**The EU in International Negotiations**

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**List of Abbreviations**

|  |  |
| --- | --- |
| ACP | African, Caribbean and the Pacific |
| CAP | Common Agricultural Policy |
| CEEC | Central and Eastern European Countries |
| CETA | EU-Canada Comprehensive Economic and Trade Agreement |
| COELA | Working Party on Enlargement and Countries Negotiating Accession to the EU |
| COREPER | Committee of the Permanent Representatives of the Governments of the Member States |
| COWEB | Working Party on the Western Balkans Region |
| DG | Directorate-General |
| DG AGRI | Directorate-General Agriculture and Rural Development |
| DG BUDG | Directorate-General Budget |
| DG CLIMA | Directorate-General Climate Action |
| DG COMP | Directorate-General Competition |
| DG DEVCO | International Cooperation and Development |
| DG EMPL | Directorate-General Employment, Social Affairs and Inclusion |
| DG ENV | Directorate-General Environment |
| DG GROW | Directorate-General Internal Market, Industry, Entrepreneurship and SMEs |
| DG HOME | Directorate-General Migration and Home Affairs |
| DG INTPA | Directorate-General International Partnerships |
| DG JUST | Directorate-General Justice and Consumers |
| DG MARE | Directorate-General Maritime Affairs and Fisheries |
| DG MOVE | Directorate-General Mobility and Transport |
| DG NEAR | Directorate-General European Neighbourhood and Enlargement Negotiations |
| DG TAXUD | Directorate-General |
| DG TRADE | Directorate-General Trade |
| EDF | European Development Fund |
| EEAS | European External Action Service |
| EEC | European Economic Community |
| EFTA | European Free Trade Association |
| EIB | European Investment Bank |
| EPA | Economic Partnership Agreement |
| EU | European Union |
| FTA | Free Trade Agreement |
| GATT | General Agreement on Tariffs and Trade |
| GDP | Gross Domestic Product |
| GI | Geographical Indication |
| ICTY | International Criminal Tribunal for the Former Yugoslavia |
| IGC | Intergovernmental Conference |
| JHLG | Joint High-Level Group |
| JPA | Joint Parliamentary Assembly |
| MEP | Member of the European Parliament |
| MERCOSUR | Southern Common Market |
| NGO | Non-Governmental Organisation |
| NTM | Non-Tariff Measure |
| OACPS | Organisation of African, Caribbean and Pacific States |
| OCT | Overseas Countries and Territories |
| SAPC | Stabilisation and Association Parliamentary Committee |
| SME | Small and Medium Enterprise |
| SRHR | Sexual and Reproductive Health and Rights |
| TCA | Trade and Cooperation Agreement |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| TPC | Trade Policy Committee |
| TPP | Trans-Pacific Partnership |
| TSD | Trade and Sustainable Development |
| TTIP | Transatlantic Trade and Investment Partnership |
| UK | United Kingdom |
| UKTF | Task Force for Relations with the United Kingdom |
| US | United States |
| WTO | World Trade Organisation |

**Introduction**

**Abstract**

The influence of the European Union (EU) on the global stage has increased significantly over the last 60 years. Much of its global engagement is conducted through international negotiations with other parties, and over time, the EU has established a wide network of negotiated agreements with countries and regions across the world. Despite this, the literature on the EU as an international negotiator is sparse. The aim of this book is to fill the gap in the literature by analysing and comparing the EU’s role as an international negotiator across the four policy areas of development, trade, enlargement, and withdrawal – areas which mostly, or entirely, are based on international negotiations, and where the EU has a significant impact. The analysis helps to identify similarities and differences across policy areas, and to provide a broader picture of the EU as an international negotiator.

**The EU in International Negotiations**

The influence of the European Union (EU) on the global stage has increased significantly over the last 60 years. Much of its global engagement is conducted through international negotiations with other parties, and over time, the EU has established a wide network of negotiated agreements with countries and regions across the world.

The EU is itself based on a complex system of negotiations, involving numerous member states and institutions. Any EU decision or policy is the result of negotiated compromises and coalition-building, and negotiations are very much part of the EU’s DNA. It is therefore not surprising that negotiations are seen as the preferred way for the EU to engage with the rest of the world (Smith 2013).

Shortly after its establishment in 1957, the European Economic Community (EEC) – the predecessor to the European Union – started negotiating special development-based agreements with its former colonies. These agreements, which have come to provide the cornerstone of the EU’s development policy, have been regularly re-negotiated, and expanded in scope and membership. The most recent accord, concluded in 2021, provides a legal framework for a partnership between the EU and 79 African, Caribbean and Pacific (ACP) countries.

Early on in its history, the EEC also began negotiating and concluding trade agreements with other parties, and today the EU has more trade agreements in place than any other country or region in the world. One of its biggest trade agreements is the one recently negotiated and concluded with Japan, covering around a third of world trade.

A significant part of the EU’s international negotiations has been with countries that have applied to join the EU. In the early 1960s, enlargement negotiations started with the UK, Denmark, and Ireland, which were the first countries to join the six founding members of the EEC in 1973. Over the years, the EU has negotiated accession agreements with another 19 countries that have joined the Union, and it is currently engaged in enlargement negotiations with countries in the Western Balkans.

One of the EU’s most recent negotiations is the one conducted with the UK, following the British decision to leave the EU. This was a novel negotiation for the EU since it was the first time it had to negotiate a withdrawal agreement with a member state. It was also the first time it negotiated a trade and cooperation agreement where the main focus was on arrangements that brought the two parties further apart.

Through this long history of different international negotiations, the EU has gained significant negotiating expertise, experience, and capacity. It has also developed a strong institutional memory, as well as a complex institutional machinery, which kicks into gear whenever new negotiations are looming. Anyone sitting opposite the EU at the negotiating table – an experience that can be quite daunting at first – is generally faced with a team of highly trained officials, who have spent a significant amount of time consulting and engaging with their colleagues in the Commission, the Council of the EU (from here on, ‘the Council’), the European Parliament, and sometimes the European Council, before coming to the international negotiating table. While the EU has often been portrayed as a slow, rigid, and difficult negotiator, due to its internal institutional complexities, it is increasingly seen as an effective, strategic, and constructive negotiator.

Despite the central role of international negotiations in the EU’s global engagement, the literature on the EU as an international negotiator is surprisingly sparse. Very few studies have identified general characteristics of the EU as an international negotiator (Elgström and Strömvik 2004). Most of the literature that does exist focuses on the EU’s role in multilateral negotiations, where the EU negotiates within broader international institutions (Carbone 2021a; Delreux and Kerremans 2010; Jørgensen 2009; Schwarzkopf 2021; Van Schaik 2013). Particular attention has been paid to its role in multilateral trade negotiations through the WTO (Ahnlid 2004; da Conceição-Heldt 2011; Damro 2007; Hoffmeister 2015; Meunier 2005; Young 2011; Young and Peterson 2014) and multilateral environmental and climate change negotiations through different UN frameworks (Afionis 2017; Bäckstrand and Elgström 2013; Delreux 2018; Delreux and Happaerts 2016; Groen et al. 2012; Kilian and Elgström 2010; Obertür and Groen 2018; Schunz 2015; Van Schaik and Schunz 2012).

The EU’s role in bilateral negotiations have received much less attention. There are a number of case studies of the EU’s engagement with other parties in the specific policy areas of trade (da Conceição-Heldt 2017; Duchesne and Morin 2013; De Bièvre 2018; Dür 2007; Frennhoff Larsén 2020, 2017, 2007; Gstöhl 2021; Hoffmeister 2015; Meunier 2005, 2000; Szymanski and Smith 2005; Young 2016; Young and Peterson 2014), development (Carbone 2022, 2021b; Elgström 2004, 2000; Forwood 2004; Holland 2002; Hurt 2003; Ishmael 2021), and enlargement (Cunha 2018; Friis 2004; Granell 1998; Ruano 2002; Schneider 2008). There is also an emerging literature on the recently concluded Brexit negotiations (Bierman and Jagdhuber 2022; Bressanelli et al. 2019; Dagnis Jensen and Dahl Kelstrup 2019; Fabbrini 2019; Frennhoff Larsén and Khorana 2020; Hix 2018; Kassim and Usherwood 2017; Laffan 2019; Schuette 2021; Usherwood 2021).

However, there are hardly any studies providing a comprehensive analysis of the EU in different international bilateral negotiations. The aim of this book is to fill this gap and to advance our understanding of the EU in international negotiations, by analysing and comparing the EU’s role as an international negotiator across the four policy areas of development, trade, enlargement, and withdrawal – areas which mostly, or entirely, are based on international negotiations, and where the EU has a significant impact. The analysis helps to identify similarities and differences across policy areas, and to provide a broader picture of the EU as an international negotiator, and the constraints and opportunities it is facing in different contexts.

It is the first comprehensive book that provides a comparative analysis of the EU’s role in international negotiations across policy areas, and it thus fills a significant gap in the sparse literature on the EU as an international negotiator. The book also contributes to the general literature on the EU’s global role (Gstöl and Schunz 2021; Hill et al. 2017; Whitman et al 2017; Youngs 2021). Since much of the EU’s global engagement is conducted through negotiations, the analysis of the EU in international negotiations is key to our understanding of its global role.

**Approach**

To understand the role of the EU in international negotiations, one undeniably needs to look at the internal workings of the EU and how EU institutions operate and engage with each other during the course of international negotiations. This is a complex process, and these internal discussions and negotiations are often as difficult and time consuming as the negotiations between the EU and its international negotiating partners. That said, it is also critical to explore how the EU is influenced by its negotiating partners. A negotiation is a two-way process. If not both parties involved in the negotiation see that there are gains to be made – or at least losses to be minimised – they will not come to the negotiating table in the first place.

One of the main contributions of the book is its innovative analytical focus on the actual EU negotiators, that is, the officials sitting at the negotiating table, opposite the EU’s negotiating partners. Concentrating on the team of officials who negotiate on behalf of the EU allows for the unpacking of the complex dynamics both within the EU, and between the EU and its international negotiating partners. The book conducts a qualitative comparative analysis of the role of the EU negotiators in four case studies identified within the areas of development, trade, enlargement, and withdrawal negotiations.

A theoretical framework based on two-level game and principal-agent analysis is used. The framework places the EU negotiators at the centre and explores how they move between two levels of negotiations: the domestic negotiations within the EU, where they engage with the College of Commissioners, the Council, the European Parliament, and sometimes the European Council, and the international negotiations with the EU’s negotiating partners. The relationship between the EU negotiators and the EU institutions is likened to a principal-agent relationship, where the EU negotiators operate as the agent which negotiates on behalf of the principals – the College of Commissioners, the Council, the European Parliament (and sometimes the European Council) – which all have to ratify the final agreement reached between the EU negotiators and the EU’s negotiating partner.

By opening up the ‘black box’ of the European Commission and analysing intra-Commission dynamics – dynamics that are most often overlooked in analyses of the EU’s international negotiations – the framework allows for a thorough exploration of who the EU negotiators are, where within the institutional structures they sit, what their preferences and motivations are, what power resources they have, and what strategies they can use. It also helps analyse how the EU negotiators are influenced and constrained by numerous principals at the domestic level, as well as by the EU’s negotiating partners at the international level. The theoretical framework adopted in this book is outlined in the next chapter.

The four case studies follow the same structure, facilitating comparisons across the different issues explored. Through its comparative approach, the book helps to identify general trends across the four policy areas and increase our understanding the EU’s global engagement through negotiations.

One of the main challenges of studying international negotiations is that they generally take place behind closed doors. As a result, analysts have to rely on accounts or records from those who were privy to the negotiations. This comparative analysis draws on 48 semi-structured interviews with people directly or indirectly involved in the negotiations analysed in the case studies. They include officials, politicians, and diplomats from the EU institutions, as well as representatives from the EU’s negotiating partners. The interviews, which were carried out between 2017 and 2022, each lasted around an hour. They were generally recorded but conducted on the condition of confidentiality. A list of the interviews is available in Appendix 1. The analysis is also based on official documents, media reports and secondary literature.

**Case Selection**

Development, trade, enlargement, and withdrawal are all policy areas where the EU conducts much of its engagement through international negotiations. The four specific case studies within these areas were selected to provide in-depth insights into current dynamics in the EU’s international negotiations. The four case studies consequently all focus on recently concluded, or in the case of enlargement, still on-going negotiations.

The Partnership Agreement between the EU and the Organisation of African, Caribbean and Pacific States (OACPS) was concluded in April 2021 and is awaiting final ratification at the time of writing. It is the most recent in a long list of partnership agreements negotiated between the EU and some of its former colonies.

The EU-Japan Economic Partnership Agreement, which entered into force in February 2019, is one of the biggest and most significant trade agreements that the EU has ever negotiated. It reflects the current trend where the EU is increasingly negotiating with more economically powerful trading partners, and where it adopts a market access-based approach, including in the sensitive area of agriculture.

The last Accession Treaty to be concluded was with Croatia in 2013. However, given that significant changes have taken place since then, both in terms of the EU’s general commitment to enlargement and the accession process itself, the current enlargement negotiations with Montenegro and Serbia provide more up-to-date insights into current negotiating dynamics. These countries are commonly seen as the two ‘front runners’ in the enlargement process.

Finally, the recently concluded Brexit negotiations reflect a completely new negotiation for the EU, as it was the first ever withdrawal to be negotiated with an existing member state. As a result, the case study provides insight into how the EU responds when faced with a new situation, where it cannot rely on established structures and precedents. While the first part of the negotiations, which led to the Withdrawal Agreement (effective from February 2020), were not true international negotiations since the UK was still part of the EU, they do mirror other EU external negotiations, with the EU negotiators on one side of the negotiating table and the UK on the other. The second part of the negotiations, which focused on the future relationship and resulted in the EU-UK Trade and Cooperation Agreement (fully effective from 1 May 2021), were conducted between the EU and the UK as an independent external negotiating partner. It was a unique trade agreement, since it was the result of negotiations where the parties had to agree on arrangements that would bring them further apart. It was thus a question of erecting, rather than removing, barriers to trade and cooperation.

In addition to being recently concluded, the four case studies all focus on bilateral negotiations. In terms of enlargement and withdrawal negotiations, the EU *only* engages bilaterally, with the EU negotiators on one side of the international negotiating table and the negotiating partners on the other. In the areas of trade and development, negotiations do take place both multilaterally and bilaterally. However, in addition to filling the bigger gap in the literature on bilateral negotiations, solely using case studies of bilateral negotiations allows for clearer comparisons across cases.

In multilateral negotiations very different dynamics are at play. The complexity is much greater, with the EU being just one among many sitting around the negotiating table. There is also more variation in terms of who represents the EU at that table. Multilateral negotiations take place in a state-centric environment (Jørgensen 2009), and the EU member states are often more present and engaged at the international negotiating table, although they may be formally represented by the rotating Presidency of the Council, by the High Representative of the Union for Foreign Affairs or the European External Action Service (EEAS), or by the European Commission, depending on the forum. This is indeed of great interest, but beyond the scope of this book.

**Terminology**

Negotiations take place between the EU and its negotiating partners, as well as between and within the EU institutions. There is no generally accepted definition of ‘negotiations’, but the following is adopted in this book: ‘a process in which actors take steps to agree on an outcome, and every actor seeks to make that outcome as good as possible from their own perspective (Odell and Tingley 2013: 144). Or put more simply: ‘communication between parties with the joint intention of making an agreement’ (O’Neill 2018: 516).

When referring to the parties that the EU is negotiating with, the terms ‘external parties’ or ‘negotiating partners’ are used. In many studies of the EU’s external engagement the term ‘third party’ is used when referring to a negotiating partner of the EU. This is most likely an adaptation of the term ‘third country’ used in EU parlance to describe a country outside of the EU’s jurisdiction. However, given that the focus of this book is on the EU’s role in international negotiations, where the EU and its negotiating partners conclude internationally binging agreements, the term ‘third party’ might be misleading. The generally accepted legal definition of a ‘third party’ is someone beside the two main parties involved in a negotiation, or someone not connected to a contract, but who might be affected by its outcome. The EU’s negotiating partners are clearly part of the negotiations, as well as the contract reached at the international level, and consequently the term ‘third party’ is avoided not to cause confusion.

**Structure of the Book**

After this introductory chapter, the theoretical framework that provides the basis for the four subsequent chapters is outlined. Each of the four policy-based chapters – development, trade, enlargement, and withdrawal – are structured as follows: First, an overview of the negotiations conducted by the EU in the specific policy area to date is provided. It identifies some of the main trends and features of the negotiations, and how they have developed over time and influenced the current negotiating climate. Second, using the principal-agent framework, each chapter explains who the EU negotiators are and where they sit within the institutional structures, focusing on their relationship with the College of Commissioners, the Council (and sometimes the European Council), and the European Parliament. Third, an in-depth case study of a recent, and in the case of enlargement, ongoing negotiation is provided. The book concludes with a comparative summary of the four case studies, highlighting similarities and differences across the different policy areas, and some general reflections on the role of the EU as an International negotiator.

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**Theorising the EU as an International Negotiator**

**Abstract**

This chapter provides an outline of the theoretical framework used to analyse the negotiating dynamics in the four case studies of development, trade, enlargement, and withdrawal negotiations. The framework combines a two-level game approach with principal-agent analysis. The main focus of the framework is on the actual negotiators – most often a team of Commission officials situated in a specific DG. It explains how these negotiators continuously engage with three or four sets of domestic constituents – the College of Commissioners, the Council, the European Parliament (and sometimes the European Council) – while they negotiate international agreements. The framework outlines how the EU negotiators engage with their international counterparts, using a range of negotiating strategies to reach an agreement that is satisfactory to both parties, and which will be ratified by the domestic constituents.

**International Negotiations as a Two-Level Game with Principals and Agents**

**The Negotiator in a Two-Level Game**

A theoretical approach often used to understand international negotiations, and how they are affected by both domestic and international factors, is Robert Putnam’s (1988) two-level game approach. Rather than focusing on *either* the domestic *or* the international level to explain the outcome of international negotiations, this approach combines the two levels through its focus on the actual negotiators. During international negotiations there are parallel domestic negotiations taking place internally among each party’s domestic constituents, and the negotiators move back and forth between these international and domestic negotiations, or games. Beyond the linkage provided by the negotiators, the two games are also closely connected through the ratification requirement, as no international agreement can enter into force without domestic ratification. At the international level (referred to by Putnam as Level One) negotiators engage with their external counterparts to reach an international agreement that is acceptable to all parties involved, including their respective domestic constituents, who in the end will ratify the agreement. At the domestic level (Level Two) the negotiators engage with domestic constituents, such as political institutions and bureaucracies, which push the negotiators to adopt positions in line with their respective interests. Here, the negotiators explore the preferences and red lines of these domestic constituents, while also building support for the international agreement to ensure its eventual ratification. Since the domestic constituents of both negotiating parties involved in the international negotiations at Level One need to ratify the same agreement, the agreement cannot be amended once it has reached the ratification stage. Final ratification must therefore simply be voted up or down. If a domestic constituent does suggest an amendment at this stage, it will count as a rejection, and the international negotiations at Level One would have to be re-opened (Putnam 1988: 437). Whereas final domestic ratification provides a key link between the domestic and the international games, the two games are intertwined and take place simultaneously throughout the whole negotiation process. International and domestic factors thus determine international negotiations in a simultaneous and mutual way, with moves at one level affecting the game at the other level (Evans 1993: 397).

For an agreement to be reached at the international level and ratified at the domestic level, there needs to be an overlap between the so called ‘win-sets’ of the negotiating partners. A win-set consists of all the potential negotiating outcomes that would be ratified by the domestic constituents of the negotiators (Putnam 1988: 437). Generally, the bigger the win-sets, the more likely that they will overlap, and an agreement be reached. The size of a win-set is shaped by a number of factors, including the preferences and coalitions of the domestic constituents that will ratify the agreement, the level of engagement of these domestic constituents in the international negotiations, the institutional ratification procedures, the strategies employed by the negotiators both domestically and internationally, and by the negotiating context (Meunier 2005; Moravcsik 1993; Putnam 1988).

Although not a fully developed theory, but rather a framework or a ‘metaphor for domestic-international interactions’ (Putnam 1988: 433), or ‘a starting point for empirical study’ (Knopf 1993: 601), the two-level game approach offers a way of addressing the classic level-of-analysis problem which has been the subject of extensive debates in the study of international relations (Gourevitch 1978; Moravcsik 1993; Rosenau 1969; Singer 1961; Waltz 1959). A distinction is made between international- and domestic-level explanations. International-level (or systemic) analyses assume that states are unitary actors and focus on their position in the international system, while domestic-level analyses consider the politics and political institutions of individual states.

According to the level-of-analysis problem, the prioritization of one of these levels of explanation results in insufficient explanations. While theoretically neat, such explanations fail to capture the actual dynamics of most international negotiations (Moravcsik 1993). The two-level game approach is concerned with both levels. By placing its focus on the actual negotiators and explore how they move between the domestic and international negotiating tables, the approach illustrates how international and domestic negotiations affect each other, and how one cannot understand internationally negotiated agreements by focusing on just one of these sets of negotiations. Through its focus on domestic politics and institutions that affect the nature of the win-set (Level Two), as well as the international negotiating environment (Level One), the approach combines domestic and international-level explanations.

A central element of the two-level game approach is the preference or motivation of the actual negotiators. Only by understanding these preferences and motivations can we fully understand the dynamics of international negotiations (ibid.). There is a significant body of research that has further developed the two-level game approach and hypothesized around the interactions between international and domestic negotiations (Collinson 1999; Conceição-Heldt, 2013; da Conceição and Mello 2017; Evans et al. 1993; Knopf 1993; Sebenius 2013). Many of the theoretical expectations emerging from this research do indeed center around the autonomy of the negotiators to pursue their preferences. The two-level game approach assumes that the negotiators have independent preferences and interests, which may be different from those of the domestic constituents, and that the negotiators often have a certain amount of autonomy, or discretion, to act strategically and pursue these preferences during the negotiations both at Level One and Level Two. As recognised by Putnam (1988), this assumption corresponds with that of principal-agent analysis, which can fruitfully be combined with the two-level game approach to better understand the relationship between the negotiators and their domestic constituents.

**Principal-Agent Analysis – Domestic Dynamics**

Principal-agent analysis was first introduced by Stephen Ross (1973) in the area of microeconomics and offers a way of looking at the relationship between two sets of actors, where one (the principal) delegates power to the other (the agent) to act on its behalf. The relationship reflects that between shareholders of a company (principals) and the business managers of the company (agents). The shareholders delegate power to the business manager to run the company in a way that protects their interests. Principal-agent analysis has since been applied extensively to the area of political science, exploring relationships such as the one between elected politicians (principals) and public officials (agents), as well as the area of international relations, exploring the relationship between member states (principals) and the secretariats of international organisations (agents). This relationship between the principals and the agents is characterised by conflicting preferences, which may cause agents to act upon their own preferences rather than those of the principals. Agents are seen to have a number of power resources at their disposal, such as agenda-setting responsibilities and informational advantages, which might make it easier for them to pursue their own preferences and thus exercise agent autonomy. However, the principals may try to prevent this ‘shirking’ through various control mechanisms (McCubbins et al. 1987). Principal-agent analysis helps us understand the balance between this agent autonomy and principal control, and how it varies between different situations and over time. Combining principal-agent analysis with the two-level game approach results in a basic analytical structure where agents (i.e. the negotiators) negotiate at the international level on behalf of their respective principals (i.e. the domestic constituents). Throughout the negotiations the principals have various ways through which they can monitor and control their agents to ensure they do not act beyond the responsibilities delegated to them, or the interests of the principals. At the end of the negotiations the principals must ratify the international deal struck between the negotiating agents (Pratt and Zeckhauser 1985; Lax and Sebenius 1986).

There are several ways in which principal-agent analysis complements and provides further insights into the two-level game dynamics during international negotiations. First, it clarifies the process of delegation, i.e. why delegation takes place and who is delegated the power to negotiate and act as an agent during the course of the negotiations. The reason for delegating power to an agent to negotiate on behalf of the principals is mainly based on a functional logic (Epstein and O’Halloran 1999). Delegation takes place in order to reduce the principals’ problem of capacity and competence (Lupia 2003). Although the power to make the final decision on a negotiated deal lies with the principals, it makes sense for them to delegate the task of conducting the actual negotiations to an agent who possesses the necessary capacity, expertise and experience. In addition, when there are several principals involved, delegating the task of negotiating to one agent reduces transaction costs, as not all principals then need to negotiate separately.

As for who is delegated the task to negotiate, the two-level game approach does not - despite the centrality of the actual negotiators and their preferences - elaborate on who the negotiators are and where they are positioned within the domestic institutional structures, and how this in turn affects their strategies and ability to pursue their own interests. Putnam (1988) equates the negotiator with the Chief of Government, who engages in international negotiators with Chief of Governments representing other states at Level One, and with the domestic constituents at Level Two. Yet, as the approach has developed and been applied to an increasing number of cases, it is clear that the negotiators are not always Chief of Governments. The term ‘statesmen’ has often been used to reflect a broader range of potential backgrounds of the negotiators, including diplomats, ministers, and other governmental representatives (Evans et al 1993). Understanding who has been delegated the power to negotiate in a two-level game helps us gain insight into the preferences and motivations of these negotiating agents, as well as their power resources, such as responsibilities, expertise, and experience. In this way, principal-agent analysis encourages us to focus on who the negotiating agents actually are, as well as on the origins of their preferences. This is a helpful addition to the two-level game approach, which often takes these preferences as given (Moravcsik 1993: 30). In other words, who negotiates matters.

Second, and related to the delegation process, principal-agent analysis helps identify the main domestic constituents, or principals, during an international negotiation. Putnam (1988: 442) stresses that any two-level game approach needs to be rooted in the power and preferences of the major actors at the domestic level. According to principal-agent analysis, those domestic constituents who delegate negotiating power to an agent are generally seen as the formal, or *de jure*, principals. In addition, there can be informal, or *de facto*, principals, who are closely involved in the domestic negotiations and exercise control over the agent, and whose endorsement of the negotiations is key (Heldt 2021). Principal-agent analysis also differentiates between *multiple* and *collective* principals. When the negotiating agent is contractually linked with institutionally distinct principals, the agent has a delegation relationship with *multiple* principals. And when the agent has a single contract with a principal, but that principal consists of several actors, the agent has a delegation relationship with a *collective* principal (Nielson and Tierney 2003: 247). This insight into the composition and engagement of the principals helps to identify the relevant preferences and possible coalitions among the domestic constituents, which in turn influence the win-set.

Third, principal-analysis helps us analyse the dynamics in the domestic games at Level Two in more detail. In these domestic negotiations the negotiating agents engage with their principals (the main domestic constituents) to explore their preferences, in order to identify the win-set. However, given the assumption that negotiators have their own preferences which they try to pursue, the dynamic of this game often centers around the agents’ aim to exercise autonomy, while the principals try to control them. By comparing the agents’ power resources with the control mechanisms of their principals, the extent of this autonomy, or agent discretion, becomes clear. The more control the principals can exercise, the less autonomy the negotiators have to push their own preferences. And conversely, the greater the power resources of the negotiators, the more likely it is they will be able to escape the control of the principals and pursue their own interests.

Resources identified by principal-agent analysis as relevant to a negotiating agent include agenda-setting responsibilities, expertise, experience, institutional memory, and the informational and strategic advantages that result from the negotiators’ central position in the negotiations (they are involved in both games and have the best overview of all interests involved). Control mechanisms available to the principals, on the other hand, include the appointment of the negotiator, authorisation of negotiations to start, various monitoring mechanisms applied throughout the negotiations, and final power not to ratify the agreement (Pollack 1997; 2003). The ratification requirement is linked to Putnam’s argument about how domestic institutional ratification procedures affect the win-set. For example, it is easier to get domestic approval for an international agreement if only a simple majority, as opposed to a qualified majority, or all, of the members within a collective principal, such as a Parliament or a Congress, need to vote in favour (Putnam 1988: 448). In addition, if multiple principals need to ratify an agreement, the risk of a domestic veto increases. In other words, the stricter the ratification requirements among and within the principals, the smaller the win-set will be.

It should be noted that even if principals have a number of control mechanisms available to them, it may be costly to use them, and consequently the principals have to find a balance between these control costs and the acceptable level of agent autonomy. In particular, the costs of monitoring may increase if there are multiple principals involved, as it requires coordination between principals whose preferences might diverge (McCubbins et al. 1987). In addition, even if principals are keen to control the agent as much as possible to ensure the agent acts in their interest, control can be intrusive if principals interfere too much in the task of the agent (Epstein and O’Halloran 1999). As anyone who has been subject to extensive micro-management knows, such intrusive control might undermine the agent’s capacity to perform effectively (Moe 1990).

In terms of temporal aspect, it is expected that the negotiators have a significant amount of autonomy and power over the initiation of the negotiations and the agenda-setting. However, this control is then expected to decrease gradually as domestic mobilisation increase during the negotiations. And finally, the negotiators are expected to have very little control over the final vote itself (Moravcsik 1993: 27). Simplified, during the preparation phase, principals exercise their appointment and authorisation powers. During the negotiation phase, the principals exercise control through different forms of monitoring. And during the ratification phase, they can use their veto powers. Through this distinction of different stages of control, principal-agent analysis adds a clearer temporal dimension to the two-level game approach, something that has often been called for (da Conceição-Heldt and Mello 2017).

In short, principal-agent analysis helps to explain the complexities that characterise the domestic games played by negotiators at Level Two, and how the number of principals, and the extent of their control mechanisms, affect the outcome. Generally, the more principals there are, and the more far-reaching their control mechanisms, the more difficult the domestic negotiations are. Indeed, it is recognised that negotiators often spend more time negotiating with their domestic constituents than with their international counterparts (Putnam 1988: 433). This in turn helps explain why principal-agent analysis has often been used when analysing international negotiations. However, principal-agent analysis has an inherently domestic focus and says little about the dynamics playing out in the international game at Level One, where influence is also exercised by the external party. Consequently, to gain a fuller understanding of the dynamics during international negotiations, principal-agent analysis cannot be used in isolation, but rather as a helpful tool in understanding parts of the negotiating dynamics. When using principal-agent analysis to understand international negotiations, the argument has indeed been made that it is best combined with the two-level game approach (Gsthöl 2021; Moravcik 1993; Young and Peterson 2014).

**Strategic Action by the International Negotiator**

The two-level game approach helps explain the dynamics in the international negotiation at Level One, and how these influence the domestic dynamics (and vice-versa), by focusing on the strategic actions of the negotiators. In the international negotiations there are both common and conflicting interests between the parties, and the challenge of the negotiators is to find the common ground, or in two-level game terminology, to get their respective win-sets to overlap enough for an agreement to be reached. The negotiators use their privileged position at the intersection of the domestic and international games and act strategically to try and reach a deal at Level One. Their strategies are of course constrained by what their respective domestic constituents, or principals, will ratify, and what their negotiating partners on the other side of the negotiating table will accept. In the words of Moravcsik (1993: 15), the negotiators ‘balance international and domestic concerns in a process of “double-edged’ diplomacy’. This process happens over time during which alternating offers and responses are made by the negotiators. Strategic action is made easier by the negotiators’ agent power resources, such as agenda-setting and control over information. The latter stems from the negotiators’ involvement in both the international and the domestic negotiations, which allows them to decide how much of the information to convey from one level to another.

The two-level game approach identifies a number of strategies that can be used by the negotiators to change the size of the respective win-sets. Given that it is more likely that the win-sets will overlap the larger they are, negotiators often use strategies that expand the win-sets, either among their own domestic constituents or among the domestic constituents of the negotiating partner. One such strategy is issue-linkage, where the negotiators identify linkages between issues at the international level that will alter, or open up, new policy options domestically at Level Two (Putnam 1988: 447). Issue-linkages are made easier if a negotiation includes a wide range of issues, thus allowing the negotiators to identify linkages that will lead to a balance in terms of the gains and concessions among the main domestic constituents, or principals, both within and between the negotiating parties (Crump 2011). Given that most international negotiations do include several issues, issue-linkage is a commonly used strategy (Odell 2000).

Another strategy identified by the two-level game approach, is that of collusion between the negotiators at the international level. Given that the negotiators often have a joint interest in reaching a deal, as it will enhance their respective standing both internationally and domestically, they may collude and support each other to bolster their domestic popularity, and consequently increase the chances of successful ratification (Putnam 1988: 451). Through such collusion, the negotiators help their counterparts overcome *their* domestic challenges at Level Two. This requires negotiators to understand the interests and motivations of their counterparts and to be able to put themselves ‘in their shoes’ (Sebenius 2013: 8; Fisher and Ury 1981). When there is collusion between the negotiators at the international level, the negotiators are also more likely to exaggerate the external constraints, i.e. the tightness of the win-set of their negotiating partner, to their own domestic constituents, in order to change the win-set in line with their preferences.

Negotiators may also use the so called ‘hands tied’ strategy, in which they exaggerate the tightness of their domestic win-set to their international negotiating partners. Although a small win-set makes it less likely that there will be an overlap between the respective win-sets, and that an agreement can be reached, the literature highlights how a small win-set gives the negotiators a stronger bargaining position at the international level (Putnam 1988; Evans et al 1993). This stems from the paradox that great institutional autonomy for negotiators at home, where they can act independently without being too controlled or constrained by their domestic constituents, may weaken their international bargaining position at Level One. With a big domestic win-set and significant negotiating autonomy vis-à-vis their domestic constituents, the negotiators may be pushed around by their international negotiating partners at Level One. If, on the other hand, they have limited negotiating autonomy vis-à-vis their domestic constituents, they are, in line with the so-called ‘Schelling conjecture’ (Schelling 1960), likely to have greater negotiating power towards their international negotiating partner. With a small win-set, or a win-set that is perceived to be small, the less likely it is that the negotiator will be pushed around in the international negotiations. Consequently, if it helps the negotiators to reach an agreement in line with their own interests, they can argue that while they themselves would be willing to meet certain demands from their negotiating partner, they are unable to do so, as their hands are tied by their domestic constituents.

Although many two-level game-based analyses have focused extensively on this ‘Schelling conjecture’ and the benefits of a small win-set from a bargaining perspective (da Conceição-Heldt and Mello 2017), it should be noted that the two-level game approach also recognises that a negotiator focusing too much on their hands being tied may find that the resulting lack of flexibility is a disadvantage. Such a rigid approach might increase the risk of a breakdown in the negotiations, and consequently the elimination of all joint gains (Evans 1993: 402-3). In other words, the bargaining power of the negotiator in the international negotiations at Level One increases, but the scope for international cooperation, and an international agreement being reached, might decrease (Putnam 1988: 448).

Negotiators sometimes use the provision of transparency strategically in a two-level game. Given the negotiators’ involvement in both the international and the domestic negotiations, they can to a certain extent decide how much of the information to convey from one level to another. Two-level game-based analyses explore how transparency affect the bargaining power of the negotiators, as well as the likelihood of an international agreement being reached (Iida 1993). It is generally assumed that international negotiations at Level One are most effective if there are low degrees of transparency (Stasavage 2004). If these negotiations take place behind closed doors, with the negotiators providing limited transparency of the process, the negotiators have significant autonomy vis-à-vis their domestic constituents. They can decide to only provide partial information about the win-set of their negotiating partner, or frame it in such a way that it becomes easier to get their domestic constituents to make concessions or compromises to facilitate agreement at the international level, in line with their own preferences. Providing low degrees of transparency allows the negotiators to engage with their international counterparts without too much interference from their domestic constituents, and most negotiators see a strong link between limited transparency and successful negotiating outcomes at Level One (Putnam 1988: 445).

On the other hand, the strategy of providing limited transparency of the international negotiations, may negatively affect the standing of the negotiators among their domestic constituents. With the current ‘policy vogue for transparency’, adopting an open approach is seen as a normative goal in itself (McCarthy and Fluck 2017: 417), and something that is valued by most domestic constituents. In addition, if the latter are to be able to monitor their negotiating agent effectively, they are dependent on transparency. If this is not provided, the domestic constituents may accuse the negotiators of hiding their actions and question whether they represent the true domestic interests in their negotiations at Level One. To prevent this, the negotiators may instead opt for increased transparency at the international level. However, while this increases the accountability of the negotiators vis-à-vis their domestic constituents, making it easier for the latter to judge whether the negotiators are acting in their interests, it may make the international negotiations more difficult. It can increase the incentive for negotiators to ‘posture’ by adopting positions that demonstrate to their domestic constituents that they are not caving in to demands from their negotiating partner (Stasavage 2004: 670). This in turn, increases the risk of a break-down of the international negotiations.

As for transparency of the domestic negotiations, there is a similar tension. Since the negotiators may gain a bargaining advantage in the international negotiations by exaggerating the tightness of their domestic win-set, they want to provide as little information as possible about the nature of their domestic negotiations to their negotiating partner at Level One. By withholding information and playing their cards close to the chest, the negotiators don’t reveal their bottom line and keep their commitment to the tight win-set credible. However, this strategy of providing limited transparency of the Level Two negotiations, may not be conducive for building trust between the parties at Level One, and consequently, make it harder to reach an international agreement (Odell 2000).

Alternatively, high degrees of transparency regarding the Level Two negotiations deprive the negotiators of strategies that require uncertainty about the win-set. It may indeed be easier for the negotiators at Level One to exploit each other, and try to gain advantages at each other’s expense, particularly when there are distributional consequences at stake. However, when the focus is on less distributional matters, and on more integrative issues, where negotiators need to find solutions to joint problems, an open approach with high degrees of transparency from the domestic negotiations may give the negotiators certain advantages (ibid.). In addition, negotiators can use transparency strategically to control the narrative around the negotiations. Consequently, there is not always a trade-off between transparency and efficiency.

An additional strategy that can be used by negotiators at the international level is that of agenda-setting. Of course, agenda-setting responsibility is an agent power resource that negotiators use to increase their autonomy vis-à-vis the domestic constituents. However, it can also be used as a strategy at Level One. The party to be the first to set the agenda, or put proposals on the international negotiating table, obtains an initial lead, as the other party has to respond to the agenda or proposal. The subsequent negotiations are then likely to centre around that specific agenda or proposal, giving a certain first-mover advantage to the proposing party, as long as the proposal does not reveal a bottom-line that the negotiators want to hide. The party with the longer negotiating experience and the higher levels of preparation, is more likely to set the agenda. To gain time, negotiators often act within an environment of bounded rationality (Jones 2003), and present proposals based on previous agreements negotiated with other parties (Crump 2007). By adopting this strategy, negotiators not only gain an advantage at Level One, they also increase the likelihood of domestic ratification. If domestic constituents have agreed to something once – albeit in a different context – they are likely to do so again. Negotiators consequently contribute to a certain level of ‘path-dependency’ during international negotiations (Pierson 2004).

Finally, time can be used strategically by the negotiators in a two-level game. It is not a strategy that has been widely explored in two-level game analyses, but timing is a key aspect in most international negotiations (O’Neill 2018; Raiffa 2002). Negotiators may impose deadlines to tease out concessions, or make demands about sequencing, where certain issues need to be agreed upon before moving onto other issues. Negotiators’ use of timing as a strategy at Level One is often embedded within the domestic political calendar at Level Two, and there is consequently a clear two-level game dynamic at play. For example, negotiators can refer to upcoming national elections or a significant meeting of key domestic constituents to put pressure on their international negotiating partners to come to a quick agreement. Conversely, negotiators might want to delay the international negotiations if they expect resistance from domestic constituents, and if they believe an upcoming election might change the preference composition of the domestic constituents.

To conclude, negotiators have a wide range of strategies that they can use to reach an agreement with their international counterparts, while ensuring domestic ratification. Whatever strategy the negotiators opt for, they are unlikely to act in any way that leads to an agreement that goes counter to their own preferences. As per the assumption of the two-level game approach, negotiators have their own preferences which they will try to pursue.

**Strategic Action by the Principals at the International Level**

Most of the international dynamics are played out through the interactions of the negotiators at Level One, with domestic constituents – or principals – pushing their interest and preference through their respective negotiators. However, the domestic constituents can also engage directly in the international negotiations through ‘cross-table’ action. By engaging with actors on the opposite side of the international negotiating table, they can influence the win-set of the negotiating partner, and as a result, the overall negotiating outcome. Such engagement can take place through ‘trans-national’, ‘cross-level’ or ‘trans-governmental’ action (Knopf 1993; Nye and Keohane 1971). While not clearly distinguishing between different types of domestic-international interaction, the two-level game approach opens up this possibility of domestic constituents engaging in strategies alongside the negotiators (Moravcsik 1993: 31-32). Putnam recognises that just focusing on the strategies of the negotiators can result in too great a simplification, and he calls for work that explores the strategic implications of direct communication by domestic constituents (1988: 45).

During trans-national engagement, domestic constituents interact directly with their counterparts on the other side of the international negotiation table. Cross-level action occurs when domestic constituents on one side of the negotiating table engage directly with the negotiators on the other side of the table. And trans-governmental engagement comes into play when government officials on one side of the negotiating table interact with government officials on the other side. Treating trans-governmental engagement as a separate category, means dividing the executive branch between the actual negotiators – whether they are Chief of Governments, ministers, or diplomats – and government officials (Knopf 1993: 606). Even if they are all part of the executive branch, such divisions reflect the realistic scenario where there are different interests and preferences – most often along departmental lines – within the executive.

Even if the focus on domestic strategic action through cross-table engagement might diverge from the focus on the negotiator as the main link between the international and the domestic negotiations, such action is indirectly linked to the behaviour of the negotiator. Strategic action by the domestic constituents can be expected if they fear the final negotiating outcome will diverge too much from their preferences. This in turn may be a result of three factors: the negotiators acting upon their own preferences rather than those of their domestic constituents, the negotiators not pushing the interests of the domestic constituents hard enough, or the negotiators being forced to make too many concessions by their negotiating partners in the international negotiations at Level One. The reason domestic constituents mobilise at the international level is to change the outcome that purely bargaining by the main negotiators would produce (Knopf 1993: 607).

When analysing this kind of strategic action by domestic constituents, it is helpful to make the distinction between supportive and competitive logic (Fonck 2017). According to the supportive logic, domestic constituents accept the lead by the negotiators, and coordinate their actions with them before engaging with actors on the other side of the negotiating table. When following a competitive logic, on the other hand, the domestic constituents act independently and engage with the actors on the other side of the negotiating table to push the negotiations in a direction not always desired by their own negotiators. In principal-agent terms, the principals do not remain within the domestic game at Level Two, simply using their control mechanisms, but they become directly involved in the international negotiations at Level One and in the very task that they have delegated to their negotiating agent.

It should be noted that negotiators can also make strategic use of such cross-table action. Rather than just mobilising the constituents domestically to help tip the balance of the domestic win-set towards the negotiators’ own preferences, the negotiators can use their principals to mobilise, or put direct pressure on, the negotiators or domestic constituents on the *opposite* side of the negotiating table. While such strategies reduce the negotiators’ agent autonomy vis-à-vis their principals, they may facilitate an international agreement.

**Negotiating Context**

Putnam does not make explicit reference to the impact of the negotiating context, however, it is indirectly addressed by the two-level game approach through its focus on the relative size of the respective win-sets and how the preferences of the negotiators, as well as the domestic constituents, relate to each other. The impact of the of negotiating context has been incorporated into the approach more systematically over time (Gstöhl 2021; Meunier 2005). Negotiations are affected by the structural relationship between the negotiating partners, by the nature of the two-level game being played on the other side of the negotiating table, and by external events or developments taking place beyond the negotiating table.

Regarding the structural relationship, many international negotiations are characterised by a degree of power asymmetry between the negotiating partners. The partners are different in terms of size, resources, economic clout, status, and power. Such factors undeniably affect the extent to which the negotiating partners are dependent on an agreement being reached, and the way the negotiators perceive of themselves and each other in the international negotiations. In addition, the partner asking for the agreement, the so-called *demandeur,* is also likely to be the one more dependent on it. It is logical to expect weaker parties being subject to greater influence from the negotiators representing the stronger party, rather than the other way around (Strong 2017). Stronger parties are more likely to adopt a ‘take-it-or-leave it’ approach (Pfetsch and Landau 2000: 23). However, this is not to say that weaker parties cannot exert influence. They can compensate for their weakness through the ‘borrowing of power’, that is, by drawing on external power sources, and thus equalise the relationship between the negotiating parties (Zartman 1997: 238). Ways in which weaker states can compensate for their disadvantaged position in an asymmetrical relationship include: joining forces with other weaker parties to form coalitions and pool resources, by identifying allies and forming coalitions with likeminded domestic constituents within the stronger party (i.e. influencing the Level Two negotiations of the opposite party by shifting the balance of power towards those constituents with similar preferences to their own), and by framing the narrative around the negotiations in a way that gives the weaker parties moral power by using norm-based arguments (Odell 2010). As mentioned by Putnam (1988: 455), ‘messages from abroad can change minds, move the undecided, and hearten those in the domestic minority’. Such strategies put the negotiators of the weaker party in a better position during the international negotiations at Level One, particularly if there is an existing relationship that hold the negotiating parties together (Zartman and Rubin 2000).

The nature of the two-level game being played by the negotiator on the opposite side of the table, and how it compares with a negotiator’s own game, also impacts on the negotiating dynamics. The more complex that game is, and the more domestic constituents that are involved, the greater the constraints of the negotiator. This may make it difficult for the negotiator to agree to compromises and new solutions in the negotiations at Level One, without continuously having to go back to the domestic constituents, thus prolonging the international negotiations. Even if a negotiator is expected to have a significant amount of barraging power in the international negotiations due to a tight domestic win-set, this will clearly be offset if the other party is equally constrained domestically.

Finally, negotiations take place in a context of changing global power balances and external events, which may impact on the negotiating dynamics. Circumstances or events that surround a particular negotiation may change the preferences and priorities of the negotiators and their domestic constituents, and thus the process and outcome (Crump 2011: 198). International negotiations are embedded in a network of past, parallel and future negotiations, which may influence the strategies and action adopted by the negotiators (Crump 2011, 2007; Meunier and Morin 2015).

**Two-Level Game and Principal-Agent Analysis of EU International Negotiations**

The two-level game approach has often been applied, and further developed, to analyse the EU’s international negotiations (Collinson 1999; da Conceição-Heldt 2013; Damro and Guay 2016; Frennhoff Larsén 2017; Gstöhl 2021; Meunier 2000; Young and Peterson 2014). In these analyses, the European Commission is most often equated with Putnam’s negotiator, which moves back and forth between international negotiations with other countries or regions in the world and domestic negotiations within the EU. Domestically, most analyses have centred around the negotiations between the member states in the Council. No international agreement negotiated by the Commission enters into force unless it is ratified by the member states in the Council. However, as the European Parliament now also has to give its consent to most international agreements concluded by the EU, it has recently been included as a domestic constituent in a number of two-level game analyses of the EU’s international negotiations (Frennhoff Larsén 2020; Ripoll Servent 2014; Young and Peterson 2014). As stressed by Putnam (1988, p. 442), any two-level game approach needs to be rooted in the power and preferences of the major actors at the domestic level. With its veto powers, the European Parliament is clearly a major actor.

When using the two-level game approach to analyse the EU’s international negotiations, it has often been extended to a three-level game, with the argument that there is an additional game being played within the individual member states (Collinson 1999; Gstöhl 2021; Meunier 2000). In such a three-level game model, the negotiations between the EU and its negotiating partners are treated as the international negotiations at Level One. The intra-EU level negotiations, involving the member states in the Council, and sometimes also the European Parliament and other EU institutions, are treated as the Level Two negotiations. And the negotiations taking place within each member state between national political institutions and bureaucracies are treated as the Level Three negotiations. Any international agreement that is reached between the EU and a negotiating partner at Level One, needs to have the support by both the EU institutions at Level Two, and the domestic constituents within individual member states at Level Three. This double ratification requirement becomes particularly clear in cases of mixed agreements that require EU ratification, as well as national ratification in all 27 member states (Delreux, 2008; Ripoll Servent, 2014). However, in addition to the domestic ratification requirement, the main argument of the two-level game approach is that it is the negotiator who provides the link between the different levels of negotiations. This link is broken in most three-level game analyses since the EU representative (generally the Commission) provides the link between the international (Level One) and EU-level (Level Two) negotiations, but the national representative provides the link between the EU-level (Level Two) and the domestic (Level Three) negotiations (Frennhoff Larsén, 2007a). This break is particularly clear since, in line with principal-agent logic, the Commission and the national representatives often have conflicting interests. As a result, it is difficult to ‘conceptualize any kind of dynamic link’ between Level One and Level Three through Level Two (Collinson 1999: 219). Each negotiator involved, whether it is the Commission or a national representative, is consequently still only playing a two-level game. The situation is thus better described as two two-level games which are linked at the EU level (Young and Peterson 2014). As a result, when using two-level game analysis to explore the role of the EU negotiators, the model is best limited to two levels. At Level One, the EU negotiators engage with the EU’s external negotiator. And at Level Two, they engage with those EU institutions that are linked to the international game through their ratification powers. The dynamics playing out in the Level Two game, reflect those of a principal-agent relationship.

Principal-agent analysis, which was first brought into the study of the EU by Mark Pollack (1997; 2003), has been used extensively to explore the EU’s internal set-up and conduct during international negotiations (Bilal 1998; da Conceição-Heldt 2010; Damro 2007; Delreux and Adriaensen 2018; Dür and Elsig 2011; Elsig 2007; Frennhoff Larsén 2007b; Gstöhl 2021; Kassim and Menon 2003; Kerremans 2006; Meunier 2000; Meunier and Nicolaïdis 1999; Poletti 2011; Pollack 2003). Questions about the EU’s internal set-up focus on micro-delegation, where the delegation from one actor to another takes place *within* the EU. This is different from macro-delegation, which refers to member states’ delegation of authority to the EU in the first place (Meunier 2005). Most often, these analyses of the EU’s internal set-up treat the Commission as the agent, which has been delegated power by the member state principals to set the agenda and conduct international negotiations on their behalf. The member states, which act as a *collective* principal through the Council, can exert control over the Commission through its appointment, authorisation, monitoring, and ratification powers (Delreux and Adriaensen 2018). However, over time, more actors have been incorporated into the analysis. For example, the European Parliament, when relaxing the delegation requirement, is often treated as another principal through its ratification powers in international negotiations (Heldt 2021; Ripoll Servent 2014). And on the agent side, some analyses have moved away from treating the Commission as a unitary actor. Instead, they explore how principals may engage in ‘agent shopping’ (De Bièvre and Dür 2005), identifying individual DGs as the main agent (Dür and Elsig 2011; Frennhoff Larsén 2007b).

This approach links with the literature on the Commission’s internal coordination processes and the role played by the DGs that hold the lead in these processes (Egeberg 2006; Ellinas and Suleiman 2012; Hartlapp et al. 2014; Nugent 2000; Peters 1994). The lead Directorate-General (DG) has an informational advantage vis-à-vis the other DGs since it acts as the internal agenda-setter and comes up with the initial proposals relating to the international negotiations (Hartlapp et al. 2014). It also hosts the negotiating team that negotiates internationally at Level One with the EU’s negotiating partner, and domestically at Level Two with its principals to reach a unified EU position. By moving beyond the Commission as a unitary actor approach, the functional and sectorial divides that exists between the DGs become clear. These divides help to provide insights into the preferences of the agents. In line with functional logic, the officials working within a DG are seen to champion interests linked with the specific brief or sectorial responsibility of that DG (Carbone 2007; Egeberg 2006; Nugent 2000). The preferences are influenced by the ‘mission, culture, and policy style’ of the DGs (Carbone 2007: 22).

In addition to these sectorial dividing lines, there are hierarchical divides in the Commission between the political arm, consisting of the Commission President and the 27 Commissioners who make up the College of Commissioners, as well as their respective Cabinets, and the administrative arm, consisting of the DG. While most of the substantial work takes place at the administrative level through the coordination of the sectorial interests between the different DGs, the College needs to approve all key decisions (Hartlapp et al. 2014).

By treating the negotiators within a specific DG as agents in international negotiations, it becomes clear that they face several principals, who in the end need to ratify the agreement reached at the international level. In addition to the Council and the European Parliament, which have provided the focus for most principal-agent analyses of EU international negotiations, the Commissioners in the College need to give their approval to any agreement negotiated by the agents. The Commissioners, which operates as a *collective* principal in the College, are the most immediate principals of the DG-based negotiators. They are able to exercise principal control over the negotiating agents through their appointment, authorisation, monitoring, and ratification powers.

Through its different conceptualisations of the relationship between agents and principals, principal-agent analysis has proved a useful tool for analysing and understanding domestic dynamics during the EU’s international negotiations. However, with its inherently domestic focus, it is of limited value by itself in explaining the outcome in international negotiations, which also reflect the dynamics between the EU and its negotiating partners. In this context, principal-agent analysis can be seen to contribute to the ‘excessively Eurocentric perspective’ (Lucarelli 2014:11) or rather ‘self-indulgent’ approach (Youngs 2021: 3) of existing research on the EU’s external relations. As mentioned previously, it is consequently fruitfully combined with two-level game analysis when exploring the EU as an international negotiator (Gstöhl 2021; Putnam 1988; Young and Peterson 2014).

**The EU Negotiators at the Centre: A Framework for Analysis**

Building on these two-level game and principal-agent analyses, the framework used in this book centres on the actual EU negotiators who represent the EU in the international negotiations. While the EU organises itself differently depending on policy area, this framework captures the role played by the EU negotiators in the four policy areas of development, trade, enlargement, and withdrawal. It identifies the constraints and opportunities that the EU negotiators face, both domestically and internationally. The EU negotiators, who often operate as a team or a task force, constitute the negotiating agent in the two-level game, and as such, they provide the main link between the domestic game within the EU at Level Two, and the international game between the EU and its negotiating partner at Level One. Domestically at Level Two, the EU negotiators engage with their principals to explore their preferences, and to build support for the international agreement that they are negotiating with the EU’s external partner. The negotiators have three (and sometimes four) main sets of principals – the College of Commissioners, the Council (in some cases the European Council constitutes and additional, albeit related, principal), and the European Parliament. At Level One, the negotiators engage with their international counterparts to reach a draft agreement that is acceptable to all parties involved, including the principals at Level Two, which all have ratification powers, thus providing the additional link between the domestic and international games.

Principal-agent analysis helps identify who has been delegated power to negotiate on behalf of the EU. Often the role of negotiator has been delegated specifically to the Commission in the EU Treaties, while at other times it is a political decision. Once the Commission has been delegated power to lead on the negotiations, another level of delegation takes place *within* the Commission, when it is decided where within the Commission’s structures the actual negotiating team should be based, and who should be part of that team. The EU negotiating team is normally made up of experienced officials who are based within one of the administrative DGs within the Commission, or in the case of the Brexit negotiations, in the Commission headquarters. As a result of the delegation, they have strong motivations to successfully reach a deal with the external negotiating partner, thus fulfilling the task that has been delegated. In line with principal-agent logic, they also want the deal to reflect their own preferences, which align with the functional or sectorial responsibilities of the DG where they are based.

The EU negotiators have different contractual links with its multiple principals, but the College of Commissioners, the member states in the Council and the European Council, and the European Parliament are all closely involved in the domestic negotiations, exercising principal control over the negotiators. Because of their ratification powers, no agreement can be reached unless they all support it. Given their respective composition as *collective* principals, there are often preference divergences both within and between the principals. Simplified, the Commissioners in the College represent the sectorial interests stemming from their respective portfolios. The member states in the Council or the European Council represent the national interests of their governments. The MEPs represent the positions of their political groups, as well as the overall position of the European Parliament in international negotiations. The role and influence of the Parliament has lagged behind that of the Commission and the Council, and consequently the Parliament still uses international negotiations to carve out a more influential role for itself.

Domestically, the EU negotiators engage regularly with these different sets of principals to explore their red lines and identify the domestic win-set as the negotiations proceed. By taking part in the domestic negotiations conducted withing each of these sets of principals, the EU negotiators try to shape the domestic win-set in line with their own preferences. As for agent power resources, which can help them push these preferences, the EU negotiators generally have strong agenda-setting powers, as they lead on the negotiations and draft most of the key negotiating documents, including mandates, negotiating frameworks, textual proposals, common positions, and the international agreement. They also have high levels of expertise and significant experience – necessary requirements for being part of a Commission-based negotiating team – and they can often rely on the institutional memory of previous negotiations conducted by teams in their DG. By being involved in all negotiations, both at Level One and Level Two, they have a good overview of all the preferences reflected in the negotiations, giving the EU negotiators an informational and strategic advantage vis-à-vis the principals. Yet, the EU negotiators may be constrained in their autonomy by the control exercised by the principals. Principal control mechanisms include appointment of the negotiators, authorisation of the negotiations to start, various monitoring mechanisms during the course of the negotiations, and ratification powers.

In terms of the temporal aspect of principal control during the EU’s international negotiations, the process is divided into the three phases of preparation, negotiation, and ratification. During the preparation phase, the principals make use of the control mechanisms of appointing the negotiators, authorising the negotiations to start, and identifying the guidelines for the negotiations. During the negotiation phase – which starts with the formal opening of the international negotiations between the EU and its negotiating partner, and concludes when a draft agreement has been reached between the two parties – the principals make use of various monitoring mechanisms, most often through reporting requirements placed on the EU negotiating agent. Sometimes, additional authorisation powers are also exercised during this phase. This happens, for example, when principals introduce benchmarks or suspension clauses into the negotiating framework, giving them an opportunity to decide whether enough progress has been made at a certain point to allow the negotiations to proceed. Finally, during the ratification phase, the principals exercise control by formally ratifying, or rejecting, the international agreement reached at Level One. The stricter the institutional ratification rules, the greater the control of the principals. The ratification procedures vary depending on the principals and the nature of the negotiations, but the College of Commissioners need to adopt all agreements by consensus. In the Council, ratification takes place either by unanimity or a qualified majority. When the European Council is involved, they take decisions by consensus. In cases of mixed agreements, which involve competences of both the EU and the individual member states, the agreement also needs to gain parliamentary approval in all member states. As for the European Parliament, it gives its consent to international agreements by an absolute majority.

These principal control mechanisms are compared with the agent power resources – agenda-setting responsibilities, sectorial expertise, negotiating experience, institutional memory, and the informational and strategic advantage stemming from the EU negotiators’ close engagement in all negotiations both domestically and internationally – to understand the level of autonomy, or discretion, of the EU negotiators. Principal-agent analysis thus provide helpful insights into the domestic dynamics during the EU’s international negotiations.

The main innovation of the framework in terms of the domestic game is that it opens up the ‘black box’ of decision-making and negotiations within the Commission, rather than, as is commonly the case, treating it as a unitary actor. It explores the dynamics of the intra-Commission negotiations and how the Commissioners in the College exert control over the EU negotiators. Of course, the negotiating team is itself part of the administrative structures of the Commission, and as such, represents the Commission as a whole vis-à-vis the Council and the European Parliament once a unified position within the Commission has been reached. As a result, the negotiations could indeed be conceptualised as a three-level game, but one where the domestic focus at Level Three is on the negotiations between the Commissioners in the College, and the DGs under their responsibilities (rather than on the domestic negotiations within the member states). In this case, the Negotiating Team would provide the link between all three levels, demonstrating the ‘dynamic link’ that is required between Levels One and Three in any clearly conceptualised three-level game. However, while most formal authorisation and ratification powers are exercised sequentially, with the College’s adoption being required prior to that of the Council (and the European Council and European Parliament where relevant), the negotiations within the three or four sets of principals generally take place in parallel. The EU negotiators engage continuously with all of the principals, and as a result, they are conceptualised here as three or four distinct principals – albeit with different contractual relationship with the negotiators – operating at the domestic level of a *two*-level game.

This conceptualisation of the DG-based negotiators as agents, and the College of Commissioners, the Council, and the European Parliament as multiple principals, reflects the perception of those involved in EU international negotiations. As expressed by a Commission official engaged in negotiating the recently concluded development-based agreement between the EU and the Organisation of African, Caribbean and Pacific States: ‘you need to get all of the Commission, the member states, and Parliament on board before the negotiations with the ACPs even start’ (23/9/2021).

Internationally, the EU negotiators engage with their negotiating partners with the aim of reaching an agreement that will fall within their respective win-sets. The negotiators adopt a number of two-level game-based strategies vis-à-vis their negotiating partners, including issue-linkages, collusion, hands-tied strategies, transparency provision, agenda-setting, timing strategies, and the strategic use of principal involvement at Level One, to expand either their own or the negotiating partner’s win-set until there is an overlap between the two. Although most of the international engagement takes place through the interactions between the EU negotiators and their international negotiating partners, the principals may also act strategically and engage directly with actors on the other side of the negotiating table through cross-table action. Cross-table action undertaken by the principals follow either a supportive or competitive logic. In the case of the former, the principals accept the lead by the EU negotiators, and coordinate their actions with them before engaging with actors on the other side of the negotiating table. In contrast, when following a competitive logic, the principals act independently and engage with actors within the EU’s negotiating partners to push the negotiations in another direction than that desired by the EU negotiators.

Finally, the context within which the international negotiations take place also matters. First, in terms of the power relationship, the EU is most often the economically stronger party, with the asymmetry leaning heavily in its favour. However, weaker parties can compensate for their disadvantaged position in this asymmetrical relationship by joining forces with other weaker parties to form coalitions and pool resources, by forming coalitions with likeminded domestic constituents within the EU, such as the European Parliament, or by framing the narrative around the negotiations in a way that gives them moral power over the EU by using norm-based arguments. Second, the nature of the domestic two-level game played by the EU’s negotiating partners may also impact on the international negotiations. While the EU negotiators generally have a difficult domestic game due to the institutional complexities of the EU, other parties may also have complex games to play. This, in turn, will affect their behaviour in the negotiations with the EU and the overall dynamics of the international negotiations. Finally, the negotiations between the EU and its negotiating partners may be affected by global developments, external events, or by negotiations conducted with other parties.

The above framework, combining two-level game and principal-agent analysis with a specific focus on the EU negotiators, provides the structure for the four case studies of EU international negotiations in the policy areas of development, trade, enlargement, and withdrawal. These fields are heavily based on bilateral negotiations between the EU and external parties, and the analyses provide insights into the nature and operation of the EU as an international negotiator.

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**Development Negotiations**

**Abstract**

This chapter provides a background overview of the development-based partnership agreements that the EU has negotiated with its former colonies in Africa, the Caribbean, and the Pacific from the 1960s until today. It demonstrates how the EU negotiating agent, which is based within the DG responsible for development in the European Commission, is constrained by three sets of principals during its negotiations with the African, Caribbean and Pacific countries – the College of Commissioners, the Council, and the European Parliament. Through a two-level game-based case study of the recently concluded EU-OACPS Partnership Agreement, it explains how the negotiating agent – the Post-Cotonou Task Force – navigated the two-level game. Together with its negotiating partner, it reached an agreement that generally satisfied the principals, while also reflecting its own preferences. The negotiations were characterised by high levels of collusion between the two negotiating teams, with both of them facing difficult negotiations domestically.

**Introduction**

Development cooperation is an important external policy for the EU, and together, the EU and its member states constitute the largest aid provider in the world. International negotiations have played a central role in EU development cooperation, which to a large extent has been based on negotiated inter-regional agreements since the 1960s (Arts 2003; Carbone 2021; Holland 2002, Lister 1997; Smith 2004; Zartman 1993). Keen to maintain the historical and imperial links with their colonies, the founding members of the EEC agreed to include a special section on the association of Overseas Countries and Territories (OCTs) in the Treaty of Rome of 1957. According to Article 131 of the Treaty, OCTs which had special relations with the colonial powers of the EEC should be brought into close association with the Community. The Treaty provided for a free trade area between the six European countries and each of the OCTs, as well as the establishment of a Development Fund. The Fund consisted of annual contributions from the member states aimed at supporting investment and development in the OCTs.

However, these initial provisions were the result of *internal* negotiations between the European countries, outside the control of the OCTs. The close association of the OCTs was mainly pushed by France as it feared the disintegration of the French Union, which had replaced the French colonial empire system in 1946. France wanted to maintain its influence in Africa, and saw an opportunity in bringing the OCTs closer to the European integration project. It suggested that trade between the EEC and the OCTs – most of them French – would be liberalised by the gradual removal of tariffs and quotas. In exchange, all six member states would contribute to the funding of the economic and social development of the OCTs. However, the negotiations were not friction free. The French proposal was supported by Belgium and Italy, but opposed by West Germany and the Netherlands, which were sceptical about providing aid to countries politically linked to France, Belgium, and Italy (Lima Sakr 2021). West Germany and the Netherlands wanted to see a wider network of development cooperation focused on the poorest countries in the world (Grilli 1993). Yet, in the end the six countries did reach an agreement on an Implementation Convention, which outlined the details of the association and the funding mechanism. To placate the concerns of West Germany and the Netherlands, it was agreed that the Convention would only last for five years after the entry into force of the Treaty of Rome in 1958, thus giving the member states an opportunity to evaluate the results and review the arrangements. Before the expiry of the Convention, the Council should ‘determine the provisions to be made for a further period’ (Article 136).

Shortly after the signing of the Treaty of Rome, the African OCTs started gaining independence as the decolonising process advanced across the continent. Consequently, it was clear that new arrangements were needed to regulate the relationship between the EEC and the newly independent African countries. The latter rejected the previously established association, which was seen to reproduce colonial preferences (Lima Sakr 2021), and they expressed the need for a new cooperative arrangement with the EEC that recognised their status as independent countries. At a Euro-African conference in Strasbourg in June of 1961, 18 African countries asked that an association agreement was negotiated between them and the EEC. Faced with the new political landscape of decolonialisation, and with the expiry of the existing Convention approaching, the EEC agreed to this. Official negotiations between the six EEC member states on one side, and the 18 African countries on the other, started later that year. Following two years of negotiations, the Yaoundé I Convention was signed in Cameroon’s capital in July of 1963.

This was the first of several agreements between these two parties - former European empires and their former colonies. Constructed around a North-South dimension, the agreements have become the cornerstone of EU development policy and served as a ‘model’ for development cooperation (Smith 2004: 60). Over the last 60 years, they have been regularly re-negotiated, and expanded in scope and membership.

This chapter provides a background overview of these agreements that have been negotiated and concluded between the EU and its former colonies in Africa, the Caribbean, and the Pacific from the 1960s until 2000. It then outlines how the EU organises itself during these negotiations. Using the principal-agent framework, it explains who the EU negotiators are and where they sit within the institutional structures, focusing on its relationship with the College of Commissioners, the Council, and the European Parliament. Finally, it provides a two-level game-based case study of the negotiations between the EU and the OACPS[[1]](#footnote-1), which lead to the EU-OACPS Partnership Agreement, concluded in 2021.

**Background**

**From Yaoundé to Lomé**

In 1961, the Commission submitted a proposal for a new EEC-Africa Association Convention to the Council, the European Parliament, and the governments of the 18 African countries. France and Belgium, which were strongly in favour or renewing this relationship, supported the proposal. West Germany and the Netherlands, which thought the association through the Implementation Convention was a temporary arrangement, were less enthusiastic. However, when the African countries expressed their support for a continuation of their joint association with the EEC as a way for the colonial powers to take their responsibility vis-à-vis the economically weaker African countries, all EEC member states agreed to negotiate a new Convention (Claeys 2004: 122). The proposal formed the basis for the negotiations that the Commission then conducted on behalf of the six EEC member states, starting in 1962. The negotiations led to the signing of the Yaoundé Convention in 1963 by the EEC and the 18 African countries. The main aim was to maintain the links between the parties, but on terms that were compatible with the independent status of the African countries. Through the new Convention, the parties would gradually move towards a free trade area, where the EEC granted African products free access into its market, while the African countries were allowed to raise *some* tariffs or impose restrictions for EEC goods to protect certain industries. Yet, the relationship was mainly based on *reciprocal* trade liberalisation.

In addition to the trade pillar, the Convention included a development aid pillar, through which the EEC committed to provide grants and loans to the African countries to promote economic and social development. This was done through the European Development Fund (EDF) and the European Investment Bank (EIB) (Frey-Wouters 1980: 14). The parties also agreed to establish joint institutional structures to administer the Association, including an Association Council, a Parliamentary Conference, and an Arbitration Court, in which the two parties were represented on an equal footing. The Yaoundé Convention thus institutionalised the association regime between the EEC and the African countries (Clayes 2004: 122), and it entered into force in 1964 for a period of five years.

In the lead-up to 1969, the parties initiated talks to renew the Yaoundé Convention. Again, West Germany and the Netherlands expressed reservations about continued association. They saw the Convention as a way for the EEC to pay for France’s special relations with its former colonies. In addition, French companies had obtained most of the EDF-related work in the African countries (Delorme 1972: 209). West Germany and the Netherlands advocated for a more ‘globalist’ approach where aid would be provided to all developing countries, regardless of colonial attachments to the EEC. Yet, France, Belgium, Italy, and the Commission were all in favour of the existing regional approach, where Africa was prioritised. And again, given that the African countries also favoured a renewal of the relationship, mainly to maintain the aid provisions from the EEC, the Convention was eventually renewed. Yaoundé II entered into force in 1972 until 1975. The Yaoundé Conventions are often regarded as ‘French creations’ (Dickson 2004: 44), and France clearly exerted significant influence during these negotiations, and undoubtedly benefitted from the arrangement. However, France’s influence was strengthened not only by the support of the Commission’s DG for Development (DG DEVCO)[[2]](#footnote-2), which at the time was very ‘French’ in terms of culture and interests (Hewitt and Whiteman 2004: 138), but also by the African countries. The latter argued that the EEC had a moral obligation to provide aid and support their economic development. This way they were able to push for an increase in the level of aid, and influence parts of the final outcome (Odell 2010). Overall, though, the Yaoundé Conventions were seen by many as tools to ensure the EEC’s continued economic domination in Africa even after decolonialisation (Asante 1981: 662).

**From Lomé to Cotonou**

With the UK’s accession to the EEC in 1973, the number of countries with colonial links to the EEC increased significantly. As a result, the successor agreement to the Yaoundé Conventions – the Lomé Convention – was reached between nine EEC countries (the original six and the UK, Denmark and Ireland) and 46 African, Caribbean and Pacific countries, which included anglophone Commonwealth nations alongside the 18 francophone countries that were part of the Yaoundé Convention. The Lomé Convention, which was signed in the capital of Togo in 1975 after 18 months of negotiations, was hailed as a new model of North-South cooperation and as a partnership between equals. The Commission’s DG DEVCO, which led the negotiations on the EEC side, was surprised that the African, Caribbean, and Pacific countries negotiated as a block, rather than as three regional groupings. However, by negotiating as one they increased their bargaining power vis-à-vis the EEC (Brown 2002; Flint 2009; Ravenhill 1985). Following their collective success, these countries signed the Georgetown Agreement later in 1975, which formally established the ‘African, Caribbean, and Pacific (ACP) Group’ of all ACP states that were, or were to become, signatories to the Lomé Convention.

The Lomé Convention provided for non-reciprocal trade liberalisation, where 99% of ACP products had duty-free access to the EEC market in unlimited quantities, while EEC goods destined for the ACP markets could be made subject to quotas and taxes. The Convention also included a compensation scheme for ACP exporters of primary products in case of short-term declines in their earnings (Mahler 1994). And it boosted the levels of aid through the EDF and the EIB, without making it conditional on the adoption of specific development strategies (Brown 2004: 18). In terms of institutional structures, the Lomé Convention established an EEC-ACP Council of Ministers, Committee of Ambassadors, Consultative Assembly and Committee on Industrial Cooperation.

Over the next 25 years, the Lomé Convention was renegotiated three times, with Lomé IV expiring in 2000. The membership on both sides increased significantly during this time. By 2000 the EU had enlarged to 15 member states, and the membership of the ACP group had expanded to over 70 countries. However, the four Lomé Conventions did not deliver as hoped, and they were generally seen as disappointments due to the relative lack of economic development and trade diversification in the ACPs (Mahler 1994). As the expiry of Lomé IV approached, there were calls for a significant overhaul of the EU-ACP relationship.

In 1996, the Commission presented a Green Paper which reflected a clear preference for replacing the non-reciprocal trade arrangements of Lomé with free trade agreements between the EU and different regional ACP groupings, to help the latter integrate into the world economy. It also included references to greater conditionality, in line with the prevailing thinking around global political economy and development at the time (Montoute 2017). The paper provided the basis for the post-Lomé negotiations between the EU and ACPs from 1998 to 2000. Although the relative power of the colonial powers within the EU had decreased following EU enlargement, and an increasing number of member states questioned the rationale for maintaining the EU-ACP relationship, the member states did in the end agree to the Commission’s proposal for a continued – albeit reformed – EU-ACP relationship. However, the ACP countries were no longer privileged to the same extent as they had been in the past, as regions geographically closer to the EU had gained in importance (Smith 2004).

The new agreement – the Cotonou Agreement – which was signed in the capital of Benin in 2000 between 15 EU member states and 78 ACP countries, was set to guide the EU-ACP relationship for a period of 20 years. It maintained the language of equal partnership, as well as the joint EU-ACP institutions, and it was based on the three pillars of political dialogue, development cooperation, and economic cooperation and trade. It was greatly influenced by the ‘development through trade liberalisation’ philosophy which dominated in the Commission at the time. The ACPs had expressed strong reservations about the trade aspect, and the move away from non-reciprocal arrangements to regional free trade agreements. Many of them were dependent on import duties, and felt that some of their industries were not yet ready to compete in the global market. There were also concerns that the EU might want to break up the ACP group through such regionalisation (Montoute 2017). And they opposed the increasing aid conditionality. However, the Commission, supported by most member states, argued in favour of regional trade liberalisation as a way of normalising EU-ACP relations, while maintaining a strong EU-ACP political and development-based partnership (Forwood 2001). The Commission also referred to the legal necessity of updating the EU-ACP trading relationship, since the Lomé Convention was found to be in violation of the WTO rules on reciprocity, and its waiver for this purpose would expire in the year 2000. In the end, development cooperation and aid provision were of such importance to the ACPs that they agreed to initiate negotiations of regional Economic Partnership Agreements (EPAs) as part of the Cotonou Agreement (Mackie 2021).

The EPA negotiations, which started in 2002 between the EU and regional ACP groupings, proved difficult and controversial (Carbone 2013; Elgström and Pilegaard 2008; Hurt et al. 2012; Murray-Evans 2018; Oloruntoba 2016; Stevens 2006). Through the regional division, the structural relationship between the EU and the individual regional groups became highly asymmetrical, with the power leaning heavily in the EU’s favour (Jørgensen 2009). The EPAs were seen to be imposed by the EU and challenge its developmental-friendly image, and the negotiations took much longer than initially expected (Orbie 2021). Unlike the Cotonou Agreement, which was negotiated by DG DEVCO, the EPA negotiations were led by DG TRADE on the EU side. This move from DG DEVCO to DG TRADE meant that the ACP groupings were faced with a commercially oriented negotiator, which adopted a harder and more inflexible approach (Carbone 2013; Jørgensen 2009). While the functional logic of the move was clear, it was regretted by both the ACPs and DG DEVCO (Elgström and Frennhoff Larsén 2010). The ACPs had hoped for a repeat of the EU-South Africa trade negotiations, where the EU negotiating Task Force was based within DG DEVCO, and as such, had a development-focused mindset and showed great understanding for South Africa’s interests and concerns (Frennhoff Larsén 2007). And for DG DEVCO, the move meant that it lost responsibility for a significant part of the EU-ACP relationship. As a result, when discussions about the EU-ACP relationship post-Cotonou began, the focus was mainly on development and political issues. Although the new EU-OACPS Partnership Agreement, signed in 2021, provides the overall framework within which the EPAs are concluded, trade relations between the EU and the ACPs are now regulated by the seven open-ended EPAs (Boidin 2020). Yet, the contentious EPA negotiations undoubtedly affected the EU-ACP relationship as the two parties prepared to enter into negotiations on their future Partnership Agreement (Carbone 2021). The EPA negotiations clearly demonstrate how the composition and institutional location of the negotiators matter.

**The EU Institutional Set-Up: A Principal-Agent Relationship**

**Agent Power**

The agreements between the EU and the ACPs have been concluded as Association Agreements based on Article 217 of the Treaty on the Functioning of the EU (TFEU). In terms of negotiating process, Association Agreements constitute a special case under Article 218 TFEU. According to Article 218 TFEU, the Council authorises the Commission to open and conduct negotiations on behalf of the EU. In other words, the member state principals in the Council delegate power to the Commission to negotiate on their behalf. Each negotiating mandate then further specifies who the negotiator is. *Within* the Commission, DG DEVCO has been delegated the lead for the negotiations with the ACP countries[[3]](#footnote-3). It has always been the natural host for the negotiating agent. Even when the DGs responsible for external relations were divided along geographical lines, DG DEVCO was responsible for relations with the ACP countries. And following the restructuring of the DGs according to functional responsibilities, which made DG DEVCO in charge of all development cooperation and aid provision, EU-ACP development matters remained within DG DEVCO.

The actual negotiations are carried out by a specific Task Force for each negotiation, consisting of DG DEVCO officials. Initially, DG DEVCO was seen as being closely aligned with the interests of France (Hewitt and Whiteman 2004: 138). In terms of staffing, a significant number of French civil servants worked within the DG, and from 1958 to 1985 all Development Commissioners were French (Claeys 2004: 115). While it was clear that Commission civil servants should not pursue specific national interest, it was seen as logical to have the French occupy these positions, given their experience and presence in Africa. The African francophone countries also preferred the French as their interlocutor (Lemaignen 1964: 57). Although the DG became less distinctly French over time, and underwent several rounds of restructuring, it has maintained a specific partiality for the ACPs. It has also developed a strong normative ‘esprit de corps’ (Keijzer and Schulting 2019: 660), or ‘mission’ (Carbone 2007: 3), and it brings together officials with ‘altruistic’ interests (Aggarwal and Fogarty 2004: 227), whose natural constituents include EU-based development non-governmental organisations (NGOs) and developing countries. DG DEVCO is the biggest DG, and it is seen to have a significant amount of autonomy within the Commission (Interview, Commission official, 23/9/2021).

The DG DEVCO-based Task Force thus constitutes the negotiating agent, and it has an interest in maintaining the EU-ACP relationship and providing extensive support to the ACPs – albeit in line with the norms and values of the EU – and it is often siding with the ACPs. Its preferences are thus in line with the sectorial brief of the DG. The Task Force has strong agenda-setting powers, as Article 218 TFEU provides it with the right of proposal. It is responsible for drafting the mandate proposal, as well as the EU’s text proposals during the course of the negotiations. The officials appointed to the Task Force generally also have significant levels of technical expertise and experience, and they can draw on the DG’s long institutional memory of negotiations with the ACPs. DG DEVCO has been in charge of negotiating these agreements ever since the 1960s. In addition, through their central position during the negotiations – both at the domestic and the international levels – the Task Force members have an in-depth understanding of the interests and preferences involved, both among the ACPs and within the EU institutions, which provides them with an informational advantage vis-à-vis the principals. Yet, the Task Force may be prevented from pursuing its own interests as a result of the control exercised by its principals – the College of Commissioners, the Council, and the European Parliament.

**Principal Control**

*The College of Commissioners*

It is the President of the European Commission who decides and divides the portfolios between the Commissioners. The Commissioner with the Development portfolio has always had responsibility for the relationship with the ACP countries (or with the African countries prior to the Lomé Convention). While the remit has expanded over time, the ACPs have remained a key part of the portfolio. As a way of emphasising the partnership aspect, and make it sound less neo-colonial (Delputte and Orbie 2020), Commission President Ursula von der Leyen changed the title of the post from Commissioner for International Cooperation and Development to Commissioner for International Partnership[[4]](#footnote-4) in 2019. The Task Force is under the direct political supervision of the Commissioner for International Partnerships (or its predecessors), and there are regular contacts between the two parties to ensure the Commissioner is kept up to date on progress in the negotiations (Interview, Commission official, 1/9/2021). These meetings allow the Commissioner to monitor the work of the Task Force, and to provide input on its negotiations both with the ACPs at Level One, and with the Council and the European Parliament at Level Two.

For its proposals, the Task Force needs to gain the official approval from the College of Commissioners as a whole. This includes the mandate proposal, which provides the authorisation and guidelines for the upcoming negotiations, as well as the final negotiated text, but also other Commission-labelled proposals and papers relating to the negotiations. In these College-wide discussions, where decisions are taken by consensus, the Commissioner for International Partnerships normally defends the proposal by the Task Force since they most often share the same preferences. The Commissioner tends to follow the steer of the Task Force, as the latter has the more detailed knowledge of the proposal.

However, since most of the negotiations are carried out at the level of officials, most of the intra-Commission negotiations take place between the Task Force and the other DGs through inter-service consultations. Given that the areas of cooperation between the EU and the ACPs have increased over time, the number of DGs and Commissioners with an interest in the negotiations has grown. This in turn can make the intra-Commission negotiations quite difficult (Carbone 2022, 2007; Interview, Commission official, 3/9/2021).

The preference divergence in the Commission corresponds to the functional responsibilities of the DGs and portfolios of the Commissioners (Carbone 2007). For example, there have been divides between the DG DEVCO based Task Force and DG TRADE (and the Trade Commissioner), with the latter prioritising trade liberalisation over development concerns. DG AGRI (and the Commissioner for Agriculture) has at times expressed concerns about how favourable market access conditions for the ACPs impact on EU farmers. And as the agenda has expanded in scope to include more political matters, other DGs, including DG HOME, DG CLIMA and DG JUST (and the Commissioners for Home Affairs, Climate Change, Justice, and Equality) have become more engaged and pushed for high levels of ambition in their respective areas. In addition, the EEAS has become more involved since its creation in 2011. Through its delegations, it has broad connections with the ACPs, and it has an overall EU foreign policy perspective on the relationship. As a result of these divisions, there are significant inter-service consultations and negotiations in order to reach a united position within the Commission (Whiteman 2017; Interviews, Commission officials, 1/9/2021 and 3/9/2021).

The appointed Task Force in DG DEVCO thus conducts the negotiations on behalf of the Commission, but in close consultation with the College of Commissioners. The latter exercise principal control through its authorisation, monitoring, and ratification powers.

*The Council of the EU*

The member states in the Council are linked with the negotiators in a clear principal-agent relationship. According to Article 218 TFEU, the Council adopts the mandate, based on the proposal from the Task Force, and thus authorises the opening of the negotiations. The mandate sets out the guidelines for the negotiations. The Council also formally appoints the EU negotiators, who shall conduct the negotiations in consultation with a special committee in the Council. The main committee where member state officials discuss EU-ACP matters is the Council’s ACP Working Party, which was created in 1963 and is one of the oldest bodies in the Council (Kaijzer and Schulting 2019: 663). The ACP Working Party generally meets once or twice per week, and the Task Force reports to it on a regular basis. This allows the member states to monitor progress in the negotiations, as well as setting out their preferences and red lines (Interview, member state representative, 2/9/2022). At ambassador level, the lead of the Task Force, often referred to as Chief Negotiator, reports to the Committee of the Permanent Representatives of the Governments of the Member States (COREPER). Both the ACP Working Party and COREPER are chaired by the member state holding the six-monthly rotating Council Presidency. At Ministerial level, the Commissioner for International Partnerships reports to, and engages with, the Foreign Affairs Council (Development), which also ratifies the final agreement reached with the ACPs. Up until 2002, there was a separate Development Council, but this was incorporated first in the General Affairs and External Relations Council, and later in the Foreign Affairs Council (Development). Since 2009 and the entry into force of the Lisbon Treaty, the Foreign Affairs Council (Development) is chaired by the High Representative of the Union for Foreign Affairs and Security Policy (from here on, the ‘High Representative’). This has, however, only affected the most recent EU-ACP negotiations, since the other agreements were negotiated before 2009. The anomaly of having the Working Party chaired by the Council Presidency, rather than the EEAS, which chairs all other preparatory committees with responsibilities falling under the High Representative, such as the Political and Security Committee and the geographical working parties, was the result of member states pushing to retain control of the EU-ACP relationship. They were concerned that they would lose influence vis-à-vis the EU negotiators, due to the links between the Commission and the EEAS (Kaijzer and Schulting 2019).

As for preferences in the Council, there have been significant divergencies between the member states, and the complexity of the negotiations has increased over time as the EU has enlarged. However, one can detect a few clear coalitions. First, there is the group of member states that have always wanted to maintain close links with the former colonies through the EU-ACP relationship, including France, Belgium, Italy, Portugal, and the UK. This contrasts with those, including Germany and the Netherlands, which have adopted a more globalist approach (Smith 2004). Second, there is the so-called group of likeminded, including Denmark, Finland, Sweden, the Netherlands and the UK, which have been seen as drivers of a generous and progressive development policy (Elgström 2017). These countries expressed strong reservations about the controversial negotiations of the EPAs (Forwood 2001). And third, more recently a number of Eastern European member states, led by Poland and Hungary, want to see linkages between development and more political issues, in particular migration (Cibian 2020). Given the wide range of issues under discussion in the EU-ACP negotiations, member states also differ in terms of the importance they attach to the different issues. Not all issues have the same weight for the different member states (Interview, member state representative, 2/9/2022).

At the end of the negotiations between the EU and the ACPs, the Council authorises the signing of the negotiated agreement. Once the European Parliament has given its consent, the Council then ratifies the final agreement by unanimity (Article 218 TFEU). As a rule, the agreements are concluded as mixed agreements, meaning that in addition to having veto power in the Council, member states are also parties to the agreements in their own right. In this case, the agreements need to be ratified by national parliaments as well (Van Elsuwege and Chamon 2019). The decision about whether an agreement is of mixed or exclusive competence is taken after the negotiations have been concluded, and consequently this does not impact significantly on the actual negotiations.

The member states in the Council thus constitute a collective, albeit rather divided, principal, which controls the negotiators through its formal appointment, authorisation, monitoring, and ratification powers.

*The European Parliament*

The European Parliament provides principal control over the negotiating Task Force through its consent to Association Agreements (Articles 217 and 218 TFEU). The right to provide consent (previously assent) was obtained with the Single European Act in 1986. However, the Parliament, through its Committee on Development, has been involved in the EU-ACP (and previously EU-Africa) relationship ever since the 1960s, issuing reports, resolutions, and recommendations to the European Commission. And since its legal powers increased, its engagement has intensified even further (Whiteman 2017). This has led the Task Force to attend parliamentary meetings more frequently to report back on on-going negotiations. While there are different preferences within the Parliament, it has generally been a strong advocate for generous aid policies, and it has been a close ally of the ACPs. Its links with the ACPs have been strengthened and developed through the ACP-EU Joint Parliamentary Assembly (and its predecessor, the Parliamentary Conference between the EEC and the Associated African States and Madagascar). This has proved a useful forum for deliberation and developing understanding between the two parties (Delputte 2012). As a result, the Parliament often sides with the ACPs – sometimes even more so than the Task Force.

While not involved in the delegation or appointment of the EU negotiator, the Parliament thus provides principal control through its monitoring, resolutions, and ratification powers.

**Case study – Negotiating the Partnership Agreement with the OACPS**

**Preparation Phase**

The decision to negotiate a new EU-ACP agreement was already embedded in the Cotonou Partnership Agreement. The Agreement stated that 18 months before its expiry, the two parties should initiate negotiations on how their future cooperation should be governed (Article 95.4 CPA). Both parties consequently knew that these new negotiations had to begin by September 2018 at the latest. The preparatory phase started during the lead-up to the third review of the Cotonou Agreement in 2015. The review was mainly seen as an opportunity to start reflecting on the nature of the EU-ACP relationship beyond Cotonou (Carbone 2013). Given the significant changes that had taken place since the conclusion of the Cotonou Agreement in 2000, both globally and internally within the EU and the ACPs, it was not taken for granted that the partnership should continue in the same format. Despite the close relationship between the parties, and their interest in starting off ‘on the right footing’ (Pape 2013: 739), the preparations for the negotiations were conducted very much as two separate processes – one on the EU side and one on the ACP side – rather than as a joint undertaking (Interview Commission official, 23/9/2021).

In terms of appointing the EU negotiator, the President of the European Commission, Jean-Claude Juncker, made it clear that overall responsibility for the negotiations should lie with the Commissioner for International Cooperation and Development, Neven Mimica, supported by DG DEVCO. The responsibilities given to Commissioner Mimica by President Juncker upon taking office in 2014 included ‘preparing and launching negotiations for a revised Cotonou agreement’ (Carbone 2021: 246). In 2015, a Post-Cotonou Task Force (from here on, the ‘Task Force’) was set up in DG DEVCO with responsibility to prepare and lead on the upcoming negotiations with the ACPs on behalf of the EU. It brought together around 15 officials with extensive experience of the EU-ACP relationship. While most of the officials were from DG DEVCO, some of them came from the EEAS, which had not been involved in previous EU-ACP negotiations given that it was only established in 2011. However, many of the Task Force members who came from the EEAS had worked in EU delegations in ACP countries, and they had a thorough understanding of the region and the issues at stake. The process was led by two senior DG DEVCO officials, who were seen to have a ‘smooth and conciliatory negotiating style’ (Interview, EEAS official, 1/9/2021). The Task Force was overseen by DG DEVCO Director-General Stefano Manervisi and EEAS Secretary-General Helga Schmid. The former was appointed as the Chief Negotiator, so while the EEAS was involved in the negotiations, the lead was clearly with DG DEVCO.

*The EU’s Domestic Negotiations at Level Two – Identifying the Win-Set*

To prepare for the negotiations, DG DEVCO organised a series of round table discussions to explore the different interests and priorities among EU stake holders, including Commission officials, MEPs, EU ambassadors, and representatives from the member states, academia, think-tanks, the private sector, and civil society organisations. On occasion, ACP representatives were invited as well, but the agenda and process were very much driven by the European side (Interview, Commission official, 23/9/2021). There was indeed criticism expressed by the ACPs that these discussions were conducted in the ‘Brussels Bubble’ without proper consultation with the other side (Adebajo 2014).

In 2015, the newly set up Task Force held a public consultation on the performance of the Cotonou Agreement and the future of EU-ACP relations. This consultation fed into an evaluation of the Cotonou Agreement and an impact assessment, which formed the basis for a Joint Communication from the Commission and the EEAS to the European Council and the European Parliament on a renewed partnership with the ACPs (European Commission and High Representative 2016). One of the main issues under discussion during this consultation was the nature of the future relationship itself. This was an open reflection in which stakeholders considered the value of continuing with a legally binding agreement between the EU and the ACPs. The Cotonou Agreement had been seen as the last step before the full normalisation of relations between the EU and its former colonies (Carbone 2019), and its expiry provided an opportunity to move beyond this construct, which for many reflected an ‘obsolete relic’ of the EU’s colonial past (Nickel 2012: 6).

On one side, Germany, supported by the Nordics and the Netherlands, as well as by leading think tanks, such as the European Centre for Development Policy Management, stressed that significant global change had taken place since the signing of the Cotonou Agreement, and that an EU-ACP partnership based on a colonial history was no longer relevant when responding to today’s challenges (Interview, Commission official, 3/9/2021). According to this group, the increased regionalisation across the world challenged the geographical rationale for continued EU-ACP cooperation. This regionalisation was reflected in the EU’s separate trade agreements with the seven regions of the ACP (the Caribbean, the Pacific, and five African regions). Trade relations would thus continue to operate mainly on a regional basis, regardless of the future EU-ACP relationship (Bossuyt 2017). And given the growing heterogeneity among the ACPs, with widely varying levels of economic development, the logic of grouping them together in terms of development cooperation was questioned (ibid.). In addition, with the geopolitical importance of Africa, and the increasing role played by the African Union, it was argued that the EU should prioritise its relationship with the African continent. The EU-ACP framework was seen to complicate, and even compete with, other Africa-focused initiatives, such as the Joint Africa-Europe Strategy from 2007 (Bossuyt et al 2016). This group also highlighted the limited influence exerted on the global stage by the EU-ACP partnership, despite its size and geographical coverage. Together the EU and the ACPs have over 1.5 billion people, and they represent more than half of the United Nations member states. Furthermore, the EU had expanded significantly since the signing of the Cotonou Agreement, with the addition of 13 new member states. Many of these had no history of relations with the ACPs, nor any ‘colonial baggage’ (Cibian 2020), making them less inclined to support the continuation of this framework. Instead, they prioritised the Eastern dimension of the EU’s external relations (ibid.).

On the other side, France, supported by Belgium, Portugal, Spain, and the European Parliament, advocated in favour of a continued EU-ACP partnership, albeit in a modernised format (Interview, Commission official, 3/9/2021). They saw the partnership as a way of maintaining stability, and further developing a strong relationship in times of rapid global change when multilateralism is often challenged (Boidin 2020: 2). While the member states of this group clearly had strong colonial ties to the ACPs, they argued that the partnership was now based on mutual interests and a longstanding friendship. They stressed the need for the EU to have close allies on the international stage, and they referred to the effective cooperation both in the WTO and in the multilateral climate change negotiations leading to the Paris Agreement in 2015. In the latter the EU-ACP alliance had worked effectively together to achieve substantial commitments to reduce carbon dioxide emissions (Bossuyt 2017).

The Parliament, which played an active role already during the preparation phase, stressed its commitment to a continued EU-ACP relationship based on a solid institutional framework. It set up a special monitoring group within its Committee on Development with the purpose of following the upcoming negotiations and serving as a point of contact for the Task Force. One of the key issues for the Parliament was the role of the EU-ACP Joint Parliamentary Assembly (JPA) in facilitating dialogue and promoting mutual understanding between the EU and the ACP states (ACP-EU Joint Parliamentary Assembly 2015). The JPA – a consultative body composed of parliamentarians from the EU and the ACP which meet twice-yearly in plenary sessions, alternately in Brussels and in one of the ACP states – had been criticised by EU member states for being an expensive endeavour with limited impact (Interview, Commission official, 3/9/2021). However, the Parliament saw it as the most relevant forum for discussing controversial subjects in a frank and open way, and it stressed the importance of maintaining the structure and further strengthening its oversight role in any future agreement (European Parliament 2015). This commitment to a strong joint parliamentary dimension was repeated throughout the preparation phase. In a 2016 resolution, it was emphasised how the Assembly will ‘provide for an open democratic and comprehensive parliamentary dialogue, including on difficult and sensitive subjects … and make an important contribution to a new cooperation partnership on an equal footing’ (European Parliament 2016).

This divide between those wanting to move beyond the EU-ACP relationship and those wanting to maintain it was reflected in the impact assessment which informed the Joint Communication prepared by the Task Force and the EEAS. It identified the two options of either moving forward without an agreement, or initiating negotiations on a renewed partnership, and it outlined a clear preference for the latter, albeit with a strong regional dimension (European Commission and High Representative 2016). This preference for a continued EU-ACP relationship had been strongly rooted in DG DEVCO ever since the reflections on a post-Cotonou scenario started. This was not surprising given that the EU-ACP partnership has always been the ‘bread and butter’ of DG DEVCO (Interview, Commission official, 23/9/2021). Already in 2014, the then Development Commissioner, Neven Mimica, highlighted the success of the Cotonou Agreement and expressed his commitment to establishing a new EU-ACP agreement post Cotonou (Mimica 2014). He thus publicly expressed the general preference existing within DG DEVCO.

To address the concerns of those sceptical of the progress made by the Cotonou Agreement and its continuation, the Joint Communication stressed that the changed global context, and the lessons learned from the Cotonou Agreement, ruled out a simple rollover of the previous Agreement. It suggested instead that an overall EU-ACP umbrella agreement should be maintained, but a greater shift of decision-making and implementation should be moved to the regional level, with three separate protocols for Africa, the Caribbean, and the Pacific (European Commission and High Representative 2016). It also underlined that this umbrella option would allow for the involvement of interested parties beyond the ACPs, thus highlighting that this would not be at the cost of a pan-African dimension. The Task Force, which was in charge of developing the Joint Communication, saw no opposition between the two. The EU-ACP Agreement would be a legal agreement, while the EU’s relationship with the African Union is political. Any political guidance from the African Union could, in its view, be integrated into the EU-ACP Agreement (Interview, Commission official, 3/9/2021).

The Task Force was thus able to present a way forward in line with its own preferences and build on the strengths of its long cooperation with the ACPs. What helped the Task Force tip the balance in favour of its own preferences was its collusion with the future negotiating partners, the ACPs. Although there were limited formal consultations between the two parties during this phase, the overall ACP preference for a continued relationship was well known within DG DEVCO. And once the option of not renewing the EU-ACP partnership was raised within EU circles, the ACPs became wary. They started approaching their contacts within DG DEVCO and the Task Force, emphasising that the EU could not unilaterally decide to dismantle this group by dividing the EU-ACP partnership into three completely separate entities (Interview, Commission official, 23/9/2021). While recognising that a certain level of regionalisation was necessary, they insisted on a strong overarching agreement that should prevail over the regional partnerships (Boidin 2020). This collusion between the Task Force and the ACP strengthened the power of the Task Force vis-à-vis the more reluctant member states in the Council.

During this phase, there were also discussions with affected DGs, and an inter-service steering group was set up to monitor the upcoming negotiations and to provide advice and sectorial expertise to the Task Force. Given the envisaged political scope of the future agreement, a large number of DGs were involved. However, they mainly encouraged the Task Force to maintain high ambitions in areas such as climate change (DG CLIMA), gender equality, and Sexual and Reproduction Health and Rights (SRHR) (DG JUST), or to include stricter provisions for migration (DG HOME) (Interview, Commission official, 3/9/2021). Given each DG’s focus on their own sectorial responsibilities, the discussion about whether to continue or dissolve the EU-ACP partnership did not feature much in these inter-service discussions. In terms of the balance between an umbrella agreement and the regional components, DG TRADE pushed for a strong umbrella agreement with all ACP states as a way of providing the link between the EPAs and the political elements, such as promotion of democracy, human rights and the rule of law (Carbone 2021: 247). As for the EEAS, which worked alongside the Task Force on the Joint Communication, their main focus was on the EU’s strategic relationship with Africa, and they expressed some concerns about how to fit the EU-ACP partnership within the EU’s broader geopolitical dialogue (Interview, Commission official, 23/9/2021). As a result, they did not prioritise the upcoming EU-ACP negotiations, which they saw as a continuation of an existing relationship under the responsibility of DG DEVCO, and they did not invest significant time or resources during the preparatory process. There was for example no specific ACP unit in the EEAS (Montoute 2017: 26), and the team that was tasked with the upcoming negotiations was small and lacked the administrative capacity of DG DEVCO. Due to the historically strong relationship between DG DEVCO and the ACPs, the EEAS considered it appropriate that the lead remained with the Task Force in DG DEVCO (Interview, EEAS official, 1/9/2021). Some of these inter-service discussions were replicated at the level of the Commissioners, but overall, the EU-ACP negotiations did not feature that often at the College meetings during the preparation phase (Interview, Commission official, 1/9/2021)

Based on these extensive consultations, it was clear that the upcoming negotiations needed a detailed mandate. Normally, mandates set out the broad guidelines, leaving significant autonomy to the negotiating agents. The proposal prepared by the Task Force outlined the structure of the proposed agreement as consisting of ‘three regional compacts based on a common foundation’ with the centre of gravity on the regional compacts. It also stressed how it should depart from donor-recipient dynamics and focus more on common, as well as EU specific, interests, such as migration, peace and security and investment (European Commission 2017). The Task Force presented the draft mandate proposal to the College of Commissioners in December 2017. As it was the result of close inter-service consultations, the Commissioners adopted it quickly, before it was submitted to the Council and the European Parliament.

The Council negotiations, which mainly took place in the ACP Working Party, proved challenging. Although many of the member state preferences were already included in the mandate proposal following the extensive consultations, several member states wanted to alter or add additional issues to the mandate, thus further constraining the Task Force in the upcoming negotiations with the ACPs. In particular, Hungary and Poland successfully pushed for stronger provisions to control illegal migration through return and re-admission, while toning down the positive aspects of legal migration (Carbone 2021: 247). They argued that the EU tried to legitimise its pro-migration policy through the agreement with the ACPs (Keijzer and Schulting 2019: 668). This was one of the most difficult issues and it reached both COREPER and the Foreign Affairs Council (Development) before an agreement could be reached. In addition, the mandate proposal did not specify a time limit for the Agreement but stated that it could be terminated upon the request of one of the Parties (European Commission 2017). However, the member states, led by Germany and the Nordics, insisted on a 20-year duration, with the possibility of an extension (Carbone 2021: 247). Given the resistance to the continuation of the EU-ACP partnership expressed by these countries during the consultation process, this was a way for them to maintain the opportunity to ‘dismantle’ the partnership later on (Carbone 2019: 143).

From the perspective of the Task Force, which took part in all the Council discussions, it was a difficult phase due to the widely diverging interests among the member states. In the words of one of its members: ‘there was a lot of work with the member states to get them aligned – informal contacts, visits, phone calls, as there were big divisions’ (Interview, Commission official, 3/9/2021). While the member state holding the rotating Council Presidency was in charge of chairing the meetings of the ACP Working Party, the Task Force did much of the manoeuvring behind the scenes to get the member states to reach an agreement (ibid.). Of course, there was close consultation between the Task Force and the different member states holding the Presidency, and before every six-month term, the Presidency would set out their ambitions in terms of progressing the negotiations. However, as expressed by a member state representative, ‘the Council Presidency is heavily influenced by the issues that are on the table, the sensitivity of those issues, and there is only so much it can do to push the process forward’ (Interview, 2/9/2022). For example, Bulgaria, which held the Presidency in the Spring of 2018 when the mandate was discussed in the Council, had initially hoped for an agreement to be reached in May 2018. However, as a result of stalemate in COREPER, due to Hungarian resistance to the language on migration, the process was delayed until the very end of that Presidency (Carbone 2019). The compromise that was reached in the end was mainly brokered by the Task Force and the Cabinet of the Commissioner for International Cooperation and Development, ‘largely bypassing’ the Bulgarian Presidency (Keijzer and Schulting 2019: 669).

Following several months of Council negotiations, the mandate was finally adopted on 22 June 2018 (Council of the European Union 2018). Through its adoption, the Council formally authorised the Commission and the High Representative to jointly open the negotiations with the ACPs on behalf of the EU. However, as in past EU-ACP negotiations, the Commissioner for International Cooperation and Development was identified as Lead Negotiator. The Task Force in DG DEVCO thus maintained the lead for the actual negotiations, while being supervised by the Commissioner, who also represented the Task Force at Ministerial level. As a result, the EEAS came to play a supporting, rather than leading, role (Interview, EEAS official, 1/9/2021). This confirmed how the historic legacy of DG DEVCO loomed large, and how the limited involvement of the EEAS during the preparation phase led to a loss of influence in the subsequent process (Interview, Commission official, 23/9/2021).

Although the main thrust of the Task Force’s mandate proposal was reflected in the approved mandate, it was clear that the dynamics in the Council had changed significantly since the Cotonou negotiations and that the negotiators would be more constrained in the negotiations with the ACPs. This was evident with many of the new member states, including Hungary and Poland, which had limited interests in development in general, and in the ACPs in particular (Cibian 2020). They were concerned that the Task Force would make far-reaching commitments on their behalf, and as a result, they wanted to exercise significant control over the mandate. The institutional autonomy provided to the EU negotiators in previous negotiations was thus significantly reduced. Another change was the weakening of the coalition of so-called like-minded member states following Brexit. Although the UK was still formally a member during the EU-ACP negotiations, it played a limited role, and the weight of the coalition was reduced – a coalition that the EU negotiators could often rely on to pursue similar interests to their own (Interview, Commission official 23/9/2021).

As for the European Parliament, it did not have any formal powers relating to the adoption of the mandate. However, it took advantage of the praxis that has developed in trade negotiations, where it issues a resolution on the mandate proposal before the formal adoption of the mandate by the Council (Frennhoff Larsén 2020). In its resolution of 14 June 2018, it broadly welcomed the mandate proposal from the Task Force, and it recognised that its views and interests had been largely taken into account. However, in the human rights section of the mandate, it wanted to see explicit reference to freedom from discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or gender identity, as well as SRHR (European Parliament 2018). Given that this issue had also been raised by the like-minded countries in the ACP Working Party, such a reference did make it into the final mandate as adopted by the Council. Similarly, it asked for the inclusion of a ‘provision on the full implementation by all parties of the Rome Statute of the International Criminal Court (ibid.). Again, such a provision was included in the final mandate. However, the Parliament also expressed concerns that there was no explicit reference to the Joint Parliamentary Assembly, despite its insistence on the relevance of this institution already in 2016. The resolution stressed ‘the importance of strengthening the parliamentary dimension of the future agreement, guaranteeing real consultative power for the future overarching JPA and ensuring that it provides for open, democratic and comprehensive parliamentary dialogue’ (ibid.). Yet, given the view shared by many member states that the JPA is of limited use, and that regional institutional arrangement would be more relevant (Delputte and Williams 2016), the Council refrained from including a specific reference to the JPA in the final mandate. There had been a general discussion between the Task Force and the member states in the Council on the issue, but the Parliament’s concerns were not taken seriously. The importance of a joint parliamentary dimension was recognised, but the JPA was generally seen as ‘costly and not effective’, and both the Commission and the member states wanted to put the emphasis on the regional structures (Interview, Commission official, 1/9/2021). As a result, it was decided to leave it out of the mandate, despite the red line set by the Parliament.

The Parliament also stressed that it had to be ‘informed fully and immediately at all stages of the negotiating procedure, in line with Article 218(10) TFEU’ and that there was a ‘need to agree on improved practical arrangements for cooperation and information sharing throughout the full life-cycle of international agreements’ (European Parliament 2018). During the preparation phase there was generally good engagement between the Task Force and the Parliament through the monitoring group, as well as through continuous information sharing and contacts with individual MEPs (Interview, Commission official 3/9/2021). As expressed by a Commission official: ‘Parliament was very thorough and substantial about what it wanted, and it came into the game early on. Normally you would think the Commission is the first to put out a paper, and then Parliament will react. But no, they had really done their homework about what it wanted to see in the future’ (Interview, 23/9/2021). At this stage, Parliament was united in its positions, and very much spoke with ‘one voice’ (Interview, Member of the European Parliament, 1/9/2021).

To conclude, the Task Force engaged in consultations with its principals during this preparation phase to identify the win-set. Since the negotiations of the Cotonou Agreement 20 years earlier, the internal complexity of the EU had increased significantly. 13 new member states had joined the EU, and the institutional structures had changed following the Lisbon Treaty. This decreased the agent autonomy of the Task Force, which was aware that a difficult domestic game was waiting as the upcoming negotiations with the ACPs approached. It was given a detailed and tight mandate, reflecting the diverging preferences and priorities among its principals. However, due to its early and active involvement in discussions with all principals, it had managed to anchor its preferred approach of maintaining the EU-ACP relationship, supported by a strong regional dimension. It had also used this phase to establish clear communication channels with its principals, and it knew where the challenges would lie in the upcoming negotiations with the ACPs. After more than three years of preparation, the Task Force was in a strong position once the international negotiations began (Ishmael 2021).

*International Engagement at Level One*

There was limited contact between the EU and the ACPs during the preparation phase. Of course, they knew each other well, and they had a good idea of their respective aims and preferences. However, once it became clear to the ACPs that there was a discussion within the EU about whether to renew the EU-ACP relationship or not, the ACPs started engaging with their contacts within DG DEVCO. They stressed how this was not a decision the EU could make by itself, and they argued that the EU had a moral responsibility not to abandon a relationship that had developed over more than 40 years (Interview, ACP Secretariat official, 22/9/2021). This commitment to the EU-ACP relationship was emphasised in the ACP negotiating mandate, which was adopted by the ACP Council of Ministers on 30 May 2018 and stressed the need to secure a legally binding agreement. It underlined the importance of keeping the existing EU-ACP institutional structures, while recognising some differences between the three regions (Carbone 2019: 146). It reflected the ACPs’ aim to maintain as much continuity as possible in the EU-ACP relationship, and it expressed some concerns about the changes on the EU side: ‘The EU’s enlargement eastwards has incorporated countries that have only recent ties with ACP countries, mainly as a result of their membership of the EU in the 1990s […] Compounding this is the expected withdrawal of the UK from the EU (Brexit) by March 2019, and the impact that this will have on the future trade relations of ACP countries with the UK outside the EU regime’ (ACP 2018).

In line with the European Parliament’s preferences, the ACP mandate underlined how the JPA remained essential to the new agreement. In terms of migration, the mandate stressed the need for ‘creating the conditions to promote legal migration and the right of movement of persons, sharing skills and experiences which could be portrayed as the positive side of migration’, and it proposed that the ‘Return and Readmission processes to the country of origin’ should be on a voluntary basis (ibid.). This contrasted with the stronger and more security-based language of the EU’s mandate, following the demands made by Hungary and Poland.

Overall, the ACP mandate was shorter and more general in nature than that of the EU. The ACPs had focused much of their attention on their internal structures and the future role of the ACPs, and as a result, it had not engaged in the same preparatory work as the EU (Ishmael 2021). Combining the preferences of 79 was indeed a challenge. In addition, the mandate negotiations coincided with a broader discussion about achieving a coordinated position between the ACP and the African Union on their respective relations with the EU (Carbone 2018). While these discussions failed, they added to the complexity of the internal negotiations on the ACP side. It was clear that both the Task Force and the ACP negotiating team were going to continue to have domestic challenges as they entered the international negotiations at Level One.

**Negotiation Phase**

The negations on the EU-OACPS Partnership Agreement were launched in September 2018. They were conducted in five main negotiation rounds and were formally concluded in December 2020. Throughout the negotiations the Task Force and the ACP negotiators moved back and forth between the international negotiations at Level One and their respective domestic negotiations at Level Two.

*The EU’s Domestic Negotiations at Level Two*

There were continuous consultations between the Task Force and the affected DGs through the inter-service steering group, and between the Commissioner for International Partnerships and the other Commissioners in the College. Every time the Task Force produced any communication or recommendation, it consulted with the inter-service steering group to allow other DGs to provide input, before the text was passed to the College for approval (Interview, Commission official, 3/9/2021). It was clear that the Task Force could not act on its own, and that it needed to have its positions anchored with the DGs, and eventually with the College.

DG HOME in particular, under the lead of the Commissioner for Home Affairs, was closely involved throughout the negotiations to help deal with the contentious issue of migration. The Task Force needed the expertise of DG HOME and sometimes asked the latter to be directly involved in the discussions with the ACPs. These intra-service discussions brought to the fore the long-standing disagreement between DG HOME and DG DEVCO on migration (Mouthaan 2021). The former approached migration from a security perspective, while the latter emphasised migration as a tool for development (Carbone 2022). DG HOME pushed for stricter language on migration, referring to the provisions in the mandate on returns and readmissions. It wanted to see an increase in the rate of returns and stricter time limits. This put it at odds with the Task Force which knew the sensitivities of such a proposal for the ACPs. These divisions were also reflected within the College of Commissioners. Both Commissioner Mimica and his successor as Commissioner for International Partnerships, Jutta Urpilainen, had a genuine interest in the EU-ACP relationship (Interview, Commission official 1/9/2021). In addition, Commissioner Urpilainen had been given clear instructions from Commission President von der Leyen to ensure the conclusion of the post-Cotonou agreement (von der Leyen 2019). In line with the Task Force’s preferences, these Commissioners stressed the need to see the issue from the ACP perspective when they engaged with the other Commissioners. However, the Commissioner for Home Affairs pushed the same line as DG HOME, emphasising the need to increase the rate of returns as well as setting strict time limits. As a result, the Task Force had to prepare a proposal for a detailed mechanism for readmission of illegal citizens from the ACPs in the EU (Interview, Commission official, 1/9/2021). Yet, the Commissioner for Home Affairs was also receptive to some of the arguments about the challenges faced by the ACPs. And overall, the development-based nature of the negotiations, and the fact that trade issues were dealt with separately, contributed to relatively high levels of cohesion within the Commission (Interview, EEAS official, 1/9/2021).

Throughout the negotiation phase, the Task Force kept the Commissioner for International Partnerships informed about progress, and during the more intense periods of the negotiations, they met on a weekly basis. This gave the Commissioner an opportunity to provide guidance to the Task Force, particularly in terms of scheduling and overall strategy. They discussed when it would be most fruitful to organise meetings with the ACP counterpart, the Minister of Foreign Affairs of Togo, Robert Dussey, and how best to prepare for these meetings (Interview, Commission official, 1/9/2021).

The relationship between the Task Force and the EEAS ran smoothly, and there was no significant preference divergence between them. In terms of the contentious issue of migration, the EEAS was not seen to have a clear vision, and its main aim was to maintain good diplomatic relations with the ACPs (Carbone 2022), which put it on par with the Task Force. The EEAS stuck to its supporting, rather than leading, role that it had adopted during the preparation phase (Interview, EEAS official, 1/9/2021). It thus confirmed the reluctance of the EEAS to assert itself in development policy and development-based partnerships (Keijzer and Schulting 2019: 669).

The member states in the Council were able to closely monitor the negotiations as the Task Force reported on progress in its talks with the ACPs on a weekly – sometimes bi-weekly – basis to the ACP Working Party. The general view was that the Task Force provided the member states with enough information, although, as pointed out by one member state representative: since member states are not present at the international negotiation, ‘it is difficult to gauge whether you get enough information, it is a subjective assessment’ (Interview, 22/9/2022). One aspect which was particularly valued by the member states in the ACP Working Party was that they were invited to some of the political stock-taking sessions between the two Lead Negotiators at ministerial level – Commissioner Urpilainen and Foreign Affairs Minister Dussey. This allowed the member states to hear directly from the ACP side on how they saw certain issues where there was stalemate in the negotiations (ibid.). While these stock-taking sessions are not normal negotiations where the details of the agreement are being discussed, they still provided the member states with principal control opportunities. From the Task Force’s perspective, it meant that they were subject to additional monitoring from the member states, as the Commissioner to a great extent followed the steer of the Task Force (Interview, Commission official, 1/9/2021). However, given the interest of the Task Force, not only in reaching an international agreement, but to reach one that also reflected some of the interests of the ACPs, this was a helpful way of exposing the member state principals to the interests of the ACPs, without involving them in the actual negotiations.

The details of the international negotiations between the EU and the ACPs were discussed in the ACP Working Party, where the Task Force was able to anchor its positions on the issues where agreement had been reached with the ACPs, and to seek advice on how to move forward on issues where there were disagreements. As expected, these Council negotiations were difficult and exposed the widely diverging views between the member states. The contentious issues of migration and mobility continued to dominate. Poland and Hungary, together with other countries with external borders, including Greece, Italy, and Spain, wanted to make development cooperation and financing by the EU conditional on migration issues, including strong references to return and readmission of migrants deemed to be illegal (Interview, Commission official, 3/9/2021). Although there was a legal obligation set out in the Cotonou Agreement, requiring countries to readmit their own nationals, this had not been fully implemented. Despite the Task Force’s argument about the difficulty of this issue for the ACPs, it knew that it had to accommodate the preferences of these member states, given the sensitivity of the issue both politically and socially in the EU (Ishmael 2021). Hungary and Poland even made strong language on returns and readmissions a condition for their ratification of the final agreement (Chadwick 2021a). While many member states felt less strongly about migration, and preferred a more development-focused approach, they were also sensitive to the difficulties some of the member states had faced during the migration crisis of 2015. As a result, they did not actively oppose stronger language on fighting irregular migration. The Task Force, which was aware that this would require a significant concession from the ACPs, made sure to also push for the facilitation of legal migration in this context, to be able to reach a more balanced agreement on migration (Interview, Commission official, 23/9/2021). As a result, migration now has 14 articles and a specific foundation in the overall umbrella agreement, and seven articles in the Africa Protocol. This contrasts sharply with the single article in the Cotonou Agreement (Boidin 2020).

There was also a path-dependent logic to this approach. The member states most concerned about the security aspect of migration saw it in a broader political context. Given that the EU often uses previous agreements as models when entering new negotiations, the member states used the EU-ACP agreement to embed its preferences, with the realistic expectation that it would set a precedent for future agreements (Interview, Commission official, 3/9/2021).

Another thorny issue in the Council was that of human rights, and the linkages with sexual orientation and gender identity, as well as SRHR. Here, some member states, in particular the like-minded, including the Nordics and the Netherlands, had higher ambitions and wanted explicit references to non-discrimination. While the Task Force sympathised with these ambitions, and pushed them vis-à-vis the ACPs, it also knew that this was an issue where change needed to happen gradually. It had to come back to the member states saying: ‘Look, we tried, but it is not possible now. We have made good progress on other issues, and on non-discrimination we have to accept the status quo’ (Interview, Commission official, 3/9/2021). The Task Force stressed the fact that at least ambitions were not lowered, and it highlighted the need to understand where the ACPs were coming from on this issue. After all, it was European colonialisation that contributed to the criminalisation of previously widely accepted sexuality and gender expressions (Døhlie and Thiel 2021), and pushing the issue of non-discrimination was seen as interference in African domestic affairs, yet again. As expressed by an EEAS official: ‘Their [ACPs] system is based on colonial law, British law, and in this sense, arrogance on the EU side was part of the problem, and part of their [ACPs] resistance’ (Interview, 1/9/2021). On this matter, the job of the Task Force to explain the ACP perspective in the Council was made easier by the fact that a number of governments of Eastern European member states held positions similar to those of the ACPs.

While the general dynamic in the Council was more difficult than in previous EU-ACP negotiations, not least because of the reservations by Hungary and Poland on the issue of migration, the member states generally had confidence in the Task Force, and its ability to take the lead when agreements needed to be reached (Interview, EEAS official, 1/9/20210). They were aware of the two-level game dynamics of the negotiations, and clearly recognised that this was not just an internal negotiation between EU member states, but one that also involved 79 countries on the other side of the international negotiating table. The fact that it was a joint EU-ACP agreement being negotiated made member states more inclined to compromise and accept the arguments presented by the Task Force (Interview, member state representative, 2/9/2022).

Finally, the European Parliament was actively involved during the negotiation phase. In line with its parliamentary resolutions, it was kept fully informed about the international negotiations with the ACPs. Both the Task Force and the Commissioner for International Partnerships frequently reported back to the European Parliament’s Committee on Development. In fact, Commission President von der Leyen had made it an explicit priority in her mission letter to Commissioner Urpilainen that ‘the European Parliament is regularly briefed, notably before major events and at key stages of international negotiations’ (von der Leyen 2019). MEPs did indeed have a good rapport with the members of the Task Force, and they considered the Task Force approachable and willing to answer any questions (Interview, MEP, 1/9/2021). For the Task Force it was clear that the Parliament had to be involved throughout, since it had to give its consent at the end. It therefore took care to respond to all parliamentary resolutions and share as much information as possible (Interview, Commission official, 3/9/2021). In terms of preferences, the Task Force and the Parliament were generally aligned, with both wanting a strong EU-ACP relationship and an agreement as beneficial as possible to the ACPs.

However, the issue of the JPA exposed preference divergences between the Task Force and the Parliament. The Parliament was concerned that references to the JPA had not been included in the negotiating mandate despite its earlier resolutions identifying it as a clear red line. During the negotiations, it continued to issue resolutions stressing ‘the importance of strengthening the parliamentary dimension of the future agreement’ and that ‘the institutional framework should include an ACP-EU JPA’. It underlined how it considered ‘this demand as non-negotiable in terms of the European Parliament giving its consent to the future agreement’ (European Parliament 2019). Despite resistance from the member states, the Task Force realised that the JPA had to be part of the future agreement. It was not a hard sell to the ACPs, since it was included in their mandate, and they had raised the issue with the Task Force in their negotiations at Level One. However, even when the JPA was included in the draft agreement, Parliament still found the text unacceptable, as it did not provide a real consultative role for the JPA. Just before the meeting to conclude the negotiations, the Parliament issued a statement saying that it ‘would not give its consent to the new Post-Cotonou agreement if greater parliamentary scrutiny and democratic control were not included’ (European Parliament 2020). As a result, the Lead Negotiators agreed to add a reference in the minutes accompanying the conclusion of the agreement, saying that some fine-tuning in relation to the JPA was needed. In addition to safeguarding the JPA, this intervention by the Parliament served to demonstrate that its red lines cannot be ignored (Interview, MEP, 1/9/2021).

The Parliament was also concerned about the discussion around migration. Many MEPs felt that the Task Force emphasised return and readmission of migrants to their original countries too much, and that it did not focus enough on legal migration and its positive aspects. However, while the Parliament was united on most issues, this was one that saw divisions both between and within the political groups. For many, national origin seemed to matter more than political affiliation (ibid.). Overall, though, the Parliament voted in favour of not making aid allocation conditional on cooperation on migration issues, as it considered it incompatible with the overarching development principles of the partnership (European Parliament 2019). This was consequently another issue where Parliament sided with the ACPs. Here, the Task Force, which was sympathetic to these concerns, had to refer to the strong positions in the Council, and how the focus had to be on finding a balanced compromise between the return and readmission requirement and the legal dimensions of migration. In the end, the internal divisions within the Parliament made it easier for the Task Force to gain the support for a balanced compromise in this area (Interview, Commission official, 3/9/2021).

In terms of the human rights component of the future agreement, the Parliament’s position was closer to the like-minded member states in the Council than to that of many ACPs. In its resolution of 2019, it pushed for the inclusion of ‘explicit wording on fighting discrimination on any grounds, including sexual orientation or gender identity’ and strong commitments to SRHR (European Parliament 2019). The Task Force, which was aware of the sensitivities of this issue on the ACP side, referred to progress made on other issues, in particular gender equality, and stressed how, in a negotiation, you can’t make progress on all fronts. The position of the ACPs on sexual rights was well known to MEPs, not least because of the discussions with their ACP counterparts in the JPA, and they understood where the ACPs were coming from (Interview, ACP Secretariat official, 22/9/202). So, while these were important issues for Parliament, it did not make them a condition for ratification.

To conclude, in the domestic negotiations at Level Two, the Task Force mainly pushed the interests of the ACPs, and it had to work hard to find compromises between the widely diverging interests, both between and within the principals. It was a complex negotiation, as coalitions varied and cut across the different principals depending on the issue being discussed. The three sets of principals closely monitored the Task Force throughout the negotiations. As expressed by a Commission official: ‘when you negotiate these agreements, the main difficulty is usually not between you and the other party – it’s between you and the people who are behind you’ (Interview, 23/9/2021). In the end, although the Task Force had to lower ambitions in some areas, it was able to rally the principals around most of its preferences. It also managed to reach a final agreement in less than three years, which by EU standards was seen as a success (Interview, EEAS official, 1/9/2021).

*International Negotiations at Level One*

During the negotiations between the EU and the ACPs, the Task Force engaged in a number of two-level game strategies that helped the two parties reach agreement. Given the integrative nature of most of the issues, and the long relationship between the two parties, the negotiations were generally conducted in an open and constructive way. In terms of context, the ACPs were to a great extent able to balance against the power asymmetry characterising the EU-ACP relationship, but the game played by the ACP negotiators was sometimes more difficult then the one played on the EU side.

*Negotiating Strategies*

*Agenda-setting:* The negotiations started with the two parties identifying areas of convergence and divergence between their respective mandates. Overall, there were significant convergences in terms of what issues to include in the new agreement since both teams had taken the Cotonou Agreement as their point of departure. However, as for the overall framework, as well as detailed textual proposals, the ACPs, which had not engaged in the same level of preparatory work as the EU, found themselves reacting to the Task Force’s proposals rather than setting out their own positions. The Task Force benefitted from its long experience of negotiations. In fact, some of the members of the Task Force had also been involved in the negotiations of the Cotonou Agreement 20 years earlier (Interview, Commission official, 3/9/2021). This contrasted with the ACP negotiating team which consisted of ACP Ambassadors. As with most foreign services, they followed a rotational process and did generally not remain in the same post for more than five years. Of course, the ACP Secretariat provided continuity and expertise, but it was not conducting the actual negotiations (Interview, ACP Secretariat official, 22/9/2021). It was therefore natural that the Task Force, which relied on this experience and its institutional practices as a negotiator, set the agenda by presenting the overall framework and being the first to put forward textual proposals. There was a recognition among the ACPs that they would have benefitted from more domestic negotiations before initiating negotiations with the EU (Ishmael 2021). Even if the asymmetry in preparations disappeared over time as ‘the OACPS negotiating machinery kicked into gear’ (ibid.), the Task Force gained an initial lead in the negotiations which gave it significant influence. There was indeed a considerable overlap between the EU mandate and the final agreement, and it was clear that its extensive preparatory work at Level Two helped the Task Force take control of the agenda at Level One (Interview, Commission official, 23/9/2021).

*Collusion:* There was strong collusion between the two negotiating teams. They both had a keen interest in reaching an extensive and deep partnership agreement, and the negotiations were conducted in an open and constructive way. They understood their respective sensitivities back home at Level Two, and they wanted to expand their own domestic win-sets as much as possible to facilitate an overlap. To this end, they supported each other in conveying arguments that could be used domestically. And when faced with domestic difficulties, they shared this with each other. For example, as observed by an official of the ACP Secretariat: ‘They [the Task Force] adopted an approach where there was an appreciation of where the other side was coming from and trying to accommodate that. There were times when they would not understand why some of their own member states were insisting on a certain position because they saw the issue from our angle and the difficulties we were facing. But they had to deliver for their members’ (Interview, 22/9/2021). This allowed the ACPs to take advantage of the lack of consensus on the EU side on a number of key issues, and to provide the Task Force with arguments that it could use vis-à-vis its ’difficult’ principals. For example, they spelled out the need to link strong language on fighting irregular migration with the facilitation of legal migration.

*Transparency Provision:* The negotiations took place in a climate of openness and transparency. Both parties published documents relating to the negotiations on their respective websites, including the mandates. Given that both trade and aid, which had dominated in previous EU-ACP negotiations, had been moved to different structures outside of the Partnership Agreement, the negotiations mainly focused on political matters (Boidin 2020). As a result, most discussions were of an integrative, rather than distributive, nature, and there were no incentives to adopt a secretive approach. Both parties described the dynamics of the negotiations as open and cordial, with high levels of trust and understanding (Interviews, ACP Secretariat and Commission officials, 22/9/2021 and 23/9/2021). They stressed how the atmosphere was very different from 20 years ago. Even on matters where there was no collusion between the two negotiating parties, such as on SRHR, the parties engaged in frank discussion, explaining where they were coming from. This helped in reaching a compromise whereby the parties committed all signatories to the agreement to implement international conventions on the matter, including the Beijing Declaration and Platform for Action. Although this compromise did not fully meet the demands of some of the EU member states, it provided a starting point for a deepened dialogue on this sensitive topic (Boidin 2020).

*Negotiating Context*

The EU-ACP negotiations were influenced by the structural relationship between the two parties and by the nature of the difficult two-level game played by the ACP negotiators. There is a clear power asymmetry in the EU-ACP relationship, with the EU being the economically stronger party, as well as a significant aid provider to the ACPs (Byron 2005; Carbone 2022; Elgström 2004; Farrell 2005; Fioramonti 2014; Gomes 2013; Hurt 2003). However, as in previous negotiations, the ACPs could act in ways that compensated for their disadvantaged position in the asymmetrical relationship. First, they could frame the narrative around the negotiations to give themselves moral power by using norm-based arguments. The ACPs did indeed refer to the moral responsibility of the EU not to abandon the partnership that had developed over more than 40 years.

Second, they could form coalitions with like-minded domestic constituents in the EU to shift the balance of power in their favour. The European Parliament proved a generally reliable ally of the ACPs. Their preferences converged strongly, not least in terms of continuing the EU-ACP partnership and maintaining the JPA (Interview, ACP Secretariat official, 22/9/2021). Interestingly, there was no engagement between the ACP negotiators and individual EU member states. On the EU side, member states were very clear that it was the Commission that negotiated on their behalf (Interview, member state representative, 2/9/2022), and the ACP negotiators ‘did not want to appear to be going around the agreed structures’ (Interview, ACP Secretariat official, 22/9/2021). Of course, the ACP countries and the EU member states met formally through the annual meetings of the ACP-EU Council of Ministers, but they stayed away from discussing any details of the negotiations. In addition, the importance of this forum had declined significantly over time (ibid.).

Third, the ACP group was in itself a strong coalition consisting of a large number of economically weaker parties. The ACP group had grown to include 79 countries at the time of the start of the EU-OACPS Partnership negotiations. While they had suffered from a lack of effective coordination and leadership during the Cotonou negotiations, the group was determined to stay united and increase its influence this time around (Carbone 2021). The focus on defining itself to stay relevant in the future, and build stronger internal cohesiveness, was indeed a major focus of the domestic game on the ACP side (Interview, ACP Secretariat official, 22/9/2021).

As for the internal game played by the ACP negotiators, this was characterised by complex institutional structures. The negotiations were led by ACP Ambassadors, and not by the ACP Secretariat. The latter helped prepare the negotiations, but it did not negotiate. A Central Negotiating Group consisting of two Ambassadors from each region was set up to lead on the negotiations. They constituted the ACP counterpart of the Task Force (Interview, ACP Secretariat official, 22/9/2021). However, as Ambassadors, they had limited autonomy, and continuously had to go back to the governments represented on the ACP Council of Ministers to seek advice and guidance. This made them less flexible at the negotiating table at Level One compared with the Task Force, which had more autonomy to act, as long as it stayed within the parameters set by the mandate. This made the domestic ACP negotiations time-consuming, which in turn slowed down progress at Level One (Interview, Commission official, 1/9/2021). In contrast to many of its previous external negotiations, the EU faced a negotiating partner with equally complex domestic institutional structures.

However, despite the institutional complexity, and the resultant delay in coming up with their joint positions, the ACPs had developed significant institutional practice and negotiating capacity over the years, and they had evolved into a more assertive and influential actor (Byron 2005; Carbone 2022). The EU-ACP negotiations took place during the revision of the Georgetown Agreement, through which the ACP Group of States was first created in 1975. The revised Agreement entered into force in April 2020, and established the ACPs as a formal international organisation, with the aim of increasing its international engagement and impact. Through the revision, the group also changed names to the Organisation of African, Caribbean and Pacific States (OACPS). The greater assertiveness was seen in these negotiations, where the ACPs stood firm against the EU’s attempts to include a commitment to abolish the death penalty, as well as stronger language on non-discrimination on grounds of sexual orientation or gender identity. In terms of the death penalty, the agreed text only commits the parties to have ‘dialogue at bilateral level’ on the issue, and to ‘adhere to due process and internationally agreed minimum standards’ (European Commission 2021). And sexual orientation or gender identity is not referred to in the context of human rights and non-discrimination. In addition, the final text on migration reflects a balance that was acceptable to both parties after the ACPs succeeded in toning down some of the initial textual proposals (Carbone 2022). The ACPs were thus able to exert influence over the negotiations, and the days when the EU could offer a ‘take it or leave it’ approach (Fioramonti 2014), are clearly over. As highlighted by an EEAS official, ‘times have changed…you can no longer ask the ACPs to sign on the dotted line in exchange for funding’ (Interview, 1/9/20210).

To conclude, during the international negotiations at Level One, there was a close relationship between the negotiating teams and significant levels of collusion. It was clear that both parties faced some of their more difficult battles back home at Level Two.

**Ratification Phase**

Once the Lead Negotiators at ministerial level – Commissioner for International Partnerships Urpilainen and Togo Minister of Foreign Affairs Dussey – had reached a political agreement on 3 December 2020, the negotiated draft text underwent a process of legal scrubbing, where lawyers reviewed the agreement to make sure there was consistency and legal certainty throughout. During this time, the Task Force engaged in a process of ‘selling’ the agreement to its principals to ensure their ratification. Within the College, there were few reservations at this stage (Interview, Commission official, 1/9/2021). However, in the Council, Poland and Hungary continued to express concerns about the section relating to migration and mobility, arguing that the agreed text strayed too far from the negotiating mandate (Chadwick 2021a), and the Task Force had to explain that the agreement could not be re-opened once the negotiations had been concluded. The agreed deal was the result of more than two years of discussions, linguistic tweaking, and delicate compromises, and trying to change one section at this stage, risked opening other sections for discussions as well. The Task Force stressed how the EU had a responsibility vis-à-vis the ACPs to adhere to what had been agreed (Interview, Commission official, 23/9/2021). Eventually, it managed to get the member states on board, allowing the negotiators to move towards initialling of the text.

Given the reassurance that had been given to the European Parliament that the text on the JPA would be fine-tuned, the Task Force, together with the Commissioner for International Partnerships, also met with the European Parliament’s Committee on Development to thrash out a clearer definition of the scope and responsibilities of the JPA. In the end they reached a text that was satisfactory to the Parliament (Interview, MEP, 1/9/2021).

The Lead Negotiators then initialled the text on 15 April 2021. The only part of the text that had not been finalised was the definition of the ‘parties’ to the agreement, and whether it should be concluded as a mixed or an EU-only agreement. In the case of the latter, only the EU would be party to the Agreement on the EU side, while in the case of a mixed agreement, both the EU and the EU member states would be parties to it. The decision about the nature of an agreement is always taken after the conclusion of the negotiations. In this case, there was a clear expectation both among the member states and the ACPs that it would be signed as a mixed agreement, just like all the previous EU-ACP agreements (Interview, member state representative, 2/9/2022). However, on 11 June 2021, following a ‘vivid’ internal discussion about the nature of the agreement (Interview, Commission official, 1/9/2021), the College of Commissioners adopted a proposal from the Task Force for a Council decision on the signing and provisional application of the Partnership Agreement as an EU-only agreement (European Commission 2021). The proposal was met by strong opposition from the member states in the Council, and a debate between the institutions followed in the summer and the autumn of 2021. The Commission, supported by the European Parliament, had advocated for an EU-only agreement as the EU has competence in all the areas covered by the agreement, and it would avoid parliamentary approval in all EU member states – a process that often takes several years. However, at this stage of the process the decision was with the Council, and the member states argued that an agreement that covers such a vast number of domains – many of which do not fully fall within the exclusive competence of the EU but are of shared competences – should be concluded as a mixed agreement (Chadwick 2021b). The ACP states on their part were also in favour of a mixed agreement, something they had stated already in their mandate (ACP 2018). Given the political nature of the agreement, the Ministers of the ACPs want to be able to engage directly with their counterparts in the EU member states, rather than with just the Commission. In particular, if there are implementation problems in certain member states, the ACPs want them to be directly accountable and responsible (Interview, ACP Secretariat official, 22/9/2021).

While the member states in the Council expressed unanimous support for a mixed agreement, another stumbling block emerged. In tandem with the discussions about the nature of the agreement, Hungary began, once again, to bring up its concerns about migration, threatening to veto the agreement if the language on legal migration of ACP citizens to the EU remained unchanged. At the time of writing, there is still no agreement between the member states in the ACP Working Party. Hungary is seen to keep the ratification of the Post-Cotonou Agreement ‘in limbo’ (Chadwick 2022), and there is pressure on the Council to come up with a clear timeline for ratification (Jacobsen 2022). To ensure continuity in the EU-OACPS relationship, a temporary extension of the Cotonou Agreement to 30 June 2023 has been agreed. However, most of those involved in the negotiations want to see ratification completed long before that. Interestingly, the ratification problems have brought back the discussion about the nature of the agreement, with more member states recognising the advantages of an EU-only agreement, as it would reduce the risks of additional vetoes further down the road. However, member states are also wary that if they agree to this agreement being ratified as an EU-only agreement, a precedent would be set, which the Commission could then refer to in future negotiations (Interview, member state representative, 2/9/2022).

The delay in ratification demonstrates how the power lies with the principals – and in this case, the Council – and that the influence of the agent is rather limited at this stage. As expressed by a Commission official when referring to the ratification process: ‘once it is with the Council, it is with the Council’ (Interview, 3/9/2021). While the Task Force agent has a clear informational advantage during the course of the negotiations, given its grasp of the overall preference composition in the Council, it does not know whether a member state principal decides to change its mind during the ratification phase and throw in a veto. The now almost completely dismantled Post-Cotonou Task Force has little influence at this stage. Instead, the role of the Presidency increases, as it is responsible for finding agreement between the member states. There were hopes that the French Presidency would be able to break the stalemate in the spring of 2022, however those hopes never materialised (Interview, member state representative, 2/9/2022). Yet, many still think that Hungary eventually will lift its veto. After years of preparations and negotiations, there comes a point where principals have to stop making ratification conditional on specific demands. The costs of non-ratification would in this case be significant, not least for the reputation of the EU as a reliable partner of the ACPs.

To conclude, the ratification phase demonstrates how the EU-ACP negotiations at Level One are closely connected with the domestic game at Level Two. The principals clearly have the final word, and the Post-Cotonou Partnership Agreement cannot enter into force without domestic ratification.

**Conclusion**

The conclusion of the EU-OACPS Agreement confirmed the continuation of the EU’s colonial legacy in development policy through the extension of the institutional relationship between the EU and the ACPs. The negotiations of the Agreement were conducted by the Post-Cotonou Task Force, which was based within the Commission’s DG DEVCO, and had strong development-based, or ‘altruistic’, interests, which often made it push the interests of the ACPs in its domestic negotiations at Level Two. The Task Force consisted of experienced officials, who could rely on the DG’s long experience of negotiating partnership agreements with the ACPs. Its involvement in all key negotiations both domestically and internationally also provided it with a privileged position and an overview of all interests involved, and it had strong agenda-setting powers. Despite these agent power resources, its autonomy was constrained to various degrees by its three sets of principals – the College of Commissioners, the Council, and the European Parliament, which all had ratification powers and were actively involved in monitoring the Task Force throughout the negotiations. In addition, the College and Council had appointment and authorisation powers, while the European Parliament had informal authorisation powers.

In the College, there were relatively high levels of cohesion, with the other Commissioners respecting the development-based arguments presented by the Task Force via the Commissioner for International Partnerships. However, the Commissioner for Home Affairs ensured provisions on irregular migration were included in the mandate proposal, and DG HOME engaged closely with the Task Force in terms of the technical details of migration during the negotiations. Yet, while pushing these issues, both the Commissioner for Home Affairs and DG HOME were receptive to the development challenges of the ACPs, and they adopted a constructive approach, willing to compromise.

The initial expectations that the EEAS would play an influential role in the process never materialised. The EU-ACP relationship was not considered a priority within the EEAS, and although the High Representative and the EEAS had supportive roles in the negotiations, they left it to the Task Force in DG DEVCO to lead the negotiations. Institutionally, the EEAS had also been denied the role of chairing the ACP Working Party and COREPER. The member states had demanded that the chairing responsibility at these levels remained with the Council Presidency, even if the High Representative chairs the ministerial meetings of the Foreign Affairs Council (Development).

In the Council, the dynamics had changed significantly since the Cotonou negotiations 20 years earlier. The number of member states had increased, and the discussions became more political in nature. The member states exercised significant control over the Task Force through an extensive and detailed mandate and through regular monitoring via the ACP Working Party during the course of the negotiations. Migration was one of the most hotly debated issues. Poland and Hungary in particular pushed the Task Force to include extensive provisions on migration, with strong language on returns and readmissions. In addition, issues relating to gender equality and SRHR were pushed extensively by the like-minded countries. These were all issues that posed challenges for the Task Force in its negotiations with the ACPs at Level One. In terms of principal ratification powers, these are evident through Hungary’s veto, which is still in place at the time of writing.

The European Parliament also emerged as a well-informed and increasingly involved principal compared with previous EU-ACP negotiations, and it was able to leave its mark on the final agreement. It engaged frequently with the Task Force, which reported to Parliament’s Committee on Development before and after each negotiating round with the ACPs. It used its veto powers as ratification was looming to ensure that the JPA was provided with a real consultative role in the final agreement. It became clear to the Task Force, which had initially omitted to include references to the JPA in the mandate, that the Parliament’s demands cannot be disregarded.

In the international negotiations, which were characterised by open and constructive engagement between the two parties, the Task Force used strategies including agenda-setting, collusion, and transparency provisions to reach an agreement with the ACPs that to a great extent reflected its own preferences. While there was strong preference convergence between the two negotiating parties, there were areas where compromises had to be reached, and ambitions had to be lowered. However, overall, both parties were satisfied with the agreement. In fact, the biggest ‘win’ for both the Task Force and the ACPs was the agreement itself. During the preparation phase, there had been a tense debate about whether the EU-ACP partnership should be maintained at all. Some principals, including Germany, the Netherlands, the Nordics, and many of the Eastern European member states pushed for a complete overhaul of the relationship. They argued that a partnership based on a colonial history was no longer relevant when responding to today’s challenges, and that the increased regionalisation across the world challenged the geographical rationale of EU-ACP. Yet, through strong agenda-setting powers, and the support from other member states and the European Parliament, the DG DEVCO-based Task Force managed to rally support for yet another renegotiation of the EU-ACP relationship, albeit with a more regional dimension.

The EU-ACP relationship was characterised by power asymmetry, with the EU being the economically stronger party, as well as a significant aid provider to the ACPs. However, the ACPs successfully used strategies to compensate for this. In addition to negotiating as a group of 79, they identified ‘allies’ within the EU, including the European Parliament and the likeminded member states, as well as the Task Force itself. And they referred to the moral responsibility of the EU to provide support and maintain the close relationship that had developed over 50 years. The international negotiations at Level One were also influenced by the institutional complexities of the domestic games. As a result, it was not always the Task Force that faced the most difficult game at Level Two. Apart from the delay in ratification resulting from the stalemate in the Council, many of the delays during the negotiations were caused by domestic difficulties on the ACP side, where agreement had to be reached between 79 countries, and where the ACP negotiators had less autonomy than the Task Force. Consequently, in this case, the EU was generally not seen as the most difficult and institutionally complex negotiating partner. Although being constrained by its principals, the Task Force was able to push through some of its own – and thereby the ACP’s – interests in its domestic negotiations at Level Two. This allowed the EU to move beyond the perception of being a rigid and inflexible negotiator, which asks its negotiating partner to make all the concessions and accept any internally agreed position within the EU.

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**Trade Negotiations**

**Abstract**

This chapter provides an overview of the EU’s extensive network of trade agreements, and how the trade agenda has changed from the 1960s until today. It demonstrates how the EU negotiating agent, which is based within DG TRADE of the European Commission, is constrained by three sets of principals during bilateral trade negotiations with other parties – the College of Commissioners, the Council, and the European Parliament. Through a two-level game-based case study of the recently concluded EU-Japan Economic Partnership Agreement, it demonstrates how the negotiating agent – the Negotiating Team – navigated the two-level game, and, together with Japan, reached an agreement that satisfied its principals, while also reflecting its own preferences. The EU-Japan negotiations were conducted between two equally powerful negotiating teams, and they were reflective of the current trend where the EU adopts a market-access based approach, including in the sensitive area of agriculture.

**Introduction**

The EU is the world’s largest trading bloc, closely followed by the US and China, and it is the main trading partner of more than 80 countries (WTO 2021). Trade policy, or the Common Commercial Policy, is one of the oldest and most integrated policy areas, and one that has contributed significantly to the EU’s global influence. It was introduced with the Treaty of Rome in 1957 to accompany the customs union, which established a common external tariff for the six founding members of the ECC. The Treaty provided the EEC with exclusive competence for trade, meaning that member states do not conduct their own individual trade policies. By delegating responsibility for agenda-setting and the conduct of negotiations to the supranational level, member states increased their collective influence in international trade negotiations (Dür and Elsig 2011; Meunier 2005; Meunier and Nicolaïdis 1999). The member states gained greater bargaining power by negotiating as one, rather than individually, as the size of their combined market made them an attractive trading partner. Through its gradual widening and deepening, the EU now has a fully integrated single market with a population of 450 million and the third largest economy in the world, just behind the US and China (Eurostat 2020).

Most of EU trade policy consists of negotiations, either bilateral with individual countries or regions, or multilateral through the WTO. Although the EU can adopt unilateral trade policies, such as anti-dumping measures and the General System of Preferences, which do not require any negotiations with external parties, the most commonly used policy instrument is by far the conclusion of trade agreements. And as a result of the stalling of the Doha development round at the multilateral level, the EU now focuses heavily on bilateral trade agreements, and spends a significant amount of time negotiating such deals. Over the years, it has developed an extensive network of bilateral trade agreements with countries and regions across the world.

This chapter provides an overview of these agreements and how the EU trade agenda has changed from the 1960s until today. It then outlines how the EU organises itself during trade negotiations. Using the principal-agent framework, it explains who the EU negotiators are and where they sit within the institutional structures, focusing on their relationship with the College of Commissioners, the Council, and the European Parliament. Finally, a two-level game-based case study of the EU-Japan negotiations leading to the Economic Partnership Agreement in 2018 is provided. It is one of the biggest and most recent free trade agreements that the EU has negotiated and concluded, and it offers an illustrative example of some of the current dynamics of EU trade negotiations.

**Background**

**Entering the Multilateral Trading System**

The EEC had a difficult start in the multilateral trading system. Even before entering into force, the Rome Treaty was heavily criticised by the signatories of the General Agreement on Tariffs and Trade (GATT) for its high external customs tariff, its Common Agricultural Policy (CAP), and its preferential arrangements for its Overseas Countries and Territories (see Chapter 3). These were all seen as protectionist measures going against GATT’s aim of expanding international trade through trade liberalisation. Once established, the EEC had to learn quickly how to engage at a multilateral level, while still developing its own common trade and agricultural policies. Initially, its focus was primarily on the domestic rather than the multilateral level. However, during the Kennedy Round (1964-67), it began to see the benefits of trade liberalisation for industrial goods, and it started playing a more active role in international trade negotiations. Yet, in agriculture, it remained firmly defensive, wanting to protect European farmers rather than considering any trade gains from agricultural exports (Coppolaro 2013). This protectionist position on agriculture remained dominant in EU trade policy until recently. From a negotiation perspective, the most significant development of the Kennedy Round, was the EEC’s decision to speak with ‘one voice’ (Woolcock 2019). Of course, there were differences between the six, with Germany, Belgium, the Netherlands and Luxembourg being in favour of extensive tariff cuts, while France and Italy were more reluctant since they were still adjusting from opening up their markets internally within the EEC. However, the European Commission, who spoke on behalf of the EEC, quickly developed strong negotiation capacities, and came to play a leading role in the multilateral negotiations. Domestically, it demonstrated technical expertise and the ability to identify innovative compromises to help forge a common position between the six, and to steer the process forward. And internationally, it ‘affirmed its role as the sole EEC negotiating agent’ and increased its autonomy significantly (Coppolaro 2014: 39). This autonomy and lead by the Commission came to characterise many of the EU’s subsequent trade negotiations (da Conceição-Heldt 2011; Elsig 2007; Young and Peterson 2014).

Up until the Uruguay Round (1986-1994), the focus of the multilateral trading rounds was mainly on the reduction of tariffs for industrial goods. However, with the Uruguay Round, which resulted in the establishment of the WTO in 1995, the focus expanded to also include services and regulatory matters. As significant progress had been made on lowering tariffs, the relative importance of differing national rules and regulations as barrier to trade increased. Examples of this ‘deep trade agenda’ (Young and Peterson 2006: 798) included the establishment of the General Agreement on Trade in Services and agreements on Trade Related Intellectual Property Rights and Sanitary and Physiosanitary measures. The EU was a strong advocate for reaching multilateral agreements on regulatory matters, and it pushed for investment, competition policy, government procurement, and trade facilitation to be part of the WTO agenda. However, agreeing on regulatory coordination is politically and administratively more complicated than simple tariff elimination (Young 2015), not least in a multilateral forum where decisions are taken by consensus. As a result, limited progress has been made at the multilateral level since the Doha Development Round was launched in 2001.

**Towards Bilateralism**

Following this lack of progress at the multilateral level, the EU abandoned its ‘multilateralism first’ approach (Elsig 2007) and started prioritising negotiations leading to bilateral or regional free trade agreements (FTAs), in line with its trade strategy *Global Europe* of 2006 (De Bièvre and Poletti 2020; Young 2017). The strategy identified FTAs as a way of moving further and faster in promoting openness and integration, and as a steppingstone to multilateral agreements, as they would be ‘preparing the ground for the next level of multilateral liberalisation’ (European Commission 2006). There had been several bilateral agreements concluded even when the EU’s main focus was on the multilateral level. For example, FTAs were concluded with Switzerland, Liechtenstein, Iceland, and Norway in the early 1970s. And in the 1990s, coinciding with the completion of the single market, the EU concluded FTAs with a range of countries, including Tunisia, Israel, Morocco, the Palestine Authority, Jordan, Mexico, and South Africa. However, from 2006 the Commission started prioritising the negotiation and conclusion of bilateral FTAs as a way of gaining market access in economically powerful regions. As the global balance of power changed, and the relative power of the EU declined, the EU had to become more proactive in order to maintain its role as a global trading power. To this end, agreements were reached with countries including Canada, Central America, Chile, Colombia, Japan, the Southern Common Market (MERCOSUR) (still to be ratified at the time of writing), New Zealand (still to be ratified at the time of writing), Peru, Singapore, South Korea, and Vietnam. The EU is currently negotiating FTAs with countries including Australia, India and Indonesia. It has thus established an ‘extremely dense network of preferential trade agreements’ (Zimmerman 2019: 27).

The EU’s recent FTA negotiations have been shaped by a number of interrelated trends: decreasing power asymmetries, a deepening of the trade agenda, a politicisation of trade policy, and a shift towards greater transparency. For a long time, most of the EU’s bilateral trade negotiations were conducted with countries that were much smaller economically than the EU. This allowed the EU to use its asymmetrical bargaining power to obtain concessions from its negotiating partners. It could use access to its market as a bargaining chip to get other countries to adopt EU norms and standards (da Conceição-Heldt and Meunier 2014). The EU was often seen to adopt a ‘take it or leave it’ approach (Bretherton and Vogler 2006: 79). However, with the changing global balance of power, the relative power of the EU is decreasing, and it has become more dependent on gaining access to new markets. As a result, some of its recent negotiations have been more symmetrical in nature, including the recently concluded negotiations of the Economic Partnership Agreement with Japan, and the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the US. The latter were launched in 2013 but were then abandoned as a result of strong civil society opposition and the change in US administration from 2017 (Bürbaumer 2021).

A prominent feature of these trade negotiations is their focus on regulatory cooperation and compatibility. As tariff levels among the most economically developed countries are already relatively low, the biggest obstacle to trade is non-tariff measures (NTMs) (Rodrik 2018). Given the difficulty of agreeing on a deep trade agenda at the multilateral level, the EU is now using its FTAs to improve regulatory compatibility with its negotiating partners, and to tackle NTMs (Laursen and Roederer-Rynning 2017; Pelkmans 2017; Young 2015). It also uses FTAs to include political clauses relating to matters such as sustainable development and human rights (Micara 2019; Orbie et al. 2017; Poletti et al. 2021; Wouters and Ovádek 2021). Negotiations on regulatory compatibility and issues of a political nature are more complex, and they expose different dynamics to the traditional distributive bargaining that is characteristic for trade negotiations on tariff elimination (Bürbaumer 2021; Lamy 2015; Lester and Barber 2013). Unlike tariffs, regulations ‘cannot simply be traded away’ (Young 2015: 1256), and negotiators need to adopt a more integrative approach, based on openness and understanding of each other’s regulatory systems and political sensitivities (Odell 2000). The nature of EU trade negotiations has consequently changed as a result of the deep trade agenda, and EU negotiators combine elements of both distributive and integrative bargaining. In addition, the deep trade agenda has brought in new institutional actors. While the European Commission’s DG TRADE still remains firmly in the lead, sectorial DGs with regulatory responsibilities now often engage directly with regulators in the EU’s negotiating partners. As for political matters, the European Parliament, which was given ratification powers with the Lisbon Treaty in 2009, is now actively involved in trade negotiations and often plays an influential role (Devuyst 2013; Eckes 2019, Frennhoff Larsén 2020; Ripoll Servent 2014).

Negotiations on regulatory compatibility and political matters also generate different politics from traditional trade negotiations focusing on at-the-border barriers (De Ville and Siles-Brugge 2017; Dür and Lechner 2015; Lamy 2015; Young 2016). This was most clearly seen with the negotiations of the TTIP agreement between the EU and the US, which reflected the most far-reaching attempt at regulatory cooperation through an FTA. The negotiations triggered significant mobilisation of citizens and civil society organisation across the EU, as there were concerns about the impact of TTIP on environmental, health, and social standards (De Bièvre and Poletti 2017; De Ville & Siles-Brügge 2015; Gheyle 2020; Meunier and Roederer-Rynning 2020). The negotiations became highly politicised and served to raise public awareness of trade negotiations (D’Erman 2021). The European Parliament became an important channel for civil society organisations to exert influence in these negotiations, and it saw its role in trade negotiations significantly enhanced through the TTIP experience (Meissner 2016). One of the main criticisms towards the negotiations was that they were being conducted behind closed doors, and there were demands for greater transparency and more opportunities for public and institutional scrutiny of EU trade negotiations (Gheyle and De Ville 2017; Heldt 2020).).

In response to these demands, the EU has since adopted a more transparent approach during trade negotiations, in line with the trade strategy *Trade for All* of 2015 (Coremans 2020; Gheyle and De Ville 2017; Marx and Van der loo 2021). The strategy stressed how a ‘lack of transparency undermines the legitimacy of EU trade policy and public trust’ and how ‘there is demand for more transparency in trade negotiations, particularly when they deal with domestic policy issues like regulation’ (European Commission 2015). The commitment to transparency in trade negotiations was also identified as a priority by Commission President, Ursula Von der Leyen, in her Mission letter to the Trade Commissioner in 2019 (Von der Leyen 2019). The Commission now publishes the mandate proposals for all its trade negotiations, as well as all EU text proposals and the final negotiated agreement on its website. It also provides greater institutional transparency through its open approach towards to the European Parliament (Marx and Van der Loo 2021). As a result, the EU negotiators now operate in a more transparent environment, in which they are subject to greater scrutiny and control (Heldt 2020). While this has made negotiations more time consuming, it has also increased their democratic legitimacy.

To conclude, the EU is a powerful international trade negotiator with an extensive network of bilateral trade agreements. The nature and scope of the negotiating agenda has broadened, with a greater focus on regulatory and political issues. Negotiations are conducted with greater levels of transparency, and the role of the European Parliament, as a channel for civil society organisation to express their more political concerns, has increased. Much of the EU’s influence stems from the ability of the EU negotiators to speak with a ‘single voice’ (Meunier 2005). However, this voice is the result of a complex process of domestic negotiations between and within the EU institutions.

**EU Institutional Set-Up: A Principal-Agent Relationship**

**Agent Power**

Article 207 TFEU stipulates that it is the Commission that negotiates trade agreements on behalf of the EU. In terms of responsibility for trade negotiations *within* the Commission, it has been delegated to DG TRADE. DG TRADE, which coordinates commercial relations between the EU and the rest of the world, is responsible for all international trade negotiations[[5]](#footnote-5). Whenever new trade agreements are to be negotiated, a specific Negotiating Team is appointed to lead the negotiations within DG TRADE. It brings together DG TRADE officials, under a Chief Negotiator at Director level within the Commission. Depending on the scope and nature of the negotiations, officials from other DGs may also join the Team. The Negotiating Team is responsible for preparing the mandate proposal, which sets out the main guidelines and remit for the future trade agreement. Once the proposal has been approved by the College of Commissioners and adopted by the Council, the Negotiating Team conducts the international negotiations at Level One. Its main aim is to conclude the negotiations with the EU’s negotiating partner in a way that is satisfactory to its principals. However, it will also try and conclude an agreement that reflects its own preferences, as per principal-agent logic (Dür and Elsig 2011; Pollack 2003). In line with the functional argument, these preferences are influenced by its location within DG TRADE, which is seen to favour free market liberalism and extensive liberalisation (Aggarwal and Fogarty 2004: 227; Lightfoot and Burchell 2005: 83; Young 2007). Surveys on the attitudes within the Commission confirm that most officials in DG TRADE are economical liberals (Young and Peterson 2014).

In terms of agent power resource, the officials in the EU’s Negotiating Team generally have extensive technical expertise and significant experience of trade negotiations, as many senior officials have a long career within DG TRADE. They can also rely on the institutional memory of DG TRADE, which has conducted trade negotiations for over 50 years. And through their central position during the negotiations – both at the domestic and the international levels – they have an overall understanding of all the interests and preferences involved, which gives them a significant informational advantage vis-à-vis their principals. They also have strong agenda-setting powers, as they are responsible for drafting the mandate proposal, as well as the EU’s text proposals during the course of the negotiations. However, despite these resources, the Negotiating Team may be prevented from pursuing its own interests as a result of the control exercised by the principals – the College of Commissioners, the Council, and the European Parliament.

**Principal Control**

*The College of Commissioners*

The initial decision to initiate new trade negotiations is taken at the level of the College of Commissioners, most often on the initiative of the Trade Commissioner – either in response to a request from an external country or region, or based on priorities set out in a Trade Strategy. Most Trade Commissioners publish a Trade Strategy at the beginning of their tenure. Once negotiations start, the Negotiating Team operates under the direct supervision of the College of Commissioners, and it reports to the College on a regular basis. All formal proposals produced by the Negotiating Team, including the mandate proposal and specific text proposals, need to be approved by the College by consensus before they are transmitted to the Council and the European Parliament. To this end, the Negotiating Team first consults with the affected DGs, and then the proposal goes via the Director-Generals to the Cabinets of the Commissioners. And finally, a decision on the proposal is taken by the College (Interview, Commission official, 21/6/2017). In line with the divisions of portfolios between the Commissioners, the DG TRADE-based Negotiating Team is ‘under the authority’ of the Trade Commissioner (Meunier and Nicolaïdis 1999: 480). The Negotiating Team engages regularly with the latter, and there is an effective system of consultation between the Negotiating Team and the Cabinet of the Trade Commissioner throughout the negotiations. As all matters need to have the ‘blessing’ of the Cabinet, the Negotiating Team submits its negotiating documents for a quick Cabinet approval (or rejection) (Interview, Commission official, 21/6/2017). The Cabinet of the Trade Commissioner is thus kept closely informed of the developments in the negotiations. The Trade Commissioner also operates as the political lead of the EU Negotiating Team and gets involved when discussions take place at ministerial level, whether it is with the Trade Ministers in the Foreign Affairs Council (Trade), with MEPs in the Committee on International Trade or Plenary, or with Trade Ministers of the EU’s negotiating partners. In addition, when political input is needed at critical points in the international negotiations, the Trade Commissioner is called upon. This direct involvement of the Trade Commissioner allows for particularly close monitoring of the negotiation process and the work carried out by the Negotiating Team.

The level of direct control that Trade Commissioners exercise over the Negotiating Team, and ‘how close a leash they want to keep on their DG’, depends on the individual Commissioner (Interview, Commission official, 21/6/2017). Generally, when it comes to trade negotiations, the power of balance leans towards the administrative, rather than political, level. This means that many issues are solved through inter-service consultations between the DGs, and do not have to be widely debated at the level of the College. In terms of preferences of these principals, they correspond with the functional or sectorial responsibilities of the DGs and portfolios of the Commissioners. Trade negotiations tend to expose a divide between the pro-liberalisation stance of DG TRADE (and the Trade Commissioner) and the more protectionist stance of DG AGRI (and the Commissioner for Agriculture). DG GROW and the Commissioner for the Internal Market, which act in the interest of European industries, are also actively involved. Whether they align with the liberal or more protectionist stance depends on the industrial production of the negotiating partner. As the trade agenda has deepened, and the focus has shifted from simple tariff reduction to issues of a more political nature and regulatory compatibility, an increasing number of DGs and Commissioners are involved in the negotiations, including those with responsibility for climate change, environment, health, and competition. All negotiating documents published by the Commission are consequently a result of negotiations between these different sectorial interests. Once a final deal has been reached between the Negotiating Team and the EU’s negotiating partner at the international level and the negotiating text is agreed, the Negotiating Team prepares a proposal for signature and conclusion of the agreement. After this proposal has been through the inter-service consolation process, the Commissioners in the College need to adopt it by consensus.

The Negotiating Team thus conducts the negotiations, but under the control of the College through its through its authorisation, monitoring, and ratification powers.

*The Council of the EU*

As per Article 207 TFEU, it is the Council that authorises the Commission to open negotiations, based on the proposal from the Commission, and the negotiations shall be conducted in consultation with a ‘special committee’ appointed by the Council. The member states in the Council thus constitute a collective formal principal, which provides the negotiators with a mandate, setting out the main guidelines and parameters of the future trade agreement (Billiet 2009; da Conceição-Heldt 2009; Dür and Elsig 2011; Dür and Zimmerman 2007; Pollack 2003; Young 2002). Throughout the negotiations, the Negotiating Team regularly reports to, and seeks advice from, the ‘special committee’ – the Trade Policy Committee (TPC) – consisting of senior trade officials from all the member states. The TPC meets once a week in its ‘deputies’ format’ with trade specialists from the Representations of the member states in Brussels, and once a month in its ‘full members’ configuration, when senior officials from the national trade ministries meet in Brussels. When reporting to the latter, the Negotiating Team is normally represented at Chief Negotiator level (Interview, member state representative, 9/1/2018). The Chief Negotiator also reports to COREPER, which on occasion discusses trade negotiations when there are issues that cannot be solved at the TPC-level, or when formal decisions have to be made. At regular intervals the Trade Commissioner also reports to the Foreign Affairs Council (Trade), generally following the brief of the Negotiating Team. All these three sets of meetings are chaired by the member state holding the rotating Council Presidency. Although the Foreign Affairs Council meetings are generally chaired by the High Representative, and the preparatory bodies by the EEAS[[6]](#footnote-6), this is not the case when it meets in its trade configuration. Despite the fact that ‘common commercial policy shall be conducted in the context of the principles and objectives of the union’s external action’ (Article 207 TFEU), the High Representative and the EEAS play a marginal role in trade policy.

The preference divergence within the Council is often illustrated by placing member states along a liberal-protectionist axis (Meunier 2005; Pollack 2003). At the liberal end are the so-called likeminded member states, including Denmark, Estonia, Finland, Germany, the Netherlands, Sweden, and the UK (until its departure), and at the other end are the protectionist Southern member states, including France, Spain, Italy, and Portugal (Young and Peterson 2014). However, these coalitions are not permanent, and member states might have liberal preferences in some areas and protectionist in others. For example, the UK diverged from its liberal stance when it came to the issue of free movement of people in the negotiations with India (Frennhoff Larsén 2017; Henig 2018). In addition, as the trade agenda is deepening, many issues do not involve a liberal-protectionist dynamic, and the coalition formations are consequently becoming more fluid.

Once an agreement has been reached between the Negotiating Team and the EU’s negotiating partner, and it has been approved by the College of Commissioners, the member states in the Council ratify it by a qualified majority or by unanimity. The latter applies in cases where the agreement covers areas that require unanimity voting in the Council, such as cultural and audio-visual services, education services, and health services, or certain aspects of trade in services, intellectual property, and foreign direct investment (Article 207 TFEU). If the nature of the agreement is established as ‘mixed’ – involving competences of both the EU and the individual member states – it also needs the ratification of parliaments within the member states.

The Council thus serves as a formal principal, which can exercise control over the negotiating agent through its authorisation, monitoring, and ratification powers.

*The European Parliament*

Before the Lisbon Treaty of 2009, the role of the European Parliament was relatively limited during trade negotiations. However, the Lisbon Treaty provided the Parliament with both ratification powers and the right to be kept informed by the Commission throughout EU trade negotiations (Articles 207, 218 TFEU). This change, aimed at increasing the democratic legitimacy of EU trade negotiations, made the Parliament into a de facto principal (Conceição-Heldt 2021), and it has exerted significant influence over recent trade negotiations (Eckes 2019; Frennhoff Larsén 2020; Meissner 2016; Rosén 2017; Ripoll Servent 2014; Van der Putte et al 2014). The Negotiating Team reports on a regular basis to the European Parliament’s Committee on International Trade, and to the specific monitoring group that is established within this Committee for each trade negotiation. The Trade Commissioner also addresses the Committee on International Trade and the MEPs in Plenary when there are significant developments in the international negotiations. The Committee on International Trade is one of the newest committees in the European Parliament, but it has nevertheless played an active role in recent trade negotiations and its experience and expertise has deepened significantly. The meetings through this Committee and the Plenary provide opportunities for MEPs to scrutinise the negotiations, and to raise questions and concerns directly to the negotiators. Parliament also exerts influence through its resolutions and written questions. While it does not have the same authorisation powers as the Council, a praxis has developed whereby the Parliament issues a resolution on the mandate proposal from the Commission before the formal adoption of the mandate by the Council (Frennhoff Larsén 2020). This makes it difficult for the Council to ignore the view of the Parliament, and as such, it can be seen as having informal authorisation powers.

In terms of preferences, there are differences between the political group. However, overall, the parliamentary position is in favour of free trade, since the two biggest groups – the Group of the Progressive Alliance of Socialists and Democrats and the Group of the European People’s Party – support this position (Conceição-Heldt 2017). With the politicisation of the EU trade agenda, the Parliament has also become a strong advocate for social, environmental, and political aspects of trade agreements (Eckes 2019), and it has at times made its ratification conditional on the inclusion of such political clauses. The Parliament has also pushed for increased public transparency during trade negotiations (Ripoll Servent 2014; Delimatsis 2017; Heldt 2020), and its pressure has contributed to a more open approach, making it easier for citizens and civil society to follow the negotiations. And the Parliament is a channel for many of the demands made by civil society organisations. This was seen not least during the protests around the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and TTIP negotiations.

In short, the Parliament exercises significant control through its informal authorisation, monitoring and ratification powers.

**Case Study – Negotiating the Economic Partnership Agreement (EPA) with Japan**

**Preparation Phase**

When preparing for trade negotiations, DG TRADE and its international counterparts normally engage in a scoping exercise to determine the potential and nature of a future trade agreement between them. In the case of the EU-Japan negotiations, the scoping exercise was led by a Joint High-Level Group (JHLG), which was established in April 2010 at an EU-Japan summit between the Prime Minister of Japan and the Presidents of the European Council and the Commission. The JHLG brought together officials from DG TRADE and their Japanese counterparts, who conducted a joint examination of different options for strengthening the EU-Japan economic relationship (Council of the EU 2010). At a summit a year later, the JHLG reported on the options, and the political leaders agreed that the parties should initiate negotiations towards ‘a deep and comprehensive FTA/EPA, addressing all issues of shared interest to both sides including tariffs, non-tariff measures, services, investment, Intellectual Property Rights, competition and public procurement’ (Council of the EU 2011). The focus of the JHLG then turned to determining the ambition of the future agreement – an exercise that provided the basis for each party’s negotiating mandate.

When appointing the EU negotiating team for the negotiations with Japan, it was clear that it would be based in DG TRADE, given its responsibility for all trade matters. Through the establishment of the JHLG by the Presidents of the European Council and the Commission, DG TRADE officials were given the lead in the scoping exercise on the EU side. Once a team had to be formally established, several of these officials who had been part of the scoping exercise became part of the EU Negotiating Team. This reflects the ambition within DG TRADE to ensure as much continuity as possible in relations with its negotiating partners (Interview, Commission official, 10/1/2018). The Team was thus set up within DG TRADE, under the lead of the late Deputy Director-General Mauro Petriccione as Chief Negotiator. Given the scope of the future agreement, the Negotiating Team also invited officials from other affected DGs, including DG Agriculture and Rural Development (AGRI), DG Climate Action (CLIMA), DG Competition (COMP), DG Employment and Social Affairs (EMPL), DG Environment (ENV), DG Internal Market and Industry (GROW), DG Maritime Affairs and Fisheries (MARE), DG Taxation and Customs Union (TAXUD). In total, the Negotiating Team comprised around 35 officials under the coordination of the DG TRADE officials (Interview, Commission official, 9/1/2018). Following the instructions from the Presidents at their summit with Japan, the first major task of the EU Negotiating Team was to ‘seek the necessary authorization for the negotiation of these agreements on the basis of successful scoping’ (Council of the EU 2011).

*The EU’s Domestic Negotiations at Level Two – Identifying the Win-Set*

The aim of the scoping exercise was to provide both sides with reassurances that the negotiations would produce results ‘likely to fall within an acceptable range of outcomes’ (European Commission 2012). To help identify the acceptable outcomes, or the win-set, on the EU side, the Negotiating Team engaged in extensive consultations with its domestic constituents, or principals – the College of Commissioners, the Council, and the European Parliament – to get an understanding of their main preferences and sensitivities. These consultations also served to inform the mandate proposal.

Japan had been identified as a strategic partner with which to pursue closer trade cooperation in both the 2006 *Global Europe* strategy produced by Trade Commissioner Peter Mandelson, and the 2011 *Trade, Growth and World Affairs* strategy produced by Trade Commissioner Karel de Gucht. While the actual demand to initiate negotiations came from Japan (Interview, Commission official, 10/1/2018), this meant that there was strong political support for the upcoming negotiations from the College of Commissioners, which approves all trade strategies. However, given the technical details of the negotiations, most of the coordination work during this phase took place at the level of the DGs. To support the scoping exercise and to help prepare the proposal for the negotiating mandate, an impact assessment of an FTA with Japan was undertaken. Under the lead of DG TRADE, a steering group was created bringing together the affected DGs. Some of the most active DGs at this stage included DG AGRI and DG GROW.

The main concern raised by DG GROW was the high levels of NTMs on the Japanese side, and there was a worry that it would be a ‘tariffs versus NTMs’ agreement, with the EU reducing tariffs and Japan adjusting its NTMs. NTMs, which refer to policy measures other than tariffs that can impact on international trade, and include behind-the-border measures, such as standards, regulations, and practices, are more difficult to change than tariff schemes, and there were concerns that Japan would be unable to tackle its NTMs effectively (Interview, Commission official, 9/1/2018). Since tariffs between the EU and Japan were relatively low, the relative importance of NTMs had increased, and all studies carried out at the time indicated that without significant changes to the Japanese NTMs, particularly in the chemical, automotive, transport, telecommunication and financial services sectors, the agreement would bring limited benefits to the EU (European Commission 2012). DG GROW was also concerned about the effects of the reduction of EU tariff on motor vehicles on EU car makers.

On the other hand, DG AGRI, which normally adopts a protectionist stance, saw an opportunity for EU farmers in the Japanese market, which hitherto had been difficult to access due to high tariffs for agricultural and processed food. In addition, Japan’s agricultural exports were not seen to pose a threat to EU farmers. As a result, DG AGRI pushed for an early and rapid conclusion of the agreement, putting it at odds with DG GROW (Interview, Commission official, 9/1/2018). Yet, overall, in these inter-service consultations, and in the discussions between the Commissioners in the College, there were relatively high levels of consensus at this stage. To placate the ‘tariff versus NTMs’ concerns, the EU Negotiating Team referred to the success of the recently concluded FTA with South Korea, which had exposed the same dynamics (ibid.).

During the scoping exercise members of the Negotiating Team also engaged with the member states in the Council through the TPC, and they shared the results from their general consultations and impact assessments. The discussions in the TPC mirrored those in the Commission, and several member states expressed concerns about Japan’s extensive NTMs, and they demanded that Japan provide proof that it was willing to engage on NTMs (Interview, member state representative, 21/7/2017). The Negotiating Team took this on bord, but again, it referred to the success of the EU-South Korea Agreement. It also referred to the on-going Trans-Pacific Partnership negotiations, which Japan was conducting with Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam, which could negatively affect the EU’s trade with the region. This helped to highlight the urgency of an EU-Japan agreement, and member states’ support for the agreement gradually increased during the scoping exercise. However, their contributions were still short on detail, and as is often the case, they waited to specify their preferences until they were presented with the mandate proposal (Interview, Commission official, 9/1/2018). This gave the Negotiating Team significant agenda-setting powers as it could formulate the mandate proposal without too much interference by the member states.

The European Parliament played an active role during this stage. The scoping exercise with Japan started just after the entry into force of the Lisbon Treaty in 2009, and the European Parliament was keen to make the most of its new monitoring powers. Article 218 TFEU states that ‘Parliament shall be immediately and fully informed at all stages of the negotiation’. For the Parliament, it was clear that ‘all stages’ of the negotiations included the scoping exercise, and the Committee on International Trade became actively involved in the discussion about the EU-Japan agreement (Interview, MEP, 10/1/2018). The Negotiating Team, which was well aware of the new parliamentary powers, and the way Parliament had used them to veto the EU-US Terrorist Financing Tracking Programme (Eckes 2019), was willing to engage. Team members attended meetings of the Committee on International Trade, and they shared the results from their general consultations and impact assessment in the same way as it did vis-à-vis the Council. The Parliament had the same concerns as the College of Commissioners and the Council about Japan’s NTMs, and in addition, it pushed for the inclusion of human rights and social and environmental standards in the future agreement with Japan (European Parliament 2011a). In particular, it wanted to make sure there were substantive commitments on these matters. However, overall, the Parliament was very supportive of an agreement with Japan (Interview, European Parliament official, 21/6/2018).

Once the scoping exercise was concluded, the Negotiating Team prepared the mandate proposal. Despite concerns among several of the principals about increased competition resulting from increased Japanese exports into the EU, the proposal advocated for high levels of trade liberalisation overall. As for the worries about Japanese NTMs, these were addressed in the proposal, which identified Japanese NTMs elimination as one of the main goals of the negotiations. It proposed a strict parallelism between the reciprocal elimination of tariffs by the EU and the elimination of NTMs by Japan. This would ensure that the elimination of tariffs was preceded by NTMs elimination (Interview, Commission official, 9/1/2018). The mandate proposal also stated that the agreement with Japan should only include provisions on trade and trade-related matters. Although the decision about the nature of the agreement would only be made once the final agreement had been reached, this narrow focus would increase the chances of the agreement being qualified as an ‘EU only’ agreement. This was in line with the preferences of the Negotiating Team, as an ‘EU only’ agreement would avoid a lengthy ratification process by national parliaments, which would increase the risks of ratification failure. During the preparation of the mandate proposal, the College of Commissioners was regularly updated on progress, and once the Negotiating Team submitted its proposal to the College, it was adopted without difficulties on 18 July 2012. The proposal could then be transmitted to the Council and the European Parliament.

During the discussions about the mandate proposal in the TPC, the member states become more vocal and specific. On one side, the so-called like-minded countries, including the UK, the Netherlands, and the Nordics, which generally favour trade liberalisation, were in support of the mandate proposal. On the other side, countries with strong car industries, including Belgium, Czech Republic, France, Germany, Italy, Spain and Slovakia were worried that there would be a rapid increase in the number of imported cars, threatening their domestic industries (Interview, member state representative, 9/1/2018). However, the Negotiating Team could balance these protectionist concerns with the opportunities for access to the Japanese market for food and agricultural products. Many of the car-producing countries were also strong on agriculture or processed food, and through a ‘cars-for-cheese’ compromise, the Negotiating Team could rally the member states around its pro-liberalisation approach (Interview, Commission official, 10/1/2018). In response to the member states’ concerns about NTMs, the Negotiating Team included a suspension clause, through which the negotiations would be suspended after twelve months if Japan did not meet its implementation commitments, as per an NTMs elimination schedule agreed during the scoping exercise. The clause stated specifically that the TPC would be consulted, and based on that consultation, the Commission would decide whether Japan had made enough progress for the negotiations to progress, or whether they should be suspended (Council of the EU 2012). This illustrates how the Negotiating Team, which was keen to initiate the negotiations with Japan as soon as possible, offered the opportunity of a potential future veto for the member states in order to get them to authorise the start of the negotiations. It was clearly easier for the member state principals to provide this authorisation if they knew they had the opportunity to suspend the negotiations later. So, with this reassurance of additional authorisation powers, the member states adopted the mandate proposal by unanimity on 29 November 2018.

For the European Parliament, these negotiations offered an opportunity to set procedural precedents in terms of its involvement in trade negotiations. Since the mandate proposal was the first to be presented following the entry into force of the Lisbon Treaty, the Parliament insisted that it was sent to the Council and the Parliament at the same time to allow the Parliament to express its views *prior* to adoption by the Council (European Parliament 2012b). The Negotiating Team accommodated this request and sent the mandate proposal to these two sets of principals at the same time. This then developed into the generally accepted praxis, where the Council always waits for the resolution from the European Parliament before adopting the mandate. The Parliament’s resolution in response to the mandate proposal for the EU-Japan negotiations highlighted Parliament’s overall support for a future agreement, and it reaffirmed the parliamentary call for a ‘robust and ambitious sustainable development chapter with core labour standards’ (European Parliament, 2012c). As a result, the final mandate referred to sustainable development as ‘an overarching objective of the parties’ (Council of the EU 2012).

To conclude, the Negotiating Team engaged extensively with its principals in the College, the Council, and the European Parliament during the preparation phase, and the principals had the opportunity to exercise control through their authorisation and monitoring powers. Yet, the Negotiating Team had significant agenda-setting powers and it obtained a mandate which was mainly in line with its own preferences. It was also fairly broad and flexible, and as a result, it did not severely restrict the autonomy of the Negotiating Team. As long as Japan delivered on its NTMs commitments, the negotiators had a wide win-set, which should facilitate negotiations with Japan at Level One.

*International Engagement at Level One*

During the preparation phase the EU and Japan engaged closely from the very beginning. The scoping exercise was carried out jointly by the two parties, and it involved regular meetings between the officials in DG TRADE and their Japanese counterparts in both Brussels and Tokyo (European Commission 2012). This allowed the two parties to gain a good understanding of their respective preferences and sensitivities. Many of the officials who were part of the JHLG were then transferred to the two negotiating teams in the lead up to the start of the negotiations. Consequently, they knew each other and had developed a good working relationship (Interview, Commission official, 29/9/2022). The EU negotiators conveyed the concerns of their principals about Japan’s NTMs. Japan, which was the initial *demandeur* of the agreement since it wanted to level the playing field with South Korea, which had just concluded its FTA with the EU, understood these concerns (Kleimann 2015). In order to progress the preparations and placate the concerns in the EU, Japan thus proactively started to dismantle some of its NTMs already during the scoping exercise (Interview, Commission official 9/1/2018). This made it easier for the EU negotiators to rally support for the upcoming negotiations domestically. However, for Japan it was a difficult domestic game. Standards and regulations are not easily removed since in many cases they have legitimate purposes. The Japanese government consequently had to work hard to bring about the required changes domestically.

Although there was some domestic resistance on both sides, it was clear to all the officials in the HLWG that the agreement would benefit both parties in the long term. The EU and Japan are among the biggest economies in the world, and as such they offered extensive market access opportunities. Given their respective reliance on export industries, an FTA that removed trade barriers between them would lead to great economic gain for both parties. In addition, at the time they were both engaged in significant trade and investment negotiations with other parties. The EU was negotiating with the US and China, and Japan was involved in the Trans-Pacific Partnership negotiations. There were consequently strong motivations to tighten their trading relationship to make sure they were not negatively affected by these future trade agreements. The EU and Japan clearly saw ‘eye to eye’ on the need to negotiate an FTA (Interview, Japanese official, 29/9/2022).

While the international engagement mainly took place between the officials in the HLWG, the European Parliament travelled to Japan to express its overall support for the agreement already during this phase (Interview, MEP, 10/1/2018). The parliamentary Delegation for Relations with Japan, which had been established in 1979, took an active interest in the upcoming negotiations, and its members engaged with their counterparts in the Japanese Diet. It was thus clear to the Japanese side that the European Parliament was in favour of a far-reaching agreement, but also that it was closely engaged in the negotiations process – an engagement that was only set to increase during the negotiation phase (Interview, Japanese official, 29/9/2022).

**Negotiation Phase**

The negotiations between the EU and Japan were officially launched in March 2013 by the Presidents of the European Council, Herman Van Rompuy, and the Commission, Jose Manuel Barroso, and the late Japanese Prime Minister Shinzo Abe. The first negotiation round took place in April 2013, and the negotiations were concluded in July 2017. During the four years of negotiations the EU Negotiating Team moved back and forth between the international negotiations with Japan at Level One and the domestic negotiations with its principals at Level Two.

*The EU’s Domestic Negotiations at Level Two*

During the negotiation phase, the Negotiating Team provided regular updates to the Cabinets of the Commissioners, and all negotiating texts had to be approved by the College before being submitted to Japan. As for the direct control over the Negotiating Team, the weekly ‘jour fix’ meetings between the Trade Commissioner and DG TRADE were used to provide updates about progress in the negotiations. The engagement between the Commissioner and the Negotiating Team intensified at critical points in the negotiations and when there were meetings with Japan at Ministerial level, or with the Foreign Affairs Council (Trade) and MEPs. Trade Commissioner Cecilia Malmström, who took over from Karel de Gucht at the end of 2014, made the negotiations one of her main priorities. She wanted to be kept informed on a regular basis, and whenever there were particular challenges. However, she did not get involved in direct day-to-day control. As explained by a Commission official in her Cabinet: ‘her approach was very much: ‘they [the Negotiating Team] are people who do their job well’ and as long as things were advancing, she would let them do their job and follow from a distance…she was not keeping them in a strict reporting environment’ (Interview, 21/6/2017).

The Trade Commissioner did however influence the level of transparency of the negotiations. She was a strong advocate of increased transparency in trade negotiations, as reflected in the *Trade for All* strategy. She made sure detailed reports of each negotiating round were published together with all textual proposals submitted to Japan. In addition, a series of public meetings, conferences and civil society dialogues were organised to provide information about the EU-Japan negotiations by either the Negotiating Team or the Commissioner. However, while important to hold these meetings from a transparency perspective, they generated little interests as a result of the limited public engagement around the negotiations with Japan (Meunier and Nicolaïdis 2019). Most of the questions that were raised during these meetings referred to the negotiations with the US or Canada, rather than Japan (Interview, Commission official, 21/6/2017).

Given the unprecedented preference convergence between the Trade and Agriculture Commissioners, who traditionally have been on opposing ends of the liberalisation-protectionist axis, the discussions within the College were relatively consensual. This was also a result of the detailed work that had taken place through the inter-service consultations conducted by the Negotiating Team. During the negotiations, DG AGRI continued to push for extensive access to the Japanese market, which only reinforced the pro-liberalisation position of the Negotiating Team, making it easier to pursue the aim of ensuring ‘the highest possible degree of liberalisation’ as set out in the mandate (European Commission 2012). However, although reassured by Japan’s effective handling of NTMs, DG GROW continued to express concerns about the impact on the EU car industry – one of its stakeholders that had mobilised significantly around the negotiations. It argued that the EU-Japan automobile trade relations were already asymmetrical in favour of Japan, and that the FTA offered little prospect for EU car manufacturers to boost their exports. Yet, since market access for the automotive sector was Japan’s main ambition, and one that it would not compromise on, other ways to compensate the EU car industry had to be found. These included transition periods allowing for a gradual elimination of tariffs in the EU, as well as the removal of the complex regulatory barriers to the Japanese car market to facilitate exports for EU car manufacturers. In the end, DG GROW had a ‘global view’ of the agreement, as it also advocated the interests of other industries, including European Small and Medium Enterprises, which were seen to benefit significantly from new export opportunities, and which for the first time were given a separate chapter in the Agreement (Interview, Commission official, 9/1/2018). In addition, DG GROW was determined not to be subject to the same aggressive car lobbying as during the negotiations with South Korea, and it consequently toned down its defensive approach on cars over time (Erixon and Lee-Makiyama 2010; Interview, Commission official, 9/1/2018).

These discussions between defensive and market access-based interests took place at the level of the College as well, but overall, there was overwhelming support for the agreement, and the Commissioners backed the Negotiating Team in its efforts of getting Japan to open up its market as much as possible (Interview, Commission official, 10/1/2018). As always when the end of trade negotiations approach, and the political impetuous is needed, both Trade Commissioner Cecilia Malmström and Agriculture Commissioner Phil Hogan engaged directly with their Japanese counterparts, Foreign Affairs Minister Fumio Kishida and Agriculture Minister Yuji Yamamoto. For both, the negotiations with Japan had become a priority following the US administration’s tilt towards isolationism and protectionism. They saw these negotiations as a way of sending ‘a powerful signal to the rest of the world that two of the largest economies are resisting protectionism, in favour of openness’ (European Commission 2017). While these direct interactions with Japan offered opportunities for increased principal control, the Commissioners continuously consulted with the Negotiating Teams in between these negotiation sessions at political leaders level.

As for the Council, the EU Negotiating Team reported to the TPC on a regular basis during the negotiations with Japan, and at critical points the Trade Commissioner reported to the Foreign Affairs Council (Trade). The TPC was briefed before and after each negotiating round with Japan, and the Negotiating Team shared documents and proposals relating to the negotiations as part of its transparency approach. Once the member states were reassured that Japan was serious about dismantling its NTMs, they decided not to trigger the suspension clause. The focus then shifted towards market access. In particular, the member states saw opportunities for agricultural and processed food products, such as pork, wine, pasta, chocolates and cheese, as well as for industrial products, including chemicals, textiles, metal, plastics, and jewellery (Interview, Commission official, 10/1/2018).

As discussed in the Council already during the preparation phase, the only real cost associated with the agreement for the member states was the increased competition from Japan’s car producers. This was reflective of the broader trend in EU negations with Asia, where cars have replaced agriculture as the most sensitive sector (Lee-Makiyama 2012: 11). Japan was pushing the EU to remove its 10% tariff on cars. The EU’s car producing member states knew that this had to be accommodated in order to gain access to the Japanese market, and for Japan to continue to dismantle its NTMs. However, in order to protect their industries, they pushed the Negotiating Team to reach a deal on a 7-year transition period during which the 10% tariff would be phased out. This was much longer than what had been discussed internally in the Commission, and also the 3–5-year transition period agreed with South Korea (Interview, Commission official, 9/1/2018).

As in all EU trade negotiations, the issue of geographical indications (GIs) featured widely in the Council. GIs refer to regional specialty foods, such as Aceto Balsamico di Modena, Camembert de Normandie, Gouda, or Queso Manchego, and the EU always aims to establish wide protections for these during its trade negotiations. The member states pushed for as many of their own GIs as possible to be protected in Japan (Ibid.). The Negating Team, which was well-aware of earlier ratification threats – for example Greece and Italy had threated not to ratify CETA due to insufficient GI protection (Huysmans 2020) – took their demands on board.

Given the nature of preferences within the Council, the dynamic was one where the member states pushed the Negotiating Team to be as bold as possible in its negotiations with Japan, asking for extensive market access, continued NTMs dismantlement, significant GI protections, and long transition periods for the removal of EU tariffs on cars. Since the main offensive and defensive interests were concentrated within, rather than between, the member states, there were relatively few distributional consequences within the Council. The line of attack was very much ‘the more the better’ (Interview, Commission official, 9/1/2018). For the member states, it was a question of how hard to push. They had to feel that they had been given enough on their respective key interests in order to be able to reach a conclusion (Interview, member state representative, 21/7/2017). Yet, as highlighted by a member state representative, ‘in the end it is the Commission negotiators that make the final judgement, they decide when it is time to conclude’ (ibid.). There was a general acceptance within the TPC that the Negotiating Team had the better insight into the Japanese interests and priorities and what would be possible to achieve. The member states recognised that there is a certain amount of give and take in an international negotiation, and overall, they had trust in the Negotiating Team to deliver on their behalf, not least since they witnessed the on-going progress on NTMs in Japan (Interview, member state representative, 9/1/2018). While the meetings of the TPC were chaired by the Council Presidency, there was a general recognition that the Negotiating Team had the full overview and understanding of the negotiations. As a result, the Council Presidency consulted closely with the Negotiating Team in terms of agenda items and how to progress the negotiations in the Council. (ibid.)

Throughout the negotiation phase the Negotiating Team also reported regularly to the European Parliament’s Committee on International Trade and the monitoring group for Japan. Under the lead of the Rapporteur Silva Pereira, the monitoring group brought together the Shadow Rapporteurs from all the political groups. Before and after each negotiating round, the Chief Negotiator briefed the group, and there was a constant exchange of documents. Given the enhanced role of the Parliament post-Lisbon, it also received all documents that were shared with the Council (Interview, European Parliament official, 11/1/2018).

Throughout the negotiations, the Parliament pushed for extensive commitments to sustainable development. It wanted to see the inclusion of an ambitious trade and sustainable development (TSD) chapter in the agreement with Japan. To this end, the Negotiating Team, which recognised the importance of promoting trade in a way that contributes to sustainable development, included a detailed TSD chapter (Interview, MEP, 10/1/2018). Another issue pushed hard by the Parliament during the negotiations was the provision of institutional transparency. Given the experience of the TTIP negotiations, where the Commission was criticised for adopting a secretive approach, the Negotiating Team went out of its way to provide transparency towards the Parliament (Interview, Commission official, 21/6/2017). As a result, a strong relationship developed between the Negotiating Team and the Committee on International Trade and the monitoring group. As expressed by a Parliamentary official: ‘they [the Negotiating Team] learned that it is in their interest that the Parliament is fully involved at all times to minimise surprises at the end of the process… it is good for the EU internationally if there is co-ownership [with the Parliament] because it makes us a more credible negotiator’ (Interview, 11/1/2018). For the Parliament, the negotiations with Japan served to set an important precedent for extensive transparency provisions from the EU negotiators.

To conclude, the Negotiating Team engaged regularly with its principals during the negotiation phase, and the latter had plenty of opportunities to exercise control through their monitoring.

*International Negotiations at Level One*

During the international negotiations between the EU and Japan, there were high levels of expertise on both sides of the table. There was great respect between the parties, and while they were both hard negotiators, the negotiations were conducted in a professional and polite manner. The EU Negotiating Team adopted a number of two-level game strategies that helped it reach an agreement that satisfied its principals, while also reflecting its own preferences. In terms of context, the negotiations were characterised by the symmetric relationship between the parties, by Japan’s difficult domestic game, and by the US withdrawal from the TPP and the TTIP negotiations, which heightened the geopolitical importance of a trade agreement between the EU and Japan

*Negotiating Strategies*

*Agenda-Setting:* The EU Negotiating Team was the first to present a proposal for the overall structure of the agreement, which in many respects was based on previous FTAs concluded by the EU, not least the one with South Korea in 2010. This approach of using previous agreements as templates was standard praxis for the EU since it was used to being the stronger party in most bilateral negotiations, and as such, could push for its template to be used, expecting its negotiating partners to follow (Interview, Commission official, 21/6/2017). Although Japan was of a similar size and had the same negotiating experience, it quickly became evident to its negotiators that the EU negotiators were rather inflexible when it came to the format of the agreement (Interview, Japanese official, 29/9/2022). The Japanese side thus accepted the structure proposed by the EU side, even on matters where it deviated significantly from how Japan normally structures its FTAs (ibid.). Although not explicitly said, it was clear that the EU negotiators preferred working with their own established structures, as this facilitated agreement at Level Two. It was more likely that their principals would agree structures that they had previously agreed to, rather than something new (Interview, Commission official, 21/6/2017). The one issue that Japan did push was the actual name of the agreement. Japan refers to most of its FTAs as Economic Partnership Agreements (EPAs), and they wanted consistency on this. For the EU, the term EPA was used for the controversial agreements concluded with the different regions of Africa, Caribbean, and the Pacific (see previous chapter on Development Negotiations), and they preferred a different name. As a result, the name issue remained undecided until the very end, when the EU negotiators did agree to the name of EPA, seeing it as a small compromise given that the overall structure was very similar to that initially proposed by them (Interview, Japanese official, 29/9/2022).

In terms of the actual content of the agreement, the EU Negotiating Team was also often the first to present textual proposals, making the Japanese negotiators respond to them, rather than develop them in the first place (Interview, Commission official, 9/1/2018). These proposals, which again often mirrored previously agreed texts in other FTAs and were the result of internal negotiations at Level Two on the EU side, thus provided the basis for the international negotiations at Level One. Of course, the EU Negotiating Team was willing to compromise to a certain extent, but the fact that the discussions were based around their proposals gave them significant influence over the negotiating outcomes.

In addition, the EU Negotiating Team was effective in pushing through many of its proposals once they had been presented at the international negotiating table. Although it was not severely restricted by its negotiating mandate from the Council, it wanted to deliver on the far-reaching demands that were made in terms of market access to Japan, given its own preferences for extensive trade liberalisation. It was thus perceived as a ‘hard negotiator with no wiggle room to concede’, and one that was unable to accept any Japanese requests if these were incompatible with its mandate (Interview, Japanese official, 29/9/2022). The Japanese negotiators saw their EU counterparts as ‘really professional, always calm, but always sternly pushing for their demands’ (ibid.). The EU Negotiating Team also benefitted from having officials who had been trade negotiators for many years, while Japanese officials rotate between different posts every two to three years, in line with their administrative system of governance (ibid.). So while many of the negotiators knew each other from the preparation phase, most of the Japanese negotiators changed over time.

*Collusion:* Both negotiating teams had strong interests in reaching a deal, as this was the task delegated to them by their respective principals, but also because of their own preferences for trade liberalisation. While both parties were seen as being hard negotiators, the negotiations were conducted in an open, transparent, and constructive manner, with high levels of mutual respect. Both teams tried hard to understand each other’s domestic protectionist difficulties and how these could be addressed (Interview, Commission official, 9/1/2018). On Japan’s side, the main opposition to the negotiations came from the agriculture sector and Japanese farmers, who were concerned about the impact of competition from the EU with the reduction of Japan’s prohibitive tariffs. While pushing the Japanese negotiators to agree to further liberalisation in the agricultural sector, the EU negotiators also understood these concerns. As a result, when engaging with their own domestic constituents, they stressed the sensitivity of the Japanese agricultural sector and the need to allow for some protective tariffs to remain and for transition periods to be put in place. The EU negotiators consequently echoed the demands made directly to them by the Japanese negotiators. However, the overall agenda of the Japanese government was based on liberalisation and the gradual opening of the agricultural sector, as the high-cost farmers were seen to have been sheltered for too long. In line with ‘Abenomics’, the Japanese government consequently used the EPA negotiations as leverage for some of the domestic structural reforms it wanted to carry out anyway (Silva Pereira 2019). Yet, rather than making the negotiations easy, this domestic reform was seen as a necessary precondition for the negotiations to even proceed on the sensitive issue of agriculture. A lot of work was still needed by the EU negotiators to reach a beneficial deal in terms of agriculture.

Similarly, there was domestic reluctance in Japan to undertake the necessary reforms demanded by the NTMs reduction schedule agreed between the EU and Japanese negotiators. However, some NTMs were seen to protect uncompetitive sectors of the Japanese economy, and the Japanese government was keen to reform many of the areas with significant NTMs (Hilpert 2019). This helps explain the agreement of Japan to initiate the dismantling of NTMs already before the negotiations started, and its commitment to eliminate most NTMs during the course of the negotiations.

*Issue-Linkages:* The wide range of issues and the mixture of defensive and offensive interests on both sides in the EPA negotiations allowed the negotiators to identify linkages that would lead to an overall balance in terms of gains and concessions between the EU and Japan, but also between their respective domestic constituents. Yet, it was a complex process, which required great skills and understanding of the main gains and costs for the different domestic constituents. The overall compromise that emerged was based on the linkage between cars and the agricultural sector. The EU agreed to abolish its 10 percent tariff on cars over a 7-year transition period, while cutting duties on certain automotive parts more swiftly. In return, Japan committed to opening its agricultural market by cutting most of its tariffs (Marks et al. 2017). Through this compromise, the negotiators ensured a deal that fell within the win-sets of both parties, and it was considered a success overall (Interview, Commission official, 9/1/2018). For those EU member states that had been concerned about the impact on their car industry, the Negotiating Team delivered exactly what they had asked for in terms of the 7-year transition period. As a result, the member states were satisfied with the final result (Interview, member state representative, 9/1/2018).

*Principal Cross-Table Action:* Towards the end of the negotiations, Agriculture Commissioner Hogan intervened directly in the negotiations with Japan. The negotiations had been stalling due to a final hurdle of Japan’s resistance to open up its soft cheese market in line with the EU demand of a yearly quota with reduced tariffs for 40,000 tons of European soft cheese. Japan, keen to protect products such as Sakura cheese, refused to meet the EU demand. In consultation with the Negotiating Team, the Agriculture Commissioner then proposed a compromise formula whereby the EU would reduce its market access demand for soft cheese to 31,000 tons, in exchange for almost complete market access for hard cheeses. Japan agreed to this, and the final deal could be sealed (Marks 2017). Given the unusual convergence of preferences between the DG TRADE based Negotiating Team and the Agriculture Commissioner, this trans-governmental principal engagement with the Japanese negotiating partner, followed a supportive, rather than competitive logic.

The European Parliament also engaged directly in the international negotiations through cross-level action. During the domestic negotiations at Level Two, it had repeatedly asked for strong commitments on sustainable development, and the inclusion of an ambitious TSD chapter. Even after the Negotiating Team had agreed to such a chapter in the negotiations with Japan, the Parliament expressed concerns that it did not include a review clause. However, at this stage, a political deal had already been reached between the EU and Japan, and the Negotiating Team was extremely reluctant to re-open the TSD chapter. It was worried it would lead to demands for other chapters to be re-opened, and thus delay the conclusion of the agreement (Interview, MEP, 10/1/2018). The Rapporteur and his parliamentary team then went to Tokyo in September 2017 and engaged directly with the Japanese negotiators. They pushed for the inclusion of a review clause in the TSD chapter, stressing that there was a risk of ratification failure if their concerns were not addressed. The Japanese negotiators, who were well aware of the European Parliament’s consent powers, agreed to amend the TSD chapter to this end (ibid.). For them, the influential role of the European Parliament was evident, and its engagement in the negotiations process distinguished the EU from other negotiating partners of Japan. They had never negotiated with a country or region where there was such strong parliamentary involvement (Interview, Japanese official, 29/9/2022). Parliament’s influential role on the TSD chapter illustrates how the powers of the principals increase as the ratification gets closer. While the Negotiating Team expressed initial frustration about this parliamentary cross-level engagement with the Japanese negotiators, as it would delay the conclusion of the agreement, in the end it supported the action. Substance-wise, the Negotiating Team agreed with the insertion of a review clause to ensure enforcement of the TSD chapter. The Rapporteur also liaised closely with the Chief Negotiator throughout the process, and it was clear that its cross-level engagement mainly followed a supportive logic. The Negotiating Team had continuously been made aware of Parliament’s interests, concerns, and reservations, and a constructive relationship between the MEPs and the Negotiating Team developed during the course of the negotiations (Interview, MEP, 10/1/2018). Yet, the inclusion of a far-reaching TSD chapter with a review clause was seen as a huge parliamentary ‘win’ (Interview, Commission official, 9/1/2018).

*Negotiating Context*

The EU-Japan negotiations were influenced by the structural relationship between the parties, the two-level game played by the Japanese negotiators, and the linkages with other negotiations. In terms of the structural relationship, the negotiations reflected a symmetrical relationship between two equal parties. Both represent highly developed economies, with similar levels of Gross Domestic Product (GDP), and they are based on similar values. Like the EU, Japan had an extensive network of FTAs with countries including Australia, Brunei, Chile, Brunei, India, Mexico, Peru, Singapore, Switzerland and Vietnam. As a result, both parties had significant negotiating experience and expertise, and while the future agreement would be the most important bilateral FTA for both of them, no one was more dependent on it than the other. As a result, the negotiations were characterised by compromises where both parties had to make some concessions in order to increase each other’s win-sets.

While the EU negotiators clearly had the more complex institutional structure domestically, the Japanese negotiators had a difficult domestic game to play on their side as well. Given the significant demands pushed by the EU in terms of the dismantlement of NTMs, the Japanese negotiators were dependent on the commitment and ‘buy-in’ from their regulators to undertake the necessary reforms. Regulatory change requires ambitious reform efforts, and at times there was strong resistance. The Japanese negotiators also had to spend a significant amount of time engaging with the farming industry, which was extremely concerned about increased competition from abroad. In addition, the Japanese negotiators regularly engaged with the Diet, where they often faced difficult discussions given the expected impact of the agreement on specific constituents of some parliamentarians (Interview, Japanese official, 29/9/2022). This, together with the non-confrontational and consensual way of decision-making in Japan, contributed to the delay in responding to many of the textual proposals from the EU Negotiating Team, which in turn allowed the EU to take the lead on many of the issues (Interview, Commission official, 9/1/2018). It is thus clear that it is not always the EU that has the most difficult domestic game to play.

The EPA negotiations took place at the same time as the Trans-Pacific Partnership (TPP) negotiations. This contributed to Japan’s initial reluctance to open up its market towards the EU, as it would be under pressure to liberalise to the same extent towards the United States (US) through the TPP. This led to concerns within the EU that Japan prioritised TPP over EPA (Gilson 2016: 797). Indeed, in 2015 the Negotiating Team met fierce resistance regarding access to the Japanese agricultural market. This led to increasing frustration among the principals on the EU side, in particular among member states in the Council. In 2015-16, the talks had almost come to a standstill, and the Negotiating Team was aware that the EU would ‘face a terminal credibility crisis if negotiations dragged on much longer without a breakthrough’ (Marks et al. 2017). As an agent, it was clearly not delivering on behalf of its member state principals. The situation changed dramatically with the election of President Trump, and the US withdrawal from the TPP negotiations in January 2017. The US withdrawal was a devastating blow to Japan, and as a signal to the US, the Japanese negotiators became willing to go beyond anything they had offered to the US in their negotiations with the EU (Interview, Commission official 9/1/2018). This change in the Japanese approach allowed the Negotiating Team to re-engage with Japan and push the different member state demands. In the end, it delivered on all the core interests of the member states. It ensured extensive market access for agricultural and processed food products, with the potential of tripling EU agricultural exports (Von de Burchard and Hanke Vela 2017). These concessions offered to the EU on agricultural products, were a particular blow to US farmers. Japan delivered on its commitment to eliminate all identified NTMs, most of them even during the course of the negotiations as an ‘advance payment’. The Negotiating Team managed to obtain the 7-year transition period for Japanese car exports into the EU. And Japan agreed to recognise over 200 EU GIs – more than what was agreed by Canada in CETA, giving EU farmers yet another win with this agreement (Interview, Commission official, 9/1/2018).

The US administration’s de facto freeze of TTIP also impacted on the speed of the conclusion of EPA. Although the TTIP negotiations between the EU and the US had made little progress since the extensive public mobilisation against them, this move by the US further strengthened the resolve of the EU to reach a deal with Japan, as a way of demonstrating its support for cooperation, free trade, and a rules-based order (Silva Pereira 2019). The turn towards protectionism in the US thus heightened the geopolitical importance of EPA, and united the EU and Japan in their aim to play a leading role in shaping the future of international trade (Binder 2018).

On 6 July 2017, after 18 rounds of negotiations, a political agreement was reached. EPA constituted the biggest FTA either side had ever concluded, covering over 600 million citizens, a third of global GDP, and almost 40% of world trade. For the EU, it was also the most significant and far-reaching agreement in the traditionally protectionist area of agri-food trade.

**Ratification Phase**

Following the political agreement of 6 July 2017, negotiations on a number of unresolved issues – including the European Parliament’s intervention to secure a review clause of the TSD chapter – then continued until 8 December 2017, when the EPA was finalised. After this, the negotiated text underwent a process of ‘legal scrubbing’, during which EU lawyers reviewed the text to ensure compatibility with the EU Treaties and consistency with other EU FTAs. A similar process took place on the Japanese side. Normally, the legal scrubbing process in the EU lasts for a few months but given the strong commitment by the Negotiating Team, and the Commission as a whole, to have the EPA ratified before the UK’s departure from the EU, it was completed within weeks. The UK had been one of the strongest supporters of the Agreement, and given the uncertainty of Brexit’s impact on EU FTAs, the Commission wanted the EPA to enter into force before March 2019, the date initially set for the UK’s exit (Suzuki 2017: 885).

Once the Agreement had undergone the legal scrubbing, the Negotiating Team drafted the proposals for the Council decisions on signature and conclusion of the agreement. These proposals, together with the final EPA text, was sent to all the affected DGs for a final inter-service consultation, before they went to the College of Commissioners. Given the wide sectorial representation on the Negotiating Team, and the continuous inter-service consultations, as well as regular reporting to the College, during the course of the negotiations, there were no significant surprises. The proposals were adopted by the Commissioners on 18 April 2018, and then transmitted to the Council. Given that the Negotiating Team had delivered on all of the member states’ key interests, the Council discussions were relatively straightforward, and on 6 July 2018, the Council adopted the decision on the signature of the agreement, requesting the consent of the European Parliament. The Agreement was signed by European Council President Donald Tusk and Commission President Jean-Claude Juncker on the EU side, and by Prime Minister Shinzō on the Japanese side, at an EU-Japan summit on 17 July 2018.

As for parliamentary ratification, the two houses of the Japanese National Diet ratified the agreement on 29 November and 8 December 2018. However, when the Agreement was discussed in the European Parliament’s Committee on International Trade, there were renewed concerns among some of the MEPs about Japan’s commitment to implementing the TSD chapter. To avoid ratification failure, a group of MEPs, led by the Rapporteur and the Chair on the Committee on International Trade, organised yet another visit to Japan to ask the government for further reassurances about its implementation of the TSD chapter. In response to this cross-level engagement, Prime Minister Abe established an inter-ministerial task force to oversee the implementation of the TSD chapter (Dreyer 2018). This was enough to reassure those MEPs who had expressed concerns, and on 12 December 2018, the European Parliament gave its consent to the Agreement (474 votes in favour, 152 against, and 40 abstentions) – one of the strongest majorities in favour of an FTA at the time[[7]](#footnote-7). Following parliamentary approval, the Council of the EU adopted the final decision on the conclusion of the EPA on 20 December 2018, allowing the Agreement to enter into force on 1 February 2019.

One of the main debates in relation to the ratification of trade agreements is whether they fall within the exclusive competence of the EU, and only need formal ratification at the EU level, or whether they are ‘mixed’ agreements, involving competences of both the EU and the individual member states. In the case of the latter, the agreements need ratification at EU level, as well as within each member states, according to national ratification procedures – a process that often takes several years, and increases the risks of ratification failure, as seen when the regional parliament of Wallonia in Belgium held CETA in limbo through a temporary veto in 2016 (Bursens and Du Bièvre 2021). To make sure the EPA was identified as an ‘EU only’ agreement, the EU and Japanese negotiators had decided to leave the sensitive issue of investment protection to be resolved through a separate agreement (it was also an issue where EU and Japan had strongly diverging views). Opinion 2/15 by the Court of Justice of the EU on the EU-Singapore FTA had made it clear that EU exclusive competence can be extensive and include a wide range of issues without requiring joint ratification by the EU and the member states, but it also confirmed that investment protection was a mixed competence matter (European Commission 2018a).

Yet, even if an agreement legally falls under the exclusive competence of the EU, a political decision can always be made to subject an agreement to ratification within the member states. However, given the strong market access-based interests on both sides in the EPA negotiations, it was in the interest of the negotiators to have a swift conclusion and ratification of the Agreement (Conconi et al. 2021). There was strong support for this approach by the College of Commissioners, which favour greater EU exclusive competences in general. The Commissioners were keen to build on the precedent set by the EU-Singapore FTA, and the proposal that was adopted by the College and presented to the Council in April 2018, made it clear that the EPA ‘does not cover any matters that fall outside the scope of the EU’s exclusive competence’ (European Commission 2018a). While the Council has often been on the opposing side of the Commission in this debate on the extent of EU exclusive competence in trade agreements (Conconi et al. 2021), the member states did understand that on this occasion, there was a strong case for a quick ratification, given the looming uncertainty of Brexit. The Negotiating Team stressed to the Council that signing the EPA as an exclusive agreement, did not mean that it would be a template for the future (Interview, Commission official, 9/1/2018). Of course, knowing the power of precedents during trade negotiations, this was more of a rhetorical argument to reassure the member states, than something the Negotiating Team necessarily believed, or hoped for.

**Conclusion**

The EPA negotiations between the EU and Japan were characterised by a symmetrical relationship between two equal parties, representing highly developed economies based on similar values. They were reflective of the EU’s strategy of increasing market access, particularly in Asia, and, for the first time, in agriculture – an area normally characterised by highly defensive interests in the EU. The DG TRADE-based Negotiating Team brought together senior officials with strong technical expertise and extensive experience, who could draw on DG TRADE’s long institutional memory of over 50 years of trade negotiations. It had strong agenda-setting powers through its involvement in the drafting of the initial assessment report on the nature of the future agreement, as well as the mandate proposal and the textual proposals during the negotiations. As a result of its close engagement with the principals throughout the negotiations, and its privileged position at the intersection of the domestic and international games, it had a good understanding of all the preferences involved. These agent power resources allowed the Negotiating Team to reach a deal with Japan that to a great extent reflected its own preferences.

While Japan was the initial *demandeur*, a far-reaching FTA with one of the biggest economies in the world was fully in line with the economically liberal preferences of the DG TRADE-based Negotiating Team. An FTA with Japan offered extensive market access opportunities for the EU. Within the EU, the Negotiating Team became the strongest advocate for a comprehensive FTA with extensive trade liberalisation. However, it was subject to principal control from three sets of principals – the College, the Council, and the European Parliament – which were actively involved in the negotiations throughout, and which all had ratification powers. Initially, the Negotiating Team had to convince these somewhat sceptical principals about the benefits of a future agreement. The concerns were mainly about Japan’s extensive NTMs among all three principals. The main resistance was within the Council, and the Negotiating Team had to include a suspension clause in the mandate to obtain the member states’ authorisation to initiate negotiations. Once the negotiations started, the Council became relatively united in its support due to the strong market access opportunities. The College shared some of the initial reservations of the member states, but also came to rally around the approach of the Negotiating Team. Given the opportunities for market access in agriculture, the tensions that normally exist between the Agriculture and Trade Commissioners were absent. The European Parliament supported the agreement, but it advocated for strong commitments to TSD, as it saw the possibility of setting a far-reaching precedent with the EPA negotiations. The Negotiating Team remained in close contact with all three sets of principals throughout the negotiations. While this allowed the latter to closely monitor the process, it also allowed the Negotiating Team to build support for the agreement, and to anchor its own preferences with the principals.

The officials on the Negotiating Team engaged closely with their Japanese counterparts during the preparation phase to jointly assess the preferred nature of the future agreement. There was thus a shared commitment between the parties even before the negotiations started. While the EU Negotiating Team often led in terms of setting the overall structure for the future agreement, and presenting textual proposals, the negotiations were characterised by mutual compromise and understanding. They were conducted in an open and transparent way, and the EU Negotiating Team relied on the strategies of agenda-setting, collusion, and issue-linkages. Despite the fact that some aspects of the negotiations were of a highly distributive nature, including the extensive focus on tariff reductions, hard bargaining strategies, such as the ‘hands-tied’ strategy, were rarely used. In the absence of strong defensive interests, the task of the Negotiating Team was one of pushing for as much market access, or as high TSD ambitions, as possible, following a ‘more the better’ dynamic. The principals generally felt that the Negotiating Team delivered successfully on their behalf. And when they didn’t, the principals acted strategically and engaged directly with the Japanese negotiators through cross-table action. This was seen not least by the last-minute interventions of the European Parliament when it successfully pushed for stronger commitments to TSD. This engagement demonstrates how principal power increases as ratification looms, and how the European Parliament has become an influential principal during EU trade negotiations since its powers expanded with the Lisbon Treaty. The strong parliamentary engagement was clearly felt by Japan, which saw the European Parliament as a key advocate for a far-reaching agreement.

In terms of context, Japan had a difficult domestic game to play, highlighting how it is not necessarily the EU negotiators that always have the most challenging principals at Level Two. The EPA negotiations took place against the backdrop of the US withdrawal from the TPP and TTIP negotiations, as well as Brexit, which provided momentum and speed to the EPA negotiations, as the two parties were keen to show their shared commitment to cooperation and free trade.

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**Enlargement Negotiations**

**Abstract**

This chapter provides an overview of the EU’s enlargement rounds to date, highlighting how the negotiating process and dynamics have developed over time. It demonstrates how the EU negotiating agent, which is based within DG NEAR of the European Commission, is now constrained by four sets of principals during accession negotiations – the College of Commissioners, the Council, the European Council, and the European Parliament. Through a two-level game-based case study of the on-going accession negotiations with the Western Balkans, focusing mainly on Montenegro and Serbia, it demonstrates how the negotiating agents – the DG NEAR Teams – find themselves in a tight two-level game, where their autonomy is severely restricted by some of their principals at Level Two, and where they are facing increasing difficulties in supporting the candidates to meet the accession criteria at Level One. While the DG NEAR Teams have to finely balance their dual role as both ally and critic of the candidates, they can use this duality strategically to progress the negotiations both at Level Two and Level One.

**Introduction**

Enlargement is considered one of the biggest achievements of the European integration project, and it is often described as the EU’s most successful foreign policy (Smith 2011). It has allowed the EU to extend its own domestic space of economic prosperity and democratic peace (Hill 2002), and it has become a defining feature of European integration (Ludlow 2013). The whole process of enlargement is based on negotiations, where the EU negotiates with countries that have applied for membership of the Union. During most of its history the EU has been involved in such negotiations, and it has successfully concluded accession with 22 countries. The first enlargement took place in 1973, when the six founding member states were joined by Denmark, Ireland and the UK, and the most recent in 2013, when Croatia joined to the Union.

Enlargement, or accession, negotiations differ significantly from other negotiations as they are heavily based on conditionality (Gateva 2015; Grabbe 2006; Schimmelfennig and Scholtz 2008). Until a country applies to join the EU, the latter remains passive in the process and does not actively seek new members or encourage countries to apply for membership. Its expansion has been based on the ‘power of attraction’ (Balfour and Stratulat 2012). However, once a country has applied, and the application has been approved by the existing member states, the EU stipulates the conditions that need to be met by the country before it can join the EU. Conditionality refers to the linking of benefits – EU membership – to the fulfilment of certain criteria. Enlargement conditionality has evolved considerably over time, and the conditions have become more and more demanding. In addition to conditions relating to political and economic criteria, candidates for membership need to adopt, implement, and enforce the entirety of the *acquis communautaire* – the cumulative body of EU law and obligations from 1958 to date, including all EU Treaties, laws, declarations, resolutions, international agreements, and the judgements of the Court of Justice of the EU. As a result, much of the enlargement negotiations centre on the changes and reforms needed in the candidates to meet the accession conditions, with the EU monitoring progress and providing support and assisting the candidates in the reform process. The negotiations are based on a complex process of determining when enough progress has been made on meeting the EU conditions. Since the *acquis* itself is non-negotiable, the burden of change falls entirely on the candidates. Issues that *can* be negotiated include potential derogations, transition periods, funding arrangements, and how the *acquis* is transposed into national legislation.

The power asymmetry between the EU and the candidates in the negotiations is thus heavily in favour of the EU. Even if both the EU and the candidates gain from EU enlargement, the latter are likely to benefit more (Moravcsik and Vachudova 2003: 46), and as the *demandeurs* of accession, they are put in a relative position of weakness in the relationship with the EU (Smith 2003: 108). This does not imply that the negotiations between the EU and candidates are easy for the EU negotiators. On the contrary, accession negotiations are complex processes, with the negotiators having to find the right balance between pushing and supporting the candidates in their *rapprochement* to the EU. However, for the EU negotiators the greatest challenges often lie in the negotiations with their domestic constituents within the EU. Despite the overall political, economic and security benefits of enlargement for the EU, there are widely diverging interests and positions, not least among the member states. These different interests have to be merged into a unified position in order for the enlargement to proceed (Schneider 2008). In addition, in the last decade enlargement has slipped down the EU agenda, and support for progressing and opening new accession negotiations is waning in several parts of the EU. This further complicates the task of the EU negotiators.

This chapter provides a background overview of the enlargement rounds to date, highlighting how the negotiation process and dynamics have changed over time. It then explains the institutional set-up within the EU during enlargement negotiations. Using the principal-agent framework, it explains who the EU negotiators are and where they sit within the institutional structures, focusing on their relationship with the College of Commissioners, the Council, the European Council, and the European Parliament. Finally, it provides a two-level game-based case study of the on-going accession negotiations with the Western Balkans, focusing mainly on Montenegro and Serbia as the two ‘front runners’ of the enlargement process.

**Background**

**The First Enlargement: From Six to Nine**

Following the early success of the EEC, and the rapid economic development in the Six founding member states, the UK started eyeing the prospect of membership as a way of addressing its own declining economic performance. It also had concerns about the long-term implications of being excluded from the single market and the political influence of the EEC (Ludlow 1997; Steinnes 1998). Yet, the UK was keen to remain outside of the Common Agricultural Policy and to maintain preferential trading links with the Commonwealth, and it sought an arrangement that would accommodate these interests. There was understanding for the British position in Italy, Germany and the Netherlands in particular, and these countries showed willingness to engage in discussions with the UK to explore potential cooperative measures. However, France was vehemently opposed to any sort of half membership of the Community. As expressed by French diplomat Olivier Wormser: ‘The Six have reached a compromise amongst themselves which is the Treaty of Rome. They still have to implement it. There is a major difference between saying I want to be an associate for certain parts of the Treaty but do not want to participate in others, and saying that I want to be a member with all that the latter entails’ (cited in Ludlow 1997: 35). These differences between the existing member states would have to be overcome once the UK applied for membership. Denmark, Ireland, and Norway had also considered the prospect of membership following the economic success of the EEC. However, since most of their trade was with the UK, they did not want to apply without the UK, and therefore waited for the British application. Once the UK submitted its application in August 1961, these countries followed the British lead, with Ireland applying for membership in July 1961, Denmark in August 1961, and Norway in April 1962.

Faced with membership applications for the very first time, the Six had to decide on an enlargement negotiating procedure. Article 237 of the Rome Treaty stated: ‘Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the Commission. The conditions of admission and adjustment to this Treaty necessitated thereby shall be the subject of an agreement between the member states and the applicant State. This agreement shall be submitted for ratification by all the contracting states in accordance with their respective constitutional requirements’. The Treaty thus made it clear that the member states would play a significant role both by being parties to the accession negotiations and the final Accession Treaty, and through the unanimity rule. However, in terms of the actual negotiating process, the Treaty was vague (Ruano 2002: 4). After intense discussions between the Six, it was decided that they should agree on common positions between themselves before engaging in negotiations with the individual applicant countries. The negotiations would be bilateral, with the Six on one side speaking with one voice, and the applicant on the other. Consequently, negotiations would take place between the member states within the EEC prior to the international negotiations with the applicants. This was to prevent applicants from exploiting differences between the member states, and to protect the *acquis communautaire* (ibid. 5). The EEC was still in its early development and member states did not want accessions of new countries to compromise the internal integration project. The accession negotiations would thus be asymmetrical in nature, with the balance of power being in favour of the existing member states, with limited opportunities for influence by the applicants. Of course, the initial decision to apply for membership remained entirely with the applicants. They were the *demandeurs* of the accession agreements, and the EEC adopted a reactive approach and simply responded to membership applications. However, once the member states had agreed unanimously in the Council on the acceptance of an application, the EEC set the agenda for the negotiations, and the ‘onus of adaptation’ was placed on the candidates[[8]](#footnote-8) (Ludlow 2016). It was deemed vital that accession negotiations did not result in any changes to the Treaties or internal decisions taken by the member states to date.

Still, in its negotiations with the Six, the UK made accession conditional on being able to maintain privileged relations with the Commonwealth countries and being exempt from a number of Community regulations. In particular, it asked for significant changes to the CAP (Neville-Rolfe 2010). While the member states were overall positive about the prospect of UK membership, these conditions posed challenges for the EEC negotiators. Given the need to find consensus among the member states, most of the negotiations focused on reconciling the views of a majority of the member states, which were in favour of UK accession, with that of a minority – a minority most often represented by France as the member state most sceptical to British accession (ibid. 2010: 23). In order to find internal unity, and protect what had already been built, the negotiations were more ‘*about* Britain, rather than *with* Britain’ (Ludlow 2017). There were also some doubts in the European Commission about the UK application, as many officials considered it to be premature, arriving before the EEC was fully developed. However, given the support of most member states, the Commission kept these doubts to itself (Ludlow 1997: 47). Yet, in January 1963, France unilaterally requested that the negotiations be suspended, arguing that the UK ‘had not been able to accept the disciplines of the Rome Treaty, notably the common agricultural policy’ and that the accession of new members to a club, which was not yet complete, raised serious concerns for the founding members (UK Parliament 1963). This followed from the famous press conference by French President Charles de Gaulle, in which he declared his opposition to UK membership, emphasising the differences in economic interests and structures between the UK and the EEC, particularly in the area of agriculture. De Gaulle was worried that the accession of the UK would threaten the development of CAP (Moravcsik 2000: 11). He was also concerned that the close links between the UK and the US would lead to a more Atlanticist pivot of the EEC at the expense of French leadership. And he had doubts about the UK’s full commitment to the European integration project. The other five member states tried to persuade France to continue the negotiations, but to no avail. Given the lack of unanimous support for the UK’s accession, the negotiations had to be suspended.

At this stage, Denmark, Ireland and Norway had also been engaged in negotiations with the EEC. However, with the suspension of the negotiations with the UK, these countries had no choice but to withdraw their applications, since they did not want to put their trade with the UK at risk. Following a second application by the UK in 1967, the three countries also re-applied. In its Opinion on these applications, the European Commission proposed an immediate opening of negotiations with all four countries. Yet, President De Gaulle expressed once more his disapproval of British accession. Even if the UK at the time had weakened its links with the Commonwealth and adopted a less conditional approach to its accession application (Ruano 2002), De Gaulle maintained that the British economy was still incompatible with that of the EEC. Again, the five other member states were in favour of UK accession, but since a unanimous decision was required negotiations remained blocked. However, with the change of leadership in France, a clear consensus between the Six emerged. President George Pompidou, who succeeded President De Gaulle, was in favour of British accession, and the EEC-UK negotiations resumed in June 1970. This also allowed the negotiations with Denmark, Ireland and Norway to continue. The main difficulties in the negotiations with the UK were around the CAP and the British financial contribution to the EEC budget. However, by this time, the British negotiators understood the Community system better, and they were more realistic in their demands (Ludlow 2008). They knew that the UK had to adopt the *acquis communautaire* – which had grown significantly since the first negotiations in 1961-63 – in its entirety, and that specific exemptions for candidate countries could not be made. As a result, they made fewer demands and accepted the CAP. They just negotiated a transitional period during which to adopt to the policy (Franklin 2008). In terms of the financial contribution, the UK also accepted – albeit reluctantly – to pay a significant share of the EEC budget, ending up a large net contributor (Moravcsik and Vachudova 2003: 45). The UK realised that it had limited powers as a candidate country, and that it was only by accepting the membership terms set by the EEC that it would be able to join.

Following parallel progress on the negotiations with Denmark, Ireland and Norway, the Treaty of Accession between the EEC and the four candidate countries was signed in January 1972. The Treaty had to be ratified by the candidates as well as the existing member states. France was the only existing member state to hold a referendum on this accession (share of vote in favour: 68.3%), again reflecting the distinct position of France during the first enlargement round. Following the French approval, both Ireland and Denmark ratified the Treaty following national referenda in May and October of 1972 (share of Irish vote in favour: 83.1%; share of Danish vote in favour: 63.3%), and the UK Parliament ratified it in October 1972. However, the Norwegians rejected membership in a national referendum in September 1972 (share of vote against: 53.5%). A successful opposition campaign based around concepts of sovereignty and ‘self-determination’, as well as strong scepticism among the fishing communities, were cited as reasons for the result (Holst 1975). Once the ratification process was concluded, the Treaty of Accession of Denmark, Ireland, and the UK entered into force on 1 January 1973.

Through this very first enlargement round, the EEC expanded from six to nine member states. While there was no clear prior strategy in place, with the EEC responding to, rather than encouraging, membership applications, the process adopted during this period firmly established some of the main features of future enlargement negotiations. First, it was an asymmetrical process, where the candidate countries had to adapt to existing structures and policies, accepting the *acquis* in full, rather than a traditional negotiation of ‘give and take’.As for the issues under negotiation, the focus was on technical matters such as budgetary contributions and transition periods for the implementation of policies. Second, the member states negotiated as one, with differences between them resolved through internal negotiations before engaging with the candidates. Once agreement had been reached – based on a proposal from the Commission – the Community position was rigid and inflexible, often leaving the candidate with a ‘take it or leave it’ offer (Ruano 2002: 11). The negotiations took place through ministerial meetings between the Six and the European Commission on one side and the candidate on the other. While the formal lead for the negotiations was with the country holding the Council Presidency, the Commission played a key role through its Opinions and the management of the negotiations. It was frequently asked by the member states to produce reports and updates on progress to facilitate the negotiations. Given the technical nature of the negotiations, the Commission, with its extensive technical expertise, was well placed to identify compromises between the member states in the Council. It also reported on progress of the negotiations to the European Parliament, which was overwhelmingly in favour of enlargement (European Parliament 1968). Since there were no institutional structured in place to deal specifically with enlargement, a temporary Enlargement Task Force was set up to lead on the accession negotiations within the Commission (Ludlow 2013: 12). Third, despite the managerial role played by the Commission, the member states had ultimate control of the process. All decisions were taken by unanimity, making it impossible to progress even if just one member state expressed concern or used its veto. With subsequent enlargement rounds the negotiation process has changed, but these three features are still very much part of the game.

**The Southern Enlargement: From Nine to Twelve**

While the first enlargement round had been motivated by a combination of economic and political factors, with an emphasis on the former, the Southern enlargement to Greece in 1981, and to Spain and Portugal in 1986, was mainly politically driven (Blanco Sío-López 2013; Magone 2011; Royo and Manuel 2003). Whereas formally consisting of two separate enlargement rounds, the Southern enlargement is often treated as one, given the similarities between the 1981 and 1986 accession processes. All three countries had undergone transitions to democracy following years of dictatorship, and they saw EEC accession as a way of consolidating their new and still fragile democratic regimes, and ending the international isolation that they had experienced during their authoritarian rule (Royo and Manuel 2003: 12). However, economic motivations were also present. All three countries were keen to modernise their economies, and they saw the EEC as a ‘symbol of economic prosperity’ (Magone 2011: 222). Consequently, Greece submitted its application for membership of the EEC in June 1975, followed by Portugal in March 1977, and Spain in July 1977.

Apart from the requirement to be ‘European’, as per Article 237 of the Treaty of Rome, there had been no explicit membership criteria during the first enlargement round. However, with the submission of the applications of Greece, Portugal and Spain, there were concerns about their recent transition to democracy, and existing member states felt they needed to strengthen the membership criteria (Smith 2003: 109). This was explicitly expressed by the European Council in its *Declaration on Democracy*, which emphasised that ‘respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership’ (European Council 1978).

In the EEC, Greece’s application was received positively by the member states, not least by France and Germany. France emphasised the political importance of supporting Greece’s attachment to Europe and its developing democratic structures. Geo-strategically, Greece’s position on the edge of the Balkans made it an important addition to the ‘regional community of democratic states’ during the Cold War (Magone 2011:217). Germany, which had strong trading links with Greece, saw potential economic gains from its accession, and pushed for a quick opening of the negotiations. However, the Commission adopted a more cautious approach, and in its Opinion on Greek accession, it warned about the lack of economic development in the country, as well as the risk of the Community becoming party to the longstanding dispute between Greece and Turkey (European Communities 1976). To provide time for economic reforms, the Commission proposed a 10-year pre-accession transition period. However, the Council of Ministers disagreed with this proposal, and rather dramatically it unanimously overruled the Commission’s view, and agreed to the immediate opening of negotiations (Smith 2003: 110). Member states were of course aware of the lack of economic development in Greece, and the strain its accession would put on the CAP and regional and social funds. However, they felt that such economic costs would be outweighed by the political gains. After having stressed the importance of democracy as a membership criterion, they considered it important to show their support for Greece – as ‘the cradle of democracy’ – and its commitment to the transition to democracy (Karamouzi 2013). Negotiations started in 1976, and the Treaty of Accession was signed in May 1979. The Treaty was ratified through a parliamentary vote in Greece, and by the EEC member states, and it entered into force on 1 January 1981. While there were some contentious issues in the negotiations, particularly in relation to the free movement of workers and some agricultural products, Greece was seen to have had a relatively quick and easy accession process. It was granted a number of transitional arrangements to ease adaptation to Community rules, and substantial levels of aid to assist it through the transition. It also became a beneficiary rather than a net contributor to the EEC budget. In hindsight, many considered that the negotiations might have taken place too quickly (Magone 2011: 222).

The applications from Spain and Portugal exposed greater preference divergence among the member states. On the one hand, Germany, the Netherlands and the UK were strong supporters of enlargement to the Iberian Peninsula. On the other hand, France and Italy were worried about the impact of the Iberian accession on the CAP (Schneider 2008: 55). The main concern was with Spain as the agricultural area of the Community was expected to increase by over 30 per cent with its accession, putting the CAP under severe strain (Royo and Manuel 2003: 9). In addition, much of Spain’s agricultural production was similar to that of France and Italy, thus posing a direct competitive threat to French and Italian farmers. France was also worried about the competition from the steel works and car industries of Spain (Cunha 2018: 31). However, all member states supported the applications in principle since the broader context of the Cold War made them keen to support the democratisation processes to guarantee stability and prevent communist parties from obtaining power in the still young democracies of Spain and Portugal (Cunha 2018: 27). To this end, formal negotiations were opened with Portugal in October 1978 and with Spain in February 1979.

Although Portugal insisted on separate negotiations, as it did not want to be held back by the threats posed by Spanish accession to the EEC, the negotiations of the two countries became increasingly linked. Portugal’s accession raised fewer problems as it hardly had any agricultural or industrial sectors that seriously threatened the EEC, and through the simultaneity of the negotiations, it became somewhat of a ‘prisoner’ to Spain’s accession (Cunha 2018: 25). Existing member states, as well as the Commission, preferred a globalised approach to the negotiations, with the two candidates joining at the same time. Joint accession was seen as administratively easier at a time when the EEC had a number of other pressing issues to deal with domestically, including reform of the CAP, the institutions, and budget contributions (ibid.: 31). It was recognised from the start that the negotiations would be long and require significant thought, given the economic impact of the Iberian accession. However, the accession negotiations lasted even longer than initially anticipated as a result of complex negotiations between the member states on these domestic matters (Núñez Peñas 2015). For example, on the insistence of France and Italy, the agricultural chapter in the accession negotiations with Spain was not concluded until reform of the CAP had been achieved within the EU. In response to concerns of Belgium, the Netherlands, Luxembourg, Ireland, and Italy about maintaining efficient decision-making processes in an enlarged Community, institutional reform was agreed, and reflected in the Single European Act of 1986. The UK pushed for a review of the budget contributions as it was concerned about the costs of enlargement, and it was successful in obtaining agreement on a ‘rebate’, allowing it to lower its national contribution to the EEC budget. And Greece, which was worried about the impact of the Iberian accession on its economy, threatened to veto the accession unless it was compensated. As a result, the European Council agreed to the Integrated Mediterranean Programmes, which provided financial support to disadvantaged regions of the Community, including Greece, France, and Italy.

These examples illustrate how member states’ interests ‘conditioned the entire negotiation process’ (Cunha 2018: 26). The member states used enlargement to push their interests and solve domestic problems in the EEC. This in turn resulted in delays to the accession negotiations – delays that were unrelated to the progress made by the candidates in meeting the accession criteria and adopting the *acquis*. In terms of the adoption of the *acquis*, this was indeed relatively unproblematic. For the candidates, accession was linked to their democratic transitions and economic development, and unlike the UK, which initially made a conditional application, Spain and Portugal did not try to change the EEC or the *acquis*. On the contrary, they wanted to follow the ‘European model’ when developing its new structures and institutions (Ruano 2002: 14). Yet, due to the diverging interests of the member states, the negotiations lasted for seven years. The Treaty of Accession of Spain and Portugal to the EEC was signed in June 1985, and it was approved by parliamentary procedures in both the candidates and the member states, and the Treaty entered into force on 1 January 1986.

Through this Southern Enlargement, in which the EEC expanded from nine to 12 member states, a number of additional features of the enlargement negotiation process were established. First, the general accession criteria evolved. It was the first time the EEC enlarged to comprise recently democratised countries, and a commitment to democratic principles became part of the criteria. In addition, rather than just passively waiting for the candidates to adhere to the criteria, the EEC, and the Commission in particular, became actively involved in the process. It provided significant financial support to assist the candidates with their democratisation processes and adaptation to the *acquis,* and it acted as an engaged international monitor of progress (Magone 2011: 215). The focus on democracy promotion tallied with the Community’s emerging political identity (Blanco Sío-López 2013: 28), and with its self-perception as ‘a promoter of democracy’ (Karamouzi 2013). In terms of the *acquis,* it became clear that it is a ‘moving target’ as it expands continuously, and consequently the cumulative body of Community legislation and policies that had to be adopted by the Southern candidates was much greater than that of the first enlargement round (Ruano 2002: 2). This time around, the EEC also insisted on the full implementation of the *acquis* prior to accession. Second, additional institutional developments emerged. Despite being over-ruled by the Council regarding its Opinion on Greece’s accession application, the Commission – under the lead of its President as well as the External Relations Commissioner – played an increasingly influential role in the technical aspects of the negotiations. The team of Commission experts carried out much of the day-to-day negotiations with the candidates, monitoring and providing advice on the implementation of the *acquis.* Domestically in the Council, the team often negotiated as an ‘ally’ of the candidate countries (Ruano 2002:11), and it worked alongside the Council Presidency in trying to find compromises between the member states. Admittedly, the latter still dominated the process, and national interests continued to exert significant influence over the negotiations. When unanimous support was lacking, measures of compensation had to be found to get member states on board (Schneider 2008). And in the case of the Iberian accession, the member states did not shy away from delaying the negotiations – sometimes for reasons other than those directly related to the accession negotiations. During this enlargement round, the European Parliament – directly elected since 1979 – also played a more active role. While it was not formally involved in the accession negotiations, it followed the process and pushed the Commission and the Council to bring the negotiations to a swift conclusion through its reports and resolutions. With the new focus on democratic criteria, the Parliament saw itself as a well-placed actor to observe and support the democratisation processes in the candidate countries (Salm 2021). It engaged directly with its counterparts in the candidate countries, often through the Joint Parliamentary Committees. These institutional arrangements provided the Parliament with its own channels with domestic constitutes in the candidate countries. Finally, although the Greek accession was negotiated separately, this negotiation round cemented the precedent from the first negotiating round of negotiating with groups or pairs of candidate countries whenever possible.

**The EFTA Enlargement: From Twelve to Fifteen**

The end of the Cold War opened up the possibility for the three neutral countries of Austria, Finland and Sweden to apply for EU membership. During the Cold War, Austria had committed to ‘permanent’ neutrality as a condition for the withdrawal of Soviet troops from its territory (Gehler 2005: 133). Finland had made neutrality part of its doctrine, and agreed to stay out of any East-West confrontation (Ojanen 2005: 150). And Sweden had adopted a policy of ‘non-alignment in peace aiming at neutrality in war’ (Gussarsson 2005: 170). With the Soviet threat disappearing, these neutrality commitments were no longer considered incompatible with EU membership. Although these countries had been militarily neutral, they had gradually aligned economically with the West during the Cold War. Austria and Sweden were part of the seven countries that had established the European Free Trade Association (EFTA) in 1959-60, and Finland, which initially signed a bilateral agreement with EFTA, became a full member in 1986. As a result, the accession of these three countries is often referred to as the ‘EFTA enlargement’.

All three countries had strong economic motivations to join the EU. For Austria and Finland, EU membership was also a way of regaining sovereignty after Soviet control (Gehler 2005: 138; Gebhard 2013: 372). By early 1992 they had all submitted their applications, and accession negotiations started in February 1993. By this time, the Maastricht Treaty had entered into force, and candidates were consequently negotiating to join the European Union, as established by the Maastricht Treaty, rather than the European Community, to which they had applied. While the negotiations took place with each candidate individually, they were conducted in parallel to conclude a joint Accession Treaty.

The negotiations were relatively uncontroversial as the three candidates had well-functioning economies with a high degree of openness to foreign trade, as well as strong democratic political systems. Much of the preparatory work for the negotiations had been undertaken by the Commission as it produced its Opinions on the applications. In addition, although the candidates initially had concerns about the full acceptance of the Economic and Monetary Union and the Common Foreign and Security Policy, they were fully aware that they had to implement all of the *acquis.* They just asked for certain temporary derogations and transitional periods in the areas of agriculture, regional aid, contribution to the EU budget, fishing quotas, and alcohol monopolies (Granell 1995; Whitfield 2015). Among the member states, many advocated for a swift conclusion of the negotiations, and they were therefore willing to grant concessions in these areas. Germany, in particular, was keen to see the accession of Austria, while Denmark was a strong advocate of Sweden and Finland as members.

The negotiations were organised along 29 chapters, which covered the full *acquis.* A network of DGs in the Commission with responsibility for different aspects of the *acquis* was set up to support the negotiations. The Commission’s especially created Enlargement Task Force played a key role in the coordination of the negotiations of the different chapters (Granell 1995: 120-22). The Single European Act (1986) had provided the European Parliament with assent powers, and it was thus given a formal role in the enlargement process for the first time. This increased its involvement, and it was active through debates, commentary and resolutions (Whitfield 2015). While the formal accession negotiations took place in Intergovernmental conferences (IGCs) between the EU member states and the candidates, this illustrates how the role of the EU institutions expanded during this time.

However, even in these relatively straightforward negotiations, there were widely diverging interests between the member states. As expressed by the Director of the Commission’s Enlargement Task Force: ‘In some cases, the negotiations between the Twelve themselves to define their common negotiating position … have caused more difficulties than the negotiations between the Twelve and the candidate countries’ (Granell 1995: 121). The main issue that divided the EU internally related the institutional impact of the enlargement. Despite the increase in the total number of votes in the Council as a result of the accession of new member states, Spain and the UK sought to maintain the same number of votes needed for a blocking minority on proposals adopted by qualified majority voting. The UK had concerns about losing power in an enlarged EU, and Spain was worried about the northern countries dominating EU decision-making at the expense of the Mediterranean ones. France, Belgium, Luxembourg, the Netherlands, as well as the Commission and the European Parliament, reacted strongly against this idea, arguing that it would paralyse decision-making in the Union. After long discussions, a complex solution was reached through the so-called Ioannina compromise (ibid.: 133). This dispute reflected a broader debate about the need for institutional reform and a deepening of the integration process for the EU to be able to continue to work effectively with an increased membership. The issue was raised repeatedly by the European Parliament, as well as the Commission and several of the member states. The Parliament even threatened to withhold its assent to the Accession Treaty with the EFTA countries unless there was a decision to discuss institutional reform, including greater democratic accountability, in the future (Whitfield 2015). To make sure the Accession Treaty was not held hostage to this broader institutional debate, the member states agreed to involve the European Parliament in the upcoming discussions about institutional reform and the revision of the Maastricht Treaty at an IGC in 1996. With this assurance to the Parliament, and the general recognition that further institutional reform was needed in the near future, the draft Accession Treaty was concluded in March 1994. Following the Commission’s positive Opinion on the draft Treaty in April 1994, the Parliament gave its assent in May 1994 with an overwhelming majority of the MEPs voting in favour. This paved the way for the signing of the draft Treaty in June 1994.

The parliamentary ratification in the 12 member states proceeded without problems, and national referenda were held in the three candidate countries, with the citizens voting in favour of accession (share of vote in favour: Austria: 66%; Finland: 57%; Sweden 52%). The Treaty entered into force on 1 January 1995, making this the quickest enlargement negotiation to date. Norway had also applied and negotiated its accession in parallel with Austria, Finland, and Sweden. However, the Norwegians rejected membership for a second time (share of vote against: 53%). Again, membership was perceived as a threat to national identity, and given the country’s relative economic success, there was a strong sentiment that it could afford to stay outside the EU (Gstöhl 2005).

Through the EFTA enlargement, in which the EU expanded from 12 to 15 member states, a couple of additional features of the accession negotiations emerged. First, the need to link the widening of the EU with a deepening of the integration process became apparent. Questions about how the EU can continue to operate effectively with an increasing number of member states have accompanied successive enlargement rounds ever since. The Amsterdam, Nice, and Lisbon Treaties all came to deal with questions relating to the functioning of an enlarged EU, including the extension and redefinition of qualified majority voting in the Council, the size of the Commission and the European Parliament, and increased democratic accountability. Second, the Single European Act had provided the European Parliament with ratification powers. By having to give its assent (now ‘consent’), the European Parliament became formally involved in the enlargement process.

**The Eastern Enlargement: From Fifteen to Twenty-Seven**

Following the end of the Cold War, the Central and Eastern European Countries (CEECs) – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia – also expressed a desire to re-integrate into Europe. They initiated a reform process of economic and political approximation, with the aim of eventually joining the EU. The CEECs had strong economic, political and security motivations for seeking EU membership. Economically, they would benefit from the single market and from being net recipients of EU funds. Politically, accession would help strengthen their relatively young democratic systems. And membership was seen to offer soft security protection. As a result, they applied for membership between 1994 and 1996 (Schimmelfennig and Sedelmeier 2005). Malta and Cyprus, which had already applied for membership in 1990, also became part of the Eastern enlargement round. In addition to the economic benefits of being part of a bigger market, Malta saw accession as a way of being able to influence EU policies towards its Southern Mediterranean neighbours. Just as for Finland and Sweden, EU membership had been incompatible with Malta’s neutrality status during the Cold War. Yet, with the end of the Cold War this was no longer an obstacle (Pace 2003). For Cyprus, membership was a way of strengthening the European identity of an island at the very Eastern end of the Mediterranean. It also hoped that accession would provide a way of finding a resolution to the long-standing division of the Island between the Greek Cypriot community in the South and the Turkish Cypriot community in the North. However, it later became clear that such a resolution would not be found, and the EU did not make it a precondition for Cyprus’s accession (Nugent 2006).

The membership applications of the CEECs did not come as a surprise given the applicants’ gradual reform process, which had been supported by the EU. Under the lead of the European Commission, the EU had provided extensive financial aid and negotiated and concluded Association Agreements (Europe Agreements) with the CEECs between 1991 and 1996 (Blanco Sío-López 2013). To prepare for enlargement, the EU had also engaged in a discussion about strengthening the accession criteria to ensure that the accession of the CEECs would not threaten the functioning and future development of the Union. At the European Council meeting in Copenhagen in June 1993, the EU leaders agreed that the CEECs would be able to join the EU as soon as they satisfied a number of political and economic conditions. These conditions – the so-called the Copenhagen criteria – included ‘stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities’; the ‘existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union’; and the ’administrative and institutional capacity to effectively implement the full body of common rights and obligations that are binding on all EU member states’ (European Council 1993). The EU leaders also agreed that the ‘Union’s capacity to absorb new members, while maintaining the momentum of European integration’ should be considered (ibid.).

Leading up to the start of the negotiations, the Commission played a key role in getting member states on board and support the Eastern enlargement (Sedelmeier 2000). Although supportive of the reform processes in the CEECs, several member states had reservations about the accession of such a large number of young democracies that were to become budgetary net recipients. This would disproportionately affect existing net recipients, including Greece, Ireland, Portugal, and Spain. In addition, for some member states, in particular France, there were worries about a potential geopolitical shift from the West to the Centre of Europe, as many new member states were expected to side with Germany or the Northern countries on important decisions (Schimmelfennig 2001). However, the Commission stressed that the EU had a ‘special responsibility’ to support the integration of the CEECs into the EU (Sedelmeier 2005a: 122), and how this would ‘ensure stability and security on the continent’ (Dimitrova 2016). It also worked closely with those member states in favour of enlargement, including Denmark, Germany, Sweden and the UK, to highlight the objectivity in assessing candidates. The objectivity, which meant that countries would be judged on their own merit and only join once they were ready, made it easier for the sceptical member states to accept the potential accession of a large group of countries (ibid.). In addition, the Commission tapped into the ‘rhetorical action’ used by the CEECs, whereby they referred to the norms on which the EU is founded, including European unity and the desire to overcome past divisions of Europe. By continuously referring to these norms, and the moral obligation of the EU to welcome the applicants, the Commission and the pro-enlargement member states made it difficult for the sceptical member states to express their reservations, as it would contradict the very foundations on which the EU is built (Schimmelfennig 2001).

The accession negotiations started with the CEECs and Cyprus and Malta between 1998 and 2000. Initially, DG I (External Relations) was responsible for the coordination of the negotiations. However, the incoming European Commission President of 1999, Romano Prodi, embarked on a re-organisation of the Commission and its administrative structures. A new separate Enlargement DG was established, bringing in the officials who had been part of the Task Force Enlargement and DG I. The DG was under the political responsibility of a dedicated Enlargement Commissioner, Günter Verheugen (Blanco Sío-López 2013: 30). This reflected the Commission’s strong commitment to, and prioritisation of, enlargement. DG Enlargement played a key role in driving the accession process forward and in monitoring and supporting the candidates. A number of new instruments were introduced, including regular reports and screening processes based on 31 negotiating chapters, allowing DG Enlargement to closely follow the progress made on the ground in the candidate countries, and to report back to the member states (Papadimitriou and Gateva 2009). DG Enlargement and the Enlargement Commissioner also acted as mediators between the different interests in the Council, working closely with the Council Presidency. Given the unanimity rule, some of the most difficult negotiations were again between the member states in the Council. The Eastern enlargement led to significant distributional consequences, and in order to move the process forward, solutions often had to be found where the losers from enlargement could be compensated by the winners, or where the losses derived from enlargement could be postponed through the introduction of transitional periods, thus delaying some of the benefits of membership for the CEECs (Schneider 2008).

At the end of 2002, the negotiations were concluded, and in April 2003 the draft Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia was signed. By September 2003, the existing member states had ratified the Treaty, and referenda had been held in all ten candidates apart from Cyprus, which only required parliamentary ratification (share of vote in favour of joining: Czech Republic: 77%; Estonia: 67%; Hungary: 84%; Latvia: 68%; Lithuania: 91%; Malta: 54%; Poland: 78%; Slovakia: 94%; Slovenia: 90%). The Treaty entered into force on 1 May 2004.

Bulgaria and Romania lagged behind in the implementation of the *acquis,* and as a result they were given slightly longer to make the necessary political and administrative changes. However, in April 2005 they signed their Treaty of Accession, which was ratified by their parliaments and those in the existing EU member states. The Treaty entered into force on 1 January 2007, and with that, the Eastern enlargement round was concluded. While being celebrated as one of the most important developments in EU history, and as the reunification of the European continent, there were concerns about the speed with which Bulgaria and Romania had had to reform, and whether they were fully prepared at the time of accession (Lazowski and Vlašić 2014: 5). Despite the Commission’s emphasis on objectivity, with countries being judged on their own merit, technical standards were seen to have given way to political ambitions (Wallace 2017: 81).

During this round, which expanded the EU from 15 to 27 member states, the EU’s conditionality developed significantly, and the enlargement methodology became more robust and demanding for the candidates. In addition to the Copenhagen Criteria, the legal basis for enlargement was updated with the Amsterdam Treaty of 1997. Article 49 of the Treaty on European Union (TEU) referred specifically to how applicants need to respect EU values, as set out in Article 2 TEU: ‘respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities’. The Commission, and its newly established DG Enlargement, also came to play a more influential role during these negotiations. It was taking a proactive role in the screening and support of reforms in the candidates. In addition, despite its huge success, the enlargement round gave rise to questions about future ‘integration capacity’ (Börzel et al 2017), and how far the EU should enlarge.

**The Enlargement to Croatia: From Twenty-Seven to Twenty-Eight**

Following the Balkan Wars of the 1990s, Croatia concluded a Stabilisation and Accession Agreement with the EU in 2001 with the aim of preparing for accession. It saw membership as a way to ‘come back to Europe’ and draw a line under the recent war (Mađarević 2015: 38). It applied for membership in February 2003 and was awarded candidate status in June 2004. For the EU, the accession of Croatia was seen as a way of helping to establish stability in the region (Rose 2005), and it agreed to open negotiations in October 2005.

The negotiations reflected Croatia’s experience of the Balkan Wars, and they were heavily coloured by the stability factor (Lazowski and Vlašić 2014). The negotiating framework, which was prepared by DG Enlargement as a basis for the negotiations, introduced strong conditionality. In addition to the Copenhagen criteria, the framework specifically stipulated that Croatia’s progress in the negotiations was conditioned on its full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and its commitment to good neighbourly relations (European Commission 2005). The framework also expanded the number of chapters to be negotiated to 35, and for the first time, specific opening and closing benchmarks were introduced for each chapter. And it required further monitoring of the progress on the ground by the Commission. One of the most difficult chapters in terms of meeting the opening and closing benchmarks, was chapter 23 on Judiciary and Fundamental Rights. This was a new chapter in the accession process, and it was not opened until the end of the negotiations. In addition to guaranteeing the independence, impartiality and accountability of the judicial system, Croatia had to tackle its problems relating to corruption and organised crime (Šeperić 2011). Although Croatia made significant progress in all these areas, it became clear that the benchmarks were political in nature, and as a result, they were somewhat arbitrary and open to a degree of interpretation (Mađarević 2015). The Commission commended the progress made by Croatia in this area, however some member states were sceptical. For example, the Netherlands, the UK, and the Nordic countries blocked the negotiations on several occasions with the motivation that ‘full cooperation’ with the Hague Tribunal was needed (ibid.). Similarly, Slovenia blocked negotiations on chapter 23, insisting that a bilateral border dispute between Croatia and Slovenia since the collapse of the former Yugoslavia be resolved (Pavelic 2013). While eventually lifted, such blockages caused significant delays to the negotiating process.

The negotiations were concluded in June 2011, after five years of intense discussions. Based on the Commission’s positive Opinion, the European Parliament gave its consent (European Parliament 2011a). Whereas ratification was never in doubt given the strong pro-enlargement position of most MEPs, the European Parliament, which wants to be more involved and better consulted on enlargement negotiations (Interview, MEP, 11/4/2022), used the occasion to stress that the Commission ‘must keep Parliament regularly informed of the extent to which the Croatian authorities honour their commitments’ (European Parliament 2011b). Once the European Parliament had delivered its consent, the member states in the Council gave their unanimous approval of the Accession Treaty with Croatia. This paved the way for the signing of the Accession Treaty on 9 December 2011 by the Heads of State or Government of the 27 Member States and by the President and Prime Minister of Croatia.

Following a successful Croatian referendum in January 2012 (share of vote in favour of joining: 67%), the Accession Treaty gained parliamentary approval in Croatia. As for parliamentary ratification in the 27 member states, there was apprehension about Slovenia’s ratification. Although its border dispute with Croatia had been solved, Slovenia issued a threat of veto unless another bilateral dispute was solved. This dispute related to the former Ljubljanska Bank, involving the savings of Croatians who had deposited money in the bank before Yugoslavia broke up. The Co-Chair of the EU-Croatia Join Parliamentary Committee called on Slovenia to solve the dispute and stressed how ‘bilateral issues should not burden the process of enlargement at any stage’, warning that the ‘cost of non-ratification would be beyond measure. Not only would it undermine the process of enlargement and thereby the credibility of the EU, but it would have ripple effects on other aspiring EU candidates’ (Hökmark 2013). In the end, in April 2013 the Treaty was ratified by Slovenia’s Parliament – a month after Croatia and Slovenia had reached an agreement whereby Croatia agreed to suspend all legal proceedings against the Slovene bank in return for Slovenia’s commitment to ratify the Accession Treaty with Croatia (Pavelic 2013). In the other 26 member states ratification was smooth, and on 1 July 2013 Croatia became the 28th member state of the EU. Since then, no other country has joined the EU, making this period the longest without any enlargement since the first one took place in 1973.

Through this most recent enlargement round, a number of additional features of the accession negotiations emerged. First, rather than advocating for a group accession, as had been the case in previous enlargement rounds, the EU adopted the so-called regatta approach. Croatia negotiated separately from the other Western Balkan countries, without having to wait for others to catch up. Second, the EU’s conditionality intensified even further, taking into account Croatia’s recent war experience. The negation approach also became more comprehensive with the expansion of the chapter structure, and the introduction of benchmarks and increased monitoring of progress on the ground. Third, member states became increasingly involved and used the unanimity requirement to control the speed of the negotiations. They did not shy away from allowing bilateral disputes to spill over into the accession negotiations. Finally, while still having a marginal impact on accession negotiations compared with the Commission and the member states, the European Parliament increased its engagement and pushed for further parliamentary involvement in the process in the future.

In terms of the EU’s next enlargement round, there is uncertainty. Turkey initiated accession negotiations in 2005, the same year as Croatia. However, these negotiations have proved difficult due to Turkey’s lack of progress in meeting the accession criteria and a drift towards authoritarianism, combined with increased ‘enlargement fatigue’ and a lack of political will in the EU member states (Börzel et al 2017). At the time of writing, these negotiations are *de facto* frozen.

The Western Balkans are seen to be the next in line, but the accession process has been slow. However, there are signs that the EU enlargement process might be regaining momentum. In February 2022, Ukraine submitted its membership application, followed by Georgia and Moldova in March 2022. The European Commission presented its Opinion on these applications already in June 2022, and it recommended that both Ukraine and Moldova be given candidate status, and that Georgia be given ‘the perspective to become a member’, specifying that it should be granted candidate status once it had addressed a number of priorities (European Commission 2022). Six days later, the European Council followed the Commission’s recommendation and decided to grant candidate status to Ukraine and Moldova, while expressing its readiness to grant candidate status to Georgia once the priorities identified by the Commission had been met (European Council 2022). At the same meeting, the EU leaders also expressed their ‘full and unequivocal commitment to the EU membership perspective of the Western Balkans’ and called for an acceleration of the accession process (ibid) – a process that has already lasted many years, and in which the EU negotiators have encountered significant difficulties both domestically at Level Two and Internationally at Level One.

**The EU Institutional Set-Up: A Principal-Agent Relationship**

**Agent Power**

Article 49 TEU, which provides the legal basis for enlargement, is vague on the actual negotiation process. It stipulates that the ‘applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission’ and that the conditions of admissions ‘shall be the subject of an agreement between the Member States and the applicant State’. However, in practice, a well-established process has developed through which the Commission plays a critical role in the accession negotiations (Interview, Commission Official, 11/7/2019). The notion of ‘consulting the Commission’ has thus been stretched significantly, and a number of key tasks have informally been delegated to the Commission. First, the Commission provides the Opinion on the initial application submitted to the Council. This is preceded by close engagement between the Commission and the applicant to inform the Opinion. Second, once the European Council has adopted the Opinion unanimously, and agreed for negotiations to start, the Commission prepares the draft negotiating framework. The framework sets out the structure for the negotiations, including the specific characteristics of the candidate and the negotiating chapter breakdown. Third, during the accession negotiations, which formally take place in IGCs between the member states and the candidate, the Commission supports the latter in meeting the criteria and implementing the *acquis*. Before a new chapter can be opened, the Commission, together with the candidate, conducts a screening of the candidate’s level of preparation and reform, and presents the findings in a screening report. The report will either recommend that negotiations start immediately, or that certain conditions, so-called opening benchmarks, need to be met first. Once the Council has decided that the chapter can be opened, the Commission prepares the EU’s draft common position, which needs to be adopted by the Council, before it is used as a basis for the decision of the IGC. The common position sets out specific benchmarks, which need to be met by the candidate before the chapter is closed. Fourth, the Commission conducts the technical day-to-day negotiations with the candidates. Fifth, throughout the negotiations, the Commission monitors progress made in the candidate countries, and publishes annual enlargement packages, including detailed country specific reports. These reports serve two purposes: they help the candidates to identify where more work is needed, and the member states and the European Parliament to decide when enough progress has been made to move forward in the negotiations. Finally, when all chapters are closed, the Commission draws up the draft Accession Treaty for ratification (Interviews, Commission officials, 9/7/2019 and 11/7/2019).

While the formal negotiations are conducted in the IGCs between the member states and the candidate, this illustrates how the Commission is informally delegated the task of managing and facilitating the negotiations. *Within* the Commission, responsibility for conducting these tasks is delegated to specific Teams in DG NEAR (Directorate-General for Neighbourhood and Enlargement Negotiations), which replaced DG Enlargement in 2015. Each Team, made up of more than 50 DG NEAR officials, is responsible for accession negotiations with one candidate, and operates as the agent in the negotiations. The Team consists of officials from the relevant Country Unit and Thematic Desks. The latter cover specific chapters of the accession negotiations. The officials working on these Thematic Desks are involved in all accession negotiations when their specific chapter is discussed. Within each Country Unit, officials have responsibility for a number of specific chapters, and they work closely with the officials from the relevant Thematic Desks. There are also officials who have responsibility for the overall coordination and preparation of the negotiations, both domestically within the EU and with the candidates. The Head of the Country Unit is generally acting as the Chief Negotiator (Interview, Commission official, 11/7/2019).

The DG NEAR Team – the agent – has been conceptualised in different ways, ranging from the ‘bureaucratic gatekeeper of the Union’ (Janse 2019: 44) or the ‘political motor of the enlargement process’ (Interview, EEAS official, 30/7/2019) to the ‘manager of the entire negotiation process’ (Interview, Commission official, 9/7/2019) or ‘coordination platform’ (Interview, Commission official, 10/7/2019). It is the DG NEAR Team that carries out all the background work and drafts all documents relating to the accession process, including Opinions, negotiating frameworks, screening reports, EU common positions, enlargement packages and country reports. It also leads on the technical day-to-day negotiations with the candidate, and monitors and supports the candidate in its reform process. In addition, it is the main point of contact for the candidate country, and all communications are channelled through its officials to ensure full coordination (Interview, Commission official, 9/7/2019).

The Team engages domestically with the College of Commissioners and experts from the other DGs, the Council, the European Council, and the European Parliament. It is also present at the IGCs. At the ministerial level, the Team is represented by the Commissioner for Neighbourhood and Enlargement.

Based on functional logic, the preferences of the DG NEAR Team correspond to its responsibility of progressing the enlargement agenda. Its officials are generally in favour of EU enlargement, and they are likely to push the interests of the candidates domestically within the EU (Interview, Commission official, 9/7/2019). In the words of a Commission official: ‘There is a strong conviction within the Team that enlargement creates stability and security, and that it leads to economic development, both in the candidates and the EU itself. Its officials always toe the line and push the enlargement agenda’ (Interview, 1/9/2022). Enlargement is sometimes characterised as a ‘composite policy’. It consists both of a macro-policy, which determines the overall objectives and parameters of enlargement, and of sectorial meso-policies, which focus on the substance in particular sectors (Sedelmeier 2005b: 240). Using this terminology, the DG NEAR Team is in charge of the macro-policy and has a ‘global’ view of the enlargement process. While there are sectorial specialists within the Team, including the officials from the Thematic Desks and those within the Country Units with responsibility for specific chapters, the officials still have a broad view of the accession negotiations, and they often approach the sectorial issues from the perspective of the candidates. The DG NEAR Team aims to be a reliable partner for the candidates and to bring forward the process by opening and closing as many chapters as possible. That’s their ‘mandate’ (Interview, Commission official, 10/7/2019).

Of course, although the DG NEAR Team wants enlargement to progress, its officials also have a responsibility to ensure that the candidates that accede to the EU meet the criteria and uphold the values set out by the European Council. They will consequently not push for enlargement at every cost. Their task is to provide a frank and objective assessment, in order to help the member states make informed decisions about progressing the negotiations once the candidates are ready (Interview, Commission official, 9/7/2019).

As for agent power resources, the DG NEAR Team has a strong agenda-setting role as it is the penholder for all key documents in the accession process. It also has high levels of expertise given its composition of experts, both in terms of country and thematic chapter knowledge, and it can draw on the institutional experience of enlargement negotiations within DG NEAR. By closely monitoring and supporting the reform efforts in the candidate, it also has thorough understanding of the situation ‘on the ground’. In addition, through its central position in the accession negotiations – it participates in all negotiations, both domestically in the College, the Council, the European Council, and the European Parliament, and internationally in the IGCs and the technical discussions with the candidate – the DG NEAR Team has an in-depth understanding of all the different interests and preferences involved, giving it an informational and strategic advantage. However, despite these power resources, the DG NEAR Team is constrained in driving the accession process forward due to the control exercisedby its principals – the College of Commissioners, the Council, the European Council, and the European Parliament.

**Principal Control**

*The College of Commissioners*

The President of the Commission decides where enlargement should sit within the Commission’s administrative structure. Commission President Prodi (1999-2004), who attached great importance to this policy, established a separate DG for Enlargement, bringing in officials who had previously been part of the Task Force Enlargement in the DG for External Relations. He also decided that the new DG should be under the political responsibility of a dedicated Enlargement Commissioner. However, Commission President Juncker (2014-2019) somewhat downgraded the policy by merging DG Enlargement into a new DG with responsibility for both the European Neighbourhood Policy and enlargement negotiations, the current DG NEAR (Schimmelfennig 2015). Similarly, the European Neighbourhood Policy and enlargement negotiations became the responsibility of *one* Commissioner – the Commissioner for Neighbourhood and Enlargement.

The political steer from the Commission President and the College plays a significant role in enlargement negotiations, and the DG NEAR Team works under the direct political authority of the Commissioner for Neighbourhood and Enlargement (Interview, Commission official, 1/9/2022). Given the broad scope of enlargement negotiations, with the whole *acquis* covered by different negotiating chapters, all Commissioners and their Cabinets, as well as the DGs under their respective responsibilities, are closely involved in the process. All drafts that are prepared by the DG NEAR Team need to be approved and adopted by the College of Commissioners. These include Opinions, screening reports, the negotiating framework, EU common positions, enlargement packages, country reports, new enlargement strategies, as well as the final draft Accession Treaty. Since the latter is not binding until it wins the unanimous support of the Commissioners, the College has clear ratification powers. The DG NEAR Team regularly updates the Cabinet of the Commissioner for Neighbourhood and Enlargement, who in turn reports to the College on progress in the accession negotiations (Interview, Commission official, 11/7/2019). In addition, there are normally weekly meetings between the Commissioner and the Director-General of DG NEAR, allowing the former to keep up to date with all ongoing accession negotiations (Interview, Commission official, 1/9/2022).

Due to the horizontal, or composite, nature of enlargement policy (Sedelmeier 2005b), where sectorial meso-policies constitute a significant part of the overall policy, extensive coordination and consultation is needed with the Commissioners, and their respective DGs. While the DG NEAR Team provides the overall lead for the negotiations, it relies heavily on the expertise of the so-called ‘line DGs’ – DGs in charge of the thematic areas of the *acquis –* as well as the EEAS, which is responsible for negotiating the chapters on Foreign Common and Security Policy. The technical sector-specific negotiations with the candidate are carried out by the line DGs, or the EEAS, but always in the presence of officials from the DG NEAR Team, as they are responsible for the overall coordination. The DG NEAR Team also conducts regular inter-service consultations with the line DGs, and key documents, such as progress and screening reports, are drawn up with their input.

In terms of preferences, each Commissioner, or DG, normally align with the functional responsibility, or brief, of their respective policy area. While there are frequent splits within the Commission on the enlargement agenda (Avery 2009; Schneider 2008), the main dividing lines tend to reflect the tensions between macro and meso-policies. The DG NEAR Team, and the Commissioner for Neighbourhood and Enlargement, which have a macro-political view, want to prioritise enlargement and offer high levels of accommodation and support for the candidates. The thematic line DGs or the other Commissioners, on the other hand, want to see the *acquis* of their specific policy areas transposed to the letter (Sedelmeier 2005b). This often translates into different priorities where the DG NEAR Team is more inclined to offer flexibility or longer transition periods for the implementation of the *acquis,* while the line DGs are more rigid in terms of how and when their specific policy area is transposed into national policy or legislation in the candidate country (Interview, Commission official, 9/7/2019). The ambition of the DG NEAR Team can also be compromised by the overall importance placed on enlargement by the College as a whole, and the Commission President in particular.

To conclude, the College of Commissioners exerts significant principal control over the DG NEAR agent through its regular monitoring, approval of all key documents, and by setting the overall enlargement agenda. In addition, the involvement of the line DGs in the negotiations with a candidate country on their respective sectorial policy areas, ensures that all technical details of a specific sectorial nature are properly addressed. While this can be seen to reduce the autonomy of the DG NEAR Team, it also reduces the number of potential conflicts at the level of the College. In other words, the Commissioners can use their respective DGs to keep the agent in line. In addition, the close involvement of the sectorial line DGs increases the informational advantage of the DG NEAR Team vis-à-vis the member states in the Council.

*The European Council and the Council of the EU*

Member states play a dominant role in enlargement negotiations (Hillion 2015). First, they are involved as individual countries, or *multiple* principals. The formal accession negotiations take place between ministers and ambassadors of the EU governments and the candidate country in the IGCs, which are generally held twice in each EU Council Presidency. The IGC takes the formal decisions relating to the negotiations, such as opening and closing chapters. And the final Accession Treaty needs to be ratified by the individual member states.

Second, they are involved as *collective* principals, both in the European Council and the Council. Article 49 TEU stipulates that the European Council shall agree the conditions of eligibility of the candidates, and it is responsible for granting candidate status to applicants. In addition, as confirmed in Copenhagen in 1993, the European Council closely follows ‘progress in each associated country towards fulfilling the conditions of accession to the Union and draw the appropriate conclusions’ (European Council 1993). And most decisions that have been adopted by the Council are also forwarded to the leaders in the European Council for their approval, to provide an additional level of control.

However, most of the member states’ work is carried out in the Council, as the ‘central decision-maker’ for enlargement (HM Government 2014). In line with Article 49 TEU, it must give its unanimous support both to the application and the final accession of a candidate. At Ministerial level, enlargement matters are discussed in the General Affairs Council, where the DG NEAR Team is represented by the Commissioner for Neighbourhood and Enlargement. At the level of officials, enlargement matters relating to candidate countries are discussed in the Working Party on Enlargement and Countries Negotiating Accession to the EU (COELA). Each DG NEAR Team reports to COELA, generally twice a week. Since most enlargement decisions require unanimity, each member state has veto powers, and the task of finding consensus is challenging. The country holding the Council Presidency chairs all the Council meetings, from COELA to the General Affairs Council, but the DG NEAR Team is actively involved in the COELA and COREPER discussions, often serving as a facilitator or ‘honest broker’ between the national interests (Interview, Commission official, 9/7/2019). However, this power is reduced at the level of the General Affairs Council and in the IGCs, where the Council Presidency, and to a certain extent the Commissioner for Neighbourhood and Enlargement, play a more influential role.

In terms of preferences, there has been a clear shift since the Eastern enlargement in 2004. At the time, there was greater enthusiasm overall for enlargement, and it was considered important politically, strategically, and morally. Recently, however, there is more widespread scepticism, which has led the accession process to slow down (Interview, Commission official, 11/7/2019). At the time of the Eastern enlargement, member states could be categorised in terms of ‘drivers’ and ‘brakemen’, with Austria, Denmark, Finland, Germany, Sweden, and the UK belonging to the former, and Belgium, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain belonging to the latter (Schneider 2008: 49). Now, there is less of a neat divide between supporters and opponents. Generally, there is strong backing for enlargement to the Westerns Balkans among the neighbouring countries, many of which became members with the Eastern enlargement. This group is often joined by Italy and Spain. Many of the ‘drivers’ in the Eastern enlargement are still supportive in general, but they place strong emphasis on the adherence to the political criteria, and the rule of law in particular, and have adopted more restrictive positions. In addition, some former ‘drivers’ have become more sceptical, including Denmark and Germany. Overall, the coalitions now change more frequently depending on the candidate country, the issues being discussed, and any bilateral issues that may exist between individual member states and the candidates (Interview, Commission official, 11/7/2019). While the coalitions have changed, the main challenge of finding unanimous support among the member states remains. National positions still have a decisive influence on the enlargement process (Hillion 2015; Schneider 2008), and the argument that ‘the most arduous and time-consuming part of an accession negotiation is not the negotiation with the candidate countries but the process of arriving at a common position of the EU member states’ (Avery 2009: 261) still holds.

Given the numerous formal steps in the enlargement process, the DG NEAR Team is faced with member state principals (operating individually or through the Council or the European Council) that have plenty of opportunities to express their views and, if deemed necessary, use their vetoes. The prevalence of unanimity means that any member state can block progress at every formal step of the accession process, including the opening and closing of each chapter.

The member states consequently exercise significant control over the DG NEAR agent through their continuous authorisation, monitoring, and ratification powers.

*The European Parliament*

Under Article 49 TEU, the European Parliament shall be notified of an application for membership, and it must give its consent to any new accession by a simple majority. It consequently has ratification powers, which makes it a de-facto principal. This has allowed it to become increasingly involved during accession negotiations.

The Parliament’s Committee on Foreign Affairs is responsible for enlargement matters, and it appoints standing rapporteurs for all candidate and potential candidate countries. The rapporteur is responsible for drafting the parliamentary resolutions, which are issued when there are significant developments in the accession negotiations or on the ground in the candidate country. In addition, annual resolutions are prepared in response to the Commission’s country reports (Interview, MEP, 11/4/2022).

Although there is no structured reporting format in place, the DG NEAR Team remains in regular contact with the Committee on Foreign Affairs, and it always attends the Committee in connection with the publication of the Commission’s annual country report to respond to questions from its members. The DG NEAR Team also attends the meetings of the Committee on Foreign Affairs when the Parliament’s resolution in response to the Commission’s country report is presented (Interview, Commission official, 9/7/2019).

In addition, the European Parliament has direct trans-national relations with the candidate countries through the Stabilisation and Association Parliamentary Committees (SAPCs). Each SAPC brings together the country specific Delegation of the European Parliament with MPs from the candidate country’s parliamentary Delegation for relations with the European Parliament. The parliamentarians meet in this format twice a year, which allows them to have a political debate on developments of relevance for the accession process. The Joint Conclusions produced through these meetings serve to highlight some of the main difficulties in terms of political developments in the candidate countries. Officials from the DG NEAR Team are always present at these meetings, allowing them to see the broader political picture. The Chair of the European Parliament Delegation also liaises with the DG NEAR Team on a regular basis in between these meetings (Interview, MEP, 11/4/2022).

As for preferences, the European Parliament is generally the most pro-enlargement institution in the EU (ibid.). Candidate countries tend to see it as their ‘friend’, and one with which they have an open engagement (Interview, candidate country official, 8/4/2022). However, issues of human rights and the rule of law are of great importance to most MEPs, and where there is a lack of progress in these areas in the candidate countries the European Parliament does not hesitate to condemn this and push for change. In fact, in March 2019 it adopted a resolution recommending the suspension of accession negotiations with Turkey as a result of its human rights situation following the failed coup of 2016 (European Parliament 2019a).

To conclude, the European Parliament’s ratification powers give it a role in the accession process. There are regular contacts between the European Parliament and the DG NEAR Team, allowing the former to monitor and express its views on the accession negotiations. Its main influence is exercised through its direct engagement with the candidate country. It engages in trans-national action through the SAPCs, which allows it to work alongside the DG NEAR Team in pushing for reforms in the candidate countries. However, the European Parliament lags behind the Council, the European Council, and the College of Commissioners in terms of principal control in the negotiations at Level Two.

**Case Study – Negotiating Accession with the Western Balkans**

**Preparation Phase**

The six Western Balkan countries – Albania, Bosnia and Herzegovina, Croatia, the then former Yugoslav Republic of Macedonia (now North Macedonia), Serbia and Montenegro were recognised as potential candidates for EU membership at a European Council meeting in Feira of June 2020. This commitment was confirmed at an EU-Western Balkan summit in Thessaloniki in 2003, where the EU reiterated ‘its unequivocal support to the European perspective of the Western Balkan countries’, stressing that the ‘future of the Balkans is within the European Union’ (European Council 2003). However, progress in the accession process has been slow since. The EU opened negotiations with Montenegro and Serbia in 2012 and 2014 respectively, and they are still ongoing and far from being concluded. Albania and North Macedonia only started their accession negotiations with the EU in July 2022. Bosnia and Herzegovina applied for membership in 2016 and was granted candidate status in 2022. And Kosovo was the last to submit its application in December 2022.

The reason for the slow progress in the accession process of the Western Balkans is the result of a triple challenge. First, the candidate countries have a more complex domestic context than previous candidates, given the legacy of recent armed conflict, bilateral disputes, and greater levels of polarisation. Second, the resistance to enlargement within the EU, in particular among the member states, has increased. Third, as illustrated in the overview of the enlargement rounds to date, the conditions and standards that candidates need to meet have increased significantly over time, and for the Western Balkan countries they are higher than ever. Since Croatia’s accession, there have been a number of Enlargement strategies with revised methodologies, which are now applicable to the Western Balkan countries. One of the main innovations is the introduction of the ‘fundamentals first’ approach, which was developed as a result of the difficulties with chapter 23 in the accession negotiations with Croatia. Chapter 23 on Judiciary and Fundamental Rights, as well as chapter 24 on Justice, Freedom and Security, are considered central in the accession process, and to extend the timeframe for these negotiations, and give as much time as possible for the candidates to undertake the necessary reforms in these areas, the two chapters are now opened first, and closed last (European Commission 2013).

As a result of the slow progress in the accession process, particularly in Bosnia and Herzegovina and Kosovo, this case study only covers the preparation and negotiation phases for Serbia and Montenegro - the two frontrunners, and the preparation phase for Albania and North Macedonia.

*The EU’s Domestic Negotiations at Level Two – Preparing the Negotiating Frameworks for Montenegro and Serbia*

When the applications were received from Montenegro in 2008 and Serbia in December 2009, the Council asked the Commission to issue its Opinion on these in line with Article 49 TEU. The preparatory work thus started within the two Teams in DG NEAR[[9]](#footnote-9), each consisting of a Country Unit and Thematic Desks. At the time, there was one Country Unit for Montenegro and one for Serbia, but they have since merged into one. To prepare the draft Opinions, the two DG NEAR Teams engaged closely with Montenegro and Serbia. Expert missions were organised to assess the political, economic, and administrative situation in line with the Copenhagen criteria in the two countries. The Teams explored the reform processes undertaken to date, and identified remaining challenges and priorities for the upcoming negotiations. There was deep knowledge about the countries within DG NEAR as its officials had worked closely with both Montenegro and Serbia through the Stabilisation and Association Agreements, which the EU had concluded with the two countries, and through the Instrument for Pre-Accession Assistance, which supports EU candidates and potential candidates in the reform process to align with EU rules, standards, and values. When carrying out the assessments, the DG NEAR Teams could draw on this knowledge. The assessments provided the basis for the draft positive Opinions on the membership applications, which were adopted by the College of Commissioners (in November 2010 for Montenegro, and October 2011 for Serbia) before being submitted to the Council and the European Parliament. At this stage there were no significant divisions within the College of Commissioners, given the Commission’s overall preference in favour of enlargement (Interview, Commission official, 11/7/2019). European Commission President Manuel Barroso and Enlargement Commissioner Štefan Füle were both strong advocates of enlargement to the Western Balkans. The Commissioners trusted the DG NEAR Teams’ assessments, which were based on objective criteria, and given that no country can join until it fully meets the Copenhagen criteria and has implemented the full *acquis,* the adoption of the draft Opinion was just the first step of a very long process.

The draft Opinions were adopted by the General Affairs Council (in December 2010 for Montenegro, and February 2012 for Serbia), which, in turn, allowed the leaders in the European Council to formally grant candidate status to the two countries (in December 2010 for Montenegro, and March 2012 for Serbia). In terms of preferences among the member states, there was general agreement that enlargement to these countries was of great strategic importance to help transform and stabilise the region. There was also a sense of responsibility following the EU’s failure in preventing the Wars of the 1990s. However, member states were divided on how quickly the accessions should proceed, and how stringent the application of the conditionality should be. One group of member states, including Austria, Bulgaria, Hungary, Italy, Poland, and Romania, were strongly in favour of a quick accession of the two Balkan countries. They were keen to push the process forward as far as possible, being less concerned about the need to meet all the set conditions. Another group, including Belgium, the Netherlands, and the Nordics, also favoured accession, but wanted to make sure there was strict adherence to the criteria, particular on the rule of law (Balfour and Stratulat 2015; Interviews, Commission officials, 11/7/2019). The preferences of the latter group corresponded with those of the DG NEAR Teams. While the mandate of the DG NEAR Teams was to push the enlargement process forward, they also had strong commitments to the values on which the EU was founded. Any undermining of the rule of law and human rights would severely affect their credibility as reliable partners, both vis-à-vis the other institutions in the EU and the candidates (Interview, Commission official, 9/7/2019). The UK also belonged to the latter group, although its ability to exert influence had started to wane at the time, due to its heated immigration debate and increasing Euroscepticism (Balfour and Stratulat 2015). As for the German and French governments, they were in favour of enlargement but had concerns about high levels of opposition to enlargement among French and German citizens. For France, this meant that enlargement had fallen down the political agenda, and instead, it prioritised the inner consolidation of the EU (Wunsh 2015). For Germany, it translated into a push for even stricter application of the accession criteria than what was proposed by the DG NEAR Teams. This was seen as the only way to make the case for enlargement to an increasingly sceptical German public (Adenahr and Töglhofer 2015). In fact, Germany vetoed the Commission’s recommendation to provide Serbia with candidate status when it was first discussed at a Council meeting of December 2011. The veto was motivated by the need for Serbia to progress further on improving relations with Kosovo. Although some member states strongly opposed this move, arguing that Serbia had done what the Commission had asked it to, others, including Finland, France, the Netherlands, and the UK, agreed with Germany’s assessment, although they themselves would not go as far as blocking the approval of Serbia’s candidate status (Vogel 2011). However, two months later, following progress in the dialogue between Serbia and Kosovo, the Commission’s Opinion was adopted unanimously in the General Affairs Council in February 2012 (Council of the EU 2012a).

This illustrates how the DG NEAR Teams could not take the support of the member states for granted. In addition, although most member states relied on the assessments and reports of the DG NEAR Teams on the progress made in the candidate countries, some member states, including Germany, started carrying out their own evaluations, rather than solely relying on the Opinion of the Commission (Adenahr and Töglhofer 2015). Although lagging significantly behind DG NEAR in terms of monitoring capacity (Interview, Commission official, 9/7/2019), these assessments reduced the informational advantage of the DG NEAR Teams, and they could be seen to undermine their autonomy. However, factually the member state reports did not differ in their overall assessment of the situation on the ground. What differed was the member states’ judgement on whether the progress made was enough to move the accession process forward. This reflects the embedded subjectivity in the accession process, which limits the burden on member states to provide justifications for their objections.

The European Parliament, which followed the process closely, issued its resolution just after the agreement in the Council, expressing its full support for Serbia as a candidate, and for a swift opening of accession negotiations. It argued that Serbia had met all the criteria set out by the Commission and made considerable progress on meeting the political Copenhagen criteria. However, it also stressed that continued progress was needed, particularly in the areas of the rule of law and human rights, as well as in the dialogue with Kosovo (European Parliament 2012). It had issued a resolution earlier in March 2011, welcoming the candidate status provided to Montenegro, and pushing for negotiations to start as soon as possible. It criticised the Commission for insisting ‘on a gap between the granting of candidate status and the opening of negotiations’ (European Parliament 2011c).

Once the countries had been given candidate status, the DG NEAR Teams engaged in additional monitoring and prepared draft recommendations for the opening of the accession negotiations. These were again agreed without difficulty by the College of Commissioners (in October 2011 for Montenegro, and April 2013 for Serbia). The General Affairs Council then adopted the recommendations, before they were endorsed by European Council (June 2012 for Montenegro, and June 2013 for Serbia).

During this time, the DG NEAR Teams had also started preparing the negotiating frameworks, setting out the principles, substance, and procedures for the upcoming negotiations. The two frameworks were similar, apart from the requirement of Serbia to work towards the normalisation of relations with Kosovo (which were to be dealt with under chapter 35 – ‘Other Issues’). In terms of principles, the frameworks specified the conditionality, outlining the Copenhagen criteria, and stressing the commitment to good neighbourly relations and the centrality of chapter 23 (Judiciary and fundamental rights) and chapter 24 (Justice, freedom and security) (Conference on Accession 2014; Council of the EU 2012b). As for substance, the frameworks highlighted how the full *acquis* needs to be implemented as it stands at the time of accession. While the *acquis* itself is non-negotiable, the frameworks recognised that adaptations to the implementation and transitional measures may be agreed exceptionally (ibid.). This, again, illustrates how the dynamics of accession negotiations differ from regular take-and-give negotiations. They reflect more of a ‘take it or leave it’ situation, where all that can be negotiated is the amount of time that the candidates need to adapt and to implement the *acquis* (Interview, Commission official, 11/7/2019).

The procedures in the frameworks confirmed that the formal negotiations should take place in the IGCs between the EU member states and the candidate countries. In terms of the Commission’s role, it specified its responsibility for the screening process with the candidates, and for closely monitor and reporting on progress in the candidate countries throughout the negotiations. The decision about whether the conditions for concluding the negotiations had been met, would also be taken on the basis of a report from the Commission. In addition, the Commission should regularly inform the Council of progress in the candidate countries, ‘in particular when presenting draft EU common positions’ (Conference on Accession 2014; Council of the EU 2012b). Through the draft negotiating frameworks, the DG NEAR Teams thus confirmed the extensive role played by themselves, as representatives of the Commission, in the negotiations. However, the framework also stated that the Council, based on proposals from the Commission, could lay down benchmarks for the opening and closure of each chapter, including interim benchmarks for chapters 23 and 24 (ibid.). The interim benchmarks provided additional opportunities for formal involvement of the member states during the negotiations, thus restricting the autonomy of the DG NEAR Teams further. While increased principal involvement could slow down the negotiation process as there would be additional veto points, the hope was that it would help break down the reform process for the candidates into clear priority areas, but also make member states more likely to keep the process moving forward. The argument was that it would be easier to find unanimous support around benchmarks focusing on specific, less extensive, areas. In addition, it was hoped that member states would be more willing to agree to benchmarks if they knew that there were additional veto points further down the line (Interview, Commission official, 9/7/2019). The negotiating frameworks were adopted by the College of Commissioners, before being submitted to the Council where they were agreed by the General Affairs Council (in June 2012 for Montenegro, and December 2013 for Serbia). With this, the two countries could move onto the negotiation phase.

To conclude, during the preparation phase, the DG NEAR Teams, as agents, played a central role through the drafting of the Opinions on the two applications, the recommendations for the opening of negotiations, and the negotiating frameworks. However, given the multiple steps of the preparation phase, there were several opportunities for the principals to express their views, or even block progress, as demonstrated by Germany’s initial blockage of Serbia’s candidate status. The College of Commissioners, as well as the Council and the European Council, had to agree unanimously to all the draft documents presented to them by the DG NEAR Teams. At this stage, there were no significant divisions within the College, and the Commissioners adopted the draft documents without difficulties. However, in the Council, there were diverging views and extensive discussions, resulting in delays to the process. As for the European Parliament, it did not have a formal role during this phase, but it followed the process closely and issued resolutions. Given its strong pro-enlargement stance, it endorsed the documents produced by the DG NEAR Teams, but it criticised the gap between providing candidate status and the opining of the negotiations. From the submission of the two applications, to the opening of the negotiations, it did indeed take around four years for Montenegro and five for Serbia. While this might seem long, it should be put in the context of the accession process of two other Western Balkan countries – Albania and North Macedonia, with which accession negotiations only opened in July 2022. A brief overview of these two cases serves to demonstrate the power of the member state principals, and how any progress in the accession process is dependent on their unanimous support.

*The EU’s Domestic Negotiations at Level Two – Preparing the Negotiating Frameworks for Albania and North Macedonia*

North Macedonia (then referred to by its UN-recognised name, the Former Yugoslav Republic of Macedonia) and Albania submitted their membership applications already in 2004 and 2009 respectively. Following progress towards meeting the accession criteria, the former was granted candidate status in 2005. However, the decision to open negotiations with the country was blocked by Greece due to a dispute over its name. Greece opposed the country’s use of ‘Macedonia’ as its official name, since it is also the name of a province in northern Greece, and there were fears of potential territorial ambitions (Conley and Melino 2018). Greece insisted that until a satisfactory solution to the bilateral name dispute was reached, it would continue to block the opening of accession negotiations. This was of great frustration both to the DG NEAR, which was keen to move forward with the accession process given the progress made in the country, and of course to the Former Yugoslav Republic of Macedonia itself. However, in June 2018 the two parties reached agreement on the name of the ‘Republic of North Macedonia’, and as a result, Greece lifted its veto on accession negotiations.

In the meantime, Albania had been granted candidate status in 2014, and the two countries, which had been coupled together by the EU, were expected to be given the green light to embark on their accession negotiations. Yet, at a meeting of the General Affairs Council in June 2018, some member states, including France, Denmark, and the Netherlands, opposed the Commission’s recommendation of a swift opening of the negotiations. Although the DG NEAR Team for Albania had repeatedly demonstrated how progress had been made, not least through a significant transformation of the judiciary system in Albania following an extensive vetting process of judicial prosecutors, the member states argued that they wanted further progress still (Interview, Commission official, 11/7/2019). So, while the member states agreed with the factual assessment about significant progress, they could make their own judgement as to whether this was sufficient to move the process forward. Since the exact threshold for what was required for the opening of a chapter was not specified, the member states were left with significant discretion (ibid.). This illustrates how despite the win-set being very clear in terms of the *acquis* and the criteria to be met, member states could use this discretion to change the win-set at any time based on their own judgements. In addition, the member states had broader political concerns about enlargement that were not directly related to the progress made in the candidate countries. They were concerned about the integration capacity of the EU and the general enlargement fatigue among citizens. They also worried that the opening of negotiations would stir up anti-immigrant sentiments before the European Parliament election in 2019. As a compromise, it was agreed that negotiations would open, but not until the following year (Gotev 2018).

When the European Council met a year later in October 2019 to decide on an exact date for the opening of the negotiations with Albania and North Macedonia, France refused to progress with the opening until a revised enlargement methodology had been agreed. It wanted greater support for the candidate countries and a stronger emphasis on the rule of law, as well as the possibility to reverse the process, allowing the EU to call off the negotiations if there was backsliding from the accession criteria (Herszenhorn and Momtaz 2019). Denmark and the Netherlands joined France in pushing for a postponement of the negotiations with Albania specifically. As a result, no decision on the opening of talks was taken, and the leaders could only agree to ‘revert to the issue’ at a later stage (European Council 2019).

This caused great frustration in both the Commission and the European Parliament. Commission President Juncker referred to it as a ’historic error’ (Emmott et al 2019), and the European Parliament stressed how it was ‘a strategic mistake’, which damaged the credibility of the EU, allowing other foreign actors to engage more closely with the two countries (European Parliament 2019b). However, DG NEAR, which had to make sure the accession negotiations progressed, embarked on the process of developing a revised enlargement methodology, which responded to the demands made by France. This also provided an opportunity to think strategically about how to invigorate the enlargement process, which had accumulated multiple problems over the years (Ivković 2020). As the main facilitator of accession negotiations, DG NEAR had to make sure the strategy responded to the concerns of the member states, but also kept the candidates – which were becoming increasingly exasperated by the slow progress of the process – on board. As for the latter, the draft methodology proposed that chapters would no longer be opened individually, but rather through six thematic clusters: Fundamentals; Internal market; Competitiveness and inclusive growth; Green agenda and sustainable connectivity; Resources, agriculture and cohesion; and External relations (European Commission 2020a). This would allow the candidates to open more chapters at once, and thus provide the negotiations with momentum. The candidates were also offered the possibility of taking part in certain EU policy areas prior to accession, and they were offered more funding and investment (Ivković 2020). To placate the concerns of the member states about the lack of progress on the rule of law in the candidate countries, DG NEAR proposed a stronger focus on the Fundamentals cluster, including the chapters on judiciary and fundamental rights; justice, freedom and security; public procurement; statistics; and financial control. The draft methodology provided for clearer sanctions for backsliding, and greater involvement of the member states in assessing the progress of the candidates (ibid.). DG NEAR thus proposed that its own administrative lead for the judging of candidate’s progress would be complemented by the political involvement of the member state governments.

The draft methodology was adopted by the College of Commissioners in February 2020 and endorsed by the member states in the General Affairs Council in March 2020. With the revised methodology in place, France finally agreed to the opening of the accession talks with Albania and North Macedonia. While Denmark and the Netherlands still had some reservations, they found it difficult to express their opposition. Without France on their side, they did not have the same political weight, and they considered the political price for continued opposition to be too high (Interview, Commission official, 1/9/2022). As a result, there was unanimous support for the opening of negotiations. This was welcomed by the Commission, which had repeatedly argued in favour of it (European Commission 2020b), and it paved the way for the DG NEAR Teams to draft the negotiating frameworks for the upcoming negotiations. The green light was also received positively in Albania and North Macedonia, which had been engaged in years of reform to meet the criteria set by the EU. In July 2020, the draft negotiating frameworks were presented to the Council. However, rather than approving them with a unanimous vote as was expected, Bulgaria set out a number of conditions to be met by North Macedonia before negotiations could open. The conditions included a recognition by North Macedonia that its history and language had Bulgarian roots (Fouéré 2021). The Bulgarian veto meant that once again a bilateral dispute between a member state and a candidate blocked progress in the accession process.

This blockage was only overcome when North Macedonia and Bulgaria accepted a proposal presented by France during its Council Presidency in the Spring of 2022. The proposal suggested that Macedonian should be made an official language in the EU – a language that Bulgaria considers to be a dialect of Bulgarian, while also suggesting that textbooks in North Macedonia with negative references to Bulgaria should be changed, and that the country’s constitution should be altered to acknowledge Bulgarians among its people (Brzozowski 2022). Once North Macedonia and Bulgaria had accepted the proposal, the Council adopted the negotiating frameworks on 18 July 2022, two years after they had first been presented by the DG NEAR Teams. In the Council conclusions, Bulgaria made sure its concerns were reflected with a reference to how North Macedonia is expected to make the necessary changes ‘with a view to including in the Constitution citizens who live within the borders of the state and who are part of other people, such as Bulgarians’ (Council of the EU 2022). Following the adoption of the frameworks, the accession negotiations were launched with both countries on 19 July 2022 (European Commission 2022b) – 18 and 13 years after North Macedonia and Albania submitted their respective applications.

This reflects how the DG NEAR Teams were severely constrained by the tight control of the member state principals. The latter did not shy away from using their vetoes, even for reasons not directly related to the progress made in the candidate countries.

*International Engagement at Level One*

Moving back to Serbia and Montenegro, during the preparation phase there was close engagement between the DG NEAR Teams and these two candidates. The parties liaised continuously during the drafting of the Opinions on the applications, as well as on the recommendations to open negotiations. Since the draft documents relied on accurate assessments of the situation on the ground, there was extensive monitoring, but also support to help the candidates reach the necessary levels of progress.

Already before the formal negotiations opened, the DG NEAR Teams initiated the screening process for those chapters that should be opened first, including chapters 23 and 24. The screening process consists of an explanatory screening and a bilateral screening. During the explanatory screening, the DG NEAR Teams organised screening events to which they invited delegates from the candidate countries. Each event focused on a specific chapter of the accession negotiations, and relevant experts from the line DGs came along to present the technical details of the *acquis* of that chapter. These events, which each lasted two to four days, provided a way for the DG NEAR Teams and their colleagues from the line DGs to properly explain the *acquis* and what was expected from the candidates. It was also an opportunity for the delegates from the candidate countries to ask questions and get a full grasp of the *acquis*. The Serbian delegates were invited to attend some of the explanatory screening sessions organised for Montenegro to give them additional time to prepare for their own screening process (Interview, Commission official, 11/7/2019). Since there had to be explanatory screening events for each of the negotiating chapters, the whole process lasted over a year for each country. Following the explanatory screenings, there were bilateral screenings, where the candidates had to present the degree of their alignment with the *acquis,* and identify areas where transitional periods might be needed. Based on the presentation from the candidate countries, the DG NEAR Teams then produced draft screening reports, which were discussed and adopted by the College of Commissioners and the Council.

In terms of the dynamics at Level One during the preparation phase, they reflected a situation where the DG NEAR Teams monitored and supported the initial reform process in the candidates, and then explained the *acquis*. Since the scope of the negotiations was determined by the *acquis,* there were no bilateral discussions about the nature or content of the future agreement. It was a question of preparing the candidates for the reforms and alignment with the *acquis* that had to take place during the upcoming negotiation phase.

**Negotiation Phase**

The negotiations were formally launched through the IGCs (in June 2012 for Montenegro, and January 2014 for Serbia). At the first IGC, the negotiating frameworks, which set out the structure for the negotiations, were presented and adopted by the delegates. Since then, all chapters have been opened in the negotiations with Montenegro, and 22 are opened with Serbia at the time of writing. The time frame indicates that progress has been slow, and it is still unclear when the two candidates will accede to the EU. The lack of speedy progress during the negotiation phase is the result of political developments on the ground and delays in the alignment with the *acquis,* as well as a more polarised and difficult environment within the EU.

*The EU’s Domestic Negotiations at Level Two*

The DG NEAR Teams for Montenegro and Serbia remain in regular contact with the Cabinet of the Commissioner for Neighbourhood and Enlargement during the negotiations. There are generally also weekly one-hour meetings between the Director-General of DG NEAR and the Commissioner for Neighbourhood and Enlargement, during which the Director-General updates the Commissioner on the key issues in the different accession negotiations, allowing the Commissioner to keep on top of the work of the DG NEAR Teams (Interview, Commission official, 1/9/2022). Commissioner Johannes Hahn, who provided the direct political authority over the DG NEAR Teams between 2014 and 2019, was strongly committed to the enlargement agenda and remained in continuous contact with DG NEAR. Following his departure, however, the contacts between the political and administrative levels have become less frequent as a result of less day-to-day involvement by Commissioner Hahn’s successor, Commissioner Olivér Várhelyi (Interview, Commission official, 1/9/2022).

Yet, since the line DGs are closely involved in the process, both through the inter-service consultations and their lead on the technical day-to-day negotiations, most sectorial divisions are solved at the administrative level. However, at times there have been differences in interests or levels of ambition, which have been reflected in the discussions between the Cabinets. Sometimes these differences have also spilt over into the discussions in the College of Commissioners. Such divisions often reflect the divide between the macro and meso-policies (Sedelmeier 2005b). For example, there have been occasions when Commissioners find that new directives in their specific policy areas have not been fully transposed into the legislation of a candidate, or that particular policy priorities have not been pushed hard enough vis-à-vis the candidates. While the DG NEAR Teams and the Commissioner for Neighbourhood and Enlargement have understood their concerns, they have argued that in the broader picture of enlargement, those issues might not be the most important at that specific point in time (Interview, Commission official, 9/7/2019). On these occasions the DG NEAR Teams have operated as an ally of the candidates and pushed their case internally in the Commission. Most often a balanced compromise has been reached without too much difficulty given the generally close working relationship between the services and the Commissioners.

However, there have also been cases when the principal control exerted by members of the College over the DG NEAR Teams have had a significant impact. For example, in 2014 the Commission President Juncker announced in the political guidelines for his mandate that the EU needed to digest the addition of 13 new Member States in the past 10 years, and that no further enlargement should take place within five years (European Commission 2014). While it was unlikely that any country would be ready to join within the five-year period, such a bold message sent negative signals to the countries in the Western Balkans about the EU’s commitment to the accession process (Fouéré 2014). This made the work of the DG NEAR Teams more difficult, as they had to keep the candidates engaged and motivated to continue with their reform processes. Although Commissioner Hahn was supportive of enlargement, this illustrates how the ambitions of the DG NEAR Teams were compromised by the overall importance placed on enlargement by the College as a whole.

Another example of principal control exerted over the DG NEAR Team for Serbia, was when Commissioner Várhelyi advocated in favour of the acceleration of the negotiations with Serbia. He instructed the DG NEAR Team to move towards the opening of new clusters, despite the lack of progress in the area of rule of law. During the preparation of the draft country report for Serbia in 2021, his Cabinet made the language prepared by the DG NEAR Team less critical about the lack of progress in Serbia. This significantly undermined the role of the DG NEAR Team, not least vis-à-vis the candidate countries, where it had continuously stressed the importance of the rule of law (Wanat and Bayer 2021). It also raised questions about whether the country reports were trustworthy. To try and rectify the situation, the DG NEAR Team approached colleagues in other DGs asking them to give a critical opinion on its own draft report, to ensure that the final version, which had to be adopted unanimously by the College, reflected a somewhat more accurate picture of the domestic situation in Serbia (ibid.). This shows how the DG NEAR Team was compromised by their immediate political principal, something which led to significant frustration within the Team (Interview, Commission official, 1/9/2022).

As for the control by the High Representative, the negotiating frameworks confirmed that the High Representative is responsible for the screening and negotiations of chapter 31 on the Common Foreign and Security Policy, and in the case of Serbia, chapter 35 on the normalisation of relations with Kosovo (Council of the EU 2012b). This work is thus carried out by the EEAS, but in close consultation with the DG NEAR Teams. In terms of the preferences of the EEAS and the High Representative, they often converge with those of the DG NEAR Teams. However, both the High Representative and the EEAS often adopt a more diplomatic approach, as they have a strategic focus and see the enlargement process as part of the EU’s broader foreign policy, while the DG NEAR Teams must provide a more critical assessment, since their mandate is to bring the candidates in line with the *acquis* and the set criteria (Interview, Commission official, 10/7/2019). There is a clear recognition within the EEAS that the lead lies with DG NEAR. There is also a significant difference in terms of capacity within the EEAS and DG NEAR, with the latter having more staff per Unit than the total number of officials working on enlargement in the EEAS (Interview, EEAS official, 30/7/2019). Even in the EU delegations in the candidate countries, which fall under the command of the EEAS, the officials working on enlargement are part of the DG NEAR Teams, and as such they respond directly to the Commissioner for Neighbourhood and Enlargement, rather than the High Representative.

During the negotiation phase, there are close contacts with the member state principals in the Council. The DG NEAR Teams generally report on progress in the accession negotiations to COELA twice a week. Most decisions, including screening reports and benchmarks, are taken at this level, and sometimes at COREPER. Much of the discussions thus focus on whether the candidates have reached the set benchmarks, and what is still required (Interview, Commission official, 9/7/2019). While the DG NEAR Teams push the interests of the candidates, they are aware of the need to keep the member states on board due to the unanimity requirement, and they consequently take the member state concerns into consideration, adopting a transparent and open approach to ensure member states have as much information as possible. For example, the DG NEAR Teams have invited the members of COELA to attend the screening processes with the candidates. While not many have attended, it demonstrates how the Teams want to involve the member states in the process to ensure that any positions taken in the Council are related to the actual situation on the ground, rather than to bilateral issues or general attitudes towards enlargement (Interview Commission official, 11/7/2019). In COELA there is generally great respect for the work of the DG NEAR Teams, with the member states recognising the significant expertise and experience of the Teams, as well as their awareness of the situation on the ground in the candidates. As a result, the member states normally trust the assessments of the DG NEAR Teams (Interview, member state representative, 10/7/2019).

In terms of overall preferences towards enlargement in the Council, they have remained mainly the same since the preparation phase. The only change is the departure of the UK, but this does not seem to have changed the dynamics significantly (ibid.). Whereas the UK was often identified as one of enlargement’s main advocates in the past (Scazzieri 2021), during its last years of membership it was increasingly perceived as having toned down its support for new members, and some candidates even see Brexit as something positive as it has led to ‘one less difficult member state’ (Interview, candidate country official, 8/4/2022). However, while the overall preferences have remained the same, member states have not shied away from using their vetoes in the General Affairs Council and the European Council to block the accession process. On numerous occasions they have acted against the recommendation of the Commission to open new chapters. For example, in 2016 Croatia blocked the opening of chapters 23 and 24 for Serbia, arguing that further progress was needed on cooperation with the ICTY and the treatment of the Croatian minority in Serbia (Kmezić 2016). It later also blocked the opening of chapter 26 on education and culture for Serbia, referring again to issues relating to the Croatian minority in the country and to the return of cultural goods (Zaba 2016). In October 2016 the UK blocked the opening of chapters 2 and 3 relating to free movement and the right of establishment and freedom to provide services for Montenegro. Although it was in the process of leaving the EU, the UK still raised concerns about how high levels of EU workers undermine wage levels (Tomovic 2016). These are just a few examples of many, where member states have used their vetoes and continuous authorisation powers to block progress, thus undermining the whole accession process, as well as the autonomy of the DG NEAR Teams. This has made it difficult to keep up the morale within the Teams, where many have felt frustrated by the lack of support from some of the member state principals (Interview, Commission official, 1/9/2022).

The European Parliament plays an active role in the negotiations with both Montenegro and Serbia. It engages extensively in the domestic discussions within the EU, working closely with the DG NEAR Teams, and it interacts regularly with its counterparts, as well as the broader society, in the candidates. The DG NEAR Teams also report regularly to the parliamentary Committee on Foreign Affairs on progress and problems in the negotiations. Through its annual resolutions on the Commission’s country reports, the European Parliament expresses its view on the accession process, sending clear messages to the other EU institutions. For example, in the 2021 resolution on the Commission’s report on Serbia, the Parliament called on the Commission to use the revised enlargement methodology to accelerate the enlargement process, and to strengthen support for civil society, NGOs and independent media on the ground (European Parliament 2021). The resolutions provide a way to exercise parliamentary control over the DG NEAR Teams. Yet, as their preferences generally align, the resolutions often help the DG NEAR Teams in their engagement both with the member states and the candidates. For the DG NEAR Teams, the Parliament’s assessment, which offers a broader political picture, helps complement their own approach, which follows more of a ‘technical adaptation process’ (Wallace 2017: 81). Both the standing rapporteurs for Montenegro and Serbia, and the Chairs for the two SAPCs, liaise closely with their respective DG NEAR Teams, and there is a good working relationship between the institutions (Interview, MEP, 8/4/2022). However, the Parliament would like to see a more formal and structured way of exerting influence over the Commission and the Council, and it does not hesitate to express its criticism of the other principals of the DG NEAR Teams. For example, following Commissioner Várhelyi’s push for an acceleration of negotiations with Serbia, MEPs expressed great concern that rule of law enforcement was being disregarded by the Commission (Wanat and Bayer 2021).

Given that enlargement negotiations mostly focus on the reform process in the candidates, the European Parliament plays a key role through its direct engagement with the candidates. The SAPCs help foster closer parliamentary relations and increased understanding between the parties. In addition, the Parliament runs extensive projects on the ground to support capacity building and the reform process towards accession. It thus operates as a partner of the candidates, and the personal involvement by many MEPs help to build trust in the accession process (Interview, EEAS official, 20/7/2019). The Parliament also uses its annual resolutions on the Commission’s country reports to put pressure both on the EU institutions, as well as on the candidate country. For example, in its resolution on the 2021 Commission Report on Serbia, the Parliament stressed that progress on ‘full alignment with EU’s foreign, security and defence policy, including sanctions against Russia’ would determine the pace of accession (European Parliament 2022). This way, the Parliament aimed to put pressure on Serbia to change its stance on the imposition of sanctions. Given the preference convergence between the Parliament and the DG NEAR Teams, and the fact that they ‘peddle in the same direction’ (Interview, MEP, 8/4/2022), these resolutions do not constrain the DG NEAR Teams in their autonomy. While the Parliament does not have the same powers as the other principals in the accession process, it plays an important role in the reform process through its work on the ground.

To conclude, during the domestic negotiations at Level Two, the DG NEAR Teams are controlled by three sets of principals. The autonomy of the Teams is restricted by the oversight of the College of Commissioners, which decides on the overall priority of enlargement negotiations, as well as the level of ambition of sectorial interests. The fact that the specific chapters are negotiated with the support of the sectorial experts from the DGs facilitate the ratification process in the College, while it also reduces the autonomy of the DG NEAR Teams. However, this reduction in autonomy vis-à-vis the College, gives them an informational advantage towards the member states in the Council, as they can then refer to the sectoral expertise. Yet, despite the recognition of the work of the DG NEAR Teams, the Council has repeatedly undermined their agent by blocking progress in the negotiations. The European Parliament, as a de factor principal, monitors the DG NEAR Teams through its close engagement and regular reports and resolutions. It also plays an important role through its work on the ground. However, given that Parliament’s ratification powers can only be used at the very end of a long negotiation – and the fact that the Parliament is overwhelmingly in favour of enlargement – these powers only cast a very weak shadow over the accession process.

*International Negotiations at Level One*

During the negotiations between the EU and the candidates, the formal steps of opening and closing chapters take place in the IGCs, following a decision in the Council. Once a chapter has been opened, the negotiations are then mainly carried out between the candidates and the DG NEAR Teams, in close coordination with the line DGs. Given that progress can only take place once the candidates have carried out the necessary reforms and aligned their national legislations with the *acquis* as per the set benchmarks, the DG NEAR Teams are dependent on the cooperation of the candidates. In addition, they are dependent on their principals recognising that progress has taken place, in order to get agreement to move forward. The DG NEAR Teams consequently find themselves in a tight two-level game, where they have to work hard on two fronts. The win-set is based on the full implementation of the *acquis* and adherence to the set criteria. However, given that the accession process lasts for several years, the *acquis* expands over time. As a result, the contours of the win-set continuously change. While the DG NEAR Teams have a clear grasp of what reforms need to be undertaken on the ground to ensure all criteria are met, they never know whether the principals’ judgement about the level of progress will correspond with their own. In addition, they never know if reasons unrelated to progress on the ground will be used to block the process. It is therefore difficult for the DG NEAR Teams to predict the exact contours of the win-set. To this end, they have adopted a number of two-level game strategies to try to move the accession process forward.

*Negotiating Strategies*

*Agenda-Setting:* The DG NEAR Teams have a leading role as the agenda-setters of the negotiating process. Although the *acquis* is set and non-negotiable, the key documents, including the negotiating frameworks, the EU positions, the screening reports, and the benchmarks, are all drafted by the DG NEAR Teams, thus giving them significant influence over the process. The annual publication of the country report is one example where the Teams influence the process. The report can play a decisive role both domestically vis-à-vis the principals in the EU, where it provides the basis for decisions about whether to move the accession process forward, and internationally, where it can influence the reform process in the candidate country. The report captures the role of the relevant DG NEAR Team as the central player in a two-level game. The Team has to merge the roles of critic and ally of the candidate. As an ally, it wants to recognise the positive progress made in the candidate country, keeping it engaged and motivated to continue the reform process. These positive assessments also serve to convince the principals within the EU that the technical and financial support provided by the EU is having an impact, and that the candidate is ready to move to the next stage in the negotiation process. As a critic, on the other hand, the Team identifies the areas where progress has been lacking, in order to provide guidance to the candidate on what to prioritise as it is moving forward. Domestically in the EU, the critical assessment serves to demonstrate to the principals that the Team is engaged in careful monitoring, and that it would not recommend progress in the accession process prematurely. This would neither serve the EU, nor the candidate. While a few member states have criticised recent reports for being too upbeat in their assessment (Von der Burchard et al. 2020), there is generally strong agreement that the DG NEAR Teams provide objective evaluations of the situation on the ground (Interview, candidate country official, 4/4/2022). In drafting the country reports, the DG NEAR Teams make extensive use of reports and analyses from NGOs, international organisations, and independent research institutes, such as Transparency International and Freedom House, which strengthens their hand both domestically and internationally. Drafting the country reports is thus a fine-tuned balancing act, but one which can be used strategically by the DG NEAR Team to influence progress in the negotiations.

*Promoting Principal Involvement:* Another strategy used by the negotiators is that of changing the rules of the game by increasing the involvement of the principals in the international negotiations. Rather than the principals engaging in cross-table action as a strategy to push their own interests, such involvement of the principals is sometimes encouraged and driven by the negotiating agent. This was clearly the case with the launch of the revised enlargement methodology, which was designed by DG NEAR to provide new impetus into the negotiations following years of stalemate (European Commission 2020a). Prior to the introduction of the revised methodology, the responsibility for judging candidates’ progress towards meeting the EU criteria mainly rested with the DG NEAR Teams and their colleagues from the line DGs. The member states had only been involved in the decisions about when to open or close negotiating chapters. However, the revised methodology has introduced much greater political steer from the member states. They now contribute more regularly to the accession process by being involved in the monitoring of progress on the ground and by contributing directly to the annual report. There are also more meetings of the IGCs and EU-Western Balkan summits to oversee the accession process (ibid.). It might seem paradoxical that DG NEAR would propose greater principal involvement as it will increase the level of principal control, and thus reduce the informational advantage of the DG NEAR Teams vis-à-vis their principals. However, if member states are more involved, and if they have a clearer grasp of the situation on the ground, the expectation is that it should be more difficult for them to block progress for reasons not directly related to the negotiations, such as bilateral issues (Ivković 2020). In line with principal-agent logic, increased monitoring is costly for the principals, which explains why the member states left the DG NEAR agents with significant autonomy in their engagement with the candidates. The strategic thinking behind the revised methodology is that member state principals should be more willing to move forward with the accession process if they have invested significant resources into the monitoring process. And more frequent engagement with the candidates should also help build greater respect and a sense of responsibility, again making it harder for the member states to express reservations without justifications. In fact, during the first IGC between the EU and Serbia following the introduction of the revised methodology, the dynamics of the discussion were very different. Unlike in the past, when delegates had mainly made a number of pre-prepared statements, this time the discussions had substance and were more meaningful (Interview, candidate country official, 4/4/2022).

*Collusion:* There are high levels of collusion between each DG NEAR Team and its counterparts in the candidate country. Both parties want to move the accession process forward, and they understand each other’s difficulties at the domestic level. For the DG NEAR Team, the biggest challenge lies with the Council and the member states, which have blocked progress on numerous occasions. Recognising the difficulty faced by their negotiating partner when such blockages occur, a candidate country official stressed how ‘it is frustrating for DG NEAR and the line DGs which did their job, they prepared, the laws were adopted, and they prepared action plans, and now it is blocked, and they can’t do anything’ (Interview, 4/4/2022). To help reduce the number of such blockages the DG NEAR Team works closely with the candidates in preparing the latter’s action plans and negotiating positions as they know where the resistance is likely to come from among the principals on the EU side. While the documents belong to the candidates, the input from the DG NEAR Teams is seen to reduce problems in the Council.

Similarly, the candidates often experience difficulties domestically: ‘The EU is a complex negotiator, but for us the domestic negotiations, that’s where the hard work is’ (Interview, candidate country official 4/4/2022). Given the amount of work required domestically in carrying out reform processes and transposing the *acquis* into national legislation, this is not surprising. To support this process, the DG NEAR Teams work closely with the domestic constituents, providing financial support, policy advice, and technical assistance(Interview, Commission official, 11/7/2022)*.* The DG NEAR Teams also understand the impact on the domestic constituents in the candidate countries whenever there are blockages on the EU side. In the words of another candidate country official, ‘there is a lot of frustration when something is blocked, they [the domestic constituents] are less willing to complete the reforms’ (Interview, 4/4/2022). This illustrates how the vetoes expressed by the member state principals, most often on bilateral grounds, severely reduce the DG NEAR Teams’ leverage over domestic reforms in the candidates. In contrast, when there is an opening of a chapter, there is a real momentum, and domestic constituents are more motivated to move forward with the reform process (ibid.). The main purpose of the revised methodology was precisely to try and get the member states to open more chapters through the cluster approach, and this way reinject momentum into the accession process.

*Transparency Provision:* While some negotiations benefit from a certain lack of transparency, in order for negotiating partners not to reveal their bottom line, this is not relevant in the context of enlargement negotiations. The content of the negotiations is fully known in the form of the *acquis,* and there is no bottom line that need hiding. The actual process is also transparent with reports and documents being published widely on the Commission website. Extensive transparency provisions are seen as an effective way to put pressure on the candidates to change (Interview, Commission official, 11/7/2019). To this end, the annual country reports, for example, demonstrate how public documents constitute a key part of international negotiations, and how they are used to influence the negotiation process (Svendsen 2022). Indeed, the revised methodology further strengthens the commitment to transparency and wider publication of key documents (European Commission 2020a). In addition to putting pressure on the candidates, this is expected to demonstrate the conditionality and robustness of the process to domestic audiences in the EU, which in turn, should increase public awareness and strengthen confidence in the process. Given the general enlargement fatigue and scepticism among the public in many member states, this is an indirect strategy through which the negotiators aim to increase support for enlargement.

*Principal Cross-Table Action:* The European Parliament’s direct engagement with parliaments and civil society organisations in the candidates constitutes an important part of the reform process. The Parliament interacts both with political allies and opponents on the other side of the table to try and build support for the reforms needed to meet the set criteria. Through the SAPCs they engage trans-nationally with their counterparts and conduct political dialogue in the context of the accession process. In addition, when preparing its annual resolutions on the Commission’s country reports, the Rapporteur and other MEPs engage in cross-level action through extensive meetings with the government negotiators in the candidate countries to ensure the resolutions provide an accurate picture of the country as a whole (Interview, MEP, 8/4/2022). Through the resolutions, it then exerts pressure on the governments in the candidate countries. For example, in its 2021 resolution, it expressed its regret that the pace of alignment of Serbia’s legislation to the *acquis* had been slower than expected, particularly for chapters 23 and 24. It also called on Serbia to strengthen human rights institutions and guarantee their independence, and to take action to guarantee freedom of expression and media independence (European Parliament 2021). These resolutions are read carefully in the candidate countries, where the European Parliament is seen as an important player (Interview, candidate country official, 4/4/2022). The Parliament thus provides an additional channel – one that is generally respected in the candidate countries – through which influence can be exerted. Given the preference convergence between the European Parliament and the DG NEAR Teams, and the fact that the Rapporteurs liaise closely with the DG NEAR Teams during their engagement with the candidates, this trans-national and cross-level engagement follow a supportive logic.

*Negotiating Context*

The negotiations with Serbia and Montenegro are influenced by structural relationship between the parties, which is characterised by a power asymmetry leaning heavily in favour of the EU. As the *demandeurs* of accession, and the ones likely to make greater immediate gains from it, the candidates are in a relative position of weakness in their relationship with the EU (Smith 2003: 108). The burden to reform and meet the criteria set by the EU falls entirely on the candidates, albeit with support from the EU. Unless the candidates meet the criteria, they will not accede, reflecting the ‘take-it-or-leave-it’ approach by the EU (Pfetsch and Landau 2000: 23). Strategies that can be used by weaker parties in an asymmetrical power relationship – joining forces with other weaker parties, forming coalitions or identifying allies among the domestic constituents within the stronger party, and framing the narrative using norm-based arguments (Odell 2010) – are less likely to translate into significant influence in these negotiations. Since candidates are judged on their own merit, joining forces with other candidates will have little impact. Granted, there are past examples of when it was an advantage to be part of a broader coalition of candidates, as individually, they could benefit from the momentum gained in the negotiations resulting from progress made by others. This was most clearly seen in the Eastern enlargement. However, there are also examples of candidates being disadvantaged by being grouped together with others. Portugal being a clear illustration (Cunha 2018), but also Albania and North Macedonia, which are seen to have delayed progress for each other at different times. In addition, given increasing enlargement fatigue within the EU, and prevailing discussions about integration capacity (Börzel et al. 2017), the accession process has become more of a competitive race between the candidates, and there is little incentive to negotiate together with other candidates. Here, being small is generally an advantage. The accession of small countries translates into fewer distributional consequences among the member states, and it has less of an impact on the EU’s institutional balance. So, while there are concerns within the EU about Montenegro’s and Serbia’s accessions, the size of their countries is not one of them. This contrasts with, for example, Turkey, where its size is a contributing factor to some of the scepticism encountered within the EU (Müftüler-Bac 2008).

As for the strategy of identifying allies among the domestic constituents within the EU, this is indeed done by both Montenegro and Serbia. They have a strong advocate in the European Parliament, which makes their case in the domestic discussions in the EU (Interview, MEP, 11/4/2022). Similarly, there are member states pushing for their quick accession, particularly in Eastern Europe. This impacts on the overall balance of the EU position. However, this strategy is weakened by the unanimity requirement in the Council. As every step along the accession process must be agreed by all member states, these ‘allies’ of the candidates can be outvoted at any time.

While the use of norm-based arguments was effective in the Eastern enlargement (Schimmelfennig 2001), this has not been the case in the current accession negotiations. The candidates can no longer rely on the highly symbolic importance attached to enlargement. Official declarations still refer to the ‘unequivocal support for the European perspective of the Western Balkans’ and a shared continent and history (European Council 2021). However, such language has not gained traction among the member states, and messages about the EU’s moral responsibility towards the region have given way to a more divisive language (Stratulat 2021). References are made to how far the candidates still have to go to meet the EU criteria, and how there can be no firm commitment to an accession date. Only vague suggestions of ‘a possible 2025 perspective’ are made (Youngs 2021: 97), and given the slow progress in the negotiations so far, such suggestions lack credibility (Schimmelfennig and Sedelmeier 2020).

However, as mentioned earlier, there are speculations about the enlargement process regaining momentum following the applications of Ukraine, Moldova, and Georgia in February and March 2022. These were processed with unprecedented speed, with Ukraine and Moldova being granted candidate status in July 2022, and the European Council expressing its readiness to grant candidate status to Georgia once conditions have been met (European Council 2022). There have indeed been calls for an acceleration of the accession process by several leaders. The call from German Chancellor Olaf Scholz, stressing the urgency of integrating the Western Balkans in the EU, has been seen as particularly significant, given Germany’s previously hesitant approach to enlargement (Corblin 2022). The EU decision to grant candidate status to Bosnia and Herzegovina in December 2022 can be seen in this context of member states’ increasing focus on the region’s strategic importance. While this has boosted the morale in the DG TEAR Teams (Interview, Commission official, 1/9/2022), they are well aware of the difficulties facing them both at Level One and Level Two.

**Conclusions**

The EU has been involved in enlargement negotiations during most of its existence, and its expansion from six to now 27 member states is considered one of its biggest achievements. However, the negotiations have become increasingly difficult and complex over time, and the EU negotiators find themselves in a tight two-level game, where their autonomy is severely restricted by some of their principals at Level Two, and where they are facing greater difficulties in supporting the candidates to meet the accession criteria at Level One.

The DG NEAR Teams have significant agent power resources, including technical expertise, experience, strong institutional memory, and an overall understanding of all the preferences involved in the negotiations, given their central position and close engagement with the principals at Level Two and the candidates at Level One. They also have strong agenda-setting powers as they draft all the main documents relating to each accession negotiation, and through their involvement in the drafting of the general enlargement strategies. As for preferences, they want the accession negotiations to move forward as quickly as possible, on the condition that the candidates have met the necessary criteria.

However, the DG NEAR Teams are restricted in their autonomy through the control of four sets of principals – the College of Commissioners, the European Council, the Council, and the European Parliament, which all have ratification powers. Given the close engagement between the DG NEAR Teams and the line DGs during the accession negotiations, there are relatively few frictions at the level of the College. The College discussions most often reflect tensions between macro and meso policies, with most Commissioners pushing and prioritising issues relating to their specific portfolios, and the Commissioner for Neighbourhood and Enlargement generally taking a macro political view, wanting to prioritise enlargement, and accommodate and support the candidates as much as possible. However, there have been occasions when the President of the Commission or Commissioners have reduced the room of manoeuvre for the DG NEAR Teams by pushing through policies or initiatives that go counter to the agent preferences, thus undermining the autonomy of the Teams. Yet, the greatest control over the DG NEAR Teams is exercised by the member states through their frequent veto points throughout the negotiations. COELA provides continuous overview of the DG NEAR Teams and decides whether the candidates have met the numerous benchmarks that have been inserted into each chapter of the accession process. In addition, all major decisions relating to the opening of negotiations, as well as the opening and closing of each chapter, are taken unanimously by the Council, and then passed by the European Council, before being presented at the IGCs. The authorisation power thus extends far into the negotiation phase, and individual member states have not shied away from using this power to block progress in the negotiations. As for the European Parliament, it uses its monitoring powers by engaging closely with the DG NEAR Teams and inviting them to report to the Parliament on a regular basis, as well as issuing its own reports and resolutions. However, given the preference convergence between the Parliament and the DG NEAR Teams, this control does not significantly constrain the autonomy of the DG NEAR agent. On the contrary, the work of the Parliament often supports that of the DG NEAR Teams.

In the international negotiations at Level One, the main task of the DG NEAR Teams is to support the candidates in their reform processes by offering technical assistance and financial support, while at the same time monitoring the level of progress. The detailed work on transposing the *acquis* into national legislation is conducted by the line DGs under the coordination of the DG NEAR Teams. The negotiations thus involve a significant amount of technical work with regulators closely involved on both sides of the negotiating table. Yet, support towards the overall political criteria is provided by the DG NEAR Teams. Here they are supported by the European Parliament’s direct engagement with the candidates through cross-table engagement. However, given that progress in the negotiations is not only determined by the speed of the reform process in the candidate countries, but also by the member states’ recognition that enough progress has taken place, the strategies used by the DG NEAR Team are to a great extent aimed at getting the member states on board. In particular, they want to involve the member states more closely in the actual negotiations to give them a clearer grasp of the situation on the ground, as well as greater respect and understanding of the candidates. While this limits the autonomy of the DG NEAR Teams, the strategy is aimed at reducing the risks of authorisation or ratification failures.

There is thus strong collusion between the DG NEAR Teams and the candidates, with both parties wanting to move the accession process forward, and understanding their respective difficulties at the domestic level. When making use of agenda-setting and transparency strategies, the role of the DG NEAR Teams as central players in a two-level game, where they play the dual role of ally and critic of the candidates, becomes clear. The DG NEAR Teams have to finely balance this dual role of ally and critic of the candidates, but they can use it strategically to progress the negotiations both at Level Two and Level One. This is evident in the publications of their annual country reports, for example. As allies, they recognise the positive progress made in the candidate countries. These positive assessments serve both to keep the candidates engaged and motivated to continue the reform process, and to convince the principals within the EU that the technical and financial support provided by the EU is having an impact, and that the candidates are ready to move to the next stage in the negotiation process. As critics, they identify areas where progress has been lacking. This serves to provide guidance to the candidates on what to prioritise as they move forward, and to demonstrate to the principals that the Teams are engaged in careful monitoring, and that they would not recommend progress in the accession process prematurely.

Accession negotiations take place in the context of great power asymmetry, where the candidates are the clear *demandeurs* and the EU, as the bigger and stronger party, adopts a strict conditionality approach. Candidates need to meet all the criteria set by the EU, before they can join the Union, and it can be likened to a ‘take it or leave it’ situation. However, the candidates are supported in the process not only by the DG NEAR Teams, but also by the European Parliament through its cross-table engagement, and there is still a strong overall political commitment to enlargement to the Western Balkans in all four sets of principals. Yet, as long as progress in the accession process can be blocked by individual principal’s vetoes all along the way, it becomes harder for the DG NEAR Teams to maintain momentum in the process. While support for membership is still high in Montenegro, and relatively high in Serbia, such vetoes might lead candidates to eventually decide to abandon the process.

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**Withdrawal Negotiations**

**Abstract**

This chapter provides a background overview of the EU’s legal basis for withdrawal negotiations, and the UK’s role in the EU during the period leading up to the British referendum on EU membership in 2016, focusing on the re-negotiation of the UK’s membership terms. It demonstrates how the EU responded to the British decision to leave the EU – the first time the EU was faced with a member state withdrawing from the Union – by quickly preparing for the upcoming negotiations. The EU’s negotiating agents – the Article 50 Task Force and the Task Force for Relations with the United Kingdom – were established within the Commission’s headquarters, as a way of insulating them from other on-going day-to-day business, and they were subject to control from four sets of principals – the College of Commissioners, the European Council, the Council, and the European Parliament. Through two-level game-based analyses of the negotiations leading to the Withdrawal Agreement as well as the EU-UK Trade and Cooperation Agreement, insights are provided into the negotiating dynamics. The EU’s negotiating agents engaged extensively with their principals at Level Two to build domestic unity around the EU’s position. As a result of this unity, and strategic action in the international negotiations at Level One, the agents were able to reach agreements with the UK, which to a great extent reflected their own preferences.

**Introduction**

The UK’s exit (or Brexit) from the EU on 31 January 2020 marked the first time a member state left the Union. The result of the UK’s 2016 referendum on EU membership, in which 52% voted to leave, and 48% to remain, came as a shock to the EU. It was described as a ‘political earthquake’ (Wincott et al. 2017: 429), an ‘existential crisis’ (Martill 2021), and ‘the biggest challenge yet faced by the EU’ (Jacobs 2018: 7). For the EU, Brexit meant losing one of its biggest and most powerful member states. The UK had played a key role in the development of the single market, as well as in EU trade, development, and enlargement policies. It was a net contributor to the EU budget, and British civil servants and military personal were held in high esteem (Kassim 2017). However, despite the shock and regret, as soon as the result of the referendum was announced, the EU started preparing for the negotiations over the terms of the UK’s withdrawal, in accordance with Article 50 TEU. Article 50 TEU, which had only been introduced with the Lisbon Treaty in 2009, sets out the process to be followed in case a member state decides to leave the Union. The existence of Article 50 TEU demonstrates how EU decision-makers had already considered the potentiality of a member state leaving, although they might not have expected it to be applied so soon.

The Brexit negotiations consisted of two separate but interrelated negotiations. First, the EU and the UK negotiated the terms of the UK’s withdrawal, which led to the Withdrawal Agreement that entered into force on 1 February 2020. Second, they engaged in negotiations on the future EU-UK relationship, which resulted in the EU-UK Trade and Cooperation Agreement (TCA), fully effective from 1 May 2021. Although the withdrawal negotiations were not true international negotiations since the UK was still part of the EU while they were conducted, they do mirror other EU external negotiations, with the EU negotiators on one side of the negotiating table and the UK on the other. Article 50 TEU clarifies that, for the purpose of the withdrawal negotiations, the country leaving, in this case the UK, shall not participate in any discussions of the European Council or the Council, nor in any decisions concerning it. Consequently, the dynamics are similar to those of international negotiations, and exploring these negotiations helps to shed further light on the role of the EU in international negotiations.

The subsequent negotiations on the future relationship were concluded with the UK as an independent country. Yet, these negotiations were closely interrelated, and to a certain extent overlapped, with the withdrawal negotiations. As a result, they followed a different logic from other international negotiations aimed at concluding cooperative arrangements. The framework for the future relationship had to be taken account of in the WA, and consequently, part of the agenda for the TCA negotiations was already established during the withdrawal negotiations. And since they were being conducted between the EU and a former member state, the TCA negotiations focused on establishing *less* cooperation compared with when the UK was a member of the EU. It became a question of how to deal with increasing barriers to trade and cooperation.

This chapter provides a background discussion about Article 50 TEU, and the UK’s role in the EU during the period leading up to the referendum, focusing on its re-negotiation of the British membership terms. It then outlines how the EU organised itself during these negotiations. Using the principal-agent framework, it explains who the EU negotiators were, and where they were positioned within the institutional structures, focusing on its relationship with the College of Commissioners, the Council, the European Council, and the European Parliament. It concludes with two two-level game-based case studies of the negotiations leading to the Withdrawal Agreement and the TCA between the EU and the UK.

**Background**

**The Legal Basis for Exit Negotiations**

The discussion about inserting an exit clause in the EU Treaties started during the Convention on the Future of Europe in 2002. The Convention brought together representatives from the EU institutions, the member states, and the candidate states that were to join the EU in 2004 and 2007. The aim was to have a broad discussion on the future direction of the EU before Eastern Enlargement. Prior to the Convention, there had been no Treaty-based procedure to follow in case a member state wanted to leave the EU, and there was some uncertainty about the legality of withdrawal. Arguments questioning its legality stressed the unlimited duration of the Treaties, the reference to ‘ever closer union’, and the primacy of EU law over national law (see Huysmans 2019: 158). However, since the EEC had accepted the UK’s referendum on continued membership in 1975[[10]](#footnote-10) – two years after it joined in 1973, it must be assumed that exit was possible for a member state even without a specific exit clause in place. And more importantly, there had been previous cases of countries or territories exiting the EU, following independence or self-determination from existing member states.

Due to Europe’s colonial past, both Algeria and Greenland became part of the EEC, not because of sovereign decisions taken by these countries themselves, but as a result of the decisions of their respective motherlands, France and Denmark (Patel 2018). When France and the other founding members of the EEC signed the Treaty of Rome in 1957, Algeria was still an integral part of France, and the French government had made sure that the Treaty regulations applied to Algeria as well, despite the on-going war. Algeria was thus part of the EEC from the beginning, albeit with a special status. However, following the War of Independence (1954-62), Algeria cut its links with France, and thereby also with the EEC. When exiting the EEC in 1962, it wrote to the Commission, asking to remain closely linked in terms of economic relations, something which the EEC agreed to (Patel 2018: 116). Algeria was consequently treated as a ‘de facto’ member even after its exit. Yet, its request for such treatment was not accepted without intense negotiations, particularly at the EEC domestic level between the member states in the Council. Here, Germany, Italy and the Netherlands questioned the duty-free entry of Algerian goods into the EEC through France. However, the latter exerted extensive influence in these negotiations and thus came to shape the EEC’s continued treatment of Algeria as a ‘de facto’ member, in line with France’s priority of maintaining close links with its former colonies (Zartman 1968: 2). Algeria kept this privileged position, which reflected a ‘super-soft’ version of exit, for most of the 1960s (Patel 2018: 118). But in the 1970s it came to an end as the EEC started to erect more and more trade barriers, not least through the strengthening of its protectionist Common Agricultural Policy. This hit Algeria’s wine producers particularly hard. After having been one of the biggest wine producers in the world, Algeria’s production collapsed as a result of being locked out of its biggest export market (ibid.). While relations between the two parties are now closer again, with an association agreement and a free trade agreement in place since 2005, the Algerian exit demonstrates how the colonial ties gradually weakened following France’s changing priorities, and how Algeria moved from a soft exit in the 1960s to a hard one in the 1970s.

As a county of Denmark, Greenland became part of the EEC when Denmark acceded in 1973. Although Greenland had voted against joining the Community in the Danish referendum in 1972, with 70% voting against, it had to follow the majority decision in Denmark, where the share of vote in favour of joining was 63%. Following accession, Greenland saw how control over its fisheries moved ‘from distant Copenhagen to even-more-distant Brussels’, which triggered Greenland’s demand for Home Rule in 1979 (Gad 2014: 99). This, in turn, made it possible for Greenland to withdraw from the EEC. In a referendum held in 1982, 52% of Greenlanders voted to leave the EEC. Unlike the Algerian exit, which was not established through a formal agreement with the EEC, Greenland’s exit was the result of two years of negotiations, leading to a Withdrawal Treaty, the so-called Greenland Treaty, which entered into force in 1985. Through the Treaty, Greenland was granted the status of Overseas Countries and Territories associated with the Community, and a package deal on fisheries was reached, whereby Greenland was given financial support, as well as unrestricted and duty-free access to the EEC for its fisheries products, in exchange for EEC access to Greenlandic waters. West Germany in particular, pushed hard for access to Greenland’s waters – a price Greenland considered worth paying to maintain close trade relations (Patel 2018: 118). As a result, Greenland’s exit from the EEC was soft, and its relationship with the EU has remained close.

These cases demonstrate that withdrawing from the EU without an exit clause was indeed possible, although neither Algeria nor Greenland were members of the EEC in their own right. The purpose of Article 50 TEU was therefore not to grant member states the right to withdraw, but rather to facilitate an orderly withdrawal and reduce the legal uncertainty around the process (Dougan 2020). In addition, during the discussions of the Convention, and the subsequent Intergovernmental Conference, it was argued that a Treaty-based exit clause would help gain support for accession in the upcoming referenda on EU membership in the Eastern European candidate countries. It would provide a guarantee that the EU is not a ‘prison’ that you can’t leave (Huysmans 2019:161). It would also help convince Eurosceptic member states, such as the UK and Denmark, to accept the Constitutional Treaty.

Different versions of an exit clause were presented, but the one drafted by the Secretary General of the Convention, Lord Kerr, gained traction. Although the Constitutional Treaty had to be abandoned after citizens in France and the Netherlands voted against it in national referenda, much of its content was incorporated in the Lisbon Treaty of 2009, including the exit clause drafted by Lord Kerr (ibid.: 159). This clause became Article 50 TEU. It stipulates that exit should be based on a negotiated agreement. It is through a process of negotiations that the exiting country and the rest of the EU shall reach an agreement, setting out the arrangements for withdrawal, and also taking account of the framework for their future relationship. Allowing for a negotiated process avoids an abrupt and rushed exit, which would cause shocks to both the EU and the withdrawing country, given the deep levels of integration of the EU and the resulting complexities involved in disentangling a member state from it. However, to prevent the withdrawing country from remaining ‘trapped’ in the EU against its will, Article 50 TEU sets out a two-year time limit for such an agreement to be reached. If an agreement has not been reached and ratified within this time frame, the withdrawing country leaves without an agreement, and the EU Treaties cease to apply to it, unless the European Council, in agreement with the withdrawing member state, unanimously decides to extend the two-year period. The EU can thereby not block a member state from leaving.

Although the withdrawing country is still a member of the EU during the course of the withdrawal negotiations, Article 50 TEU makes it clear that it shall not participate in any discussions of the European Council or the Council, nor in any decisions concerning it, during the withdrawal negotiations. The dynamics of these negotiations thus mimic those between the EU and external parties, with the exiting member state on one side of the negotiating table, and the rest of the EU on the other.

As for the negotiations on the future relationship, these are clearly distinct from the withdrawal negotiations. Although the framework for the future relationship will be taken account of in the withdrawal agreement, the details of this relationship must be negotiated separately by the two parties. Article 50 TEU does not specify when these negations can start, but it is clear that they need to be ratified by the EU and the withdrawing member state *after* the latter has left the EU, as they are conducted in accordance with other procedural Treaty provisions that govern EU relations with external parties. What these provisions are, depends on the nature of the future agreement, but the final agreement needs to be ratified by the EU and the withdrawing country as a non-EU member (Kreilinger et al 2017).

Even if they follow separate processes, the two sets of negotiations are also interrelated. Not only is the nature, or framework, of the negotiations on the future relationship determined by the withdrawal agreement. These negotiations also follow a different logic from other EU negotiations with external parties – whether they are leading to free trade agreements, association agreements, membership of the single market or customs union – as a result of being conducted between the EU and a former, or soon to be former, member state. In other negotiations, the EU and external parties negotiate arrangements that bring them closer together, making trade and other forms of cooperation easier. In contrast, during the negotiations on the future relationship, the EU and the withdrawing country agree on arrangements that bring them further apart compared with when the country in question was a member of the EU. It is thus a question of erecting, rather than removing, barriers to trade and cooperation.

**The Re-Negotiation: A Precursor to Brexit**

Ever since the UK became a member of the EU in 1973, it has been referred to as a somewhat ‘awkward partner’ (George 1998) or ‘reluctant European’ (Wall 2020). It was often seen to identify more easily with the Anglosphere and the Commonwealth, rather than with an integrated Europe (Vickers 2022). As a member, it had more opt-outs than any other country. For example, it did not participate in the Euro, the Schengen, or parts of Justice and Home Affairs cooperation. It also had an unusually Eurosceptic domestic media, and comparatively high levels of Euroscepticism among the public (George 1998). The latter was clearly reflected in the electoral gains of the United Kingdom Independence Party in the 2009 European Parliament elections, where it gained 13 out of the UK’s 73 seats, with 16.5% of the vote. There was also a growing Euroscepticism within the Conservative Party, not least after the eurozone crisis. This increase in Euroscepticism contributed to Prime Minister Cameron’s commitment made in 2013 to hold a referendum on continued UK membership of the EU, should the Conservatives win the next general election. However, he clarified that the referendum should be held after a re-negotiation of the terms of British EU membership, just as had been the case with the 1975 referendum on continued UK membership in the EEC.

Following the Conservative’s victory in the general election of 2015, Prime Minister Cameron thus embarked on this re-negotiation, travelling around the capitals of the other 27 member states to gain support among the political leaders for a better ‘deal’ for the UK, particularly in the areas of economic governance, competitiveness, sovereignty, and immigration-related issues. While the 27 would not agree to anything that required Treaty change, or violated the four freedoms of movement, they were willing to engage with the UK on these matters to help ensure a new settlement that would reduce the risks of a ‘Leave’ victory in the upcoming UK referendum. They knew that the UK needed something that could be sold as ‘new terms’ of membership (Beach and Smeets 2020: 451).

In addition to the political discussions taking place between the leaders, an informal institutional network, bringing together the Council Secretariat and the Commission in an EU Task Force, was set up to negotiate the actual details of the UK’s settlement. This network ensured effective coordination between key people within the institutions, and avoided formal structures of broader consultation. The negotiators in the Task Force made sure they were shielded from potential pressures from domestic constituents, allowing them to be as accommodating as possible to the UK demands. The Task Force kept the representatives in the Council ‘at arm’s length in order to avoid a lowest-common-denominator-type dynamic’ (Beach and Smeets 2020: 457). It also limited the role of the European Parliament, which was only ‘watching in the wings’ (McGuinness 2016). And the College of Commissioners was mainly kept outside of the negotiation process (Beach and Smeets 2020: 454). This undeniably led to dissatisfaction among the domestic constituents, which criticised the negotiators for their shielding and lack of transparency. However, the approach was effective in terms of reaching agreement between the negotiating teams, among which there was significant agent collusion. Both wanted the UK to remain in the EU. From the UK’s perspective, not only did the informality of the negotiation process make it easier to extract concessions from the EU Task Force, but it also helped avoid formal minutes or drafts of texts being leaked to Eurosceptic domestic constituents back home (ibid.: 452).

The re-negotiation did lead to a relatively far-reaching settlement, which accommodated most of the UK’s demands within the realm of what was possible without triggering Treaty change. The new settlement limited the powers of the eurozone institutions over non-eurozone member states. It also addressed the UK’s concerns about sovereignty, by giving assurances that it would not be committed to further political integration in the EU, and by improving democratic accountability through an increased role for national parliaments (Niblett 2016). And even if the new settlement on immigration did not meet all objectives of the UK, it did contain some significant reform proposals, including a safeguard mechanism that could be triggered in situations of exceptional inflow of people from other member states over an extended period of time. This illustrates how the EU ‘bent backwards’ to meet the concerns of the UK (Beach and Smeets 2020: 445). In line with the logic of a two-level game, the decision to call a referendum back home at Level Two, can be seen as a strategic move as it clearly helped the UK to achieve considerable concessions from the EU during the Level One negotiations (Huysmans 2019: 169). However, once a deal was reached at Level One, it had to be ratified at Level Two. The settlement had already been agreed by the European Council, but it would not enter into force until the UK notified the Secretary-General of the Council that it would remain in the EU (European Council 2016d). As such, the UK referendum served as a sort of ratification, or endorsement, of the new settlement. In case of a Leave vote, the settlement would never enter into force.

After having concluded the re-negotiation, Prime Minister Cameron thus had to ‘sell’ the settlement domestically. He argued that it reflected sufficient reform for the UK to remain in the EU. Both the Council and the Commission agreed not to intervene in the referendum campaign in the UK, as it was seen to be a domestic matter (Kassim and Usherwood 2017). An analysis of the reasons behind the result of the referendum is beyond the scope of this book (for such analyses, see Bhambra 2017; Clarke et al 2021; Clarke et al 2017; Farrell and Goldsmith 2017; Glencross 2016; Hobolt 2016; Menon and Salter 2016; Vickers 2022), but even though the strategy of calling a referendum might have helped the UK extract concessions at Level One, it was a risky one to use as a way of changing the terms of British membership of the EU, as it resulted in Brexit (Huysmans 2019).

Although the new settlement hardly featured in the referendum debate, and never entered into force due to the result of the referendum, the re-negotiation helps to provide the context for the subsequent Brexit negotiations. While some of the close inter-institutional working relationships that developed during the re-negotiation process within the EU were replicated in the Brexit negotiations, the latter followed a very different dynamic and process. Rather than being conducted informally, the Brexit negotiations were based on a strictly formal process, as set out in Article 50 TEU. The EU negotiators also engaged extensively with their domestic constituents in the Commission, the Council, the European Council, and the European Parliament throughout the negotiations. The transparency around the negotiations was unprecedented, and the EU would not agree to anything that threatened the integrity of the single market or put an existing member state in a less favourable position in comparison with a country that had left, or were about to leave, the EU. Since it was the first time Article 50 TEU was applied, the negotiations were likely to set a precedent for future withdrawal negotiations. Consequently, the EU wanted to make the benefits of membership clear, and ideally prevent such negotiations from ever happening again. For the UK, which knew the EU and its institutional complexity well after almost 50 years of membership, and as a result had been able to play the domestic game to its advantage, it quickly became clear that negotiating from within the EU, as a member of the club, is very different from sitting on the opposite side of the negotiating table, as the EU’s international negotiating partner (Figueira and Martill 2021).

**The EU Institutional Set-Up during the Negotiations of the EU-UK Withdrawal Agreement: A Principal-Agent Relationship**

**Agent Power**

According to Article 50 TEU, responsibility for negotiating a withdrawal agreement with the departing member state is an exclusive competence of the EU, and it thus lies with the EU, rather than individual member states. The Article stipulates that the negotiations shall be conducted in accordance with Article 218(3) TFEU, and consequently the Council shall nominate the ‘Union negotiator or the head of the Union’s negotiating team’. Who this EU negotiator shall be depends ‘on the subject of the agreement’. The formal nomination of the EU negotiator takes place with the Council’s adoption of the negotiating mandate, which in turn is based on a proposal from the Commission.

As this was the first time Article 50 TEU would be used, there were no precedents to rely on in terms of the institutional set-up for the negotiations. There were some discussions about who the Head of the EU negotiation team should be, and where within the institutional structures the team would best be based (Maurice 2018). However, the prevailing view was that the Commission was ideally placed to conduct the technical negotiations with the UK and to coordinate the EU inter-institutional relations. After having consulted with France and Germany, as well as the President of the European Council, Donald Tusk, Commission President Jean-Claude Juncker appointed Michel Barnier, former European Commissioner and French Foreign Minister, as the Head of the EU’s Commission-based negotiating team at the end of July of 2016. He stressed how Barnier ‘is a skilled negotiator with rich experience in major policy areas relevant to the negotiations’ and ‘has an extensive network of contacts in the capitals of all EU Member States and in the European Parliament’ (European Commission 2016). These extensive contacts were considered instrumental in maintaining the unity on the EU side. At this time, the Commission President also mentioned that Barnier would help negotiate the EU’s future relationship with the UK, thus hinting at the importance of maintaining continuity and a smooth transition between the withdrawal negotiations and the negotiations around the future relationship (Barnier 2021: 36).

Once appointed, Barnier started building the EU negotiating team, the so-called Article 50 Task Force, drawing on the extensive negotiating expertise and experience that exists within the Commission, not least in the areas of trade and enlargement. Given the exceptionality and the challenge associated with the Brexit negotiations, he managed to convince some of the most esteemed Commission officials to join him, as they were attracted by the idea of being part of this ‘extraordinary mission’ (Barnier 2021: 38). By October, a team of around 50 members had been established, bringing together ‘some of the ablest and most experienced officials in the Commission’ (Laffan 2019: 19).

In terms of the institutional location of the negotiating team, there was no DG that would provide a natural home for the Task Force given the vast number of policy areas affected by Brexit. There was no single, or existing, ‘subject of the agreement’ as per Article 218(3) TFEU. Instead, it was agreed that separate structures were needed to insulate the Brexit negotiations from the EU’s day-to-day routines of policy making (Laffan 2019: 18). To this end, parts of the fifth floor of Berlaymont, the headquarters of the European Commission and the home of its President and the College of Commissioners, became host to the Task Force. It was seen as a temporary institutional set-up, the purpose of which was to lead the negotiations with the UK.

As for preferences, this absence of a DG affiliation meant there were no clear sector specific interests that had to be pursued. The preferences of the Article 50 Task Force therefore represented a broader perspective of maintaining EU unity and the integrity of the single market, as well as minimising the negative consequences stemming from Brexit for the EU.

Although the formal appointment of the EU negotiating team would only take place with the Council’s adoption of the negotiating mandate in May 2017, it was clear that the Article 50 Task Force was delegated responsibility for preparing and conducting the negotiations with the UK already at this early stage. In other words, it became the negotiator, or agent, in the two-level game. While it could not rely on any institutional memory, since it was the first time the EU were to engage in withdrawal negotiations, the negotiating team possessed extensive expertise and experience – two agent power resources.

**Principal Control**

*College of Commissioners*

There was a clear principal-agent relationship between the College of Commissioners and the Task Force, since it was the President of the European Commission who appointed Barnier as the Chief Negotiator. He proposed the appointment to the College of Commissioners in July 2016, and following the unanimous approval of the Commissioners, Juncker made it clear that Barnier could draw on all resources within the Commission, and he emphasised how the College was expected to remain closely involved throughout the negotiations: Barnier ‘will report directly to me, and I will invite him to brief regularly the College to keep my team abreast of the negotiations’ (European Commission 2016). Since there was no Commissioner in charge of withdrawals, Barnier was given a particular status, which allowed him to engage at Ministerial/Commissioner level, while also being the actual Chief Negotiator leading the Task Force - two roles which are often separated along the Commission’s political (College of Commissioners) and administrative (Directorate-Generals) divide when the EU engages in external negotiations. This meant that Barnier reported directly to the College whenever Brexit was discussed. Given his close involvement in the actual negotiations through his role as Chief Negotiator, he could provide the Commissioners with detailed updates from the negotiations. This, in turn, gave the Commissioners, in their role as principals, significant opportunities for monitoring the negotiating agent. The location of the negotiation team within the same building as the College of Commissioners facilitated this exercise of principal control. As for the ratification requirement, which brings together the international and the domestic games and provides the principals with one of their main control mechanisms, the College of Commissioners had to formally agree to the final text of the Withdrawal Agreement by consensus, before it went to the Council and the European Parliament.

The principals in the College were consequently able to control the Task Force through their appointment, authorisation, monitoring, and ratification powers.

*The Council of the EU and the European Council*

The Council constituted a formal principal of the negotiating team since it indirectly delegated power to the latter to negotiate the agreement with the UK. Through the adoption of the negotiating mandate in May 2017, it formally appointed the Commission, which in turn had appointed Barnier and the Task Forceto lead the negotiations with the UK. It was also the Council that authorised the negotiations to start through its adoption of the mandate, which set out the remit and main guidelines for the negotiations with the UK. The Council appointed Didier Seeuws as Head of a Special Task Force on the UK within the General Secretariat of the Council (which serves both the Council and the European Council). He would be in charge of coordinating the positions of the member states. Again, it was clear that separate structures were needed to prevent Brexit from interfering with the Council’s other work, and also as a result of the reference made in Article 50 TEU to the withdrawing member state’s exclusion from Council discussions. The Council consequently established the Ad Hoc Working Party on Article 50 to support COREPER (Art. 50), both of which brought together representatives of the 27 remaining member states. At Ministerial level, the Brexit negotiations were the responsibility of the 27 Europe Ministers meeting in the format of the General Affairs Council (Art. 50).

Through these structures the Council was well set-up to monitor the Brexit negotiations. The member states, which had directed severe criticism towards the informality of the re-negotiation with the UK in 2015-16, and the lack of transparency and involvement of the Council in the process (Beach and Smeets 2020), were determined to be closely involved in the Brexit negotiations. Given his dual role as Ministerial counterpart and Chief Negotiator, Barnier reported on the negotiations to both the General Affairs Council (Art. 50) and the Ambassadors in COREPER (Art. 50). The former was chaired by the European Affairs Minister, and the latter by the Ambassador, of the country holding the Council Presidency. The Deputy Chief Negotiator of the Article 50 Task Force, Sabine Weyand, reported to the Ad Hoc Working Party (Art, 50), which was chaired by Didier Seeuws. The decision to appoint a ‘permanent’ Chair of this Working Party, rather than relying on the six-monthly rotating Council Presidency, reflects the importance attached to the Working Party, and the need for continuity, experience, expertise, and close relationships with the other institutions (Interview, member state representative, 10/1/2018).

Regarding the ratification requirement, the Withdrawal Agreement should be concluded by the Council, acting by a qualified majority vote, after obtaining the consent of the European Parliament (Article 50 TEU). The Council thus acted as a formal collective principal, with the ability to exercise significant control over the negotiating team through its appointment, authorisation, monitoring, and ratification powers.

Although closely related to the Council in terms of dynamics and preferences, the European Council also had a distinct and influential role in the withdrawal negotiations. As per Article 50 TEU, it is the European Council that shall be notified by the withdrawing member state of its intention. The European Council then provides the general guidelines for the withdrawal negotiations. In case of an extension to the 2-year deadline for concluding the agreement, it is the European Council that needs to agree to this by unanimity, and in agreement with the withdrawing member state. And while it was the Council that formally appointed the negotiator, the initial decision by the Commission to appoint Barnier as Chief Negotiator was taken in close consultation with the European Council. In addition, although the Council provided the EU negotiators with the detailed mandate, it was the European Council that set the general guidelines that defined the framework for the negotiations and the overall position and principles that the EU would pursue in the negotiations. The European Council also made it clear that it would ‘remain permanently seized’ to the withdrawal negotiations (European Council 2016c).

During the Brexit negotiations the European Council met in the format of the European Council (Art. 50), bringing together the 27 Heads of State or Government. They met both in connection with the regular European Council meetings, and in several special Brexit-focused European Council meetings to progress the negotiations and prevent any unnecessary delays on the EU side. These meetings provided a way for the political leaders to monitor progress in the negotiations, as well as offering instructions to the EU negotiators. In line with the guidelines of the European Council, which stressed that ‘the Union negotiator will systematically report to the European Council’ (European Council 2016c), Barnier was always invited to the European Council (Art.50) meetings to give an update on the status of negotiations with the UK, and to seek instructions and guidance on matters such as the extension to the two-year negotiation period, where the decision was solely in the hands of the European Council. There was consequently unusually close engagement between the EU negotiator and the political leaders, giving the latter the opportunity to monitor the former. In addition, the working relationship between the European Council President Tusk and Barnier was close. They met frequently, which offered a continuous way for the European Council to be involved and monitor progress in the negotiations. The rivalry that is sometimes seen between the Commission and the European Council was clearly absent during these negotiations (Kassim 2017).

As for the ratification requirement, the European Council had to endorse the final Withdrawal Agreement reached between the EU and the UK before it was submitted to the Council and the European Parliament for formal ratification. Consequently, in the Brexit negotiations, the European Council can be conceptualised as a collective principal, which was able to control the negotiating agent through its guidelines, monitoring, and ratification powers.

*The European Parliament*

The European Parliament was determined to be closely involved in the Brexit negotiations in its role as a de-facto principal. Article 50 TEU provides the European Parliament with ratification powers as the final withdrawal agreement is dependent on its consent by a simple majority. Without it, the agreement cannot enter into force. Following the referendum, the European Parliament expressed its preference for having the Commission as the lead negotiator in the upcoming negotiations (European Parliament 2016a). It had developed a close working relationship with the Commission in EU trade negotiations, and it wanted to see that replicated, or even strengthened, in the Brexit negotiations (Interview, European Parliament official, 20/11/2018).

To engage effectively with the Brexit negotiations, the European Parliament established a set of new institutional structures. After the referendum, the Conference of Presidents – consisting of the President, the First Vice-President, and the Presidents of all Political Groups – took overall responsibility for all Brexit related matters. In September 2016, the Conference of Presidents appointed a Brexit Coordinator, Guy Verhofstadt MEP, to lead on the Brexit negotiations on behalf of the Parliament, and to engage regularly with the Chief Negotiator. A six-member Brexit Steering Group, chaired by Verhofstadt, was set up to prepare and coordinate the parliamentary position on Brexit. The Steering Group provided a small and cohesive point of contact for the Task Force to facilitate continuous dialogue between the two parties throughout the negotiations with the UK (Laffan 2019: 19). By setting up these separate structures – the Brexit Steering Group and the Brexit Coordinator – the European Parliament ensured that the Brexit work would not spill over into its day-to-day business, but also that the focus would be on the bigger political picture. Had the lead been with one of the Committees, the discussions would have been more fragmented and polarised (Bressanelli et al 2019: 359).

The European Parliament knew that to exert influence over the negotiations, it had to be actively involved from the very beginning, and it could not wait until the end of the negotiations when it would simply be asked to approve the final agreement in an up or down vote. Based on its experience from recent trade negotiations, where the parliamentary consent requirement has translated into significant parliamentary influence during the actual negotiations (Eckes 2019; Frennhoff Larsén 2020), Parliament demanded that it was kept fully informed during all stages of the Brexit negotiations. In a warning to the President of the European Council, the President of the European Parliament stressed that it could not be excluded that MEPs could reject the outcome of the negotiations at the end (European Parliament 2016b). As a result, the European Council guidelines of December 2016 stated that the EU negotiators should ‘keep the European Parliament closely and regularly informed throughout the negotiation’ (European Council 2016c). And in its first resolution, the Parliament made this demand of full involvement a precondition for its consent (European Parliament 2017).

Article 50 TEU excludes participation by the withdrawing member state in withdrawal-related discussions in the European Council and the Council, but it says nothing about participation of MEPs from the withdrawing member in European Parliament discussions. There was general agreement that the British MEPs, as representatives of all EU citizens, should be allowed to take part in Brexit related debates, as well as in the final vote on the withdrawal agreement (Cîrlig 2020: 10).

Although it was not directly involved in the actual delegation of power to the EU negotiating team, the European Parliament was linked with the negotiators as a de facto principal, and its resolutions, monitoring and ratification powers provided it with effective control mechanisms of the negotiating agent.

This demonstrates how the EU acted quickly to set up new institutional structures to deal with Brexit, ensuring that these negotiations would not ‘interfere with’ the EU’s other on-going work (European Council 2017a). The new institutional set-up provided for close coordination between the EU negotiators and the College of Commissioners, the Council, the European Council, and the European Parliament through a horizontal framework, rather than the traditional sector-specific structures. A sector specific approach would most likely have exposed more diverging interests within and between the main institutions, and perhaps also prioritised a close relationship with the UK, at the cost of compromising on common EU-wide principles, such as maintaining unity and preserving the integrity of the single market (Dagnis Jansen and Dahl Kelstrup 2019: 35). With this institutional set-up, the agent, in the form of the Task Force under the leadership of the Chief Negotiator, consequently had to respond to four sets of principals – all of whom wanted to be closely involved in the negotiations.

**Case Study – Part 1: Negotiating the UK’s Withdrawal from the EU**

**Preparation Phase**

The preparation phase of the Brexit negotiations started suddenly following the shock result of the UK referendum on EU membership on 23 June 2016. There had been limited preparation for the potential negotiations on the EU side, as there were worries that leaks of such work could affect the result of the referendum (Kassim 2017)[[11]](#footnote-11). In addition, just a few months earlier, the EU had completed the complex re-negotiation of the UK’s membership, and significant resources and attention had already been paid towards accommodating the UK. However, while there was little enthusiasm about initiating negotiations with the UK yet again, the EU was clear that the referendum result had to be respected, and the necessary preparations for Brexit had to start. During the days leading up to the referendum the President of the European Council, Donald Tusk, contacted the political leaders to clear his two responses to the referendum, depending on the result (ibid.). Consequently, just a few hours after the result of the referendum was announced, EU leaders issued a statement: ‘In a free and democratic process, the British people have expressed their wish to leave the European Union. We regret this decision but respect it.’ (European Council 2016a). One of the main commitments in terms of the negotiation process, was the need for unity on the EU side. The EU leaders stressed how ‘this is an unprecedented situation but we are united in our response’ (ibid.), and a few days later this commitment was repeated at an informal meeting of the European Council: ‘We are determined to remain united and work in the framework of the EU to deal with the challenges of the 21st century’ (European Council 2016b).

Although it had never been invoked before, Article 50 TEU provided the EU with a process to follow when negotiating the UK’s departure, ensuring an orderly withdrawal. Since it is the member state that decides to withdraw from the EU that shall notify the European Council of its intentions, it was in the hands of the UK to decide when to trigger Article 50 TEU. There were initial calls from within the EU for the Article to be triggered as soon as possible to reduce the uncertainty surrounding Brexit (European Parliament 2016a), but this was not a decision for the EU to make. It was the UK that was the clear *demandeur* of this agreement, both in terms of taking the decision to leave, based on the result of the referendum, and by determining the timing of it. None of the other member states were in favour of Brexit. However, since it was going to happen, they immediately started preparing for the upcoming negotiations, to be ready whenever the UK did trigger Article 50 TEU.

*The EU’s Domestic Negotiations at Level Two – Identifying the Win-Set*

Since the mandate had to be based on a proposal from the Commission, the Task Force members started identifying the main priorities for the upcoming negotiations, within the overall commitment of maintaining EU unity, as expressed by the European Council (European Council 2016b). They began by an in-depth screening of all existing EU legislation to evaluate the impact of Brexit on EU policies. This provided them with the detailed knowledge of the legal complexities of the Brexit process, and it gave them a head-start on the agenda-setting. It helped identify the different options for a future EU-UK relationship, and the resulting consequences of any red lines expressed by the UK (Laffan 2019: 21). It also strengthened their expertise and informational advantage vis-à-vis their principals.

Three main priorities emerged during this initial work by the Task Force. First, the importance of unity among the EU-27 was key. Unity was seen as a precondition for succeeding in the negotiations with the UK. The Task Force did not want to see Brexit divide the EU as had been the case in previous crises, including the eurozone crisis. Second, no EU member state should be in a less favourable situation than a country outside of the Union. The Task Force wanted to make it clear that membership matters, and that a country outside of the Union cannot have the same rights as a member. They stressed how the four single market freedoms concerning the movement of goods, capital, services, and people would be indivisible. Third, there should be no negotiation without notification. It was the UK that decided when to trigger Article 50 TEU, but it was in the EU’s power to decide not to initiate any preliminary negotiations beforehand. There was strict discipline within the Task Force not to anticipate any moves from the UK, and to focus attention on identifying and shaping the domestic win-set of the EU (Barnier 2021: 44). Through its commitment not to initiate premature negotiations, the Task Force made time into a strategy. Once the negotiations started, there would only be two years to conclude them, which the Task Force could use to its advantage to put pressure on the UK (Laffan 2019: 21).

The central location of the Task Force in Berlaymont, rather than within a specific DG, helped avoid any particular sectorial, or ‘parochial’, interests from emerging within the Task Force (Schuette 2021: 1143). However, given that member states were to be affected very differently by Brexit, and as a result, had widely diverging interests in the negotiations, the Task Force knew that the unity would not develop automatically, but had to be cultivated through a close and continuous engagement with the principals. The Task Force members attached great importance to gaining the trust of their principals, and they adopted a transparent and open approach as a means to achieve this (Laffan 2019: 21). They did not want to see a repeat of the criticism regarding the lack of transparency expressed by the member states following the re-negotiation with the UK, and by the European Parliament following its limited involvement in the negotiations leading to the Personal Name Record Agreements and the Anti-Counterfeiting Trade Agreement (Bressanelli et al. 2019).

The Task Force started its work by embarking on a tour of all 27 capitals to build personal relations with the political leaders and members of government. This was seen as vital for the success of the negotiations, given the central role of both the European Council and the Council in the Brexit negotiations. These meetings served to identify the main interests, concerns, and red lines of every member state, but also to explain the legal complexities resulting from Brexit, and to anchor the priorities of the Task Force with the member states. This engagement with the member states continued throughout the preparatory phase with additional tours across all countries to get an in-depth understanding of local perceptions and interests in relation to Brexit. The Task Force also had an ‘open door policy’ in order to facilitate engagement with different stakeholders from the member states (Laffan 2019: 20).

In terms of member state preferences, there were those with very close trading, political, and social links with the UK, including Ireland, Sweden, Denmark, Finland, Malta, and the Netherlands, which would be severely affected by Brexit, and therefore wanted the EU-UK relationship to stay as close as possible to the status quo. They wanted the UK to remain in the single market, or at least have some influence over it, given their shared preference for free trade and open markets. For these countries, Brexit featured high on the political agenda. Second, there were member states like France and Germany, which prioritised the unity of the EU above a close relationship with the UK, and which wanted to protect the integrity of the single market at every price. These countries also saw some opportunities with Brexit in terms of strengthening the Franco-German alliance, the euro area, and the financial centres of Paris and Frankfurt. Third, there were countries that were geographically far from the UK, including Croatia, Bulgaria, Poland and Romania, that did generally not have close trading links with the UK (Poland being the exception), but had strong interests in terms of citizens’ rights (Interviews, member state representatives, 10/1/2018, 4/3/2019; James and Quaglia 2018; Kassim and Usherwood 2017; Lequesne 2017).

However, all member states were in strong agreement that the UK should continue to meet all financial commitments that it had made as a member state. In other words, what had been agreed by 28 should be paid by 28 (Barnier 2021: 50). What also became apparent during these meetings and consultations, was how quickly the member states adapted and expanded their administrative systems to be able to deal with Brexit by staffing new units, setting up new working groups, and investing in research on the consequences of Brexit (Interviews, member state representatives, 10/1/2018, 4/3/2019). Member states were thus united in their shared frustration about the time, energy and resources that had to be spent on Brexit. They all perceived it as a lose-lose situation, where the task of the EU negotiators was to minimise the negative consequences that would undeniably follow from Brexit.

As for the European Parliament, the Task Force initiated close consultations with the Brexit Coordinator, Verhofstadt, and the other MEPs involved in the Brexit Steering Group. Given the ratification powers of the Parliament, the Task Force knew that it was important to have parliamentary support from the very beginning, and therefore ‘cultivated the relationship’ with Parliament (Bressannelli et al 2019: 356). A strong bond developed between the Task Force and the European Parliament, and Verhofstadt and Barnier often addressed MEPs jointly (Interview, European Parliament official, 20/11/2018). Through these meetings it became clear that the Parliament shared the commitment to maintaining unity on the EU side. Parliament saw Brexit as an opportunity to relaunch ‘the European project’ by illustrating the benefits of membership (European Parliament 2016a). One issue which became increasingly prioritised by Parliament over the initial months was the need to protect the rights of those citizens that would be most affected by Brexit, including the non-UK EU citizens living in the UK, and UK citizens living in other EU countries.

As for the consultations with the College of Commissioners, President Juncker regularly invited Barnier to update the Commissioners on the preparations for the upcoming negotiations. There were no significant preference divergences at this stage, and there was strong support for the Task Force’s approach and priorities. The College recognised the advantages of a transparent approach, and often invited Barnier to address the press on behalf of the Commission, following his briefings to the College. This gave the EU negotiators an advantage, as they could control the public narrative around the negotiations, and counter some of the ‘fake news’ circulating around the upcoming negotiations (Barnier 2021: 56).

Overall, there was a sense of common purpose among the 27 and between the EU institutions to save the EU and its system of cooperation and decision-making. Of course, there were some divergences in terms of interests and priorities. However, through the negotiators’ close engagement with the different principals, and their informational advantage, which increased further during these engagements as they gained a better picture of the overall win-set, they were able to understand, but also to shape, the main priorities of their principals. Given the high levels of complexity of de-linking the UK from the EU after more than 40 years of membership, it was difficult for the principals, be it the Commissioners, the member states, or the MEPs, to fully understand the potential consequences of different negotiating outcomes (Dagnis Jensen and Dahl Kelstrup 2019). This increased the chances of the principals being swayed by the explanations and arguments put forward by the Task Force. Given the informational advantage of the Task Force, the principals were also in full agreement that it was the Task Force that should negotiate on behalf of the EU, and that any attempts by the UK to ‘divide-and-rule’ should be prevented (Nicolaïdis 2017).

Three main themes emerged from these consultations with the principals that the Task Force incorporated in the proposal for the guidelines to the European Council: citizens’ rights, money, and the Irish border. Given the concerns expressed by the Eastern European member states and the European Parliament about how Brexit, and the ending of free movement, would affect citizens, the Task Force identified this as its main priority. As there were widespread concerns around this issue, it was an easy one around which to build EU unity. Similarly, there was strong agreement that efforts should be made to ensure UK met all its financial commitments. The Irish border issue reflected a priority where one principal in particular was able to exercise control over the negotiators and make sure its concerns were reflected in the proposal for the overall guidelines. The Task Force had frequent meetings with Ireland and spent a lot of time trying to understand the potential impact of Brexit on Ireland, clearly the member state most affected by Brexit given the shared land border with the UK. Ireland’s success in getting the Irish border issue to be part of the three main priorities of the withdrawal negotiations was seen by many as a diplomatic feat. Ireland did indeed engage extensively, not only with the Task Force, but also with the other institutions to sensitise them to Ireland’s concerns about the future of the island of Ireland following Brexit (Interview, member states representative, 10/1/2018).

For the Task Force, it became clear that the Irish border issue would be one of the most complex issues, particularly once Prime Minister May confirmed the rumours that the UK planned to leave both the single market and the customs union (May 2017c), something that would be incompatible with the absence of a border between the Republic of Ireland and Northern Ireland. However, for the Task Force, the issue also helped push their own priority of demonstrating that membership matters. By showing solidarity with Ireland, they made it clear that member states can count on the support of the EU when facing problems. It also helped explain the centrality of the single market, and that there are consequences of leaving the EU (Laffan 2019: 23). The Task Force strategically used this message of solidarity and unity to gain the support of the other member states, and the Irish border issue quickly became a concern shared by all.

By anchoring the message of unity and the importance of maintaining the integrity of the single market firmly with the member states, the Task Force also helped shift the priorities of those member states that initially expressed strong preferences for maintaining as close links as possible with the UK. Relatively quickly, countries such as Denmark, Sweden, and the Netherlands, started prioritising the unity of the EU and the integrity of the single market over specific commercial interests (Interview, member state representative, 4/3/2019).

Based on these extensive consultations and its preparatory work, the Task Force presented its negotiating strategy for the withdrawal negotiations to the Commission President in November 2016. First, the three issues relating to citizens’ rights, the UK’s financial commitments, and the Irish border, had to be addressed in the first phase of the negotiations. This was to ensure that these issues would not be used as bargaining chips in the subsequent negotiations about the future relationship. It would prevent the UK from making any issue-linkages between these matters and trade and security – areas where there could potentially be greater divergences between the member states. Only when sufficient progress had been reached on these three issues, should the EU initiate negotiations on the future relationship agreement. Second, in terms of the *nature* of their future relationship, which also had to be specified in the withdrawal agreement, the EU was open to different options depending on the UK’s preferences and red lines. However, any future agreement needed to guarantee a level playing field, not least regarding competition rules, and have a robust legal underpinning. Third, once the contours of the future relationship had been agreed, the parties could reflect on introducing a limited transition period, as part of the withdrawal agreement. This would allow time for the negotiations on the future agreement to be concluded, ensuring a smooth transition towards the new EU-UK relationship.

With the negotiating strategy in place, the Task Force was well placed to quickly get its mandate adopted once the UK triggered Article 50 TEU on 29 March 2017. Within 48 hours, the President of the European Council presented the draft negotiating guidelines, based on the proposal prepared by the Task Force, to the EU leaders. He stressed how ‘the United Kingdom is now on the other side of the negotiating table’ and how the EU had worked hard to be able to conclude the negotiations within the tight two-year timeframe (European Council 2017a).

Next, the European Parliament adopted its resolution on 5 April 2017. The resolution reflected the outcome of the close discussions between the Task Force and the Brexit Steering Group in the months leading up to the vote in the Plenary. The resolution stressed that talks about transition arrangements should only start once ‘substantial progress’ had been made towards the withdrawal agreement. It also reiterated that the withdrawal agreement needed to enter into force well before the European Parliament elections in May 2019. And it emphasised how the rights and interests of the citizens who had moved from the UK to the EU or vice versa ‘must be given full priority in the negotiations’, and that the UK must meet all of its financial obligations (European Parliament 2017). The resolution was adopted with 516 MEPs voting in favour, 133 against, and 50 abstaining. The strong majority reflected the unity in Parliament around Brexit.

Parliament stressed that it expected its resolution to be taken into account by the European Council when adopting the guidelines for the negotiations (ibid.). This reflects the praxis that has developed during EU trade negotiations where the Council waits for Parliament’s resolution on the Commission proposal before adopting the mandate (Frennhoff Larsén 2020). While not giving the European Parliament authorisation powers, this gave the Parliament, as a principal, the opportunity to indirectly influence the mandate. The fact that Parliament referred to the European Council, rather than the Council, reflects the prominent position of the European Council as a principal in withdrawal negotiations.

The Task Force and the General Secretariat of the Council, through its Special Task Force on the UK under the leadership of Didier Seeuws, worked closely to finalise the guidelines to be adopted by the European Council. Once the European Parliament had issued its resolution, they could make sure all parliamentary concerns were addressed in the guidelines. As part of this preparatory work, Barnier met with the advisors of the 27 political leaders in the lead-up to the European Council meeting. There were reservations among the 27 about the need to conduct the negotiations in full transparency. However, Barnier explained that the Task Force considered this the best approach, as it would avoid leaks and help build trust among the citizens (Barnier 2021: 69; Laffan 2019: 20).

Once the carefully prepared guidelines were presented to the European Council on 29 April 2017, they were adopted in a matter of minutes - a clear demonstration of unity among the leaders. The guidelines fully reflected the priorities set out by the Task Force. They stressed that any agreement with the UK needs to ‘be based on a balance of rights and obligations, and ensure a level playing field’, and ‘preserve the integrity of the single market’ (European Council 2017a). They also highlighted how the EU would act as one, and how the negotiations should ‘be conducted in transparency and as a single package’. It was made clear that individual items could not be settled separately, which responded to a suggestion from the UK that an early settlement on citizens’ rights should be struck. As for the UK proposition that the terms of the future relationship should be agreed alongside those of the UK’s withdrawal from the EU, the guidelines emphasised that only when the European Council decides that ‘sufficient progress’ has been made in the first phase towards reaching a withdrawal agreement can preliminary and preparatory discussions about the future relationship take place (ibid.). The guidelines reflected the UK’s wish to leave the single market and negotiate an ambitious free trade agreement, and they highlighted the European Council’s willingness to initiate work on such an agreement, but it would have to be finalised and concluded once the UK had left the EU. The guidelines also highlighted the aim of avoiding a hard border on the island of Ireland, and they made it clear that there would be no separate negotiations between individual member states and the UK on Brexit related matters.

These guidelines reflected the principal-agent relationship between the Task Force agent and the principals in the European Council, with the latter emphasising that it should be kept informed about the negotiations on a permanent basis, and that it would update the guidelines as and when necessary (ibid.). For the Task Force, it was clear that these guidelines provided the basis for its negotiations with the UK, and they would stick to them meticulously (Barnier 2021: 74). The Task Force translated the guidelines into a detailed mandate proposal (European Commission 2017a), which was presented to the College of Commissioners on 3 May 2017. Given the close engagement both between Barnier and the President of the European Commission and the College, and between the Task Force and the different DGs, during the development of the proposal, it was adopted without problems. Because of the technical nature of many of the issues, there had been significant input from some of the DGs, including DG Budget (BUDG) on how to calculate the UK’s financial obligations, and DG Employment, Social Affairs and Inclusion (EMPL) on how best to guarantee the continued rights of those citizens most affected by Brexit.

When the General Affairs Council met to formally adopt the mandate proposal on 22 May 2017, there was again a strong sense of unity, and the proposal was adopted unanimously, even if only a qualified majority was required. The mandate provided the Task Force with the detailed parameters for the negotiations the UK. It also formally approved the appointed EU negotiator and defined its rules of engagement with the Council. In other words, the Council outlined its principal control mechanisms through which it would monitor the negotiating agent. The mandate stipulated that the ‘Union negotiator will conduct negotiations with the United Kingdom in continuous coordination and permanent dialogue with the Council and its preparatory bodies’ and that ‘the Council and COREPER, assisted by the Working Party on Article 50, will provide guidance to the Union negotiator’. It stressed that the ‘Union negotiator will in a timely manner consult and report to the preparatory bodies of the Council’ and provide ‘the necessary information and documents relating to the negotiations’ (Council of the EU 2017a). These stipulations confirmed the close and effective working relationship that had already developed between the Task Force and the Council.

At the General Affairs Council, the ministers also adopted additional guidance regarding transparency in the upcoming negotiations, echoing the approach advocated by the Task Force from the very beginning. The guidance highlighted the expected interest in the upcoming Brexit negotiations from citizens, public authorities, and stakeholders across the EU, and how a transparent approach was key to the success of the negotiations. It invited the EU negotiator to provide accessible information about the negotiations through regular press conferences, and to publish all Brexit related documents on the Commission’s website. It also stressed that the ‘European Parliament will be kept closely and regularly informed throughout the negotiations by the Union negotiator’ (Council of the EU 2017b). The guidance confirmed the view of the Task Force that high levels of transparency would help build trust both between the negotiators and the institutions, and between the EU and the public, which in turn would lead to greater unity within the EU (Laffan 2019). In addition, it would allow the Task Force to control the narrative of the negotiations (Barnier 2021: 68).

With the adoption of the negotiating mandate, the EU had completed all the necessary steps to be able to initiate negotiations with the UK. For most EU international negotiations, this mandate process takes much longer, but the extensive preparations and the close consultations with all four sets of principals facilitated the decision-making. And given the tight two-year timeline, there was a sense of urgency on the EU side, and the principals were willing to act swiftly to ensure there were no unnecessary delays to the process on the EU side. In less than two months, the EU negotiators had been given the green light to embark on the Brexit negotiations with the full support and trust of their principals, and with a detailed mandate, which to a great extent reflected their own preferences and priorities.

*International Engagement at Level One*

During the preparation phase there were limited contacts between the EU and the UK, mainly due to the Task Force’s insistence on no negotiation without notification. The main negotiating strategy employed by the Task Force at Level One during this phase was consequently to abstain from engagement to be able to use time strategically once the two-year countdown started. The UK stressed that it would need to ‘by-pass the Commission and make a direct appeal to the national capitals’ (Kassim 2017), with the argument that it is the Commission which is the ‘enemy’, and that many of the 27 are deeply dependent on the UK (Barnier 2021: 46). Based on its experience from the re-negotiation, where Prime Minister Cameron engaged extensively with his counterparts in the other EU member states, the UK assumed that it would be able to engage directly with the principals in the EU behind the back of the EU negotiators, and that way change the win-set. However, all principals on the EU side supported the position of the Task Force, and agreed that until the UK, as the withdrawing state, took the first step and notified the European Council of its intention to leave, there should be no Brexit-related engagement with the UK. In addition, given the strong unity that developed in the EU over this phase, there was no incentive for individual principals to conduct any cross-table engagement with the UK (Interview, member state representative, 10/1/2018). Even if there was sympathy for those in the UK who did not want to leave the EU, it was clear that the decision on how the UK should move forward with Brexit was an internal British matter in which the EU should not get involved. The few bilateral meetings that did take place between EU principals and the UK negotiators during this phase only served to reiterate the stance of no negotiation without notification (Banks 2016). The cross-level engagement of the principals thus followed a supportive, rather than competitive, logic.

When the UK triggered Article 50 TEU on 29 March 2017, nine months after the referendum, the two-year countdown to the UK’s departure from the EU started. One of the rationales behind the timing was to ensure that the UK would have left the EU before the European Parliament elections in May 2019. It was also a way for Prime Minister May to demonstrate that the UK was serious about delivering on the result of the referendum. Although some advocated for a longer period of preparation, it was thought that the triggering of Article 50 TEU would help focus minds and prevent the Brexit process from dragging on (Hom and Beasley 2021). In the Article 50 letter delivered to the President of the European Council, the UK set out its main principles. It wanted to negotiate a ‘deep and special partnership’ including a ‘bold and ambitious free trade agreement’ (May 2017b). The letter stressed the necessity to agree the terms of the future relationship between the EU and the UK alongside those of the UK’s withdrawal from the EU. The UK did recognise that it would be a challenge to negotiate both agreements within the two-year time frame, but insisted it was possible because of the ‘trust in one another’s institutions, and a spirit of cooperation stretching back decades’ (ibid.). The letter also highlighted the need to protect non-UK EU citizens in the UK and British citizens in the EU, and it suggested an that early agreement about their rights should be struck.

Rather than consulting with domestic constituents to try and identify a win-set, Prime Minister May used the period leading up to start of the negotiations to call a general election for 8 June 2017. The rationale for the election was that the UK needed ‘certainty, stability and strong leadership’ when entering the negotiations with the EU (May 2017). An increased Conservative majority in the House of Commons would strengthen the Prime Minister’s hand in the negotiations with the EU. However, the Conservative Party lost the election, and Prime Minister May formed a minority government that had to rely on the support of the Democratic Unionist Party. As a result, it became even harder to discern a win-set among the widely diverging preferences in the House of Commons. This illustrates how the Prime Minister acted strategically in the domestic game at Level Two with the aim of gaining leverage vis-à-vis the EU at Level One. However, this strategy backfired, and the UK entered the next phase of the negotiations with a very difficult game at home.

**Negotiation Phase**

Having had limited contact during the preparation phase, the EU and the UK began to engage properly during the negotiation phase. The negotiations formally opened on 19 June 2017. After six months of intense discussions around the three key withdrawal issues of citizens’ rights, the financial settlement, and the Irish border, the two parties were able to publish a Joint Report on progress in December 2017. This allowed the European Council to decide that sufficient progress had been made on the withdrawal agreement for talks to start on the future EU-UK relationship, as well as the transition between the UK’s exit and the entry into force of the agreement on the future relationship.

This phase of the negotiations proved difficult, not least because of the so-called backstop solution to the Irish border issue. The backstop, which had been drafted by the Task Force and included in the Joint Report, stipulated that the UK should propose specific solutions to avoid a hard border on the island of Ireland, and in the absence of agreed solutions, there should be full alignment with the rules of the single market and the customs union as a way of maintaining the all-island economy (European Commission 2017c). However, there were great concerns among some domestic constituents in the UK about having different arrangements in Northern Ireland and the rest of the UK. This issue, which was intrinsically linked with the future relationship, dominated much of the negotiations during 2018. Eventually, the parties agreed that until a solution to the Irish border issue was found through an agreement on the future relationship, there should be a temporary single customs territory between the EU and the UK, thus ensuring Northern Ireland was in the same customs territory as the rest of the UK. Although this agreement also encountered significant opposition among domestic constituents in the UK, it was included in the final Withdrawal Agreement, which was agreed and signed by the two negotiating teams and approved by the European Council in November 2018. The 600-page Withdrawal Agreement was accompanied by a Political Declaration setting out the nature of the future EU-UK relationship. The ratification process could consequently start, to ensure the UK would leave by the set date of 29 March 2019.

However, the Withdrawal Agreement was rejected three times in the House of Commons during 2019, which eventually led to the resignation of Prime Minister May, and Boris Johnson replacing her in July 2019. This required three extensions to the Article 50 process. Although the EU was unwilling to re-open the Withdrawal Agreement after it had been signed by both parties, it did in the end agree to changing the backstop, which was the issue that caused most concerns on the UK side. The UK suggested that there should be no customs territory between the EU and the UK, and that Northern Ireland would align with most of the EU’s rules and regulations. Given that this change to a great extent corresponded with the initial proposal of the Task Force, the EU agreed to it. Although this meant that Northern Ireland would be treated differently from the rest of the UK, and that some checks on good eventually would have to be undertaken in the Irish Sea, Prime Minister Johnson was confident a revised Withdrawal Agreement including this change could be sold domestically. The final revised Withdrawal Agreement was consequently agreed on 17 October 2019.

*The EU’s Domestic Negotiations at Level Two*

The close engagement between the Task Force agent and its principals continued throughout the withdrawal negotiations with the UK, and the strong sense of unity that had developed during the preparation phase persisted. Barnier coordinated with the Commission President on all political decisions, and he was also regularly invited to the College of Commissioners to provide updates on progress (Schuette 2021). The Commissioners followed the negotiations carefully and were overall supportive. However, they expressed some concerns about the tempo of the negotiations, given the tight two-year time frame. Barnier explained that a certain amount of time was needed between each negotiating round to be able to brief and seek advice not only from the College, but also the 27 leaders or their advisers, the Council, and the European Parliament (Barnier 2021:99). Yet, the Task Force did try to speed up the process in response to this demand from the principals. However, this proved difficult as the UK lagged behind in developing its positions and responses to the position papers published by the Task Force (Fabbrini 2019).

In terms of the Council, the Task Force engaged on a weekly basis with the Working Party on Article 50 and COREPER (Art. 50), and monthly with the General Affairs Council (Art. 50) (Interview, member state representative, 10/1/2018). In addition, it kept the Council informed before, during and after each negotiating round with the UK (Maurice 2018). Member states expressed support for the inclusive approach of the Task Force (Schuette 2021). As highlighted by one member state representative: ‘The people in the Task Force are very politically savvy as well as being hard working and very good at what they do. It’s very well managed… information flows are excellent... people are broadly very happy with the approach they are taking. We set the direction of travel and they check in regularly. There is no sense that [they] will run off and make an offer to the UK that member states aren’t happy with... they are very consultative’ (Interview, 10/1/2018). However, there were some concerns in the Council when the Task Force accepted the UK’s proposal for the backstop to include a single customs territory for the EU and the UK, while retaining regulatory alignment requirements only for Northern Ireland. Many member states had concerns that this would affect the level playing field between the EU and the UK. However, the Task Force ensured the member states that there was no need to worry, and that the level playing field provisions would be watertight (Schuette 2021). Although the single customs territory was later scrapped by Prime Minister Johnson, it reflects an example where the Task Force used its autonomy vis-à-vis the principals to agree to a proposal from the UK in line with its own interests, which at the time were centred on reaching an agreement to avoid a no-deal scenario. And it shows how the Task Force subsequently used its informational advantage and trust placed in it by the member state principals to get them on board and support this proposal.

The European Council also remained engaged in the negotiations. The continuing oversight of such a significant event as Brexit clearly fell within the European Council’s remit of defining ‘the general political direction and priorities of the European Union’. In addition, it had carved out a significant role for itself by demanding that it remained ‘permanently seized’ to the withdrawal negotiations in its guidelines (European Council 2016c). As a result, it reviewed the state of play at regular points in the negotiations, it adopted additional guidelines as and when needed, it decided whether sufficient progress had been achieved to move the agenda to the future relationship between the EU and the UK, and it decided on the extensions to the Article 50 process (Dougan 2020). The already close relationship between the EU negotiators and the 27 leaders intensified further during this phase. The leaders expressed their confidence in the Task Force, and the fact that most European Council conclusions were adopted in minutes, without much discussion, was proof of this. In terms of deciding when sufficient progress had been made on the negotiations – a decision that was made on 15 December 2017 – the leaders trusted the Task Force to make this decision and advice the European Council accordingly (Barnier 2021: 132).

The main area where there were some tensions between the Task Force and the European Council was regarding the UK’s three requests for extensions to the negotiations, following ratification failures of the Withdrawal Agreement in the UK Parliament. The tensions were the result of increasing frustration among many of the leaders about the numerous extra meetings that were required to deal with Brexit due to the lack of consensus around a win-set within the UK. When debating a second extension, some leaders favoured the approach of the Task Force to opt for a short extension to put maximum pressure on the UK, while others felt a longer extension would reduce the risk of additional extension requests later. On this point the former group gave way to the latter (Barnier 2021: 320), reflecting how the autonomy of the Task Force was somewhat limited through principal control. However, this was an exception rather than a rule, and generally the European Council followed the recommendations of the Task Force.

Finally, the European Parliament remained closely involved throughout the negotiations. Barnier attended every Plenary session to provide updates on the negotiations with the UK, and the Task Force held meetings with the Brexit Steering Group before and after every negotiating round. The European Parliament passed several well-timed resolutions, setting out its priorities and assessments of the negotiations (Dougan 2020). It carefully decided to focus its efforts on the issue of citizens’ rights in order to have a real impact. As Brexit was taking a lot of resources, the European Parliament had to prioritise what to focus on (Bressanelli et al 2019). Although it had initially threatened to veto the final agreement unless it was properly involved in the negotiations, the Parliament came to play a cooperative and constructive role, expressing its full support for the Task Force (Bressanelli et al 2019: 357). It felt that it was consulted and that its views were considered (Interview European Parliament official, 20/11/2018). As seen in other negotiations, when properly involved, the Parliament becomes a constructive and cooperative principal (Frennhoff Larsén 2020; Ripoll Servent 2014).

In short, throughout the negotiations with the UK, there was continuous and transparent engagement between the Task Force and its principals at Level Two. The overarching priority was to maintain unity and the integrity of the EU. Brexit should not threaten the ‘solidarity or indeed the survival of the Union as a whole’ (Dougan 2020). A unified approach was seen to give the EU an advantage in the negotiations with the UK at Level One (Dagnis Jensen and Dahl Kelstrup 2019; Laffan 2019), and principals were willing to put aside minor differences and focus on ‘the big picture’ to maintain unity (Bressanelli 2019: 257). Where there were specific issues that would have a considerable impact on certain principals – such as the Irish border – these were elevated to EU-wide interests, around which all principals rallied. The principals were also in full agreement that all negotiations should be conducted through the Task Force. They trusted their agent and were willing to provide it with substantial autonomy in its negotiations with the UK (Jones 2019: 42).

*International Negotiations at Level One*

During the negotiations between the EU and the UK at Level One, the Task Force employed a number of two-level game-based strategies to influence the negotiating outcome. In addition, the context of the negotiations, and in particular the domestic game played by the UK, affected the nature and pace of the negotiations.

*Negotiating Strategies*

*Agenda-Setting:* Unlike many international negotiations, which start with a comparison between the respective mandates of the negotiators to identify overlaps and areas of divergence, these negotiations relied from the very beginning on the detailed mandate of the Task Force. Since the UK had not published any negotiating details – apart from the Article 50 letter, which mostly focused on the future relationship – the EU guidelines provided the basis for the Terms of Reference agreed by the two parties in the very first negotiating round. The Terms identified the three issues of citizens’ rights, financial settlement, and the Irish border, that had to be addressed in the withdrawal negotiations (HM Government 2017). The issue of trade was not referred to, reflecting the EU’s preference for a phased approach, in which discussions on trade and the future relationship should only start once sufficient progress had been reached on these three withdrawal issues. It was somewhat surprising that the UK negotiators accepted this approach so quickly, since the UK had insisted that negotiations on the new trade agreement should start immediately and in parallel with the withdrawal negotiations. However, with no mandate of their own and a lack of preparations, it was difficult for the UK negotiators to take the lead in the negotiations, and to fully appreciate the consequences of the phased approach (Roberts et al 2017). The EU consequently structured the process in its own favour from the very start (Jones 2019). By agreeing to the phased approach so early on, the UK gave the EU a tactical advantage and lost much of its leverage and potential issue-linking strategies that could have proved useful later (McTague 2019). For example, the financial commitment could have been used as a tool to gain concessions in the discussions about the future trade agreement.

This initial agenda-setting lead by the Task Force remained throughout the negotiation process. It was the result of careful preparation and coordination with domestic constituents at Level Two, and its continuous publication of detailed position papers and text proposals (Fabbrini 2019: 4; Schuette 2021: 1150), in combination with the UK’s vague demands and lack of detailed negotiating proposals (Beach and Smeets 2020). The Task Force consequently controlled the process as the discussions mainly focused on *its* guidelines and proposals (Frennhoff Larsén and Khorana 2020), which forced the UK to respond to, rather than initiate, negotiating proposals (Interview, member state representative, 4/3/2019)

*Using Time Strategically:* An unusual feature of these negotiations was that they were conducted under tight legal time pressure. An agreement had to be reached within the set time frame of two years, or the UK would leave the EU without a deal. While a no-deal scenario in most negotiations result in the continuation of the status quo, a no-deal scenario in the Brexit negotiations would lead to a dramatic change in the EU-UK relationship, with significant consequences for citizens, trade, and the border on the island of Ireland. The aim of the withdrawal agreement was to minimise the uncertainty and disruption resulting from Brexit, and it was clearly in the interest of both parties to reach an agreement. The Task Force used this time pressure strategically. It rejected Prime Minister May’s initial timing strategy of negotiating the Withdrawal Agreement and the agreement on the future relationship simultaneously, and insisted on the phased approach as a way of putting pressure on the UK (Hom and Beasley 2021: 275). Since the UK wanted to leave as much time as possible to focus on the future relationship, it agreed to most of the EU proposals on the withdrawal issues already by December 2017 (Laffan 2019: 21). This included the EU’s proposal on the financial settlement – an issue where many had expected the UK to put up more resistance. However, faced with the time pressure imposed by the EU, combined with the strong EU unity, the UK did not have much choice but to agree to settle on a methodology for how its financial obligations should be calculated, in order to move the talks to the next phase (Barnier 2021: 181). Similarly, the UK agreed to the ‘backstop’ proposal presented by the EU despite outrage among some of its domestic constituents. This was to ensure that the two parties could agree on a Joint Report (European Commission 2017c), which provided the basis for the European Council’s decision on 15 December 2017 that sufficient progress had been made to move to the next phase.

It was not only the overall timeframe set by Article 50 TEU that put pressure on the negotiations. The domestic political calendar of the EU also shaped the progress of the talks at Level One. Given the influential role of the European Council in these negotiations, the Task Force could use the European Council meetings, which take place every three months, as milestones by which certain agreements would have had to be reached. For example, the reason it was important to agree to the Joint Report by December 2017 was so that the 27 leaders could make the decision about sufficient progress at the European Council meeting of 15 December 2017. Had the Joint Report not been agreed in time for that meeting, there would most likely have been a delay of another three months until the next European Council meeting, before talks could move to the future relationship. This ‘calendar technique’ (Laffan 2019: 21) was used extensively by the Task Force, particularly towards the end of the negotiations. Given the multiple procedural ratification steps in the EU, the Task Force identified specific European Council meetings as deadlines for progress and agreements. In this way, the Task Force set the tempo of the negotiations and structured them around the EU calendar (Barnier 2021: 54).

Finally, while the EU left it to the UK to ask for extensions to the two-year deadline as set out by Article 50 TEU, it was up to the EU to grant the extensions and decide how long they should be. The decision on every extension had to be taken by the European Council, but it consulted with the Task Force. The first request from the UK, which was submitted on 20 March 2019, 10 days before the UK’s planned exit, asked for an extension until 30 June 2019. In agreement with the Task Force, the European Council rejected this timeline, and instead agreed an extension until 22 May 2019, on the condition that the Withdrawal Agreement was ratified in the UK by 29 March 2019. This would allow the EU to go through its own ratification procedures before 22 May 2019, making sure the UK had left the EU before the European Parliament elections of 2019. However, failing ratification, the extension would only last until 12 April 2019 – the deadline by which the UK had to decide if it were to hold European Parliament elections. This was a way for the EU to put pressure on the UK to indicate a way forward (European Council 2019a). The vote in the House of Commons on 29 March failed, and the UK asked for a second extension until 30 June 2019, in the hope that the House of Commons would eventually vote in favour of the agreement. However, after three failed votes in the UK, the European Council felt that more time was needed for the UK negotiators to shift the domestic win-set to make sure it included the Withdrawal Agreement. It thus agreed to a further extension that would last as long as necessary for the Withdrawal Agreement to be ratified, but no longer than 31 October 2019 (European Council 2019b). The final request for an extension was the result of a legal act passed by the UK Parliament. It obliged Prime Minister Johnson to ask for an extension until 31 January 2020, something the EU leaders agreed to as the revised Withdrawal Agreement had been reached, and this was only to allow time for proper ratification on both sides. This again demonstrates how the length of the extensions were dictated by the EU-side, and how the Task Force controlled much of the negotiating calendar.

*Hands-Tied Strategy:* The hard bargaining approach of referring to hands being tied was used rather sparingly by the Task Force. Given the unity of the EU, and the transparent manner in which it negotiated, it was clear that its hands were tightly tied without this having to be pointed out explicitly. The Task Force had published its clearly defined and detailed mandate to which it had to adhere. In addition, given the nature of the negotiations, which largely were about finding technical solutions to the complex process of disentangling the UK from the EU while minimising disruption and uncertainty, the Task Force approached the negotiations with a problem-solving attitude (Frennhoff Larsén and Khorana 2020). This was seen as more effective than a traditional distributive ‘give and take’ approach (De Rynck 2019). However, on a few occasions, the Task Force still referred to its principals and how they would never accept some of the UK’s proposals. For example, regarding citizens’ rights, it used the red lines of the European Parliament on family reunions and the deadline for applying for settled status to successfully push for a more ambitious agreement (Bressanelli et al 2019 and Schuetter 2021).

Yet, in a negotiation where the lack of an agreement would result in the UK crashing out of the EU, rather than the continuation of the status quo, and where the aim was to minimise the uncertainty and negative consequences of the UK’s entanglement from the EU, the hands-tied strategy was never fully credible. The Task Force used the European Parliament as a way of putting pressure on the UK to accept its demands. However, even if its red lines had not been met, it is unlikely the European Parliament would have rejected the final agreement. In a situation like this, any agreement is better than no agreement (Bressanelli et al 2019: 340).

Still, the *UK* negotiators adopted a hard bargaining approach with several references to their hands being tied. They referred to domestic constraints as a way of gaining bargaining power over the EU (Hancké 2020: Martill 2021). This approach had served the UK well while it was a member of the EU, and not least during the re-negotiations of its membership terms (Figueira and Martill 2021). However, at that time the UK still had the trump card of leaving the EU up its sleeve. Once it was clear that Brexit would happen, there was no longer the same solidarity with the UK, and few reasons to make concessions (Martill 2021). When tying their hands, negotiators implicitly make it clear that they are willing to accept a no-deal outcome. It is therefore more likely that the party less dependent on the agreement reverts to such strategies. Yet, despite the power asymmetry in the Brexit negotiations, and the proportionately greater costs of a no-deal scenario for the UK, the British government stuck to this approach (Martill 2022; Hix 2018). It even started making references to the possibility of a no-deal scenario, and its readiness to accept such an outcome. This alarmed member states, not least those with close trading links with the UK, and there were concerted efforts to discourage the UK from using such rhetoric as it distracted from the priority of negotiating and mitigating the negative effects of Brexit (Interview, member state representative, 13/7/2017). However, these efforts were to no avail, and the no-deal rhetoric became an integral part of the UK’s bargaining approach (Martill and Staiger 2021). Even when faced with domestic opposition and attempts to rule out a no-deal outcome, the UK government stressed that the threat was necessary to maintain leverage in the talks with the EU. However, given that the UK would lose considerably more than the EU from such an outcome, the Task Force never really took this threat seriously (Barnier 2021; Martill 2022).

*Transparency Provision:* The Terms of Reference had established transparency as the default approach for these negotiations. The Task Force saw the approach to transparency, both domestically vis-à-vis its principals and externally towards the UK and the wider public, as key to the success of the negotiations. It published all its documents, including negotiating agendas, EU position papers, EU text proposals, fact sheets, speeches and agreements on the Commission’s website. And after each negotiating round at Level One, Barnier or members of the Task Force held a press conference. The negotiations were consequently ‘carried out with unprecedented transparency’ (European Commission 2017b). Given that the negotiations were about agreeing arrangements that would minimise the uncertainty and disruption stemming from Brexit, it was clear to the Task Force that there was no bottom line that needed hiding, or anything to gain by playing one’s cards close to the chest (Frennhoff Larsén and Khorana 2020). On the contrary, a transparent approach was seen as advantageous. The extensive publication of Brexit related documents on the EU side, not just by the Task Force, but also by the European Commission as a whole, the European Council, the Council, and the European Parliament, highlighted the unprecedented unity between the EU institutions. This made it clear that neither the Task Force, nor the UK negotiators, would be able to play different EU principal interests against each other. Indeed, when such attempts were made by the UK negotiators, they failed (Kassim and Usherwood 2018). For example, the UK government begged member states, in particular France and Germany, to exert influence over the Task Force to make it compromise with the UK and offer some flexibility in terms of single market access to protect jobs on both sides of the Channel (Philip 2018). It also regularly tried to bypass the Task Force and negotiate directly with individual member states. However, this proved futile, as member states either just referred to the Task Force as the channel through which all negotiations had to be conducted, or re-emphasised the unified EU position (Barnier 2021; Cooper 2018).

Through its extensive transparency provisions, the Task Force also became the first point-of-call for many media outlets, allowing it to shape much of the public narrative around Brexit. This contributed to increased support for its approach, both among its own principals, and some domestic constituents on the UK side, who were frustrated about the secretive approach adopted by the UK negotiators. Even if the UK government eventually started publishing Brexit-related documents on its website, as it became difficult to maintain a secretive approach in the face of the EU’s transparency provision, much of the decision-making in the UK took place behind closed doors by the Prime Minister and a small group of select Ministers and civil servants (Kendrick and Sangiuolo 2017).

*Negotiating Context*

The negotiating context was influenced by the structural relationship between the parties, the two-level game played in the UK, and the linkages with potential future negotiations. In terms of the structural relationship, there was a clear power asymmetry (Hix 2018). Granted, the UK was one of the most powerful member states in the EU, and as such, it was used to exert significant influence within the EU. However, as a negotiating partner on the opposite side of the table from the EU, it was undoubtedly the weaker party (Schimmelfennig 2018). It was more dependent on EU trade than vice versa (D’Erman 2021). It also faced an EU which was much less willing to accommodate specific British demands than it had been when the UK was a member (Laffan 2019: 24). This shift from being an influential member state within the club, to one negotiating from the outside, was difficult for the UK to adapt to, and many of its expectations about EU behaviour were based on its experience as a member state (Figueira and Martill 2021). The UK expected the negotiations to be relatively easy, and that the unity on the EU side would falter. It assumed that special economic interests within EU member states would put pressure on national leaders to push the EU negotiators to adopt a flexible approach towards the UK, and offer a bespoke deal (Martill and Staiger 2021). This misperception of the structural relationship made the UK rely on hard bargaining (Frennhoff Larsén and Khorana 2020; Martill and Staiger 2021), making threats to walk away from the negotiations and using a ‘take it or leave it’ approach – a strategy normally reserved for the stronger party.

Strategies that can be used by weaker parties to balance against the power asymmetry, such as forming coalitions or identifying allies among the domestic constituents in the stronger party, were not available to the UK. There was little support for Brexit among the EU principals. No member of the Commission or the Council were in favour of the UK leaving. And since a referendum had been held, and the UK *would* leave, the incentives to accommodate specific British requests in the hope that they would remain a member were gone. Even those member states that were closely linked with the UK, and whose support the UK had relied on in the past, prioritised the unity and integrity of the EU over British interests (Hix 2018). There was a sense that Brexit was already putting a huge administrative, economic, and political burden on the remaining member states, without them also having to meet specific demands made by the UK (Interview, member state representative, 4/3/2019). It was the UK’s decision to leave, and as such, it needed to accept the consequences. Only the European Parliament included constituents in favour of Brexit. The three political groups of the European Conservatives and Reformists (home to the Conservative Party since Prime Minister Cameron pulled it from the main Centre Right group, the European People’s Party), Europe of Freedom and Direct Democracy (home to the UK Independence Party), and Europe of Nations and Freedom supported Brexit. However, their share of the vote had little impact on the overall vote of the European Parliament, which otherwise was unusually united. In addition, these three political groups were excluded from the Brexit Steering Group (Cîrlig 2020: 25).

However, despite the power asymmetry overall, the UK did have the upper hand in terms of deciding if and when to initiate negotiations. It could decide when to start the two-year countdown towards the UK’s departure, thus keeping the EU ‘on their toes about what exactly [the UK would] do and when’ (Rogers 2020). It therefore surprised many when Prime Minister May already in October 2016 announced that the UK would trigger Article 50 TEU at the end of March 2017. This removed the possibility of forcing a discussion with the EU about how Article 50 TEU would work, rather than relying on what was set out by the EU. With the date announced, there was no incentive for the EU to engage in any sort of discussions with the UK, making its commitment to ‘no negotiation without notification’ even stronger (ibid.). The reason the Prime Minister made the announcement was to respond to domestic pressure from Brexiteers, who wanted reassurances that the Brexit process would start quickly (Hom and Beasley 2021). It was thus a move that seemed rational in her difficult domestic game at Level Two, but which significantly reduced the UK’s leverage vis-à-vis the EU at Level One.

As for the nature of the two-level game played by the UK, the British negotiators faced a very difficult domestic game (Svendsen 2022). There were widely diverging preferences between and within the main domestic constituencies that contrasted starkly with the unity on the EU side. The referendum campaign had served to create deep divisions within the UK, and it was difficult to see how a domestic win-set could emerge, even before considering whether such a win-set would overlap with that of the EU. There had been little strategic thinking about Brexit. Neither those who advocated for Leave, nor the government that wanted the UK to remain, had made any material preparations for the complex negotiations that would follow in the case of a Leave victory (Vickers 2022). Rather than identifying the win-set through consultations with domestic constituents, the Prime Minister interpreted the result of the referendum as a vote for a hard Brexit (Martel 2021b). She firmly ruled out membership of the single market and the customs union by stressing that the UK would control immigration, secure new independent trade agreements with other countries, and take control of its own laws (HM Government 2017). This hard Brexit stance surprised the Task Force, which had identified different options for the future relationship. They found it puzzling that the UK negotiators would ‘close one door after another’ and tie their hands even before the negotiations had started (Barnier 2021: 60). It reduced the win-set significantly, as domestic constituents bought into this rhetoric, making it difficult for the Prime Minister to then backtrack on these commitments during the negotiations (Martill 2022).

Finally, in terms of linkage with other negotiations, there was no precedent to rely on as it was the first time a member state would leave. However, since the EU negotiators were aware of the embedded nature of EU negotiations, they knew that these negotiations most likely would set a precedent for future withdrawal negotiations, in case other member states decided to leave. It was therefore not in their interest to be particularly accommodating to the UK and offer a bespoke deal on the future relationship (Martill 2021: 983). Instead, they used the negotiations to demonstrate the value of EU membership, and to make clear that there could be ‘no privileged status for a former member state’ (Laffan 2019: 24). The strategy seemed to work, as support for membership increased across all member states during the Brexit process (Schuette 2021: UK Parliament 2019), and political parties that previously advocated for their country to withdraw from the EU have toned down such aspirations, now advocating for reform rather than exit (Treib 2020). The political turmoil in the UK during the negotiations most likely also helped to strengthen the support for the EU and reduce the attractiveness of withdrawal.

**Ratification Phase**

Once the revised Withdrawal Agreement had been reached on 17 October 2019, it had to be ratified by the two sides according to their own internal procedures. Given the Task Force’s close engagement with the four sets of principals throughout the negotiation phase, there were no real concerns about ratification failure on the EU side. The Withdrawal Agreement was not considered a mixed agreement, and consequently did not need to be ratified by national parliaments in the 27 member states. The Council had endorsed the Commission’s interpretation of Article 50 TEU as giving the EU exceptional powers to negotiate all issues relating to the withdrawal on behalf of the 27 member states, even where these issues would normally fall within shared competence between the EU and the individual member states (Dougan 2020). Just a few hours after the Withdrawal Agreement had been reached between the EU and the UK, it was formally approved by the College of Commissioners before it was submitted to the Council and the European Parliament for scrutiny. However, because of the uncertainty and concerns about ratification on the UK side, it was decided to wait for the UK’s approval before continuing the formal EU ratification process.

As the UK government had conducted the negotiations without a clear mandate or close engagement with domestic constituents, the contours of the domestic win-set were unclear (Biermann and Jagduber 2022: 794). The government did not want to see a repeat of the three ratification failures that followed the conclusion of the Withdrawal Agreement in 2018. Consequently, in the hope of changing the composition of the domestic constituents in a way that would increase the chances of ratification, the government called a general election for 12 December 2019. The strategy succeeded, and the Conservative Party won an overall majority. The government thus modified the win-set so that it would overlap with that of the EU’s through a change in the parliamentary composition, rather than changing the agreement. This cleared the way for the Withdrawal Agreement to be ratified, and by 23 January 2020 it had received approval by the UK Parliament, just in time for the UK’s exit on 31 January 2020.

Following the UK election results, the leaders at the European Council meeting of 13 December called on the Council and the European Parliament to ratify the Withdrawal Agreement in a timely manner. On 24 January 2020, the day after the UK’s ratification, the Presidents of the European Commission and the European Council signed the Withdrawal Agreement. It was then approved by the European Parliament on 29 January 2020 by 621 votes in favour, 49 against, and 13 abstentions. With the parliamentary consent provided, the Withdrawal Agreement could be ratified by the Council on 30 January 2020. While only a qualified majority of the 27 remaining member states was needed (72% of the member states comprising at least 65% of the population of those states) all 27 member states agreed to it, confirming the unity that had characterised the EU position throughout these negotiations.

There was relief on the EU side that the agreement was finally ratified, almost three years after the UK triggered Article 50 TEU. However, there was also great regret about the departure of an important and valued member state, as well as apprehension about the upcoming negotiations on the future EU-UK relationship, as expressed by the late European Parliament President, David Sassoli: ‘It deeply saddens me think that we have come to this point. Fifty years of integration cannot easily be dissolved. We will all have to work hard to build a new relationship, always focusing on the interests and protection of citizens' rights. It will not be simple. There will be difficult situations that will test our future relationship. We knew this from the start of Brexit. I am sure, however, that we will be able to overcome any differences and always find common ground’ (European Parliament 2020c).

**The EU Institutional Set-Up during the Negotiations of the EU-UK Trade and Cooperation Agreement: A Principal-Agent Relationship**

**Agent Power**

Given the success of the withdrawal negotiations in terms of EU unity, transparency and influence, there was a strong incentive to replicate much of the structures and processes from those negotiations when preparing for the upcoming negotiations on the future relationship. According to Article 218 TFEU, the Council nominates the Union negotiator, based on a proposal from the Commission. Even before officially taking over from President Juncker, the new European Commission President, Ursula Von der Leyen, appointed Barnier as Chief Negotiator for the negotiations on the future relationship in the autumn of 2019. Barnier was selected to ensure there was continuity when moving into the second part of the negotiations with the UK, and also as a result of his extensive expertise and the ‘solid bedrock of support from national governments and the European Parliament’ that he had built during the withdrawal negotiations (Brunsden 2019). He was seen to have done an ‘excellent job’ in the withdrawal negotiations, and he had the support of the principals (Kassim 2020).

Before Barnier was formally appointed as Chief Negotiator, he started building a negotiating team – the Task Force for Relations with the United Kingdom (UKTF) – to ensure a smooth transition into the second part of the negotiations. The team brought together officials from 22 DGs, the EEAS, and the Secretariat-General of the Commission. Given the broad scope of the agreement as envisaged by the Political Declaration, a wide range of technical experts was needed to help negotiate the different aspects of the future agreement. The Political Declaration identified ‘an ambitious, broad, deep and flexible partnership across trade and economic cooperation with a comprehensive and balanced Free Trade Agreement at its core, law enforcement and criminal justice, foreign policy, security and defence and wider areas of cooperation’ (HM Government 2019). Again, the team had some of the most experienced and skilled officials in the Commission. Many had been part of the Article 50 Task Force, and others had been in positions where they had followed the Brexit negotiations closely, and they were thus well-versed with the challenges facing them (Barnier 2021).

As for location, it was agreed that a separate structure should be maintained, rather than placing the team in one of the DGs or the EEAS. The upcoming negotiations with the UK were seen as unique given their close connection with the withdrawal negotiations, and it therefore made sense to keep the established structure, rather than moving responsibility to DG TRADE, which normally leads on trade negotiations.

The negotiating agent – UKTF under the lead of Barnier – was thus delegated power to prepare and negotiate the agreement on the future relationship with the UK by the Commission President. The delegation was formally confirmed by the Council, through its adoption of the negotiating mandate of February 2020. As for agent power recourses, UKTF had extensive expertise and experience. Given that many of its members had been involved in the withdrawal negotiations, a certain institutional memory had also developed. UKTF could rely on its experience of negotiating with the UK and replicate the processes and strategies that had proved effective during the withdrawal negotiations. Its central position, stemming from its close involvement in all key negotiations both at Level One and Two, gave it a clear appreciation of all interests involved. And it had significant agenda-setting powers, since it was preparing the mandate proposal, as well as the first draft of the detailed legal text of the TCA. UKTF started working on these documents several weeks before the UK left the EU, just to ensure they would be ready when needed (Barnier 2021: 410).

**Principal Control**

*College of Commissioners*

The College of Commissioners remained closely involved throughout the negotiations, and Barnier reported to it on a regular basis. In particular, the UKTF worked closely with the Trade Commissioner and DG TRADE, given the nature of the future agreement. The mandate also stipulated that the negotiations should be conducted in cooperation with the High Representative given the parameters of the new agreement (Council of the EU 2020). In the Political Declaration the parties had agreed to establish a partnership that would include cooperation around foreign policy and defence (HM Government 2019). However, following the UK’s decision not to enter into negotiations on these issues, the High Representative and the EEAS came to play a smaller role than initially expected. Commission President Von der Leyen, on the other hand, was deeply engaged and worked closely with Barnier throughout the negotiations. Whenever political impetus was needed to move the negotiations forward, President Von der Leyen became directly involved. In December 2020, as the deadline of the agreed transition period approached, she took over much of the negotiations, and was responsible for finding the final compromises needed to reach agreement with the UK, while following the steer and advice of Barnier, her agent. In the end, the College had to approve the final agreement before it was submitted to the Council and the European Parliament.

Consequently, the College of Commissioners was able to exercise control over the negotiators through its appointment, authorisation, monitoring, and ratification powers.

*Council of the EU*

While the European Council had played a significant role in the withdrawal negotiations as per Article 50 TEU, it was less involved in the negotiations on the future relationship. These negotiations were based on Articles 217 and 218 TFEU, which provide no specific legal role for the European Council. However, given the political importance of the negotiations, and their link with the withdrawal negotiations, the Task Force continued to liaise closely with the EU leaders. Yet, most of the work took place in the Council, which constituted a *collective* principal through its formal appointment of the EU negotiator, and its authorisation of the negotiations to start. The negotiating mandate established that the negotiators should ‘consult and report to COREPER and the Working Party on the UK’ and that they should ‘provide in a timely manner all necessary information and documents relating to the negotiations’ (Council of the EU 2020). At the ministerial level, responsibility for the negotiations remained with the General Affairs Council, rather than moving to the Foreign Affairs Council, which is normally in charge of trade negotiations. Given that Barnier’s role spanned that of both minister and diplomat, he continued to report to the General Affairs Council as well as COREPER. At working party level, it was decided to build on the success of the ad hoc Working Party on Article 50, as a ‘central hub’ that could provide an overview of the negotiations (Kassim 2020). Its structures were replicated in the new Working Party on the UK, to which the UKTF reported on a weekly basis. Didier Seeuws continued in his role as Permanent Chair for this Working Party. Again, it was considered important to maintain continuity, rather than relying on the rotating Council Presidency to chair these meetings. At the end of the negotiations, the final agreement had to be ratified by the Council.

The Council’s appointment, authorising, monitoring, and ratification powers thus provided it with significant principal control mechanisms.

*The European Parliament*

The European Parliament continued to operate as a de facto principal. Article 218 TFEU provides it with ratification powers and stipulates that it should be ‘immediately and fully informed at all stages of the procedure’. However, the Brexit Steering Group, which held the parliamentary lead during the withdrawal negotiations, had completed its functions and responsibilities on 31 January 2020 as the UK left the EU. Instead, a new UK Coordination Group was set up under the leadership of David McAllister MEP, Chair of the Foreign Affairs Committee. This group liaised closely with the UKTF throughout the negotiations, and influenced its work through resolutions, which it prepared in close coordination with the European Parliament’s Committees on Foreign Affairs and on International Trade (Kassim 2020). The Parliament was also able to issue a resolution on the mandate proposal before it was adopted by the Council. And in the end, the European Parliament had to give its consent to the final agreement.

The European Parliament consequently controlled the UKTF through its informal authorisation, monitoring, and ratification powers.

To conclude, while still negotiating the withdrawal agreement, the EU set up the institutional structures needed for the upcoming negotiations on the future relationship with the UK. Rather than relying on existing structures that are normally used during trade negotiations, the EU mainly maintained the structures used during the withdrawal negotiations to provide continuity, and to build on the success of those structures.

**Case-Study – Part 2: Negotiating the Trade and Cooperation Agreement with the UK**

**Preparation Phase**

The preparation phase for the negotiations on the future EU-UK relationship started already during the withdrawal negotiations. The discussions about the Irish border were closely related to the nature of the future agreement, and the non-binding Political Declaration that accompanied the Withdrawal Agreement set out the main framework and aspirations for the agreement. There had consequently been significant preparations for these negotiations. However, they could not formally begin until the UK had left the EU, as they were based on a different legal basis and involved slightly different institutions and decision-making processes.

The timeframe for the upcoming negotiations was tight. The transition period, which was agreed through the Withdrawal Agreement, and during which the UK remained a member of the single market and the customs union, would expire on 31 December 2020. The Withdrawal Agreement did allow for an extension of this period, but despite having agreed to three extensions to the withdrawal negotiations, the UK decided against this for these upcoming negotiations (Usherwood 2021).

*The EU’s Domestic Negotiations at Level Two – Identifying the Win-Set*

Given the tight timeframe, UKTF worked fast to prepare the detailed mandate proposal, based on the ambitions set out in the Political Declaration. On 3 February 2020 – three days after the UK left the EU – UKTF presented its mandate proposal to the College of Commissioners. Since the appointment of the new Commission in the autumn of 2019, Barnier had engaged closely with the Commissioners, and the European Commission President in particular, and there were no surprises in the proposal. Once adopted by the College, it was transmitted to the European Parliament and the Council (European Commission 2020a)

In line with the praxis in trade negotiations, and the approach adopted in the withdrawal negotiations, the European Parliament received the mandate proposal at the same time as the Council. This allowed the European Parliament to issue its resolution on the proposal on 12 February 2020, and for this resolution to be considered by the member states in the Council before they adopted the mandate. The European Parliament was thus given informal authorisation powers. The mandate formally appointed the EU negotiator and authorised negotiations to start, and the parliamentary resolution stressed that the EU negotiator should be the *sole* negotiator, and that there should be no bilateral negotiations with the UK by the member states. The resolution also emphasised that the negotiations should be conducted transparently, and that the EU should aim for the same level of unity as in the withdrawal negotiations. And it recognised that the depth and ambition of the agreement had to be adapted to the tight timeframe that the UK had chosen (European Parliament 2020a). In addition, the European Parliament expressed its concerns about the implementation of the Withdrawal Agreement, and in particular the UK Prime Minister’s interpretation of the provisions of the Protocol on Ireland/Northern Ireland concerning border controls in the Irish Sea (ibid.).

There were intense discussions between the member states in the Council during this phase. The upcoming negotiations with the UK were expected to expose more diverging interests than the withdrawal negotiations. Member states had varying levels of trade dependency on the UK and different specific interests that could complicate the negotiations. At the General Affairs Council of 10 February 2020, when the mandate proposal was discussed, Barnier thus conveyed the idea of parallelism, which had already been discussed with the College of Commissioners. Despite the tight timeframe, it was important not to prioritise certain areas, or those sectors that would be most affected by the UK’s exit from the single market and the customs union, but instead progress on all themes of the negotiations in parallel. This would ensure that no specific interest of a member state was disregarded (Barnier 2021: 414). Member states bought into the idea, and a reference to this effect was included in the mandate, which was adopted on 25 February 2020 (Council of the EU 2020). With a clear mandate, and the experience from the withdrawal negotiations of the importance of maintaining EU unity, the UKTF was ready to initiate negotiations with the UK on behalf of its principals in the College, the Council, and the European Parliament.

*International Engagement at Level One*

There was no specific engagement between the two parties at Level One during this very short period between the UK leaving the EU and the mandate being adopted. Just like the EU, the UK used the preparation phase to set out its own negotiating objectives, which were published two days after the adoption of the EU mandate. This time around, both parties consequently entered the negotiations at Level One with clearly defined objectives. However, there were significant differences between their respective objectives, in particular regarding the issues of access to fishing waters and maintaining a level playing field for businesses (Eiser et al. 2021).

**Negotiation Phase**

The negotiations between the EU and the UK formally opened on 2 March 2020, with both parties aware that they had ten months to negotiate and ratify a new agreement on their future relationship. As a result of the UK’s decision not to extend the transition period beyond 31 December 2020, the new agreement had to be ready to enter into force by 1 January 2021. According to the Terms of Reference (European Commission 2020b), the parties agreed to hold negotiating rounds every two to three weeks to have a chance at meeting the tight deadline. After nine formal negotiation rounds, talks intensified further, and they were held on an almost daily basis from October 2020. Despite difficulties and widely diverging views between the EU and the UK, particularly on the issues relating to fish and the level playing field, the two parties reached agreement on a Trade and Cooperation Agreement (TCA) on 24 December 2020. As previously mentioned, these negotiations were unique since the parties started from a position of free trade, and then discussed what barriers to erect between them (Lamy 2020). From an economic perspective, the negotiations were ‘value destroying’ for both parties (Darbishire 2019), and they consequently followed a different logic from other trade negotiations.

*The EU’s Domestic Negotiations at Level Two*

The UKTF remained in close contact with the College, the Council, and the European Parliament throughout the negotiations with the UK, in the same way as during the withdrawal negotiations. And just as in those negotiations, its main aim was to maintain EU unity and the integrity of the single market. Through the approach of parallelism, and its continuous engagement with its principals, the UKTF did meet these aims, despite expectations to the contrary (Hall 2020). The UK’s decision to rule out any extension to the transition period also contributed to the unity on the EU side. It made it clear that the final agreement had to be a standard free trade agreement with zero tariffs, which limited the number of issues that had to be covered by the negotiations, and as a result, the areas of potential disagreements within the EU. The more distributional nature of the TCA negotiations, compared with the withdrawal negotiations, did not translate into significant preference divergences between and within the EU institutions. The principals had experienced the benefits of a united approach in the withdrawal negotiations, and therefore tried to maintain this approach.

It was only towards the end of the negotiations that some cracks appeared in the EU unity. Some member states in the Working Party on the UK, including France, the Netherlands, Denmark and Ireland, had particularly strong interest in ensuring as much continuity as possible in terms of fishing activities, and the reciprocal access to waters and quota shares (Bevington 2020). The UK, on the other hand, wanted to see this access significantly reduced. There had been a strong collegiality in the Council throughout the negotiations. Member states respected their respective interests and vulnerabilities, and specific interests were upgraded to EU-wide interests (Laffan 2019). However, as the deadline approached, and the fears of a no-deal scenario increased, some member states expressed frustration with these fishing nations for their lack of flexibility and compromise. Barnier and the UKTF stressed the need for a compromise, explaining that without it, there would be no agreement with the UK. To get the fishing nations to lower their ambitions, the UKTF insisted it would hold firm on other key issues in the negotiations with the UK, including the level playing field, ensuring EU businesses would not be undercut by their British rivals (Agence France Presse 2020). While understanding the need for compromise, France was reluctant to agree to this, given its politically important fishing community, and Barnier was ‘walking a tightrope between London and Paris’ (Baczynska et al. 2020). In the end, though, the fishing nations did agree to lower their initial expectations in order to reach a compromise with the UK (Usherwood 2021).

However overall, the unity held within the EU, and fears that businesses would mobilise in the member states to push for a closer relationship with the UK never materialised. The principals were well informed and closely engaged with the negotiation process at all times, and they maintained their confidence in the UKTF and Barnier (Hall 2020).

*International Negotiations at Level One*

The TCA negotiations were influenced by the strategies adopted by the two negotiating teams, as well as the context within which they took place. The final outcome reflected compromises and concessions made on both sides, and although the agreement was not as far-reaching in terms of depth and scope as many had hoped, it was definitely ‘something of an achievement’ to reach a deal within the very tight timeframe (Usherwood 2021: 118).

*Negotiating Strategies*

*Agenda-Setting:* In terms of the overall nature of the agreement on the future relationship, this was to a large extent determined by the British side. Since the UK had ruled out participation in the single market and the customs union already in 2017, it was clear that the core of the agreement would be based on a free trade agreement. In addition, since the UK decided not to enter into negotiations on foreign policy and defence cooperation, thus departing from the commitments made in the Political Declaration, the scope of the agreement would be relatively narrow. The rationale for this decision was based on the tight time frame of the negotiations. The UK wanted to focus its energy and resources on the trade agreement, making sure a deal was reached before the end of the transition period. The absence of a trade deal would have much more severe consequences for citizens and businesses than the absence of an agreement on foreign policy and defence cooperation. The latter policy areas were not integrated to the same extent as trade, and a lack of a deal in these areas would therefore cause less disruption (Whitman 2020). Finally, it was the UK that decided the tight time frame of the negotiations by not asking for an extension to the transition period. Prime Minister Johnson had made it a political commitment vis-à-vis his domestic constituents to ‘get Brexit done’ and to do so at pace (Usherwood 2021).

However, in terms of the details of the future agreement, the EU took the lead. Already on 18 March 2020, UKTF published a full draft agreement, reflecting the significant preparatory work that had taken place at Level Two. The UK, on its part, also tabled a number of text proposals. However, these were not made public, and the British government asked explicitly that they were not shared with the member states (UK Parliament 2020). This gave UKTF an agenda-setting advantage as much of the subsequent negotiations were based around its publicly published draft agreement proposal.

The issue of maintaining a level playing field led to one of the most difficult discussions at Level One. The UK had asked for a free trade agreement, similar to the one concluded between the EU and Canada, but the UKTF made it clear that this was not possible. Given the geographic proximity and the level of trade between the EU and the UK, a no-tariff trade agreement would make the UK too much of a competitive threat for the EU unless it was aligned with the EU’s regulatory structures (Barnier 2021: 420). A joint commitment to a level playing field was made already in the Political Declaration. However, since the declaration was not binding, and the UK had deviated from it in terms of foreign policy and defence cooperation, TFUK made sure the level playing field provided the very basis for the TCA negotiations. The EU’s starting point was that the UK should remain aligned with the EU’s regulatory framework. Over the ten months of negotiations, a compromise was reached whereby a free trade agreement focusing on goods only was concluded. It did allow the UK to deviate from the EU’s regulatory framework, but if such deviations were seen to compromise the level playing field, they could be subject to tariff sanctions (Bennett and Vines 2022: 71). The outcome reflects concessions by both sides, but by taking the lead, and focusing the discussion on how to maintain a level playing field, the final agreement ended up closer to the EU’s preferences than those of the UK (Usherwood 2021).

*Hands-Tied Strategy:* Given the distributional nature of some of the key sticking points of the negotiations at Level One, in particular around fish and fishing quotas, there was room for a harder bargaining approach, and the UKTF started to make use of the hands-tied strategy – a strategy it had used sparingly during the withdrawal negotiations. The UK wanted to take control of British waters while continuing to access the EU market, and the EU wanted to maintain as much access as possible to the UK waters. The EU and UK fishing industries had become deeply integrated, with their respective boats fishing in each other’s waters, and the trade in fish and fish products being substantial (Bevington 2020). Consequently, a compromise had to be found. Since the UK negotiators maintained their hard bargaining approach that they adopted already during the withdrawal negotiations, it was a question of ‘take and give’ between two hard bargaining negotiating teams. UKTF referred to its member state principals with coastal communities – France, Denmark, Ireland, the Netherlands, Belgium – and argued that they would never agree to a significant change in the relationship. It stressed how these communities were dependent on access to UK waters, and how they should not be punished because of the UK’s decision to leave the EU. Barnier made it even clearer when he explained that no member state could ever justify a situation where British companies maintain access to the EU market, while EU fishermen are denied access to British waters. He added that in the end, it is the member states that need to ratify the TCA by unanimity (Barnier 2021: 497). Through this hands-tied strategy, the EU negotiators managed to get the UK to significantly soften its initial approach, and a compromise was reached. They agreed to a phased downwards adjustment of the EU’s permitted catch over five and a half years, and to hold annual talks to determine the total allowable catch and quotas for the following year (Usherwood 2021).

*Negotiating Context*

The TCA negotiations were influenced by the structural relationship between the two parties, by the two-level game played by the UK, and by external developments and linkages with the Withdrawal Agreement. Just as in the withdrawal negotiations, the EU had the power asymmetry to its advantage (Hall 2020). It had the stronger economy, and the UK was more dependent on its trade than vice versa. This allowed the UKTF to use bargaining strategies, such as the hands-tied strategy, to great effect.

In terms of the two-level game played by the UK negotiators, it was much easier than during the withdrawal negotiations. The UK government was better prepared and had a clearer vision of what it wanted. It had also gained some experience of what it meant to be at the opposite side of the negotiating table from the EU. In addition, negotiating a free trade agreement was a less divisive matter than negotiating the UK’s departure from the EU. Of course, there were still some internal divisions, not least between the government and the devolved administrations. Scotland, in particular, advocated for continued regulatory alignment, and a relationship as close as possible with the EU. However, despite expressing a commitment to increased consultation with the devolved administrations, the government mainly used its reserved prerogative to act on behalf of the UK as a whole in trade negotiations, and it pursued its own interests of a loser relationship with the EU (Eiser et al 2021). Given the government’s strong parliamentary majority, this was not a risky strategy, and ratification failure was considered unlikely.

As for external developments, the TCA negotiations were conducted in the shadow of the spread of Covid-19. This had an impact on the negotiations and shortened the timeframe even further. Meetings were cancelled, and several negotiating rounds had to be conducted remotely. This delayed the process as progress could not be made as quickly as when negotiating in person (House of Commons 2020). It also further exasperated the frustration about Brexit among many member states. They had already dedicated significant time, resources, and energy to something which was perceived as a self-imposed conflict. Rather than focus more resources and energy on their response to the pandemic, they had to continue the negotiations with the UK to prevent a no-deal scenario (Interview, member states representative, 1/9/2021). In such a scenario there would be no trading arrangements in place once the UK left the single market and the customs union at the end of the transition period.

The negotiations also took place while the Withdrawal Agreement was being implemented, and some of the difficulties in that process affected the dynamics of the TCA negotiations. In the autumn of 2020, the UK published the Internal Market Bill, which would allow Ministers to override parts of the Northern Ireland Protocol of the Withdrawal Agreement. This readiness by the UK to break international law made the EU negotiators question the whole exercise of reaching an international agreement with the UK (Usherwood 2021). In response, the European Council stressed the need for full implementation of the Withdrawal Agreement, and it also asked that the member states and the EU institutions stepped up their preparations for a no-deal scenario (European Council 2020). While the Bill was later changed, this move by the UK affected the general relationship between the two parties (Usherwood 2021), and it caused frustration that the no-deal scenario was put back on the table, with yet more resources and time needed by the member states and the EU institutions to prepare for such an outcome (Interview, member states representative, 1/9/2021).

To conclude, the TCA negotiations took place during most of 2020 against a tight timeframe and under difficult circumstances. They were characterised by more hard bargaining than the withdrawal negotiations, and both sides had to make concessions. For the EU, it was of course disappointing to see the UK leave the single market and the customs union. However, for UKTF, the main aims had been to limit the damage from the UK’s exit, to maintain EU unity and the integrity of the single market, and to discourage others from exiting the EU. From that perspective, the agreement reached on 24 December 2022 was seen as a success.

**Ratification Phase**

Given that the TCA was only agreed on 24 December 2020, there was not enough time for the agreement to be ratified on the EU side by 31 December 2020 when the transition period expired. In order to avoid a no-deal scenario, it was proposed that the TCA should be provisionally applied from 1 January 2021, while the European Parliament and the Council scrutinised and ratified the agreement. As a result, the College of Commissioners met and formally proposed that the member states agreed to the signing of the TCA and its provisional application. The Council agreed to this by written procedure on 29 December 2020. This, in turn, allowed for the agreement to be officially signed by the two sides the following day – the same day that the UK Parliament met in an emergency session to pass the legislation needed to put the TCA into law – and the TCA entered into force provisionally from 1 January 2021.

The Commission and Council had decided to conclude the agreement as an ‘EU-only’ agreement, thus avoiding the long and sometimes unpredictable ratification by parliaments in the 27 member states. The decision about the legal nature of an agreement – whether it should be concluded as a mixed agreement, thus making *both* the EU and the individual member states party to it, or an ‘EU only’ agreement – normally follows detailed legal analysis and lengthy discussions between the Commission and the Council. However, due to the urgency of concluding this agreement to avoid a no-deal scenario, proper discussions about the legal nature of the TCA never took place (Eckes and Leiono-Sandberg 2021). Despite many areas of the agreement falling under shared competence of the EU and the member states, it was argued that the TCA was a unique agreement since it was concluded with a country that had withdrawn from the EU, and as such, it did not necessitate individual member state ratification. This increased the importance of the European Parliament’s consent, as the only directly elected assembly to ratify the agreement on the EU side (Van der Loo and Chamon 2021).

Provisional application of EU trade agreements is not unusual, particularly in cases of mixed agreements. However, in such cases the European Parliament gives its consent *prior* to the provisional application. There were consequently concerns within the European Parliament about the rushed process for the TCA. Yet, given the ‘unique and specific circumstances’ the Conference of Presidents accepted the provisional application ‘to prevent the chaos of a no-deal scenario’ (European Parliament 2020b). But they stressed that this should under no circumstances constitute a precedent (ibid.). The European Parliament was expected to give its consent since it had been fully involved in the process, and as it wanted to avoid a no-deal scenario. Even if the Withdrawal Agreement had been ratified and some of the most pressing issue relating to citizens, money and the Irish border had been resolved, a no-deal scenario in these negotiations would still lead to significant disruption and uncertainty. In the same way as during the withdrawal negotiations, any deal was better than no deal for the European Parliament.

However, when the UK decided to unilaterally extend the grace period for checks on trade between Northern Ireland and the rest of the UK in March 2021, the European Parliament withheld its ratification, which was expected later that month. In several resolutions it had made the correct implementation of the Withdrawal Agreement a precondition for approving the TCA (European Parliament 2020a). The European Parliament thus ‘flexed its muscles’ and demonstrated that its consent cannot be taken for granted (Van der Loo and Chamon 2021). Yet, in the end, the European Parliament approved the agreement on 27 May 2021, by 660 votes in favour, five against, and 32 abstentions (European Parliament 2021). The Council could then conclude the ratification process through its unanimous approval on 29 April 2021, and the TCA entered into force on a permanent basis on 1 May 2021.

**Conclusion**

With the UK’s decision to leave the EU, Article 50 TEU was applied for the first time, and the EU was faced with a new kind of negotiation, with no precedents to rely on. Yet, it was able to draw on its existing negotiating expertise and act quickly to set up new distinct institutional structures to deal with the negotiations. The Article 50 Task Force, which brought together highly trained and experienced Commission officials, was established under the lead of Chief Negotiator Barnier. It was placed within the Commission headquarters to be insulated from specific sectorial interests, as well as separated from the day-to-day business of the EU. Following the success of the withdrawal negotiations, and the need for continuity, these structures were replicated for the TCA negotiations. As for preferences of the Task Force, they quickly emerged around the need to ensure unity within the EU, maintain the integrity of the single market and the customs union, and to minimise the negative consequences that would undeniably follow from Brexit.

The negotiations followed different dynamics from the EU’s other negotiations. First, they were conducted under tight time pressure. The failure to reach agreement within the set timeframe would not result in the continuation of the status quo, but in a dramatic change in the EU-UK relationship with severe consequences for citizens and companies on both sides of the Channel. And since they were conducted between the EU and a former – or soon to be, former – member state, they focused on establishing *less* cooperation between the two parties, and on how to deal with increasing barriers to trade and cooperation between the two parties.

During the negotiations, the Task Force was subject to principal control from the College of Commissioners, the European Council, the Council of the EU, and the European Parliament. The College of Commissioners, the European Council and the Council had appointment and authorisation powers, while all the principals had monitoring and veto powers. Despite its lack of formal authorisation powers, the European Parliament played a significant role from the very beginning, and it was fully involved throughout the process. The monitoring powers of all principals were used extensively through their close engagement with the Task Force. However, rather than trying to escape such close principal control, the Task Force nurtured it. It used its informational advantage and initial agenda-setting powers to anchor its own preferences with the principals. While it listened and took the respective national interests into consideration, it was able to massage the win-set in line with its own preferences through its close engagement with the principals, and by explaining the technical consequences of the UK leaving the customs union and the single market

Since all principals opposed Brexit, it was relatively easy to unite them – in particular the College of Commissioners and the European Parliament, whose preferences converged with those of the Task Force. Initially there were some divergences between the member states based on their bilateral relationship and level of trade with the UK. Yet, by continuously anchoring the message of unity, even those member states which initially advocated for close links with the UK, came to prioritise the unity of the EU and the integrity of the single market over specific commercial interests. Despite expectations to the contrary, this unity among the principals continued even during the TCA negotiations.

In addition to its close engagement with the principals, the Task Force adopted a transparent approach whereby it published all key documents on the Commission website and held regular press conferences. It also shared widely from the negotiations at Level One with the principals. This transparency approach ensured that the principals were well-informed about the negotiations, which in turn contributed to high level of trust in the negotiating agent, and to the unprecedented levels of unity.

During the preparation phase there were no contacts between the EU and the UK in terms of the upcoming withdrawal negotiations. The Task Force left the decision about when to trigger Article 50 TEU entirely with the UK, as it would allow the Task Force to use the tight timeframe of the negotiations strategically once they started. Instead, the Task Force used the preparation phase to consult and engage extensively with its principals, and to prepare the groundwork for the negotiations. To this end, it was fully prepared once Article 50 TEU was triggered, and it could get its negotiating mandate adopted in record time. This gave the Task Force a head start in terms of agenda-setting vis-à-vis the UK, which had less of a clear mandate from *its* domestic constituents.

During the negotiation phase, the Task Force used a number of two-level game-based strategies with good effect, and the final Withdrawal Agreement generally corresponded with its preferences. In particular, the strategic use of time and transparency put the Task Force in an advantageous position vis-à-vis the UK, while it became clear that the hands-tied strategy lacks credibility in a situation where the failure to reach an agreement would result in the UK crashing out of the EU, rather than the continuation of the status quo. In such a situation, even if references are made to hands being tied by the principals, it is unlikely that the principals would reject the final agreement, as any agreement is better than no agreement. As for principal cross-table action, this did not take place during these negotiations. All the principals respected the lead of the Task Force as the EU negotiator, and since it negotiated in line with their preferences, the principals had no reason to intervene in the negotiations.

In terms of context, there was a clear power asymmetry, with the EU being the stronger party. The UK was the *demandeur* of the agreement, and while the EU had no choice but to engage in negotiations in order to ensure an orderly exit, it was unwilling to meet specific British demands. Strategies normally available to weaker parties to compensate for the asymmetry, such as identifying allies in the stronger party, were not available to the UK. There was little sympathy for the UK among the EU’s principals. Brexit had put huge administrative, economic, and political costs on them, and they were unwilling to push any demands by the UK in their domestic negotiations at Level Two. For the EU, these negotiations would constitute a precedent for future withdrawal negotiations – if they were to happen. It was therefore not in its interest to be particularly accommodating to the UK. Instead, it used the negotiations to demonstrate the value of EU membership, making it clear that there could be no privileged status for a former member state.

For the UK, it was difficult to accept the shift from being an influential player within the EU, to one sitting opposite the EU at the negotiating table, with its powers significantly reduced. The UK also had a very difficult game back home. Despite the institutional complexity of the EU, the Task Force thus faced a negotiating partner with a more difficult domestic game.

The TCA negotiations followed much of the same dynamics. It was negotiated under tight time-pressure because of the UK’s decision not to extend the transition period. The unity within the EU remained largely intact. The Task Force was able to act strategically to push through most of its preferences. Yet, during these negotiations, the UK’s domestic game was significantly easier since the government had a strong majority in the House of Commons, and it had gained experience of what it meant to sit at the opposite side of the EU in international negotiations. As a result, it was able to push the EU to make some concessions. Although it was a less far-reaching agreement than many had hoped, a no-deal scenario would have had significant consequences given the high level osf trade and integration between the two parties. Without a deal, the UK would have crashed out of the single market and the customs union, making any deal better than no deal. As a result of this situation, as well as the Task Force’s close engagement with the principals throughout the negotiations, there were never any real fears of ratification failure.

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**Conclusion**

**Abstract**

The EU has engaged extensively in international negotiations over the last 60 years, and it has developed into a powerful and efficient international negotiator. Through its comparative approach, this book provides insights into the role of the EU as an international negotiator in four external policy areas: development, trade, enlargement, and withdrawal – areas which mostly, or entirely, are based on international negotiations, and where the EU has a significant impact. This concluding chapter summarises the main findings by focusing on the role of the EU negotiators and their preferences, agent power resources, and strategies – both domestically and internationally, as well as on how they are constrained by the control of their principals and the broader context of the international negotiations.

**Introduction**

The EU has engaged extensively in international negotiations over the last 60 years, and it has developed into a powerful and efficient negotiator. Through its novel approach of comparing four external policy areas, which are mostly or entirely based on international negotiations, and where the EU has a significant impact – development, trade, enlargement, and withdrawal – this book provides insights into the role of the EU as an international negotiator. It demonstrates how the EU’s international negotiations have developed over time. The specific case studies – the development negotiations between the EU and the OACPS, the trade negotiations between the EU and Japan, the enlargement negotiations between the EU and the Western Balkans, and the withdrawal (and future relationship) negotiations between the EU and the UK – highlight current features and dynamics of the EU’s international negotiations. Although far-reaching generalisations cannot be drawn from specific case studies, the comparative approach helps to identify similarities and differences across policy areas, as well as established practices and new emerging trends in EU international negotiations. The book offers a comprehensive picture of the EU as an international negotiator, and the constraints and opportunities it is facing in different contexts. It should be noted that the focus is on the role of the EU in bilateral negotiations. In multilateral negotiations slightly different dynamics are at play since there is greater complexity and more variation in terms of who represents the EU at the international negotiating table.

One of the main contributions of the book is its analytical focus on the EU negotiators. Concentrating on the officials who negotiate on behalf of the EU allows for the unpacking of the complex dynamics both within the EU, and between the EU and its international negotiating partners. Using two-level game and principal-agent analysis, each case study identifies who the EU negotiators are, and where within the EU’s institutional structures they are based. The analysis moves away from the traditional approach of treating the Commission as a whole as the negotiating agent of the EU. Instead, it treats the specific negotiating teams, mainly composed of Commission officials, as agents, which have been delegated the task of negotiating on behalf of their principals. The shift in analytical focus from the Commission to the actual negotiators allows for a nuanced analysis of the agent preferences. It also increases the number of principals, since the College of Commissioners – in addition to the Council, the European Council, and the European Parliament – also fills the function of a principal. It thus provides a more accurate reflection of the negotiating dynamics at play when EU negotiators engage in international negotiations. In addition, the shift provides for a more detailed analysis of the interactions at the international negotiating table where the EU negotiators engage with their international counterparts.

This concluding section summarises and compares the main findings of the four case studies, focusing on the EU negotiators and their agent power resources, the principals and their control mechanisms, the two-level game strategies adopted by the EU negotiators and the principals, and the context of the international negotiations.

**The EU’s Negotiating Agent**

For each negotiation, a specific Task Force or Negotiating Team was appointed to lead on the negotiations on behalf of the EU. The teams were based within different DGs – DG DEVCO (now DG INTPA), DG TRADE, and DG NEAR, apart from the Article 50 Task Force and the subsequent UKTF, which were based in the Berlaymont, the headquarters of the European Commission. Each team was made up of highly trained professionals with extensive expertise and significant experience of conducting negotiations. They had a thorough understanding of the complexities of the internal decision-making processes within the EU, as well as technical policy-specific expertise. They were consequently well equipped to navigate the two-level game.

In terms of preferences, the EU negotiators had strong motivations to successfully reach a deal with their external negotiating partners, thus fulfilling the task that had been delegated to them. However, they also wanted the deal to reflect their own preferences. Based on functional logic, the EU negotiators championed interests linked to the sectorial brief of their respective DG. For the DG NEAR Teams and the Post-Cotonou Task Force, this meant that they often sided with the external negotiating partner of the EU (the Western Balkans and the OACPS respectively) in line with the pro-enlargement approach of DG NEAR, and the development focused approach of DG DEVCO stemming from its long-standing relationship with the ACP countries. The EU negotiators were seen as allies of their negotiating partners, whose case they often pushed in the domestic negotiations within the EU at Level Two. The preferences of the Negotiating Team leading the negotiations with Japan were in favour of extensive trade liberalisation in line with the pro-liberalisation approach of DG TRADE. As for the preferences of the Article 50 Task Force and UKTF, they could not be attributed to the sectorial interests of a DG. The decision to place the Task Force within the European Commission headquarters, both during the withdrawal negotiations and the subsequent negotiations on the future relationship, had been taken precisely to avoid specific sectorial interests dominating the process. Instead, the agent preferences quickly converged around maintaining the unity of the EU and the integrity of the single market.

Having the EU negotiators firmly based within the administrative structures of the Commission, with officials at Director-level providing the roles of Chief Negotiator or main lead for the negotiations, ensured permanency, continuity, and a strong institutional memory to rely on for the EU negotiators. This put them in an advantageous position vis-à-vis many of their principals, which changed with regular electoral cycles, or rotating schemes of national ministries. Of course, the aim of shielding EU negotiators from electoral cycles was the very purpose of the initial delegation structures within in the EU, when the task of conducting international negotiations was delegated to the Commission. With the strengthening of the institutional capacities over time, the development of sectorial experience and expertise, and the extensive array of past negotiations that can be used as precedents, much of the EU’s negotiating power is now firmly anchored within the administrative structures of the Commission. Even when the EU had no previous institutional structures in place, as for the Brexit negotiations, existing resources across the DGs were drawn upon to quickly set up a smooth and well-functioning negotiating structure. Once this structure was established, it remained in place for the second phase of the negotiations on the TCA. While the natural home for such negotiations would have been DG TRADE, it was decided to keep the established structures for the very purpose of maintaining continuity.

Given this institutional power of the administrative DGs, it has proved difficult for the EEAS to gain ground in the four policy areas explored. While closely involved in some of the negotiations (development and enlargement), the EEAS never adopted a leading role. There was a clear recognition among the EEAS officials that the negotiating lead was with the DGs, as that’s where the resources, capacities, experience, and institutional memory lie. Even when there were expectations that the EEAS would take a lead, as during the preparation phase of the EU-OACPS negotiations, this never materialised. Despite the aim of providing a more streamlined EU external approach through greater involvement by the EEAS in all external policy areas, the balance of power still lies firmly with the Commission and its DGs in these specific policy areas where the EU has a significant international impact.

**Principal Control**

By placing the focus on the Negotiating Teams, it becomes clear that they were linked to three, and sometimes four, main sets of principals: the College of Commissioners, the Council, the European Council, and the European Parliament. As these principals all have ratification powers, the EU negotiators spent a significant amount of time engaging with them both during the preparation phase, when they had to identify the initial contours of the win-set, and during the negotiation phase, when they had to keep the principals on board to avoid ratification failure at the very end of the process.

Through its appointment, authorisation, monitoring, and ratification powers, the College of Commissioners was involved in all four negotiations and provided the overall political oversight. The Commissioners responsible for the portfolios relating to each negotiation – the Commissioners for International Partnerships, Trade, and Neighbourhood and Enlargement – provided the direct political oversight of their respective negotiators. In the case of the withdrawal negotiations, since there were no existing institutional structures in place, and no Commissioner with withdrawal as part of their portfolio, the Commission President took the lead and appointed and established the Negotiating Team and the supporting structures within the Commission headquarters under his direct authority. The President provided the team with strict reporting requirements to himself, as well as the College as a whole.

Throughout the negotiations, the EU negotiators continuously reported to the College, most often through the Cabinet of the Commissioner providing the direct political oversight of the negotiators. The EU negotiators also liaised closely with the other DGs, either via inter-service consultations, or by having them directly involved at Level One, negotiating the specific details of chapters or sections falling within their sectorial areas of responsibility. As a result of this inter-service engagement, many of the sector-based differences or conflicts were solved before reaching the level of the College. However, since all decisions are taken by consensus in the College, there were still a number of vivid discussions between the Commissioners, before compromises were reached.

The Council also had appointment, authorisation, monitoring, and ratification powers, and the member states were actively engaged in all four sets of negotiations. The EU negotiators reported to the relevant Council working parties – the ACP Working Party, the Trade Policy Committee, COELA, and the Ad Hoc Working Party on Article 50 / Working Party on the UK – as well as COREPER on a regular basis. The unity in the Council was surprisingly high in both the trade and the withdrawal negotiations. While the EU negotiators initially had to work hard to convince the member states about the advantages of a future trade agreement with Japan, the member states later rallied around the market access opportunities offered by the agreement. The defensive interests in the area of cars and automotives could be balanced against market access opportunities for agriculture. In the withdrawal negotiations, the member states were clearly united in their desire to minimise the negative consequences resulting from Brexit. Yet, given their varying levels of dependency on UK trade, and their different political and cultural ties with the UK, the unity among the member states did not happen automatically. Instead, it was the result of close engagement between the EU negotiators and the member states, where the former used their informational advantage to shape the preferences of the latter.

However, in the areas of development and enlargement, the member states had widely diverging preferences. In development, they differed in their views on whether to maintain the EU-OACPS relationship at all, and also on how to deal with some of the political issues featuring in the negotiations, in particular migration. In terms of maintaining the EU-OACPS relationship, the EU negotiators used their agenda-setting powers, as well as the support from the OACPS, to push for a continuation of the relationship in line with their own preferences. While the EU negotiators managed to identify compromises on the political issues that divided the member states, they had to spend a significant amount of time negotiating in the Council. These divisions at Level Two often constrained the EU negotiators when negotiating with the OACPS at Level One. In enlargement, there are also significant preference divergences between the member states. Since all decisions are based on unanimity, and the process includes numerous authorisation and veto opportunities – which the member states have not shied away from using – the autonomy of the EU negotiators has been significantly reduced. In response, the EU negotiators are now seeking to involve the member states more closely in the actual negotiations at Level One to give them a clearer grasp of the situation on the ground, as well as greater understanding of the candidates. While this limits the autonomy of the DG NEAR Teams, the strategy is aimed at reducing the risks of authorisation and ratification failures. More veto points have also been introduced in the accession process through additional benchmarks that have to be met by the candidate countries. The argument is that it should be easier to find unanimous support around benchmarks focusing on specific and less extensive areas if member states know that there are additional authorisation and veto points further down the line. This way, the DG NEAR Teams hope to make it easier to reach agreement at Level Two, and to re-inject some momentum in the enlargement process.

In terms of the Council dynamics, it is interesting to note that the member state holding the rotating Presidency did not play a significant role. Only in the enlargement negotiations was it seen to be able to exert some influence due to its formal role of chairing the IGCs and speaking on behalf of the member states. In trade negotiations, the Presidency chairs all the Council meetings – from the TPC to the Foreign Affairs Council (Trade) - but the general view among those involved in the process was that trade negotiations have their own momentum, and that there is only so much the Presidency can do to influence the process. This view was echoed by those involved in the development negotiations. Even if the member states had fought to keep the ACP working party under the lead of the Council Presidency, rather than the EEAS, it was clear that each Presidency consulted closely with, and followed the advice of, the Task Force on agenda items and on where progress was needed in upcoming meetings in the Council. And in the withdrawal negotiations the Presidency played no role at all, since a permanent Chair was established for both the ad hoc Working Party on Article 50 and the subsequent Working Party on the UK, in order to ensure continuity.

In the areas of enlargement and withdrawal, the European Council offered member states an additional layer of control. Both Articles 49 and 50 TEU explicitly provide the European Council with powers. For enlargement, it agrees on the accession conditions, and for withdrawal, it sets the guidelines for the negotiations and decides on any extensions of the Article 50 process. The European Council was particularly active in the withdrawal negotiations where it held numerous extra meetings outside of its normal calendar to stay fully briefed and to provide guidance to the EU negotiators on how to proceed.

The European Parliament has become increasingly involved in international negotiations. Through its informal authorisation, monitoring, and ratification powers, it influenced all the negotiations on several occasions. For example, it used the threat of veto in the negotiations with both Japan and the OACPS to obtain significant changes in the final agreement. It also made use of a veto threat following the conclusion of the TCA between the EU and the UK, but given the nature of those negotiations, where any agreement was better than no agreement, it was less credible. The cases illustrate how the Parliament has flexed its muscles, and how it now exercises effective principal control over the EU negotiators. Overall, the preferences of the European Parliament often converge with those of the EU negotiators. Where they differ, it is more about ambition than any fundamental differences. Yet, given its veto powers, and the fact that it does not shy away from using them, the EU negotiators now work closely with the European Parliament throughout the negotiation process. Enlargement is the one area where the Parliament still lags behind the other principals, in particular the member states, in terms of influence over the domestic discussions at Level Two. Its ability to control the process is significantly reduced by the continuous authorisation and veto powers of the member states. These contrast with the parliamentary veto powers, which only cast a very weak shadow over the accession process, since they can only be used at the very end of a long process.

To conclude, with three, and sometimes four, sets of principals, the EU negotiators spent a significant amount of time at the domestic game in all four negotiations. The negotiators were well aware of the need to keep their principals closely involved and engaged throughout the negotiations, both to ease the ratification process, but also as a way of anchoring their own preferences with the principals.

**Strategies**

Before initiating the international negotiations, the EU negotiators often engaged closely with their future negotiating partner during the preparation phase, exploring shared interests and priorities. Through this engagement, the EU negotiators built close relationships and prepared the ground for the upcoming negotiations. In the trade negotiations with Japan, this took place through the standard praxis of a scoping process, where the two parties jointly evaluated the preferred nature of the agreement to regulate their future relationship. In enlargement, the EU had worked closely with the candidates through the Stabilisation and Association Agreements, and by providing financial assistance to support the reform process needed to meet the accession criteria. In development, the parties knew each other well through their long history of negotiated agreements, and they were well aware of each other’s preferences regarding the nature of the future agreement. The deviant case was the Brexit negotiations, where, while the parties knew each other well after the UK’s more than 40 years of membership, they did not engage in any preparatory discussions about the exit agreement to be negotiated. Given the tight timeframe of these negotiations, this was a strategic choice by the EU negotiators. It meant they were able to use time pressure strategically once the negotiations started.

Once the international negotiations started at Level One, the EU negotiators employed a number of two-level game-based strategies, including agenda-setting, issue-linkages, collusion, hands-tide strategies, transparency provisions, timing strategies, and principal involvement. The way in which the strategies were used, and if they were used at all, depended on the nature of the different negotiations.

*Agenda-Setting:* While the negotiating partners were the *demandeurs* of all the agreements, apart from the development agreement, where there was a shared objective to continue the institutionalised relationship between the EU and the ACPs, the EU negotiators took the lead in terms of agenda-setting in all negotiations. Through their extensive preparatory work at Level Two – facilitated by the expertise, experience, capacity, and institutional memory within the DGs – the EU negotiators were able to steer the process at Level One. In the cases of the development and withdrawal negotiations, the EU negotiators had a head-start through detailed mandates and a clear position in terms of the structure of the future agreements. In the development negotiations, the EU negotiators quickly anchored the idea of negotiating an overall umbrella agreement and three regional protocols with the OACPS. In the withdrawal negotiations, the EU negotiators insisted that the issues that were important to the EU were agreed upon before discussions on the future relationship began. Given the tight timeframe, and the lack of opposing proposals from the UK, the latter had no choice but to agree to this structure. In enlargement, the whole agenda is set by the EU through conditionality and the need to fully align with the *acquis.* Accession negotiations are by their very nature an adaptation process to the EU’s agenda. In trade, the structure of the future agreement was a result of joint assessments and decisions. However, in terms of the detailed textual proposals, the EU negotiations were often the first to put theirs on the table.

*Issue-Linkages:* Issue-linkage is a common strategy in all negotiations involving more than one issue, and it was most clearly adopted in the trade negotiations with Japan. The wide range of issues and the mixture of defensive and offensive interests on both sides on the negotiating table allowed the negotiators to identify linkages that would lead to an overall balance in terms of gains and concessions between the EU and Japan at Level One, but also between their respective domestic constituents at Level Two. The issue-linkage was facilitated as there were relatively high levels of collusion between the two negotiating parties.

*Collusion:* Given the close relationship that had been cultivated during the preparation phase, there was strong collusion between the EU negotiators and their counterparts during the Level One negotiations in the areas of trade, development, and enlargement. The parties worked closely together, identifying ways in which they could help each other overcome their respective domestic difficulties at Level Two. By having a full understanding of all the preferences and issues on both sides of the table, the negotiators were also able to identify issue-linkages that would bring their principals on board. However, such strategies were not employed in the case of withdrawal, as there was less of a shared purpose between the negotiators. While both wanted to minimise the negative consequences of Brexit, they differed in their views of how this was best done. There was also a sense that the domestic difficulties on the UK side were of their own doing, and as a result, the EU negotiators were less inclined to support their counterparts in overcoming them.

*Hands-Tied Strategy:* This strategy was used relatively sparingly by the EU negotiators. With three, and sometimes four, sets of principals, it was clear that the hands of the EU negotiators were tightly tied at Level Two. Given the high levels of transparency within the EU, this was also evident to the EU’s partners at Level One, without the EU negotiators having to make specific use of this strategy. With the high levels of collusion between the parties in the areas of development, trade, and enlargement, the focus was rather on how to overcome domestic obstacles and untie each other’s hands. However, in the negotiations of the Trade and Cooperation Agreement, the EU negotiators did refer to how the member states with coastal communities would never accept the demands made by the UK in terms of reduced access to UK waters for EU fishing boats. Yet, overall, the strategy was not used very often in the negotiations with the UK either. In negotiations where any deal is better than no deal, the hands-tied simply strategy lacks credibility.

*Transparency Provision:* The EU negotiators adopted a transparent approach in all negotiations. Such an approach was seen as conducive for reaching agreement at the international level. Many of the issues under discussion were of an integrative, rather than distributive, nature, and consequently there was no bottom line that needed hiding. This was clearly the case in the development negotiations, where most of the discussions focused on political matters. Given the convergence of preferences between the negotiating parties, transparency also helped the parties push each other’s case with their own principals at Level Two. In enlargement, the process is fully transparent, as it is clear what the outcome needs to look like – full alignment with the *acquis*. All reports are published by the EU negotiators, and they are used strategically to send messages both to the candidates at Level One and to the principals at Level Two. In this process, the EU negotiators have to finely balance their dual roles of allies and critics of the candidates. As allies, they recognise the positive progress made in the candidate countries to keep the candidates engaged and motivated to continue the reform process, and to convince the principals within the EU that the technical and financial support provided by the EU is having an impact, and that the candidates are ready to move to the next stage in the negotiation process. As critics, they identify areas where progress has been lacking to provide guidance to the candidates on what to prioritise as they move forward, and to demonstrate to the principals that the EU negotiators are engaged in careful monitoring, and that they would not recommend progress in the accession process prematurely. Even in the trade negotiations, where many of the issues discussed were of a distributive nature, there were generally high levels of transparency. This was partly a result of the negotiations taking place in the shadow of the TTIP and CETA negotiations, which had been criticised for their lack of transparency. Finally, the withdrawal negotiations took place under ‘unprecedented levels of transparency’. This gave the EU negotiators an advantage vis-à-vis their UK counterparts, as it ‘forced’ the UK to respond to many of the EU’s internal documents that were made publicly available. It also made the EU negotiators the first point-of-call for the media, allowing them to control much of the narrative around the negotiations. In addition, extensive transparency provisions were seen as an effective way of building unity domestically in the EU.

*Timing Strategy:* International negotiations may be shaped by the EU’s domestic political calendar. The EU negotiators can use this strategically by identifying specific meetings of their principals at Level Two as milestones by which certain agreements have to be reached at Level One. This strategy was frequently used in the withdrawal negotiations, where the EU negotiators used the European Council meetings, which normally take place every three months, to put pressure on the UK to make progress in the negotiations at Level One. The withdrawal negotiations also offered additional opportunities to use time strategically, given their unusual feature of the being conducted under tight legal time pressure. Since an agreement had to be reached within the set time frame of two years to avoid the UK leaving the EU without a deal – a situation that would lead to serious disruption within both parties – the EU negotiators were able to insist on a phased approach in the negotiations. This implied that sufficient progress had to be made on the withdrawal issues that were key to the EU, before negotiations could move onto the future EU-UK relationship. Since the UK was concerned about the future relationship and wanted to leave as much time as possible in the negotiations to discuss this, the British negotiators had little choice but to follow the EU’s proposal for a phased approach, and to relatively quickly agree to the withdrawal issues pushed by the EU negotiators.

*Principal Involvement:* The strategic use of principal involvement in the international negotiations at Level One was used in the trade and enlargement negotiations. In the trade negotiations, the strategy was employed (albeit very sparingly) to push the final outcome in a direction that was desired by the EU negotiators. The intervention of the Agriculture Commissioner during the endgame resulted in a number of final concessions and compromises in the area of agriculture, leading to greater liberalisation overall. This trans-governmental engagement took place in coordination with the EU negotiators, who recognised that the Agriculture Commissioner could obtain results where they had been unable to. In the enlargement negotiations, the strategy was used as a way of trying to reduce the number of authorisation failures caused by the member states. The rationale behind the strategy, which was introduced with the revised enlargement methodology, was that closer involvement of the member state principals in the negotiations at Level One would lead to greater understanding of the situation on the ground, as well as an increased sense of responsibility towards the candidates. Rather than trying to escape the control of the principals, the EU negotiators asked them to be more invested in the process. This in turn, it was hoped, would reduce the risks of principals refusing authorisation of the opening of new chapters for reasons not directly related to the accession process. The strategy of involving principals was not used in the cases of development and withdrawal, as the EU negotiators were successful in pushing through their preferences, and there were no fears of ratification failure (although ratification of the EU-OACPS Agreement turned out to be more difficult than expected with the Hungarian veto in place at the time of writing). After all, negotiators prefer negotiating without having their principals at the table at Level One. However, having them there, is a price worth paying to reduce the risk of principal vetoes.

*Principal Cross-Table Engagement:* Strategic action at Level One is not limited to the negotiators, and principals may also intervene directly in the international negotiations. However, such cross-table engagement was adopted sparingly in the four case studies. Generally, there were high levels of trust in the EU negotiators, and the principals were clear that it was the EU negotiators who conducted the negotiations on their behalf, and they did not want to get involved in the very task that they have delegated to the EU negotiators.

Yet, there were occasions when the European Parliament – which does not have the same delegatory relationship with the EU negotiators as the other principals – engaged directly with the negotiators on the other side of the table. For example, when the Parliament was concerned that the EU negotiators did not push its preferences on ambitious TSD provisions hard enough vis-à-vis Japan, it intervened in the international negotiations through cross-level engagement to obtain concessions from the Japanese negotiators. Rather than remaining at Level Two and continue to channel its influence through the EU negotiations, the Parliament by-passed the latter to engage directly with the EU’s negotiating partner at Level One. However, given the generally strong preference convergence between the European Parliament and the EU Negotiators, this did not significantly compromise the role of the latter. Regarding TSD, it was a question of different ambition rather than fundamental differences. In addition, the European Parliament liaised closely with the EU Negotiators before, during, and after its cross-level engagement with Japan, and its actions consequently followed a supportive logic.

The European Parliament also engaged in trans-national action during the development, enlargement, and trade negotiations. The ACP-EU Joint Parliamentary Assembly, as well as the EU-Serbia and EU-Montenegro Stabilisation and Association Parliamentary Committees, served as fora through which MEPs and their parliamentary counterparts discussed the on-going negotiations, and issued joint statements and recommendations for the negotiators. And in the trade negotiations with Japan, the parliamentary Delegation for Relations with Japan took an active interest in the negotiations, and its members engaged regularly with their counterparts in the Japanese Diet. Given that there were no joint EU-UK parliamentary structures in place at the time of the withdrawal negotiations, there was limited trans-national engagement between the European Parliament and the UK Parliament. However, with the TCA, an EU-UK Parliamentary Partnership Assembly has now been established, and consequently there might be greater trans-national engagement by the two parliaments in future EU-UK negotiations.

**Negotiating Context**

Apart from the symmetrical negotiations with Japan, all negotiations reflected asymmetrical relationships, with the power leaning heavily towards the EU, as the economically stronger party. Given the market size and economic weight of the EU, this is the case in most of its bilateral negotiations. However, in the development negotiations, the OACPS used strategies to compensate for their relative weakness. In addition to negotiating as a group of 79, they identified allies within the EU, in particular the European Parliament, and referred to the moral responsibility of the EU to provide support and maintain the close relationship. In the enlargement negotiations, the candidates could also rely on the support of allies within the EU. However, it has become harder to refer to the moral responsibility of the EU, with prevailing concerns about the EU’s integration capacity. And joining forces with others is not necessarily an advantage in accession negotiations, as it might slow down the accession process overall. In the withdrawal negotiations, the UK did not perceive of the relationship as being asymmetrical. It had difficulties adapting to the shift from being one of the most influential member states within the EU, to being the weaker party. As a result, it did not try to compensate for its weakness, but relied instead on hard bargaining strategies that are normally reserved for the stronger party.

The EU negotiators generally also have an advantage vis-à-vis their negotiating partners since they most often have been in post for a considerable time, having gained extensive experience of negotiations within the context of their specific DG. Their counterparts, on the other hand, are normally subject to greater political influence and change, since they come from national ministries where there is a regular rotation of diplomats and civil servants between posts.

As for the two-level game played on the other side of the table, the four cases challenge the view that it is always the EU negotiators who face the most difficult game domestically, and as a result, make their negotiating partners wait. Granted, the institutional complexity on the EU side is striking, and the EU negotiators sometimes spent more time negotiating with their principals than with their negotiating partners. However, in the development negotiations, the OACPS negotiators had to coordinate with 79 countries. And as ambassadors, they had limited negotiating autonomy, making them less flexible at the negotiating table. They had to continuously engage in domestic consultations at ministerial level, which delayed the game at Level One. In the trade negotiations, the structures on the Japanese side were more streamlined than on the EU side. However, due to the nature of the negotiations, which required significant domestic reforms and buy-in from the Japanese regulators to tackle the NTMs, the Japanese negotiators had a difficult domestic game, which at times led to delays at Level One. In the withdrawal negotiations, the most difficult game was clearly on the UK side, with widely diverging preferences among the domestic constituents, limited experience of negotiations, and a tumultuous political situation. This in turn, led to significant delays at Level One, with the UK having to ask for three extensions to the Article 50 process. In the enlargement negotiations, the candidates are faced with a challenging game as accession requires significant domestic reforms and full alignment with the *acquis.* However, in these negotiations, the EU negotiators are also facing an increasingly difficult game as a result of the numerous authorisation and veto opportunities in the enlargement process, and the predisposition of the member states to use them.

In terms of the broader context, the EU’s relative power is declining, and some of its values are being challenged. The trade negotiations with Japan took place against the backdrop of the US withdrawal from the TPP and TTIP negotiations, as well as Brexit, which both provided momentum and speed to the EPA negotiations, as the EU and Japan were keen to show their shared commitment to cooperation and free trade. The development negotiations between the EU and the OACPS were conducted in the context of the changing balance of power in the international system, and the parties saw the strengthening of their relationship as a way of consolidating an alliance that would help both of them gain decisive influence in multilateral fora. The enlargement negotiations also take place in a context that should be conducive to further accessions, as other powers are exerting increasing influence over the Western Balkan region. However, despite the best efforts of the EU negotiators, the enlargement negotiations are dragging. As long as progress can be blocked by principals for reasons unrelated to the set accession criteria, it will be difficult for the EU negotiators to push through any sense of geopolitical urgency. It remains to be seen whether the recent applications and the provision of candidate status to Ukraine and Moldova will inject renewed energy in the enlargement process. Finally, Brexit was seen as a product of a broader trend of populism and Euroscepticism, and there were fears that other member states would follow the UK. However, through a successful negotiation, which aimed at demonstrating the value of membership, support for the EU has increased across the member states. The need to prepare for future withdrawal negotiations consequently seems to have disappeared, for now.

**Final Reflections on the EU in International Negotiations**

Negotiations are part of the EU’s DNA. The EU is itself based on a complex system of negotiations, with all EU decisions and actions being the result of negotiated compromises, and much of its external engagement is conducted through negotiations. Over time, the EU’s external negotiating capacities have expanded, and today the EU negotiating teams consist of highly trained, skilled, and experienced officials, who are able to successfully navigate the complexities of international negotiations, making the EU into an effective, strategic, and constructive negotiator.

The two-level game approach with its analytical focus on these negotiating teams as the link between the domestic and international negotiations provides a helpful tool to understand how these teams operate, and the dynamics at play, both domestically and internationally. Domestically, the negotiations are becoming more complex due to an increasing number of domestic constituents, or principals, and greater politicisation of many of the EU’s external policy areas, which in turn has led to greater preference divergence between and within the principals. The EU negotiating teams, as agents, have to continuously engage with the College of Commissioners, the Council (and sometimes the European Council), and the European Parliament, which are able to exercise principal control over the negotiating teams through their various appointment, authorisation, monitoring, and ratification powers. While this control may restrict the autonomy of the EU negotiating teams, the latter often use this engagement to anchor their own sector-based preferences with the principals. In addition, they see the development of close, effective, and transparent channels of engagement with all their principals at Level Two as a way of increasing the chances of success at Level One. As a result, rather than trying to escape principal control, the negotiating teams now often reach out proactively to the principals, and in most areas a constructive relationship has developed between them and their principals.

Internationally, the EU negotiating teams are facing increasingly powerful negotiating partners, whose strategies and domestic negotiations clearly also impact on the Level One negotiations. For the EU negotiating teams, negotiations reflect a two-way process where any international agreement is the result of compromises reached between themselves and their international counterparts. While they act strategically to push through their own preferences as far as possible – and most often do so successfully – they are also pressured by their negotiating partners to make compromises to reach an international agreement – something which is in both parties’ interest. The outcome of the EU’s international negotiations is thus not solely dependent on the performance and strategic action of the EU negotiating teams, but also on the behaviour and strategies of their negotiating partners. The latter are also involved in a two-level game where they must ensure support for the international agreement from *their* principals. Indeed, at the international negotiating table the EU negotiating teams are often faced with negotiators who have an equally – and sometimes more – difficult domestic game to play on their side. Despite its institutional complexity, the EU has a well-developed and efficient negotiating machinery that kicks into gear when new negotiations are initiated. This challenges the view that it is always the EU that is the more difficult negotiator, and that it constantly adopts a rigid and inflexible approach, as a result of the many principals within the EU.

In terms of future research, analyses of the EU in international negotiations would benefit from greater focus on these dynamics at the international level, and how they are affected by domestic constraints and politics in the EU’s negotiating partners. There has been a disproportionate focus on the EU’s domestic dynamics during its international negotiations, and there are surprisingly few joint studies that bring together experts on EU negotiations with experts on the EU’s negotiating partners. International negotiations should provide fertile ground for joint research projects, with scholars analysing the process from the negotiating parties’ different perspectives. Since bilateral negotiations themselves are a two-way process, the academic literature on the EU in international negotiations would be enriched by such collaborative approaches.

**Appendix 1**

**Interviews**

**Chapter on Development Negotiations: 13 interviews**

DG DEVCO Commission officials: 1/9/2021 x 2

DG DEVCO Commission official: 3/9/2021 x 3

DG DEVCO Commission officials: 23/9/2021 x 3

EEAS official 1/9/2021

Member state representative: 2/9/2022 x 2

MEP: 1/9/2021

ACP Secretariat official: 22/9/2021

**Chapter on Trade Negotiations: 13 interviews**

DG TRADE Commission officials: 21/6/2017 x 2

DG TRADE Commission officials: 9/1/2018 x 3

DG TRADE Commission officials: 10/1/2018 x 2

Member state representative: 21/7/2017

Member state representative: 9/1/2018

MEP: 10/1/2018

European Parliament official: 11/1/2018

European Parliament official: 21/6/2018

Japanese representative: 29/9/2022

**Chapter on Enlargement Negotiations: 14 interviews**

DG NEAR Commission officials: 9/7/2019 x 2

DG NEAR Commission officials: 10/7/2019 x 2

DG NEAR Commission officials: 11/7/2019 x 2

DG NEAR Commission official: 1/9/2022

EEAS official: 30/7/2019

Member state representative: 10/7/2019

MEP: 11/4/2022

Candidate country representatives: 8/4/2022 x 4

**Chapter on Withdrawal Negotiations: 8 interviews**

Member state representatives: 13/7/2017 x 2

Member state representatives: 10/1/2018 x 2

Member state representatives: 4/3/2019 x 2

Member state representative: 1/9/2021

European Parliament official: 20/11/2018

1. The OACPS was formed in 2020 as part of a review of the Georgetown Agreement, which had established the African, Caribbean and Pacific (ACP) group in 1975. Given that the group was still referred to as ACP during most of the negotiations, this term will be used throughout this chapter, unless referring specifically to the new EU-OACPS Agreement. [↑](#footnote-ref-1)
2. The DG responsible for Development has changed composition and names several times (DG VIII/DG Development, DG International Cooperation and Development/DG DEVCO, DG International Partnerships/DG INTPA). It is referred to as DG DEVCO in this chapter up until 2021 when it became DG INTPA. [↑](#footnote-ref-2)
3. The exception was the EPA negotiations referred to above, where the lead was with DG TRADE. [↑](#footnote-ref-3)
4. The title of Commissioner for International Partnership will be used throughout this chapter, unless specifically referring to the Commissioner for International Cooperation and Development, Neven Mimica, who was replaced by Commissioner for International Partnerships, Jutta Urpilainen, in December 2019. [↑](#footnote-ref-4)
5. An exception was the negotiations with South Africa that led to the Trade, Development, and Cooperation Agreement in 1999, where the Task Force was based in DG VIII (Development). [↑](#footnote-ref-5)
6. An exception to this process is the ACP Working Party, which is chaired by the Council Presidency (see chapter 3). [↑](#footnote-ref-6)
7. The EU-UK TCA was later adopted by an even higher majority (See Chapter 6). [↑](#footnote-ref-7)
8. While the terms ‘applicants’ and ‘candidates’ are often used interchangeably, officially a country changes from being an ‘applicant’ to a ‘candidate’ once the Council has agreed unanimously to accept its application. [↑](#footnote-ref-8)
9. The term DG NEAR is used throughout, although it was named DG Enlargement up until 2015. [↑](#footnote-ref-9)
10. Unlike other countries joining the EU, the UK did not hold a referendum before its accession in 1973. [↑](#footnote-ref-10)
11. However, in certain member states, in particular Ireland which would be severely affected by Brexit, extensive contingency planning had taken place (Interview, member state representative, 10/1/2018). [↑](#footnote-ref-11)