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Democratic legitimacy in common commercial policy of European Union – evolution of European Parliament’s role

Abstract

RESEARCH OBJECTIVE: This article aims to present the principles of decision-making, distribution of competences regarding the common commercial policy (CCP), with attention given to the evolution of European Parliament’s (EP) role and to identify actions taken by the EP in relation to the CCP.

THE RESEARCH PROBLEM AND METHODS: Due to the Member States’ delegation of powers to the supranational level and decision-making procedures, allegations that there is no democratic legitimacy in the European Union are of particular relevance to the CCP. In this context, special importance is given to the role of the European Parliament and powers vested in it, especially over the past years. The article employs an analytical and descriptive method.

THE PROCESS OF ARGUMENTATION: The first part presented decision-making principles for the EU’s common commercial policy. Next, the evolution of the European Parliament’s role in the shaping of the CCP was discussed. Finally, the last part gives attention to the EP’s actions in practice and attempts to assess what was a decisive factor behind the Parliament’s specific position.

RESEARCH RESULTS: The Treaty of Lisbon increased the formal powers of the European Parliament with regard to the CCP, but at the same time, diminished the role of Member States’ national parliaments (which was due to the fact that the CCP coverage was extended and the scope of the EU’s exclusive competences was broadened). The research conducted has revealed that the EP

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is more and more often taking advantage of its position in the shaping of the EU commercial policy.

CONCLUSIONS, INNOVATIONS, AND RECOMMENDATIONS:
Due to the fact that the role of the European Parliament in the decision-making process has increased, the issue of a democracy deficit in the shaping of the CCP, which was raised in the pre-Lisbon Treaty period, is currently becoming less formally legitimate.

KEYWORDS:

Common Commercial Policy, European Parliament,
the European Union, trade agreements

INTRODUCTION

The Common Commercial Policy (CCP) is – apart from the agricultural policy and the competition policy – considered the oldest and the most communitarised of all the European Union’s policies. Since the Treaty of Rome in 1957, the EU’s Member States have moved their commercial policy powers to a supranational level, therefore it is said that as far as trade is concerned, the European Union “has been speaking with one voice” (Devuyst, 2013, p. 259). Due to the Member States’ delegation of powers to the supranational level, allegations that there is no political legitimacy in the European Union are of particular relevance to the commercial policy, specifically before the Treaty of Lisbon. In fact, legitimacy is possible through democratic representation. It can be assumed, echoing such scholars as Sophie Meunier (2002), that democratic legitimacy is the intention of subjects declared by representative, i.e. democratic, institutions.

According to Fritz Scharpf (1999), there are two forms of democratic legitimacy, which traditionally coexist in democratic national countries: the first one is focused on a political process (government by the people) and the other one on the outcome of politics (government for the people). The legitimacy of a decision-making process with respect to the CCP is based on the assumption that decision-makers are representative, accountable and subject to public scrutiny – which means that citizens are involved in a political process (for instance, by referenda or direct elections) and a decision-making

procedure is transparent (for example, by making debates open to the public). The legitimacy of outcomes, on the other hand, concentrates on a policy that has been eventually framed, and not on the process in the course of which that policy was developed. In this case, what makes a commercial policy legitimate is its capability of resolving problems that require common solutions serving the “public interest”, that is to say, all or almost all individuals and groups of society. A public debate on a democratic deficit in the EU usually rests on a definition of process-based legitimacy. This is because those who are critical of the Union commercial policy complain that “civil society” has no influence whatsoever on a decision-making process.

Traditionally, EU commercial policy has been dominated by only two actors: the European Commission and the Council (Kleimann, 2011, p. 3). It was in the 1960s that the European Parliament was already informally engaged in a commercial policy (the Luns-Westertep procedure). The EP had informally grown in importance over years, but its formal role had been limited for a long time. Indeed, the European Parliament played a minor or even no role in the key areas of shaping the commercial policy – drafting framework legislation and conducting trade negotiations.

This article aims to present the principles of decision-making, distribution of competences regarding the CCP, with attention given to the evolution of the European Parliament’s role (both that formal and informal), and to identify practical actions taken by the EP in relation to the CCP, specifically, when trade agreements are to be made with third countries. The article also attempts to reflect on amendments to the Treaty of Lisbon designed to introduce democratic legitimacy on a supranational level, particularly, by civil society’s contribution to Union structures and, obviously, by strengthening the role of the European Parliament, the only body which is elected in direct elections and represents people. Whereas the process of European integration, selected CCP instruments or the major EU bodies: the Council, the Commission or the Court of Justice received considerable and meticulous scholarly attention many times, the European Parliament and its specific actions relating to the common commercial policy were researched by scholars less frequently. Researchers focused on the EP’s extended competences (Chang & Hodson, 2019; Keukeleire & MacNaughtan, 2008; Müller & Wulf, 2019; Piris, 1994;

Raworth, 1994; Richardson, 2012; Rittberger, 2003; Woolcock 2010; van den Putte et al, 2015), analysed the consequences of that change on public policies (Pollack, 1997; Risse, 2014), and in broader terms, on the policy as such (Dehousse, 1995), or raised the issues connected with majority, coalition or political groups within the EP (Hix & Lord, 1997; Plottka & Müller, 2020, p. 28; van den Putte et al, 2015), to name but a few. Theoretical research into the “democratisation” of the EU common commercial policy was carried out shortly after the Treaty of Lisbon had come into effect (1 December 2009), nowadays, in times when the global economy is influenced by other issues (the COVID-19 pandemic), it has slightly declined in importance and been not that intense. Hence the research conducted in this article aims to fill the research gap in this regard, especially, due to the fact that more than a decade has passed since the distribution of CCP competences was changed following the entry into force of the Treaty of Lisbon. In consideration of the foregoing, an initial assessment of the EP’s actions concerning the area in question can be made in the context of the EP’s greater competences.

DECISION-MAKING FOR EU COMMON COMMERCIAL POLICY – VERTICAL AND HORIZONTAL COMPETENCES

For the process of creating the common commercial policy it was necessary to delegate the competences of individual Member States and their parliaments to European states acting jointly through the Council of Ministers. This is the vertical distribution of competences for the common commercial policy, where competences are distributed between the Union and its Member States (Meunier & Nicolaidis, 2005, p. 251). In practice, pursuing a commercial policy also reveals another (horizontal) level of delegation of powers, that is to say, when the Council delegates them to the European Commission.

At the very beginning, when the European Community was established (formerly the European Economic Community, from 1 November 1993 to 30 November 2009 – the European Community, and from 1 December 2009 – the European Union), the exclusivity of its vertical competence stemmed, to a large extent, from the Court of

Justice decisions. The Treaties of Rome generally did not determine the distribution of competences, although they were referred to, e.g. saying about the approximation of Member States' legislations (Sozański, 2007, p. 233). The first reference to "exclusive competence" was contained in the Treaty of Maastricht (Article 3b of the TEC, subsequently Article 5 of the TEC). It stipulated that the Community should act within the limits of the powers conferred upon it under the Treaty with a view to achieving the objectives set out therein. The vertical distribution of competences was considerably changed by the Treaty of Nice, which extended the scope of exclusive competences of the Community. Under the provisions stipulated by the Treaty of Amsterdam in Article 133(5), the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, was granted authority to extend the scope of CCP application to "negotiations and international agreements concerning services and intellectual property".

It was not until the Treaty of Lisbon (TL), which contained a new section (Title I) relating to the categories and areas of competences (The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, hereinafter referred to as the Treaty of Lisbon or the Lisbon Treaty, the TFEU), that a clear legal basis for the distribution of competences was set out. Article 2 of the Treaty listed exclusive competences, competences shared with the Member States and those which are designed to support, coordinate and complement the Member States' actions.¹ As for exclusive competences (Article 2(1) of the TFEU), only the European Union may enact the law and approve legally binding acts, whereas the Member States may do the same, however, only with the EU's authorisation.

The common commercial policy was mentioned in Article 3(1)(e) of the TFEU as one of the five areas, apart from the customs union, Article 3(1)(a), falling within the exclusive competence of the Union.

1 Even when the previous treaty provisions were in force, it was estimated that due to legal acts being passed by EU institutions and having a binding effect on areas covered by exclusive and shared competences (in particular, regulations and directives), Member States' parliaments were losing between 60 per cent to 80 per cent of their legislative power in favour of EU institutions (Kuciński & Wołpiuk, 2012, p. 333).

Hence regarding the CCP, exclusive competences cover, as stipulated in Article 207 of the TFEU, changes in customs duties, entering into customs and trade agreements concerning trade in goods and services and trade-related aspects of intellectual property rights, direct foreign investments, the achievement of uniformity in measures of liberalisation, export policy, as well as trade protection measures. The horizontal distribution of competences, as already mentioned, refers to their division at the European Union level only. The following bodies, before the Treaty of Lisbon – operating as part of the Community, and subsequently, as part of the European Union, serve an influential role in the functioning of the common commercial policy: The Council, the Commission and the Court of Justice and the European Parliament.

In the case of the treaty-based commercial policy, i.e. the negotiation and making of trade (customs) agreements, the procedure for entering into trade agreements may be divided into five stages (Chalmers et al, 2010, p. 633). First of all, the Council makes a decision to open negotiations following the Commission's recommendation, the Commission submits to the Council recommendations on starting negotiations, in which it specifies the type, subject-matter, legal basis and scope of an agreement with third countries or international organisations. Second, the Council authorises the Commission to conduct negotiations, and that authorisation is granted in the form of the Council decision, which does not have to be published, and indeed, it is usually not. These negotiations (in accordance with the Council's negotiating directives) are conducted in collaboration with a special committee designated by the Council.² It must also hold meetings with the representatives of civil society organisations and publish, among other things, the EU's stand, proposed draft agreements and negotiation reports. Third, the Council takes a preliminary decision that gives authority to sign an agreement and, where necessary, to perform it on a temporary basis until entry into force. Fourth, the European Parliament must consent to an agreement. Fifth, the Council

2 The '113 Committee', subsequently termed the 'Article 133 Committee', and after the Treaty of Lisbon – the '207 Committee', is often called the Trade Policy Committee. Currently, this Committee also advises and assists the Commission on and about negotiating and entering into trade agreements with governments or international organisations.

approves (ratifies) an agreement by a qualified majority of votes, except where a unanimous vote is required for the subject-matter of an agreement.

For mixed agreements, apart from Union procedures (unanimous voting in the Council), all the Member States must ratify an agreement in accordance with their own constitutional requirements. In the case of the majority of Member States, this means that national parliaments decide on the implementation of relevant provisions.

EVOLUTION OF EUROPEAN PARLIAMENT'S ROLE IN COMMON COMMERCIAL POLICY DECISION – MAKING PROCESS

The European Parliament is the only body within the Union's institutional system which, since 1979 direct elections, has had democratic legitimacy to serve its functions and represents EU citizens. This fact is recognised in the literature as a turning point in the history and the evolution of the European Union's institutions (Hix et al., 2005; Pacek & Radcliff, 2003). Indeed, this means the creation of an institutional body which is directly accountable towards the general public and acts for the benefit of the whole of society (Feliu & Serra, 2015, p. 19).

In practice, informal procedures for the European Parliament's participation in drafting agreements with third countries and international organisations were established before – namely, the Luns procedure, implemented in 1964 on the initiative of a Dutch Foreign Minister, and subsequently, the President of the Council Joseph Luns. That procedure enabled the Parliament to gain knowledge, while taking part in debates, of proposed association agreements before entering into negotiations. The Parliament was kept advised of negotiation progress on an ongoing basis and in detail and was informed about the outcome before the final agreement was signed. The so-called "Luns procedure" was extended in 1973 on the initiative of another Dutch President of the Council, Tjerk Westerterp (the Westerterp procedure) and covered agreements which (contrary to association agreements) the Parliament was not entitled to consult. Ten years later, the procedure in question, known in those times as

the Luns-Westerterp procedure, was extended by the 1983 Stuttgart declaration to include all relevant international agreements made by the Community, including co-operation agreements and accession treaties concluded with new Member States (Thym, 2008, p. 4).

After the Treaty of Maastricht, trade agreements required consent of the European Parliament, however, in certain cases, that consent was merely a formality. In this context, a good example includes the Agreement establishing the World Trade Organisation. As this agreement set special institutional framework, the consent of the European Parliament was needed. The agreement was scheduled to enter into force on 01 January 1995, hence the European Parliament, which was elected in June 1994, was brought under considerable time pressure and gave its consent on 14 December 1994, that is to say, within the period of fewer than three months after receiving from the Council a document of approximately 25,000 pages (including appendices) (Hilf & Schorkopf, 1999, p. 112). Having considered the fact that there was not enough time and the document was voluminous, it seems impossible that the text of the agreement had been analysed in detail before the consent was granted. Furthermore, the European Parliament was, so to speak, presented with a *fait accompli* – given the outcome of negotiations before signing the agreement and the fact that it was not involved in these negotiations in any form whatsoever. The text of the agreement was agreed and in principle, no amendments could be introduced thereto (Petersmann, 2005, p. 546).

Member States' national parliaments were also not allowed to submit the common commercial policy to democratic scrutiny. They could exert direct influence on it, but only for trade agreements falling within mixed competence. With the extension of the Community's exclusive competences related to the common commercial policy, national parliaments of the Member States were losing the opportunity to shape it. In addition, even for mixed competences, a question arises as to whether the consent of national parliaments was of any relevance whatsoever or it was also a mere formality. The Agreement establishing the World Trade Organisation, which was already referred to above, and the German Parliament are a good example. The Bundestag and the Bundesrat were forced, in some sense, to vote well before the text of the agreement was translated into German (Petersmann, 2005, p. 546). Hence it should not be a surprise that

many members of the parliament either only skimmed through the document or did not read it at all.

After the Treaty of Nice, the Parliament could, in the event of doubts, request the Court of Justice to examine whether a given international agreement complied with the provisions of the treaty.

The Parliament also did not have any power to affect the mandate of the Commission to conduct negotiations before entering into trade agreements. Therefore before the Treaty of Lisbon, some even claimed that a “democratic deficit could be observed for the common commercial policy” (Deutscher Bundestag, 2002, p. 158).³ The deficit was particularly significant in view of the growing importance of the commercial policy and the Community’s broader competence regarding the CCP, which resulted, among other things, from the fact that not only the European Parliament, by reason of its limited competence, but also national parliaments served absolutely no control functions (Krajewski, 2006, p. 67).

Unlike the Treaty of Nice, which maintained the *status quo*, the Treaty of Lisbon, seen as an important step towards reducing the democratic deficit, introduced some quite significant changes to the common commercial policy. The Commission has still the legislative initiative for the CCP, however, unilateral measures within the framework of the autonomous commercial policy are adopted, in the form of regulations, by the Council and the European Parliament, and not, as it used to be, by the Council alone,⁴ in accordance with the ordinary legislative procedure (OLP), which is a new term of the Union codecision procedure.⁵ As regards the common commercial policy, the treaty conferred, as part of the codecision procedure, additional powers on the Parliament. In accordance with the OLP, the Council and the Parliament must agree and adopt provisions put

3 According to critics, the EU’s democratic deficit stems, among other things, from the fact that the European integration is a process, as history has shown, driven by elites and not by general vote (Meunier, 2003, p. 70).

4 Article 207(2) of the TFEU stipulates that the European Parliament and the Council adopt measures setting out the framework of the common commercial policy.

5 That procedure is set out in Article 294 of the TFEU (formerly, Article 251 of the TEC).

forward by the Commission, which is required for such provisions in order to become effective.

The Commission committed itself, under the 2006 framework agreement on relations with the Parliament, to notify the latter both of the preparation of agreements and on the progress and completion of negotiations, which applied, specifically, to trade agreements (Clause 19, *Interinstitutional Agreements*, 2006, p. 128). In practice, this usually means that the Parliament is provided with secret documents by the Commission, and specifically, the Parliament's International Trade Committee (INTA).⁶

With the entry into force of the Treaty of Lisbon, the same procedural powers to influence framework trade legislation as those possessed by governments of the Member States represented in the Council were conferred on the Parliament's International Trade Committee (INTA) (Kleimann, 2011, p. 4). Furthermore, due to the fact that the said Committee presents the final legislative proposal at a plenary session for approval by a simple majority vote, it has considerable powers to act within the Parliament, which enable it to shape framework regulations necessary for the implementation of the CCP.

The Treaty of Lisbon imposed on the Commission the obligation to submit regular reports on the progress of negotiations, where trade agreements with third countries and international organisations are being negotiated, and to give negotiating directions, which is a new element designed to strengthen the role of the European Parliament in shaping the common commercial policy (Article 207(3) of the TFEU; paragraph 23 et seq, *Framework Agreement on relations between the European Parliament and the European Commission*, 2010). These reports must be also provided by the Commission to the Trade Policy Committee. The Commission had earlier committed itself to keep the EP advised of the progress of trade negotiations at every single stage, but it was not until the Treaty of Lisbon that such an obligation was formally imposed on it.

Scholars take different views as to whether these new provisions of the Treaty of Lisbon will considerably strengthen the Parliament's authority and whether the strengthened democratic legitimacy of the

⁶ The INTA meetings are held on average once a month.

shaping of the CCP will be – through the European Parliament’s participation – advantageous to the commercial policy or it will become excessively politicised. Involving the EP in the legislative procedure is tantamount to making the decision-making process longer and more complex than in the past. If neither the Council nor the Parliament consents at the very beginning, and a process requires the full codecision procedure to take place – “three readings”, then the legislative process may be longer than a year. In addition to the long formal process, about three months may be necessary to translate proposals submitted by the Commission to the Parliament to all 24 official languages of the EU (Kleimann, 2011, p. 5). Extending the legislative procedure, which is definitely the case in this situation, corroborates some researchers’ view that the trade policy is often presented as requiring a considerable compromise between efficiency and legitimacy. Indeed, actions designed to expedite the negotiations of trade agreements lead to a loss of certain legitimacy, as parties involved may influence that process to a lesser extent and the number of such entities engaged in it is smaller. And vice versa, every action aimed at increasing legitimacy could leave less room for negotiators to act and hinder the conclusion of complex international agreements by them (Meunier, 2003, p. 75). Whereas some say about the “most important amendment” to the Treaty of Lisbon in the area of the commercial policy (Devuyst, 2013, p. 259) or the “Copernican revolution” due to the increased role of the European Parliament (Eeckhout, 2011, p. 57–58), others imply that, in respect of multilateral trade agreements, the Treaty of Lisbon essentially codifies merely the EP’s rights (Young, 2011, p. 719).

The Treaty of Lisbon extended the EU’s competence to include foreign investments and intellectual property. It covers almost all elements of mixed trade agreements. That extension of exclusive competence may reduce the number of instances where trade agreements must be approved by national parliaments.

It must be noted that due to the right to approve trade agreements by the EP, the Treaty of Lisbon eliminated the gap in the parliamentary participation, and consequently, addressed considerable deficit in the legitimacy of common commercial policy. Currently, the whole area of commercial policy falls within the competence of the EU, which is the reason behind national parliaments’ lack of competence

in this regard. Furthermore, it can be claimed that the European Parliament's right to grant approval is exercised under other political and parliamentary conditions than the right of approval that Member States' parliaments have. As parliamentary government systems are in operation in all the EU Member States, the possibility of rejecting international agreements at the Member State level can practically be ruled out. Rejecting an agreement negotiated by a government would be tantamount to a vote of censure for it. The European Parliament is not subject to such limitations therefore its right of approval is probably practically more important than the right of approval national parliaments have.

Attention must be given to a certain increase in the transparency of the CCP as a consequence of the EP's extended scope of competence. Unlike the Commission or the Council, the European Parliament's International Trade Committee meets in public, which is the same as in the case of plenary sessions of the Parliament. Consequently, this clearly shows what the exact position the Parliament and its individual MPs take with respect to specific matters.

PARLIAMENT'S RIGHTS IN RELATION TO CONCLUSION OF INTERNATIONAL AGREEMENTS AND THEIR USE IN PRACTICE

The EP's involvement in the decision-making process reflects at the European Union level the fundamental democratic principle which enables people to participate in government through a representative assembly. For these reasons, in the process of entering into an international agreement, as provided for in Article 218(6) of the Treaty on the Functioning of the European Union, the Council's decision on the making of international agreements requires either the consent of the European Parliament – i.e. the decision is taken once such consent has been secured – or consultation. Article 218(6) of the TFEU stipulates that the European Parliament is required to express its opinion within a time limit set by the Council, which depends, however, on how urgent is a given case. In the absence of such an opinion within a time limit determined, the Council may take

a decision alone. Furthermore, as already mentioned, the European Parliament is immediately given complete information at every stage of the procedure designed to make an international agreement.

Before the Treaty of Lisbon entered into force, the European Parliament, expecting greater parliamentary powers arising from the treaty, to some extent gave its comments about ongoing negotiations, implicitly taking an attitude towards its right to (refuse) consent. What deserves special attention in this context is the European Parliament's conditional declaration of support for a free trade agreement between the EU and the ASEAN countries. In its resolution of 8 May 2008, the European Parliament pledged in principle itself to support such an agreement, but also put forward a list of demands as to its content (European Parliament resolution of 8 May 2008). The European Parliament insisted, in its statement issued before the entry into force of the Treaty of Lisbon, *inter alia*, that: the agreement had to contain provisions related to human rights and employees' rights, rainforest protection, fishing industry (especially for tuna). The Parliament resolution on negotiations with the ASEAN countries is a good example of how the Parliament could take an opportunity of shaping the contents of a future agreement in the course of negotiations. In principle, rejecting an agreement in which the Parliament plays an active role at the stage of negotiations is unlikely (Krajewski, 2003, p. 9).

So far, the European Parliament has refused its consent to international agreements several times. For the first time on 11 February 2010, when it refused to approve an agreement between the European Union and the United States for the transfer of passenger name records (PNR), however, it will not be discussed herein in detail, as that agreement was not a trade agreement.

On 11 February 2010, the European Parliament did not grant its approval for the second time, in which case its decision concerned an interim agreement for the transfer of banking data to the United States via the SWIFT network.⁷ Reservations were voiced about privacy protection and the proportionality and reciprocity of measures provided for in the said agreement. The agreement which was signed

⁷ The Society for Worldwide Interbank Financial Telecommunication (SWIFT) serves approximately 80 per cent of all international financial transactions.

by the governments of 27 Member States and the USA ceased to be in effect. The Parliament requested the Council and the Commission to commence works on a new agreement. That agreement does also not fall within the CCP scope (Brok, 2010, p. 220).

On 14 December 2011, the Parliament voiced a dissenting opinion about the signature of the fisheries partnership agreement between the European Community and the Kingdom of Morocco. As regards the fisheries agreement, apart from ecological matters and the violation of international law, the reason behind the EP's negative decision was the high cost of the agreement European taxpayers had to incur and its minor contribution to the growth of the Moroccan fisheries sector (Ambroziak & Błaszczuk-Zawiła, 2012, p. 18).

The Anti-Counterfeiting Trade Agreement (ACTA) was aimed at counteracting trade in counterfeit goods and was an agreement designed to ensure the better enforcement of intellectual property rights at an international level. The contracting parties were as follows: Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea, the United States and the European Union. ACTA was negotiated between 2007 and 2010 outside the World Trade Organisation, a traditional forum for this type of agreements. At the beginning of 2012, dozens of thousands of people gathered in many European cities to protest against ACTA. In response, several Member States stopped national ratification procedures and the European Commission requested the Court of Justice to give an opinion. The European Parliament took into consideration the views of citizens and the anti-ACTA movement and vetoed the agreement on 4 July 2012.⁸ Therefore the provisions of that agreement may not apply within the EU. The Parliament decided by vote to reject it on account of the protection of its citizens' privacy and the freedom of individuals. This is the first instance where the European Parliament used its powers provided for by the Treaty of Lisbon to reject an international trade agreement.

Between 2007 and 2009, after the Council accepted the negotiating mandate, eight negotiation rounds were held to negotiate a trade agreement between the EU and South Korea (Brown, 2011). It was

⁸ There were 478 votes for rejection, 39 against, with 165 abstaining (Euractiv, 2012).

already in December 2007 that the EP referred to “significant problems” in a report presenting the course of negotiations. During the negotiations, European car makers requested to suspend talks with South Korea out of concerns over increased competition from imported Korean passenger cars, should a customs duty on cars be abolished in mutual trade. The Council admitted that no provisional application of the said trade agreement was possible without the European Parliament’s consent. After more than two years of negotiations, the European Parliament consented to a new-generation trade agreement being made with South Korea. In February 2011, the EP approved the agreement, which entered into force on 1 July 2011 for an interim period (Council Decision of 16 September 2010). The protection clause was incorporated into the agreement under pressure created by Members of the European Parliament, who also demanded that the new Korean law setting CO₂ content in exhaust fumes would not affect European automotive companies adversely, which had also to be guaranteed in the agreement.

EUROPEAN PARLIAMENT AND PROTECTION OF HUMAN RIGHTS

The protection of human rights, as stipulated in the Treaty of Lisbon⁹, is one of the overriding objectives of the European Union in relation to its external activities, specifically, with respect to trade agreements. Since the mid-1990s, the EU has developed a variety of instruments designed to promote human rights in the common commercial policy, of which the following deserve particular attention: human right clauses included in bilateral trade agreements with third

⁹ Article 2 of the Treaty of Lisbon provides that the EU is founded, *inter alia*, on the value of respect for human, including the rights of persons belonging to minorities, whereas Article 3(1) of the Treaty stipulates that the Union’s objectives include the promotion of its values. Article 6 of the TEU contains key provisions relating to human rights, which ensure that the Charter of Fundamental Rights of the EU of 7 December 2000, as modified on 12 December 2007 in Strasbourg, is in full force and effect. The Charter has the same legal effect as treaties and rights, freedoms and principles stated therein are recognised by the Union.

countries and human right and employee right conditions set under the system of unilateral preferences granted to developing countries. The EU has also introduced a ban or restriction on trade in goods which might lead to human right violations, such as instruments of torture, devices used for execution and dual-use goods.

After the entry into force of the Treaty of Lisbon, the EP was allowed the possibility of using its consent power with respect to the promotion of human rights by way of international trade agreements. One of the examples includes the EU's negotiations of free trade agreements with Colombia, which began in 2007 and continued until 2012. The negotiations of the agreement were controversial on account of concerns over the infringement of human rights in Colombia. Opponents of the agreement criticised the EU, claiming it attached too little significance to a dire situation concerning human rights in Colombia, where trade union members and journalists often received threats and were the victims of aggression (Council on Hemispheric Affairs, 2013). Subsequently, the EP adopted a resolution urging Colombia to define a transparent and binding human rights roadmap (European Parliament, 2012, point 15). That requirement was eventually met by the government of Colombia as a precondition for the EP's approval of the agreement.

Sri Lanka applied for the GSP Plus status on 12 July 2016, the Commission examined the application, and, on finding that the country met the eligibility criteria, notified a delegated regulation on according the GSP Plus beneficiary status to Sri Lanka on 11 January 2017.¹⁰ According to the Opinion of the European Parliament of 20 April 2017 (European Parliament, 2017), the fact that human rights are currently being violated in Sri Lanka raises doubts as to whether the GSP Plus status should be granted or not, and government's reforming efforts, including those directly related to GSP Plus criteria, have not made it possible to attain the objective yet – which is the compliance with the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of Racial Discrimination; furthermore, the government of Sri Lanka is suspected of

¹⁰ See: Czermińska (2019, pp. 379–392) for more information on the GSP and GSP Plus.

insufficient efforts to combat the culture of impunity, as it rewarded military officials accused of human right violations by appointing them to government posts; accordingly the EP objected to the Commission delegated regulation. A delegated act may come into effect only if the European Parliament or the Council do not voice an objection within two months from the submission of that act to them. Eventually, preferences under the GSP Plus were granted to Sri Lanka; since May 2017, the country has been subjected to strict scrutiny to verify whether it has been effectively complying with 27 international conventions.

Recent European Parliament's actions relate to an investment agreement with China. The European Parliament decided by vote to defer discussions concerning that agreement until sanctions imposed by China on European citizens and some entities have been lifted. Members of the European Parliament also paid attention to China's compliance with human rights. The resolution of 20 May 2021 precluded further discussions on the investment agreement until the said restrictions have been removed. In that instrument, MEPs maintained that China's decision to impose sanctions on the EU constituted the violation of fundamental freedoms. (European Parliament, News, 2021).

CONCLUSIONS

The Treaty of Lisbon considerably extended the European Parliament's formal powers in the area of common commercial policy and diminished the role Member States' national parliaments. As far as the Union's CCP legislation is concerned, the European Parliament is currently on an equal footing with the Council, meaning that the EP's authority is significantly greater than it was before. Regarding this legislative dimension of commercial policy, the Parliament has also already showed (by objecting to the Commission Delegated Regulation on according Sri Lanka the GSP Plus beneficiary status) that it is willing to exercise its new rights. Despite the fact that the EP remains on the fringes of legislative process, not taking any part at the stage of enacting laws concerning the commercial policy, it has left its mark on the new system of delegated and implementing acts, strengthening thus its role.

The Treaty of Lisbon also contributed to more democratic control, transparency and decision-making for the common commercial policy. The new powers of the European Parliament are reaching such a level of parliamentary participation in international agreements and national regulations which can be seen as a standard of parliamentary and democratic systems. The relationship between the Commission and the European Parliament is by its very nature different than a relationship between a government and a parliament in a parliamentary system of government. Indeed, the Commission is dependent on the specific political majority in the European Parliament. And vice versa, the Parliament does not perceive the Commission as “its own” government. Therefore, as regards the exercise of consent power, the European Parliament has greater political “freedom” than Member States’ parliaments. Consequently, a threat of refusing consent to an international agreement is also not unlikely. In practice, the European Parliament exercised its right to refuse consent several times (for instance, in the ACTA case), which gave it the opportunity to at least defer the entry into force of international agreements (as was the case e.g. with the agreement with Colombia). It could also influence the content of trade agreements, for instance, by adding specific protective clauses thereto (the agreement with South Korea).

To assess the requirement for the European Parliament’s consent from the theoretical democratic perspective, it must be noted, first and foremost, that granting the right to approve international agreements in the context of the common commercial policy closes a gap in the democratic legitimacy of commercial policy, which has been seen in Europe for several decades. Furthermore, what deserves attention in this context is the extension of the CCP coverage, which includes not only trade in goods, but also trade in services and capital movements in the form of direct foreign investments (DFI). The commercial policy thus embraces issues, in particular regulatory ones, which in the past used to be controlled by national authorities, meaning that the extension of the CCP coverage is tantamount to the gradual loss of national sovereignty on these territories, and such issues as the settlement of disputes between a foreign investor and a state (relating to DFI), food safety or environmental protection. That increasing coverage of the CCP is accompanied by the growing competence of the European Parliament in this area.

The Commission more and more often communicates with the EP, particularly with certain political groups, to obtain the approval of trade agreements, which demonstrates that the Parliament's role in the CCP has been strengthened. Another sign of the EP's recognised role in the commercial policy is lobbying around the EP, which is becoming more and more intense. The EP joined the group of commercial policy decision-makers after the Treaty of Lisbon, therefore influence on the EP has become significant.

The fundamental view of the EP on human rights in international agreements is reflected in the SWIFT and ACTA agreements, which were rejected by the EP on account of the protection of citizens' privacy and the individuals' freedom.

To avoid conflicts, closer coordination among Union bodies, such as the Commission, the Council and the European Parliament, is required. If the European Parliament is able to attain a strong position, the new rights and duties of the EP may give rise to real democratic legitimacy for the commercial policy. Although the increasing role of the EP, and to a lesser extent of national parliaments, sometimes poses a challenge for the successful conclusion of international and trade agreements, various parliamentary arenas make it possible for the voice of civil society to be clearly listened to during such negotiations.

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