

The Boundaries of the Negotiating Power of the Candidates for Membership of the European Union: Some Theoretical Considerations and Practical Implications*

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Introduction

The negotiations for accession to the European Union should be more appropriately called “entrance examinations”, rather than negotiations. The candidate countries will have to demonstrate their ability to assume the obligations of membership known as the “*acquis communautaire*”. However, the candidates do have room for manoeuvre in defining the terms of their accession to the Union. The question is how much “bargaining” power do they have and how can they utilise it in practice?

This short note is a companion piece to an earlier paper entitled “Negotiating Effectively for Accession to the European Union: Realistic Expectations, Feasible Targets, Credible Arguments”.¹ The purpose of this follow-up paper is to delineate the boundaries of the negotiating discretion of the candidate countries. To that end, it attempts to derive relevant lessons by analysing the concept of negotiations.

Of course, simply by examining theoretical concepts, we will not be able to arrive at a complete answer to the question posed above. The complete answer depends on the technicalities of each particular issue under discussion and is further determined by the context in which the negotiations for accession to the European Union take place and the overall preparations of applicant countries to adopt the *acquis*. Although, the negotiations between each of the candidates and the EU will be conducted bilaterally, they will also be held within the context of the enlargement process and will unavoidably be influenced, even decisively so, by the outcome of the negotiations with the other candidates and by the more general issues that will shape the broader process of expanding the membership of the EU. These kinds of considerations will be the subject of a future paper.

In general terms, the objective of any kind of negotiation is to arrive at an outcome which is acceptable to both or all sides.² Since there may be many such mutually acceptable outcomes, the sides involved in negotiations try to devise strategies that lead to the best possible outcome as seen from their perspective. When this problem is expressed mathematically, the task of a

negotiator is to find out whether the chosen options of each side lead to an equilibrium solution. That is, to obtain a solution, the optimum option for each side must ultimately coincide. Otherwise, one or both sides must make a different choice, which necessarily requires a compromise and therefore a departure from the optimum. The extent of this “deviation” or “departure” from the initial optimum is determined by the negotiating effort, strategy, power, etc., of each side.

It follows that the “art” of negotiation is to find a way so that the best outcome, as perceived by one’s own side, is close to what is believed to be the optimum for the other side. This “convergence” of choices can be achieved either by moving one’s own position or by “pushing” the other side to move its position. The former is often called concessions while the latter is called exercise of power.

Nonetheless, much of the skill in negotiations involves neither concessions, nor the exercise of power. It involves, on the one hand, an appraisal of what is in principle acceptable to the other side (and to one’s own side) and, on the other, feeding information to the other side to shape its expectations, precisely because the strategy of the other side will be formulated on the basis of assumptions and assessment of what is acceptable to one’s own side. To put it in different words, negotiations begin even before the bargaining starts, because the pre-bargaining “posturing” and agenda-setting are also significant to the final outcome.

Our analysis suggests that, on the basis of the reasonable hypothesis that the applicant countries have little negotiating power, the best strategy for them is to aim for outcomes that would be close to those preferred by the EU. As already said, this is because in this context, negotiating or bargaining power means the ability to force the other side to deviate from its optimum. The outcomes that would be preferred by the EU are largely those that can be derived from the application of existing rules.³

The concept of negotiations⁴

There are two ways of defining negotiations. The first is to look at the outcome of negotiations. Accordingly, negotiations are an attempt to arrive at a mutually acceptable result. As already mentioned in the Introduction, each side tries to achieve the best possible result for itself, so a satisfactory conclusion of the negotiations is feasible only when the range of acceptable

* *Un bref résumé de cet article en français figure à la fin.*

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outcomes for one side coincide fully or partially with the range of acceptable outcomes for the other side. Hence, when one enters a negotiating situation, one must necessarily have formed a view as to the range of acceptable outcomes to the other side. Otherwise, if there were no concurrence of acceptable outcomes, there would be no need to negotiate at all.

The second way of defining negotiations is to look at the basic characteristics of negotiations. All negotiations, from buying a second-hand car to determining the terms of accession into the EU, share the same three fundamental characteristics:

- *Process of discovery:* The two sides inform each other about what they need or what they offer. So they learn about each other and form opinions about the strengths and weaknesses of each other. Information, therefore, is a vital instrument of negotiations which can be used to shape perceptions and expectations.
- *Strategic interaction:* In a negotiating situation the two sides also seek to influence each other and shape each other's behaviour for the purpose of achieving the best possible outcome for themselves. The best possible outcome is the one which maximises the gains and/or minimises the losses of each side. So in negotiations each side sets priorities and targets which it attempts to reach and tries to predict the reaction of the other side to its own actions.
- *Process of exchange:* Each side tries to shape the other's behaviour by offering something or by conceding something. Each side's strength is determined by what it has to offer or deny to the other side and each side's weakness is determined by what it requests. A mistake which is often committed in negotiations is to concede something simply because it is of little value to one's own side. The same thing may be of much greater value to the other side and, therefore, can give significant leverage to the side that can offer it.

The interaction of the two sides and the attempts to shape each other's behaviour take place on two levels:

- *Technical level:* Issues or disputes are resolved with reference to a given set of rules, criteria or benchmarks, without attempting to establish any cross-linkages with other issues. This is because cross-linkages make the resolution of one issue conditional or dependent on resolution of another. By contrast, resolution according to the given rules in essence isolates each issue from the rest.
- *Political level:* Issues or disputes within a certain (policy) area are resolved without reference to the rules applying to that area. Therefore, cross-linkages are necessarily established with other issues and the final outcome is a "package" involving technically unrelated issues. So in this context, "political argumentation" does not mean politics in the ordinary sense of the word. It only means the definition of a "package deal" that includes

technically distinct issues and is acceptable to both sides.

As mentioned above, a fundamental characteristic of negotiations is the strategic interaction through which each side attempts to influence the behaviour of the other. Behaviour, and ultimately the final outcome of negotiations, can be influenced or shaped in three ways:

- *Legal/technical arguments:* The use of legal and/or technical arguments presupposes the existence of a set of benchmark rules or criteria which are acceptable to both sides. Much of the legal or technical argumentation concerns the definition of the appropriate benchmark criteria⁵ and the interpretation of the meaning of such criteria.⁶ The skill in using argumentation as a negotiating tool is to identify the relevant analogy between the mutually accepted principles and the issue at hand.
- *Promotion of mutual interest:* Here each side tries to persuade the other side that what it seeks or proposes is actually also in the interest of the other side. This is probably the most effective way of influencing the behaviour of the other side because if that side finds that legal/technical arguments go against its interests, it will inevitably seek to "politicise" the subject under discussion by creating cross-linkages and by resorting to power (if it has any).
- *Use of power:* If legal/technical arguments are ignored or are unsuccessful and if appeals to mutual interest go unheeded, the only other means left for influencing the behaviour of the other side is to resort to power. As the famous 19th century German strategist von Clausewitz said that war is a continuation of politics through other means, similarly the use of power is the continuation of negotiations through other means. However, power in this context does not mean the use of physical force. It only means the ability to impose conditions on the other side or to deny something that the other side wants irrespective of legal or technical considerations. Hence, power appears at the political level of negotiations where the outcomes are in the form of a package or even involve deals with issues that have nothing to do with the subjects under negotiation.

From the preceding brief review of the main components of negotiations it is obvious that effective negotiation, in general, and proof of a country's ability to assume the obligations of membership of the EU, in particular, have an important characteristic in common. They both depend decisively on the use of appropriate information and statistics. No one can negotiate successfully unless he/she uses information effectively both in transmitting it and receiving and then analysing it. Information is vital, on the one hand, to establish clearly one's own position and views and, on the other, to understand the other side's position, views and acceptable alternatives.

Although there are basically two possible methods of achieving one's objectives in a negotiating situation – persuasion and argumentation according to the principles that apply to the subject under negotiation and use of power to force the other side to deviate from its optimum by cross-linking issues – it is always more difficult to successfully manage cross-linkages between the various chapters of the accession negotiations. For one thing, there are no simple rules how to establish such linkages. This is a matter of judgement for the negotiators. For another, the exercise of power invites counter measures. This means that any attempt at cross-linkages will most probably be met with a counter-attempt at cross-linkages too. The process then becomes unpredictable and, therefore, very difficult to manage. It is much easier (in principle) to demonstrate compliance with EC rules to the Union and, where necessary, use the EC's rules to arrive at an outcome that is acceptable to both sides. The latter relies on creative interpretation of the rules.

Where cross-linkages have to be made, the applicants are likely to be more successful if they emphasise mutual interest, rather than attempt to resort to power (of which they have little and which initiates a process of counter-measures that is difficult to control). That is, where an applicant cannot make any more concessions, it would probably be more effective pointing out to the EU that it is also in its own interest to minimise the cost to be borne by the applicant and prospective new member of the Union.

The emphasis on rules as a negotiating approach also addresses one of the main tasks facing any negotiator; that of adequate preparation and presentation of credible positions. By giving prominence to the information which is needed and the reasoning that should be used, the negotiator in fact has to deal both with the issue of strategy and the issue of preparation of negotiating positions. These two issues are inextricably linked.

Understanding the dynamics of negotiations

The issues examined in the previous section can also be analysed in a more rigorous manner. The use of a simple model will enable us to highlight a number of other important aspects of negotiating interaction and identify more clearly the boundaries of the negotiating power of the applicant countries.

In particular, this section seeks to formalise the concepts of relative gains and losses and power. Without claiming that other issues are unimportant, it appears to us that the chief negotiators of the applicant countries have two primary concerns: (a) how to present a credible position to the EU (to demonstrate sufficient compliance with the *acquis communautaire*), and (b) how to gauge any negotiating power they may have and how to wield it.

We addressed the first concern in the paper cited in footnote 1. In this paper we expand on our previous work by examining the link between the drafting of a credible paper and the overall national strategy on EU membership. As we explain in the last two sections of

this paper, the applicant countries and the chief negotiators should look beyond the accession negotiations when they prepare their position papers. They will better serve their national interests by asking how the targets they seek to achieve through the negotiations will help their countries benefit more from EU membership in the longer term. But, first, this section takes a closer look at negotiating power. To facilitate our task we will formalise the concept of power.

A simple model

Let's begin by defining a party's objective in some bilateral negotiations. Assume that the purpose of the negotiations is to determine a certain common rule that can be effectively implemented only if both parties agree (e.g. exchange rate management, cross-border cooperation in fighting international fraud, etc). Further assume that each side derives benefits and experiences costs from defining and implementing such a common rule.

The negotiating objective of each side is to maximise net benefits:

$$B = G(x) - C(x)$$

where B denotes net benefits, G is the function of gross gains from regulation x, while C is the function of gross costs of compliance with regulation x.

Each party derives the optimum level of regulation x (that maximises B) by differentiating the equation with respect to x and by setting it equal to zero (i.e. no extra benefits can be obtained) so that

$$B_x = G_x - C_x = 0 \text{ [the subscripts denote the first-order derivatives]}$$

This means that x is optimised (from their perspective) when marginal gains equal marginal compliance costs, or $G_x = C_x$

The purpose of the negotiations is to define a common x when x_i (the optimum for party i) is not equal to x_j (the optimum for party j). As a result, both parties will have to move away from their optimum solution. Our purpose here is to understand how far each party will be prepared to move when net benefits are very much unequal, as in the case of the EU and any of the applicant countries. That is, B_i^* differs from B_j^* , where "*" denotes the level of B when x is optimised.

To gauge the willingness to move, we postulate that their negotiating effort is a function of the potential reduction in net benefits they suffer by moving away from their optimum. In addition, we postulate that the negotiating effort is directly proportional to the reduction in net benefits. We can then define function, N, such that

$$N_i = a_i(B_i^* - B_{ic})$$

where B_{ic} is the amount of B of party i determined by the level of x which is commonly decided (i.e. the outcome of the negotiations) and "a_i" is a parameter

Since B^* is fixed and since it must be the case that

$B^* > B_c$, N must be a function that increases at an increasing rate because the difference between B^* and B_c also increases at an increasing rate. This is caused by the bell-shaped curvature of function B . The exact slope of N is also determined by parameter “ a ”. Parameter “ a ” which denotes how the size of potential losses translates into negotiating effort, captures such aspects of negotiations as the costs of the negotiations and other procedural issues (in a way it corresponds to the institutional constraints within which negotiations take place). For our purposes we do not need to elaborate it further. We also assume for the sake of simplicity that negotiations themselves are costless.

If x_i^* is smaller than x_j^* , then the objective of negotiations is to find an x_c such that

$$x_i^* < x_c < x_j^*$$

N_i has an upward slope rising from left to right and starting at zero at point x_i^* . It reaches its maximum value at the point where x_i , say x_i' , makes $B_i = 0$. That is, x_i' imposes a constraint. By contrast, N_j has a downward slope declining from left to right until it reaches zero at the point x_j^* . It starts at its maximum value where x , say x_j' , makes $B_j = 0$.

For an equilibrium solution to exist x_c must have a value so that $x_j' < x_c < x_i'$. This means that N_i and N_j must intersect each other, otherwise they have no common value and, therefore, no equilibrium solution.

That equilibrium solution is reached when neither side has any incentive to negotiate further. That solution has a real life counterpart. Each side will initially be willing to make small deviations from their optimum, but as the deviations increase, so will their negotiating effort because greater deviations will signify greater potential losses. The equilibrium is at that level of x , x_c , where their negotiating effort is equalised. That is, N_i at $x_c = N_j$ at x_c , or $a_i(B_i^* - B_{ic}) = a_j(B_j^* - B_{jc})$

If the ratio of parameters a_i and a_j , a_i/a_j , represents the “technology” of negotiations (i.e. is given by existing institutions, skills, etc.), and if the tenacity with which each party negotiates is directly proportional to the size of the loss of net benefits, then the outcome of the negotiations will be determined by the ratio of relative losses of each party

$$(B_j^* - B_{jc}) / (B_i^* - B_{ic}) = a_i / a_j$$

This simple result is illuminating because it shows that the negotiated outcome does not depend on the absolute level of gains and losses but on the relative cost of deviating from the optimum solution of each party. So in determining their negotiating strategy each party has to make a guess, first, as to what is the optimum outcome of the other side and, second, how much it will lose out by deviating from that outcome.

There are two corollaries to the result derived above. First, negotiators should not be impressed by arguments about the size of absolute costs. In this sense, it does not matter whether the other side is either much bigger or much smaller, or whether the absolute gains or costs are much bigger or smaller. What matters is the cost of departing from the theoretical optimum, which

may be much less than not having any agreement at all.

Second, we see once more that providing and obtaining information are important because this is how each side evaluates the reaction and willingness of the other to move away from its preferred position. We have abstracted here from issues such as bluffing and posturing. No party enters negotiations by revealing its true preferences. Indeed, bluffing and misleading information may change the final outcome drastically. Note, however, that no one would suggest applicant countries should bluff or cheat. They are under such intense scrutiny that it is in their interest to demonstrate to the EU their true preferences and capabilities.

We can now consider the concept of power, which, in the context of this paper, manifests itself in cross-linkages between different issues. To be able to do that, we have to define power in such a way as to allow us to explore the nature and implications of cross-linkages. First, however, we need to motivate the definition we use below.

As explained in the previous section, power is a relative concept. It denotes, on the one hand, the degree of a party’s control over resources or other assets that another party wants. On the other hand, it also denotes that first party’s need for resources or other assets controlled by the other party. Hence, for the purposes of this paper, power is a relative relationship denoted by: “the ability to withhold something the other side wants while having little need for something that the other side is in a position to withhold”

This definition suggests that the power of party i is greater, the greater the need of or benefit to party j from asset y controlled by party i , and the smaller its own need or benefit from asset x controlled by party j . Power, P_i of party i is a function such that

$$P_i = f[B_j(x, y), B_i(x, y)]$$

For the sake of simplicity, we assume that there is a one-to-one relationship between B and our cardinal measure of P and that the two parties experience net benefits which can be expressed in the same units. Under these conditions, the function above can be written as

$$P_i = B_j(x, y) - B_i(x, y)$$

The net benefits of parties i and j from the negotiations are, respectively

$$B_i = G_i(x) - C_i(y) \text{ and } B_j = G_j(y) - C_j(x)$$

The cost borne by each party is the value of the units of either x or y that have to be given up in “exchange” of the gains of either y or x . This kind of “exchange” establishes direct cross-linkages between x and y .

The negotiating objective of party i is to maximise $B_i = G_i(x) - C_i(y)$. The corresponding objective holds for party j . This means that power can also be expressed as

$$P_i = [G_j(y) - C_j(x)] - [G_i(x) - C_i(y)] = [G_j(y) + C_i(y)] - [G_i(x) + C_j(x)]$$

We can now see the relationship between negotiating objectives and negotiating power. There are several interesting cases (for simplicity the results below are presented in terms of the effect on party i):

- (i) The higher the gains of party j, G_j , the higher the power of party i, P_i (*ceteris paribus*). In a way this is not a very interesting result because it stems directly from the definition of power.
- (ii) Correspondingly, the higher the gains of party i, G_i , the lower its own power, P_i . Again this is a direct result of our definition.
- (iii) $C_i = 0$ (party i faces no cost). This could happen when party i experiences no costs in granting y to party j or in making concessions on issue y. In this case its power would be lower than otherwise, *ceteris paribus*. Now, this is a rather unexpected result. However, it does make sense because it indicates that party i has more power (to refuse something and/or to demand more of something else) when concessions are more painful. Similarly, the power of party i is lower, the more painful the concessions of demanded from party j (i.e. C_j).
- (iv) $G_i = 0$ (party i experiences no gain). Its power is higher than otherwise because it is as if party i is very difficult to satisfy. As many salespersons have discovered, it is not easy to sell a product to difficult customers with weird preferences or with little need.⁷

The analysis can also be generalised to many subjects. The objective for each party would still be to maximise

$$B_i = G_i(x_a, \dots, x_n) - C_i(y_a, \dots, y_n)$$

where “ x_a, \dots, x_n ” and “ y_a, \dots, y_n ” are the various negotiated subjects

Although we have not developed the tools in this paper that would allow us to analyse such multi-subject cases, there is an observation worth making. Assuming that all subjects are of equal value, the greater (smaller) the number of subjects for which $G_j > 0$ and the smaller (greater) the number for which $G_i > 0$, the stronger (weaker) the negotiating power of party i.

Preliminary conclusions

Contrary to common perception, if a party is interested only in a few subjects, it does not necessarily follow that it would be easier for it to be satisfied and that negotiations would consequently be less difficult. It may also mean that it is determined to negotiate much harder because it has only few demands and, therefore, more power and stronger negotiating position. The corollary is that when a party is interested in many subjects, the negotiations may become as a result more complex, but it would be an easier task, *ceteris paribus*, to satisfy that party because it would also have relatively less power (because it would have many more demands).

The main result of the analysis is perhaps paradoxical at first glance. When questions of power and negotiating strategy are considered, the most commonly held belief

one encounters is that those who have power, gain the most. Yet we have seen that there is an inverse relationship between negotiating gains and negotiating power because power is proportional to what the other side needs and inversely proportional to what is requested from the other side. In a sense, power is like a currency that has to be expended to obtain benefits from negotiations. The purpose of negotiations is not to maximise power (i.e. deny everything to the other side and request nothing from the other side). The purpose is to maximise potential gains by making as many requests as can be tolerated or satisfied by the other side. Not surprising, the toughest negotiations take place in situations where there is asymmetry between the parties, when one side has little to gain or to lose or when it is interested in just a few issues. In those situations, mutually acceptable cross-linkages and trade-offs are difficult to achieve.

It is for the reasons explained above that the negotiator who wants to maximise his/her side’s benefits has to take risks and make demands and offers that in effect make his/her own side more vulnerable. This is why negotiations are to a large extent unpredictable and their successful conclusion requires a substantial dose of judgement, discretion and willingness to take risks.⁸

The insights we derive from theoretical considerations are very pertinent to the negotiations for accession to the European Union. They show more rigorously what is by now fairly recognised in Brussels and national capitals; that the applicant countries will be in a weak negotiating position if they attempt to make too many demands on the EU and that the negotiations are likely to be tougher for them than in the past because of the sheer asymmetry between the EU and any of the applicants (of course the negotiations are tougher anyway because the *acquis* is much larger).

Above all they show the dangers of attempting to resort to power through cross-linkages. The EU is likely to be a demander on fewer issues than any of the applicants (in the sense of asking for deviations from the *acquis*, which is the benchmark for the negotiations). Furthermore, any attempt on behalf of the applicants to establish cross-linkages need not lead to a speedier resolution of disagreements because it is also more likely that any deal would founder on the objections of at least one of the 15 existing member states. Resolution would require the consent of all 15 Member States, which means that as the membership of the EU increases internal common positions will be more difficult to achieve and, as a result, the EU will become a tougher side.

Although the applicants are not powerful, they are not powerless. They may not have the capability to force the EU to accept bargains it considers unfavourable to itself, but they can certainly act to further their objective of gaining admission to the Union. Even though cross-linkages would be risky, the applicants should not ignore the possibility of moving the EU from its preferred position with regard to those issues for which the EU’s relative losses are smaller than those of the applicants.

But, above all, it is certainly within the capability of the applicants to shape the EU's attitude through the provision of the "correct" information. The sections that follow explain how the applicants can further their objectives by providing information that will boost their credibility.

The concept of membership in relation to the accession negotiations

A question that arises is whether the applicant countries, which have little negotiating power, should concentrate their efforts on persuading the EU that they do indeed qualify for membership and that they can implement Community rules faithfully and effectively? Not necessarily. What should be clear in any negotiator's mind must be the motives of the country that seeks entry into the EU. This is an important but potentially overlooked issue. The motives are a mix of political and economic objectives (e.g. political stability, access to EU markets and funds, etc). Yet these motives are not explicitly linked to the targets of the accession negotiations.

The prospective entry into the EU is not only a challenge or threat. It is also an opportunity to derive gains which are not directly related to the subjects of the accession negotiations. A case in point is the potential boosting of the competitiveness of the economy of a new member as a result of entry of foreign investors who perceive it as a less risky place for business. In this sense and in relation to the accession negotiations, the question that must always be asked is the following: "Will complete compliance with the EU rules, on the one hand, or any requested derogations, on the other, help us in the longer term to safeguard and even strengthen, for example, our economy?" (The same question can be posed about any other aspect of membership.) In other words, the requested derogations need not be those that simply protect the status quo before entry into the EU. They should be those that will be indispensable to an internationally strong economy in the next decade or two. Perhaps paradoxically, to identify the "right" derogations that should be asked for, negotiators should look at issues beyond the negotiations themselves.

We define in Table 1 three approaches to EU membership and the accession negotiations. In the left-hand column we identify three steps in the process of preparation for entry into the EU. The first step is to perform a "gap analysis" of the differences, similarities and incompatibilities between the *acquis communautaire* (i.e. the obligations of membership) and existing national rules and policies. The next step is the definition of negotiating objectives and the drafting of position papers. The third step involves a much broader assessment of the costs of entry into the EU and the opportunities that are opened up by that entry. The adoption of the *acquis* that is initiated and the definition of negotiating targets take place within a wider framework of analysis that incorporates views about the role that the country will play as a member of the EU.

There are also at least three basic approaches in relating the assessment performed at each step with the accession negotiations. These are also shown in the table. What we call the "passive" approach confines itself to seeking derogations that simply minimise the costs of adjustment and of adopting the *acquis*. The "reactive" approach aims not only to minimise costs but also to safeguard certain national policies which are considered to be important for the national economy. The "proactive" approach looks beyond the negotiations and asks how membership of the EU can be used to strengthen the national economy. Consequently, the negotiating targets are not necessarily those that maximise short-term or monetary gains, but those that will enable the country to achieve its long-term objectives.

The right answer to the question above about the derogations to be asked and the specific features of the "right" model will undoubtedly differ significantly from one applicant to another. Yet, the main message is the same for all. Successful accession negotiations should not be simply defined in terms of the number of the concessions that can be extracted from the EU. The successful outcome of the negotiations are those that result in terms of accession that enable an applicant country to become a strong and prosperous member of the Union. (See Table 1.)

Components of a credible negotiating position

In this last section we examine very briefly what needs to be considered in preparing a credible negotiating position in the context of each applicant's own membership model. There are at least seven components that make up a credible negotiating position. These components are:

- (1) The *acquis* that has to be adopted by the applicant.
- (2) The objectives, views and attitudes of the EU (and its member states) on the future development of the policy/rules under discussion.
- (3) The corresponding situation for the applicant.
- (4) The contribution of the sector/industry under discussion to the economy of the applicant and the contribution it can make (or not) to the EU and to the "common interest".
- (5) The capacity of the applicant's public administration to enforce EC and rules.
- (6) The treatment accorded to other candidate countries.
- (7) The precedents created by past accession negotiations.

We have dealt with components 6 and 7 in another paper.⁹ The remaining components, with the exception of item 4, are outside the scope of this short note. Component 4 is more relevant to this note because it relates to one of the basic instruments in shaping the outcomes of negotiations; i.e. appeals to mutual interest or to the common Community interest. Such appeals should constitute an essential characteristic of the applicants' approach to the accession negotiations.

Everything which is presented to the EU, either opening positions or requests for derogations, must be

hinged on some EU objective or EU rule. For example, it has been found to be in the “common interest” to promote the growth of under-developed regions, provide financial services to Eastern Europe, promote cross-border cooperation on R&D, protect the environment and to attract back to EU flags ships and jobs for seafarers (e.g. 1997 guidelines on state aid). It is also in the “common interest” not to cause economic disruption in a prospective Member State resulting in a widening instead of narrowing of the gap between rich and poor member states (e.g. Articles B EU and 2 EC).

In this context, a candidate country could benefit more substantially in the longer-term if it obtained a protocol that simply recognised the importance of the sectors/industries under discussion to its economy and acknowledged that the application of Community principles and the formulation of Community programmes will take that into account. Such a protocol need not include any derogations. It would be very similar to protocols obtained by Ireland, Greece, Portugal and Spain. Their protocols acknowledged the need of those countries to develop economically and pledged not only Community support for that purpose but also appropriate application of Community rules. This kind of protocol could prove extremely useful five or ten years after accession. Hence, the wording of Articles B, 2 and 130(a) on economic and social cohesion should be used to preface any presentations on sensitive sectors/industries or requests for exceptions. It would not be difficult for the applicants to argue their case because their Association Agreements with the EU already provide that they are to be considered as “Article 92(3)(a) regions” which qualify for state aid for regional development.

More generally, the applicants should make clear to the other side that it is in the EU’s interest to have new members with healthy economies rather than members with structural weaknesses. Therefore, the costs of too rigid or too quick application of the *acquis* must be highlighted in trying to persuade the EU that it is not to its disadvantage to be flexible.

Conclusion

Any good negotiator sets his/her priorities before entering the negotiating process. Similarly, the prospective members of the EU would have to identify their own priorities and their “bottom line” – what they cannot concede. At the same time, however, they need to understand the EU’s bottom line. It would make no sense for them to seek anything that the EU will not grant them (unless such demands are made as a negotiating ploy, but this kind of stratagems are risky because they spoil the atmosphere of the discussions).

There is also little doubt that the prospective members will be expected to comply fully with the requirements of their Association Agreements (especially the provisions on free trade) and with the *acquis*-compatible international obligations they have already assumed in the context of GATT, IMO, etc. These Agreements and international obligations cover

a substantial part of the internal market *acquis*.

In addition, full compliance will be expected with the targets identified in the Accession Partnerships which provide for the implementation of national plans for the adoption of the *acquis*. However, it is still unclear what status these National Plans will have because they will be decided between the applicants and the Commission while the accession negotiations will formally be conducted with the member states.

It follows that the applicants will have more room for manoeuvre in those areas of the *acquis* which are not covered either by fundamental Community principles concerning the internal market or by Association Agreements or where the *acquis* itself admits to possible exceptions. It is plausible, therefore, to conclude that the applicants should not waste valuable negotiating capital seeking derogations from fundamental principles or obligations that they have long accepted under their Association Agreements. In summary, they would more effectively and productively concentrate their efforts on (a) non-core areas of the *acquis*, (b) those provisions of the *acquis* that allow for exceptions, (c) issues not covered by Association and other Agreements and (d) issues on which the EU itself will be a demander.

As in all negotiations, during the accession discussions there are bound to be attempts by all sides to link issues. The success of the applicants in obtaining exceptions or extra resources from the Union will very much depend on their ability to link concessions in one area with demands in another. Their position will become stronger, the less willing is the EU to extend all privileges and freedoms to them (e.g. free movement of persons) and the more slowly the EU wishes to integrate them in Community policies (e.g. common agricultural policy). Ironically, their non-integration in one area may become their trump card for supporting their requests for slower integration in another area.

Bearing in mind the concepts of negotiations explained earlier, we conclude that the best strategy for a candidate country is to

- prove that on the whole it complies with EC rules,
- where compliance is not possible, demonstrate that the exceptions it seeks are allowed by existing rules, and
- the exceptions are in the EU’s own interest because they minimise the cost of entry that has to be borne by the prospective member and, therefore, reduce potential demand for EU assistance.

RÉSUMÉ

Les limites du pouvoir de négociation des pays candidats à l’adhésion à l’Union européenne : considérations théoriques et implications pratiques

Cet article applique les concepts théoriques des négociations à l’élargissement de l’Union européenne. Il se propose d’examiner le pouvoir de négociation que peuvent exercer les pays qui souhaitent adhérer à l’UE.

Il conclut que les pays candidats auront une marge de manoeuvre plus grande dans les domaines de l'acquis communautaire qui ne sont pas couverts par les principes fondamentaux de la Communauté concernant le marché intérieur ou par leurs accords d'association, ou encore dans un domaine où l'acquis autorise d'éventuelles dérogations. Les pays candidats ne doivent pas gaspiller leur précieux capital de négociation à tenter d'obtenir des dérogations par rapport aux principes ou obligations fondamentaux qu'ils ont acceptés depuis longtemps en vertu de leurs accords d'association.

En revanche, ils pourraient concentrer de manière plus efficace et plus productive tous leurs efforts sur (a) les domaines non fondamentaux de l'acquis, (b) les dispositions de l'acquis qui autorisent des dérogations, (c) des questions qui ne sont pas couvertes par les accords d'association ou autres et (d) des questions pour lesquelles l'UE sera elle-même demandeuse.

Comme dans n'importe quelle autre négociation, toutes les parties tenteront au cours des discussions d'adhésion de relier plusieurs questions. Le degré de réussite des candidats à obtenir des exceptions ou des ressources supplémentaires de la part de l'Union dépendra très largement de leur capacité à lier les concessions dans un domaine à des exigences dans un autre domaine. Cela renforcera leur position, dans la mesure où l'Union européenne est moins disposée à leur accorder tous les privilèges et libertés (p. ex. libre circulation des personnes) et qu'elle souhaite les intégrer le moins rapidement possible dans les politiques communautaires (p. ex. politique agricole commune). De façon ironique, on peut dire que leur non intégration dans un domaine pourrait devenir leur atout majeur pour soutenir leurs requêtes d'une intégration plus lente dans un autre domaine.

L'analyse théorique montre que la meilleure stratégie pour un pays candidat est de :

- prouver que, dans l'ensemble, il satisfait aux règles communautaires ;
- démontrer, lorsque la conformité aux règles s'avère impossible, que les exceptions qu'il réclame sont autorisées par les règles en vigueur, et
- montrer que les dérogations sont dans l'intérêt

même de l'UE, dès lors qu'elles minimisent le coût de l'entrée que doivent supporter les futurs membres et réduisent, par conséquent, la demande potentielle d'aide communautaire.

NOTES

- ¹ Published in *Eipascope*, no. 1998/1 (Maastricht: European Institute of Public Administration).
- ² Negotiations can be bilateral or multilateral. We refer here mostly to bilateral negotiations. It should be noted, however, that accession negotiations are in essence multilateral, given that all 15 Member States of the EU have to reach consensus and that the European Parliament has to grant its consent.
- ³ Even this general statement, however, has to be qualified. Where EC policies involve transfer of resources (e.g. structural operations), there is currently under way a reform process, which is essentially aimed at avoiding the application of the present rules to the future member states.
- ⁴ This and the following section draw on the following seminal works on strategy, negotiations and game theory: T. Schelling, *The Strategy of Conflict*, (Cambridge, MA: Harvard University Press, 1960); H. Raiffa, *The Art and Science of Negotiation*, (Cambridge, MA: Harvard University Press, 1982); A. Dixit and B. Nalebuff, *Thinking Strategically*, (New York: W.W. Norton, 1991).
- ⁵ For example, the restrictions on the nationality of the master of a vessel are contrary to Articles 6 and 48 of the EC Treaty. However, member states have in effect argued that the appropriate benchmark criterion is Article 55, which exempts activities connected with the "exercise of official authority".
- ⁶ For example, a matter of interpretation is whether the master of a vessel exercises official authority so as to benefit from the exemption of Article 55.
- ⁷ As someone said, the best time to buy something is when you least need it. This may be otherwise inane advice, but it does suggest that one can bargain hard when one has little need.
- ⁸ The personal characteristics that are attributed to successful negotiators, i.e. skill, willingness to take risk and even flair, are responsible for the frequently reported problems emerging between negotiators and their own side! Risk-taking and flair do not normally characterise the decisions made by teams or committees. This is why it is said that the toughest negotiations are those which are conducted at home before the sides meet.
- ⁹ See P. Nicolaidis & S. Raja Boean, *A Guide to the Enlargement of the European Union*, (Maastricht: EIPA, 1997). □

Table 1:
Approaches to EU Membership and the Accession Negotiations

	Passive	Reactive	Proactive
Gap Analysis: EU – national rules	Yes	Yes	Yes
Accession Negotiations	Arguments for transitional derogations (cost of adjustment)	Arguments for derogations (costs plus safeguard own policies)	Arguments for derogations (costs plus safeguard own policies; in common interest)
Adoption of <i>acquis</i> within "own model" of EU membership	No	No	Internal reform to adjust and strengthen national policies