

# Dealing with the twists and turns of the EU negotiation process – Part 2 of 2

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Blog 3, part 2 of 2, of the series ‘Possible impacts of the current pandemic on international negotiation processes’.

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*Last time, in part 1, we looked at how the EU decision-making mechanism works and how the institutions themselves can use it to further their own interests. Join us as we dive further down the rabbit hole of EU negotiations and illustrate some of the other characteristics unique to Brussels negotiations...*

## Multi, multi, multi

As we discussed last week, the institutions themselves are vested stakeholders in the EU negotiation process. Sitting alongside them you will find people from each of the 27 Member States representing the citizens (in the Parliament), the EU as a whole (in the Commission) and the national administrations (in the Council of the European Union). These negotiations can involve different players up and down the hierarchical chain of command in the EU, and also in each of the Member States.

To summarise, you have **multilevel** and **multilateral** discussions, taking place in a **multicultural** environment.

In practical terms this means there will be many different people, with many different backgrounds and many different cultural norms at the negotiating table. You will not only have to

be aware of the formal rules (e.g. the official rules of procedure) but also the informal ones. This includes cultural codes which may not be so clear-cut. In the EU you may encounter both cultural codes specific to the Member States and cultural codes of the institutions, alongside the cultural codes that have developed within the entity of the EU itself.

In EU negotiations the impact of the multicultural environment manifests in the form of the national experience, which influences different stakeholders around the table. Developments in the political sphere back home may shape how a stakeholder engages with a discussion.

The Dutch Prime Minister, Mark Rutte, found he was in line with the national mood back home as he pushed back against the idea of relaxing debt deficit rules as part of the post-Covid recovery package. Mr Rutte and his ‘Frugal Four’ colleagues from Austria, Denmark and Sweden had opposed the Commission’s proposal to include grants in the Covid recovery fund (as was suggested by Germany and France). There was a strong division among Member States in the European Council as to how they should proceed. This division threatened the overall MFF and Covid Recovery Package negotiations as the Member States were polarized on this issue, which required unanimity.

Rutte’s role as the defender against reckless spending resonated with the Dutch public, which was beneficial to Rutte in the run-up to the general election in 2021. We can only speculate as to how this debate may have unfolded if the Dutch parliamentary elections were not on the horizon. All the same it is an interesting case to note as it illustrates the different facets which can influence EU negotiations.

These multilateral, multicultural discussions have another ‘multi’ characteristic, in that they

are also **multidisciplinary**.

The EU does not work in only one thematic area. This means that a meeting agenda may cover a variety of unrelated topics. Consider this agenda from a European Parliament sitting or this COREPER I meeting.

Although each individual agenda item may not be of relevance to all of the individual stakeholders, there is the potential for a unique negotiation strategy. Horse-trading – or the selling of support for one issue in exchange for reciprocal support on another – is not uncommon in the EU sphere, especially in the upper levels of the institutions. For negotiators this means you will have to switch your focus from the immediate dossier on the table and consider what else is going on in terms of the current agenda, and what other items are coming down the line.

However, even if the issues on the table provide ample opportunity for horse-trading, the nature of the issue itself may have an even greater impact on how the negotiations progress. The politicisation of an issue can vary between stakeholders. Depending on how important or political a topic is for national governments for example, the respective Member States will have different approaches to dealing with the negotiations. As the priorities of each stakeholder are not only varied but influenced by many other factors outside the EU negotiating sphere, this can be a real snake pit for the unprepared negotiator. In short, the negotiations may become more about these externalities than the topics being discussed.

As the deadline for the MFF was drawing closer and closer in late 2020, Hungary and Poland blocked the EU's €1.82 trillion budget and recovery package. The Hungarian and Polish leaders refused to give their seal of approval to the much anticipated budget and recovery fund unless the new Rule of Law conditionality was removed or watered down in what was referred to by some as an

'institutional crisis'. The Rule of Law conditionality was first proposed by the European Parliament. During the July 2020 European Council summit leaders failed to agree on the exact wording of the clause, which would link eligibility for EU funds to respect for the democratic norms. Although it was linked to the MFF, the legislation required to enact this proposal was subject to qualified majority voting (QMV). As Hungary and Poland were the only opponents, the Rule of Law proposal still would have passed under QMV. Hence, they decided to express their frustrations during a vote on the MFF and the Recovery and Resilience Package, where unanimity in the Council is a must.

Both countries were hit hard by the pandemic and were major recipients of EU funds, but as one diplomat noted, 'Even after all that, and even with all the money that is at stake ... there is no movement. They are just fully entrenched.' This example clearly shows that the logic or rationale behind an approach may be difficult to understand, but it boils down to a question of perception and a subsequent reaction.

### Never-ending cycle

Maybe using the phrase 'never-ending' in relation to EU negotiations is a slight exaggeration. The EU is a long-term project. That means all EU negotiations should be viewed as marathons as opposed to sprints. Just because you have finished your discussions on one specific dossier, it does not mean the negotiation is over. Regardless of your priority, be it of a national or a thematic orientation, you will interact with the same people repeatedly over a substantial period of time. We've all heard the saying, *Brussels is a village* and in villages everyone remembers everything, so be nice to your neighbours!

In all seriousness, good relations are key to reaching your goals at the EU's negotiating table. It is highly probable that you will meet your

counterparts at the school gates, or in the bar (when they open again), which gives you ample opportunity to keep the relations cordial and conduct some informal negotiations, should you so wish.

Either way, the bottom line is that you will probably see your interlocutors again. If you remember that you will (more than likely) be working together in the future you can take steps to maintain relations now, thus benefiting your future negotiation strategy. It's all about the long game in Brussels.

In December the European Parliament gave its consent to the MFF package, the EU Recovery Instrument and the Rule of Law instrument. The next day the Council adopted the MFF legislation, and we had our long-term budget. The focus then moved from one topic to another, with the same people continuing to meet at EU negotiations. The day after it gave its approval in a plenary session, the Parliament discussed OLAF's cooperation with the EPPO and debated breaches of human rights and democracy. The budget was solved and now it was on to the next thing – and the cycle continues.

### So what now?

The aim of these posts was to illustrate some of the main features you should be aware of before engaging in EU negotiations. The MFF example helps to illustrate some of the specificities you may encounter in the process. We looked at how the MFF negotiations were about more than just the money involved. Each stakeholder contextualised the debate within their own priorities, which in turn impacted the outcome of the discussion.

In some ways, it was business as usual. As is the tradition in Brussels, when we can't agree on something we find a diplomatic way to postpone the discussion – usually with the help of some ambiguous language. That is why the Rule of

Law conditionality is still up for debate within the institutions. The Commission has referred Poland to the Court of Justice, regarding a new law on national judges. Meanwhile Poland and Hungary have both filed separate claims to the CJEU to make the conditionality principle unlawful.

From a different perspective, the MFF case study provides a good representation of how we can expect the EU decision-making process to function during a crisis. The Covid-19 pandemic flipped 'normal' on its head and forced us all to consider a world in which what we took for granted no longer really exists at all levels of the EU negotiation processes. Everyone involved was forced to adapt to a new way of working almost immediately. It may be seen by some as a litmus test for the responsiveness of the EU – a stress test to see where the institutional weaknesses lie. After all, if the EU becomes so bound by its procedures that it cannot effectively adapt to a new environment, the functioning of the collective is at risk.

The shift to online meetings and online negotiations was not something the EU (and the rest of the world) was prepared for. This means that even now, one year later, we have only scratched the surface of the impact of this shift on our capabilities. Specifically, we are still in the dark as to how this has impacted our ability to negotiate effectively and the possibilities it can offer. For more on this, check out our April blog post where we will take a closer look at what these stress tests have revealed for practitioners engaging in online negotiation.

**Read blog one, two, and three (part 1) of the series 'Possible impacts of the current pandemic on international negotiation processes' by the Negotiation Team.**

**Do you have questions? Contact the Negotiation Team [negotiationteam@eipa.eu](mailto:negotiationteam@eipa.eu).**

*The views expressed in this blog are those of the author and not necessarily those of EIPA.*