

Faculty of Law



Political Science
Department



Impact of the entry into force of the Lisbon Treaty on the EU Export Control Regime

Pr. Dr. Quentin MICHEL

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December 2009: entry into force of the Lisbon Treaty

Potential impacts regarding nuclear trade control regime might concern:

- Euratom Treaty **marginalisation**
- **EU external** representation
- **Drafting and adoption** of regulations and decisions

1. Euratom Treaty marginalisation on trade issues

- Adopted in 1958 and regularly amended to conform to the new provisions of the EC and EU treaties
- Chapters and articles regarding its **institutions and decision making process** have been **modified**
- The **core** of the Treaty has **never** been **substantially reviewed**

Nuclear common market, safeguards, property & ownership, promotion of research

Seems to be more and more **disregarded** by Member States if not informally rejected

- Euratom Treaty is a **satellite treaty** and is no longer considered (informally) as equal to the TUE/TFUE

- **Nuclear common market** has been informally reviewed by other treaties

Dublin declaration 1984, Annex IV of the Regulation 428/2009

Members States' policies regarding nuclear energy are less and less compatible

Germany, Ireland, Hungary, Austria, Sweden have attached a **Declaration to the Lisbon Treaty** stating that the Treaty *need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.*

2. EU external representation

- **Who speaks** on behalf of the European Union for **nuclear trade** issues ?
- The Treaty has strengthened the role of the **High Representative** of the Union for Foreign Affairs and established a position of President of the European Council
- The role of the HR is to
 - Chair the Foreign Affairs Council
 - Represent the European Union for CFSP related issues
 - Express the Union's position in international organisations and conferences

Nuclear trade policy in between former EC competencies and CFSP

- Nuclear trade concerns directly and indirectly a **number of issues** such as non-proliferation, disarmament, energy, safety, safeguards...
- Each issue could involve **several competencies** within the EU and between the EU institutions and Member States
- The role of **three potential EU actors has not (yet) been clearly defined**

HR, Commissioner, Rotating Presidency

April 2011, adoption by the UN General Assembly of a Resolution on *Participation of the European Union in the work of the United Nations(A65/L.64/Rev.1)*

Grant the EU as an observer the right to :

- Speak and make interventions
- Present proposals and amendments
- Exercise the right of reply

In the sessions and work of the General Assembly and its committees and working groups, in international meetings and conferences convened under the auspices of the Assembly and in United Nations conferences;

But for the Resolution the EU could be ...

.... the following institutional representatives: the President of the European Council, the High Representative of the Union for Foreign Affairs and Security Policy, the European Commission and the European Union delegations, which assume the role of acting on behalf of the European Union in the exercise of the competences conferred by its member States

3. Drafting and adoption of nuclear trade regulations and decisions

Two elements should be considered

- The **extension of the co-decision** mechanism to common trade policy and the Chair of the Foreign Affairs Council
- The **political role** of the European Parliament

The extension of the co-decision

- Article 207 TFUE has been modified to submit the **common commercial policy** to the “ordinary legislative procedure”
- **Co-decision** between the Council of Ministers (like it was before) and the European Parliament
 - Get a consensus on the same text in maximum three rounds (readings)

Consequences in comparison with the previous legislative procedure

- **Slowing down** the adoption of annual/regular revision of control lists

The 2009 version updating the Annex I of Regulation 428/2009 has not yet been adopted by the Parliament

- Necessity to be considered by **several parliamentary committees** and it has not been considered as a priority

- Nevertheless for the EP, it constitutes a **technical issue** based upon several commitments taken within a number of **other frameworks** and therefore the EP regards to adopt it without amending
such understanding might change
- Introduction of **Comitology** might be considered

The co-decision was not extended to CFSP

Consequently the implementation of UN embargoes by the EU requires **two decisions not adopted by the same institutions**

1. **External relations:** non-proliferation concerns :
Council

Council Common Position 2007/140/CFSP of
27 February 2007 concerning restrictive
measures against Iran (as amended)

2. **External trade:** Parliament and Council (co-decision)

Council Regulation (EC) No 423/2007 of 19
April 2007 concerning restrictive measures
against Iran (as amended)

The Chair of the Foreign Affairs Council

The chair will be held by the HR and **no longer by the Rotating Presidency**

Competencies concerning nuclear related issues :

- Adoption of political decisions regarding trade restrictions against certain States (Iran, North Korea, Syria,...)
- Adoption of decisions supporting or defining the EU policies (NPT Review Conferences, 1540 Committee, IAEA (LEU) bank,...)

MS and HR have the right of initiative but could a decision be adopted by **another Council configuration** ?

Political role of the European Parliament

- The extension of the ordinary legislative procedure to common commercial policy has constrained the Council **to confront and adjust its policies** to these of the Parliament

- Both institutions **are not led** by the same political priorities

Human rights considerations are one of the Parliament's priorities

- External influence on the definition of priorities

A reversal of the Parliament's position regarding CGEA for low-value shipments

To conclude

The Lisbon Treaty

- Does not review the Euratom Treaty but intensifies its marginalization
- The reform of the legislative and political procedure represents the main novelty; an implementation thereof might fundamentally change the EU policy on nuclear trade