



kindly invite you to the seminar

Reassessing Institutional Balance in EU External Relations Post-Lisbon

26 July 2016, 13:30-19:00 h.
Council Room, Faculty of Law, Tiensestraat 41 Leuven

1. Concept

As part of its PACO project (<https://ghum.kuleuven.be/ggs/projects/paco-project>) the Leuven Centre for Global Governance Studies, in co-operation with the University of Salamanca and the ESIL Interest Group on the EU as a Global Actor, is hosting a half-day seminar to examine the latest developments in EU external relations law. Over the past years, a series of inter-institutional disputes have been brought before the European Court of Justice (CJEU) on the interpretation of Article 218 TFEU and the respective powers of the institutions in the negotiation and conclusion of international agreements, and on the international representation of the EU post-Lisbon. At the same time, the prevailing pillar structure and the reinforcement of delimitation through Article 40 TEU clashes with a declared emphasis on coherence and consistency in the Treaty of Lisbon.

The resulting picture arising from these disputes shows an empowerment of the European Parliament, which besides having the power of consent for a large number of international agreements also has the right to be fully informed at all stages of the procedure, according to Article 218(10) TFEU, even in areas relating to CFSP (*Parliament v. Council*, C-658/11). This has been salient in the Parliament's rejection of the first SWIFT Agreement and the adoption of SWIFT II, as well as in the rejection of ACTA and the Fisheries Agreement with Morocco. However, the role of the Parliament in the (pre-) negotiation phases of international agreements is in need of further clarification. According to the judgment of the CJEU of 14 June 2016 in the Tanzania case (*Parliament v. Council*, C-263/14), the purpose of this provision in CFSP is not for the Parliament to participate in the negotiation and conclusion of agreements. This raises the question of the different levels of parliamentary involvement in CFSP and non-CFSP areas. An enhanced role in the determination of the substantive content of the agreement through *ex ante* mechanisms could have strong implications in future international negotiations by the EU and in the EU's negotiating position, as well as on the coherence and consistency of EU external action.

The judgment in the Tanzania case also brings back the question of the possibility of joint legal bases and the revision of the CJEU's case-law on legal basis post-Lisbon,

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which it does not completely rule out in general, but only *in casu*. Is there room for the use of joint legal basis instruments post-Tanzania? What legal avenues are left to the institutions to succeed in their quest for consistency in light of Article 40 TEU? Is the CJEU now focusing on interinstitutional cooperation in the achievement of horizontal consistency?

An interesting paradigm in this sense is the Court's case-law on sincere cooperation and mixed agreements as seen in *Commission v. Luxembourg* (C-266/03), *Commission v. Germany* (C-433/03) or *Commission v. Sweden* (C-246/07). The future of mixity in key areas of EU external relations such as the common commercial policy is also a matter of concern that should be decided by the Court in the coming years as a result of Opinion 2/15. Other important questions raised by the series of FTAs currently on the table is the question of the Investment Court System, as proposed for TTIP, in the light of the CJEU's fierce defence of the 'autonomy of EU law'.

Other questions raised in the context of Article 218 TFEU are the possible obligation of the Council of the EU to examine in detail and impartially, prior to its conclusion, all the elements of an international agreement to ensure that its potential implementation does not lead to, or indirectly encourages, the violation of the right to self-determination, as held by the General Court in *Front Polisario v. Council* (T-512/12). What is the role of the Court in the face of rather political questions? Could this interpretation be extended to other peremptory norms of international law if upheld by the Court of Justice?

Apart from judicial disputes, recent practice points towards a departure from the established procedures by political institutions and towards a rise of intergovernmental (and swift) decision-making outside the framework of the Treaties. Examples are the EU-Turkey Deal, concluded by the European Council outside of the framework of Article 218 TFEU, and the UK deal. These developments raise important questions of principle that go beyond institutional prerogatives.

In this light, the Leuven seminar aims to bring together academics and practitioners with a view to a "Chatham House" discussion on the resulting picture in key issues of EU external relations law, such as the role of the institutions in international agreements in the aftermath of the rulings in Mauritius and Tanzania, and the possibility for cross-pillar instruments, the role of values in EU external relations law, as well as the future of mixity in CCP or the Investment Court System.

As this seminar aims to be as interactive as possible, interventions will be limited to maximum 10 minutes each in order to allow for sufficient time for discussion.

Participation is free, but prior registration is necessary by 19 July on a first come, first serve basis (limited seating): mail to conference@ggs.kuleuven.be



2. Programme

13:00 Coffee, tea and sandwiches

13:30 Welcome and introduction to the seminar by the Chair, **Prof. Dr. Jan Wouters** (Jean Monnet Chair, Director of the Leuven Centre for Global Governance Studies, KU Leuven)

Presentations and discussions on:

1. Institutional balance post-Lisbon, **Thomas Ramopoulos** (DG AGRI, European Commission / Leuven Centre for Global Governance Studies, KU Leuven)
2. The strengthened role of the European Parliament in international agreements post-Lisbon: an enhancer of consistency in EU agreements?, **Soledad R. Sánchez-Tabernero** (University of Salamanca/ Leuven Centre for Global Governance Studies)
3. Comment: The role of the European Parliament in international relations post-Lisbon, **Ricardo Passos** (Legal Service, European Parliament)
4. Decision-making in CFSP and cross-pillar instruments, Dr. **Frederik Naert** (Legal Service, Council of the EU)
5. The future of mixity in international trade agreements: what to expect from Opinion 1/15, Prof. Dr. **Pieter-Jan Kuijper** (University of Amsterdam)

16:00 – 16:15: coffee and tea break

Presentations and discussions on:

1. Front Polisario, international law and the EU legal order, Prof. Dr. **Ricardo Gosalbo Bono** (Professor of Law, Vrije Universiteit Brussel/ Lehrbeauftragter, Europa-Kolleg, Hamburg/ Former Director, Legal Service, Council of the EU)
2. The EU-Turkey deal, Prof. Dr. **Juan Santos Vara** (University of Salamanca)
3. The EU's New Global Strategy on Foreign and Security Policy: Who will promote the EU's values?, Dr. **Joris Larik** (Leiden University/The Hague Institute for Global Justice)
4. The role of the Commission in international representation (Commission as negotiator in international agreements and division of labour in international representation with Council, ITLOS case, etc.), **Fernando Castillo de la Torre** (Legal Service, European Commission)
5. The proposed Investment Court System and the autonomy of EU law, Prof. Dr. **Frank Hoffmeister** (DG Trade, European Commission)

