

SESSION III - THE ROLE OF THE EUROPEAN UNION PARLIAMENTS IN NEGOTIATIONS ON INTERNATIONAL TREATIES

Background note

The role that the EU parliaments play or can play in the complex process of shaping agreements between the EU and third parties is becoming an increasingly salient part of public discourse and political debate, because it forms part of a broader discussion to do with the transparency of EU negotiations, public disclosure and limits to the exercise of democratic control.

It is, moreover, a highly topical matter because three major ongoing rounds of talks (TISA, CETA and TTIP¹) have become a focus of public concern and interest. In an effort to meet the demands for transparency from many quarters, the European Council has authorised the Commission to make its negotiating mandates public for the first time².

Indeed, the treaties mentioned above have a vast scope of application, and touch upon many matters that are potentially significant not only for the production and growth prospects of European economies, but also for the protection of fundamental rights.

The Lisbon Treaty strengthened some of the powers of the European Parliament to negotiate international agreements. Article 218, paragraph 6, of the Treaty on the Functioning of the EU (TFEU) increases the number of instances in

¹ The Trade in Services Agreement (TiSA) is being negotiated by the 23 members of the World Trade Organisation (WTO), including the EU. The Comprehensive Economic and Trade Agreement (CETA) is being negotiated between the EU and Canada, and is intended to abolish the 99% of customs duties. The Transatlantic Trade and Investment Partnership (TTIP), which is being negotiated between the EU and the USA, is expected to become the most wide-sweeping bilateral free trade agreement ever made.

² In addition, the European Commission has taken or is poised to take several initiatives relating to the TTIP: make known to the public a larger number of the negotiating texts that it has already disclosed to Member States and the European Parliament; by means of the so-called "reading room", give all members of the European Parliament rather than only a select few access to the TTIP texts; classify fewer documents as "restricted" so that they are more readily accessible to members of the European Parliament even outside the reading room; publish and regularly amend the public list of the documents shared with the European Parliament and the Council; organize public consultations on the most sensitive issues.

which the European Council must first obtain the consent of the European Parliament before concluding an agreement, and article 218, paragraph 10 of the same specifies that Parliament must be immediately and fully apprised of all stages of the negotiation procedure.

It should be noted that the European Parliament has already made extensive use of its new powers by refusing to approve the Anti-Counterfeiting Trade Agreement (ACTA), which, consequently, never came into force. Likewise, the European Parliament is remaining constantly vigilant in relation to the negotiations between the EU and the United States of America on the TTIP, and is deploying the procedural tools now at its disposal. One such procedure deserving of special mention is that provided by Rule 108 of the European Parliament's Rules of Procedure, which states that at any stage of the negotiations, the European Parliament may adopt specific recommendations for the European Commission and require them to be taken into account before the conclusion of the relevant agreement.

The Committee on International Trade of the European Parliament, acting in its capacity as the body responsible for the TTIP and taking advice from 14 other parliamentary committees, is considering the progress of the TTIP negotiations, which began 18 months ago and are now in their eighth round, and is preparing draft recommendations to be adopted at a plenary sitting in May 2015.

It is doing so even though the whole process of negotiation is essentially intergovernmental in nature, given that the Council rather than the European Commission is conducting the talks.

The Treaties assign specific powers to national parliaments when dealing with what is known as a "mixed agreement", since the matters involved in such an agreement fall under the concurring competence of the EU and of Member States. Indeed, in these cases, the resulting treaty requires the ratification not just of the EU but also of Member States.

In June 2014, the Chairpersons of the European Affairs and Foreign Trade Committees of the Lower House of the Netherlands sent a letter, co-signed by 19 Chairs of the equivalent Committees of other national parliaments of EU countries, asking the European Commission to accept that the free-trade agreements under discussion (the aforementioned TTIP and CETA) should be defined as "mixed agreements" in view of the policy areas included in their remit, and that they would therefore require the ratification of national parliaments.

The reply that the then Vice President of the Commission Maroš Šefčovič sent on 16 October 2014 to the parliaments whose Committees had signed the letter made the point that, first, the nature of the agreement could not be determined with certainty until the negotiations had been concluded and the content defined. Secondly, the letter

reminded them, national parliaments have several tools at their disposal to exert control over the process of negotiation. Finally, the letter expressed the Commission's belief that robust debate by national parliaments of important negotiations was a good thing, and expressed its willingness to provide information for the debates of national parliaments, and even to participate in them if asked.

It should be noted here that the procedures for parliamentary scrutiny of the provisions for the ratification of international treaties do not allow the modification of the content of the treaties themselves through specific amendments. Thus, the power of national parliaments is actually limited to preventing ratification. In short, a national parliament may only approve or reject a treaty text.

Of course, national parliaments still have the power to use the various ordinary procedures at their disposal to carry out their institutional functions of policy-setting and oversight over government policies, by which they may influence the actions of their respective governments in the European Council (the degree of parliamentary oversight varies from one country to another). National parliaments also have fact-finding powers with respect to the progress of negotiations.

In light of the foregoing observations, the session could focus upon the following salient points:

- a) With reference to the exchange of information among various parliaments with some experience in these matters, and the progress they have made in discussing the negotiations, can we regard as adequate and satisfactory the currently available tools and procedures for the assiduous and timely monitoring of negotiations on treaties that would grant the EU and Member States powers that may have major repercussions on national legal systems or have other concrete effects?
- b) In light of the recent initiatives of the First Vice-President Frans Timmermans of the European Commission for greater cooperation with national parliaments, and once again making the most of the potential of the Treaty of Lisbon and the appended Protocol referring to the role of national parliaments and their right to receive direct information from European institutions, how can we achieve the goal of providing constant and punctual updates of the progress made in negotiations?
- c) Can we make this area an exemplary instance of how to reinforce political dialogue between the Commission and national

parliaments, and between the national parliaments themselves; if so, how?