiation of derogation:

- State non-acceptance of the *acquis;*
- Explaining national situation;
- Defining precise requests;
- Justifying/identifying means/procedures of eventual compliance;

IV. Negotiations of institutions/financial issues:

- Defining precise request;
- Justifying."

<u>Advisable</u>:

- Should provide very precise proposals and reasons for these proposals;
- Imprecise or insufficiently reasoned proposals might create the impression that the candidate country does not really know what it wants;

- Important that the candidate country leaves the perception that it is fully in control of every situation presented in the Position Paper;
- The Position Paper is a formal document, so the writing style should reflect this fact;
- If a Position Paper lacks precision, negotiations may be delayed, the Member States will demand clarifications and the process of internal coordination must start all over again before negotiations can really begin.

As professor Nicolaides (1999) pointed out, it is important to:

- "Keep papers short and well structured (headings, etc.),
- Define precise position/request,
- Explain fully your own situation/capacity,
- Justify position/request (as provided by the existing *acquis*)."

Twenty-eight Questions to Ask in Preparing a Persuasive Negotiating Position (after Nicolaides, 1999, p. 13):

Understand the acquis:

1. **What are the relevant Treaty provisions?**
2. **What is the relevant secondary legislation?**
3. **Are there any relevant Court rulings?**

Understand your own situation:

1. **Why does compliance with the acquis cause problems?**
2. **What is the nature and magnitude of the problems?**
3. **Are other remedies rather than derogations unavailable?**

Exceptions/safeguards in treaty or secondary legislation:

1. **Are there any?**
2. **Have they been used or invoked by any existing member? How?**

Exceptions/safeguard in past accession negotiations:

1. **Did past applicant countries have similar problems?**
2. **What exceptions did they obtain in their treaties of accession?**

3. **Can you use similar arguments?**
4. **Do you have the same negotiating power?**

Formulate your own position/request:

1. **Do you need a permanent or a temporary derogation? How long should it be?**
2. **Should it be general (recording your needs) or specific (modifying a certain EC act)?**
3. **Would a safeguard do, instead of a derogation?**
4. **Will compliance with the *acquis* cause irreparable economic/social damage?**
5. **Is there no other remedy apart from derogation? Is it proportional to the intended effect?**
6. **Do your identified needs coincide with the objectives of the EU?**
7. **Do you suggest mechanisms for eventual compliance with the *acquis*?**

Formulate your back-up position:

1. **What is the minimum that you can accept?**
2. **Could you accept a shorter derogation that can be extended after you enter the EU?**
3. **Could you propose "objective" means of deciding later on whether extension is necessary?**

Understand the EU's position:

1. **What is the EU's offer/target?**
2. **Are there disagreements among the Member States?**
3. **Will the EU itself ask for a derogation?**

Monitor the other applicant countries:

1. **Have they obtained something you have not? Why?**
2. **Could you request the same?**

Should you request the same?

THE E.U. COMMON POSITION

- The initial position of the European Union in the accession negotiations is "the *acquis* and nothing but the *acquis" (*Sigma Pepr,2007);

  Remember: the Commission is "the Guardian of the Treaties" and the Member States are the "Masters of the Treaties";

- For the Member States some parts of the *acquis* are more important than others =>in some areas no concessions will be made, while in other flexibility will be shown;
- The process of deciding the content of the EU Common Position is very difficult because of the possible divergent national preferences of current Member States =>the Member States negotiate among themselves to agree on the EU Common Position, and the Commission acts as a mediator;
- These intra-Member States negotiations prove that the accession negotiations are more than bilateral negotiations (between a candidate country and the EU as a unit); they are also multilateral negotiations, which are not only for the joining of the EU but in order "to redistribute the costs and benefits from accession" (Schneider, 2009). And these negotiations reflect "the network of special relations that had grown up between the existing and future member states" (Meerts&Cede, 2009).
- The Draft Common Position (DCP), which is prepared by the Commission, will be discussed by the Member States in the Enlargement Working Group of the Council and decisions regarding the temporary derogations are taken by the Council Drafting Committee. The agreements achieved by the Member States in the Working Group open the way to get the common position on behalf of all Member States. The Presidency communicates the Common Position (CP) to the Chief Negotiator of the candidate country in the "negotiating conference".

When all compromises and concessions were achieved, the Member States might agree on communicating to the candidate state the CP about the provisionally closing of a negotiating chapter (so-called "chaptology" says that each chapter remains provisionally closed till the end of the game).

2.6. Transition periods and derogations

The accession negotiations are about the conditions for joining the EU. All Member States must be satisfied and convinced that the accession is in their own interests. For these reasons the flexibility during negotiation is not very impressive.

There are three types of **flexibility** in the accession negotiations (Sigma Paper 37, 2007):

A) Permanent derogations;

B) Temporary derogations and transitional arrangements;

C) Technical adjustments.

The exemptions of new Member States from implementation of all approximate 100,000 pages of *acquis communautaire* or a particular policy "reflects the balance between allowing applicants some time to adjust their policies and the desire to accept only those applicants whose policies are already stable and in harmony with the EU" (apud Plumper in Schneider, 2009).

Definitions (euabc.com)**:**

Transition: A transition period is a negotiated number of years during which the EU obligations do not apply (temporary exemption from implementation of the *acquis).*

Remark: The accession document of the Ministerial meeting opening the IGC on the Accession of Montenegro to the EU (29 June 2012), stated that transitional measures „are limited in time and scope, and accompanied by a plan with clear defined stages for application of the *acquis".* The same document adds: "For areas linked to the extension of the internal market, regulatory measures should be implemented quickly and transition periods should be short and few; where considerable adaptations are necessary requiring substantial effort, including large financial outlays, appropriate transitional arrangements can be envisaged as part of an ongoing detailed and budgeted plan for alignment. In any case, transitional arrangements must not involve amendments to the rules or policies of the Union, disrupt their proper functioning, or lead to significant distortions of competition."

Derogations: imply that a rule is not binding for a certain country. For certain countries there are derogations from parts of the treaties. There are also "opt-outs" from parts of the adopted policies.

Remark: not popular in the EU. The Commission wants laws to be identical across the whole of Europe.

Technical arrangements – are generally undertaken by the Commission and do not give rise to problems.

Remark: typically, the change would be the addition of a specifically protected name - food and drink products- from the candidate country to the list of protected geographical designations.

2.6.1. Cases for Applying Transitions and Derogations

Transitional periods and derogations are established (Nikolaides, 1999):

- To give the economy of the candidate country the time to adjust to the membership conditions :
  - ✓ Increased competitive pressure,
  - ✓ New rules to comply with;
- To allow the public administration of the prospective member to import and implement the new rules and regulations into domestic legislation;
  - ✓ **Remark**: the implementation of the *acquis* may require the creation of new national and/or local agencies and procedures – this, along with setting up the administrative apparatus may take a considerable amount of time.

Transition periods = agreed for several reasons (Sigma Paper 37, 2007):

- Technical: it is sometimes technically difficult or impossible to apply the *acquis* - from the moment of accession (e.g. the revoking of an international treaty, or when the equipment cannot be procured before the accession);
- The need to mitigate the impact of systemic change;
- The need to protect the higher standards existing in the candidate countries;
- The political need to defend perceived key national interests;
- The need to help the candidate countries develop their social and economic programs;
- Major financial concerns.

Transitional arrangements: **indispensable** in the case of:

- **Financial contributions** (that can be calculated and put into effect almost immediately) ;
- **Attracting EU funding-** the amount that each country is able to obtain depends on its integration into the various Community programs;
  - ✓ **Examples**: Agriculture: CAP receipts calculated on the basis of the country's output for the previous year – officially, CAP framework statistics are unavailable for the new Member States;
  - ✓ Structural policy programs: the initial receipts/payments imbalance typical to new Member States: redressed by a temporary and declining credit mechanism;

- The EU itself may request a **gradual** introduction of the new Member States into the Community programs as well as an incremental application of its laws in order for the Community to be able to adjust at its turn to the enlargement.

Examples:

- ✓ In order to temporarily protect their interests from the potentially harmful competition of new members, EU farmers as well as steel workers used to request that the principle of free trade be applied gradually;
- ✓ Luxembourg: 10 years restriction in what concerns the inward movement of Portuguese workers (countries that entered the EU after its founding were subjected to similar restrictions).

Transitions and derogations:

- Generally sought after when a country expects to have difficulties in implementing the *acquis*:
  - ✓ Political issues;
  - ✓ Social issues;
  - ✓ Economic issues;

Remark:

- ✓ **Negotiation strategy:** during accession negotiation a country should avoid focusing its demands only on transitions and derogations (risk of becoming a less desirable partner):
- ✓ Asking for exceptions from the rule because compliance costly: **negative attitude;**
- ✓ Asking for assistance in order to enable compliance: **positive attitude** (possible assistance programs: trainings, programs supporting adaptations, improving existing capital/infrastructure etc.);
- ✓ **Another way** of avoiding making difficult adjustments as well as asking for derogations: adaptation of the *acquis* (immutable in theory) – e.g. In the accession negotiations of Austria, Finland, Norway and Sweden: the Union agreed to review its own standards with respect to environment, health and safety issues in order to *raise* them to the level of the candidate countries.

Implementation plans:

- Requests for transitional measures need to be justified by detailed implementation plans

ensuring that compliance with the *acquis* will be reached (http://ec.europa.eu);

- Both the requests and implementation plans should be accompanied by a timetable for the progressive achievement of full compliance;
- Implementation plans: the conception of "intermediate targets" (legally binding);
- Their application should be monitored by the Commission (and by the Member States).

Transitional measures, typical to such domains as (eutransition.eu):

- **Agriculture, Land Market Reform and Environment Related Issues:**
  - ✓ Environment;
  - ✓ Food Safety;
  - ✓ Land Administration and Cadastre;
  - ✓ Renewable Energies.
- **Democracy, Human Rights and Political / Institutional Reforms:**
  - ✓ Civil Society;
  - ✓ Decentralisation and Regional / Local Government & Administration;
  - ✓ Human Rights;
  - ✓ Political Freedoms and Democratically Elected Institutions;
  - ✓ Public Administration Reform;
  - ✓ Reform of Internal Security System;
  - ✓ Reforms of Legal System and Judiciary.
- **Economic Reforms (Transition to a Market-Based Economy):**
  - ✓ Domestic Financial Systems;
  - ✓ Liberalization of Prices, Trade and Foreign Exchange;
  - ✓ Macro-Economic Stabilization;
  - ✓ Private Sector Development;
  - ✓ Privatization of State-Owned Enterprises;
  - ✓ Reform of Public Finances;
  - ✓ Trade Development and Regional Integration.
- **Human Development:**
  - ✓ Children's Rights;
  - ✓ Education;
  - ✓ Employment, Labor and Social Protection (Social Reforms);

- ✓ Gender Equality and Women's Rights / Empowerment;
- ✓ Health.

The E.U. – **extensive transition management experience:**

- "The European Consensus on Development": a European Commission's development policy document, drawn up in 2005, stating in Article 33 that: "The EU will capitalize on New Member States' experience (such as transition management) and help strengthen the role of these countries as new donors.";
- "The European Transition Compendium", an awareness-raising and knowledge-sharing tool that compiles experiences about transition. It is meant to raise interest about this delicate and complex phase of transition when a country gradually transforms itself politically, economically and socially, in order to embrace democratic values.
- All EU Member States experienced transition at some point or another:
  - ✓ The economic transformation and reconstruction process brought about by France and Germany after World War II by creating the European Economic and Steel Community (EESC);
  - ✓ Spain: transition to democracy in 1975 (simultaneous process in Portugal and Greece);
  - ✓ The post-Cold War period: Central and Eastern European countries as well as the Baltic States struggled for independence and began to successfully govern their young countries;
  - ✓ The 12 most recent members of the EU all needed transitional periods in order to fully adapt to the EU economic, judicial and social framework.

Length of transitional periods: varies, subject to negotiations (from the EU point of view: should be kept as short as possible; the candidate countries are interested in obtaining long transitions);

- Greece: five years;
- Spain and Portugal: seven-year transitional period (for certain sensitive issues - ten years);
- More recent members: one year to nine years (average period of about three years).

2.6.2. Derogations

Types of derogations (Nikolaides: 1998):

- Most derogations granted by the EU – **temporary** (room for manoeuvre for the prospective member).
  - ✓ Not pre-determined (in terms of length):
  - ✓ May be granted for a fixed and short period of time (no formula for what fixed and/or short represents).
  - ✓ Length varies in relation to the adjustment having to be made (estimated difficulty and extent).
  - ✓ If necessary, some derogations may be prolonged;

NB: though EU has only accepted temporary derogations, there is one exception: Malta, who gained a permanent derogation on the purchase of second homes on the island (euabc.com) =>permanent derogations have been agreed in rare cases.

- Defined in terms of:
  - ✓ Products (e.g. apples),
  - ✓ Sectors (e.g. banking),
  - ✓ Standards (e.g. environmental measures),
  - ✓ Factors of production (e.g. workers),
  - ✓ Tax measures (e.g. VAT rates or exempt activities),
  - ✓ Regions (e.g. certain islands),
  - ✓ Area of operations (e.g. amount of re-insurance by foreign companies on domestic territory),
  - ✓ Business practices (e.g. establishment of companies),
  - ✓ Private practices (e.g. purchase of land or currency transfers) etc.
    a. specific (refer to a certain provision of a legal act);
    b. unspecific (do not take the form of an exception. Instead of requesting an outright exception). A candidate country may ask for the recognition of "special needs": the cases of Ireland, Greece, Portugal, Spain: treaties of accession recognizing the countries' efforts towards „economic development";

Remark: when it anticipates difficulties regarding complying with the *acquis* in a certain area, a prospective member may seek **safeguards** instead of derogations.

- ✓ **Safeguards**:
  a. exemptions from the rules only if the need arises;
  b. specific derogations may not be defined during accession negotiations;
  c. general safeguards (manufacturing sectors mostly) – defined in all enlargements;
  d. allow partners to avoid cases in which disagreements on legal issues of minor relevance hinder the progress of negotiations;

Obtaining derogations:

- ➢ not granted lightly;
  - ✓ cases of evident need:
    a. "needs" must be **quantifiable** or
    b. proven to represent matters of: vital national interest; traditions; important social policies (heaviliy impacted by the adoption of the *acquis*);
  - ✓ **Not granted in matters of fundamental freedoms of the internal market** as deviating from such basic principles would change the character of the European Union;
  - ✓ **However: a Compensatory derogations** may be given even in such circumstances as the EU may itself ask for transitional arrangements for aspects such as the movement of workers/trade of agricultural products etc.

- ➢ **Easier** to obtain when the issues at stake are of **major** importance to the prospective member but of **minor** importance to the EU (ex. Marketing of moist tobacco in Sweden, illegal in the rest of the EU);

  - ✓ **However:** these are **rare** situations – candidates must usually **argue** very convincingly their cases in order to obtain any derogation**;**

  - ✓ The most **powerful** argument: the existence of a precedent: exceptions granted to any other existing member provided in the **treaties** (some restrictions on the freedom to trade, move and establish for certain specific reasons: protection of

national security/public morality- very few/narrowly defined/must be applied in a non-discriminatory manner**)** and in **secondary legislation** (much more numerous – Member States must be very familiar with EU legislation and jurisprudence);

- Every case is, however, unique - EU practice does not always offer useful precedents: negotiation very important;
- The prospective member must:
  - ✓ Be able to **explain** the manner in which adopting the *acquis* would cause irreparable damage to its welfare- reduction of national standards/economic activity etc.;
  - ✓ Prove that costs related to the immediate adoption of the full *acquis* are too high and that derogations are the only way of avoiding them;
  - ✓ Demonstrate that the derogation is not contrary to the general principles of the EU;
  - ✓ Indicate the precise way in which that derogation is beneficial (raise the standards of living/levels of prosperity/reduce social and regional disparities etc.);
  - ✓ Prove that the requested derogation does not impact on trade and competition inside the EU;
  - ✓ Quantified evidence helpful;

NB: On all requested exceptions: hard bargaining process to be expected;

Important steps for preparing the request of transitions/derogations in a negotiating position (Nikolaides, 1998)**:**

1. Understanding the *acquis*:

- Examining all relevant provisions in the treaties;
- Analyzing the relevant secondary legislation;
- Searching for relevant jurisprudence;

2. Understanding one's own situation:

- Reasons for which compliance with the *acquis* is likely to cause problems;
- Nature and magnitude of the problems;
- Analyzing potential solutions other than derogations.

3. The existence of certain exceptions/safeguards in treaties or in the secondary legislation:

- Method in which they have been used/invoked in the past by older members.

4. The granting of various exceptions/safeguards in past accession negotiations:

- Finding similar problems encountered by older members;

- Analyzing the exceptions granted to them;
- Analyzing the possibility of using similar arguments;
- Assessing one's own negotiating power accordingly.

5. Formulating one's position and request:

- Permanent or temporary derogation requirement– estimating the time length;
- Required derogation - general or specific;
- Assessing the possibility of replacing the derogation with a safeguard;
- Assessing the potential damage of adopting the full *acquis*;
- Analyzing if one's identified needs coincide with the objectives of the EU;
- Setting forth potential mechanisms for eventual compliance with the *acquis.*

6. Setting up a back-up position:

- Establishing an acceptable minimum;
- Assessing if a shorter derogation (with extension potential) is acceptable.

7. Understanding the position of the EU:

- Analyzing the offer/target proposed by the EU;
- Assessing potential disagreements among Member States;
- Anticipating if the EU itself is likely to ask for a derogation.

8. Monitor the other applicant countries:

- Cases (and reasons) in which other Member States obtained a transitional period/derogation;
- Possibility of requesting the same;
- Desirability of such a transitional period/derogation.

From rigidity to creativity in accession negotiations:

Difficulties in accession negotiations are not only resolved by means of the transition periods and derogations or safeguards. It is true that there are transitional periods which are to the candidate' advantage, but there are also transitional periods, which disadvantage the candidate (Schneider,2009). The creativity and imaginative approaches of negotiators are very important tools „to discover" new solutions. The experience of previous accession negotiations presents several types of „imaginative solutions"(Nicolaides et al., 1999):

- Adaptation of the *acquis*,
- Extension of the *acquis*,

- Interpretation of the *acquis*,
- Geographic limitation of the *acquis*,
- Pragmatic - flexible transitional arrangements.

2.7. Effective Implementation of the Negotiated Commitments and EU Rules

- It refers to the development of an administrative system;
- There is a contrast between frequent reform *announcement* and *statement of intents* by the government of a candidate country and the perceived *lack of progress* reflected in the Commission Opinions and Progress Reports (for example, the cases of candidates countries from Central and Eastern Europe);
- There are <u>three key elements of administrative reform</u> that need to be developed:
  - ✓ What is the degree of the perception of lack of progress;
  - ✓ How the problems experienced by the candidate states could be explained;
  - ✓ What alternative strategies might be available to speed up the administrative development process.
- There are three main areas of administrative development to be reviewed:
  - ✓ The creation of a new civil service system (the development and implementation of a civil service legislation);
  - ✓ The development of training capacities;
  - ✓ The reform of administrative structures and processes, including the creation of dedicated structures for the management of EU affairs;

    a. these three areas in the development of professional and reliable administrations <u>are essential requirements for the new Member States to function effectively in the EU;</u>

b. Civil Service legislation and policy are crucial elements in the stabilization, de-politicization and professionalization of the civil service;

c. training is an important potential catalyst for change;

d. the rationalization of administrative structures and procedures is instrumental in creating a more effective and accountable administration.

Structural reform and re-designing the policy process:

Even a high quality civil service can only function adequately if it is embedded in a well-designed administrative structures and processes, including functioning horizontal and vertical co-ordination systems and a clear accountability system, to provide civil servants with the necessary freedom of action.

There are three important elements:

a. *Improving policy process*:

- The re-definition of the role and position of ministries, their subordinations and the core executive unit in the administration;
- The reform of policy-making and implementation structures and systems;
- The difficulties from former candidates countries are: top heavy co-ordination, leaving little or no space for conflict resolution before issues reach the government, duplication of functions and lack of clearly defined accountability structures;
- Other point of importance is the development of impact assessment capacities at core executive units of governments.

b. Accountability systems:

- In its assessment of administrative capacities in the candidate countries, the EU has placed much emphasis on the development of capacities for internal and external financial control, as one element of the creation of new accountability system;

- Accountability systems are a crucial element of capacity development in relation to EU membership, in particular since the overwhelming majority of EU policy implementation is controlled nationally;

- The development of internal financial control and external audit capacities has been strongly advocated and supported by the EU;

- The question that may arise is whether there is a move towards the creation of modern, well-balanced accountability systems, including administrative, political, judicial and quasi-market accountability mechanisms.

c. *European Integration(EI) management systems:*

- One area of structural development in which considerable progress has been made in candidate countries is the creation of dedicated institutions and structures for the management of the European Integration process;

- Even though special decision-making structures at ministerial and senior official level have been put in place in most candidate states, these rarely function as real "filters" in the policy process;

- Most of the policy-making systems in the candidates countries lack a true arbitration institution;

- The strong position of line ministries and the high degree of collegiality in decision-making make it extremely difficult for arbitration systems to develop, leading to an overloaded of government agendas, much like in the "ordinary" policy arena.

Level 1: Top level decision	**Created or planned**	**Not planned or created**
Special Council of Ministers Meetings **Council of Ministers plus Advisory Council**	Bulgaria Slovakia	

Council of Ministers, but filtered by Ministerial committees: Permanent and non-permanent Members Council of Ministers, prepared by ministerial committees with variable membership	Czech Republic, Estonia, Latvia, Lithuania, Poland, Hungary, Slovenia Romania	
Level 2 and level 3: Preparatory work		
Permanent Committee of Deputy ministers or committee of senior civil servants Committee of deputy ministers and Committee of senior civil servants; Coordinating secretariat European secretariat	Czech Republic, Lithuania, Hungary, Estonia, Poland, Latvia, Slovenia, Bulgaria all countries (de facto)	Romania (ad-hoc meetings), Slovakia (ad-hoc meetings)

- The location of European secretariats has been a problematic issue in many candidate states, creating "turf wars" over control of the EI secretariat between the Ministry of Foreign Affairs and institutions concerned with management of "internal aspects" of EU affairs;

- Traditionally, EU secretariats in most Member States are located within the Ministry of Foreign Affairs;

- The development of capacities within line ministries to manage EU affairs has been an uneven process in candidates states;

- Generally, ministers have created special units for EU affairs, but there is significant variation as to the tasks and formal position of such units;

- In many cases and instances EI units often are not sufficiently integrated in policy development in the line ministries, and have only limited abilities to ensure that EU-related obligations are met;

- In general, European Integration issues were not well integrated in daily routine of line ministries at the beginning of accession process.

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