

Surviving European Negotiations



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Brussels, as the arena for negotiations between the 25 Member States of the European Union, has become a little world of its own. Today it offers national representatives who are participating in the EU decision-making processes a particular experience that is characterised by a game spirit, a businesslike and bargaining atmosphere, interpersonal communication enhanced by cultural and background diversity, as well as a cobweb of home-made rules with which to muddle through diversified preferences and interests. To some extent, this world has recaptured the essence of international representation described in Europe during the early years of the eighteenth century when, according to former diplomat Harold Nicolson, most representatives operated within the same professional format, knowing each other and developing an esprit de corps that led them to, if necessary, distance themselves from their nationality. Almost 200 years later, Richard Langhorne observed that with the EU's own structure, many officials both within domestic services and in the Brussels system conduct a kind of diplomacy without being diplomats in the formal sense. Today, missions in Brussels for national representatives – whether officials flying in from their “capital” or the attachés/counsellors established in the Permanent Representations – require specific preparation to fit into the clothes of diplomats of a peculiar kind and into a distinct organisation of national interests.

Once upon a time in Brussels

Individual preparation for such a formatted philosophy and collective management has been the target of the EIPA since 1987, when it started to design and invest in knowledge and pedagogical tools through its Programme on European Negotiations. At the time, the processes of negotiation among the Member States of the European Communities were at a crossroads, with specific dynamics suddenly made obvious and the number of meetings growing due to four specific contextual factors.

First, the completion of the internal market was set as an economic and political target, with close to 300 measures of approximation scheduled to be negotiated under the first significant attention of the media, as well as of interest groups, to the normal legislative action of the European institutions. Second, in 1987 the first Decision on “comitology” was adopted in order to provide the institutional framework for the exercise of delegated powers; this set a new negotiating challenge for national representatives, namely to formally and regularly convene with the European Commission to decide on the revision, adaptation and implementation of European legislative acts. Third, the Single European Act entered into force that very same year, introducing a more widespread use of qualified majority in a series of common policies and European prerogatives established in the original founding Treaties. The

shadow of the vote made the incentive to negotiate more salient and demonstrated more evidently the need to use specific techniques to defend national interests. Fourth, this was the time of the first multidisciplinary financial perspective deals that endowed common policies with multi-annual financial commitments; fierce discussion of these issues – in particular economic and social cohesion among the most and the least favoured regions after the accession of Spain and Portugal the preceding year – also took place in the wide open and made conspicuous the predominance of the culture of bargaining in European negotiations. Since most national representatives were not exactly at ease with such a culture, in their eyes the preparations for such a process took predominance.

The boot camps

EIPA's approach over the years has been to identify the job profile of any national representative or European official who is expected to participate in the negotiation processes inherent to the decision-making procedures, political deliberations and legislative production, from the initiation to the implementation phases. The abilities and skills required to survive in this environment have subsequently been targeted and a specific pedagogy has been designed to help current or future negotiators in Brussels either to survive longer or to perform better. EIPA has cultivated learning tools, knowledge and advice related to the negotiation and bargaining theory, the application of procedures and protocols, interpersonal communication, cultural awareness, politically correct behaviour and diplomatic language. Simulations and case studies have been designed to re-create genuine negotiations, within the Council or in co-decision, on European legislation dealing inter alia with toys, chocolate, packaging waste, trans-European networks, the WTO, nuclear safety, family reunification and cosmetics. Over the years, EIPA has polished the job profile of European negotiator and tailored the state of mind required to survive and perform better in European negotiations, whether as a national representative or as a European official. Twenty years of working with and accompanying thousands of national representatives and European officials enable us to outline four of the essential requirements for the job.

Game spirit

First, a European negotiator should be game-spirited. To be convinced that Brussels negotiations bear resemblance to a game, it suffices to witness the behaviour and attitudes of the actors at the end of a negotiation or meeting. Most individual reactions are those of traditional winners and losers, of satisfaction and joy for having used a sleight of hand or having concealed much more than is allowed in the conventional processes of give and take. Gaming among negotiators materialises in the opening bids, argumentation and seduction, the tactics used to increase one's individual pay-off, hide information, slow down the process, save face or divide and rule. Adrenalin and pay-offs are both intense and quite addictive, since most negotiators who have left Brussels' playing field report their nostalgia, regret and sometimes frustration. A European negotiator should therefore not be afraid of gambling; EIPA's training serves precisely the purpose of exploring one's past, undisclosed or unachieved relation to this pattern.

Strategy oriented

A European negotiator should further assess accurately the investment and the expected returns through a programmed calculation strategy comprising four steps. The first calculation is a sequential or chronological one: are the dividends of the negotiating position to be expected in the short term or can/should the return be expected on a longer time scale? The second calculation is a horizontal one: are the gains to be derived from the dossier that is being discussed or can/should there be linkages with other side dossiers? By the same token, should an exchange of vote be envisaged between dossiers in order to switch between

different degrees of salience or interest? Thirdly, potential coalitions and alliance-building might further be considered in order to secure sufficiently favourable outputs. These calculations should be cross-examined with the alternatives that will be available if the negotiation fails and yields no result as a consequence of intransigent negotiating positions. Finally, the negotiator needs to calculate where, how much and with whom to make his/her efforts of socialisation and exchange information; a widely agreed figure among practitioners indicates that around 80% of all efforts needed to negotiate and strike a deal come about informally, outside the official meeting, that is, before, during and/or after the formal plenary session in certain pubs, corridors, rooms, saunas or even confessionals. The European negotiator should not computerise items in order to manage and approach them from a binary angle, such as a large or weaker voting power, but strategically reassess all the power that is available, under what form and where to use it.

Diplomatic mind and tongue

The willingness of other European negotiation partners to offer concessions and arrive at a compromise will, however, not depend merely on how much power and strategic unilateral planning is demonstrated to them: it will depend more on how much consideration is made of their own interests and motives to negotiate. There is a requirement to use a collective method, whereby mutually cooperative attitudes (as opposed to competing unilateral strategies) ensure that the interests of all parties, or a critical mass among them, are recognised and taken on board of the ultimate solution as much as possible. Following both earlier and recent estimates by Fiona Hayes-Renshaw and Helen Wallace, this “philosophy” leads, for example, European negotiators in the Council of Ministers to use their power wisely by reaching consensual decisions without a vote in roughly 75% of the cases where a qualified majority vote is provided for in the Treaties. European negotiators who join EIPA’s boot camps are not invited to cooperate blindly and sacrifice on the altar of a quasi-religious or quasi-ethical recommendation to cooperate; instead, they are prepared to follow a particular method to explore collective solutions and mutually advantageous technical or political ways out of impasses. Alternatives to impasses in European negotiations could materialise in, for example, partial harmonisation, flexible implementation, compensatory measures, safeguard measures or derogations. The first diplomatic requirement is thus to be not so much ethically correct as philosophically and methodologically flexible.

Beyond this method and how good it should prove to be, the willingness of all actors to engage in dialogue and to exchange information as well as concessions further depends on how much respect is paid to the size of the country and its accession date, and on their ego or their cultural preferences. Serious collateral damage can result from such phraseologies and oral references as “new Member States”, “Eastern country”, “cohesion country”, “small” or “poor” Member State. Such references, which are innocuous in other circumstances, might be perceived as attacks, offences or sheer arrogance. A large part of the trust that any group of negotiators needs in order to establish lasting collaboration in recurrent situations is founded on the mutual respect of a verbal non-aggression pact. However, the required diplomatic language does not prevent directness and forceful speeches; negotiators need to reflect on where to draw the line between being ruthless and being rude according to “Brussels” standards.

A clear, bird’s-eye view

The European negotiator’s third challenge is to take into account and calculate the effect of a series of shadows that influence the very perspective of the negotiation, making the target more difficult to aim at. The first shadow is that of the future: the power of a Member State shifts whenever coalitions are altered, the salience and centre of interest of partners evolve, governments or public opinion change, or domestic pressure increases. Even when negotiations are



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successful, the likelihood is that they will merely lead to yet another round of negotiations if the agreement needs implementing measures, review or reconsideration at a later stage simply because the initial national commitments were left sufficiently loose. Negotiators, or their colleagues, will therefore most often meet again, possibly under altered circumstances, with other dossiers attached or different interests linked. Expressing a position and using a vote – two classical vehicles of power – always need to be gauged in the light of how the future might retaliate or intervene in the subsequent rounds.

Closely associated is the shadow of the past through which previous agreements might have been made conditional upon later rewards, compensation, lines of action, reviews or exchanges of votes; such postponed conditionality is akin to a path dependency based on both fairness and long-term calculations. The exchanges of votes can be deferred either from one dossier to the other within the group's competence under the authority of the same negotiators, or horizontally across issues belonging to totally different subject areas; in the latter case, one delegation could exchange its vote on an issue that has low salience for the partner's offer to follow reciprocal voting instructions on another issue. Such a swap could, for example, take place on technically unconnected issues such as the vote on the number of sardines allowed per can sold within the EU and the decision on liberalising financial services. The solution to be found might be dependent upon earlier beaten tracks or parallel avenues.

The third shadow is that of the rules of procedure or, as some might say, the obscurantism of the decision-making rules applying to deliberations and negotiations among Member States. The challenge for the negotiator in this respect is to keep abreast of rules that change after enlargements and internal institutional reforms, how they operate formally and informally, and how they apply differently within the various preparatory groups of the Council and across the comitology groups. Such procedural surroundings encompass language regimes, recommendations for the preparation and conduct of meetings, rules for formal adoption and voting, the circulation and adoption of agendas, as well as timing provisions and calendar obligations.

The next shadow to delimit is the domestic background of the negotiator. The first set of elements constituting this background are the instructions provided in the mandate drawn up by the capital or the hierarchy, how much flexibility and room to manoeuvre is traditionally left to the individual negotiator, and how much autonomy the negotiator is customarily granted to leave aside the initial national instructions in order to secure long-term, side or group interests. Another crucial task for the European negotiator is thus to gather information on the latitude the other negotiators are allowed, how much influence these negotiators have on their domestic institutions and whether they can convince their authorities of the necessary concessions in order to grab something out of the deal that is looming. Other domestic factors to spot and manage are, of course, the cultural preferences and patterns. Here, the challenge consists mainly of becoming aware of how and where cultural differences materialise and taking them into account in order to sufficiently respect them without relinquishing one's own preferences. Negotiators from the 25 Member States have different approaches, preferences and senses of logic when it comes to the autonomy of the representative vis-à-vis the capital, the relation to time, the way to communicate through words and body, transparency and openness, or modes of socialisation. Since differentiated perceptions of these accounts are combined with further disparities of personality and individual background, all these differences result in the negotiators having dissimilar expectations regarding how the process of negotiation should be conducted. The more such expectations are considered by the group within recurrent socialised negotiations, the higher the degree of lasting cooperation every negotiator will be ready to contemplate.

The final shadow to distinguish originates from the neighbouring institutions and bodies involved in the decision-making process, in parallel, before and after the national delegations. The representative of a Member State needs to take into consideration the strategy of the other institutional actors such as the Commission, the European Parliament and the Presidency, all acting notably in the shadow of the right of initiative, the agenda-setting or the co-decision procedure.

Conclusion: “The most incomprehensible thing about the universe is that it is comprehensible”

What Einstein said about the universe applies to the Brussels world of negotiations. The hostile appearance of the procedures, the technicality of the dossiers, the national stakes and the bargaining tension may at first sight appear to national representatives as problematic; with guidance, however, negotiations can open up a world of addictive gaming, efficient collective management, mutual confidence, lasting cooperation, subtle engineering of European solutions, enrichment of interpersonal relationships and a quasi-diplomatic status as technical ambassadors. In order to capture the requirements to enter this world, survive it and perhaps even look forward to it, EIPA's Programme on European Negotiations has followed a genuine holistic approach comprising training sessions, simulation exercises and workshops, all of which aim at making comprehensible a system of negotiation that determines to a large extent how the individual parts behave, and that in turn is determined and personalised by them. ::

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