



European Institute of Public Administration  
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# **Strategic planning tools for European negotiators to defend their national interests in the Council of the European Union**

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## **Summary**

Negotiating in the Council of the European Union poses some challenges that are common to most international negotiations but there are other dimensions that are a lot more specific. In order to understand better the specific nature of negotiations on a European level and to develop some practical guidelines for European negotiators, it is important to situate European negotiations in the more general context of the theory on international relations and to remember that European negotiations are governed by the general principles which characterise the negotiation theory.

This working document has three objectives; after having reminded ourselves of the fundamental principles that govern European negotiations, it aims to provide a general foundation, which in turn will be useful for preparing most negotiations within the Council. A series of practical recommendations will then be made in order to contribute to the strategic thinking of the negotiator responsible for defending the interests of his or her Member State within the Council.

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# **Strategic planning tools for European negotiators to defend their national interests in the Council of the European Union**

## **Introduction**

The Council of the European Union's activities are punctuated by, on average, more than 4,300 meetings per annum (2009 figure). Whether Regardless of whether these relate to successive meetings of the different working parties and preparatory bodies, the Committee of Permanent Representatives (COREPER) or the Council of Ministers, they all involve a multitude of players, each with very different and even diverging interests. Most of the time, these players manage to come to an agreement that is accepted by the majority through the process of negotiation. The art of negotiation is the indispensable *modus operandi* of the decision-making process within the Council of the European Union.

Negotiation is a concept that can have very different and sometimes deliberately ambiguous meanings. In this context, it may be defined in a rather schematic way as a social process that can also be used for political means, on a national level. Negotiation is a process of communicating and exchanging between two or more parties, with the goal of resolving a problem or dealing with an issue that is subject to different views. The parties involved in the negotiation process may have either a cooperative or competitive relationship. It is normal for such a relationship to alternate between these two types during negotiations.

Negotiations are a product of social sciences, sometimes known as the "soft sciences", and had an important place in the development of international relations theories, which began at the start of the 20<sup>th</sup> century. The globalisation phenomenon has progressively widened its boundaries. This explains why international negotiations today include an ever-growing range of different players. Negotiation emerges, in this context, as a political process where the influence of a multitude of interests, at an international level, highlights the relationships of force between various powers or different regional blocs. The "international negotiator" is confronted with a series of very different "data" that he/she must try to master in order to better defend their mandate and, therefore, the interests that they represent within negotiations.

Negotiations within the Council of the EU impose challenges, some of which are common to most international negotiations (such as multilateral or multicultural dimensions) but other aspects (particularly the repetitive nature of the decision-making process and its long-term rationale) are much more specific.

To gain a better understanding of the specificities of negotiations on the European scene and to provide the European negotiator with some practical advice, it is important to bear in mind that European negotiations can be placed within the more general framework of international relations theory, and that they are governed by the general principles that characterise the theory of negotiations. The aim is not to draw up an exhaustive list of the main schools of thought, but to demonstrate to the practicing reader that the origins of a non-negligible part of the European negotiation process' rules and characteristics are to be found in these theories. Lastly, the specificities of the Council of the European Union can be described and understood as the field of action for the negotiations that are of interest to us in this working paper.

We use an analytical framework (Lempereur & Colson, 2010) based on our collaboration with the Institute for Research and Education on Negotiation of ESSEC Business School (ESSECIRENE Paris & Singapore), in the context of a support programme jointly carried out by the European Institute of Public Administration (EIPA) and ESSEC-IRENE for the Council Secretariat.

- **General principles in the development of the international relations theory**

It may be of interest for negotiator to understand how international relations theory has developed. A negotiator's work effectively takes place within the framework of these relations and, as a result, the way in which their nature and perception have evolved will modify his approach.

At the start of the 20<sup>th</sup> century, war was either avoided or promulgated with due regard to the perceived balance of power between the principal actors. The constant competition for advantage, in terms of the balance of power, was associated with a

policy of ruthless power and a Hobbesian outlook on politics and processes. The years that followed saw the progressive growth of liberal-inspired hypotheses whereby constitutional government and the primacy of law should be promoted as universal principles that apply to all types of regime, whether national or international. Multiple variants of the realist and liberal schools developed over the last century.

During the post-war period, some authors, including Hans Morgenthau (1948), viewed international relations international as "a set of States pursuing interests conditioned by the notion of power". Others, such as Raymond Aron, believe that "the characteristic of an international system is the configuration of the power relations". What is noteworthy here is that the nation state is no longer considered as the sole actor but as the most important. The notion of interests highlights two major concepts: states have interests and those interests control behaviour.

In the 1950s and 1960s, the contributions of social sciences, particularly the behavioural sciences, progressively enabled the focus to shift from interpretative approaches to a more conspicuously rigorous behaviourist approach. The aim of the latter was to provide a conceptualisation, systematically supported by scientific reasoning, in order to avoid any anecdotal dimension (much of it growing out of diplomatic history) that had been in use beforehand.

In the early 1970s, the development of international relations saw the emergence of new challenges, with the resultant consequence of both a change in the diplomacy of the great powers ("*high politics*") and the emphasising, to a lesser extent, of socio-economic changes ("*low politics*"). These cumulative changes produced the dominant theories of the 1980s and 1990s based on neo-realism and institutional neo-liberalism.

This brief historical reminder of how international relations theory has developed, enables us to understand the move from an idealised model of inter-State relations (liberal internationalism) to a more realistic approach (including the behaviourists). The important events of this period, i.e. the two World Wars, are probably the main reason for the changes in the modelling of international relations. More recently, the end of the Cold War, has heralded even more theoretical diversity but with the fundamentals of the early realist and liberal dialogues still identifiable.

This should not surprise the reader since it says as much about the development of international relations as it does about perceptions of human nature.

It is interesting for the negotiator to see how views on the role of the State have changed over time, in terms of the development of international relations theory. The changes in the entity represented by the negotiator will, naturally, have obvious consequences in terms of their approach. From the notion of the "nation state", the key to diplomatic and strategic relations, the study of decision-making processes within the framework of international relations has progressively demonstrated that the unitary nature of states in international relations (at least in the western world), as described by the realist school of thought, was illusory. By "unitary nature of a state", we mean the idea that states always act to defend their interests or political power, independently of economic, ethical, aesthetic or religious factors, even though they often claim (sincerely or hypocritically) that they are doing so for moral, humanist or other reasons. The realist school of thought in its unitary conception of the state assumes that political sphere is fully autonomous, a monolithic block, the sole engine of diplomatic and strategic relations. The theory of a unitary state could be used to describe a state participating in an organisation such as the United Nations (UN), but with more difficulty when it comes to a state participating in an organisation such as the European Union (EU) or the UN's operational agencies. In the first instance, it concerns an international body in which the states interact while, in the second two examples, the international organisation represents more than an international arena and, in that context, it seems to be more difficult for a Member State to use the organisation as a tool in its service.

The development of the economic sphere has followed a similar trend to that of the political sphere. Commercial enterprises have always traded beyond state boundaries. They have evolved over time and new business models have developed. Production has taken on a global dimension, bringing with it the notion of multinational cooperation. In this way, the quality of enterprise behaviour, as well as states in the political sphere, have evolved.

Diplomatic strategy in international relations becomes of crucial importance when the stakes involve life or death for states. However, in a world which is



constantly changing, where the Cold War is fast becoming a memory, the international role of social connections and, in particular, economic connections are in turn becoming its weapons. This development in inter-state relations is accelerating change and the establishment of models in international relations.

These changes have been highlighted in the collection of works on transnational relations by R. Keohane and J. Nye (1971, 1977 and 2000). These authors underline how these changes imply the establishment of relations based on pluralism and complex interdependence. We can no longer assume that relations between states systematically take precedence over relations of any other kind, or that states have the power to efficiently regulate all the actors or stakeholders on their territory. This complex interdependence highlights the existence of a multitude of access channels between players in society (both in the branches of the state machinery and in civil society), as opposed to the notion of the unitary state developed by the realist school of thought. Moreover, this complex interdependency implies that international relations are not based on force. Lastly, concerns and interests are not organised into a hierarchy in an environment of complex interdependence. Against this background, security becomes one theme, among others, and the schedule for discussions is drawn up depending on the current priorities. States stand together, a new outcome of pluralism, and their relationships are no longer considered as a whole but "divided up" according to sectors of interest (trade or finance, for example). For each sector, interactions are influenced by mutual interdependence. The sensitivity and responsiveness of players varies according to the circumstances and their level of vulnerability. These differences cause the politics of complex interdependence. In this context, "sensitivity", refers to the extent to which the players are sensitive to changes in a given context. Vulnerability measures each player's ability to adapt their responses to their level of sensitivity.

In very schematic terms, interest may be considered to be inseparable from circumstances. The negotiator will thus be led to imagine and construct several possible scenarios for achieving the goals that they set themselves, probably dictated by a multitude of factors, but also and above all by a cold analysis of the real means at his disposal.

We shall now look at the extent to which this trend is reflected in negotiation theory.

- **General principles of negotiation theory**

The literature on international relations and European integration has been developed without any special attention to the parallel developments in negotiation theories. This area of negotiation theory took shape in the 1970s, particularly in the United States. It was mainly developed by studying the aspects behind negotiations, such as the strategies employed by actors in negotiations, the factors that reinforce (or weaken) the bargaining power of the parties involved, the conditions under which negotiations are most effective, the way in which the negotiators' preferences may be influenced when they enter into negotiations, the importance of speech and forming an argument, the impact of an approach based on a long- or short-term rationale and the role that a mediator may play in facilitating compromises (Ury and Fisher 1981, Hopmann 1996, Raiffa 1992, Zartman 1978).

Since most of the research in these areas was carried out in the United States, these empirical works mainly focus on themes reflect American interests and priorities, such as bilateral relations between the United States and the USSR in the negotiations around the control of Soviet arms, or an interest in the negotiations relating to the peace process in the Middle East (Hopmann 1974).

In contrast, very little empirical and "theorising" research has been carried out on negotiations within the EU. European research has focused more on, for example, the ideas promoted by the founders of the EU, such as the commercial interests, indicators of the national preferences and the changes in the abilities of the EU supranational bodies. The development of research into the specific area of European negotiations only began much later, at the end of the 1990s.

Initial work on this subject was descriptive and did not immediately or explicitly contribute to the development of the negotiation theory (Wallace 1990, Werts 1992). This trend has been reversed since then. The theoretical aspects of negotiation, such as an analysis of the predominant style of negotiations within the EU, the specific role of stakeholders in European negotiations or an explanation for the particularities of the

results obtained within the context of a particular European policy have been developed (Da Conceição-Heldt 2006,Dür and Mateo 2010,Elgström and Jönsson 2000, Lodge and Pfetsch 1998,Meerts and Cede 2004,Niemann 2004,Talberg 2006,and Thomas 2009).

When researchers refer to the negotiation *process*, they define it either in a restricted fashion; as a whole made up of the legal procedure and the internal working of meetings (agendas, distribution of documents, taking the floor), or in a wider fashion by including the calendar, the size of delegations, the format and logistics. In an international, multilateral context, the second definition appears to be more fitting, since the negotiations are much more sensitive to changes in the rules of the game, if you will.

Research into multilateral negotiations stresses the importance of managing the process. Together with the formation of coalitions and the changing nature of the Best Alternative to a Negotiated Agreement (BATNA), process management marked one of the three fundamental differences between bilateral and multilateral negotiations (Susskind and Alii, 2005). As pointed out by Pfetsch (2009) when talking about multilateral negotiations within the World Trade Organisation, "the process shapes the outcome".

European negotiations form a particular type of international, multilateral negotiation insofar as the process is defined by the treaties and jurisprudence. The Presidency can, therefore, focus its efforts on the other aspects, particularly the schedule, the format (formal or informal), the logistics and the calendar. Moreover, the system of permanent representations means that negotiators posted in Brussels already maintain meaningful and cordial, if not friendly, relations with each other prior to the negotiations. The context is therefore strongly standardised, unlike the major inter-governmental conferences, which seem so restrained that a large part of the process has to be reinvented every time. The Brussels negotiation forum could be described as a consolidated multilateral forum.

Before looking at the two major approaches to negotiations, it is worth saying something about strategy and tactics, as well as making a clear distinction between these two concepts. Strategy is "a set of coordinated actions or manoeuvres intended

to achieve victory", while tactics are "a set of coordinated means employed to arrive at a result"

The first negotiating approach is the distributive approach, also known as the competitive or "win/lose" approach. This approach starts from the principle that negotiations are zero-sum transactions. In other words, the negotiators treat the negotiations as competitions for a limited or fixed quantity for the desired advantage, in such a way that any gain by one party amounts to a loss by the other. The sum of the gains to be obtained is often represented in metaphoric terms as a "cake", to be shared out. Given that the negotiators are fighting for a particular advantage, they hope to "win" a portion matching the corresponding loss by their adversary. The goal is for one party to seize the largest possible share of the cake with the other being left with only crumbs. The tactics used in this type of distributive negotiations are therefore aimed at appropriating the benefits while defending itself against identical actions by the adversary.

Contrary to distributive approaches, integrative or cooperative approaches frame the negotiations as potentially "win/win" interactions. Where the zero-sum vision considers the goal of the negotiations to be to win its share of a "cake of a fixed size", integrative negotiation theories seek the means to create value or to "increase the size of the cake" so that the negotiation results in more to be shared out between the parties. Because of the importance placed on resolving the problems, cooperating, joint decision-taking and creating mutual gains, integrative strategies require negotiators to work together to find so-called "win/win" solutions.

John von Neumann (1928) put forward game theory and the theory of general equilibrium. In 1944, his work resulted in the publication of *Theory of Games and Economic Behaviour*, in collaboration with Oskar Morgenstern, which has become a fundamental book on economics. This theory was taken up and developed by Thomas Schelling (1960) in the context of the Cold War, particularly following the missile crisis in Cuba, when he paved the way for studies on bargaining and strategic behaviour. These concepts are still widely used in negotiations and management theory.

The negotiator is then confronted with the dilemma of choosing between cooperation and competition. The "prisoner's dilemma" is one of the theories frequently quoted when referring to the principles of game theory and the latter's

application in the area of negotiation. Its scenario is the following: two prisoners are waiting to be judged for a crime that they have committed. Each of them must choose between two actions: admit to it or remain silent. If neither of them admits anything, they are cooperating and will each have to serve a sentence of two years in prison. If one denounces the other, the punishment will go up to four years for both of them. In addition, the prisoners learn that, if one of them cooperates but the other denounces him, the latter will be freed and the one who refused to testify against his partner will receive a five-year sentence. With each player trying to optimise his own situation, yet ignoring what the other is going to do, the game of the prisoner's dilemma demonstrates that the rational player will systematically opt for denunciation because he realises that he will always come out better than his opponent, whatever the latter's choice.

In reality, the negotiators are *a priori* confronted with a similar challenge when making a decision, since they do not have enough information about the other negotiators' intentions. If the above logic was followed in similar negotiation scenarios, agreements would then be improbable because each party would have a good reason for denouncing the other in order to maximise its own gains. However, such a result is not optimal because the parties present would achieve greater results if they were to cooperate. In order to prove that cooperation was possible, Robert Axelrod used an iterative version of the prisoner's dilemma to demonstrate that individuals seeking their personal interest are likely to cooperate when they realise that they risk meeting each other again. This is, of course, the case for negotiations within the Council of the European Union.

In fact, during the numerous Council meetings, whether these are formal or informal, Member States representatives (irrespective of where the discussion takes place, i.e. preparatory bodies or the Council of Ministers), are going to meet each other and negotiate on a regular basis in order to build the alliances necessary for defending their common interests. This also implies the importance of dedicating time and energy to socialising with all the interlocutors present at the table or with some of them, which can consequently lead to strong links being created, going beyond simple professional relations.

Taking all the groups together, some 4,300 annual meetings between the different actors of the Council and its preparatory bodies contribute to narrowing the gaps between their points of view and advancing the multinational integration process. An influential network is therefore created between national and European officials who participate in the work of the groups and committees that prepare Council decisions. This analysis is even more fitting when we look at the negotiations that bring together the Permanent Representatives, the Deputy Permanent Representatives and the sectoral advisors of the 27 within the Committee of Permanent Representatives (COREPER). They are all posted to their respective permanent representation for at least 4 to 5 years and meet each other every week (we will return later to the detailed workings of the Council). These actors are strongly imbued with a "European esprit de corps", unlike their national civil service colleagues. The latter more often remain ardent defenders of national causes and measures. In fact, each brick placed on the common structure removes a little more of their competence and authority. Given that all States have more to lose in the long run by not cooperating, common and national interests have to be constantly reconciled in order to develop operational common policies. Thus, in the context of European affairs, the integrative approach largely prevails.

This reminder of those principles and concepts should put the negotiator in a position to establish links between theoretical fundamentals and personal experience. This individual approach should contribute to an in-depth reflection on the way in which the European negotiation process operates and help identify new ways for improving its effectiveness. Before returning to these aspects in more detail, we would like to briefly present the formal context in which European negotiations take place.

- **The Council of the EU: context of European negotiations**

- European negotiations take place in an institutional framework made up of formal and informal rules. The Member States make decisions via a set of precise procedures and rules defined by a series of norms. This is why it is so important to pay systematic attention to the institutional constraints of these negotiations.

Several studies have been carried out in the area of European negotiations. Some seek to define fundamental principles on the basis of the general principles of negotiation theory (Elgström and Jönsson 2005, Elgström and Smith 2000, Meerts and Cede 2004 and Naurin and Wallace, 2008), while other research tries to explain its particularities (Thomson et al. 2006, Moravcsik 1998, Bailer 2010, Talberg 2006, Lewis 2005, Elgström and Jönsson 2000, Naurin and Lindahl 2008 and Meunier 2005).

Despite the diversity and variety of academic research in this area, what clearly emerges from this literature is that the particularities and outcomes of negotiations within the EU are conditioned by the institutional context of bargaining. This element constitutes the analytical starting point for all European negotiations. The analytical "3 P" approach (which we shall explore in the second section) isolates this element and considers it to be one of the three variables of any European negotiation. This variable is known as the "process variable".

Most of the negotiations within the Council of the EU take place in Brussels, in the Justus Lipsius and Borschette buildings. The Council is composed of a representative of each Member State at ministerial level, who is involved with the government of that Member State. When we talk about the "Council" or the "Council of Ministers" in general, the reality is that there are ten specialised formations grouping together several areas, such as "General Affairs", "Foreign Affairs", or "Economic and Financial Affairs". The Treaty of Lisbon distinguishes between the Foreign Affairs Council, which furthers the external action of the EU, and the General Affairs Council, which ensures that the work of different Council formations is consistent, prepares the European Council meetings (between the Heads of State and Government of the EU Member States) and ensures their follow-up in conjunction with the President of the European Council and the Commission.

The Treaty of Lisbon also states that, with the exception of the Foreign Affairs Council, the presidency of the formations of the Council is carried out by Member States' representatives under a system of equal rotation defined by a decision of the European Council, adopted by qualified majority. We will talk about the "Presidency" later on in this working paper. It should be noted that the seating arrangement for formal negotiations is drawn up in advance and follows the order of the Presidencies.

Each Council formation is made up of the ministers who are experts on that particular subject, but several ministers may participate as official representatives in the same Council formation, for example, in the case of the ministers for health and the ministers for social policy. Commission proposals are discussed in the specialised Council formation. However, decisions that have the approval of all the Member States may be adopted without debate (as "A items on the agenda") by any Council, often though by the "General Affairs" Council.

It is, therefore, the minister of the country of the incumbent presidency, who chairs each session of the Council. The rotating presidency has the advantage of giving each country a chance to demonstrate how effective they can be in promoting common policies on the basis of the Commission's proposals. In order to avoid problems regarding the differences in the priorities of the twenty-seven presidencies of the enlarged Union, the legislative work is now based on a strategic three-year programme adopted by the European Council. This programme forms the basis on which the General Affairs Council adopts an annual operational programme of Council activities in December of each year, accompanied by six-monthly indicative agendas for the different Council configurations.

COREPER's task is to prepare the work of the Council and to implement the mandates entrusted to it by the latter. COREPER sits in two formations: COREPER I is made up of the Deputy Permanent Representatives and examines issues that are more technical in nature, while COREPER II, which is made up of the ambassadors themselves, deals with more political questions. After examining a question, COREPER may report to the Council, responsible for the preparation of the deliberations, highlighting the political aspects to which particular attention must be paid or, if a consensus has been reached among the permanent representatives and the representative of the Commission, recommend that the Council adopt the finalised text "as an A item", i.e. without discussion. In both cases, the work of the Council is facilitated by the COREPER's intervention.

The Council is also assisted by numerous working parties made up of national delegates, who examine the Commission's proposals and report to COREPER. There are currently some 160 active working parties, some of which are more specialised



and more politicised than others. Given the specific nature of the themes dealt with and the diversity of the individuals that make up the Council, each working party has its own procedural rules, particularly regarding its language regime, and the conduct and dynamics of the negotiations. The national delegates are generally experts in the issues they are dealing with. They intervene on technical instructions and their amount of room for manoeuvre varies considerably from one Member State to another. The amount of flexibility that a delegate has is often related to the influence of the national coordination system in European affairs.

In addition, the Council is assisted by a General Secretariat made up of "eurocrats" of the 27 nationalities of the EU, plus their counterparts representing the Commission. The functions of the Council's General Secretariat have evolved from a role as logistician, note taker and legal adviser to one as being responsible for the negotiations and adviser to the Presidency. Its original mission was to assist in the logistics of meetings at the Council. That may, in particular, consist of assisting the Presidency by sending out the invitations and agendas for the upcoming working parties. The Council Secretariat, with all its years of experience, assists and guides the Presidency in its work, particularly by providing legal expertise on form, content and procedures. As we have seen, the current General Secretariat also takes on a more political role. It very often resembles the body responsible for the negotiations and a political adviser to the different Presidencies. Its experience and neutral persona allow it to take on the role of political secretary and mediator, offering its "good offices". Finally, it holds the reins in the event of a civil and military crisis.

The European Commission participates in all meetings of the working parties of national experts, COREPER and the Council itself to explain its positions and assist the Presidency in reaching an agreement on its proposals. Mastering the technical content of the proposals and the involvement of the Commission from the initiation of the consultation phase explain why seven out of ten Presidency compromises are elaborated with the technical, but also sometimes political, support of the Commission. During the course of the ordinary legislative process, the European Commission is party to the negotiations during the first and second readings in order to safeguard the spirit and letter of its proposal as far as possible. Should the Council decide to amend a proposal without the Commission's approval, it must do so unanimously (Article 293,

paragraph 1, of the Treaty on the Functioning of the European Union (TFEU). Furthermore, the European Commission may withdraw its proposal at any moment during the first two readings, under certain internal conditions (Article 293, paragraph 2, TFEU). The Commission has a mediating role during the third reading, a phase during which it is no longer able to withdraw its proposal.

Apart from the organisation and the players, the procedural, decision-making rules are essential elements which influence the modalities and outcomes of the negotiations. The most common legislative procedure is the ordinary legislative procedure, which involves both the European Parliament and the Council of the European Union (by qualified majority voting) on an equal footing. There are also other so-called "special" legislative procedures, such as the annual budgetary procedure and the acts of the Council with consultation or consent of the Parliament. Each of these procedures involves a different weighting of the individual decision-making institutions, which thereby conditions the way in which the negotiations should be considered.

Article 16 of the Treaty on the European Union provides that the Council make decisions by qualified majority, except in the cases where the treaties provide otherwise. The modalities governing qualified majority voting are stipulated in Article 16 of the Treaty on the European Union (TEU) and Article 238, paragraph 2, TFEU. However, based on the protocol on transitional arrangements regarding qualified majority voting (applicable until 31 October 2014), Council members' votes are weighted as follows and the influence of a Member State in the decision-making process is more or less linked to its demographic weight:

	<b>Pop.</b>	<b>Votes</b>
Germany	81.8	<b>29</b>
France	65.4	<b>29</b>
UK	63.0	<b>29</b>
Italy	60.8	<b>29</b>
Spain	46.2	<b>27</b>
Poland	38.5	<b>27</b>
Romania	21.4	<b>14</b>
Netherlands	16.7	<b>13</b>
Greece	11.3	<b>12</b>
Belgium	11.0	<b>12</b>
Portugal	10.5	<b>12</b>
Czech Rep.	10.5	<b>12</b>
Hungary	10.0	<b>12</b>
Sweden	9.5	<b>10</b>
Austria	8.4	<b>10</b>
Bulgaria	7.3	<b>10</b>
Denmark	5.6	<b>7</b>
Slovakia	5.4	<b>7</b>
Finland	5.4	<b>7</b>
Ireland	4.6	<b>7</b>
Lithuania	3.0	<b>7</b>
Latvia	2.1	<b>4</b>
Slovenia	2.0	<b>4</b>
Estonia	1.3	<b>4</b>
Cyprus	0.9	<b>4</b>
Luxembourg	0.5	<b>4</b>
Malta	0.4	<b>3</b>
<i>EU 27</i>	<i>503.7</i>	<b>345</b>

Until 31 October 2014, acts adopted upon a proposal from the Commission must obtain 74% of the total votes from the Member States (255 out of 345 votes). A Member State may request a verification of whether this qualified majority does indeed represent at least 62 % of the total population of the Union (decision 2007/4). If there is no Commission proposal, the deliberations are deemed approved if they have obtained at least 255 votes in favour from at least two-thirds of the Members (Protocol no. 36 on Transitional Arrangements).

From 1 November 2014, a qualified majority is defined as at least 55 % of the Council members, comprising at least fifteen of them and representing Member States

comprising at least 65% of the Union's population. A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained. (Article 16, TEU). However, when the Council is not acting on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72% of Council members, representing Member States comprising at least 65% of the Union's population (Article 238, paragraph 2, TFEU).

In cases where, under the Treaties, not all the Council members participate in voting, a qualified majority shall be defined as at least 55% of the Council members representing the participating Member States, comprising at least 65% of the population of these States. A blocking minority must include at least the minimum number of Council members representing more than 35% of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained (article 238, paragraph 3, TFEU).

From 1 November 2014, the Treaty of Lisbon should considerably facilitate the qualified majority voting system. Instead of the three criteria required under the Treaty of Nice for a qualified majority (the threshold of weighted votes, the majority of the Member States and 62% of the Union population), only two criteria will continue to be applicable: 55% of the Member States, representing 65% of the Union population. It should be noted that the third criterion imposed by article 16, paragraph 4, TEU (15 Member States in favour of a proposal) is superfluous. In a Union of 27 Member States, 55% of the total number will mathematically include at least 15 of them. The new voting system will respect the equality of the Member States since each one will have a valid vote under the first criterion, while the second takes account of the different sizes of their populations. Moreover, the new system, which will define the criteria for a qualified majority once and for all, will avoid, during future enlargements (and particularly when Croatia joins in 2013), long negotiations on the numbers of votes for Member States and the definition of the threshold for a qualified majority. Thus, when Croatia joins the Union, it will have 7 votes. For all of the 28 Member States, the total number of votes will rise to 352 and a qualified majority will be 260 votes. The blocking minority will then be reached with 93 votes.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained, even if it does not meet the population criteria (Article 16, paragraph 4, TEU). Even if divides between "large" and "small" Member States are extremely rare, this clause could facilitate decision-making in the Council, to the extent that it will make a hypothetical coalition between "large" Member States more difficult, given that three of them could form a blocking minority since their populations represent more than 35% of the Union's population. Given that a blocking minority must include at least four members, three "large" Member States will have to allow a "small" one into their coalition in order to block a Council decision.

In the specific context of European negotiations, the extension of qualified majority voting has been stimulated by the risk of blockages, a risk that increases with the increase in the number of Member States. The move towards a quasi-systematic use of the qualified majority means that the Council's ability to take decisions is maintained. This system has developed within the EU on the basis of a relative differentiation in the weight of the votes. It amounts to an institutionalisation of the asymmetry of power that formally influences the outcome of negotiations in favour of the smaller Member States.

Nonetheless, it is interesting to note that, despite the potential threat of a vote, most of the decisions are taken by consensus, even when it is not imposed by the rules. In more than 75% of cases where a decision might have been taken by a vote, it can be noted that the Member States have still arrived at an agreement by consensus (Hayes-Renshaw et al. 2006: 163).

There are, therefore, the actors and the rules of the game, on the one hand, and the organisation, norms and procedures, on the other, which define the formal framework in this arena, while the informal rules and their understanding both influence and suggest the forms of behaviour to be adopted during negotiations.

In the special framework of negotiations within the Council of the EU, this working paper has three objectives. After having recalled the basic principles governing the framework for European negotiations, it aims to provide a generic chart that should be useful when preparing for most negotiations in the Council of the EU. A series of

practical recommendations will then be presented in order to contribute to the strategic thinking of a European negotiator in charge of defending the interests of their Member State within the Council.

## **I – Understanding the rules of the game before entering the arena**

European negotiations have their own characteristics, which in turn affect the behaviour and room for manoeuvre of a European negotiator in this forum. The strategic choices open to the negotiator and their limits will then be derived from this analysis.

- **A-/ What are the characteristics of European negotiations?**

European negotiations are multilateral and multicultural in nature, covering many different subjects. They have a tendency to repeat themselves, and are sometimes informal, complex in nature and subject to long-term rationale. This complexity is accentuated by the fact that most of the institutions within which they take place are also stakeholders in the process itself.

It is essential for anybody wishing to understand or actively participate in the European negotiation process to take account of these multiple parameters.

**a) Complex negotiations:** European negotiations are influenced by the way in which the main institutions that make up the EU institutional context act not only as a forum for negotiation, but are also stakeholders in the decision-making process itself. These institutions must defend specific interests (preferences), have their own strategies and be able to reject an agreement that does not satisfy them, but they have also to manage their own potential internal divergences. For example, under the treaties, the European Commission has the exclusive right to make legislative proposals in most cases and has accordingly, in agreement with the Court of Justice, to ensure that the legislative texts voted are implemented. This means that it has to negotiate with this in mind, in accordance with the appropriate decision-making procedure, with the Member States and the other institutions. The Commission is not

a monolithic bloc ; its internal negotiations are frequent and often intense, whether the discussions are at the level of the college of commissioners or between the different directorates-general. It is the same when the Commission has to negotiate in the co-decision framework with the Council and the European Parliament. The latter too must hold internal negotiations, with each of its political groups negotiating nearly one item after the other on the Parliament's agenda.

**b) Multilateral and multicultural negotiations:** European negotiations always involve more than two players. It may be the 27 Member States or several institutions with a set of rules (codified or not), procedures and general principles, which frame the conduct of the discussions. At the same time, numerous negotiations take the form of informal discussions. This is particularly the case during the preparatory phase of the rotating presidency of the Council of the EU, when the Presidency begins its tour of capitals before assuming its official position. The codes and expectations in terms of negotiating attitudes and behaviour are a lot more flexible in these situations.

Moreover, the EU is characterised by a high level of homogeneity, cultural identity and shared values, which all provide fertile ground for the development of standards conducive to structuring productive negotiating behaviours (Checkel 2005; Levis 2010). Negotiators have been stakeholders in the European negotiation system for a long time. They have learnt to react in accordance with the standards in place, and even to consider them as beneficial (Heisenberg, 2005). Newcomers, in contrast, frequently deviate from this standard but eventually adapt to expectations, once the decision-making culture has been acquired (Levis 2010). This situation was largely demonstrated when Sweden joined the EU: the country received a record number of votes contesting decisions in its first year of membership, later adopting the standard consensus once it had become used to it (Talberg 2010).

**c) Negotiations on multiple subjects:** To begin with, negotiations often cover several items on the agenda, as, for example, in COREPER. It is then possible to link several themes together, with a view of bargaining one item against another. Moreover, the preferences of one or more parties during a given negotiation may be the subject of concessions or be supported by one or more other delegations during a forthcoming discussion. It should be noted here that the exchanging of concessions

may take place during or after the meeting. To illustrate the variety of themes and subjects touched on during a meeting, we will take the agenda for the COREPER I meeting of Wednesday, 11 July 2012, as an example. The “I” items do not require any discussion; they may relate to subjects as diverse as coordination at EU level with the view of a common position for the ICAO High-level Aviation Security Conference or the adoption of the Proposal for a Council Decision to authorise the Commission to open negotiations on behalf of the European Union for a new Protocol to the Fisheries Partnership Agreement with the Republic of Côte d'Ivoire. The agenda II items discussed were on varied subjects such as information from the Presidency on the progression of work on the Proposal for a Council Regulation adjusting the rate of contribution to the pension scheme of officials and other civil servants of the European Union, with effect from 1 July 2011. This was a report by the Presidency on the progression of the Proposal for a Regulation of the European Parliament and of the Council on European Social Entrepreneurship Funds (EuSEF) (first reading). The “any other business” item at the end of the agenda allowed participants to raise any particular subject before the meeting was closed. The negotiator must be aware that issues raised under “any other business” may only be discussed and may not be the object of a decision between the parties present.

**d) Rationale behind an iterative process and a long-term process:** The intensity of the EU's institutional activity gives an iterative nature to the negotiations between Member States and supranational bodies. Consequently, the national representatives participating in the negotiations know their counterparts relatively well, even when they are not posted to Brussels, as they will already have had the opportunity to negotiate with them in the past. This contributes to creating a more cooperative atmosphere based on trust, or even the creation of a common identity (Lewis 2005).

As well as its iterative character, the European process is a long-term one. Becoming a member of the EU is a heavy commitment. Even if the Treaty of Lisbon was the first to introduce a withdrawal clause (Article 50, TEU), it has not yet been used and its political impact would not be without consequences. In this way, the Member States, like the institutions that make up the EU, are involved in a long-term process, leading to a high degree of trust. It would be counter-productive to end such a relationship. This might explain why it is easier to link subjects together which are



under negotiation and develop viable agreements based on an exchange of concessions. The players involved in this type of long-term agreement are ready to bargain hard around the negotiating table (Fearon 1998).

After having identified the essential characteristics of the negotiations in which the national delegate charged with the defence of his country's interests will be participating, it is now time to analyse the typology and hierarchisation of national interests so as to be able to develop a strategic and tactical approach.

- **B-/ The negotiator's challenges in a European context: possible strategic choices and their potential limits**

Generally, the academic debate on the characteristics of negotiation strategies of Member States within the EU has progressively evolved, moving from concepts of "hard bargaining" (Moravcsik 1998, Scharpf 1988) or the "Communitarian method" (or cooperative/integrative method) (Lewis 2000) to a general acceptance of different, yet coexisting negotiation approaches (Elgström and Jönsson 2000).

European bargaining is typically characterised by one of these principles (e.g. Schalk et al. 2007: 234) since European negotiations are based on "cooperative bargaining". It is now important to concentrate on the bargaining strategy chosen by the Member States and to identify the conditions under which the choice is made.

Factors, such as the degree of politicisation (Elgström and Jönsson 2000), the stage in the decision-making process (Elgström and Jönsson 2000; Niemann 2004), the institutional context of the negotiations (Lewis 2010) and the intrinsic characteristics of each Member State (Dür and Mateo 2010) are quoted as factors affecting the choice of each State's negotiating strategy.

The negotiations surrounding the Bathing Water Directive are a good illustration of these different factors. Such a directive has existed since 1976, but all involved agreed it was time to revise it. In this way, the revision of this directive illustrates the different aspects of the European legislative process, right up to the final adoption of the revised text in March 2006.

With reduced costs and fewer constraints on travelling within the Union, intra-European tourism has continued to grow. Europeans' favourite destinations correspond to a single criterion: water. The quality of bathing water is, therefore, an element with crucial economic and political repercussions for the Member States. Consequently, the quality of bathing water should be maintained, protected and improved with the dual objective of protecting the environment and human health.

Having said that, and even if this is generally the case for all of the Member States, the degree of politicisation of and interest in the subject varies enormously from one Member State to another. While this directive can apply to all types of bathing water, the subject is, for example, of extreme political importance for a State such as France, which has an extensive coast line. This is not a problem for States like Luxembourg and Austria, which are landlocked countries without any coastline whatsoever. The negotiating strategy of each Member State will vary significantly depending on its location. Moreover, States' interests in revising this directive also depend on whether they have already met the quality criteria or not.

As we have seen, the stage reached in the decision-making process and the institutional context, both have a major impact on the negotiating approach. The European Commission issued a first proposal for reforming the 1976 directive in 1994. The Council was unable to reach an agreement on the Commission's modified proposal. The institutional context then played an important role in the approach to negotiations because, with the entry into force of the Treaty of Amsterdam in 1999, the directive's legal basis changed and the procedure went from one of cooperation to one of co-decision. The proposal was briefly reintroduced under this new legal basis before being withdrawn.

The European Commission did not, however, abandon its idea and presented a new proposal in 2002. Parliament adopted its position on its first reading, significantly modifying the Commission's proposal. The latter accepted only some of the amendments, while leaving the others for the Council's consideration. The Council was much divided and the Italian Presidency sought to build a compromise around a graduated approach to improving the quality of water, introducing more permissive

pollution risk standards. Given the divergences in positions, the Presidency decided to send the file up to the highest level, i.e. the Environment Council of December 2003. Despite all its efforts, the Presidency concluded that no political agreement could be found and it passed the file on to its successor, the Irish Presidency, which took it up in April 2004. The difficulties persisted, with some States opposing the strict standards in the proposal and others refusing to be perceived as being too lax on the subject of the protection of health and the environment. The Irish Presidency finally proposed an alternative to the delegations: the addition of a new category for the quality of water with lower standards or an undertaking by the States to meet the standards in the proposal at a later date, i.e. in 2015. Having to choose between reducing the risk factors or quite simply enforcing the strict standards to a later date, the majority of delegations opted for the first solution. This is how a political agreement was arrived at in the Council for the continuation of the second reading. During this stage, the Parliament, very unsatisfied with the new proposal, refused the addition of this new category in the plenary session. The amendments sought to restore the ideas of the Commission's initial proposal. Conciliation was then inevitable.

The Conciliation Committee is made up of representatives of the Council and an equal number of representatives from the Parliament, together with the commissioner in charge. These committees work in the following way: in the majority of cases, the negotiations are conducted in "informal trilogues" involving small teams of negotiators representing each institution, with the Commission acting as mediator. The participants in these trilogues report regularly to their respective delegations. The compromise found at the end of these trilogues is submitted to the Conciliation Committee for agreement in the form of a "joint text". For instance, in the case of the Bathing Water Directive, the committee finally arrived at an agreement by defining new standards.

The end of the procedure then becomes a formality: the Council adopted the compromise at its session of 20 December 2005 as an A item, without any discussion. The European Parliament in turn adopted the text on 18 January 2006, paving the way for its publication in the Official Journal.

The characteristics of the different negotiating themes, as well as the way in which they are linked, also influence the Member States when choosing their negotiating strategies.

The strategic option chosen by a Member State will be developed according to a scale of negotiating themes. This scale goes along a bipolar axis from *hard bargaining* to *soft* or *cooperative bargaining*.

The "integrative/distributive" approach is a typology often utilised in negotiation theory in international relations (Raiffa, 1982; Walton and McKersie 1965); the "hard/cooperative" approach (which describes the same thing) is a typology favouring a clearer, more explicit distinction in its terms between the behaviour of a Member State when negotiating and what motivates it to adopt different types of behaviour during the bargaining stage (Dür et Mateo 2010). These typologies may be defined as follows:

1. **Hard bargaining.** Allowing for tactics such as threatening a public undertaking not to give way, and even creating a defensive coalition to form a solid blocking minority.
2. **The cooperative approach –soft bargaining.** Allowing for tactics such as showing signs of flexibility, statements aimed at reconciling diverging positions, identifying partners in favour of a compromise and proposing alternatives (to the most reticent) likely to assist in developing a compromise (Dür and Mateo 2010).

The strategic choices and negotiating approaches adopted by the Member States are largely influenced by the theme or themes dealt with. The main characteristics or conditions enabling the nature of a theme to be defined have been the subject of much research. Four main characteristics can be observed:

- a. Is the theme of the negotiation a high or low political priority?
- b. Does the sum of all the items for negotiation represent a zero-sum or a positive-sum?

- c. What is the relevance of the subject in view of the Member State's interests in the negotiating process?
- d. What position does the theme occupy (on the priority list of a Member State) when the negotiations cover several themes at the same time?

We shall develop the characteristics of these parameters, which constitute variables that are relative and not absolute in nature.

**a) Is the theme of the negotiation a high or low political priority for the negotiator?**

The political dimension of the subject (whether weak or strong) partly affects the strategic choices of the Member States during the different phases of the negotiation. For example, is it about negotiating on issues relating to national sovereignty or the security of a Member State? Depending on the answer, this will affect the strategic choice in the negotiating attitude and approach of a Member State (Hoffmann 1966).

- When the discussion has a strong political dimension, the States are more inclined to achieve the desired result without making any concessions, so as to obtain an "absolute gain". In this way, when their sovereignty is at stake, the States are not prepared to concede anything at all (Tversky and Kahneman 1986). In other words, States are firmly opposed to any loss of sovereignty and will, therefore, adopt much more defensive positions during negotiations, calling this dimension into question. Within the context of the European Union, this idea is perfectly illustrated by the attitude of Cyprus on the enlargement negotiations regarding Turkey. The firm and inflexible official position of Cyprus is that it does not oppose Turkey's entry into the Union if, and only if, the latter meets all the membership conditions, including the recognition of all the European States (in particular the Republic of Cyprus). In light of Turkey's persistent refusal to do so, the Council of December 2006 decided to freeze eight chapters of the membership negotiations. Cyprus is also blocking two chapters, "energy" and "education and culture". For Cyprus, this issue directly touches on its sovereignty and its position regarding decisions requiring unanimity on the subject, are inflexible.

Inversely, States will be much more concerned about "relative gains" when they are negotiating subjects of lesser political importance (Lipson 1984; Mearsheimer 1994/1995). Within the Union, the States adopt much more flexible negotiation approaches when "communitarised" policies are involved, for example, matters relating tourism.

This difference in motivation determines the choice and use of a negotiation type more than any other in international negotiation processes. The chosen negotiation tactic must still be refined regarding the gain to be achieved. When the States are both preoccupied by absolute gains and want to obtain real results, they will be more inclined to seek a mutually beneficial agreement. When States are concerned about absolute gains, one may think they would be considerably less cooperative and, therefore, adopt a more confrontational attitude, intended to gain as much as possible and only give way to a strict minimum. However, as explained above with the example of prisoner's dilemma, practice and analysis have shown that the best way for a negotiator to obtain an acceptable result (in view of their initial position) is to take the other parties' expectations into account and accept some concessions. In this context, we can expect to see more cooperative behaviour.

We can start by looking at the example of inter-governmental conferences (IGCs), the frameworks for discussions on institutional changes, the relative power of the Member States within the EU and, more generally, questions of national sovereignty (the negotiations cover a large number of political items which are of prime importance and relating to key issues). During these conferences, the negotiating or bargaining techniques of Member States tend to be based on a hard approach. The effect of "major political issues" may also provoke some "surprising" negotiating strategies adopted by the Member States, as shown during the IGC of 2003 with regard to the establishment of a new qualified majority system for taking decisions in the Council. Even if most of the decisions within the EU are made in a consensual manner (Hix 1999), changing the qualified majority voting system can increase the risk of a Member State being isolated when a decision is being made and, therefore, of being obliged to change its national legislation to bring it into line with European legislation, without having supported the idea during the negotiation phase. This has major implications in the daily decisions made within the EU. That

said, the States have reached an agreement on the transition to qualified majority voting, since facilitating decision-making on a European level is in their own interest.

If it initially appears difficult to understand why the larger Member States, benefiting from the qualified majority voting system, should support the practice of consensual decisions, an answer may be found in "*power-oriented institutionalism*". The most powerful Member States (i.e. those having the largest number of votes) are able to respect the standard procedure of consensus while at the same time making use of various practices so as to avoid the inherent power constraints. Like the United States, the EU benefits from the consensual approach within the WTO by using the size of their markets as the foundation for a bargain tool (Steinberg 2002). The largest Member States of the EU may benefit from their structural advantage in terms of the power to adapt the form of the agreement to be obtained depending on whether it relates to an agreement which has been approved by a qualified majority or unanimously. In addition, even when negotiations are the result of a consensual agreement, the possibility of a vote is always present, which guarantees the largest Member States more power in terms of influencing the final result. Rather than reducing this influence, the consensual standard favours the creation of a fictive procedure that hides the exploitation of the weakest by the strongest.

Furthermore, themes as varied as foreign affairs, security, environment, competition, agriculture and home affairs may be dealt with during negotiations. Some areas, such as foreign policy or defence, often concern issues directly related to national sovereignty, while this does not directly concern other policies. The most likely outcome is, therefore, that the Member States will adopt a harder negotiating strategy if they must negotiate on issues relating to foreign affairs or defence, as these issues have strong political potential. Their approach will, however, be more flexible when they are negotiating issues that are not directly related to national sovereignty, such as the environment or competition.

We can conclude that the States adopt very firm negotiating strategies when the subject matter under discussion has a strong political slant. However, their approaches are more flexible and cooperative when issues are less politicised. Despite this, as we have seen, an approach that is too hard in a European context

could end up being counter-productive. The table below summarises these different situations.



**Table 1 – Is the subject of negotiation a high or low political priority for the negotiator?**

<i>Nature of the subject</i>	<i>Issue dealt with – motivation</i>	<i>Desired result</i>	<i>Implications</i>
Strongly politicised	Absolute gain	Achieve the desired outcome without making any concessions	Hard approach and more confrontational attitude
Not very politicised – of less interest	Relative gain	Issue of lesser importance, thus, more open to discussion	More flexible approach. More open to concessions and seeks for mutual gain

**b) Do all of the issues under negotiation naturally represent a zero-sum or a positive-sum?**

The negotiating strategies adopted by the Member States are also influenced by the nature of the situation or discussion. We will now explore "zero-sum" situations or "positive sum" situations. In the context of international negotiations, the zero-sum situation is normally associated with confrontational negotiating strategies (von Neumann and Schelling). Stakeholders in zero-sum negotiations have firmly opposing interests (Raiffa 1982; 33), which leads to the adoption of confrontational strategies.

In a non-zero negotiating situation, however, the interests of the Member States are not diametrically opposed. The parties may, therefore, adopt an approach based on a less confrontational strategy.

In other words, when the issues being dealt with give rise to completely opposing positions, the strategic approach adopted is a hard one, whereas the Member States will be more inclined to adopt a more flexible approach when their interests are different, without, however, being contradictory (i.e. in a positive-sum situation).

We can now ask ourselves how we should proceed to analyse the nature of a negotiation.

**The nature of the negotiation depends on several factors:**

1. **The number of issues.** Of all the negotiations which the Member States deal with, only one issue leads to a zero-sum bargaining situation, while negotiations involving several issues are more conducive to a positive-sum negotiation (Raiffa 1982).
2. **The dominant features of each issue.** The redistributive nature, or not, of an issue will influence the nature of the negotiation. The redistributive dimension is the reallocation of one Member State's available resources to another. Redistribution generally gives rise to a zero-sum situation, as it follows a loser / winner rationale. What a Member State is going to gain will be to the

detriment of another. It may, for example, involve the choice of a town as the seat of a new European agency. The redistributive aspect of an issue will lead Member States to adopt a firm negotiating strategy in order to better protect their own interests (Elgström and Jönsson 2000).

3. **The literal distribution of a resource during a negotiation.** This element also involves a zero-sum approach. For example, it is typically the case for negotiations on the allocation of quotas between Member States. This type of sharing-out by quotas happens frequently in the context of the Common Fisheries Policy (CFP) and for some aspects of the Common Agricultural Policy (CAP). For the CFP, some of the decisions taken by the Council are intended to preserve the environment and set rules for guaranteeing the sustainability of fishing resources, by fixing a total number of catches of fish per species and per annum. This method of allocating quotas corresponds to a zero-sum negotiation rationale, as a high quota for catches in one Member State means low ones must be allocated to the others.

The same rationale applies in the context of the EU's environmental commitments during negotiations on the Kyoto Protocol. The EU committed itself to reducing greenhouse gas emissions by 8% between 2008 and 2012, as compared to the level of emissions in 1990. The Member States had to negotiate on the amount of greenhouse gas reductions for each Member State, in order to be able to collectively reach the reduced target assigned to the EU. Again, this constituted a zero-sum situation, as a small reduction in greenhouse gas emissions for one Member State meant that the others had to work much harder to reach the target.

All the above-mentioned factors enable the nature of the negotiation to be defined. They indicate that Member States tend to adopt a hard strategic approach if there are few issues on the table, if the negotiations are of a redistributive nature or if the Member States have to negotiate quotas to be shared out between them. The elements may be accumulated during a negotiation, without making the consequences any better or worse.

Inversely, we know that the complexity of the issue(s) under negotiation constitutes another influential factor in European negotiations. The more complex the subject, the more varied the negotiation dimensions will be. All these dimensions must be resolved together, in order to reach a result which is accepted by the majority. From this we can deduce that negotiations in a complex environment will be more likely to lead the Member States to adopt so-called cooperative (soft) strategies.

The table below summarises these different situations.

**Table 2 – Do all of the issues under negotiation naturally represent a zero-sum or a positive-sum situation?**

To remember: the interactive bargaining rationale will be influenced by:

- 1) the importance of the political dimension of an interest for a Member State
- 2) the importance of the interest at national level and any repercussions it may have on the electoral process.

<i><b>Nature of the negotiation</b></i>	<i><b>Strategy adopted</b></i>	<i><b>Nature of the interests at stake</b></i>	<i><b>Diversity of the themes under negotiation</b></i>	<i><b>Nature of the issues under negotiation</b></i>
Zero-sum negotiation	<u>Hard bargaining strategy</u>  Seeking an absolute gain Winner / loser or Loser / winner	Opposing interests on almost all occasions	Very limited number of subjects under negotiation, or even only one	Redistributive dimension
Positive-sum negotiation	<u>Cooperative strategy</u>  Seeking mutual gain  Win / win approach	No major incompatibility of interests	Large number of varied issues under negotiation  Complex issues under negotiation, e.g. dealing with extremely technical issues	Themes with multiple dimensions are managed jointly in order to achieve results

### **c) Predominance and a Member State's particular interest in an issue?**

The negotiation approach maintained will depend on the importance of the subject for the State, which will seek to defend its own interests as effectively as possible. An offensive approach or an escalation in conflicts (international or otherwise) may constitute a negotiating technique when the interests at stake are considered by the negotiator or a State representative as important. This results in a Member State being more inclined towards conflict if the object of the negotiations represents a strong national interest. This notion is often used in international relations literature where the concept of "highly political issues" is referred to. This argument naturally reinforces the preceding paragraphs when it involves determining the most appropriate approach during negotiations, European or otherwise. However, an issue that is of minor political importance at a European level may be of great importance for the government of a Member State (the central player in international negotiations). For example, if it transpires that this issue is crucial at a national level and may have an influence on the national electoral process. In this context, it is certainly the hard strategic approach that will be opted for at an international level and this will be reflected in tactics intended to conclusively demonstrate inflexibility during the international negotiation process to the nationals of the Member State. Consequently, we can suggest that the more the subject depends on the national electoral variable, the more the Member State will be inclined to adopt a firm, non-conciliatory position during negotiations. This approach will be reinforced by the way in which the Member State links this subject to other issues under discussion in the same negotiation.

To illustrate this, we can look at the Community funds allocated within the CAP to Member States whose agricultural sector is well-developed. This subject could have major consequences at a national level for Member States receiving major support. The grants given to France, for example, represent a non-negligible percentage in comparison with its Gross Domestic Product (GDP). Its position is, therefore, very robust when it comes to negotiating on this issue in the Council, as the outcome of negotiations in Brussels will have major consequences at a national level.

**d) Links between the issues to be negotiated: a relative value unique to each Member State?**

When several issues are under discussion during a negotiation, the links between the different items may influence the Member States in their choice of negotiating strategies (Sebenius 1983). While some studies define the nature of the links between the issues and their potential influence on the negotiation through analysis of the different items on the agenda, a lot of research has focused on the difference between the preferences of a Member State on one or other of the issues under discussion (Da Conceição-Heldt 2008; Sebenius 1983). The key element that allows the different types of strategic approach in a negotiation situation where several items are linked to be distinguished from each other will depend on whether or not Member States with opposing interests accord the same priority to the various issues.

From this, we can suggest that the main characteristic of the links between issues dealt with during international negotiations depends on the importance that each state gives each item in terms of its own interests (national sovereignty or political issues). If it transpires that the subjects are of differing degrees of importance for a Member State, a mutual exchange of concessions benefiting all of the parties is possible, which increases the chances of the states reaching a negotiated agreement (Da Conceição-Heldt 2008; Sebenius 1983). Most recent research has concentrated on the establishment of links between different discussions themes on the outcome of the negotiations.

However, if the States' negotiating strategies are influenced by the items on the agenda, they also depend on the desired final outcome. The Member States must, therefore, analyse and test the combinations of several issues during the negotiations in order to adopt the best possible strategy and behaviour for achieving their objectives. This cause and effect relationship is effectively illustrated in several bargaining models (Coleman 1990; Schalk et al. 2007; Stokman and Van Oosten 1994; Van de Bos 1991). However, given the current level of research in this area and accounting for the numerous variables that can influence strategic choices in terms of negotiating approach, it has never been demonstrated with certainty that a State defines its negotiating strategy solely

on the basis of a stimulus related to the level of priority attached to the different issues under discussion in relation to that of other States. One can assume that the exchanging of concessions between the issues will lead to a certain degree of cooperation between the States involved. This approach aimed at reaching a compromise shows a direct link with the cooperative approach or "soft strategic approach". The negotiation strategies adopted by the States depend on the relative value of each of the different items under discussion. The more different a relative value is for each party involved, the greater the chances that the parties will opt for a cooperative approach.

The attraction of informal cooperation should also to be emphasised; it spontaneously reinforces the efficiency of decision-making and, thus, of the negotiation. In this context, the norm of consensus is part and parcel of a set of informal practices, which facilitate decision-making through the creation of a link between several files in an iterative negotiating environment (Héritier 1999).

More specifically, decision-making based on the consensual approach appears to be the result of an informal exchange of votes between Member States in the framework of an existing legislative agenda (principle of consistency/log-rolling) or over a longer period (diffuse reciprocity) (Heisenberg 2005). This is a strategic practice of the Member States, which consists of "selling" their support or preferences that are of less importance for them in exchange for advantages in other areas or in future negotiations. This method allows their interests to be valorised and for them to obtain a specific result, while contributing to the efficacy of the decision-making process.

In this way, the importance of the Commission's role and that of the other institutional players in the context of European negotiations should not be underestimated. The exclusiveness of the right of initiative (depending on the area concerned and the associated procedure), taken together with the fact that the Commission drafts a major part of the legislative proposals is a parameter that has major repercussions on the possible interactions between the Member States during the negotiation phases. The Commission, both prior and during the drafting of the legislative proposal, is subject to what can be an intense influence (lobbying) by the Member States. The Commission



may, in some cases, anticipate the reconciliation of major interests of several Member States by incorporating them into the draft of the proposal. Consequently, the interests of the Member States themselves can have an indirect influence on the elements making up the legislative proposals.

Analysis of the influence (individual and collective) of these aspects should enable the European negotiator to implement the strategic approach best suited to the desired objective and result. A distinction must be made between strategic choices (the desired result) and tactical choices (the means employed to achieve the desired result). The characteristics of the issues under discussion are undoubtedly a major component in the elaboration of a Member State's strategic and tactical choices.

It is difficult, if not impossible, in the daily reality of European negotiations, to separate issues from each other. The influence that one issue may have on another should not be under-estimated. Furthermore, the intrinsic specificities of each Member State, such as the national system for coordinating negotiating positions in Brussels, will play a major role in the way they negotiate. The influence of the negotiator's individual idiosyncrasies must also be taken into account (personality and culture, in a wider sense) and the influence of factors related to the negotiation procedure within the decision-making process.

Bearing this in mind, we have developed a methodological chart designed to assist the European negotiator, both in the preparatory phase and during the negotiations themselves. This has been drawn up in close collaboration with a large panel of Council negotiators.

## **II – Advance preparation for better results: the PIP approach**

Preparation and anticipation are paramount to successful negotiation. This document includes an analytical table designed to help the European negotiator prepare their negotiations as effectively as possible, enabling them to understand the three parameters inherent to any negotiation, i.e. the people involved, the item(s) dealt with and

the process at stake in each negotiation. We shall call this tool the "PIP" chart. This approach is inspired by the work of Fisher and Ury (1981) and Lempereur and Colson (2010), and in particular the analytical framework developed at the Institute for Research and Education on Negotiation (ESSECIRENE Paris & Singapore). The "PIP" chart has been adapted from the latter's PPP approach (People, Problems, Process) in the context of a support programme carried out for the Council Secretariat jointly by EIPA and ESSECIRENE.

Once these elements have been clearly defined and understood, the European negotiator will easily be able to define and apply his strategy, thus better satisfying the objectives of their mandate.

- **A-/ Reasoning behind the PIP approach**

The analytical chart is the product of a classic study of negotiation theory, but also of the experience acquired over the fifteen last years from observing the negotiating techniques and practices at the very heart of the European institutions and, particularly, within the Council of the European Union.

The methodological chart is intended to accompany the European negotiator in the preparatory phase and during negotiations in the Council. It provides them with an anticipation and strategic preparation tool drawing their attention to the key elements to be taken into consideration in the majority of Council negotiations, on the one hand, and to better structure their approach and strategic choices, on the other.

The contributions from psychosocial literature on negotiation include the theoretical and experimental works devoted to the influence of "motivational" tendencies on the behaviour of negotiators. Certain researchers, such as Deutsch (1958), Messick & McClintock (1968), Kelley & Stahelski (1970), Messick & Brewer (1983) and Komorita & Parks (1994), have defined four distinct types of personal motivation, which is determined by the individual's position in two dimensions, i.e. interest in interpersonal relations and interest in the outcome. The result is motivational tendency typologies represented in the

form of a continuum: *individualist, altruist, cooperative and competitive*. An *individualist* is solely motivated by his personal results. An *altruist* is exclusively interested in the results of the other parties. A *cooperative* person is concerned with the result of all of the parties present, while someone who is more *competitive* is motivated by the desire to do better than his interlocutors.

Another important element of the behavioural approach (also addressed by the theoreticians of other schools of thought) is the setting or framework. The "framework" is the way in which a problem is described or perceived. Is the glass half full or half empty? The way in which a question is formulated may highlight certain evaluative objectives and, in turn, influence the outcome (Raiffa 1982). It may also have an impact on the emotional reaction of an individual when a problem is set out in factual terms. Neale and Bazerman (1985) noticed that the nature of the framework or the representation of a conflict in the eyes of the negotiators had an effect on the way they perceived the task (optimise gains or limit losses), as well as the probability of reaching a negotiated agreement.

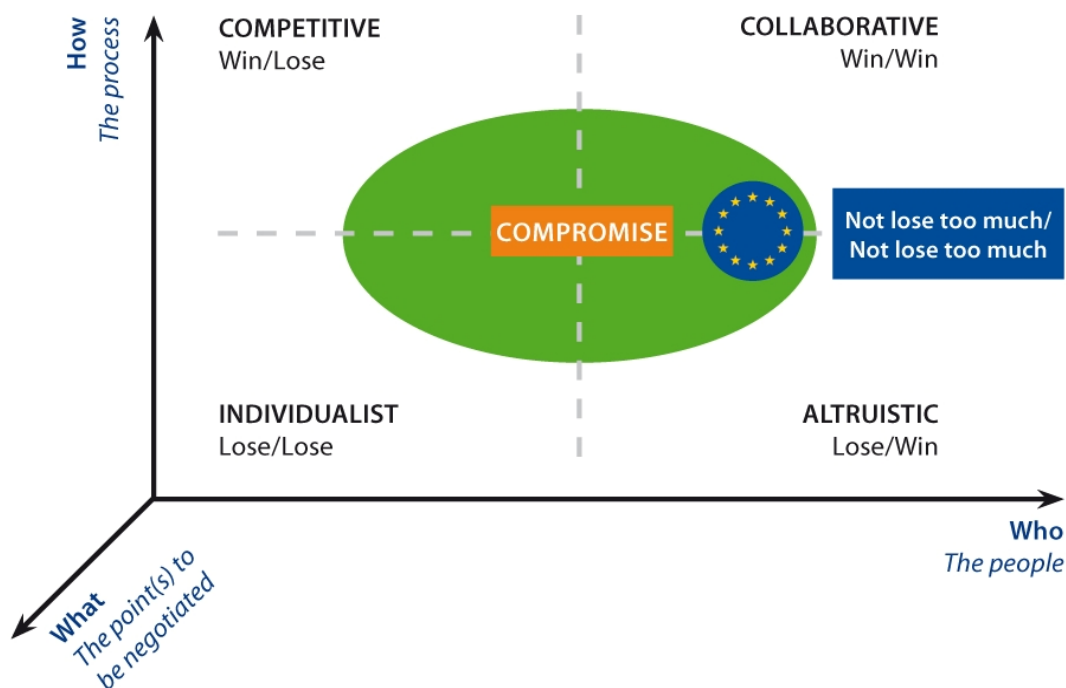
Contrary to game theory, which starts from the principle that the parties taking part in a negotiation are impersonal and uniformly rational entities seeking to optimise gains, the behavioural approach allows the negotiator to put the emphasis on human tendencies, emotions and competences, as well as on the role played by the "art" of persuasion, attitudes, confidence, perception (including faulty perceptions), personal motivation and personality in the negotiated results. Besides the rational dimension of the negotiations, the approach proposed also incorporates factors such as relationships, culture, norms, skill, attitudes and confidence.

Using the general principles of the theory of negotiation studied in the first part of this working paper, two determining variables stand out when analysing negotiation situations: a variable defining *interpersonal relationships* and a variable focused on the *desired outcome*. Starting from this classic negotiation structure, the PIP approach proposes to fine-tune these variables in order to adapt them to the reality of European negotiations. If the interpersonal relationship axis is kept, the other is made more precise

and split into two parts: the axis of the items to be negotiated (the file) and the process axis (the dynamic enabling the desired outcome to be attained). The complexity of European procedures and the iterative and long-term nature of these negotiations require the variable centred on the process to be tailored to each one. So, a first variable will be that of the people, the "who" in the negotiations. The second will be made up of the "what" or the "items to be negotiated". And, finally, the last will be the "how" or the aspects relating to the negotiation process (the dynamic). The description and the sub-categories of these three major axes will explain and illustrate the reality of European negotiations.

The diagram below illustrates the 3 variables around which European negotiations are based.

### European Negotiations: Finding the right balance



- **B-/ Anticipation and strategic preparation chart: a PIP approach**

### **1- The preparatory phase of the negotiations**

Before describing and analysing the PIP anticipation chart, the European negotiator must prepare themselves prior to the negotiation and pay extra attention to several aspects. The items which require particular attention may be dealt with through the following five questions: who, where, how, when and what? – the list of symbols, "WWHWW" (2WH2W), maybe a good way of remembering the order of the questions.

Preparing for negotiations is a crucial stage in the final outcome. During this phase, the aim is to run through the maximum number of scenarios and identify the means for responding to a particular situation. The European negotiator must keep in mind the fact that negotiations come in many different forms. This preparation will allow them to be more spontaneous and reactive during the negotiation phase, as they will already have thought about their response or at least about the start of a response.

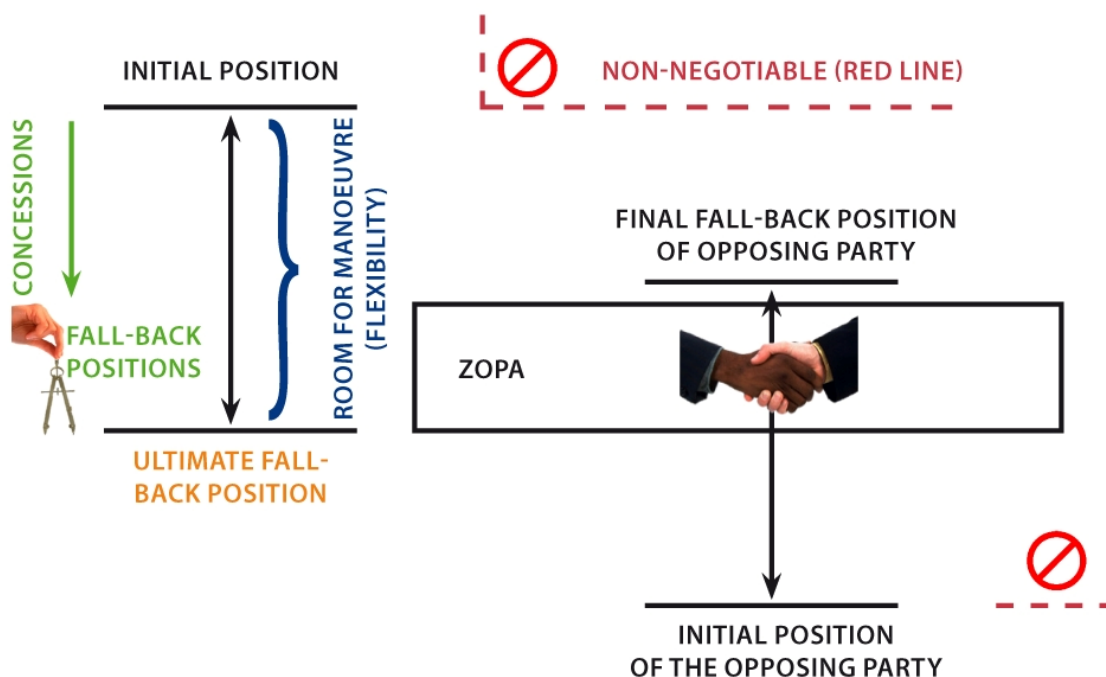
The first thing to do when preparing for the meeting is to determine, as far as possible, who else will be involved, why are they present and their authority to make decisions. These elements will allow the first question to be answered: "Who?" Effective negotiations suggest that the key players in the negotiation process (both in the room and outside) should be identified. Once the European negotiator has understood who the principal players are and what their influence may be at each stage of the decision-making process, they are in a position to develop an influential strategy.

In response to the question, "where", we should remember that negotiations take place in a group and that each group has its own working methods. Generally, a group relies on the harmonious management of three functions: production, facilitation and regulation. Production seeks to obtain, as efficiently as possible, a tangible result, which may take the form of decisions, proposals and/or exchanges of information. The purpose of facilitation is to organise and shape its positions/interventions during the meeting in a way that takes account of what is said by all the parties present in a structured framework. Finally, regulation focuses on the most suitable approach for managing the individuals and their interactions. Analysing the interactions between individuals, who

react according to their personality, status, their position in a hierarchy, their sense of belonging to the group, their value system, how involved they are in defending their national interests, their expectations, etc. A group, however, creates a strong bond, particularly through frequently associating with the chair of the session and the other members of the group. Special communication links begin to develop based on networks around a leader and the roles allocated to the players present, reflecting a sense of belonging to the group and its cohesion. The European negotiator must also be aware of this when they attend the meeting and try to master the basic principles of conflict management with the group.

In order to reply to the question, "how", the negotiator should focus on analysing their mandate. For this reason, they should clearly define their initial negotiating position, i.e. the position they adopt when facing the other parties at the start of the negotiation process. The negotiator must also know exactly what their limit is before they reach their breaking point; in other words, knowing what issues they can or cannot compromise on. The gap between the initial position and the breaking point allow us to see the margin available in a negotiation, but will also allow the negotiator to draw up a list of elements on which they may make concessions and, thus, have a series of fall-back positions. These elements must be clearly identified prior to the meeting, in order to be able to find a compromise within the available margin. The diagram below demonstrates these considerations.

## Positioning...



The "how" must be supported by the use of tools that are simple yet very effective. To see how the discussions evolve, negotiators take notes in order to remember the essential points raised by others as well as to be able to summarise the positions and outcomes of a meeting. Normally, negotiators take notes in a linear fashion, just like a clerk preparing a verbatim report. The European negotiator must arrange and organise their notes in such a way as to be able to rapidly produce a summary of the main points and positions touched on. This allows them not only to intervene effectively in the negotiation process but also to play the role of advisor that is expected of them when reporting to people who were not in the room (i.e. the reference authority, the person issuing the instructions or colleagues indirectly involved in the negotiation). For this purpose, it is critical to draw up a table summarising the positions of each delegation or of large group of delegations and monitor changes in their positions over time and at different stages. This table may take the following form:

Taking notes and techniques for following discussions

	<b><i>Positions / Main points relating to</i></b>	<b><i>Concessions</i></b>	<b><i>Alternative</i></b>
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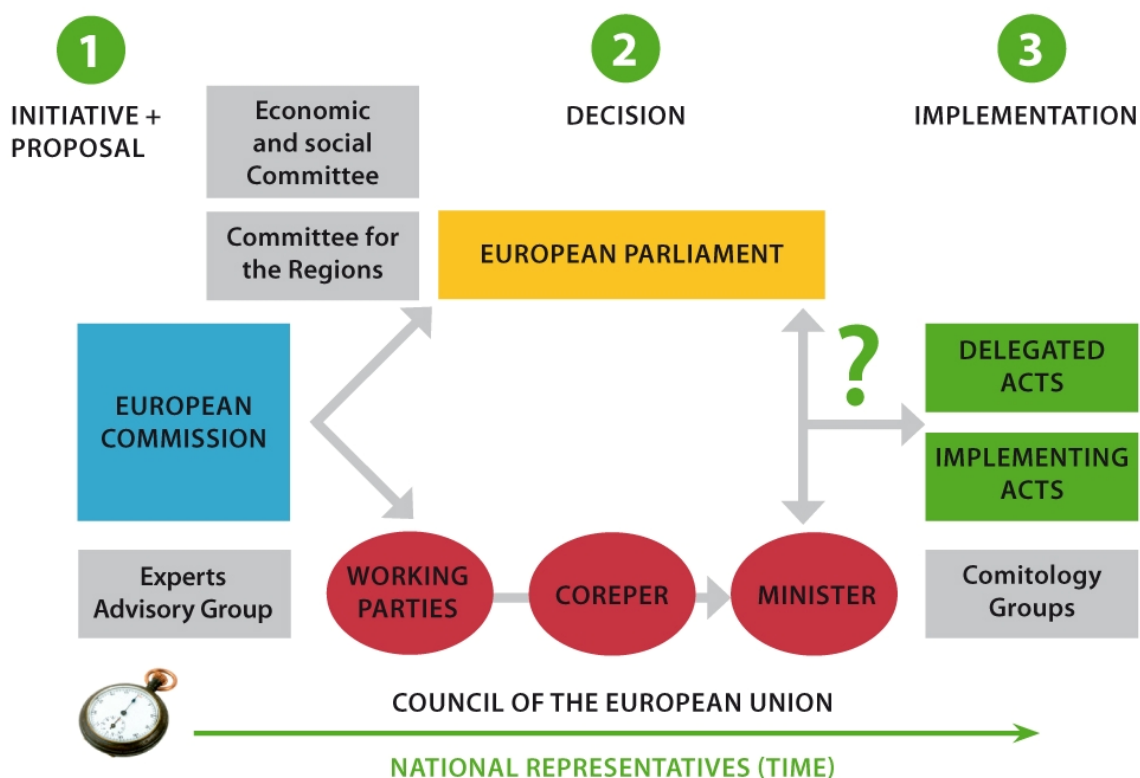
	<i>the Commission's position</i>					<i>proposals, compromises</i>
	Art. 1	Art. 2	Art. 3	Art. 4		
<b>Delegations</b>						
Finland						
France						
Netherlands						
Poland						
United Kingdom						
Greece						
...						

Preparing for negotiations in the best possible way also means answering the question, "when?", which comes in several forms. Firstly, it may refer to the most suitable moment for any form of action aimed at influencing the process. In order to elaborate much of their national legislation, officials responsible for representing the interests of their Member State must follow the progress of the Commission's draft legislative proposals from the moment they are published in the EU's *Official Journal*. Influencing the decision-making process so far in advance is only the first stage in a long process of influencing and negotiating. From the start of the negotiations, it is important to assess and anticipate the potential result in order to develop a detailed strategy (a battle plan). It is essential to maintain this influential negotiation strategy throughout the legislative process, the main objective being to exert influence by proposing concrete solutions that promote the defence of national interests, as far as possible. A lack of continuity may mean that the objectives of the legislation are lost from sight and deprive civil society, the business world and other concerned parties of the clarity and time needed to be able to prepare themselves.



The question of "when?" may consist of understanding and mastering the stages in the decision-making process. Where are we in the decision-making process? Is the decision following the standard legislative procedure? Does the Council need to negotiate with the European Parliament? Are we at the first or second reading stage? Where the meeting fits into the general picture of the European decision-making process will enable the negotiator to adapt their strategy to the institutional and procedural context in which the negotiation will take place. The stakeholders' dynamic, the rules of procedure, the tactics available, just to cite a few elements, vary considerably according to the context. The European negotiator will have to place the negotiation in the following diagram.

European decision-making process – a 3-stage process



Lastly, it is important that the European negotiator knows exactly what the general framework of a given negotiation is, in order to be able to answer the last question, "what?" For this reason, the agenda of the meeting (whether it is an annotated agenda or an "info flash" recapitulating the different elements to which the negotiator must pay attention) may turn out to be useful. These are as follows: the reference documents for

the negotiation, the state of negotiations when the Council and the Parliament meet(inter-institutional negotiations?), the object of the meeting, how long it is supposed to last and any stages foreseen at the end of the meeting.

The preparatory phase is therefore a crucial and indispensable stage in a successful negotiation. Although we cannot verify this scientifically, we often read that the quality of preparation counts for 80% of a negotiation's outcome. Although this figure is debatable, it is evident that the quality and level of preparation make a difference in terms of the result achieved. The following should be carried out when preparing for negotiations:

- Collect all the available information from the Commission and your own permanent representation
- Prepare your position and arguments (trying to diversify the nature of the arguments: political, economic, technical, social, legal and even emotional, if appropriate)
- Map the delegations' positions on the subject under negotiation
- Identify the leaders, allies and opponents, but also and above all the floating minorities
- Research the agenda and the Presidency's objectives.

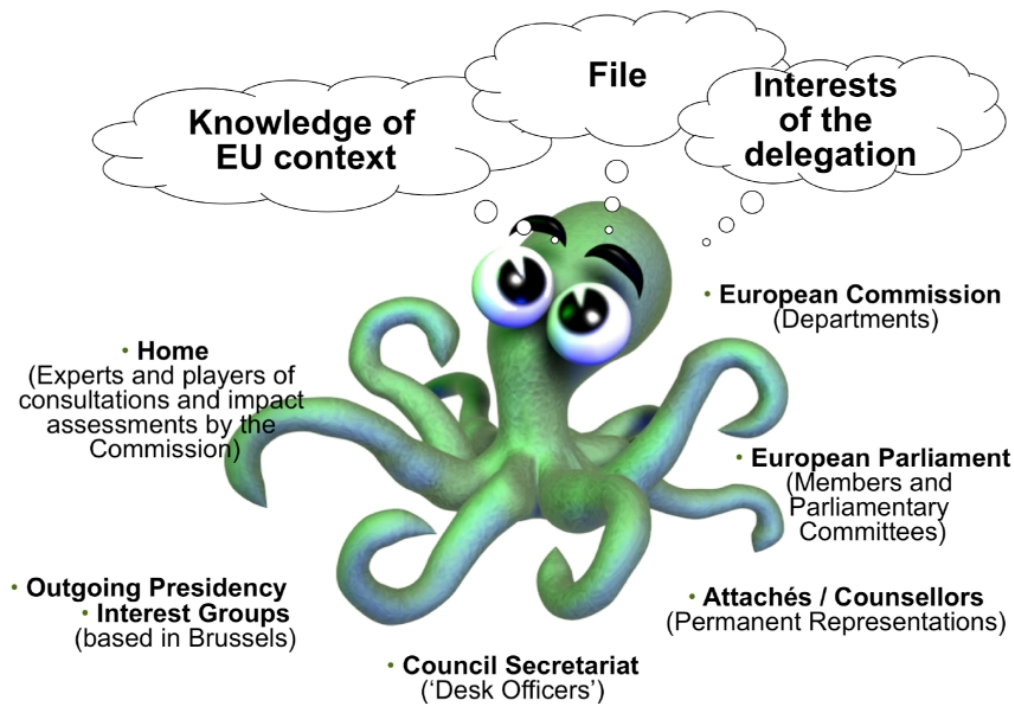
The European negotiator can formulate their plan by analysing the following five questions and developing a cross-cutting vision that aims to cover the three elements essential to any European negotiation:

- Mastery of the process and procedures relating to the discussion
- Good knowledge of the subject being dealt with and possible links that may be made with other subjects
- Good understanding of the interests present (around the table and outside of the negotiation room).

These questions are illustrated in the following diagram:

These questions are illustrated in the following diagram

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## 2- Description: the PIP approach

In order to use this diagram during negotiations, we have created three major categories for PIP factors, as previously explained.

### a. The people: "Who?"

These are the individuals involved in the negotiation process. This category responds to the question, "who?", and includes elements such as:

- the stakeholders (in the negotiation room and outside of it)
- the motivations (mandates and instructions)
- the interpersonal relationships (Presidency, General Secretariat of the Council and delegations of the Member States).

## **i. The stakeholders**

The stakeholders in a negotiation are divided into two sub-groups, depending on whether or not they are in the room.

Firstly, as mentioned when talking about the preparatory phase, before entering the room it is a good idea to map out the delegations present and the other stakeholders, who may have a direct and/or indirect influence on the course of discussions. On a given subject, who are our allies, our opponents and the minorities? It is important to know the position of the Commission as a stakeholder. Although often discreet during the formal phases of discussion, it is very active outside the negotiation room. It is important to understand the position of the Presidency on the subject, to know what it wants to achieve during the course of its mandate and to consult the timetable that it has set itself. Once the different players have been identified, as well as their relative weight, room for manoeuvre and any possible (or impossible) compromises with them should be assessed.

### ***The key-players to influence around the table***

#### **The Commission**

Except in certain specific cases defined by the treaties, such as that of judicial cooperation in criminal matters (Title V on the area of freedom, security and justice of the TFEU), the Commission has the exclusive right of initiative for community legislation. In this context, it is more difficult for the European negotiator to propose amendments once the Commission's legislative proposal has been drafted and issued. Therefore, it is very judicious and useful to intervene as early as possible concerning the Commission's proposal. Once the proposal is published, the Commission plays a crucial role in the ordinary legislative procedure. It is their responsibility to explain and defend its proposal. To do so, it cooperates closely with the Presidency and its interlocutors from the Parliament, particularly the rapporteur of the parliamentary committee in charge of the matter. This allows it not only to contribute significantly to the agreement between the co-legislators, but also to make known its opinion known and defend itself on the

amendments proposed. The main players to target within the Commission are the following:

- The "Desk Officers" and the head of unit for the lead directorate-general (DG)

These individuals are responsible for drafting the proposal before it arrives on the legislators' desks. It is, therefore, their ideas, perceptions, understanding and knowledge of the subject that will shape the Commission's initial proposal.

During the actual negotiation phase, these individuals will develop close relations, behind the scenes, with the rotating Council Presidency's team and the key-interlocutors of the European Parliament. Moreover, they are often responsible for representing the Commission during the discussions at a working party level. In this way, their opinion may have a non-negligible weight for the other Member States. This means that convincing the Commission of the validity of the negotiator's position is a way of convincing several delegations with minimum delay. The Commission is always careful to obtain an agreement that satisfies the greatest number and the large Member States' point of view is never neglected. For example, the Commission will be very interested to know the point of view of the individual representing a country such as Germany or the United Kingdom. The size of a Member State that someone represents may, therefore, sometimes influence the level of attention given by the Commission.

As mentioned at the start of the paragraph, the Commission is responsible for researching the stakeholders' points of view from the start of the consultation phase. This involvement very early on in the process largely explains why seven out of ten of the Presidency's compromises are elaborated by the representatives of the Commission or in close collaboration with them. This is yet another reason for maintaining good contact with the Commission throughout the decision-making process.

- Officials from other DGs involved and the General Secretariat

If a European negotiator only works with the Desk Officer and head of unit for the lead DG, they will overlook an important number of interlocutors within the Commission. Some officials from other DGs may also play a major role and provide information. This is

particularly the case in the stage that precedes the publication of the Commission proposal.

It is the General Secretariat of the Commission's job to prepare an overview of all of the new proposals and ensure that the "*impact assessment board*" (IAB) examines every impact study of new proposals, failing which the procedure must be interrupted. The officials of the other DGs and the General Secretariat participate in inter-service consultations. These are meetings at which each DG may contribute to a proposal from another DG, in order to improve or modify its content. The DGs for which the subject being negotiated represents an interest may also participate in working party discussions.

- Commissioners and their cabinets

The commissioner in charge of the file will work hard to shape the initial proposal with their teams. The entire college of commissioners has to approve all of the proposals in the name of the Commission, in accordance with the principle of collegiality. Once a proposal has been prepared and the inter-service consultation process has been completed, the proposal can be discussed at the level of the commissioners or their cabinets. Another possibility for influencing a proposal prior to its publication consists of sending a short note for the attention of the cabinet of the lead commissioner or of commissioners likely to support your approach. For this, it is necessary to go via the Permanent Representation. The commissioner in charge of the file will play an influential role in the negotiations, but any substantial modification to the original proposal will require the agreement of the college.

### **The Presidency**

Seven to eight months before the start of its presidency, the Member State exercising the six-monthly rotating presidency fixes the priorities for its period of office. Several weeks prior to the official start of its term, the General Secretariat of the Council sends the Presidency a list of the "*likely files*", i.e. the issues raised during the previous presidency or presidencies which have yet to be resolved. The future Presidency defines the priority to be assigned to each file and, once in office, chairs the meetings of the Council and the working parties up to the level of the Council of Ministers, and thus looks after the preparation of the documents for meetings, including proposals for compromises. It also

represents the Council during negotiations with the Parliament or some international organisations.

The Presidency must always act as a neutral player, always being at the disposal of the group for the duration of its term of office. But the reality is sometimes different and some Member States seek to use the position of Presidency to force the adoption of measures which are closer in line to their national interests. Consequently, it is important to be prepared for future presidencies and to be aware of the questions of national importance likely to affect these Presidencies on matters that are a priority for the negotiator. This will help them to effectively anticipate any divergences on these key-files and to be properly prepared.

- The General Secretariat of the Council (GSC)

An official/representative of the General Secretariat of the Council is responsible for supporting the Presidency for each of the proposals negotiated within the Council. They assist the Presidency in preparing the documents for the meetings. The level of support provided by the General Secretariat of the Council will depend on the Member State in the Presidency. Although always discreet and at the institution's service, the influence of the GSC's representative may vary considerably from one presidency to another. The representative of the GSC takes part in nearly all of the discussions (including briefings and debriefings before and after Council negotiations) between the Commission and the Presidency's team and is also highly involved in the preparation of and follow-up to trilogues with the Parliament. They are excellent interlocutors when it comes to collecting information. The official representing the GSC may also be a source of information and support regarding proposed drafting changes. This contribution may take the form of close collaboration with the meeting chair and the representative of the Commission when it is a question of drafting a compromise proposal. Minor modifications may be introduced by the Council Secretariat in the margins of working party discussions, to avoid having to raise them in plenary discussions.

- The Council legal service

A representative of the Council legal service may be called upon to intervene on the legal/judicial content of a proposal, but does not automatically attend working party

meetings. This official gives advice and issues legal opinions at the request of the Council. The Member States may address the Presidency to obtain the opinion of the Legal Service. It is important to maintain good relations with the Council Legal Service, particularly when it is preparing its opinion for the attention of the Member States. This is because its opinion may influence the position of other Member States around the negotiation table.

### **The delegations**

Depending on the resources and the status of the European negotiator (which vary from one Member State to another), an effective strategy may consist of establishing contacts at all levels of the national administration of the main interlocutors/Member States within the Council. This includes the person in charge of the file up to the minister, including and via the interlocutors of the permanent representation, of course. Depending on the State, the involvement of the minister responsible for the file at a very early stage in the negotiation process is deemed to be an asset. Ministers have their own networks of relationships, which can make a great difference from the very start. Notwithstanding the skills and charisma of an official, nothing will make such an impression as a ministerial position. The minister's involvement from the outset of negotiations is a strong sign of the interest of Member State X or Y's administration for the subject being dealt with.

It is important, however, not to estimate the value of an ally solely on weight they represent within the Council (whether that weight is statutory or related to the number of votes that said Member State represents in the calculation of the qualified majority). It may turn out to be very useful to have the support of the smaller Member States and it is worth noting that in the past a majority has come about because of just 3 or 4 votes.

The Council decides on the proposals jointly with the Parliament. As a result, even though the Council represents the Member States, a Member State (as large as it may be and despite its number of votes) cannot act alone in influencing the debates within the Council. It is always necessary to build alliances with other States in order to achieve objectives set at a national level. In this way, it is a good idea to try to learn the positions of the large Member States, not only because they hold a large number of votes in the Council, but also because they have a large number of members in Parliament.



Not taking account of these stakeholders in the process, who are outside of the negotiation room would be an error. These external players can be very different. The representatives of the various interest groups can have a considerable influence on the decision-making process. Furthermore, the organisation, maturity, experience and Brussels' awareness of the national coordination system are just some of the elements that may influence negotiations and their outcome. Lastly, it should not be forgotten that the large majority of decisions involve the participation of the three European institutions. Therefore, the status of discussions within the other institutions plays a major role, particularly within the parliamentary committees and during the plenary sessions. If the file follows the ordinary legislative procedure, it is important to know exactly what point the negotiations are at in the other co-legislator, the European Parliament.

The key-players around the table to be influenced are:

### **The Parliament**

The European Parliament is co-legislator with the Council and, as such, it has an equal voice in the elaboration of European legislation. The Parliament has 754 members elected for five years, who sit in political groups. There are currently eight political groups in the Parliament, the largest being the European People's Party (Christian Democrat Group). Twenty permanent parliamentary committees, a full list of which can be found [here](#), are responsible for preparing the Parliament's plenary sessions.

**The key players to focus on in these committees are:**

- The rapporteur

The rapporteurs of the parliamentary committees are in charge of drafting the Parliament's position. They have an influence on the amendments adopted by their institution, as well as the agreements obtained during the first and second readings, and they participate in the formal and informal trilogues. The rapporteur is appointed according to a weighting system and the size of each political group in the parliamentary

committee. He is nominated very shortly after the elaboration of the Commission's proposal.

- The shadow rapporteur

A shadow rapporteur is nominated for each of the other political groups participating in the parliamentary committee. The shadow rapporteurs are responsible for preparing the positions of their groups. By carefully monitoring the work of the rapporteur, they will therefore have an influence on deciding of the committee's final position (reports and proposals for amendments).

- The rapporteurs and shadow rapporteurs of the committees consulted for their opinions

Often, the matter is of interest to several committees. The committees consulted issue an opinion and propose a series of amendments that will then be voted on by the parliamentary committee responsible for the subject.

- The officials of the parliamentary committee

The Parliament makes members of its personnel available for the purpose of providing the secretariat of each committee. The representatives of the Parliament look after the procedural aspects, including the preparation of voting lists. At times, the secretariat of the committee prepares a first draft of the report for the rapporteur. In this way, it is important, (whether directly or via the intermediary of the permanent representation) to maintain good relations with these interlocutors, as they may be the fastest way of obtaining the most recent version of a document.

- The parliamentary assistants

Generally, a large part of the preparatory work for the reports and amendments is done by parliamentary assistants, even if this may vary considerably from one European member to another. Therefore, the assistants may also play an important role in modifying the amendments.

- The national delegate's European members of State

Many Member States maintain close relations with their members of the Parliament. They may be accustomed to having an influence on the debates and raising issues of national interest. Some governments organise information sessions for their members of Parliament on the proposals and positions of the Member State. This information may be conveyed in writing before the examination of a text and the votes in parliamentary committee or in plenary. This, of course, does not exclude the establishment of solid links with the rapporteurs of sensitive files. This is particularly important for the Member States that have few or no deputies in large political groups such as the EPP. Once again, the quality of professional relations can have a significant impact on this channel of influence.

### **The other stakeholders**

Other stakeholders may provide a very effective means of promoting and conveying important messages on a position. Stakeholders, such as NGOs and industry, are very active players in terms of influence on Member States and the European Parliament, when the issue is of particular interest to them. Their points of view and the impact of their lobbying activities must be taken into consideration when elaborating a negotiating strategy. Therefore, it is appropriate to provide stakeholders with quality information on the proposal. When the points of view of the stakeholders are compatible with the national position, they may, by supporting them, reinforce the strategy and position of a Member State. As a result, they constitute an excellent channel of communication with the European Parliament, but also have an influence on other Member States. Their arguments sometimes succeed in convincing reticent, if not sceptical, Member States of the position defended. The elaboration of a mapping matrix for communicating and monitoring the positions of stakeholders may turn out to be a very useful tool. The use of this type of information enables an effective negotiating strategy to be developed by making the approach more dynamic. The questions to be covered focus on the identification of potential allies, the most appropriate way to use them to influence floating minorities, opponents, and priority target interlocutors, and the most effective arguments

for convincing them. We will come back to this tool later on in the document when we deal with the second part, the "i" of the matrix and, in particular, in the section dealing with the key elements of the problem to be discussed.

## **ii. The motivations**

The participants in the negotiations often have one goal in mind. This goal generally corresponds to the mandate given to the European negotiators by their capitals, but other elements may also be involved. It is, however, possible that a national representative arrives at the negotiation table without a mandate, for reasons as varied as the lack of national expertise on the subject, a lack of interest on the part of the country regarding the subject or the lack of coordination at a national level or between the capital and its permanent representation.

- *The Presidency's motivations*

The Presidency is centre stage in the negotiations and its motivations do not always correspond to those of the other players. If each delegation is initially motivated by a unilateral gain for its capital, the Presidency may try to ensure that the negotiations succeed and produce a result acceptable to the group or, at the very least, to the majority of the group. Sometimes, the Presidency's approach is motivated more by individualist objectives than by community interest and it tries to use its privileged situation to advance the discussions in the direction of its national interests. However, such an attitude is quite rare, to the extent that such behaviour will be badly perceived by the other delegations and could very certainly be counter-productive in the short/medium-term, both for the image of the Presidency and for the reputation of the chair of the session. The latter will usually return to being the national delegate at the end of their Presidency. In any case, the action of the Presidency is all the more effective if the team is prepared and speaks with a single voice. If the Presidency decides to fulfil its facilitating role for the good of the community, it will benefit if it distances itself from its national position and its capital. It is then up to the national delegate to manage the necessary interactions on these two fronts. It is worth noting that the Presidency's assistants (co-chair and/or national

delegate) play a significant role during the six months of the mandate. In plenary, as between sessions, they are responsible for collecting detailed information on the positions present, in order to better prepare the future negotiating strategy.

- *The motivations of delegates*

Apart from the Presidency, the delegations present around the table constitute an important group of interlocutors. Their primary incentive is, obviously, to defend the interests of their capital in the best possible way. Occasionally, more personal motivations may come into play. However, some delegates, imbued with the "spirit of Brussels" (often described by the phrase "gone native") are generally driven by the desire to reach a consensus and by the spirit of cooperation necessary for obtaining a compromise accepted by the majority. In fact, by moving around in Brussels spheres, the "communautaire" spirit may end up influencing the national character of a large number of European negotiators. Such a cooperative approach is only possible when the delegate has the benefit of a relative amount of autonomy with regard to the mandate defined by his capital.

Irrespective of who the interlocutor is, one of the essential concepts to keep in mind is the KISS principle, "*keep it short and simple*". The negotiator should remember that complicated arguments can be difficult to grasp and, therefore, to keep in mind. Moreover, the interlocutors do not want to be given a course or lesson, but understandable information in a concise and, above all, useful manner. Irrespective of whether such information is oral or written, in the form of a "*non-paper*" or any other document, it is a powerful tool for convincing your interlocutors, as long as you remember that they generally have little time to read and understand your point of view. At best, for example, a parliamentarian will devote five or ten minutes of their time to listening to your point of view. If you are precise, clear and convincing, the conversation may last longer. It is equally important to remember that not everyone masters the lingua franca. Do you speak their mother tongue or another language? How well do they master it? It may be a second or third language. One way to increase your potential for convincing people is to draw up a "*non-paper*" with other Member States and to present the proposed amendments.

Do not hesitate to combine written and oral presentations. Depending on the circumstances, the European negotiator may have a need for both of these means of communication. A note drafted prior to meetings is a good way of developing complicated arguments, which is impossible during an oral exchange in a meeting. Properly prepared and structured written documentation is often reused and good quality notes can find their way back to their author's table after having passed through several delegations or institutions. The European negotiator may also follow up their oral presentation, by circulating a written text during or after the meeting. Some negotiators have become past masters in the art of offering their drafting skills to the group or their interlocutor. It is not useful to go any further into the interest of this approach, particularly if you are very good at it.

### **iii. Interpersonal relations**

Interpersonal relations play a central role in negotiations. Bargaining takes place between individuals with different cultures, personalities and reputations and these factors have a crucial impact on the outcome of negotiations. It is a good idea to identify the main parameters that affect the relationships between the stakeholders present around the negotiation table. There are multiple interactions, both in a multilateral and bilateral framework. They include the combinations of possible interactions between the different groups of players (Commission/Presidency, Commission/delegations, Presidency/delegations), on the one hand, and the interactions of the delegations between themselves, on the other. It is equally interesting to consider the perspective of the bilateral interactions of the European negotiator facing the Presidency or the other Member States or the Commission.

- *Commission/Presidency relations*

As previously mentioned, the Commission is often a weighty ally. It has a very good grasp of the subject from the start of the process (it is responsible from the consultation phase). As a result, it is the best-placed player to know when to propose which

alternatives, which accommodate the different positions present around the table. This enables them to arrive at a compromise acceptable to the greatest possible number. At this point, we should remember that the Commission generally comes up with the largest number of compromises proposed to the group by the Presidency. On the other hand, at the end of the discussions, the Commission has to support the compromise by officially indicating its approval of the modifications to the initial proposal. Failing which, the compromise reached by the group - without the agreement of the Commission – will, pursuant to Article 293 of the TFEU, require unanimity instead of a qualified majority. Even if there is unanimity, the Commission may, in accordance with the treaty (and subject to certain strict conditions involving the college) decide to withdraw its proposal. The Presidency will then have obtained a pyrrhic victory, as the Commission has withdrawn its proposal from the negotiation table. European negotiators are always well-advised to monitor the cooperation or lack of cooperation between the Presidency and the Commission. This allows them to adapt their interventions and try to make sure that the most important gains are retained at the end of the discussions.

- *Presidency/delegation relations*

Maintaining good relations with the Presidency has numerous advantages. The attitude of delegations is certainly influenced by the elements making up their mandate, but a negotiator's skill to present points without appearing systematically to be obstructionist may result in the Presidency having a positive attitude towards them. This may prove useful in the long-run if a negotiator finds himself noticeably isolated on a particular point in the discussion. For the European negotiator, being a source of proposals or playing a facilitating role (when compatible with his mandate) when the Presidency is having difficulty accommodating the parties present may turn out to be a good strategic move in the medium and long-term. In most cases, the Presidency will then be more inclined to listen attentively to that delegation. It is also important for the European negotiator to keep in mind that most of the issues are dealt with under the rotating presidency and that it is quite possible that the national delegate will sooner or later take over the chair of the meeting. Depending on the attitude adopted prior to that, a former chair, who has returned to being a national delegate, may be tempted to seek revenge for an attitude that was very unhelpful and, in turn, make life difficult for the incumbent chair. Even

though the list is not exhaustive, thinking about their attitude both prior to and during the negotiation process should help the negotiator avoid making things more complicated than they already are.

- *Commission/delegation relations*

The large majority of legislative texts within the EU come from the European Commission. This power gives it great importance. Member States must ask themselves about the attitude to adopt with regard to the recognised role of the Commission as an institution. That said, the Commission has no legislative power. Thus, one of the first questions to be asked about the relationships between the Member States and the Commission is to determine whether the latter is perceived as being part of the group of players in the negotiation. In order to answer this question, the Member States will mostly be interested in the way in which the Commission has taken account of their contribution in the consultation phase. This will also depend on the involvement and quality of the national experts during the elaboration stage of the Commission's proposal.

- *Relations between delegations*

The main players around the Council table are undeniably the Member States. They act according to very different cultures and interests. Their relations are affected by various parameters. Is the dynamic linking these players primarily cooperative or confrontational? Does one State or a group of States lead the entire group? Will the issues of culture and behaviour resulting from these cultures have an obvious influence on the relations between States? Finally, as mentioned earlier, the sociological and socialisation dynamics inherent in the working of the group must not be ignored.

Every European negotiator must position themselves in relation to the Presidency, the other Member States and the European Commission.

- *European negotiator/Presidency relations*

Each Member State's relationship with the Presidency is built up over time, on the basis of mutual respect. To be effective, the Presidency's expectations with regard to the



Member States must be very clear. Equally, each negotiator must express their expectations relating to the Presidency. Such reciprocal clarity will enable a climate of mutual respect to be developed, which can only help in the negotiation process. The European negotiator is strongly advised to do all they can to establish an environment of trust and cooperation with the Presidency. Such an approach may be initiated from the very first informal meetings, but also in the framework of bilateral relations between the respective capitals. As in all interpersonal relationships in a multicultural environment, cultural prejudices and stereotypes may exist. These should be taken into account and reviewed critically.

- *The European negotiator's relations with their counterparts*

Essentially based on trust (personal, technical, professional, etc.), the European negotiator's relations with their counterparts from the other Member States are developed over a long period. They are made up of factual and rational elements but also, through socialising, more intuitive or even emotional elements. To achieve optimal cooperation, it is essential that the individual representing a Member State be perceived by the rest of the group as a reliable interlocutor, who shows goodwill. It is equally important that the State be viewed by the rest of the group as maintaining balanced relations with each of the other Member States, without distinction regarding size or economic or political weight.

- *European negotiator/Commission relations*

Lastly, it is recommended that the European negotiator develop and maintain good relations with the European Commission. Such relations are based on *communautaire* good will and good cooperation, reflected by years of *communautaire* negotiation and practices. In the framework of a particular negotiation, it is up to the European negotiators to maintain this climate of trust and cooperation throughout the preparatory meetings of the working parties.

#### How to influence the main players?

There are various ways of influencing the players in a negotiation. It is up to each negotiator to choose the best way of advancing their file. The Permanent Representation

is in an ideal position to offer advice on how to identify the target audiences to be influenced and the most effective way to go about it. It is normal practice to inform the Permanent Representation in a systematic manner prior to any contact, whether it is with a member of the Parliament, one of their assistants or a member of a commissioner's cabinet. This allows you to be certain that the message conveyed is consistent with the strategy of other members of the administration, and sometimes colleagues within the delegation or higher up within the hierarchy of the Council or national administration.

#### Should you opt for a formal or informal setting?

The European negotiator needs to make use of both formal and informal settings, adapting their method of communication accordingly. The operating rules may vary considerably from one working party to another and it is important for newcomers to obtain information from their colleagues within the delegation or group on the habits and customs of the group in question. Plenary sessions are obviously occasions for information to be exchanged. However, negotiators should not under-estimate what can be accomplished outside of these plenary sessions. It is essential that you examine what can be done in an informal setting. Every occasion should be seized, whether it involves having a discussion over coffee with the competent officials or participating in events organised by one of the stakeholders (around the table or otherwise). Devoting time to socialising and reinforcing personal relationships probably seems obvious, but it is undoubtedly an investment for the future, particularly for constructing or seeking future compromises. Such a relationship may be useful in the future, for example to share your opinion with a wider public, even if all the members do not appreciate its full value.

#### **b. The issues to be negotiated: "What?"**

The second category of factors responds to the question, "what" or, in other words, the issues under discussion. In this context, the following items will be discussed:

- the key elements
- solutions available around the table
- solutions available outside of the negotiating room.

## **i. The key elements**

When you are starting negotiations, it is important that you master the key elements of the issue(s) on the agenda. These elements have already been referred to in the section devoted to the preparatory phase. We shall now go into them in more depth.

- *Mastering the general context*

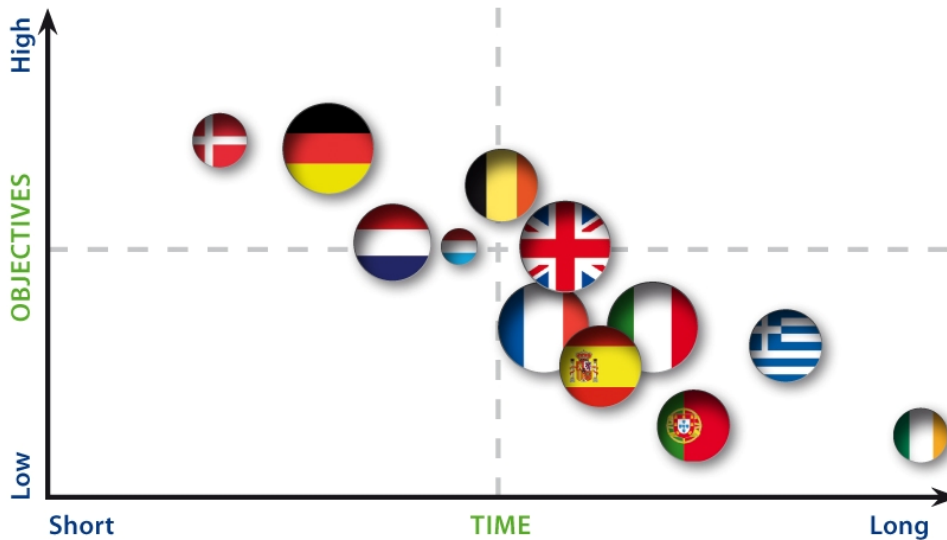
It is important to start by being fully aware of the general context into which the negotiation issues fit. The elements of the file, their significance and political, economic and legal implications must be fully understood. Is the subject of political or economic importance in the particular country you are dealing with? Is an article of the legislative proposal under discussion, for example, already the subject of a legal discussion on the inter-institutional balance or the principle of subsidiarity? It is equally important to follow how the content of the files changes at the various stages of negotiation. Such monitoring relates to the progress of the file within the Council, but also within the European Parliament when it intervenes as co-legislator. Regarding the evolution of the file within the Council, the negotiator should be aware of the elements that led to tension during earlier meetings and the problems that were overcome. Lastly, it is important to keep the objectives of the negotiation in mind; both those of your delegation and those of the Presidency or those pursued by other parties present. It is useful, during the course of the negotiations, to regularly revisit the objectives identified in order to verify that they have not evolved and/or changed during the successive meetings. This will also prevent the European negotiator from losing sight of the objectives set because of unforeseen events. We have noted that some negotiators, who deeply disagree with another delegation on a particular subject, end up systematically reacting to interventions by that party, without really thinking about the validity of the point raised. This is characteristic of polemical situations where the goal is no longer to negotiate but solely to have the last word, whatever the cost. In this way, it is important to regularly reconsider the objectives defined in the mandate, in order to maintain a reasoned approach and not fall into polemical, coercive or manipulative negotiations.

- *Mapping*

The European negotiator should pay full attention to a precise mapping of the various positions. How much importance do the parties concerned accord to the object of the negotiation? What are their preferences and interests? Where possible, it may be very useful to work out the existing margins for manoeuvre and which points are negotiable for each of the other parties, as well as identifying their possible alternative positions. Lastly, it is important to know the approach, mind-set and/or competence of the other European negotiators, regarding the resolution of the issues under discussion and any problems that may arise from it.

Such a map can be a very useful tool for communicating and monitoring the positions of stakeholders. This information will be useful in developing an effective negotiating strategy, by making the approach more dynamic. The questions asked centre on identifying potential allies, the best way to use them to influence floating minorities and opponents, the identifying priority target interlocutors and the most effective arguments for convincing them.

Through this illustration, we can quote from the mapping of the positions of the Member States during the negotiations on Article 4 of directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste. The mapping of delegations' positions was as follows:



- Identifying and establishing alliances and coalitions

Having established where the delegations stand, the next step is identifying or establishing the necessary coalitions and alliances with the other delegations that share positions and interests similar to those of the negotiator. Such alliances will most often be steered by one or more lead delegations. Such coalitions will have much more weight if they are supported by the European Commission.

In addition, possible areas of agreement should be identified in order to further develop the mapping study. This involves mapping various preferences and interests in order to classify them according to the following parameters: 1) shared compatible positions, 2) similar but incompatible positions, 3) different yet complementary positions, and 4) positions that are both different and contradictory. On the basis of these observations, the European negotiator can decide whether or not to establish coalitions in order to better achieve their initial goals.

At this stage, it is important to have contact with the so-called “floating minorities”. These are delegations which do not have a firm position on the issue, either because it is not of major national interest or because the mandate does not have a particular position the point. The latter may be due to the difficulty in arriving at a clear position during their

coordination on the subject at the level of the different ministries of the national administration.

## **ii. Solutions available around the table**

The negotiator has several tools at his disposal for finding a solution around the negotiation table. These tools involve planning, production, the construction of alternatives and justification.

Preparation and planning are the key to successful negotiations. The Presidency, General Secretariat of the Council and Commission may adopt a common strategy in advance for maximising the chances of a successful negotiation. To that end, the Presidency may “play around” with the list of requests for the floor, the interactions and requests for information that it addresses to the Commission, or on its relationship with its national delegate, managing them to suit its objectives.

- Reaching a compromise

The solution around the table will, of course, come about via the production of a compromise. Reaching this compromise requires several elements to be identified and selected as far as possible: How much time is available for reaching said compromise? What are its political, technical and legal dimensions?

When constructing a compromise, it is always equally important to foresee and develop alternatives. There are several possible approaches. The Commission may, for example, offer to go halfway. All the delegations are then invited to go part of the way needed to reach a compromise and, therefore, make the implicit concessions. The Presidency or the Commission may intervene and try to give partial satisfaction to all the delegations by taking account of one or several points in the Presidency's compromise, proposed by each of the delegations participating in the discussions. One of the most classic compromise solutions is, undoubtedly, to seek a common denominator with the largest number of Member States possible being satisfied. Another approach may be that of accommodation, which consists of incorporating some of the minority interests into the

solution proposed by the majority, in exchange for their support for the final agreement. Lastly, the compromise may equally consist of arriving at a positive outcome by establishing a compensation system. This will, in particular, be the case when the negotiators are able to link two or more issues under negotiation. What some will gain on one issue could be offset by concessions on another issue. This solution is often used in negotiations, which require a political input, in COREPER or at the Council of Ministers. At a more technical level, or example in the working parties, it is much more difficult to link issues. It then appropriate to assess how realistic the possible options are and to weigh up the pros and cons of each option, potentially making it more acceptable to the greatest number. The development of alternatives is most often the outcome of long informal (behind the scenes) negotiations.

- Tools for getting out of deadlock

In the event of a deadlock in the negotiation, the European negotiator and the Presidency have several tools at their disposal for defusing problems. Here is a list of some ways in which deadlock can be overcome, starting with the drafting of a compromise text:

- Progressive establishment of elements forming a compromise. By constructing a compromise, step-by-step, the parties may progressively use each element and have a better understanding of them.
- Move forward by small steps in order to avoid putting the spotlight on any one delegation.
- Introduce a revision clause into the compromise.
- Formulate the compromise in such a way that it is open to flexible interpretations.
- Introduce transition periods into the compromise, the possibility of an “opt-out” or adjust the scope of the object of the compromise.
- Introduce support measures into the compromise, which will make its application easier for some delegations.
- Establish global solutions that enable the different positions to be reconciled by incorporating support, technical assistance, financial or other assistance into the compromise.
- Make use of recitals to take account of everyone’s preoccupations or concerns.

- Add one or more declarations to the text of the compromise.

There are also other tools for getting out of a deadlock, which are more related to managing the negotiation itself:

- Make use of the “reserve” tool, which comes in different forms (language, parliamentary, waiting or study). Such reserves may be mentioned in the report on the meeting as being unilateral, collective or as representing a short/medium-term commitment (deadline).
- Distract the protagonists by shifting the focus from the object of negotiation, by recalling certain major principles or a general legal principle (principle of subsidiarity, Community or national preference, principle of proportionality, principle of non-discrimination, principle of legal certainty or “polluter pays” principle, etc.).
- Put false “B” items on the agenda, accompanied by an asterisk. The files in question refer to subjects for which all the technical dimensions have already been resolved at a COREPER level, but on which one or more ministers want to speak before being able to support the compromise, in most cases for national political reasons.
- Send the file up the line. When the file is blocked, it is possible that the next level up, having more authority and often more political, may be able to make more difficult choices allowing the situation to be unblocked, so that the file can return to the lower level for technical fine-tuning.
- “Stop the clock” in the negotiation room in order to be able to continue the discussions beyond the deadline. The *momentum* of the negotiation is then *out of time*, which may favour obtaining an agreement.
- Allow the Presidency to organise “confessionals”. These bilateral meetings between the Presidency and some delegations, focused on an issue, allow everyone’s grievances to be heard in a more personalised context with the aim of reaching a compromise.
- Apply pressure by raising the logistic constraints, such as the rules on working with interpreters.



- Depict the situation in a very pessimistic manner in order to apply pressure and incite a delegation to make extra effort. Otherwise negotiations may continue for days on end, which is not always possible.
- Call on the attachés of the permanent representations to find a solution behind closed doors.

Finally, the constructing a compromise is certainly a step in the process, but reaching an agreement requires that the compromise be accepted. We have seen that the dominant culture of the Council is based on reaching a consensus. That said, when everything has been done in an attempt to reach a compromise but to no avail, the alternative of the qualified majority becomes the solution and may even, offer other levers for reaching a compromise.

The table below illustrates a series of possible combinations of blocking minorities within the Council.

## When? : Blocking minorities at the Council

Member States	A	B	C	D	E	F	G
Germany	29	29	29	29	29	29	29
United Kingdom	29	29	29	29	29	29	29
France	29	29	29	29	29	29	29
Italy	29	29	29	29	29	29	29
Spain	27	27	27	27	27	27	27
Poland	27	27	27	27	27	27	27
Romania	14	14	14	14	14	14	14
Netherlands	13	13	13	13	13	13	13
Greece	12	12	12	12	12	12	12
Portugal	12	12	12	12	12	12	12
Belgium	12	12	12	12	12	12	12
Czech Republic	12	12	12	12	12	12	12
Hungary	12	12	12	12	12	12	12
Sweden	10	10	10	10	10	10	10
Austria	10	10	10	10	10	10	10
Bulgaria	10	10	10	10	10	10	10
Slovakia	7	7	7	7	7	7	7
Denmark	7	7	7	7	7	7	7
Finland	7	7	7	7	7	7	7
Ireland	7	7	7	7	7	7	7
Lithuania	7	7	7	7	7	7	7
Latvia	4	4	4	4	4	4	4
Slovenia	4	4	4	4	4	4	4
Estonia	4	4	4	4	4	4	4
Cyprus	4	4	4	4	4	4	4
Luxembourg	4	4	4	4	4	4	4
Malta	3	3	3	3	3	3	3

**Total : 345 votes**

<b>Blocking minority</b>	<b>41,63%</b>	<b>91 votes</b>	<b>92 votes</b>	<b>14 MS</b>	<b>108 votes</b>	<b>115 votes</b>	<b>NO</b>
		(36,5%)		88 votes			87 votes

<b>A</b>	3 large MS, including Germany (Pop.);
<b>B</b>	3 large MS, except Germany (Votes);
<b>C</b>	Spain + 2 large MS, except Germany;
<b>D</b>	Maj. of MS starting from the smallest (14 MS);
<b>E</b>	New MS;
<b>F</b>	Mediterranean MS;
<b>G</b>	Germany, France and Benelux.

As important as reaching a compromise is, its justification in the eyes of all involved is the negotiation's success. It is vital that collective ownership of the compromise be encouraged by suitable arguments so as to fit in with the rationale of their interlocutors.

### **iii. Solutions available outside of the room**

During negotiations, it is important to keep in mind that other players outside the negotiation room are also concerned by the items under discussion, and may influence the decision-making process to a considerable extent.

The European negotiator must be particularly vigilant on a number of issues. They must be aware of the consequences that failure could have for the members of the group, the Presidency and the Commission. A negotiator can decide to act at a political level and play the "consulting the capital" card. Despite this, we still remain in the sphere mentioned above: the world of players present, be it directly or indirectly, around the table. Recourse to external pressure on a politically sensitive or highly publicised point can equally be a tool. In this way, it may prove very useful to incorporate players from outside of the room into the negotiation strategy.

In this context, it is essential to pay particular attention to the elaboration of the negotiator's "Best Alternative(s) To a Negotiated Agreement" (BATNA), or "Solution Away from the Table" (Lempereur & Colson, 2010). These are alternative solutions which are proposed when a solution cannot be found around the table. At times, it is possible that a negotiator is not interested in finding an agreement around the table, since another solution, outside of the negotiation, is much more beneficial to them. That said, this type of situation is quite rare at a European level, due to the iterative nature of negotiations, as previously explained.

### **c. The process: "How?"**

The third series of factors relates to the elements involved in the process ("how?") and deals with the following issues:

- Strategies and tactics available
- Communication and information management.

#### **i. Strategies and tactics available during the meeting**

The practical elements of organising the meeting have a certain impact on negotiations; these should be taken advantage of and used. Different tactics and tools may be used depending on whether the meeting is a formal or informal one. In the context of an informal meeting, the table plan may have an impact on how the meeting unravels. In practice, the table plan for formal meetings is preset and follows the order of the rotating presidency of the Council of the EU, as shown below:

## Seating order of delegations during negotiations of the Council 01/07 – 31/12/12

		 COMMISSION				
	ROMANIA	<b>Rotating EU Presidency Schedule</b>				
	FINLAND	2011 2012	Poland Denmark Cyprus	AUSTRIA		
	GERMANY			BULGARIA		
	PORTUGAL			ESTONIA		
	SLOVENIA	2013 2014	Ireland Lithuania Greece	UNITED KINGDOM		
	FRANCE			MALTA		
	CZECH REPUBLIC			SLOVAKIA		
	SWEDEN	2014 2015	Italy Latvia Luxembourg	NETHERLANDS		
	SPAIN			LUXEMBOURG		
	BELGIUM			LATVIA		
	HUNGARY	2016 2017	Netherlands Slovakia Malta	ITALY		
	POLAND			GREECE		
	DENMARK			LITHUANIA		
	CYPRUS			IRELAND		
		GENERAL SECRETARIAT	PRESIDENT 	PRESIDENCY		

"Behind the scenes" diplomacy also offers several tools. It offers the possibility of bargaining more freely and encouraging the exchange of concessions. It also allows certain compromise options to be tested before going back into the room.

It is the European negotiator's job to identify the essential information to be used when promoting their position, thus better defending their real interests. Evidently, the arguments used will depend on the nature of the issue to be negotiated. If, for example, you want to plead in favour of alternative proposals to the current or proposed regulations, recourse to arguments based on economic analysis should enable you to demonstrate that the current or proposed regulations are not justified. The arguments will be classed according to type/nature: political, economic, technical, social, legal, individual or even emotional.

It is obvious that, in order to influence the process in an effective manner, a negotiator should have perfectly mastered the arguments that they have at their disposal, as well as the objections that could be raised against them, and be prepared with counter-arguments that they can use to respond to most of the objections. This is a *sine qua non*, but the negotiator must equally adapt the message/argument to the target interlocutor. The same approach cannot be used to influence the three players of the institutional triangle. We are, therefore, going to examine briefly which are the principal elements to be taken into account when seeking to influence the Council (delegation, Presidency), the Commission and the Parliament.

#### How to influence the Commission?

There are different ways of influencing the Commission. We have seen that the possibilities vary according to whether the meeting is formal or informal. The importance of informal contacts is a central parameter for influencing the decision-making process. Participation in workshops and other events organised by the Commission during the consultation phase is equally important. However, it is important to establish contacts with several DGs, and not just the lead DG in charge of the file. This approach is fundamental in the formal phase of the negotiations. It is then appropriate to identify how the other DGs may be affected, either directly or indirectly, by the legislative proposal. It is a good idea to invite a representative of the institution to present their proposal within your Member State and take the opportunity to meet the stakeholders at a national level.

#### How to influence the Council?

- Make alliances with the other Member States

Irrespective of the Member State represented by the negotiator, supporting other delegations is the key to having an influence on the Council's decisions. Establishing contacts, as soon as possible, with the other delegations will enable the European negotiator to better identify their positions and their principal preoccupations. This exercise will not only make identifying potential allies likely to support your point of view easier, but also identifying opponents and floating minorities. Socialising is useful for creating the largest possible network of contacts and being able to use a large variety of channels of communication, as long as they have the necessary human resources to

maintain them. The targets do not have to be solely the larger Member States. Investing in the future Presidencies is always worthwhile. It is an efficient way of anticipating the creation of links with those who will be responsible for the negotiation process in the future.

If a negotiator has limited human resources, it may be a good idea to target the four most dependable allies and four strongest opponents as a priority. This will allow them to work in both directions at the same time: trying to convince the most fervent opponents whilst analysing how best to cooperate with the allies. Another part of the work consists of identifying the delegations whose positions are the most flexible in order to try to rally them to their cause as soon as possible.

- Anticipating the strategies of the various other players

It is always a good idea to anticipate the strategies of others. In this regard, information is fundamental. For example, if the Commission is trying to influence certain Member States so that they will support its proposal and if the negotiator has arguments going in the same direction or their position is similar, they should be used as a lever to convince delegations and, therefore, strengthen their position as a facilitator in the negotiation process. This may turn out to be very useful when they are less in touch with the positions of other delegations. Inversely, if they are part of a blocking minority and the Commission is trying to break up that coalition, they will need to be proactive and anticipate this type of intervention in order to maintain the alliance for as long as possible. We will come back to this aspect in the last part of this working paper.

Decisions are most often made in capitals rather than in Brussels. It is, therefore, vital to maintain permanent contact at a national level. It is as much the link between the negotiator and his own capital as the link between the European negotiator and the main delegations identified, whether partners or opponents. They can use the contact details of the participants in contact with their counterparts to this end (negotiators should also check with their permanent representation) and not hesitate to take advantage of existing networks, for example by asking their national expert to use the connections in the European network of experts in the latter's area. The constitution of alliances relies

largely on personal contacts and the sharing of analysis and positions prior to formal meetings of Council working parties. In some cases, such coalitions may even offer joint documents on a specific point. By indicating the presence of this type of alliance, the European negotiator will demonstrate the existence of a common front that is prepared to go in a particular direction on the issue and will avoid being isolated on their position within the Council. This relates to the constitution of a blocking minority, as explained above.

- Knowing how and when to intervene in discussions

It is vital for the European negotiator to reflect on how best to present arguments to their counterparts from other delegations in the Council. The delegates who share their point of view may then defend them in contacts with their own national administrations and, so, strengthen the validity of that position in the next Council discussion. The European negotiator should, however, collect general information on the European affairs coordination system within the administrations of his counterparts in the Council. Avoiding any assumptions on how other national administrations operate will allow them to limit setbacks when an ally or party identified as such takes an official position. In other words, it should not be assumed that the ministry of another Member State works in the same way as their own. On the issue of national coordination of European affairs, it is customary, according to the classification of coordination systems established by Kassim, to make a distinction between two basic systems when it comes to the elaboration of national positions: centralised or decentralised systems with inclusive or selective approaches. The combination of these two parameters means that four types of national European affairs coordination can be defined according to the degree of centralisation of the decision-making process and the way in which a Member State uses the resources available to it to cover all of the issues discussed in the Council.

During their rotating presidency of the Council, each incumbent Member State defines its priorities and objectives in more or less explicit manner. If the file for which the negotiator is responsible appears on this list of priorities, the rhythm of work and meetings during the six months will evidently be intense.



The process of obtaining an agreement between the 27 Member States means that the Presidency must above all try to focus its efforts and the discussions on the major issues of the file, while trying to satisfy the greatest number of Member States. The Presidency and the Commission will generally be committed to ensuring that the process runs as smoothly as possible and the European negotiator, keen to contribute positively to the discussions, will be very much appreciated and thanked for their position on some of his points. In the event of the opposite, the result will not be as positive if they persist in defending positions having little, if any, chance of being accepted. There is a great risk that their influence will be strongly diminished for the remainder of the discussions or, even worse, they risk being isolated within the Council. The negotiator should, therefore, always make sure to intervene as early as possible in the decision-making process, particularly before positions become too entrenched around the negotiation table.

#### How to influence the Parliament?

- The importance of the European Parliament for the European negotiator

The influence of the European Parliament on Council negotiations has considerably increased since the signature of the Treaty of Lisbon. In fact, 90 % of current legislation is the outcome of a co-decision process between the European Parliament and the Council. The players of the Parliament now seek to take advantage of this situation by trying to exercise their influence at every step of the legislative and political process. After the U.S. Congress, the European Parliament is the institution that is the most subject to lobbying. Although the figure cannot be properly verified, it is estimated that there are some 15,000 lobbyists in Brussels. For the European negotiator responsible for defending the country's national interests, it is important to make sure that their voice is heard within the institution, participating in decisions. The best way to do so is to take advice from the experts in the permanent representation of their Member State as they are best placed to say whom to contact, when and, above all, how.

The very existence of the new dynamic introduced by the Treaty of Lisbon means that the Parliament has the power to make substantial changes to a proposal, even to make it fail. It is, therefore, crucial to take the interlocutors of the Parliament very seriously. Even if a negotiator has a strong position in the Council, they may fail in the defence of their

national interests if they have not taken adequate account of the power the European Parliament's influence on the final decision. It is, therefore, vital to understand the Parliament's own dynamic. Each permanent representation has its own approach. For example, the British permanent representation regularly organises information sessions for representatives of the European Parliament.

- Targeting European Parliament members

It is important to make as much use as possible of the assistance of members of the Parliament receptive to the position defended, but not to target solely the members of the negotiator's nationality. The negotiator should identify personal motivations and make sure that each member they target shares ideas and the analysis in line with the position they are defending, in order to maximise the impact of the position during Parliamentary debates. The earlier that contacts are established with key players and members of the Parliament prior to the decision-making process, the greater the reactivity and effectiveness of the negotiator when an agreement is being formalised between the Parliament and the Council.

- The various tools for making sure their voice is heard in the European Parliament

Organising a conference or colloquium can be a good way to inform the members or their assistants about any problems and to present a Member State's point of view. The commitment and presence of a minister are always very much appreciated and effective when it comes to influencing the European Parliament. Members feel that they are valued when a minister attends the meeting in person, to explain the point of view of a Member State. This raises the profile of the issue being examined or the question being dealt with. As we have explained for the Council, the most effective approach when it comes to influencing the European Parliament is to play a role that is both active and positive in the negotiation process. In other words, the European negotiator must not just raise blocking issues, but also offer solutions for resolving the blockages identified or at least some of them. When things are presented in this form, the representatives of the European Parliament too will seek to make their own contribution. This may take the form of a

proposal for an amendment that the member will take on as their own during the negotiation phase between the Parliament and the Council.

It may be useful to keep a watchful eye on the Parliament's own initiative opinions, as they are likely to have a significant impact on future legislative proposals of the European Union.

In 2011, the European Parliament announced the establishment of an impact assessment unit. Part of its task is to examine the impact assessments of the Commission's proposals and to produce impact assessments of the amendments lodged by the members. If amendments proposed by the European Parliament pose a problem for the defence of the negotiator's position, it may be wise to ask a member, who is favourable to the negotiator's position, to request an impact assessment by the Parliament.

It is possible to have an influence by drafting a note for the attention of the targeted members. As soon as the text of a proposal is known, the European negotiator should, in consultation with their permanent representation, consider contacting their targeted members. The information note must give the names of the individuals contacted and the state of play of the process, indicating whether the briefing will be in writing or oral form and by whom it will be given (official, ministry, lobbyists from the industrial sector, etc.). Summary notes on some non-legislative reports of patent interest or of a sensitive nature may also be provided. The earlier that members receive suggestions/proposals, the more they will be appreciated, as it will make the management of the numerous amendments that arrive at the European Parliament easier.

This note may take the following form:

## Information note for Member...

### 1- Position of the European negotiator's Member State

Official document reference	Parliament, Council and Commission document reference
Title	Abbreviated title, if necessary, but clear and comprehensible with key words in bold
Object of the discussion	1 or 2 sentences explaining why the issue appears on the agenda of the meeting (debate, agreement, vote, etc.)
Legislative procedure	Is the proposal subject to consultation or co-decision?
Procedural stage	1 <sup>st</sup> , 2 <sup>nd</sup> reading, etc.
Rapporteur	Name, political group, nationality
Parliamentary committees competent on the subject	AGRI, BUDG, AFET, DROI, ECON...
Other parliamentary committees involved and drafters	The information is available on OEIL <a href="http://www.europarl.europa/oeil/search.jsp">http://www.europarl.europa/oeil/search.jsp</a>
Responsible minister in the Member State	Minister's name

- Give a clear description of the position of the Member State on the issue and explain it

This will enable the targeted members to know what attention they should pay to the subject. Do not raise an issue of little interest as this will detract from the weight accorded to the interventions and commentaries made at a working party level. Always focus on the essential points. The members have little time and, therefore, generally little interest in technical details.

- In simple terms, briefly explain the context of the issue and what it should achieve

Focus on the real impact (for the public, industry, economy, environment, etc.).

## **2 – What are the major issues at stake for the Parliament?**

Explain, in one or two sentences, what the problem is for the Parliament. Has the proposal just been sent to the Parliament? Has it already been the subject of a draft report? Is this the last time that the committee will deal with this issue before it is discussed in plenary for definitive opinion?

Get the latest information from the Committee's home page on the European Parliament's website: <http://www.europal.europa.eu/activities/expert/committees.do?language=EN> or from OEIL: <http://www.europa.eu/oeil/search.jsp>

## **3- Commission's and Council's points of view**

- a) Commission
- b) Council

Explain briefly (in two sentences at most) what the problem is within the Commission and Council.

## **4- Discussion points**

By following up the position of the Member State under point 1, submit a series of suggestions (supported by facts and arguments) that the members can use in a debate. Always use arguments that will raise significant interest and not ones that only reflect the interests of a service in the ministry.

## **5. Other contextual elements**

If necessary, use this section to provide additional information on the proposal in question (it must be as short as possible, no more than 3 or 4 paragraphs ; the European Parliament members can contact the responsible individuals if they need further information).

## **6. Official interlocutor from whom members can obtain further information:**

Information regarding the name and contact details of the interlocutor at the permanent representation and the point of contact in the capital.

Name:

Department & division:

Official address:

Professional telephone:

Mobile telephone:

Fax:

E-mail address:

## **ii. Communication and information management**

Communication and information management are vital elements in any negotiation.

- Choose the right moment to intervene

Good communication of the negotiator's ideas and position will guarantee that they will be understood and well-defended. In this context, several tools exist. Firstly, choose the right moment to intervene. Depending on the content of the position to be defended, the other positions present and the chosen strategy, the intervention can be planned for the start of the meeting or, inversely, towards the end. The following table summarises the different possible situations and the best time to intervene.

## Time your interventions: early or late

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Early ...	... Late
<ul style="list-style-type: none"><li>• Unite floating minorities</li><li>• CBM or "communautaire"</li><li>• Precautionary strike (mission): attack, register or restrict</li><li>• Commit oneself solely on the basis of major interests</li><li>• Do the Presidency's work</li><li>• Start a dialogue or restrict the subjects talked about during the discussion</li></ul>	<ul style="list-style-type: none"><li>• No mandate or idea</li><li>• Leave others to obstruct the debate (keep their credibility longer)</li><li>• Push at an open door (as arguments or to obtain something)</li><li>• Financial concessions</li><li>• Demand vote</li><li>• Slanted summary</li></ul>

- *Structure interventions*

At times, it may be useful to structure interventions or any information communicated during the various interventions along the following lines: 1) introduce the position; explain the position by justifying it and, if necessary, return to it during subsequent interventions in order to reformulate it; 2) explain it so that it is clearly understood by all delegations. During the various interventions, the national delegate should provide arguments in support of their position, in relation to the other opinions from around the table and defend their line of argument. Depending on the evolution of the strategy defined beforehand and the changes in positions around the table, the negotiator can skilfully let their non-negotiable interests be seen as well as any movements in their position or possible concessions. Finally, make a point of always checking the draft compromise and any undertakings it contains.

Each time they intervene, the European negotiator should follow a few rules in order to guarantee the impact on their audience. Firstly, always start by thanking people. You should thank the presidency for having given the floor to the delegation, but also to

commend the quality of the work done by the European Commission and the authors of any expert reports. The speaker thus informs the audience about the delegation which has just taken the floor. This may seem very heavy and formal, but it has, above all, a logistical use. By providing this information, the speaker is indicating, especially to the interpreters, the language in which they will speak and that they have started their intervention. The orator then endeavours to structure the intervention and set out the elements that will be explained. Later on, this will allow the negotiator to situate their intervention in terms of the markers announced at the beginning and thus ensure, as far as possible, a better understanding on the part of the other delegates, as a result of their being able to follow the common thread announced at the very beginning. They should be decisive when setting out their position and ensure the effect of announcing support for a particular element of the negotiation. It is important, at the end of the intervention, to summarise the main points of their position before thanking the audience for their attention.

- Managing the information available

Managing information before, during and after the meeting is vital. This task falls mainly to the Presidency, but the negotiator does not have to remain totally passive.

One of the Presidency's tools is the "info flash" or annotated agenda, which lists the essential elements for the next meeting. The info flashes, distributed prior to certain delegation meetings, list the reference documents for the meeting, the state of the negotiations, the position of the European Parliament on co-decision files, the purpose of the meeting in particular, its estimated duration and the stages that will follow.

Here is an example of an info flash:



## Proposal for a Council Regulation on a European Fisheries Fund (EFF)

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- |                                |                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| • <b>Relevant documents</b>    | Doc. 10066/05 ADD 1 PECHE 123 CADREFIN 128, new DOC 6398/06                                                                                                                                                                                                                                                                                                                                                             |
| • <b>State of play</b>         | WG 9. FEB. Political agreement adoption April Council<br>(only if compromise is possible)                                                                                                                                                                                                                                                                                                                               |
| • <b>EP</b>                    | Opinion on horizontal issues expected May 2006                                                                                                                                                                                                                                                                                                                                                                          |
| • <b>Focus of this meeting</b> | Start with a short COM presentation of a new working document that will be sent today (late afternoon). Afterwards we begin the cleaning exercise and start to examine the text and reduce as many footnotes as possible.                                                                                                                                                                                               |
| • <b>Duration</b>              | 2,5 hours                                                                                                                                                                                                                                                                                                                                                                                                               |
| • <b>Follow-up</b>             | 23 FEB, we will continue to run through the articles and continue the “cleaning exercise”. And we will come back to the new document, that will be provided today.                                                                                                                                                                                                                                                      |
| • <b>Comment:</b>              | Although I know that political issues will be for COREPER 1 and Council only I ask you to be as cooperative as possible and to remove all the footnotes that can be removed from your side. We need a text for COREPER that has a significant reduction of footnotes for the following reason: COREPER is on 12th April. After that there are only 3-4 working days left before the council to get the documents ready! |

Claudia Koreiman-Özkan, Fisheries Attachée

The info flash offers the Presidency the possibility of structuring the meeting beforehand by setting out the context of the discussions. It allows the meeting to be started on the assumption that all the parties have the same essential information. This document, in a way, is the negotiator's “map”. However, it is not issued automatically and some Presidencies do not use it at all. In this case, if the negotiator has the information, it is up to them to decide whether they wish to share it, in order to put the meeting into context, or if the absence of a clear structure will benefit them.

The European negotiator may also have some more technical information in their possession, such as statistics on the issue to be discussed. It is then up to them to decide whether it is in their interest to share this information with the Commission and Presidency, depending on what they want to achieve.

For the European negotiator, management of information is also about managing the report that they will provide their capital with. What to convey, what to keep from what

transpired during the negotiations? It may be useful, for example, to explain what happened so that their capital can understand that it will be necessary to reconsider or adapt the initial position.

- Practical management of the meeting

Setting and managing the agenda of the meeting are equally negotiation tools. This management is carried out jointly by the Presidency and the representative of the General Secretariat of the Council and generally takes the form of a six-stage structure: the prologue, the individuals, the objective of the meeting, the plan or items on the agenda, the rhythm or time allotted to each item on the agenda and, finally, the procedural aspects, i.e. the implicit operating rules (rules for the working party in question) and the explicit rules (Rules of Procedure of the Council<sup>1</sup> of the European Union and, in particular, its Annex IV).

The prologue acts as an introduction for the Presidency. Its purpose is to remind participants of the practical aspects of the negotiation and the foreseen duration and, thus, to allow them to adopt their positions. Then the individuals around the table are presented, particularly any new representatives or experts who are attending only one meeting. After this, the negotiators present are reminded of the object and purpose of the meeting. The plan recapitulates the items on the agenda. Procedure is an important element because it clearly states the rules that must be followed during the meeting. These rules can be found in the Council's rules of procedure. As far as the running of the meeting is concerned, there are seven main rules:

1. No subject is presented purely for information purposes.
2. The time allotted to each speaker may be limited to two minutes.
3. Full table rounds should generally be avoided, even though they may be useful on certain occasions, particularly during the exploratory phase of the negotiation. The Presidency will then try to clarify the initial positions of each delegation as best as possible.

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• <sup>1</sup> Rules of procedure of the Council, Official Journal no. L 325 of 11/12/2009 p. 0036 - 006

4. Delegations are requested to avoid any repetition in their interventions.
5. Like-minded delegations are invited to hold consultations with a view on the presentation by a single spokesperson of a common position on a specific point.
6. Delegations are encouraged to make concrete drafting proposals, rather than merely express their disagreement with a particular point.
7. Finally, silence is, in principle, deemed to be tacit agreement.

Another element that has to be understood managed and used as effectively as possible is the Council language regime. This is made clear prior to the formal meeting and the use of all 23 official languages of the Union is not systematic. However, all the languages are systematically available for European Councils, the meeting of the Council in its ten configurations, the Conciliation Committees and for some twenty preparatory groups.

In COREPER, there is a "*gentlemen's agreement*" that there are three working languages: English, French and German. Some working parties may benefit from an interpretation regime with more or fewer languages being simultaneously interpreted, but the current tendency is increasingly for working parties to function without interpretation. That said, each Member State may make a formal request to be able to use the language of its choice at a specific meeting, subject to certain financial and logistical conditions.

In meetings where an interpreter is available, it is important that the European negotiator allows for the additional communication difficulty due to the inevitable filters of interpretation. This is the reason why good collaboration with the team of interpreters will ensure better transmission of the message and, therefore, clearer and more effective communication to the entire group. For the purposes of working successfully with them, it is a good idea to meet the interpreters before the meeting and to share any texts to be used during interventions, explaining, if necessary, any acronyms, the key points and any technical or major points. It is also very good practice for European negotiators to greet the team of interpreters before and after each meeting, not only for reasons of politeness but also to create a link that could prove very valuable during interventions. It is important

to think about the pace at which you speak during an intervention, so as to allow the interpreters to convey the message, position and arguments under the best possible conditions.

- The styles of Presidency

Apart from mastering its own communication and information management, it may be very instructive for a national delegate to study and understand, via its communications, what Presidency style is and what it aims to do. Contrary to common belief, the Presidency may take on another role from that of acting as a simple broker. Three major presidency styles can be identified: the arbitrator Presidency, the facilitator Presidency and the architect Presidency.

The first type of presidency, the arbitrator Presidency, is characterised by several elements that can be easily identified by the negotiator. This type of presidency positions itself as guardian of the rules. It defines and follows a strict agenda, respects the rules of procedure precisely, regularly sums up the state of play in objective terms and shows a certain obsession for accurate summaries. This type of presidency generally distances itself from the others present when it takes the floor by speaking of "you".

The second type is the facilitator Presidency, a fervent proponent of consensus. This is a presidency that is very committed to resolving problems and showing empathy by trying to take account of all the points of view. It regularly offers summaries reflecting the general climate of the negotiation. Always focused on reaching an agreement, this type of presidency tends to use "we" when taking the floor.

The last type of presidency is the architect Presidency, for which the end always justifies the means. It tends to weigh up the situation in terms of its advantage and uses the agenda and BATNA method as tools to pressurise delegations. Its primary interest is making progress, anticipating events and summarising them in a progressive or regressive manner depending on its interest. In its communications, this type of presidency most often refers to "I".

Identifying the predominant nature of a Presidency will allow the negotiator to adjust their own strategy and communications, according to the stage in the negotiations, in order to meet the objectives that they have set themselves.

### **iii. The post-negotiation phase: results and preparations for future negotiations**

Although just as necessary and essential as the preparatory phase, negotiators unfortunately very rarely take stock of the outcome of the negotiations immediately after they end. Such stocktaking allows the negotiator to stand back and critically analyse the effectiveness of their approach. Such an analysis will enable them to become aware of any persistent errors and to take remedial action so as to avoid always following the same path. It is also preparation for the next round of negotiations.

It may prove interesting for the negotiator to create and analyse a profile of negotiators encountered and the type of negotiation with which they may be confronted for use in future negotiations. These different negotiation profiles may be summarised and demonstrated as follows:

## The negotiator in theory

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Positions Interests	Hard	Tenacious	Indulgent
Power	Domineering	Moderate	Submissive
Climate	Hostile Formal	Credible Solid	Personal Jolly
Flexibility	Repetitive	Patient	Willing to explore

Based on W. Mastenbroek, in "International Negotiation", V. Kremenyuk (ed.), 2002.

In the vast majority of cases, the European negotiator is asked to produce a report on every negotiation. Such a document may be organised in the following fashion: start by presenting the subject of the negotiation to the reader, who is probably far from the Brussels scene, and listing the relevant reference documents. In order to bring out the procedural constraints, it may be useful to recall the legal bases and their procedural impact. The report then gives a summary of the state of the procedure at the moment of the negotiation and any outcome from this negotiation: problems that have been resolved and those that remain on the table. The national delegate then explains the implications and impacts of these results. They can explain, even justify, the outcome in relation to their initial mandate by summarising the various positions around the table. At this stage of the report, the national representative can usefully analyse the situation, the position of their Member State on the subject, with all its strengths and weaknesses. The negotiator can, for example, skilfully try to make their capital understand that the initial position was not easily to maintain and that it would be desirable for it to be redefined, in order for a compromise to be reached. Finally, it is a good idea to recall the next stage in the procedure that has to be followed.

X's report on the negotiation on Y

Subject of the negotiation and reference documents	
Legal base and procedural constraints	
State of the procedure at the time of the negotiation	
Nature of negotiation: - problems resolved - outstanding problems	
Implications and impact of the outcome of the negotiation	
Assessment of the initial mandate relating to the other positions around the table	
Stocktaking of the situation of the position of the State: - strengths - weaknesses	
Next stage in the procedure	

However, negotiation is a process that takes time to mature, during which the experiences accumulated will enrich the negotiator's database. This is why the negotiator will find the summary table below of assistance when preparing and monitoring the negotiations in which they are invited to participate. This is not an exhaustive list but a matrix, developed in the light of the work over the last fifteen years alongside negotiators from the 27 Member States and the European institutions.

**TABLE 3 – STRATEGIC ANALYTICAL CHART - (Inspired from Lempereur& Colson, 2010)**

<b>PERSON "Who?"</b>	<b>Interpersonal relations</b>	<b>With the Presidency</b>	<ul style="list-style-type: none"> <li>○ Cultural prejudices and stereotypes</li> <li>○ Timetable of first informal meetings</li> <li>○ Connection/contacts with the capital?</li> <li>○ How to create a climate of cooperation/trust?</li> <li>○ Define the rules conducive to mutual respect                             <ul style="list-style-type: none"> <li>▪ <i>Clarify the Presidency's expectations with regard to the Member States</i></li> <li>▪ <i>Clarify the Member States' expectations with regard to the Presidency</i></li> </ul> </li> </ul>
		<b>With the other Member States</b>	<ul style="list-style-type: none"> <li>○ Reputation as member of the group – goodwill</li> <li>○ Integration in the group</li> <li>○ Impartiality and equal treatment</li> <li>○ Creation of a climate of trust and willingness to maintain it</li> </ul>
		<b>With the Commission</b>	<ul style="list-style-type: none"> <li>○ "<i>Communautaire</i>" reputation (support for Commission or EU)</li> <li>○ Behaviour and attitudes with regard to the Commission (and inversely) during meetings of the working party (time of questions)</li> </ul>
		<b>Member States/Commission</b>	<ul style="list-style-type: none"> <li>○ Is the Commission treated like a member of the group?</li> <li>○ Effectiveness and consistency in taking account of the national contributions in the preparation of compromise proposals (level of involvement of the experts in the consultative phase?)</li> <li>○ Attitude to be adopted regarding the accepted role of the Commission as an institution?</li> </ul>
		<b>Between the Member States</b>	<ul style="list-style-type: none"> <li>○ Cooperative or confrontational dynamic</li> <li>○ Group leadership and phenomena</li> <li>○ Profile-type of the national representatives (specialisation/expertise)</li> <li>○ Cultural diversity</li> <li>○ Influence/importance of socialising with members of group</li> </ul>
	<b>Stakeholders</b>	<b>In the room</b>	<ul style="list-style-type: none"> <li>○ Identification of allies, opponents and floating minorities (mapping of delegations present in the room)</li> </ul>
		<b>Outside the room</b>	<ul style="list-style-type: none"> <li>○ Representation of interest groups</li> <li>○ National coordination system: role of the permanent representation and spokesperson</li> <li>○ Status of discussions in other institutions?</li> </ul>
	<b>Motivations</b>	<b>Presidency</b>	<ul style="list-style-type: none"> <li>○ Consistency of Presidency team</li> <li>○ Room for manoeuvre and distance relative to the capital</li> </ul>



	<b>(mandate and instructions)</b>	<b>Presidency delegation</b>	<ul style="list-style-type: none"> <li>○ Role of national delegate and management of national interests?</li> <li>○ Any personal interests</li> <li>○ Role of the permanent representation/attachés</li> </ul>	
		<b>Delegations</b>	<ul style="list-style-type: none"> <li>○ Degree of autonomy in relation to the capital</li> <li>○ Form and type of cooperation</li> <li>○ Role of the permanent representation/of the attachés</li> </ul>	
<b>PROBLEM "What?"</b>	<b>Key elements</b>	<b>General framework</b>	<ul style="list-style-type: none"> <li>○ Minimum knowledge required of the file, political context and legal framework</li> <li>○ Negotiation objectives</li> <li>○ Objectives of the Presidency and of the various parties</li> <li>○ Current state of the discussion</li> </ul>	
		<b>National positions</b>	<ul style="list-style-type: none"> <li>○ Mapping of positions</li> <li>○ Importance given to the question</li> <li>○ Interests and preferences</li> <li>○ Negotiable and non-negotiable questions (red lines)</li> <li>○ Conceivable fall-back or alternative positions</li> <li>○ Level at which decisions are made (State or competence of negotiators ) for resolving the problem</li> </ul>	
		<b>Shared positions</b>	<ul style="list-style-type: none"> <li>○ Joint position and leaders</li> <li>○ Coalitions and alliances</li> <li>○ Support for the Commission's position</li> </ul>	
		<b>Possible area of agreement</b>	<ul style="list-style-type: none"> <li>○ Possible concession and alternative solutions</li> <li>○ Mapping of preferences and interests: <ul style="list-style-type: none"> <li>▪ Shared and compatible</li> <li>▪ Similar but incompatible</li> <li>▪ Different yet complementary</li> <li>▪ Different and contradictory</li> </ul> </li> </ul>	
		<b>Solutions around the table</b>	<b>Planning</b>	<ul style="list-style-type: none"> <li>○ Approach focused on solutions and strategy adopted between Presidency, General Secretariat of the Council and Commission</li> <li>○ Tactics: list of requests for the floor, information and interaction with the Commission</li> <li>○ How the Presidency uses its national delegate?</li> </ul>
			<b>Production</b>	<ul style="list-style-type: none"> <li>○ Identify and select the building blocks of a compromise: <ul style="list-style-type: none"> <li>▪ Availability at the time</li> <li>▪ Political dimension</li> <li>▪ Technical dimension</li> <li>▪ Legal/judicial dimension</li> </ul> </li> </ul>

		<b>Construction alternatives of</b>	<ul style="list-style-type: none"> <li>○ Assess the realism of the existing options</li> <li>○ Weigh up pros and cons of each option</li> <li>○ Informal/behind the scenes negotiations and sharing out of tasks</li> </ul>
		<b>Justification</b>	<ul style="list-style-type: none"> <li>○ Encourage collective ownership of the compromise</li> <li>○ Use arguments in line with interlocutor's logic</li> <li>○ Consensus or qualified majority, when to decide on the best option?</li> </ul>
	<b>Solutions outside of the table</b>	<b>Things to watch out for</b>	<ul style="list-style-type: none"> <li>○ Evaluate the consequences of a failure <ul style="list-style-type: none"> <li>▪ For the group</li> <li>▪ For the Presidency</li> <li>▪ For the EU</li> </ul> </li> <li>○ Recourse to the political level? "Consulting the capital" technique</li> <li>○ Use of external pressure</li> </ul>
		<b>Best Alternative To a Negotiated Agreement</b>	<ul style="list-style-type: none"> <li>○ For the Presidency</li> <li>○ For the Commission</li> <li>○ For the Member States <ul style="list-style-type: none"> <li>▪ Opponents</li> <li>▪ Allies</li> <li>▪ Floating minorities</li> </ul> </li> </ul>
<b>PROCESS "How?"</b>	<b>Organisation of the meeting</b>	<b>Formal and/or informal</b>	<ul style="list-style-type: none"> <li>○ Logistics</li> <li>○ Possibility of playing with the table plan?</li> <li>○ Tactics</li> </ul>
		<b>Fixing the agenda</b>	<ul style="list-style-type: none"> <li>○ 6P method: Prologue, Persons, Purpose, Plan, Pace, Procedures</li> <li>○ Single or iterative discussion?</li> <li>○ Duration and time devoted to each item on the agenda</li> </ul>
		<b>Behind the scenes diplomacy</b>	<ul style="list-style-type: none"> <li>○ Bargaining options</li> <li>○ Encouraging exchange of concessions</li> <li>○ Testing options/possibilities for compromise</li> </ul>
	<b>Communications</b>	<b>Information</b>	<ul style="list-style-type: none"> <li>○ "Info flashes" and annotated agendas</li> <li>○ Allocation of roles and tasks to be carried between meetings</li> <li>○ What to ask for, provide and keep?</li> <li>○ Information management with regard to the Commission – when and how?</li> </ul>
		<b>Management of the group/Presidency style</b>	<ul style="list-style-type: none"> <li>○ Definition of realistic and structured objectives</li> <li>○ Assertiveness and effectiveness in running and successfully completing discussions/meetings</li> <li>○ Presidency delegation</li> </ul>

## Conclusion

Negotiation is a process that can be approached in many different ways and the final outcome will depend, to a great deal, on the quality of the preparatory phase. The key to negotiating an outcome advantageous to those issuing the instructions lies in the negotiator's ability to consider the largest possible number of elements relating to the situation with which they is confronted, to identify the various options and to assess them one by one. This ability goes hand in hand with the ability to put the situation into perspective in its historical context and trying, as far as possible, to view the other stakeholders in the negotiation as partners rather than as adversaries.

At the European level, as in most negotiations, it is not easy to gauge and identify Member States' negotiating strategies, to the extent that negotiating strategies are made up of a large number of elements leading to the use of various tactics. For example, the cooperative strategy that is most favoured in the European context takes account of tactics such as sending signs of flexibility, proposing concessions, valorisation of the opposing side's position, searching for partners to a compromise or even a compromise proposal (Dür and Mateo 2010). These categories represent the ideal approach in terms of a cooperative strategy. The European negotiator must, however, beware of naive optimism and remain constantly alert, asking themselves the following questions:

- 1) What are the behavioural factors that reflect flexibility?
- 2) How can they recognise signs of flexibility in the context of negotiations?
- 3) How can they assess the value and significance of each tactic?
- 4) How can they assess a cooperative approach during negotiations? A Member State sends signs of wishing to cooperate but does not make any concessions or, inversely, a Member State makes a concession without having sent any signal beforehand. In this context, which Member State has the more cooperative approach?

The strategic analytical chart is, therefore, intended to be a tool that will assist the European negotiator in carrying out the indispensable analysis in a structured manner, inviting them above all to permanently question everything and keep in perspective the very large number of parameters that make up the negotiation in which they are participating.

There are still no viable scientific means for gauging the way in which links are created between several items during the course of a negotiation. Coalitions effectively appear when there are more than two partners around the negotiation table. Coalitions change over the course of a single negotiation or from one negotiation to the next. In addition, a great deal of importance is attached to the rational dimension of the negotiation, but what about the emotional dimension? Are all the decisions made by a negotiator during the course of European negotiations exclusively rational? European construction is littered with examples of cases where the emotional dimension had an impact on the final outcome and we are not even talking here about the challenges of communication in a multi-cultural environment.

Working nearly daily alongside European negotiation professionals, we wanted to share a series of strategic tools with everyone who is interested in the dynamics of Brussels. These are intended to accompany and support the reflection process of a negotiator in charge of defending interests within the Council of the EU. For this, we wanted to shed light on the particularities of European negotiations and offer a set of practical suggestions for anybody responsible for preparing and defending a position and interests in the Council of the EU.

Becoming a good negotiator demands a lot of time, curiosity and work. Contrary to the impression that some of our interlocutors sought to give, we do not believe that it is an innate gift but rather the development of the ability to analyse and adapt relatively rapidly to a situation characterised by multiple, heterogenic factors. The experience acquired by the negotiator in the course of successive meetings will encourage a "reflex behaviour" to develop. This will enable them to manage most negotiation situations more rapidly and, above all, more effectively.

The interest in this discipline probably resides in the fact that every negotiation is unique, but it does still have certain points in common with previous negotiations. In negotiations as in many other disciplines, nothing is ever entirely acquired; everything is always in movement and continually evolving.

Exactly the same is exactly true of this working paper. It is not the completion of research work. On the contrary, we consider this document to be a starting point, intended to enrich discussions on the subject with experts and neophytes, and to continue progressing with the identification of practical tools, allowing European negotiators to become ever more effective in the defence of the interests that they must represent.

## Bibliography

Axelrod, R. (1984). *The evolution of cooperation*. New York: Basic Books

Bailer, S. (2010) 'What Factors determine bargaining power and success in EU negotiation?' *Journal of European Public Policy* 17(5):753-57.

Bazerman, M., Loewenstein, G., & White, S. (1992). Reversals of preference in allocation decisions: Judging an alternative versus choosing among alternatives. *Administrative Science Quarterly*, 37, 220–240.

Bazerman, M. H., White, S. B., & Loewenstein, G. F. (1995). Perceptions of fairness in interpersonal and individual choice situations. *Current Directions in Psychological Science*, 4, 39-43.

Bos, Jan M. M. van den. 1991. *Dutch EC Policy Making*. Thesis Amsterdam

Checkel, J. (ed.) (2005), 'International Institutions and Socialization in Europe', Special Issue of *International Organization* 59 (4).

Da Conceição-Heldt, E. (2006) 'Integrative and distributive bargaining situations in the European Union: what difference does it make?' *Negotiation Journal* 22(2): 145-65.

Deutsch, M., Coleman, P.T., Marcus, E.C., (1958) 'The Handbook of Conflict Resolution: Theory and Practice', Jossey-Bas, A Wiley Imprint, www.josseybas.com, 960 pages

Dür, A. and Mateo, G. (2010) 'Bargaining power and negotiation tactics: the negotiations on the EU's financial perspective, 2007-2013', *Journal of Common Market Studies* 48(3): 557-78.

Elgström, O. and Jönsson, C. (eds.) (2005) 'European Union Negotiation: Processes, Networks, and Institutions', London: Routledge.

Elgström, O. and Jönsson, C. (2000) 'Negotiation in the European Union: bargaining or problem-solving?' *Journal of European Public Policy* 7(5): 684-704.

Fearon, J. 1998. Bargaining, Enforcement, and international cooperation. *International Organization* 52 (spring): 269-305.

Fisher, R. and Ury, W. (1981) 'Getting to Yes: Negotiating Agreement without Giving in', London: Hutchinson Business.

Hayes-Renshaw, F., van Aken, W. and Wallace, H. (2006) 'When and why the EU Council of Ministers votes explicitly' *Journal of Common Market Studies* 44(1):161-94.

Heisenberg, D. (2005) 'The institution of "consensus" in the European Union: formal versus informal decision-making in the Council', *European Journal of political Research* 44:65-90.

Héritier, A., (1999) 'Policy-making and diversity in Europe: escaping deadlock', *Cambridge University Press*, vi, 113 p

Hix, S., (1999) 'Dimensions and alignments in European Union politics: Cognitive constraints and partisan responses' in *European Journal of Political Research*, Dordrecht. Vol. 35.No. 1. p. 69-106.

Hoffmann S., (1966), "Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe", *Daedalus*, Vol. 95, No. 3

Holsti O. R; Hopmann, P. T. and Sullivan, J.D (1973) 'Unity and disintegration in international alliances: comparative studies', New York, Wiley, xv, 293 p.

Hopmann, P. T., (1996), 'The negotiation process and the resolution of international conflicts' Columbia, S.C.: University of South Carolina Press, xi, 353 p.

Kahneman, D.; Tversky, A. (1973). "On the psychology of prediction". *Psychological Review*

Kahneman, D.; Tversky, A. (1979). "Prospect theory: An analysis of decisions under risk". *Econometrica*

Kahneman, D.; Tversky, A. (1984). "Choices, values and frames". *American Psychologist* 39 (4): 341–350

Kahneman, D., & Tversky, A. (Eds.). (2000). *Choices, values and frames*. New York: Cambridge University Press

Keohane R.O., Nye J.S. Jr., 'Transnational Relations and World Politics: An Introduction' *International Organization* Vol. 25, No. 3, Transnational Relations and World Politics, pp. 329-349

Keohane R.O., Nye J. S Jr. (1977), last edition (2001) 'Power and interdependence: world politics in transition'. *Boston: Little, Brown, .*

Lempereur, A. and Colson, A. (2008), *Méthode de négociation*, 2<sup>nd</sup> edition, Paris: Dunod.

Lempereur, A. and Colson, A. (2010), *The First Move. A Negotiator's Companion*, Edited by Michele Pekar, Chichester: John Wiley & Sons.

Lewis, J. (2005) 'The Janus face of Brussels: socialization and everyday decision making in the European Union', *International Organization* 59(4): 937-71.

Lewis, J. (2010) 'How institutional environments facilitate co-operative negotiation styles in EU decision-making', *Journal of European Public Policy* 17(5): 648-64.

Lipson, C. (1984) 'International cooperation in economic and security affairs', *World Politics Princeton*. N.J. Vol. 37. No. 1. p. 1-23.

Lodge, J.E. and Pfetsch, F. (1998) 'Negotiating the European Union: introduction', *International Negotiation* 3(3): 289-92.

Messick, D. M., & McClintock, C. G. (1968) 'Motivational basis of choice in experimental games' *Journal of Experimental Social Psychology*, 4, 1-25.

Raiffa, H.; Richardson J.; Metcalfe, D. 'Negotiation analysis: the science and art of collaborative decision making', MA: Belknap Press of Harvard University Press, 2002 xiv, 548 p.

Raiffa, H. and Keeney, R.L. 'Decisions with multiple objectives: preferences and value tradeoffs' Cambridge [England]; New York, NY, USA: Cambridge University Press, 1993, xix, 569 p.

Meerts, P. and Cede, F. (eds.) (2004) *Negotiating European Union*, Basingstoke: Palgrave Macmillan.

Mearsheimer, J.J. (2011), 'Why Leaders Lie: The Truth about Lying in International Politics' (New York: OxfordUniversity Press,).

Mearsheimer, J.J. (2001), *The Tragedy of Great Power Politics* (New York: Norton,)

Mearsheimer, J.J. (1988). *Liddell Hart and the Weight of History* (New York: Cornell University Press; London: Brassey's).

Mearsheimer, J.J (1983) *Conventional Deterrence* (New York: Cornell'University Press.

Meunier, S. (2005) *Trading Voices. The European Union in International Commercial Negotiations*, Princeton, NJ: PrincetonUniversity Press.

Moravcsik, A. (1998) *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca, NY: CornellUniversity Press.

Morgenthau, H.J (1948) *Politics among Nations: The Struggle for Power and Peace* (New York: Knopf, 1948).



Morgenthau, H. J. (1948) "Review of Book: *The Cultural Approach: Another Way in International Relations*, ed. by Ruth McMurry and Muna Lee," *American Journal of Sociology*, vol. 53, no. 5 (March 1948), pp. 397-398

Müller, H. (2004) 'Arguing, bargaining and all that: communicative action, rationalist theory and the logic of appropriateness in international relations', *European Journal of International Relations* 10(3):395-435.

Naurin, D. and Lindahl, R. (2008) 'East-North-South: Coalition-building in the Council before and after enlargement', in D. Naurin and H. Wallace (eds.), *Unveiling the Council in the European Union: Games Governments Play in Brussels*, Basingstoke: Palgrave Macmillan, pp. 64-80.

Niemann, A. (2004) 'Between communicative action and strategic action : the Article 113 Committee and the negotiations on the WTO Basic Telecommunications Services Agreement', *Journal of European Public Policy* 11(3) : 379-407.

Pfetsch, F.R., (2007), 'Negotiating political conflicts', New York : Palgrave Macmillan, xiv, 216 p.

Raiffa, H. (1982) *The Art and Science of Negotiation*, Cambridge, MA : Harvard University Press.

Ruggie, J.G. (ed.) (1993) *Multilateralism Matters: The Theory and Praxis of an Institutional Form*, New York : Columbia University Press.

Schalk, J., Torenvlied, R., Weesie, J. and Stokman, F.N. (2007) The power of the presidency in EU Council decision-making. *European Union Politics*, 8, No 2, 229-250 (Award by Sage Publications: Best 2007 article in European Union Politics journal)

Scharpf, F. W. (1978) "Interorganizational Policy Studies: Issues, Concepts and Perspectives." In *Interorganizational Policy Making: Limits to Coordination and Central Control*, ed. London and Beverly Hills, Cal.: Sage Publications

Scharpf, F.W., Reissert, B., and Schnabel, F. (1978). "Policy Effectiveness and Conflict Avoidance in Intergovernmental Policy Formation.", in *K.I Hanf and F.W. Scharpf (eds.)*

Schelling T. (1960), *The Strategy of Conflict*, Harvard University Press, 311 p.

Sebenius, J.K. and Lax, D.A (1986) 'The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain' NY: Free Press, (Also published in Czech, French, Italian, and Spanish editions.)

Sebenius, J.K., Lax, D. A., Weber, R, Samuelson, W. and Weeks T. (1985) 'The Manager as Negotiator and Dispute Resolver', NIDR teaching materials series. Washington, D.C.: National Institute for Dispute Resolution.

Steinberg, R.H. (2002) 'In the shadow of law or power? Consensus-based bargaining and outcomes in the GATT/WTO', *International Organization* 56(2): 339-74.

Stokman, F.N., and Reinier Van Oosten, R.(1994) The Exchange of Voting Positions: An Object-Oriented Model of Policy Networks, Bruce Bueno de Mesquita and Frans N. Stokman (eds.), *European Community Decision Making: Models, Applications, and Comparisons*, New Haven: Yale University Press, 105-127

Susskind, L.; Duzert, Y. and Pekar Lempereur, A., (2009) 'Faciliter la concertation', Eyrolles, éd. d'Organisation, Paris

Susskind L. E., McKearnan S., Thomas-Larmer J., (1999) - The Consensus-Building Handbook.  
SAGE, London.

Susskind L. E., Ozawa C., (1984 )– Mediated negotiation in the public sector: the planner as mediator. In *Journal of Planning Education and Research*, 4, 5-15.

Susskind, L. and E. M. Landry (1991). "Implementing a Mutual Gains Approach to Collective Bargaining." *Negotiation Journal*, Vol. 7, 5-10.

Tallberg, J. (2006) *Leadership and Negotiation in the European Union: The Power of the Presidency*, Cambridge: CambridgeUniversity Press.

Thomson, R., Stockman, F.N., Achen, C.H. and König, T. (eds.) (2006) *The European Union Decides*, Cambridge: CambridgeUniversity Press.

Thomas, D.C. (2009) 'Explaining the negotiation of EU foreign policy: normative institutionalism and alternative approaches', *International Politics* 46(4): 339-57.

Wallace, H. (1990) 'Making multilateral negotiation work', in W. Wallace (ed.), *The Dynamics of European Integration*, London: Pinter, pp. 213-28.

Walton, R. E. and R. B. McKersie (1965) *A Behavioral Theory of Labor Negotiation*. New York: McGraw-Hill.

Walton, R. E. and R. B. McKersie (1966) "Behavioral Dilemmas in Mixed- Motive Decision Making." *Behavioral Science*, Vol. 11, 370-384.

Walton, R. E., J. E. Cutcher-Gershenfeld and R. B. McKersie (1994). *Strategic Negotiations*. Boston, Mass.: HarvardUniversity Press.

Werts, J. (1992) *The European Council*, Amsterdam: North-Holland.

Zartman, W. (ed.) (1978) *The negotiation Process: Theory and Applications*, Beverly Hills, CA: Sage