

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
POLICY DEPARTMENT



**The implications of  
international economic  
and financial  
governance agenda for  
EU trade and  
investment policy**

INTA



## STUDY

# The implications of international economic and financial governance agenda for EU trade and investment policy

### ABSTRACT

Many of the rules, norms, principles and practices that are central to EU trade and investment policy today have been influenced by a wide range of different types of international organisations (IOs). This influence occurs through formal rulemaking, voluntary codes of conduct or standards, the provision of technical and scientific expertise or the dissemination of research and best practice. The influence is pervasive and decisions taken years ago in IOs can shape EU trade policy today. With the difficulties facing multilateral approaches to rulemaking in the World Trade Organisation (WTO) the impact of other IOs has increased.

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## List of abbreviations

BCBS	Basel Committee on Banking Supervision
CETA	Comprehensive Economic and Trade Agreement between the EU and Canada
CSR	Corporate Social Responsibility
EBRD	European Bank for Reconstruction and Development
EDRC	Economic and Development Review Committee
EIB	European Investment Bank
EP	European Parliament
ESCB	European System of Central Banks
FAO	United Nations Organisation for Food and Agriculture
FDI	Foreign Direct Investment
FSB	Financial Stability Board
G20	Group of Twenty
G7/8	Group of Seven / Eight
IASB	International Accounting Standards Board
IBRD	International Bank for Reconstruction and Development
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IEC	International Electrotechnical Commission
IFC	International Finance Corporation
ILO	International Labour Organisation
IMF	International Monetary Fund
IOs	International organisations
ISDA	International Swaps Dealers Association
ISO	International Organisation for Standardisation
MAP	Mutual Assessment Process
MIGA	Multilateral Investment Guarantee Agency
NTM	Non-tariff measures
OECD	Organisation for Economic Co-operation and Development
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade-Related Aspects of Intellectual Property
UNCITRAL	United Nations Commission on International Trade Law
UPU	Universal Postal Union
WB	The World Bank Group
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

## Executive Summary

Trade negotiations are no longer principally about the lowering of tariff barriers. The global trade policy agenda has expanded to include numerous issues, cutting across several areas of economic and financial governance. The European Union's most recent trade agreements incorporate standards, principles, and practices from a wide variety of sources. Many actors, including national governments, transnational groups, and international organisations seek to influence EU negotiating positions as well as negotiating outcomes, creating a very fluid process.

This study analyses how the rules, norms, and standards that make up the trade and investment policy of the European Union (EU) take shape. In particular, we focus on the role of international organisations (IOs) as rule-makers, and the dual roles of the European Union as rule-maker and 'rule-taker'.<sup>1</sup> Despite stalled formal multilateral negotiations on rulemaking, such as in the shape of the Doha Development Agenda (DDA) of the World Trade Organisation, international organisations remain important actors in many policy areas and can play decisive roles in shaping rules and practices. This study identifies many different ways in which international organisations can shape outcomes, including: convening power; naming and shaming; monitoring, evaluation, peer review, and benchmarking. IOs also influence policy development through the provision of scientific and technical expertise, the dissemination of research, guidance, best practices and voluntary standards that may be used as the basis for regulation. These various methods of influence can reinforce each other; for instance, standards and rules can be elaborated within one organisation and then implemented in another. We find that many of the rules, norms, principles, and practices that are central to EU trade and investment policy today were influenced by international organisations, sometimes over decades of policy debate and research.

The study surveys a wide range of international organisations and then presents two in-depth case studies. The case studies illuminate the interplay between the EU institutions, EU Member States, and various IOs in the shaping of trade and investment policy and practices. The first case study examines the influence of two small international organisations, ICSID (International Centre for Settlement of Investment Disputes) and UNCITRAL (United Nations Commission on International Trade Law), on investor-state dispute settlement. These organisations emerge as influential norm-makers. ICSID actively disseminated the idea of investor-state arbitration through the provision of technical expertise, the dissemination of best practices, and in particular through model clauses. UNCITRAL has been an important forum, in which member states and observers have elaborated normative regulations for adoption as international treaties, formulated model laws to serve as guides for local adaptation, and incorporated commercial customs and practice into formal legal frameworks. The second case study of the Organisation for Economic Co-operation and Development (OECD) shows the influence of this organisation on several areas of trade and investment policy. With regard to investment protection and liberalization, the OECD emerged as an important forum in the 1960s and has continued to work on investment for decades, resulting in multiple, influential draft agreements or codes, which were then incorporated in the domestic laws and investment treaties of EU member states. The failure of the OECD as a forum for negotiating a formal, binding Multilateral Investment Agreement (MAI) does not mean that it has not played a role in shaping investment policy. The OECD also shaped the procurement policies of EU countries over several decades, through research, national inventories of procurement standards, voluntary OECD guidelines, and draft guidelines that were then transferred to the GATT. Various codes developed in the OECD have been incorporated into EU legislation such as that on export credit. And research in the OECD had an important impact on agricultural trade negotiations.

<sup>1</sup> In the academic debate on this topic it is more often the practice to use the terms 'norm-maker' and 'norm-taker'.

This study also probes the EU's distinctiveness and effectiveness as an actor in international economic and financial governance. Previous studies have highlighted the role of the EU within particular policy areas, its ability to impact other countries through multilateral and bilateral fora, and the necessary conditions to exert such influence. The study briefly surveys the factors that shape EU participation in these IOs. These include;

- the competence of the EU in the area concerned, whether it is exclusive, shared, support and coordination, special competence, or exclusive member state competence;
- whether the EU is a full member, observer, or has no seat in the IO;
- how, if at all, a common EU position is arrived at through coordination in the EU; and
- the choice of forum (unilateral, bilateral or multilateral) as well as binding versus non-binding rules.

EU Member States, the European Commission and other EU institutions and stakeholders are overall well-represented in the international economic governance fora, but there is still more to be achieved in terms of coordination and 'speaking with one voice'.

The study has three primary implications for the European Parliament (EP), seeking to improve the efficacy of the EU as an actor in international economic and financial governance:

- the EP should seek to ensure the competence for engaging in IOs is clearly defined. EU competence or a clear mandate for coordination facilitates 'speaking with one voice' in international fora;
- where there is no formal EU competence the EU can still be a rule-maker provided there is effective coordination of Member States and the EU institutions;
- the EP can contribute to ensuring the EU is a rule-maker through its role in implementation. Where international codes, norms or standards are developed, there is generally scope for flexibility in how they are implemented. Early implementation can mean the EU shapes how the rules are interpreted; and
- the EP should seek to establish means of monitoring the work of the relevant IOs in order to assess whether this is in line with EU preferences.

# 1 Introduction

Trade negotiations are no longer principally about the lowering of tariff barriers. The global trade policy agenda has expanded to include *inter alia* non-tariff measures (NTMs), regulatory issues, sustainability issues, health and safety and consumer protection, as well as international economic and financial governance issues. To address these issues there is a need to develop international norms that affect competition in markets and thus trade and investment.<sup>2</sup>

But there is no one organisation working on rules and norms in all these policy areas. The World Trade Organization (WTO) provisions cover some core trade issues, but it has not proved to be the organisation in which detailed norms can be negotiated and agreed. One could argue that the demand for deeper economic integration has created a governance gap due to lack of comprehensive agreement on the multilateral level. The WTO has in any case always drawn of rules, norms or standards developed in other organisations, such as the OECD, the International Standards Organisation (ISO), Basel Committee on Banking Supervision (BCBS), etc. Consequently the norms that shape trade and investment policy and thus EU trade policy are shaped in a diverse set of IOs. Rules, norms and practices are established in fluid debate, where transnational groups, the IOs (as agents in other words the secretariat or staff), national governments and the EU compete. These norms and practices then in turn influence the EU policies on trade and investment.

This study analyses the role of IOs as rule-makers, and the dual roles of the EU as 'rule-maker' and 'rule-taker'. Rules with implications for global markets are promoted not only by formal organisations and international agreements, but also by transnational networks and private regulators. Within this context, the EU's distinctiveness and effectiveness as an actor in international governance has long been the subject of academic and policy debate. Previous studies have highlighted the role of the EU within particular policy areas, its ability to impact other countries through rules shaped in multilateral and bilateral forums, and the necessary conditions for the EU to exert such influence.<sup>3</sup> Recent literature has also underlined the ability of the EU to 'unilaterally regulate global markets' through the so-called 'Brussels Effect' and its 'market power'.<sup>4</sup>

The evolution of EU trade and investment policy also shows how the EU is a consumer of the norms or rules developed in a range of IOs. The EU trade policy has long drawn on rules developed elsewhere and applied them in multilateral and bilateral agreements. Inevitably it has tended to be more of a rule-maker when it has internal cohesion and dynamism. EU competence is also important. As the case study in investment will show, the extension of exclusive competence to cover Foreign Direct Investment (FDI) in the Lisbon Treaty has resulted in a shift from the EU being a rule-taker to a rule-maker. As trade and investment policy has become increasingly interrelated with other policy areas, it is essential to map the processes through which global norms are established in all areas that shape EU trade and investment policy. As a result of this review, the study observes that:

- Despite stalled formal multilateralism in some issue areas, IOs remain important actors and can play decisive roles in shaping the EU debate on norms and practices;

<sup>2</sup> Norms here are used to simplify the presentation. We define norms to include international standards that are predominantly voluntary in nature but which shape trade in goods and services as well as the coverage of labour and environmental and a wide range of other social provisions. Norms are defined to also include general principles or approaches to regulation. This study uses regulation, rules, and standards interchangeably and defines them as the 'rules established by expert bodies prescribing de jure or de facto the quality or performance of a given practice, procedure, or product'.

<sup>3</sup> For more information, see Bradford (2012) and Damro (2012, 2006).

<sup>4</sup> Bradford, 2014; Damro, 2012; Vogel, 1995

- The main channel through which IOs influence flows is soft law, standards and the specific decision-making procedures of the IO;
- The EU, either through the Member States or the European Commission and other EU institutions, is overall well-represented in international governance, but there is still more to be achieved in terms of coordination;
- Wide differences exist across policy areas depending on the institutional setting, the relative strength of other parties, the EU's competence, EU market power and regulatory capacity;
- Relations between the EU and some institutions need to be revised to reflect changes in both the EU and the IOs concerned;
- To map the influence of IOs it is sometimes necessary to consider decades rather than years of discourse. In some policy areas it is possible to identify shifts in the EU role from a predominantly rule-taker to a rule-maker due to the internal dynamism of the EU, the transfer of competences to the EU or improved coordination.

This study therefore looks at how EU trade and investment policy is shaped by IOs, and includes a range of actors, time frames, and varied means of influence. The influence of IOs is often more layered and informal than in the past, when formal intergovernmental negotiations dominated. More specifically the study assesses:

- The role of IOs in shaping EU trade and investment policy including international financial institutions, IOs active in international labour and environmental standards, as well as IOs that help set industrial standards and intellectual property rights;
- The role of the EU in these IOs and how the various EU actors (Commission, Council, Member States, the EP, and regulators) interact and;
- Provides a detailed case study of how IOs have over a long period shaped the norms in investment policy.

## 2 Rulemaking in international organisations (IOs)<sup>5</sup>

### 2.1 Definition and typology of IOs and standard-setting organisations

International institutions sometimes establish formal, binding rules and sometimes promote non-binding, voluntary norms in an informal setting. They are sometimes public bodies in which governments or public competent bodies are represented and sometimes predominantly or fully private intergovernmental organisations (IGOs). Below we present a typology to clarify the different types of IOs and distinguish between the institutional setting (public and private) and the selection mechanism (competing, non-market or market-based). The differentiation is accompanied by examples for institutions that could be classified using these categories.

**Table 1. Global rulemaking**

		Institutional setting	
		Public	Private
Selection mechanism	Non-market based	Type I formal international organisation; transgovernmental regulatory cooperation Examples: Kyoto Protocol; International Labour Organisation (ILO); International Monetary Fund (IMF); OECD	Type IV Transnational standard-making body Examples: International Accounting Standards Board (IASB), ISO, International Electrotechnical Commission (IEC)
	Market-based	Type II Competing standards developed in national, regional or multilateral public bodies Examples: EU Directorate-General for Competition versus US Department of Justice/Free Trade Commission; Codex Alimentarius versus Cartagena Protocol	Type III Competing standards set by individual firms; consortia; competing transnational standard-setting bodies Examples: Microsoft (Windows); Sony et al versus Toshiba et al (Blu-ray); corporate social responsibility (CSR) standard-setters

Source: from Büthe and Mattli (2011, pp. 19–33), Figures 2.1 and 2.2.

This study focuses mainly on Type I and Type II, the non-market and market-based public bodies, but where relevant we also refer to non-market private rule-setting (Type IV). Type III standard-setting, while often important is beyond the scope of the present terms of reference of a study of the influence of international organisations.<sup>6</sup> The next section looks at the role of the EU in the various institutions while Annex 1 gives a summary overview.<sup>7</sup>

### 2.2 Mechanisms for rulemaking

From the definitions above it follows that the institutional context is an important component in assessing how standards are developed and promoted. Institutions can ‘channel, structure, reconstitute or constrain the behaviour of powerful actors, offering in return the benefits of ensuring commitment, reducing uncertainty and informational asymmetries, and changing preferences and strategies, as well as

<sup>5</sup> For the sake of clarity the term ‘rulemaking’ is used in a general sense to cover all the means by which influence is exercised, including binding rules, codes of conduct, best practice, etc. In the discussion of detail there is then a differentiation between the different instruments.

<sup>6</sup> For more information, see Büthe and Mattli (2011).

<sup>7</sup> The scope of coverage in the study has been determined by the terms of reference from the EP.

the contours of internal political contests'.<sup>8</sup> More concretely IOs can influence the EU:

- through binding rules, such as those of the WTO that the EU is obliged to implement;
- by means of 'soft law' norms that are subsequently integrated into EU regulations thus making them in effect 'hard law';<sup>9</sup>
- through the dissemination of ideas or practices that the EU takes on board, integrates and then often disseminates further through its external policies;
- by shaping behaviour through the way they (the IOs) are organised or do business thanks to:
  - *Convening power*, discussion forum/platform and 'talking shops' (e.g. Group of 7/8, Group of 20 (G20), Financial Stability Board (FSB));
  - '*Naming and shaming*' (e.g. OECD's blacklist of particular jurisdictions as tax heavens);
  - Monitoring, evaluation, '*peer review*'<sup>10</sup> and benchmarking (e.g. OECD's review of domestic regulatory policies through the Economic and Development Review Committee (EDRC) or the FSB in the field of financial regulation);
  - Provision of scientific and *technical expertise* (e.g. United Nations Environmental Programme);
  - *Dissemination of research*, guidance and best practices (e.g. OECD; IMF);
  - *Standards setting*:
    - used by EU regulators as the basis for EU legislation (e.g. Basel Committee on Banking Supervision);
    - that binds member states of the organisation and signatories of specific conventions (e.g. Universal Postal Union (UPU) and the ILO);
    - that is voluntary but linked to certification schemes and require additional proof of compliance, often directed to companies (e.g. CSR, fair trade standards, environmental sustainability standards);
    - that is used to prove compliance with mandatory regulations (e.g. ISO; IEC; IASB; International Swaps Dealers Association (ISDA) for financial transactions)

The following section describes the interaction between the EU and these organisations. In all cases influence travels in both directions. In other words the EU is generally both a rule-taker and a rule-maker. Implications for EU policy are a matter of degree. In order to assess the balance between rule-taker and maker it is necessary to define more clearly the role of the EU in international organisations, which is the subject of the next section.

<sup>8</sup> Newman and Posner, 2015, p. 1324.

<sup>9</sup> In more systematic terms, Abbott and Snidal distinguish between hard and soft law where the former refers to 'legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law' (2001, p.421).

<sup>10</sup> Wolfe clarifies that 'OECD commitments work to the extent that they are subject to surveillance by fellow members' (2007, p. 4).

### 3 EU's role in international organisations

The role of the EU in these international organisations is shaped by:

- **The legal basis for participating in IOs and competence of the European Union in the policy area concerned namely exclusive EU, shared, supporting and coordination, special competence or exclusive MS competence.**<sup>11</sup> The EU competence is partially defined in Art 220(1) TFEU.<sup>12</sup> However, the Treaty does not elaborate or cover the role of the EU in inter-governmental forums such as the G20. This leaves scope for different interpretations and informal arrangements. In international financial organisations, Article 138 TFEU calls for cooperation between different bodies and that 'the Council, on a proposal from the Commission:
  1. [...] shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences.
  2. [...] may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences'.
- **Member States participation in the IOs and interaction with non-participating MS:** for some of the organisations reviewed it holds that only a limited number of EU MS have individual seats and a key challenge is how to ensure the involvement of those MS that are not participating or have less prominent roles.
- **European Union participation in the IO (full member, observer status, no seat) and framework for cooperation with international bodies:** e.g. Commission of the *Codex Alimentarius* under the United Nations Organisation for Food and Agriculture (FAO), the International Organisation for Legal Metrology, the International Organisation for Normalisation, the Economic Commission for Europe or the World Intellectual Property Organisation. At the same time in some participation of the EU is far from clearly defined (e.g. OECD).
- **Coordination and/or setting of a common EU position and its effectiveness:** EU Member States have gradually developed 'ad hoc and informal procedures to coordinate EU involvement in the IMF, the World Bank, the OECD, the Group of 7, the Group of 8, and the G20'.<sup>13</sup>
- **Choice of forum (e.g. bilateral, plurilateral or multilateral) and the type of instrument (binding versus non-binding):** the EU can choose between different IOs depending on which best serves the EU interests or preferences (forum-shopping<sup>14</sup> or forum linking) depending on the type of organisation (see above Table 1) and the type of influence (soft law, binding international commitments etc). The strategies the EU deploys then also substantially vary across these contexts.

Annex 1 summarises the EU role for some of the key institutions in international financial and economic governance as well as those institutions with which the EU interacts the most.

<sup>11</sup> Articles 3, 4, 5, and 6 TFEU.

<sup>12</sup> Art 220(1) TFEU: '1. The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialized agencies, the Council of Europe, the Organization for Security and Cooperation in Europe and the Organization for Economic Cooperation and Development'.

<sup>13</sup> Hodson, 2011, p.2.

<sup>14</sup> Forum-shopping is a term coming from international private law which applied in this context refers to the circumstances when 'a state's government talks to one organisation on a particular issue and decides then to move to another to pursue the issue' (Jørgensen and Laatikainen, 2012).

## 4 Review of specific policy areas and organisations

### 4.1 International economic and financial governance: Group of 7/8, 20, IMF, OECD, FSB

European institutions and EU Member States (MSs) are active participants in international financial and economic governance and their engagement with global rulemaking has become more evident as a result of the global financial and Eurozone crisis. The crisis has highlighted the need for better regulation and more effective implementation of standards. This section looks at the diverse institutions that shape international financial regulation and economic cooperation in general and discusses the interaction between these IOs, the EU institutions and the EU Member States.

#### 4.1.1 Group of 20

The Group of Twenty (G20) is not an international organisation in the legal sense<sup>15</sup> since it functions as an informal forum of states without a permanent secretariat. The G20 has a broad mandate that encompasses various areas of rulemaking. It was created in 1999 with the wide agenda to provide 'a new mechanism for informal dialogue in the framework of the Bretton Woods institutional system, to broaden the discussions on key economic and financial policy issues among systemically significant economies and promote co-operation to achieve stable and sustainable world economic growth that benefits all'.<sup>16</sup> Over time, its role has evolved to become the 'catalyst' for cooperation after the 2008 financial crisis and has largely taken the lead in global financial and economic coordination from the G8. An earlier EP study highlighted the significant role played by the G20, often deemed as the 'global club', in bringing together major economies to discuss economic and financial policies in the midst of the global financial crisis.<sup>17</sup> The G20 has become prominent in putting forward measures to overcome the economic and financial crisis and promoting rules to prevent collateral effects, including resisting protectionism and commitment to an open global economy. In particular, in 2008, G20 Leaders committed to protecting free trade and to refraining from 'raising new barriers to investment or to trade in goods or services, imposing new export restrictions, or implementing World Trade Organisation (WTO) inconsistent measures to stimulate exports'.<sup>18</sup> This commitment was further extended to 2014 at the 2012 Los Cabos Summit to 2014. A key difference between the more institutionalised IOs that rely on 'hard law and binding agreements', the G20 relies on soft law and informal agreements within an intergovernmental setting.<sup>19</sup> The G20 has been seen as the 'steering committee of global governance' and 'forum to provide political impetus'. Regardless of its informal and 'club-like nature', the G20 became the forum for discussing many overreaching issues particularly with regard to macroeconomic policy coordination such as:

- Overarching Framework for Strong, Sustainable and Balanced Growth<sup>20</sup>, a framework launched during the 2009 Pittsburgh Summit to promote shared responsibility for strong, sustainable and balanced growth and resilient international financial system, founded on the recognition that strategies and policies across member states are different. The framework covers: responsible fiscal policies, strong

<sup>15</sup> According to the definition of the International Law Association (ILA).

<sup>16</sup> G20, 1999. Communiqué: Finance Ministers and Central Bank Governors Meeting, Berlin, Germany, December 15-16, 1999. G20 Information Centre: <http://www.g20.utoronto.ca/1999/1999communiquie.htm>.

<sup>17</sup> The future of the EU trade policy. <https://polcms.secure.europarl.europa.eu/cmsdata/upload/e5c862e6-dd0d-4471-96af-79d7b3d0ff2f/The%20future%20of%20the%20EU%20trade%20policy.pdf>

<sup>18</sup> Declaration of the Summit on Financial Markets and the World Economy, 15 November 2008.

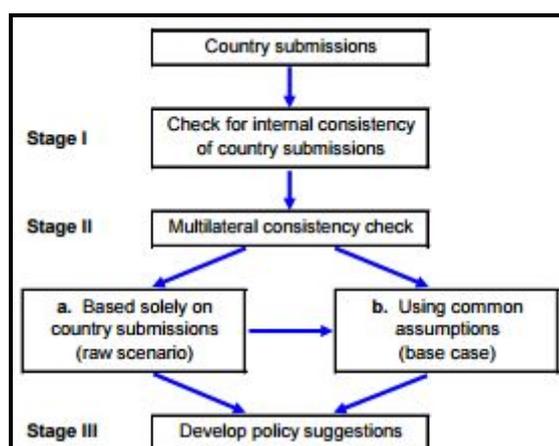
<sup>19</sup> Debaere et al., 2014.

<sup>20</sup> G20, 2009. G20 Leaders Statement: The Pittsburgh Summit September 24-25, 2009, Pittsburgh. <http://www.g20.utoronto.ca/2009/2009communiquie0925.html>.

financial supervision, balanced current accounts and open trade and investment, monetary policy aimed at price stability, structural reforms, and balanced economic development. It also led to the creation of the Mutual Assessment Process (MAP).

- Mutual Assessment Process, an approach to policy cooperation set up in the G20 Pittsburgh Summit, to ensure that collective action benefits all. The IMF was tasked to provide the technical analysis to achieve this i.e. analyse 'how the G-20's respective national and regional policy frameworks fit together' and '...develop a forward-looking analysis of whether policies pursued by individual G-20 countries are collectively consistent with more sustainable and balanced trajectories for the global economy'.<sup>21</sup> The process followed by the IMF in the assessment of G20 Policies is illustrated below.

**Figure 1. IMF Assessment of G20 policies**



- Financial regulation: Basel III bank capital requirements. The 2008 Washington Summit set out five principles for reform of financial markets, among which strengthening transparency and accountability and enhancing sound regulation. The G20 tasked 'key global accounting standards bodies to enhance guidance for valuation of securities, also taking into account the valuation of complex, illiquid products, especially during times of stress'.<sup>22</sup> As a result the Basel Committee of Banking Supervision (BCBS) launched an overhaul of the existing capital adequacy requirements. The resulting Basel III framework was endorsed by the G20 during the 2010 Summit in Seoul that led the path to the European Capital Requirements Directives (see 4.1.3 below).
- Tax havens: during the 2009 London summit member states agreed to take action against non-cooperative jurisdictions, including tax havens, highlighting that the 'era of banking secrecy is over'.<sup>23</sup> In their statement, members drew on an OECD's tax haven list that included three European Union Member States: Luxembourg, Belgium and Austria. Observers argue that the G20 reference to the list has come as a surprise due to an agreement during a preceding European Council meeting among MS that no EU country will be featured.<sup>24</sup>

Institutional reform: 2010 IMF reform and resources. Reform of IMF governance featured prominently on the 2010 Seoul Summit, where the reforms agreed included: shift of representation towards emerging markets and developing countries in terms of the number of votes, as well as a reshuffle of the European

<sup>21</sup> IMF, 2009. The G-20 Mutual Assessment Process and the Role of the Fund. <http://www.imf.org/external/np/pp/eng/2009/120209a.pdf>.

<sup>22</sup> G20, 2008. Declaration of the Summit on Financial Markets and the World Economy, Washington DC, November 15, 2008. <http://www.g20.utoronto.ca/2008/2008declaration1115.html#actions>.

<sup>23</sup> G20, 2009. London Summit – Leaders' Statement, 2 April 2009. [https://g20.org/wp-content/uploads/2014/12/London\\_Declaration.pdf](https://g20.org/wp-content/uploads/2014/12/London_Declaration.pdf).

<sup>24</sup> Nasra & Debaere, 2012, p. 14.

Executive Board members to include more representation from emerging markets. The EU itself defines the G20 as the 'premier forum for international economic cooperation' which functions thanks to 'through exchange of information, peer pressure and coordination' (European Union, 2011). Commitments in the G20 take the form of communiqués published after each summit and differ in their degree of prescriptiveness, binding and time horizon. The EU is represented by the President of the European Commission and the President of the European Council, who jointly set out EU's views on the G20 agenda. The EU is a full member alongside France, Germany, Italy and the United Kingdom, as well as Spain, which is a permanent invitee. The EU's membership at the G20 is partially due to its exclusive competence or shared competence with the EU Member States in the areas covered by the forum.<sup>25</sup> At the same time the Treaties do not provide a legal basis or guidance as to EU representation and preparation for G20 meetings, but such cooperation falls under article 4(3) TEU on the 'principle of sincere cooperation'. However, the stronger role of the G20 in global and economic financial governance prompted the need for coordination of an EU position. This was also driven by the non-G20 EU countries who wanted to secure a voice with regard to the G20 agenda. Positions of EU participants in the G20 parallel the different tasks of the forum and are mostly organised in two tracks: 'Finance' and 'Sherpas'.<sup>26</sup> In brief, concerning the 'Finance' track, coordination takes place in the Council for Economic and Financial Affairs' (ECOFIN) preparatory body – the Economic and Financial Committee (EFC) and its two subcommittees, i.e. Financial Services Committee (FSC) and the Sub-committee on IMF-related issues (SCIMF), based on information produced by the European Commission in cooperation with the Council Presidency. The 'Sherpas' track, on the other hand, is prepared and led by the European Commission and EU Member States participate by sharing their opinion during the meeting of Committee of Permanent Representatives (COREPER). Also coordination in advance of G20 meetings has evolved from the publication of 'agreed language' published by the European Council in 2008-2009 to the presentation of a joint letter of the Presidents of the European Commission and the European Council before the Brisbane Summit in 2014.<sup>27</sup>

As a result of the lack of formal coordination mechanism, representation of interests of the non-G20 EU members has been a contentious issue at several instances. The limited involvement of non-G20 EU Member States has led to situations where certain actions are demanded of them without their consent, examples discussed above include tax haven listing and the IMF reform. In-depth research shows that even though G-20 EU Member States still dominate the agenda, non-G20 EU countries may influence EU's position but their influence is varying and conditional on creating consensus between 'the dominant actors, via third countries and international organizations and by focusing on the EU legislative agenda'.<sup>28</sup>

Within G20, the EU has supported a wide remit beyond economic and financial issues and a wider membership. In particular, the EU has been recognised as having a substantial role in adding development policy to G20's agenda. This has not been the case in the field of climate change where the EU faced stronger opposition from the BRICs (Brazil, Russia, India and China) whose preference was for the UNFCCC as the forum for negotiating climate change (Debaere et al., 2014). According to a review of EU agenda-setting in advance of G20 meetings between 2008 and 2010, the EU has been able to influence the G20 agenda substantially (Wouters et al., 2013). However, it has occasionally failed to get

<sup>25</sup> For a detailed discussion of the accountability of the European Union in international economic fora, see series of papers prepared by Policy Department A at the request of the Committee on Economic and Monetary Affairs of the European Parliament:

<sup>26</sup> For a detailed discussion of the two tracks, see EP, 2015a. The European Union's Role in International Economic Fora Paper 1: The G20, pp. 44-47.

<sup>27</sup> Idem.

<sup>28</sup> Nasra and Debaere, 2012, p.18.

specific objectives adopted, in particular global tax on financial institutions and the 'Everything but Arms' initiatives.

The impact of G20 decisions has been most notable on EU financial regulation where EU legislation, strategies and documents invoke G20 commitments. One of the difficulties in assessing how much of the internal legislation is directly influenced by G20 commitments is that Member States have been reluctant to mention G20 in the final legislative texts.<sup>29</sup>

G20 commitments with particular relevance for EU trade policy include the fight against protectionism in all its forms, promotion of joint action to boost global growth and jobs, resolution of currency issues and agreement to move to more market based exchange rates and to enhance exchange rate flexibility. These commitments are reflected in EU's monitoring of potentially trade restrictive measures as well as reforming an ensuring stability of economic governance in the EU and the euro area. The compliance of the EU with the G20 commitments has been explored in detail in the compliance reports of the G20 Research Group at the University of Toronto and *The European Union's Role in International Economic Fora Paper 1: The G20*.

The EU has responded promptly to some G20 initiatives, such as those on banking regulation but lagged in others, such as OTC derivatives (Wouters et al., 2013). The 2009 de Larosière report<sup>30</sup> setting out the future of European financial regulation and supervision explicitly referred to the need for the EU to 'work with [our] partners to converge towards high global standards, through the IMF, FSF, the Basel committee and G20 processes (p.3).' The de Larosière report paved the way for both the European Systemic Risk Board (ESRB) and the developments in the OTC derivatives markets, agreed by the European Parliament and the Council.<sup>31</sup> Influence therefore flows both ways: the EU promotes issues on the G20 agenda and the G20 and the specific IOs coordinated by the G20 shape EU policy.

#### 4.1.2 Financial Stability Board (FSB)

Involvement of the EU and - some of - its Members States in promoting financial stability also takes place through the FSB the successor to the Financial Stability Forum (FSF). The FSB monitors and makes recommendations about the global financial system. It coordinates national financial authorities and international standard-setting bodies in the process of developing regulatory, supervisory and other financial policies. The FSB is composed of the Plenary decision-making body, a Steering Committee to conduct day-to-day operations and three Standing Committees on Assessment of Vulnerabilities (SCAV), Supervisory and Regulatory Cooperation (SRC), and Standards Implementation (SCSI). The FSB's work is supported by a Secretariat, hosted by the Bank for International Settlements (BIS) in Basel, and six Regional Consultative Groups (RCGs).<sup>32</sup> The RCGs expand the reach of global financial rules beyond the members of the G20 and promote implementation within their respective regions. RCGs are chaired by representatives of one FSB member and a non-member institution. In the case the Europe RCG these posts are currently held by Anne Le Lorier, First Deputy Governor, Banque de France, and Jon Nicolaisen, Deputy Governor, Norges Bank.

The Plenary, currently chaired by Mark Carney, Governor of the Bank of England, is the sole decision-making body and is made up of the representatives of all Members. Currently this consists of: 54

<sup>29</sup> For further discussion based on expert interviews, see Debaere (2015).

<sup>30</sup> The High-Level Group on Financial Supervision:

[http://ec.europa.eu/internal\\_market/finances/docs/de\\_larosiere\\_report\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf)

<sup>31</sup> European Parliament legislative resolution of 29 March 2012 on the proposal for a regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories.

<sup>32</sup> Americas, Asia, Commonwealth of Independent States, Europe, Middle East and North Africa, and Sub-Saharan Africa region

representatives from 25 countries<sup>33</sup>, 6 representatives from 4 international financial institutions<sup>34</sup> and 9 representatives from 6 international standard-setting, regulatory, supervisory and central bank bodies<sup>35</sup>. EU Member States participating include: France, Germany, Italy, The Netherlands, and Spain, while the European Union is represented by the ECB and the Commission. The decisions in the Plenary are taken by consensus and are not legally binding. The main channels of influence are through 'moral suasion' and peer pressure. At the same time member countries commit to<sup>36</sup>:

- Maintain financial stability;
- Ensure openness and transparency of the financial sector;
- Implement international financial standards and 12 key International Standards and Codes, covering [Macroeconomic Policy and Data Transparency](#), [Financial Regulation and Supervision](#) and [Institutional and Market Infrastructure](#);
- Subject themselves to peer reviews, based on, among other things, IMF/World Bank public Financial Sector Assessment Program (FSAP) reports.

As in other financial standard setting bodies, members are represented by central banks, supervisory and regulatory agencies. Financial regulation is primarily based on soft law, best practice, models and benchmarking and more rarely enforceable binding obligations. Most importantly, financial regulation remains a shared competence between the EU and EU Member States, which becomes particularly relevant in an area where some MS are globally recognised (UK, Germany and France) (EP, 2015b).

Finally, the relationship between the FSB and other international institutions is based on cooperation and reinforcement. Even though the FSB was developed as an initiative of the G20, it is a self-standing institution with wider membership, but the G20 can often support the FSB agenda and views. In its monitoring role, the FSB relies on IMF/World Bank reports as well as the standards set by other bodies as indicated above. The FSB shapes the agenda and work of the specialist standards bodies in financial markets and thus indirectly the regulatory norms and the degree to which they are promoted and enforced. International trade depends on a stable financial system, so in this way the FSB is important for trade. The recent global financial crisis also had a direct negative effect on availability of trade finance that resulted in reduced trade flows.<sup>37</sup> At the same time trade finance is also influenced by capital requirements and regulations in the context of Basel III, which is briefly reviewed in the next section.

### 4.1.3 Basel Committee on Banking Supervision (BCBS)

BCBS, a key standard-setter in banking, shares the same Secretariat with the FSB. The BCBS does not possess any formal supranational authority and its decisions do not have legal force. The BCBS relies on its member organisations to implement and comply with the standards developed and as a result has more often referred to as a 'transgovernmental forum' or a 'network of national regulators'. Its members include central banks and banking regulators of 28 jurisdictions, of which 9 are EU MS. As set out in the table in the annex the ECB is a full-member with two seats, while the Commission and the European

<sup>33</sup> Member Jurisdictions: Argentina, Australia, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Mexico, The Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Turkey, United Kingdom, United States of America, European Union;

<sup>34</sup> Bank for International Settlements (BIS), Organisation for Economic Co-operation and Development (OECD), International Monetary Fund (IMF), the World Bank

<sup>35</sup> Basel Committee on Banking Supervision (BCBS), International Association of Insurance Supervisors (IAIS), Committee on the Global Financial System (CGFS), International Accounting Standards Board (IASB), Committee on Payments and Market Infrastructures (CPMI), International Organization of Securities Commissions (IOSCO)

<sup>36</sup> FSB website.

<sup>37</sup> See Brandi and Schmitz, 2014, for a detailed review on the link between trade finance, international trade and crises.

Banking Authority have observer status. The ECB has held two seats since 2014 due to its role as the supervisory authority for the countries participating in the Single Supervisory Mechanism. In addition to the legal basis outlined above, Article 6 of Protocol (no 4) on the statute of the European System of Central Banks (ESCB) and of the European Central Bank define their roles in international cooperation.<sup>38</sup>

The Committee is the ultimate decision-making body of the BCBS and has responsibility for ensuring that its mandate is achieved. Decisions are made by consensus. In line with the mechanisms described above, the BCBS sets standards for the regulation and supervision of banks that constitute minimum requirements for members. These standards need to be incorporated into the legal framework of each member country within specific timeframes and members should 'seek the greatest possible equivalence of standards and their outcome'. The BCBS also provides guidelines to support the implementation and monitoring of standards, as well as a forum for the dissemination of regulatory best practice among members.

The BCBS has significantly shaped EU policy because the EU has incorporated Basel I, II, and III into the legally binding provisions of the Capital Requirements Directives for all banks and investment companies, not only those internationally active as required by the Basel accords. The fact that the EU's single market programme was developed and revised in parallel with the negotiation of Basel I, II and III, clearly illustrates the influence of the BCBS and the interaction between EU and international policy making in the field of global financial regulation.

#### 4.1.4 Organisation for Economic Co-operation and Development (OECD)

The OECD has responsibilities for monitoring the implementation of the G20 standstill agreement on trade (avoidance of restrictive measures following the 2008 financial crisis). But it has long played an important role in shaping trade and investment policy and the norms developed have shaped wider multilateral approaches in United Nations Conference on Trade and Development (UNCTAD) and the GATT/WTO (see the following case study of the OECD in Section 7). OECD coordination through the [International Collaborative Initiative on Trade and Employment \(ICITE\)](#) also has implications for the EU.<sup>39</sup>

Another concrete illustration of how the work of the OECD has shaped EU policy can be found in norms on export credit and role of export credit agencies (ECAs).<sup>40</sup> In 1978, due to their potential trade distorting effects, OECD members adopted an [Arrangement on Officially Supported Export Credits](#). The Arrangement contains a 'comprehensive set of guidelines governing the most favourable financial terms and conditions that ECAs may offer [such as] minimum fixed-interest rates, maximum repayment terms and risk-based minimum premium rates' (European Parliament, 2013). The export credits that are admissible under the agreement fall under [Annex I: Illustrative List of Export Subsidies of the 1995 WTO Agreement on Subsidies and Countervailing Measures](#). The Arrangement was directly incorporated into EU law by [Regulation 1233/2011](#), stating that the guidelines contained in the Arrangement shall apply to the EU (Art.1). Moreover, the preamble highlights that 'the Commission...should support the efforts by the OECD in reaching out to non-Participants to the Arrangement...[and] should use bilateral and

<sup>38</sup> Article 6 International cooperation 6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented. 6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions. 6.3. Articles 6.1 and 6.2 shall be without prejudice to Article 138 of the Treaty on the Functioning of the European Union.

<sup>39</sup> ICITE, launched in 2010, is a joint undertaking of 10 leading international organisations requested by G20 Leaders to take a fresh look at the relationship between trade and jobs. According to their mission, ICITE aims to: 'i) seek a better understanding of how trade interacts with employment, ii) promote dialogue on these issues, and iii) develop policy-relevant conclusions. An inter-organisation steering group is guiding the implementation of the project' (OECD, 2015).

<sup>40</sup> ECAs are 'mostly government or quasigovernmental agencies, but may also be private companies empowered to operate as public "insurers of last resort" on behalf of governments' (EP, 2013).

multilateral negotiations in order to establish global standards for officially supported export credits' (Preamble clause 1). Therefore, in addition to directly adopting OECD's rules on ECAs, the Commission is charged with the role to promote these rules through EU's trade policy.

Similarly in June 2015, the Commission proposed an Action Plan for Fair and Efficient Corporate Taxation that is inspired by OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, which was in turn initially suggested during the G20 meetings back in 2013. The Action Plan establishes a new approach to corporate taxation in the EU to 'tackle tax avoidance, ensure sustainable revenues and foster a better business environment in the Single Market' thus also improving access to the EU market.<sup>41</sup> The measures are further aligned with the OECD's BEPS reforms as amended to meet the EU's particular challenges and needs.

Another example of the OECD as a norm setter is the work it has done on conflict minerals as set out in the guidance and due diligence on conflict minerals.<sup>42</sup>

In the area of investment early OECD norms in the shape of the Code on Liberalisation of Current and Invisible Operations and the Code on Liberalisation of Capital Movement in the 1960s shaped the investment policies of OECD countries including EU Member States. The Codes 'were important as a focus for an emerging normative consensus' (Wolfe, 2007, p.5). These codes were accompanied by the 1976 *Declaration on International Investment and Multinational Enterprises*. Even though all three at the time failed to gather support for a multilateral agreement, the OECD's approach paved the way for further discussions at the international level. The OECD also shaped the norms of international investment policy that are the subject of the contemporary debate on investment. For a more detailed discussion on the OECD and investment see section 7.

#### 4.1.5 International Monetary Fund and the World Bank Group

The IMF's original mandate included promoting international monetary cooperation, such as issues related to exchange stability, balance of payments, and the expansion and balanced growth of global trade. The IMF's mandate was updated in 2012 to include all macroeconomic and financial sector issues that bear on global stability. Each of the five distinct entities of the World Bank Group has its own mandate. The IBRD provides loans, guarantees, risk management products, and expertise on development-related disciplines. The IDA provides concessional finance; such that in 2015, 77 countries were eligible to receive IDA assistance. The IFC focuses on facilitating private sector engagement in developing countries, while MIGA provides political risk insurance, and ICSID facilitates dispute resolution between investors and states.

The EU is represented through its MS in both the IMF and the World Bank Group. Germany, France, and the UK have significant influence due to their permanent seats on the Executive Boards of both organisations. EU Member States join each of the five components of the World Bank Group separately, where all 28 MS are members of the IBRD, IDA, IFC, and MIGA and all except Poland are members of the ICSID.

In the IMF the ECB has observer status, which is not the case in the WB. Since 1999, the ECB's status has allowed it to participate in the meetings of the Executive Board on issues that fall within the ECB competence or which are of mutual interest to the ECB and the IMF. The European Commission participates as an observer in the IMF's International Monetary and Financial Committee and as observer in the World Bank's Development Committee. Coordination of EU participation in the World Bank is not

<sup>41</sup> Questions and Answers on the Action Plan for Fair and Efficient Corporate Taxation in the EU: [http://europa.eu/rapid/press-release\\_MEMO-15-5175\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5175_en.htm).

<sup>42</sup> <http://www.oecd.org/corporate/mne/GuidanceEdition2.pdf>

as formalised as in the IMF (discussed below) and in some respects depends on the issue concerned. On the other hand, both the IMF and the WB have established a long-standing cooperation with the EU institutions and the latter benefit from the expertise, guidance and discussion forum provided by the former.

Coordination among EU Member States on matters covered in the IMF takes place in the Sub-committee on the IMF (SCIMF) in Brussels and EURIMF in Washington. SCIMF is a sub-committee of the Economic and Financial Committee (EFC), which is in charge of the preparation of the ECOFIN meetings. The SCIMF is composed of representatives of each EU member state, the European Commission and the ECB. The SCIMF monitors IMF activities and drafts positions, but these are not binding on the MS that lead in the Executive Board. The SCIMF also prepares statements on IMF issues that are then delivered by the Council Presidency at the annual and fall meetings of the IMF and the World Bank. The European Commission and the ECB are closely involved in this process by providing draft common positions and background information. The Eurogroup Working Group cooperates with the Commission and ECB in supporting the Eurogroup and the President in preparing discussions. Coordination among EU Member States and between MS and institutions at the WB is much less formalised than in the IMF and a much more recent trend. One of the reasons for this is the different actors involved on World Bank issues, due to its broad mandate across the different composite bodies, as well the different relations between WB and the EU and MS in political and in technical contexts. On one hand, policy coordination has evolved in Washington through the EU Presidency, resulting in ad hoc coordination meetings and statements, but this largely depends on the country holding the Presidency. On the other hand, operational aspects are handled by a number of Commission DGs. This includes the so called 'Limelette process', bringing together World Bank officials working on Africa and DG Development; protocols on geographical cooperation and a framework agreement on co-financing.<sup>43</sup> Also the World Bank Group has a Brussels office, dedicated to facilitating and cultivating the partnership between the World Bank Group and EU institutions.

EU MS also make use of informal mechanisms to maximise EU influence in the IMF.<sup>44</sup> As seen in 4.1.1, the changes witnessed in the IMF during the post 2008 financial crisis have been seen as promoted by the EU that pushed for agreed language on 'IMF surveillance and IMF reform'.<sup>45</sup> The global financial crisis had particularly strengthened EU-IMF cooperation in the context of European sovereign debt crisis and the current 'Troika' efforts towards Greece. Within this environment, since 2009 the EU has become the second largest donor to IMF capacity-building and technical assistance projects.<sup>46</sup> In 2015, to reflect this and changes in financial regulations in the EU, the IMF and the EU signed a renewed 'Framework Administrative Agreement for Capacity Development Cooperation'. In pursuing its mission in technical assistance and capacity building, the IMF also cooperates closely with the WTO, the World Bank, the OECD, G20, FSB as well as regional organizations.<sup>47</sup>

Beyond capacity building, the EU also cooperates with the IMF and other institutions in its financial assistance mechanisms. They include:

- European Financial Stabilisation Mechanism (EFSM) supports any EU MS;
- Balance-of-payments programme (BOP) supports non-euro area MS;

<sup>43</sup> For more information, see ADS Insight, 2006. European Coordination at the World Bank and International Monetary Fund: A Question of Harmony.

<sup>44</sup> Hodson, 2011.

<sup>45</sup> Wouters et al., 2013.

<sup>46</sup> IMF, 2015.

<sup>47</sup> EP, 2015b.

- Macro-Financial Assistance (MFA) supports partner countries currently following an IMF programme.<sup>48</sup>

This study briefly turns to MFA, since it complements and is conditional on the third country's relationship and track-record with the IMF. The MFA is also conditional on 'the respect of human rights and effective democratic mechanisms, including a multi-party parliamentary system and the rule of law'.<sup>49</sup> In essence MFA is an exceptional EU crisis response instrument available to the EU partner countries, which are geographically, economically and politically close to the EU, experiencing severe balance-of-payment problems. Since the funds are borrowed by the EU on capital markets and then on-lent to partner countries, the recipient countries benefit from more attractive conditions than they would have access to otherwise. The most recent recipient of the MFA has been Ukraine which is now part of a third MFA programme since 2010. Financial assistance to Ukraine and other non-EU countries is coupled both with the technical assistance projects described earlier and development aid.

Concerning its development policy the EU has been seen by observers as a 'follower' or a 'norm-taker' from the World Bank as well as other IOs such as the UN, the G7/G8, the OECD and the IMF that shape policy.<sup>50</sup> The World Bank has been seen as the central actor in development policy due to its 'intellectual monopoly' and 'knowledge bank', in contrast to the EU, which has been seen as 'lacking capacity to exert influence'.<sup>51</sup> This was also the view of a 2002 OECD-DAC report that identified 'limited analytical capacity, bureaucratic procedures and member states' reticence' as factors limiting EU's ability to set the agenda, going as far as blaming the EU for being a 'free-rider on other institutions' analysis'.<sup>52</sup> Since the 1990s the EU has implemented a number of reforms to improve the framework for the management of aid. These include the set-up of EuropeAid, involvement of EU/EC offices, Country Strategy Papers, Policy Coherence for Development, and most recently, the European External Action Service.<sup>53</sup> This stronger institutional architecture has been supported by a number of policy initiatives such as the 2015 European Year for Development, European Development Days and the annual European Report on Development. The EU has both strengthened its capacity and involvement in the field of development policy. Moreover, due to the cooperation and partnership between the EU and the World Bank, the transfer of influence has become more balanced with the EU being both a rule-maker and a rule-taker.

Although discussed in wider international settings the EU's interactions with 'the rest of the world' in financial governance can be seen as predominantly 'transatlantic' because of the continued strength of the US and EU in international finance (Mügge, 2014a, p. 3). This dialogue has taken place in the EU-US Financial Markets Regulatory Dialogue. In the early years, the EU emulated the rules negotiated on the global scene, particularly in banking, where Basel I 'became a template for European legislation' (Mügge, 2014a, p. 3). As noted above the revisions introduced by the Basel Committee on Banking Supervision (BCBS), negotiated in parallel to the EU single market, shaped the foundations of EU's banking regulations. With the launch of the EU single market and increased internationalization of financial exchanges between European and US-based companies, the EU aimed to bring its rules closer to those of the US through its Financial Services Action Plan (FSAP) (Mügge, 2014a).

<sup>48</sup> EC, 2015. The EU as a borrower: [http://ec.europa.eu/economy\\_finance/eu\\_borrower/index\\_en.htm](http://ec.europa.eu/economy_finance/eu_borrower/index_en.htm)

<sup>49</sup> EC, 2015. Macro-Financial Assistance to non-EU countries: [http://ec.europa.eu/economy\\_finance/eu\\_borrower/macro-financial\\_assistance/index\\_en.htm](http://ec.europa.eu/economy_finance/eu_borrower/macro-financial_assistance/index_en.htm)

<sup>50</sup> Wouters et al., 2013.

<sup>51</sup> Orbie et al., 2013, p.4.

<sup>52</sup> OECD-DAC, 2002, p. 60.

<sup>53</sup> Ibid at 59.

## 4.2 International labour standards setting: International Labour Organisation

The EU draws substantially from ILO standards in both its internal provisions on labour and employment conditions, as well as in its trade agreements through the explicit inclusion of ILO core labour standards (CLS) in preferential trade and investment agreements.

In the ILO, the EU is represented by its Member States and the EU based business and labour organisations that form the tripartite structure of the ILO. It is fair to say that European norms have significantly shaped the development of the ILO and international labour standards, as well as the tripartite nature of the ILO. Despite its lack of a formal seat, the EU has also been active in the drafting of ILO conventions with varying degrees of success.<sup>54</sup> The complex relationship between the ILO, EU Member States and the EU institutions has given rise to an extensive comparison by the European Commission of current ILO Conventions and the EU *acquis*.<sup>55</sup> This shows that 36 out of 72 Conventions fall under EU and Member State shared competence, with a significant minority 29 out of 72 coming under implied competence.<sup>56</sup> In the areas where Member States are free to act autonomously, they are subject to the 'duty of sincere cooperation'. This is valid for the areas defined in Article 4(2) TFEU: social and employment policy, the internal market, and the area of freedom, security and justice. In the limited number of cases, where the ILO Conventions are in conflict with the EU *acquis* the Commission does not promote ratification by the Member States.<sup>57</sup>

Broadly speaking, there are two mechanisms through which the EU recognises core labour standards (CLS) as set by the ILO: internal and external action. Internally, the EU regulates the behaviour of MS via 'protection of workers' rights through Treaty articles, EC directives relating to social policy, soft law initiatives, and the fundamental rights jurisprudence of the Court.<sup>58</sup> In its external relations, the EU can attach incentives and conditionality linked to CLS compliance to trade agreements. The 1994 Council Resolution has guided the promotion of CLS across both dimensions.<sup>59</sup> Overall the EU has reiterated the importance of CLS within its communications of 2001 and 2004 and received recognition for its role in the World Commission on the Social Dimension of Globalization.<sup>60</sup>

After attempts by both the EU and US to include links between CLS and trade in the WTO, the EU has moved to unilaterally 'require compliance with international labour standards in various preferential trade and aid agreements'.<sup>61</sup> This has been the case in the 2000 Cotonou Agreement and the ensuing Economic Partnership Agreements (EPAs) with Africa, Caribbean and Pacific (ACP) states as well as EU 'Generalized System of Preferences' (GSP). This is confirmed by the ILO, which recognises that EU agreements<sup>62</sup>:

- Focus on social development objectives;
- Promote social rights and cooperation (also issues such as gender and health);

<sup>54</sup> Kerremans and Orbie, 2009; Novitz, 2005; Orbie and Babarinde, 2008

<sup>55</sup> <http://ec.europa.eu/social/BlobServlet?docId=12598&langId=en>

<sup>56</sup> Ibid.

<sup>57</sup> Ibid. see p. 70.

<sup>58</sup> Novitz, 2005, p. 215.

<sup>59</sup> Council Resolution of 6 December 1994 on certain aspects of a European social policy: a contribution to economic and social convergence in the Union [1994] OJ C 368/6.

<sup>60</sup> Orbie et al, 2013.

<sup>61</sup> Novitz, 2005, p. 232.

<sup>62</sup> [http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/WCMS\\_115822/lang--en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/WCMS_115822/lang--en/index.htm)

- Do not include a trade sanctions-based approach to social and labour standards; but
- In GSP and GSP+, follows an incentives-based approach where compliance with labour standards brings about special reductions in tariffs.<sup>63</sup>

Certain agreements between EU and third countries provide for cooperation and dialogue in a number of different areas, including labour standards. Since the later 1990s, the EU has increasingly made reference to ILO core labour standards in its trade agreements in line with the strengthened status of sustainable development on the EU agenda.<sup>64</sup> The first EU FTA to have specific labour rights provisions was EU-CARIFORUM, where both sides confirmed their commitments to internationally recognised core labour standards.

Since then coverage of labour standards has evolved through the inclusion of a 'trade and sustainable development' chapter, which includes provisions on both social and environmental standards. These provisions have been put in place in the EU-Korea FTA, the EU-Central America Agreement (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama) and the EU – Colombia and Peru Agreement. For example, under the EU-Korea FTA, the parties commit to complement the provisions on core labour standards with reference to the objectives on decent work and the Declaration on Fundamental Principles and Rights at Work, as well as establishing continuous dialogue and peer review mechanism.<sup>65</sup> This is a similar approach to the EU-Canada FTA. More precisely, the EU-Korea FTA.<sup>66</sup>

- Refers to the ILO Declaration on Fundamental Principles and Rights at Work in Article 13.4;
- Establishes a body to oversee the implementation of the Trade and Sustainable Development chapter (Chapter 13, Art. 13.12);
- Creates institutional mechanisms to consult civil society in the form of the Civil Society Forum (Art. 13.13);
- Establishes an institutional mechanism for cooperation and for the resolution of labour issues arising from the FTA.<sup>67</sup> With regard to consultations on labour matters, the EU-Korea FTA highlights that the two Parties 'shall ensure that the resolution reflects the activities of the ILO [...] so as to promote greater cooperation and coherence between the work of the Parties and these organisations. Where relevant, subject to the agreement of the Parties, they can seek advice of these organisations or bodies' (Art. 13.14-13.16).

These social dimension aspects in the 'new generation' agreements show clear evolution and progress in protecting labour standards and in improving labour standards internationally. Moreover, sustainability impact assessments have also evolved to put greater focus on assessing the impact of EU FTAs on social and human rights issues, where the SIA guidelines make particular reference to qualitative indicators reflecting correspondence with ILO Core Labour Standards and Decent Work Agenda. The interaction of the ILO and the EU and the EU and its Member States will become even more central for the conduct of trade and investment policy in light of the 'Trade for All' Strategy and its commitment to the promotion of sustainable development issues.

<sup>63</sup> Council Regulation 2501/2001 [2001] L346/1, Art. 14.

<sup>64</sup> European Commission, 2012. Non paper on using EU Trade Policy to promote fundamental human rights: current policies and practices.

<sup>65</sup> Ebert and Posthuma, 2011. Labour provisions in trade arrangements: current trends and perspectives.

<sup>66</sup> Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea and Annex 13.

<sup>67</sup> See Corley-Coulibaly, 2014. Labour provisions in trade agreements: the role of the ILO.

### 4.3 Climate change and environmental sustainability: United Nations and Multilateral Environmental Agreements (MEA)

In the area of international environmental policy the EU has progressively assumed the role of a norm-maker. Despite the proliferation of other international and transnational organisations and networks, the UN system still has an important role in global economic governance. It has wide ranging functions which span: 'exchanging information, generating knowledge and ideas, facilitating debate of global challenges, outlining policy choices, devising consensual policy recommendations, setting global standards, coordinating and monitoring policy implementation within the UN system and across its membership, and mobilising resources around global agenda'.<sup>68</sup> In 2011 the UN General Assembly granted the EU new participating rights, 'allowing EU representatives to present EU agreed common positions, to make interventions, present proposals and circulate EU communications as official documents at the General Assembly' (General Assembly, 2011).<sup>69</sup>

For example, the EU is a Party to the United Nations Convention on Biological Diversity (CBD) of 1992, which seeks 'to ensure the conservation and sustainable use of the diversity of species, habitats and ecosystems on the planet, as well as the fair and equitable sharing of the benefits arising from the use of genetic resources'.<sup>70</sup> The EU has adopted a number of legislative measures to implement a wide range of protocols, such as Cartagena Protocol, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

The EU [Biodiversity Strategy to 2020](#) and the National Biodiversity Strategy and Action Plans (NBSAP) of EU Member States provide the framework for action in the EU and not only align EU policy to international commitments, but also outline how the EU will reduce its own biodiversity footprint. Furthermore, the EU provides assistance to developing countries in addressing these challenges and ensures that EU's trade policy and trade agreements in particular do not have negative effects on biodiversity. The EU is also implementing a broad range of biodiversity-related international agreements to complement its work under the UNCBD.

In the UN Framework Convention on Climate change (UNFCCC) the EU has played a clear norm-making role through its leadership in applying policies such as carbon trading and promoting similar approaches internationally.

In the trade and environment debate the EU had an important input in shaping WTO Ministerial Decision on Trade and Environment (Marrakesh, 1994) that set up a Committee on Trade and the Environment to define the 'relationship between trade and environmental measures in order to promote sustainable development'.<sup>71</sup> The EU then published its communication on Trade and Environment in 1996 that stressed the need to clarify the relationship between WTO rules and trade-related measures under Multilateral Environmental Agreements (MEAs).

The link between the EU and the international level vis-à-vis environmental sustainability is visible also with the entry into force of the Treaty of Nice and a commitment 'to ensure that the European Union acts as a motor for promoting the environment in the Union, as well as, in the international forum pursuing the same objectives on the global level'.<sup>72</sup>

<sup>68</sup> European Union, 2011, p.4.

<sup>69</sup> General Assembly, in Recorded Vote, Adopts Resolution Granting European Union Right of Reply, Ability to Present Oral Amendments: <http://www.un.org/press/en/2011/ga11079.doc.htm>.

<sup>70</sup> [http://ec.europa.eu/environment/nature/biodiversity/international/index\\_en.htm](http://ec.europa.eu/environment/nature/biodiversity/international/index_en.htm)

<sup>71</sup> Duran, 2013, p. 229.

<sup>72</sup> Final Act of the Conference related to Article 175 EC as cited in Azoulai (2005, p. 203).

Concerning environmental issues in bilateral agreements, a clear evolution can be seen. Agreements concluded in the 1990s had only general environmental clauses without specific commitments or strong links to MEAs. More recent agreements, such as the EU-Korea FTA, focus on trade and sustainable development and require 'coherent approach and explicit linkages with MEAs'.<sup>73</sup> EU FTAs use multilateral standards as 'benchmark(s) for assessing domestic environmental performance, with increased emphasis on questions related to implementation and enforcement of MEAs, either through an open-ended reference to the MEAs to which States are party or through a closed list<sup>74</sup> of specific MEAs'.<sup>75</sup>

In the renewed Sustainable Development Strategy of June 2006 the Council gave a mandate for the inclusion of environmental and social policy objectives in bilateral and inter-regional trade and cooperation agreements. As indicated above, this stance was then taken on by the trade strategies presented by the Commissioners' for Trade: 'Global Europe', 'Trade, Growth and World Affairs', as well as the latest 'Trade for All' Strategies.

## 4.4 Other standard setting institutions

### 4.4.1 World Customs Organisation (WCO)

The World Customs Organisation (WCO) is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of customs administrations. The WCO provides a forum in which international norms are developed that affect the area of customs and trade facilitation. With the growing importance of 'trade costs' associated with customs and border control this is important for trade. A more detailed account of the WCO shows how it corresponds to the typology of mechanisms discussed in the introduction. Its role can be summarised by:<sup>76</sup>

- Strategic Goal 1 – Provides a forum for discussion and development of instruments for security and facilitation of international trade and harmonization of Customs procedures = Economic Competitiveness Package
- Strategic Goal 2 – Develops tools to achieve fair, efficient, and effective Revenue collection = Revenue Package
- Strategic Goal 3 – Develops standards and guidelines aimed at protecting society, public health and safety = Compliance and Enforcement Package
- Strategic Goal 4 – Develops capacity building = Organisational Development Package
- Strategic Goal 5 – Provides a forum for information exchange among stakeholders
- Strategic Goal 6 – Raise the performance and profile of Customs
- Strategic Goal 7 – Conduct Research and Analysis

The WCO is governed by the Council and is supported by a Secretariat and a range of technical and advisory committees. Each member of the WCO has the right to be represented in the Council and has one vote. Representatives of a simple majority of the members of the WCO constitute a quorum and in most cases decisions are taken by a majority of not less than two-thirds of the Members voting. The WCO

<sup>73</sup> Jinnah and Morgera, 2013.

<sup>74</sup> The closed list includes the CBD and its Cartagena Protocol on Biosafety, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants (POPs), the Rotterdam Convention on the Prior Informed Consent for Certain Hazardous Chemicals and Pesticides (PIC), CITES, and the United Nations Framework Convention on Climate Change and its Kyoto Protocol.

<sup>75</sup> Ibid at 94.

<sup>76</sup> <http://www.wcoomd.org/en/about-us/what-is-the-wco/goals.aspx>

has 180 members including the EU and EU member states and are divided across six regions, represented by a Vice-Chairperson. Since July 2007, the EU has had rights akin to those of all WCO members for matters falling within its competency as an interim measure. Full accession is to take place through an amendment to the Convention of the WCO establishing a Customs Co-operation Council. The status of the EU is recognition of the role and competence of the EU in customs matters and reform. The EU involvement in the WCO covers the full spectrum of customs issues.<sup>77</sup>

The EU is a contracting party to a number of WCO Conventions.<sup>78</sup> In addition to this, the EU coordinates MS in defining a common position and represents this position in the relevant WCO bodies. The EU held the Vice-Chairmanship of the WCO's Europe region for a year starting July 1st 2014 and the mandate was renewed until June 30th, 2016. The European Commission has a unit dealing specifically with WCO co-operation at the Directorate General Taxation and Customs Union (TAXUD).

The role of the WCO on EU policy has been particularly highlighted in the Union Customs Code (UCC) adopted in 2013 and the substitution of the 'first sale rule'<sup>79</sup>. The EU's Customs Competency Framework has also been created in collaboration with the WCO and aims at harmonising and improving customs performance standards within the EU. Another example of how the WCO shapes EU trade policy is the development of the Authorised Economic Operator (AEO) method of reducing trade costs. This effectively delegates the process of customs controls to authorised companies, which when verified and monitored can ship goods without additional border checks. The AEO approach, as well as other standards developed in the WCO, is now applied in the free trade agreements currently being negotiated by the EU.

#### 4.4.2 World Intellectual Property Organisation (WIPO)

The World Intellectual Property Organisation (WIPO), established in 1967, is the global forum for intellectual property services, policy, information and cooperation. It is a self-funding agency of the UN. The WIPO interacts with members in five main ways, it<sup>80</sup>:

- Provides a policy forum to shape international IP rules;
- Provides a range of services to individuals, companies and members which include:
  - Resolving disputes through its Alternative Dispute Resolution including arbitration, mediation and expert determination<sup>81</sup>. The WIPO Arbitration and Mediation Centre also establish model contract clauses and model submission agreements.
  - International Patent System, International Trademark System and the International Design System.
  - Secure exchange of documents.
- Develops the technical infrastructure to connect IP systems and exchange information through setting standards, providing databases, dissemination of data and research;
- Develops customised and targeted capacity-building programs to assist countries in dealing with IP;
- Acts as a world reference source for IP information;

<sup>77</sup> [http://ec.europa.eu/taxation\\_customs/common/international\\_affairs/wco/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/international_affairs/wco/index_en.htm)

<sup>78</sup> <http://www.wcoomd.org/en/about-us/legal-instruments/conventions.aspx>

<sup>79</sup> For more details, see: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_code/union\\_customs\\_code/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_code/union_customs_code/index_en.htm)

<sup>80</sup> <http://www.wipo.int/services/en/>

<sup>81</sup> <http://www.wipo.int/amc/en/>

The main policy and decision-making bodies of WIPO are the General Assembly and the Coordination Committee. WIPO administers 26 treaties including the WIPO Convention. WIPO has 188 member states but they differ in the number of conventions signed and implemented. WIPO uses different mechanisms used. It sometimes set standards for national laws, like the Beijing Treaty<sup>82</sup> on the protection of performers' rights. Other norms simply facilitate action, such as the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.<sup>83</sup>

The interaction between the WIPO, the European Union and its MS can be illustrated by the process of ratification of the WIPO Copyright Treaties.<sup>84</sup> During the Diplomatic Conference of 1996 on Certain Copyright and Neighbouring Rights Questions, the EU had a 'special delegation' rather than just observer status<sup>85</sup> and was represented by Directorate General XV Internal Market and Financial Services as Head of Delegation along with a number of delegates across other DGs and the General Secretariat of the Council. This was the first time the EU enjoyed the status of full Contracting Party, recognised as an important contributor to shaping norms on copyright. Both the EU and Member States participated fully in the Diplomatic Conference and the discussions on rules on distribution, rental, the right of public communication and online content. After the Conference, the Council<sup>86</sup> decided on the joint ratification of the WIPO norms in the shape of the Copyright Treaty and the WIPO Performances and Phonograms Treaty, the so-called 'Internet' Treaties, in the 2001 European Copyright Directive. EU Member States have all transposed the provisions of the 2001 Directive into their national legislation. The EU now also includes reference to – and in some cases a binding obligation to ratify – WIPO treaties in the chapters on intellectual property rights in preferential trade agreements it negotiates.

#### 4.4.3 World Standards Cooperation (WSC)

Beyond the intergovernmental fora and agreements discussed above, there are the international standards organisations such as the ISO (International Organisation for Standardisation), the International Electrotechnical Commission (IEC) and International Telecommunication Union (ITU).<sup>87</sup> In 2001, the three created the World Standards Cooperation (WSC) in order to strengthen the standards systems and promote consensus-based standards worldwide. The three organisations play an important role of international standards that facilitate trade and contribute to the elimination of technical barriers to trade.

The EU is strongly represented in these organisations through the national standards making bodies of the Member States and the transfer of knowledge and practices through the three European Standardisation Organisations (CEN, CENELEC and ETSI) that are officially recognized by the EU and by the EFTA as responsible for developing and defining voluntary standards at European level.<sup>88</sup> CEN and CENELEC closely cooperate with ISO and IEC under the Vienna Agreement (ISO-CEN) and the Dresden Agreement (IEC-CENELEC) ensuring the exchange of technical expertise and support for international standardisation.

<sup>82</sup> <http://www.wipo.int/treaties/en/ip/beijing/>

<sup>83</sup> <http://www.wipo.int/treaties/en/ip/marrakesh/>

<sup>84</sup> [http://europa.eu/rapid/press-release\\_IP-09-1916\\_en.htm](http://europa.eu/rapid/press-release_IP-09-1916_en.htm)

<sup>85</sup> [http://www.wipo.int/edocs/mdocs/diplconf/en/crn\\_r\\_dc/crn\\_r\\_dc\\_inf\\_2.pdf](http://www.wipo.int/edocs/mdocs/diplconf/en/crn_r_dc/crn_r_dc_inf_2.pdf)

<sup>86</sup> Council Decision of 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, Official Journal L 89 of 11 April 2000.

<sup>87</sup> The WSC is taken as an illustration of the work of a range of standards making bodies. In the current study it is not possible to cover all.

<sup>88</sup> <http://www.cen.eu/about/Pages/default.aspx>

Generally speaking it is possible to argue that the EU has a norm-making role in international standards institutions thanks to the strong representation of the MS and EU level bodies and the broad consensus among the MS on the desirability of promoting international standards.

## 5 Main factors contributing to EU's agency

The main aim of this study is to illustrate how EU trade and investment policy shapes and is shaped by a wide range of different types of IOs. The previous section has made clear that it is important to monitor developments over an extended period of time, sometimes running into decades to understand how rulemaking and norms are shaped. There is also the question of when and under what conditions the EU is effective in agenda- setting and policy-making. The scope of the current study does not permit an analysis of the factors that determine the ability of the EU to be a norm-maker. Table 2 and the accompanying description highlights some of the conditions that are important. In terms of effectiveness, the literature describes a number of channels through which the EU exerts influence on norms adopted primarily based on its market size and regulatory capacity.

At the same time, in order to assess EU's ability to shape the debate on rulemaking and norms in IOs, it is necessary to take into consideration the overall context and the diversity of institutional forms described earlier. Two dimensions in particular are worth mentioning: the 'distribution of regulatory capacity across the major economies and institutional density at the global level'.<sup>89</sup> The EU has exhibited a number of the strategies shown in seeking to shape outcomes, these are illustrated with examples in the table below:

**Table 2. EU rule setting strategies and constraints**

Strategy	Defined by:	Example
<i>Export home regulation</i>	Unilateral pressure by the EU Inability of other actors to set rules Lack of constraining international institution	EU unilateral measures such as equivalency clauses Chemical regulations
<i>First-mover</i>	Institutionalisation in the global arena No particular challenger Complementarity between domestic and international institutions Depends on the decision-making rules and procedures of the IO	International Standards Organisation (ISO)
<i>Mutual recognition</i>	Presence of other powerful jurisdictions in terms of regulatory capacity Lack of constraining international institution Note: need for a shared normative framework (e.g. TTIP).	International accounting standards; International Financial Reporting Standards (IFRS) Financial services regulation
<i>Coalition-building</i>	Presence of other powerful jurisdictions Depends on the rules of the international organisation Need to forge a strong coalition	One example is the failure of the EU to build a coalition around the Codex Alimentarius (Young, 2014)

Source: Adapted from Newman and Posner, 2015.

<sup>89</sup> Newman and Posner, 2015, p. 1317

Therefore, it seems that when looking at EU's effectiveness, often described as 'regulatory capability'<sup>90</sup>, the following factors will need to be considered:

- the size of the European market<sup>91</sup>;
- the de jure competence and whether there is a clear definition of responsibilities across policy areas;
- coherence of the EU position and whether the EU 'speaks with a single voice';<sup>92</sup>
- the nature of the EU acquis and stringency of EU rules, in particular in the areas of public health, environment, data privacy and financial services; and the related question of
- whether there is a domestic-EU consensus in the policy area under discussion;
- institutional expertise; and
- capability to exert influence over actors in other jurisdictions.

For a more extensive discussion of the factors shaping the effectiveness of the EU in international trade and investment, as well as international financial and environmental negotiations see Woolcock, 2012.

## 6 In-depth case study: ICSID, UNCITRAL, and the European Union

This case study illustrates how the mechanisms of norm setting discussed in the previous sections have operated in investor-state dispute settlement (ISDS). It draws out the influence of international organisations on the architecture of investor-state dispute resolution, focusing on two organisations dedicated to the resolution of disputes between investors and states in particular. The International Centre for Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL) have both substantially influenced the contours of contemporary ISDS. The following case study of the OECD then picks up the question of how the international investment norms that are the subject of today's debate on investment policy in the EU were shaped in previous decades.

These case studies adopt a long-term perspective in order to illustrate the influence of the IOs more comprehensively. If we examine only the contemporary environment, member state governments and different organs within the EU are unquestionably shaping investor-state dispute settlement, with relatively little guidance from international organisations. If we extend the time horizon and evaluate the rise of investor-state dispute settlement over the last forty years, however, a different picture emerges. ICSID and UNCITRAL, organisations operating under the auspices of the World Bank and the UN General Assembly, respectively, emerge as important actors. Their influence in generating policy ideas, drafting model treaty language, and promoting certain practices can be seen more clearly. With a longer time horizon, the relationships between states and IO become bidirectional, with ideas and practices traveling both ways.

This case study proceeds in five sub-sections. First, it provides a brief summary of the EU's role in contemporary ISDS. Second, it discusses the creation and early work of the ICSID Secretariat. Third, it

<sup>90</sup> Defined by Bach and Newman (2007, p. 831) as 'a jurisdiction's ability to formulate, monitor, and enforce a set of market rules'. This links also to wider literature on the EU as 'regulatory state' (Majone, 1994).

<sup>91</sup> This also referred to a 'passive' channel that derives from the single market and single currency. In this scenario, companies importing to the EU market that have to follow EU rules put pressure on governments at home to 'converge on European rules' so as to minimize the transaction costs of following multiple regulatory rulebooks' (Newman and Posner, 2015, p. 1320).

<sup>92</sup> Meunier, 2005.

identifies the origins of clauses providing access to ISDS, finding that the role of IOs generally, and ICSID in particular, was pivotal. Fourth, the case study charts the creation and early work of UNCITRAL, highlighting the influence of several harmonisation efforts and model laws. The case study concludes by evaluating the role of UNCITRAL in framing and facilitating the Mauritius Convention on Transparency, a major new initiative to address transparency issues surrounding investor-state dispute settlement.

## 6.1 The European Union's Role in Contemporary Investor-State Dispute Settlement

Contemporary investor-state dispute settlement, which usually takes the form of arbitration between a foreign investor and a state, can occur within a number of different institutions. The most commonly used arbitration institution, ICSID, was created through an intergovernmental treaty in 1966 and is an autonomous part of the World Bank Group. The second most commonly used institution, UNCITRAL, is a set of rules that can be used either on an ad hoc basis or within another arbitration organisation. The UNCITRAL rules were created through a working group affiliated to the UN General Assembly. The remaining institutions include the Permanent Court of Arbitration as well as private arbitration organisations like the International Chamber of Commerce, or the Arbitration Institute of the Stockholm Chamber of Commerce. Today these various institutions are not generally considered to be rules-makers. With rare exceptions, the public communication of arbitral institutions is limited to statistics about their caseloads and trainings for officials.

The EU emerged as a major norm-maker with regard to ISDS after the entry into force of the Lisbon Treaty, which clarified EU competence over foreign direct investment.<sup>93</sup> The Lisbon Treaty enhanced the role of the European Parliament; the Parliament now has an integral role before, during, and after the negotiation on trade and investment treaties. The change in competence raises many challenges in investor-state arbitration, since the current structures are "ill-adapted to the advent of the Union."<sup>94</sup> For instance, in order for the EU to accede to the ICSID Convention, the Convention itself would have to be amended, which is extraordinarily difficult. Therefore, although the EU has exclusive competence over investment and investor-state dispute settlement, it is the Member States (MS) that have ratified the ICSID Convention. All MSs except Poland have ratified the ICSID Convention. The evolving structure of EU policymaking on investment has coincided with a dramatic increase in public attention on ISDS.

The landscape of ISDS provisions remains very diverse today, despite efforts of the EU and other actors to harmonise dispute resolution provisions in recent treaties. Around the world today, access to ISDS is provided in thousands of bilateral investment treaties (or investment chapters in trade agreements), as well as domestic law and contracts.<sup>95</sup> An OECD study from 2012 found over a thousand different formulations of provisions providing access to arbitration in a sample of 1660 bilateral treaties.<sup>96</sup> Even if one narrows the scope to just recent EU and US treaties, there is still meaningful diversity among ISDS provisions. A recent report commissioned by the European Parliament compared several dimensions of ISDS clauses in recent EU and US treaties, including: consultation, consent, arbitration institutions available, appointment of arbitrators, code of conduct for arbitrators, transparency and public access to

<sup>93</sup> Shan and Zheng, 2011.

<sup>94</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Towards a comprehensive European international investment policy /\* COM/2010/0343 final. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0343>

<sup>95</sup> No EU member state has ever provided access to ISDS in their domestic law. Treaties are by main means by which investors in the EU have access to ISDS.

<sup>96</sup> Pohl, Mashigo, and Nohen, 2012.

arbitral proceedings, preventing frivolous claims, remedies, costs, award enforcement, and the proposal of a permanent investment court.<sup>97</sup> ISDS clauses are a remarkably varied landscape.

As of 31 April 2015, 69 cases were registered at ICSID that involved an EU member state.<sup>98</sup> These cases have not been distributed evenly. Some countries have faced a relatively large number of cases: Hungary has faced 12, Romania has faced 11, and Spain has faced 13. Poland, which is not a member of ICSID, has faced 3 cases under the ICSID Additional Facility. Ten of the 28 MS have not faced a case at ICSID (although they may have faced an investor-state arbitration at another organisation). These are Austria, Denmark, Finland, Ireland, Luxembourg, Malta, Netherlands, Portugal, Sweden, and the United Kingdom. Interestingly, of the 69 ICSID cases involving an EU member state, 74% were commenced by an investor from another EU MS.<sup>99</sup> The disputes have come from a wide range of sectors; 30% relate to electric power and other energy, 12% to finance, 7% to information and communication, and 7% to oil, gas, and mining.<sup>100</sup>

The European Commission has recently proposed an investment court system (ICS) in response to the debate on ISDS arising, in particular, from the Trans-Atlantic Trade and Investment Partnership (TTIP). The ICS would replace ISDS in TTIP and all ongoing and future EU trade and investment negotiations. The ICS would have a tribunal of first instance and an appeal tribunal. The tribunal of first instance would be composed of 15 publicly appointed judges; five EU nationals, five US nationals, and five nationals of third countries.<sup>101</sup> Three of the judges would be assigned randomly to any one case. In contrast to many earlier developments within ISDS, the proposal for an ICS was developed within the EU and did not include in-depth IO involvement. The European Commission organised a public consultation on investment dispute resolution in TTIP, then used the views of those stakeholders as well as the positions expressed by the Council and the EP to develop the proposal. A draft of the proposal was circulated for comment as an internal EU document and then formally transmitted it to the US.

The next sections evaluate the creation and work of the original ISDS system, as well as the incremental reforms that occurred before the ICS proposal. Although this is changing, due in part to the Commission's proposal, including ISDS provisions in investment treaties (or in the investment chapters of trade treaties) has become a strong norm, adhered to and actively practiced by the vast majority of countries around the world. The purpose of this case study is to investigate how the practice of including ISDS provisions in investment treaties developed and what role IOs played in this development.

## 6.2 The Creation and Early Work of the ICSID Secretariat

ICSID is unique among arbitration organisations for a number of reasons: it almost certainly has the largest caseload, was the first institution dedicated to arbitration between private investors and states, and is an autonomous organisation within the World Bank Group. Moreover, the ICSID Secretariat played an active role in the development and spread of investor-state arbitration, as this section demonstrates.

Unlike any other institution for ISDS, ICSID was created through an intergovernmental treaty, the ICSID Convention. The Convention grew out of a proposal from the World Bank in the early 1960s for a new type of machinery dedicated to resolving disputes between investors and states. This proposed machinery built on previous attempts to strengthen and institutionalise arbitration globally. To overcome political obstacles, the framers of the Convention came up with the so-called double-consent system. The ICSID Convention requires that states consent in two places before a dispute can be registered against

<sup>97</sup> Hindelang and Sassenrath, 2015, p. 19-111.

<sup>98</sup> ICSID 2015.

<sup>99</sup> ICSID 2015: 11.

<sup>100</sup> ICSID 2015: 10.

<sup>101</sup> [http://europa.eu/rapid/press-release\\_MEMO-15-6060\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-6060_en.htm)

them. Ratification provides the first consent, but no arbitration can be started without a second expression of consent. The second consent can be provided in investment treaties, investment contracts, or domestic law. Between the first cases in the 1970s and 2014, bilateral treaties provided the basis for 63% of ICSID's caseload; investment contracts provided the basis of consent for 19% of cases; domestic law for 8% of cases; and plurilateral agreements for nearly 10% of cases.<sup>102</sup>

When the ICSID Convention came into force in 1966, no existing agreements provided access to arbitration between investors and states. Dozens of investment treaties had come into force by 1966—most negotiated by European governments, including the Federal Republic of Germany, France, Switzerland, and The Netherlands—but none of these treaties provided access to investor-state arbitration. Investor-state dispute settlement was a relatively new idea and the ICSID Secretariat needed to disseminate it. Dissemination was important in a concrete sense because the ICSID Secretariat needed cases: if investors and governments did not include consent to arbitration in their agreements, then ICSID would not have any cases and would not survive as an organisation. Dissemination was also important in an ideational and normative sense: the staff of the ICSID Secretariat believed in the ability of arbitration to improve the investment climate of host states and to elevate disputes out of the realm of power and into the realm of law.

The ICSID Secretariat, as a part of the World Bank Group, had direct access to governments. The ICSID Secretariat did not have the power to compel states, and no World Bank lending was ever conditional on states providing access to arbitration. The tools available to the ICSID Secretariat were superior legal expertise and perceived neutrality; in other words, it had the power to define best practice and set standards. The ICSID Secretariat actively disseminated the idea of investor-state arbitration using means like technical assistance and model clauses.

Model clauses were the Secretariat's most effective tool to promote advance consent. In 1968, the ICSID Secretariat released its first set of model clauses, which showed governments and investors how to consent to arbitration, and the next year, the ICSID Secretariat released a second model clause document, this time dedicated to showing governments how to consent to arbitration in investment treaties.<sup>103</sup> The model clauses were an opportunity for the ICSID Secretariat to act in an advisory capacity. Thus the initiative to include ICSID access in investment treaties came from the ICSID Secretariat itself, and not from states. Clauses providing access to investor-state arbitration in investment treaties spread only after the ICSID Secretariat suggested they do so, and only after the Secretariat provided model clauses and advisory help. Without early, active dissemination from the Secretariat, the spread of these clauses would have occurred later, or perhaps not at all.

### 6.3 Early European Treaties with Investor-State Dispute Settlement

The first investment treaty to include advance consent to investor-state arbitration was the Netherlands-Indonesia agreement of 1968. Both governments had close relationships with the ICSID Secretariat. In 1968, the ICSID Secretary-General visited Indonesia, the Indonesian government signed and ratified the ICSID Convention, and signed the investment treaty with the Netherlands. When the ICSID Model Clause document for investment treaties was released a few months after that treaty, The Netherlands updated their treaty language. The Netherlands added protocols with ICSID clauses to pre-existing treaties and included advance consent in subsequent treaties. The drafting of model clauses by the ICSID Secretariat influenced the actions of the Dutch government; this is an example of how international organisations shape outcomes through the provision of technical expertise as well as the dissemination of research and

<sup>102</sup> These figures include ICSID and ICSID Additional Facility cases. ICSID, 2014-1, p. 10.

<sup>103</sup> Parra, 2012, p. 132-133.

best practices. The Netherlands then exported the language of the model clauses to its treaty partners and helped that language to become the de facto global standard.

Other European states also incorporated advance consent to ICSID in their investment treaties after ICSID released the model clause document for investment treaties. In 1969, ICSID access appeared in an investment treaty between Italy and Chad. In 1970, Belgium and Indonesia negotiated a treaty with a strong variant of an ICSID model clause.<sup>104</sup> In 1972, the French representative at the ICSID Annual Meeting announced that his government's investment treaties now "provided for reference to ICSID—explicit reference to ICSID—in the event of disputes."<sup>105</sup> In 1972, the UK government drafted its first model treaty, which included only one option for dispute settlement: ICSID. The ICSID Secretary-General encouraged the UK government to include ICSID access in previous agreements, and even visited London to promote the inclusion of ICSID's conciliation facility in the model investment treaty.<sup>106</sup> Within a few years of the ICSID Secretariat releasing model clauses for investment treaties, these clauses had become accepted practice in the treaties signed by European governments. The spread of these clauses demonstrates the influence that even a very small international organisation can have using means like the provision of technical expertise and the dissemination of best practices.

It is unlikely that European governments would have incorporated advance consent to ISDS without the ICSID Secretariat formulating and promoting these clauses, or that governments would have been much slower to incorporate these clauses. For instance, the Federal Republic of Germany signed the world's first investment treaty in 1959, adopted its first model investment treaty in 1960, and negotiated a handful of treaties before ICSID was created. None of these treaties mention investor-state arbitration. Even after ICSID was created, investor-state arbitration does not appear in German treaties for 15 years.<sup>107</sup> The German government led the way in negotiating investment treaties, and even made national investment insurance conditional on having a bilateral treaty in place, but did not lead the way on clauses in investment treaties that provided access to arbitration. The ICSID Secretariat facilitated, promoted, and subsequently monitored these clauses.

## 6.4 The Creation and Early Work of UNCITRAL

UNCITRAL, like ICSID, has influenced the contours of investor-state dispute settlement in important ways. Although there are parallels between ICSID and UNCITRAL, there are also interesting contrasts in their institutional settings, their methods, and the means through which their influence has travelled. While ICSID was designed as dispute resolution machinery, UNCITRAL was designed as a focal international standard-setting body. UNCITRAL was mandated to use model law and voluntary standards as a means to harmonise private law related to international trade. In other words, UNCITRAL provides a near-textbook illustration of several mechanisms for norm setting outlined in section 2.2 above.

The General Assembly created UNCITRAL in 1966, partly in response to concerns raised by member states that the progressive development of private international law was not handled systematically by the UN organs, and partly in order to open up the international economic order to more actors.<sup>108</sup> Its purpose was to help unify and codify private law related to international trade, which was defined broadly, to include topics like the formation of contracts, insurance, laws.

During the creation of UNCITRAL, methods to promote unification were analysed and ultimately three methods were identified as "essential to the unification of the law or international trade":

<sup>104</sup> Article 10 of Belgium-Indonesia BIT, 15 January 1970.

<sup>105</sup> ICSID Sixth Annual Meeting, p. 5.

<sup>106</sup> Poulsen, 2015, p. 60.

<sup>107</sup> The Germany-Somalia BIT (1981) was the first Germany treaty to include access to ISDS.

<sup>108</sup> Caron and Caplan, 2013, p. 2.

- Introduction of normative regulations devised and elaborated within the framework of international treaties and agreements concluded by two or more states.
- The formulation of model laws to serve as guides for local adaptation.
- The formulation of commercial customs and practices, which are founded upon the usages of the international commercial community.<sup>109</sup>

These three methods echo the mechanisms for rulemaking elaborated above, in particular: setting standards which bind member states of the organisation and signatories of specific conventions, and setting standards which countries can decide to incorporate into their domestic regulation.

UNCITRAL reports directly to the General Assembly, but its membership at any one time is a subset of General Assembly member states. UNCITRAL carries out its work at annual sessions, which held in New York and Vienna, and has a very small Secretariat. All states (members and non-members alike), as well as interested international organizations, are invited to attend UNCITRAL as observers. Observers are permitted to participate in discussions at sessions of the Commission and its working groups to the same extent as members. During the 2015 UNCITRAL session in Vienna, 11 member states of the EU attended as members, while a further 7 member states of the EU attended as observers. The session was also attended by observers from the EU institutions.<sup>110</sup> After the Lisbon Treaty, the Commission has articulated a common European position in UNCITRAL working groups, which is a striking change, as previously the EU Member States represented their individual positions.

Since its inception, UNCITRAL has worked on eight major international arbitration initiatives:

1976 UNCITRAL Arbitration Rules

1980 UNCITRAL Conciliation Rules

1985 UNCITRAL Model Law on International Commercial Arbitration

1996 UNCITRAL Notes on Organizing Arbitral Proceedings

2002 UNCITRAL Model Law on International Commercial Conciliation

2006 Amendments to 1985 Model Law on International Commercial Arbitration

2010 UNCITRAL Arbitration Rules (Revision of the 1976 UNCITRAL Arbitration Rules)

2015 UNCITRAL Convention on Transparency in Treaty-Based Investor-State Arbitration

In addition, the 1958 New York Convention is “seen as falling within the ambit of UNCITRAL.”<sup>111</sup> The facilitation and coordination roles played by UNCITRAL are considered in more depth in the next section, which analyses the Convention on Transparency.

## 6.5 The Mauritius Convention on Transparency

Between 2008 and 2015, UNCITRAL facilitated major innovations in the transparency of ISDS proceedings. UNCITRAL adopted a set of Rules on Transparency that came into effect on 1 April 2014, and completed a UN Convention on Transparency in Treaty-Based Investor-State Arbitration (Mauritius Convention), which opened for signature 17 March 2015. The speed and success of UNCITRAL’s work on transparency demonstrate both the enduring ability of international organisations to influence the contours of ISDS, but also show the limits of this influence.

<sup>109</sup> Yearbook of the United Nations Commission on International Trade Law, 1970, p. 40.

<sup>110</sup> Report of Working Group II (Arbitration and Conciliation), 2015

<sup>111</sup> Caron and Caplan, 2013, p. 3.

The impetus for UNCITRAL's work on transparency was dissatisfaction among some member state delegations specifically as well as more generally among governments and outside groups. Under the UNCITRAL Arbitration Rules, disputes between investors and states did not need to be transparent, or even publicly acknowledged. Disputes could involve corruption or public policies and yet remain confidential.

The lack of mandatory disclosure was addressed incrementally by the UNCITRAL actions. First, the Rules on Transparency came into force, which apply on a default basis to UNCITRAL arbitrations for which the basis of consent is a treaty that came into force after 1 April 2014. This means the Rules on Transparency have a relatively limited immediate impact. The Convention on Transparency extends the scope of the rules; it was prepared "in order to facilitate application of the Rules on Transparency to disputes arising under treaties concluded prior to the rules' effective date, including arbitrations under rules other than the UNCITRAL Arbitration Rules."<sup>112</sup>

The EU played an important role in the success of the Rules on Transparency and Convention: the Commission and the Parliament made transparency a priority, and backed UNCITRAL's transparency work strongly. From 2010 onward, the Commission took a public position that the EU should ensure ISDS is transparent. The Parliament supported this position and went even further in its calls for transparency. The new, coordinated European position was distinct from the previous member states positions at UNCITRAL: not a single EU member state came out in general favour of transparency in the formal positions submitted to UNCITRAL in 2010.<sup>113</sup> When UNCITRAL released the transparency rules, the Commission praised the adoption of the Rules and emphasised the Commission's participation.

UNCITRAL's transparency work was successful for several reasons. First, the Convention focused on a relatively narrow issue: "its exclusive focus on a single issue (transparency and third-party participation) prevented cross-deals with other issues on the reform agenda and helped to streamline negotiations."<sup>114</sup> Second, the delegates benefited from the preparatory work done by the UNCITRAL Secretariat, which prepared a draft text of a transparency convention to inform discussions.<sup>115</sup> UNCITRAL's facilitation role mattered, and the changes brought about by the Rules and Convention are important. UNCITRAL also has a role to play after the Rules and Convention are in force: the Rules provide for a public repository of basic case information and public release of key documents. These two actions can have transformative consequences. Increased transparency makes it possible to collect statistics about non-ICSID arbitration. This enables observers to develop more accurate studies of trends and developments in ISDS. Increased transparency also enables the development of (informal) precedent or a *jurisprudence constante*: making arbitral decisions public may encourage consistency in interpretation. Through actions like these, small actions by an international organisation can have a profound influence.

Yet the Mauritius Convention also shows the limits of international organisation influence on ISDS. The Convention is only influential once states ratify it. So far, only a small number of states have ratified it, limiting the Convention's reach. The decentralized structure of investor-state arbitration also creates many ways to evade the new transparency norm. The ISDS clauses in investment treaties often provide a menu of choices, including arbitration under the UNCITRAL Rules, ICSID, ICSID Additional Facility, or several other organisations. From this menu of choices, investors can choose which set of rules will apply to their case. If an investor does not wish to have transparency, then they can choose a non-transparent alternative mentioned in the treaty.

<sup>112</sup> Johnson and Bernasconi-Osterwalder, 2013, p. 25.

<sup>113</sup> Calamita, 2014, p. 672.

<sup>114</sup> Schill, 2015.

<sup>115</sup> Johnson and Bernasconi-Osterwalder, 2013, p. 25.

When the Chair of the forty-seventh UNCITRAL session announced the finalisation and approval of the Convention, he reminded committee members of the extraordinary influence of IOs like UNCITRAL. He told UNCITRAL members, “the Convention on Transparency was just one example of UNCITRAL’s ability to shape the global policy agenda into legal norms that made international commercial law efficient while balancing concerns affecting public interest.”<sup>116</sup> When considered over the long run, UNCITRAL and ICSID both appear as important norm-makers. Both international organisations have influenced the contours of investor-state dispute settlement.

## 7 In-depth case study: OECD and rulemaking

### 7.1 Introduction

The Organisation for Economic Cooperation and Development (OECD) was established in 1961 as the successor to the Organisation for European Economic Cooperation (OEEC), which was established to promote European cooperation in the late 1940s. It is known as a ‘government think-tank’ and could be said to influence policy by research and debate on rules and norms that then shape the policies of its members. This case study builds on the previous one of ICSID and UNCITRAL by illustrating the role the OECD played in shaping the norms on investment policy both in terms of the standards for investment protection and liberalisation. This is but one example of how work in the OECD has shaped norms that influence current investment and trade policy. The section therefore provides a brief illustration of the impact of the OECD in public procurement, agriculture and services. As noted in section 4.1 there are other areas in which the OECD have developed norms subsequently adopted by the EU, such as export credit.

### 7.2 EU participation in the OECD

The Member States of the EU are members of the OECD. Although there is a Commission presence in the deliberations whether in the detailed technical working groups or in the OECD Council or Ministerial Conferences, the representatives from the Member States also speak. On issues on which the EU is recognised as being competent, the Member States will tend to follow the agreed EU line. But on issues of mixed competence or where there is no exclusive competence for the EU, the Member States will engage actively and form coalitions with other countries outside the EU. In the case of investment there was in the past no single voice in the OECD because investment was not exclusive EU competence. In the cases of procurement and particularly agriculture the EU has followed a common policy.

### 7.3 The OECD in investment policy

Without a long excursion into history, the OECD acquired a role in investment because efforts to negotiate international investment rules failed with the failure of the International Trade Organisation (ITO) when the Havana Charter was not adopted by the US Congress. One of the key reasons for the failure of the ITO to pass Congress was the strong opposition of some US interests to provisions in the Charter (Arts 11 and 12) that allowed host states to impose ‘reasonable requirements’ on investors.<sup>117</sup> One could see this as an early illustration of the right to regulate debate. With no agreement on investment in the ITO, the GATT, which filled the vacuum left by the ITO, also excluded investment. In theory the GATT principles of national treatment in Art III and or prohibitions on restrictions to trade in Article XI could have been applied to aspects of investment as the subsequent debate on Trade Related Investment Measures (TRIMs) in the GATT Uruguay Round showed, but the priorities of GATT Contracting Parties

<sup>116</sup> “Draft Transparency Convention ‘a Powerful Instrument’” 2014.

<sup>117</sup> William Diebold, *The End of the ITO*, International Finance Section, Department of Economics and Social Institutions, Princeton University, USA, 1952.

were on tariff reduction so nothing happened until the US began to press for the inclusion of investment in the GATT in the 1970s.

With progress at the multilateral level blocked plurilateral efforts in the shape of the negotiations in the OECD followed. These negotiations were based on a draft in the shape of the Abs-Shawcross text.<sup>118</sup> But agreement could still not be reached between the capital exporters and the predominantly capital importing countries. It is worth pointing out that at the time European governments also wished to retain control over investment flows, and the Treaty of Rome (Art 56 EEC) only covered investment in so far as it was required for the establishment of the common market. Although the OECD code based on the Abs-Shawcross text was not agreed it became the model for the Bilateral Investment Treaties (BITs) concluded by the EU Member States. This model of investment agreements covered investment protection through post establishment national treatment and rules on classic expropriation. Many of the features of the norm established with the text remain contentious today, such as the broad definition of investment and fair and equitable treatment that provides scope for interpretation through arbitral tribunals (see previous case study). By providing the model for the Member State BITs the draft OECD code thus shaped the subsequent European policy on standards of investment protection through to today.

Developments in the OECD also shaped investment liberalisation. This took the form of the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations of 1964.<sup>119</sup> These codes initiated work in the OECD committees that provide the platform for and accompanied the progressive liberalisation of investment.<sup>120</sup> The Code on Capital Movements was initially the more important in removing controls on capital movements. But the OECD work also resulted in greater transparency with regard to investment controls. This applied to controls on inward FDI but also national policies such as the maintenance of public monopolies that effectively restricted investment. The OECD instruments were not binding and provided no obligation to liberalise investment, but they eventually incorporated a ratchet mechanism that precluded any reversal of liberalising measures.<sup>121</sup> In this sense the OECD instruments accompanied the unilateral investment liberalisation policies of the OECD countries. At first there was only very limited liberalisation, but starting in the USA and Britain in the late 1970s there was a progressive - and then the 'paradigm' - shift to more liberal investment when EU Member States moved to a more liberal policy, as indeed did many developing countries.

Prior to this 'paradigm' shift of the 1980s the G77 group of developing countries had sought to re-establish the right of host states to regulate investment (Calvo doctrine) in their demands for a New International Economic Order and controls on multinational companies.<sup>122</sup> The OECD provided the forum for the predominantly capital exporting countries, including the EU Member States, to respond to these demands. This took the form of the 1976 OECD Declaration and Decisions on International Investment and Multinational Enterprises, a non-binding set of Guidelines for Multinational Enterprises<sup>123</sup> and an equally non-binding provision on national treatment.<sup>124</sup>

In the absence of investment negotiations in the GATT therefore the OECD filled the gap and in doing so shaped the norms on which subsequent international investment policy was based. The lack of any agreed EU acquis on international investment policy, due to the lack of EU competence, meant that the

<sup>118</sup> OECD, 1962 Draft Convention on the Protection of Foreign Property, No. 15637. See also E Snyder, 1963, Foreign Investment Protection: a Reasoned Approach, *Michigan Law Review* 61 (6) 1087-1124.

<sup>120</sup> For a general description of the OECD instruments see OECD, 1987.

<sup>121</sup> This provision could be seen as the model for the 'ratchet' mechanism in the Schedule 1 commitments for services and investment in recent trade agreements negotiated by the EU, such as the CETA.

<sup>122</sup> See for example the 1974 UN Charter on the Economic Rights and Duties of States that was adopted in the General Assembly of the UN and clearly reflected the interests of the developing countries.

<sup>123</sup> <http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm>

<sup>124</sup> OECD *Foreign Direct Investment: Policies and Trends in the OECD Area during the 1980s* (Paris 1993).

OECD norms were adopted in EU Member State BITs. From the early 1980s onwards the USA moved to establish its model BIT and then to negotiate comprehensive trade and investment agreements starting with NAFTA. The standards of investment protection were shaped by norms developed in the OECD and implemented in BITs. The EU had an input in the work on *liberalisation* in so far as investment was covered in the GATT/WTO negotiations on GATS and TRIMs where there was at least de facto EU competence during the Uruguay Round. But it was not until the Lisbon Treaty and the introduction of exclusive EU competence for investment that there has been a debate on what an EU comprehensive investment policy should look like. This EU level debate has resulted in much greater transparency in the policy debate and resulted in the EU emerging as more of a rule-maker such as on defining the right to regulate and the definition of investment protection as well as in pressing for the creation of an Investment Court System .

## 7.4 Other examples of OECD norm making

### *Public procurement*

The OECD has also played an important role in shaping EU policy on government procurement. As with the case of investment it is necessary to trace developments back over a number of decades to illustrate this. In the case of procurement the norms developed in the OECD not only shaped the EU approach to international negotiations, it also had a significant role in shaping the EU *acquis* on procurement. It has done so by shaping the *rules* governing public procurement.

As for investment it was the US that proposed the inclusion of public procurement in the 1946 draft of the ITO, but there was general opposition to this from the European governments. Public procurement was explicitly excluded from the Havana Charter and thus equally from the GATT 1948. Nor were there explicit provisions on public procurement in the Treaty of Rome. European countries, unlike the US, had no national legal framework governing the allocation of public contracts. These were governed by ministries of supply with financial oversight by ministries of finance.<sup>125</sup> So as in investment and in contrast to the common external tariff there was no common external EEC policy on procurement.

Again as in the case of investment the debate on procurement shifted to the (plurilateral) OECD. A debate between the USA on the one hand seeking greater liberalisation, and the European governments resisting this on the other hand resulted in an agreement, within the OECD, to produce an inventory of national procurement policies in 1963. This was later accompanied by voluntary OECD guidelines (OECD, 1966) that effectively marked the beginning of international rules on government procurement. The guidelines were shaped by domestic regulatory practice, primarily of the USA, which had developed procurement laws and regulations, and the national European policies.<sup>126</sup>

Compromise positions were reached, for example on the use of both open tendering (used for US federal procurement) and restricted tendering by qualified suppliers (used by most European central purchasing bodies). The OECD code and thus subsequent rules include both. In the 1960s the US desire to include provisions for the review of contract award decisions, which was used in US federal contracts, was opposed at that time by the European governments (Blank and Marceau, 1997). This was however, subsequently introduced as the bid challenge provision of the WTO plurilateral agreement (see below).

<sup>125</sup> This practice was introduced by the European colonial powers with the result that most developing countries retained such a centralised system well into the 1980s. The difficulty reforming this centralised system is one of the major reasons why developing countries have not been ready to accept the inclusion of public procurement in the WTO.

<sup>126</sup> The Commission had proposed European legislation to establish EEC-wide framework rules as early as 1965 and the first (very weak) Supplies and Works Directives had been adopted in 1971.

The draft OECD code on procurement was then adopted by the Working Group on Government Procurement of the GATT and ultimately formed the rules element of the 1979 Government Purchasing Agreement (GPA). Within the OECD it had not been possible to negotiate the 'liberalisation' of procurement markets, so this was transferred to the GATT. In the GATT in the 1970s the European Commission was negotiating for the EU and so assumed de facto competence for the negotiation of the 'liberalisation' commitments. It is also worth noting that the European Directives of the 1970s, although initially weak, were also based on the norms developed in the OECD. After all the Member States negotiating the norms in the OECD were also negotiating the EC Directives.

During the 1980s the role of the OECD in public procurement was not so pronounced. Although there were efforts to enhance knowledge on the nature and scale of procurement, the research work did not have the same impact as in agriculture (see the below). Policy was shaped more by internal developments within the EU where the Single Market effectively established a comprehensive EU regime covering all public procurement. This gave the EU a strong negotiating position so that the EU could shift to a more proactive policy seeking concessions from the US in terms of greater coverage of sub-federal level procurement. In other words the dynamic of EU integration enabled the EU to assume the role of a rule-maker, something that was general in the 1990s thanks to the Single Market programme.

So the OECD had an influence on the development of the rules on procurement, but does it still play a role? More recent developments in the OECD have taken the form of negotiating a set of principles for integrity in public procurement. These are aimed at building on the existing rules on transparency in an effort to address what are in reality important remaining de facto barriers to effective competition in procurement markets and the continued abuse of discretion to award contracts according to subjective or corrupt practices. These principles extend the scope of transparency provisions to cover the whole procurement cycle to include planning and implementation as well as the core contract award procedures. The principles also include best practice aimed at strengthen auditing of contract awards, enhancing the role of civil society in monitoring developments and generally promoting more professional procurement practices.<sup>127</sup> In line with OECD practice these principles have been followed up by peer review of OECD member countries compliance.

### *Agriculture*

The case of agriculture illustrates how the OECD has shaped outcomes not so much in the form of draft rules or norms but as a provider of information and research. As is well known differences over agriculture had created serious difficulties in all multilateral trade rounds. Under the old GATT all that could be agreed was vague qualitative commitments. This was in no small part due to the lack of any credible and generally accepted data on the level of support provided to agriculture. During the course of the Uruguay Round negotiations of GATT this changed due in part to the role of the OECD. The OECD developed what was at the time called an Aggregate Measure of Support (AMS) for agriculture for all OECD countries. This was done by means of OECD staff research, but also peer pressure within the OECD to get countries, including the EU, to provide the data necessary to produce the data.

The establishment of the AMS covered all forms of support whether in the form of price support or direct income support for farmers. It therefore provided a credible basis for negotiation. So the OECD contributed to a replacing the vague commitments under previous negotiations with reasonably well-defined quantitative commitments that were in consequence easier to enforce (Tangerman, 2012, p. 162). Although the commitments actually made during the Uruguay Round negotiations did not lead to a significant reduction in the levels of subsidy at the time, the production of hard numbers contributed to

<sup>127</sup> See OECD Principles for Integrity in Public Procurement 2009.

the pressure for reform. The OECD has also shaped the debate on agricultural trade by shaping norms on the most efficient forms of support. For example, work on the benefits of decoupling support from production probably contributed to the shift in EU policy at the beginning of the 2000s.

The role of the OECD in shaping norms is therefore not just in relatively new areas of trade such as public procurement or trade and the environment. Even in the traditional areas such as agricultural trade policy the work of IOs can have significant if indirect effects. The OECD has produced a great deal of material on agricultural trade, including, for example, on the environmental impacts of some agricultural policies (OECD, 2008).

This brief summary of the OECD shows how its non-binding norms or codes have had a profound impact on trade policy in general including on the EU as they are assimilated by the Member States and then transposed into EU policy, but also by generally shaping awareness of the costs and benefits of policy options

## 8 Implications and conclusions

This study analyses how the rules, norms, and standards that make up the trade and investment policy of the EU take shape. In particular, we focus on the role of IOs as norm or rule-makers, and the dual roles of the EU as rule-maker and rule-taker. Despite stalled formal multilateral negotiations in some key issue areas, IOs remain important actors and can play decisive roles in shaping rules, norms and best practices.

This study identifies many different ways in which IOs can shape outcomes, including: convening power; naming and shaming strategies; monitoring, evaluation, peer review, and benchmarking; through the provision of scientific and technical expertise; through the dissemination of research, guidance, and best practices; through standards which domestic regulators impose on companies; through standards which bind member states and signatories; and finally through voluntary standard setting. These various ways of influencing policy can reinforce each other; for instance, standards and norms can be elaborated within one organisation and then implemented in another. This type of norm development can take a relatively long time to have a concrete impact; therefore this study takes a longer-term perspective.

EU Member States and the European Commission are generally well-represented in the international governance, but there is still more to be achieved in terms of coordination and 'speaking with one voice'. The study reviews the role of the EU in these international organisations by looking at some key factors that determine how the EU participates. First, the study reviews the legal basis for participating in IOs and the competence of the EU in the area covered, whether it is exclusive, shared, supporting and coordination, special competence, or exclusive member state competence. Second, it evaluates EU participation in the IO: is it full member, have only observer status, or no seat at all? Third, the study evaluates how common EU positions are coordinated or agreed. Fourth, it reviews the choice of forum (unilateral, bilateral or multilateral) as well as the choice between binding versus non-binding rules.

The case studies illuminate the interplay between the EU, Member States, and IOs in the shaping of trade and investment rulemaking. The case studies on investment showed that ICSID and UNCITRAL present influential rule/norm-makers. ICSID actively disseminated the idea of investor-state arbitration through the provision of technical expertise, the dissemination of best practices, and in particular through model clauses. UNCITRAL has been an important forum, in which member states and observers have elaborated regulations for adoption as international treaties, formulated model laws to serve as guides for local adaptation, and incorporated commercial customs and practice into formal legal frameworks.

The second case study of the OECD illuminates the influence of this organisation in several distinct areas of trade and investment policy. With regard to investment protection and liberalization, the OECD became an important forum in the 1960s producing influential draft codes, which were then incorporated into the BITs of the EU member states. The OECD also shaped the procurement policies of

EU countries over several decades, through research, national inventories of procurement standards, voluntary OECD guidelines, and then a draft code that became the basis for the GATT and then WTO rules.

The study has a number of implications for the EU Parliament:

- it is important to monitor developments in a wide range of international organisations because these will shape agendas, guidelines, voluntary standards, codes of best practice or binding rules that will in turn shape EU trade and investment policy;
- as with all policy development the early stages of the process of shaping agenda is important and these early stages often occur in deliberations in IOs;
- the role of the EU in shaping these norms will depend on a range of factors including EU market power, competence, the degree of consensus on EU domestic norms, policy/research capacity etc. The question of how to optimise EU influence requires further research; and finally
- the INTA Committee will therefore wish to consider how it can be more proactive in ensuring that the EU is more of a norm-maker than a norm-taker.

## Annex: Overview of EU-IO interaction

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
<b>Group of Seven / Eight (G7/8)</b>	Global economic issues, including trade, environment and development issues; also security	G7: Finance Ministers and central bank Governors of France, Germany, Italy, the United Kingdom. G8 is an annual meeting of the political leaders of the countries.	EU is a full member of the G8 and is represented by the Presidents of the European Council President and the European Commission.	Varying: exclusive, shared, coordination;  Non-binding coordination mechanism of EU's position. MS cede to Commission on trade (and investment).	Consensus.	No	Convening power;
<b>Group of Twenty (G20)</b>	Global economic and financial issues, with agenda extending to include broader issues	France, Germany, Italy, United Kingdom; and de facto Spain	The EU <sup>129</sup> is the only non-state member of the G20 and is represented by the Presidents of the Commission and European Council during summits.  Monetary Policy: President of the ECB.	Exclusive and shared competence areas. Art. 4(3) TEU: 'principle of sincere cooperation'  Coordination in advance of G20 meetings and the EU sets out views in a joint letter of the Presidents of the European Commission and the European Council. <sup>130</sup>	Consensus; every country can express opinion and right to a veto, which removes topic from agenda. Informal setting	No	Convening power; non-binding commitments which MS have to implement; peer pressure

<sup>128</sup> European Commission (2015). International institutions and fora: [http://ec.europa.eu/economy\\_finance/international/forums/index\\_en.htm](http://ec.europa.eu/economy_finance/international/forums/index_en.htm)

<sup>129</sup> The EU Treaties do not provide a legal basis or guidance as to EU representation and preparation for G20 meetings.

<sup>130</sup> EU excluded from the chair/presidency rotation which reduces its influence in agenda-setting.

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
				Representation of interests of the non-G20 EU members.			
<b>Financial Stability Board (FSB)</b>	International financial issues	France, Germany, Italy, The Netherlands, and Spain; Coordination through the FSB regional consultative group for Europe <sup>131</sup>	EU is a member, represented by European Central Bank (Vice President) and the Commission (Director General, Financial Stability, Financial Services and Capital Markets Union).  At ministerial level, the EU is represented by the Commission, and the ECB.	There is no formal alignment of positions between Commission, ECB and Member States but preparatory work in Economic and Financial Committee (EFC) and Financial Services Committee (FSC) (prepare ECOFIN meetings).	In Plenary; consensus	No	moral suasion; peer pressure; coordinating and monitoring of financial regulation standards; 'soft power'
<b>Basel Committee on Banking Supervision (BCBS)</b>	Financial regulation	9 EU Member States with institutions represented: Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Spain, Sweden, UK	The European Commission and the European Banking Authority have observer status, European Central Bank holds a two-seat full membership: European Central Bank and the European Central Bank Single Supervisory Mechanism.  The European Commission is represented by	Limited intra-EU coordination;  BCBS issues are discussed in the Expert Group on Banking, Payments and Insurance and the Economic and Financial Committee. <sup>132</sup>  Financial regulation is a shared competence and no formal EU mandate.	Consensus of full members (not of observers).	No	Standard-setting; guidelines; sound practices; technical expertise

<sup>131</sup> EU MS included are: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Spain, Sweden, United Kingdom. Additional RCG group members are: Israel, Iceland, Norway, Switzerland and the Group of International Finance Centre Supervisors (GIFCS).

<sup>132</sup> Expert Group on Banking, Payments and Insurance: [http://ec.europa.eu/finance/general-policy/expert-group/index\\_en.htm](http://ec.europa.eu/finance/general-policy/expert-group/index_en.htm); Economic and Financial Committee: [http://europa.eu/efc/index\\_en.htm](http://europa.eu/efc/index_en.htm).

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
			<p>the Director (or senior level official) of Financial Institutions in Directorate General Financial Stability, Financial Services and Capital Markets Union (DG FISMA).</p> <p>Mario Draghi, President of the European Central Bank is the current chair of the Group of Governors and Heads of Supervision.</p>				
<b>Organisation for Economic Co-operation and Development (OECD)</b>	International economic governance but also broader agenda esp. vis-à-vis development	21 EU Member States are full members (out of 34 members): Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy,	EU has a quasi-member status or privileged observer status, without voting rights. <sup>133</sup> Represented by the EU Permanent Delegation to the OECD (PD) <sup>134</sup> with the entry of the Lisbon Treaty, consisting of European Commission, the EEAS and national delegates. The Commissioner in charge of Economic and Monetary Affairs attends the	<p>EU's position is formulated by the DG Trade of the European Commission and in the Council's Trade Policy Committee (TPC), but there is no Working Group on the OECD, so position formulation is informal.</p> <p>Across all competencies – exclusive, shared and for example in the case of</p>	Consensus.	No	Data collection and dissemination of statistical data and research; benchmarking and peer pressure <sup>135</sup> ; dissemination of guidance and best practices; 'soft power' and standard setting

<sup>133</sup> Exceptions to this are Working Party No.3, Development Assistance Committee (DAC) and its Subcommittees, Chemicals Committee, Steel Committee and LEED Programme where the EU can exercise voting rights (EP,2015c).

<sup>134</sup> (EP, 2015c): 'The EU delegation can attend and chair meetings, suggest agenda items, table amendments and become a rapporteur without a special permission. The EU representatives can be elected to the Bureau and Standing Committees and are entitled to preside them.'

<sup>135</sup> Through the Economic and Development Review Committee (EDRC) <http://www.oecd.org/economy/surveys/role-of-the-economic-and-development-review-committee-edrc.htm>.

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
		<p>Luxembourg, The Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom;</p> <p>OECD Accession Countries: Latvia, Lithuania. Iceland and Norway also represented at the OECD.</p>	<p>economic part of the OECD ministerial meetings, though the Commissioner for Trade has also attended a number of meetings, as well as other relevant Commissioners (e.g. Employment). DG ECFIN in high level meetings &amp; in Economic and Development Review meetings on individual countries. European Supervisory Authorities (ESAs) are not officially represented in the OECD gatherings and President of the ECB and the Eurogroup President are excluded from the high-level meetings (EP, 2015c). For a detailed discussion on multiple representations of the EU in OECD, see EP, 2015c.</p>	<p>corporate social responsibility, MS represent themselves.</p> <p>Article 220(1) TFEU refers to cooperation with the OECD. Supplementary Protocol No. 1 to the Convention on the OECD of 14 December 1960, the signatories to the Convention agreed that the European Commission shall take part in the work of the OECD.</p>			
<b>International Monetary Fund (IMF)</b>	Wide coverage: global monetary cooperation, secure financial stability,	All 28 MS on Board of Governors. 4 MS with permanent seats the Executive Board, other	The EU is represented by its MS – no formal seat. The Commission participates as an observer in the IMF’s International Monetary and Financial Committee. The ECB also observer.	<p>Article 138 TFEU</p> <p>Informal coordination of the EU member states in the IMF.</p>	<p>Section 5. Voting of the Articles of Agreement</p> <p>According to the Articles of Agreement, common decisions taken in the Board of Governors or the Executive Board are taken</p>	‘The IMF’s Articles of Agreement are both a binding international legal treaty between the	Dissemination of research; technical expertise; monitoring and surveillance; peer pressure; ‘naming and shaming’

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
	facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world	MSs represent or represented in constituencies. Reform envisages reduction in EU representation			by a 'simple majority' of 50% of the votes and fundamental decision a 'supermajority' between 70% (for decisions, such as setting the interest rate on IMF loans) and 85% (for decisions, such as the admission of new members, increases in quotas or the amendment of the Articles of Agreement) of the votes may be required. <sup>136</sup>  However, most of decisions are taken by consensus.	IMF's member states and the IMF's founding constitution'. <sup>137</sup>  recommendations are not binding.	
<b>The World Bank Group: International Bank for Reconstruction and Development (IBRD); International Development</b>	Development cooperation; concessional and non-concessional lending (IBRD and IDA); facilitating private sector	MS join the five components separately (IBRD, IDA, IFC, MIGA, and ICSID). All 28 MS are members of the IBRD, IDA, IFC, and MIGA.	The EU represented by its MS. The Commission participates as an observer in the World Bank's Development Committee.  EU participation and interaction with the WB resembles to a large extent	Article 138 TFEU  Informal coordination of the EU member states in the WB in Washington DC.	IBRD and IFC: Each member receives votes consisting of share votes (one vote for each share of the Bank's capital stock held by the member) plus basic votes (calculated so that the sum of all basic votes is equal to 5.55	It varies by area; for example, ICSID awards are binding on the parties.	Dissemination of research; technical expertise; monitoring and surveillance; peer pressure; conciliation, arbitration or fact-

<sup>136</sup> EP, 2015d.

<sup>137</sup> Ibid.

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
<b>Association (IDA); International Finance Corporation (IFC); Multilateral Investment Guarantee Agency (MIGA); International Centre for Settlement of Investment Disputes (ICSID)</b>	involvement (IFC); political risk insurance (MIGA); conciliation and arbitration of investment disputes (ICSID)	Only 27 MS are members of ICSID, with Poland not being a member	arrangements with the IMF (see above). Compared to IMF, ECB does not have an observer status in the WB.  The EU has a Framework Agreement with the World Bank		percent of the sum of basic votes and share votes for all members).		finding.
<b>International Labour Organisation (ILO)</b>	Rights at work, decent employment opportunities, social protection, social dialogue	All 28 MS, but signature and ratification of conventions varying. <sup>138</sup> Tripartite body with representation by MS business and organised labour.	The EU is represented by its MS. No agreement on the representation of the EU at the ILO exists.	Competence to ratify resides with the Member States – most fall under EU and MS shared competence and EU’s exclusive competence and only a limited number under MS exclusive competence or coordination.  Where the EU has exclusive external competence EU Member States must receive authorisation to ratify the Convention in the	International labour standards are legal instruments that are binding when ratified , or recommendations, which serve as non-binding guidelines.  International Labour Conference: Three types of vote are possible: a vote by a show of hands; a record vote; and a secret ballot.	Yes.	International labour standards, convening power, naming and shaming

<sup>138</sup> ILO Conventions: <http://ec.europa.eu/social/BlobServlet?docId=12598&langId=en>.

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
				<p>interests of the Union.</p> <p>Coordination takes place via Presidency, formal regional groups, and the Industrial Market Economies Countries Group (IMEC). Most EU Member States coordination takes place in Geneva.</p>			
<b>European Bank for Reconstruction and Development (EBRD)</b>	International financial institution	All 28 EU MS are shareholders. Total MS and EU shareholding 63%.	The EBRD is owned by 64 countries, the EU European Investment Bank (EIB). Each shareholder is represented individually on the Board of Governors of the EBRD which has overall authority over the Bank.	DG ECFIN is in charge of the Commission's relations with the EIB Group and the EBRD.	<p>The voting rights proportional to shares in the bank's capital stock.</p> <p>Decisions on general policy issues are by a majority of not less than two-thirds of the total voting power of the countries participating.</p>	Not applicable.	Financial investment; policy dialogue; business services
<b>European Investment Bank</b>	European financial institution	All 28 EU MS.	According to EIB Statute, the Commission designates one Director (the Director-General of DG ECFIN) and one Alternate Director (the Director-General of DG REGIO) to the Board of Directors of the EIB, which comprises	<p>DG ECFIN is responsible for the exercise of the rights and obligations given to the Commission by the Treaties with respect to the European Investment Bank.</p> <p>Article 271 TFEU and</p>	In most cases decisions of the Board of Governors taken by a majority of its members. This majority must represent at least 50 % of the subscribed capital. (Article 8 of the Statute).	Not applicable.	Loan and assistance provision; guidance;

Institution	Areas	MS Membership	EU Participation <sup>128</sup>	Common position and competence	Decision-making procedure	Legally binding (Yes/No)	Mechanisms
			26 Directors and 16 Alternate Directors in total. <sup>139</sup>	Chapter 4: European Investment Bank ; also Statute of the EIB.			
<b>UN bodies e.g. United Nations Commission on International Trade Law (UNCITRAL)</b>	Commercial law	All 28 EU MS.	<p>UNCITRAL has 60 state members, elected for six years. The EU is an observer, but with the ability to participate fully. In recent practice, the Commission has coordinated and advocated a unified position with regard to the deliberations in UNCITRAL working groups.</p> <p>Conventions, like the UNCITRAL Convention on Transparency, are acceded to both by the EU and by the Member States.</p>	<p>Under the Lisbon Treaty, foreign direct investment has become a part of EU exclusive competence.</p> <p>EU Member States must receive authorisation to participate in the interests of the EU</p>	In principle – by consensus. On occasion, voting according to rules of the General Assembly.	<p>UNCITRAL has produced conventions; model laws; legislative guides; and model provisions. Conventions are legally binding.</p> <p>Model laws are recommended to states to enact.</p>	<p>Convening power; conventions, model laws and rules; legal and legislative guides and recommendation s; technical assistance and dissemination of information; standard setting</p>

<sup>139</sup> [http://ec.europa.eu/economy\\_finance/financial\\_operations/coordination/eib/index\\_en.htm](http://ec.europa.eu/economy_finance/financial_operations/coordination/eib/index_en.htm)

## References

- Abbott, K.W., Snidal, D., 2001. International "Standards" and International Governance (SSRN Scholarly Paper No. ID 1550889). Social Science Research Network, Rochester, NY.
- Azoulai, L., 2005. The Acquis of the European Union and International Organisations\*. *Eur. Law J.* 11, 196–231. doi:10.1111/j.1468-0386.2005.00257.x
- Bach, D., Newman, A.L., 2007. The European regulatory state and global public policy: micro-institutions, macro-influence. *J. Eur. Public Policy* 14, 827–846. doi:10.1080/13501760701497659
- Bradford, A., 2014. Exporting Standards: The Externalization of the EU's Regulatory Power via Markets. *Int. Rev. Law Econ.* 42. doi:10.1016/j.irle.2014.09.004
- Büthe, T., Mattli, W., 2011. *The new global rulers the privatization of regulation in the world economy.* Princeton University Press, Princeton, NJ; Oxford.
- Calamita, N.J., 2014. Dispute Settlement Transparency in Europe's Evolving Investment Treaty Policy: Adopting the UNCITRAL Transparency Rules Approach. *The Journal of World Investment & Trade* 15, 645-678.
- Caron, D., Caplan, L. 2013. *The UNCITRAL Arbitration Rules: A Commentary (2nd Edition).* Oxford: Oxford UP.
- Damro, C., 2012. Market power Europe. *J. Eur. Public Policy* 19, 682–699. doi:10.1080/13501763.2011.646779
- Debaere, P., Lesage, D., Orbie, J., 2014. Effective "minilateralism": the European Union's pragmatic embracement of the G20, in: *The EU and Effective Multilateralism : External and Internal Reform in the First Decade.* Routledge, pp. 170–185.
- De Bièvre, D., Poletti, A., Thomann, L., 2013. To enforce or not to enforce? Judicialization, venue shopping, and global regulatory harmonization: To enforce or not to enforce? *Regul. Gov.* n/a–n/a. doi:10.1111/rego.12017
- Debaere, P., 2015. EU Coordination in International Institutions . [Online] Available at: <http://www.palgraveconnect.com/pc/doi/10.1057/9781137517302.0001>. (Accessed: 21 November 2015).
- Debaere, Peter (2014), "The EU's Role and Performance within the G20 in the Area of Finance and Development", in: Koops, Joachim and Macaj, Gjovalin, *The European Union as a Diplomatic Actor*, available at [https://www.academia.edu/The\\_EU\\_s\\_role\\_and\\_performance\\_within\\_the\\_G20\\_in\\_the\\_area\\_of\\_finance\\_and\\_development](https://www.academia.edu/The_EU_s_role_and_performance_within_the_G20_in_the_area_of_finance_and_development) (accessed on 23 April 2015)
- Brown, W., 2004. 'From Uniqueness to uniformity? An assessment of EU development aid policies' in Arts, K. & Dickson, A. (eds.) *EU Development Cooperation. From Model to Symbol.* Manchester University Press.
- "Draft Transparency Convention 'a Powerful Instrument' in Treaty-based Arbitration United Nations International Trade Law Body Tells Sixth Committee." United Nations Press Release GA/L/3479, 13 October 2014. <http://www.un.org/press/en/2014/gal3479.doc.htm>
- Duran, G.M., 2013. The Role of the EU in Shaping the Trade and Environment Regulatory Nexus: Multilateral and Regional Approaches, in: Van Vooren, B., Blockmans, S., Wouters, J. (Eds.), *The EU's Role in Global Governance.* Oxford University Press, pp. 224–240.
- European Commission, 2014. Facts and figures about the European Union and the G20. [http://ec.europa.eu/priorities/docs/g20-brisbane\\_en.pdf](http://ec.europa.eu/priorities/docs/g20-brisbane_en.pdf).
- European Parliament, 2015a. The European Union's Role in International Economic Fora Paper 1: G20, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542207/IPOL\\_STU\(2015\)542207\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542207/IPOL_STU(2015)542207_EN.pdf)

- European Parliament, 2015b. The European Union's Role in International Economic Fora Paper 2: The FSB, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542191/IPOL\\_STU\(2015\)542191\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542191/IPOL_STU(2015)542191_EN.pdf).
- European Parliament, 2015c. The European Union's Role in International Economic Fora Paper 3: The OECD, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542192/IPOL\\_STU\(2015\)542192\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542192/IPOL_STU(2015)542192_EN.pdf)
- European Parliament, 2015d. The European Union's Role in International Economic Fora Paper 4: The IMF, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542193/IPOL\\_STU\(2015\)542193\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542193/IPOL_STU(2015)542193_EN.pdf).
- European Parliament, 2015e. The European Union's Role in International Economic For a Paper 5: The BCBS, [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/542194/IPOL\\_IDA\(2015\)542194\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/542194/IPOL_IDA(2015)542194_EN.pdf).
- Hindelang, S., Sassenrath, C.P. 2015. The Investment Chapters of the EU's International Trade and Investment Agreements: A Comparative Perspective. European Parliament Directorate-General for External Policies EP/EXPO/B/INTA/2015/01.
- ICSID. 2015. ICSID Caseload—Statistics, Special Focus on the European Union. April 2015. [https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID%20Web%20Stats%20U%20\(English\)%206-4-15.pdf](https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/ICSID%20Web%20Stats%20U%20(English)%206-4-15.pdf)
- Johnson, L., Bernasconi-Osterwalder, N. 2013. New UNCITRAL Arbitration Rules on Transparency: Application, Content and Next Steps. [http://www.iisd.org/pdf/2013/uncitral\\_rules\\_on\\_transparency\\_commentary.pdf](http://www.iisd.org/pdf/2013/uncitral_rules_on_transparency_commentary.pdf)
- Jørgensen, K.E. & Wessel, R.A. (2011) 'The position of the European Union in (other) international Organisations: confronting legal and political approaches', in Koutrakos, P. (ed.) 'European Foreign Policy: legal and political perspectives', Cheltenham: Edward Elgar.
- Kerremans, B., Orbie, J., 2009. The social dimension of European Union trade policies. Eur. Foreign Aff. Rev. 14, 629–641.
- Majone, G., 1994. The rise of the regulatory state in Europe. West Eur. Polit. 17, 77–101. doi:10.1080/01402389408425031
- Mattli, W., 1999. The logic of regional integration: Europe and beyond. Cambridge University Press, New York.
- Mattli, W., Büthe, T., 2003. Setting International Standards: Technological Rationality or Primacy of Power? World Polit. 56, 1–42.
- Mügge, D. (Ed.), 2014. Europe and the Governance of Global Finance. Also available as: eBook.
- Nasra, S. & Debaere, P. (2012): The European Union in the G20: what role for small states?, Cambridge Review of International Affairs, DOI: 10.1080/09557571.2012.678304
- Newman, A.L., Posner, E., 2015. Putting the EU in its place: policy strategies and the global regulatory context. J. Eur. Public Policy 22, 1316–1335. doi:10.1080/13501763.2015.1046901
- Newman, A.L., Posner, E., 2011. International interdependence and regulatory power: Authority, mobility, and markets. Eur. J. Int. Relat. 17, 589–610. doi:10.1177/1354066110391306
- Novitz, T., 2005. The European Union and International Labour Standards: The Dynamics of Dialogue between the EU and the ILO, in: Alston, P. (Ed.), Labour Rights as Human Rights. Oxford University Press, pp. 214–242.
- OECD (2008) *Environmental Performance of Agriculture in the OECD Countries since 1990*.

- Orbie, J., Babarinde, O., 2008. The Social Dimension of Globalization and EU Development Policy: Promoting Core Labour Standards and Corporate Social Responsibility. *J. Eur. Integr.* 30, 459–477. doi:10.1080/07036330802142178
- Orbie, J., Tortell, L., 2009. *The European Union and the Social Dimension of Globalization: How the EU Influences the World*. Routledge.
- Parra, Antonio. 2012. *The ICSID Convention: A History*. Oxford: Oxford UP.
- Pohl, J., Mashigo, K., Nohen, A. 2012. Dispute Settlement Provisions in International Investment Agreements: A Large Sample Survey, OECD Working Papers on International Investment, 2012/02, OECD Publishing. <http://dx.doi.org/10.1787/5k8xb71nf628-en>
- Poulsen, L.N.S. 2015. *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries*. Cambridge: Cambridge UP.
- Quaglia, L., 2014. The sources of European Union influence in international financial regulatory fora. *J. Eur. Public Policy* 21, 327–345. doi:10.1080/13501763.2014.882970
- Shan, W., Zhang, S. 2011. The Treaty of Lisbon: Half Way toward a Common Investment Policy. *The European Journal of International Law* 21 (4): 1049-1073.
- Schill, S. 2015. Editorial: The Mauritius Convention on Transparency. *The Journal of World Investment & Trade* Vol 16 (Issue 2). 201-204.
- Staikouras, P.K., 2012. A Theoretical and Empirical Review of the EU Regulation on Credit Rating Agencies: In Search of Truth, Not Scapegoats. *Financ. Mark. Inst. Instrum.* 21, 71–155. doi:10.1111/j.1468-0416.2012.00172.x
- Szczyptański and Bassot (2015). *The Group of Twenty (G20) Setting the global agenda*. European Parliamentary Research Service (EPRS) [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545712/EPRS\\_BRI\(2015\)545712\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545712/EPRS_BRI(2015)545712_REV1_EN.pdf).
- Tangerman, S (2012) in Heydon and Woolcock (eds) 'Agriculture' in Ashgate Research Companion to International Trade Policy
- Woolcock, S., 2008. In *The Shadow of the Eagle: American Influence on European Trade Policy*.
- Woolcock, S. 2012. *The Economic Diplomacy of the European Union: EU decision making and negotiation in international economic relations*, Ashgate.
- Wouters, J., Kerckhoven, S.V., Odermatt, J., 2013. The EU at the G20 and the G20's Impact on the EU, in: Van Vooren, B., Blockmans, S., Wouters, J. (Eds.), *The EU's Role in Global Governance*. Oxford University Press, pp. 259–271.
- WTO, 2014. *Overview of developments in the international trading environment: Annual report by the Director-General*.
- Young, A.R., 2014. Europe as a global regulator? The limits of EU influence in international food safety standards. *J. Eur. Public Policy* 21, 904–922. doi:10.1080/13501763.2014.910871.

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