

# Briefing on the life cycle of EU trade agreements

## Legal briefing

---

The following briefing explains the procedure for the negotiation, signing, and conclusion of the EU's international trade agreements (Free Trade Agreement (FTA)), based on the legal provisions of the Treaty on the Functioning of the European Union (TFEU)<sup>1</sup>, part of the Lisbon Treaty. The briefing provides a detailed step-by-step analysis of important aspects of the life cycle of EU trade agreements.

The main elements of the trade procedure can be found in articles 207 and 218 of the TFEU, both article texts are included in Annex 1. Article 218 TFEU is the general provision for the procedure for international agreements, while article 207 TFEU includes specific provisions and clarifies certain aspects of the general procedure outlined in article 218 TFEU. For instance, article 207 TFEU states that the Commission is the lead negotiator and that it will be assisted by a special Council appointed committee, the so-called Trade Policy Committee (TPC).

No binding time frame is imposed on the procedure. However, the European Parliament has established its own timeframe within its Rules of Procedure<sup>2</sup> (an internal Parliamentary document on how it functions). To allow for ease of use, a table of contents has been included so that sections can be read in order or by post pressing issue.

---

<sup>1</sup> Link to treaty in all languages: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

<sup>2</sup> Link to European Parliament Rules of Procedure (EN language): <http://www.europarl.europa.eu/sipade/rulesleg8/Rulesleg8.EN.pdf>

## Contents

Contents .....	2
Schematic overview .....	3
1 Step 1: Start of negotiations .....	4
1.1 Authorizing the start of negotiations.....	4
1.2 During the negotiations.....	5
1.3 The role of the European Parliament.....	5
2 Step 2: Signing the agreement on behalf of the EU .....	6
2.1 Authentication through initialling and translation .....	6
2.2 The decision authorising signing of the agreement on behalf of the EU.....	6
2.3 Provisional application before entry into force .....	7
2.4 The role of the European Parliament .....	7
3 Step 3: Consent by the European Parliament.....	7
4 Step 4: Conclusion of the international agreement and entry into force .....	9
4.1 Entry into force and mixed agreements .....	9
5 Step 5: Implementation of the agreement .....	9
Annex 1: Text of articles 207 and 218 TFEU.....	11
Annex 2: 2010 Inter-institutional Agreement.....	14

### Schematic overview

	European Commission	Council	European Parliament
<b>Preparation</b>	<p>Scoping exercise &amp; Impact Assessment</p> <p>↓</p> <p>Commission proposes Council to authorize opening of negotiations</p>	<p>→</p> <p>Council decides to open negotiations</p>	<p>Parliament is informed of the Commission's intentions to open negotiations by Commission</p>
<b>Negotiation</b>	<p>Negotiation start with the partner country</p>	<p>Council and Parliament are informed regularly throughout the negotiations and comment</p>	
<b>Signature and Conclusion</b>	<p><b>Negotiation are concluded</b></p> <p>Chief negotiations initial the agreement</p> <p>Text is legally scrubbed</p> <p>Text is translated into all official languages</p> <p>Commission makes 2 proposals: 1) for a Council decision authorizing the signing the agreement 2) for a Council decision on conclusion of the agreement</p>	<p>Member States verify translation</p> <p>→ 1) Council gives authorisation to sign and decides on provisional application</p> <p><b>Formal Signature</b></p> <p>2) Council asks EP for its approval and sends draft decision to conclude &amp; full text of agreement to the EP</p> <p>If agreement mixed: 1) Ratification by all MS 2) Provisional application</p> <p>Council adopts decision to conclude agreement</p> <p><b>Agreement is published and enters into force</b></p>	<p>→ Procedure of consent in the EP. Vote in committee, then in plenary</p> <p>←</p>
	<p>Monitor entry into force of the agreement</p>		

## 1 Step 1: Start of negotiations

Article 207 (3) TFEU states:

*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.*

Leading up to an official Council decision to authorise negotiations, the Commission undertakes an informal process (often called a scoping exercise) resulting in a recommendation. The Commission scoping exercise with another Party is to establish the feasibility of a particular agreement. The exercise may take months or even years to establish what the FTA might be able to achieve. The recommendations made by the Commission to the Council are not published. During the entire procedure the Council is formally in charge, as it is formally responsible for binding the EU to a particular international agreement. So the Commission can recommend all it wants and negotiate (for example) world peace, but it is the Council that will decide whether the EU should be bound by the agreement or not.

### 1.1 Authorizing the start of negotiations

The Council takes the decision to authorise the negotiations by qualified majority voting (QMV), not all 28 Member States have to agree only a certain majority<sup>3</sup>. However, there are instances for which unanimity is required, all 28 Member States have to agree (vote yes or no)<sup>4</sup>. For the negotiation and conclusion of agreements in trade in services, the commercial aspects of intellectual property, and foreign direct investment, the Council has to vote unanimously, if the measures included (for example) limit the free movement of capital to and from third countries<sup>5</sup>, or regulate certain forms of indirect taxation.<sup>6</sup>

The Council must also act unanimously if the decision to open the negotiations concerns:

- trade in cultural and audiovisual services, where the agreement risks prejudicing the Union's cultural and linguistic diversity;
- 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.

If the agreement contains any of the aspects which require unanimity (ie. cultural and audiovisual services), the Council will have to vote by unanimity for the entire agreement.

---

<sup>3</sup> EU Glossary: Qualified Majority: [http://eur-lex.europa.eu/summary/glossary/qualified\\_majority.html](http://eur-lex.europa.eu/summary/glossary/qualified_majority.html)

<sup>4</sup> EU Glossary: Unanimity: <http://eur-lex.europa.eu/summary/glossary/unanimity.html>

<sup>5</sup> Article 64 (3) TFEU

<sup>6</sup> Unanimity is required if the measures in the trade agreement concern matters for which the Council needs to decide unanimously if it were to decide on these matters internally (for instance by adopting a Directive or a Regulation). Article 113 TFEU, such as excise duties, or turnover taxes.

## 1.2 During the negotiations

The Council may address negotiating directives (negotiation mandate) to the Commission, but it doesn't have to. In most cases it does however issue negotiating directives.<sup>7</sup> The mandate is adopted in accordance with the voting requirements outlined above – QMV and unanimity. The Commission has to negotiate the free trade agreement within the framework of the mandate. (Which is why the Commissioner will often 'blame' parts of the negotiations on the Member States, by saying "I can't help it, it's in the mandate"). The Commission often prepares draft negotiating mandates for the Member States to use as a basis, this is not a legal requirement but a general practice. Until recently these negotiating mandates were not public, however TTIP has put in place a trend of selective transparency. The TTIP negotiating directives can be found [here](#) as an example. The Council may adopt multiple and specific negotiating directives.

The Commission must conduct negotiations in consultation with a special committee appointed by the Council to assist the Commission in the task of negotiating the trade agreement. This is the so-called 'Trade Policy Committee' (TPC). Its members are appointed by the Council and the Commission is required to report regularly to the TPC which meets weekly on Friday (this meeting is anecdotally known in the Commission as the meeting with the mother-in-law).

We would like to point out that the Commission has made a number of promises on transparency vis-à-vis civil society in its Communication on its new "Trade for All". While this document is not legally binding, the Commission has promised to:

- during negotiations, extend TTIP practices of publishing EU texts online for all trade and investment negotiations and make it clear to all new partners that negotiations will have to follow a transparent approach; and
- after finalising negotiations, publish the text of the agreement immediately, as it stands, without waiting for the legal revision to be completed.<sup>8</sup>

## 1.3 The role of the European Parliament

While the European Parliament has no formal role in the authorization of the negotiations, it does have extensive rights to be kept informed during the entire procedure. The participation of the Parliament in trade negotiations dates from the Lisbon Treaty and was seen as a major 'win' in giving trade negotiations democratic legitimacy. The rules requiring the European Parliament to be informed immediately are in place to try to ensure that the Parliament can signal its position on consent early on<sup>9</sup>. This is in a way to try to avoid nasty surprises at the end. The inter-institutional agreement (IIA) between the Commission and the European Parliament of 2010 provides for certain participatory rights for the Members of the European Parliament (in more detail below). See [Annex 2](#) for the IIA text that sets out the provisions the Commission will undertake with regards to the Parliament.

Under Rule 108 (4) of the European Parliament Rules of Procedure, it may draft and adopt an own initiative report (EP resolution). This can be done at any stage of the negotiations, on the basis of a report drafted by the committee responsible, in most cases the International Trade

<sup>7</sup> Article 218 (4) TFEU

<sup>8</sup> See [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf), page 19

<sup>9</sup> The Treaty itself provides in article 218 (10) TFEU that the European Parliament shall be *immediately* and *fully* informed at *all stages* of the procedure. Moreover, article 207 (3) TFEU that the Commission shall report regularly to the European Parliament on the progress of negotiations.

committee (INTA). The resolution is a recommendation that is required to be taken into account before the end of the agreement. It must be stated that the European Parliament Rules of Procedure is not enforceable vis-à-vis other Institutions, and as such an EP resolution is not legally binding.

## 2 Step 2: Signing the agreement on behalf of the EU

After the negotiations have been finalised the process for concluding the trade agreement starts.

### 2.1 Authentication through initialling and translation

Negotiations are finalised when the text of the trade agreement has been agreed upon. This can be done through initialling the agreement by the Commission (much like when you sign a contract - initialling literally means putting the initials of the people responsible for the negotiations on every page of the agreed text). This initially process does not mean that the agreement is now legally binding. It merely ensures that the text is authentic, that negotiations have closed.

The practice of 'legal scrubbing' where both Parties undertake a legal check of the agreement to correct any legal inconsistencies in the text happens after the initialling of the agreement. Generally speaking, the legal verification of the text does not leave room for changes in the content of the text. The current process with CETA is an exception in this regard, and should be considered as a reopening of the negotiations.

After the initialling of the text the Commission's translation services translate the text into all 24 official languages of the EU. This is a process that can take several months. The practice of the Commission is that the Commission will only make proposals to sign and conclude the agreement, after the Member States have verified that the translations are correct.

### 2.2 The decision authorising signing of the agreement on behalf of the EU

After translation, the Council adopts a decision authorising the signing of the agreement and, if necessary, its provisional application. The decision to sign the trade agreement requires a proposal by the Commission under article 218 (5) TFEU. The decision to authorise the signature of the agreement in the Council is done by qualified majority voting, unless unanimity is required for the same reasons as listed above.

The signature means that the agreement is ready for domestic (Member State) approval. The decision to sign the agreement, does not mean that the EU has agreed to be bound by the agreement. The decision to sign an agreement and the decision to conclude an agreement require two different decisions that are distinct from one another:

- Step 1: a decision to authorise signing of the agreement, only indicates the Council's political consent to the agreement and that it will take all the necessary domestic steps to seek ratification of the agreement;
- Step 2: a decision to conclude the agreement means that the EU is bound by the agreement.

The text of each trade agreement will provide for the details<sup>10</sup> of the ratification process. A detailed example of the ratification process can be found in article 15.10 of the EU-Korea Free Trade Agreement.

If the Council decides to amend the proposal of the Commission to authorise the signing of the agreement, it must do so by unanimity.<sup>11</sup> The Council may choose, for example, to change the legal basis or determine the mixed nature of the agreement. So if the Commission proposes to take a decision to authorise signing of an agreement on the basis of article 207 TFEU, this would imply that the agreement falls in its entirety within the scope of the EU's trade policy and would therefore be exclusive EU competence – and would not need to be ratified by the Member States Parliaments. If the Council disagrees with the Commission's proposal, the Council must therefore decide to authorise signing the agreement by unanimity if it changes the legal basis.

### 2.3 Provisional application before entry into force

The Council may when deciding to provisionally apply the agreement before its entry into force.<sup>12</sup> Provisional application can only apply to areas of the agreement where the EU has full competence<sup>13</sup> The Commission may also propose to only provisionally apply parts of the agreement. The Commission must inform the Parliament as soon as possible when it intends to provisionally apply an agreement and the reasons why, unless it has an important reason for not doing so.<sup>14</sup>

### 2.4 The role of the European Parliament

The role of the European Parliament at this stage of the process is still limited to being immediately informed about the process. In addition to the rights listed above, the Commission shall inform the Parliament when an international agreement is initialled, and will inform the Parliament when it intends to propose a provisional application and of the reasons why.<sup>15</sup>

## 3 Step 3: Consent by the European Parliament

The decision to conclude the trade agreement requires a separate proposal by the Commission under article 218 (6) TFEU. In the case of the EU-Korea Free Trade Agreement, the Commission proposed on the same day in two separate proposals (signing and concluding) to

---

<sup>10</sup> Under international law, there are many ways in which the Parties can agree to be bound by an agreement. The text of the agreement will generally specify how the Parties agree to be bound by an agreement. See the Vienna Convention on the Law of Treaties. Generally, in EU international agreements, the agreement will specify that the agreement will only enter into force if the agreement has gone through the process of domestic approval.

<sup>11</sup> Article 293 (1) TFEU

<sup>12</sup> Article 218 (5) TFEU

<sup>13</sup> Overview of EU competences: [https://en.wikipedia.org/wiki/Template:EU\\_competences](https://en.wikipedia.org/wiki/Template:EU_competences)

<sup>14</sup> 2010 Inter-institutional Agreement Annex III

<sup>15</sup> 2010 Inter-institutional Agreement Annex III

sign the agreement and to conclude the agreement. Again, the decision to authorise signing an agreement is a separate decision from the decision concluding the agreement.

Only the Council has the authority to conclude the agreement, but it may only do this once the Commission has made a proposal to do so. Once the Commission has made its proposal, the Council in turn must ask the European Parliament for permission to conclude. The European Parliament's decision to consent to the decision to conclude the agreement is a yes or no decision, no amendments to the decision or the agreement can be made at this stage.<sup>16</sup> These formal steps are actually supported by a number of inter-institutional communications – when the Commission sends its proposal to conclude the agreement to the Council, the Parliament is also sent the proposal. The Council also sends its draft decision to conclude to the Parliament.

There is no timeframe for the European Parliament to consent to the agreement. However, article 218 (6) TFEU provides that the European Parliament and the Council may, in an urgent situation, agree upon a time-limit. Moreover, the Rules of the Procedure of the European Parliament self-impose time-limits.

The following procedure applies for the European Parliament's consent<sup>17</sup>:

- The Council sends a request for consent of the Parliament to the President of the Parliament;
- The President sends the request to the responsible committee (INTA);
- The committee responsible issues a recommendation addressing the issue of consent. The recommendation comes in the form of a committee report (with a Member of the European Parliament (MEP) as lead drafts person and untimely responsible for the file (known as the rapporteur), the MEP is supported in their work by other deputies (known as shadow rapporteur) this mix ensures that all European political families are represented). However, the report cannot impose any changes to the agreement and can only provide a yes or no recommendation. If the committee decides not to give a recommendation, or has not adopted a recommendation within six months, the Conference of Presidents may either place the matter on the agenda for a subsequent part session for consideration, it can also decide to extend the six-month period in specific cases;
- The Parliament will vote in plenary on the final outcome by majority of the votes cast (this means there needs to be a majority of all the MEPs that are voting on the decision).
- If the Parliament does not consent to the Council's decision to conclude the agreement, the agreement cannot enter into force;
- On the basis of the committee recommendation, the Parliament may decide to suspend the time frame for consent for just under a year. This is to allow the Parliament more time to discuss, debate and take a decision.

One key exception to the set timeframe is the option of making a request for an Opinion to the European Court of Justice.<sup>18</sup> The delivery of an Opinion by the European Court of Justice typically takes between 12 and 18 months. The vote in the Parliament will only take place after the Court has delivered its Opinion. At this stage, the Parliament may still on the basis of a

---

<sup>16</sup> This means that the European Parliament cannot amend the text of the draft decision of the Council to make the agreement mixed, in the unlikely event that the Council does not opt for mixity. The European Parliament may request an Opinion of the Court of Justice on this issue, see for further details below.

<sup>17</sup> Rules 99 and 108 of the EP Rules of Procedure

<sup>18</sup> Rule 108 (6) states Before the vote is taken, the committee responsible, a political group or at least one -tenth of the Members may propose that Parliament seek an opinion from the Court of Justice on the compatibility of an international agreement with the Treaties. If Parliament approves such a proposal, the vote shall be adjourned until the Court has delivered its opinion



report from the committee responsible, and after considering any relevant proposal tabled pursuant to Rule 134 of its Rules of Procedure, adopt recommendations.

## 4 Step 4: Conclusion of the international agreement and entry into force

After the Council has obtained the consent from European Parliament, it will proceed to conclude the agreement. In the case of a mixed agreement, the Council will wait for the ratifications by all of the 28 Member States before proceeding with the decision to conclude the agreement. The same voting rules as discussed above apply in the final decision. The Council decides by QMV, unless one of the exceptions applies. The Council may decide, by unanimity, to amend the proposal of the Commission.<sup>19</sup>

### 4.1 Entry into force and mixed agreements

The text of the trade agreement itself provides all the details for the actual entry into force of the agreement (timeframe, etc.).<sup>20</sup> A detailed example of the ratification process can be found in article 15.10 of the [EU-Korea Free Trade Agreement](#) (see also above).

In the case of a mixed agreement, the agreement can only enter into force when all parties, including the 28 Member States, have ratified the agreement. The process of ratification in the 28 Member States is an entirely domestic affair, and follows the national procedures for ratification of international agreements. If one or more of the Member State does not ratify the agreement, the agreement will not enter into force. If the Council decided to provisionally apply the agreement, it will remain provisionally applicable. Provisional application can only be terminated upon notification by the EU to the other negotiating party, after the Council has taken that decision. Provisional application, however, only means the EU is applying the agreement itself in the EU, not that both parties are bound by the agreement under international law.

## 5 Step 5: Implementation of the agreement

Some FTAs require the EU to participate in bodies set up under the agreement, however as FTAs differ in scope and detail some require implementing bodies to be established. These bodies may adopt acts having legal effects. It is important to stress that trade agreements that establish internal decision-making within a trade agreement, the Parliament is not involved. The EU's position in these bodies is decided by the Commission and the Council only.

Article 218 (9) TFEU provides

---

<sup>19</sup> Article 293 (1) TFEU

<sup>20</sup> Under international law, there are many ways in which the Parties can agree to be bound by an agreement. The text of the agreement will generally specify how the Parties agree to be bound by an agreement. See the Vienna Convention on the Law of Treaties. Generally, in EU international agreements, the agreement will specify that the agreement will only enter into force if the agreement has gone through the process of domestic approval.

*The Council, on a proposal from the Commission [...], shall adopt a decision [...] 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.*

In the EU-Singapore FTA (EUSFTA), for example, the Trade Committee set up under that agreement may amend the definition of the fair and equitable treatment standard in the investment chapter.<sup>21</sup>

Cécile Toubeau  
Manager, Better Trade and Regulation  
+32 (0)475 226 997  
cecile@transportenvironment.org

Laurens Ankersmit  
EU Trade & Environment Lawyer  
+32(0)20 808 4321  
lankersmit@clientearth.org

---

<sup>21</sup> Article 9 (4) (3) of the EUSFTA

## Annex 1: Text of articles 207 and 218 TFEU

### Article 218

#### (ex Article 300 TEC)

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.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

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 negotiator or the head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

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.

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:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(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.

(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.

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 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.

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 a Union act 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 also 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.

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.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

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.

#### **Article 207**

##### **(ex Article 133 TEC)**

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 relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, 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. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. 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.

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article. 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.

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.

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:

(a) in the field of trade in cultural and audiovisual services, where these 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.

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.

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 in so far as the Treaties exclude such harmonisation.

## Annex 2: 2010 Inter-institutional Agreement

Annex III of the 2010 inter-institutional agreement sets out the following commitments the Commission will undertake vis-à-vis the European Parliament:

1. The Commission shall inform Parliament about its intention to propose the start of negotiations at the same time as it informs the Council.
2. When the Commission proposes draft negotiating directives with a view to their adoption by the Council, it shall at the same time present them to Parliament.
3. the Commission shall take due account of Parliament's comments throughout the negotiations;
4. The Commission shall keep Parliament regularly and promptly informed about the conduct of negotiations until the agreement is initialled, and explain whether and how Parliament's comments were incorporated in the texts under negotiation and if not why.
5. The Commission shall provide to Parliament during the negotiation process all relevant information that it also provides to the Council or the TPC. This shall include draft amendments to adopted negotiating directives, draft negotiating texts, agreed articles, the agreed date for initialling the agreement and the text of the agreement to be initialled. The Commission shall also transmit to Parliament, as it does to the Council (or to the special committee appointed by the Council), any relevant documents received from third parties, subject to the originator's consent. The Commission shall keep the responsible parliamentary committee informed about developments in the negotiations and, in particular, explain how Parliament's views have been taken into account.
6. In the case of international agreements the conclusion of which does not require Parliament's consent, the Commission shall ensure that Parliament is immediately and fully informed, by providing information covering at least the draft negotiating directives, the adopted negotiating directives, the subsequent conduct of negotiations and the conclusion of the negotiations.
7. In line with the provisions of point 24 of the Framework Agreement, the Commission shall give thorough information to Parliament in due time when an international agreement is initialled, and shall inform Parliament as early as possible when it intends to propose its provisional application to the Council and of the reasons therefor, unless reasons of urgency preclude it from doing so.
8. The Commission shall inform the Council and Parliament simultaneously and in due time of its intention to propose to the Council the suspension of an international agreement and of the reasons therefor.

9. For international agreements which would fall under the consent procedure provided for by the TFEU, the Commission shall also keep Parliament fully informed before approving modifications to an agreement which are authorised by the Council, by way of derogation, in accordance with Article 218(7) TFEU.

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

ClientEarth is funded by the generous support of philanthropic foundations, engaged individuals and the UK Department for International Development.

Brussels	London	Warsaw
4ème Etage	274 Richmond Road	Aleje Ujazdowskie 39/4
36 Avenue de Tervueren	London	00-540 Warszawa
1040 Bruxelles	E8 3QW	Poland
Belgium	UK	

ClientEarth is a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 2-6 Cannon Street, London EC4M 6YH, with a registered branch in Belgium, N° d'entreprise 0894.251.512, and with a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208