

# The EP's Battle for Power in EU External Relations: Article 218 TFEU and TSD Chapters

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# Context – Article 218 TFEU

- Art. 218(6) TFEU: The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement: (a) after obtaining the consent of the European Parliament
- Art. 218(10) TFEU: The European Parliament shall be immediately and fully informed at all stages of the procedure.
- Battle - Parliaments are not traditional institutional actors when it comes to trade negotiations and agreements.

# 2 types of developments

- **Procedural – Article 218 TFEU**
  - Judicial developments
  - Related to the Parliament as a whole
  - INTA Committee-related developments
- **Substantive – TSD Chapters**
  - Labour
  - Environmental
  - Enforcement

# 1. Procedural developments

- **a. Judicial developments**

- C-658/11, Parliament v Council, EU:C:2014:2025; Case C-263/14, Parliament v Council, EU:C:2016:435.

\* The right of information of the Parliament, as designed by Article 218(10) TFEU, constitutes a treaty obligation, whose violations (by the other EU institutions) translate into the annulment of the Council Decisions.

# 1. Procedural developments

- **b. Developments at the level of the Parliament (as a whole) (I)**
  - Inter-institutional agreements and arrangements
    - \*binding commitments
  - Framework Agreement on relations between the EP and Commission 2010
  - Interinstitutional agreements on classified information sharing between the EP and Council 2014
  - Operational Arrangements for access to TTIP-related documents 2015 (Commission)
  - Commission Statement on the role of the EP in the implementation of the EU-UK TCA 2021

# 1. Procedural developments

- **b. Developments at the level of the Parliament (as a whole) (II)**

- Rules of procedure
  - \*non-binding instruments
  - Parliamentary questions.
  - Confirmation hearings of the Commissioner-designate for Trade
  - Resolutions

\*The right of information – a more political dimension (i.e. EP needs to receive the relevant information in order to perform its consent and scrutiny functions. + ask concrete). The sanction also of a political nature -> refusal to consent to negotiated EU Trade Agreements

# 1. Procedural developments

## c. Setting up of a fully-fledged standing Committee on International Trade (INTA)

- Hearings of the INTA committee and Exchange of views
- Studies, policy briefings and workshops
- Missions and Delegations
- Monitoring groups
- INTA Chair

\* These developments enhance the quality, quantity and timeliness of the information transmitted officially under the obligation of Article 218(10) TFEU.  
+ expand the ways in which INTA can collect information from external sources to enhance its ability to exercise scrutiny over EU Trade Agreements.

## 2. Substantive – TSD Chapters

- **1. EP Resolutions** - for each EU Trade Agreement + during the procedure
  - INTA 85-90% reply rate from the Commission.
  - BUDG (100%), LIBE (94%), IMCO (93%) and REGI (91%) vs. AFET (9%), FEMM (17 %), and AFCD (22 %)
- **2. Parliamentary questions**
  - 65 Questions for oral answer: 21 generally deal with EU Trade Agreements; 11 TSD
  - 750 Written questions: 30 are related to TSD chapters
- **3. Monitoring Groups**
  - 38 based on regions, countries, themes
- **4. Missions and delegations**
  - INTA organised 27 delegations (2014-2019); 26 during 2014-2019
- **5. INTA Chair**
  - DG Trade; WTO Ministerial Conference – Canda; Exchange letters Vietnam



## 2. Substantive – TSD Chapters

- **labour standards**: ratification of outstanding ILO conventions; child labour; inclusion of provisions on equal pay between men and women, and women's empowerment;
- **environmental protection**: Paris Climate Agreement as an 'essential clause'
- **institutional developments**: establishment of a joint civil society forum that monitors and comments on the implementation; a reform of the Domestic Advisory Group (DAG) system; Human rights impact assessments before negotiations; Sustainability impact assessments before negotiations.
- **implementation and enforcement**: sanctions-based mechanism in case of TSD breaches (e.g. the possibility to suspend unilaterally the agreements in case of violation of labour or environmental commitments, or human rights violations); Dispute Settlement Mechanism.

## 2. Substantive – TSD Chapters

- Example: EP recommendation to Council/COM/EEAS on the negotiations with Chile
  - to ensure that the modernised AA contains a robust and ambitious TSDC that includes binding and enforceable provisions which are subject to suitable and effective dispute settlement mechanisms, which consider, among various enforcement methods, a sanctions-based mechanism, and which enable social partners and civil society to participate appropriately;
  - to consider that the TSDC should cover, inter alia, the parties' commitment to adopting and maintaining in their national laws and regulations the principles enshrined in core ILO etc.

# Nowadays

- TSD review
- EU-New Zealand FTA; EU-Kenya EPA
  - Dispute Settlement Mechanism for TSD matters (not the standard DS, but a special TSD DS)
  - Sanctions in instances of serious violations of labour commitments, specifically ILP fundamental principles, and climate commitments, specifically the Paris Agreement
    - suspension of ‘the application of obligations under the covered provisions.’
- + EU-Chile Interim agreement; EU-UK TCA

# BUT, BUT...

- Mercosur
  - EP Resolution “EU-Mercosur agreement cannot be ratified as it stands”
- India
  - TSD: Both sides had constructive discussions resulting in progress on a number of provisions and exploring alternatives on others. Nevertheless, substantial differences remain, including on the binding and enforceable nature of TSD commitments. Negotiators agreed to continue making efforts towards text consolidation, including through online inter-sessional meetings



**Thank you!**

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