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# European Union, State and Market. The 2004 EU enlargement and the politics of internal mobility

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## Abstract

At the perspective of the 2004 EU enlargement, Member States sat together to consider the application of a transition period to the free movement of workers. Before the negotiations, only Austria and Germany were in favour of protecting their labour market. However, by the end of the sessions, ten additional Member States had changed their minds. In this paper, we will analyse the agenda-setting and the decision-making processes that led to the application of these temporary restrictions. This particular case study will serve as an illustration to Hollifield's *liberal paradox* (1992), according to which liberal democracies are divided between a trends towards greater openness in the economic area against domestic political closure. According to this paradox, the market logics would have been predominant in countries that did not apply any transitional arrangement to the free movement of workers, against a primacy of the States' logics in the Member States that did. We shall also investigate the role of a third pole, the European Union, in a State-Market-EU triangulation. This paper will present the work of our first year of thesis on the same subject.

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## Introduction

At the eve of the 2004 enlargement, the Council had considered the Chapter II "Free Movement of Workers" as holding "sensitivities" for the Member States involved. These "sensitivities" consisted mainly in Austria and Germany expressing a fear of serious disturbance of their labour markets due to a forecast influx of workers from the candidate countries. When the chapter was opened in the first semester of 2001, they jointly asked for the application of a transition period to the free movement of workers. Initially, most EU-15 Member States reacted against such a symbolically strong proposition, the free movement of workers being one of the founding principles of the European Union enshrined in the Treaty of Rome of 1957. However, when the Council issued its Common Position in June 2001, ten additional Member States had changed their minds and had aligned themselves on the Austro-German position. In this paper, we will develop the outline of our thesis, which analyses the processes that led to the application of these transitional arrangements.

We will first contextualise the negotiations on the Free Movement of Workers, then summarize the State of the Art, before moving to the presentation of our problematic, main hypotheses and methodology.

## 1. The 2001 negotiations on the Free Movement of Workers

### *Timeline*

Eastwards enlargement only became a priority for the European Union at the turn of the millennium. Hence two phases can be distinguished for the accession negotiations: the first one from 1989 to 1997, and the other one from 1998 to 2003.

From 1989 to 1997, the energy of the European Union was mostly occupied by the completion of the Internal Market, its major institutional reforms (the 1992 Treaty of Maastricht and the 1997 Treaty of Amsterdam), the German reunification, and the 1995 enlargement to Austria, Finland and Sweden. However, from the early 1990s, the central and eastern European countries (CEECs) clearly manifested their desire to join the EU. Emergency measures without any long-term perspective were adopted. Among them were the PHARE programme, launched in 1989 by the European Commission to financially support the transition of CEECs to the establishment of democracy and market economy. The EU also signed Association Agreements or *Europe Agreements* with each of the CEECs; these were free-trade bilateral agreements with political dimensions, which did not promise EU membership but which were to inspire the later pre-accession strategy.

A step towards enlargement was taken with the 1993 Copenhagen European Council, which declared that the “the associated countries in Central and Eastern Europe that so desire shall become members of the European Union”. It was the first time that the EU promised membership to other countries, even before they had applied. The accession could take place as soon as a candidate country had fulfilled the criteria for membership, defined as the following:

For the candidate countries:

- “Stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities” (also called “political” or “democratic conditionality”).
- “The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.”
- “The candidate’s ability to take on the obligations of membership including adherence to the aims of political, economic and monetary Union” (“*Acquis* conditionality”).

For the European Union:

- “The Union’s capacity to absorb new members, while maintaining the momentum of European integration.”

A “pre-accession strategy” was defined at the December 1994 European Council of Essen. The principal instruments of this strategy were the “structured dialogue” (a series of meetings at the ministerial level and with the heads of States and governments), the aforementioned Europe

Agreements and the PHARE programme. The Europe Agreements, especially, developed into a model of institutionalized relations between the EU and the candidate countries. The 10 CEECs applied for membership between 1994 and 1996.

In July 1997, the Commission issued a detailed communication evaluating the situation of the candidate countries as well as the financial costs of enlargement under the title “Agenda 2000. For a stronger and wider Union.” In this paper, the Commission suggested to start the negotiations with a first group of six candidates: the Czech Republic, Cyprus, Estonia, Hungary, Poland, and Slovenia. *Agenda 2000* also proposed to reform the Common Agricultural Policy (CAP) and the Structural Funds in order to finance enlargement without increasing the Member States’ contribution to the budget.

Eventually, it was the December 1997 Luxembourg European Council which decided to open the negotiations with the first wave of six candidate countries, the “Luxembourg group”. Inspired by the negotiations of previous enlargement rounds, the *acquis* was divided into 31 chapters on which an agreement would have to be reached before accession could take place. So from 1998 onwards, the enlargement process took a new momentum, and enlargement to the CEECs became a proximate reality.

The accession negotiations were officially launched on 30 March 1998. In order for other candidate countries to feel included in the accession procedure, it started with a “screening process” of the legislation of all applicants from April to November 1998, which identified the areas that needed change for the implementation the *acquis*. Once the process was completed, the EU opened the negotiations with the “Luxembourg Group”, with the possibility for other countries to join the process at any time if sufficient progress had been achieved.

As more and more applicants started to fill the gap with the “Luxembourg” group, it was agreed at the December 1999 Helsinki European Council that the negotiations would be opened with the countries of the “Helsinki group” (Bulgaria, Latvia, Lithuania, Malta, Slovakia and Romania) on 15 February 2000. The pace of the negotiations increased, as the “Helsinki group” attempted to catch-up with the first one.

In its 2000 Strategy Paper, the European Commission recommended to start opening the chapters which had the “most outstanding substantial issues”. Indeed, until then, only the ones which did not cause major problems for the implementation of the *acquis* had been discussed. The Commission adopted a “road-map” to this effect, requesting for the Internal Market chapters to be discussed in priority during the first semester of 2001. Among those chapters was the chapter II Free Movement of Persons, which was opened and discussed during that time.

Eventually, the Commission’s 2002 Regular Reports stated that the negotiations had been completed successfully with all applicants, apart from Bulgaria and Romania. The December 2002 European Council meeting in Copenhagen officially closed the negotiations with the ten applicant states and the Accession Treaty was signed by the Heads of States and governments on 16 April 2003 in Athens. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia officially joined the European Union on 1 May 2004.

### *The negotiation procedure*

As aforementioned, the negotiations were divided into 31 chapters, each one corresponding to a part of the *acquis*. The first four chapters were the four fundamental freedoms of the European Union: freedom of movement for goods, persons, services and capital, illustrating the importance of those freedoms for the EU values. Each chapter was opened and negotiated individually, and the division in chapters was also used in the Regular Reports to evaluate compliance with the *acquis* criterion.

To open the negotiations, the candidate countries first had to issue position papers on their compliance with the chapters of the *acquis*. Each paper corresponded to a chapter, and was of varying length depending on whether the *acquis* was accepted in full, needed more exploratory talks or whether transitional measures were being sought by the candidate countries. These position papers served as a basis for the negotiations.

Once the candidates' position papers were issued, the Council, working through the General Affairs Council at the ministerial level and through the Permanent Representatives Committee (COREPER) at the representatives' level, decided of a common position for each chapter. The draft was made by the Commission, but was amended in the Council before being issued. This process required unanimity, which made this stage of the negotiation process particularly difficult (Nugent, 2003, p. 51).

Afterwards, formal negotiating rounds were held between EU Foreign Ministers or their representatives and the chief negotiators of candidate countries. During those formal negotiating rounds, chapters were provisionally closed when the Council and the candidate countries both agreed that no more negotiation was necessary.

The negotiating procedure left little space for the candidate countries to impose their own requirements on accession. In practice, they had to fit into the EU's mould, and the negotiations mainly verified that the applicants had implemented the *acquis* and the required institutional structures (Avery, 2004).

### *The 2001 negotiations on the Free Movement of Workers*

Among these 31 chapters was the chapter II on the Free Movement of Persons, which was also to tackle the question of the Free Movement of Workers.

First of all, the Free Movement of Workers was not the only area in which a transition period was requested. Many transition periods were asked by the candidate countries in order to postpone the implementation of the *acquis* into their national legislation, in policy areas such as competition policy, taxation or energy (European Commission, 2003). A total of 322 transitional measures were agreed in 17 of the 31 chapters, 43 of them relating to the Internal Market. Derogations were also put in place for membership to the Schengen area or to the Eurozone. In general, safeguard clauses may also be applied in case of serious macroeconomic or competition choc, or in case of severe breach of the legislation in the areas of the Internal Market or Justice and Internal Affairs.

It was not the first time that transitional arrangements to the Free Movement of Workers were applied either. Some were applied for the 1981 enlargement to Greece, and the 1986 enlargement to Spain and Portugal had entailed a seven-year transition period. The precedent of Portugal and Spain was often referred to during the 2001 negotiations on the Free Movement of Workers. Though many argue that both enlargement rounds could not be compared, it was indeed easy to draw a resemblance between them. As the CEECs, both Portugal and Spain had been under an authoritarian regime, and their economy was largely underdeveloped if compared with those of the EU Member States. Yet arguably, a transition from a communist party system and a centralised economy was of a very different nature than the transition of Portugal and Spain.

The negotiations on the Free Movement of Workers were characterized by the high sensitivity of the issue among the public opinion of various Member States, particularly in Austria and Germany. A first attempt had been made to open the chapter in 2000, but the topic was so hotly debated that the Council concluded to the existence of “sensibilities” and postponed it to a later stage of the enlargement process. Eventually, chapter II, Free Movement of Workers, was debated during the first semester 2001 under the Swedish presidency.

The topic, however, already engaged several Member States long before the accession negotiations were open. Austria and Germany were the most active. As far back as 1997, studies were made in Austria on the potential impact of the Free Movement of Workers on their respective labour markets. The figures varied between the studies and the migration theories used to generate statistics, but it was generally agreed that because of their geographical location, both countries were to expect a greater flow of workers than other Member States; Germany more than Austria because of the trade relations it had established from the early 1990s. Because of the wage differential, both countries also expected the development of a commuting phenomenon, with workers from neighbouring CEECs seeking to earn an Austrian or German wage while living outside these two countries. So the fears mostly concerned a general worry that the labour markets could not absorb a large flow of eastern European workers.

Moreover, Germany had the experience of the reunification, which had entailed to absorb the less developed economy of the former GDR. Their public opinion suspected that, as for the reunification, the transition would be longer and more difficult than announced. The new Länder of the former GDR also expected to lose the financial support of the Structural Funds which they had benefited from until then (Iffly, 2005, p. 168).

On 17 April 2000, the Commission provided the Council with an information note, “Freedom of Provision of an Economic Activity in the Context of the Enlargement.” Basing itself on various studies, the note stated that among the EU-15, Germany and Austria attracted about 70% of all CEECs’ workers. Far from channelling the Austrian and German fears, however, the note expressed the view that transitional periods would not be necessary. It first drew a parallel to previous enlargement rounds, insisting that in the case of Portugal and Spain, the flow of workers had “remained small”, even after the abolishment of the transition period. Similarly, the Commission did believe the Austro-German fears to be exaggerated. The question was fiercely debated within the Council, and postponed to the first semester of 2001.

In the meantime, Austria and Germany were in background talks on their position regarding the Free Movement of Workers. In September 2000, the German Social Ministry informally informed

the Austrian Foreign Ministry that Chancellor Gerhard Schröder had the intention of requesting a transitional period of seven years during the opening of chapter II; Austria agreed to make a conjoint proposition (Sajdik & Schwarzinger, 2008, p. 188).

In a speech pronounced in Weiden in December 2000, Gerhard Schröder officially announced that he would “propose during the enlargement negotiations a transitional period of seven years to limit access to the labour market” (Schröder, 2000). He did not exclude flexibility and suggested several options. His propositions were based on the transition period requested for the 1986 enlargement to Portugal and Spain, though he insisted that the wage differential was far more important in the case of the CEECs. The Austrian Chancellor Wolfgang Schüssel welcomed Schröder’s initiative and they presented a united front for the opening of the negotiations on the matter.

The CEECs reacted strongly against the declaration. Poland officially expressed its opposition in January 2001, stating that enlargement would not cause a massive influx of workers from Poland, apart maybe in localized geographical areas or labour sectors. Poland’s declaration was unanimously supported by all CEECs. They could not understand being imposed delays on what seemed the most significant advantage of enlargement, and saw these restrictions as the imposition of a form of “second-class citizenship”.

When the negotiations opened during the first semester of 2001, Austria and Germany officially requested a transition period. Most other Member States did not understand the apprehensions of Austria and Germany, especially at a time when labour mobility had become central to employment policy and when demographic studies showed that the EU would need to rely on labour migration (Avery, 2004, p. 49). Spain and Portugal, drawing from their previous experience, were particularly opposed to these restrictions; the United Kingdom and the Netherlands also expressed their disagreement. The countries that were geographically close, however, started to show some inclination for the Austro-German argument.

To answer the Austro-German request, the Commission issued an internal note on 6 March 2001 offering five different options for transitional arrangements. The first one suggested the complete opening of the labour market, and the four other ones offered solutions from the most flexible to the most restrictive.

Despite how strong the disagreements might have been, most Member States progressively decided to align themselves on the Austro-German position. In June 2001, when the Council elaborated its Common Position, only Ireland, Sweden and the United Kingdom were still determined to open their labour market at the time of accession. The others decided to apply a transition period of a maximum of seven years, on the basis of a “2+3+2” division, with an evaluation mechanism at the end of each phase. Austria and Germany added a further transitional period to the free movement of services.

Such a change of opinion is generally attributed to the expansion of the Austro-German perception of a threat to the labour market, in spite of studies predicting that such fears were unfounded. In our thesis, we shall deepen the analysis of this phenomenon, and analyse whether other factors were at play.

## 2. State of the Art

This subject can be approached under two theoretical angles. The first one concerns the theories and politics of international migration, and the second one relates to public policy theories.

Two contrary tendencies can be identified in the contemporary EU migration politics. On the one hand, they evolve towards a greater communitisation: since the 1997 Treaty of Amsterdam creating an “area of freedom, security and justice”, EU migration policies have taken a decisive turn, with transfers of competencies on border control to the EU level, and with the national convergence of Member States’ policies of migration and asylum (de Bruycker, 2003). In practice, however, the role of the Union is mostly limited to questions of security and of control of migration flows (Guiraudon & Lahav, 2007). Member States are indeed reluctant to renounce to their prerogatives, perceiving the transfer of migration matters to the European level as a threat to their national sovereignty (Brubaker, 1992; Joppke, 1999). Therefore, the State remains the main actor on a certain amount of migration-related issues, among which the labour market. As a result, at the opposite of a communitisation trend, stands a Eurosceptic and protectionist dimension associated with the logics of States.

This contrast in politics can also be found in migration theories. Defending the European logic of communitisation, some political scientists and sociologists defend that the States are losing or have already lost the control of their migration prerogatives to the benefit of other levels. According to their hypotheses (transnational (Bauböck, 1994; Sassen, 1996), postnational (Soysal, 1994; Jacobson, 1996) or specifically European (Featherstone & Radaelli, 2003)), the level benefiting from the States’ loss of power are either supranational, European or even subnational. On the contrary, advocates of the States’ logics argue that the State remains the most important actor for these questions (Joppke, 1999; Koopmans & Statham, 2000; Koopmans & Statham, 2005; Guigni & Passy, 2006).

In reaction to this debate, other authors add that the factors that intervene in migration policies are numerous, and that one also needs to take into account economic, social, historical or ideological aspects. Among others, the market forces play a determinant role in the adoption of migration policies. These authors generally argue that neither the EU nor the States can control market-based migration flows (Entzinger, Martiniello, & Wihtol de Wenden, 2004; Hollifield, *Migration and International Relations: the liberal Paradox*, 2004; Bretel & Hollifield, 2007).

Three dimensions are therefore identified by the analysts of migration politics: the European Union, the States, and the Market.

All aforementioned theories were developed by migration theorists. However, another kind of literature allows for the concrete analysis of the decision-making process. Researchers in public policy theories open a door towards new types of hypotheses by insisting on the specific role played by the interests, institutions and ideas in the public action, to quote Peter Hall (Hall & Taylor, 1986). Some of them have already focused on the tension between the European and national levels

(Lequesne & Surel, 2004; Palier & Surel, 2007) or on questions of migration (Guiraudon & Lahav, 2007). Besides the public policy analyses, we shall also mobilise the theoretical approach of the “political opportunity structure” (McAdam, 1996; Tarrow, 1996), and particularly its European approaches (Kriesi & al., 1995).

### **3. Problematic**

#### *Main hypothesis: European Union, States and Market*

EU Member States have taken a symbolically strong decision against the EU values by imposing restrictions to the Free Movement of Workers, one of the fundamental freedoms of the Internal Market. A first, straightforward explanation would be to understand this decision as the evidence that the States remain the main actor in the area of the labour market, at the expense of the European integration process. In other words, this hypothesis states that the more restrictive the transitional arrangements were, the less integrated to the European Union their national government was. However, this explanation is not valid for this specific case study. For example, Germany, one of the most pro-European Member States, was also the most active advocate for a transition period. In contrast, the United Kingdom, who has a Eurosceptic reputation, decided not to adopt any restriction. These two Member States have reacted inconsistently with regard to their engagement towards the European Union.

The tension between the European and national levels cannot therefore explain the adoption of these transitional arrangements. We shall base ourselves on Hollifield’s *liberal paradox* (1992) to deepen this hypothesis. According to his theory, contemporary liberal democracies are trapped in a paradox of two opposite trends: on the one hand, the Market’s logic pushes them towards greater transnational openness in the economic arena; while on the other hand, the States’ logic presses them for domestic political closure. Applied to the subject of the transitional arrangements on the Free Movement of Workers, his theory would imply that the logic of the Market would be dominant in the Member States who did not apply any restriction on their labour market (United Kingdom, Ireland and Sweden), and that it would be less important than political pressures in other Member States.

In my thesis, I shall therefore study the organization of three factors: the European Union, the State and the Market, applied to the negotiations on the Free Movement of Workers in the framework of the 2004 EU enlargement. I shall pay a particular attention on the potential dominance of one the poles of this interdependent trio.

#### *Germany, France and the United Kingdom*

This thesis shall focus on the attitude of three Member States in particular: Germany, France and the United Kingdom, who illustrate the different kinds of positions taken by the EU Member States during the negotiations on the Free Movement of Persons. Alongside with Austria, Germany was the most vigorous campaigner for the application of a transition period; at the opposite, the United

Kingdom has always favoured an unconditional opening of its labour market. In the middle of these two extremes, France has followed the political attitude of most other Member States, who first reacted against the proposition for transitional arrangements, then eventually aligned themselves on the Austro-German position.

We shall limit our research to the eight central and eastern candidate countries that joined the EU in 2004. We shall therefore not take into account the negotiations led in the framework of the 2007 enlargement to Bulgaria and Romania, nor the debates around the potential enlargement to Turkey.

### *Methodology*

Our methodology is qualitative, based on the analysis of documents and on individual interviews with regional, national and international actors.

Regarding the analysis of documents, we will analyse all sources produced by the main actors. These might be decision-makers or agenda-setters such as parliaments, governments, administrations and other public institutions, at the national, subnational and European levels. These sources may include, among others, the legislation, information notes, minutes of meetings, Common Positions or parliamentary debates. At the European level, we shall especially consider sources from the European Commission's DG Enlargement and those from the Council (working group enlargement, COREPER and General Affairs Council). We shall also consider sources from actors not directly involved in the decision-making process but who may have influenced other actors' positions, such as political parties, courts of justice, interest groups (trade unions, employers' organisations), NGOs, media, universities or think tanks.

The negotiations having taken place in the first semester of 2001, we shall keep in mind that our interviews will necessarily be a reconstruction from the human memory, and therefore we shall privilege written documents in case of information conflicts.

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