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Nina Ferreira

The European Parliament's Practice in the Adoption of
International Trade Agreements: The Creation of an Institutional
Parallelism to the Unilateral Dimension?

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Nina Ferreira

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List of Abbreviations

CCP	Common Commercial Policy
EC	European Community
ECJ	European Court of Justice
EU	European Union
FTA	Free Trade Agreement
INTA	International Trade
MEP	Member of the European Parliament
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TTIP	Transatlantic Trade and Investment Partnership

I. Introduction

The entry into force of the Treaty of Lisbon in December 2009 marked the beginning of a new era for the Common Commercial Policy (CCP) of the European Union (EU).¹ Already included in the Treaty of Rome in 1957, this policy area has ever since been at the heart of EU external relations.² With the Lisbon Treaty, the CCP did not only undergo significant substantial, but also institutional changes.

According to Kleimann, “the empowerment of the European Parliament is by far the most momentous CCP reform that the Lisbon Treaty has brought about”.³ The new powers of the Parliament are found in two main spheres: First, it obtained a full legislative role as a co-legislator with the Council for the adoption of internal framework legislation under Article 207(2) of the Treaty on the Functioning of the European Union (TFEU).⁴ And second, it was given new participatory rights for the negotiation and conclusion of international agreements with third countries or international organisations under Article 218 TFEU. The reforms made by the Lisbon Treaty illustrate the treaty-makers’ recognition of the value of the democratic input that the Parliament could bring in the field of the CCP.⁵

While the European Parliament has been domestically given greater powers through the introduction and extension of the ordinary legislative procedure, the negotiations and adoption of international agreements are still mostly in the hands of the Council and the European Commission. The Parliament has repeatedly called “for the ‘parallel treatment’ of domestic and international law-making”; a treatment which was however not envisaged by the treaty-makers.⁶ In light of these recurrent calls and the practice of the European Parliament to extend its powers over areas with restricted legislative role,⁷ the question arises whether the Parliament has attempted to strengthen its role in the adoption of

¹ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, OJ C 306/01, 13 December 2007.

² Treaty establishing the European Community, (Treaty of Rome), 1957.

³ D. Kleimann, ‘Taking Stock: EU Common Commercial Policy in the Lisbon Era’. CEPS Working Document No. 345, April 2010, p. 4.

⁴ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326/47, 26/10/2012.

⁵ G. V. Puig G. & B. Al- Haddab, ‘The Common Commercial Policy after Lisbon: an Analysis of the Reforms’. *European Law Review* 36, 2011, p. 289.

⁶ D. Thym, ‘Parliamentary Involvement in European International Relations’ in M. Cremona & B. de Witte, *EU Foreign Relations Law. Constitutional Fundamentals*. Portland, Oregon: Hart Publishing, 2008, p. 203.

⁷ A. Dashwood et al., *Wyatt and Dashwood’s European Union Law*. Sixth Edition. Oxford: Hart Publishing, 2011; M. Romaniello, The international role of the European Parliament: The SWIFT Affair and the ‘re-assessed’ European institutional balance of power. *Perspectives on Federalism*. Volume 5, Issue 1, 2013; D. Thym, 2008.

international trade agreements as well, thereby creating a parallelism between unilateral and bilateral law-making procedures. And if so, is this practice still in accordance with the procedure set out by the treaty-making provision Article 218 TFEU? Did this practice change the division of powers between the EU institutions and hence the institutional balance? Any change to the division of powers impacts on the institutional balance, a principle developed by the European Court of Justice (ECJ) in its case law and set out in Article 13(2) of the Treaty on European Union (TEU).⁸

This contribution aims therefore at answering the following research question: Does the European Parliament try to align its prerogatives in the bilateral dimension to the new acquired powers in the unilateral dimension, and to what extent is this still in accordance with Article 218 TFEU and the principle of institutional balance? On account of a proper understanding of the concepts 'unilateral dimension' and 'bilateral dimension', these are used to define whether the scope of the EU's action extends to entering into commitments with third countries or international organisations, or not. While the EU adopts autonomous measures, which are secondary EU legislation, in the 'unilateral' dimension, it negotiates and concludes international agreements in its 'bilateral' dimension. In order to provide a proper answer to the research question, this paper is based on legal literature research, EU documents analysis and on interviews with civil servants of the International Trade (INTA) Secretariat in the European Parliament. The interviews with the INTA Secretariat add substantial first-hand expert knowledge on the practice of the Parliament in the conclusion of international trade agreements.

For the analysis of the Parliament's practice, it is not only important to examine the formal rules governing the role of the European Parliament, i.e. the rules laid down in the EU Treaties. Also, inter-institutional agreements and so-called informal rules adopted by the institutional actors should be taken into consideration. These measures can be of clarifying, complementing or modifying nature. "Actors that formulate informal rules intend to fill the 'incomplete character' of formal treaties with substance that is either included for norm-based or self-interest-maximising reasons".⁹ Such rules can be either set out in agreements between EU institutions, or individual statements or rules drawn up by a single institution.

⁸ Consolidated version of the Treaty on European Union (TEU), OJ C 326, 26/10/2012. Article 13(2) TEU reads: "Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation."

⁹K. Raube, 'The Emerging Relationship Between the European Parliament, the High Representative and the External Action Service'. Leuven Centre for Global Governance Studies, Working Paper No. 74, 2011, p. 4.

With some exceptions discussed in the course of this contribution, these rules are often adopted as ‘soft law instruments’, i.e. non-legally binding instruments with “certain (indirect) legal effects” that are intended to and possibly create practical effects.¹⁰ Such instruments can be, for example, declarations, statements, recommendations and resolutions. Within this context, it is important to recall the ECJ’s judgement in *France v Commission*, where it stated that the principle of institutional balance cannot be circumvented or disregarded by soft law.¹¹ The fact that it lacks a legally binding force does, consequently, not allow the EU institutions to act in a manner disregarding the institutional balance. While examining the European Parliament’s practice on the one hand, attention should be paid to any possible impact on the institutional balance on the other hand. Therefore, it is essential for this contribution to analyse which legal effects inter-institutional agreements and soft law measures may actually have on the institutional balance.

This paper is structured as follows: At first, it conceptualises the principle of institutional balance by discussing the relevant case law of the ECJ. Subsequently, it addresses the unilateral dimension of law-making in the CCP by describing the role and function of the different institutional actors and in particular of the European Parliament. The next section firstly sets out the European Parliament’s role in the bilateral dimension according to the relevant Treaty provisions. Then, it assesses the practice of the Parliament in order to establish whether it is trying to copy the unilateral law-making procedures to the bilateral dimension. The last part of the analysis constitutes the legal evaluation by discussing the Parliament’s practice in light of Article 218 TFEU and the principle of institutional balance. The final section summarises the findings of this contribution.

II. The Principle of Institutional Balance

Before turning to the essence of this contribution, this section introduces the concept of institutional balance, or *équilibre institutionnel*. This principle is of relevance as it not only applies to the unilateral dimension, but also the bilateral dimension where the EU institutions have specific roles in the process of entering into international commitments pursuant to Article 218 TFEU. The concept describes the existence and respect of the division of powers between the EU institutions.¹² Several Treaty provisions (Articles 13 - 19 TEU) set out the

¹⁰ L. Senden, *Soft Law in European Community Law*. Portland, Oregon: Hart Publishing, 2004, p. 112.

¹¹ Case C-233/02 *French Republic v Commission of the European Communities* [2004] ECR I-02759, para. 40.

¹² L. Senden, 2004.

tasks and competences of the Union's institutions, thereby creating a certain balance between them. Any change to this internal division of powers will have an immediate impact on the overall institutional balance.

The first reference to the institutional balance is found in the *Meroni* case of 1958.¹³ The Court deemed the balance of powers to be an essential element of the then Community's institutional system and to constitute "fundamental guarantee granted by the Treaty".¹⁴ The concept was further defined in the *Chernobyl* case.¹⁵ According to this judgement, the institutional balance is a "system for distributing powers among the different [EU] institutions, assigning to each institution its own role in the institutional structure of the [EU] and the accomplishment of the tasks entrusted to the [EU]".¹⁶ Each Union institution is obliged to comply with the institutional balance, which means that they shall take into consideration the powers of the other institutions when making use of their own powers. In light of this, the ECJ further claimed that any breach of the balance should be punishable.¹⁷

Importantly, the Court clarified later in the *Wybot* case that a unilateral extension of powers by an EU institution and, hence, encroachment on other institutions' powers are not permissible.¹⁸ It moreover stated that "in accordance with the balance of powers ..., the practice of the European Parliament cannot deprive the other institutions of a prerogative granted to them by the Treaties themselves".¹⁹ In other words, the institutional balance limits the EU institutions in the performance of their powers so as not to exceed these powers to the detriment of the others.

Besides its mention in the ECJ's case law, the principle of institutional balance is expressed in Article 13(2) TEU that sets out that "[e]ach institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation". Accordingly, the principle of institutional balance is composed of two important elements: (i) the separation of powers of the EU institutions, and (ii) the cooperation between the institutions. As De Witte states, the inter-institutional relations are

¹³ Case 9/56 *Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community* [1958] ECR 1957-1958.

¹⁴ *Ibid.*

¹⁵ Case C-70/88 *European Parliament v Council of the European Communities (Chernobyl)* [1990] ECR I-02041.

¹⁶ Case C-70/88, para. 21.

¹⁷ Case C-70/88, para. 22.

¹⁸ Case 149/85 *Roger Wybot v Edgar Favre and Others* [1986] ECR 2391; J.P. Jacqu e, 'The Principle of Institutional Balance'. *Common Market Law Review*, 41, 2004.

¹⁹ Case 149/85, para. 23.

“dominated by the twin values of autonomy and cooperation; the principle of institutional balance serves to ensure respect for the separate powers of each institution whereas the duty of sincere co-operation expresses the countervailing value that the institutions should cooperate beyond the formal rules of procedure laid down in the Treaty”.²⁰

The first element is based on the idea that the powers of the institutions are separated in order to preclude that too much power is concentrated in the hands of a single institution.²¹ Therefore, the institutions’ powers are limited to those conferred on them by the Treaties.²² The delegation of any competences is not realisable, unless a Treaty provision explicitly enables such a transfer of power.²³ The idea of separation of powers is coupled with the prohibition for the institutions to impede the exercise of other institutions’ tasks and, hence, institutions must not be hindered from performing their Treaty obligations.²⁴

The second element relates to the idea that the inter-institutional relations are subject to the mutual duties of sincere cooperation, as it is the case for the relations between the Member States and the EU institutions pursuant to Article 4(3) TEU. An analogue application of this principle to the EU institutions *inter se* was formulated in *Luxembourg v European Parliament* and reinforced in subsequent judgements.²⁵ As a consequence, all EU institutions must perform their tasks without disregarding the legal powers and legitimate interests of the other institutions, which ultimately reinforces the obligation to preserve the internal division of powers.

The principle of institutional balance is subject to judicial review by the ECJ. The latter has the task to safeguard the overall system of balance. In *Chernobyl*, the Court stated that it must be allowed to do so to guarantee the right interpretation and application of the Treaties.²⁶ It needs to ensure “that in the context of inter-institutional cooperation the institutions do not ignore the rules of law and do not exercise their discretionary power in a

²⁰ B. de Witte, ‘Institutional Principles: A Special Category of General Principles of EC Law’ in U. Bernitz & J. Nergelius, *General Principles of European Community Law*. The Hague: Kluwer Law International, 2000.

²¹ L. Senden, 2004.

²² Dashwood et al., 2011.

²³ R. Schütze, *European Constitutional Law*. Cambridge: Cambridge University Press, 2012.

²⁴ R.M. Popescu, ‘Features of the Unwritten Sources of European Union Law’. *Lex ET Scientia International Journal*, No. XX, Vol. 2, 2013.

²⁵ Case 230/81 *Grand Duchy of Luxembourg v European Parliament* [1983] ECR 00255, para. 37; Case 204/86 *Hellenic Republic v Council of the European Communities* [1988] ECR 5323, para. 16; Case C-65/93 *European Parliament v Council of the European Union* [1995] ECR I-00643, para. 23.

²⁶ Case C-70/88, para. 23.

manifestly wrong or arbitrary way”.²⁷ In the past, the ECJ has in general rigorously restricted institution’s activities to their role and functions specified in the Treaties.²⁸

As this paper sets out to, *inter alia*, examine whether the institutional balance has been modified, it is essential to clarify the situations in which such a change takes place. One of the following situations must apply for the balance to be considered modified: First, an institution disregards the powers of the other institutions and thereby limits their autonomy when making use of its own prerogatives. Second, there is a delegation of powers from one institution to another which is not envisaged by the Treaties. Third, unilateral extension of powers by an institution constitutes an encroachment on the powers of the other institutions and, therefore, a change in the institutional balance. Such a modification can even take place through the adoption of informal rules by the institutions. As mentioned previously, the ECJ ruled in *France v Commission* that the principle of institutional balance cannot be circumvented or disregarded by soft law.²⁹ The fact that such instruments lack legally binding force does, therefore, not allow the EU institutions to act in a way that takes no account of the institutional balance.

Having identified the situations, in which the institutional balance is considered to be changed, it is possible to assess whether the European Parliament’s practice in the bilateral dimension of the CCP is in line with the principle. This legal evaluation is made in Part 4.3. of this contribution.

III. The Unilateral Dimension: Law-Making in the CCP

A further important step for the analysis is to describe the role and function of the institutional actors in the unilateral dimension, with the focus on the European Parliament. This allows to compare both the unilateral and bilateral dimension and to draw conclusions on whether the Parliament is indeed trying to align its role, thereby creating an institutional parallelism. The domestic law-making in the CCP is therefore described in this section.

The CCP is regulated under Articles 206 and 207 in Title II on the “External Action of the Union” of Part V of the TFEU, which amend the former Articles 131(1) and 133 of the Treaty Establishing the European Community (TEC).³⁰ Article 131(2) TEC, which incorporated “a reference to the favourable effect of the abolition of customs duties between

²⁷ Case 204/86, para. 17.

²⁸ J. Fairhurst, *Law of the European Union*. Eighth Edition. Harlow: Person Education Limited, 2010.

²⁹ Case C-233/02, para. 40.

³⁰ Consolidated version of the Treaty establishing the European Community, OJ C 321E, 29/12/2006.

Member States on the competitive strength of undertakings”, has been removed as it had no legal meaning.³¹ Another Article, which was deleted as no use was made of it, is the former Article 132 TEC “on the harmonisation of state aid for exports to third countries”.³² In any case, export aids fell into Article 133 TEC and now Article 207 TFEU. Furthermore, the new provisions on the CCP exclude the former Article 134 TEC on necessary measures in the event of trade diversion or economic difficulties because it conflicts with the internal market.³³

The main modifications of the institutional structure in the CCP affect the decision-making in the Council, and the European Parliament’s role and powers. Now, Article 207(2) TFEU is the procedural legal basis for the adoption of “measures defining the framework for implementing the [CCP]”, which allows the EU institutions to adopt regulations in order to implement the CCP. The Council, in the formation of the Trade Policy Committee³⁴, and the European Parliament, in the formation of the INTA Committee³⁵, are the central institutions for the adoption of autonomous trade policy legislation and for the implementation of trade agreements.³⁶

The Article refers to the application of the ordinary legislative procedure, which makes the European Parliament a co-legislator on equal footing with the Council on trade issues. As a consequence, the Parliament has been granted the right to make amendments and to veto internal measures. A legislative act can, hence, not enter into force where the Parliament does not agree to its adoption. In comparison to the situation pre-Lisbon, this constitutes a significant change: Under the former Article 133 TEC, the Parliament did not enjoy any participatory right for the unilateral nor bilateral dimension. For the latter dimension, it had a mere information right following the Luns-Westerterp procedure, which is

³¹ M. Krajewski, ‘The Reform of the Common Commercial Policy’ in A. Biondi, P. Eeckhout & S. Ripley, *EU Law after Lisbon*. Oxford Scholarship Online, 2012, p. 293.

³² M. Krajewski, 2012, p. 293.

³³ M. Krajewski, 2012.

³⁴ The Trade Policy Committee deals with the trade policy of the EU with third countries and/or international organisations. The three main areas, which it covers, are WTO matters, bilateral trade relations and internal EU legislation within the CCP.

³⁵ The INTA Committee is the parliamentary committee managing issues concerning the EU’s CCP. It is responsible for the establishment, implementation and monitoring of this particular policy field. It deals mainly with the financial, economic and trade relations with third countries, international organisations and international fora on trade-related matters.

³⁶ The autonomous measures include measures relating to anti-dumping, countervailing duties, general import regulations, common customs tariff, safeguard measures, generalised systems of preferences, common rules for exports and the Trade Barriers Regulation. B. Van Vooren & R. A. Wessel, *EU External Relations Law. Text, Cases and Materials*. Cambridge: Cambridge University Press, 2014; K. Ulmer, ‘Lisbon Treaty and impact on EU Trade Policy’. APRODEV Briefing. Brussels: 2010; S. Woolcock, ‘The Treaty of Lisbon and the European Union as an actor in international trade’. [Working Paper]. European Centre for International Political Economy, 2010.

explained in further detail in the next section.³⁷ With the entry into force of the Lisbon Treaty, the previously existing asymmetry between the Parliament and the Council concerning their legislative power has therefore been greatly remedied. Consequently, the Parliament's standing in the institutional triangle in the CCP has improved considerably.

Article 294 TFEU sets out the ordinary legislative procedure. Accordingly, the Council and the Parliament can adopt the legislative measures proposed by the Commission. The Commission holds the sole and exclusive right of initiative,³⁸ and gives its opinion on amendments by the two other institutions throughout the proceedings. During the legislative readings, the Parliament and the Council receive the other institutions' amendments and need to agree on a common position in order to be able to adopt the legislation. Pursuant to Article 294(10) TFEU, a Conciliation Committee is set up in case the Council and the Parliament cannot find a common position after two unsuccessful legislative readings. Only when the Council and the Parliament agree and vote positively on the proposal after a maximum of three readings, the legislation will be adopted.³⁹

Although the Treaties do not envisage formal negotiations between the EU institutions and just require them to formally express their standpoint to the other institutions throughout this procedure, a common practice to undertake so-called informal 'trilogue negotiations' has developed.⁴⁰ In these meetings, representatives of the Commission, the Parliament⁴¹ and the Council⁴² negotiate during the legislative process in order to find an early agreement on the most controversial issues in a proposed legislative measure. The aim of these negotiations is to accelerate the formal procedure set out in Article 294 TFEU for the sake of procedural efficiency and rapid adoption of legislation.⁴³

It is clear that the Lisbon Treaty resulted in a far-reaching change for the Parliament with regard to its legislative powers. However, the Treaty "falls short of granting [the] Parliament implementation powers".⁴⁴ It will be excluded from the implementation of EU trade policy legislation, while the Commission continues to be the main institution responsible for the implementation and application of EU law pursuant to Article 17(1) TEU. It is in charge of controlling the enforcement of the Treaties and of secondary legislation and

³⁷ Dashwood et al., 2011, p. 949.

³⁸ Article 294(2) TFEU.

³⁹ D. Kleimann, 2010, p. 4.

⁴⁰ D. Kleimann, 2010, p. 5; The internal rules in the Parliament on the conduct of such trilogue negotiations are set out in Rule 73 of its Rules of Procedure of the 8th parliamentary term.

⁴¹ The European Parliament is represented by the rapporteur of the legislative file.

⁴² The Council is represented by the Member State holding the EU Presidency.

⁴³ D. Kleimann, 2010, p. 5.

⁴⁴ *Ibid.*, p. 5.

their correct application by the Member States.⁴⁵ The Commission's implementing powers can be divided into three categories: (i) powers conferred by the Treaties; (ii) delegated acts; and (iii) implementing acts. As the focus of the analysis will be on the implementation of acts, the following paragraphs will describe the respective role of the Parliament more in detail.

Implementing acts deal with the implementation of a legislative measure.⁴⁶ Delegating this power to the Commission through the adopted legislative measure, the co-legislators keep control to a certain extent: Both European Parliament and Council have a right of scrutiny over implementing acts.⁴⁷ Article 219(3) TFEU sets out that the European Parliament and Council "shall lay down ... the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers".

Besides this, the Parliament has other means of control. For example, it scrutinises the Commission's annual reports on monitoring implementation of Union law. Moreover, it can request the Commission to submit legislative proposals on matters where Union action is needed according to Article 225 TFEU, and can finally investigate alleged infringements or misconduct in the implementation of Union law through a Committee of Inquiry pursuant to Article 226 TFEU.

In summary, the Parliament holds a full legislative role as a co-legislator with the Council for the adoption of the internal legislation under Article 207(2) TFEU. Within this procedure, it takes part in the informal trilogue meetings as one of three parties. Finally, as regards the implementation of legislative measures, the Parliament enjoys a right of scrutiny, which it can exercise through various means.

IV. The Bilateral Dimension: The European Parliament's Role in the Adoption of International Trade Agreements

This part of the contribution relates to the bilateral dimension, where the Union enters into trade commitments with third countries or international organisations, and in particular the role that the European Parliament plays in it. Firstly, it describes the Parliament's function and prerogatives laid down in the Treaty provisions. Secondly, the practice of the Parliament

⁴⁵ According to Article 4(3) TEU, the Member States of the Union are obliged to implement EU law in order to fulfil the obligations arising out of primary and secondary EU law.

⁴⁶ European Parliamentary Research Service, 'Delegated and Implementing Acts'. Retrieved via <http://epthinktank.eu/2012/09/24/delegated-and-implementing-acts/>, last visited 16 July 2014.

⁴⁷ European Parliamentary Research Service, *ibid.*

is analysed and conclusions on the possible practice of copying the internal law-making are drawn. Lastly, this contribution examines whether the overall practice is in compliance with Article 218 TFEU, and whether the institutional balance might have been modified.

A. Article 218 TFEU: The ‘Ordinary’ Treaty-Making Procedure

The European Parliament’s role and prerogatives are not limited to the internal dimension of the EU’s trade policy. With the entry into force of the Lisbon Treaty, its powers for the adoption of international trade agreements were significantly increased. Prior to the Lisbon, the process of the conclusion of international agreements was set out in the old Article 300 TEC, which provided only for consultation of the Parliament in its paragraph 3. However, with the exception of Article 133(3) TEC on trade policy, mentioned in Article 300(3) TEC, any consultation of the Parliament for international trade agreements was excluded. The only instances, in which the Parliament was consulted, were trade agreements including aspects of intellectual property pursuant to Article 133(7) TEC. Apart from that, it was merely informed based on a Framework Agreement with the Commission and on the Luns-Westerterp procedure.⁴⁸

The Luns-Westerterp procedure was an informal inter-institutional agreement which provided for the information of the Parliament on the progress of the negotiations with third countries or international organisations.⁴⁹ Introduced in 1964 as the ‘Luns procedure’ for association agreements, it was extended in 1973 to commercial and economic agreements, known as the ‘Westerterp’ expansion.⁵⁰ Finally in 1983, the Solemn Declaration on European Union widened this procedure to “all significant international agreements concluded by the European Communities”.⁵¹ Altogether, these procedures foresaw the following involvement of the European Parliament during the negotiation phase: First, it had the possibility to hold a plenary debate before any negotiation round. Moreover, continuing contact to the MEPs had

⁴⁸ Framework Agreement on relations between the European Parliament and the Commission [2006] OJ C117E/123, annexed to the Rules of Procedure of the European Parliament; Dashwood et al., 2011, p. 949.

⁴⁹ Minutes of the Council 24 and 25 February 1964, S/861/63, not published.

⁵⁰ Communication of 16 October 1973, notified to the European Parliament, but never published officially in its wording. K. K. Lenaerts, P. Van Nuffel, *Constitutional Law of the European Union*, p. 884; D. Thym, 2008, p. 204.

⁵¹ Solemn Declaration on European Union. Bulletin of the European Communities. Dir. of publ. Commission of the European Communities. June 1983, n°6. Luxembourg: Office for Official Publications of the European Communities, p. 27.

to be ensured and, finally, the Parliament had to receive confidential information on the outcome of the negotiations before the signature of an agreement.⁵²

The new post-Lisbon procedural legal basis for treaty-making with third countries or international organisations is Article 218 TFEU. The provision distinguishes between different (possible) stages of the life cycle of an international agreement: (i) initiation and negotiations, (ii) signature and conclusion, and (iii) modification and suspension. As this contribution analyses the adoption and implementation of international trade agreements, the focus of this section will be on points (i) and (ii). In case of international *trade* agreements, the procedure is equally subject to Article 207 TFEU which cross-refers to Article 218 and lays down further procedural rules.

Within this procedure, the Council constitutes the central institution: Its role is not limited to a *primus inter pares* with the Parliament as in the internal dimension, but it is a *primus*.⁵³ Besides specifying the central position of the Council, Article 218 TFEU lays down the other EU's institutions' secondary roles in the procedure. The procedure starts, pursuant to Article 218(3) TFEU, with the initiation of negotiations by either the Commission or the High Representative, depending on the subject-matter of the agreement.⁵⁴ Upon recommendation by the respective institutional actor, it is the Council that opens the negotiations and nominates the negotiator on the part of the Union.

The European Parliament is another institutional actor that has certain rights throughout the procedure. First, it is granted a right to "be immediately and fully informed" throughout the procedure in accordance with Article 218(10) TFEU. Moreover, under the CCP Title, the third subparagraph of Article 207(3) TFEU lays down the Commission's obligation to "report regularly to the special committee and to the European Parliament on the progress of negotiations" of international agreements. The ECJ has recently stated in the *Pirate Transfer Agreement* case that it is necessary to inform the Parliament about the progress to assure its position in the task of democratic scrutiny of the Union's external action.⁵⁵ Even though the Commission already used to inform the Parliament based on the Framework Agreement of 2006 pre-Lisbon, the express mention of the Parliament in the above-stated Articles strengthens its role in a legal sense. Consequently, the Commission's

⁵² For more information on these procedures: I. MacLeod, I. D. Hendry and S. Hyett, *The External Relations Law of the European Communities*. Oxford, Clarendon Press, 1996.

⁵³ R. Schütze, 2012, p. 207.

⁵⁴ It is generally the Commission that is the European negotiator for international agreements. Where the international agreement covers Common Foreign and Security Policy matters however, the High Representative of the Union for Foreign Affairs and Security Policy becomes the negotiator.

⁵⁵ Case C-658/11 *European Parliament v European Commission* (Pirate Transfer Agreement) [2014], not reported yet, para. 79.

duty to inform the Parliament in the same manner and degree as the Council's Trade Policy Committee is legally binding now.⁵⁶

The wording of Article 207, read in conjunction with Article 218, draws a distinction between the role of the Council and the Parliament throughout the negotiations, besides “the fact that Parliament has no formal role whatsoever in the determination or adoption of negotiation mandates”.⁵⁷ On the one hand, the Commission consults and is assisted by a special committee appointed by the Council throughout the negotiations. On the other hand, it merely reports to the Parliament on the development of the negotiations. In contrast to the Council, the European Parliament has therefore a mere passive role according to the Treaty provisions. This distinction may be considered as a justification for the dissimilar treatment of the Council in relation to the Parliament concerning the access to confidential documents and to negotiation sessions.⁵⁸

The European Parliament has also been accorded a role in the conclusion of international agreements, with the exception of agreements relating exclusively to the Common Foreign and Security Policy.⁵⁹ The conclusion of *trade* agreements requires the consent of the Parliament. This is a consequence of Article 218(6) (a) (v) TFEU, as the CCP is a field to which the ordinary legislative procedure applies pursuant to Article 207(2) TFEU.⁶⁰ In contrast to the unilateral dimension, the Parliament cannot discuss the amendments to the measure over several readings, and needs to either accept or reject the text. From the Parliament's viewpoint, the procedure for the conclusion of an international agreement is therefore much more static.

In summary, the Parliament has a more passive and static role than in the unilateral dimension. It has a right to be informed throughout the procedure and receives reports by the Commission on the progress as set out in Articles 218(10) and 207(3) TFEU respectively. In contrast to the Council, it cannot determine the negotiating mandate nor can it make any amendments to the negotiated text. In the conclusion phase, the Parliament has

⁵⁶ M. Krajewski, 2011, pp. 292-311.

⁵⁷ D. Kleimann, 2010, p. 20.

⁵⁸ *Ibid.*, p. 20.

⁵⁹ Article 218(6) TFEU.

⁶⁰ Article 218(6)(a) enumerates all international agreements that require the consent of the European Parliament in order to be concluded. Among these are international agreements, which cover fields to which the ordinary legislative procedure applies. It is clear, as judged by the ECJ in the *Pirate Transfer Agreement* case (C-658/11), that Article 218(6) (a) (v) TFEU “establishes symmetry between the procedure for adopting EU measures internally and the procedure for adopting international agreements in order to guarantee that the Parliament and the Council enjoy the same powers in relation to a given field” (para. 56). DG Trade, ‘Treaty of Lisbon enters into force – Implications for the EU's trade policy’. DG Trade News Archive, 1 December 2009. Retrieved via <http://trade.ec.europa.eu/doclib/press/index.cfm?id=493>, last visited 18 June 2014.

a right to give consent to international trade agreements according Article 218(6) (a) (v) TFEU.

B. A Practice of Copying the Unilateral Law-Making to the Bilateral Dimension

This section analyses the consolidated practice of the European Parliament in the procedural structure for bilateral commitments. It is necessary to describe this practice in order to analyse the possible implications on the institutional balance in the following section.

As previously mentioned, there have been repeated calls by the Parliament for a parallelism between unilateral and bilateral law-making in order to increase its role and to equate it to the domestic one. According to Romaniello, the Parliament “has always fought a battle to extend its powers” over those areas in which it had a limited role.⁶¹ It has therefore often made use of informal means in order to interfere with decision-making processes and to influence the Council and particularly the Commission. This section addresses the question of whether the Parliament has tried to do so in the adoption of international trade agreements as well, thereby creating a parallelism between domestic and international law-making. Therefore, this section looks at the measures which have been adopted by the institutional actors after the entry into force of the Lisbon Treaty.

Equal Treatment with the Council

As seen in the previous section, the Parliament and the Council play different roles in the negotiation stage. While the Council appoints a special committee which assists the Commission, the Parliament remains limited to a mere passive role of being informed. This has consequently led to a dissimilar treatment of the Council in relation to the Parliament concerning the access to confidential documents and to negotiation sessions.⁶² However, throughout the last legislative period 2009-2014, the Parliament has adopted rules which ensure the equal treatment of both institutions by the Commission, in particular as regards the access to (confidential) information and to meetings.

In October 2010, for example, the Commission and the Parliament have adopted a Framework Agreement.⁶³ This inter-institutional agreement revises the relations between the two institutions in light of the reforms of the treaty framework. Annex III of that Framework

⁶¹ M. Romaniello, 2013, p. 99.

⁶² D. Kleimann, 2011.

⁶³ Framework Agreement on relations between the European Parliament and the European Commission [2010] OJ L304/47.

Agreement sets out arrangements on the equal treatment of the Council and the Parliament. According to Point 1, the Parliament shall be informed about the Commission's intention to propose the opening of negotiations "at the same time as it informs the Council". Furthermore, the Parliament shall get access to the draft negotiating mandate at the same time as the Council receives it.⁶⁴

Even more significant, Point 5 sets out all kinds of relevant information that needs to be forwarded to the European Parliament.⁶⁵ Moreover, any documents received from third parties shall be transmitted to the Parliament, conditional upon the approval by the third party. Remarkably, it is clarified that any information provided to the Council is transmitted to the Parliament as well, thereby ensuring an equal treatment of both institutions.

In comparison to the unilateral law-making, where the Parliament as a co-legislator is provided with the same information as the Council, i.e. proposal and opinions by the Commission, it is arguable that the Parliament is indeed attempting to copy this feature of the internal law-making to the bilateral dimension. Even though the Treaty provisions do not envisage an equal treatment with the Council, the Parliament has managed to create the same conditions for the bilateral dimension. First, it shall have access to the same documents that are transmitted to the Council. Second, the access needs to take place at the same time.

The access to the final negotiating mandate is not formalised in the Framework Agreement of 2010. Until recently, this text was leaked on an informal way.⁶⁶ However, in March 2014, the Parliament managed to agree with the Council on the access to the final mandate through an inter-institutional agreement.⁶⁷ This agreement lays down the rules governing the transfer to and the treatment by the Parliament of confidential information concerning issues other than those in the Common Foreign and Security Policy field.

Pursuant to Article 1 of that agreement, the Parliament shall have access to, *inter alia*, information on international agreements and the negotiating directives for agreements, where it needs to be consulted or give its consent. Consequently, the Parliament should have access to the final negotiating mandate of *trade* agreements, based on the condition of

⁶⁴ Point 2 of Annex III of the Framework Agreement.

⁶⁵ This information includes draft amendments to adopted negotiating directives, draft negotiating texts, agreed provisions of the agreement, the set date for initialling the agreement, and finally the text of the agreement as such.

⁶⁶ Interviews with staff members of the INTA Secretariat, European Parliament, Brussels, 15 and 16 April 2014.

⁶⁷ Interinstitutional Agreement of 12 March 2014 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, OJ C 95/1, 1.4.2014.

giving its consent to it. Drawing a comparison with the unilateral dimension, where the Parliament has equal access to documents, it is arguable that the Parliament tries also here to align its powers in the bilateral dimension by creating an access right to the final negotiating mandate. The Parliament has consequently successfully created a parallelism to the unilateral dimension in terms of access to documents.

Amendment Rights

As regards the negotiation stage in general, it is clear from the Treaty provisions that the Parliament and the Council hold unequal roles. The Parliament does not play any role in the adoption of the negotiating mandate, or in setting the direction of negotiations or the objectives of the trade agreement. This clearly contrasts the Council's right to amend the draft mandate. Moreover, the Parliament has no right to put forward any amendments to the text of the trade agreement, which stands in contrast to its prerogatives as regards legislative measures under the ordinary legislative procedure.

The practice of the Parliament however shows that it has tried, by means of parliamentary resolutions, to influence the Commission and the Council in the adoption of the negotiating mandate. In 2011, the Parliament adopted a resolution on a *New Trade Policy for Europe under the 2020 Strategy*, in which it "remind[ed] the Commission and the Council to take seriously into account Parliament's views when deciding about the mandates".⁶⁸ Moreover, in the context of the EU-Japan negotiations, the Parliament immediately asked the Council not to authorise the opening of trade negotiations until it had expressed its position on the proposed negotiating mandate.⁶⁹ In fact, the Parliament managed to issue its resolution setting out its views before the adoption of the mandate.⁷⁰ The 'Japan resolution' served as a precedent for future negotiations, where the Parliament could express its views before the mandate was adopted.⁷¹

Another striking example is the Transatlantic Trade and Investment Partnership (TTIP)⁷² negotiating mandate for which the Parliament issued a resolution, insisting therein on the exclusion of the audio-visual sector from the negotiating mandate. In the end, the

⁶⁸ European Parliament resolution of 27 September 2011 on a New Trade Policy for Europe under the Europe 2020 Strategy (2010/2152(INI)).

⁶⁹ European Parliament resolution of 13 June 2012 on EU trade negotiations with Japan (2012/2651(RSP)).

⁷⁰ European Parliament resolution of 25 October 2012 on EU trade negotiations with Japan (2012/2711(RSP)).

⁷¹ E.g. China negotiations: European Parliament resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement (2013/2674(RSP)).

⁷² Draft Transatlantic Trade and Investment Partnership (TTIP) of 02 July 2013. Retrieved via <http://keionline.org/sites/default/files/eu-kommission-position-in-den.pdf>, last visited 23 June 2014.

Council specifically excluded audio-visual services from the negotiating mandate.⁷³ This shows that the Parliament is indeed able to influence the negotiating mandate, particularly when it is backed by Member States within the Council. Based on the consolidated practice of adopting resolutions, it seems like it found a way to influence the other EU institutions in order to include its preferences in the negotiating mandate. This practice of adopting resolutions can be considered to be a substitution of its right to amend the text, which it holds in the unilateral dimension. Even though it cannot create an exact parallelism, i.e. give itself a role of amending the text as the Council, the Parliament managed to establish an alternative way of ensuring that its position is taken into account.

As regards the amendment of the text of the international agreement, the sub-section on international agreements and enlargement in Part III of the Framework Agreement of 2010 presents further rules that indicate a parallelism. Point 23 essentially reiterates Article 218(10) TFEU on the right to be fully and immediately informed, and adds the Commission's duty to give full effect to its obligations. The responsible parliamentary committee shall be informed in sufficient time for the Parliament to give its views at all stages of the procedure. In this manner, the Commission has the possibility to take these views as far as possible into consideration.⁷⁴ The full and immediate information on the negotiating mandate and on the progress of negotiations allows the Parliament to fully employ its opportunities to influence the direction of the trade negotiations and the content of the negotiated text.

Finally, Points 4 and 5 of Annex III to the Framework Agreement are to mention. Following these points, the Commission is expected to explain as to whether and how the Parliament's comments were included in the negotiated text and if not why. In fact, in practice, the Commission usually takes into account the views of the Parliament, in particular in light of a possible veto during the ratification stage of the agreement due to a lack of consideration of its views.⁷⁵ The Parliament has used several times its "nuclear option", i.e. the denial of consent, as a threat to ensure its concerns are taken seriously.

The threat of a veto can play a significant role in the negotiations, as evident from the case of the EU-Korea Free Trade Agreement (FTA).⁷⁶ In the final stages of its negotiation process, "a consistent fear was voiced by DG TRADE officials that the European Parliament would scupper the agreement".⁷⁷ By using its veto threat, the Parliament ensured that the

⁷³ Interview with staff members of the INTA Secretariat, European Parliament, Brussels, 15 April 2014.

⁷⁴ Point 24. See also: Point 3 of Annex III of the Framework Agreement.

⁷⁵ Interviews with staff members of the INTA Secretariat, European Parliament, Brussels, 15 and 16 April 2014.

⁷⁶ Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ L 127, 14/05/2011.

⁷⁷ D. Kleimann, 2010, p. 11.

Commission included a strong safeguard clause to protect European small car producers.⁷⁸ The TTIP serves as another example to illustrate the pressure from the Parliament for the Commission and the Council to consider its views. In the context of the National Security Agency surveillance programme, the Parliament stressed in a resolution that it “may only consent to the final TTIP agreement provided the agreement fully respects, inter alia, the fundamental rights recognised by the EU Charter”.⁷⁹

This clearly illustrates that the Parliament can exert pressure for its views to be taken into account. Since the Parliament has been granted this veto power, the Commission is much keener to discuss trade issues with the Parliament, to inform it well and to take into account its position. It makes use of the parliamentary channels of information because it does not want to be accused of not involving the Parliament in the process.⁸⁰ Indeed, it would be risky if the Parliament was faced with a *fait accompli* and was merely required to give or withhold its consent, as it was the case for the SWIFT Agreement⁸¹ and Anti-Counterfeiting Trade Agreement.⁸² The Parliament’s readiness to exert its new power has made other institutional actors to well-consider its views and to involve it from the very beginning in the negotiations.⁸³

Overall, as argued above, it appears like the Parliament is establishing a way to express its views and to ensure that these are taken into account, thereby influencing the negotiated text. It is arguable that the Parliament thus tries to create an alternative to its right to amend, which it enjoys in the unilateral dimension. Consequently, a sort of parallelism between unilateral and bilateral dimension seems to be envisaged by it. Moreover, it is observable that the European Parliament is attempting to align the bilateral dimension to the unilateral by using the veto threat as a way to ensure the consideration of its views and position. This practice supports the argument that the Parliament indeed tries to create an

⁷⁸ Ibid., p. 11.

⁷⁹ European Parliament resolution of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs (2013/2188(INI)), Point 74.

⁸⁰ Interviews with staff members of the INTA Secretariat, European Parliament, Brussels, 15 and 16 April 2014.

⁸¹ 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, OJ L 8/11, 13/01/2010. In February 2010, the European Parliament refused to give its consent to the EU’s interim agreement on banking data transfers to the USA via the SWIFT network due to concerns about privacy, proportionality and reciprocity. The rejection rendered the text signed between the US and the EU Member States legally void.

⁸² Anti-Counterfeiting Trade Agreement, rejected by the European Parliament in 2012 and never came into force. Text available at http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf, last visited 17 June 2014.

⁸³ R. Bendini, ‘The European Union trade policy, five years after the Lisbon Treaty’. DG for External Policies, 2014.

alternative way to make actual amendments to the text. The amendments, in contrast to the unilateral dimension, are however carried out by another institutional actor. The extent to which the Parliament can actually 'amend' must also be considered as being significantly different, as it remains in the hands of the Commission and Council what will be included in the negotiated text or not. Nonetheless, one can see a trend in the Parliament's practice to create ways to copy its unilateral law-making prerogatives.

Trilogue Meetings

The 2010 Framework Agreement sets out another right for the Members of the European Parliament (MEPs) in Point 25. They can be granted observer status in Union delegations, in all relevant meetings before and after negotiation rounds, and in meetings of bodies set up by multilateral international agreements involving the Union in order to facilitate the information flow to the Parliament. In Union delegations, the MEPs participate in their independent capacity, complying with the instructions of the delegations' head and without having any direct negotiating role. Their participation makes it easier to defend and advance the EU's positions, even if they are mere observers, in particularly by staying in contact with third country parliamentarians.⁸⁴

Having included this right in the Framework Agreement, the Parliament has established a role for itself in those delegations and all relevant meetings in the negotiation stage. Drawing a parallel to the unilateral dimension, one could argue that the Parliament is trying to copy the trilogue negotiations to the bilateral dimension. In the trilogues, the three institutions exchange their views on the most controversial issues and try to find early compromises. Here, it seems that the Parliament tries to develop a similar situation. The situation is still quite different as regards the participation of the MEPs, as the Parliament is attending the meetings but cannot do more than observing. Nonetheless, the inclusion of the MEPs as observers can be considered as an early attempt to create a parallelism to the unilateral dimension, where the Parliament can fully participate in the trilogue meetings.

Implementation

With regard to the implementation of the trade agreements, the Treaties do not provide the Parliament with any formal participatory rights for in the bilateral dimension, while it can domestically scrutinise the Commission in its implementation task for autonomous measures. Nonetheless, the Parliament is increasingly aware of the need for monitoring

⁸⁴ R. Corbett, F. Jacobs & M. Shackleton, *The European Parliament*. Eighth Edition. London: John Harper Publishing, 2011.

procedures and has managed to create a system, whereby it can ensure a certain oversight of the future implementation of agreements.⁸⁵

Over the course of the consent procedure concerning the EU-Korea FTA, a Joint Declaration of the Parliament and the Commission and a Commission Statement were adopted.⁸⁶ These two constitute Annexes I and II to the Regulation implementing the Safeguard Regulation to the EU-Korea FTA.⁸⁷ In the Statement, the Commission outlines a number of actions that it will take in the context of the implementation of the FTA. Firstly, it stated that a yearly report will be forwarded to the Parliament on the implementation of the FTA. Secondly, discussions with the responsible Parliament's committee concerning the implementation will take place.

The Declaration, which was adopted together with the Parliament, is even more striking. Therein, the Commission and the Parliament agreed to closely cooperate in the monitoring of the implementation of the FTA and the Safeguard Regulation. The Commission commits to respond to recommendations by the Parliament to initiate a safeguard investigation and to examine the conditions for an *ex-officio* initiation. Moreover, the institutions agreed that the Commission reports upon request by the responsible committee on Korea's implementation of the non-tariff measures and the sustainable development commitments contained in the FTA. This Declaration is momentous as the Parliament positions itself "in the system for implementing the EU-Korea FTA", even though, as a legislative body, the Parliament is normally not entitled to do so.⁸⁸ The implementation of the law is the task of the Member States or the Commission, in accordance with Articles 291(1) and (2) TFEU.

Strikingly, such Declarations and Statements were also annexed to the Safeguard Regulations to the EU-Colombia/Peru and EU-Central America FTAs.⁸⁹ In the context of the

⁸⁵ Y. Devuyt, 'The European Union's Competence in International Trade After the Treaty of Lisbon', *Georgia Journal of International and Comparative Law* 39, 2011.

⁸⁶ Regulation (EU) No 511/2011 of the European Parliament and of the Council of 11 May 2011 implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea, OJ L 145, 31/05/2011.

⁸⁷ Safeguard clauses are so-called "*economic emergency exceptions*". They are adopted when a surge in imports causes, or threatens to cause, serious injury to the domestic industry. Safeguard measures temporarily limit import competition in order to provide the domestic industry with sufficient time to adjust to the new economic realities. More information on safeguard clauses can be found in P. Van den Bossche & W. Zdouc, *The Law and Policy of the World Trade Organisation*. 3rd Edition, Cambridge: Cambridge University Press, 2013.

⁸⁸ C. M. Brown, 'Changes in the Common Commercial Policy of the European Union After the Entry Into Force of the Treaty of Lisbon: A Practitioner's Perspective', in M. Bungenberg, C. Herrmann, *Common Commercial Policy after Lisbon*. Heidelberg: Springer, 2013, p. 168.

⁸⁹ Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and

Colombia/Peru trade agreement,⁹⁰ the Parliament also adopted a resolution in June 2012, which underlines the necessity to oversee “the implementation of higher standards on human rights” by obtaining reports from the Commission on the state of affairs. Furthermore, it mentioned that “new European Parliament powers regarding international agreements ... bring new responsibilities”.⁹¹

This is arguably a clear example of how the Parliament attempts to align the bilateral dimension to the unilateral one. For autonomous measures, it has the right of scrutiny, as described in Part 3 of this contribution. Not only does the Parliament receive a yearly report on the implementation from the Commission, which is a rule for the unilateral dimension as well. Also, the general cooperation between the Parliament and the Commission mirrors the procedures in the unilateral dimension. Consequently, the European Parliament can again be regarded as copying its prerogatives from the unilateral to the bilateral dimension by supervising the implementation task of the Commission.

Interim Conclusion

All in all, it can be concluded that there are several examples of how the Parliament tries to copy the unilateral law-making throughout all the different stages of the adoption of an international trade agreement. First, it attempts to ensure an equal treatment with the Council on the access to information as in the procedural structure of the unilateral dimension. Second, it tried to align the prerogatives as regards amendments to the negotiated text by establishing alternative ways to incorporate its views and to stimulate amendments. Third, the MEPs participation in delegations and all relevant meetings in the negotiation stage seem to reflect the idea of the trilogue meetings in the unilateral dimension. Finally, the Parliament seems to copy its scrutiny rights in the implementation phase to the bilateral dimension.

In light of this, it is arguable that the Parliament has indeed attempted to create a parallelism between the unilateral and bilateral dimension. Nonetheless, it must not be disregarded that the Parliament does not exactly use the same means it uses in the

Peru, of the other part; Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.

⁹⁰ Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, OJ L 354, 21/12/2012.

⁹¹ European Parliament resolution of 13 June 2012 on the EU trade agreement with Colombia and Peru (2012/2628(RSP)).

unilateral level which results therefore not necessarily in the same effect. Whether this practice of the Parliament is still in accordance with Article 218 TFEU and the principle of institutional balance is analysed in the following section.

C. Legal Evaluation: The European Parliament's Practice in Light of Article 218 TFEU and the Principle of Institutional Balance

As seen from the practice described above, the Parliament has mainly adopted inter-institutional agreements and other non-legislative measures — either individually or together with another institution — which have arguably been a means to increase its powers and to create a parallelism between the unilateral and bilateral dimension. Now, it is crucial to examine whether this consolidated practice is still in line with primary law, i.e. Article 218 TFEU and the principle of institutional balance. In order to be able to draw proper conclusions in this section, it is essential to discuss the legal effects of inter-institutional agreements and of soft law measures. The first sub-section addresses this issue, followed by a sub-section discussing the compliance with Article 218 TFEU and the institutional balance.

i. Legal Effects of Inter-institutional Agreements and Soft Law Measures

To determine the legal effect of inter-institutional agreements and soft law measures, it is necessary to examine on whom these instruments are binding, what their legal status is, what the obligations for third parties are, and finally what the purpose and use is. Moreover according to the *FAO* judgement, it is essential to examine the intention of the institutions in order to determine the legal effect of an instrument.⁹²

Inter-institutional agreements

First, the inter-institutional agreement with the Commission and the Council respectively are considered. An inter-institutional agreement is a measure by at least two EU institutions, and is considered a “constitutional glue through which the major institutional players can resolve high-level issues, provide guiding principles, or lay the foundations for more concrete

⁹² Case C-25/94 *Commission of the European Communities v Council of the European Union* (FAO) [1996] ECR I-01469, para. 49.

legislative action”.⁹³ Such an agreement lays down the procedural rules governing and strengthening the inter-institutional cooperation. It simplifies procedural issues with respect to aspects of decision-making, e.g. information management.⁹⁴ In particular, where the separation of powers is not clear from the Treaty provisions because detailed rules are lacking, inter-institutional agreements are envisaged by the institutions in order to clarify certain issues.⁹⁵

The legal effects of inter-institutional agreements are much disputed among scholars.⁹⁶ With the entry into force of the Lisbon Treaty, however, a new Article 295 TFEU became the legal basis for institutional agreements and clarifies that they *may* have binding force.⁹⁷ As regards the hierarchy of norms within the EU, “these agreements seem to be situated somewhere at the level of secondary law, but their precise legal nature will depend on the context and content of each agreement”.⁹⁸ The respect for the hierarchy of norms indicates that inter-institutional agreements may be legally binding.

Moreover, according to Senden, they may be at least binding *inter pares*, even though they might not be binding in a strict legal sense.⁹⁹ The binding nature among themselves is a logical consequence of the EU institutions’ intention to comply with their own rules, which results in a politically binding effect. The legally binding effect *inter pares* was also underlined within the context of the principle of sincere cooperation by Declaration 3 on Article 10 EC, attached to the Nice Treaty, which provided for the adoption of inter-institutional agreements. In fact, the agreements would lose their *effet utile* where the institutions depart from it. Therefore, they must be in principle legally binding *inter pares*. A way to ascertain, whether such arrangements are indeed legally binding, is to examine on a case-by-case basis their substance, their wording and especially the institutions’ intention.¹⁰⁰

⁹³ L. Senden, 2004; P. Craig & G. De Búrca, *EU Law. Text, Cases, and Materials*. Fifth Edition. Oxford: Oxford University Press, 2011, p. 107.

⁹⁴ A. Maurer, ‘Framework Agreements between the EP and the Commission: The ‘legislative contract’ and tool-kit for parliamentarising the Treaty’s grey areas’, 2011. Retrieved via http://www.euce.org/eusa/2011/papers/7k_maurer.pdf, last visited 23 July 2014.

⁹⁵ L. Senden, 2004, p. 201.

⁹⁶ F. von Alemann, *Die Handlungsform der interinstitutionellen Vereinbarung. Eine Untersuchung des Interorganverhältnisses der europäischen Verfassung*. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. Heidelberg: Springer, 2006.

⁹⁷ Article 295 TFEU reads: “The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature.”

⁹⁸ A. Rosas & L. Armati, *EU Constitutional Law. An Introduction*. Oxford: Hart Publishing Ltd, 2010, p. 52.

⁹⁹ L. Senden, 2004, p. 285.

¹⁰⁰ L. Senden, 2004; F. von Aleman, 2006.

The first inter-institutional agreement discussed in the previous section is the 2010 Framework Agreement between the Commission and the European Parliament. The purpose of this agreement is to revise the relations between the two institutions in light of the reforms brought about by the Lisbon Treaty. The agreement does not stipulate whether it has any legally binding force according to Article 295 TFEU or not. However, the use of 'shall' in the provisions of this agreement indicates that legal effects are intended by the two parties. Therefore, it is assumed to be at least legally binding *inter pares*. The intention of the parties to this agreement was to establish rules which do not affect the prerogatives of the institutions set out by the Treaties, but "to ensure that those powers and prerogatives are exercised as effectively and transparently as possible".¹⁰¹

It can therefore be concluded that the parties to this agreement did not intend to create obligations to third parties, which is also clear from the reading of the agreement. Moreover, it is stated that the agreement shall be interpreted in light of the institutional framework organised by the Treaty, which essentially means that the parties intended to guarantee the existing institutional balance. Both institutions' intention was to lay down rules on the operation of the inter-institutional practices in a more detailed manner than in the often unclear Treaty provisions.¹⁰² Consequently, this agreement is to be considered to have legally binding force *inter pares*, without producing any obligations on third parties.

The second agreement discussed is the inter-institutional agreement with the Council of 2014 on the access to confidential information.¹⁰³ The purpose of this agreement is to formalise the access to confidential information, which took previously place through informal means. As the Framework Agreement, the agreement does not mention any legally binding force according to Article 295 TFEU in its preamble. It is also clear from its wording that it does not create any obligations for third parties. With regard to its wording, this agreement uses 'shall' in most of its provisions, indicating that legal effects were intended at least *inter pares*. Consequently, the inter-institutional agreement with the Council is considered to be legally binding *inter pares*.

Soft law measures

Besides inter-institutional agreements, the Parliament has made use of soft law measures. Soft law embraces all non-legally binding instruments laying down rules of conduct. Not

¹⁰¹ Framework Agreement, 2010, OJ L304/47.

¹⁰² D. Johnson, 'When Agreements Lead to Conflict: Interinstitutional Agreements and the Institutional Balance, a Coherent Relationship?'. [UACES Conference Paper at Passau], 2012. Retrieved via <http://uaces.org/documents/papers/1201/johnson.pdf> , last visited 23 July 2014.

¹⁰³ See p. 19.

adopted through a procedure set out in the Treaties, such instruments do not have the legally binding effect of, for example, Regulations or Directives. According to Senden, however, “no legally binding force” does not imply “no legal effect at all”.

Resolutions are soft law measures regularly used by the Parliament, which do not have any binding force.¹⁰⁴ They may be considered to be ‘steering instruments’, i.e. instruments guiding the course of an action in a non-legally binding way. However, as already mentioned, even non-binding acts can have some legal effect. The EU institutions may, for example, use them to interpret the provisions in the Treaties and other binding Union acts, without altering these provisions or acts.¹⁰⁵

Apart from that, Commission Statements and Joint Declarations with the Commission have been adopted. These are as well soft law measures without any legally binding force. As resolutions, they are considered being steering instruments. Joint Declarations are adopted by at least two EU institutions and incorporate statements of how the institutions deal with certain issues and as such mostly constitute a guideline for their own behaviour.¹⁰⁶ They may have to a certain extent external effects, as they give rise to the expectation of certain conduct of the institutions.

Overall, the soft law measures adopted do not have any legally binding force. It is nonetheless important to examine the content and their use, as they may still have indirect effect, in order to identify what impact they might have on the compliance with Article 218 TFEU and the principle of institutional balance. It needs to be kept in mind that the non-legally binding force does not allow the EU institutions to act in a way that ignores the institutional balance.

ii. Compliance with Article 218 TFEU and the Principle of Institutional Balance

In order to determine whether the inter-institutional agreements and soft law measures are in accordance with the wording of Article 218 TFEU and the principle of institutional balance, this sub-section examines the rules adopted by the institutions in light of the Union’s primary law.

Inter-institutional agreements

¹⁰⁴ L. Senden, 2004.

¹⁰⁵ K. Lenaerts et al., 2005, p. 785.

¹⁰⁶ L. Senden, 2004, p. 202.

First, the Framework Agreement with the Commission is examined. Despite the intention of the Parliament and the Commission to guarantee the existing institutional balance, this inter-institutional agreement has been criticised by the Council Legal Service due to a possible modification of the institutional balance. In its view, the Commission's autonomy is more restricted by according the Parliament more rights than prescribed by the Treaties.¹⁰⁷ Moreover, it is of the opinion that the agreement comprises "too many concessions by the Commission to the Parliament and upset the institutional balance to the detriment of the Council".¹⁰⁸ In light of this, the Council Legal Service raised the possibility of challenging the Framework Agreement in front of the ECJ. Corbett, Jacobs & Shackleton claim that the Framework Agreement extends "the bounds of parliamentary powers to the edge of what is possible under the treaties".¹⁰⁹ If it actually is still in compliance with Article 218 TFEU and the institutional balance as regards the European Parliament's role in the adoption of international trade agreements, is examined in the following paragraphs.

First, as discussed previously, the Framework Agreement intends to contribute to the equal treatment with the Council in the negotiation stage. For the unilateral dimension, it is obvious that the Article 207 TFEU ensures equality between the two institutions as both act as co-legislators. It is nonetheless also clear that the specific roles of the institutions may be distinct for different areas. In the view of the Council, European Parliament cannot simply assert a universal equal treatment with the Council and hence create new duties for the Commission which go beyond those set out in the Treaties. Moreover, it claims that the two institutions cannot supplement their prerogatives and obligations by merely basing themselves on the fact that the Treaties do not provide any rules on issues such as the access to information.¹¹⁰

However, at the same time, it is arguable that the EU institutions are free to organise their inter-institutional relations which are not clear from the mere reading of the Treaties. In light of Article 295 TFEU, which arguably gives the institutions a broad discretion to consult each other and to adopt rules on their cooperation, the institutional actors should be allowed to clarify their relations more in detail. They should do so without disregarding the institutional balance, however.

The equal treatment with the Council concerns mainly access to information which is in line with Article 218(10) TFEU that does not explicitly mention the kind of information.

¹⁰⁷ Council of the European Union, Opinion of the Legal Service on the Draft Framework Agreement between the European Parliament and the Commission. Brussels, 30 August 2010.

¹⁰⁸ R. Corbett et al., 2011, p. 314.

¹⁰⁹ Ibid., p. 314.

¹¹⁰ Opinion of the Legal Service, Point 7.

Moreover, in light of the final consent given or withdrawn by the Parliament in the ratification phase, it is important for the institutions to ensure that it has access to all relevant documents. Another aspect supporting this argument is the recently judged *Pirate Transfer Agreement* case, in which the ECJ stated that it is essential to keep the Parliament informed about the progress to guarantee its position in the task of democratic control of the Union's external action.¹¹¹ Therefore, it is preferable for it to be provided with all important texts which are given to the Council as well. As a consequence, it is difficult to argue that the Parliament encroaches on the prerogatives of the Council or the Commission. It simply created internal rules with the Commission that regulate the information flow by clarifying that it needs the same documents as the Council.

Moreover, the Commission's duties imposed by Annex III of the Framework Agreement to take into consideration the Parliament's views and to notify it of the way it has included them or not in the negotiated texts need to be examined. According to the Council, these obligations are not provided for by the Treaty.¹¹² It is true that the Treaty provisions do not provide for such a right. Nonetheless, the Commission recognises that it needs to inform the Parliament about the progress, including the consideration of its comments, as it is the Parliament's task to give a final consent at the end of the procedure. It would be very risky if the Commission did not take into account its views, as it was the case with the rejection of the SWIFT Agreement. The treaty-makers might have intended such action by the Commission in view of the consent right that they incorporated in Article 218(6)(a) TFEU. As a consequence, this rule stipulated in the Framework Agreement does not change the institutional balance.

Another introduced right discussed was the participation of MEPs as observers in meetings and in Union delegations. In the view of the Council Legal Service, this rule alters the procedure set out in Article 218(4) TFEU as the Parliament would gain a participatory right in the internal meetings. According to Article 218(4) TFEU, the Council sets up a special committee that will be consulted by the Commission for the negotiations. Therefore, it is only the Council that can decide on the committee to be consulted and, hence, on the participation in the internal meetings. The application of the informal rules enabling the MEPs to be observers would compromise the Council's prerogatives.

It is true that the Council decides on who will participate in the internal meetings, but the MEPs will be mere observers. The Commission and the Parliament laid down rules for a better inter-institutional cooperation in view of the right to be informed pursuant to Article

¹¹¹ Case C-658/11, para. 79.

¹¹² Opinion of the Legal Service, Point 10.

218(10) TFEU. With the MEPs as observers, it will be easier for the Parliament to gather the relevant information it needs. Such an inter-institutional cooperation does not limit the autonomy of the Council as the latter remains responsible for deciding on who to appoint as negotiator and special committee. The right to observe the meetings does not give the Parliament any new significant competences, but is just another way that guarantees that it gets informed. Overall, the autonomy of the Council is not limited and, therefore, one can conclude that this right still remains in line with the institutional balance and with the wording of Article 218 TFEU, in particular because of the general right to be informed.

The 2014 Inter-institutional Agreement with the Council has created, *inter alia*, the new right for the Parliament to have access to the final negotiating mandate. As regards Article 218 TFEU, paragraph 10 does not specify which information is required to be forwarded to the Parliament. This Article specifically demands the Parliament to be “immediately and fully” informed and does not set out any exceptions to this rule. Consequently, the institutions can decide on which information to be transferred to it throughout the procedures in order to comply with the obligations under this provision. Moreover, this Article does not specify which institution is responsible for informing the European Parliament. The Council can therefore as well as the Commission provide the Parliament with all information. The transfer of the final negotiating mandate to the Parliament is particularly significant in light of its right of consent at the later stage. Consequently, these rules seem to be in accordance with Article 218 TFEU and also with the institutional balance as it does not confer the Parliament any new significant rights that were not envisaged by the treaty-makers.

In summary, the inter-institutional agreements adopted by the Parliament with the Commission and the Council respectively are in compliance with Article 218 TFEU and do not modify the institutional balance. They have indeed created new rights for the Parliament and responsibilities for the other two institutions. These can, however, not be considered as being delegated by the other institutions, nor as limiting the autonomy of the other institutions, nor as a unilateral extension of powers by an institutions. These have been the three situations set out in Part II of this contribution, which must apply for the institutional balance to be modified. None of them applies to the inter-institutional agreements, as all relevant informal rules deal with the clarification of the internal rules of the institutions and the inter-institutional practices.

These new rights and responsibilities comply with the wording of Article 218 TFEU and clarify the right to be informed set out in paragraph 10 of that Article. They specify mainly which information and how this information is transmitted to the Parliament.

Moreover, the legal effects are just *inter pares* and do not affect any other institutions' autonomy or rights. Therefore, it can be concluded that the inter-institutional agreements do not impinge upon the allocation of powers to the institutions and therefore are in compliance with the institutional balance.

Soft Law Measures

As established in Part 4.2. of this contribution, the resolutions adopted by the Parliament have been used to stimulate an 'amendment' of the negotiating mandate or the text of the international trade agreement by way of expression of the Parliament's position. In view of the right of consent, it is legitimate for the Parliament to make known its concerns and position to prevent a situation in which the Parliament finally withdraws its consent. A right to modify trade agreement provisions, however, does "not comply with the customs and laws of international relations which still consider treaty negotiations as inter-state bargaining whose compromises, especially in a multilateral context, cannot easily be unravelled".¹¹³ According to Thym, the relations between the EU institutions and the internal processes cannot be carried on to the international dimension.¹¹⁴

An even more striking concern is the idea that the Parliament would weaken its scrutiny powers by creating a role for itself in the negotiation stage. It would become increasingly difficult for it to be as independent as the treaty-makers intended it to be for its scrutiny task.¹¹⁵ However, at the same time, the Parliament cannot be simply ignored when the Commission and the Council determine negotiating objectives, the mandate and the course of negotiations. In view of the threat of parliamentary veto, it is necessary to take into consideration the Parliament's concerns right from the start of the trade negotiations.

Moreover, it would be incorrect to say that the Parliament has no right of action with regard to monitoring the negotiations. It is Article 218(10) TFEU which foresees the full and immediate information of Parliament and which aims specifically to fulfil that purpose of monitoring. This provision would be deprived of substance if one considered the Parliament to be informed, but not to monitor the negotiations. Legally speaking, it is to be kept in mind that the Treaty provisions still prevail over the Parliament's requests in the resolutions adopted and, consequently, the negotiation room remains closed for it. The institutional balance can therefore not be altered. As the legal binding effect is missing and these

¹¹³ D. Thym, 2008, p. 210.

¹¹⁴ D. Thym, 2008, p. 232.

¹¹⁵ J. H. H. Weiler, 'Dispatch from the Euro Titanic: and the orchestra played on'. *European Journal of International Law*, 2010, p. 809.

resolutions constitute just steering instruments, the institutional balance cannot be considered to have changed.

Finally, declarations and statements have been adopted to create new responsibilities for the Parliament: An oversight right over the implementation of the trade agreement. Even though not expressly provided in Article 218 TFEU, the scrutiny power in this context might be considered to come from its general scrutiny power over the Commission's task of implementation. According to the *Haegeman* case, the provisions of an international agreement concluded by the EU institutions form an integral part of Union law.¹¹⁶ This includes a legally binding effect on the EU institutions and its Member States as stipulated in Article 216(2) TFEU.¹¹⁷ This means that any international trade agreement concluded by the Union is part of EU law and, consequently, can be assumed to stand under the Commission's supervision, which is ultimately scrutinised by the Parliament. Therefore, the new practice of the Parliament of overseeing the implementation of trade agreements can be considered to be in compliance with EU primary law and the institutional balance.

These new responsibilities were created in particular as regards the respect for human rights. The Parliament, as EU institution promoting the respect for human rights, seems to be in the right position to monitor the implementation of the parties' human rights obligations. FTAs generally include human rights clauses, which have to be applied by the signatory third countries. Where the Parliament observes the lack of implementation and the Commission does not address this lack sufficiently, it should be able to make the Commission aware of it. This can be considered as being in line with Article 21 TEU as well, which sets out the general Union's objective to support human rights in its international relations.

All in all, the creation of an oversight right can be considered to be in accordance with primary law and the institutional balance principle. This is a consequence of the Parliament's general right to scrutinise the implementation task of the Commission. The practice of the European Parliament is therefore in compliance with Article 218 TFEU and institutional balance remains unchanged.

V. Conclusion

¹¹⁶ Case 181/73 *R. & V. Haegeman v Belgian State* [1974] ECR I-00449, para. 5.

¹¹⁷ Article 216(2) TFEU reads: "Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States."

The practice of the Parliament to fight for the extension of its powers through the adoption of non-legislative means is commonly known. With the Lisbon Treaty, the CCP has undergone many institutional changes. However, the prerogatives of the Parliament in the unilateral and bilateral dimension differ significantly, giving it a much more passive and static role in the latter one. Due to repeated calls for a parallelism between these dimensions and the common practice of the Parliament to extend its powers, the research question of this contribution was: Does the European Parliament try to align its prerogatives in the bilateral dimension to the new acquired powers in the unilateral dimension, and to what extent is this still in accordance with Article 218 TFEU and the principle of institutional balance?

The practice of the Parliament shows that it has adopted several means, either unilaterally or with other institutions, in order to copy its prerogatives of the unilateral dimension and, thereby, to strengthen its role in the bilateral dimension. Thus, it attempted to create an institutional parallelism. However, it is no exact parallelism, as the Parliament had to use different procedural means to achieve similar results. This contribution has shown that there have been several instances, where the Parliament clearly tried to create such parallelism throughout all the different stages of the treaty-making procedure.

First, it attempted to ensure an equal treatment with the Council on the access to information as in the unilateral dimension. Second, it tried to align the prerogatives as regards amendments to the negotiated text by establishing alternative ways to incorporate its views. Third, the MEPs participation in delegations and relevant meetings in the negotiation stage seem to reflect the idea of the trilogue meetings of the unilateral dimension. Finally, the Parliament seems to copy its scrutiny rights in the implementation phase to the bilateral dimension.

This contribution moreover examined whether this practice is still in accordance with Article 218 TFEU and the institutional balance. The overall conclusion is that the new rights and responsibilities for the institutions are in compliance with the wording of Article 218 TFEU. They can be considered as being a more detailed clarification of its provisions, such as the information right. It remains within the meaning which the treaty-makers seem to have envisaged. As regards the institutional balance, no change seems to have occurred as the new rights and responsibilities have not been delegated by the other institutions, nor do they limit the autonomy of the other institutions, nor do they constitute a unilateral extension of powers by an institution. Overall, the adoption of the inter-institutional agreements and the soft law measures does impinge upon the division of powers between the institutions.

For the recently started legislative period 2014-2019, it remains to be seen which measures the Parliament will adopt. It is to be expected that more rights and responsibilities

might be created as regards the implementation phase, to which the INTA Committee pays increasing attention. Whether the future practice will remain within the limits of Article 218 TFEU and the institutional balance should be addressed by future research. However, being warned by the Council Legal Service, the Parliament is likely to continue to be attentive to any possible infringement of the institutional balance.

VI. Bibliography

F. von Alemann, *Die Handlungsform der interinstitutionellen Vereinbarung. Eine Untersuchung des Interorganverhältnisses der europäischen Verfassung*. Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht. Heidelberg: Springer, 2006.

P. Van den Bossche & W. Zdouc, *The Law and Policy of the World Trade Organisation*. 3rd Edition, Cambridge: Cambridge University Press, 2013.

A. Dashwood et al., *Wyatt and Dashwood's European Union Law*. Sixth Edition. Oxford: Hart Publishing, 2011.

R. Bendini, 'The European Union trade policy, five years after the Lisbon Treaty'. DG for External Policies, 2014.

C. M. Brown, 'Changes in the Common Commercial Policy of the European Union After the Entry Into Force of the Treaty of Lisbon: A Practitioner's Perspective', in M. Bungenberg, C. Herrmann, *Common Commercial Policy after Lisbon*. Heidelberg: Springer, 2013.

R. Corbett, F. Jacobs & M. Shackleton, *The European Parliament*. Eighth Edition. London: John Harper Publishing, 2011.

P. Craig & G. De Búrca, *EU Law. Text, Cases, and Materials*. Fifth Edition. Oxford: Oxford University Press, 2011.

Y. Devuyst, 'The European Union's Competence in International Trade After the Treaty of Lisbon', *Georgia Journal of International and Comparative Law* 39, 2011.

J. Fairhurst, *Law of the European Union*. Eighth Edition. Harlow: Person Education Limited, 2010.

J.P. Jacqué, 'The Principle of Institutional Balance'. *Common Market Law Review*, 41, 2004.

D. Kleimann, 'Taking Stock: EU Common Commercial Policy in the Lisbon Era'. CEPS Working Document No. 345, April 2010.

M. Krajewski, 'The Reform of the Common Commercial Policy', in A. Biondi and P. Eeckhout (eds.), *European Union Law after the Treaty of Lisbon*. Oxford: Oxford University Press, 2011.

D. Johnson, 'When Agreements Lead to Conflict: Interinstitutional Agreements and the Institutional Balance, a Coherent Relationship?'. [UACES Conference Paper at Passau],

2012. Retrieved via <http://uaces.org/documents/papers/1201/johnson.pdf> , last visited 23 July 2014.

K. Lenaerts, P. van Nuffel, R. Bray, *Constitutional Law of the European Union*. Second Edition. London: Thomson/Sweet & Maxwell, 2005.

I. MacLeod, I. D. Hendry and S. Hyett, *The External Relations Law of the European Communities*. Oxford, Clarendon Press, 1996.

A. Maurer, 'Framework Agreements between the EP and the Commission: The 'legislative contract' and tool-kit for parliamentarising the Treaty's grey areas', 2011. Retrieved via http://www.euce.org/eusa/2011/papers/7k_maurer.pdf, last visited 23 July 2014.

R. Passos, 'The European Union's external relations a year after Lisbon: a first evaluation from the European Parliament', in P. Koutrakos, *The European Union's external relations a year after Lisbon*. [CLEER Working Paper], 2011.

R.M. Popescu, 'Features of the Unwritten Sources of European Union Law'. *Lex ET Scientia International Journal*, No. XX, Vol. 2, 2013.

G. V. Puig G. & B. Al- Haddab, 'The Common Commercial Policy after Lisbon: an Analysis of the Reforms'. *European Law Review*, 36, 2011.

K. Raube, 'The Emerging Relationship Between the European Parliament, the High Representative and the External Action Service'. Leuven Centre for Global Governance Studies, Working Paper No. 74, 2011.

M. Romaniello, The international role of the European Parliament: The SWIFT Affair and the 're-assessed' European institutional balance of power. *Perspectives on Federalism*. Volume 5, Issue 1, 2013.

A. Rosas & L. Armati, *EU Constitutional Law. An Introduction*. Oxford: Hart Publishing Ltd, 2010.

R. Schütze, *European Constitutional Law*. Cambridge: Cambridge University Press, 2012.

L. Senden, *Soft Law in European Community Law*. Portland, Oregon: Hart Publishing, 2004.

D. Thym, 'Parliamentary Involvement in European International Relations' in M. Cremona & B. de Witte, *EU Foreign Relations Law. Constitutional Fundamentals*. Portland, Oregon: Hart Publishing, 2008.

K. Ulmer, 'Lisbon Treaty and impact on EU Trade Policy'. APRODEV Briefing. Brussels: 2010.

B. Van Vooren & R. A. Wessel, *EU External Relations Law. Text, Cases and Materials*. Cambridge: Cambridge University Press, 2014.

B. de Witte, 'Institutional Principles: A Special Category of General Principles of EC Law' in U. Bernitz & J. Nergelius, *General Principles of European Community Law*. The Hague: Kluwer Law International, 2000.

J. H. H. Weiler, 'Dispatch from the Euro Titanic: and the orchestra played on'. *European Journal of International Law*, 2010.

S. Woolcock, 'The Treaty of Lisbon and the European Union as an actor in international trade'. [Working Paper]. European Centre for International Political Economy, 2010.

EU Primary and Internal EU Law Acts:

Communication of 16 October 1973, notified to the European Parliament, but never published officially in its wording.

Consolidated version of the Treaty establishing the European Community, OJ C 321E, 29/12/2006.

Consolidated version of the Treaty on European Union, OJ C 326, 26/10/2012.

Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326/47, 26/10/2012.

European Parliament resolution of 27 September 2011 on a New Trade Policy for Europe under the Europe 2020 Strategy (2010/2152(INI)).

European Parliament resolution of 13 June 2012 on the EU trade agreement with Colombia and Peru (2012/2628(RSP)).

European Parliament resolution of 13 June 2012 on EU trade negotiations with Japan (2012/2651(RSP)).

European Parliament resolution of 25 October 2012 on EU trade negotiations with Japan (2012/2711(RSP)).

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

European Parliament resolution of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs (2013/2188(INI)).

Framework Agreement on relations between the European Parliament and the Commission [2006] OJ C117E/123, annexed to the Rules of Procedure of the European Parliament.

Framework Agreement on relations between the European Parliament and the European Commission [2010] OJ L304/47.

Interinstitutional Agreement of 12 March 2014 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, OJ C 95/1, 1.4.2014.

Regulation (EU) No 511/2011 of the European Parliament and of the Council of 11 May 2011 implementing the bilateral safeguard clause of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea, OJ L 145, 31/05/2011.

Regulation (EU) No 19/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part.

Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.

Solemn Declaration on European Union. Bulletin of the European Communities. Dir. of publ. Commission of the European Communities. June 1983, n°6. Luxembourg: Office for Official Publications of the European Communities.

Treaty establishing the European Community, (Treaty of Rome), 1957.

Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, OJ C 306/01, 13 December 2007.

Case law:

Case 9/56 *Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community* [1958] ECR 1957-1958.

Case 181/73 *R. & V. Haegeman v Belgian State* [1974] ECR I-00449.

Case 230/81 *Grand Duchy of Luxembourg v European Parliament* [1983] ECR 00255.

Case 149/85 *Roger Wybot v Edgar Favre and Others* [1986] ECR 2391.

Case 204/86 *Hellenic Republic v Council of the European Communities* [1988] ECR 5323.

Case C-70/88 *European Parliament v Council of the European Communities* (Chernobyl) [1990] ECR I-02041.

Case C-65/93 *European Parliament v Council of the European Union* [1995] ECR I-00643.

Case C-25/94 *Commission of the European Communities v Council of the European Union* (FAO) [1996] ECR I-01469.

Case C-233/02 *French Republic v Commission of the European Communities* [2004] ECR I-02759.

Case C-658/11 *European Parliament v European Commission* (Pirate Transfer Agreement) [2014], not reported yet.

International Agreements

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, OJ L 8/11, 13/01/2010.

Anti-Counterfeiting Trade Agreement, rejected by the European Parliament in 2012 and never came into force. Text available at http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf, last visited 17 June 2014.

Draft Transatlantic Trade and Investment Partnership (TTIP) of 02 July 2013. Retrieved via <http://keionline.org/sites/default/files/eu-kommission-position-in-den.pdf>, last visited 23 June 2014.

Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ L 127, 14/05/2011.

Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, OJ L 354, 21/12/2012.

Miscellaneous sources

European Parliamentary Research Service, 'Delegated and Implementing Acts'. Retrieved via <http://epthinktank.eu/2012/09/24/delegated-and-implementing-acts/>, last visited 16 July 2014.

Council of the European Union, Opinion of the Legal Service on the Draft Framework Agreement between the European Parliament and the Commission. Brussels, 30 August 2010.

DG Trade, 'Treaty of Lisbon enters into force – Implications for the EU's trade policy'. DG Trade News Archive, 1 December 2009. Retrieved via <http://trade.ec.europa.eu/doclib/press/index.cfm?id=493>, last visited 18 June 2014.

Minutes of the Council 24 and 25 February 1964, S/861/63, not published.