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Postprint

This is the accepted version of a paper published in *Economic Systems*. This paper has been peer-reviewed but does not include the final publisher proof-corrections or journal pagination.

Citation for the original published paper (version of record):

Fritz, H. (2000)

Negotiating EU Accession: An Institutional Perspective.

Economic Systems, 24(4): 341-347

Access to the published version may require subscription.

N.B. When citing this work, cite the original published paper.

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<http://urn.kb.se/resolve?urn=urn:nbn:se:lnu:diva-38589>

Negotiating EU Accession: An Institutional Perspective¹

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Introduction

The negotiations for the fifth enlargement of the European Union (EU) with Central and Eastern European countries (CEECs) have been going on for almost three years. Many scholars have emphasized developing optimal solutions for the most problematic areas of integration. In many cases these issues are perceived problematic because resolving them requires redistribution of income among groups or regions. However as economists have had to learn elsewhere, political decisions with redistributive implications do not always correspond with recommendations based on welfare economics. Rather a positive analysis of the political process of decision making, its institutional setting and the incentives and constraints for the main actors proves to be instructive.

The aim of this article is to develop a different perspective of enlargement negotiations that explains the outcome of the negotiations by their institutional setting. The structure is as follows: the next section reports on the institutional provisions for EU enlargement. Then some reflections based on negotiation theory in a two-level setting are made in order to develop hypotheses about the influence of institutional features on the outcome. The article goes on with an examination of previous EU enlargements before some conclusions are drawn for the ongoing negotiations with the CEECs.

1. The negotiations for EU enlargement - institutional provisions

The basic institutional provisions for enlargement are laid down in Article 49 of the Treaty on European Union. According to this Article and to supplementing Council regulations (Avery and Cameron, 1998: 28pp) the subject of the negotiations for EU accession are the terms under which the applicant country will adopt, implement and enforce the *acquis communautaire* and, notably, the granting of possible transitional arrangements.²

The executives of the EU Member States and of the applicant state are vested with treaty making power. At the outset of the negotiations a member of the applicant's

¹ This article summarizes some findings of a joint research project with Chris Mögelin. I am indebted to Chris for intensive discussion about the topic and for his authorization of using ideas for this paper that we have elaborated in common. The results of the project are discussed more comprehensively in Fritz and Mögelin (2000). Of course I alone bear responsibility for all remaining errors and inaccuracies of the present paper.

² A more comprehensive record of the negotiation procedure is given by Booß and Forman (1995).

government presents a position paper on a specific topic. Then the EU Council of Ministers unanimously develops a common position on this topic and entrusts the President to conduct the negotiations within a limited mandate. If the position of the EU diverges from the applicant this procedure is repeated until a proposal finds unanimous approval of both the executives of the Member States and of the applicant country. In this fashion, the Accession Treaty materializes piecemeal.

However, the Treaty does not come into force until different institutions ratify it. On the national level ratification occurs in accordance with the respective constitutional requirements. In democratic constitutions the legislature is generally vested with ratification power. Additionally, approval by a majority in a public referendum or in a second legislative chamber may be necessary. On the EU level the Treaty requires assent of the European Parliament by absolute majority. Different from day to day policy-making the European Commission is a consultative body with no formal power.

2. Conceptualizing the negotiations

The negotiations for international treaties that require domestic ratification can be conceptualized as a two-level game (Putnam, 1988). On the international level executives negotiate for an agreement that has to be ratified on the domestic level by separate actors who are not directly involved in international negotiations. However, the preferences of these domestic actors may shape the agreement because the strategies of the negotiators are dependent on their assessment of the probability for ratification.

The behavior of the executives who negotiate on the international level is driven by their interest to stay in power. In a democracy this means that their actions are motivated by domestic vote maximization. Thus the value of EU enlargement can be expressed in net vote gains. Some voters, such as export-oriented economic agents, support further integration whereas others, such as employees of import-competing industries, oppose it.

Suppose that the outcome of the negotiations can be ranked along an ordinal scale representing the degree of integration. An Accession Treaty which provides for long transitional periods in a large number of policy areas can be interpreted as a low degree of integration whereas short transitional periods in a small number of policy areas represent a high degree of integration. As given in figure 1 the ideal point, i.e. the degree of integration that provide maximum vote gains for the applicant's executive (E_A^{ideal}) is assumed to be located left of the ideal point of the EU ($E_{\text{EU}}^{\text{ideal}}$). This is because the applicant is keen on preserving as much sovereignty as possible whereas the EU wants to reach as much harmonization to its existing legislation as possible. Furthermore preferences are assumed to be

single peaked. This means that the benefits of a degree of integration for an actor increase with its proximity to his ideal point.

Figure 1: Constrained zone of bargaining with uncertainty

No actor proposes a degree of integration lower (higher) than E_A^{ideal} (E_{EU}^{ideal}) because a move to the right (left) is Pareto-improving. The relevant zone of bargaining is between the ideal points of both negotiators. Any move from a given point within this range is redistributive, i.e. it improves the position of one actor at the expense of the other. Three determinants of the outcome can be identified within this concept:

- *The costs of no-agreement:* Given rational behavior an executive negotiates for EU enlargement only if the outcome promises higher vote gains or lower vote losses than the best alternative to EU accession. Accordingly failure of the negotiations involves costs for the negotiators – the costs of no agreement.³ The negotiator for whom these costs are lowest is most powerful in incorporating his preferences into the agreement. Thus asymmetrically distributed benefits from EU enlargement tend to bias the terms of agreement in favor of the relatively low-beneficiary. The same refers to a delay of agreement. A negotiator with a higher individual discount rate for net benefits of enlargement is likely to make concessions instead of postponing an agreement.
- *An external constraint:* The most obvious constraint stems from the need for ratification according to the national constitutional provisions for the transfer of sovereignty. The negotiators have to take into account the preferences of domestic actors that are vested with ratification power. The effect of this constraint can be seen in figure 1. The negotiator of the applicant is assumed to be constrained by the legislature whose utmost tolerable level of integration is L_A^{max} .⁴ As a corollary the possible zone of agreement is reduced by the gray range. From the perspective of the applicant's negotiator the constraint is a bargaining advantage (Schelling, 1956) because it rules out the least beneficial alternatives. However, a severe constraint may obstruct an agreement if L_A^{max} is lower than the minimum level of integration that the EU demands. The more

³ For the purpose of this article sunk costs such as the costs of conducting the negotiations can be neglected.

⁴ The constituency of the legislator is smaller than the respective one of the executive which makes the former more responsive to regional pressure groups than the latter. Under the assumption that protectionist interests can be better organized than those in favor of free trade it is reasonable to argue that the legislature is less integration-minded than the executive branch.

inclusive the majority needed for ratification of the Accession Treaty by the legislature the tighter the constraint for the executive.

- *The availability and the distribution of information:* The information about the location of the constraint may be distributed unevenly (Iida, 1993). Asymmetric information on the international level means that the negotiator of the applicant knows about the location of $L_A^{\max}$ but the EU's negotiator does not. Even if information about the genuine preferences of pivotal domestic actors are available to the negotiator of the EU the whole range of possible side-payments that may influence the voting behavior of these actors remains obscure. If side payments are decided in an institutional setting that vests the executive with more power than in the issue of ratification, e.g. less inclusive voting by the legislature, the applicant's negotiator is in a position to soften the domestic constraint without its counterpart being able to notice it (Milner, 1997: 109pp). Given that a constraint is a bargaining advantage the applicant's negotiator has a strong incentive to convey the impression of a more severe constraint to his counterpart than actually is faced. A more dramatic case of incomplete information arises if information about $L_A^{\max}$ is not even available to the applicant's negotiator. The effect on the outcome of the negotiations is not clear apart from the fact that „involuntary defection“ may occur by the applicant, i.e. the negotiator cannot deliver successful ratification which is in contrast to his own preferences (Iida, 1993).

This theoretical framework suggests that the institutional setting of the negotiations influences the terms of EU accession. In concrete terms the lower the costs of staying outside are and the more severe the external constraints for the negotiator are, the more favorable the terms of accession the applicant can be expected to achieve.

3. Insights from previous enlargements

Watertight empirical support of the reflections above is hindered by the fact that different Accession Treaties cannot be adequately compared regarding the achievements of the applicants. Complicating factors include the growing *acquis communautaire* extended from one enlargement to another. The assessment of achievements also depends on knowledge of the initial positions of the negotiators that are not publicly available. Furthermore some applicants were already linked to the EU prior to accession by formal institutional arrangements characterized by different degrees of harmonization to EU law. Nevertheless the partly comparative partly narrative study of previous enlargements can make a case for the necessity to pay more attention to institutional features than it is done by previous studies of EU enlargement.

Access to the EU market has always been an important motivation for a country to join the EU. The more intensive the trade links that exist between the EU and the applicant, the more beneficial is the removal of impediments to trade. Figure 2 depicts the pre-accession dependence on the EU market in the applicant's regional export structure as a proxy of the costs of no agreement.

Figure 2: Export shares of applicant countries five years before EU accession

Source: OECD; WIIW; own calculations.

The figure reveals a part of the „domino effect” of European integration (Baldwin, 1995), in which each country that joins the EU increases the costs of staying outside for the remaining countries. Countries of the first wave of enlargement faced the EFTA option as a real alternative to EU accession whereas the CEECs are extremely dependent on the EU market. Accordingly the countries that joined the EU earlier should be expected to have a stronger position in the negotiations for accession.

Figure 3: Constitutional provisions for ratification of Accession Treaties

Source: Fritz and Mögelin (2000)

Moreover the constraints for the negotiators imposed by the national constitutional provisions for ratification have varied significantly as shown in figure 3.⁵ Approval by the legislature is required in any democratic system. The necessary support ranges from simple majority just as for passing ordinary law (e.g. the UK) to high-inclusive majorities most notably in the Nordic countries. In some countries ratification may additionally prescribe an optional or compulsory referendum among the constituents.⁶

4. Conclusions and outlook for the Eastern enlargement

The institutional setting of the negotiations for EU enlargement suggests that the terms of accession are dependent on (i) the costs of no agreement for each of the negotiating parties, (ii) the tightness of constraints for the negotiators imposed by the preferences of domestic actors who are vested with ratification power, and (iii) the availability and distribution of information about constraints. Analyses of previous accession treaties provide some indication that supports this view.

What are the implications for the CEECs? Undoubtedly the applicants are negotiating for transitional periods for the application of the *acquis communautaire* to some sensitive areas such as agriculture, regional policy, environmental policy, competition policy etc. Regardless the respective issue at stake the analysis above suggests that this attempt can only be successful in an institutional environment that is favorable for the CEEC's negotiators. However, as depicted in figure 2 and supported by Baldwin et al. (1997) the CEECs face relatively high costs of no agreement. Thus their starting positions in the negotiations are rather weak. Second, severe domestic constraints for the negotiators imposed by national constitutions do not exist in most applicant countries. Only the Polish constitution includes explicit provisions for the transfer of sovereignty: ratification requires a two-third majority vote by the Parliament (Art. 90) and a referendum may be held of which the result is legally-binding (Art. 125.3). In the light of shrinking support for EU membership in opinion polls this may be regarded as a constraint. However as long as the definite requirement for a referendum is not embodied in the constitution, the government's declaration of intent to hold a referendum cannot be utilized as a credible constraint in the negotiations. The only "bargaining chip" is that the EU itself seeks to achieve transitory periods in some policy areas such as free movement of workers. This provides the opportunity for the CEEC's negotiators to achieve an issue linkage within which at least some of their demands may be successfully translated into the Accession Treaty.

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⁵ For the sake of simplicity the requirement for approval of a second chamber is ignored. Actually this is considered a formality rather than a real constraint.

⁶ See Fritz and Mögelin (2000) for a much more comprehensive account of previous enlargements.

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