Introduction: Negotiation and policy-making in the European Union – processes, system and order

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This Special Issue of the *Journal of European Public Policy* is devoted to a phenomenon that is pervasive in the European integration project: negotiation. It is apparent from a review of the literature on integration and policy-making in the European Union (EU) that a great deal of it deals more or less explicitly with the ways in which ‘inputs’ are mediated by forms of negotiation to result in ‘outputs’, and that understandings about negotiation, its rules, its procedures and its consequences, are central to the evolution of expectations and the perceived legitimacy of institutions.

So much is clear. But we are aware of the fact that unless conceptual and analytical boundaries are clearly established, it is possible to define almost everything that goes on in the EU as ‘negotiation’. The word can become synonymous with the integration project itself, and as such it can lose its theoretical and policy utility. The concern of the articles gathered here is thus two-fold: first, to validate the ‘negotiation perspective’ as a way of penetrating the workings of the EU in the widest sense, and, second, to contribute to the furthering of negotiation analysis as a means of ordering our understanding of the European integration project. The articles, in diverse ways, can be framed by three aspects of a ‘negotiation perspective’. First, they deal with *negotiation as process*. Second, they deal with *negotiation as system*. Finally, they deal with *negotiation as order*. We argue that each of these aspects of a ‘negotiation perspective’ contributes significantly to our understanding of European integration and of policy-making in the EU.

THE EU AS NEGOTIATION PROCESS(ES)

Our first concern is to identify the ways in which negotiation processes enter into the European integration project and into the analysis of EU policy-making. It is not uncommon to characterize decision-making processes in the EU as negotiation processes. In fact, Helen Wallace (1996: 32) notes that ‘[t]he European policy process has been peculiarly dependent on negotiation as a
predominant mode of reaching agreements on policy and of implementing policies once reached.’ Other scholars describe the EU as a ‘permanent negotiation institute’ (Bal 1995: 1) or as a ‘multilateral inter-bureaucratic negotiation marathon’ (Kohler-Koch 1996: 367). Moreover, many aspects of the Union’s external relations are managed by negotiations. Indeed, the EU is considered a major negotiator in many different international contexts; in the millennium-round of the World Trade Organization (WTO), in enlargement negotiations, in the renewal of the so-called Lomé agreement with less developed countries, in talks about the stabilization of the former ex-Yugoslavia. The EU is thus not only in itself a major site of negotiation, but also (and partly by virtue of its internal negotiation processes) a major participant in international negotiations.

Negotiation has been defined as ‘a process in which explicit proposals are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realization of a common interest where conflicting interests are present’ (Iklé 1964: 3–4). A negotiation, or bargaining, situation is characterized by interdependence and by the existence of both common and conflicting interests. A negotiation process is a communication process, where actors send signals to each other in order to influence the expectations and/or the values of the other party (Jönsson 1990: 2).

Clearly, there is a close relationship and partially an overlap between ‘negotiation’ and ‘decision-making’. The aim of both processes is to reach an agreement. Decision-making will normally comprise negotiations, but may also exhibit other traits: voting is obviously one form of collective decision-making (which normally is preceded by negotiations and coalition-building), rule application is yet another type of a more legal nature. When we in this volume claim that we interpret EU decision-making as a negotiation process, we apply a special perspective on the policy-making process and emphasize certain characteristics at the expense of others.

Instead of using alternative perspectives, for example a rational choice model or a garbage can model (cf. Richardson 1996), we underline the shared and contrary interests of EU actors, the strategic interaction and signalling that takes place between them, the linkage between different games and issue-areas and the compromises that are usually made in the end.

The relationship between the EU and negotiation processes is complex and distinctive. Although we can make general statements about the ways in which the EU is permeated by negotiations, it is also important to say what exactly it is about the EU process that demands attention and analysis. One way of doing this is to emphasize the various elements of negotiation processes, and to establish where the EU fits on a number of different but interrelated dimensions. A key starting point is to recognize that the dominating characteristic of negotiation processes in the EU is diversity, which permeates the central elements of the negotiation process.

First, the EU is characterized by diversity of negotiating contexts and occasions. Although it is legitimate to see the EU as a continuous multilateral negotiation
process, it is clear that this ‘hides’ the range of contexts and occasions generated by the EU’s internal and external development. A key element for analysis is thus the coexistence of the crisis and the routine, the structured and the unstructured, the ‘public’ and the ‘private’ in EU negotiations.

Second, the EU is characterized by diversity of actors and preferences. In the ‘internal’ negotiation of EU business, there is a wide range of institutional, governmental, non-governmental and quasi-governmental participants; when the ‘external’ implications of negotiation are added to the mix, there is a heterogeneous and at times almost bewildering array of actors in negotiation. Among these actors, there is a wide range not only of preferences but also of ways in which preferences are formed and adapted to changing contexts or for different occasions. Although it can be, and has been, argued powerfully that the preferences of governmental actors are the dominant and often determinate ones (Moravcsik 1993, 1998), this seems to us to be only a starting point for further analysis, taking into account the diversity of occasions and contexts already noted. Which actors or what issues are significant in specific contexts, and under what circumstances preferences are ‘open’ or ‘closed’, are significant research questions.

Third, the EU demonstrates diversity of strategies, negotiation styles and communication. The range of negotiating behaviour between bargaining and problem-solving is a widely recognized analytical focus. For the EU, this focus needs to take into account the impact of the diversity on occasions and contexts, and the diversity in actors and preferences, outlined above. To take a simple example, the coexistence of negotiation processes operating to different timetables and with different institutional ramifications means that the strategies of actors, their negotiating behaviour and their communication styles are likely to come under particular and distinctive pressures.

Finally, the EU manifests diversity of outcomes: the product of negotiation processes is often difficult to pin down, and the need for ratification and implementation at different levels and in different institutional and cultural contexts is a pervasive concern of the negotiators.

It would be easy to conclude from this that the diversity of negotiation processes in the EU defies systematic analysis. This is not our position. Rather, we take as our starting point the need to recognize diversity, but also to recognize that the EU can be interpreted as both a negotiation system and a form of negotiated order. It is the coming together of these three elements – process, system and order – that makes the EU a distinctive challenge for negotiation analysis.

THE EU AS NEGOTIATION SYSTEM

The notion of a ‘negotiation system’ clearly implies some essential characteristics. In talking about systems in general, we can identify three fundamental properties: interdependence of actors, regularities of interactions, and the presence of (informal and formal) rules or institutions. From these, it is
possible to develop further insights into, for example, the stability and adaptive capacities of specific systems, and to gain an understanding of the relationships between systems and their environments, for example in situations where endogenous or exogenous shocks are experienced by the systems concerned. Our argument is that the EU demonstrates these features, and that they have important implications for the ways in which negotiations work in the EU context. While the multi-level negotiation process referred to above is extremely complex, it is nevertheless possible to distinguish some common features and prominent patterns. In a sense, the negotiation system of the EU is unique: while some of the traits distinguished below can be found in other settings, internationally or in national arenas, the overall dynamics do not seem to have any correspondence anywhere else.

First, EU negotiations are highly institutionalized. They are embedded in a rich framework of formal and informal norms and rules. Patterns of practices have evolved over time, and resulted in prescriptions for behaviour that are taken-for-granted and implemented almost automatically. Institutionalized responses to certain situations (be it intergovernmental conferences (IGCs) or budget deadlines) in terms of negotiation activities have developed. A negotiation framework that specifies when, where and how negotiations are to take place has gradually emerged through a process of meta-negotiations (negotiations concerning the rules of the game). Norms that govern procedures and even substance have been created. For example, minority protection is guarded by formal voting rules in the Council but also by an informal norm that obliges member states not to ride roughshod over minority views. A consensus culture is often claimed to inform EU negotiations at all levels. Negotiations are also influenced by an informal principle of juste retour, i.e. that all members are supposed to gain something from an ongoing round of negotiation.

Second, EU negotiations are permanent, linked and continuous. It is exceedingly difficult to define the beginning or the end of a certain negotiation. Different negotiations are interlinked or overlap. The outcome of one negotiation process creates a new bargaining situation, and the negotiating parties continue to interact. According to one popular theory, the possibility of close international co-operation increases with the length of the shadow of the future (Axelrod 1984). If actors know that their relationship will be long-lasting, the temptation to try to reap unilateral gains at the expense of other actors will be smaller than in a one-shot negotiation. In the EU, all actors almost by definition expect long-term favours from membership. Therefore, they might sometimes make concessions in one negotiation process, as they are confident that other actors will reciprocate such behaviour sooner or later. This set of qualities has fundamental implications for the evolution of expectations and the generation of negotiation strategies.

Third, the character of the negotiating parties, and by extension their roles, are distinctive. Most prominent is the presence and importance of institutional actors, particularly the Commission and the European Parliament (EP). Unlike in all other types of international negotiations, such actors constitute autono-
mous players in many EU negotiation processes. They have formal powers, like the sole right of initiative of the Commission and the potential veto power of the EP under co-decision-making. But Commission officials may also be key players in many informal networks and by their power of knowledge steer and drive policy processes forwards. The system, and some of its fundamental rules, create circumstances in which such actors can have important inputs into agenda-setting, and in which they can take advantage of ‘opportunity structures’ to advance not only their specific objectives but also their more general institutional legitimacy and competence. Besides the special role of institutional actors, the sheer number and the different types of negotiating actors are also noteworthy. The multi-level governance school epitomizes the position that EU decision-making processes involve a multitude of players at different levels, and we should add to this insight the fact that many of the negotiating systems thus created are characterized by a combination of ‘public’ and ‘private’ actors deriving their legitimacy and their resources from very different roots.

Fourth, and partly as a consequence of the richness and variety of the negotiation environment, the formal negotiation process is closely linked to a prevalence of informal negotiations. Negotiations do take place in the plethora of expert groups, working parties and comitology committees working in Brussels. Simultaneously, however, most seasoned observers point to the existence of informal networks (Peterson and Bomberg 1999; Jönnson et al. 1998). The reason for relying on informal channels is expressed by a high-level Commission official: ‘If you stuck to formal procedures, each decision would take ten years.’ Networks and informal contacts are seen as major instruments to promote effectiveness and flexibility. As a result of this coexistence between formal and informal negotiations, there is a constantly fluctuating boundary between the two, and the negotiation system is thus characterized by a need for ‘negotiations about negotiations’ more than in conventional or traditional forms of international diplomacy or bargaining.

Finally, EU negotiations are characterized by linkages not only between levels and sectors internally, but also between internal and external negotiations. The EU is not only itself an arena for negotiation among its members and those wishing to influence its institutional or policy development, it is also a major participant in external negotiations. The boundary between these two arenas is often difficult to find, and the often intense linkages between ‘internal’ and ‘external’, for example in commercial or industrial policies, are a key feature of the EU negotiation system. When this is coupled with the linkages between levels and sectors which are implicit in the EU’s expansion of its territorial and functional responsibilities, it is bound to have implications for the analysis of negotiation processes and negotiation outcomes.

THE EU AS NEGOTIATED ORDER

From what has been said already, it is apparent that the EU poses distinctive conceptual and analytical challenges whether viewed in terms of negotiation
processes or as a negotiation system. At several points in the argument so far it has also been clear that in some ways the EU goes beyond both of these two conceptions. Because of the intensity, complexity and continuity of the negotiation process, and the permanent and evolutionary character of the negotiation system embodied in the EU, it is possible to argue that it also constitutes a complex and sophisticated negotiated order, resting not only on the material foundations of institutions and procedures but also on a powerful set of normative and quasi-ideological understandings.

Two approaches can be taken to this idea of negotiated order. The first can be described as structural in the sense that the EU can be seen as reflecting a set of forces in the European – and by extension the global – arena that have led to a powerful convergence of expectations and resources around the EU’s negotiation system. Robert Cox (1986) identifies three central components to this set of forces: the distribution of material capabilities, the institutional structure at the international level, and the ‘reigning ideas’ or the ideologies characterizing a particular international order. If this line of argument is pursued, the EU can be seen as a partial or nascent form of world order, gaining much of its strength from the robustness of the negotiation system already described.

A second approach focuses more on the processes through which a negotiated order is established, maintained and modified. Oran Young (1982) has proposed three archetypes of international order: spontaneous, imposed and negotiated. The third of these embodies a process of formal or informal negotiation and renegotiation of the rules and procedures framing actors’ behaviour. While Young was proposing his schema within the analytical tradition of regime theory, it does not take much imagination to see ways in which this can be applied to the EU. Not only this, but if we combine the ‘structural’ characteristics identified by Cox with the ‘procedural’ characteristics proposed by Young, we can arrive at a series of questions about the ways in which the EU is, on the one hand, a form of negotiated order and, on the other, a practitioner of the processes through which negotiated order can be maintained or extended.

This helps us to add new dimensions to the analysis of the EU from a negotiation perspective. In particular, it gives us a new angle on the qualities of the EU which are central to its effectiveness and impact as a set of negotiation processes and as a negotiation system. First, we can identify in the EU a set of negotiation problems shaped by the distribution of capabilities: the shifting and evolving balances between EU members, which will be further determined by the direction and intensity of their preferences. Second, we can identify negotiation problems emerging from the institutional structure, which, as we have seen, has a particularly pervasive – but not unchanging – impact on the ways in which EU negotiations take place. Third, we can delineate an important role in EU negotiations for ‘reigning ideas’ in the form of elite consensus and the shaping of expectations or understandings which provide a powerful non-material shaping force in the negotiation system. Recent studies
of the EU from a social constructivist standpoint are significant in this context (Christiansen et al. 1999). In all three of these areas – distribution of capabilities, institutions and ideas – it is clear that the EU embodies a shifting and evolving set of social forces.

If we turn to the procedural aspects of negotiated order, we can see that the EU gives further food for analysis. Much of the EU negotiation system is dedicated to the continuous shaping and reshaping of rules and procedures; unlike many international regimes, however, this process is conducted across many sectors and at a number of different levels. This makes the process at one and the same time more robust and less adaptive. In particular, it accounts for the ways in which the EU encounters three negotiation problems, both internally and in its dealings with outsiders. First, it encounters the problem of investment: the existing members of the EU have through the operation of the negotiation system a major ‘sunk investment’ in the Union, and it is thus difficult to redistribute or dilute this investment. Second, the EU faces the related problem of collective action: since the negotiation system depends so much on the building of coalitions, of package deals and informal understandings, there are many barriers and checks built into it. Third, the EU faces a problem of authority, legitimacy and compliance: complex, multi-level negotiations combined with a lack of coercive resources are both central to the negotiation order and a major root of sub-optimal outcomes. In historical institutionalist terms, this means that the EU as a negotiated order exhibits strong tendencies towards path dependence, but we need to go further than this and relate these tendencies to the evolution of ideas about the ‘negotiable’ and the acceptable outcomes to negotiation.

The idea of negotiated order complements our two earlier frameworks: those of the negotiation process and the negotiation system. It does so by focusing on the structural, procedural and normative underpinnings of the processes and the system, and by identifying the ways in which it links with broader problems of international order. Most importantly, it gives us a means of understanding the ways in which the EU relates to the broader European and world orders, because it tells us that the obvious salience of the EU within Europe or the world arena may not be matched by its performance in negotiations, if that comes up against the diversity and complexity of the internal EU order. This is an important theme for analysis, since it gives us a new perspective on the ways in which the EU as a negotiation system has related to the challenges of a changing European and global arena in the post-Cold War period. Does the apparent success or failure of the EU as a ‘provider’ of order during the past decade reflect the contradictory demands of negotiated order at the ‘internal’ and the ‘external’ level, not only in an operational but also in a normative sense?

THE STRUCTURE OF THE SPECIAL ISSUE

The articles gathered together in this Special Issue all deal with the three related problems that we have identified above: the EU as negotiation process,
the EU as negotiation system, and the EU as negotiated order. This does not mean that they are rigidly defined by reference to the three areas. Indeed, one of the features of the articles is their diversity and their mobilization of different conceptual tools with which to address one or another of the central problems of negotiation in the EU.

In the first article, Ole Elgström and Christer Jönsson claim that bargaining and problem-solving modes of negotiation exist side by side in EU decision-making, and they propose a number of contextual factors that may influence when one or the other is most likely. They also suggest that we should expect to find developments of EU negotiation style, as contextual conditions change. Learning and institutionalization are crucial intervening processes in this evolution. Problem-solving has become increasingly institutionalized within the EU machinery as decision-makers have learnt from experience that a cooperative, creative mode of negotiation seems more effective than time-consuming confrontation.

The following two articles are focused on the EU’s internal negotiation system and they trace change and consolidation of new norms within two contrasting issue-areas. In her analysis of EC social policy, Gerda Falkner examines an innovation in the EU negotiation framework. The sector is governed by a ‘corporatist policy community’, a policy network including representatives of labour and industry as well as the Commission, the Council and the Parliament. Falkner distinguishes two interdependent arenas of policymaking: intergovernmental negotiations and collective bargaining. In doing so, she demonstrates how non-governmental actors can play influential bargaining roles, and how their participation has become increasingly institutionalized. Brigid Laffan explores the development of EU budgetary grand bargains. Budget processes have – from being sites of intergovernmental negotiations par excellence – been increasingly permeated by authority in terms of new institutional mechanisms and new decision-making norms. Laffan argues that change in the highly institutionalized EU system may take place at critical moments: if these are exploited they become critical junctures at which EU actors may achieve an integrative bargaining mode, the results of which become locked in and embedded in the acquis through institutionalization.

The next pair of articles describe how the EU reacts to particular negotiation challenges, and demonstrate in contrasting ways that EU negotiation processes are not necessarily predictable, although they form part of a negotiation system. Madeleine Hosh’s article is centred on the decision to introduce economic and monetary union. Her focus is on the reasons why Germany decided to favour the new monetary system, and on the relative importance of Germany in the negotiations. Drawing on a basically intergovernmental bargaining model, the author seeks an explanation not only for the German success in the final round of negotiations, but also for the fact that Germany still chose to offer important concessions despite being in a strong bargaining position. She finds that a two-level bargaining approach offers the best explanation in both cases. In their analysis of the negotiations leading to the
Stability Pact for south eastern Europe in 1999, Lykke Friis and Anna Murphy investigate the characteristics of crisis-induced negotiations in the EU context. They examine how the EU seeks to widen the boundaries of its negotiated order and how capabilities, structures and ideas influence this process. The research puzzle is why the EU chose to offer five more countries the perspective of membership, when twelve countries were already queueing up for accession. The crisis in their view resulted in ‘turbo-charged’ negotiations which actually produced a quick EU reaction, but which did not allow time for creative thinking. Instead, the EU was led to rely on its existing ‘tool-kit’ and thus to produce a path-dependent type of decision-making.

The final two articles turn their attention to the EU as an external negotiating actor, and to efforts by the Union to spread at least some elements of its negotiated order outside its own boundaries (which themselves are contested and subject to change). This theme, present also in the Friis and Murphy article, illuminates the interplay between a European negotiated order and the search and demand for a wider, global order. Anthony Forster investigates the motivations and instruments of the EU and member states when they try to regulate their contacts with other international actors, using EU relations with the Association of South East Asian Nations (ASEAN) and the Asia–Europe Meetings (ASEM) as illustrations. Forster emphasizes the multitude of actors and levels involved in the EU’s external contacts, describing this multi-faceted reality as reflecting three worlds: boundaries, layers and networks. As a consequence, both of these coexisting worlds and of its internal characteristics, the EU is a highly conservative actor which has problems in co-ordinating and synchronizing its activities and in adapting to a changing environment. Michael Smith concludes that boundaries, layers and networks are of variable importance in EU relations to its ‘near neighbours’, to its ‘near abroad’ and to ‘terra incognita’ in the Balkans, respectively. EU negotiators, it is suggested, are likely to be more effective in a given negotiating milieu if they recognize the balance of forces between the three worlds and the particular modes of negotiation that they typically generate, and also if they are conscious of the links between these negotiations and broader issues of European order.

The different articles point to the variety and complexity of negotiations in the EU. Indeed, one common theme is the importance of contextual analysis to understand systems of negotiation within the Union. Not only do negotiation processes differ according to levels of decision-making (Peterson and Bomberg 1999; Elgström and Jönsson in this volume), they also vary depending on what sector or issue-area is considered. This is clearly illustrated by the articles by Falkner and Laffan. Negotiations within certain problem areas, furthermore, seem to adopt their peculiar traits: crisis negotiations display certain characteristics (Friis and Murphy in this volume) as do norm negotiations (Elgström 2000) and reform negotiations (Rosén 2000).

Another shared theme is the attention paid to processes of institutionalization, to lock-in and to path dependence. With time, characteristic modes of negotiation evolve and are cemented (see Falkner and Laffan). Various actors
acquire distinct roles, although these may differ across issue-areas. The more Europeanized an issue-area is, the more it seems to be marked by institutionalized patterns of interaction. In contrast, those areas in which the EU is entangled as a negotiator outside its boundaries can produce considerable uncertainty and demand the creative combination of existing and new negotiation processes (see Forster and Smith).

Complexity in multilateral negotiations, such as those exemplified by the articles here, is related to a broader set of negotiation issues arising from efforts to simplify the environment and reduce uncertainty (Zartman 1994). Thus, package deals are made to reduce the number of issues, coalitions are created to diminish the number of actors, roles are chiselled to clarify division of labour. In the EU, package deals are indeed claimed to constitute a vital element in the Community method of negotiation (Elgström et al. 2000). In the multi-level governance system of the EU, network coalitions typically emerge to govern sector policies (Richardson 1996) and leadership and mediator roles are played – with varying degrees of success – by the Commission, the Presidency and individual member states. In drawing attention to or developing these points, the articles in this volume contribute to our understanding of the relationships between processes, systems and order: it is clear, for example, that in dealing with issues of social policy or the budget, the constellation of forces, roles and institutions is fundamentally different from that encountered in dealing with matters of external negotiation or the management of new or rapidly developing negotiation domains.

Attention to such questions gives us insights into the ways in which negotiation processes contribute to the emergence of negotiation systems, and through which negotiation systems are gradually shaped and become constitutive parts of the European negotiated order. Crucially, however, they remain subject in varying degrees to the evolution and fluctuation of the wider European and global contexts. The articles gathered together here constitute a series of attempts to get to grips with the ways in which context, institutions and negotiation practices intersect to produce the rich and varied negotiation characteristic of the EU.

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