The European Parliament and International Trade Agreements: The Case of Soft Law Arrangements

Prof. Elisa Baroncini

Dipartimento di scienze giuridiche

Articles 218 and 207 TFEU & Article 10 TEU

The Lisbon Treaty marks a major advancement for the formal involvement of the European Parliament in the conclusion of international agreements (Articles 218 and 207 TFEU)

EU Democratic aspirations – Article 10, para. 1 TEU: «The functioning of the Union shall be founded on representative democracy"

Principles and Purposes of EU International Action

Article 3, para. 5 TEU: «In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the **sustainable development of the Earth**, solidarity and mutual respect among peoples, **free and fair trade**, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter"

Principles and Purposes of EU International Action

Article 21 TEU: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation …

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. **It shall promote multilateral solutions to common problems**, in particular in the framework of the United Nations"

Article 207 TFEU

- The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

Article 218 TFEU - Consent

Article 218, para. 6, lett. a) TFEU establishes that the Council may conclude an international agreement only after having obtained the **consent of the European Parliament** for the following types of treaties:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure

Article 218 TFEU - Consent

As the Council and European Parliament are co-decisors for the above mentioned types of international agreements, Article 218 establishes that «in an urgent situation», **the European Parliament and the Council "may … agree upon a time-limit for consent**."

Article 218 TFEU – EP Consultation

Pursuant to Article 218, para. 6, lett. b), "in other cases", the Council may conclude an international agreement just "**after consulting** the European Parliament". In this case, "the European Parliament shall deliver its opinion **within a time-limit which the Council** may set depending on the urgency of the matter. **In the absence of an opinion within that time-limit, the Council may act.**"

Article 218 TFEU & CFSP

Pursuant to Article 218, para. 6 TFEU, there is no involvement of the European Parliament in the conclusion of international agreements “where agreements relate exclusively to the common foreign and security policy”

Article 218 TFEU & EU Trade Policy

Very wide category, for the consent of the European Parliament, of the agreements "covering fields to which either the **ordinary legislative procedure** applies, or the special legislative procedure"

After the Lisbon Treaty, such "fields" include the **Common Commercial Policy (CCP – EU Trade Policy)**

Article 207, para. 2 TFEU: The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.

Marked improvement by comparison with the **pre-Lisbon legal framework, where, formally, the EP was not involved in the adoption of CCP acts**

Duty to inform the Parliament – Article 218, para. 10 TFEU & Article 207, para. 3 TFEU

Article 218, para. 10 holds that «The European Parliament shall be **immediately and fully informed at all stages of the procedure**"

For international trade agreements, Article 207, para. 3 reinforce **the transparency requirement**, as the Commission has to "report regularly … to the European Parliament on the progress of negotiations"

Consent

In the consent procedure, the European Parliament cannot introduce amendments to the text of the proposed agreements. The Assembly may either entirely approved the treaty, or entirely reject the treaty.

European Parliament Strategy

How to make the most of the unprecedented strengthening of the role of the European Parliament in the conclusion of international agreements? **Four paths**

Rejection of not appreciated proposed agreements

Pressure for the full performance of the duty of information within all the phases of the making of international treaties

Adoption of resolutions on the external policies and future agreements to be implemented or negotiated / concluded by the Union

Complaint to the EU Court of Justice in case of illegitimate legal basis, more generally in case of infringements of the EP prerogatives

Rejection of not appreciated proposed agreements

Refusal of consent: the SWIFT Agreement

Immediately after the enter into force of the Lisbon Treaty, on 11 February 2010, the Assembly withheld its consent on the EU/US Agreement on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program - SWIFT Agreement (*Society for Worldwide Interbank Financial Telecommunications*)

Refusal of consent: the SWIFT Agreement

The European Parliament criticized the compatibility of the SWIFT Agreement with fundamental rights, in particular with Article 8 of the EU Charta on Fundamental Rights, concerning data protection.

Transfer of bulk data even in presence of a request of information concerning one single person; **absence of clarity on the need of a priori judicial authorization before asking personal data**; possibile transfer of the EU data, by the US authorities to third countries, without guaranteeing the respect by the third countries of adequate protection of the EU data; absence of indication on the period of conservation of EU data; lack of reciprocity on data protection, between the EU and US legislations.

Refusal of consent: the SWIFT Agreement

P7_TA(2010)0029, European Parliament legislative resolution of 11 February 2010 on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program (05305/1/2010 REV 1 – C7-0004/2010 – 2009/0190(NLE))

No *fait accompli*

Refusal of consent: the EU-Morocco Fisheries Partnership Agreement

On 14 December 2011, the EP refuses to approve the EU-Morocco Fisheries Partnership Agreement.
No significant benefits for the EU
Excessive exploitation of fish stocks
Limited contribution of EU funds for the development of local Moroccan fishery
Absence of evidence in the Agreement that the fishery activities «are to the benefit of, and according to, the wishes of the people of Western Sahara" (2002 Opinion by the UN Legal Counsel Hans Corell)

Refusal of consent: the EU-Morocco Fisheries Partnership Agreement

~~P7_TA(2011)0569, European Parliament legislative~~ resolution of 14 December 2011 on the draft Council decision on the conclusion of a Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial compensation provided for in the Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco (11226/2011 – C7-0201/2011 – 2011/0139(NLE))

Refusal of consent: the ACTA Agreement

Proposal of an Anti-Counterfeiting Trade Agreement (ACTA) between the EU and its Member States, and other 10 Third Countries

Insufficient information and possibility to participate and of being involved in the negotiations, by the EP and all the stakeholders

Incompatibility with fundamental rights: insufficient definition of the tipologies of crimes and not proportionate sanctions for violations of the ACTA rules

Unprotected and unrestricted access to personal data of persons charged of having infringed intellectual property rights on the web, with injustified limitation of the privacy; threat to the important role of free access to the web

Refusal of consent: the ACTA Agreement

P7_TA-PROV(2012)0287, European Parliament legislative resolution of 4 July 2012 on the draft Council decision on the conclusion of the Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America (12195/2011 – C7-0027/2012 – 2011/0167(NLE))

EU/Uzbekistan Agreement on Free Trade in Textiles

On 15 December 2011, the Parliament declares to be ready to give its consent to the proposed Protocol only when a serious initiative has been undertaken to contrast **forced child labour in cotton farming** (P7_TA(2011)0586, EC-Uzbekistan Partnership and Cooperation Agreement and Bilateral Trade in Textiles, European Parliament Resolution of 15 December 2011)

EU/Uzbekistan Agreement on Free Trade in Textiles

Communication from the Commission on 'Promoting decent work for all: The EU contribution to the implementation of the decent work agenda in the world' (COM(2006)0249)
Communication from the Commission on 'A Special Place for Children in EU External Action' (COM(2008)0055) as well as the European Commission staff working document on combating child labour (SEC(2010)0037)
Council Conclusions on child labour of 14 June 2010
EU international action has to be coherent with the purposes and principles of Articles 3 and 21 TEU

EU/Uzbekistan Agreement on Free Trade in Textiles

The European Parliament « requests the Council and the Commission to … ensure that pursuing the end to the practice of forced child labour in cotton production will be a priority of the Union human rights strategy in the Union Delegation in Tashkent” (P7_TA(2011)0586, EC-Uzbekistan Partnership and Cooperation Agreement and Bilateral Trade in Textiles, European Parliament Resolution of 15 December 2011, para. 1 viii)

The Assembly has requested further discussions with the Commission and the Council

EU/Uzbekistan Agreement on Free Trade in Textiles

P7_TA(2011)0586, EC-Uzbekistan Partnership and Cooperation Agreement and Bilateral Trade in Textiles, European Parliament Resolution of 15 December 2011 on the draft Council decision on the conclusion of a Protocol to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, amending the Agreement in order to extend the provisions of the Agreement to bilateral trade in textiles, taking account of the expiry of the bilateral textiles Agreement (16384/2010 – C7-0097/2011 – 2010/0323(NLE))

EU/Uzbekistan Agreement on Free Trade in Textiles

European Parliament non-legislative resolution of 14 December 2016 on the draft Council decision on the conclusion of a Protocol to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, amending the Agreement in order to extend the provisions of the Agreement to bilateral trade in textiles, taking account of the expiry of the bilateral textiles Agreement (16384/1/2010 – C7-0097/2011 – 2010/0323(NLE) – 2016/2226(INI))

EU/Uzbekistan Agreement on Free Trade in Textiles

B. whereas in that interim report Parliament concluded that it will only consider consent if the ILO observers have been granted access by the Uzbek authorities to undertake close and unhindered monitoring and have confirmed that concrete reforms have been implemented and have yielded substantial results in such a way that the practice of forced labour and child labour is effectively in the process of being eradicated at national, viloyat and local level;

C. whereas Parliament has established a regular dialogue with the Commission, the EEAS, the Government of Uzbekistan, the ILO and civil society in order to monitor developments during the cotton harvest and exert pressure on all involved to achieve the end of the use of child and forced labour in Uzbekistan;

EU/Uzbekistan Agreement on Free Trade in Textiles

D. whereas in 2013 the Government of Uzbekistan authorised the ILO to monitor the cotton harvest; whereas since 2013 the ILO has on several occasions undertaken monitoring, initially focused on child labour and later extended to forced labour and recruitment conditions;

E. whereas the cooperation between the ILO and the Government of Uzbekistan has been gradually broadened, and in 2014 Uzbekistan became the first Central Asian country to agree on a Decent Work Country Programme with the ILO;

F. whereas the most recent ILO monitoring during the 2015 cotton harvest has shown that 'the use of children in the cotton harvest has become rare, sporadic and socially unacceptable, even if ongoing vigilance is needed'(4) ;

EU/Uzbekistan Agreement on Free Trade in Textiles

European Parliament legislative resolution of 14 December 2016 on the draft Council decision on the conclusion of a Protocol to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part, amending the Agreement in order to extend the provisions of the Agreement to bilateral trade in textiles, taking account of the expiry of the bilateral textiles Agreement (16384/1/2010 – C7-0097/2011 – 2010/0323(NLE)) (Consent)

Provisional Agreements

- EP Committee on Fisheries rejected the EU/Chile Agreement concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean (30 November 2010)
- Provisional application of the Agreement by the Council, quick notification by the Commission of the EU/Chile Agreement to the WTO Secretariat without informing/involving the European Parliament

Provisional Agreements

«the Understanding in question does not constitute a convincing solution either to the specific problems it is supposed to solve or to the more general issue of fisheries cooperation with Chile" (MEP Pat the Cope Gallagher, Rapporteur, 2010/0084(NLE), DRAFT RECOMMENDATION, EU/Chile Agreement, 9.8.2010)

Provisional Agreements

"Should [the EP] consent be refused … this precedent should probably serve as an incentive for the **other institutions** involved in the negotiation and conclusion of international agreements in the area of fisheries **not to take the approval of the Parliament for granted** and to **fully respect its new role** as foreseen by the Treaty of Lisbon" (MEP Pat the Cope Gallagher, Rapporteur, 2010/0084(NLE), DRAFT RECOMMENDATION, EU/Chile Agreement, P. 8)

Provisional Agreements

Practice developed after the blockage of the EU/Chile Agreement on swordfish: when the EP consent is needed, the Commission has 1) to fully inform and involve the Assembly; and 2) to propose to the Council a deadline for the enter into force, on a provisional basis, of the proposed agreement which is **subsequent to** the estimated date of approval by the Parliament

First test: EU/South Korea Free Trade Agreement (provisionally entered into force on 1 July 2011)

Pressure for the full performance of the duty of information within all the phases of the making of international treaties

Transparency / Information / Participation

Formally, the Lisbon Treaty does not provide the European Parliament with a **power to authorise trade negotiations** like that of the US Congress, which may thus define purposes and principles of US trade negotiations

However, full involvement of the Assembly since the very beginning of EU negotiations may be considered as a **corollary of the EP right of consent**. Such a right cannot be reduced to the very limited possibility of intervenining only on the final text of proposed agreements, to say just a simple «yes» or «no»

Transparency / Information / Participation

Strategy of full transparency, which entails full participation: «Transparency and access to all relevant documents and information is the very basis of and a compulsory precondition for democracy and especially for the European Parliament in order to be capable to do its work» (MEP Gerald Häfner, A7-0245/2012, Report on the conclusion of an interinstitutional agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy (2012/2069(ACI)), 18.7.2012)

Framework Agreement between the European Parliament and the Commission, 20 October 2010

Parliament has strengthened rights.

Important commitments by the European Commission to inform the European Parliament in the making of international agreements

The EP succeded in obtaining information to be given at all stages of the procedure

Framework Agreement between the European Parliament and the Commission, 20 October 2010

Opening of negotiations: «Parliament shall be immediately and fully informed at all stages of the negotiation and conclusion of international agreements, ***including the definition of negotiating directives***" (Framework Agreement, para. 23); "when the Commission proposes **draft negotiating directives** with a view to their adoption by the **Council**, it shall **at the same time present them to Parliament**" (Framework Agreement, Annex III, Negotiation and conclusion of international agreements, para. 2)

Framework Agreement between the European Parliament and the Commission, 20 October 2010

The information referred to in point 23 shall be provided to Parliament in **sufficient time** for it to be able to express its point of view if appropriate, and for the Commission to be able to **take Parliament's views as far as possible into account**. This information shall, as a general rule, be provided to Parliament through the **responsible parliamentary committee** and, where appropriate, at a **plenary sitting**. In duly justified cases, it shall be provided to **more than one parliamentary committee**" (Framework Agreement, paras. 23-24)

European Parliament / beginning of negotiations

In case of the **EU/Japan Free Trade Agreement**, the EP obtained for the first time the Council to wait with the adoption of the negotiating directives until the Parliament has expressed its views on the draft directives in a resolution "The European Parliament … calls on the Council to authorise the Commission to start negotiations for a free trade agreement with Japan on the basis of the outcome of the scoping exercise and clear targets" (P7_TA(2012)0398, *European Parliament resolution of 25 October 2012 on EU trade negotiations with Japan* (2012/2711(RSP), para. 10)

This has since become a common practice for other important and comprehensive trade agreements (EU/China investment agreement, EU/US Transatlantic Trade and Investment Partnership (TTIP))

Highlights - EU´s future trade and investment strategy - Hearing, 12 November 2015 at 9.30 - Committee on International Trade

09-11-2015 09:23 AM CET

The **European Commission** adopted its **Communication** on a new trade and investment strategy entitled **"Trade for all - Towards a more responsible trade and investment policy"** on 14 October 2015. The aim of the public hearing is to get a better understanding of the Commission´s communication and to analyse if the trade strategy is able to cope with the challenges that come along with a changing world trade stage: anaemic trade growth and the EU's desire to uphold regulations and standards.

3.2 A more open policymaking process

Transparency is fundamental to better regulation. *Lack of transparency undermines the legitimacy* of EU trade policy and public trust. There is demand for more transparency in trade negotiations, particularly when they deal with domestic policy issues like regulation. The Commission has taken unprecedented steps in response to this demand, in particular in publishing EU negotiating proposals.

In the same way, the Council has published the TTIP and TiSA negotiating directives. Furthermore, the Commission publishes on its website information on meetings with interested representatives held by all Members of the European Commission, their cabinets and directors-general.

Transparency should apply at all stages of the negotiating cycle from the setting of objectives to the negotiations themselves and during the post-negotiation phase.

On top of existing measures, the Commission will:

- ***at launch, invite the Council to disclose all FTA negotiating directives immediately after their adoption;***
- ***during negotiations, extend TTIP practices of publishing EU texts online for all trade and investment negotiations*** *and make it clear to all new partners that negotiations will have to follow a transparent approach; and*
- ***after finalising negotiations, publish the text of the agreement immediately, as it stands,*** *without waiting for the legal revision to be completed.*

Adoption of resolutions on the external policies and future agreements to be implemented or negotiated / concluded by the Union

P7_TA(2011)014, *European Parliament Resolution of 6 April 2011 on the Future European International Investment Policy*

European Parliament great fighter for the protection and promotion of fundamental rights

2011 EP Resolution on the EU International Investment Policy: the future EU IIAs have to protect the **right to regulate** of the involved contracting parties, asking the European Commission "to include in all future agreements specific clauses laying down the **right of parties to the agreement to regulate**, inter alia, in the areas of **protection of national security**, the **environment**, **public health**, **workers' and consumers' rights**, **industrial policy** and **cultural diversity**"

P7_TA(2011)014, *European Parliament Resolution of 6 April 2011 on the Future European International Investment Policy*

2011 EP Resolution on the EU International Investment Policy underlines "the EU's future policy must also promote **investment which is sustainable, respects the environment (particularly in the area of extractive industries) and encourages good quality working conditions in the enterprises targeted by the investment**," so that "in all future agreements, a reference to the updated OECD Guidelines for Multinational Enterprises" has to be inserted

P7_TA(2011)014, *European Parliament Resolution of 6 April 2011 on the Future European International Investment Policy*

The Assembly «urges Parliament's position to be taken fully into account by the Commission and the Member States **before investment negotiations are initiated**, as well as **during such negotiations**; recalls the content of the Framework Agreement on relations between the European Parliament and the Commission and calls on the Commission to consult Parliament on **draft negotiating mandates** in good time to enable it to state its position, which must, in turn, be properly taken into account by the Commission and the Council » (para. 40)

P7_TA(2011)014, *European Parliament Resolution of 6 April 2011 on the Future European International Investment Policy*

«**The Commission should not submit its draft negotiating mandate to the Council until the EP has adopted its resolution**» (A7-0070/2011, MEP Kader Arif, Report on the future European international investment policy, 22.3.2011, p. 13)

The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

The EU Parliamentary Committee on International Trade (INTA) has declared on 17 September 2013 that, once opened, EU-China negotiations have to be conducted with the **highest possible level of transparency**, and subject to **constant parliamentary oversight**, qualifying these modalities as "**a precondition for the European Parliament's consent to the deal**" (see EP Press Release, *EU-China Investment Talks: no EP Consent without Transparency, Trade MEPs Warn*, 17 September 2013)

The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

INTA stated without ambiguity that "**any deal should … include binding corporate social responsibility, social and environmental clauses**," while, on the contrary, "goods produced in **China's Laogai forced labour camps** should not benefit from investments made under [the EU-China planned] international agreement" (see EP Press Release, *EU-China Investment Talks: no EP Consent without Transparency, Trade MEPs Warn*, 17 September 2013)

The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

«The European Parliament … requests the inclusion of an **'international obligation clause'** in the agreement, providing that **obligations regarding the protection of investments must be read subject to all parties' obligations under international treaties and customary international law, in particular concerning human rights, labour rights and protection of the environment**; requests, therefore, that the investment agreement should not curtail progress with regard to the ratification and full implementation of international human rights, International Labour Organisation (ILO) conventions and multilateral environmental agreements by both parties» (EP Motion for a Resolution on the EU-China negotiations for a bilateral investment agreement, 2 Oct. 2013 (B/-0439/2013, para. 18)

The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

European Parliament Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement (2013/2674(RSP)

The European Parliament …

4. Welcomes the **inclusion of market access** in the negotiating mandate; believes that a reassurance on the part of China that market access will be included in the **negotiations** should constitute a **precondition for launching** them"

The European Parliament and the Opening of Negotiations on an EU-China Investment Agreement

European Parliament Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement (2013/2674(RSP)

«12. Underlines the importance of establishing, through this agreement, the **preconditions for fair competition between the EU and China**; **recommends, to this end, that the Commission negotiate strong and binding provisions on transparency and fair competition** so that a level playing-field also applies to **state-owned enterprises** and **sovereign wealth funds' investment practices**»

European Parliament Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement

«22. Stresses that a **precondition for the conclusion of the agreement** should be the inclusion of a **strong commitment by the parties to sustainable and inclusive development, in its economic, social and environmental dimensions and in relation to investment**, in order to build up **a more balanced trade and investment relationship between the EU and China** that is not based mainly on **low labour costs and poor environmental standards in China**"

European Parliament Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement

"23. Stresses that investment **agreements concluded by the EU** must not be in contradiction with the **fundamental values that the EU wishes to promote through its external policies** and must not undermine the **capacity for public intervention**, in particular when pursuing public policy objectives such as social and environmental criteria, human rights, the fight against counterfeiting, security, workers' and consumers' rights, public health and safety, industrial policy and cultural diversity; calls for the inclusion of the respective specific and binding clauses in the agreement»

The EU Council has approved the EU negotiating mandate ***on 18 October 2013***

EU/US TTIP

European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI))

EU/US TTIP

P. whereas President Juncker has also clearly stated in his political guidelines, that he will not accept that the jurisdiction of courts in the Member States is limited by special regimes for investment disputes; whereas now that the **results of the public consultation on investment protection and ISDS** in the TTIP are available, a reflection process – taking account of the contributions – is currently being undertaken within and between the three institutions, while exchanging with civil society and the business sector, on **the best way to achieve investment protection and equal treatment of investors while ensuring states' right to regulate**;

EU/US TTIP

Q. whereas Parliament fully supports both the decision of the **Council to declassify the negotiation directives and the Commission's transparency initiative**; whereas the lively public debate across Europe on TTIP has shown the need for the TTIP negotiations to be concluded in a more transparent and inclusive manner taking into account the concerns voiced by European citizens and communicating the negotiation results to the general public;

EU/US TTIP

to ensure that the sustainable development chapter is binding and enforceable and aims at the full and effective ratification, implementation and enforcement of the eight fundamental International Labour Organisation (ILO) conventions and their content, the ILO's Decent Work Agenda and the core international environmental agreements; provisions must be aimed at further improving levels of protection of labour and environmental standards; an ambitious trade and sustainable development chapter must also include rules on corporate social responsibility based on OECD Guidelines for Multinational Enterprises and clearly structured dialogue with civil society;

EU / Canada CETA

European Parliament legislative resolution of 15 February 2017 on the draft Council decision on the conclusion of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (10975/2016 – C8-0438/2016 – 2016/0205(NLE)) (Consent)

EU / Canada CETA

Investment. CETA was the first economic EU agreement following the Lisbon Treaty to contain a full-fledged investment chapter, including all relevant investment protection provisions. Following intense public debate and a clear position in the European Parliament against ISDS, the Commission put forward a new approach for investment protection in September 2015, which was fully embraced by the Canadian government. CETA introduces this new investment court system and enhanced rules on investment protection. It guarantees the right of EU governments to regulate in the interest of their citizens, while still encouraging foreign investors by protecting their investments. The new system also makes the resolution of investment disputes fairer and more transparent. As such it serves as an important step towards the EU's ultimate goal of a global investment court.

EU / Canada CETA

Joint Interpretative Instrument

At the time of signature [Brussels, 30 October 2016)], Canada and the EU and its Member States adopted a joint interpretative instrument. This instrument provides, in the sense of Article 31 of the Vienna Convention on the Law of Treaties, a statement of what the parties agreed in a number of CETA provisions that have been the object of public debate and concerns and provides an agreed interpretation thereof. This includes the impact of CETA on the ability of governments to regulate in the public interest, as well as the provisions on investment protection and dispute resolution, and on sustainable development, labour rights and environmental protection. As such, the instrument is an integral part of the agreement.

Complaint to the EU Court of Justice in case of illegitimate legal basis, more generally in case of infringements of the EP prerogatives

The European Parliament and the EU Court of Justice

Action brought on 21 December 2011 - European Parliament v Council of the European Union (Case C-658/11) to annul Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the **Agreement** between the European Union and the Republic of Mauritius on the **conditions of transfer of suspected pirates and associated seized property** from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer

The European Parliament and the EU Court of Justice

The European Parliament considers that Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the EU/Mauritius Agreement is invalid because it does not relate exclusively to the **CFSP,** as expressly provided for in Article 218(6), second paragraph, TFEU.

The European Parliament considers that the Agreement between the European Union and the Republic of Mauritius also relates to **judicial cooperation in criminal matters**, **police cooperation**, and **development cooperation**, covering fields to which the **ordinary legislative procedure applies**.

Therefore, this Agreement should have been concluded after obtaining the **consent of the European Parliament** in accordance with Article 218(6)(a)(v) TFEU.

The European Parliament and the EU Court of Justice

Furthermore, the European Parliament considers that the Council has **violated Article 218(10) TFEU**, because **it did not inform Parliament fully and immediately at the stages of negotiation and conclusion of the Agreement**

EUCJ, Case C-658/11, Judgment, 24 June 2014

"As regards the objectives of **Article 218 TFEU**, it must be noted that, following the entry into force of the Treaty of Lisbon, in order to satisfy the requirements of clarity, consistency and rationalisation, that article now lays down **a single procedure of general application concerning the negotiation and conclusion of international agreements which the European Union is competent to conclude in the fields of its activity, including the CFSP**, except where the Treaties lay down special procedures." (para. 52)

EUCJ, Case C-658/11, Judgment, 24 June 2014

"Article 218(6) TFEU covers ***three types of procedure for concluding international agreements***, each one prescribing a different role for the Parliament. Thus, the Parliament may be called upon to consent to the conclusion of an agreement, or it may only be consulted in that regard, or it may even be excluded from the process of concluding the agreement, ***without prejudice, however, to its right to be immediately and fully informed at all stages of the procedure, in accordance with Article 218(10) TFEU.***" [para. 54]

EUCJ, Case C-658/11, Judgment, 24 June 2014

"However, as stated in paragraph 52 of the present judgment, **the procedure covered by Article 218 TFEU is of general application and is therefore intended to apply, in principle, to all international agreements negotiated and concluded by the European Union in all fields of its activity, including the CFSP which, unlike other fields, is not subject to any special procedure.**" [para. 72]

EUCJ, Case C-658/11, Judgment, 24 June 2014

"it must be noted that Article 218(10) TFEU provides that the Parliament 'shall be **immediately and fully informed at all stages of the procedure**' for negotiating and concluding international agreements envisaged in that article … it must be held that, in this case, the Parliament was not immediately informed at all stages of the procedure for negotiating and concluding the EU-Mauritius Agreement." [paras. 75 and 76]

EUCJ, Case C-658/11, Judgment, 24 June 2014

"It is apparent from the file submitted to the Court that, after having announced the opening of negotiations to the Parliament, **the Council did not inform it of the adoption of the contested decision and the signing of that agreement until three months later and 17 days after their publication in the *Official Journal of the European Union*. It follows from this that the Council infringed Article 218(10) TFEU**." [paras. 77 and 78]

EUCJ, Case C-658/11, Judgment, 24 June 2014

"That finding is not called into question by the Council's argument that the contested decision had in any event been published in the *Official Journal of the European Union*, and therefore the Parliament had been in a position to take note of it. In fact, such a publication is prescribed in Article 297 TFEU and satisfies the publicity requirements to which an EU act is subject if it is to enter into force, … [para. 79]

EUCJ, Case C-658/11, Judgment, 24 June 2014

"whereas the information requirement arising under Article 218(10) TFEU is prescribed in order to ensure that **the Parliament is in a position to exercise democratic scrutiny of the European Union's external action** and, more specifically, to verify that its powers are respected precisely in consequence of the choice of legal basis for a decision concluding an agreement."

[para. 79]

EUCJ, Case C-658/11, Judgment, 24 June 2014

"the procedural rule laid down in [Article 218(10)] constitutes an **essential procedural requirement** within the meaning of the second paragraph of Article 263 TFEU and its infringement leads to the nullity of the measure thereby vitiated … **That rule is an expression of the democratic principles on which the European Union is founded**. … the Parliament's involvement in the decision-making process is the reflection, at EU level, of the **fundamental democratic principle** that **the people should participate in the exercise of power through the intermediary of a representative assembly**" [paras. 80 and 81]

EUCJ, Case C-658/11, Judgment, 24 June 2014

"From that point of view, the Treaty of Lisbon has even enhanced the importance of that rule in the treaty system by inserting it in a separate provision that is applicable to all types of procedures envisaged in Article 218 TFEU." [para. 82]

"the role which the Treaty of Lisbon has conferred on the Parliament in relation to the CFSP remains limited. … Nevertheless, it cannot be inferred from that fact that despite its exclusion from the procedure for negotiating and concluding an agreement relating exclusively to the CFSP, the Parliament has no **right of scrutiny** in respect of that EU policy. On the contrary, it is precisely for that purpose that the information requirement laid down in Article 218(10) TFEU applies to any procedure for concluding an international agreement, including agreements relating exclusively to the CFSP." [paras. 83, 84, 85]

"If the Parliament is not immediately and fully informed at all stages of the procedure in accordance with Article 218(10) TFEU, including that preceding the conclusion of the agreement, it is not in a position to exercise the **right of scrutiny** which the Treaties have conferred on it in relation to the CFSP or, where appropriate, to make known its views as regards, in particular, the correct legal basis for the act concerned. The infringement of that information requirement impinges, in those circumstances, on the Parliament's performance of its duties in relation to the CFSP, and therefore constitutes an **infringement of an essential procedural requirement**. That being the case, the second plea is well founded and the contested decision must accordingly be annulled." [paras. 86 and 87]

Some weaknesses in the EP action

European Parliament & Soft Law

In the last years there has been a proliferation of soft law measures in the implemetation of EU external policies, usually undertaken by the Commission, or by the Commission together with the Council.

Example: there are more than 50 «**structural dialogues**» between the European Commission and **China** which created a very articulated Brussels / Beijing net of collaboration in almost all the fields (e.g. competition, climate change, intellectual property, social policies). This practice takes place while the negotiations for an ambitious Partnership and Cooperation Agreement (PCA), launched in January 2007, are frozen … also because of the severe approach of the European Parliament with reference to human rights

European Parliament & Soft Law

"The European Parliament … emphasises that it is no longer prepared to give its assent to new international agreements that do not contain a human rights and democracy clause" (P6_TA(2006)0056, *European Parliament resolution on the human rights and democracy clause in European Union agreements of 14 February 2006*, para. 10)

P9_TA(2021)0255
Chinese countersanctions on EU entities and MEPs and MPs
European Parliament resolution of 20 May 2021 on Chinese countersanctions on EU entities and MEPs and MPs (2021/2644(RSP))

J. whereas in December 2020 the EU and China agreed in principle to the EU-China Comprehensive Agreement on Investment (CAI); whereas the ability of the European Parliament to duly analyse the CAI is significantly hindered by the Chinese sanctions, which prevent, as a minimum, the Subcommittee on Human Rights from working with Chinese experts; **whereas it is not acceptable to deal with trade and investment relations *outside* the general context of human rights issues and the broader political relations;**

10. Takes the position that any consideration of the EU-China Comprehensive Agreement on Investment (CAI), as well as any discussion on ratification by the European Parliament, has **justifiably been frozen** because of the Chinese sanctions in place; demands that China lift the sanctions before Parliament can deal with the CAI, without prejudice to the final outcome of the CAI ratification process; expects the Commission to consult with Parliament before taking any steps towards the conclusion and signature of the CAI; calls on the Commission to use the debate around the CAI as leverage to improve the protection of human rights and support for civil society in China and reminds the Commission that Parliament will take the human rights situation in China, including in Hong Kong, into account when asked to endorse the CAI;

P9_TA-PROV(2019)0083, European Parliament Resolution of 28 November 2019 on the Crisis of the WTO Appellate Body

The European Parliament declared to fully "[s]upport … [these] recent EU initiatives to conclude **interim arrangements** for provisional solutions with our major trade partners that would **preserve the European Union's right to the resolution of trade disputes at the WTO through binding two-level, independent and impartial adjudication, while recalling that a Standing Appellate Body remains the core objective of the EU's strategy**" (para. 5)

P10_TA(2025)0020 Escalation of violence in the eastern Democratic Republic of the Congo - European Parliament Resolution of 13 February 2025 on the escalation of violence in the eastern Democratic Republic of the Congo (2025/2553(RSP))

whereas **the EU has formed raw materials partnerships with several countries, including the DRC, Rwanda and other countries in the region**; whereas these partnerships are focused on, among other things, **advancing due diligence and traceability, cooperation in fighting against the illegal trafficking of raw materials, and alignment with international environmental, social and governance standards**; whereas **Parliament, unlike the Council, was not given the opportunity by the Commission to share its political assessment of the decision to negotiate a Memorandum of Understanding (MoU) with Rwanda or to provide technical feedback on the draft MoU;**

P10_TA(2025)0020 Escalation of violence in the eastern Democratic Republic of the Congo - European Parliament Resolution of 13 February 2025 on the escalation of violence in the eastern Democratic Republic of the Congo (2025/2553(RSP))

10. **Regrets that the EU** has not taken appropriate measures to sufficiently **address the crisis and effectively press Rwanda to end its support for M23**, and that it **has instead taken steps – including the signing in February 2024 of an MoU on sustainable raw materials value chains without sufficiently discussing the conflict**, and the decision to top up support for Rwanda's deployment in Mozambique under the European Peace Facility (EPF) – that have failed to demonstrate sufficient safeguards and that have contributed to sending an inconsistent message to the Rwandan authorities;

P10_TA(2025)0020 Escalation of violence in the eastern Democratic Republic of the Congo - European Parliament Resolution of 13 February 2025 on the escalation of violence in the eastern Democratic Republic of the Congo (2025/2553(RSP))

11. **Urges the Commission and the Council *to immediately suspend* the EU-Rwanda MoU on sustainable raw materials value chains** until Rwanda proves that it is ceasing its interference and its exportation of minerals mined from M23-controlled areas; **calls on all actors to increase transparency and to effectively ban the entry of all blood minerals into the EU;**

12**. Calls on the Commission to render the future re-activation of cooperation on critical raw materials conditional upon Rwanda joining the Extractive Industries Transparency Initiative, which the DRC is already part of;**

P10_TA(2025)0020 Escalation of violence in the eastern Democratic Republic of the Congo - European Parliament Resolution of 13 February 2025 on the escalation of violence in the eastern Democratic Republic of the Congo (2025/2553(RSP))

13. Calls on the Commission and the Member States to ensure that the current Conflict Minerals Regulation … is strongly enforced and on the Commission to propose a revision of the EU rules, with the aim of **ensuring the highest standards of traceability and transparency**;

14. Notes that **parliamentary oversight and civil society involvement in the preparation, signing and implementation of raw material MoUs and roadmaps are essential for an inclusive process with adequate scrutiny, and *must* become part of the MoU**;

EU-U.S. trade deal: one joint statement, two legislative proposals

27 July 2025; Turnberry: U.S. President Donald Trump and EU Commission President Ursula von der Leyen announce they have reached **a high-level political agreement** aimed at resetting the transatlantic trade relationship and preventing sweeping U.S. import tariffs from coming into force

21 August 2025: the EU Commission and the U.S. published a "**Joint Statement** on a United States-European Union **Framework on an Agreement** on Reciprocal, Fair and Balanced Trade"

The EU/US Joint Statement has now been followed by **two EU legislative proposals**:

1) COM(2025) 471 final, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the adjustment of customs duties on the import of certain goods originating in the United States of America and opening of tariff quotas for imports of certain goods originating in the United States of America, Brussels, 28.8.2025;

2) COM(2025) 472 final, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the non-application of customs duties on imports of certain goods, Brussels, 28.8.2025

STATEMENT | 21 August 2025 | Brussels | Directorate-General for Trade and Economic Security | 9 min read

Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade

The United States and the European Union are pleased to announce that they have agreed on a Framework on an Agreement on Reciprocal, Fair, and Balanced Trade ('Framework Agreement').

This Framework Agreement represents a concrete demonstration of our commitment to fair, balanced, and mutually beneficial trade and investment. This Framework Agreement will put our trade and investment relationship – one of the largest in the world – on a solid footing and will reinvigorate our economies' reindustrialisation. It reflects acknowledgement by the European Union of the concerns of the United States and our joint determination to resolve our trade imbalances and unleash the full potential of our combined economic power. The United States and the European Union intend this Framework Agreement to be a first step in a process that can be further expanded over time to cover additional areas and continue to improve market access and increase their trade and investment relationship.

EUROPEAN
COMMISSION

Brussels, 28.8.2025
COM(2025) 471 final

2025/0261 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the adjustment of customs duties on the import of certain goods originating in the United States of America and opening of tariff quotas for imports of certain goods originating in the United States of America

COM(2025) 471 final

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 27 July 2025 the European Union and the United States reached a political agreement as regards their trade relationship and on 21 August 2025 they issued a Joint Statement which announced the European Union-United States Framework on an Agreement on Reciprocal, Fair, and Balanced Trade ("Joint Statement"). As a result, the United States committed to modify certain tariffs applicable to Union imports in line with that political agreement, reducing the applicable rate to an all-inclusive tariff ceiling of 15 %. The United States Executive Order (14326) of 31 July 2025 implements this commitment from 7 August 2025. From 1 September 2025, the United States will also apply only the Most Favoured Nation (MFN) tariff to certain Union products such as unavailable natural resources (including cork), all aircraft and aircraft parts, generic pharmaceuticals and their ingredients and chemical precursors. The Union and the United States will also consider other sectors and products that are important for their economies and value chains for inclusion in the list of products for which only the MFN tariffs would apply. The Union and the United States intend this Joint Statement to be a first step in a process that can be further expanded over time to cover additional areas and continue to improve market access and increase their trade and investment relationship.

As part of the political agreement, and as laid down in the Joint Statement of 21 August 2025, the Union expressed the intention to eliminate tariffs on all industrial goods originating in the United States and to provide preferential market access for certain seafood and agricultural goods.

To advance the implementation of the Union's political commitments, the objective of this proposal is to provide for the non-application of customs duties on all industrial goods originating in the United States and provide the preferential market access treatment for certain seafood and agricultural goods originating in the United States.

European Parliament & Soft Law

~~The Assembly should promote a~~ **~~mechanism of~~ mandatory notification** of all the international soft law measures through which the international action of the European Union is implemented and expressed

See P. J. KUIJPER, *The Case Law of the Court of Justice of the EU and the Allocation of External Relations Powers: whither the Traditional Role of the Executive in EU Foreign Relations?*, in M. CREMONA AND A. THIES (EDS) *The European Court of Justice and External Relations Law - Constitutional Challenges*, 2014, Hart Publishing: «*legislatures in some countries have established special notification procedures of all agreements 'concluded' by ministries and administrations or at least of those agreements that are supposed to have binding force*"

European Parliament & Soft Law

The mechanism of mandatory notification would prevent the circumvention of the EP powers now conferred by the Lisbon Treaty, also rendering justice to the huge work of the EU at international level

Need of a distinction between **minor agreements** and **major agreements**, in order to reserve the consent of the European Parliament only to the latter, while guaranteeing full control by the Assembly on EU international action

Parliament-Commission Framework Agreement: greater transparency, trust, better dialogue

Press Releases AFCO 09-09-2025 - 18:49

EU Parliament and EU Commission representatives have finalised negotiations on an updated Framework Agreement to improve interinstitutional relations, trust, transparency and dialogue.

Further info

New 2025 Draft Parliament-Commission Framework Agreement

Key improvements

The draft text, provisionally agreed by negotiators today, reflects the nine political principles agreed by the President of the European Parliament and the President of the European Commission on 21 October 2024.

...

more detailed provisions on the flow of information regarding international agreements with, inter alia, a commitment by the Commission to properly inform Parliament about non-binding international agreements;

Thank you for your attention!

ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA

Co-funded by
the European Union

Prof. Elisa Baroncini

SustainEUorPlanet Jean Monnet Chair & Coordinator

Department of Legal Studies

https://site.unibo.it/sustaineuorplanet/en

https://www.linkedin.com/company/sustaineuorplanet/about/?viewAsMember=true

SustainEUorPlanet