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The Commission's Perspective on  
the EFTA Accession Negotiations

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SEI WORKING PAPER NO. 12

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First published in 1995  
by the **Sussex European Institute**  
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## **The Commission's Perspective on the EFTA Accession Negotiations**

### **Graham Avery**

The views expressed are personal to the author, who is Chief Adviser in the Commission's Directorate General for External Political Relations. He was director responsible for the EFTA countries in 1992, and Director in the Commission's Task Force for Enlargement during the accession negotiations in 1993-1994.

This paper was originally written for a seminar at the Sussex European Institute in September 1994 in which senior practitioners shared their experience of the EFTA accession negotiations with academic experts. The paper provides a finely focused account of the negotiations as seen from within the Commission, explains both the many issues and the dynamics. It concludes with some observations on both the specificity of the EFTA candidates and the lessons for future engagements.

#### **Abstract**

Negotiations for accession, in which the 'external' becomes the 'internal' are a unique process in the European Union. Although the negotiations are intergovernmental in character, the Commission plays a special role, both in relation to existing members, and towards the applicant countries. The main problems of the 1993-1994 negotiations (agriculture, regional policy, finance, transit of lorries through Austria) were solved in a classic marathon session under pressure of time. Lessons to be drawn for future accession negotiations concern the 'group dynamic', which accelerated the process for the EFTA countries, and their uniquely good preparation through the European Economic Area. However, for the accession of Central and East European countries, can the Union insist on the acceptance of the *acquis communautaire* without significant change?

## **THE COMMISSION'S PERSPECTIVE ON THE EFTA ACCESSION NEGOTIATIONS**

The 1993-94 accession negotiations with the European Free Trade Area (EFTA) countries are often described – correctly – as the fourth enlargement of the European Community (EC). But they were also the first enlargement of the European Union, which came into being in November 1993 after the ratification of the Treaty on European Union (TEU) 'Maastricht'. To avoid confusion, I use the expression European Union (EU) throughout, even where EC would be technically more correct.

The passage from EC to EU took place during the EFTA accession negotiations, and they were in fact the first occasion on which the new Union operated collectively. Although the negotiations commenced well before the TEU came into force, it was axiomatic that they were negotiations for accession to the future Union, not to the existing Community. Consequently the member states, already in their preparations for the accession negotiations in the autumn of 1992, had to organise themselves - for the first time - in the 'Union mode', with arrangements for coordination of the three 'pillars' (EC, common foreign and security, justice and home affairs) according to a uniform procedure, in which the Committee of Permanent Representatives (COREPER) had overall responsibility for preparing the decisions of the Council on common positions of the Union. When the Council President opened the negotiations on 1 February 1993, nine months before the Union finally came into existence, he was already speaking for the Union rather than the Community.

### **The Special Nature of Accession Negotiations**

For the Commission, and for the other participants, negotiations for accession to the European Union are special in a number of ways, and unlike any other negotiations which the Union undertakes with non-member countries.

They are, after all, not negotiations about future relations between the Union on the one hand and a non-member state on the other hand, but about how a non-member is to join the Union, and apply the rules of the Union. They are not about future relations between 'us and them', but rather about relations between the 'future us'. It is this process of the external becoming internal which gives accession negotiations such extraordinary interest. It follows that the subject matter of accession negotiations is not at all the traditional matter of external negotiations – tariff reductions, mutually balanced trade concessions, and so on – but rather the whole range of the Union's activities, policies, and institutions. All these have to be examined to see what problems may be posed for (or by) the prospective member: every regulation, directive, etc has to be 'screened', to see if there are problems, for which solutions may have to be negotiated. In this process, the 'internal' policies and arrangements of the Union (from the single market through agriculture to the budget) are more important than its 'external' policies – which occupied a minor place in the EFTA accession negotiations.

The wide-ranging scrutiny of all the Union's policies in accession negotiations means that they are usually preceded and accompanied by considerable heart-searching on both sides – by both existing and prospective members – about the basic aims and means of the Union. It sometimes comes as a surprise to applicant countries that a mere application for membership can lead to such deep and painful discussions among member states. Enlargement tends to be

an occasion when the existing members are forced – perhaps unwillingly – to face fundamental questions about what they want the Union do, and how they want to do it. This can lead – as it did in the case of the EFTA negotiations – to disputes between the existing members (rather than with the applicant), particularly about the institutional changes necessary for enlargement. After all, even if a prospective member were to declare itself ready to accept every single rule and policy of the Union on accession, without modification, it would **still** be necessary to modify the Treaty so as to determine the new member's weight in the Community institutions (votes in the Council, members of Parliament and Commission), and this question alone can open a Pandora's box which existing members normally prefer to keep closed. This tendency for accession negotiations to reopen old discussions between members can even give applicant countries the impression that, rather than conducting a negotiation with the Union, they have accidentally intruded into an ongoing negotiation within the Union itself!

## **The Commission's Role**

What is the Commission's role in this? It should be remarked at the outset that another way in which accession negotiations are different from traditional external negotiations of the Union is that the Commission is not the negotiator. It is the Presidency of the Council which, formally speaking, presents the common position and speaks for the Union in the negotiations; this is quite different from the normal method in external trade and other negotiations where, in matters of Community competence, the Commission is the sole spokesperson, negotiating with a mandate entrusted to it by the Council. This feature of accession negotiations derives from the fact that, formally, they are a kind of Intergovernmental Conference, preparing an 'agreement between the member states and the applicant state'. It is a feature which dates from the very first accession negotiations, and was not invented as a consequence of the development of the role of the Council's presidency in external affairs, exemplified in the provision of the TEU that 'the Presidency shall represent the Union in matters coming within the common foreign and security policy'.

But these formal rules for accession negotiations do not mean that the Commission's role is merely technical, or that it has no influence in guiding the negotiations. In the first place, what the Presidency presents and negotiates is a common position which – in matters of Community competence – has to be decided by the Council on a proposal of the Commission; so, in this field, the Commission has the important right of proposal. In exercising its right, the Commission has to keep in mind not only the interests of the existing member states, and the existing Union policies, but also the applicant country as a future member, and the future Union. That means that, in framing proposals, the Commission has to think not only of what the member states will be prepared to agree among themselves, but also of what the applicant country will be prepared to accept, and what will be equitable and workable in an enlarged Union.

In the second place, the Council may request the Commission to explore possible solutions to specific problems with the applicant country, when there seems to be an impasse in the negotiations. In the EFTA accession negotiations, this happened frequently, in an informal way, although not always exclusively with the Commission; sometimes there were joint contacts with an applicant country, involving both Presidency and Commission. It should be remembered that the official negotiations – the meetings of the Conference at ministerial

level and at deputy (that is, Ambassador) level – were extremely formal. Except in the final days of the negotiations, these meetings consisted of each side reading prepared speeches: they were not real 'negotiations' in the sense of spontaneous give-and-take, but the presentation of positions elaborately worked out, sometimes to the last comma, by each side's experts. In the case of the Union, the Presidency was simply not authorised to do other than say what the member states had agreed in advance; in the case of the applicant country, the spokesperson followed faithfully the line agreed in his capital. This is not to say that progress was not made at these official meetings, or that there were not (occasionally) surprises; but the real discussions took place elsewhere, behind the scenes, often between the applicants, the Presidency and the Commission.

To the extent that the problems were technical in nature – and many of them were very technical – the Commission was uniquely well placed in these contacts to explain, understand, and solve. The Commission, unlike the Presidency, can rapidly call in experts in the fields required, and the Commission's expertise is normally considered to be more 'neutral' than that of the Presidency, which may have to depend on colleagues from a national ministry who naturally have a national point of view.

The Commission's role vis-à-vis the applicant country has been summarised as 'the friend who tells the truth'. The Commission needs to act as a friend to the applicant for the same reason as it needs to be the 'friend' of existing member states; it has to show that it takes its interests fully into account in finding a solution. The Commission is also well placed to tell the truth about the chances of the applicant country securing its negotiating objectives, and about the likely reactions and conduct of the member states. More than one applicant country has discovered that expressions of goodwill and support obtained from high-level bilateral contacts with the different member states are belied by the positions taken by member states in the Union's internal discussions. The Commission is, in general, likely to be more realistic about the results which can be secured by an applicant country, and can do it good service by advising discreetly on what can ultimately be obtained. After all, one of the keys to a successful accession negotiation – like most negotiations – is to open with a limited number of realistic objectives, and to close with a satisfactory compromise which safeguards essential long-term interests.

It is important to recall that the Commission also makes an Opinion on an application for membership before the beginning of accession negotiations. In effect, the contents of the Opinion prefigure the subjects to be discussed in the negotiations, and set out some of the parameters for the Union's position; because it is prepared in consultation with the candidate country, it also reflects the applicant's concerns. In the case of Austria, Sweden, Finland and Norway, the Commission's Opinions summarised rather well the main problems raised in the negotiations and even foreshadowed some of the solutions.

Finally it must be admitted that in the conduct of the EFTA negotiations, the Commission sometimes had difficulties of internal coordination and presentation of a common position, and most clearly this was the case for agriculture. It is no secret that the proposal for immediate adoption of the common agricultural prices by the new members was the most disputed question in the whole negotiations, not only between member states, but also in the Commission itself. Until the very last moment, agricultural experts believed that, in the end, this proposal would be rejected in favour of the 'traditional' technique of progressive

alignment of price support with protection of the borders between old and new member states.

## How the Negotiations Concluded

In important negotiations there is always a tendency for the most difficult problems to be solved at the very end, and the accession negotiations with the EFTA countries in 1993-94 were no exception. Although the negotiations commenced in February 1993, little concrete progress was made on important questions until December 1993, and the main problems were resolved only in the last days of February 1994, against an impending deadline of 1 March.

The first real breakthrough was made at the ministerial session in December when, under Belgian Presidency, there was agreement on two matters: the question of the common foreign and security policy (CFSP) of the Union, and the request of the applicant countries for a period in which to maintain their national rules in certain areas of environmental, health and safety, where adoption of the Union's 'single market' rules would have led to lower standards.

The agreement on the CFSP was useful and symbolic, for it cleared out of the way the question of 'neutrality' soon after the TEU came into force in November, and it defused what might have become a troublesome subject for some of the applicant countries, if the negotiations had focused on it in too public and protracted a way. But it was not really a difficult exercise, since the applicant countries were seeking nothing – they accepted the relevant part of the TEU without reserves – and the Union was content with a simple declaration confirming this. The background was different for each of the applicant countries – Finland and Sweden had pursued neutrality as a preferred policy, Austria had neutrality embedded in a constitution at law (and having made a reserve on its neutrality in its original application for membership) while Norway was a member of NATO and not neutral at all. But the joint declaration was identical for all, and diplomatically made no mention of neutrality. It was fully prepared, in advance of the ministerial session, by patient efforts of the Presidency with the applicant countries, and by the COREPER; the final obstacle was overcome when it was agreed to make a single text, rather than separate and different declarations (which would have 'singularised' Austria publicly) and there was no need for detailed discussion at the Ministerial meeting.

In the case of 'standards and the single market' there was a more animated discussion, and the first real negotiation at the ministerial level. It was by no means clear, in advance, whether the applicant countries were willing to abandon the solution which they had obtained in the European Economic Area (EEA) agreement, namely an 'open-ended' transitional period without limit of time, with provision only for 'review'. In the ministerial session with Austria – which came first, according to the tradition that precedence among the applicant countries is determined by the chronological order of their applications for membership – the Union's offer of a transitional period of three years was accepted. But with Sweden this proved impossible, and four years were negotiated; consequently Finland and Norway obtained the same, as did Austria, which immediately asked for the same as the others. This agreement was important for governments and for public opinion in the applicant countries, for it demonstrated a willingness on the part of the Union to respect their higher environmental standards – a matter of high political importance in their countries. It was also an important stage psychologically for ministers of the existing member states, for it provided a modest element of drama, and the first real episode of negotiation after a series of ministerial meetings which had been largely predictable and 'scripted in advance'.



There was a feeling on the Union side that ministers had tasted action and were ready for more. But there was little concrete progress for a number of weeks. The Union side now made an important tactical decision, to fix the end of February as the deadline for completing the accession negotiations with their sights on 1 January 1995. Exactly what might be the ultimate deadline for conclusion of the negotiations was not certain in advance; the choice of end-February was (allegedly) to allow the European Parliament to vote before its dissolution for the elections in June 1994; in reality, it provided a comfortable margin, for the European Parliament voted only on 4 May and the Treaty was signed only in June.

This margin of manoeuvre was not, however, evident in the first weeks of 1994, and some participants believed that the process of ratification by national parliaments – involving twelve parliaments in the member states, and four parliaments (and four referendums) in the applicant countries – could not be compressed into less than 9 or 10 months. In January most of the important questions remained to be resolved in the negotiations and on many of them the Union had not yet adopted a position; particularly in the field of agriculture, the Commission had not made proposals on a great number of technical aspects, and the proposal which it had made in autumn 1993 on the transitional arrangements for agriculture was still the object of dispute between the member states.

The prospects for settlement by end-February did not appear good. Behind the scenes, not many of the negotiators believed it possible. On the part of the applicant countries, there was a natural apprehension that tactical pressure was being put on them so as to force unwelcome compromises. In any case, who really expected accession on 1 January 1995? The Swedes had consistently affirmed this as their intention, and the other applicant countries had followed them with differing degrees of conviction, but in reality there seemed no objective justification for accession in 1995 rather than 1996, while there was always a clear argument for the latter date since the applicants wanted to be present at the Intergovernmental Conference scheduled for 1996. Nevertheless, as the deadline of end-February approached, tension mounted as each side examined the real possibilities and began to face the difficult choices now impending. A meeting of the negotiating conferences at ministerial level was scheduled for 26 February, to continue, if necessary, 'non-stop' until completion.

Just before that meeting, the situation and strategy was analysed within the Commission in the following terms. There appeared to be six 'top' questions to be finalised in the closing stages:

- first, agriculture in all its aspects, including the crucial problem of the transitional period and other important questions such as milk and sugar quotas for the new members, long-term aid for Nordic agriculture, and so on; this chapter of the negotiations concerned all the applicant countries in one way or another;
- second, structural and regional policy where the problem was limited to finalising the new 'Objective 6' for Nordic regions in Finland, Sweden and Norway; and
- third, budget questions, which essentially meant saying 'no' to the requests of Austria and Sweden for a 'phasing-in' of their contribution to the common budget.

These three problems were all linked by a common denominator: finance. The remaining ones were specific to Austria and Norway:

- fourth, the transit of heavy lorries through Austria;
- fifth, the acquisition of second residences by foreigners, although the other applicant countries had raised this problem, only Austria persisted with it; and
- sixth, fisheries for Norway.

In addition, there were quite a number of other remaining problems, but it was expected that they would fall into place if there was a successful conclusion on the 'top' six questions. The other questions included taxation (a number of technical, but also political, problems), institutions (for which the Union had not yet presented its complete position – and with which it had great difficulty, later in March, to finalise a position), economic and monetary union (again, incomplete position of Union), and a miscellany of diverse points many of which concerned only Norway (for example, energy, the Sami people, Svalbard).

At the level of strategy, it was clear by this stage that Sweden and Finland had fewer difficulties to resolve than the other two: Sweden had only the first three problems – agriculture (but even here it had fewer problems than the other applicants because it was not requesting a transitional period for prices), regional policy, and budget. Finland had only the first two, since estimates of its budgetary contributions and receipts suggested it would be a net recipient from the common budget, unlike the other applicants who would be net contributors.

These considerations determined that the Union's priority would be to conclude, if possible, with Finland and Sweden first. Finland had made clear already that its priority was satisfaction on aids for 'Nordic agriculture' including its mountains and less-favoured areas; this implied that it would, in the end, concede the Union's demand for immediate adoption of the lower European agricultural prices, provided that there was a move on the Union's side to contribute to the cost of direct aids to farmers, during a transitional period, to compensate for this change. This would leave only the final arrangements for definition of areas in Finland eligible under the new 'Objective 6' of the structural funds.

With Sweden, the essential problem for the Union was how to resolve the last few remaining problems while avoiding (or limiting) concessions on its demand for 'phasing-in' of its budgetary contribution. The idea of such a concession on Sweden's payments into the common budget was particularly unwelcome for the Union side because of the risk of having to extend it not only to Austria and Norway, but even to Germany where a public debate was under way on its net contribution to the budget.

The device by which this problem was solved was particularly ingenious, and all the more effective because it was brought into play by the Commission at the very last moment. It had been clear for several months that some concession would have to be made to Austria, Finland and Norway to 'co-finance' from the common budget the compensatory direct aids to farmers if they were to agree to align immediately on the European agricultural prices; what was still disputed was how much such aids would cost and how far the Union should or could go in co-financing them. Although some of the member states were attracted by the

'immediate alignment' proposal (or the 'big bang' as it was pejoratively termed by its opponents), none were willing to make significant concessions on the budgetary side in order to secure it. The United Kingdom and Germany, when agreeing to the common position of the Union proposing the immediate alignment of agricultural prices, had expressly reserved their position on 'co-financing' of aids and threatened to go back on the common position if such a concession was made.

In the last days of February, the Commission's experts began to make known the existence of the 'green hole'. This was the name devised for the phenomenon – not widely realised up to then – whereby the new member states during the first year of membership would receive much less than their normal payments from the common agricultural fund. According to the financial accounting rules, reimbursements are made to member states for agricultural market support expenditure only in the year following that in which the expenditure is incurred. So in 1995, even if the new member states applied the common agricultural policy in full, they would receive much less from the common budget than in later normal years, because there would be no eligible national expenditure in 1994 to be reimbursed in 1995.

The discovery of the green hole and its unexpected financial resource thus opened up the possibility of co-financing transitional aids to farmers from the budget at a significant level. But this would help only Austria, Finland and Norway, whose farmers faced a cut in agricultural price support after accession, not Sweden which had already reformed its agricultural policy in the early 1990s in such a way that support prices had already been brought down to levels very close to those of the Union. What to do for Sweden, which was not envisaging transitional aids to its farmers, but simply asking to pay less into the budget?

The Commission's elegant solution to this problem was to devise a 'lump-sum' payment to each of the applicant countries from the agricultural section of the budget – an 'agro-budgetary package' over the first four years of membership. It was described as 'degressive' compensation towards the costs for Austria, Norway and Finland of adjusting to agricultural prices, as well as the 'adjustment effort already undertaken by Sweden'. In other words, Sweden was to be compensated for the adjustment of prices which it had effected before accession – an unexpected concession on the part of the Union. It solved the problems both of agricultural transition and of Sweden's budgetary request – with the added attraction in the latter case that the payments of Sweden into the budget would be made from the outset according to the normal rules, since the adjustment of its net contribution would be effected by means of temporarily higher receipts.

This was the solution which prevailed as the negotiations draw to a close. On the morning of 1 March, Finland and Sweden were on the verge of striking a final deal. Some observers had predicted that Finland would settle first; although their negotiating style was less demonstrative than Sweden's, with less public emphasis on the need for rapid accession, they had built up a formidable reputation as simple, direct negotiators, concentrating absolutely on the essentials. Moreover, for geopolitical reasons (their long frontier with Russia) the Finns had a real political motive to avoid delay. But, in the event, it was Sweden which struck the conclusive deal in the late morning of 1 March, accepting the final details on agriculture and regional policy, but bidding for – and obtaining – a little more on the budgetary package. Finland came soon after, in the early afternoon, with its important concession on the immediate adoption of agricultural prices, coupled with the hard-won details of agreement on national aids for Nordic agriculture and Community aid for mountains and less-favoured

areas. The sensitivity of Finland on agricultural questions – rendered even more delicate by the political balance of the parties in its government – was apparent in this final stage, and remained evident in succeeding months when misunderstandings and disputes flared up between Finland and the Commission on the interpretation of the agricultural details.

With the success of Sweden and Finland, the spotlight immediately began to play on Austria. The Commission's analysis, in the days preceding this marathon session of the negotiations, had been that Sweden's dropping of its request for a budget rebate, and Finland's acceptance of immediate alignment of agricultural prices, would cut the ground from under the feet of Austrian negotiators in both these fields. This would force Austria to decide its real priority within the 'trierarchy' of priorities which it had been declaring for some months: the triarchy comprised transit, agriculture, and second residences. It was now even more apparent, since Switzerland's referendum on transit of lorries just one week previously, that the political need for a good result on transit would be paramount for Austria, implying some flexibility on the other two dossiers. In fact, Austria had already made an important move on second residences by signalling that it would not insist on a permanent exception to prevent foreigners acquiring them in Austria. Instead, a 5-year transitional period was agreed during which it could maintain its national legislation – and this was extended automatically to the other three applicants. On agriculture Austria made the – now inevitable – concession for immediate alignment of prices, and agreed the other final details in the agricultural chapter. Transit was the dossier for which it reserved an absolute priority.

As the afternoon of 1 March wore on, the prospects for a solution on transit became little clearer. The Union's Ministers discussed the problem in full session, and at one stage came to a virtual impasse: a formula discussed, and apparently agreed, between the Belgian Minister (as a member of the 'troika' of past, present and future Presidents of the Council) and the Austrians proved to be unacceptable to other members of the Council. The problem was the procedure for passage from one stage to another of the 'three-stage transitional period' of nine years (3 times 3 years) now envisaged for Austria's system of 'eco-points' limiting the passage of heavy lorries through its territory. It was agreed that the passage from the first to second stages could be 'automatic' for Austria: if the review at the end of the first stage did not lead to a decision of the Council by unanimity, the transitional period would be automatically extended for three years. But this was not acceptable to the Union side for the passage from the second to third stages, which should be subject to a decision by qualified majority.

This was a classic example of the ultimate problem in a Union negotiation being an 'institutional' problem: it depended on the procedure for decision-making rather than the technical aspects of the problem. Surely Austria, as a full member of the Union and after six years of transitional arrangements, could trust the other member states to reach an equitable decision by qualified majority? How could Austria's negotiators explain to their parliament and people that they had obtained adequate guarantees that the correct decision would be taken?

As time passed, and the evening progressed, the pressure intensified on both Austria and the Union. Could it be possible that Austria would fail to reach agreement with the Union on the same historic day as Sweden and Finland – that Austria, which had been the first of the EFTA countries to apply for membership, would not be in the 'first wave'? Finally at about 9 o' clock in the evening, a formula was found on the Union side which seemed to turn the key:

the passage from the second to third stage would come after a scientific study of the extent to which the basic aim (reduction of pollution by heavy lorries by 60%) had been achieved; if the study showed the aim had not been achieved, then the Council could adopt by qualified majority arrangements ensuring equivalent protection; in the absence of such a decision, the transitional period would automatically be extended for a final three years. This masterpiece of procedural ingenuity satisfied both the Union and Austria, and allowed the triumphal concluding session with Austria to take place at ten in the evening, just in time for the late television news and the next day's press.

The settlement of the outstanding issues with Sweden, Finland and Austria still left out Norway, particularly because of its difficulties over fisheries, and it did not cover all chapters of the negotiations, particularly not the institutional chapter for which the Union side had not finalised its position. Norway's negotiators left Brussels in a mood of despair; but it turned out that a solution for Norway was more rapid than for institutions. After intensive negotiation in the next two weeks, including particular efforts by Germany as part of the 'troika', an overall settlement was agreed with Norway including a solution on fisheries based on the principle of 'relative stability' of the fishing effort of member states. It was not until the meeting at Ioannina on 27 March, however, that the Union reached agreement on qualified majority voting in the Council of Ministers, which permitted the final sessions with the applicant countries to take place so as to register agreement on the last details of the Treaty of Accession.

## **Lessons for the Future**

What lessons can be drawn from the 1993-94 negotiations for future accession negotiations? There are still six applications for membership on the table, from Turkey (since 1987), Cyprus and Malta (1990), Hungary and Poland (1994), and also Switzerland (1992, but effectively in suspense since the 'no' in their referendum on membership of the European Economic Area). In addition, there are 'Europe' agreements concluded, or planned, with eight other countries (Czech Republic, Slovakia, Bulgaria, Romania, Slovenia, Estonia, Latvia, Lithuania) which may lead to applications for membership. Sooner or later, Norway may try again, and Iceland may also apply. Thus the future may hold as many as sixteen more accession negotiations – and the list is not exhaustive.

What can other applicant countries, or members of the Union, learn from the EFTA experience of 1993-94? One must be cautious about extrapolating from the experience with Austria, Sweden, Finland and Norway, countries uniquely well prepared for membership, to future negotiations with applicants whose political and economic situation is very different. Nevertheless, there seem to be at least two important lessons which can be drawn:

- 'group dynamic' played an important role: although there were separate negotiations between the Union and each applicant, they were conducted in parallel, and in the EFTA case the 'group effect' accelerated, rather than decelerated, the process; and
- the EFTA countries' preceding negotiations with the Union on the European Economic Area (EEA) was an extremely useful preparation for the applicant countries, not only for their membership of the Union, but for the accession negotiations themselves.

There is, in addition, an important question-mark which is now posed concerning future accession negotiations, particularly with the countries of central and eastern Europe:

- can they be based on the traditional premise – which was reaffirmed in the EFTA negotiations – that new members must accept the *acquis communautaire* without change? Or will the Union need to relax this rule in future?

## **The 'Group Dynamic'**

Enlargement of the EC has almost always taken place in groups, with more than one new member at a time. In the sequence of enlargements which have brought in the United Kingdom, Denmark, Ireland (negotiations opened in 1970: accession took place in 1973), Greece (1976: 1981), Portugal (1978: 1986), Spain (1978: 1986), Austria, Sweden, Finland (1993: 1995) there has been only one case of the accession of a single country, that is Greece in 1981. Even this accession, which took place after the commencement of negotiations with Portugal and Spain, is often considered as the first stage of a 'Southern' enlargement which was completed in 1986.

Accession negotiations have always been conducted separately with each applicant, but in parallel with other applicants. In the case of the EFTA negotiations this principle was laid down in advance at the European Council of Lisbon in June 1992, which stated that 'negotiations with the candidate countries will, to the extent possible, be conducted in parallel, while dealing with each candidature on its own merit'. In practice, joint sessions with Austria, Sweden and Finland took place only at the ceremonial opening of negotiations at ministerial level, and at the end (Norway was not included on these occasions because it commenced and concluded a few weeks later than the others). On all other occasions, the four Negotiating Conferences functioned separately, even though meetings with the four countries at Ministerial or deputy level often took place on the same day, one after the other, and with practically identical agendas.

The separate nature of the negotiations was important both for the Union and for the EFTA side. For the Union, it allowed it sometimes to obtain concessions from one candidate which the others were then under pressure to follow: the outstanding example was the decision by Finland in the end to accept the immediate alignment of its agricultural prices, which was followed by the same concession from Austria and then Norway. But the negotiations were nevertheless constructed in such a way that the candidates were able, if necessary, to return to the charge if they made a concession which another candidate subsequently refused: an example was in the field of environmental standards and the single market, where Austria originally accepted the Union's proposal of a period of three years in which to keep its own standards, but Sweden shortly afterwards obtained four years. The principle that no chapter of the negotiations could be finally closed until all the chapters were closed allowed Austria to come back and successfully request four years.

This 'divide-and rule' aspect of separate negotiations with the Union could perhaps have been counteracted by an effort on the part of the candidates to make a common front, since they had similar interests and similar situations in the majority of chapters of the negotiation. But although there were regular contacts between the candidates, the Union was never really presented with a firm common line. In the case of agricultural prices, for example, there was

a joint meeting of agriculture ministers of the candidate countries, which declared opposition to the Commission's proposal for immediate alignment, but in the end-game this apparent solidarity broke down.

Austria, Sweden and Finland had a preference for separate negotiations basically because each feared that its accession might be delayed by difficulties in the negotiations with the others. Austria, after all, had been the first to apply for membership in 1989, two years before Sweden, and considered that it had already suffered unfair delay; Sweden considered that it had fewer problems than the others to solve in the negotiations, particularly in agriculture and fisheries; and Finland displayed throughout the negotiations a traditionally independent 'Finland alone' attitude. 'Nordic solidarity' was seldom much in evidence, and towards the end of the negotiation Norway began to take a distance from the others because of the fisheries question; in fact, Norway indicated that it would prefer not to conclude the negotiations in the first two months of 1994, so as to have more 'breathing space'. Far from fearing to be held up by the others, Norway feared to be hurried by them.

In the end, after a considerable effort by both sides, Norway concluded its negotiations only two weeks after the others. Because of the need to finalise the Accession Treaty in time to begin all the necessary ratification procedures (commencing with a vote by the European Parliament) any further delay by Norway would effectively have left it outside the field for accession on 1 January 1995. This was not wanted by the Union side, and particularly not by Norway's principal 'friends' on the Union side, because it would have been impractical to have three accessions in 1995 and another in, say, 1996.

The preference of the Union to synchronise accessions is based on practical considerations. 1 January has always been the date of accessions, because it fits the Union's budgetary year and the cycle of its institutions (particularly the six-monthly rotation of the Presidency of the Council): even with this simplification, enlargement is sufficiently disruptive for the Union to be reluctant to undertake it frequently. In fact, the shortest interval has been the five years between the accessions of Greece (1981) and Portugal and Spain (1986). The wish for synchronisation is an important factor in explaining why the 'group dynamic' of the EFTA negotiations accelerated, rather than decelerated, the momentum of enlargement. It cannot be said that it acted against the interests of the applicants - on the contrary, it helped to ensure that the Union side made the necessary concessions to Norway on fisheries. If the accession negotiations with Norway had continued for another six or twelve months, there is no reason to think Norway would have obtained better terms, and possibly worse. The 'group dynamic' will no doubt be important in future, particularly with the central and east European countries, who are already positioning themselves: none of them wish to be left behind in the 'race for membership', and those who are more advanced economically are suspicious that they may be delayed by others who are presently less well placed. This means that the decision, with which applicant countries to open negotiations, will be a very delicate one indeed for the Union when the time comes. Since that moment is unlikely to be before 1997 at the earliest, after the Intergovernmental Conference of 1996 has taken place, it is premature to speculate now on the precise 'group' which will be concerned. What seems reasonably sure, however, is that the Union will want to engage once again in separate, but parallel, accession negotiations; and will also want to synchronise the date of accession for a group, rather than have successive accessions over a period of years. Whether this will accelerate or decelerate the process in future remains to be seen; the lesson of the EFTA accession negotiations, at least, is that it was a factor of acceleration.

## The European Economic Area

It is clear that the agreement between the EFTA countries and the EC on the European Economic Area (EEA) which was concluded in May 1992, and entered into force in January 1994, was an important reason why the EFTA accession negotiations were the most rapid ever. It had been suggested, when the EEA was first conceived, that it was designed to prevent the rapid accession of the EFTA countries - that, by giving full participation in the EC's single market, but not in other fields of EC activity, it would be particularly attractive to the EFTA countries, and provide a permanent alternative to membership rather than a temporary stage on the way. If that was its object, it failed, for the EEA served to clear the road to accession for several reasons.

The signing of the EEA by the EFTA countries signified their willingness to adopt – in advance of membership – a fundamental element of the EC system, and a large part of the *acquis communautaire*. It is not exactly true, as has sometimes been suggested, that the EEA covered 60% of the *acquis*: judged by the number of pages of legislation published in the Official Journal, it covered only about 25% (agriculture, a very important part of the *acquis* in terms of volume, was not included in the EEA). Nevertheless, it was the first time that prospective members were able to demonstrate so clearly their advance preparation for membership. When the Lisbon summit in June 1992 gave the green light for the accession negotiations, it stated explicitly that the EEA Agreement has paved the way for opening enlargement negotiations with EFTA countries seeking membership of the Union.

The EEA was thus an objective distinction between the EFTA applicant countries (at that stage, Austria, Sweden, Finland and Switzerland had applied) and the other applicants (Turkey, Cyprus and Malta) with whom the opening of accession negotiations was not yet possible. Its utility as a 'fast-track' ticket to accession was underlined by the fact that Norway – which did not apply until November 1992 – was able automatically to join the accession negotiations, and that Switzerland fell out of the accession process in December 1992 after the 'no' in its referendum on the EEA.

Having made the EEA Agreement helped Austria, Sweden, Finland and Norway in the conduct of the accession negotiations because it simplified the adoption of the *acquis communautaire* in a number of important chapters, where both the Union and the applicants knew they would have few problems to negotiate. It did not, however, eliminate the 'screening' exercise (to see where technical adaptations were necessary), or the need to negotiate again a number of thorny problems already encountered in the EEA: for example, environmental standards for products in the single market, for which the applicants had obtained in the EEA a derogation without limit of time. Paradoxically, this type of question, where specific problems had already been solved in the EEA, proved rather difficult in the accession negotiations because the applicants considered that the EEA solutions should be simply transposed into the Accession Treaty, while the Union insisted that they should be renegotiated (in the case of environmental standards, to limit the derogation in time).

Another important aspect of the 'EEA experience' was that representatives of the applicant countries had already been through a difficult and detailed negotiation with the Union on the single market. This was an invaluable training-ground for the process, as well as the substance, of the accession negotiations: experts at many levels of the administration in Austria, Sweden, Finland and Norway had acquired a familiarity with the institutions,



procedures, texts and personnel of the EC which gave them a flying start compared with preceding accession negotiations, in which the first stages were a learning-period for the applicant countries. In some of the fields covered by the EEA, the applicant countries had as much expertise as the Commission, and knew very well how to deploy it !

### ***The Acquis Communautaire***

An important aspect of accession negotiations has always been the insistence of the existing member states that the applicant country should accept the *acquis communautaire* without significant change. The precise formulation used by the Union in the case of Austria, Sweden, Finland and Norway is worth quoting, in the words used by the President of the Council (the Danish Foreign Minister) at the opening of negotiations in February 1993:

'Accession implies full acceptance by your countries of the actual and potential rights and obligations attaching to the Community system and its institutional framework, known as the *acquis communautaire*. This includes:

- the content, principles and political objectives of the treaties, including those on European Union;
- legislation adopted pursuant to the treaties, and the case law of the Court of Justice;
- statements and resolutions adopted within the Community framework;
- international agreements and agreements concluded among themselves by the member states relating to Community activities.

The acceptance of these rights and obligations by a new member may give rise to technical adjustments, and exceptionally to temporary (not permanent) derogations and transitional arrangements to be defined during the accession negotiations, but can in no way involve amendments to Community rules.'

So particular is the concept of the *acquis communautaire* that it has generally resisted translation into other languages (in the case of English, the half-translation the 'Community's *acquis*' is sometimes used) and its definition in the passage quoted was the outcome of painstaking drafting and discussion on the Union side. One may ask, in light of such a position, what there is left for an applicant country to negotiate with the Union, if none of the rules can be changed and only 'technical adjustments and temporary derogations' are possible.

Traditionally, international agreements between two parties are based on the concept of a mutually balanced agreement, involving concessions and counter-concessions, and advantages for both sides. Accession negotiations are less symmetrical. From the point of view of the Union, it is the applicant who has requested to join, not vice-versa; and it has done so because it believes that membership offers advantages. Among those advantages, not least is the right to participate and vote in the Union's institutions from the very first day of membership; that is why the passage quoted concerning the *acquis communautaire* emphasises the 'rights' equally with the 'obligations' of membership. From the point of view of the applicant, the priority must be to join the Union, rather than to seek basic changes in its

rules – it being understood that, as a member, it will be in a position to pursue its own interests, like other members. It has even been remarked that accession negotiations are essentially concerned with obtaining a 'microphone and a name-plate': that is, a seat and voice in the Council of Ministers and the other institutions, on equal terms with the existing members.

In reality, the formulation 'only technical adjustments and temporary derogations' is misleading, for it is well understood that prospective members can have real problems and difficulties that need to be resolved in accession negotiations. At the opening of negotiations, the Union adopts this extreme formulation partly for tactical reasons; it later becomes clear that 'technical adjustments' can be quite far-reaching in character, and temporary derogations or 'transitional periods' can provide adequate time not only for the new member to adjust to the Union's rules, but also if necessary for the Union to review and adapt the *acquis communautaire* after enlargement.

Important examples in the EFTA accession negotiations were the period of four years in which the new members may maintain certain environmental standards, and the period of up to nine years in which Austria may continue the system of control of heavy lorries in transit. In both cases, the new members will have the opportunity to make their contribution to the development of the *acquis communautaire* as full members, in the expectation that the rules which they will apply on expiry of the period will take account of their essential interests. Nevertheless, in both cases, it was stipulated that they will apply the *acquis* as it exists at the time when the transitional period expires, and that the outcome of the future review by the Union is not prejudged.

Another important example of an adjustment to the rules was the decision to create a new 'Objective 6' for the structural funds for the benefit of Sweden, Norway and Finland; this is considerably more than a 'technical adjustment', for it means that regions in these countries will be eligible for substantial flows of finance from the Community budget. But it is interesting to note that it was only acceptable for the existing member states on the basis that (to quote Protocol 6 of the Act of Accession) 'this transitional arrangement will also be re-evaluated and revised simultaneously with the main framework regulation on structural instruments and policies in 1999'.

Despite these more than 'technical' adjustments, it is clear that in the EFTA accession negotiations the Union insisted rather strongly on the principle of adoption of the *acquis communautaire* by the new members – more strongly, indeed, than in preceding accession negotiations. The justification, in the case of the EFTA applicants, was the fact that their economies were very well developed, and uniquely well prepared for membership; moreover no important sector or interest-group in the existing Union was threatened economically by their membership. This had not been the case in the 'Southern' enlargement negotiations, where existing members were alarmed by the prospect of free movement of workers, competition from industries with lower labour costs, and free access for agricultural products particularly from Spain: consequently the Union side was itself looking for protection from the newcomers, at least during a transitional period.

This element of competition was absent from the EFTA accession negotiations: in agriculture, for example, it was Austria, Finland and Norway, having higher support prices than the Union, which wanted protection and a transitional period. The only case on the

Union side for which the question of a transitional period was raised in internal discussions was the fisheries sector, where the member states were protected by tariffs and other measures against competition from the EFTA countries and particularly from Norway. The Union's fisheries experts were inclined to prefer a progressive phasing-out of the tariffs, rather than their immediate abolition on accession; but this idea was rapidly discarded, not only because it was inconsistent with the overall negotiating position of the Union on the immediate application of the single market, but also because it would have given Norway an excellent argument to ask for a corresponding delay in its adoption of the rules of the common fisheries policy concerning catch quotas and access to waters.

But, if the Union successfully insisted on the principle of the *acquis communautaire* and minimal transitional periods in the EFTA accession negotiations, can it expect to do so in future accession negotiations, particularly with the central and east European countries? Plainly these countries will be less ready economically for membership than previous new members, even if the 'pre-accession strategy' to prepare them for membership is successfully conducted over a period of years. Moreover, the Union side will be faced with two types of problems which it did not have with the EFTA applicants – although it did experience them with the 'Southern' applicants:

- sectors and interest-groups on the Union side will probably still want protection against low-cost competition and labour from the prospective new members; and
- the budgetary cost of applying the existing Union rules to the new members, particularly in the fields of agriculture and 'cohesion' policies (structural funds, etc.), will probably be substantial.

So the question will inevitably be posed whether the Union can afford to be so rigorous in its position on the *acquis communautaire* in future accession negotiations. In fact, the political and economic debate has already begun, with a stream of analyses and reports on the economic consequences of the membership of central and east European countries.

The choice is not likely to be made very rapidly by the Union: after all, if 1997 is the earliest moment when accession negotiations can begin, the definition of the Union's negotiating position on these matters will probably wait until then. But the choice will have to be made, sooner or later, between three basic scenarios:

- a significant reform of the policies concerned (agriculture, cohesion) in advance of enlargement – and indeed, in advance of the accession negotiations – so as to reduce their budgetary cost;
- the definition of a position in the accession negotiations under which these policies would be applied by new members in a different and less expensive way; or
- transitional periods of sufficient length to allow the necessary revision of the policies to be made after accession.

The first scenario would be a radical departure from the practice of enlargements up to now. Whether it will be realised depends, among other things, on the assessment on the Union's side of the economic consequences of enlargement – a matter which will continue to be hotly

disputed by the experts, since both the *acquis communautaire* and the situation of the applicant countries are in a state of continuous development, and the date of enlargement is still a long way in the future. Already for the Intergovernmental Conference of 1996 the Union has set itself the task of reforming its institutional arrangements in view of enlargement. Will it wish to add to this important precondition other, and no less difficult, reforms ?

The second scenario would also be a divergence from practice – and indeed from principle – since it would amount to defining 'second-class' terms of membership for new members. Not only would this be difficult for them to accept politically in accession negotiations, it would also be difficult to agree among the existing members for a number of reasons including the fear of 'contagion' – that is, the risk that existing members could one day find themselves in the 'second-class' part of the train. Finally, such an arrangement would probably not last for long after enlargement if – as must surely be axiomatic – the new members will have full rights of voting in the institutions of the Union. As Richard Baldwin has vividly expressed it, 'unpleasantness is unavoidable if second-class ticketholders can vote on what the first-class passengers will have for dinner'.

The third scenario would be more in accordance with tradition, and probably less difficult to negotiate, because the new members would have the prospect of full implementation of the *acquis communautaire* after a transitional period (always supposing that the transitional period would not be absurdly long, and that it would indeed have a fixed term: for a transitional period without a term is not really a transitional period). But it could be more difficult to obtain agreement on such a course between existing members, because there would be no certainty of the result of future discussions in the enlarged Union.

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