

Trade-relevant Provisions of the Lisbon Treaty

Implications for ACP/African countries

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About ECDPM

- Independent and **non-partisan** foundation created in 1986
- **Mandate:** to improve relations and cooperation between the European Union and the countries in Africa, the Caribbean and the Pacific (ACP)
- **Board of Governors:** ACP and EU, ACP mainly
- **Policy framework:** the Cotonou Partnership Agreement; Joint EU-Africa Strategy; and other EU-A/C/P agreements
- **Work on Lisbon:** monitoring the implementation of the Lisbon Treaty, facilitated informal EU reflections, briefings to ACP (ambassadors, AUC, SA), participation to the EU Development Days...

Structure of the Presentation

I. The Lisbon Treaty in a nutshell

II. Changes in EU trade policy

1. New EU competences
2. Stronger role of the European Parliament

III. Implications for EPAs

IV. Changes beyond trade policy

Introduction

- Ongoing change process
- Uncertainty
- Formal rules versus practice
- Actors and partners will shape outcomes

The treaty in a nutshell



Changes in
trade policy



Implications for
EPAs



Changes beyond
trade policy

About the Lisbon Treaty

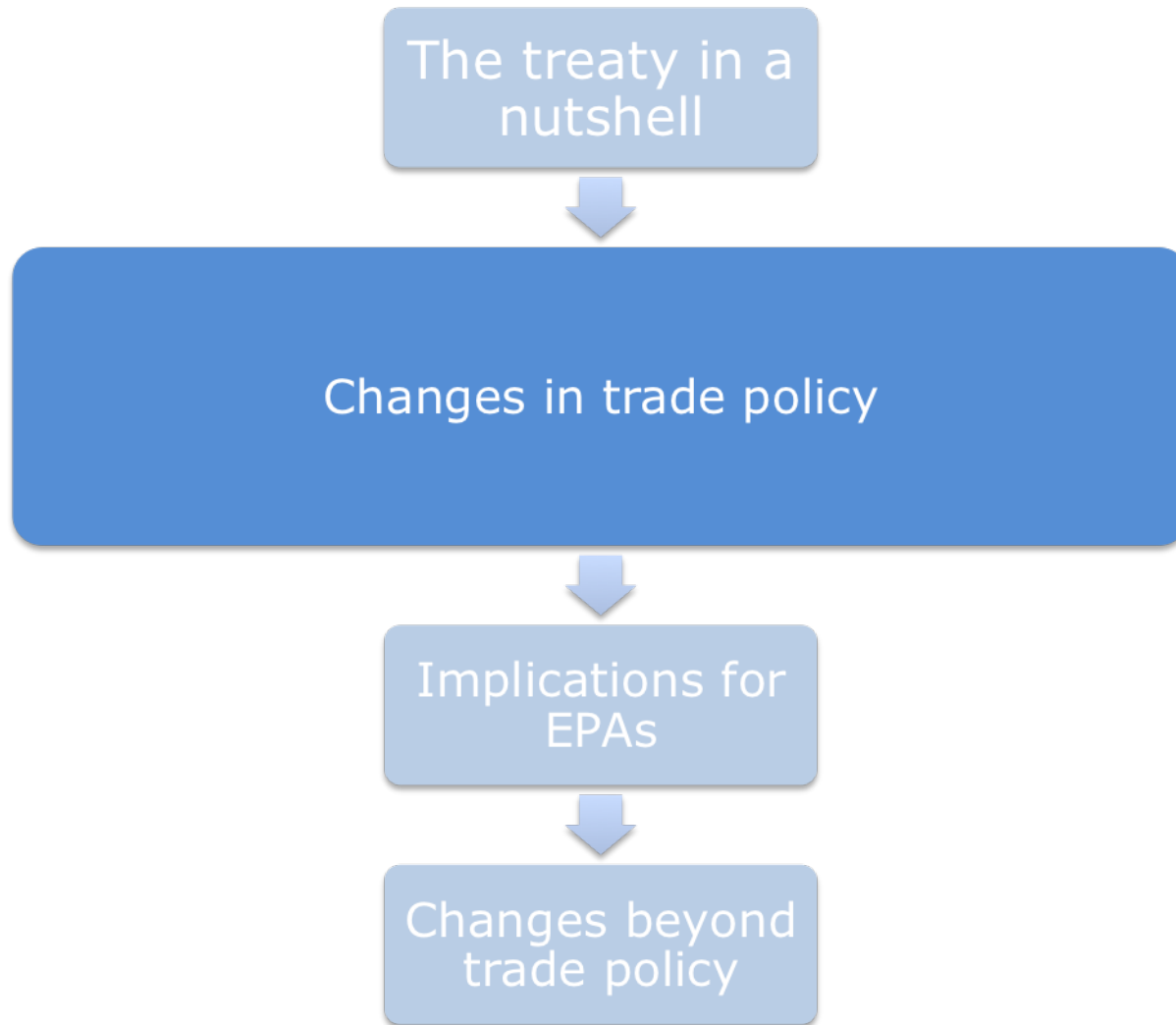
- Entered into force on 1 December 2009 as a framework to improve the effectiveness of an enlarged EU
- Amends earlier EU Treaties
- Gradual transformation of the EU from inward-looking community to one with **ambition to be a global player**
- **Ambition to address global challenges**
- New Expanded Objectives
- Greater emphasis on **consistency** of EU external action
 - Btw various EU policy areas
 - Btw. the EU and the EU member states

Institutional Novelties

- President of the European Council
- High Representative of the Union for Foreign Affairs and Security Policy (EUHR), whose mandate is to :
 - Implement the Common Foreign and Security Policy & Common Security and Defence Policy
 - Act as Vice-president of the European Commission
 - Chairs of the Foreign Affairs Council
 - Ensure consistency in EU external action
- European External Action Service (EEAS)

The European External Action Service

- Coordinating body of all EU external actions and policies
- Role: bring together and ensure consistency between the different strands of EU policy (environment, trade, security, migration and development)
- Unified geographical desk system, absorbing all geographical desks previously in the Commission
- Reshuffling of the European Commission Directorates (DG RELEX, part of DG DEV, but not DG Trade)
- Former EC Delegations become EU delegations (formally part of the EEAS)
- External representation of EU – End of rotating Presidency



Streamlined Competences and enlarged CCP

- Entire Common Commercial Policy (CCP), including **trade in services, trade-related aspect of intellectual property rights (IPR) and Foreign Direct Investment (FDI)** under exclusive EU competence
- extension of QMV (with only a few exceptions : health, education, audiovisual and cultural services: Art. 207(4))
- Transport, non-commercial IPR, portfolio investment(*) remains shared competences

Services

Consolidation of the current state of affairs

- EC was already de facto negotiating for the EU on all services
- EU market in services is far from unified today. EU's offer to third countries on services cannot be expected to change any time soon.
- QMV formal rule – reality is voting by consensus
- member state parliaments will not be asked to ratify all agreements any more, but in practise this ratification has been largely a “rubberstamping exercise for years”
- Mode 4: lack of political will in EU member states

Investment (1/2)

Until now

- EC negotiated market access liberalization (mode 3 GATT) and pre-establishment national treatment
- “post-establishment” provisions remained the sole prerogative of MS (around 200 BITs btw ACP and EU MS)

Now : EU competence to negotiate comprehensive international investment agreements and/or FTA incl. far-reaching investment provisions, ie. **both** pre and post establishment provisions

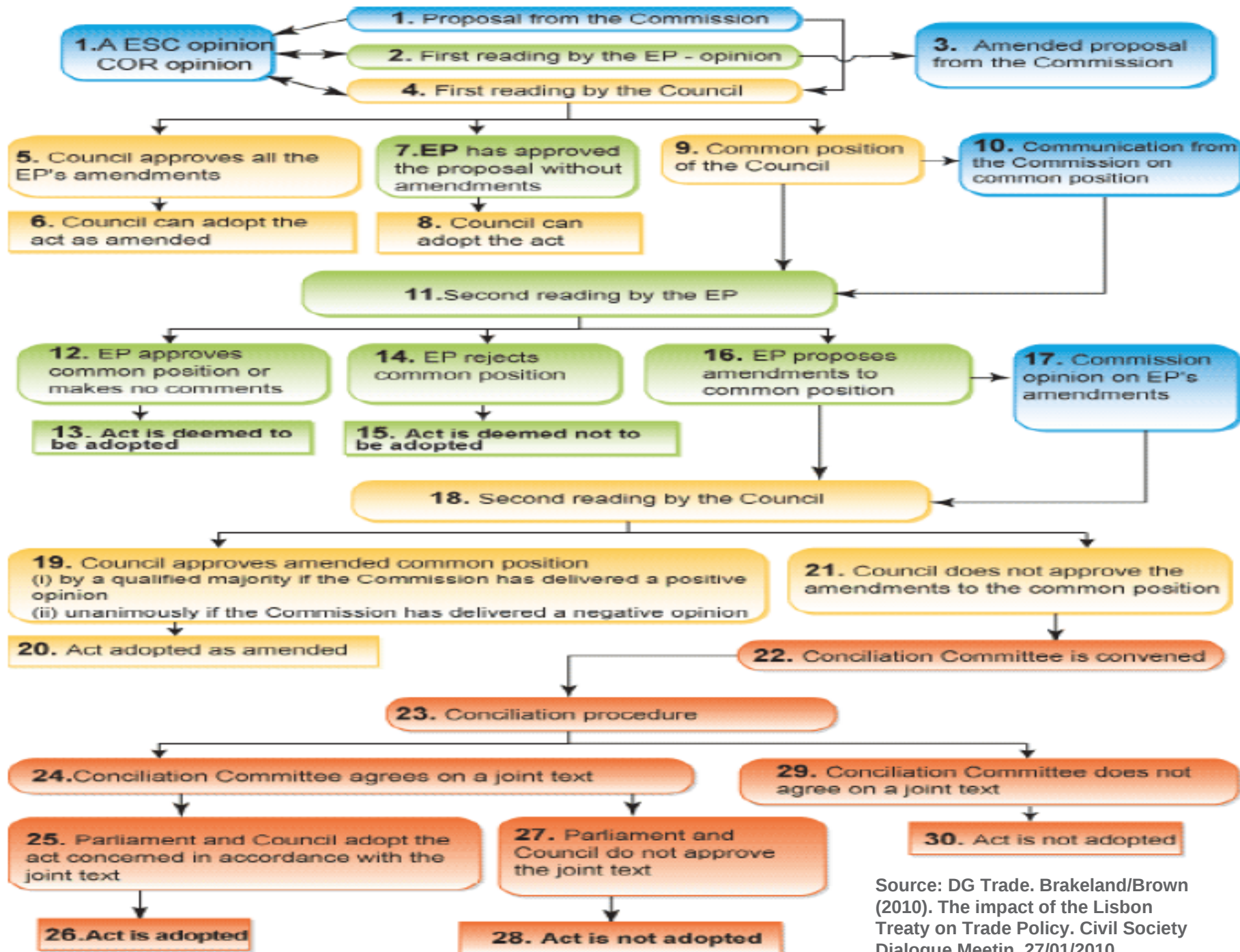
Investment (2/2)

- **07 July 2010:**
 - (1) EC COM: “Towards a comprehensive European International Investment policy”
 - (2) proposition for EP/Council Reg. for transitional arrangements offering guarantees to existing BITs
 - Followed by Council Conclusions (October 2010)/and motion for a EP Resolution
- ACP countries are not part of the priority agenda for investment negotiations
- The new EU’s Common Investment Policy could bring both Challenges and Opportunities for ACP countries : need to monitor the crafting process.

Increased Role of the EP (1/2)

Increased Role of the EP in legislative procedures

- Ordinary Legislative procedure “ on the measures defining the framework for implementing the common commercial policy” (Art. 207(2)-TFUE)
- Likely to result in more complex and potentially lengthy procedures
- New role of the EP as co-legislator (OLP) is relevant for :
 - ✓ GSP (currently under revision)
 - ✓ “essential” amendments in EU EPA Market Access (at least indirectly)
 - ✓ Antidumping
- New role for lobbying the European Parliament
- Difficult to know ex- ante in which direction the EP will push. But : transparency of information and possibility to follow debates

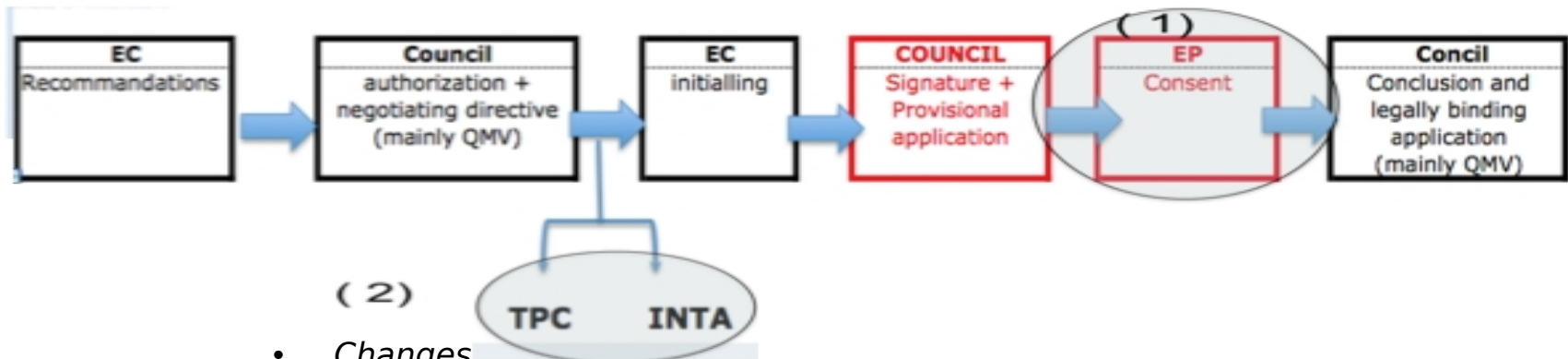


Source: DG Trade. Brakeland/Brown (2010). The impact of the Lisbon Treaty on Trade Policy. Civil Society Dialogue Meetin, 27/01/2010

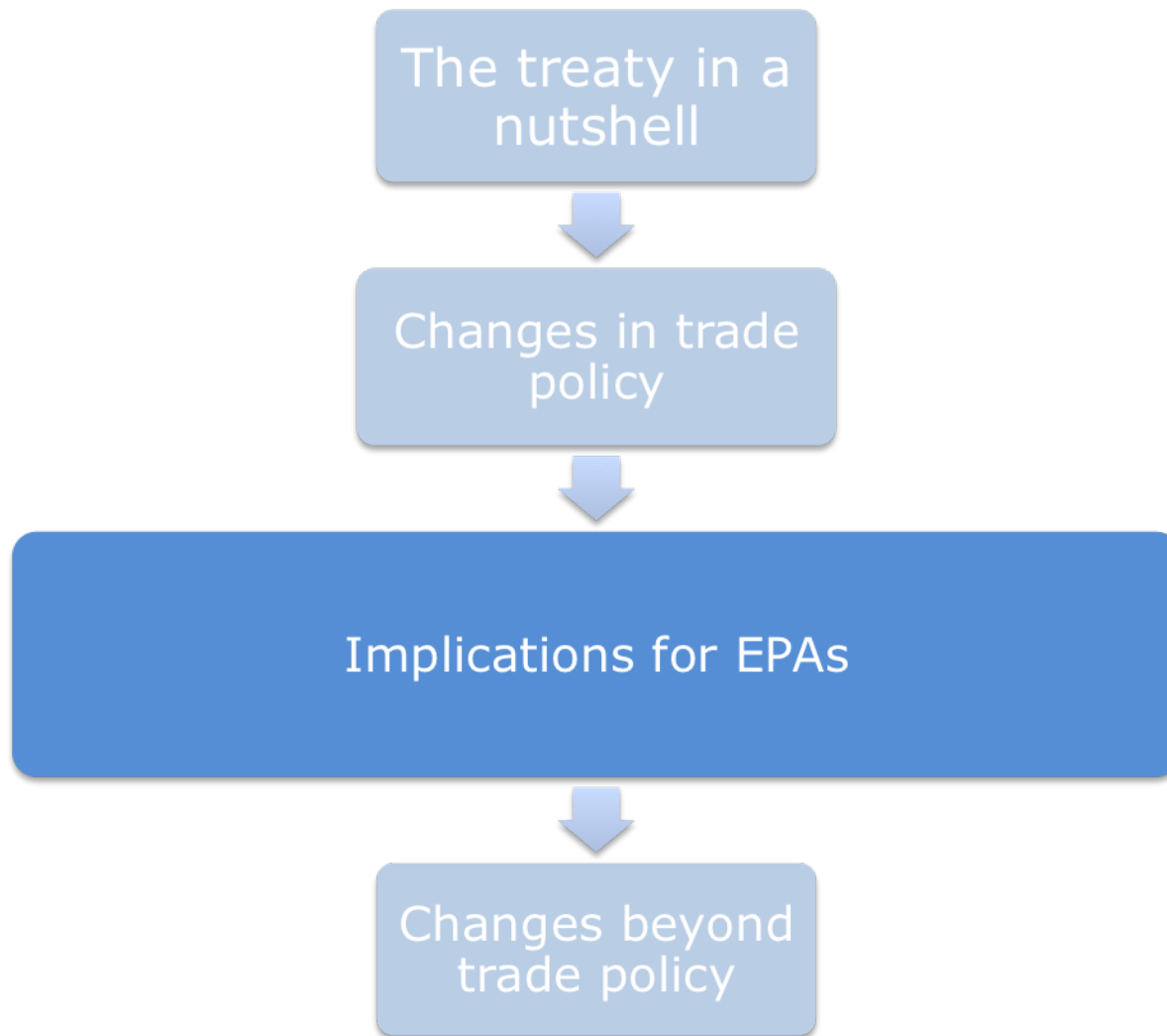
Increased Role of the EP (2/2)

Increase Formal Role of the EP in trade negotiations

- Remains Unchanged:
 - Council to authorize the Commission to open negotiations on the basis of Commission recommendations.
 - Commission/ DG Trade represents the Union as ‘the negotiator’
 - Commission conducts negotiations in consultation with the Trade Policy Committee (previously called ‘Article 133-Committee’) and regularly reports to it



- Changes
 - **EP has to give its consent to all trade agreements**
→ Previously, the EP’s approval (then called ‘assent’) was not required for trade in goods only
 - **Right to regular and substantive information**



Implications for EPAs

- **Lisbon Treaty unlikely to have a significant impact on EU-ACP (I)EPA**
- Services/Investment : no dramatic implications in the short to medium term
- EPA Market Access Regulation (Reg. EC No1528(2007))
 - under certain circumstances - could fall within the scope of OLP
 - However, rules for amendment of the Reg. falls within the scope of the Reg itself.
 - Politically sound however for EC to consult EP on major decisions (importance of trust in iterative encounters)
- Amending the text of an Interim EPA
 - Same as pre-Lisbon procedures, provided rules for amendments are incorporated in the text of the EPA itself
- Negotiating/Concluding an EPA
 - EP was already briefed in EPA negotiations on a monthly basis and had enjoyed the right of 'assent' in relation to agreements going beyond goods-only and/or establishing joint institutions (Pacific-EU IEPA has just been ratified by EP)
 - Yet EP likely to try to expand its influence in practice (submission of (informal) list of pre-conditions to consent upfront ?)
 - politicisation of EU's trade agreement ?
 - Shift in balance of power: game of alliance-building.

The treaty
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Changes beyond trade policy

Specific Issues for ACP Countries

- Removal of reference to ACP & EDF from Treaty
- unification of all geographic desks under EEAS and organization of EEAS along continental blocks
 - will ACP be marginalised as a group?

Trade Policy as part of the EU external action

- EU trade policy within the realm of EU external action.
- Trade policy shall therefore “be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter I of the Title V of the TEU”
- Development Cooperation: main focus is poverty reduction: “*Union development cooperation policy shall have as **its primary objective the reduction and, in the long term, the eradication of poverty.***”
- EU actions to be consistent with development policy to ensure **Policy Coherence for Development**
 - PCD remains unchanged but by means of the new focus on poverty reduction, objectives of development cooperation becomes a stronger demand.
- Development remains “shared parallel competence” btw EU and member states.
 - > but strengthened complementarity and coordination

Towards politicization and/or better consistency and coordination ?

HR/ EEAS mandate on consistency

- Risk of politicization of trade policy ?
- Coordination/Facilitation?
- EEAS to help unifying EU support in terms of aid for trade?
 - *agenda will be informed by the requests of EU member states and institutions, but also by the priorities expressed by third countries and regions in the political dialogue.*
- New EU interlocutors – New avenues to raise concerns at a political level?

→ **conclusion: some challenges, but also some opportunities**

Conclusion

- The Lisbon Treaty has introduced:
 - new decision-making rules
 - new institutional structures responsible for external relations,
 - increased responsibilities/powers of EU institutions, notably EP
- When it comes to trade negotiations (EPAs), no drastic changes (at least in the short run)
- But the previously technical areas of EU trade policy may become subject to political influences by an expanded set of actors -> **New opportunities for engagement and new challenges**
- Still some uncertainties : much will depend on how EU actors will interpret and implement the text in practice. Similarly though, much will also depend on African countries manage to seize opportunities offered by the Treaty

→ Key Question :

- How will Southern actors (notably African countries, regions and the African Union) engage with the new key actors?
 - in view of potential exertion of political influence on the EU's trade policy and its trade negotiations?
 - in view of cooperation on regional, continental and global issues?
 - In view of demanding that the EU respects needs of partner countries in all its policies (Policy Coherence for Development)?

Thank you !

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ECDPM works to improve relations between Europe and its partners in Africa, the Caribbean and the Pacific. L'ECDPM oeuvre à l'amélioration des relations entre l'Europe et ses partenaires d'Afrique, des Caraïbes et du Pacifique.