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## **The implications of the Lisbon Treaty for EU Trade policy**

*Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort*

S&D seminar on EU Trade Policy

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Good morning ladies and gentlemen,

I am pleased to be here in Oporto: we will discuss European trade policy in an outward looking city that is closely associated with international trade and that boasts an internationally famous export good.

Port wine not only took its name from this city and was transported by the river and sea to export. I understand that the Douro valley has been established as a protected region (or appellation) for the production of Port for over two hundred and fifty years now.

Having been in force for only 10 months, the Lisbon Treaty has not had *nearly* as much time to get established. Neither in terms of "brand recognition" nor in finding the tried and tested routes to trade success! No one - neither I nor Liliane Bloem nor Professor Vital Moreira - has yet had the length of experience necessary to become true connoisseurs of this product. And yet, from my initial tasting, I believe we have the ingredients of a fine vintage product.

Let me tell you what I think the new "Lisbon" ingredients bring to the mix. I'm going to focus first on the new scope of the EU's commercial policy before turning to the internal decision making processes.

### **The scope of the EU's commercial policy**

Trade policy was always a core competence of the European Union. Already the Treaty of Rome dedicated an entire chapter to the liberalisation of the international exchange of goods. Over the decades, trade in services became important as well. Moreover, trade-related aspects of intellectual property rights (IPRs) were included in the Uruguay Round, which led to the establishment of the WTO in 1994.

However, the treaty provisions existing at the time did not cover these new issues. As you may know, the Commission lost an important case before the European Court of Justice back in 1994 (Opinion 1/94). The Court held that the EU could only conclude the General Agreement on Trade in Services (GATS) and the Agreement on Intellectual Property Rights (TRIPS) together with its Member States. In order to remedy this situation, the treaty revisions in Amsterdam (1997) and Nice (2000) broadened the scope of EU trade powers, but fixed at the same time a number of exceptions. Fortunately, Member States finally agreed in Lisbon to entrust the EU with full powers in the services and IPR field. This is a major step forward.

The second big Lisbon innovation relates to foreign direct investment (FDI). While our negotiations for Free Trade Agreements already included a market access agenda on investments, the Treaty has now established an exclusive competence on FDI as part of the common commercial policy. This is complemented by an implied competence on portfolio investments derived from the internal market chapter on free movement of capital.

How are we going to use this broadened scope of the EU's commercial policy? First and foremost, the EU external investment policy should facilitate foreign investment as a tool of economic and social development. The EU has long encouraged inward investment through the strength of the internal market and its regulatory framework and by offering foreign investors established in the EU the same treatment that is granted to domestic investors. So it is the EU's internal policies that set the scene for inward FDI and the rights and obligations of foreign investors in the EU.

Our newly defined EU external investment policy will mainly seek to obtain access for investment in our trading partners' markets. We will integrate liberalisation and investment protection standards to serve all European investors equally and effectively.

The enhanced role on EU investment does not mean that the almost 1200 bilateral investment treaties between our Member States and third countries will disappear. They continue to provide protection for our investors as long as the EU has not concluded an investment deal with the same foreign partner. And in such EU deals, I will strive to negotiate the highest possible level of protection for all EU investors.

Experience has led the Commission to believe that the best way forward to integrate investment into the common commercial policy lies in broader trade negotiations. Therefore, in the short run, the Commission is considering the possibility of broadening the scope of ongoing negotiations (e.g. with India, Singapore, Canada) by including investment protection.

In addition, the Commission will also examine the feasibility of stand-alone investment negotiations on a case-by-case basis – for example agreements with countries that offer a great potential for EU investments, such as China and Russia.

The Commission's proposed Communication and Regulation are only the first steps in the development of a European international investment policy. The final shape of the European international investment policy will depend on further discussions with Member States and the European Parliament.

This leads me to the next ingredient in the formulation of trade policy under the Lisbon Treaty: the processes of decision making.

## European Parliament

As a European Commissioner and a former MEP, you will expect me to welcome the new role of the European Parliament in trade policy. And I will not disappoint you. The Commission views the new role of the European Parliament as the most fundamental and important change arising from the Lisbon Treaty in the field of trade policy.

The Treaty changes a great deal. It introduces the **ordinary legislative procedure** for internal law-making. It requires parliamentary **consent** for all trade agreements. The Commission shall also keep the Parliament **informed of trade negotiations**, details of which are spelt out in the Framework Agreement between the Parliament and the Commission. The European Parliament just approved it with overwhelming majority this week at Committee level. The plenary will vote in the coming weeks

These changes significantly alter the debate over EU trade-policy. No-one can now claim that EU-trade policy making is a bureaucrat-to-bureaucrat exercise, devoid of scrutiny and passion. The European Parliament brings a broader range of voices and opinions to the debates on trade and ensures that these debates happen in full transparency. And this is not just lip service. For example, I have personally made sure that drafts of the Anti-Counterfeiting Trade Agreement (ACTA) can now be shared with the broader public, revoking the older practice based on a confidentiality clause between the negotiators of ACTA. I did this because this draft Treaty raised broad concerns in the public at large, for example of access to internet for all.

Let me also mention our recent practice with respect to the provisional application of trade agreements. According to the Treaty, the Council can sign a treaty and provisionally apply it, whereas the Parliament's consent is only needed before the conclusion ("ratification") of the Treaty. Provisional application is an accepted tool in international practice and is needed where quick action is imperative for both sides. A good example is our Banana-Agreement with a number of Latin-American countries which effectively ends a long trade-dispute with them. We were only able to conclude this deal with the possibility to put it into early provisional application.

On the other hand, there may be important trade agreements which will fundamentally define our relationship to a third country for a long time. In this

situation, it is politically warranted to involve the Parliament even before provisional application. The EU-Korea FTA is a case in point: it will **not** be provisionally applied before the Parliament has had a chance to give its consent. This is what the Commission said in the Explanatory Memorandum to the agreement and is in line with my promise to the Parliament during my hearing. This has been accepted by the Council and even put in writing in their decision of late September this year.

This brings me to the third player in the triangular process, namely the Council.

## **Council**

Ladies and Gentlemen, let me be clear: also the Council maintains its crucial and central role in trade-decision making.

The Council might take some time adjusting to the fact that the Parliament is now fully part of trade policy decision making. This is natural, after over fifty years of quasi exclusive Council control, and will require a certain adaptation. This is now under way. New methods of working, new approaches are being absorbed into the decision-making process.

Legally, qualified majority has been the rule since the beginning of the common commercial policy. This was an important leverage for the Commission even if, in practice, the Council has practically always acted by consensus. Under the Lisbon Treaty, qualified majority remains as a rule. However, agreements covering the new issues mentioned before (services, IPR, investment) fall under unanimity in three cases (domestic implementation by unanimity, audiovisual services that affect cultural or linguistic diversity, services in the social, education or health sector). This again shows that every Member State in the Council will be needed to advance EU trade policy, in particular in the services sector, which is so important for economic growth.

Moreover, even post-Lisbon the practice of so-called mixed agreements has continued. These are agreements which are concluded both by the EU and by all of its member States on the one side, and by the third country, on the other side.

The EU-Korea free trade agreement is a case in point.

It might have been possible to design this agreement as an EU-only agreement. However, certain issues, such as cultural cooperation, triggered the need to conclude it together with all our Member states. Some say that this was a good choice to make sure that a landmark deal with major political and commercial significance for the whole of the European Union is supported by everyone. However, it also means the FTA must be ratified by national parliaments in all 27 Member States. In some countries, like Belgium, it means up to 7 parliamentary assemblies.

I thus conclude that there is still room to think twice about the appropriate form of future trade agreements under the Lisbon Treaty. After all, the Treaty did away with the express call for mixed agreements on certain issues, which was still enshrined in Nice version of our trade competence. Do we really need 27 additional national ratifications when the European Parliament can now exercise parliamentary scrutiny over these agreements? We will thus further explore how to keep everyone on board for major trade deals, while at the same time not diluting the new possibilities under the Treaty.

## Conclusion

So why does the institutional plumbing of the EU matter? Because trade matters – it matters for jobs and growth in Europe. And so getting decision-making right matters for European businesses and consumers.

Of course having a greater voice in international trade affairs is advantageous. But not for its own sake - only if it brings advantages back home – to the people and businesses affected by that trade.

By broadening the scope of the common commercial policy, including investment, the Lisbon Treaty enhances the EU's ability to implement a comprehensive policy. It provides us with the capacity to address better the needs of all European investors.

By strengthening the European Parliament's role in decision making, the Lisbon Treaty brings more voices to the table for a better, richer debate on how best trade policy can contribute to ensuring sustainable growth for the EU.

Now the debate over EU trade policy making is back on the substance – it's the “why” and “how” that matters. *Why is the EU-Korea FTA good for the EU? How could the Generalised System of Preferences scheme best help developing countries?*

Ladies and gentlemen,

Like any fine port, a bit of ageing will allow the new trade policy policies and procedures to mature and develop. We have the right ingredients but they need some wisdom and careful handling to develop in the right way. I hope that we will taste our combined success in the trade policy field a few years down the line.

Thank you for your attention.