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## Dogfennau Ategol – Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Lleoliad: I gael rhagor o wybodaeth cysylltwch a:  
Hybrid – Ystafell Bwyllgora 3 Senedd, a P Gareth Williams  
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### Hybrid – Pecyn Atodol

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Noder bod y dogfennau a ganlyn yn ychwanegol i'r dogfennau a gyhoeddwyd yn y prif becyn Agenda ac Adroddiadau ar gyfer y cyfarfod hwn

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#### 2 Ymchwiliad Llywodraethiant y DU–UE: Sesiwn dystiolaeth

(13.00 – 14.05)

(Tudalennau 1 – 25)

Panel 1

Charles Whitmore, Fforwm Cymdeithas Sifil Cymru

Tom Jones, cynrychiolydd Fforwm Cymdeithas Sifil Cymru ar Fforwm

Cymdeithas Sifil y DU–UE

Brigid Fowler, Cymdeithas Hansard

**Dogfennau atodol:**

LJC(6)-20-23 – Papur 20 – Papur gan Charles Whitmore [Saesneg yn unig]

#### 3 Ymchwiliad Llywodraethiant y DU–UE: Sesiwn dystiolaeth

(14.15 – 15.20)

(Tudalennau 26 – 34)

Panel 2

Yr Athro Tobias Lock, Prifysgol Maynooth

Lisa Whitten, Prifysgol Queen's Belfast

Dr Elin Royles, Prifysgol Aberystwyth

**Dogfennau atodol:**



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LJC(6)-20-23 – Papur 21 – Tystiolaeth ysgrifenedig a gyflwynwyd gan yr Athro David Phinnemore and Dr Lisa Whitten [Saesneg yn unig]

## **12 Memorandwm Cydsyniad Deddfwriaethol ar y Bil Dioddefwyr a Charcharorion: Adroddiad drafft**

(16.05 – 16.15)

(Tudalennau 35 – 43)

**Dogfennau atodol:**

LJC(6)-20-23 – Papur 15 – Adroddiad drafft [Saesneg yn unig]

## **13 Bil yr Amgylchedd (Ansawdd Aer a Seinweddau): Adroddiad drafft**

(16.15 – 16.55)

(Tudalennau 44 – 89)

**Dogfennau atodol:**

LJC(6)-20-23 – Papur 16 – Adroddiad drafft [Saesneg yn unig]

## **14 Adolygiad o oblygiadau Bil Cyfraith yr UE a Ddargedwir (Dirymu a Diwygio)**

(16.55 – 17.05)

(Tudalennau 90 – 98)

**Dogfennau atodol:**

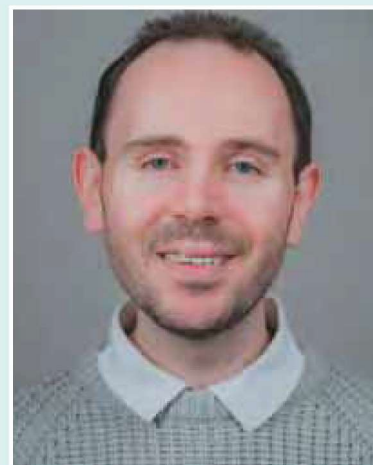
LJC(6)-20-23 – Papur 19 – Papur briffio [Saesneg yn unig]

# The UK's Withdrawal from the EU

## Impact on the political, social and legal conditions for cross-border civil society cooperation

### Charles Whitmore

**Charles Whitmore** is a research associate with Cardiff University's Wales Governance Centre (WGC) and Wales Council for Voluntary Action (WCVA), the national membership body for voluntary sector organisations in Wales. He has a background in European Union Law and Internal Market studies and has worked in the third sector in health and social care. He is currently the coordinator of the Wales Civil Society Forum on Brexit, a partnership between the WGC and WCVA funded by The Legal Education Foundation to provide legal and policy expertise to the voluntary sector in Wales on the legal, administrative and constitutional implications of the UK's Withdrawal from the EU.



### Introduction

Historically, the EU plays a significant and varied role in facilitating civic society cross-border cooperation. In direct terms, it provides funding which facilitates this. Interreg and Erasmus are very clear examples, but the EU funds civil society to achieve goals as diverse as policy work to peacebuilding.<sup>1</sup> Civil Society Organisations (CSOs) in EU member states also work across borders influencing EU policy and in so doing create valuable opportunities to share best practice and knowledge. Especially in non-unitary states like the UK, EU membership also creates an impetus for internal cross-border cooperation to optimise influence at the European level – with feminist CSOs in the UK providing an excellent example of this.<sup>2</sup>

The EU also fosters civic society cooperation with its neighbours. The European Neighbourhood Policy (ENP) is an example of this,<sup>3</sup> and civic society cross-border dialogue is one of its core features.<sup>4</sup> It has also become common practice for the EU to include what this article refers to as Civil Society Mechanisms (CSMs) for domestic and transnational civic society cooperation within its trade agreements. These are formal institutions written into the text of the treaties that provide a role for CSOs to cooperate in overseeing the social dimensions of trade.

It shouldn't come as much of a surprise then that the UK's transition to third country status will have a profound impact on the landscape for cross-border cooperation within these islands and with the EU. This article seeks to provide a preliminary answer to the question of how the conditions for this cooperation are changing as a result – from a legal, social and political perspective. The commentary is by necessity preliminary as many of the developments discussed have either yet to take full effect, to be implemented or are still subject to significant uncertainty. Furthermore, the UK is the first country to withdraw from the EU and by that fact alone the emerging landscape for cross-border cooperation is filled with novelty. For the EU – building civic society bridges across borders is often in part an exercise in Europeanisation,<sup>5</sup> yet the UK fits neither into the category of states seeking accession, nor does it fit within those states with whom a trading relationship is articulated around regulatory convergence. Instead the UK/EU Trade and Cooperation Agreement (TCA) is novel in seeking to manage divergence. As a result, the context for future UK/EU civic society cooperation is different from all EU precedents. One might talk instead of limiting de-Europeanisation or perhaps of re-Europeanisation – a process of re-evaluation and learning to navigate new reasons, opportunities and challenges for cross-border cooperation from an ex-member state perspective. This article will examine this emerging landscape from two dimensions. The first, spread across two sections, will examine lessons from the EU's previous use of formal structured CSMs, to inform the implementation of those in the TCA and their use by CSOs. The final section will more briefly look at how the social and political landscape for informal, less structured cooperation has been impacted by Brexit.

# 1. The EU's use of Civil Society Mechanisms (CSMs) in its Trade Agreements

The EU has a distinct approach to providing formal structures for CSOs to cooperate domestically and transnationally with each other in monitoring the implementation of the social dimension of trade agreements.<sup>6</sup> The TCA is the latest example of this practice and stakeholders are still agreeing how to implement the provisions. Given the timing and the unique purpose of the TCA, it is useful to briefly reflect on the EU's history as some lessons can be extracted to inform this process.

## 1.1 From vague provisions to Domestic Advisory Groups and Civil Society Fora

Data collected by Van den Putte et al show that the earliest instances of the EU writing a role for civil society into its trading relationships can be found in its Mexico (1997)<sup>7</sup> and Cotonou (2000)<sup>8</sup> agreements. These were relatively weak however. The former stated only that periodic consultation with civil society shall happen, and the latter broadly defined civil society as a non-state actor with which the parties should cooperate. Vague terms like 'regular consultation' and 'ongoing dialogue' were not prescriptive and left much room for limited implementation.

There was a step change with the 2002 EU-Chile agreement,<sup>9</sup> which included institutional provisions for civil society in the shape of a Joint Consultative Committee tasked with promoting transnational civic society cooperation and dialogue.<sup>10</sup> With that said, other provisions on consultation and financial support were optional. Nevertheless, this treaty marked the start of a more systematic embedding of a role for CSOs to monitor the implementation of sustainable development objectives.<sup>11</sup>

A further paradigm shift occurred with the EU-South Korea Trade Agreement in 2011, which has come to be known as the first of the 'new generation' trade agreements.<sup>12</sup> It adopted the current setup of Domestic Advisory Groups (DAGs) for domestic CSO/state dialogue, and a Civil Society Forum (CSF) for transnational meetings.<sup>13</sup> This agreement had several key details that would become common features:

- Governments would facilitate engagement with its civil society to monitor the implementation of the sustainable development provisions (defined as the environment and labour) either by giving an existing body a new function or by creating a DAG.
- DAGs are to be comprised of independent CSOs reflecting a balanced representation of environment, labour and business organisations (as well as other stakeholders).
- Each party is free to determine their own DAG setup. The EU systematically establishes a single DAG for each new agreement, but the practice varies amongst its partners. Canada opted to have separate labour and environmental DAGs, for example, and for regional trade agreements, different countries can set up their own DAGs.
- Members of each party's DAGs meet at a CSF, usually yearly though there have been gaps.
- The views, opinions and findings of the CSF can be submitted to the parties.
- The practice has also developed to allow observers at DAGs and the CSF.

Over the following decade several trade agreements followed aspects of this model, including central America in 2012, Moldova in 2014 and the South African Development Community in 2016. The implementation of the CSMs was sometimes very slow and stakeholders have also been clear in highlighting challenges.<sup>14</sup>

## **1.2 What can we learn from pre-TCA EU civil society mechanisms?**

Several of these challenges stem from a lack of concrete and shared definition of the purpose of the EU's CSMs.<sup>15</sup> For example, environmental CSOs and business groups tend to place different emphases on influencing. There is a relatively loose understanding that CSMs aim to facilitate knowledge exchange, increase democratic oversight and input/output legitimacy, to monitor implementation and to ultimately influence policy. However, this vision is not usually clearly defined in the text of agreements and therefore not necessarily translated into appropriately suited

mechanisms in practice. This can lead to inefficiencies, loss of interest by CSOs, different interpretations by the parties,<sup>16</sup> and make it easier for Governments to avoid meaningful implementation and to steer conversations away from sensitive topics.<sup>17</sup>

The South Korean agreement illustrates some of these terminological challenges, with references to ‘conducting of a civic society dialogue’, undefined use of ‘balanced representation’, and lack of direction on how DAG members are recruited (though these last two are common criticisms across EU CSMs). Consequently, disagreements have taken place over the Korean Government’s appointment of DAG members that were almost all supportive of its policies, and around unwillingness to discuss questionable labour practices.<sup>18</sup> Similar challenges have been reported with the Peru, Central America and CARIFORUM agreements,<sup>19</sup> leading some commentators to recommend that Governments use open recruitment calls.<sup>20</sup>

The purpose of CSMs in EU treaties is best articulated by Martens et al’s framework. They conceptualise these functions as a ladder, with the effective fulfilment of each rung constituting a necessary precondition for the next to also be effectively implemented. In order, they are:

- **An instrumental purpose** of providing platforms for structured dialogue.
- **An information sharing purpose** allowing CSOs to share expertise, knowledge and information between each other, and with the parties.
- **A monitoring purpose** by which CSOs gather and share information on the implementation of the agreement with a view to highlighting potential failures and breaches.
- **And a policy impact purpose** whereby CSOs through a combination of the previous functions, can influence change.

Combined these functions are intended to increase legitimacy and democratic oversight, but commonly recurring systemic challenges around transparency, resourcing, domestic government engagement, and accountability have typically led to mixed results.

**Transparency, Awareness and representativeness** challenges arise, particularly in the EU’s trading partners where CSO engagement is sometimes less institutionalised and where basic procedures to enable CSOs to

participate in meetings are sometimes not clear.<sup>21</sup> Group membership, meeting schedules, minutes and other necessary information should be publicly available online. Issues typically also extend to the selection process for DAG membership in the trading partners, and to the lack of transparent structured channels for CSOs to interact domestically with their governments. Transparency and promoting awareness of the CSMs is considered essential if CSOs from outside of the DAG(s) are to be able to support them.

**Resourcing and capacity** issues are present in both the EU and its trading partners. The European Economic and Social Committee (EESC), which serves as the nerve centre of the EU's CSMs by providing the secretariat for DAGs and by organising CSFs, has highlighted that the increasing number of demands placed on it have not been accompanied by appropriate increases in financial resources.<sup>22</sup> This is making it increasingly challenging to meet transparency objectives. Nevertheless, the EU's institutionalised approach to this guarantees a level of financial support. The problem is much more acute in the EU's trading partners where the effective operation of DAGs is known to have been undermined due to a lack of resourcing.

The EU's **institutionalised channels of communication** between CSOs and executive bodies and its tripartite mobilisation of civil society along trade union, employer, and wider third sector lines are not always paralleled in its trading partners. This is generally considered a hindrance, but it becomes an acute problem when CSOs struggle to engage with their domestic government. The EU-CARIFORUM agreement is held up as one of several examples where the lack of a domestic counterpart to the EESC and overall lack of CSO/Government coordination led to significant delays in implementing the CSMs. With the infrequency of DAG and CSF meetings, the absence of structured CSO/state engagement outside of these structures also creates continuity problems. It is generally necessary for there to be options for continuous follow-up between domestic governments, their DAGs and wider CSOs outside of the DAG and CSF meetings to advance work and coordinate in anticipation of upcoming transnational events.

A fourth set of challenges pertain to **accountability**,<sup>23</sup> or the provision of formal feedback loops. There is evidence of successful influence flowing from these mechanisms, as a case study on the EU-Chile agreement showed that Chilean CSOs learned advocacy strategies from EU counterparts through CSMs to successfully uplift domestic labour standards.<sup>24</sup> However, cross-



cutting assessments have argued that overall, CSMs' influence has been limited.<sup>25</sup> The reluctance of domestic governments to take on board issues raised within CSMs, sometimes stemming from a culture of opposition to CSO/government dialogue, is a significant factor here. Influence can even be challenging for the EU at times owing to gaps in trade agreement enforceability, though third country CSOs have noted that participation in CSMs and the communication with EU institutions this opens up, affords them greater influence on their own government than domestic opportunities.<sup>26</sup> This is a striking parallel with the experiences of CSOs in the UK using EU connections to engage around the Withdrawal Agreement and TCA negotiations.

Further gaps in the CSMs' ability to influence lie in:

- the absence of a formal requirement for the EU or the Governments to consider advice or recommendations
- the lack of clarity around the precise remit of the CSMs to influence
- the absence of formal channels for DAGs to trigger enforcement and dispute resolution procedures. The creation of a procedure by which DAGs can formally recommend the instigation of dispute resolution mechanisms has been suggested to address this.

In 2015 and 2017 the Commission suggested several steps to addressing some of these issues, including enhancing the advisory role of DAGs and Joint Fora.<sup>27</sup> However, recent empirical study has also shown that many of these challenges are still present, going so far as to conclude that DAGs have not been able to monitor compliance with the sustainable development provisions of existing treaties, and have had little political relevance due to a lack of dialogue between DAG members, DAGs and Governments.<sup>28</sup>

## **2. What are the UK/EU TCA CSMs and how might they play out in the UK?**

The CSMs in the UK/EU Trade and Cooperation Agreement are in Title III on the Institutional Framework and have yet to be implemented – in fact at the time of writing the UK Government has just launched a consultation.<sup>29</sup>

- Article 12 spells out an overarching duty to consult civil society on the implementation of the Agreement, in particular through DAGs and the CSF.
- Article 13 provides that: (emphasis added)
  - the parties shall consult with new or existing DAG(s) comprising a representation of **independent civil society organisations** including non-governmental organisations, business and employers' organisations, as well as trade unions, active in economic, sustainable development, **social, human rights, environmental and other matters**. It also notes that each Party may convene its DAG(s) in **different configurations** to discuss the implementation of different provisions.
  - The Parties **shall consider the views and recommendations submitted by its DAG(s)** and that they should aim to **consult them at least once a year**.
  - In the interest of raising awareness, there is also a commitment to **'endeavour' to publish** the list of DAG(s) members.
  - A final provision states that the parties shall promote interaction between their respective DAG(s), including by exchanging where possible the contact details of the members.
- Article 14 covers the CSF, which:
  - Shall **'conduct a dialogue** on the implementation of Part two'. Furthermore, the Partnership Council, which is the transnational political institution at the summit of the TCA's institutional hierarchy, shall adopt the Forum's **operational guidelines**.
  - Shall meet at least **once a year unless otherwise agreed by the Parties**.
  - Shall be open for the participation of independent civil society organisations established in the territories of the Parties, **including members of the domestic advisory groups** referred to in Article 13. Each Party shall promote a **balanced representation**, with specific examples mirroring those in article 13.

## 2.1 The TCA Civil Society Mechanisms – a mixture of progress and continuity

There are both similarities and differences in these provisions when contrasted with previous EU practice that reflect progress and a lack thereof. Noteworthy progress has been made in introducing an express role for the DAG(s) in dispute resolution, for example. However, the level of detail on the CSM functions is again limited. The agreement refers only to the Parties' duty to consult the DAGs and for the CSF to 'conduct a dialogue'. The EU-Ukraine agreement by contrast goes into some detail around information sharing and states clearly that the DAGs advise the parties on implementation. The CSF's functions are as vague as in the TCA but are supplemented by a more specific Civil Society Platform, which benefits from a commitment to keep it informed and has an explicit function to make recommendations.

The TCA DAGs can submit views and recommendations to the Parties, but the CSF has no explicit mandate to do so. Furthermore, the UK successfully sought to limit the remit of the CSF to part two of the agreement which may have several ramifications. Firstly, this means that the CSF can only discuss the economic dimensions of the TCA.<sup>30</sup> Secondly, the CSF will have a narrower remit than the DAGs – a departure from EU practice. Aside from any logistical issues this may create, the resulting articulation between substantive scope and membership also seems inconsistent. Advocacy groups are likely to have insights into other parts of the treaty's implementation – particularly as human rights groups are specifically enumerated as participants for both the DAGs and the CSF, yet a significant part of the treaty's human rights provisions pertain to part three (law enforcement and judicial cooperation). Ongoing reviews of Part 5 (Participation in EU programmes) may also be of interest.

Overall the TCA explicitly mentions a wider range of CSO stakeholders for both the DAGs and CSF than previous EU agreements, perhaps due to its much wider scope. Typical EU practice is to have a dedicated sustainable development chapter involving independent labour, business and environmental CSOs. This has been replaced by a wider list which also includes NGOs active in economic, social, human rights and other matters. However, again at the request of the UK, the requirement for 'balanced representation' in the DAGs was removed (though it is retained for the CSF). The intention behind this is unclear, but it creates a situation where the potentially 'less balanced' groups of CSOs have a wider remit than the more inclusive CSF. It should be noted that the lack of details around the operation of the TCA's CSMs may leave room to pre-emptively address ambiguities and

challenges as the parties draw up operational guidelines. This was done in the EU-Korea agreement for example,<sup>31</sup> where the institutions also decided to accept recommendations from both the DAGs and CSF.

There is another difference in how the TCA addresses representativeness in the CSF. Older EU Agreements saw the CSF specifically as a meeting of DAG members, with some treaties working around this limitation by creating a separate platform for wider CSOs. Over time the practice has evolved so that the CSF allows for both DAGs and wider CSOs to meet, while separate transnational DAG-to-DAG meetings also take place prior to the CSF. The TCA makes this distinction clearer by explicitly noting that the CSF is open to CSOs, including DAG members, though it is perhaps to be regretted that the DAG-to-DAG system is not recognised in the agreement text.

In terms of transparency, the TCA has inherited a certain hesitancy towards binding commitments. While the rules in Annex 1 provide that agendas are to be published prior to meetings and that minutes will be published after approval, neither commitment comes with a timeframe. The agendas for the first TCA committee meetings were published, at least in one case, only the day before the meeting took place.<sup>32</sup> Furthermore, it is not mandatory for the parties to publish the decisions and recommendations of the Partnership Council. At the time of writing, the recently published UK Government consultation on the UK DAG and CSF contains only a minor commitment to 'endeavour' to publish the membership and contact details of the DAG. The EU although not immune to criticism in this area, currently has a slightly more comprehensive web space for communicating with stakeholders around potential complaints relative to the TCA<sup>33</sup> and for publishing materials pertaining to the work of the various specialised committees.<sup>34</sup>

In summary does the text of the TCA provide the conditions for CSMs to effectively discharge their functions?

- **Instrumental function:** In principle yes – as with previous agreements there is a textual basis for the DAGs and CSF, but the treaty is, like its predecessors, lacking in basic transparency commitments. Furthermore, there are no commitments in the text of the treaty for the Parties to financially support their CSOs to participate in these mechanisms. While this is likely less of a problem for the EU – there are significant questions around this in the UK context.

- **Information sharing:** The effective discharge of this function requires a baseline level of transparency, for example by publishing the contact details of the DAGs and their members to facilitate communication outside of formal meetings. There are loose commitments to this in the treaty and more generally to promote interaction between DAGs. This function also benefits from a high degree of representativeness, and as explained above, there are questions on what the removal of ‘balanced representations’ means in practice.
- **Monitoring:** There are improvements in relation to this function in the TCA relative to previous EU agreements as the DAGs have an explicit role in dispute resolution, and there are duties placed on the parties to make information available to them in this process. Nevertheless, expertise, resourcing and capacity challenges are still likely, and the TCA’s highly novel non-regression and rebalancing mechanisms are further sources of uncertainty.
- **Influence:** There is little in the text of the TCA to support the exercise of this function aside from a welcome acknowledgement that the DAGs can submit recommendations and views to the Parties. There is, however, no duty on the Parties to respond to these submissions. Whether this function will work in practice, depends more on how the CSMs are implemented, especially in the UK.

## 2.2 Implementing the TCA’s Civil Society Mechanisms in the UK context

While the text of the TCA provides some insights – there is significant scope for practice in this area to differ from how it is addressed on paper.<sup>35</sup> As a result, despite the UK Government’s reluctance to meaningfully engage CSOs on Brexit, there may be scope to influence the initial formation of these systems, particularly as these changes are taking place in a wider context of shifting patterns of territorial governance in the UK.

The first of two overarching factors this section discusses is the relevance of devolution. The UK DAG(s) will need to be adapted to the territorial governance of civil society in the UK and the roles of the devolved governments. Without appropriate input from the devolved level, there is a risk that the contributions will not be representative. This is problematic because there are considerable differences in social values, culture and expectations with regards to how civil society is engaged in policy making

across the UK. Wales bears the closest resemblance to the EU in this regard as third sector/government engagement has a statutory basis. There are highly structured geographic (Third Sector Support Wales) and thematic (Third Sector Partnership Council) groups coordinated by Wales Council for Voluntary Action (WCVA), the national membership body for that sector, that have regular structured engagement with the Welsh Government. It is a similarly common practice in Scotland to involve CSOs in policy making, and while Northern Ireland has attempted to institutionalise engagement with bodies like the Civic Forum under the GFA,<sup>36</sup> the disrupted political situation has made progress difficult.

The situation is different in England, and the absence of embedded structures for systematic engagement, the lack of an engagement culture in Whitehall, and a general lack of understanding of devolution became particularly evident throughout the Brexit process.<sup>37</sup> This stands in stark contrast to the EU's highly institutionalised approach, where as well as the EESC, the Commission organises a 'Civil Society Dialogue' mechanism to ensure regular consultation and information exchange in addition to any formal trade agreement structures.<sup>38</sup> Experience suggests that left unaddressed, this issue will frustrate the implementation of the TCA's CSMs, as it has in other countries.<sup>39</sup>

A similar complication stems from countries having sometimes a substantially different definition of civil society than that of the EU,<sup>40</sup> where structures are organised around a tripartite taxonomy of employers, workers and the 'diversity' group.<sup>41</sup> Very different understandings of civil society and its role in democratising governance has previously frustrated CSM implementation, particularly in the early stages. Sometimes, as is the case with the UK, this means that there is no parallel body that can fulfil the role of the EESC in bringing together different strands of civic society at the national level. This typically hinders domestic and transnational civic society cross-border dialogue,<sup>42</sup> and indeed this appears to have translated into the early stages of the UK/EU relationship, with the latter already far more advanced in its implementation process. Recently, parts of the voluntary sector, the TUC and business groups in the UK have been discussing the need for such a body.<sup>43</sup> However, early efforts by CSOs to engage the UK Government on the TCA's CSMs have been slow to yield results, in part due to delays in ratification of the TCA itself and the commencement of the institutional provisions in the UK. As a result, CSOs have already had contingency discussions on the possibility of a 'shadow' mechanism to guarantee more appropriate levels

of civic society representation. These bear a striking similarity to how Peruvian CSOs successfully created a shadow DAG in response to the Peruvian Government's reluctance. This shadow body engaged more successfully with the EU's DAG than its official counterpart and was ultimately successful in prompting pressure from the EU for Peru to increase transparency and reform its domestic DAG setup.<sup>44</sup>

Careful consideration is needed on how to reflect the UK's devolved structure in its DAG and wider non-DAG channels of communication. Experience from the EU's CSMs with Peru/Colombia and the CARIFORUM states has shown the importance of internal domestic coordination across regions prior to transnational CSMs.<sup>45</sup> One suggestion could involve a system of DAG(s) comprised of sub-groups within which finer devolved and thematic representation could be catered to. Systems should also be considered for separate devolved level dialogue between CSOs and their local governments to generate input that can be used in intergovernmental work. This would also be useful for CSOs in their wider connections, including with the UK DAGs, the CSF and the EESC's newly formed UK Follow-up Committee which has been agile in connecting with the devolved regions by capitalising on pre-existing relationships with the UK's ex-EESC members. Building a wider ecosystem of structured channels of communication alongside the formal CSMs will help ensure continuity of dialogue outside of the relatively infrequent DAG and CSF meetings.

Thought will also need to be given to the importance of an appropriately placed and resourced secretariat to manage the domestic DAG system. Resources saved on digital meetings could be used to fund a more developed, representative and open domestic mechanism. This is also important to ensure that discussions and actions progress outside of formal meetings, and to ensure sufficient capacity for the transparent management of agendas, minutes and contact details. If the UK Government is to make funding available to support engagement, consideration will also need to be given to ensuring that this does not compromise independence, as the use of non-disclosure agreements and gagging clauses by the UK Government has become an issue for the sector.<sup>46</sup>

A second UK specificity to consider after devolution is the novelty of the UK's situation and pre-existing relationship with the EU. Awareness of EU CSMs domestically within its trading partners is typically low, resulting sometimes in implementation over several years. This is less of an issue in the UK given

the high-profile nature of the TCA. Discussions have already taken place between EESC representatives and large infrastructure CSOs in the UK, whilst CSOs have been active in considering the CSMs and members of the House of Lords have been questioning the Government.<sup>47</sup>

Despite this, awareness of CSMs in trade agreements prior to the TCA appears to have been low. This is at least partially explained by domestic CSOs' reliance on EU civic society in this area, even for those with a trade specialism. This was of course justified as the centre of decision making on trade has long been at the EU level. However, with the UK now taking this responsibility back domestically, a rethinking of the sector's needs and role may be helpful. The UK Government has had to invest heavily in staff training in this area but with perhaps the exception of the environmental and labour sectors, there is currently little expertise and awareness amongst CSOs of the role they can play in the democratic governance of external trading relationships. Yet evidence shows that this lack of awareness and capacity amongst small and medium sized CSOs and businesses hinders cooperation both domestically and transnationally.<sup>48</sup> Unfortunately this problem is compounded by the UK Government's requirement that participants in its Trade Advisory Groups sign non-disclosure agreements.<sup>49</sup>

The UK is negotiating several new trade agreements. It has relatively typical EU CSMs to facilitate engagement with, and has rolled over many EU trade agreements – thus far leaving unaddressed the very valid question of whether those agreements' CSMs will now also be applied between the UK and its trading partners. There is currently little information, coordination and no discernible plan at the Government level on how the UK's implementation, not only of the EU's CSMs will take place, but more broadly on what the vision of the UK's landscape for domestic and transnational CSMs in trade will be. A shift in thinking will likely need to occur within CSOs and the devolved and UK Governments if effective use is to be made of these opportunities for cross-border civic society cooperation. At the very least civic society stakeholders will likely need investment in their sector to upskill and raise awareness of the role they can play. However, it is also crucial that the governments of the UK consider jointly how this aspect of the post-Brexit landscape will be addressed. Simple steps like creating an online portal akin to the European Commission's, which summarises the membership, and other relevant information across all its trade CSMs in one place,<sup>50</sup> would be an initial step.



### 3. How has Brexit impacted other forms of civic society co-operation?

In addition to the TCA's provision of new structures, Brexit has also altered the social and political landscape domestically for civic society cooperation outside of any formal treaty structures. This last section will briefly explore this in four connected points.

The first is that Brexit had an immediate and acute impact on the need for internal coordination and capacity sharing amongst CSOs across the UK to identify, unpack and respond to policy issues. It created a ream of salient concerns from labour and environmental standards, human rights, rule of law and constitutional issues, EU funding and EU citizens' rights to pressing 'no-deal' concerns. Forming networks to maximise impact is a common practice for civic society in the UK, however the complexity, high pace and extremely politicised nature of Brexit made it particularly challenging for stakeholders to mobilise and influence. This was recognised by funders including The Legal Education Foundation, Lloyds Bank Foundation, New Philanthropy Capital, the Joseph Rowntree Foundation and the Paul Hamlyn Foundation, who went on to fund projects to increase sector capacity and understanding. Some of this was aimed in particular at empowering devolved voices.

The second point is that Brexit did not have to be implemented in a fashion that is so diametrically opposed to cross-border cooperation. Very much in line with its efforts to emphasise the opportunities of Brexit, the UK Government could have taken steps to work with civil society across the UK to rethink how cooperation takes place within these islands and with the EU in a post-Brexit context. There is little evidence to suggest that this was ever a consideration or a future interest however. On the contrary, the political decisions to also withdraw the UK from cross-border cooperation programmes like Interreg, Erasmus, Creative Europe and the European Solidarity Corps are likely to result in an overall reduction of opportunities. Funding from the UK Government to support civic society through Brexit has been very limited – with the only two notable examples being aimed at supporting EU citizens to access Settled Status,<sup>51</sup> and the relatively inaccessible Brexit Readiness Fund.<sup>52</sup> Funding has been made available in other parts of the UK but has targeted more immediate concerns – like access to food in Scotland,<sup>53</sup> or providing support around hate crime and for Disabled People in Wales.<sup>54</sup>

The Welsh example bears further commentary as it illustrates how widely differing visions for the country and strained intergovernmental relationships are leading to an increasingly variegated social and political landscape for cross-border cooperation. Erasmus is a clear example of this: the Turing Scheme will be available UK-wide, Northern Ireland is retaining access to Erasmus+, the Welsh Government is introducing its own scheme<sup>55</sup> and Scotland is investigating the potential of doing the same. The Welsh Government was early in stating that the UK should seek to maintain access to as many EU programmes as possible,<sup>56</sup> arguing that losing access to these would be detrimental to cross-border cooperation.<sup>57</sup> This point was reiterated in its 2020 International Strategy which provided a policy backdrop for increasing cross-border cooperation with the EU, its Member States, regions and in particular with Ireland. Over the course of 2019 and 2020, it developed a portfolio of policy proposals which again, sought to provide the conditions necessary for cross-border cooperation in a post-Brexit landscape. Its Regional Investment Framework, for example, developed in partnership with stakeholders including civic society, provided concrete proposals for replacing EU funding in Wales.<sup>58</sup> It contains a section on cross-border and international working developed from proposals by its Regional Investment for Wales Steering Group, which argued that cross-border working should be ‘in the DNA’ of future regional investment.<sup>59</sup> The framework also contained plans for two new funds to support the development of and access to small and large scale cross-border opportunities. A significant challenge to the implementation of these plans has emerged however, as post-Brexit changes to the UK’s territorial governance are so far seeing the UK Government centralise post-EU funding. While the Levelling Up white paper, and the prospectus for the Shared Prosperity Fund are still forthcoming, there is little to suggest either will have a focus on cross-border activities. The Welsh Government has also sought to mitigate the eventual loss of the Ireland-Wales European Territorial Cooperation programme. To this end it has recently issued a call under the SCoRE Cymru grant scheme, which for the first time will have two strands:<sup>60</sup> one to maximise engagement in Horizon Europe by overcoming access barriers and to help build initial partnerships, and another in direct response to the recently agreed Joint Action plan with Ireland,<sup>61</sup> to increase cooperation around the Irish Sea.

The final point is that early civic society discussions show significant interest for less structured, informal civic society cross-border cooperation. This is consistent with EU CSOs’ experiences as many regularly work with or have

members from outside the EU. There are several reasons behind this, one being that despite the lower direct interest in influencing EU policy, many social issues worked on by CSOs are shared across borders. This is likely even more the case for the UK given pre-existing relationships. A second reason is that the EU acts both as an internal arena and externalising vehicle for promoting human rights, environmental, and other social values that provides opportunities to strengthen local CSOs' ability to influence domestic policy.<sup>62</sup> In this spirit, the Welsh and Scottish Governments both have stated objectives to monitor EU policy, and the EU Civic Society space remains open to UK participation, as evidenced by the inclusion of UK organisations in the 2020-2021 EESC Civic Solidarity Prize,<sup>63</sup> and UK CSOs being able to participate in the Conference on the Future of Europe.

## Conclusion

In answer to the introductory question, Brexit-related changes to the social, political and legal conditions for cross-border civic society cooperation are creating both new challenges and opportunities. However, the resulting landscape is still in a significant state of flux. Relatively direct impacts like the UK's withdrawal from EU cooperation programmes have yet to be fully felt and are still caught up in turbulent domestic politics. Recent comments by Mark Drakeford on the UK Internal Market Act suggest ongoing frustrations<sup>64</sup> – likely because its centralising effect on the UK's territorial constitution is a significant barrier to devolved ambitions like strengthening cross-border cooperation.

However, new opportunities are also due to emerge. The EU/UK TCA is introducing a form of institutionalised cross-border civic society dialogue that is new to the UK, though it remains to be seen how this will play out in practice as results from other EU agreements are mixed. Formal meetings within the context of these structures can be infrequent and a significant determinant of their impact lies in how CSOs and Governments allow for dialogue in between and around these critical junctures. This will require a paradigm shift in how UK Government engages with civil society across the UK and in how CSOs view their role in the democratic governance of external trade to be effective.

Finally, the underlying reasons for cooperation remain broadly the same, and early signs suggest significant interest in continued cooperation. For example,

WCVA and its Irish counterpart, The Wheel, are in the early stages of a new joint Erasmus project and other groups are seeking funding to establish new UK/EU relationships. There will be challenges of course, concrete EU assistance facilitating non-EU member state cross-border cooperation is limited, and where support is provided administrative burdens limit accessibility for many.<sup>65</sup> As a result it is usually up to individual CSOs to identify and seize opportunities to cooperate. Nevertheless, the societal challenges they address will still be best tackled collectively across borders and experience suggests that organisations will find ways to overcome barriers to cooperation – as there is still much to share and learn from each other.

## Endnotes

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- <sup>1</sup> Giada Lagana, *The European Union and the Northern Ireland Peace process* (2001), p.137.
- <sup>2</sup> See Rachel Minto, 'Sticky Networks in Times of Change: The Case of the European Women's Lobby and Brexit' (2020), p.1587.
- <sup>3</sup> See Regulation (EU) No 232/2014 establishing a European Neighbourhood Instrument, for the instrument covering the 2014-2020 multiannual framework (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0232&from=EN>), and regulation (EU) 2021/947 for its successor covering the 2021-2027 period (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0947&from=EN>).
- <sup>4</sup> European Parliament, 'Report on Strengthening the European Neighbourhood Policy' (26 October 2007), available at: [https://www.europarl.europa.eu/doceo/document/A-6-2007-0414\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-6-2007-0414_EN.html); European Commission, 'A Stronger European Neighbourhood Policy' (5 December 2007), COM(2007) 774 final, available at: [http://aei.pitt.edu/38883/1/COM\\_\(2007\)\\_774.pdf](http://aei.pitt.edu/38883/1/COM_(2007)_774.pdf).
- <sup>5</sup> Katy Hayward, Cathal McCall, and Ivo Damkat, 'Building peace and crossing borders: The North/South dimension' (2011).
- <sup>6</sup> Myriam Oehri, 'Comparing US and EU labour governance 'near and far' – hierarchy vs network?' (2015), p.732.
- <sup>7</sup> EU-Mexico Economic Partnership, Political Coordination and Cooperation Agreement, article 36, [2000] OJ L 276/52, [https://eur-lex.europa.eu/resource.html?uri=cellar:f95ad1a3-795e-4fb0-84e1-28351b99415c.0004.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f95ad1a3-795e-4fb0-84e1-28351b99415c.0004.02/DOC_2&format=PDF).
- <sup>8</sup> Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, [2000] OJ L 317/3, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22000A1215%2801%29>.

- <sup>9</sup> Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF).
- <sup>10</sup> See Articles 32 (2) (3) and 41 for further new civil society provisions on strengthening influence on public policy and awareness raising. See Article 10 for the institutional provisions and article 11 for a broader commitment to promoting civic dialogue.
- <sup>11</sup> This process can also be traced in successive EU Commission policy documents see: European Commission, 'Global Europe: Competing in the World – a Contribution to the EU's Growth and Jobs Strategy', COM (2006) 567 final; European Commission, 'Trade, Growth and World Affairs – Trade Policy as a Core Component of the EU's 2020 Strategy', COM (2010) 612 final; European Commission, Trade, growth and development Tailoring trade and investment policy for those countries most in need', COM (2012) 22 final.
- <sup>12</sup> Jan Orbie, Deborah Martens and Lore Van den Putte, 'Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation' (2016).
- <sup>13</sup> EU-South Korea Free Trade Agreement, [2007] OJ L 127, articles 12 and 13.
- <sup>14</sup> Lore Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015), p.222.
- <sup>15</sup> Deborah Martens, Jan Orbie, Lore Van den Putte and Yentyl Williams, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.3.
- <sup>16</sup> Martin Westlake, 'Asymmetrical institutional responses to civil society clauses in EU international agreements: pragmatic flexibility or inadvertent inconsistency?' (2017), pp.9-10; Jan Orbie, Deborah Martens and Lore Van den Putte, 'Civil Society Meetings in European Union Trade Agreements' (2016), p.38.
- <sup>17</sup> Lore Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015), p.225.
- <sup>18</sup> Judith Kirton-Darling, 'EP INTA hearing on sustainable development chapters in trade agreements' (27 November 2013).
- <sup>19</sup> Deborah Martens et al, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.6.
- <sup>20</sup> Lore Van den Putte et al, 'What social face of the new EU trade agreements? Beyond the "soft" approach' (2015), p.3.
- <sup>21</sup> Deborah Martens et al, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.5.
- <sup>22</sup> Martin Westlake, 'Asymmetrical institutional responses to civil society clauses in EU international agreements' (2017), p.11.
- <sup>23</sup> Lore Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015), p.225.
- <sup>24</sup> Evgeny Postnikov and Ida Bastiaens, 'Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements' (2014), pp.927-928.

- <sup>25</sup> Deborah Martens, Diana Potjomkina and Jan Orbie, 'Domestic Advisory Groups in EU Trade Agreements – Stuck at the Bottom of Moving up the Ladder?' (November 2020), p.37.
- <sup>26</sup> D. Martens et al, 'Domestic Advisory Groups in EU Trade Agreements – Stuck at the Bottom of Moving up the Ladder?', p.37.
- <sup>27</sup> European Commission, 'Trade for all - Towards a more responsible trade and investment policy' (2015), [https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf); European Commission, 'Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)' (11 July 2017), [https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf).
- <sup>28</sup> D. Martens et al, 'Domestic Advisory Groups in EU Trade Agreements – Stuck at the Bottom of Moving up the Ladder?', p.37.
- <sup>29</sup> UK Government, 'Consultation on engagement with business and civil society groups' (8 August 2021), <https://www.gov.uk/government/consultations/consultation-on-engagement-with-business-and-civil-society-groups>.
- <sup>30</sup> This covers trade, transport, fisheries and other arrangements (including intellectual property, public procurement, aviation, road transport, energy, social security and visas for short term visits).
- <sup>31</sup> Lore Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015), p.230.
- <sup>32</sup> See for example the first meeting of the Specialised Committee of Fisheries: [https://ec.europa.eu/info/publications/first-meeting-specialised-committee-fisheries-20-july-2021\\_en](https://ec.europa.eu/info/publications/first-meeting-specialised-committee-fisheries-20-july-2021_en).
- <sup>33</sup> A digital form to submit complaints to the EU Commission on the implementation of the TCA can be found here: [https://ec.europa.eu/info/reasons-united-kingdom/eu-uk-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/reasons-united-kingdom/eu-uk-trade-and-cooperation-agreement_en).
- <sup>34</sup> See [https://ec.europa.eu/info/reasons-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement\\_en](https://ec.europa.eu/info/reasons-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement_en).
- <sup>35</sup> See findings from Lore Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015), p.226.
- <sup>36</sup> Ray McCaffrey, 'The Civic Forum', Northern Ireland Assembly, Research and Information Service Research Paper (5 September 2013), [http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2013/assembly\\_exec\\_review/10913.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2013/assembly_exec_review/10913.pdf).
- <sup>37</sup> Kathryn Sturgeon, 'Seizing the Opportunity – The Case for Embracing Civil Society's Role in Democracy' (January 2021), <https://static1.squarespace.com/static/5b9265d0ee175944bdd8fc5d/t/600952ef728d05165b69054c/1611223792881/Seizing+the+Opportunity+-+The+case+for+embracing+civil+society%27s+role+in+democracy+-+Report.pdf>.
- <sup>38</sup> See the European Commission DG Trade page on the Civil Society Dialogue: <https://trade.ec.europa.eu/dialogue/>.
- <sup>39</sup> Jan Orbie, Deborah Martens and Lore Van den Putte, 'Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation' (2016), p.38.

- <sup>40</sup> James Wesley Scott and Ilkaa Liikanen, 'Civil Society and Neighbourhood – Europeanization through Cross-Border Cooperation?' (2010), p.431.
- <sup>41</sup> Also known as Group III in the EESC, it is made up of other representatives and stakeholders of civil society, particularly in the economic, civic, professional and cultural fields.
- <sup>42</sup> Nadia Ashraf and Jeske van Seters, 'Making it count: civil society engagement in EU Trade Agreements' (2020), <https://ecdpm.org/publications/making-count-civil-society-engagement-eu-trade-agreements/>.
- <sup>43</sup> See TUC, 'Briefing on TUC recommendations on Domestic Advisory Group under the EU-UK TCA' (March 2021), <https://www.tuc.org.uk/sites/default/files/2021-05/TUC%20proposals%20for%20TCA%20DAG%20.pdf>.
- <sup>44</sup> See Deborah Martens, Diana Potjomkina and Jan Orbie, 'Domestic Advisory Groups in EU Trade Agreements – Stuck at the Bottom of Moving up the Ladder?' (November 2020), p.56.
- <sup>45</sup> See Nadia Ashraf and Jeske van Seters, 'Making it count: civil society engagement in EU Trade Agreements' (2020), p.8; Deborah Martens, Jan Orbie, Lore Van den Putte and Yentyl Williams, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.6.
- <sup>46</sup> See ACEVO, "Gagging Clauses in Government Contracts" (2018), <https://www.acevo.org.uk/2018/11/gagging-clauses-government-contracts/>.
- <sup>47</sup> House of Lords Oral Questions session, 24 June 2021: <https://hansard.parliament.uk/lords/2021-06-24/debates/DA278476-A591-4655-A19F-D352E29D2461/CivilSocietyForumUKDelegation>; see also Baroness Hayter's written question, answered on 25 May 2021: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-12/hl151>.
- <sup>48</sup> D. Martens et al, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.6.
- <sup>49</sup> See the Institute for Government event "Creating the Department for International Trade" (13 July 2021). Recording available at: <https://www.youtube.com/watch?v=cWogXl3i79E>.
- <sup>50</sup> This portal is available at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1870>.
- <sup>51</sup> UK Government, 'New fund to support vulnerable EU citizens apply for settled status' (25 October 2018), available at: <https://www.gov.uk/government/news/new-fund-to-support-vulnerable-eu-citizens-apply-for-settled-status>.
- <sup>52</sup> UK Government, 'Business Secretary launches £10 million Brexit readiness fund for business organisations' (29 August 2019), available at: <https://www.gov.uk/government/news/business-secretary-launches-10-million-brex-it-readiness-fund-for-business-organisations>.
- <sup>53</sup> Scottish Government, 'Brexit funds for people struggling to afford food' (25 September 2019), available at: <https://www.gov.scot/news/brexit-funds-for-people-struggling-to-afford-food/>.
- <sup>54</sup> See the Welsh Government 'Preparing Wales' website, Community Cohesion and Disabled People pages available here: <https://gov.wales/preparing-wales>.

- <sup>55</sup> Welsh Government, ‘An International Learning Exchange Programme for Wales’ (22 March 2021), <https://gov.wales/written-statement-international-learning-exchange-programme-wales>.
- <sup>56</sup> Welsh Government, ‘Securing Wales’ Future’ (2018), <https://gov.wales/sites/default/files/publications/2018-10/white-paper-securing-wales-future-summary.pdf>.
- <sup>57</sup> Welsh Government, ‘The Future UK/EU Relationship – Negotiating Priorities for Wales’ (20 January 2020), [https://gov.wales/sites/default/files/publications/2020-01/the-future-uk-eu-relationship\\_0.pdf](https://gov.wales/sites/default/files/publications/2020-01/the-future-uk-eu-relationship_0.pdf).
- <sup>58</sup> Welsh Government, ‘Regional investment in Wales: framework’ (18 November 2020), <https://gov.wales/regional-investment-wales-framework>.
- <sup>59</sup> Welsh Government, ‘Regional investment: proposals for cross-border and international working’ (25 February 2020), <https://gov.wales/regional-investment-proposals-cross-border-and-international-working>.
- <sup>60</sup> Welsh Government, ‘SCoRE Cymru Call: maximising engagement in Horizon Europe and increasing Irish Sea co-operation’ (18 June 2021), <https://gov.wales/sites/default/files/publications/2021-06/score-cymru-call-june-2021.pdf>.
- <sup>61</sup> Welsh Government, ‘Ireland-Wales shared statement and joint action plan 2021 to 2025’ (1 March 2021), <https://gov.wales/ireland-wales-shared-statement-and-joint-action-plan-2021-to-2025.html>.
- <sup>62</sup> James Wesley Scott and Ilkaa Liikanen, ‘Civil Society and Neighbourhood – Europeanization through Cross-Border Cooperation?’ (2010), p.430.
- <sup>63</sup> European Economic and Social Committee, ‘The EESC reveals the winners of its Civil Solidarity Prize’ (15 February 2021), <https://www.eesc.europa.eu/en/news-media/press-releases/eesc-reveals-winners-its-civil-solidarity-prize>.
- <sup>64</sup> See Institute for Government event ‘Reforming the Union: Mark Drakeford MS, First Minister of Wales’ (15 July 2021). Recording available at: <https://www.instituteforgovernment.org.uk/events/reforming-union-mark-drakeford>.
- <sup>65</sup> James Wesley Scott and Ilkaa Liikanen, ‘Civil Society and Neighbourhood – Europeanization through Cross-Border Cooperation?’ (2010), p.434.

## References

Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part. [2002], [https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF)

Ashraf, N., and van Seters, J. (2020) “Making it count: civil society engagement in EU Trade Agreements”, ECDPM Discussion Paper No. 276, <https://ecdpm.org/publications/making-count-civil-society-engagement-eu-trade-agreements/>



- European Commission. (2007), COM(2007) 774, 'A Stronger European Neighbourhood Policy' (5 December) [http://aei.pitt.edu/38883/1/COM\\_\(2007\)\\_774.pdf](http://aei.pitt.edu/38883/1/COM_(2007)_774.pdf)
- European Commission. (2010), COM(2010) 612 final, 'Trade, Growth and World Affairs – Trade Policy as a Core Component of the EU's 2020 Strategy', <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:EN:PDF>
- European Commission. (2012), COM(2012) 22 final, 'Trade, growth and development Tailoring trade and investment policy for those countries most in need', <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52012DC0022>
- European Commission. (2015) 'Trade for all – Towards a more responsible trade and investment policy', [https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)
- European Commission. (2017), 'Trade and Sustainable Development (TSD) chapters in EU Free Trade Agreements (FTAs)', [https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf)
- EU-Mexico Economic Partnership, Political Coordination and Cooperation Agreement, article 36, [2000] OJ L 276/52, [https://eur-lex.europa.eu/resource.html?uri=cellar:f95ad1a3-795e-4fb0-84e1-28351b99415c.0004.02/D OC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:f95ad1a3-795e-4fb0-84e1-28351b99415c.0004.02/D OC_2&format=PDF)
- European Economic and Social Committee. (2021), 'The EESC reveals the winners of its Civil Solidarity Prize', <https://www.eesc.europa.eu/en/news-media/press-releases/eesc-reveals-winners-its-civil-solidarity-prize>
- European Parliament. (2007), 'Report on Strengthening the European Neighbourhood Policy' (26 October), [https://www.europarl.europa.eu/doceo/document/A-6-2007-0414\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-6-2007-0414_EN.html)
- EU-South Korea Free Trade Agreement. [2007] OJ L 127
- Hayward, K., McCall, C., and Damkat, I. (2011), 'Building peace and crossing borders: The North/South dimension', in M. Power (ed.), Building peace in Northern Ireland (Liverpool: Liverpool University Press), pp.191-208
- Kirton-Darling, J. (2013), 'European Parliament INTA hearing on sustainable development chapters in trade agreements', 27 November <https://www.europarl.europa.eu/cmsdata/191674/20131206ATT75636EN-original.pdf>
- Lagana, G. (2020), The European Union and the Northern Ireland Peace process (Basingstoke: Palgrave Macmillan)
- Martens, D., Orbie, J., Van den Putte, L., and Williams, Y. (2016), 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs', European Centre for Development Policy Management, Briefing Note 93, <https://ecdpm.org/publications/civil-society-meetings-eu-trade-agreements/>
- Martens, D., Potjomkina, D., and Orbie, J. (2020), 'Domestic Advisory Groups in EU Trade Agreements – Stuck at the Bottom of Moving up the Ladder?', Friedrich Ebert Stiftung, p.37, <http://library.fes.de/pdf-files/iez/17135.pdf>

- McCaffrey, R. (2013), 'The Civic Forum', Northern Ireland Assembly, Research and Information Service Research Paper, [http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2013/assembly\\_ex ec\\_review/10913.pdf](http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2013/assembly_ex ec_review/10913.pdf)
- Minto, R. (2020), 'Sticky Networks in Times of Change: The Case of the European Women's Lobby and Brexit', *Journal of Common Market Studies*, 58(6), pp.1587–1604
- Oehri, M. (2015), 'Comparing US and EU labour governance “near and far” – hierarchy vs network?', *Journal of European Public Policy*, 22(5), pp.731-749
- Orbie, J., Martens, D., and Van den Putte, L. (2016), 'Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation', Centre for the Law of EU External Relations papers 2016/3, [https://www.asser.nl/media/3044/cleer16-3\\_web.pdf](https://www.asser.nl/media/3044/cleer16-3_web.pdf)
- Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, [2000] OJ L 317/3, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22000A1215%2801%29>
- Postnikov, E. and Bastiaens, I. (2014), 'Does dialogue work? The effectiveness of labour standards in EU preferential trade agreements', *Journal of European Public Policy*, 21(6), pp.923-940
- Scott, J.W. and Liikanen, I. (2010), 'Civil Society and Neighbourhood – Europeanization through Cross-Border Cooperation?', *European Integration*, 32(5), pp.423-438
- Scottish Government. (2019), 'Brexit funds for people struggling to afford food', <https://www.gov.scot/news/brexit-funds-for-people-struggling-to-afford-food/>
- Sturgeon, K. (2021) 'Seizing the Opportunity – The Case for Embracing Civil Society's Role in Democracy', Brexit Civil Society Alliance, <https://static1.squarespace.com/static/5b9265d0ee175944bdd8fc5d/t/600952ef728d05165b69054c/1611223792881/Seizing+the+Opportunity+-+The+case+for+embracing+civil+society%27s+role+in+democracy+-+Report.pdf>
- TUC. (2021) 'Briefing on TUC recommendations on Domestic Advisory Group under the EU-UK TCA', <https://www.tuc.org.uk/sites/default/files/2021-05/TUC%20proposals%20for%20TCA%20DAG%20.pdf>
- UK Government. (2018), 'New fund to support vulnerable EU citizens apply for settled status', <https://www.gov.uk/government/news/new-fund-to-support-vulnerable-eu-citizens-apply-for-settled-status>
- UK Government. (2019), 'Business Secretary launches £10 million Brexit readiness fund for business organisations', <https://www.gov.uk/government/news/business-secretary-launches-10-million-brexit-readiness-fund-for-business-organisations>

- UK Government. (2021), “Consultation on engagement with business and civil society groups”. <https://www.gov.uk/government/consultations/consultation-on-engagement-with-business-and-civil-society-groups>
- Van den Putte, L. (2015), ‘Involving Civil Society in Social Clauses and the Decent Work Agenda’, *Global Labour Journal*, 6(2), pp.221-235
- Van den Putte, L., Orbie, J., Bossuyt, F., Martens, D., and De Ville, F. (2015), ‘What social face of the new EU trade agreements? Beyond the “soft” approach’, *European Trade Union Institute Policy Brief 13/2015*, <https://www.etui.org/publications/policy-briefs/european-economic-employment-and-social-policy/what-social-face-of-the-new-eu-trade-agreements-beyond-the-soft-approach>
- Welsh Government. (2018), ‘Securing Wales’ Future’, <https://gov.wales/sites/default/files/publications/2018-10/white-paper-securing-wales-future-summary.pdf>
- Welsh Government. (2020), ‘A Framework for Regional Investment in Wales: proposals for cross-border and international working’, <https://gov.wales/sites/default/files/publications/2020-02/a-framework-for-regional-investment-in-wales-proposal-for-supporting-cross-border-and-international-working.pdf>
- Welsh Government. (2020), ‘The Future UK/EU Relationship – Negotiating Priorities for Wales’, [https://gov.wales/sites/default/files/publications/2020-01/the-future-uk-eu-relationship\\_0.pdf](https://gov.wales/sites/default/files/publications/2020-01/the-future-uk-eu-relationship_0.pdf)
- Welsh Government. (2020), ‘Regional investment in Wales: framework’, <https://gov.wales/regional-investment-wales-framework>
- Welsh Government. (2021), ‘An International Learning Exchange Programme for Wales’, <https://gov.wales/written-statement-international-learning-exchange-programme-wales>
- Welsh Government. (2021), ‘Ireland-Wales shared statement and joint action plan 2021 to 2025’, <https://gov.wales/ireland-wales-shared-statement-and-joint-action-plan-2021-to-2025.html>
- Welsh Government. (2021), ‘SCoRE Cymru Call: maximising engagement in Horizon Europe and increasing Irish Sea co-operation’, <https://gov.wales/sites/default/files/publications/2021-06/score-cymru-call-june-2021.pdf>
- Westlake, M. (2017), ‘Asymmetrical institutional responses to civil society clauses in EU international agreements: pragmatic flexibility or inadvertent inconsistency?’, *Bruges Political Research Papers n.66*, <http://aei.pitt.edu/93140/>

# Eitem 3

## The Windsor Framework

Written evidence submitted to the Legislation, Justice, and Constitution  
Committee of Senedd Cymru

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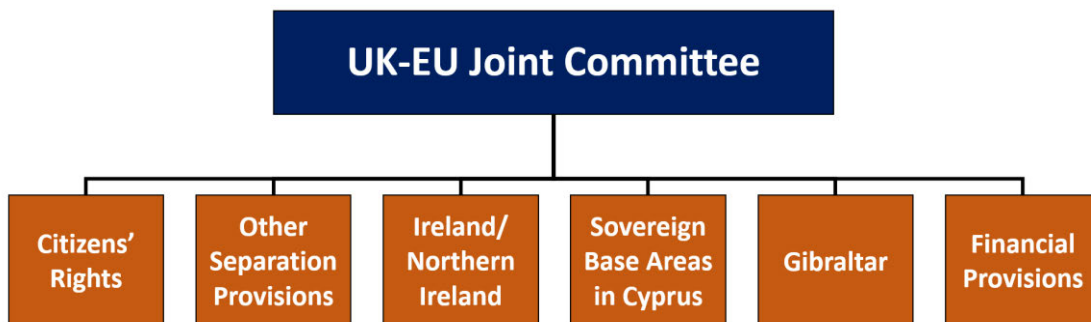
Queen's University Belfast

23 June 2023

This evidence is submitted as part of three-year academic research project on *Governance for 'a place between': the Multilevel Dynamics of Implementing the Protocol on Ireland/Northern Ireland* funded by the Economic and Social Research Council.<sup>3</sup> It focuses primarily on the institutional architecture and governance arrangements in UK-EU agreements as they relate to Northern Ireland and specifically the Protocol on Ireland/Northern Ireland and particularly since the adoption of the Windsor Framework.

### The institutional architecture and governance of UK-EU agreements and how these have evolved in practice.

1. The institutional architecture and governance arrangements for UK-EU relations post-Brexit are based on the Withdrawal Agreement (2020), and the Trade and Cooperation Agreement (2020).
2. The Withdrawal Agreement (WA) provides arrangements governing UK withdrawal from the EU. They are limited in terms of their scope to essentially citizens' rights, the financial settlement, 'other separation provisions', as well as certain matters relating to Gibraltar and the UK Sovereign Base Areas in Cyprus. To oversee implementation a series of joint UK-EU bodies have been established: a Joint Committee and six Specialised Committees.



Most of the Specialised Committees are expected to have either a limited shelf-life or see decreasing activity as the terms of withdrawal are implemented. The significance for UK-EU

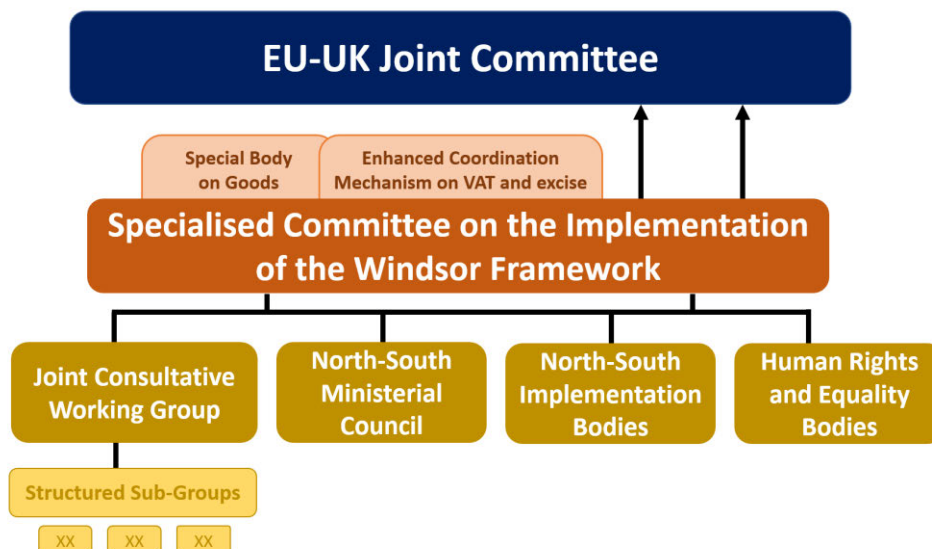
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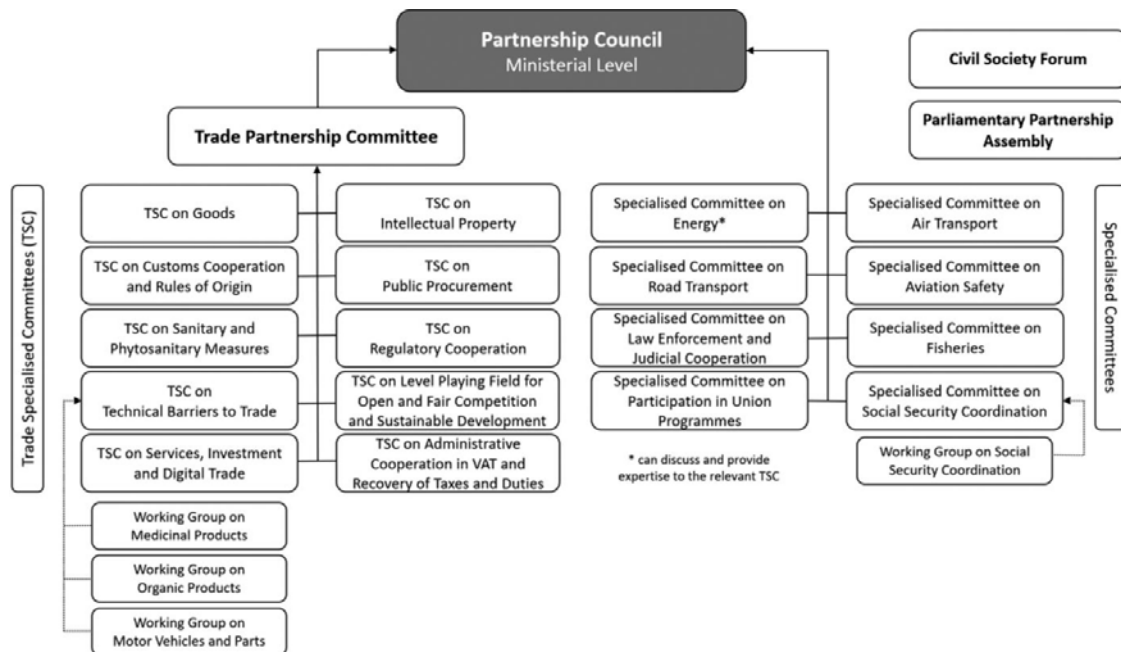
<sup>3</sup> [www.qub.ac.uk/sites/post-brexit-governance-ni](http://www.qub.ac.uk/sites/post-brexit-governance-ni).

relations of the governance arrangements established by the Withdrawal Agreement will therefore generally decrease over time.

3. The main exception concerns the governance arrangements for the operation of the Protocol on Ireland/Northern Ireland. This reflects the semi-permanency of the detailed arrangements established by the Protocol ‘to address the unique circumstances on the island of Ireland, to maintain the necessary conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions’. With Northern Ireland in the EU customs territory and part of the EU internal market for goods and in a position of dynamic regulatory alignment with the EU, there is a need for a detailed institutional framework to manage the relationship.
4. For the Protocol on Ireland/Northern Ireland, the governance arrangements are more developed than for any other element of the Withdrawal Agreement and they have recently been added to by the Windsor Framework in 2023 (see para. 6 below), Essentially the arrangements comprise three tiers: the Joint Committee, a Specialised Committee, and then four sets of bodies reporting to the Specialised Committee. The first – the Joint Consultative Working Group (JCWG) – is specific to the Protocol and is focused on the dynamic regulatory alignment of Northern Ireland with EU legislation relating to customs, the free movement of goods, and the single electricity market on the island of Ireland. The remainder are pre-existing bodies established by or as a result of the 1998 Belfast (Good Friday) Agreement, these include: the North-South Ministerial Council (NSMC), North-South Implementation Bodies, and rights and equality bodies tasked with monitoring the implementation of Protocol Article 2.
5. A further feature of the Protocol on Ireland/Northern Ireland (as noted at para. 24(a) below) is the ‘democratic consent’ mechanism. It involves members of the Northern Ireland Assembly (MLAs) being given an opportunity from 2024, and potentially every four years thereafter, to vote on the continued application of core provisions of the Protocol (Articles 5-10) governing the movement of goods into and out of Northern Ireland and the single electricity market on the island of Ireland.
6. With the Windsor Framework, the Specialised Committee was renamed, and two new formations established. Provision was also made for the creation of thematic sub-groups to the JCWG with five currently being established. They cover: goods regulation, the Single Electricity Market, customs, agrifood and subsidy control.



7. The institutional framework for the Trade and Cooperation Agreement (TCA) is more dense and more complex. It comprises the EU-UK Partnership Council which is supported on trade issues by a Trade Partnership Committee and ten Trade Specialised Committees (TSCs), and on other issues by eight Specialised Committees. A number of specific Working Groups support the work of Specialised Committees. In addition, there is a Civil Society Forum and Parliamentary Partnership Assembly.



8. An early academic assessment (July 2022) of the governance arrangements of the Withdrawal Agreement and the Trade and Cooperation Agreement concluded:

*Withdrawal from the EU has seen the UK abandon membership of and formal influence over the strategic priorities of and policy making in the EU. Early experiences reveal a rather weak UK influence over the terms of both the WA and the TCA. Greater preparedness, internal UK cohesion, time and ambition may have led to a less imbalanced outcome to the withdrawal negotiations and those on the TCA. However, through the two agreements, frameworks for UK–EU engagement have been established and these do provide opportunities for the UK to shape the development of relations as well as, notionally at least, influence EU policy making. This is particularly so in the case of the arrangements in place for the Protocol on Ireland/Northern Ireland where structures have also evolved to accommodate stakeholder input. Further developments may occur as well, although the UK government’s proposed legislation for unilateral action to disapply much of the Protocol clearly threatens this.*

*Arrangements in place for the Protocol also provide some counter to the processes of disintegration and disengagement that generally define the UK’s post-Brexit approach to its relations with the EU. Equally, the slow operationalization of the TCA’s institutional framework and limited use of governance mechanisms set up for the purpose of managing the Protocol’s implementation speak strongly to the disengagement narrative. These remain early days, however, in the post-Brexit UK–EU relationship; and the extent of the UK government’s engagement with the*

*institutional frameworks established through the WA and the TCA may increase assuming future UK governments focus less on achieving an ideologically pure Brexit and instead adopt a more pragmatic and stakeholder-informed approach to managing relations with the UK. If such a change does occur, the denseness of the frameworks should provide opportunities for significant engagement with the EU and the possibility of exerting some influence over its decision-making. Given the limited ambition of the TCA and the absence of a high-level political body to promote the development of relations, that engagement may, structurally at least, be limited to addressing essentially technical issues. However, the institutional arrangements could evolve. As initial experience from the Protocol shows, evolution and adaption are possible, as are influence. It should be noted, however, that the Protocol and developments around its implementation are a response to very particular and 'unique circumstances' on the island of Ireland where, through the Protocol, the EU now has a formal obligation to support peace and stability. They should not necessarily be seen as a precedent for some privileged status for the UK if it were to seek a more integration-based relationship with the EU. In leaving the EU, the UK has opted to be a non-Member State. The EU's response has been to treat it as such.<sup>4</sup>*

9. To date, no changes have been made to the governance arrangements for the TCA. As noted, however, the Windsor Framework has introduced changes to the governance arrangements for the Protocol on Ireland/Northern Ireland.<sup>5</sup> The new mechanisms are an enhancement of the existing institutional framework for managing the implementation of the Protocol and offer the means for institutional responsiveness to Northern Ireland's unique position. The potential of these mechanisms to bring benefit will depend on their specific design and operation, the frequency of meetings, the quality of information they can draw upon, and the willingness of both the UK and EU to invest necessary time and resources in them.
10. The Specialised Committee will now meet additionally in two new 'specific compositions': the Enhanced Coordination Mechanism on VAT and Excise (ECMVE) and the Special Body on Goods. The ECMVE will primarily, it seems, function through the work of two 'lead experts' appointed by the UK and EU. These lead experts can exchange views and meet informally and representatives of 'third parties' or 'other experts' 'may be invited to talk on particular matters'.<sup>6</sup>
11. The Special Body on Goods has provision for 'representatives from business' to be invited to attend its meetings, which will be convened 'as necessary'. This will be an important body given that it could provide for 'exchanges of views' on any future UK legislation regarding goods of relevance to the Protocol, including 'assessing the potential divergence between UK and EU rules'. The Specialised Committee can also

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<sup>4</sup> Phinmore, D. (2022) 'The United Kingdom: Turning its Back on Influencing the EU?', *JCMS: Journal of Common Market Studies*, <https://doi.org/10.1111/jcms.13419>, 18-19.

<sup>5</sup> This section draws on evidence previously submitted by the authors and Prof. Katy Hayward to the House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland as part of its 2023 inquiry into the Windsor Framework; see: <https://committees.parliament.uk/writtenevidence/120901/pdf/>.

<sup>6</sup> *Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework*, OJ L102, 17 April 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2023:102:TOC>

adopt recommendations for measures to be taken by the Joint Committee.<sup>7</sup> This suggests that the work of the Special Body is potentially very significant, including in regard to monitoring and managing regulatory divergence (see para. 19).

12. The establishment of the sub-groups to the JCWG will provide opportunities for wider specialised input into the work of this important body. At the moment, the adjustment made to the JCWG Rules of Procedure provides for these sub-groups to include UK and EU officials only; it is anticipated that officials from Northern Ireland will be part of the UK delegation to meetings. There is also potential for these JCWG sub-groups to draw in experts from industry as well as stakeholders.
13. Complementing the existing democratic consent provisions in the Protocol, the Windsor Framework also introduced a 'Stormont Brake' mechanism allowing MLAs, in strictly defined circumstances to block the application in Northern Ireland of amendments and replacements to EU acts applicable under the Protocol. A second 'Stormont Brake' requires MLAs approval for the addition in the future of any new EU laws that the EU maintains should apply under the Protocol. These are discussed in greater detail below (see para. 24(b)).
14. Such measures are designed to help addressing the 'democratic deficit' inherent in the Protocol and its operation. Also contributing is the joint UK-EU commitment to 'establish regular engagement with Northern Ireland stakeholders' at 'each level' of the institutional framework for managing the implementation of the Protocol. This can include political representatives.<sup>8</sup>
15. Whether an effective contribution can be made to reducing the democratic deficit will also depend on the extent to which expertise and experience from Northern Ireland is heard and can be seen to be heard in the decisions that are made, either directly through representation or through stakeholder engagement. Essential here will be timely, visible, and accessible reporting on the planned and actual activities of the various joint bodies and mechanisms. Consideration needs therefore to be given to how activities are reported to and can be scrutinised by interested parties, most notably elected representatives, particularly in the Northern Ireland Assembly but also at Westminster. There is also a need for the Northern Ireland Assembly to have effective scrutiny arrangements in place.

**The role of the devolved governments in the institutional architecture and governance of the UK-EU agreements themselves and UK intergovernmental arrangements in place to support their engagement.**

16. Throughout the implementation of the Protocol – and most recently in the Windsor Framework, the UK government has committed to the participation of the First and deputy First Ministers of Northern Ireland (when in office) in the UK delegation to the Joint

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<sup>7</sup> *European Commission, Questions and Answers: political agreement in principle on the Windsor Framework, a new way forward for the Protocol on Ireland/Northern Ireland*, QANDA/23/1271, Brussels, 27 February 2023, [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda\\_23\\_1271/QANDA\\_23\\_1271\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_23_1271/QANDA_23_1271_EN.pdf) and *Joint Declaration No 2/2023 of the Union and the United Kingdom in the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, L102/91, 17 April 2023, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2023.102.01.0091.01.ENG&toc=OJ%3AL%3A2023%3A102%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2023.102.01.0091.01.ENG&toc=OJ%3AL%3A2023%3A102%3ATOC)

<sup>8</sup> *Windsor Political Declaration by the European Commission and the Government of the United Kingdom* 27 February 2023 Available: <https://commission.europa.eu/system/files/2023-02/political%20declaration.pdf>



Committee. It has also included officials from Northern Ireland in the UK delegation to meetings of the Specialised Committee and the JCWG.

17. Neither the Withdrawal Agreement nor the Protocol/Windsor Framework contain provision for or a commitment to enabling the devolved institutions of Wales or Scotland to input to the implementation of the Protocol/Framework or its governing architecture. As most of its provisions are focused exclusively on Northern Ireland, this is perhaps unsurprising. Nonetheless it is worth noting that due to changes agreed under the Windsor Framework businesses, traders, and parcel carriers based in Great Britain will be newly eligible to use new 'green lane' systems of customs and regulatory easements for the movement of goods from GB into Northern Ireland for use or sale there. Although much will depend on how these new systems are operationalised and used, the expanded scope of eligibility may lead to stakeholders in Scotland and Wales seeking to develop avenues for inputting into the joint bodies managing the Protocol/Windsor Framework. In this respect, the Special Body on Goods would likely be the most relevant context for potential involvement of stakeholders from Wales or Scotland, including elected representatives.
18. There is no formal relationship between the joint bodies of the Withdrawal Agreement and those of the Trade and Cooperation Agreement. This is potentially problematic due to the overlap between the scope of certain TCA Committees (e.g., TSC on goods, TSC on customs cooperation and rules of origin, TSC on sanitary and phytosanitary (SPS)) and the scope of the Protocol/Windsor Framework and those EU laws it makes applicable to Northern Ireland (including on regulation of goods, customs, SPS rules etc.).
19. The relationship between different bodies tasked with monitoring and/or managing regulatory divergence both within the UK and between the UK and EU is not clear. For example, it is unclear if/how the Special Body on Goods assessment of any potential divergence of UK and EU rules (see para. 11) relates to the monitoring work of the Office for the Internal Market regarding divergence within the UK internal market, including between NI and GB arising as a consequence of the Protocol/Windsor Framework. Similarly, it is unclear if/how the operation of Common Frameworks in areas covered by the Protocol/Windsor Framework will relate to or account for developments in the latter's implementation.
20. Overall the post-Brexit regulatory environment in the UK is extremely complex and continues to evolve and remains affected by UK relations with and commitments to the EU. Yet, there are clear gaps in the architecture for monitoring and implementing the TCA and the Protocol/Windsor Framework dimensions of the UK-EU relationship. Ensuring that the views of the devolved institutions, particularly those in Wales and Scotland, are represented is set to remain a major challenge.

**The role of UK legislatures and particularly devolved legislatures in the oversight of decision-making and scrutiny of the operation of the agreements.**

21. UK legislation that implements the WA and TCA in domestic law does not provide for the routine involvement of devolved legislatures in general in the oversight of decision-making and/or of the operation of either agreement. The exception in this regard is the series of provisions made for the involvement of Northern Ireland institutions (when operational) in some oversight and scrutiny activities related to the Protocol/Windsor Framework.
22. The absence of a functioning Northern Ireland Assembly means there is currently no scrutiny taking place at devolved level in Northern Ireland of the implementation of the Protocol/Windsor Framework or TCA. During its period of post-Brexit operation (January

2020 – February 2021) the Northern Ireland Assembly did review the implementation of the Protocol, primarily through the Committee for The Executive Office. This included holding evidence sessions with the UK and EU co-chairs of the Joint Committee, David Frost and Maroš Šefčovič.

23. Assuming the restoration of devolved government in Northern Ireland, the UK government has mandated the establishment in the Northern Ireland Assembly of a Windsor Framework Democratic Scrutiny Committee. Its primary purpose is to support MLAs in determining whether use should be made of the Stormont Brake (see para. 24(b)). What other, wider scrutiny arrangements will be put in place – including any evidence sessions with co-chairs of the various Protocol/Windsor Framework joint bodies – remains to be seen.
24. Due to the unique arrangement for Northern Ireland under the Protocol/Framework a series different processes exist which enable the Northern Ireland Assembly to periodically express a view on the operation and/or continuation of aspects of the Protocol/Framework. These fall into two broad categories:
  - a. Democratic Consent Mechanism: under Article 18 of the Protocol, the Northern Ireland Assembly will be given opportunity to vote, first in 2024 and then every four or eight years thereafter, on the continuation or otherwise of Articles 5-10 of the Protocol which primarily concern the movement of goods. If a simple majority in favour of continuation is achieved, another vote on the same terms will be held four years later; if a cross-community majority in favour of continuation is achieved, another vote on the same terms will be held eight years later; if a majority against continuation is achieved, Articles 5-10 of the Protocol will cease to apply two years later and, in the interim, the Joint Committee will make recommendations to the UK and the EU on 'necessary measures' taking into account obligations arising under the Belfast/Good Friday Agreement.
  - b. Stormont Brake Procedures:
    - i. Under (new) Article 13(3)(a) of the Protocol, 30 MLAs from at least two parties in the Northern Ireland Assembly may opt to notify the UK government that an amendment or update to EU laws on the regulation of goods, which would otherwise apply in Northern Ireland under Article 5 of the Protocol, is likely to have 'significant impact specific to everyday life of communities in Northern Ireland' in a manner that is 'liable to persist' and therefore should not take effect in Northern Ireland. If the UK government consider the MLAs notification to be legitimate and compliant with relevant conditions, they may notify the EU in the Joint Committee and the relevant amendment or update will not apply in Northern Ireland; should this scenario arise, the EU can take 'remedial measures'.
    - ii. Under Article 13(4) of the Protocol, the UK and EU can agree to add new EU laws to those which already apply to Northern Ireland under its terms if the new act is deemed to be in scope of its objectives and necessary for its operation. Fulfilling a commitment in its Windsor Framework Command Paper the UK government introduced a new domestic process related to the Article 13(4) process whereby, prior to the addition of a new EU act being agreed in the Joint Committee, a vote must be held in the Northern Ireland Assembly on an 'applicability motion' concerning the legitimacy or otherwise of adding the relevant EU act. A UK Minister cannot agree to the addition of

an EU act without having first secured cross-community majority consent for doing so in the Northern Ireland Assembly unless ‘exceptional circumstances’ apply.<sup>9</sup>

### **The role of civil society in the operation of the agreements and in particular the role of the Civil Society Forum and Domestic Advisory Groups under the Trade and Cooperation Agreement<sup>10</sup>**

25. Polling carried out as part of our three-year research project has consistently revealed public support for direct UK-EU engagement with Northern Ireland regarding the Protocol. In February 2023, before the Windsor Framework was announced, almost three quarters (73%) of respondents agreed that the UK and the EU should commit to regular consultation with Northern Ireland stakeholders and political representatives on how the Protocol is implemented. This included majorities from supporters of the main Northern Ireland political parties (i.e. Sinn Féin, the Democratic Unionist Party, the Alliance Party, the Social Democratic and Labour Party and the Ulster Unionist Party).
26. In our most recent polling (March 2023),<sup>11</sup> more than three quarters (77%) of respondents agreed that commitments in the Windsor Framework for increased UK Government and EU engagement with Northern Ireland stakeholders and political representatives regarding the implementation of the Protocol are ‘welcome and important’. Significantly, this included the majority of respondents from across the political spectrum, with 56% of those respondents identifying as ‘strongly unionist’ and 72% of ‘slightly unionist’ welcoming these commitments. It also included the majority of supporters from each of the five main political parties in Northern Ireland, plus the plurality of TUV supporters.
27. The European Commission’s ‘enhanced measures’ for the involvement of Northern Ireland stakeholders are novel and provide a privileged form of consultative engagement that goes beyond arrangements the EU has as part of its relations with non-member states. Essential to the overall success of the measures will be the extent to which they provide meaningful opportunities for stakeholder input into Protocol-relevant European Commission proposals and for relevant interests and concerns to be reflected in part, at least, in the substance of those proposals and the decisions ultimately adopted by the EU and, as appropriate, the Joint Committee.
28. Stakeholder engagement needs effective resourcing. While the extent of the envisaged engagement is substantial, it is open to question the extent to which stakeholders across Northern Ireland will have the capacity to engage on an ongoing basis in meaningful consultations. To this end, consideration needs to be given to how best the UK Government and the European Commission can facilitate the engagement of stakeholders through (a) appropriate resourcing and support and (b) the design of mechanisms. Co-design with stakeholders should be encouraged.

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<sup>9</sup> *The Windsor Framework (Democratic Scrutiny) Regulations 2023* DRAFT SI 2023/XX Available: <https://www.legislation.gov.uk/ukdsi/2023/9780348246322>

<sup>10</sup> This section draws on evidence previously submitted by the authors and Prof. Katy Hayward to the House of Lords European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland as part of its 2023 inquiry into the Windsor Framework; see: <https://committees.parliament.uk/writtenevidence/120901/pdf/>.

<sup>11</sup> Phinnemore, D. *et al* Testing the Temperature Extra: *What do voters in Northern Ireland think about the Windsor Framework?*, Queen’s University Belfast, April 2023 <https://www.qub.ac.uk/sites/post-brexit-governance-ni/ProjectPublications/OpinionPolling/TestingTheTemperature-Extra/>.

29. If stakeholder engagement is to contribute to a reduction in the 'democratic deficit' under the Protocol, it will be important for evidence of engagement and the associated outcomes to be fully documented and made public. It is recommended that, once evidence is available, examples are produced of how stakeholder engagement has shaped EU decisions with relevance to the Protocol.
30. We note that while the European Commission has adopted 'enhanced measures', there is no corresponding statement as yet from the UK Government as to the measures it will take, as per the Windsor Framework Political Declaration it issued with the European Commission, to contribute to 'regular engagement with Northern Ireland stakeholders including citizens and businesses, at each level of the Withdrawal Agreement's structures and with the co-chairs of the Joint Committee'.<sup>12</sup>

### **The transparency and accountability of these new UK-EU governance structures.**

31. Although the UK Government and the EU do maintain relevant webpages,<sup>13</sup> the transparency of UK-EU governance structures established under the Withdrawal Agreement is limited. Prior to meetings of the Joint Committee or Protocol/Windsor Framework Specialised Committee a provisional agenda is normally published; after the meeting has taken place a joint EU-UK or separate UK and EU statements are normally published. Typically, the information provided in provisional agendas and/or statements is very high-level. No public record is made of when JCWG meetings take place or what is discussed. The Joint Committee publishes an annual report on its activities that also references the work of the Specialised Committee and the JCWG.
32. There is greater transparency regarding the activities and discussions that take place in TCA committees. An agenda is published before any meeting of a Specialised or Trade Specialised Committee and a detailed minute of proceedings is published after the meeting takes place. These are made available online via UK government and the European Commission webpages.<sup>14</sup>

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<sup>12</sup> *Political Declaration by the European Commission and the Government of the United Kingdom*, 27 February 2023, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1139420/Political\\_Declaration\\_by\\_the\\_European\\_Commission\\_and\\_the\\_Government\\_of\\_the\\_United\\_Kingdom.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139420/Political_Declaration_by_the_European_Commission_and_the_Government_of_the_United_Kingdom.pdf)

<sup>13</sup> See UK Government 'Withdrawal Agreement Joint Committee' *gov.uk* Available: <https://www.gov.uk/government/collections/withdrawal-agreement-joint-committee> and European Commission 'Meetings of the EU-UK Joint and Specialised Committees under the Withdrawal Agreement' *commission.europa.eu* Available: [https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement\\_en](https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement/meetings-eu-uk-joint-and-specialised-committees-under-withdrawal-agreement_en)

<sup>14</sup> See European Commission 'Meetings of the EU-UK Partnership Council and Specialised Committees under the Trade and Cooperation Agreement' *commission.europa.eu* Available: [https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement\\_en](https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/meetings-eu-uk-partnership-council-and-specialised-committees-under-trade-and-cooperation-agreement_en) and UK Government 'Trade and Cooperation Agreement Governance' *gov.uk* Available: <https://www.gov.uk/government/collections/trade-and-cooperation-agreement-governance>

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