

CIVIL SOCIETY DIALOGUE MEETING

The impact of the Lisbon Treaty on trade policy

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Outline of Presentation

A - Changes specific to trade policy

- 1. Role of the European Parliament**
- 2. Clarification of competence for services/
Extension of competence for FDI**
- 3. Adoption of legislation**
- 4. Extension of QMV**

B - General changes affecting trade policy

- 5. Trade policy in the broader context**
- 6. Delegated/implementing acts**

A - Changes specific to trade policy

1. – Role of the European Parliament

The mechanics:

- the ordinary legislative procedure for «measures defining the framework for implementing the common commercial policy » (Article 207(2) TFEU) OLP defined in Art. 294

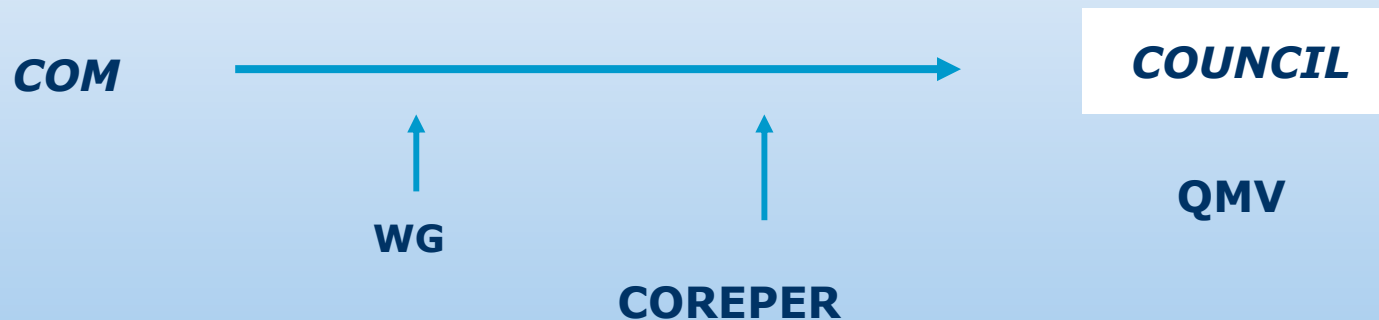
- Consent for trade agreements (Article 218 (6)(a)(v) TFEU)

What will this mean for the content of trade policy ?

A - Changes specific to trade policy

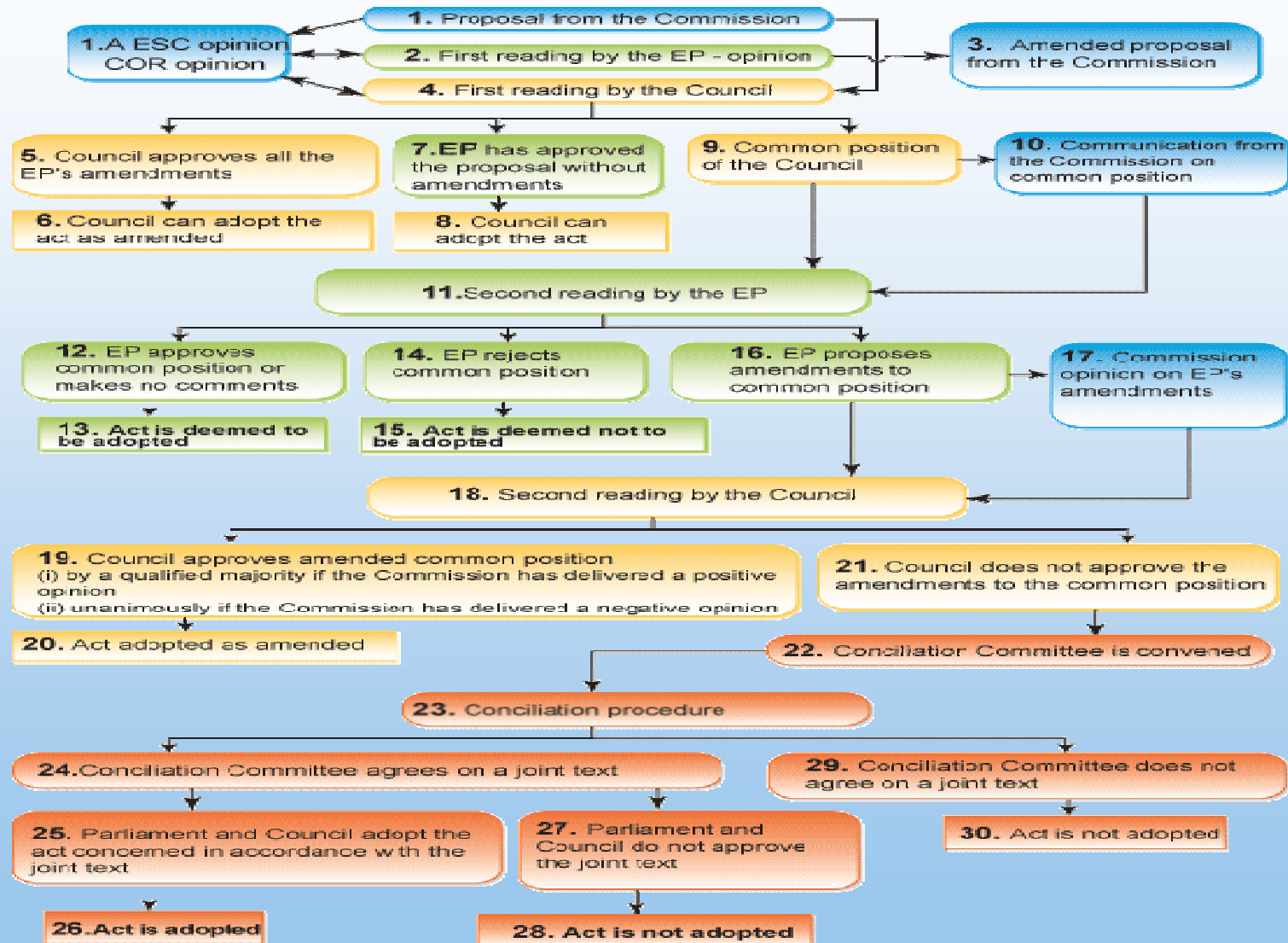
1. – Role of the European Parliament

PRODUCING LEGISLATION: before



External Trade

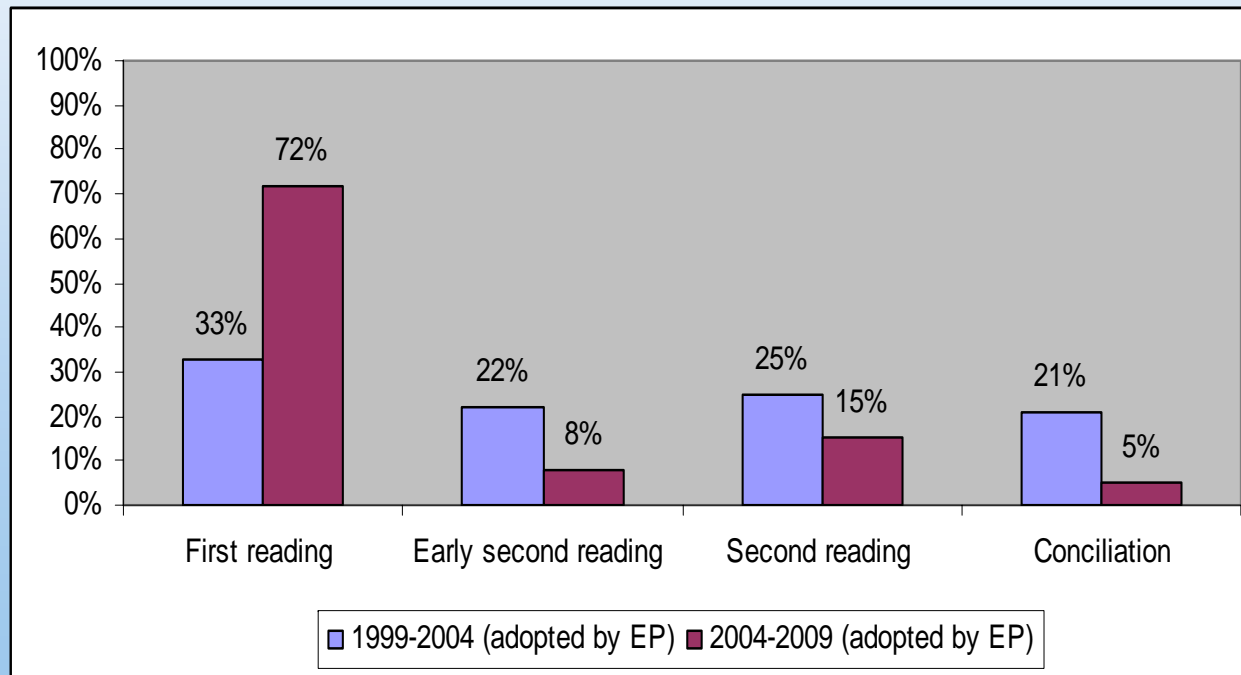
With
Lisbon:
OLP



A - Changes specific to trade policy

1. – Role of the European Parliament

PRODUCING LEGISLATION:



A - Changes specific to trade policy

1. – Role of the European Parliament

Table 1: Average duration in months of the procedure from Commission proposal until signature (including only files signed up to 13/05/2009)

Agreement in	Legislature 1999-2004	Legislature 2004-2009	Shortest and longest procedure (2004-2009)
First reading	13.8	15.2	1.8/47.9
Second reading	25.1	31.3	11.9/108.1
Conciliation	31.9	43.7	28.8/159.4

A - Changes specific to trade policy

1. – Role of the European Parliament

Practical effects of OLP:

- **3 pending proposals affected.**
- **Upcoming proposals: investment regulation, GSP, Korea FTA implementation**
- **In the future – basic AD/CVD regulations, amendments to the EPA MAR, etc, etc**

A - Changes specific to trade policy

1. – Role of the European Parliament

International agreements under the old treaty

- **One step procedure (Art 133 + 300(3)§1):**
 - trade-only agreements
 - « *The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3) .. »*
- **Two step procedure (Art 133 + [...] + 300(3)§2):**
 - trade plus = consultations
 - trade agreement with certain features (e.g. powerful institutions)= assent

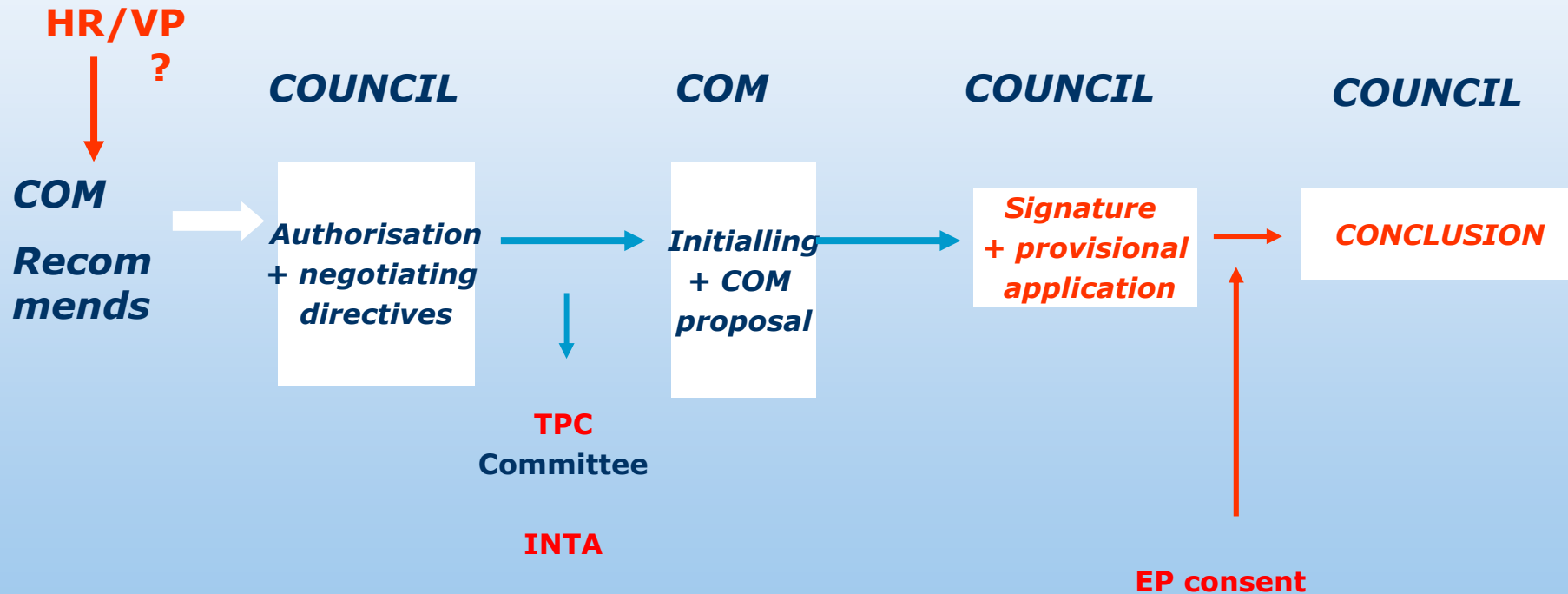
A - Changes specific to trade policy

1. – Role of the European Parliament Before Lisbon



A - Changes specific to trade policy

1. – Role of the European Parliament



A - Changes specific to trade policy

1. – Role of the European Parliament Involvement of the EP in negotiations

207 (3)

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 and to the European Parliament on the progress of negotiations.

A - Changes specific to trade policy

1. – Role of the European Parliament

- **Is this a change ?**
 - **For FTAs, probably not. EPAs, Korea FTA required assent (consent) under the existing treaty**
 - **For trade-only agreements, clearly yes.**
- **How will it work ?**
 - **Is the procedure too heavy for simplified technical agreements ?**

A - Changes specific to trade policy

1. – Role of the European Parliament

Practical issues :

Immediately :

- **Agreements already negotiated but not signed**
– change references from EC to EU etc
- **2 Decisions (signature and conclusion) not 1 decision (signature/conclusion)**
- **3 pending proposals that need to be dealt with**

In general :

- **Integrate need for EP consent from the beginning**

A - Changes specific to trade policy

2. – Clarification of competence for services/ Extension of competence for FDI

Trade policy is made explicitly an exclusive EU competence

- **« only the Union may legislate and adopte legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implmentation of Union acts »**

A - Changes specific to trade policy

2. – Clarification of competence for services/ Extension of competence for FDI

1. Services:

- no more carve-outs for culture or health
- EU already negotiating on these areas

2. Investment

- Already for market access in services (mode 3 of the GATS)
- EU already de facto negotiating market access

3. Transport provisions require transport legal base
– Opinion 1/08

A - Changes specific to trade policy

2. – Clarification of competence for services/ Extension of competence for FDI

FDI IN THE EXCLUSIVE COMPETENCE

-> BITs traditionally concluded by MS (around 1000)

-> How to manage existing BITs?

Key= Legal certainty for EU Investors

-> How to exercise the exclusive competence?

Empowerment when no added value ?

A - Changes specific to trade policy

3. – Adoption of legislation

- **Instrumental distinction in the existing 133 (5) has gone**
- **i.e. EU can adopt legislation on external aspects of services, investment, IPR**

A - Changes specific to trade policy

4. – Extension of QMV

-> **limited number of exceptions: Art. 207 §4 TFEU**

1. «The agreement includes provisions for which unanimity is required for the adoption of internal rules » (doesn't apply for goods only)

2. « Agreements in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity »

3. « Agreements 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 »

General changes affecting trade policy

B- General changes and trade policy

5. – Trade policy in the broader context

- > SPECIFIC OBJECTIVE OF TRADE POLICY: Article 206 TFEU**
« The Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers »

- > BUT Article 205 TFEU: NO CLINICAL ISOLATION**
« The Union's action on the international scene [...] shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the TEU »

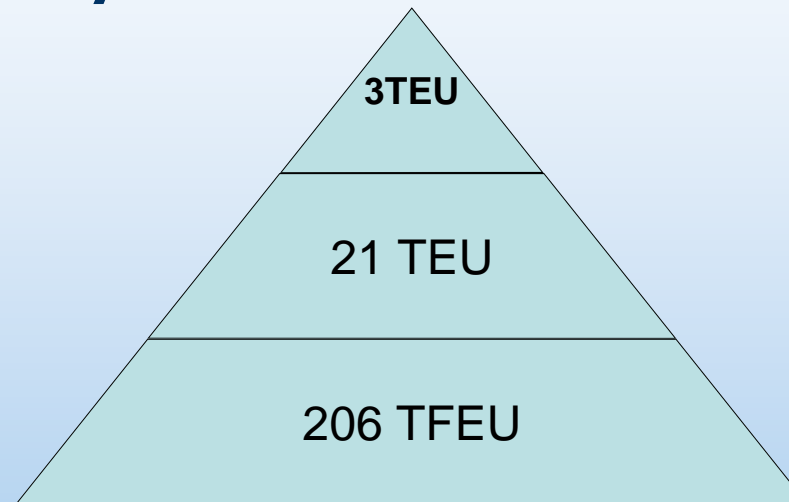
B- General changes and trade policy

5. – Trade policy in the broader context

- **Article 21 §1 TEU: PRINCIPLES OF THE UNION'S EXTERNAL ACTION**
- **Article 21 §2 TEU: OBJECTIVES OF THE UNION'S EXTERNAL ACTION**
 - (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade**
- **Article 21 §3 TEU: LINK WITH EXTERNAL ASPECTS OF INTERNAL POLICIES**
 - « The Union shall ensure consistency between the different areas of its external action and its other policies »**
- **Article 22 TEU : decisions of the European Council on the strategic interests and objectives of the Union, adopted unanimously on a recommendation from the Council**

B- General changes and trade policy

5. – Trade policy in the broader context



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

B- General changes and trade policy

5. – Trade policy in the broader context

**-> THE DOUBLE-HATTED HR/VP KEY
CREATION OF THE CONVENTION: Art 18
TEU, Art 27 TEU**

-> TASKS:

- 1. Conduct CFSP (outside collegiality) with president of European Council**
- 2. Preside over Foreign Affairs Council**
- 3. As VP of Commission, ensure consistency of the Union's external action (+ Article 21§3, 2 TEU)**

B- General changes and trade policy

6. Delegated/implementing acts

Pre-Lisbon : Council

- > Adopts legislation (basic AD REG)**
- > Adopts small modifications (NME Status)**
- > Implements (Definitive AD duties)**

B- General changes and trade policy

6. Delegated/implementing acts

LISBON TREATY LOGIC :

Framework legislation by co-legislators

**Article 290 on delegated acts to supplement or amend certain non-essential elements of the legislative act :
Commission**

**Article 291 on implementing acts when uniform conditions for implementing legally binding Union acts are needed :
Commission, or Council in duly justified specific cases**

B- General changes and trade policy

6. Delegated/implementing acts

Applicable conditions for delegated acts:

**Legislative acts must explicitly lay down conditions.
Conditions may be:**

- The EP or Council can revoke the delegation**
- the delegated act enters into force only if no objection from the EP or Council within a specified period**
- Commission Communication with model clauses adopted on 9th December 2009**

B- General changes and trade policy

6. Delegated/implementing acts

Article 291 on implementing acts

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

B- General changes and trade policy

6. Delegated/implementing acts

- existing decision-making remains in place pending adoption of a new regulation on implementing powers;
- Current comitology decision has an exception for the common commercial policy :

the specific committee procedures created for the implementation of the common commercial policy and the competition rules laid down by the Treaties that are not currently based upon Decision 87/373/EEC are not in any way affected by this Decision

Note that, unlike the previous comitology decision the new regulation is adopted through the ordinary legislative procedure (co-decision). ;

- Continued exception or should the CCP be brought in line with general practice ?

CONCLUSIONS :

1. **MORE ACTORS, MORE COMPLEXITY, LONGER LEAD-IN TIMES:**
2. **TENSION BETWEEN « GLOBAL EUROPE » AND OTHER OBJECTIVES (TRADE-ANDS Vs. POLITICAL OBJECTIVES)**
3. **CONVINCE ABOUT WHY? NOT HOW**
4. **A FEW YEARS TO BED DOWN ?**