



International Agreements – Review and Monitoring Clauses

A Rolling Check-List

EXTRACT OF STUDY

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International Agreements – Review and Monitoring Clauses

A Rolling Check-List – Extract

Abstract

This extract comprises the introduction to a study which provides an analysis and overview of the review and monitoring clauses, sunset clauses, consultation clauses and management and implementation clauses contained in bilateral and multilateral international agreements concluded between the EU and other countries, and in force as of 1 September 2019.

Drawing on information publicly available across several databases, it provides an analytical overview of international agreements and their respective clauses within a single, comprehensive repository. This repository is annexed to the full study, and is published online on the European Parliament's Think Tank website.

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Executive summary

This document provides an analysis of information included in the database of international agreements between the EU and third countries, and review and monitoring clauses included therein, that is annexed to an electronic version of this publication published on the EPRS think tank webpage.

Despite their limitations, the powers and competences given to the European Parliament by the Treaties in the field of international agreements allow Parliament to play an active part in the processes of negotiating, concluding and acceding to the majority of international agreements forged between the EU and third countries. The consultation and consent procedures that were devised precisely to this particular end (Article 218 TFEU) underline the fact that Parliament cannot be simply overlooked in the related procedures by the European Commission and the Council. Political proclamations and agreements such as the Framework Agreement on relations between the Parliament and the Commission (2010) or the Interinstitutional Agreement on Better Law-Making (2016) should further strengthen Parliament's position regarding immediate and full access to information at all stages concerning the negotiation and conclusion of international agreements. However, as things stand, a broader political agreement is currently required in order to make these political proclamations work in practice.

This rolling check-list offers Parliament an implementation monitoring tool allowing a systematic and comprehensive overview of the various 'review and monitoring clauses' contained in international agreements concluded between the EU and a third country. It covers all the review clauses, special review clauses, reporting clauses, management and implementation clauses, consultation clauses and sunset clauses that can be found in international agreements concluded between the EU and third countries.

The following findings can be highlighted on the basis on an analysis of these international agreements and review and monitoring clauses:

- the database includes 940 bilateral agreements and 253 multilateral agreements made between the EU and a third country and were either in force or provisionally applied as of 1 September 2019;
- approximately 32 % of bilateral agreements were concluded in the field of international trade while approximately 30 % of multilateral agreements were concluded/or acceded to in relation to the environment;
- approximately 69.3 % of bilateral international agreements and 83.3 % of multilateral international agreements include at least one review clause;
- the most common review and monitoring clause in both bilateral and multilateral agreements is a 'management and implementation clause' with 29 % of bilateral agreements and 26 % of multilateral agreements containing it;
- only a limited number of international agreements (19 % of bilateral agreements and 2 % of multilateral agreements) contain a sunset clause that would limit the validity of a particular agreement in time;
- in approximately 44 % of bilateral agreements and approximately 64 % of multilateral agreements a review of implementation of the said agreements is carried out by bodies, consisting of representatives of contracting parties, that were established by international agreements;
- generally, there is a difference in the wording of review clauses used in different international agreements, although there are cases where these clauses are identical and;

- other existing databases of international agreements (EUR-Lex, the Treaties Office Database and the Council Database of international agreements) are not unified as they tend to contain different information.

The list of international agreements – a database – contained in the annex to the full version of this publication is structured by individual countries that have concluded an agreement with the EU. The database contains:

- information on the entry into force of the agreement;
- a special provision containing one or more of the 'review and monitoring clauses';
- a competent body established/appointed by the agreement;
- possible dates of review, reporting and or meetings of the bodies;
- the subject matter of the agreement (policy area) and
- remarks concerning the agreement.

The electronic version includes a direct internet link to the agreement in question in the EUR-Lex database.

The analysis and the database has been produced by the Ex-Post Evaluation Unit of the European Parliamentary Research Service (EPRS), the European Parliament's in-house research service and think tank, as part of its work evaluating the EU policy cycle.

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1. Introduction

This is the fourth, updated, edition of an analysis of a database of international agreements, presenting an overview of the various review and monitoring clauses – including sunset, consultation, management and implementation clauses – that can be found in the international agreements concluded between the European Union and third countries. It is produced by the Ex-Post Evaluation Unit of the European Parliamentary Research Service (EPRS), the European Parliament's in-house research service and think tank, as part of its work on the evaluation of the EU policy cycle.

This document provides an analysis of the information contained in the database of international agreements between the EU and third countries that is annexed to the electronic version of this publication to be found on the Parliament's Think Tank website.

While the review and monitoring clauses refer to the process of assessing the implementation of international agreements, the sunset clauses refer to their duration. The management and implementation clauses describe the composition and powers of the body in charge of supervising the management of the agreement, and sometimes define special procedures for management or implementation. The consultation clauses generally contain requests for mandatory or optional consultations between the parties in various circumstances, including consultations regarding the implementation of agreements or their parts.

This version of the study covers 1 193 international agreements, 253 of which are multilateral and 940 bilateral. The part on bilateral agreements includes international agreements concluded between the EU and all other countries in the world. The study includes those international agreements that were in force at the time of drafting and those agreements that applied provisionally (as of 1 September 2019).

The European Union engages in a wide range of international agreements, following the procedures set out in the Treaty on the Functioning of the European Union (TFEU). The present document should enable the European Parliament to improve its follow-up on the international agreements in force, by identifying the management mechanisms and upcoming reports, revision and sunset dates or cases in which consultation of the parties is required.

Depending on their interests and objectives, readers might also find it useful to use this rolling check-list in conjunction with the other rolling check-lists that are produced by the Ex-Post Evaluation Unit of EPRS:

- [Review Clauses in EU Legislation: A Rolling Check-List](#) provides a comprehensive overview of review clauses, i.e. review, evaluation and reporting provisions, contained in recent EU legislative acts and programmes.
- [Evaluation in the European Commission: Rolling Check-List and State of Play](#) provides a comprehensive overview of on-going and planned ex-post evaluations of EU legislation and spending programmes conducted by the Commission, as well as of the mechanisms underpinning them.
- [Special Reports of the European Court of Auditors: A Rolling Check-List](#) of recent findings presents a comprehensive overview of these reports, concentrating on those of relevance to the annual EU discharge procedure.

These research and analysis tools complement each other and allow the reader to gather an overview of relevant information available in a given policy area or on a specific legislative act with regard to reporting, monitoring and evaluation. They therefore constitute a comprehensive toolbox at the service of parliamentary committees and individual Members.

2. Background and methodology

2.1. International agreements and the position of the European Parliament

Despite its sui generis character, the European Union is an international organisation and as such it can conclude or be a party to bilateral or multilateral international agreements with other subjects of international law. According to Article 216 TFEU, the European Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding EU act or is likely to affect common rules or alter their scope. According to Article 216(2) TFEU, agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

The TFEU describes a specific procedure through which the European Union enters into agreements with other countries and international organisations. International agreements are negotiated by the European Commission, or the High Representative of the European Union for Foreign Affairs and Security Policy, based on a negotiating mandate defined by the Council. In the vast majority of cases, the European Parliament plays an active role through the **consent procedure** (Article 218(6), a, TFEU). In exceptional cases, Parliament is involved through the **consultation procedure** (Article 218(6), b, TFEU). Therefore, by virtue of the Treaty provisions and in accordance with standing jurisprudence, most of the international agreements cannot be concluded without the European Parliament giving its consent to the conclusion of the agreement.

Consent of Parliament (Article 218(6)(a), TFEU) is required for:

- association agreements;
- the agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- agreements establishing a specific institutional framework by organising cooperation procedures;
- agreements with important budgetary implications for the Union; and
- agreements covering fields to which either the ordinary legislative procedure applies, or a special legislative procedure where the European Parliament's consent is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit to give consent. If Parliament refuses to give its consent the international agreement cannot be concluded. Parliament has in this context a 'veto' power.

Consultation of Parliament by the Council (Article 218(6)(b), TFEU) is required in all other cases. In this case, Parliament delivers its opinion within a time limit that the Council may set depending on the urgency of the matter. In the absence of an opinion within that time limit, the Council may act.

The only cases where there is an exception from the consent and consultation procedure involve international agreements relating exclusively to common foreign and security policy. These agreements do not require Parliament to actively exercise its powers.

Nonetheless, in accordance with Article 218(10) TFEU, Parliament has the right to be immediately and fully informed at all stages of the procedure connected with the conclusion of international agreements. This article also applies to agreements exclusively relating to the common foreign and

security policy. The provision of immediate and full information to Parliament by the Council is covered by the [interinstitutional agreement](#) of 12 March 2014 between the European Parliament and Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy. The provision of immediate and full information by the Commission is covered by the [Framework Agreement](#) on relations between the European Parliament and the European Commission of 20 October 2010, [as revised](#).

In addition to the consent procedure, the consultation procedure and the right to be informed, Parliament has supervisory and scrutiny powers that also include the field of international agreements.¹ Pursuant to Article 14(1) of the Treaty on European Union (TEU), Parliament can exercise functions of political control. For example, according to Article 36 TEU, the Vice-President of the European Commission/ High Representative of the European Union for Foreign Affairs and Security Policy has an obligation to consult Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. Furthermore, the High Representative has to ensure that the Parliament's views are duly taken into consideration. MEPs may address questions or make recommendations to the Council or the High Representative.

According to the [Framework Agreement on relations between the European Parliament and the European Commission](#) (2010), Parliament has the right to be immediately and fully informed at all stages of the negotiation and conclusion of international agreements. The Framework Agreement also enables the inclusion of a delegation of Members of the European Parliament as observers in EU delegations, so that Parliament may be fully and immediately informed about conference proceedings. Although MEPs may not participate directly in the negotiations, they may be granted observer status by the Commission (point 25). This is however subjected to legal, technical and diplomatic possibilities.

Under the same conditions, the European Commission should facilitate access as observers for MEPs forming part of the EU delegations to meetings of bodies set up by multilateral international agreements involving the Union, whenever such bodies are called upon to take decisions which require the consent of Parliament, or the implementation of which may require the adoption of legal acts in accordance with the ordinary legislative procedure (point 26).

Furthermore, Annex III, point 1 of the Framework Agreement gives the Parliament the right to be informed about the Commission's intention to propose the start of negotiations at the same time as the Council. In the case of international agreements the conclusion of which requires Parliament's consent, Parliament shall be provided with all relevant information provided to the Council by the Commission. This includes draft amendments to adopted negotiating directives, draft negotiating texts, agreed articles, the agreed date for initialling the agreement and the text of the agreement to be initialled (point 5). In the case of international agreements the conclusion of which does not require Parliament's consent, Parliament shall be provided with information about the draft negotiating directives, the adopted negotiating directives, the subsequent conduct of negotiations and the conclusion of the negotiations (point 6).

In the 2016 [Interinstitutional Agreement on Better Law-Making](#),² the European Commission, Council and Parliament acknowledge 'the importance of ensuring that each Institution can exercise its rights and fulfil its obligations enshrined in the Treaties as interpreted by the Court of Justice of

¹ For more about parliamentary scrutiny of the Commission see M. Remáč, [Parliamentary scrutiny of the European Commission: Implementation of Treaty provisions](#), DG EPRS, European Parliament, 2019.

² OJ L 123, 12.5.2016.

the European Union regarding the negotiation and conclusion of international agreements' (point 40). In this regard, the institutions were supposed to meet 'within six months after the entry into force of this Agreement in order to negotiate improved practical arrangements for cooperation and information-sharing' (point 40, paragraph 2). Talks between Parliament, the Commission, Council and European External Action Service 'have been ongoing since November 2016 in order to agree on improved cooperation and exchange of information between institutions as regards negotiations, conclusion and application of international agreements'.³ As of September 2019, the talks have been only partially successful.⁴

2.2. Type and range of international agreements covered

This scrutiny tool does not include agreements concluded exclusively between the EU and other international organisations. It concentrates rather on international agreements between the EU and third, i.e. non-EU, countries.

This edition of the study includes published **bilateral agreements**, concluded between the European Union or its predecessors, or Euratom, and non-EU countries, that were in force as of 1 September 2019. It also includes international agreements that had by this time been provisionally applied but were not in force.⁵

The study also includes those **multilateral agreements** that were in force by 1 September 2019 and to which the EU is party. It also includes those agreements that had by this time been provisionally applied but were not in force.

The study takes account of the basic acts of international agreements, i.e. the international agreements as they were originally adopted, but it also includes protocols and other documents that could have an impact on the content of the basic acts. These acts are generally included as individual entries.

On the above-mentioned basis, the study provides an overview of the various relevant clauses included in:

- 253 multilateral agreements, and
- 940 bilateral agreements.

The international agreements included in the study cover a variety of policy areas and subject matters. Some cover issues that fit into more than one policy field. The tables below give a breakdown of the main policy fields in bilateral and multilateral agreements.

The following figures show that approximately 32 % of all bilateral agreements included in this database (302 out of 940) fall within the policy field of international trade, followed by external relations (24 % - 221 out of 940) and agriculture (11 % - 104 out of 940).

The situation regarding multilateral agreements is different, as approximately 30 % of them (77 out of 253) have been concluded (or acceded to) in the environment policy area, followed by international trade (17 % - 43 out of 253) and freedom, security and justice (11 % - 27 out of 253).

³ International agreements: EP not excluding to go to Court again, [press release](#), European Parliament, 24 January 2018.

⁴ In this regard see also M. Remáč, [Parliamentary scrutiny of the European Commission: Implementation of Treaty provisions](#), DG EPRS, European Parliament, 2019, p. 87.

⁵ In some cases, the databases were not clear as to whether the agreements in question were in force or were provisionally applied.

Figure 1 – Policy fields/subject matters covered by bilateral international agreements included in the study⁶

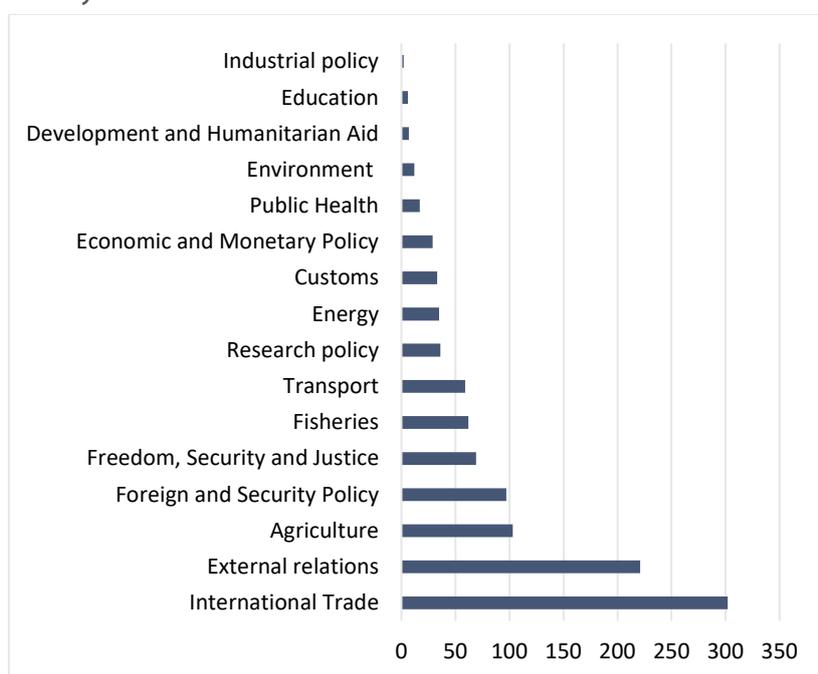
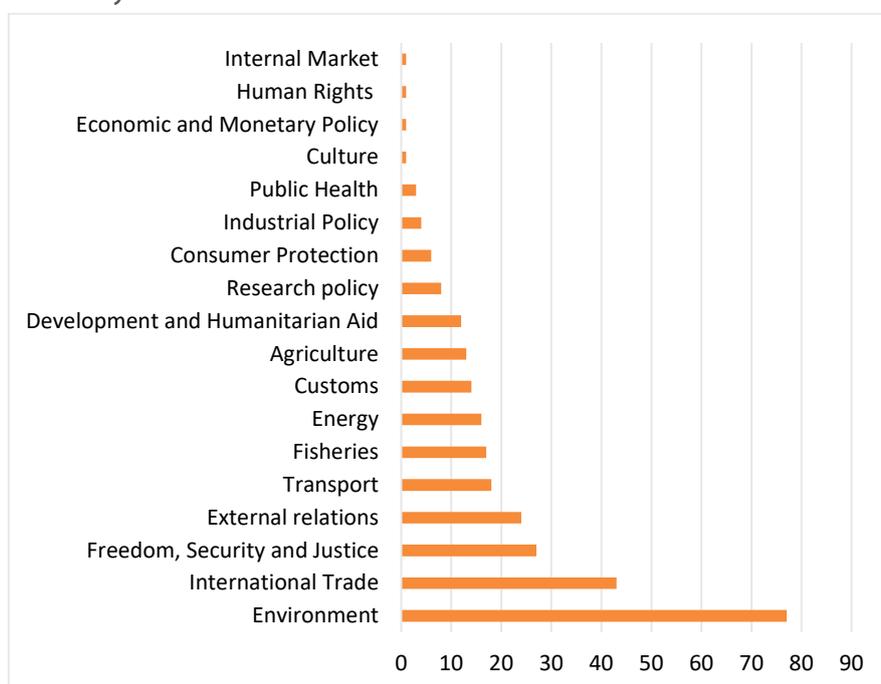


Figure 2 – Policy fields/subject matters covered by multilateral international agreements included in the study⁷



⁶ The number of policy areas is greater than the number of individual agreements because some agreements apply to more than one policy area.

⁷ The number of policy areas is bigger than the number of individual agreements because some agreements are applicable to more than one policy area.

2.3. Sources of information

Currently, there is no single database listing international agreements concluded between the EU and other subjects of international law. This study relies on three publicly accessible databases of international agreements, namely the [EUR-Lex database](#),⁸ the [Treaties Office Database](#)⁹ and the [Council Database of Agreements and Conventions](#).¹⁰ While the first database is an internet portal of European law and can be considered to be the main electronic source and collection of published EU legislation, the second is an internet portal that includes a list of international agreements concluded by the EU, covering 'all the bilateral and multilateral international treaties or agreements concluded by the European Union (EU), the European Atomic Energy Community (EAEC) and the former European Communities (EC, EEC, ECSC)'.¹¹ The third database is a publicly accessible database of international agreements published on the website of the Council Secretariat containing information on European Union agreements and conventions. This study essentially forms a fourth database of international agreements, while using publicly available information in other databases. This database is not designed to compete with the three above-mentioned databases, it just provides Parliament with a (useful) scrutiny tool, as it concentrates on review and monitoring clauses.

Although in the majority of cases the data included in these databases are identical, this edition of the study uses the EUR-Lex database as its primary source of information as concerns bilateral international agreements. The Treaties Office Database and the Council Database of Agreements and Conventions were used to cross-check information. The Treaties Office Database took priority with regard to finding the date of entry into force of an international agreement, as this information was often lacking in the former database. In this regard, the Treaties Office Database occasionally provided more thorough information. In cases of inconsistency between the data available in these databases, the information included in the EUR-Lex database was used as the reference as regards entry into force of an international agreement.

With regard to multilateral international agreements concluded between the EU and other subjects, the starting point was a list of multilateral agreements included in the Treaties Office Database, as the other two databases' search criteria do not allow a distinction to be made between 'multilateral agreements' and 'bilateral agreements'. The multilateral agreements included on this list were checked against the EUR-Lex database and the information provided in the latter database was used in the study. In the cases of inconsistency between the data available in these databases, the information included in the EUR-Lex database was used as a reference.

The EUR-Lex database currently numbers approximately [950](#) international agreements that are in force. This study covers all the international agreements listed in that database.¹²

⁸ This database is managed by the [Publications Office of the European Union](#).

⁹ This database is managed by the [European Union External Action Service](#).

¹⁰ This database is managed by the [General Secretariat of the Council](#).

¹¹ See Treaties Office Database, accessed in September 2019.

¹² This figure includes basic acts without corrigenda and it is limited to those international agreements that have entered into force. Differences between the number of international agreements published in the EUR-Lex database and the number included here might be linked to the fact that the databases sometimes provide different information on the validity and existence of an international agreement and that this database has been built on the basis of the three above-mentioned accessible databases. Furthermore, the EUR-Lex database sometimes publishes only Council decisions, where the Council announces adoption of a particular international agreement or an accession thereto, with the text of the agreement annexed to this decision.

2.4. Clauses included in international agreements

The analysis looks at various clauses that can be found in international agreements notably with a view to identifying the instances where Parliament can expect substantial information on the application of the agreement or where it could exercise its institutional role. It concentrates on four specific types of clause included in the agreements.

Review and monitoring clauses

A review and monitoring clause, as included in this study, is a provision in an international agreement which requires or enables a party to the agreement or a body created by the agreement to evaluate the implementation of that agreement. This definition needs to be differentiated from another possible definition of review clauses which generally refers to competences of parties to the agreement to revise and thus amend the text of the international agreement. Therefore, in the context of this study the review and monitoring clauses are not to be interpreted as 'revision clauses'. This, however, does not exclude the possibility that a review of the implementation and functioning of the agreement could potentially lead to an amendment or a revision of such an agreement.¹³

Management and implementation clauses

Management and implementation clauses are provisions of international agreements that establish a special procedure for the management or implementation of the agreement. They can also establish a body that is provided with competences to manage the agreement or assess/review its implementation.

Consultation clauses

Consultation clauses are provisions that in various cases prescribe or enable consultations between the parties. Such consultations can also take place with regard to implementation of the international agreement in question.

Sunset clauses

Sunset clauses are provisions of international agreements that limit the validity of the agreement in time. These clauses can have an impact on rights and obligations of the parties to agreements and on the application of the agreement.

Although the study distinguishes between: (1) review and monitoring clauses, (2) sunset clauses, (3) management and implementation clauses and (4) consultation clauses, this division is often theoretical, as in practice it is not always possible to distinguish between them on account of the frequent overlaps in the current formulation of international agreements. For instance, a majority of management and implementation clauses included in this study enables a particular body to carry out a review of the implementation of the international agreement or it makes this body responsible for a proper implementation of the agreement.¹⁴ Other types of clause that can be found in international agreements are not covered by this study.

¹³ For example, Article 17 (Review) of the Agreement on mutual legal assistance between the European Union and the United States of America (2010). The article states that: 'The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.'

¹⁴ See for example, Article VII (1) of the Agreement between the Government of the United States of America and the European Union on the coordination of energy-efficiency labelling programs for office equipment (2013). The article states that: 'The Parties shall establish a Technical Commission to review implementation of this Agreement,

2.5. Structure of the database

The database of international agreements included in the annexes to this study is structured around three separate columns.

Column 1: Name/Date of effect

This column provides the name of the international agreement and the agreement's date of effect. The internet version of the database includes a link to the EUR-Lex database, which gives access to the complete text of the international agreement in question and all additional data concerning the agreement.

Column 2: Special provisions

This column shows any review and management clauses identified (e.g. management and implementation clauses, review clauses, special review clauses, consultation clauses, report clauses or sunset clauses). It also shows the text of the specific provision of the international agreement containing this clause.

Secondly, this column may contain the author's remarks concerning the agreement in question, including additional analytical information about the agreement. For instance, remarks may concern the frequency of meetings of a particular agreement's body; they may offer information on the frequency of review or evaluation of the agreement; and they may also mention that one or more databases used for this study (e.g. the EUR-Lex database or the Treaties Office database) do not consider the agreement in question to be in force, or do not specify. The purpose of a remark is solely to point the reader to specific issues linked with the agreement. The remarks are based solely and exclusively on the information included in the databases used for this study and on the text of the international agreement in question.

The remarks do not alter the fact that an agreement included in the database is in force.

Column 3: Miscellaneous

This column contains data concerning the international agreement in question. It includes information regarding the management body of the agreement; potential review and reporting obligations; potential dates of management body meetings, and subject matter. This information is based solely and exclusively on the information included in the databases used for the study and on the text of the international agreement in question. No external sources are used to prove or disprove this information and this information cannot therefore be used as a sole authoritative source of information.

composed of representatives of their respective Management Entities.¹ This provision combines the review and monitoring clause and the management and implementation clause.

3. Main findings

International agreements, whether bilateral or multilateral, concluded between the EU and other subjects of international law, are different in nature from secondary European law, e.g. regulations or directives. The differences are reflected, for instance, in the way international agreements become binding for the EU and/or its Member States, in the way the international agreement is adopted, but also in the nature of the impact of individual clauses included in them.

Figure 3 – Number of different clauses in bilateral and multilateral international agreements included in the study

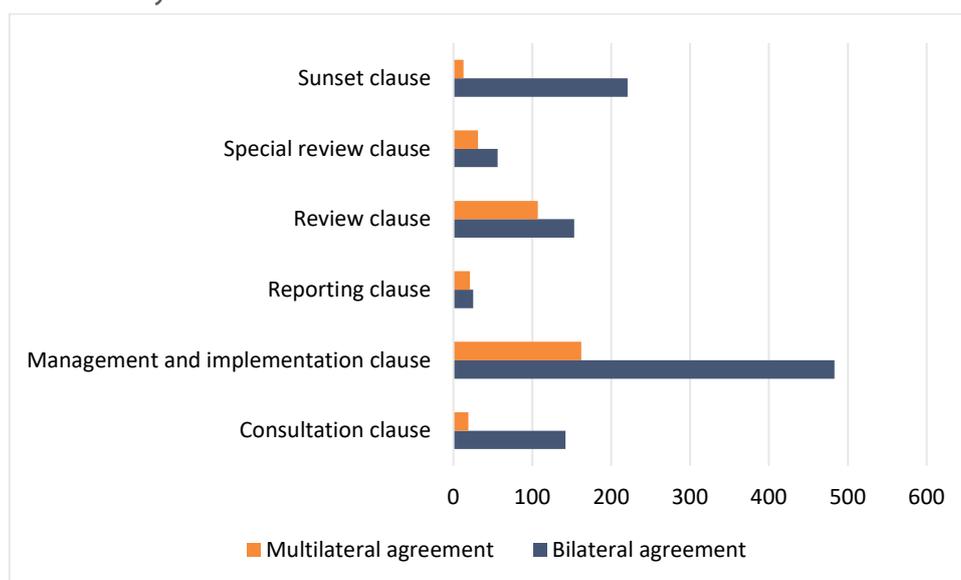
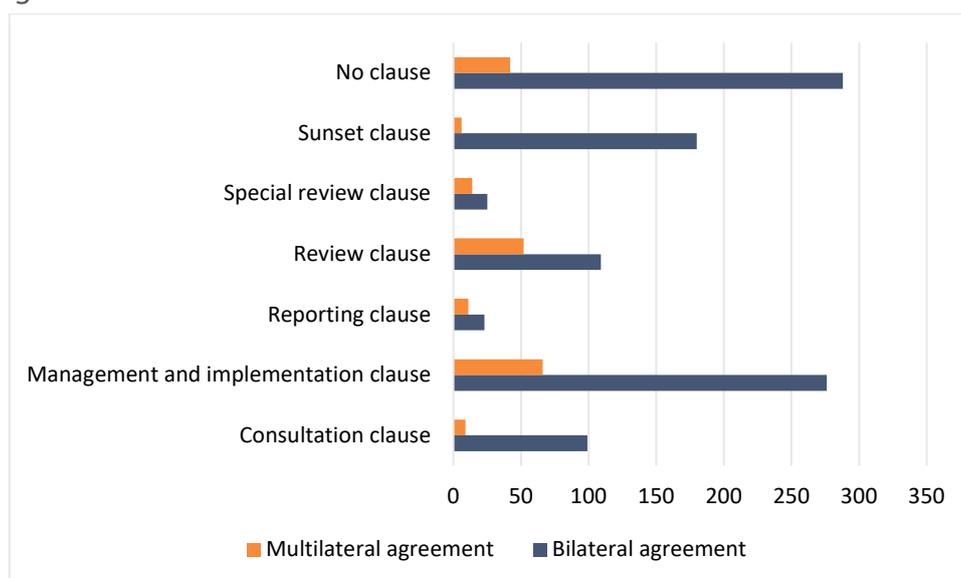


Figure 4 – Number of different bilateral and multilateral international agreements containing different clauses



The majority of international agreements included in the study contain at least one of the clauses in question: approximately 69.3 % in the case of bilateral international agreements and 83.3 % in that of multilateral international agreements.

Figure 3 shows that the number of different clauses in bilateral and multilateral international agreements included in the study differs not only regarding the types of agreement (bilateral or multilateral) but also regarding the individual types of clause.

In bilateral agreements, the most common clause is a management and implementation clause (483), followed by a sunset clause (221) and a review clause (153). The situation is slightly different regarding multilateral agreements, in which the most common clause identified is a management and implementation clause (162), followed by a review clause (107) and special review clause (31).

Figure 4 and Table 1 show that 288 bilateral agreements (31 %) do not include any review or monitoring clauses. Conversely, the number of multilateral agreements that do not include a review or monitoring clause is rather low, at only 17 % of agreements (42). Furthermore, regarding bilateral agreements, 276 agreements include management and implementation clauses (29 %), 180 agreements include sunset clauses (19 %) and 109 agreements contain review clauses (12 %). The situation for multilateral agreements is slightly different, with 66 agreements including a management and implementation clause (26 %), 52 agreements a review clause (20.5 %) and 14 agreements a special review clause (5.5 %).

Table 1 - Numbers of various types of clauses contained in bilateral and multilateral international agreements

Type of clause	Bilateral agreements (940) ¹⁵	Multilateral agreements (253)
Consultation clause	99 (10.5 %)	9 (3.5 %)
Management and implementation clause	276 (29 %)	66 (26 %)
Reporting clause	23 (2.5 %)	11 (4 %)
Review clause	109 (12 %)	52 (20.5 %)
Special review clause	25 (2.5 %)	14 (5.5 %)
Sunset clause	180 (19 %)	6 (2 %)
No (searched) clause	288 (31 %)	42 (17 %)

3.1. Review and special review clauses

Various types of review and monitoring clauses in international agreements concluded between the EU and other subjects of international law can be identified. Review clauses have been identified in 109 bilateral international agreements (approximately 12 %) and in 52 multilateral international agreements (approximately 20.5 %) included in the study. In addition, 25 bilateral agreements (approximately 2.5 %) and 14 multilateral agreements (approximately 5.5 %) contain special review clauses.

In a number of cases the provisions included in international agreements explicitly allow and/or require a review of the implementation of the agreement. These review and monitoring clauses are

¹⁵ The number of agreements included in Table 1 does not equal 940 or 253, being the numbers of bilateral or multilateral agreements included in the database. The number is higher as agreements often include different types of clauses.

usually included in individual provisions of the agreement with a title such as 'Review', 'Review clause' or 'Evaluation'. They are usually included in the final provisions and cover the whole agreement.¹⁶ Special review clauses are not normally given a specific heading - such as 'special review',¹⁷ also their placement within the agreement is more haphazard. These clauses very often require the review of a specific part of the agreement¹⁸ or a specific article.¹⁹

The majority of international agreements, however, simply include a general provision that implicitly enables or requires a review of the implementation or application of the agreement. These provisions usually oblige or allow a certain body to carry out a review of the implementation of the agreement. Such a body is usually established by the international agreement itself. It can carry out a review of the implementation of the international agreement, and only sometimes it has an obligation to report on this review to the parties to the agreement. In the majority of such cases a review is set out in very general terms and it is the body concerned that has to decide about the details for and timing of the review. In some of the cases, these bodies are required to carry out reviews at annual intervals and produce annual reports.²⁰ As a result of such a review of the implementation of the agreement, some of the international agreements allow the parties to the agreement to amend the text of that agreement.

In this context it is important to note that review and monitoring clauses do not necessarily include a precise date for a review. In this regard, they are rather vague. Most of them require a review of the implementation of an international agreement within a certain time limit, which usually starts after the agreement entered into force or after the bodies of the international agreements met for the first time. Furthermore, the existence of review and monitoring clauses does not necessarily imply that the review and monitoring will be carried out on a regular basis, i.e. that there will be a structured revision and monitoring procedure in the future. Therefore, in many of the cases, a review of the implementation of an international agreement is only a single, non-recurring event.²¹

Review and monitoring clauses can also be distinguished according to the extent of a review. Most of the clauses have the character of general review and monitoring clauses as they allow or require

¹⁶ An example of this review and monitoring clause can be found in a bilateral Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security (2012), Article 23 (Review and evaluation) or in the majority of the multilateral agreements connected under the WTO framework as, for example, Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation) (1995) in Article 23 (Review).

¹⁷ In the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (2016), Article 80, 'Review', calls on the parties to 'regularly review the provisions of this Section (2) and the list of reservations referred to in Article 79 of this Agreement'.

¹⁸ For example, in the bilateral Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (2016), Article 374 calls on the parties to monitor and assess 'the impact of the implementation of Title V (Trade and Trade-related Matters) of this Agreement on sustainable development'.

¹⁹ For example, in a bilateral Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part (2004), Article 15 (6) Prohibition of drawback of, or exemption from, customs duties (Protocol 4) states that 'the provisions of this Article ... may be reviewed by common accord'.

²⁰ Examples of an indirect review can be found, for instance, in the multilateral Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (2014), Article 26 (Conference of the parties serving as the meeting of the parties to this protocol) or in the bilateral Agreement for scientific and technological cooperation between the European Community and the Government of the People's Republic of China (1998), Article 6 (Coordination and facilitation of cooperative activities).

²¹ See, for example, a bilateral Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws (1991).

the review of the application, implementation or general functioning of the international agreement by its parties as a whole.²² Some provisions of international agreements can also require the review and monitoring of a particular provision or a specific part (e.g. a chapter or an article) of an international agreement (identified in the present study as 'special review').²³ Some international agreements include both general and special review and monitoring clauses at the same time and thus may be subject to various review procedures.²⁴

Research, meanwhile, has shown that the wording of the review clauses and special review clauses included in the database generally differs from agreement to agreement, with only small overlaps.

3.2. Management and implementation clauses

The research showed that a review of the implementation of international agreements is a priori carried out by a body or a subject that is either created by the international agreement in question or that is authorised by this agreement to do so. These clauses are present in 276 bilateral international agreements (approximately 29 %) and in 66 multilateral international agreements (approximately 26 %).

a) The study shows that with regard to bilateral agreements a review and monitoring of the implementation of these agreements is carried out mainly by bodies created by an international agreement that consists of representatives of both contracting parties. These bodies are usually called joint committees. Joint committees, as bodies established under international agreements, meet, review and monitor, and potentially also report at annual intervals to the contracting parties, and their general powers and competences are usually defined in the agreements. Sometimes, competences of joint committees contain specific obligations to review the implementation of an international agreement but only rarely do they include a clear obligation to report about the results of this review or to keep the contracting parties informed about the results of the review. Nonetheless, as the wording of international agreements is rather general, joint committees have broad discretion and can adopt their rules of procedure, set intervals of their meetings or decide on places for their meetings. This means that, de facto, there is a large number of ad hoc bodies dealing with developments in specific areas connected with international agreements and reviewing and monitoring and potentially subsequently reporting about the status of implementation of the agreement and carrying out other functions specifically envisaged by the agreements.²⁵ Research centred on the database shows that approximately 44 % of bilateral agreements (418) have established (or have been required to establish) a specific body in order to review and monitor implementation of the agreement concerned.

b) The situation is rather similar in the field of multilateral agreements. Nonetheless, the bodies that can carry out a review and monitoring in the context of multilateral agreements are more diverse. The situation is also more complex as there are, apart from the EU, at least two other contracting

²² An example of such a review clause can be found in Agreement between the European Economic Community and the Swiss Confederation (1973), Article 31 (2).

²³ An example of these clauses can be found in the bilateral Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part (2004), for example, Article 12 (Tariff elimination by South Africa).

²⁴ This is, for example, the case of the bilateral Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement (2002), Article 6 (Non-discrimination).

²⁵ One example of a joint committee is the joint committee for management of the agreement established in accordance with the bilateral Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas (2008), Article 12 (Joint Committee for management of the Agreement).

parties. Apart from joint committees,²⁶ the review of implementation of agreements can be carried out by the conferences of the parties,²⁷ committees,²⁸ commissions,²⁹ councils³⁰ or meetings of the parties,³¹ etc. The competencies of these ad hoc or permanent bodies are usually very similar. Among other powers, they can review the implementation of the agreement and sometimes have an obligation to report on their findings to the parties of the agreement. In most of the cases, these bodies have to adopt their own rules of procedure. Owing to the multilateral nature of these agreements the meetings of these bodies take place at much greater intervals (every two, three or five years, etc.). The database shows that approximately 64 % of multilateral agreements (162) have established (or have been required to establish) a specific body in order to review and monitor implementation of the agreement concerned.

3.3. Consultation clauses

Consultation clauses were identified in 99 of the bilateral international agreements (approximately 10.5 %) and in nine of the multilateral international agreements (approximately 3.5 %) covered by the study. This type of clause is usually included in the individual provisions of the agreement under a title such as 'Consultations' and is usually placed with the final provisions.

Occasionally, an international agreement can oblige or allow the contracting parties to take part in mutual consultations linked with the application, review or implementation of the agreement.³² However, these provisions are rather more general, without providing a clear timeframe for consultations or their content. They normally only require 'periodical consultations'³³ or 'consultations at request'.³⁴ Nonetheless, requests for consultations regarding the implementation of particular agreements or their parts can be found in some international agreements.³⁵

²⁶ For example, the joint committee established by Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway (2001), Article 3.

²⁷ For example the Conference of the Parties in Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (2014), Article 26 (Conference of the parties serving as the meeting of the parties to this protocol).

²⁸ For example the Standing Committee established by Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2010), Article 4.

²⁹ For example Commission on the International Commission for the Protection of the Rhine established by Article 6 of the Convention on the Protection of the Rhine (2003).

³⁰ For example the International Coffee Council established by the International Coffee Agreement (2011), Article 2.

³¹ For example Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (1999), Article 26 (Meetings of the Parties).

³² Several agreements also allow for consultations in order to deal with possible conflicts among the parties. Others allow for consultation on any topic, including implementation of a particular agreement.

³³ Consultation clauses can be found, for example, in the Agreement on fisheries between the European Economic Community and the Government of Canada (1981), Article X and in the European Convention for the Protection of Animals during International Transport (2006), Article 31 (Multilateral consultations).

³⁴ See, for example in the Amending Protocol to the Agreement between the European Community and the Principality of Andorra providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (2017), Article 7 (Consultations and suspension of this Agreement).

³⁵ See, for example the Agreement on scientific and technological cooperation between the European Union and the Government of New Zealand (2009), Article 10 (2) or the Agreement between the European Economic Community and Canada concerning trade and commerce in alcoholic beverages (1989), Article 6.

3.4. Sunset clauses

Sunset clauses are not very common in the international agreements analysed for the present study, as most of the international agreements it includes have been concluded for an indefinite period of time. That is particularly the case for multilateral agreements. Of the 253 multilateral international agreements included in the study, only six contain a sunset clause (approximately 2 %). The situation is different regarding bilateral international agreements covered by the study, as 180 out of 940 agreements include such a clause (19 %). These clauses are generally included in the final provisions of international agreements.

Some of the sunset clauses in the international agreements included in the study can be linked with review and monitoring clauses as in some of the cases, there is a requirement to review the implementation of the agreement some time before an agreement ends.³⁶

Some of the sunset clauses are only temporary. This means that if the agreement had not been terminated or denounced by one of contracting parties within the time limit set by the sunset clause, the agreement will be tacitly prolonged for a limited or an unlimited period of time. In such cases the agreement remains in force until it has been terminated or denounced in a way provided for by the agreement.³⁷

Sunset clauses are sometimes linked to a specific condition. The international agreement is then valid as long as the condition is complied with³⁸ or until the condition is met.³⁹

³⁶ For example Agreement for scientific and technological cooperation between the European Community and the United Mexican States (2005), Article 11 (Entry into force, termination and dispute settlement).

³⁷ For instance the Framework agreement on a Multilateral Nuclear Environmental Programme in the Russian Federation (2003), Article 18 (Entry into force, duration, withdrawal and termination).

³⁸ For example Agreement between the European Union and the Swiss Confederation on the participation of the Swiss Confederation in the European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali) (2014). This agreement remains in force as long as the Swiss Confederation 'contributes to the mission', Article 9 (Entry into force and termination).

³⁹ For example Agreement between the European Community and the Republic of Turkey on the participation of the Republic of Turkey in the work of the European Monitoring Centre for Drugs and Drug Addiction (2014). This agreement expires 'on Turkey's accession to the European Union', Article 11 (Validity and termination).

4. Conclusions

The analysis of the international agreements covered by the present study shows that the powers of the European Parliament when dealing with international agreements are defined mainly through the consultation procedure and the consent procedure. Effectively, Parliament does not wield much power in the negotiation phase of international agreements although it has the right to be informed about all the stages of the procedure connected with the conclusion of international agreements. At the same time, its Members can be observers during negotiation of international agreements.

Once an international agreement is approved, Parliament can exercise its supervisory powers, mainly in cases where the international agreement or European legislation requires the European Commission to inform Parliament about the implementation of the agreement. Furthermore, individual Members can become observers forming part of the EU delegations at meetings of bodies set up by multilateral international agreements involving the European Union. Although the Interinstitutional Agreement on Better Law-Making (2016) and other political documents include various pledges from the other EU institutions to inform Parliament on international agreement negotiations, the situation is not yet optimal.

The majority of bilateral and multilateral international agreements included in the database contain one or more review or monitoring clauses. In general, international agreements can include several review and monitoring clauses i.e. a review of implementation of an international agreement can happen on several occasions at various points of time and can lead to a review of the implementation of the agreement as a whole or its constituent parts.

A smaller number of international agreements also include sunset clauses that can limit the application of international agreements in time. However, a distinction can be drawn here between bilateral and multilateral agreements, as multilateral agreements only rarely include such a clause. Furthermore, the sunset clauses included in bilateral agreements are very often only temporary or have specific conditions attached.

The review and monitoring of international agreements is very often exclusively in the hands of the bodies established by the international agreements. Only rarely do the review or monitoring of international agreements remain directly with the parties to the agreement.

The bodies established by international agreements can have different powers and can meet at varying intervals. They adopt their own procedural rules, which in practice amplifies the variety of their powers. The members of these bodies are representatives of the parties to the agreement. In the vast majority of cases, the European Union is represented by the European Commission.

The implementation of international agreements can be sometimes the subject of consultation clauses that require and/or enable parties to the agreement or other subjects to enter into consultations leading to this particular end.

An obligation to review the implementation of an international agreement is not often linked with an obligation to provide a written report about the state of the implementation, nor is there a standard approach to informing the European Parliament about this implementation.

Finally, there is a broad variety of review and monitoring clauses included in international agreements as these clauses do not have the same wording or take the same form.

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Annexes

Colour codes of policy areas

Agriculture ⁴⁰
Consumer protection
Culture
Development and humanitarian aid
Economic and monetary policy
Environment
Energy
Freedom, security and justice
Fisheries
External relations
Employment
Industrial policy
International trade
Internal market
Foreign and security policy
Research policy
Human rights
Public health
Education
Transport

⁴⁰ If more than one policy area has been identified in a particular agreement, then the international agreement is given the colour code of the first policy area included alphabetically.

5. List of annexes, to be found in the full study

Annex I - Bilateral agreements: Africa

Annex II - Bilateral agreements: Asia

Annex III - Bilateral agreements: Australia

Annex IV - Bilateral agreements: Europe

Annex V - Bilateral agreements: North and Central America

Annex VI - Bilateral agreements: South America

Annex VII - Multilateral agreements

This is an extract of a study which provides an analysis and overview of the review and monitoring clauses, sunset clauses, consultation clauses and management and implementation clauses contained in bilateral and multilateral international agreements concluded between the EU and other countries, and in force as of 1 September 2019.

Drawing on information publicly available across several databases, it provides an analytical overview of international agreements and their respective clauses within a single, comprehensive repository. This repository is annexed to the full study, and is published online on the European Parliament's Think Tank website.

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