

THE INCREASING ROLE OF THE EUROPEAN PARLIAMENT IN EU FTA NEGOTIATIONS

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Introduction

The legal role of the European Parliament (EP) in EU Free Trade Agreement (FTA)¹ negotiations increased significantly with the Lisbon Treaty in 2009. However, it has been questioned whether its legal powers would translate into actual influence over the negotiations and the final FTAs between the EU and third parties, given the EP's relative lack of relevant experience and technical expertise.² But almost six years after the Lisbon Treaty entered into force there are now clear signs of increasing parliamentary influence in EU FTA negotiations.

Background

The European Union has negotiated FTAs with third parties across the world for more than 40 years. During most of this time the EP has played a limited role, and the internal dynamics within the EU have been dominated by the interplay between the European Commission, which negotiates FTAs on behalf of the EU, and the Member States in the Council, which both set out the parameters and provide guidance to the Commission during the course of the negotiations, and in the end ratify all FTAs. Before the Lisbon Treaty there was no legal obligation for the Commission to ask for the EP's assent to FTAs. Even if in practice it often did ask for it, the lack of legal ratification powers reduced the ability of the EP to effectively threaten to reject an agreement.

However, the Lisbon Treaty gave the EP a substantial role in EU FTA negotiations. It now has to give its consent to all EU FTAs,³ which obliges the Commission to take its preferences into consideration not to risk ratification failure at the end of a negotiation process. The Treaty also requires the Commission to report regularly to the EP and to keep it fully informed at all stages of the negotiations.⁴ This requirement is further strengthened by a Framework Agreement through which the Commission guarantees that it will treat the EP and the Council equally as regards access to meetings and the provision of contributions or other information.⁵

The EP has in effect been given a veto over FTAs and is put on a more or less equal legal standing with the Council.⁶ Such a major step forward in decision-making terms requires considerable institutional adaptation, which undoubtedly takes time. However, in many aspects the EP has already become an integral player in EU trade negotiations. This is evident by looking at the ways in which it is changing inter-institutional working patterns, influencing the nature of FTA negotiations, and facilitating civil society participation.

Changing Inter-Institutional Working Patterns

Already during the discussions leading up to the Lisbon Treaty, a specialist International Trade Committee (INTA) was established within the EP

¹ The focus of this brief is on FTAs specifically, but the increased powers provided by the Lisbon Treaty extends to all trade agreements.

² E.g. Kleimann 2011, Van den Putte et al. 2014, Woolcock 2012

³ TFEU, Article 218

⁴ TFEU, Articles 207, 218

⁵ European Communities 2010

⁶ Legally, only the Council has an 'assisting' role during the negotiations and the right to approve the negotiating mandate (TFEU, Articles 207, 218). However, in practice the EP has exercised some influence over the mandates for negotiations with e.g. Japan and the US (see Van den Putte et al. 2014).

to give more attention to trade negotiations. It is one of the newest committees in the EP, but it has nevertheless played an active role in recent trade negotiations and its experience and expertise is gradually deepening. Building on the powers granted to it by the Lisbon Treaty the EP has also set up so called Monitoring Groups to scrutinise progress in all FTA negotiations. These Monitoring Groups, generally consisting of MEPs from the different political groups within INTA, invite the Commission on a regular basis for informal discussions. What is discussed in these meetings is not publicly reported, and it gives the parliamentarians an opportunity to have a confidential negotiation with the Commission.

The Commission has also been proactive in establishing close relations with the EP. It is providing technical assistance and regular briefings for the INTA members and to the MEPs' assistants and policy advisors, generally being represented at high official levels, often by the chief negotiators themselves. Whatever information the Commission shares with the Council, it now also shares with the EP. It is clear to the Commission that not only the Member States, but also the EP, needs to be on board throughout the negotiation process to prevent a parliamentary veto at the end of the negotiations. The nature of FTA negotiations is becoming increasingly political, and when difficult political decisions have to be made the Commission sees it as particularly important to engage key MEPs, and may turn to the EP before the Council.

It is clear that the inter-institutional working patterns between the Commission and the EP is changing as the Commission is spending more and more time with the EP. Even if the technical expertise and experience of the EP still lags behind that of the Commission, as well as the Member States, and even if the EP plays a less prominent role in the trade technical aspects of the negotiations, it now has the political clout to influence the nature of FTA negotiations.

Influencing the Nature of FTA Negotiations

The EP has always attached great importance to normative issues such as human rights and sustainable development. Prior to the Lisbon Treaty it had limited success in pushing these

issues through given its limited powers. As a result, the EU was often criticised for prioritising commercial interests over normative ones. While this criticism is still expressed in some cases, the EP is gradually influencing the EU FTA agenda and putting political and normative issues to the fore. It has started to make its consent to FTAs conditional on the inclusion of meaningful political clauses on human rights and sustainable development. For example in the FTA negotiations with Colombia and Peru the EP expressed concerns about the violation of human rights, and demanded that the two countries committed themselves to an annual human rights dialogue with the EU. Not until this demand was accepted by Colombia and Peru could the EP give its consent to the agreement.

The trade agenda is also becoming increasingly regulatory in nature, rather than just focusing on traditional trade barriers, such as quotas, tariffs and subsidies. When exploring opportunities for regulatory convergence – be it in health, safety, animal welfare, environment, or social affairs – political tensions are likely to emerge between corporations (who most often will benefit from such convergence) and consumer groups (who are worried about the risks connected with regulatory changes), opening up an arena for parliamentary involvement. This has been most visible in the EU-US FTA negotiations aimed at establishing the Transatlantic Trade and Investment Partnership (TTIP), where the EP has played an active role setting out its red lines on any lowering of EU standards. The EP has contributed to the heightened political discussion surrounding TTIP, both through its own internal debates – MEPs diverge deeply on the benefits of TTIP – and by facilitating civil society participation.

Facilitating Civil Society Participation

By pushing political and normative issues to the fore, the EP has, through its new powers, widened the spectrum of civil society organisations involved in the negotiation process. The corporate sector has long played a key role in providing the Commission and Member States with the detailed and technical information they need when formulating their positions, while NGOs have been less successful

in exerting influence over FTA negotiations.⁷ However, following the Lisbon Treaty the EP has proved to be an open and effective channel through which NGOs can direct their demands. As FTA negotiations reflect a more political and regulatory agenda, there is a new role to be played by interest groups involved in such issues. For example, in the FTA negotiations between the EU and India the EP has pushed the demands of development NGOs concerned about the effects that stricter Intellectual Property Rights (IPR) may have on developing countries' access to cheap medicines produced in India. The EP has managed to get the Commission to change its initial proposal on IPR provisions for pharmaceuticals in line with the interests expressed by NGOs in both the EU and India, and to ensure that it will not in any way interfere with India's right and capacity to manufacture and export life-saving medicines to other developing countries.⁸

Similarly, the EP is subject to a lot of pressure from interest groups concerned about TTIP. No other FTA negotiations has mobilised civil society to the same extent. The 'Stop TTIP' initiative brings together an alliance of over 500 civil society organisations and trade unions from across the EU, and the EP has proved a welcoming target for their protests. Even if the EP's adoption of a resolution supporting TTIP in July 2015 disappointed many of these civil society organisations, it revealed a divided EP with strong disagreements between MEPs. Civil society organisations are thus likely to find support for their positions among many of the MEPs, and will continue to pressure the EP. TTIP will remain a widely debated topic in the EP, and the Commission needs to keep it involved to ensure its support at the end of the negotiation process.

Another way in which the EP is facilitating civil society participation in FTA negotiations is through its continuous pressure for greater openness of the negotiation process. It has contributed to the recent efforts made by the Commission to increase transparency of trade negotiations, which in turn gives civil society greater access to negotiating documents. This is most clearly seen in the TTIP negotiations where

the EP has been calling for more transparency since the start of negotiations, and has welcomed the initial steps taken by the Commission in this area. In October 2014 it made public the negotiating mandate, and in January 2015 it published all EU position papers and proposals for legal texts that are tabled for discussion with the US. Although MEPs continue to demand greater access to documents in TTIP (in particular from the US) as well as in other FTA negotiations, these initial steps taken by the Commission are generally seen as a victory for the EP. The timing of the move by the Commission was facilitated by the appointment of Trade Commissioner Malmström, a former Swedish MEP of the Alliance of Liberals and Democrats for Europe (ALDE) group who has always fought hard for transparency and openness. The increased public disclosure of TTIP documents was also triggered by several leaks of classified documents following the entry into force of the Lisbon Treaty. As the number of players involved in the negotiations process increases, so does undeniably the risk of documents leaking.

Concluding Remarks

The EP is building on the new powers given to it by the Lisbon Treaty, and there are clear signs of growing parliamentary influence over EU FTA negotiations. This influence can only be expected to increase as the EP's experience and expertise deepens, as its relationship with the Commission further institutionalises, as the trade agenda becomes more political in nature, as more and more civil society organisations use it as a channel of influence, and as its record of successfully impacting FTA negotiations grows. The EP is thus on its way to becoming a significant actor in EU FTA negotiations, fulfilling the potential offered to it by the Lisbon Treaty.

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⁷ See for example Dür and Bièvre 2007

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