

THE CULTURE OF THE EUROPEAN ACCESSION NEGOTIATIONS

Simion Costea¹ Assoc.Prof. PhD., „Petru Maior” University of Tirgu-Mures

Abstract: The accession negotiation has an external and an internal dimension. It is about transposition of the EU acquis, implementation, building the necessary administrative capacity, with human and financial resources, about drafting directive specific implementation plans as basis for negotiating realistic transitional periods. The success of accession negotiations allow to a candidate country to become MS. The transitional periods are agreed by the Commission and MS on the basis of the good planning, with targets and deadlines and strong arguments. The transitional periods allow to the country to progressively implement the relevant EU legislation. A chief negotiator should successfully negotiate internally with the stakeholders and externally with the Commission, Member States, And European Parliament.

Keywords: *EU, negotiations, institutions, procedures, stakeholders*

For a successful accession negotiation: good and early preparation

Europe needs a stronger and wider EU. At a time when the EU faces major global uncertainty and gains new momentum for economic, financial and political integration, the enlargement policy continues to contribute to peace, security and prosperity on our continent. Previous enlargements of the EU have brought economic benefits to both the acceding countries and the EU as a whole. Therefore, EU enlargement policy continues to be valid for the future.

The current EU enlargement agenda covers Western Balkans and Turkey. The EU enlargement process is built on strict but fair conditionality and addresses the fundamentals first, including the economic governance.²

The success of accession negotiations allow to a candidate country (CC) to become Member State (MS). The EU acquis organized in 35 chapters must be transposed in national legislation and implemented. We choose the chapter 27 as a test case. This is a relevant example, as it is widely recognized as a very difficult chapter, with a huge volume of acquis and resource-intensive, but not politically sensitive. Good and early preparations are indispensable. Human and financial resources are key issues. Involvement of all concerned stakeholders is essential. The Chapter 27 Environment and climate change, is large, complex and resource intensive. The *acquis* in this chapter comprises over 200 legal acts covering 10 areas: horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals, noise, civil protection and climate change. Compliance with the *acquis* covered by this chapter requires significant investments. Moreover, a strong and well-equipped administration at national and local level is imperative for its application and enforcement.³

The candidate countries and potential candidates must cooperate with the EU on the environment long time before the opening of accession negotiations. E.g.: SAA Albania (2006), Article 108 –Environment: "1. The Parties shall develop and strengthen their

¹ The responsibility for the information and views set out in this article lies entirely with the author. The content of this article does not reflect the official opinion of any institution he works for or he collaborates with.

² *EU Annual Enlargement Strategy and Main Challenges 2013-2014*

³ *EU Screening report Montenegro - Chapter 27 - Environment and climate change*, Bruxelles 2013 (part 1)

cooperation in the vital task of combating environmental degradation, with the aim of promoting environmental sustainability. 2. Cooperation shall mainly focus on priority areas related to the Community *acquis* in the field of environment."⁴

Stages and substance of negotiations

The main Stages of accession negotiations are: the accession application is submitted to the Council; the Commission (COM) publishes an OPINION on possibility to start negotiations; the Council decision to start negotiations; the Screening process is developed by the Commission; the Accession negotiations take place (chapter by chapter, with OBMs and CBMs, technical meetings, monitoring from the Commission); each chapters should be opened, negotiated and closed; **post-closure monitoring**; the European Council decision on the finalization of negotiations; drafting and signing the Accession Treaty; ratification.⁵

What is the substance of the accession negotiation? The CC must: accept EU law; adopt and transpose the EU law; Implement and enforce the EU law; Build the administrative capacity; Commission must verify and monitor. The EU may agree to requests from the Candidate Country "transitional measures provided they are limited in time and scope, and accompanied by a plan with clearly defined stages for application of the *acquis*".⁶

What is required for a successful accession process: Solid work at home on alignment with the *acquis*; Political will and resources; Efficient coordination between the stakeholders; Clear, unambiguous positions from the Candidate Country (CC); Ability to provide to the COM clear, supplementary information rapidly. The roles of the Prime Minister, Ministry of Finance, the designated competent authorities for Environment, Parliament (ensure sufficient scrutiny) are important. Cross-party consensus and broad stakeholder consultation + civil society are crucial.

The Negotiating Framework is a general framework, crucial for opening and closing the accession negotiation. It establishes principles, substance and procedures of negotiations. Once agreed, overall negotiations can begin. Example: "In all areas of the *acquis*, Serbia must ensure that its institutions, management capacity and administrative and judicial systems are sufficiently strengthened with a view to implementing the *acquis* effectively"⁷

The Screening Process

This is an analytical examination of the *acquis*. There are 3 stages. The first stage is the explanatory screening meeting: the COM experts make a detailed and systematic

⁴ *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part*, Brussels 2006,

http://ec.europa.eu/enlargement/pdf/albania/st08164.06_en.pdf

⁵ Pușcaș, Vasile (2003-2005), *Negotiating with the European Union*, Bucharest, Editura Economica, 2005 (4 volumes). Pușcaș, Vasile (2013), *EU accession negotiations. A handbook*, Vienna: Hula and Co Human Dynamics. Pușcaș, Vasile (2014) 'EU Decisional Process and the EU Accession Negotiations', *Multi-country workshop on preparations for accession negotiations on Chapter 27*, Bruxelles, 2014, http://ec.europa.eu/enlargement/taix/dyn/taix-events/library/detail_en.jsp?EventID=56217

⁶ *EU Negotiating Framework Serbia 2013*

<http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20INIT>

⁷ *EU Negotiating Framework Serbia 2013*

<http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=AD%201%202014%20INIT> (Art. 35)

presentation of the EU legislation in the Chapter 27 in front of the candidate country experts (4-8 February 2013 for MNE, 15-21 September 2014 for Serbia). The second stage is the **bilateral screening meeting**: the candidate country experts make a detailed and systematic presentation of their level of legislative alignment, implementation and administrative capacity on the Chapter 27 (18-22 March 2013 for MNE, 17-21 November 2014 for Serbia). In the third stage, the COM elaborates the Screening Report on Chapter 27 and presents it in front of the 28 MS diplomats in the Council (November-December 2013 for MNE)

The COM is the natural ally of the candidate country during the entire Accession Process. The COM evaluates the country's level of preparedness. The COM presents the case in front of the Council (28 MS). The COM offers guidance, advice and financing to the candidate country. The candidate country should help the COM help it. The CC should convincingly present its case. Mutual trust & transparency is a key. Partnership is better than confrontation. Good technical preparation counts, not political clout or arms-twisting. However there is a political negotiation and a political decision at a high level. The CC should think of itself as a (future) Member State

The Screening Report includes 4 parts: I. Chapter content; II. Country alignment and implementation capacity = a descriptive part, based on info provided by the Candidate Country; III. Assessment of the degree of alignment and implementing capacity = COM evaluation; IV. Conclusions and recommendations on Opening Benchmarks (OBM) = COM propose them, the Council decides. What information is included in the Screening Report? Here is a real example from a real Screening Report: "The country stated that it is at a very early stage of alignment with Directive 2008/105/EC on water quality standards. Full alignment is envisaged for the end of 2015, through the adoption of the amendments to the Law on Waters and related implementing legislation. A deadline and a detailed plan for full implementation have not yet been determined. The competent authorities are in place (Ministry of Agriculture), but need further strengthening in terms of human and financial resources."⁸

What info should the country provide during the bilateral Screening meeting? Information should be well presented using the structure which is needed for the EC analysis: directive by directive; legislative alignment (transposition), institutional development, implementation and enforcement, foreseen problems (challenges).

Planning documents are needed where they are required by the *acquis*: waste management plans, river basin management plans, etc. Also, Directive specific implementation plans (DSIPs) will be needed also to support transitional periods.

The country should pay special attention to: alignment with the horizontal legislation and the framework directives first (Waste, Air, and Water Framework Directives); the directives which are related to high cost and possible transitional periods (UWWT); the directives which require substantial data collection (Birds & Habitats).

The CC should solve several institutional issues: Clear allocation of responsibilities for transposition, implementation, enforcement; Systematic approach to monitoring, enforcement and inspection capacities (description of systems); Identification of institutional gaps; Elaboration of institutional development plan.

⁸ *EU Screening report Montenegro - Chapter 27 - Environment and climate change, part II*

The legislative alignment with and implementation of the EU Directives is very time and resources demanding. It should not be underestimated. What was not done before to open the chapter will need to be done during negotiations; thus it will slow down negotiations process.⁹

The OBM for Chapter 27, approved by the Council, for Turkey mentions the main requirements. Screening process was completed for the Chapter 27 in 2006, and two opening benchmarks have been set for the opening of the accession negotiations in this chapter: 1. Turkey presents to the Commission its comprehensive strategy for the gradual, well-coordinated transposition, implementation and enforcement of the *acquis* in this chapter, including plans for building up the necessary administrative capacity at national, regional and local level and required financial resources, with an indication of milestones and timetables. 2. Turkey fulfils its obligations as regards the implementation of applicable environment *acquis* in line with the relevant EC-Turkey Association Council Decisions.¹⁰

Opening the chapter

COM presents the Screening Report to MS, to the Council, including recommendation to set Opening Benchmarks for the chapter 27. The 28 Member States (in the Council) discuss and agree the final text. Presidency letter is sent to the Candidate Country on OBM. Then the CC submits to the COM the Action Plan for fulfilment of the OBM: the plan for transposition, implementation and strengthening the administrative capacity. Then the COM elaborates the OBM Assessment Report and presents it to the 28 MS in the Council. MS agree the Report and invite CC to submit its negotiating position. The CC must elaborate and submit its negotiation position. Then the COM elaborates the EU Draft Common Position (DCP), which includes the Closing Benchmarks (CBM), and presents it to the MS in the Council. MS discuss and agree on the opening EU Common Position which includes the Closing Benchmarks.

The Council agrees (in unanimity) a Common Position (EUCP) on Chapter 27, which is based on the DCP elaborated by the COM. It responds to the Candidate Country's negotiating position. It may request further information. It sets closing benchmarks (CBM, for closure of the chapter).

The Commission monitoring continues through the whole process until accession by: Progress reports (in October each year); Monitoring reports (+ RENA/ECRAN); Peer reviews (COM missions on the field); Sub-committee meetings each year (first semester) and ad-hoc meetings; Technical meetings during the negotiations.

The Country's progress must be achieved in “real life”, not just on paper!

Closing a chapter and adopting the Accession Treaty

There are several stages in closing a chapter. CC submits to COM information on fulfilment of CBMs and closing Negotiating Position. Then the COM elaborates the draft closing EU Common Position (DCP) including an assessment of CBMs and presents it to MS,

⁹ Lithuania's example in RENA

¹⁰ Turkey - Minister for EU Affairs: <http://www.abgs.gov.tr/index.php?p=92&l=2>.

in the Council. MS agree on closing EU Common Position (EUCP). Then the Chapter is provisionally closed.

There were 6 closing benchmarks for Turkey. This chapter may only be provisionally closed once it is agreed by the EU that the following benchmarks are met: Cooperation with all its neighbours ("... implementation of the Additional Protocol to the Association Agreement"); Horizontal and framework legislation including its transboundary aspects; Water quality: Turkey establishes River Basin Protection Action Plans; implementing legislation; Industrial Pollution Control and Risk Management; Nature protection and waste management and the remaining sectors; Administrative capacity.¹¹ There were 4 closing benchmarks for Croatia: Water Quality; Industrial Pollution; Horizontal, air, waste, nature, chemicals, noise; Administrative capacity.

The Closing EUCP must say whether chapter can be closed – or not. The Chapter 27 can be closed when: High level of preparation was achieved; Closing Benchmarks are met; Transitional measures are agreed.

Commitments are not enough! Implementation and administrative capacity must be proved.

Negotiations are closed once all chapters are closed ("Nothing is agreed until everything is agreed"). The length of the negotiation process is difficult to predict. In the case of Croatia it took almost 6 years.

The final steps to accession are: Monitoring until accession; Accession Treaty signature (4-6 months after closure of negotiations); Ratification (12-18 months); Adjustment of financial framework; Accession of the country to the EU.

Conclusion:

The accession process is a process of transformation¹² of the country, at legislative level, institutional, economic and societal level. The entire EU legislation must be implemented. This is in the benefit of the citizens. The accession to the EU is a big challenge and a great chance for modernisation and sustainable development in the benefit of the citizens.

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