

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

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Chapters







Context – Article 218 TFEU

- Art. 218(6) TFEU6: 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.
- <u>Battle</u> 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



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.



- 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 (<u>Commission</u>)
 - Commission Statement on the role of the EP in the implementation of the EU-UK TCA 2021



- 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



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 AFCO (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; <u>Exchange letters Vietnam</u>



2. Substantive – TSD Chapters

- <u>labour standards</u>: 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'
- <u>institutional developments</u>: 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.
- <u>implementation and enforcement</u>: 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 <u>binding and enforceable provisions</u> which are subject to <u>suitable and effective dispute</u> <u>settlement mechanisms</u>, which consider, among various enforcement methods, a <u>sanctions-based mechanism</u>, 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 <u>core</u> <u>ILO etc.</u>



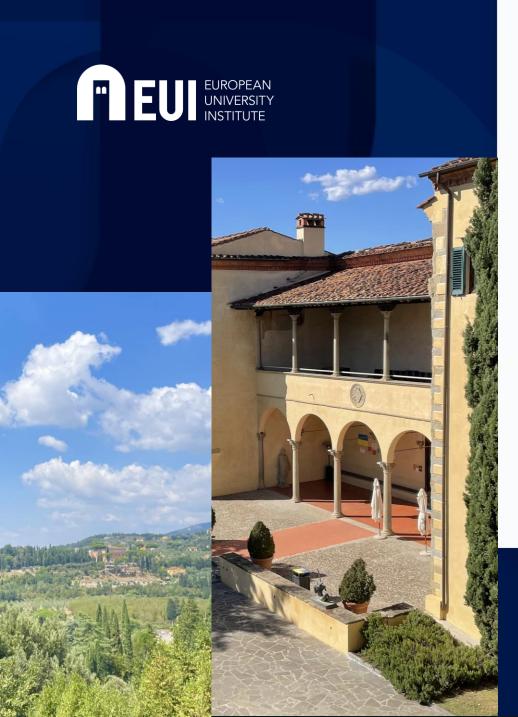
Nowadays

- 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, <u>substantial differences</u> <u>remain</u>, 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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