Persuading the Giant? Explaining Eastern Partnership States’ (Unexpected) Negotiation Success in Relations with the European Union

Giselle Bosse¹
University of Maastricht, Minderbroedersberg 4-6, 6211 LK Maastricht, The Netherlands
g.bosse@maastrichtuniversity.nl

Moritz Höpner²
University of Luxembourg, 2 avenue de l’Université, L-4365 Esch-sur-Alzette, Luxembourg
moritz.hoepner@uni.lu

Alena Vieira³
Universidade do Minho, Largo do Paço, 4704-553 Braga, Portugal
d4215@eeg.uminho.pt

Received 30 June 2020; accepted 15 November 2020

Abstract

In bilateral relations and negotiations with the European Union (EU), smaller and economically weaker states are often unable to express their national preferences. Despite their limited bargaining power, however, some Eastern Partnership (EaP) countries

---

¹ Giselle Bosse is Associate Professor in EU External Relations and Vice Dean of Education at the Faculty of Arts and Social Sciences, Maastricht University. She currently holds a Jean Monnet Chair in EU Politics in a Changing Global Context (CHANCE).

² Moritz Höpner is a research and development specialist in charge of knowledge management and stakeholder communication at the University of Luxembourg’s Centre for Childhood and Youth Research (CCY). He has worked in the Secretariat of the Eastern Partnership Civil Society Forum’s (EaP CSF) digital outreach activities. He holds a Master’s degree in European Studies from Maastricht University.

³ Alena Vysotskaya Guedes Vieira is Assistant Professor at the Department of Political Science, School of Economics and Management, the University of Minho.
obtained significant concessions from the EU. This article analyzes the factors that explain EaP states’ unexpected negotiation success in the context of the Deep and Comprehensive Free Trade Agreement (DCFTA) with Ukraine, the Comprehensive and Enhanced Partnership Agreement (CEPA) with Armenia, and enhanced economic partnership with Belarus. We identify negotiation strategies that are crucial to understanding of the puzzle.

Keywords
	negotiation strategies – European Union – small states – Ukraine – Armenia – Belarus

The European Union (EU) is the most powerful trading block in the world, not only because of the large size of its single market, but also due to over fifty years of experience of negotiating international trade agreements.4 There is a wide consensus in the academic literature that the EU is not only a power in trade, but also through trade (Meunier & Nicolaïdis 2006). Power through trade refers to the ability of the EU to use its market strength as a tool to encourage or enforce change in the domestic politics and policies of partner countries, as well as in their foreign policies. Faced with such a powerful bargainer (Baldwin 2006; Meunier 2005), small or economically weak countries often experience their relations and negotiations with the EU as a ‘bruising battle,’ especially in bilateral settings (Vickers 2011: 184).

The EU’s ‘take-it-or-leave-it’ stance to negotiations with weaker actors is well-documented with regard to its relations with the African, Caribbean and Pacific (ACP) group of countries and, in particular, in negotiations to conclude Economic Partnership Agreements (Flint 2009; Vickers 2011; Babarinde & Wright 2013). This specific EU position is also prevalent in EU relations with Asia and Latin America (Fioramonti & Lucarelli 2008). More recently, scholars observe that the EU’s non-compromising approach has also been visible in its relations with countries in the Eastern Partnership (EaP),5 including the negotiations of Deep and Comprehensive Free Trade Agreements (DCFTAs) (Delcour & Wolczuk 2013; Delcour 2013; Samokhvalov 2015; Potjomkina 2015;

4 The study was supported by the Research Center in Political Science (CICP) (UIDB/CP00758/2020), Fundação para a Ciência e Tecnologia (FCT), and the Portuguese Ministry of Education and Science through national funds. Support was also provided by the Netherlands Organisation for Scientific Research (NWO) for Bosse’s project on “Explaining Europe’s failure to deal with autocratic regimes” (Ref. 451-12-015).

5 The EaP includes Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan.
Kostanyan 2015). In the words of Johansson-Nogués (2017), “when some neighbors’ governments tried to introduce their own proposals during the ENP (European Neighbourhood Policy) Action Plan consultation process, the Commission reportedly deterred such attempts and ENP countries were essentially encouraged to ‘take-it-or-leave-it.’” According to Johansson-Nogués, this approach is “also evident in the subsequent EEAS (European External Action Service) and Commission-led negotiations with the eastern neighbors,” including the negotiations of the Association Agreements (AAs) and DCFTAs (Johansson-Nogués 2017: 437).

Instances of the EU’s negotiation approach vis-à-vis weaker states resonate well with general theoretical expectations and empirical observations on the position of small states in the international system. On most accounts, larger states are able to exploit their size advantage and dominate international negotiations, especially on the bilateral level (Waltz 1979; Keohane 1984; Moravcsik 1998; Panke 2010). Accordingly, smaller states with limited financial and administrative capacities, and lesser economic or political leverage are simply outperformed by larger states (Waltz 1997). Small states’ performance is regarded least effective in bilateral bargaining, where “vast power asymmetries constrain the possibilities for more assertive behaviour” (Vickers 2011: 183–184).

Against this background, one would expect the EU not to offer significant concessions in its bilateral relations with weaker states. So how can one account for instances in which the seemingly weaker state does obtain concessions from the EU, in the absence of any notable bargaining leverage? This is the puzzle we aim to address in this article. The EU’s relations with the EaP countries, in particular, provide a number of striking examples for small countries’ negotiation success, which seem to contradict the general assumption that weak states lack effective capacity and authority to shape the negotiations with the EU. In this article, we focus on three instances of EaP countries’ considerable negotiation success in the context of (a) the Deep and Comprehensive Free Trade Area (DCFTA) with Ukraine signed in 2014, (b) the Comprehensive and Enhanced Partnership Agreement (CEPA) with Armenia signed in 2017, and (c) the offer of enhanced economic partnership with Belarus in 2016.

The central question guiding the paper is: What factors explain EaP countries’ (unexpected) negotiation success in their relations with the EU? While other small countries have also obtained concessions from the EU in the past – for example, ACP countries managed to secure longer transition periods with regard to the approximation of legislation and technical standards – the three cases of EU concessions chosen for this analysis clearly stand, because each involves the EU breaking with key principles of its previous policies towards the EaP countries. First, Ukraine is the only partner country
that obtained sector-specific concessions from the EU in negotiations of the DCFTA (Emerson & Movchan 2018: 42–43; Van der Loo 2017). Up to that point, the EU had categorically declared the prohibition of sector-specific export duties as non-negotiable. However, eventually and unexpectedly, the EU gave in to the demands by Ukrainian negotiators. Second, the EU also accepted the continued operation of the ailing Medzamor nuclear power plant, contrary to the principles of the EU’s commitment to nuclear safety in international cooperation (IAEA 2013) and the principles to environmental sustainability enshrined in the Partnership and Cooperation Agreement (PCA). Third, the EU lifted almost all sanctions against the Belarusian government in 2016, and extended its economic partnership with the country despite the fact that there was no evidence of improvement with regards to Belarus’s human rights record and democratization. The EU’s decision was a critical departure from its longstanding principle of tying rapprochement with the regime to democracy and human rights. Thus, while the EU may not have suffered high economic costs from the concessions offered to EaP countries, the implications for its reputation as a principled trade and normative actor in the region (and beyond) is certainly very significant.

Small countries’ negotiation success can be explored through a variety of theoretical lenses. One set of approaches draws attention to domestic level factors, such as changes of government, which can impact the outcome of negotiations (Janusch 2018). In the context of the three EaP countries, domestic-level factors do not fully account for the EU’s willingness to offer concessions. It was during the negotiations with the (then stable) government of Viktor Yanukovich in 2011 that the EU unexpectedly changed its negotiation position on Ukraine’s import tariffs. In a similar vein, neither the Armenian nor the Belarusian government had changed during the timespan of negotiations with the EU.

A second set of approaches emphasizes the role of geopolitical factors, such as the increasingly assertive role of the Russian Federation vis-à-vis the EaP countries, which may have prompted the EU to adopt a softer stance in the negotiations with the three countries. It is undeniable that competition and conflict between the EU and Russia over their ‘common neighborhood’ has been a critical factor driving and shaping the EU’s engagement with the EaP countries, especially since the 2008 Russo-Georgian war. While geopolitical context certainly accounts for the broader parameters of the EaP, such as the offer to enhance relations through the conclusion of new AAs/DCFTAs or the CEPA, the three cases of EU concessions analyzed in this article still remain puzzling because they pertain to rather sudden and unexpected changes in the EU’s negotiation position within relatively stable and broader geopolitical
parameters. For example, had the EU not granted sector-specific concessions to Ukraine, this would perhaps have delayed but certainly not derailed the conclusion of the AA with Ukraine, not least because the conclusion of the AA with the EU was a key pillar in Ukraine’s (then) foreign policy strategy of geopolitical balancing vis-à-vis Russia. Armenia and Belarus pursue similar multi-vector foreign policies, which, from the point of view of the EU, would have weakened rather than strengthened the EaP countries’ leverage in the negotiations, in turn reducing the necessity for the EU to make additional concessions.

In light of the limitations of approaches focusing on domestic-level and external factors in explaining small states’ negotiation success, the article draws on a third set of approaches, which explore negotiation outcomes by zooming into the actual process of the negotiations, and the dynamics of social interaction between actors therein.

More specifically, the article operationalizes negotiation theory, which captures the role of factors, such as expertise and persuasion in negotiation strategies and processes (Zartman & Rubin 2009; Panke 2010, 2014; Risse 2000; Checkel 2002). While dynamics of persuasion are well-conceptualized in the literature on international negotiation (Grobe 2010), the concept of manipulation has received less attention. We therefore develop and operationalize manipulation as a negotiation strategy based on the misrepresentation of facts, the simulation of leverage and articulation of threats. We argue that manipulation and, in particular, simulated leverage and (implicit) threats are crucial factors to understanding EaP states’ negotiation success vis-à-vis the EU.

The article contributes to several fields of research. First, the article brings new insights to the scholarly literature on the ENP and EaP (Lavenex & Schimmelfennig 2009; Schumacher, Marchetti & Demmelhuber 2018). By examining how and under what conditions partner countries actively shape negotiations with the EU and succeed in uploading their preferences, the findings provide additional nuance to a debate which often assumes that third countries are “policy-takers but not policy-shapers” (Gstöhl 2017: 9). Second, the article adds to scholarship on EU trade negotiations (Dür & Zimmermann 2007), by contributing a set of new and very recent case studies (EU-EaP country negotiations), and also by systematically operationalizing the social perspective explaining negotiation success of seemingly weaker third countries in negotiations with the EU. And third, the article’s findings are relevant to research in the wider fields of international relations and political economy and, in particular, to debates on the role of small states in world politics (Lee & Smith 2010), and on how the weak bargain with the strong (Drahos 2003: 79) in multilateral and bilateral settings (Panke 2012; Laursen & Roeder-Rynning 2017).
EaP Countries’ Negotiation Success: Key Concepts and Conditions

The academic literature on EU relations with neighboring countries predominantly examines the extent or effectiveness of EU rule and norm transfer to partner countries, and conditions which impact on the adoption and implementation of the EU’s *acquis communautaire*. This literature has generated many important insights into EU-third country relations, including *inter alia* on the mechanisms of EU rule transfer. In their seminal work on EU external governance, Lavenex and Schimmelfennig (2009) identify different institutional modes through which EU rules and norms are extended to non-member states. One of them, hierarchical governance, is a mode of top-down policy transfer and “describes a form of steering based on formal and precise rules that are non-negotiable and legally binding as well as enforceable upon actors” (Lavenex & Schimmelfennig 2009: 797). In contrast, the mode of network governance refers to ‘regulatory expansion’ that “occurs through the co-ordination of national rules’ allowing third countries to participate in the definition of relevant EU policies” (Lavenex & Schimmelfennig 2009: 796–798). The mode of EU hierarchical external governance corresponds to the observation that the EU often adopts a non-compromising approach vis-à-vis small, economically weaker third countries. The concept of network governance, however, cannot fully capture (or explain) third countries’ negotiation success in their relations with the EU. While network governance does account for third county participation in the formulation of EU policy, broadly speaking, the concept remains inextricably tied to the premise of EU *rule expansion* rather than *rule negotiation*. Lavenex clearly emphasizes that “governance exceeds the voluntarism implicit in the term co-operation” (Lavenex 2004: 682). Network governance in the context of EU external governance therefore depicts *rule transfer through networks* rather than cooperative *rule-making or rule-shaping through networks*.

An alternative conceptualization of EU relations with third countries in its neighborhood is the ‘partnership through cooperation’ perspective (Bosse 2010). Partnership is understood as an ‘instance of cooperation,’ through which policy is negotiated based on mutual commitments and concessions. Drawing on the works of Keohane (1986) and Milner (1992), the notion of partnership through cooperation posits that cooperation between stronger and weaker parties is “only achieved when ‘rough equivalence’ is observable and under the condition that the stronger party adjusts its own policies” (Bosse 2010: 1294–1295). However, while the partnership perspective helps to capture instances of mutual concessions in EU-third country relations, the perspective
does not theorize the conditions under which weaker parties obtain concessions from the EU.

A broad range of literature examines conditions that facilitate success in international negotiations. As outlined in the introduction, factors linked to changes in the domestic or international context cannot fully account for the rather sudden concession offers by the EU within relatively stable domestic contexts and geopolitical parameters. The article therefore draws on negotiation theory, which emphasizes the dynamics of and within negotiation processes, with a focus on international and regional intergovernmental organizations (Panke 2013a,b; Panke 2014), as well as negotiations between the member state governments in the EU (Panke 2010; Naurin 2015). While duly acknowledging the complexity of the literature, we can distinguish two broad schools of thought to explain negotiation success: The first approach, around which the vast majority of analyses cluster, focuses on material factors related to size, administrative and financial capacities and hard bargaining leverage. Given the high economic asymmetry between the EU and the EaP countries and the related limited administrative and financial resources available to the negotiation teams of Ukraine, Armenia and Belarus, the focus on material factors does not have much explanatory value. The second and more recent approach, however, captures social capacities, such as the role of persuasion, manipulation and threats in negotiation strategies and outcomes.

**Intangible Sources of Leverage and Negotiation Success**

While material resources undoubtedly play a crucial role in a country’s negotiation success, size and material power are not always all that matters. Several authoritative studies show that intangible forms of leverage, such as those derived from expertise or information also shape negotiation success, especially as part of a well-designed negotiation strategy (Risse 2000; Checkel 2002).

Therefore, and as a first and most basic condition for negotiation success, the respective delegates must have received clear instructions from their government stating a national position on a particular issue (often developed by national sector ministries or the foreign ministry). In the absence of a clear national position, state delegates cannot develop a well-designed negotiation strategy.

Hypothesis 1 (H1): The presence of a clear national position on a particular issue or policy enables the formulation of a well-designed negotiation strategy, which enhances an EaP country’s chances for negotiation success vis-à-vis the EU.
Aside from a clear national position, expertise and access to quality information sources often play a critical role in determining success in negotiation processes. In the words of Panke (2014: 374), a “greater level of expertise in the relevant subject matter can be expected to enhance a delegate’s ability to negotiate using such persuasive techniques as arguing and framing.” State delegates’ expertise and the quality of information resources are notoriously hard to measure, while commonly used proxies such as the level of education of a country’s population only provide indicative findings. An alternative method to measure expertise is to examine the professional background of the negotiating team, their expertise in the subject area of the negotiations and of EU law, or previous experience in international negotiations and negotiations with the EU. Access to quality information resources is also largely determined by a delegate’s professional background, such as the level of embeddedness in relevant domestic and EU policymaking networks.

Hypothesis 2 (H2): The greater an EaP state delegation’s expertise and access to quality information, the higher are an EaP country’s chances for negotiation success vis-à-vis the EU.

So far, it is mainly constructivist scholars who have examined the role of intangible sources of leverage, such as argumentative talk, in multilateral negotiations. Authors working in this tradition argue that the parties in international negotiation engage in communicative action and ‘succumb to the better argument’ even if such behavior requires reformulating their preferences during the negotiations (Checkel 2001; Deitelhoff 2009; Risse 2000). Checkel (2001: 562) defines persuasion as “a process of interaction that involves changing attitudes about cause and effect in the absence of overt coercion. It is thus a mechanism through which preference change may occur.” A well-developed negotiation strategy based on persuasion is therefore likely to increase an EaP country’s chances to obtain concessions from the EU.

Hypothesis 3 (H3): The use of a well-developed negotiation strategy based on persuasion is likely to enhance an EaP country’s chances for negotiation success vis-à-vis the EU.

We operationalize a strategy of persuasion based on three indicators which, individually or in combination, are likely to contribute to an EaP country’s negotiation success vis-à-vis the EU:

1. *Common norms and principles*. An EaP country appeals to the EU’s normative principles and values and demonstrates that the EU’s negotiation
position is in contradiction with one or several normative principles and values. An EaP country can also recall previous positions or decisions taken by the EU in similar conditions in the past and show that the current negotiation position deviates from the past decision. An EaP country can further point out inconsistencies between the EU’s official public rhetoric on its relations with the EaP country and its negotiation position in practice.

2. *Shared history, identity, culture, religion or shared destiny.* An EaP country demonstrates that, beyond the EU’s normative principles, the EU and the EaP country share a particular historical or cultural experience, which may have relevance for the EU’s (and the EaP country’s) destiny. This may also involve appealing to the EU’s normative obligations or responsibilities.

3. Contributing *new or deeper knowledge* is also regarded as a crucial factor in argumentative persuasion in international negotiations (Grobe 2010). If the persuader (EaP country) provides the persuadee (the EU) with new or more in-depth knowledge about the problem at hand or the policy options available, it is more likely that the persuadee changes his/her goals or understanding of the problem or situation, which in turn leads to an adjustment in negotiating position. New or deeper knowledge must, however, be credible and legitimate (that is, be backed up by sound scientific expertise, legal analysis, impact assessment, etc.). New or deeper knowledge are likely to have a greater impact if external shocks disrupt or proceed the negotiations. In the case of the EaP countries’ relations with the EU, such events might include the annexation of Crimea by the Russian Federation or its military intervention in eastern Ukraine.

While constructivist scholars tend to assume that the goal of argumentative talk is normative, that is finding the better argument, rationalist accounts of negotiation argue that states use various types of causal and normative arguments in pursuit of their national preferences (Schimmelfennig 2001). The key strategy in negotiations is therefore not primarily persuasion but rather manipulation. While persuasion implies that the persuadee reasons and is convinced by an argument, manipulation means that the power subject (here, the EU) has been misled. Manipulation can take a variety of forms. It can involve the purposeful use of misinformation or withholding of information (Wrong 1995; Ware 1981), or the particular framing of problems and choices so as to (artificially) restrict the choices of the power subject (Ware 1981: 170–171).

Hypothesis 4 (H4): The use of a well-developed negotiation strategy based on persuasion is likely to enhance an EaP country’s chances for negotiation success vis-à-vis the EU.
We operationalize a strategy of manipulation based on three indicators which, individually or in combination, are likely to contribute to an EaP country’s negotiation success vis-à-vis the EU:

1. **Misrepresenting domestic pressure constraint.** Most parties in international negotiations are bound by domestic demands, accountable to national ministries, parliaments and electorates (Putnam 1988). EaP states, in particular, often suffer from political instability, quickly changing governing coalitions or pressure from strong oligarchic interests. Public expectations create pressure too. Demand for good relations with and successful integration into the EU is high among most publics in the EaP countries. As EU negotiators often lack in-depth information about the domestic context, EaP country delegates can exaggerate, misrepresent or withhold information on such domestic constraints, demands or expectations to the effect of manipulating the EU to adjust its negotiating position.

2. **Simulating leverage.** A manipulating actor may attempt to change the power subject’s attitude by overstating its own economic or geopolitical importance for the power subject (Martill & Staiger 2018). For example, an EaP country draws the EU’s attention to its special or pivotal role in regional peace negotiations, its unique geopolitical location, special relations to other EaP countries or the Russian Federation or its important function as the main role model or ‘best pupil’ vis-à-vis other EaP countries.

3. **Threatening.** While the majority of the literature on international negotiation assumes that an unequal allocation of power resources allows the most powerful party to make threats and exert pressure, weaker states have also been found to successfully use threats and warning as means to manipulate the stronger party. As Pfetsch (2011: 46) notes, weaker states, by threatening withdrawal, make a “nuisance of themselves over issues that mattered much more to them than to the distracted strong partner, busy with other problems” and that in this way “they increased their power far more than initial asymmetry would have predicted.” An EaP country could, for example, threaten to withdraw from the negotiations of the AA and argue that as a result, it would (involuntarily) be drawn further into Russia’s sphere of influence, should the EU not be willing to make a particular concession.

### Defining Negotiation Success
Negotiation success (dependent variable) is achieved when a country’s national preference is fully or at least partly reflected in the final text of a resolution, declaration, strategy or policy. It is assumed that the more actively
diplomats exert influence over negotiation outcomes, the more likely it will be that their state regards the final text as acceptable (Panke 2013a, b). In the context of the relations between the EU and EaP states, the national preferences of the latter can, for example, be uploaded into the text of bilateral agreements (for example, AAs and DCFTAs) and regulations for financial assistance instruments (for example, European Neighbourhood Instrument (ENI)), or into the text of ENP/EaP Strategy Papers, bilateral programming documents or even EU Council declarations and decisions.

Our study examines three cases of EaP countries’ negotiation success. Out of a variety of possible countries and cases, we chose these three countries because all three are ‘weak’ in terms of their economic power and material bargaining leverage (unlike Azerbaijan, which possesses energy resources as a major bargaining chip vis-à-vis the EU). The three cases were identified through careful reading of secondary literature and exploratory interviews with EU officials and officials from EaP countries who were asked to identify the most salient cases of EaP countries’ negotiation success between 2009 and 2018. By choosing three cases that represent instances in which EaP countries have been most successful in obtaining concessions from the EU – the three ‘most deviant’ cases which are not explained well by existing theories (Bennet 2004: 22) – we hope to identify new or left-out variables to explain EaP negotiation success. Thus, while it is often rightly argued that the main disadvantage of selecting cases by the dependent variable is selection bias (King, Keohane & Verba 1994), the main purpose of the non-variance design used here is to generate “new information and discovering novel explanations, which in terms of a larger research cycle provides indispensable data for broader comparative studies and new hypotheses for them to evaluate” (Collier & Mahoney 1996: 73–74).

Explaining Negotiation Success

Understanding how EaP countries’ negotiation strategies influence the EU’s negotiating position is far from straightforward. Discussing what influence means is one of the thorniest issues in political science, where the concepts of power and its many faces (Lukes 1974) come to the front. The majority of literature in international negotiation looks at influence in terms of the first face of power, that is the ability to shape negotiation outcomes in line with a negotiating actor’s preferences. This article adopts a different perspective, namely it takes a more nuanced stance on the influence of EaP countries’ negotiation strategies. We understand influence in a constructivist way, according to which an emphasis is placed on the relational dimension, that is, how EaP delegates interact with EU negotiators and how they shape negotiation outcomes, such as EU concessions. The main idea is that negotiations are understood as a
Explaining EaP states’ negotiations with the EU

social process, whereby negotiation outcomes are not attributable to a single actor, but the result of the social construction of knowledge. Influence is not unidirectional, but relational (Lowery 2013). This implies that explaining EaP countries’ influence on the EU’s negotiating position in this article is limited to examining how EaP delegates’ expertise and negotiation strategies contributed to the negotiation process, based on a large number of interviews and cross-checking information across actors and with other primary and secondary sources.

We adopt process tracing as a primary method, but in line with the constructivist angle, process tracing here provides a way of studying “not only the proposed theoretical concepts and of testing research hypotheses, but also of studying ideational factors, the evolution of social phenomena, and the influence of these phenomena on actors’ behavior” (Lupovici 2009: 202). In other words, the ambition of our analysis is not to find proof of whether and when EaP countries’ negotiation strategies and arguments have been effective. Rather, we aim to examine how EaP country delegates have employed strategies of persuasion and manipulation in negotiations with the EU, and whether and how EU negotiators have accepted and/or used EaP countries’ arguments with regards to revising the EU’s negotiating position.

Sources
The case studies draw on 45 semi-structured interviews with EU officials, as well as senior officials and civil society representatives from Ukraine, Armenia and Belarus between Autumn 2014 and Summer 2019. Interview data were triangulated with data from other primary and secondary sources (DCFTAs/CEPA, official statements by the European Commission, official statements by ministries of foreign affairs, and think tank reports). Interviews were conducted with at least two officials from each EaP country negotiating team involved in talks with the EU. In addition, data from these interviews were compared to data obtained from interviews with the relevant EU officials involved in the same talks, to ensure that one-sided (biased) perceptions of the negotiation process could be singled out and excluded from the analysis.

Case Study: The Deep and Comprehensive Free Trade Area (DCFTA) with Ukraine

When the EaP was launched in 2009, one of the key objectives of the EU was to conclude a new generation of association agreements with the partner
countries aimed at achieving deeper political and economic integration. An integral part of the new Association Agreements concluded with Ukraine, Moldova and Georgia were the DCFTAs, which established free trade areas between the EU and partner countries.

*Sector-specific concessions:* While the three DCFTAs have a very similar structure and provisions, there are a number of important differences in the agreements. With regard to the trade in goods, for example, different transitional periods apply to the elimination of import duties, especially between Ukraine and Moldova, on the one hand, and Georgia with its highly liberalized economy, on the other hand (Van der Loo 2017). Most strikingly, however, Ukraine is the only country that obtained sector-specific concessions from the EU in negotiations of the DCFTA (Emerson & Movchan 2018: 42–43). Ukrainian motor vehicles will not only enjoy a particularly long transitional period of 10 years, the DCFTA also foresees a specific safeguard mechanism for passenger cars (Van der Loo 2017). The EU’s significant concession towards Ukraine is puzzling, as it constitutes a significant departure from one of the EU’s core principles in its external trade policies. The car industry plays a critical role in the Ukrainian economy and therefore one would have expected the EU to only offer minimal concessions to ensure the transformation and sustainable development of this industry (Langbein 2016). What factors explain Ukraine’s unexpected negotiation success?

Formal DCFTA negotiations between the Ukrainian government and the Commission were launched in February 2008 and concluded in December 2011. The text of the agreement was initialed in July 2012. The DCFTA provisionally entered into force on 1 January 2016. Ukrainian president Viktor Yushchenko (2005–2010) pushed for deeper integration with the EU and accepted demands by the EU for greater liberalization of the car sector. However, the Ukrainian government under Yulia Timoshenko, re-appointed Prime Minister in late 2007, pursued a more protectionist policy, such as the introduction of a new import surcharge on a variety of products including motor vehicles in 2009. The Commission heavily criticized the measures and threatened the suspension of DCFTA negotiations. Ukraine’s protectionist policy course continued with the election of Viktor Yanukovich as president in 2010. It was during the negotiations with the Yanukovich government in 2011 that the EU unexpectedly changed its negotiation position on Ukraine’s import tariffs for passenger cars imported from the EU. Rather than insisting on the abolishment the tariffs, the EU agreed on the gradual reduction of import tariffs within a 10-year transition period and granted Ukraine the right to adopt safeguard measures (Dabrowski & Taran 2012: 20; Langbein 2016: 34).
Explaining Ukraine’s Negotiation Success: Intangible Factors

Ukraine’s DCFTA negotiation team was comprised of officials from key Ukrainian government ministries in charge of European integration, namely the ministries of foreign affairs, justice and economy. However, the negotiating team lacked relevant expertise on EU law. In addition, the Ukrainian government(s) had failed to develop a clear position and strategy on the DCFTA because they had mainly focused on broader political goals (for example, the European perspective), instead of the detailed technical provisions in the DCFTAs (Dragneva & Wolczuk 2015). In the initial stages of the negotiations, Ukraine’s delegates therefore could draw neither on a clear national position on the DCFTA (H1) nor on relevant expertise (H2). But negotiation dynamics changed from 2010 onwards, after President Yanukovich came to power. In an attempt to gain more influence over the negotiations, Yanukovich appointed oligarch and close political ally Andriy Kluyev as DCFTA chief negotiator. In practice, Kluyev represented the interests of a handful of powerful Ukrainian oligarchs, such as UkrAVTO’s chairman Vasadze, who were keen on limiting competition by EU investors and companies in the domestic market. The oligarchs were focused on a small number of key selected issues such as the car sector, which Kluyev presented as critical ‘national’ interests in negotiations with the EU. The oligarchs and their networks not only yielded significant expertise on the EU’s acquis pertaining to the car sector. They also had access to detailed information on employment figures, impact studies and public opinion polls, and they had a very clear strategy serving their own specific economic interests. EU negotiators recognized the change in bargaining dynamics and noted that the Ukrainian team “increasingly became a difficult and hard negotiating partner” (Van der Loo 2011: 107). The expectation that a clear national position (H1) and expertise (H2) must be present as conditions for Ukraine’s negotiation success can thus be confirmed, with the disclaimer that the national position essentially represented oligarchic interests.

The approach used by Kluyev’s team was based on a mix of persuasion and manipulation negotiation strategies. The strategy of persuasion included references to Ukraine’s long-term political commitment to the EU, with Ukrainian negotiators stressing that the EU was treating Ukraine unfairly, placing disproportionate demands at a time when Ukraine was experiencing economic hardship (economic crisis).6 References were also made to the EU’s commitment to the economic development of Ukraine, and the considerable risks involved in liberalizing the car sector and the ensuing risk of spiraling unemployment in the car sector and associated industries.7 With regard to the negative

---

6 Interviews with Ukrainian officials, Kyiv, October-December 2014.
7 Ibid.
implications of abolishing import tariffs too quickly, the Ukrainian negotiators also presented very detailed studies, which aimed at demonstrating new and in-depth knowledge to persuade EU officials of the necessity to allow a longer transition period and additional safeguards.

The strategy of manipulation not only included misrepresenting the national interest, but also overplaying domestic constraints and pressure from public opinion. Ukrainian negotiators identified the car industry as a critical sector on which thousands of jobs depended and their loss would jeopardize the general public's positive attitude towards the DCFTA and further integration with the EU in the longer term. At the same time, Ukrainian delegates also used threats and simulated geopolitical leverage vis-à-vis the EU. Ukraine's position vis-à-vis the Russian Federation was highlighted based on the assumption that the EU had an interest in a swift conclusion of the DCFTA with Ukraine because it feared that the country would opt for closer relations with Russia and its Customs Union. The stakes increased when Yanukovich signed an agreement with Russia allowing the Black Sea fleet to stay in Ukraine for at least another 25 years. Ukrainian delegates referred to the ‘Russia vector’ throughout the negotiations to put additional pressure on the EU to swiftly conclude the negotiations, inter alia by making concessions with regard to the car sector.

Interviews with EU officials involved in the negotiations confirm that Ukrainian negotiators used persuasion, manipulation and threat strategies during the negotiations on the DCFTA, and that EU negotiators were receptive to the arguments made. Most of the interviewed EU negotiators agree that references to common norms or shared destiny did not fully convince them. However, the in-depth knowledge of Ukrainian negotiators and their expertise (on the car sector and related EU acquis) did resonate with the EU negotiators, as did the arguments on public opinion, unemployment rates and the threat to derail the (advanced) negotiations. Agreement between the EU and Ukraine on the car sector was only reached in the final phase of negotiations at the end of 2011 in a ministerial-level meeting between EU Commissioner Karel de Gucht and Ukraine’s Deputy Minister of Economy Valeriy Pyatnytskyi. According to an EU official, Commissioner de Gucht and other high ranking Commission officials were pushing for a conclusion of negotiations ahead of the 15th EU-Ukraine summit in December 2011 to “lower the risk of Yanukovich seeking closer relations with Russia” and thereby “derailing the AA process.”

---

8 Ibid.
9 Ibid.
10 Interviews with EU officials, Brussels, October–December 2014.
11 Interview with an EU official, Brussels, November 2014.
The strategy by Ukrainian negotiators to use persuasion, as well as manipulation and threats, can therefore be considered an important factor explaining Ukraine’s negotiation success vis-à-vis the EU with regards to longer transition periods and safeguards in the DCFTA.

Case Study: The Metsamor Power Plant in EU-Armenia Relations

This case study focuses on the Armenian Nuclear Power Plant (ANPP) in the negotiations between the EU and the Republic of Armenia between 1996 and 2017, demonstrating that Armenian delegates managed to upload their preference (of keeping the plant open) to the legal text of CEPA, the latest official cooperation agreement between the two parties.

The ANPP is situated close to Metsamor, a city about 30 km away from the Armenian capital, Yerevan. Supplying the landlocked Caucasus state with 40% of its electrical energy, the ANPP is the only nuclear power plant in all of Transcaucasia (“HAEK” CJSC 2012). Built in 1969 with two reactor units, the first unit started up in 1977. In 1980, a second reactor unit was put into operation in Metsamor where both continued to work until 1988. When the Spitak earthquake devastated vast parts of the Armenian north in early December of that year, authorities quickly decided to shut both reactors down. Yet, energy scarcity in the early years of Armenia’s independence made the authorities “re-introduce [the second reactor unit] into commercial operation” (“HAEK” CJSC 2012: 20) in 1995. When high debts foreshadowed the plant’s bankruptcy, Armenia obtained a debt release by transferring the ANPP’s financial management to the Russian energy company Inter RAO in 2003. Hence, the Armenian side has had a very pronounced preference of retaining – at all costs – the ANPP as a means of independent electricity supply for the country.

The first official documents in EU-Armenian relations to mention the ANPP date back to the negotiations of the Partnership and Cooperation Agreement (PCA) between the Republic of Armenia and the European Communities,
signed in 1996. Neither the ANPP nor its importance for Armenia is acknowledged in the energy-related Article 54 of the agreement, where the parties avow “improvement of energy supply, including security of supply, in an economic and environmentally sound manner” (European Commission 1999: Art. 54). The EU negotiators’ stance on the ANPP features very clearly in a side letter outside the agreement indicating how:

[t]he European Communities and their Member States regret the decision of the Armenian authorities to reopen Unit 2 of the Medzamor Nuclear Power Plant in November 1995 […], how they consider it ‘not to be in line with […] nuclear safety worldwide […]; how ‘significant design deficiencies have been identified […]; and how ‘[o]n the basis of the fact that the Medzamor Nuclear Power Plant cannot be upgraded to a level corresponding to internationally recognized safety standards, the European Communities and their Member States consider that it is not suitable for long-term operation and that its shutdown in the shortest practically achievable time should be pursued.

European Commission 1996: 66, emphasis added

Throughout more than 20 years of EU-Armenian relations, the EU’s position has remained pro-closure, while the Armenian side insisted on keeping it open. In this time, the ANPP remained on the agenda in what seems to be a vicious cycle of deadlock. Becoming aware of the fact that an unconditional shutdown of the ANPP was impossible for the Armenian side to achieve, the EU signaled readiness to contribute financially and technically to the improvement of the Metsamor plant and its staff on the condition of an early closure. The Armenian side accepted support measures but never agreed to close the plant, postponing a potential closure again and again. While several millions of Euro were invested in the modernization of the ANPP in the framework of TACIS, the EU’s pro-closure rhetoric did not soften significantly, and the Armenian side insisted on accepting a complete shutdown only on the condition of equivalent replacement.

CEPA eventually replaced the 1996 PCA agreement in 2017, reflecting a remarkably different language towards the potential closure of the ANPP: Article 42 in CEPA, which mirrors the PCA’s provisions on energy quoted above, contains clear reference to the ANPP. While CEPA does foresee the “closure and safe decommissioning of Medzamor nuclear power plant” (European Commission 2017: Art. 42 (2) g-ii), the relevant provision acknowledges the in-substitutability of the ANPP as long as there is no qualitative replacement to “ensure the energy security of the Republic of Armenia and conditions for
sustainable development” (ibid). Clearly, 1996’s focus on security and environmental sustainability that shaped the introduction to Art. 54 PCA, had given way for “principles of partnership, mutual interest, transparency and predictability [...]” (European Commission 2017: Art. 42).

All this, despite the fact that various EU institutions have continued to frame the ANPP as an environmental threat, rather than as Armenia’s only access to electrical energy: the ANPP was mentioned as a ‘Soviet-type nuclear reactor’ (European Parliament 2004; also, European Parliament 1997) similar to the one in Chernobyl (European Commission 2008). The environmental framing gained new momentum after the nuclear catastrophe of Fukushima in 2011 (European Commission 2012b, and also European Parliament 2018).

**Armenian Negotiation Success**

How did Armenian negotiators influence the wording on CEPA’s energy provisions so significantly? In order to explain Armenia’s negotiation success vis-à-vis the EU position, one needs to zoom in on the Armenian negotiation strategy for CEPA, in which Metsamor was a key deliverable.

By 2012, the Metsamor ANPP was a key priority of negotiations in the ‘Energy’ chapter of an Association Agreement between Armenia and the EU (European Commission 2012a). The Armenian negotiators employed a negotiation strategy based on expertise and quality information. All members of the negotiation team acted from positions of established diplomatic expertise. Alongside their personal capacity, the Armenian negotiators had access to firsthand technical information produced in regular nuclear stress test reports since 2011 (European Commission 2012b). Additionally, the plant features direct communication lines with the Ministry of Emergency Situations and the Ministry of Health (“HAEK” CJSC 2012). All this results in locational factors of Metsamor that made the ANPP a home game, in which the Armenian side necessarily had an information advantage compared to their EU-negotiator colleagues.

The Armenian side combined this information surplus with a strategy of postponing deliverables. Avowing early closure of the plant on the condition of valid replacement, the Armenian authorities pushed the dates of early closure further and further. From an initial earliest possible closure in 2004 (European Commission 2003a), by 2014, “Yerevan [had] postponed the original closing date [...] to 2026 provided that alternative replacement capacity becomes available” (European Commission 2014). Similarly, Armenia procrastinated the ANPP’s decommissioning plan, which the EU had first stipulated Armenia to prepare in 1999’s TACIS program annual report (European Commission 2003b). In 2008, the Armenian authorities started the preparation of a detailed decommissioning plan (European Commission 2009), and took further steps in 2010 (European Commission 2010). In 2012, the European
Commission noted that Armenia has not yet drawn up a detailed decommissioning plan (European Commission 2012b), and continued to register the Armenian forbearance in 2013 (High Representative of the Union 2013) and 2015 (European Commission 2015).

By 2013, non-trade-related chapters of the AA were closed successfully, yet the AA could not take off due to Armenia’s decision to join the Eurasian Economic Union. Eventually, Armenia returned to the negotiation table with CEPA, a light version of the AA (Kostanyan & Giragosian 2017), that preserved the non-trade-related parts of the earlier AA. Given the fact that the ANPP is not part of the trade chapter, one must assume that the negotiators must have settled essential formulations on Metsamor already by 2012.

Yet, as informants to the negotiation process have confirmed (EU and Armenian informants, 2019), 2015’s Armenian domestic protests against increased electricity tariffs did play a role in the negotiations. The protest movement, which received international attention as ‘Electric Yerevan’ blocked the Armenian capital for several days in June 2015, after the Armenian authorities had announced to increase electricity tariffs by 17%.

Being under Russian control, Electric Yerevan nourished an anti-Russian sentiment that possibly increased even in 2016 when Russia did not initially intervene on behalf Armenia in the spring escalations with Azerbaijan on Nagorno-Karabakh. While Armenia is officially interested in balancing relations both with the EU and with Russia, you have to be anti-Russian in order to receive assistance from the EU. On this background, the Armenian side could increase the urgency of its position on electricity supplies, carving out negotiation leverage for the formulations in CEPA quoted above. CEPA was signed in November 2017.

In CEPA, the EU conceded a discursive rapprochement to the Armenian position of keeping the Metsamor ANPP open by acknowledging Armenia’s specific dependence on the ANPP. There is ample reason to assume that Armenia’s negotiation strategy led to the ANPP’s negotiation success in CEPA. The case study showed that Armenian negotiators (1) kept a clear position on the plant, (2) were well informed about its state of the art, and (3) made sure to maintain their information surplus vis-à-vis the EU through manipulative practices such as the postponing of deliverables (date of early closure), the simulating of leverage (decommissioning plan), and by tactically employing domestic pressure constraints (Electric Yerevan).

16 Interviews with EU and Armenian informants from EU and Armenia, January–June 2019.
17 Ibid.
18 Interview with an Armenian informant, May 2019.
Case Study: Enhanced EU Relations with Belarus

In October 2015, the EU suspended – and subsequently, in February 2016, ended – its sanctions, including travel bans and asset freezes, targeting 170 Belarusian individuals and 3 companies (Council Conclusions 2016).\(^{19}\) This corresponded to a significant change of the EU approach, which has traditionally emphasized restrictive measures\(^ {20}\) given the poor human rights record and the political situation in Belarus. However, prior to the lifting of sanctions, the human rights situation in Belarus had not changed significantly, apart from the release of political prisoners in August 2015 and the Belarusian authorities’ abstaining from using violence during and after the presidential elections in October 2015. Conversely, political freedoms, such as the freedom of expression and assembly, were continued to be seriously infringed (Belarusian Association of Journalists 2018; United Nations Human Rights Council 2018). No EU sanctions were adopted in 2017, when Belarus’ riot police brutally dispersed peaceful protesters in Minsk, leading to a wave of detentions (Bosse & Vieira 2018), or after the harassment of independent media by the Belarusian authorities (even though these measures were condemned by the EU).

Instead, the EU doubled its financing from EUR 14.5 million in 2015 to EUR 29 million in 2016, talks on Belarus WTO accession were resumed, the EU-Belarus Dialogue on Trade was launched, and the EU authorized to start the work of the European Investment Bank in Belarus (Bosse & Vieira 2018). In 2016, the EU-Belarus Coordination Group was established, and the parties advanced with the Mobility Partnership. The new state of affairs, in which pragmatic cooperation outweighed the issues of human rights and democratic reforms, corresponded to a longstanding objective of the Belarusian leadership and was fully satisfying to the authorities (Lukashenka 2016a). The Belarusian representatives traditionally condemned all EU restrictive measures as being counterproductive (Martynov 2006; Papou 2006, Savinych 2011; Makey 2015), but until 2016 could lead the EU to adopt comprehensive changes of its approach.

The Lifting of Sanctions as a Negotiation Process

The issue of sanctions and a rapprochement between the parties was constantly on the EU-Belarus agenda (Makey 2015). In spite of the clarity of the national position in Belarus, and the existence of the necessary expertise, progress in

\(^{19}\) Restrictive measures targeting four officials suspected of being involved in the disappearances of political opponents in the late 1990s and an arms embargo were maintained.

\(^{20}\) The Partnership and Cooperation Agreement, concluded with Belarus in 1995, was not ratified by the EU.
the matter of sanctions was hardly expected in the aftermath of the Belarusian authorities’ crackdown on demonstrators and civil society following the 2010 presidential election. In 2012, the EU extended the list of individuals and entities under sanctions, something that provoked diplomatic tensions, including the withdrawal of all EU ambassadors from Minsk, who only returned to the capital after the Belarusian authorities released Andrei Sannikau, a presidential candidate, and his aide Dzimitry Bandarenka from prison (Guimelli 2013). Even after 2012, the EU was not prepared to negotiate its position on sanctions; when the rapprochement occurred, it mostly revolved around a visa facilitation and readmission agreement, and consultations on modernization.

The 2014 Ukraine conflict offered a window of opportunity to the Belarusian party to change this state of affairs. In the light of escalating regional conflict and Belarus’ engagement in the Ukraine negotiations, the Belarusian representatives relied on a combination of the ‘common destiny’ (H3) and ‘simulating leverage’ (H4) strategies, both allowing the EU sanctions to be portrayed as senseless or at least not an issue of primary importance. In addition, sanctions were criticized as unfounded, for instance on the grounds that the list of sanctioned persons in Belarus was twice as long as the list of individuals in war-torn Syria, not to mention the list of Russian officials following the annexation of Crimea (Makey 2014a). Moreover, the inclusion of journalists in the list who were close to the Belarusian authorities was criticized as inconsistent with European values.

The core strategy of the Belarusian representatives corresponded to the ‘simulating leverage’ strategy, while aiming to establish a connection between the existing EU sanctions and the Belarusian efforts aimed at resolution of the Ukraine conflict. The fact that Belarus offered to host international negotiations over Ukraine (Minsk I and Minsk II), created the basis for an upgraded Belarus profile as a donor of regional security (Makei 2016). In general, this was very positively received in Brussels, and led the European Council to maintain that it “values Belarus’ constructive role in the region” (Council Conclusions 2016).21 The credibility of the Belarusian strategy was fostered by Belarus’ own approach towards the conflict. Despite being Russia’s close ally, Belarus de-aligned itself from Russia’s narrative towards events in Ukraine in 2013–2014 as a coup d’etat carried out by nationalists and fascists, as well from Moscow’s portrayal of the referenda in Eastern Ukraine as legitimate expressions of popular will that implied changing Ukraine’s internal organization; instead, Belarus emphasized Ukraine’s territorial integrity. Eventually, the consolidation of the position of Belarus as a donor of regional and international

21 Interview with an EU official, Stockholm, 2016.
security and its acceptance on the part of the EU raised the question of maintaining sanctions. The ‘simulating leverage’ strategy was however not limited to the Ukraine conflict, but is also identifiable in Belarus’ diplomatic efforts aimed at connecting the EU and the Eurasian Economic Union (EAEU) (Makey 2014b), and in the idea of Helsinki-II, a broad dialogue aimed at diminishing tensions in relations between the countries on the European continent.

Another strategy employed by Belarus relied on persuasion, and in particular, the ‘common destiny’ strategy. Accordingly, the Belarusian representatives drew on the fact that the immediate proximity of the escalating conflict in Ukraine made the common risks and threats clear to both the EU and Belarus, and this had to make both parties aware of their responsibility towards maintaining stability in the region, including within individual countries. In the face of an escalating regional conflict, the Belarusian negotiations were keen to emphasize the need to develop pragmatic cooperation (MFA 2014), regardless of Belarus’ human rights and democratization record. The EU, however, was reluctant to accept this idea, given the previous record of cooperation with Belarus. To improve the credibility of its strategy, Belarus focused on the release of political prisoners, a measure defined by the EU as a key requirement for closer engagement, but one that had minimal implications for the regime. Thus, in June 2014, Alies Byaliatski, a prominent human rights defender and the head of Belarus’ Human Rights Center ‘Vyasna,’ was released from prison.

The EU, however, was adopting a wait-and-see approach, even though signaling the willingness to adopt concessions in case of substantial changes. In January 2015, the Council of the EU adopted the ‘List of Possible Additional Specific Measures to Deepen the Policy of Critical Engagement towards Belarus’ (Melyantsau 2016). In August 2015, six more political prisoners were released, including 2010 presidential candidate, Mikalai Statkevich. The Belarusian party also agreed to resume the previously suspended Human Rights Dialogue. In parallel, Belarus’ engagement into international talks on Ukraine was growing (in February 2015, German Chancellor Angela Merkel and French President Francois Hollande visited Minsk to participate in the Normandy format talks). Thus, the ‘simulating leverage’ strategy was working in tandem with the ‘common destiny’ strategy.

---

22 In support of the ‘common destiny’ strategy, Belarusian diplomats drew on the changing relationship with Russia, which was now associated with a possible danger to Belarusian sovereignty, something that could not but cause concern in the EU. In 2014, this strategy came to include a meeting of the Deputy Foreign Minister Alena Kupchyna “informing the European diplomats about the problems in the relations between Belarus and Russia” (Melyantsou 2014).
A crucial test of the credibility of the Belarus negotiation strategy was the October 2015 presidential elections. They were indeed held in a more peaceful manner than the previous ones, and even though Belarus was recognized to have a considerable way to go in meeting its OSCE commitments for democratic elections, some specific improvements and a welcoming attitude were noted by the OSCE/ODIHR Election Observation Mission (OSCE/ODIHR 2015). This corresponded to their similarly constructive assessment by the president of Belarus: “to be honest, we did everything that the West wanted” (Lukashenka 2015). The credibility behind the Belarusian actions, which now allowed for a more successful ‘common destiny’ strategy, convinced the EU to suspend the sanctions for four months in November 2015. At the same time, the Belarusian representatives rejected the idea of additional conditions for the ultimate ending of sanctions (Makey 2016b). The political reforms were portrayed as following their own “rhythm dictated by our history and mentality” rather than determined by the external powers (Hainouski 2016), and they were taking place in a country that was free of military conflicts, contrary to several of its neighbors. The sanctions were subsequently ended in February 2016, a decision that was interpreted in Belarus as a recognition, on the part of the EU, of the rationale behind “certain Belarusian actions and foreign policy decisions,” something that made the “spirit of mutual understanding possible again” (Makey 2016b). The lifting of the restrictive measures was portrayed as proving the Belarusian authorities right and allowing the Belarusian president to state that “we did not deserve them” (Lukashenka 2016b).

To conclude, while the 2014 Ukraine conflict could appear as a key factor that drove EU and Belarus together, resulting in a lifting of sanctions, the lifting of restrictive measures and rapprochement between the parties was neither automatic nor immediate. Concessions on the part of Belarus, such as the release of the political prisoners in Belarus alone, cannot account for the lifting of sanctions either: other EU requirements, such as the one to introduce the moratorium on the death penalty have been continuously rejected until today. Rather, all of these factors should be understood as a part of the persuasion and manipulation strategies employed by the Belarusian representatives, thus allowing us to confirm H3 and H4.

Conclusion

Departing from the assumption that small states usually have less negotiation power vis-à-vis bigger states, this article set out to examine the unexpected negotiation success of Ukraine, Armenia and Belarus in recent negotiations
with the EU. We chose three cases that represent instances in which EaP countries have been most successful in obtaining concessions from the EU. By focusing on most deviant cases, which are not explained well by existing negotiation theory (material bargaining power), we aimed to identify new or missing variables to account for EaP country negotiation success.

In the first part of the article, we identified factors impacting on success in international negotiations, and distinguished two main perspectives: The first approach, focusing on material factors related to size, administrative and financial capacities, and ‘hard’ bargaining leverage, was found to be of limited value to better understand the role of weaker states, such as the three EaP countries, in negotiations with the EU. For that reason, we drew on a second approach, the ‘social’ perspective, capturing intangible factors, such as the role of expertise, persuasion and manipulation in negotiation strategies and processes. While dynamics of persuasion are well-conceptualized in the literature on international negotiations, the concept of manipulation has received little attention. We therefore develop and operationalize manipulation as a negotiation strategy based on the misrepresentation of facts, the simulation of leverage and articulation of threats.

In the second part of this article, we examined EaP countries’ unexpected negotiation success with regard to specific safeguard and transitional measures in the DCFTA (Ukraine), nuclear security clauses in the CEPA (Armenia), and the lifting of sanctions and enhanced economic partnership (Belarus).

We find that expertise, and negotiation strategies based on persuasion and especially manipulation played an important role in the three EaP countries’ negotiation success vis-à-vis the EU. We identified two negotiation strategies common to all three countries: Negotiators from Ukraine, Armenia and Belarus have all relied on the strategy of ‘simulating leverage,’ in combination with articulating (indirect) threats, purposefully overstating their own country’s geopolitical importance and leverage in the context of the contestation over the ‘shared neighborhood’ between the EU and Russia. The use of these strategies is particularly striking in the case of Belarus, where they form core pillars of the country’s engagement with the EU. The study also reveals differences among the three states’ negotiation strategies. Aside from simulated leverage, Ukraine’s negotiation strategy also included references to Ukraine’s long-term political commitment to the EU and pressure from domestic groups and public opinion, while Armenia’s negotiation strategy also involved expanding of deliverables, maintaining an information surplus vis-à-vis the EU, and putting forth domestic pressure constraints. This reflects a range of possible negotiation strategies available to both ‘accession-willing’ DCFTA states such as Ukraine, as well as EAEU countries such as Armenia. More generally, we
found that Ukraine and Armenia have developed more complex negotiation strategies combining different sets of persuasive arguments, while Belarus has drawn on ‘simulating leverage’ and ‘common destiny’ in negotiations vis-à-vis the EU. We also found that in the three cases examined, EU negotiators often recognized EaP country’s arguments as sufficiently valid, prompting them to revise the EU’s position and to grant concessions.

Overall, the study confirms the importance of examining the role of small states in international negotiations. Small or weak states may indeed punch above their weight (Panke 2012; Kumar 2018) by drawing on a range of sophisticated negotiation strategies based on persuasion and manipulation. The study also demonstrates the added value of research drawing on perspectives accounting for non-material ‘social’ factors in negotiations processes, such as persuasion and manipulation. Especially with regard to the three most deviant cases examined here, we were able to demonstrate the critical role of negotiation strategies based on manipulation, a concept which so far has received little attention in the literature. In that sense, the EaP states’ negotiation success vis-à-vis the EU somewhat departs from the classical theme of David confronting Goliath. Rather, by walking on intricate stilts, the EaP countries managed to ‘argue with the giant.’

The article’s findings have two general implications. First, they demonstrate that seemingly small or weak states such as the three EaP countries examined here are not always passive norm-takers, but on occasions, they also shape the EU’s position. And these occasions are by no means trivial, considering that some pertain to issues considered non-negotiable by the EU (for example, prohibition of sector-specific export duties), or EU relations with autocratic regimes (like Belarus). Moreover, as shown in this analysis, it is often doubtful whether the EU’s concessions actually serve the partner country’s general national interest. Rather, it appears that the EU is prone to buy into discourses of smart negotiators who may in fact represent very particularistic oligarchic interests or strengthen autocratic leadership. More research is therefore needed to better understand not only why, but also to whom, the EU is granting concessions, especially in relations or negotiations with transition countries and autocratic regimes.

A second implication of the article relates to the limitation of the chosen research design. While the focus on three most deviant cases has helped to identify new missing variables (that is, expertise, persuasion and manipulation strategies) to account for the three EaP countries’ negotiation success, the findings do not suggest that the mere presence of a persuasion strategy guarantees or causes negotiation success. Our article has shown that a persuasion strategy is one important factor in explaining small country negotiation success, but
more case studies are needed to determine the relevance of additional or alternative explanatory variables (for example, issue salience, complexity/length of negotiations, and type of relations/negotiation). Future research could, for example, draw on qualitative comparative analysis to examine which combination of factors, including strategies based on persuasion, leads to small countries’ (EaP/ENP) negotiation success vis-à-vis the EU.

References


Explaining EaP states’ negotiations with the EU


