

# Discussion Paper

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## **Trade relevant provisions in the Treaty of Lisbon**

### **Implications for Economic Partnership Agreements**

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## List of Acronyms

ACP	African Caribbean and Pacific
BIT	Bilateral Investment Treaty
CARIFORUM	Caribbean Forum of ACP states
CCP	Common Commercial Policy
CPA	Cotonou Partnership Agreement
DG	Directorate General
EC	European Commission
ECJ	European Court of Justice
EEAS	European External Action Service
EP	European Parliament
EPA	Economic partnership agreement
EU	European Union
FDI	Foreign Direct Investment
FTA	Free trade agreement
GAC	General Affairs Council
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
HR	High Representative
ICSID	International Centre for Settlement of Investment Disputes
IPR	Intellectual property rights
MEP	Member of the European Parliament
MNC	Multinational corporation
MS	Member States
NAFTA	North American Free Trade Agreement
NT	National treatment
OLP	Ordinary Legislative Procedure
QMV	Qualified majority voting
TEC	Treaty establishing the European Community
TFEU	Treaty on the Functioning of the European Union
ToL	Treaty of Lisbon

## Executive Summary

The entry into force of the Treaty of Lisbon (ToL) on 1 December 2009 introduced significant changes in the functioning of the European Union (EU). One major evolution concerns the way the EU manages its relationship with the rest of the world. The enlarged objectives that are attributed to EU external action under the Lisbon Treaty correspond to a widening EU foreign policy agenda, which will be supported by new structures, such as the European External Action Service (EEAS) and executed with new roles.

The Treaty of Lisbon also modifies the EU rule-setting for the conduct of its trade policy. It notably elevates the objective of trade integration to the level of an overarching objective of the EU's external action, it increases the competences of the European Union on services and investment and it increases the role of the European Parliament (EP).

Both within the area of trade policy and beyond, the ToL introduces new decision-making procedures, new EU competences and new institutions. To what extent will the internal transformation affect the conduct of the EU as an international actor, notably in the trade arena? What will ultimately be the implications for the negotiations and implementation of Economic Partnership Agreements (EPAs) with the African Caribbean and Pacific (ACP) countries? This paper addresses these questions by (i) highlighting the main changes introduced by the ToL and (ii) by considering the potential effects the reforms may have on EU trade and development policy and the EPA process more specifically.

The analysis conducted in the context of this study has revealed a number of implications deriving from the following changes:

### Changes in EU trade policy

- First, if the Council continues to authorize the Commission to open negotiations on the basis of Commission recommendations and the Commission continues to speak for the Union in international negotiations (unity in representation). But from now on the Council is acting by qualified majority when adopting both, the negotiating directives for the Commission and the final agreement. However, given the common practice in the Council to take decisions by consensus, these changes are unlikely to have a significant impact in the short term on decisions affecting the ACP and EPAs.
- Second, the entire Common Commercial Policy (CCP), including trade in services, trade-related aspect of intellectual property rights (IPR) and Foreign Direct Investment (FDI), now falls under exclusive EU competence. Yet, the extent to which the ToL will make a difference for negotiations of international agreements in the short or medium term is either limited (services) or relatively uncertain (investment).
- This being said, it will be critical for those highly services-oriented ACP countries, potentially interested in negotiating investment chapters within the context of a full-EPA, to closely monitor the crafting process of Europe's international investment policy.
- Third, the new role of the EP, which has gained legislative power in the CCP and is *de facto* likely to be more involved throughout the negotiation process for trade agreements, is therefore expected to be the main implication of the ToL for international trade partners in the medium and longer term.
- The new role of the EP as co-legislator in the CCP is relevant in terms of impacting on the fall-back option for countries that do not sign an EPA, namely the Generalised System of Preferences (GSP),

whose revision will be conducted under the new ToL rules; yet the procedures for amending the interim EPAs, for instance in case of adjustments to the liberalisation schedules, and for monitoring the implementation of the agreements are not affected by the ToL (the Joint EPA Council remains the relevant body, given that procedures are foreseen in the EPA provisions).

- Finally, the EP has gained power of consent for the conclusion of international agreements and the right to regular information on the progress of negotiations from the Commission. In the case of EPA negotiations both innovations largely codify existing practice, as the EP has already been briefed on EPA negotiations on a monthly basis and has already had the right of 'assent' (identical to 'consent' under the ToL) for agreements that go beyond goods-only and/or established new joint institutions.
- Yet, it is expected that the EP will try to expand its influence on the objectives of the negotiations and the negotiating directives for the Commission already before the start of the negotiations, as well as on the conduct of the negotiations. This shift in the balance of power could also increase tensions between the different actors, which constitutes both a challenge and an opportunity for ACP countries, as alliance-building might well become increasingly important and more frequent.

### Changes beyond trade policy affecting EPA negotiations

- New EU interlocutors, the High Representative and her EEAS, may open avenues for third countries to raise their concerns at a political level.
- As a service mandated to coordinate EU policies and EU institutions and member states, the EEAS could potentially help to unify the EU support in terms of aid for trade.
- A politicisation of EU trade policy including EPAs is unlikely. However, for countries that do not sign an EPA, the EU might use the GSP+ as a political incentive to motivate countries to make substantive improvements in the application of the Conventions.
- The removal of formal obstacle to budgetization of the European Development Fund with the ToL, the integration of the geographic desks for the ACP in the EEAS, together with the tendency towards increasing regionalisation in the EU's foreign relations could raise questions related to the future of the Cotonou Partnership Agreement (CPA) after 2020.
- Increasing EU integration in the area of Justice and Home Affairs is expected to accelerate the creation of a common immigration and asylum policy and has the potential to impact on the capacity of the Commission to negotiate agreements with third countries, including on Mode 4 of the General Agreement on Trade in Services (GATS) on the temporary movement of individual services suppliers in trade agreements.

While acknowledging the number of remaining uncertainties as to how the changes of the ToL in terms of vision, rules and structures will be implemented in the short term and play out in practice in the medium and long term, this paper argues that the outcome on the functioning of the EU will to a great extent depend on what the EU actors and their international partners, such as ACP countries in the context of the EPAs, make of the opportunities the Treaty offers.



## 1. Introduction

The entry into force of the Treaty of Lisbon (ToL) on 1 December 2009 introduced significant changes in the functioning of the European Union (EU). One major evolution concerns the way the EU manages its relationship with the rest of the world. The enlarged objectives that are attributed to EU external action under the Lisbon Treaty correspond to a widening EU foreign policy agenda, which will be supported by new structures, such as the European External Action Service (EEAS) and executed with new roles.

The Treaty of Lisbon also modifies the EU rule-setting for the conduct of its trade policy. It notably elevates the objective of trade integration to the level of an overarching objective of the EU's external action, it increases the competences of the European Union on services and investment and increases the role of the European Parliament.

The Treaty of Nice (2001), predecessor of the ToL included “the smooth and gradual integration of the developing countries into the world economy” as one objective of development cooperation. While the only objective mentioned in the chapter on development cooperation in the Lisbon Treaty is poverty reduction and eradication, the objectives of external action now include: to “[e]ncourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade” (Art. 21). The adjectives “smooth and gradual” were lost in this re-phrasing, which could be interpreted as a certain ideological shift.

New competencies, some streamlined decision-making<sup>1</sup>, new institutions and concurrent internal restructuring in the Commission should be the vehicles to realise the vision. Yet it remains to be seen whether these new internal ‘rules of the game’ and institutional arrangements are going to be operationalised and to which extent they will affect the conduct of the EU as an international actor, notably in the trade arena. Currently, there is still a lack of information and clarity around a number of political and implementation issues yet to be agreed on between institutional stakeholders in Brussels. There are also questions around the entry points and place of Africa and the African, Caribbean and Pacific (ACP) group in the new structures.

What will be the implications of these systemic and institutional changes internal to the EU on its negotiations and implementation with the ACP on economic partnership agreements (EPAs)? While the transformation process is ongoing in the EU, the outcome on the functioning of the EU, notably on trade policy, will to a great extent depend on what the EU actors and their international partners make of the opportunities the Treaty offers. Several scenarios could be envisaged:

- A minimalist scenario: in spite of some formal changes in competencies and institutional roles and arrangements, the same old dynamics prevail, with little effective changes in the conduct of trade policies;
- An ambitious scenario: the institutional and rule setting formal reshuffling lead to the full exploitation of new opportunities, with a more pro-active European Commission, bold EU initiatives (notably in pursuing comprehensive services and investment agreements), and a much more prominent role played by the European Parliament;
- A medium scenario, somewhere in between the two previous ones, where changes are more gradual, and the ambitions depending on sectors, geographical areas/partners and policy instruments concerned.

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<sup>1</sup> Though not in the foreign policy area, which will remain firmly intergovernmental and subject to unanimity voting.

This note will seek to highlight the main changes introduced by the Lisbon Treaty that may impact on EU trade and development policy and will consider the effects these may have on the EPA process. After reviewing, in Section 2, key relevant aspects of the Lisbon Treaty, Section 3 focuses on the new EU trade policy setting and its implications for the EPA process. Section 4 then ventures on a number of other policy areas (EU external action, development cooperation, migration) that may also affect EPAs, while Section 5 brings the discussion to a close by summarising some key considerations.

## 2. The Lisbon Treaty in a nutshell

The Lisbon Treaty marks the latest phase of the gradual transformation of the European Union (EU) from a rather inward looking community to one with ambitions to be a global player. This is reflected in a significant expansion of the overall aims of the EU, including global trade integration and the eradication of global poverty, among others (see Annex, Art. 21). The ToL represents the EU shifting the emphasis from peace, well-being and prosperity within the EU to a concern with addressing global challenges.

The ToL has transferred a number of areas under the EU competences. Moreover, co-decision between the Council and the European Parliament will be the standard legislative procedure and as such qualified majority voting will be extended to more than 40 areas, including migration policy, investments, etc. As a consequence the Treaty extends the role of some role players, such as the European Parliament.

The scope and ambition of the EU's external policy has been elevated to a new level by the Lisbon Treaty. A new Chapter on external action in the Treaty on the European Union – encompassing the intergovernmental areas of foreign and security policy and the community areas, such as trade and development cooperation – is opened by an article on principles. This article captures fundamental values, such as human rights and democracy and some of the aspects that have given rise to the term “soft power” for the EU. This includes the recognition of global problems that demand global solutions as well as the commitment to multilateralism and foreign relations based on the rule of law.

The way the EU will relate to its international partners will change through the two new leading figures in external relations: firstly, the High Representative of the Union for Foreign Affairs and Security Policy (EUHR), Baroness Catherine Ashton – double-hatted as the Vice-President of the European Commission (EC) – with its diplomatic staff, the European External Action Service (EEAS) – and secondly, the President of the European Council, Mr. Herman van Rompuy. Those two figures are expected to guide a more political EU external action, in which a multitude of EU external policies and instruments, including diplomacy, defence, development cooperation and trade, are to be used in a complementary and consistent manner to achieve the set of overarching objectives of EU foreign relations, which now include the progressive abolition of restrictions on international trade, the eradication of poverty and conflict prevention, among others.

## 3. The new EU External Trade Policy and its implications for EPA negotiations

With the view of making the Common Commercial Policy (CCP) more efficient and more democratic, the ToL has introduced a number of novelties, which will shape the way the CCP is currently operating. Among those changes, one could stress the new decision-making procedures (Section 3.1), the clarification of EU competences in the area of external trade policy (Section 3.2), as well as the increased powers granted to the European Parliament both in the adoption of EU legislation regarding

trade and in the conclusion (and perhaps *de facto* negotiations) of trade agreements (Section 3.3). Beyond the mere description of these three institutional and operational innovations, this section examines the impact these changes might have on international EU trade policies, in order to determine how and to which extent the new Treaty can be expected to impact the EPA negotiations and implementation.

### 3.1 New decision-making processes in trade

#### 3.1.1 Framework legislation

With the ToL the Common Commercial Policy becomes subject to the Ordinary Legislative Procedure (OLP)<sup>2</sup>. Previously the Council decided by qualified majority on the basis of Commission proposals. Now the **European Parliament (EP) is co-deciding with the Council** on EU legislation, precisely on “measures defining the framework for implementing the common commercial policy” (Art. 207 (2)), with the Council voting in general by qualified majority (QMV) and the EP voting by simple majority (first reading) or absolute majority (second reading)<sup>3</sup>. The framework of application for unilateral schemes such as the Generalised System of Preferences (GSP), anti-dumping regulations, countervailing duties and to a certain extent EPAs market access regulations shall now fall within the scope of OLP. The implications of the more prominent role of the EP resulting from this change in the legislative process are discussed below, in section 4.2.

#### 3.1.2. Negotiations and conclusion of international agreements

Two key features of the process of negotiation and conclusion of international agreements remain unchanged with the ToL (Art. 207 (3)). The Council continues to authorize the Commission to open negotiations on the basis of Commission recommendations. The Commission represents the Union as ‘the negotiator’ while the Council is ultimately “responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules” (Art. 207 (3)). Also, the Commission conducts negotiation in consultation with the Trade Policy Committee (previously called ‘Article 133-Committee’) and regularly reports to it on the progress made at the negotiation table.

However, there are also important changes in the procedure: From now on the **Council is acting by qualified majority** (Art. 207 (4) and Art. 218) when adopting both, the negotiating directives for the Commission and the final agreement. However, there are some exceptions: following pressures from several member states<sup>4</sup>, some provisions have been included in the text to preserve, under specific circumstances, the rule of unanimity in EU decision-making on those sensitive sectors (such as health, education, audiovisual and cultural services) on which the EU stance is *overall* more likely to be defensive. Article 207(4) stipulates that unanimity should prevail within the Council:

*“(a) in the field of trade in cultural and audiovisual services, where agreements risk prejudicing the Union’s cultural and linguistic diversity;  
(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them”.*

Previously the Council acted unanimously in the fields of trade in services and the commercial aspects of

<sup>2</sup> The Ordinary Legislative Procedures used to be called “co-decision” procedure under previous treaties.

<sup>3</sup> Simple majority refers to the majority of Members of European Parliament (MEP) actually casting their vote (provided the quorum is respected), whereas absolute majority refers to the majority of the overall number of MEPs.

<sup>4</sup> See Woolcock, Stephen (2010), EU Trade and Investment Policymaking After the Lisbon Treaty, *Intereconomics* 2010, 1, 22-25.

intellectual property, in addition to the ToL exceptions mentioned above. (Note that investment was not mentioned at all in the Treaty of Nice.)

#### Implications for the ACP

- The expansion of qualified majority voting in the Council on international agreements might bear some implications for ACP countries: qualified majority vote in the General Affairs Council (GAC) could *in theory* improve ACP bargaining position in trade negotiations.
- The theoretical field of economic diplomacy would indeed reveal that unanimity voting by granting each member states a veto power has the effect of reinforcing the most conservative standpoint, which becomes therefore the common EU position. Under unanimity voting therefore, ACP countries could only obtain what the most conservative EU state was willing to concede<sup>5</sup>. Qualified majority voting on the other hand mitigates the extremes and should therefore theoretically make it easier to reach an agreement.
- This said, whether in practice the new decision-making process will translate into better bargaining positions for ACP countries is far from being ensured, since on these so-called “new” trade issues (services and intellectual property rights), the position of the EU tends to be offensive rather than defensive.
- In spite of the increased competencies of the EC and the expansion of QMV, it is important to note that it is common practice for the Council to take decisions by consensus and not subject to a formal vote; this suggests that changes in the formal decision mechanism in the EU are unlikely to have a significant impact in the short term on decisions affecting the ACP and EPAs in particular.

In addition, the **EP has to give its consent** (Art. 218 (6)) **to any trade agreement**. Previously, the EP’s approval (then called ‘assent’<sup>6</sup>) was not *required* for agreements on trade in goods only (by means of derogation from the general requirement for consultation with EP/ ‘assent’ of EP for all other international agreements). The implications of the more prominent role of the EP resulting from this change in the decision-making procedure for international agreements are discussed below (Section 4.3).

### 3.2 A new repartition of competences expanding the scope of the CCP

One of the most striking innovations of the ToL lies in Art. 207 (ex-Art.133, TEC) which brings the entire Common Commercial Policy (CCP), including trade in services, trade-related aspect of intellectual property rights (IPR) and Foreign Direct Investment (FDI) under exclusive EU competence (Art. 3-TFEU). Transport, non-commercial IPR and portfolio investment<sup>7</sup> will however remain within the realm of shared competences.

One shall recall that prior to the entry into force of the ToL in December 2009, the EU have had exclusive competence over traditional trade in goods but mixed competence in many areas of the new trade agenda, notably on many behind-the-border issues<sup>8</sup>. This has often led to a tension over competences between the Council and the Commission.

<sup>5</sup> Sophie Meunier (2000). *What Single Voice? European Institutions and EU–U.S. Trade Negotiations*. International Organization, 54, pp 103-135

<sup>6</sup> Assent (under Nice Treaty) and consents (under ToL) are synonymous legal terms.

<sup>7</sup> As emphasized in Section 4.2.2 below, the ToL does not provide any definition of ‘investment’. The general understanding is however that there is a consensus that portfolio investment is very unlikely to fall within the definition of FDI and de facto under exclusive EU competence.

<sup>8</sup> Inward foreign investment, competition law, labor standards, and environmental norms.

### 3.2.1 Services

In the area of trade in services, the **ToL mainly consolidates the current state of affairs** and is unlikely to induce dramatic changes for many reasons.

First, the **EU market in services is far from unified** today, despite individual directives for specific sectors (Mutual Recognition Agreements). Significant progress in the integration in the area of services is not likely to take place in the medium term. Therefore changes affecting the EU's offer to third countries on these issues cannot be expected any time soon. Secondly, the EC was already negotiating for the EU on all services and intellectual property rights. Third, the adoption of decisions under QMV is unlikely to make a big difference as decisions on these questions have been taken by consensus for many years. Fourth, member state parliaments will not be asked to ratify all agreements any more, yet there will still be mixed agreements that require ratification by national parliaments. But, in practise this ratification has been largely a "rubberstamping exercise for years"<sup>9</sup>. Fifth, as mentioned above, in sensitive areas such as education, health, audiovisual and cultural services, unanimity can still be required under specific circumstances. (The question of whether or not this will in practice mean an automatic veto right granted to EU member states is however subject to interpretation.)

#### Implications for the EPA negotiations

In the context of free trade agreements (FTAs), including the EPA negotiations, the European Commission might aim for a simplified schedule of commitments with fewer member state-specific reservations. Some changes might for instance be seen in sectors where the internal market is relatively integrated, such as telecommunications. But realistically, the framework developed in the CARIFORUM-EU EPA comprising twenty-seven different national schedules is likely to remain the model for a foreseeable future.

### 3.2.2 Investment provisions

In the area of investment, however, changes brought about by the ToL might be more significant. With the ToL, the EU now has the competence to negotiate and conclude comprehensive international investment agreements and/or free trade agreements comprising far-reaching investment provisions.

Until now, EU Member States (MS) granted the EC the right to negotiate market access liberalization (mode 3 of the GATT) and pre-establishment national treatment (NT), while "post-establishment" provisions, such as investment protection and standards of expropriation, remained the sole prerogative of MS. MS have therefore been quite active in recent years in negotiating Bilateral Investment Treaties (BIT).<sup>10</sup>

With the ToL the EU might well become the main interlocutor for third parties for all types of FDI (ie. in services and non-services sectors) and for a broader range of investment provisions, from market access to legal protections.

A consensus is admittedly emerging in European circles about the idea that the **EC's authority now covers both investment provisions on market access and post-establishment protections**. This broad (and controversial) definition raises however two important and interrelated questions.

<sup>9</sup> See Woolcock (2010) in footnote 4.

<sup>10</sup> Currently, there are over 200 BITs between EU and ACP Member States. See Vis Dunbar (2009) - The Lisbon Treaty — Implications for Europe's International Investment Agreements - Trade Negotiations Insights. Vol(6). N9

The first one concerns the status of existing BITs concluded by MS. If Articles 351 TFEU and 4(3) TEU bears the obligation for MS to make sure their individual BITs are consistent with EU law, the new Treaty does not ensure the legality of existing BITs, even in the event of such conformity. Hence, in order to ensure the legal certainty critical to EU investors, the EU is expected to adopt a **transitional arrangement, acknowledging the existent BITs**<sup>11</sup>. BITs shall therefore remain in place in the short to medium term. These treaties could however progressively be replaced by EU-wide investment agreements. In the future, the EU may indeed be interested in negotiating comprehensive EU investment agreements with third countries, either bilaterally or for application in FTAs, that go beyond a transaction-based definition of FDI (i.e covering market access regulations, non-discrimination clauses, as well as post-establishment standard treatments). It is expected that the EU will predominantly negotiate this type of new investment treaties and/or far-reaching investment provisions within FTAs with those countries willing to negotiate these issues, and will arguably select strategic economic partners such as China, Russia, Canada or Singapore.

The second question arising thereof would therefore be: How will Europe's international investment policy look like?

Looking at the stance of the European Union over the past years, the idea that the EU might look for parity with the North American Free Trade Agreement (NAFTA) and engage in the negotiations of post-establishment "provisions" similar to those enclosed in NAFTA (notably, bans on performance requirements) have been feared by some policy experts<sup>12</sup>. Some civil society representatives have therefore stressed the need to ensure a balance between providing some investor protection and the necessity to ensure that FDI benefits the host country (policy space for governments of developing countries, but also social and environmental standards). Given the controversies that member states BITs have stirred in recent years, and the proliferation of judicial disputes initiated by multinational corporations (MNCs) against governments in developing countries, the crafting of a new EU International Investment Policy could represent an opportunity for those ACP countries willing to negotiate on these questions. The need for policy coherence between all the aspect of EU's external actions and the involvement of the European Parliament on these questions could also be critical in deciding the values which will guide the EU (see below) on these questions.

This said, on the ground that a one-size-fits-all approach will be detrimental for both the EU and the concerned negotiating counterpart, the EC seems quite opposed to the idea of developing an EU-model BIT, advocating for case-by-case solutions. It is also quite possible to see the EU deciding to partially and conditionally leave it to EU Member states to act on these "post-establishment" issues.

Some commentators have even argued that the lack of definition about what precisely constitutes FDI is *de facto* preserving the status quo as it encourages the adoption of a narrow definition of investment covering investment liberalisation only.

Some areas (such as property ownership) remain in the hands of MS, rendering it difficult for the EC to offer comprehensive investment treatment standards to third countries, notably with regards to the so-called "Parallelism-clause" (Art. 207(6) TFEU)<sup>13</sup>. Investor-state dispute settlement mechanisms might

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<sup>11</sup> This transitional arrangement is often called "grandfathering" - a misleading appellation, as it is worth noting that if the EU does indeed bless the existent, it does not systematically acknowledge the content of these agreements.

<sup>12</sup> Insights from the Roundtable for MEPs and civil society on the Future of EU International Investment Policy and the Role of the European Parliament (May 12<sup>th</sup> 2010, European Parliament).

<sup>13</sup> For more information, see Business Europe Information Note on Foreign Direct Investment under the Lisbon Treaty, 12 January 2010, available at: [www.spcr.cz/files/bjakubcova/information\\_note\\_FDI\\_Lisbon\\_Treaty.doc](http://www.spcr.cz/files/bjakubcova/information_note_FDI_Lisbon_Treaty.doc). For a legal perspective on this question, see for instance, M. Burgstaller (2010). European Law Challenges to Investment Arbitration in M. Waibe (ed) (2010) *The Backlash Against Investment Arbitration*, Kluwer Law International BV.

also de facto require the involvement of member states, as most procedures in this area (International Centre for Settlement of Investment Disputes-ICSID- procedures included) are state-centred. Moreover, investment provisions to be negotiated as part of FTAs under EU exclusive competence are unlikely to encompass all types and forms of investment assets. As previously emphasized, portfolio investment are very unlikely to fall within any definition of FDI, but could fall under the existing EU provisions on capital movement (Treaty of Rome). All we can say at this stage would therefore be that mixed agreements are unlikely to completely disappear.

Once again, there seem to be a lot of uncertainty in this area. The truth is that until the announced and awaited Commission communication on this subject clarifies the situation, the operational implications of the textual inclusion of investment within the scope of EU exclusive competence are still far from being clear.

#### **Implications for the EPA negotiations**

- Notwithstanding the above, and despite the remaining uncertainties regarding the practical implications of the newly EU exclusive competence in FDI, it will be critical for those highly services-oriented ACP countries, potentially interested in negotiating investment chapters within the context of a full-EPA, to closely monitor the crafting process of Europe's international investment policy. In this respect, the forthcoming Commission communication that shall soon come to clarify these questions will be relevant.
- In the context of EPA negotiations and/or under the revision clause (see. Art. 246 of the CARIFORUM-EC EPA), it remains to be seen if the EU will seek to negotiate post-establishment provisions, possibly within the framework of a still-to be defined EU-wide investment policy.

### 3.3 Increased role of the European Parliament

#### **3.3.1 EP's role in the legislative process**

The **EP gained legislative power** on "measures defining the framework for implementing the common commercial policy" (Art. 207 (2)), which used to be the prerogative of the Council alone, on the basis of a Commission proposal – a 'light' procedure. This change in decision-making is very significant, making the process much more complex and potentially lengthy. With co-decision power of the EP, legislation can still be passed quickly if it is adopted in a first reading, if there is consensus between the Council and EP (either EP adopts the proposal without amendments, or the Council adopts the EP's amendment). Otherwise, the proposed act goes into a second reading and if there is still no agreement after the second reading into the conciliation procedure. Hence, the EP has the power to delay legislation for many months or block it.

#### **Implications for the EPA negotiations**

The new role of the EP as co-legislator in the CCP is relevant for EPA negotiations in terms of impacting on the fall-back option for countries that do not sign an EPA, namely the Generalised System of Preferences (GSP), i.e. the planned revision of the GSP will be conducted under the new ToL rules.

### 3.3.2 The EP's role in relation to 'delegated acts' and 'implementing acts'

Questions arise and issues remain to be clarified about the EP's role in relation to the European Commission's power to adopt so-called 'delegated acts' and 'implementing acts'. The Council/ Article 133 Committee and the Commission previously dealt with these aspects under procedures specific for trade policy. Under the ToL, the new Articles 290 and 291 stipulate new procedures for all policy areas, for which the details of the limited control and oversight function of the EP are yet to be clarified. The three institutions are currently working on an inter-institutional agreement to define a general framework within which the delegation of power would operate. In principle:

- 'Delegated act' (art 290): The European Commission may be granted the power to "adopt non-legislative acts to supplement or amend certain non-essential elements" of a legislative act. The details of the delegation of powers from the legislator to the Commission will be defined in the basic legislative act itself. The ToL grants both the Council and the EP the power to revoke the delegation and to veto a delegated act on the basis of respectively qualified majority voting and majority voting. Currently, the Council and the EP are in the process of drawing up the basic regulation to frame 'Delegated Acts' under the ordinary legislative procedure.
- 'Implementing act' (art. 291): The Commission may be granted the power to adopt measures to implement legislative acts if such measures are necessary and the implementing powers are conferred to the Commission in the legislative act. The Member States will control the Commission's exercise of implementing powers. The new rules and general principles concerning mechanisms for such control by member states – the previous system was called 'Comitology' - will be decided under ordinary legislative procedure.<sup>14</sup> Hence, although the EP, together with the Council, has legislative power to define the rules through a new regulation, it has no role in the process. Once the new regulation is in place, a so-called 'omnibus legislation' will be adopted to transfer the currently existing 'Comitology' provisions and other implementing rules in the area of trade policy into the new framework of delegated and implementing acts in accordance to the ToL.

Amendments of unilateral market access regulations are a case in point, where the EP could *a priori* have slightly more influence than before, when this was purely a Council prerogative.

But in case of existing legislation, that prescribes the procedure for its own amendment, it is this procedure prescribed in the legislation concerned that prevails, at least until a new legislation with revised amending or implementation procedures is adopted to replace it.

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<sup>14</sup> On 9 March 2010, the Commission published its proposal for a regulation "laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers" (COM(2010) 83 final).



### Implications for the EPA negotiations

- A new regulation on market access for ACP countries should be decided under OLP procedures. However, the existing EU EPA market access 1528 Regulation itself stipulates certain rules for its amendments.<sup>15</sup> In particular, the Council, acting by qualified majority upon a proposal from the Commission, has the authority to remove a region or state being granted market access from the Annex I of countries under certain circumstances. To the extent that this is considered to concern implementation issues currently attributed to the Council, the EP will not play any role in a decision to add or remove an ACP country/region from the Regulation Annex that lists the countries that have concluded an (interim) EPA and are committed to sign, ratify and implementing in a reasonable period of time and thus could benefit from the duty-free-quota-free market access to the EU under the EPA.
- Nevertheless, it will be politically sound to consult the EP extensively on major changes, as trust is of key importance in an area, where the same actors interact regularly on different agreements. The EP could potentially use its veto power on other agreements, if it feels that it has not been well respected in an area on which it does not formally have a competence.
- Note that amendments to the interim EPAs are not affected by the ToL, for instance regarding possible adjustments to the liberalisation schedules, if procedures for these are foreseen in the EPA provisions. Indeed, EPAs generally foresee that such decisions are to be decided by the relevant Joint EPA Council (to which the EP has no formal part and is only informed). This of course raises the question on the appropriate process in the case such an institution has not been set-up.
- Regarding the implementation of any of the dispositions that are already in the agreement or in annexed regulations, the EP does not have a right of consent (Monitoring Act). Note that for the monitoring of the implementation of the EPAs, the Joint EPA Council is the relevant body, hence it is not affected by the ToL in terms of decision-making process. Yet, the High Representative (HR), currently Lady Ashton, should represent the EU in the Joint Council. She is however likely to delegate this task to a Minister of the EU country that holds the rotating EU Presidency. Which Minister this would be depends on the subject to be addressed, but EC's Directorate General (DG) Trade would intervene on trade matters. The vision of the Commission might be that DG Trade represents the HR.

<sup>15</sup> "2. The Council, acting by qualified majority on a proposal from the Commission, shall amend Annex I to add regions or states from the ACP Group of States which have concluded negotiations on an agreement between the Community and that region or state which at least meets the requirements of Article XXIV GATT 1994.

3. Such region or state will remain on the list in Annex I unless the Council, acting by qualified majority upon a proposal from the Commission, amends Annex I to remove a region or state from that Annex, in particular where:

(a) the region or state indicates that it intends not to ratify an agreement which has permitted it to be included in Annex I;  
 (b) ratification of an agreement which has permitted a region or state to be included in Annex I has not taken place within a reasonable period of time such that the entry into force of the agreement is unduly delayed; or  
 (c) the agreement is terminated, or the region or state concerned terminates its rights and obligations under the agreement but the agreement otherwise remains in force." (Art. 2 (2,3), COUNCIL REGULATION (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements; as published in the Official Journal of the European Union, L 348/1, 31.12.2007 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:348:0001:0154:EN:PDF>))

### 3.3.3 The EP's role in trade negotiations

The **EP must be informed regularly during the negotiations**. The Commission has to report regularly to the EP on the progress of the negotiations, in addition to regular reporting to the “special committee appointed by the Council to assist the Commission in this task” – previously called “133 Committee”, now called “Trade Policy Committee” (Art. 207 (3)); (Note that with the ToL, this obligation to report to the EP is applicable to all types of agreements: “The European Parliament shall be immediately and fully informed at all stages of the procedure.” (Art. 218 (10))

DG Trade will have to provide much more detailed information to the EP than before. In fact, the EP's Committee on International Trade (INTA) should now receive the same information as the Trade Policy Committee (ex-133 Committee), which was clearly not the case before. The issue is that these two Committees do not meet with the same frequency. The Trade Policy Committee meets every week, which is not the case of INTA, which meets on a monthly basis.

The EP has gained power of **consent to the conclusion of international agreements** on trade in goods and the right to regular information on the progress of negotiations from the Commission ('the negotiator').

#### Implications for the EPA negotiations

In the case of EPA negotiations both innovations, the right to regular information and to consent, largely codify existing practice, as the EP has already been briefed on EPA negotiations on a monthly basis and has already had the right of 'assent' (identical to 'consent' under the ToL) for agreements that go beyond goods-only and/or established new joint institutions (i.e. all (interim) EPAs except in the Pacific). Yet, it is expected that the EP will try to expand its influence in practice, in particular:

- The EP is likely to become more involved throughout the entire negotiation process. The question of the extent to which the EP will have a say before and during the negotiations will be tackled in the context of the negotiations on a new inter-institutional agreement with the Commission. The EP has recently requested to sit in the negotiations as an observer, but it is not clear how the chances are that this request could be taken up. In any case, given that it has to give its consent to the conclusion of all agreements, *de facto* the EP will be more consulted throughout the entire process - as it would be too costly for the European Commission to risk negotiating an agreement if at the end the EP does not approve it.
- Although the EP has no formal say either in shaping the Commission's negotiating directives, or during the negotiation process itself, the EP might be tempted to give a list of preconditions up front with a view of influencing the objectives and the Commission's directives in the negotiations. These could include issues such as human rights, social rights, labour and environmental standards, etc. Hence, the strengthened veto-power of the EP could lead to a certain politization of the EU's trade agreements. It is difficult to assess how likely it will be that the EP sanctions an agreement ex-post which does not meet the preconditions it has stipulated ex-ante.
- The shift in the balance of power could also increase tensions between the different actors, which constitutes both a challenge and an opportunity for ACP countries. It can be expected that alliance-building will become increasingly important and more frequent - between certain EU member states and certain members of the EP (MEPs), but there is also an increased possibility for the ACP to find allies in the EP.

- Finally, with regard to trade-only agreements such as the EU-Pacific Interim EPA, the EP has gained new powers to ‘consent’. This is likely to delay the process. In view of the EP’s efforts to take space in the currently ongoing power struggle between the EU institutions and demonstrate its power, it is not inconceivable that the EP would withhold its consent on one of the agreements that are about to be concluded.

## 4. Changes beyond trade policy affecting EPA negotiations

### 4.1 Trade policy in the context of EU external action

The ToL integrates the CCP explicitly into the EU’s external action. As the other external EU policies, it “*shall be guided by the principles, pursue the objectives and be conducted in accordance with*” the overall values, principles and objectives of the EU’s external action (Art. 205).

With the ToL also the requirement for **consistency of EU external action** – calling for the Union to respect the principles and pursue the objectives of its external action in “*the different areas of the Union’s external action*” and “*in the external aspects of its other policies*” - has clearly been strengthened.<sup>16</sup> As poverty reduction is among these objectives, the provision has gained relevance for development issues. In addition, consistency has to go beyond consistency *within* external action, with the Lisbon Treaty requiring consistency between external action and other policies, e.g. agriculture, migration, etc. What is also new is that the Commission and the High Representative are directly responsible for consistency, in addition to the Council. The High Representative/ EEAS has a mandate to ensuring **consistency of EU external action**. Together with the Council, the High Representative, has been mandated to “*ensure the unity, consistency and effectiveness of action by the Union.*”<sup>17</sup>

This raises several questions for trade issues.

- In terms of **coordinating** trade policy with other external and internal EU policies, will the High Representative and her staff play a lead **facilitation role**? E.g. in terms of aid for trade, linking-up the trade and development actors and frameworks, ensuring a more joint-up EU response between the Commission and the EU member states etc.? How is the High Representative going to fulfil this mandate of coordinating other policy areas with trade policy in practice? As an exclusive EU competence trade policy remains to be firmly located in the Commission’s DG Trade – unlike e.g. development cooperation, which is a competence shared with the member states. Unlike other parts of the Commission’s external relations DGs, DG Trade will not at all be integrated into the EEAS. As it appears now, the High Representative and the EEAS will not have any expertise on trade issues in-house and staff working on trade issues in Delegations will remain to be either from DG Trade or seconded national experts from EU member states, so it is questionable that they will play a strong role.
- In terms of **mediating** between potentially competing policy priorities or tensions between different objectives, could the High Representative and her service play a **political role** and become an interlocutor for third countries who would i.e. like to raise questions about the impacts of EU trade

<sup>16</sup> TEU, Art. 21, paragraph 3.

<sup>17</sup> TEU, Art. 26, paragraph 2.

negotiations on development issues? Will the High Representative engage with DG Trade in ensuring that EU trade policy takes into account the objectives of EU development cooperation especially poverty eradication (Policy Coherence for Development, see section 5.2)?

- The ToL's new interlocutors with a mandate to represent the entire EU on all aspects of its external relations create an opportunity for third countries to raise their concerns at a political level.
- As mentioned above in relation to the more prominent role of the EP, some have expressed concern over a possible new conditionality in EU trade policy and FTAs also due to the potential exertion of political influence by the High Representative and the EEAS. This could for instance mean more pressure to use EU trade policy to serve broader foreign policy interests, to put more emphasis on environmental issues or labour standards or human rights. Again, the institutional separation of DG Trade is expected to prevent such influence from the EEAS to a certain extent. In addition, there are only a limited number of relevant instruments in the EU's rule-based trade and foreign relations system and these are generally not regarded as being very effective.

#### **Implications for the EPA negotiations**

- New EU interlocutors may open avenues for third countries to raise their concerns at a political level. The High Representative and her staff, the EEAS, which includes the EU Ambassadors in third countries, are equipped with a much broader and stronger mandate than the EC representatives in Brussels and at Delegation level. They represent the entire EU on all aspects of its external relations in the areas of EU competence.
- The EEAS could potentially help to unify the EU support in terms of aid for trade. As a service mandated to coordinate EU policies and EU institutions and member states, it may be instrumental in linking-up the trade and development actors and frameworks and ensuring a more joint-up EU response between the Commission and the EU member states. The EEAS is however not fit to engage on technical issues, hence its agenda will be informed by the requests of EU member states and institutions, but also by the priorities expressed by third countries and regions in the political dialogue.
- In terms of politicisation of EU trade policy, it is unlikely that EPAs will be affected in any way.
  - According to Art. 96 of the Cotonou Partnership Agreement (CPA), a violation of any of the "essential elements" (human rights, democratic principles, rule of law) may provide grounds for suspending EU assistance and trade cooperation with the ACP country concerned. Trade with ACP countries has as of today never been affected by this provision, although the EU has suspended financial assistance and technical cooperation in various cases following failure to address the issue in the political dialogue with the ACP country. Although the EEAS will conduct such political dialogue in the future, it is not expected to take issue with the consensus that has manifested itself in the EU that trade sanctions are not an effective tool to promote human rights, democratic principles or the rule of law. (It is generally accepted that targeted sanctions such as asset freeze or travel ban are more appropriate measures.)

- For countries that do not sign an EPA, potential changes in the EU's handling of the application of provisions on trade sanctions under the GSP+ may be of relevance. The application of sanctions -the withdrawal of GSP+ benefits- has been based on internal Commission panels of inquiry monitoring the objectively measurable application of international human and labour rights conventions. Hence, in principle there is little political latitude for decision-makers with regard to the withdrawal of EU trade preferences under the GSP+. However, in practice the GSP+ tool can be used as a political incentive to motivate countries to make substantive improvements in the application of the Conventions, in which case a promise to deliver, on the part of the beneficiary country, can be deemed sufficient. The EEAS' new lead and coordinating role in external relations may hence affect the way such trade sanctions are handled.

With a view to addressing the whole spectrum of global challenges the EU High Representative (EUHR) will coordinate the interplay of the intergovernmental EU Common Foreign and Security Policy and the European Security and Defence Policy with the European Commission's external action areas. The ACP as a partner – and development cooperation as a topic – will have to assert their space in the dialogue with the EUHR and his diplomatic staff in more direct competition with other international actors and other global issues. This is particularly observed as a result of the unification of all geographic desks under EEAS, which will bring an **end to the current special treatment of the ACP** manifested in the traditional geographic identification of DG Development with the ACP. Indeed, **regionalisation** will become more prominent as the EU seeks to structure its cooperation along the line of EU-Africa, EU-Latin America, etc.

#### **Implications for the EPA negotiations**

The removal of formal obstacle to budgetization of the European Development Fund with the ToL, the integration of the geographic desks for the ACP in the EEAS together with the tendency towards increasing regionalisation in the EU's foreign relations could raise questions about the future of the Cotonou Partnership Agreement (CPA) after 2020. The EPAs are formally anchored in the CPA through cross-reference. However, in practice, the new EPA institutions make the regional and bi-lateral trade relationship more and more independent from the traditional EU-ACP partnership.

## 4.2 Development cooperation including aid for trade

The Treaty of Lisbon clearly states that the **fight against poverty** is at the heart of the Union's development cooperation policy: "Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty." This focus is a major change from the current provision, which mentioned three other aims on equal footing, in particular trade, as mentioned above.

Language in the Treaty about **Policy Coherence for Development** remains literally unchanged, requiring other EC measures to be consistent with development policy. But given the new focus on poverty reduction, the claim to take into account the objectives of development cooperation in policies likely to affect developing countries has become a much stronger demand.

Development cooperation and humanitarian aid remain “shared parallel competences” between the EU and its member states. Hence, it is crucial that the **complementarity and coordination** provisions have been strengthened in the Lisbon Treaty. A new element is that complementarity goes both ways: Previously the Community had to complement MS development policies, now the two “complement and reinforce each other”.

#### Implications for Aid for Trade

- With a unified geographical desk system, absorbing the geographical desks for Sub-Saharan African countries currently in the Commission, the new diplomatic service, the EEAS will from now on be responsible for the allocation of funding and the programming of multiannual strategies and the indicative programmes of the European Development Fund. Programming of the thematic budget lines, policy development and implementation will remain in the Commission’s DG DEV and EuropeAid. The division of responsibilities between the EEAS and the Commission will somewhat split the aid programming cycle in the middle, but also overcome the historical geographic split between ACP countries and the rest of the world.
- The broadening of EU external action means that a larger number of issues become subject to dialogue between Europe and its international partners. As a result, political dialogue under article 8 of the Cotonou Agreement (CPA) could for instance gain importance, both, in terms of scope and political weight. Furthermore, within the provisions on development cooperation, there is increased prominence of the aim of poverty reduction, strengthened provisions on policy coherence for development, complementarity, coordination and an expanded mandate for the new EU Delegations. This provides an opportunity to the ACP to build on the precedent set with the recent first-time use of article 12 of the CPA, pertaining to policy coherence, to request formal consultations on EU policies that could affect ACP countries’ development – from trade issues to issues of coordination of EU actors, coherence of instruments etc.

### 4.3 A more unified EU migration policy

One of the most profound reforms under the Lisbon Treaty is in the area of Justice and Home Affairs, where increasing EU integration is expected to accelerate the creation of a common immigration and asylum policy and has the **potential to impact on the capacity of the EC to negotiate agreements with third countries, including on Mode 4 of GATS on the temporary movement of individual services suppliers in trade agreements**. All EU decisions on **asylum, immigration and integration** will be subject to **qualified majority voting** in the Council and the **European Parliament** is given joint decision-making, including on new laws on entry requirements for non-EU nationals.<sup>18</sup> The European Parliament is already on equal footing with the Council regarding most EU legislation dealing with immigration, border and visa issues. But under the Treaty it will gain a stronger say in both legal and illegal migration measures. However, **EU Member states remain to have an exclusive right to determine the numbers of foreign nationals** admitted to their territory. Also, co-operation on integration is supplementary to national regulation and not about the harmonisation of laws (subsidiarity principle).<sup>19</sup> The Lisbon Treaty also strengthens the role of the European Court of Justice (ECJ) abolishing the current restrictions that limit the right to appeal to the ECJ concerning asylum and

<sup>18</sup> Britain, Ireland and Denmark continue to opt out of many migration-related policies under the Lisbon Treaty.

<sup>19</sup> The competence of the EU in the immigration issues is shared with the Member States and is confirmed by the Lisbon Treaty.

immigration decisions of the supreme courts in member states. One aim in the Lisbon Treaty as mentioned in the preamble is to develop a legislation that ensures uniform status of asylum for nationals from third countries, that is valid throughout the Union, and rights of third country nationals who are residing legally in a Member State. The text also strengthens the Commission's legal standing to negotiate agreements with home countries on **readmission** - taking back illegal immigrants.

## 5. Conclusion: Arising issues for EU-Africa trade relations in the long-term

In conclusion, there are many uncertainties as to how the changes of the Treaty of Lisbon (ToL) in terms of vision, rules and structures will be implemented in the short term and play out in practice in the medium and long term. In practice, the ToL is not expected to have any major impact on the negotiations and conclusions of the Economic Partnership Agreements (EPAs), at least in the short to medium term. The exception to this statement could be the conclusion of the interim EPA in the Pacific, for which the necessity to obtain the European Parliament (EP)'s consent may lead to delays.

Overall, the number of EU interlocutors for the African, Caribbean and Pacific (ACP) group has increased with the ToL, adding the new diplomatic service and a more influential EP. This, together with new decision-making rules in the European Union (EU) will result in more complex political processes. This development offers new opportunities for engagement, yet also challenges as the previously rather technical area of EU trade policy may become subject of political influences from an expanded set of actors. In particular, the new role of the EP, which is likely to be more involved throughout the negotiation process for trade agreements and has gained legislative power in the Common Commercial Policy, is expected to be the main implication of the ToL for international trade partners in the medium and longer term.

In addition, the expansion of exclusive EU competence to encompass services and Foreign Direct Investment (FDI) will have implications for the capacity of the European Commission (EC) to negotiate trade and investment agreements with third countries. One could wonder however whether in practice the new repartition of competences is going to bring about a brand new state of affairs for ACP countries, notably in the context of EPA negotiations. This will firstly depend on the interest of ACP countries to negotiate "new" trade issues, as well as investment provisions. It seems that even if ACP countries decide to conclude full EPAs comprising provisions on services and investment, the extent to which the ToL will turn the tables in the short or medium term is either limited (services) or relatively uncertain (investment).

## Annex 1: Comparison of relevant articles in the Treaty of Nice and the Treaty of Lisbon

TREATY OF NICE	TREATY OF LISBON
<b>TREATY ON THE EUROPEAN UNION</b>	<b>TREATY ON THE EUROPEAN UNION</b>
<p><b>TITLE I</b> <b>COMMON PROVISIONS</b></p> <p><i>Article 2</i> [no mention of EU's external relations]</p>	<p><b>TITLE I</b> <b>COMMON PROVISIONS</b></p> <p><i>Article 3</i> 5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, <b>free and fair trade</b>, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.</p>
<p><b>TITLE V</b> <b>PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY</b></p>	<p><b>TITLE V</b> <b>GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY</b></p> <p><i>CHAPTER I</i> PROVISIONS HAVING GENERAL APPLICATION</p> <p><i>Article 21</i></p>
	<p>1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.</p> <p>The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.</p>
<p><i>Article 11</i></p> <p>1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:</p> <p>— to safeguard the common values,</p>	<p>2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:</p> <p>(a) safeguard its values, fundamental interests, security, independence and integrity;</p>



<p>fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,</p> <ul style="list-style-type: none"> <li>— to strengthen the security of the Union in all ways,</li> <li>— to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,</li> <li>— to promote international cooperation,</li> <li>— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.</li> </ul>	<p>(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;</p> <p>(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;</p> <p>(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;</p> <p><b>(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;</b></p> <p>(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;</p> <p>(g) assist populations, countries and regions confronting natural or man-made disasters; and</p> <p>(h) promote an international system based on stronger multilateral cooperation and good global governance.</p>
<b>TREATY ESTABLISHING THE EUROPEAN COMMUNITY</b>	<b>TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION</b>
Preamble	
DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,	DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,
<b>TITLE IX COMMON COMMERCIAL POLICY</b>	<b>TITLE II COMMON COMMERCIAL POLICY</b>
<p><i>Article 131</i> By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.</p> <p>The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of under- takings in those States.</p>	<p><i>Article 206</i> By establishing a customs union in accordance with Articles 28 to 32, the <b>Union</b> shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and <b>on foreign direct investment, and the lowering of customs and other barriers.</b></p>

<p><i>Article 132</i></p> <p>1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted. On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.</p> <p>2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.</p>	
<p><i>Article 133 (*)</i></p> <p>1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.</p> <p>2. The Commission shall submit proposals to the Council for implementing the common commercial policy.</p> <p>3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.</p> <p>The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations. The relevant provisions of Article 300 shall apply.</p> <p>4. In exercising the powers conferred upon it by</p>	<p><i>Article 207</i></p> <p>1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements <b>relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment</b>, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. <b>The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.</b></p> <p>2. <b>The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.</b></p> <p>3. Where agreements with one or more third countries or international organisations need to be negotiated <b>and concluded, Article 218 shall apply, subject to the special provisions of this Article.</b> The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.</p> <p>The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee <b>and to</b></p>

<p>this Article, the Council shall act by a qualified majority.</p> <p>5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6. By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules. The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6. This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.</p> <p>6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.</p> <p>In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States. The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.</p> <p>7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.</p>	<p><b>the European Parliament</b> on the progress of negotiations.</p> <p><b>4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority. For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules. The Council shall also act unanimously for the negotiation and conclusion of agreements:</b></p> <p><b>(a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;</b></p> <p><b>(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.</b></p> <p>5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.</p> <p>6. The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States insofar as the Treaties exclude such harmonisation.</p>
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<p><i>Article 134</i></p> <p>In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine. In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question. In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.</p>	<p>Article 209</p> <p>1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.</p> <p><b>2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 21 of the Treaty on European Union and in Article 208 of this Treaty.</b> The first subparagraph shall be <b>without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.</b></p> <p>3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.</p>
	<p>TITLE V</p> <p>INTERNATIONAL AGREEMENTS</p>
	<p><i>Article 216</i></p> <p>1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provides or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding act of the Union or is likely to affect common rules or alter their scope.</p> <p>2. Agreements concluded by the Union are binding on the institutions of the Union and on its Member States.</p>
	<p><i>Article 217</i></p> <p>The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.</p>
<p>Article 300 (*) (*) Article amended by the Treaty of Nice.</p> <p>1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission</p>	<p><i>Article 218</i></p> <p>1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.</p> <p>2. The Council shall authorise the opening of</p>

<p>shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it. In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.</p> <p>2. Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310. By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement. The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.</p> <p>3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time limit, the Council may act. By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained. The Council and the European Parliament may, in an urgent situation, agree upon a time limit for the assent.</p>	<p>negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.</p> <p>3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union's negotiator or the head of the Union's negotiating team.</p> <p>4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.</p> <p>5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.</p> <p>6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement. Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:</p> <p>(a) after obtaining the consent of the European Parliament in the following cases:</p> <p>(i) association agreements;</p> <p>(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;</p> <p>(iii) agreements establishing a specific institutional framework by organising cooperation procedures;</p> <p>(iv) agreements with important budgetary implications for the Union;</p> <p>(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required. The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.</p> <p>(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.</p> <p>7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the</p>
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<p>4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.</p> <p>5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.</p> <p>6. The European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.</p> <p>7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.</p>	<p>Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.</p> <p>8. The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of an act of the Union as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.</p> <p>9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.</p> <p>10. The European Parliament shall be immediately and fully informed at all stages of the procedure.</p> <p>11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.</p>
<p>TITLE XX <b>DEVELOPMENT COOPERATION</b></p>	<p>TITLE III COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID CHAPTER 1 <b>DEVELOPMENT COOPERATION</b></p>
<p><i>Article 177</i> 1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:</p> <ul style="list-style-type: none"> <li>— the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,</li> <li>— <b>the smooth and gradual integration of the developing countries into the world economy,</b></li> </ul>	<p><i>Article 208</i> 1. Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action.</p> <p>The Union's development cooperation policy and that of the Member States complement and reinforce each other.</p> <p>The Union's development cooperation policy shall have as its primary objective the reduction and, in</p>

<p>— the campaign against poverty in the developing countries.</p> <p>2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.</p> <p>3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.</p>	<p>the long term, the eradication of poverty.</p> <p>The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.</p> <p>2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.</p>
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The **European Centre for Development Policy Management (ECDPM)** aims to improve international cooperation between Europe and countries in Africa, the Caribbean, and the Pacific.

Created in 1986 as an independent foundation, the Centre's **objectives** are:

- to enhance the capacity of public and private actors in ACP and other low-income countries; and
- to improve cooperation between development partners in Europe and the ACP Region.

The Centre focuses on **three** interconnected **thematic programmes**:

- Development Policy and International Relations
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- Governance

The Centre collaborates with other organisations and has a network of contributors in the European and the ACP countries. Knowledge, insight and experience gained from process facilitation, dialogue, networking, field research and consultations are widely shared with ACP and EU audiences through international conferences, briefing sessions, electronic media and publications.

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