

THE EU ACCESSION NEGOTIATIONS: LESSONS FROM EASTERN ENLARGEMENT

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Submitted to
Central European University
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In partial fulfillment of the requirements for the degree of Master of International
Relations and European Studies

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Word Count: 16045

Budapest, Hungary
2008

Despite considerable academic debate on European integration, the process of the EU internal negotiations on the enlargement as well as the accession negotiations and its analysis, quite often have been largely neglected. In my research I would explain and interpret the outcome of the EU internal and external bargains, applying the constructivists' assumption that actors do not enter into the bargaining process with pre-determined, fixed interests and preferences, but they develop them during the constant normative dialogue – negotiations. Consequently, the paper is dedicated to the study of the EU pre-accession strategy on Eastern enlargement. This shall be accomplished through the discursive analysis of the European documents. It also scrutinizes the accession negotiations during the Eastern enlargement through the descriptive analysis of the interviews conducted during the research.

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Introduction

Every decade the European Union (EU) undergoes the process of enlargement, bringing new members to the community, with their own unique experiences, identities and perceptions. The new members automatically influence the dialogue within the EU, its policies and processes of decision-making which accumulates in more sophisticated debates that are shaped by different, quite often diverse, interests and preferences of its participants.

Furthermore, with every enlargement, the negotiations regarding that further enlargement among the members of the Community appear to become more complicated as well. The distinct feature of the enlargement negotiations, although, is in the fact that after reaching the consensus internally- among their members- the EU has also to negotiate with its candidates on terms and conditions of their entrance to the EU. Notwithstanding the fact that these negotiations within the EU are usually compared with “marriage preparations” or a bargaining process happening “between us and future us”, the process does not seem as simple as that.

Indeed, for candidates, the accession negotiations are also a serious test. The growing amount of EU legislation, the ability to prove the readiness to fulfill the EU-specific demands and criteria - all that are topics for the accession negotiations, which at some point represent a challenge for the applicant state - require great commitment of its human and diplomatic resources.

The Eastern enlargement of the EU is the most recent and clearest example of the process described above. After the end of Cold World War, the Central and Eastern European Countries (CEEC) were trying to establish enhanced political and economic cooperation with the EU, declaring the membership in the organization as their main goal for the nearest future. The EU responded quickly. Consequently, the Trade agreements and the European Agreements between the EU and CEEC were concluded; in 1993, during the summit of European Council in Copenhagen the possible membership were proposed, then, the pre-accession strategy of the EU towards CEEC was developed. The enlargement, however, happened after almost fifteen years

since the established cooperation began. During these fifteen years, both sides were engaged in constant political dialogue where the EU had to first negotiate internally on the issue, seeking the path for further enlargement through the intense debates, political compromises, and economic restraints and concessions; before negotiating with CEEC. Even with the painfulness of the process, this enlargement happened in the year 2004, symbolizing the CEEC's "return to Europe".

With regards to the above, one challenge for us seems to study the process when the EU as a "negotiating order" "negotiates on its extension"¹. How did the EU negotiate on its pre-accession strategy internally, among its members? How did it negotiate during the accession negotiations with outsiders? What can be derived from this experience about the EU as a "negotiating order"?

Despite considerable academic debate on European integration, the internal negotiations on the enlargement as a process itself, and its analysis, quite often have been largely neglected. In my research I would explain and interpret the outcome of the EU internal and external bargains, applying the constructivists' assumption that actors do not enter into the bargaining process with pre-determined, fixed interests and preferences, but they develop them during the constant normative dialogue – negotiations.

The first part of the thesis, therefore, will set up a theoretical framework for the research guided by the above assumption. The second part will be dedicated to the study of the EU pre-accession strategy on Eastern enlargement. How can we explain and interpret the outcome of the EU internal bargaining, implying that the EU is in fact a "negotiation order"? This shall be accomplished through the discursive analysis of the European documents- the European Council Presidency Conclusions between 1994 and 1999; Regular Reports and other documents of the European Commission. The third part will scrutinize the accession negotiations during the Eastern enlargement. How were the negotiations conducted? How can we explain the slow path

¹ Friis, Lykke, *The End of the Beginning of Eastern Enlargement - Luxembourg Summit and Agenda-Settin'*, European Integration Online Papers, 2(7), 1998; available at <http://eiop.or.at/eiop/texte/1998-007a.htm>- last access 25.04.2008

of accession negotiations at the beginning and speed-up at the end? Why did the EU leave the most sensitive chapters to the end of negotiations? What kind of tactics and strategies did the EU and the applicants use in order to reach the agreement? To answer the questions posed above, a method different from the previous chapter shall be implemented. This second method of the thesis is the analysis of the conducted research interviews with politicians, scholars and diplomats who were engaged in the process of accession negotiations in the CEEC. To this end, seven interviews with representatives of Poland, Hungary and Slovakia were accomplished. Despite the fact that Poland and Hungary were always in vanguard of the accession process, these countries chose different strategies in the accession negotiations. The example of Slovakia is remarkable because of its progress and position during the accession negotiations. The questions posed during the interviews were targeted to reconstruct the atmosphere of accession negotiations, to obtain specific information about the tactics and strategies used by both sides, and to determine the opinions of participants about certain issues. Appendix II provides the reader with the further information on these interviews.

Chapter 1 – Theoretical framework: Intergovernmental bargaining Versus Negotiating order

1.1 Literature review

The literature that seems noteworthy to emphasize, for our research, can be classified according to the following criteria: literature on international negotiations; literature on the European integration and enlargement of the European Union (EU) - which provide us with the methodology on study the process of integration, description and analysis of the process; literature on theoretical approaches to study the EU.

At the outset of the research we applied to the literature on international negotiations. The literature aims to explain the actual bargaining process (Roy J Lewicki, David M Saunders, John Milton²; Yanis Varoufakis³), provide us with the insight on the nature and main features of international negotiations (Evans, Putnam⁴) as well as guiding principles of the conduct of international negotiations. With a little exception, however, it can hardly be applied to study of the EU negotiations. While it can be useful for practitioners – managers in their conduct of international business negotiations, diplomats in order to find solutions and reach the agreement within intergovernmental or international negotiations, and students who are interested in cross-cultural and intercultural communications, it is not credible for our debate. Moreover, surprisingly, paying much attention on intercultural and cross-cultural communication, it says little about the negotiations within the process of European integration- the negotiations and bargaining within one cultural tradition, over European continent. Thus, the next step in our research was to study the literature on European integration.

² *Negotiations: readings, exercises and cases*, ed by Lwicky Roy J., Saunders D., Minton John W, McGill University: Irwin-McGraw Hill, 1999

³ Varoufakis Yanis, *Rational Conflict*, Oxford: Blackwell, 1991

⁴ *Double Edged Diplomacy: International Bargaining and Politics*, ed by Evans P, Jacobson H, Putnam R, University of California Press, Berkley, Loss-Angeles, London, 1993

The literature on European studies can be classified according to various principles. In our research one can distinguish such authors as Michael Baum, Karen Smith, John Redmon, Preston, Cameron Fraser etc. Their works contain remarkable descriptive analysis of events, history, current development and policies, norms and procedures emerged and evolved within the process of European integration. Other scholars (Antje Wiener, Thomas Diez; Frank Schimmelfening and Ulrich Sedelmeir), used and consulted for the research, posed theoretical questions on how to comprehend and analyze the path and development of European integration and enlargement (and more precisely Eastern enlargement). Authors address to empirical samples in order to illustrate the validity of theoretical approaches and arguments (Weiner, Diez), to show the specifics of the events and trends in development within the Union (Frank Schimmelfening and Ulrich Sedelmeir).

At the same time, while paying the attention to the actual process of European integration, the aforementioned scholars were rarely engaged in debates on the European negotiations as such. Among the scholars who attempted to explain the EU negotiations either among member states as well as their “games” with outsiders, one can name at one side of spectrum such authors as Moravcsik, Vachudova who analyze the EU negotiation game within the liberal intergovernmental theory and Lykke Friis with her constructivist approach (emerged as “Moravcsikan-plus” and evolved latter into the critics of liberal intergovernmentalism). The First Chapter of the presented paper set up the contest between two approaches; compare and contrast views of the authors on the issue and then, relying on the findings draw up a theoretical framework in order to answer the questions posed above.

1.2 Theoretical Framework

There is an extensive debate among students of European studies on how to explain the process of European integration, as well as how to understand the enlargement from the theoretical perspective. The process of negotiations within the EU plays a crucial role, and one

can mention various authors who were attempting to provide us with theoretical explanation of the EU bargaining. At the same time, initial point for the debates was set up by Andrew Moravcsik within his theory of liberal intergovernmentalism, where he proposes to see the process of European integration through the prism of interstate bargaining. Therefore, it seems essential for our research to start with the analysis of his position.

According to him, states enter the negotiations with pre-determined preferences shaped by economical and geo-political interests. The governments have an access to the information needed and hence the context of the negotiations can be characterized by “information richness”⁵. The relative power of the actors further influences to what degree certain states’ preferences may shape the context of the bargaining.

Then, Moravcsik claims that with regards to these criteria, the negotiated outcome would be “Pareto-efficient”: where distributional bias favors not supranational actors but preference intensities defined by unilateral and coalitional alternatives⁶. Furthermore, threats of exit and exclusion may shape outcomes, but are effective only if the threat is credible and exclusion is costly to the targeted country. In addition to that, he claims that “linkages or package deals” under such circumstances would be limited⁷.

As one can see, Moravcsik’s explanations and hypotheses on the issue are central to the discourse concerning interstate and intergovernmental bargaining, and definitely can be employed while analyzing the negotiations inside the EU. Such an approach can be implemented while conceiving treaty- amending negotiations and negotiations at Council and European Council, but to analyze the accession negotiations we need to expand the approach. As power and preferences cannot fully explain the process at hand, one must also look to theories which take normative considerations into account. For this reason, we pay the attention on the concept

⁵ Moravcsik Andrew, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca and London, Cornell University Press and Routledge, P. 54

⁶ Ibidem, P54

⁷ Ibidem, P. 67

proposed by Lykke Friis and presented as “Moravcsikan- plus approach” in study the European negotiations.

Friis, in her works, also engages the debate regarding what factors influence the outcome of EU negotiations. Her main critique of the Moravcsik approach is that while speaking about negotiations, he completely ignores one of the most crucial phases of the process, mainly pre-negotiations⁸. According to Friis, pre-negotiations are important since, within this phase, actors can determine “what should be on the EU agenda and how the problems should be framed”⁹. Thus, in contrast to Moravcsik, Friis argues that policy problems are not “given”, but “socially constructed”¹⁰.

The point of departure in Friis’ theoretical framework is the assumption that the EU is a “negotiating order”¹¹, where actors are involved in constant process of negotiations which are influenced by its normative foundation¹². Moreover, actors’ preferences are shaped not only by their self-interests but also by the interest of the community where they interact. She justly notices that such an environment – one of common normative foundation and “community culture” - presuppose the negotiations to be more likely as “dialogue- image” than Moravcsikan’ “hard bargaining”¹³.

Furthermore, while Moravcsik assumes that the EU negotiating context can be characterized by “information richness” which allows state actors to pursue their rational strategies, Friis would argue opposite. Since the foundations for any EU negotiations rely upon historical, parallel and future games - “shadow of the past”, current development, and “shadow of the future” - the fundamental hallmark of this context will be uncertainty¹⁴. The EU ongoing dialogue transforms itself into a seeking process where participants may try to reduce their

⁸ Friis, Lykke, *The End of the Beginning of Eastern Enlargement - Luxembourg Summit and Agenda-Settin’*, European Integration Online Papers, 2(7), 1998; available at <http://eiop.or.at/eiop/texte/1998-007a.htm>- last access 25.04.2008

⁹ ibidem

¹⁰ ibidem

¹¹ ibidem

¹² ibidem

¹³ ibidem

¹⁴ ibidem

uncertainty and use the actual game to develop their own preferences or shape community preferences¹⁵. Certainly, the state preferences shape the final outcome, but they are not the sole driving force. Another actor, whose proposals and initiatives should be taken into consideration, is the European Commission.

And as to the outcome of such negotiations, however, Friis argues that they would produce a “suboptimal results”¹⁶ encompassing as many interest as possible.

Friis’ framework can also be projected on the EU games with outsiders. These negotiations, however, would be more “protracted,” and could be characterized by their “suboptimal” outcome to “a far greater extent than an ‘average’ EU’ game”¹⁷. The reason for far greater “suboptimality” in the EU “inside-outside game,” is in the fact that this game has a dual nature: the EU would need to agree on the issue not only with outsider, but, first and foremost, internally which, due to its nature, is not an easy process. In this context it seems noteworthy to step aside and to illustrate Friis’ argument by quoting one of the former negotiators in the EU’ accession negotiations of 1995 (on the EU side). He claims that:

“... sometimes negotiations among the Twelve themselves, in order to define a common negotiation position vis-à-vis the four applicants caused more difficulties than the negotiations between the Twelve and the candidate country”¹⁸.

The quotation can also be evidence for another Friis claim that the EU as “negotiation actor” is not “endowed with common identity”¹⁹. Moreover, due to the uncertain context in which it operates, it can be derived that the EU cannot cope with the problems it has at the bargaining table directly, but “only through considerable amount of filters”²⁰. In addition, she

¹⁵ Lykke Friis, *When Europe Negotiates. From Europe Agreement to Eastern Enlargement*, Institute of Political Science, University of Copenhagen, 1996, PP. VIII

¹⁶ Ibidem, P.VIII

¹⁷ Ibidem, P.IX

¹⁸ Francisco Granell, “The first enlargement negotiations of the EU”, in John Redmont, “The 1995 enlargement of the European Union”, in “The 1995 Enlargement of the European Union”, ed. By John Redmond, Ashgate, Aldershot, Brookfield USA, Singapore, Sydney, 1997, P. 44

¹⁹ Lykke Friis, *When Europe Negotiates. From Europe Agreement to Eastern Enlargement*, Institute of Political Science, University of Copenhagen, 1996, PP. X

²⁰ Ibidem, P.X

emphasizes that not only events of the past, present and future can influence decision-making in the Union, but the concern on how the decision might affect existing policies also matters²¹.

At the same time, Friis points our attention to the asymmetry of the EU inside- outside game. She states that in this game, the EU is endowed with “surplus” bargaining power which would allow it, while entering the inside-outside game, to set the agenda of the negotiations and to “transform” its proposal into the final decision of the bargaining²². This, however, leads us back to the Moravcsik theory and his assumption about pre-determined power and preferences, reminding us that her theoretical approach was initially developed as “Moravcsikan-plus”. Nevertheless, she adds that outsiders can turn the game, influencing thus its final outcome as well. According to her, the actual process of negotiations with outsiders is predetermined not only by bargaining power but also strategic capability. By strategic capabilities, she implies different strategies and tactics that states can use in order to obtain their goals during the game.

Now, let us summarize the main argument of the chapter emphasizing the points which seem to be crucial in order to answer the questions in the presented paper. It has been argued that not only predetermined bargaining power and fixed preferences of state actors are essential for the process of decision making within the EU and in its negotiation game with outsiders. Quite contrary, in order to comprehend the outcome of the EU negotiations, we should assume that its hallmark is uncertainty shaped by the previous experience, current policies and development and prospects for future. Thus, any inside bargaining game should be understood as a process where various actors not only set, but develop, their preferences. The national agenda-setting of states and the preferences of supranational actors play important role in shaping the positions of the actors during the pre-negotiation phase. At the same time, due to the number of actors taking part in the decision making and the complexity of the issue, the outcome of the Union’s decision-

²¹ Ibidem, P.X

²² Lykke Friis, *When Europe Negotiates. From Europe Agreement to Eastern Enlargement*, Institute of Political Science, University of Copenhagen, 1996, PP. XI

making would present “suboptimal” results which still satisfy the preferences of all members of the community.

The EU inside- outside game would be also protracted and produce “suboptimal” results to for a greater extent than the EU “average” game. The distinct feature of that game is its “dual” nature. The game also would be influenced by state and Commission preferences, bargaining power, institutional logics, issue-specific logics, strategic capability and “processual” logics.

Chapter 2: The Pre-accession strategy of the EU – the inside game

The first part of the thesis is dedicated to the analysis of pre-accession strategy of the EU towards the Central and Eastern European States. Since our main goal is to see how the “negotiating order negotiates on its extension”²³, a good point of departure seems to be the Essen Presidency Conclusions. Then we will continue to trace the development of pre-accession strategy of the EU towards Central and Eastern European Countries (CEEC). For this purpose, the further analysis of Presidency Conclusions for the period since 1995- 1999 would be accomplished. Before that, let us elaborate on the methodology of the analysis.

From our theoretical framework it can be drawn that the EU is negotiating order in which not only each Member states’ preferences but the Community preferences shape the policies and the outcome- final decision on various issues. Furthermore, because we are speaking about the Union interests, then we should assume that not all the time its members enter the negotiations with defined preferences, but it is the uncertainty which governs the “dialogue” among the states. The nature of this uncertainty lays in the fact that the EU has to search for dialogue keeping in mind the “shadow of the past”, the present challenges and also “future development”.

Hence on the basis of this assumption we develop a hypothesis: the EU inside bargaining game is usually protracted and produce “suboptimal result”²⁴. This result would be influenced not only by the power and preferences of Member states but also by other players and their various preferences – European Commission, their proposals and preferences; institutions (institutional logic), policy in terms of issue-specific logics; strategic capability and issue specific logics.

Give this, in order to comprehend the “suboptimal” result on the EU policy towards Central and Eastern European States we should accomplish the following steps:

²³ Friis, Lykke, *The End of the Beginning of Eastern Enlargement - Luxembourg Summit and Agenda-Settin’*, European Integration Online Papers, 2(7), 1998; available at <http://eiop.or.at/eiop/texte/1998-007a.htm>- last access 25.04.2008

²⁴ *ibidem*

1. Presidency conclusion: description of what has been declared;
2. The identification of “*suboptimality*”: The analysis of the Conclusions – advantages and disadvantages of proposals. What is not clear regarding the decisions that states implemented? Consequently, we will pose the question, the answer on which we would like to find in our analysis;
3. The background of the decision: “shadow of the past”, the problems that were at the bargaining table aside the enlargement, and the future prospects.
4. Preference formation. At this stage we need to identify who were the actors that influenced the decision on the enlargement – to which degree the national agenda of Member states countries was in favor of the enlargement; what were the preferences of the Commission and what did it propose?
5. Answer the question: how did the EU agree on the issue, what were the most influential factors? Then, we will elaborate our opinion about the development of the pre-accession strategy of the EU towards Central and Eastern European States.

2.1 Essen Presidency Conclusions, 1994

The Essen Presidency Conclusion can be said to be one of crucial importance in the development of the relationships between CEEC and the EU. First and foremost, it confirms the strategy that was declared in Copenhagen, reinforcing that:

“the associated states of Central and Eastern Europe can become a members of the European Union if they so desire as soon as they are able to fulfill the necessary conditions.”²⁵

Furthermore, The European Council requests the Commission and the Council to do “everything necessary” in order to conclude the Europe Agreements with the Baltic States and Slovenia, and thus, provide them with possibility to be the part of pre-accession strategy.

Just as important, however, is the establishment of the well-defined pre-accession strategy. The heart of this strategy is the development of “structured relations” with CEEC. It was agreed to

²⁵European Council, *Presidency Conclusions*, Essen, 1994, available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00300-1.EN4.htm, last access: 15.03.2008

conduct the meetings of the head of states and governments of associated countries with the leaders of member-states-- semiannual ministerial meetings in policy areas varying from domestic affairs, to foreign affairs, to the ministers responsible for infrastructure, education and environment²⁶. It is noteworthy that “never before have applicant countries been invited to participate on a regular basis in joint meetings with the institutions of the Union, until just before the accession”²⁷. So, the pre-accession strategy is a justly called “unique”²⁸ tool of the EU, implemented for first time during the Eastern enlargement.

It also has been argued (Mayhew, Smith, Fraser) that on a practical level, the structured relations were even more intense than originally planned: EU and East European leaders have usually met ‘on margins’ of the European Council twice a year, and the foreign ministers have met up to four times a year. Since the Essen European Council, the Council has reported twice a year to European Council on the development of relations with the East European countries, including the structured relationship²⁹.

At the same time, it seems essential to mention that the more philosophical idea laid at the foundations for establishing these instruments and mechanisms for cooperation was an attempt to integrate the associates into the EU, to “socialize” the states into the process of this ongoing political dialogue within the EU, to make them see and participate by the established rules and procedures.

Notwithstanding the significance of structured relations from the political dialogue and cooperation point of view, a critical approach in analyzing the Essen Presidency conclusions should be taken as well. First and foremost, Essen clarifies that the accession of CEEC is not a perspective of the nearest future- due to the readiness of the applicants and also due to the need

²⁶ European Council, *Presidency Conclusions*, Essen, 1994, available at:

http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00300-1.EN4.htm, last access: 15.03.2008

²⁷ Fraser Cameron, *The European Union and the challenge of enlargement*, Paper presented at the Halki International Seminar, 1996, available at: , last access: 29.04.2008

²⁸ *ibidem*

²⁹ Smith, K., *Making of EU Foreign Policy. The case of Eastern Europe*, Second Edition, 2004, Palgrave Macmillan, 2004, P. 123

to prepare the Union for the challenges which the enlargement might pose to it. The document adds that:

“the institutional conditions for ensuring proper functioning of the Union must be created at the 1996 Intergovernmental conference, which for that reason must take place before the accession negotiations begin”³⁰.

Moreover, it has only a request for the Commission to submit “a detailed analysis ... on the impact of enlargement in the context of the current policies of the Union and their development”³¹. Hence, while focusing on what the CEEC needed to do in order to prepare themselves for the membership, it says little about either the internal challenges which the EU would need to cope while preparing itself for enlargement, or provide us with any concrete timeframes for the possible accession or accession negotiations (with the exception of the year 1996 as indicative date for the Intergovernmental conference (IGC) and further possibility for the talks after the conference).

The question which seems reasonable to pose, given the aforementioned facts, is how we can explain such outcome? From one point of view, there is a clear will to intensify the political dialogue and economic cooperation, but, from the other side – uncertainty and lack of agreement on the economic prospects of cooperation. In addition to that, it has been argued that regarding the economic cooperation and especially the effort to foster economic growth in the region, the results of the summit are also not impressive³². They concern primarily such fields as trade liberalization and agriculture. It has been argued that in agriculture, for instance, “many improvements could have been made without hurting the EU procedures”³³. It also failed to improve the access of CEEC producers on the Community’s market. Little progress was achieved in the field of commercial policy, where minor improvements were made.

³⁰ Smith, K., *Making of EU Foreign Policy. The case of Eastern Europe*, Second Edition, 2004, Palgrave Macmillan, 2004, P. 124

³¹ European Council, *Presidency Conclusions*, Essen, 1994, available at:

http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00300-1.EN4.htm, last access: 15.03.2008

³² Alan Meyhew, *The European Union Policy Toward Central Europe: Design or Drift?*, in *The European Union in World Community*, ed. Carolyn Rodes, Boudler London, P.118

³³ Ibidem, P.119

In order to comprehend the Essen decision, let us suppose that here we are dealing with a typical example of the “suboptimal” outcome of EU’ internal bargaining. In this case, the fundamental features of the process were the quest for compromise within the Union and uncertainty in the preferences of most of the Member States.

The uncertainty was influenced by “shadow of the past”- the fact that the CEEC started the process of transitions only a few years ago and at that moment despite their efforts could not be characterized as politically and economically stable.

Furthermore, another factor which contributed to the ambiguous nature of the Essen conclusions was the current development of the Union: its economic problems related to the exchange rate crisis of July-August 1993 which threatened to destroy the European Exchange-Rate Mechanism (ERM) and derail plans for EMU³⁴; the ongoing process of accession negotiations with Austria, Sweden, Norway and Switzerland; and the debates on the balance between the Mediterranean policy and the relationships with Central and Eastern European states in general³⁵.

Hence, notwithstanding the fact that several applicants (Hungary and Poland) already submitted their application to the EU, there was no consensus among the member states as to future prospects of enlargement. Furthermore, the possible Eastern enlargement was seen as a challenge for the EU itself – its institutions and its ability to tackle the difficulties of further widening European integration. The financial costs of the enlargement with regard to the existing Union policies- Common Agriculture Policy (CAP) and Structural Funds primarily which would have required increase of EU spending, also provoked debates on the necessity of CAP reform before the enlargement (and such debate was extremely opposed by France)³⁶.

Thus we can assume that states, governed by uncertainty, had entered the EU’ bargaining game with weakly defined interests and preferences (on the issue of enlargement) which were then shaped during the pre-negotiation phase in the process of exchanging the opinions and in formation of positions around the proposals of the supranational and national actors who were

³⁴ Baun, Michael A *Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.53

³⁵ *ibidem*, P. 58

³⁶ *Ibidem*, P. 58

either in favor of enlargement or opposite. Thus, one can see that crucial role of agenda setters were played by the Commission and its proposals, and also Germany - state which already had at that time a clear interest in establishing close relations with CEEC and in addition held the Presidency in the European Council during the second part of 1994.

Then, upon assuming the Presidency in the European Council, the Kohl government declared that the progress on integrating the CEEC was a key goal of its term in the office³⁷.

The Commission preference and agenda-setting was also crucial. In 1994 after the Corfu European Presidency Summit, it issued its report "The Europe Agreements and Beyond" where the main components of pre-accession strategy were mentioned. Furthermore, the report also proposed to prepare a "White Paper setting out a program for meeting the obligations of the internal market which can be followed by each associated country and monitored by the Union"³⁸. In addition, this White paper turned out to be one of the key elements of pre-accession strategy and also an important achievement of the Essen Presidency.

Given this, at the pre-negotiation phase, the following questions were posed:

1. how to implement the structured relations;
2. how to support economic growth in the region of CEEC;
3. how to provide the better assistance for CEEC in their attempts to adopt the EU *acquis communautaire*;
4. how to prepare the Union for the future enlargements³⁹.

In October 1994, the discussion on these questions started. At the same time, as it has been put by one scholar, "many of the original proposals were lost in the negotiation, and more would have been lost but the powerful leadership of German presidency"⁴⁰. It seems that this sentence perfectly describes the character of the negotiations on the issue within the EU. Since the main

³⁷ Baun, Michael A *Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.56

³⁸ European Commission, *The Europe Agreements and Beyond*, Brussels, 17.04.1994, available at: <http://aei.pitt.edu/2948/01/043.pdf>, last access- 05.05.2008, last access: 20.05.2008

³⁹ Alan Meyhew, *The European Union Policy Toward Central Europe: Design or Drift?*, in *The European Union in World Community*, ed. Carolyn Rodes, Boudler London, P.117

⁴⁰ Ibidem, P. 118

achievements of Essen were already discussed, there is a need to mention the point of conflicts. These conflicts were focused around negotiations on packages of trade and market concessions. At the last phase of negotiations in the Council, the governments of France, Spain, and Portugal appeared to be unwilling to reduce the protectionist measures in their imports from CEEC⁴¹. There was also little consensus over the question of financial aid to be distributed for the pre-accession strategy. Furthermore, the debates on the balance between the Mediterranean and EU' eastern policies also contributed to the disagreement on the development of structured relations with CEEC⁴². Given to these problems, the work on pre-accession strategy proceeded slowly, and this forced the German presidency indeed to lower its ambitions on the development of structured relations with CEEC.

Regarding the facts that were mentioned above, we can conclude that certainly the Essen Presidency conclusions should be considered as significant step in the EU' attempt to strengthen the relations with CEEC. Nevertheless, while analyzing the agreement, the ambiguous character of it should be emphasized. The reasons for this ambiguity lie in the nature of the EU as a negotiating order where results shaped by various Community interests and uncertainty can be influenced by various set of actors – supranational – Commission and its proposals as well as other national actors interested in the concrete policy. It has been shown that Germany which most stood to benefit from a strengthened relationship with CEEC was able to pursue its interests during the negotiations and intensify the political dialogue between the Union and CEEC. However, taking into consideration the fact that the decisions at the European Council on such questions should be adopted by unanimity (institutional logic), different interests of the states in the Unions policies and concern how the German proposals and Commission initiatives would affect the welfare of the Community as well as “negotiation factor”- ability of actors to turn the

⁴¹ Baun, Michael A *Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.58

game, by “playing their cards⁴³” we can explain Essen’s failure to liberalize the EU economic relation with the EU.

Another main element of the pre-accession strategy approved in Essen was a White Paper⁴⁴. The document, proposed by the Commission in one of its reports, contains a precise road map for integrating the economies of associate states into the European Single Market. Upon the request of the Essen European Council, the Commission had to prepare the document for its next meeting that held by the French and had to happen in June 1995 where it has been discussed. At the same time, the next important step in the development of pre-accession strategy of the EU related with its decisions during the Madrid Summit which would be discussed in the following section.

2.2 Madrid (December 1995)

The Madrid European Council strongly declared:

“Enlargement is both a political necessity and a historic opportunity for Europe. It will ensure the stability and security of the continent and will thus offer both the applicant states and the current members of the Union new prospects for economic growth and general well-being”⁴⁵.

Therefore, during the Madrid Summit, the European Council asked the Commission to prepare its Opinions on the East European membership applications so that they could be forwarded to the Council “as soon as possible”⁴⁶ after the 1996 IGC would be concluded. It also requested the Commission to present “a composite paper on enlargement”⁴⁷, which would contain the analysis of effects of enlargement on the Union’s policies, as well as propose a future financial framework. These four sets of documents are termed ‘Agenda 2000’ and determined to set up a long-term strategy for the enlarged Union.

⁴³ Lykke Friis, *When Europe Negotiates. From Europe Agreement to Eastern Enlargement*, Institute of Political Science, University of Copenhagen, 1996, PP. XI

⁴⁴ European Commission, *Preparation of the Associated Countries of Central and Eastern Europe for the Integration to the Internal Market of the Union, White Paper*, Brussels 03.05. 1995, available at: http://aei.pitt.edu/1120/01/east_enlarg_wp_COM_95_163.pdf, last access: 01.06.2008

⁴⁵ European Council, *Presidency Conclusions*, Madrid, December 1995, available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00400-C.EN5.htm, last access: 15.03.2008

⁴⁶ *ibidem*

⁴⁷ *ibidem*

Furthermore, it declares that:

“Council will at the earliest opportunity take the necessary decisions for launching the accession negotiations. The European Council hopes that the preliminary stage of negotiations will coincide with the start of negotiations with Cyprus and Malta”⁴⁸.

This can also be evidence of the EU’s willingness to begin the preparatory phase of negotiations with the associates, and its belief to launch them with the start of negotiations with Cyprus and Malta- i.e. six months after the IGC.

However, it adds that each applicant would be “treated on equal basis”⁴⁹. Apparently, that means that each associate would be judged according to “equal basis” prescribed by Copenhagen Presidency Conclusions - *acquis communautaire*.

What seems to be puzzling in this context is how to treat this “equality”? From one point of view, it can be claimed that since the Madrid summit, “the principle of equal treatment applied”⁵⁰ in contrast to the principle of “differentiation”⁵¹. At the same time, it indeed may be interpreted vice versa. For instance, in her book, Karen Smith argues that during the Madrid Summit “differentiation among the associates was thus assured”⁵². In addition, the request for the Commission to prepare its Opinions as to which applicant should be selected for the launching the accession negotiations, does not clarify the issue; instead, making it more mysterious.

It is not surprisingly that some of the associates – Hungary and Poland in particular – were not satisfied with such results. Some of them were waiting for the reply on the “possible starting date for negotiations”⁵³ since the submission of their application for EU membership, and thus wanted more detailed prescriptions on the issue.

Similar to the case of Essen summit, we should look at the Madrid decision through the logic of the “suboptimal” result upon which it seems that the EU decided to postpone the selection of

⁴⁸ European Council, *Presidency Conclusions*, Madrid, December 1995, available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00400-C.EN5.htm, last access: 15.03.2007

⁴⁹ *ibidem*

⁵⁰ Baun, Michael A *Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.70

⁵¹ *Ibidem*, P.70

⁵² Smith, K., *Making of EU Foreign Policy. The case of Eastern Europe*, Second Edition, 2004, Palgrave Macmillan, 2004, P. 129

⁵³ Balazs Peter, *The EU’s Collective Regional Approach to its Eastern Enlargement: Consequences and Risks*, CORE working paper, Copenhagen 1997, P.11

candidates for the accession negotiations. The reasoning according to our analysis is following. First, the EU at that moment was once again saddled with internal problems – the preparation for the following IGC, preparation for the monetary union⁵⁴, etc. Secondly, it can be assumed that the Madrid Presidency conclusions also reflect the tensions within the Union regarding the question of which approach should be implemented towards the Eastern enlargement. For example, on the eve of the Madrid summit, the German government declared that it favored the beginning the accession negotiations with only three states- Poland, Czech Republic and Hungary. Earlier, in July 1995, Kohl during his visit in Poland promised the Polish parliament that Poland would join the EU in 2000⁵⁵. Hence in German view, the first enlargement of the EU on the East should encompass only the limited number of CEEC. At the same time, the German announcement provoked quite a hostile reaction among other member states. The Scandinavian states, in particular, were planning to see the Baltic States in the next enlargement round as well⁵⁶. However, some other states- such as Austria, France were also in favor of opening negotiation with all applicants at the same time (regatta- option)⁵⁷.

Thus, given these factors we can interpret the ambiguous nature of the EU decision expressed in the Presidency conclusions. Furthermore, it proves the assumption claimed in our theoretical framework that the EU cannot be imagined as a unified actor: it is likely that the decision to postpone the declaration on the candidates for accession talks reflect the beginning of the tensions within the Union on the issue of future enlargement, the approach (regatta option or small enlargement) that the Union should implement towards CEEC.

⁵⁴ European Council, *Presidency Conclusions*, Madrid, December 1995, available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00400-C.EN5.htm, last access: 15.03.2008

⁵⁵ Smith, K., *Making of EU Foreign Policy. The case of Eastern Europe*, Second Edition, 2004, Palgrave Macmillan, 2004, P.129

⁵⁷ Friis, Lykke, *The End of the Beginning of Eastern Enlargement - Luxembourg Summit and Agenda-Settin'*, European Integration Online Papers, 2(7), 1998; available at <http://eiop.or.at/eiop/texte/1998-007a.htm>- last access 25.04.2008

2.3 Luxembourg (December 1997)

In the introduction, the Luxembourg European Council expresses explicitly that one of its main goals is to “launch the overall process for enlargement of the Union”⁵⁸.

In its first parts of the text it declares:

“The task in the years ahead will be to prepare the applicant States for accession to the Union and to see that the Union is properly prepared for enlargement. This enlargement is a comprehensive, inclusive and ongoing process, which will take place in stages; each of the applicant States will proceed at its own rate, depending on its degree of preparedness”.

This statement seems to reflect the character of the whole document: it shows the willingness to launch the process of enlargement and its readiness to cope with the challenges that enlargement may pose. It also specifies that the process of enlargement should take place within several stages where each applicant should be judged individually, according to its own merits and progress, in the implementation of the *acquis communautaire*.

What is just as important, according to Conclusions, is the declaration “to launch an accession process comprising the ~~ten~~ Central and East European applicant States and Cyprus”⁵⁹. The accession negotiations would start with five CEEC applicants and Cyprus. These states - Hungary, Poland, Estonia, the Czech Republic and Slovenia (and Cyprus) compose the so-called Luxembourg group of Eastern enlargement, or 5+1 group, whereas:

“the preparation of negotiations with Romania, Slovakia, Latvia, Lithuania and Bulgaria will be speeded up in particular through an analytical examination of the Union *acquis*. This preparation may also be discussed at ministerial-level bilateral meetings with the Member States of the Union”⁶⁰.

The Luxembourg summit states that the “accession process” should consist of the following elements: a “framework for the accession negotiations” that would include all eleven candidates; the enhanced pre-accession strategy, where the core element would be the Accession Partnership and increased pre-accession aid; the commission opinions and accession negotiations; and also new review procedures towards the applicants.

⁵⁸ European Council, *Presidency Conclusions*, Luxembourg, December 1997, available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm, last access: 15.03.2008

⁵⁹ *ibidem*

⁶⁰ *ibidem*

In evaluating and conceiving the Luxemburg Presidency conclusions several things need further clarification. First and foremost, the difference in the meanings between the “accession process” and the procedure of “launching the accession negotiations” is not clear. While the procedures of the accession negotiations will be elaborated in the next chapter, at this part of the paper the following needs to be emphasized. The “accession process” within the Accession Partnership basically encompasses screening of the *acquis*⁶¹, and according to the Luxemburg summit, will be started with *all* applicants. The new trend in the development of the enlargement method should be seen in the emphasis of the fact that that screening should take place individually with each applicant⁶². Screening, however, does not mean the beginning of enlargement negotiations- its “substantial phase”⁶³, which will proceed according to the document only with states of the Luxemburg group. Essential for this is that the formal stage of negotiations was opened for all the applicants. Hence, the challenge for our analysis is seen in the attempt to explain such outcome of the EU internal bargaining. What were the factors that influence the decision on such a path for enlargement? How can we explain the decision to include not only “advanced” in terms of economic progress and preparation of *acquis* countries, but Estonia and Slovenia, whose adoption of the *acquis* was much more comparable to the progress made by Latvia and Lithuania⁶⁴?

Similarly to our previous cases, we should suggest that such decisions represent the “suboptimal” result.

Due to the uncertainty about the whole process of enlargement and due to the high number of other issues to deal with, major of national actors seem to enter the game with weakly defined preferences and interests. Following our theoretical framework we can assume that most

⁶¹ European Council, *Presidency Conclusions*, Luxemburg, December 1997, available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/032a0008.htm, last access: 15.03.2008

⁶² Maniokas, Klaudijus Methodology of the EU Enlargement: a Critical Aprisal, paper for Center of European Integration Studies of University of Bonn (ZIE), 1999, available at : <http://www.lfpr.lt/uploads/file/2000-5/maniokas.pdf>, last access: 26.05.2008

⁶³ Preston, Christopher, *Enlargement and Integration in the European Union*, (London, New York and Routledge, 1997)P.20

⁶⁴ Maniokas, Klaudijus Methodology of the EU Enlargement: a Critical Aprisal, paper for Center of European Integration Studies of University of Bonn (ZIE), 1999, available at : <http://www.lfpr.lt/uploads/file/2000-5/maniokas.pdf>

of the actors developed their preferences during the pre-negotiation phase, which was largely shaped by the Commission proposals on the issue as presented in its document Agenda 2000, and also by the rhetoric and actions of some of member states. Let us now briefly scrutinize the positions.

In Agenda 2000, with the reference to the *acquis communautaire*, the Commission declared the possibility to open the accession negotiations to Czech Republic, Hungary, Poland, Slovenia, Estonia and Cyprus (5+1 model). For the other five states it proposed to “speed up of their preparation for enlargement talks”⁶⁵. Furthermore, in order “to assure that the entire applicant countries are taken seriously”⁶⁶ it proposed to conclude “Accession Partnerships” with each applicant. The “accession partnership” shall contain detailed national programs for the adoption of the *acquis communautaire* within an established timetable. In this case, the annual reviews proposed by the Commission would indicate the progress of the candidate, and according to that, the membership negotiations can be opened as soon as it makes progress comparable with that of frontrunners.

Speaking about the positions of the states in this game, we should highlight several approaches. The first approach was already discussed while analyzing the Madrid Presidency Conclusions and is advanced by Germany. More precisely it argues in favor of “small” enlargement which can be explained by the necessity to reduce the threats that “big bang” enlargement may pose (no need for institutional and policy reforms)⁶⁷. Another approach is articulated by the Scandinavian states – Denmark and Sweden – and was already mentioned in the previous section as well. What is crucial is that the main argument used by the states in order to argue for the regatta option was the need to avoid the creation of “new dividing lines” in

⁶⁵ European Commission, *Agenda 2000, part 3: Opinions of the European Commission on the Applications for Accession: Summaries and conclusions*, Brussels, 1997, available at: <http://www.ena.lu>, access 27.05. 2008

⁶⁶ Ibidem

⁶⁷ Baun, Michael A *Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.89

Europe⁶⁸. Moreover, at the outset of negotiations on the issue, Sweden and Denmark, however, argued for the exception of Slovakia from the accession negotiations – due to its “poor record on human rights”⁶⁹ (although states later changed their positions). Given this, one can argue that states deferred not only to economic and political issues (as Germany did it) but to the role of Europe as a “normative” power.

The other states also used the pre-negotiation phase as arena of formation for their preferences, which can be seen in the fact that states discussed their views on the issue at the series of Council meetings in September and October 1997⁷⁰. Mediterranean states – Spain and Greece mainly favored for the regatta option, since in this move they see the possibility to slow down the enlargement process. Greece opted for the “group” approach, because for regional and security issues⁷¹. Benelux states alongside the UK were in favor of “5+1” model⁷². However, it should be noted that the debates on the enlargement was not the sole issue to discuss during the pre-negotiation phase. The other problems which the Union was dealing with in that moment were also serious. Among them: launching economic and monetary union, structural and regional funds reform process, and the beginning of Common Agricultural Policy reform.

As an outcome, we can see the decisions of the Luxemburg Presidency conclusions as representing the clearest example of “suboptimal” result, where the actual negotiations were started with Luxemburg group, but officially the accession process was established with all

⁶⁸Friis, Lykke, *The End of the Beginning of Eastern Enlargement - Luxembourg Summit and Agenda-Setting*, European Integration Online Papers, 2(7), 1998; available at <http://eiop.or.at/eiop/texte/1998-007a.htm>- last access 25.04.2008

⁶⁹ Baun, Michael A *Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.89

⁷⁰ Ibidem, P.90

⁷¹ Ibidem, P. 89

⁷² Ibidem, P.90

applicants – “in order to avoid the new dividing lines”⁷³. Indeed, such decision was welcomed among “5+1” group and certainly it “softened”⁷⁴ the reaction of second-wavers.

2.4 Helsinki, 1999

The Helsinki European Council is justly called “the enlargement summit”⁷⁵. Whereas it confirmed “the importance of enlargement process launched in Luxembourg in 1997”⁷⁶ it also decided:

“to convene bilateral intergovernmental conferences in February 2000, to begin negotiations with Romania, Slovakia, Latvia, Lithuania, Bulgaria and Malta on the conditions for their entry into the Union and the ensuring Treaty adjustments”⁷⁷.

Hence, by this decision it cancels the policy started in 1997 in Luxembourg – the enlargement in “waves” and seems to come back to the “regatta” strategy. Certainly, for our analysis, this shift in the strategy presents a new challenge that indeed should be explained.

From one point of view, the decision to begin the negotiations with the “second wavers” was justified by the Commission reports and the progress of the states in the fulfillment of *acquis communautaire*. At the same time, let us to see the issue through the prism of our concept.

Can we here assume that the decision to start the accession negotiations with second wavers represent the suboptimal outcome of the EU internal bargains? Which events can help to explain such decision? Furthermore, what were the positions of actors while entering the game? How did they transform it?

In conceiving the events which influenced the process, one should take into consideration the following facts. First and foremost, it seems logical to assume the real progress in implementation of the *acquis communautaire*. The best example here to mention is Slovakia,

⁷³ Friis, Lykke, *The End of the Beginning of Eastern Enlargement - Luxembourg Summit and Agenda-Settin'*, European Integration Online Papers, 2(7), 1998; available at <http://eiop.or.at/eiop/texte/1998-007a.htm>- last access 25.04.2008

⁷⁴ Maniokas, Klaudijus *Methodology of the EU Enlargement: a Critical Aprisal*, paper for Center of European Integration Studies of University of Bonn (ZIE), 1999, available at : <http://www.lfpr.lt/uploads/file/2000-5/maniokas.pdf>, last access: 26.05.2008

⁷⁵ Baun Michael A *Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.127

⁷⁶ European Council, *Presidency Conclusions*, December 1999, Helsinki, available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/ACFA4C.htm, last access: 15.03.2008

⁷⁷ *ibidem*

where, after the change of the government, there was a clear desire to catch up with the other states of the region (especially the Czech Republic), and to enter to the EU no later than the other neighbors. Hence, the political dialogue between the Slovak Republic and the EU increased significantly in that period. One of the participants of the negotiations on EU' accession from Slovak delegation in a personal interview said that while the actual EU' negotiations were mostly the technical exercise, "the most important work" had been done at the period of pre-accession negotiations (in 1998-1999)⁷⁸. In general, the fear of staying "alone" in the region in "isolation" from all Europe was not only the Slovak case. This can be said about Lithuania and Latvia, with whom the EU did not start the accession negotiations in comparison with Estonia and Poland. These states made a rapid progress in meeting the conditions⁷⁹. Hence, in the case of given states one can justly argue that the EU decision to launch the accession negotiations was largely based on their good performance. Nevertheless, this explanation does not provide us with the complete answer: the EU would have enlarged its "first- choice" group instead of including into the process all candidates whose success was not as evident as in the previous cases.

Then we need to apply to the historical context of that time. Consequently, we can find out that it was a time when Europe was under the impression of horrific events of Kosovo crisis. Under this influence, the decision to set up a Stability Pact for Southern Eastern Europe was proposed. The pact was established upon the initiative of the EU on June 1999 at Cologne. Remarkably that in the Founding document of Stability Pact a "leading role of the EU"⁸⁰ was acknowledged. Furthermore, it declared that the EU: "will draw the region closer to the perspective of full integration of these countries into its structures"⁸¹, including eventual full membership on the basis of their readiness to fulfill the *acquis communautaire*. Apparently, a

⁷⁸ Bilcik Vladimir, interview by author, Bratislava, Slovakia, 26.05.2007

⁷⁹ Smith, K., *Making of EU Foreign Policy. The case of Eastern Europe*, Second Edition, 2004, Palgrave Macmillan, 2004, P.185

⁸⁰ Stability Pact for South Easter Europe, Cologne, June 10, 1999, art. 5, p.20, available at: <http://www.stabilitypact.org/constituent/990610-cologne.asp>, last access: 21.05.2008

⁸¹ *ibidem*

decision to open the prospect for membership for these states was influenced by the events of Kosovo crisis. Europe was concerned to prevent the further possible destabilization in the region.

What is important for our analysis is the fact that this declaration and number of initiatives it sets up created a situation where the states of Southern Eastern Europe were almost “equaled” in their ambitions and desire to join the EU to those countries who were waiting and implementing the *acquis* for longer period of time and thus can be offended by such “equal footing”. In addition, some scholars argue, there was a fear within the community that leaving Romania and Bulgaria in this instable neighborhood “would not contribute to the peace and stability in Europe”⁸².

In this case, one should also look at the position of the Commission, which undertook the approach according to which the second wave of enlargement candidates should be shifted to the first, Luxemburg group⁸³. Furthermore, while analyzing the positions of European government of the issue, one can determine only German’ position as one of the most active during the conflict resolution., whereas quite a few other European states had a clear strategy as to how to address the issue properly⁸⁴. Thus, analyzing the EU decision to change the selected path of integration and to come back to the first “regatta” option, we cannot explain it as “suboptimal”. It seems that the decision was undertaken under the influence of such factors as Kosovo crisis and required further more precise analysis of the topic.

Given the analysis conducted, what can be implied about the EU, its ability to negotiate on “its extension” and particularly on its negotiations on pre-accession strategy?

First, it seems that the decisions of the EU were to a large degree influenced by the events which shape the context of its (operational) environment (of its functioning/ when it operates)/shapes its negotiation context. Following this logic, it is clear that the end of Cold War,

⁸² Smith, K., *Making of EU Foreign Policy. The case of Eastern Europe*, Second Edition, 2004, Palgrave Macmillan, 2004, P. 168

⁸³ Stability Pact for South Easter Europe, Cologne, June 10, 1999, art. 5, p.20, available at: <http://www.stabilitypact.org/constituent/990610-cologne.asp>, last access: 21.05.2008

⁸⁴ Smith, K., *Making of EU Foreign Policy. The case of Eastern Europe*, Second Edition, 2004, Palgrave Macmillan, 2004, P. 170

the process of transitions in CEEC and the strong willingness of both political elites and population to join the EU (by which the “return to Europe” was seen) dictated the necessity for the EU to launch the political dialogue with the CEEC. Under such circumstances, during the Copenhagen Summit, the EU promised to CEEC the membership in the EU. Then, the Essen Summit (1994) seemingly mapped more detailed way for the CEEC to the EU. It established concrete mechanisms and instruments to implement the “structured relationship”; declared the enhanced political dialogue between the CEEC and the EU. At the same time, little was done in the field of liberalization of trade relations among the counterparts. Moreover, no concrete time tables for the possible membership were announced. Madrid Summit (1995), despite the fact of announcement of possible indicative date for the beginning of accession process, posed another set of questions. Mainly: which way of enlargement the EU would choose: “small enlargement” as was favored by Germany; “regatta option”? Luxemburg Summit alongside with announcement of “5+1” group –a group with which the process of accession negotiations should be started, also declared the launching the accession with all applicant countries of the region. That would, from one point of view, indicate the choice of Europe in favor of small accession and explain its decision to divide applicants into two groups. Suddenly, however, the strategy changed and on its Helsinki Summit, the European Council decided to start the accession negotiations with the whole group of states. In order to explain the pre-accession strategy, its initial points and path of development, we scrutinized the following factors: state preferences and Commission; institution and policy logics; furthermore, we assumed that the process of pre-negotiations were the preferences and interested are pronounced and shaped into concrete position is no less important than the negotiations process itself, where actors, due to strategies and tactics, personal skills and abilities can also influence the process of decision making.

It has been revealed that large number of proposals concerning the Eastern enlargement was formulated and articulated by Germany and the Commission. However, due to the complex procedures of decision making within the Union, the interference of different policies into

interests and preferences of the players and their ability to pursue their own strategy during the game, pre-accession strategy acquired some sort of ambiguity or “suboptimality”. Only under the strongest impression of Kosovo crisis, the decision to launch the process of “big bang” enlargement was undertaken.

Chapter 3: The EU' inside - outside game: accession negotiations

In the present chapter, I would like to discuss several important characteristics and features of the accession negotiation process during the Eastern enlargement. For this reason, the beginning of the chapter is dedicated to the description and analysis of the procedures of accession negotiations. Then, I will point out several features of the accession negotiations in order to see what distinguishes them from business negotiations or other types of international negotiations. In the third part of my research, I am determined to study the negotiating positions of the EU and the applicant countries during the Eastern enlargement – mainly the specific issues that were at the bargaining table, as well as the tactics and strategies that were used by both sides in order to reach the agreement.

3.1 The description of negotiations

The procedures on accession negotiations were set up in Article 237 of the Rome Treaty; later in 1991, it was modified in order to include the assent of the European Parliament. Hence, in Article O of the Treaty on European Union, it states that:

Any European State may apply to become a Member of the Union. It shall be address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of agreement between the Member States and the applicant State. This agreement between shall be submitted for ratification by all the contracting States, in accordance with their respective constitutional requirements⁸⁵.

From the above statement several important observations for our research about the accession negotiations should be derived. First and foremost it states that the agreement shall be reached between the “Member states and applicant state”. This means that apart from other EU negotiations with “outsiders” – such as the negotiations with GATT and any other international organizations where the main actor from the EU side is the European Commission- the accession

⁸⁵ Euroeapan Council, *Treaty establishing European Union, Art. O*, Maastricht, 1991, available at: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>, - last access 01.06.2008

negotiations are purely intergovernmental. It includes the applicant state from one side and Member States, represented by the country of Presidency in the European Council, at the side of the EU. The European Commission however plays a crucial role in technical assistance of the accession negotiations. More precisely, it is the European Commission that has to consult the Council and collect the positions of the Member States on the issue, then deliver its recommendations on the joint position which will be discussed and adopted in the Council requiring the approval by the European Parliament.

Furthermore, the subject to negotiate during the accession negotiations is “the conditions of admission and the adjustment to the Treaties,” which means that the negotiations are basically focused around the question of EU legislation and the readiness of the applicant state to implement it. In this context it should be noted that the accession negotiations that are conducted in the form of the Accession conference include two phases: exploratory and substantive⁸⁶. During the exploratory phase, the applicant’s delegation alongside the Commission accomplishes the study of the *acquis communautaire* in order to determine which secondary legislation would be applicable directly after the accession, and whether adaptation of either national or Community is needed. The fields where the adoption of legislation is needed and hence the transition period is necessary/ required would be the subject of accession negotiations between the candidate and the Community. The following substantive phase includes the quest for the compromise within the Union at the level of internal bargaining on common position within the COREPER and Council⁸⁷, as well as the negotiations on the derogations with the applicant states. Usually, at the outset of the substantive phase, the Community indicates the date for completing the accession negotiations and the time for ratification procedures to be completed for new members⁸⁸.

⁸⁶ Preston, Christopher, *Enlargement and Integration in the European Union*, (London, New York and Routledge, 1997)P.16

⁸⁷ Ibidem, P. 16

⁸⁸ Consult the Appendix 1 in order to see the precise mechanism and the place of accession negotiations in the enlargement process of the EU

3.2 Accession negotiations: is there anything to negotiate about?

The description of the procedures accompanying the accession negotiations allows us to see the specific features of accession negotiations that distinguish them not only from others EU negotiations with outsiders but also from the other types of international negotiations. Let us analyze these features in details.

First and foremost, the accession negotiations are characterized by the large degree of asymmetry where the EU has much greater bargaining power than the applicant state. The reasons for such asymmetry can be summarized in the following order:

- The agenda of the “game”, its rules and content is fully determined by the one player- the EU that has a high degree of bargaining power. In addition at the end of the game it is the EU that decides who among the applicants deserves to be a member of the ‘club’ and who does not;
- The applicant state is in much weaker position –it has to accept the rules, show its readiness to join the organization. More precisely it has to demonstrate its ability to fulfill certain criteria – the *acquis communautaire*. Furthermore, the applicants are obliged to adopt the *acquis communautaire* in full- “no permanent opt-outs are available”⁸⁹.
- Hence the participants play around only one topic which involves the bargaining on the transition period for adaptation of the *acquis* in national legislation or in some cases the acts of the Community. In fact, as the participants of these negotiations emphasize- “those are not real negotiations”⁹⁰ but more an “entrance examination” or, as another former Polish negotiator said, “marriage preparation”, where the agreement shall be reached between “us and future us”, but not between “us and others as, for instance in the business negotiations”⁹¹;
- In addition, another asymmetrical aspect of these negotiations concerns the relative knowledge of the EU legislation by the participants of the game. As some scholars have noted,

⁸⁹ Preston, Christopher, *Enlargement and Integration in the European Union*, (London, New York and Routledge, 1997)

⁹⁰ Topolanska, M, Javorcik P., “Negotiation theory and the EU Accession Negotiations: Slovakia’s experience” (Slovak Policy Affair, Spring 2003), P. 79

⁹¹ Jaroslaw Pietras, interview by author, Budapest, 29.05.2008

“the EU member states know the EU treaty and its legislation – the object of accession negotiations- much better than the applicants”⁹² and this fact also affects the positions of the both sides. This fact it is important to mention since during the interviews that were conducted, several things concerning these problem were noted. One of the Polish negotiators, Jaroslaw Pietras, claims that within the explorative phase of the accession negotiations there were debates on the substance of the *acquis*. The applicant country understood some parts of *acquis* differently than the Commission, and that was subject for discussions⁹³. In addition, another negotiator also pointed out that the fact that:

“you enter into the negotiations with the Community where people know each other, the structure within which they work together and rules on/about which you negotiate much better than you”⁹⁴ indeed influences the position of applicant during the negotiations.

Given this asymmetry we can conclude that there is not much to “negotiate” about. As it has been argued by some of the Slovak negotiators:

“the negotiations presuppose the process of reaching agreement and compromises whereas in the case of accession negotiations, the only possible thing to negotiate about is the derogations for transitional periods in some fields of legislations⁹⁵”.

Notwithstanding this point, there are still some reasons to consider these negotiations as “the real one”. In this context it is worth mentioning the statement of Hungarian negotiator Agnes Hargita, who claims that in certain cases, the agreement on the length of transitional period – whether it is five or twelve years- was vital for national interests of applicant states and presented a real deal for bargains during the accession negotiations. Furthermore, Lykke Friis for instance as well emphasizes that in some cases the “transition period can provide such flexibility to an applicant state that the question of derogations is not an unimportant one”⁹⁶. In addition, the claim of another negotiator- Francisco Granel who was acting as negotiator on the EU side during the first EU

⁹² Friis Lykke, Jaros Anna, *From Copenhagen to Copenhagen. Big bang enlargement or fizzle?* (Copenhagen, Danish Institute of International Affairs, 2002), P. 16

⁹³ Jaroslaw Pietras, interview

⁹⁴ Hargita, Agnes, interview

⁹⁵ Duleba, Alexander, interview by author, Bratislava, Slovakia, 26.05.2008

⁹⁶ Friis Lykke, Jaros Anna, *From Copenhagen to Copenhagen. Big bang enlargement or fizzle?* (Copenhagen, Danish Institute of International Affairs, 2002), P. 14

enlargement should be mentioned. In his article he emphasizes that “many technical and political problems have been settled during the accession negotiations”⁹⁷ which allows us also to claim that accession negotiations deserve to be termed as “negotiation”. Hence, in summarizing the aforementioned it seems to be reasonable to agree with the fact that indeed, there is not much to negotiate about in the case of accession negotiations, but nevertheless one can argue that the possibility to obtain the derogations is crucial for the applicant states in these talks. Furthermore as in the case of Eastern enlargement, at some moments there were a “real” negotiations.

At the same time, all scholars who were employed with analyzing the EU accession negotiations- Moravcsik, Achudova, Friis, Fraser, Granell etc- emphasize that the degree of asymmetry in each enlargement is always different. Moreover, the asymmetric nature of accession negotiations does not presuppose negotiations with different candidates to reflect this asymmetry in the same way⁹⁸. In each case we can see a different degree of asymmetry. The relevant example here is the previous accession negotiations with EFTA countries, where the countries were able pursue their demands during the accession negotiations (for example on the environmental policy where the standards of applicants were higher than the EU and they refused to lower them according to the *acquis*). At the same time, the bargaining power of states can increase due to various reasons as it has been happened in EFTA case when Poland and Hungary submitted their applications for the full membership in the EU. In this context, it has been argued that the EU was interested in “accepting more prosperous countries in order to manage better the “burden” of the future Eastern enlargement”⁹⁹. Hence as one can see, the accession negotiations every time differ in their degree of asymmetry and what is just as important the states’ positions during the negotiations can be affected by various factors and that may also influence the outcome of the negotiations.

⁹⁷ Granell, Francisco, *The First Enlargement Negotiations of the EU*, in *The 1995 Enlargement of the European Union*, ed. John Redmond, (Ashgate, Aldershot, Brookfield, Singapore, Sydney, 1997), P. 53

⁹⁸ Topolanska, M, Javorcik P., “Negotiation theory and the EU Accession Negotiations: Slovakia’s experience” (Slovak Policy Affair, Spring 2003), P. 80

⁹⁹ Ibidem, P 80

While analyzing the accession negotiations with our theoretical framework, in principle we argue more precisely about the nature of asymmetry during the last enlargement. It is indeed obvious within the Eastern enlargement the asymmetry was greater – as it has been argued many times by different scholars - but the question which we are going to pose is in which areas we can see this asymmetry and what it can tell us about the EU as negotiating order?

Our theoretical framework allows us to think about the outcome of the negotiations not only in terms of power and preferences. The power and preferences, as it was mentioned above, indeed can explain the asymmetry of the EU bargains with the country applicant. But at the same time, it provides little explanation on the degree of asymmetry at the bargaining table. Moreover, taking into account only power and preferences it seems that the analysis of the negotiations will not be sufficient. How for instance we may understand why were such mutually sensitive questions as chapters on institutions (seats in the EU institutions e.g. the Parliament and Commission, votes in the Council of Ministers), Agriculture, Structural Funds, Budget (e.g. future member states contributions) left at the end of negotiations (at the beginning of 2002 they were opened but not closed)? Indeed, if we assume the asymmetry, there are no doubts that it was the Union who decided the order of the chapters laid down at the bargaining table, but why did it leave these issues at the end of 2002 in its “grand negotiations”? How did the internal problems of the EU – the CAP reform, other policies (issue-specific logic), influence the process?

In order to explain this issue we should apply to our theoretical framework and investigate, what shape the context of accession negotiations, what were positions of both sides, how did the other variables- institutional, issue-specific logic influence the process. In addition, we argued that the actual negotiations matter. Countries are able to move the negotiations by utilizing certain strategies and tactics. Taking into consideration this, we could study the process of accession negotiations by analyzing the negotiation positions that the EU and the applicant countries had during the process itself as well as certain tactics and strategies that they undertook in order to strengthen their positions and obtain the concessions. By analyzing it, we can in fact to get closer

to understanding- whether it is possible “to move the table”, while “negotiating” with an actor whose bargaining power is in fact greater. Strategies to be implemented analyzing the negotiation tactics and techniques by the applicant states: tying – hands strategy; the threat strategy; the group coordination strategy. Strategies which should be employed while analyzing the EU techniques: the package deal strategy; the equal treatment; the salami-effect strategy/ Ice breaker. The tactics and strategies are presupposed by our theoretical framework and were described by Friis in one of her works¹⁰⁰; we elaborated them, adding selected pieces from the various sources. One of them is the work of Slovak negotiators¹⁰¹. At the same time, it should be noted that these tactics and strategies, however are common for the international negotiations and bargaining theories and were initially developed in Robert Putnam’ works on the issue. At the same time, at the presented paper, the approach undertaken is slightly different- tactics and strategies will not be divided according to the principle of two- level game- domestic win-set and international (the EU in our case), but summarized and classified with the reference to the actor that used them in its negotiation game.

3.3 The Negotiating positions of the EU and the applicant states during the Eastern enlargement: Hungary, Poland and Slovakia

The background information

The negotiations with the “Luxemburg group” started in the March 1998. We can distinguish several phases in this accession negotiation. The first phase involved the process of opening as many chapters as possible and lasted since the beginning of the negotiations- 1998 till the April 2001. Following this path, under the German presidency (first part of 1999) the applicant states opened the first seven chapters of *acquis* and were determined to begin negotiations on eight additional screened chapters: company law, free movement of goods, consumer protection, fisheries, statistics, economic relations, custom union, and competition

¹⁰⁰ Lykke Friis, *When Europe Negotiates. From Europe Agreement to Eastern Enlargement*, Institute of Political Science, University of Copenhagen, 1996, PP. 118-120; Friis Lykke, Jarosz Anna, *From Copenhagen to Copenhagen. Big bang enlargement or fizzle?* (Copenhagen, Danish Institute of International Affairs, 2002), P. 20

¹⁰¹ Topolanska, M, Javorcik P., “Negotiation theory and the EU Accession Negotiations: Slovakia’s experience” (Slovak Policy Affair, Spring 2003), P. 85-88

policy. Following the next Finnish presidency, the chapters on EMU, free movement of capital, social policy and employment were as well opened for negotiations. The Finnish presidency was also important, since after that, another “Helsinki group” of applicants joined the accession negotiations with the EU. However, these states have had different schedule and initially different indicated dates for the end of negotiations. At the outset of the Portuguese presidency, the Hungarian and Polish delegations closed eight chapters of *acquis*. During the personal interviews, either Polish or Hungarian negotiators stated that they were not satisfied with the process itself¹⁰². The reason for that was largely in fact that the Commission (at the state of affairs of 2000) did not present the position papers of the EU on such important chapters as agriculture, the free movement of labor, environment, taxation policy and many other “politically sensitive” issues for both sides.

The real “break through” had happened under the Swedish Presidency in 2001 when the participants managed to close such “heavyweight” chapters as environment, the free movement of labor and capital. The hardest bargains though were not only around these chapters, the issues of Justice and Home Affairs also need to be mentioned. Finally, the chapters, which were unresolved till the very end of negotiations, were agricultural policy (as the Hungarian negotiators, for instance, state it was closed only on 5th of December 2002, whereas the Copenhagen summit where the closure of accession negotiations was scheduled should have been happened on the 21st of December), the structural funds, and the EU budget.

Hence, in this context it seems to be important to understand analyzing the EU’ accession game with outsiders how could the EU manage to close the most difficult chapters in a quite short period of time, while negotiating on the other minor issues before for much longer period of time?

Furthermore, the next question is what were the tactics and strategies used by both sides in order to reach the agreement? The reminder of this chapter will be dedicated to the investigation of these issues.

¹⁰² Agnes Gargita, interview

3.4 Analysis

In order to answer the first question that was posed above, we should employ the institutional logic that was proposed by our theoretical framework.

It was claimed by Friis that since the EU is in itself a “negotiating order”: therefore first and foremost it is not endowed with a common, European identity but will operate on the basis of bargaining decision style. Hence we assume and it has been showed in the previous chapter that all insiders would concentrate on their own national bill while elaborating joint position towards the applicant states for the accession negotiations. The result of this is the suboptimal output a rigid position which is also hard to negotiate about.

Evaluating the accession negotiations under such angle we should apply to the following events. As it has been claimed above, the first phase of negotiations (notwithstanding the results achieved), went around such minor, from the politically sensitive point of view, chapters as cultural policy, statistics etc. At the same time, as one of the Polish negotiators were arguing, that due to the several reasons there was no real political will within the Community and among outsiders to negotiate about the matters in which both sides would need concessions¹⁰³. Let us briefly, discuss these reasons. In the case of the applicant states the most objective criteria is the readiness to fulfill the *acquis*. Conceiving about the Community’s “unwillingness”, we can apply to the fact that the attention of the EU Member States in this moment was largely focused around the internal problems of the Union, such as budget negotiations (in Agenda 2000) as well as following intergovernmental conference headed during the French presidency in the first part of 2001. Hence, it was largely argued that such crucial issues for accession negotiations as institutions should be discussed after the ratification of the Nice Treaty.

The second phase of accession negotiations is related with the emergence/creation of the “Road map” for the accession negotiations issued by the Commission in 2001 and approved under the Swedish presidency. This road map was crucial for the path of negotiations since the approximate dates as to when the Member States had to reach a common position on the

¹⁰³ Jaroslaw Pietras, interview

different chapters of negotiation were indicated. Consequently, the path of negotiations became speed up. It was this phase of accession negotiations were the negotiations on most sensitive issues such as the chapters on agriculture, JHA, transport policy were opened. Following Spanish presidency, the chapters on financial and budgetary provision were opened as well.

How can we explain it from the “institutional logic” or issue specific logic? Issue specific: consequently during the Swedish presidency the solutions on such hard issues as free movement of labor and free movement of capita was founded.

Finally it seems necessary to identify the final phase of accession negotiations – a phase which encompassed the negotiations of such important policies as agriculture, regional policies etc and which was held by the Danish Presidency.

The next issue which seems crucial to discuss in our analysis of accession negotiations is the tactics and strategies used by both sides. Taking into consideration the institutional logic and issue-specific logic we manage to explain the timing and emergence of issues at the bargaining table, but still we know little regarding how the sides managed to reach agreement on the problems. Thus, since we claim that the actual process and ability to play cards – negotiations matter during the accession game, let us look at the strategies and tactics that were utilized by both sides in order to reach the compromise.

The strategy and tactics of the EU

(By strategy we understand the way and development of one actors policy towards the other in medium and long term perspective during the negotiations;

By tactics we understand the approach that is implemented by one side in order to achieve the agreement with the other side during the negotiations)

The strategy of the EU during the accession negotiations on Eastern enlargement - differentiation

After the 1999 December Helsinki summit, negotiations began with all twelve participants under the new procedures. These procedures were declared by the Commission in its Regular Report in October 1999. The new approach of the EU towards the applicants was based

on the principle of “*differentiation*”- each state was treated according to its own merits. In practice the principle should be applied by the EU when deciding what chapters of the acquis should be opened with concrete participant of the accession-negotiations. That goes in contrast to the previous- “classical” EU approach of opening an equal number of chapters at the same time with all candidate states. Instead of this, it was declared that the EU would base its decision on the number and subject of chapters to open by relying on the screening reports, the Europe Agreements, the annual progress reports, and Accession Partnership and National Programs for the Adoption of the Acquis.

Under such circumstances, the first tactic which seems to be at the top of the EU’ tools for the negotiations with outsiders could be characterized as/summed up under the motto “*nothing is decided until everything is decided*”¹⁰⁴. Under this principle the EU could at any moment re-open the negotiations on the chapter which had been already closed.

This procedure was also established in/by the aforementioned Commission Report and according to it “no chapter would ... be provisionally closed (or closed again after re-opening) unless the EU is satisfied that the candidates’ preparations are in line with their commitments in terms of preparation for the accession”¹⁰⁵.

In addition to that it was declared that on the basis of its monitoring and assessment of “progress” and “commitments”, the Commission also indicated that it could decide to reopen chapters that had been provisionally closed¹⁰⁶.

The report argues that such measures make the accession negotiations as well as enlargement process more fair, also providing the Helsinki group with possibility to catch up with more advanced Luxemburg group. At the same time, we can see this tactic as a method by

¹⁰⁴ Dr. Egon Dienes- Oehm, Agnes Hargita, interviews

¹⁰⁵ European Commission “Regular Report: Composite Paper”, IV.3. 1-3, Oct 1999, available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/composite_en.pdf, last access: 25.05. 2008

¹⁰⁶ *ibidem*

which the EU “can secure for itself freedom to actually re-open parts of the negotiations in order to achieve the best possible deal for itself”¹⁰⁷.

The second tactic which was widely used by the EU in order to reach the agreement with the applicant state can be named as “*salami tactics*”¹⁰⁸ or “*ice breaker*”¹⁰⁹. The core idea of the tactic was in fact that once the EU found the solution on the problem and signed the agreement with one candidate it claimed to apply the same model of agreement towards the rest of applicants.

More precisely, the model was implemented in the cases of the so-called “horizontal” issues – such as JHA for instance. Under such circumstances the EU countries could agree a single common negotiating mandate for all the applicants. Then relying on this mandate, the EU had to agree with the most “flexible” applicant and then announce the same approach towards the others candidates on the issue. In this way, significant amount of pressure is indeed put on the remaining applicants in order to make the same deal.

The equal treatment or principle of “non-discrimination”

All interviewees highlighted the fact that during the accession negotiations, despite the strategy of “differentiation”, the EU was trying to treat different candidate states “equally” in political and economical terms. Practically that means that “no one could point the finger at negotiators for achievements which might be pale in comparison with those of neighboring countries”¹¹⁰. Furthermore, that in many ways goes in contrast with the ambitions of some applicants since quite often the candidate states tend to think about their problems as about “very special case”¹¹¹ and due to this are trying to obtain special derogations. Thus, this tactics aimed to

¹⁰⁷ Friis Lykke, Jarosz Anna, *From Copenhagen to Copenhagen. Big bang enlargement or fizzle?* (Copenhagen, Danish Institute of International Affairs, 2002), P. 22

¹⁰⁸ Topolanska, M, Javorcik P., “Negotiation theory and the EU Accession Negotiations: Slovakia’s experience” (Slovak Policy Affair, Spring 2003), P. 85-88

¹⁰⁹ Friis Lykke, Jarosz Anna, *From Copenhagen to Copenhagen. Big bang enlargement or fizzle?* (Copenhagen, Danish Institute of International Affairs, 2002), P. 22

¹¹⁰ Topolanska, M, Javorcik P., “Negotiation theory and the EU Accession Negotiations: Slovakia’s experience” (Slovak Policy Affair, Spring 2003), P. 86

¹¹¹ Peter Bilcik, Alexander Duleba, interview; Pawel Swieboda, interview by author, Budapest, 28.05.2008

show that all candidates all in the same position at the bargaining table, even if territorial size and political weight of the countries might range.

At the same time, another reason for the EU to implement such strategy was to create the atmosphere of “competition” among the states¹¹² in order to “accelerate the negotiations” and to bridge the gap between the Helsinki and Luxemburg groups of applicants.

The threat

On the one hand none of the interviewees mentioned the fact that the EU used this strategy towards the applicant states. At the same time, one can think about several examples, where this tactics seem to be used during the accession negotiations by several EU Member States.

One example is the Austria’s position on the energy issue. Faced with strong domestic antinuclear movement, the government had threatened to block the accession negotiation with Slovakia due to the concern about the nuclear safety in the region. At the early stages of negotiations with Luxemburg group states Austria also blocked the beginning of the talks on the energy issue insisting to include the paragraphs requiring the highest safety standards of the nuclear power plant in the candidate states.

Another example can be the case of Swedish – Polish relations. In May 1999 Swedish government “briefly threatened”¹¹³ to pose the veto on the accession negotiations with Poland in if it did not agree its telecommunications sector which let the Swedish companies (Ericsson primarily) go into the Polish telecommunication market¹¹⁴.

The case, however, should not be overstated and it was claimed that the EU as a whole never formally employed such policy.

The strategies and tactics of several applicant states

The strategies and tactics dealt with in this section are summarized on the basis of the personal interviews that were conducted for the presented research. The cases of Poland, Hungary and Slovakia seem to be interesting in this context – each state using its own special

¹¹² Petr Bilcik, interview

¹¹³ Baun, Michael *A Wider Europe*, Rowman and Littlefield Publishers, Lanham, Oxford 2000, P.213

¹¹⁴ ibidem

strategy and tactics in order to find the solutions and make an agreement for concessions. For instance, the strategy of Hungary, if we can sum it up in well-sounded motto, was: “To join the Community as soon as possible”, as one of the former negotiators formulates it, though adding “but we knew what [kind of derogations] we wanted”¹¹⁵. In the case of Slovakia, the main motto expressed unanimously by the negotiators was “To catch up with all possible measures”/ at all possible price. The example of Poland is also worth to mention: at the beginning the strategy of Poland was “To get the best possible deal” which on practice materialized in the strategy “to open as many chapters as possible and to wait until the final round with closure”¹¹⁶. A clear change in strategy although had happened after the elections of 2001. The belief that to have too many negotiations chapters open “would not leave Poland to the success”, forced to replace the motto with a more realistic one - “To get in as soon as possible, and try to get the best possible deal at the same time”¹¹⁷.

Given this, the following tactics should be also emphasized.

The tying hands strategy

Strictly speaking, this strategy expresses the non-acceptability of the conditions for the accession on the political and public scene. In this case the negotiators are trying to change the opinions of the other side by arguing that they are constrained by public opinion on certain issues. Usually, this strategy can sound like: “I would like to give in on this issue, but my parliament would throw me out of office the day I return from Brussels”¹¹⁸.

This tactics was widely used by Poland during its negotiations talks due to the complex internal political debates on the issue of the membership in the EU. One of the brightest examples where such strategy was implemented is the issue on agricultural policy.

As it has been stated, Slovakia, due to the high degree of support for integration, did not apply to the tactics.

¹¹⁵ Egon Dienes-Ohm, personal interview

¹¹⁶ Swieboda Pawel, interview

¹¹⁷ Swieboda Pawel, interview

¹¹⁸ Lykke Friis, *When Europe Negotiates. From Europe Agreement to Eastern Enlargement*, Institute of Political Science, University of Copenhagen, 1996 P.118

In the case of Hungary, it seems reasonable to provide the reader with the story of the talks on competition chapter. This issue was “especially sensitive” for the state and it insisted on transitional arrangements in the area. Since the very beginning, however, the Commission signaled that the transitional arrangements are not possible regarding this field. As mentioned during the interview, the applicant state applied to fact that it would have had to re-negotiate a lot of issues with its domestic enterprises in case it did not obtain at least the “flexibility clause” that allowed it to grant some sort of subsidies towards the companies¹¹⁹.

The group coordination strategy

According to this strategy, the actors – applicant states can strengthen their bargaining positions by mutual coordination of their approaches.

Despite the fact that it was extremely desirable to think that the applicants could “group” themselves and unify their positions towards the EU- as it was in many aspects during the negotiations with EFTA countries,- the interviews have shown that it is not possible to make such claims in the case of Eastern enlargement. Notwithstanding the fact that there were certain attempts to organize such fora (the Visegrad initiative can serve as an example), the cooperation did not go further than the exchange of opinions on the issues among the applicant states. While the question about the reasons of such “unwillingness” was posed, the common answer was the lack of necessity as well as the preferences of the EU to differentiate the applicants and to deal with each candidate separately¹²⁰. Furthermore, it had been widely admitted that the EU usually was trying to find the most flexible state and to make a deal with it (the salami/ice breaker tactics) which leaved little space for maneuver for the rest of participants of the accession negotiations.

In fact one can claim that the aforementioned tactics were basically the only one which the state could use in order to obtain the concessions. The last approach, however that was widely implemented during the accession negotiations by both sides- the EU as well as the candidate

¹¹⁹ Hargita, Agnes, personal interview

¹²⁰ Jaroslaw Pietras, interview

states was “*package deal*” and therefore it seems reasonable to put it at the end of the section dedicated to the tactics and strategies of the EU negotiations with outsiders.

The core idea of the strategy is the understanding that both negotiating actors may improve their bargaining position by combining together/putting several issues together into one “package”. It can be expressed by the following phrase: “if you agree on our proposal, we will accept your proposal”.

Despite the fact that at the beginning of the negotiations the EU highlighted the fact that no chapters shall be interconnected during the accession negotiations¹²¹, on practice they were. Nevertheless it is worth to mention that such policy was not recognized officially by the European Council or European Commission and as some of the interviewees argue had occurred during the process of negotiations due to the complexity and large range of chapters that were at the end on the bargaining table. In addition, there is a need to mention another argument about the strategy. Friis for instance argues that to set a “package deal” in the accession negotiations is not really easy since it encompasses two rounds of bargains - the “double package deal” – one is among the Member states and the other is between the member state and applicant¹²². Thus, she is convinced that the package deal is not a widely used tactics in the accession negotiations (in comparison with “salami tactic”). Nevertheless, there is a need to emphasize several important package deals during the accession negotiations on Eastern enlargement.

This tactic was used during the Swedish presidency that was justly characterized as “real break through” of that round of accession negotiations¹²³. It interrelated the chapter on the Free movement of capital and the other on the Free movement of persons. As it has been argued – the derogations for the transitional periods for the purchase of land for foreigners- the issue especially sensitive for Hungary, Poland and some other applicants (as Czech Republic for example) has been done in order to “convince the applicants to accept transition periods for free movement of labor

¹²¹ Hargita Agnes, interview

¹²² Friis Lykke, Jarosz Anna, *From Copenhagen to Copenhagen. Big bang enlargement or fizzle?* (Copenhagen, Danish Institute of International Affairs, 2002), P. 22

¹²³ Hargita, Agnes

demanded by the Member States”¹²⁴. For both Hungary and Slovakia such deal was satisfactory (the issue on the free movement of labor did not present so big challenge to negotiate about as in the case of Poland), hence whilst obtaining ten-years transition period for agricultural land and five-years for summer houses, they completed the chapters. Polish case was although different- it asked for twenty years period for the agricultural land and also wanted to obtain the concessions in the area of free movement of labor, so the chapters were not closed during the Swedish presidency and compromise on the issue emerged latter at the end of the accession game.

Finally, it should be noted, that almost all negotiators during the interviews mentioned several presidencies, pointed out to their style and habits in conduct of the negotiations. Following their statements, I asked to evaluate the role of Presidency during the accession talks. Did it matter, who was representing the EU during the accession negotiations? Indeed, there is no reason “to overstate the case”, as one of the Polish negotiators replied, nevertheless, all interviewees emphasized the importance of the presidency at the time when critical issues aroused during the talks. Particularly for the Eastern enlargement, the German presidency at the initial phase of accession negotiations, latter Swedish presidency – where as it has been argued the “first break through” had happened and finally the Danish presidency with its goal “from Copenhagen to Copenhagen” played crucial role.

At the end, let us summarize the main argument of the chapter. The accession negotiations can be characterized by slow path at the beginning of the game, the speed up in the middle. As in any international negotiations, the most difficult questions were resolved only at the end of the game. At the same time, the EU inside-outside game it not a typical bargaining where both sides are trying to reach the agreement, but the dialogue where the bargaining power is clearly at the side of the EU. Thus, it seemed to be important to define the factors that influenced the path of the game. It has been revealed that at the beginning of the game, the EU was uncertain about its results – there was no roadmap with the exact dates for opening and finishing chapters, the approximate

¹²⁴ Topolanska, M, Javorcik P., “Negotiation theory and the EU Accession Negotiations: Slovakia’s experience” (Slovak Policy Affairs, Spring 2003), P. 88

date for completing the negotiations was not determined as well. The shift in the EU strategy/behavior can be seen in 2001, under the Swedish presidency, where the timetable for negotiations was set up, the position papers on the Commission on several mutually sensitive issues was declared; several most important chapters was agreed and the other important chapters were planned to be discussed. Finally, the positions on the questions about institutions, budget, agriculture was harmonized only at the end of negotiations. Such behavior can be explained while looking at not only power and preferences of national and supranational actors, but also paying attention on the institutional and issue specific logic. In such a way, it seems that one of the crucial factors contributed to the uncertainty and such development of the game was in the need to prepare the Union for the enlargement, necessity of institutional reforms and modification in policies of the EU. Both sides were implementing different tactics and strategies in order to reach the agreement on several sensitive issues. The strategy of the EU during the negotiations was individual approach towards each applicant. The most widely implemented EU tactics can be named as “salami tactics” or ice breaker. Applicant states were indeed applying various strategies and tactics, most of them were discussed above. The most effective tactics used by both states was in establishing of package deals – it was not official strategy of the EU, but due to the complexity of the game (opened chapters) it appeared during the negotiations. Finally, as soon as the agreement on the major part of the questions was reached, both players were interested in completing the game as soon as possible (“processual” logic) and therefore the positions of both sides were more flexible at the end of the game than at the beginning.

Conclusion

The presented paper aims to study the EU negotiations on the enlargement: its internal bargaining process or its accession negotiations. The empirical case that has been selected is the negotiations on Eastern enlargement.

First part of the paper develops a theoretical framework for research. A contest between Moravcsik's liberal intergovernmentalism bargaining theory and Friis' constructivist approach of EU negotiations was set up, the two approaches compared and discussed. It has been argued that not only predetermined bargaining power and fixed preferences of state actors are essential for the process of decision-making within the EU, and in its negotiation game with outsiders. In order to comprehend the outcome of the EU negotiations we should assume that its hallmark is uncertainty shaped by previous experience, current policies and development, and prospects for future. Thus, any inside bargaining game should be understood as a process where various actors not only set, but develop, their preferences. The national agenda setting of states, the preferences of supranational actors play important role in shaping the positions of the actors during pre-negotiation phase. At the same time, due to the number of actors taking part in the decision making and the complexity of the issues, the outcome presents "suboptimal" results which still satisfy the preferences of all members of the community.

The EU inside- outside game would be also protracted and produce "suboptimal" results to a greater extent than the EU "average" game. The distinct feature of that game is its "dual" nature. The game would be also influenced by state and Commission preferences, bargaining power, institutional logics, issue-specific logics, strategic capability and "processual" logics.

The second and the third parts of the thesis lead us to the empirical world of the EU enlargement negotiations. More precisely, a goal of the second chapter was to interpret the outcome of the EU inside game - the Presidency conclusions and Commission documents in the years between 1994 and 1999 - guiding our theoretical assumptions and beliefs. How did the EU negotiate on its pre-accession strategy for Eastern enlargement?

It has been revealed that the decisions of the EU were to a large degree influenced by the events which shape the context of its operational environment when negotiating. Following this logic, it is clear that the end of Cold War, the process of transitions in CEEC and the strong willingness of both political elites and population to join the EU (by which the “return to Europe” was seen) dictated the necessity for the EU to launch the political dialogue with the CEEC. Under these circumstances, during the Copenhagen Summit, the EU promised CEEC a membership in the EU. Then, the Essen Summit (1994) seemingly mapped a more detailed way for the CEEC to become part of the EU. It established concrete mechanisms and instruments to implement the “structured relationship” and declared the enhanced political dialogue between the CEEC and the EU. At the same time, little was done in the field of liberalization of trade relations among the counterparts. Moreover, no concrete time tables for the possible membership were announced. During Madrid Summit (1995), possible dates for the launching the accession process were declared, but another set of questions emerged. Mainly, which way of enlargement the EU would choose: “small enlargement” as was favored by Germany or the “regatta option”? The Luxemburg Summit alongside the announcement of the “5+1” group –a group with which the process of accession negotiations should be started, also declared the beginning of accession process with all applicant countries. That would, from one point of view, indicate the choice of Europe in favor of small accession and explain its decision to divide applicants into two groups. Suddenly, however, the strategy changed and on its Helsinki Summit, the European Council decided to include the second wavers into the first group.

In order to explain the pre-accession strategy, its initial points and path of development, we scrutinized the following factors: state preferences and Commission, and institution and policy logics. Furthermore, we assumed that the process of pre-negotiations where the preferences and interests are pronounced and shaped into concrete position is no less important than the negotiations process itself; where actors, due to strategies and tactics, personal skills and abilities can also influence the process of decision making.

It has been revealed that large number of proposals concerning the Eastern enlargement was formulated and articulated by Germany and the Commission. However, due to the complex procedures of decision making within the Union, the interference of different policies into interests and preferences of the players and their ability to pursue their own strategy during the game, pre-accession strategy acquired some sort of ambiguity or “suboptimality”. Only under the strongest impression of Kosovo crisis, the decision to launch the process of “big bang” enlargement was undertaken.

The final chapter provided the reader with the study of accession negotiations – the EU inside-outside game. The accession negotiations can be characterized by a slow path at the beginning of the game and a speed up in the middle. As in any international negotiations, the most difficult questions were resolved only at the end of the game. At the same time, the EU inside-outside game was not a typical bargaining where both sides are trying to reach the agreement, but a dialogue where the bargaining power is clearly at the side of the EU. Thus, it seemed to be important to define the factors that influenced the path of the game. It has been revealed that at the beginning of the game, the EU was uncertain about its results – there was no roadmap with the exact dates for opening and finishing chapters, the approximate date for completing the negotiations was not determined as well. The shift in the EU behavior can be seen in 2001, under the Swedish presidency, where the timetable for negotiations was set up, the position papers on the Commission on several mutually sensitive issues was declared; several most important chapters were agreed and the others were planned to discuss. Finally, the positions on the questions about institutions, budget, agriculture were harmonized only at the end of negotiations. Such behavior can be explained while looking at not only power and preferences of national and supranational actors, but also paying attention to the institutional and issue specific logics. In such a way, it seems that one of the crucial factors contributed to the uncertainty and development of the game was the need to prepare the Union for the enlargement, necessity of institutional reforms and modification in its policies. Both sides were implementing different

tactics and strategies in order to reach the agreement on several sensitive issues. The strategy of the EU during the negotiations was individual approach towards each applicant. The most widely implemented EU tactics can be named as “salami tactics” or ice breaker. Applicant states were indeed applying various strategies and tactics which were discussed and evaluated. The most effective tactics used by both states was the establishing of package deals – it was not official strategy of the EU, but, due to the complexity of the game and many opened chapters, it appeared during the negotiations. Finally, while the agreement on the major part of the questions was reached, at the end of negotiations, positions of both sides appeared to be more flexible than at the beginning. This can be explained by the fact that both players were interested in completing the game as soon as possible (“processual” logic) and thus, the agreement was reached during the Danish presidency in 2002.

So, what can be derived from the given facts about the EU as a negotiating order when it negotiates on its extension? First and foremost, the EU is constantly engaged in the process negotiations. The process of negotiations within the EU can be named as a complex and rigid. The reason for such conclusion lays in the fact that the EU is not endowed with common identity. Thus undertaking the decisions, it has to take into account the preferences and interests of many national actors (nowadays 27), supranational actors (Commission). The outcome is also influenced by the development of the EU different policies and also by institutional logic. Secondly, when it comes to the negotiations on its extension with outsiders during pre-accession talks, the complexity and rigidity increases. This is due to the fact that the process has a dual nature: the agreement has to be reached among the members of the EU and then with the applicants. Finally, the accession negotiations can be characterized as “asymmetrical” negotiations where the bargaining power is largely focused in the hands of one actor- the EU. Therefore, it has a power to impose its rules, procedures and will. At the same time, it should be noticed, with every enlargement, the process of negotiations would become more and more complex/ sophisticated. This is precisely because of the increased number of members within the

EU; a growing number of the EU legislation, which seem to be more difficult to agree. Therefore, we can assume that the process would become much more time-consuming, more complicated and would require more human and diplomatic commitment. Nevertheless, up to this date, with a little exception, the experience on the EU' accession negotiations, which quite often compared with "marriage preparation" can be evaluated as rather positive and successful.

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Appendix 1: Accession negotiations in the context of the whole enlargement

Procedure: (From Fraser Cameron “The European Union and the challenge of enlargement+ Preston)

1. application of the candidate state to the Council;
2. Council requests the Commission to prepare its opinion (avis)
3. The Commission delivers an opinion about the applicant to the Council
4. The Council decides to open the negotiations for accession
5. The Commission proposes, and the Council adopts unanimously, positions to be taken by the Union vis-à-vis the Applicant in the accession negotiations;
6. The conduct of negotiations. The negotiations divided into exploratory and substantive phases.

The accession conference – Ministerial and Ambassadorial level;

- i. Exploratory phase of the conference- screening and identification of the areas for the negotiation with the different aspects of the EC’s activities being divided into chapters.
- ii. “both sides are gearing up” for the more substantial negotiations to come. Commission prepares ‘vue d’ensemble’ of the applicant’s case before proposing common position to the Council. From the applicant perspective this period involves watching and waiting for the internal politics of the EC to be resolved.
- iii. Completing the negotiations- once the negotiations reached this substantive phase, the Community sets a target date for their completion. The schedule also incorporates a period for ratification procedures to be completed in time for new members to accede on 1 January. This concentrates the search for solutions and exposes the issues that determine the success or failure of the whole process.

7. agreement reached between the Union and Applicant on a draft treaty of accession
8. accession submitted to the Council and European Parliament
9. assent from Parliament
10. the Council approves the accession treaty
11. the Member States and Applicant formally sign the Accession treaty
12. ratification

Appendix 2: Negotiators

1. HUNGARY

- Agnes Hargita,
Position during the accession negotiations: counselor, Deputy Head of the Department for European Policies and Coordination
current position: retired
- Dr. Egon Dienes
position during the accession negotiations: Ambassador, Deputy Permanent Representative (COREPER I),
Current position: retired

2. Poland

- Pawel Swieboda
Position during the accession negotiations: politician, responsible for EU affairs at Ministry of Foreign Affairs of the Republic of Poland, later at worked at the Chancellery of the President of the Republic of Poland
Current position: “Demos Europa” – Center for European Strategies, Warsaw, Director
- Jaroslaw Pietras
position during the accession negotiations: negotiator, former vice minister for european integration
Current position: Professor at the Warsaw University

3. Slovakia

- Bilcik Petr
Position during the accession negotiations: advisor for the chief negotiator for the Republic of Slovakia
current position: Slovak Foreign Policy Affairs
- Alexander Duleba
Position during the accession negotiation: advisor for the negotiation team of the Republic of Slovakia
Current position: Slovak Foreign Policy Association, director