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# Forging their path in the Brussels bubble? Civil society resistance within the domestic advisory groups created under the EU trade agreements

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**Abstract** *Academic and policy interest in civil society participation in the European Union's trade policy has been growing since the late 1990s. We analyse civil society's engagement with the Domestic Advisory Groups (DAGs)—consultation mechanisms established by the European Commission at the implementation stage of its free trade agreements. While the Commission's formal rationale for the DAGs is partnership with civil society, in fact this relationship involves a marked power and resistance dynamic. We focus on civil society's agency and resistance, develop a conceptual framework laying out different possible types of resistance, and empirically demonstrate the wealth of both overt and subtle resistance practices employed by DAG members. Most of this resistance is (moderately) comprehensive and directed against the DAGs' rationalities and technologies. While showing that DAGs are deeply contested, our study also provides a nuanced analysis of resistance with particular attention for divisions between business and non-business members.*

## Introduction

Civil society participation in the European Union's (EU) trade policy has been an increasingly hot topic since the late 1990s, and stakeholders, many of them

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dissatisfied with the way in which the EU has been conducting its trade policy, have been calling for greater transparency and new engagement opportunities. The European Commission, with competence in trade policy, has tried to channel these demands for participation and policy change into a myriad of institutionalized consultation formats open to non-governmental stakeholders (Dür and De Bièvre 2007; Hannah 2016; Gheyle and De Ville 2017). Here, we will specifically focus on the Domestic Advisory Groups (DAGs)—civil society groups that have been established both in the EU and its partner countries since 2010. DAGs monitor trading partners' compliance with the commitments made in the 'trade and sustainable development' (TSD) chapters included in its free trade agreements (FTAs) starting with the EU-Korea FTA which was signed in 2010. The DAGs have been chosen because they constitute relatively institutionalized mechanisms with a rather stable membership, have existed for several years and meet regularly. Moreover, reform of the DAGs over the last years has stayed on both the Commission's and civil society's agenda, which justifies greater attention to how their participants engage with these mechanisms.

Participation of civil society and other stakeholders in EU trade policy has been the subject of numerous recent books and articles (for example Hocking 2004; Young and Peterson 2006; Hannah 2016; Khorana and Garcia 2018; Marceddu 2018). A small part of this literature is rather optimistic about the possibilities for dialogue that are offered through the DAGs, seeing them as potentially impactful (Postnikov and Bastiaens 2014; Prévost and Alexovičová 2019). However, most authors are pessimistic and point to shortcomings. Some argue that the EU uses dialogue with stakeholders in order to legitimize its policies and counterbalance opposition, sometimes without any real intent to take their suggestions on board (Van Den Hoven 2002; Dür 2008; Jarman 2008; Harrison et al 2019). The tension between business and non-business stakeholders is a pervasive theme, and business is usually believed to have more influence over the EU's trade policy than non-business actors (Grugel 2004; Dür and De Bièvre 2007; Dür 2008; Hocking and Smith 2011; Wetzel 2011; Altintzis 2013; Orbie et al 2016; Eckhardt 2018; Ford 2018; for a different perspective see Gerlach 2006). Studies also emphasize the DAGs' low impact on compliance with sustainable development commitments (Dür and De Bièvre 2007; Hannah 2016; Velut 2016; Harrison et al 2019). This is often explained by restrictive legal provisions and in particular weak dispute resolution and enforcement mechanisms under the TSD chapters (Campling et al 2016; Harrison et al 2019; Kube 2019). Stakeholders mostly direct their criticism at the institutional weaknesses (Altintzis 2013; Ebert 2016; Marx et al 2016; Orbie et al 2017; Harrison et al 2019). In addition, academics have pointed to the absence of clear linkages between civil society input and policy-making (Velut 2016; Harrison et al 2019), to EU discourses delimiting possibilities for civil society to advocate paradigmatic changes which may foster cooptation (Hannah 2016; Orbie et al 2016; Ford 2018; Lawrence 2018; Holden 2019), and to overall structural limitations on the influence of certain interest groups within the DAGs (Smith et al 2018).

What all these accounts have in common, however, is their emphasis on the *structural* dimension of the DAGs. Although studies often partly rely on stakeholders' opinions, these are embedded in analyses of the wider institutional (such as the DAGs' rules of procedure, representativeness,

accountability mechanisms, available resources) and ideational (such as the free trade philosophy, reliance on deliberative principles, vagueness of the sustainability concept) context. In other words, the predominant interest has centred on factors that enable or (mostly) constrain the relevance and functioning of DAGs.

Without denying the key importance of these structural factors, in this article we aim to shed light on the other and often neglected side of the coin by proposing an *agency-centred* approach that primarily focuses on stakeholders' response to the ways in which the DAGs are run by the Commission. We argue that mere participation in a DAG does not necessarily mean being fully content with the participation opportunities and rules that it provides. Instead of focussing on compliance (or cooptation), as some studies have done (Orbie et al 2016; Ford 2018; Lawrence 2018), we explore how the DAG members *resist* specific mechanisms put in place by the Commission, and what alternatives they advocate. It is important to note that here, we do not consider substantive suggestions on trade and sustainable development in either the EU or the partner countries made by DAG members; rather, we focus on their resistance to the ways in which they are supposed to engage with the EU, highlighting the ways in which DAG members challenge and modify existing participation opportunities to better suit their needs. This could also be called 'meta-participation' or participation on participation (Soler Masó and Novella Cámara 2015; Arias et al 2016), instead of participation on specific TSD issues; yet we prefer the term resistance as more fit for going beyond the above-mentioned structural approaches.

Theoretically, we aim to grasp this agency and resistance dimension by developing an original conceptual framework that combines insights from governmentality studies that bring attention to less visible power that may be hiding behind the notion of 'partnership' (McKee 2009; Kurki 2011; Malmvig 2014), with resistance literature including the notion of 'infrapolitics' (Scott 2012). Beyond clear and visible acts, there is a diverse arsenal of more or less subtle forms of resistance that DAG participants can employ and that have remained under the radar of existing research. Specifically, we discern six *types* of resistance. These involve not only the obvious 'rejection' but also more subtle variants such as subversion and acquiescence. Furthermore, we discern three *targets* of resistance: rationality, technology and subjectivity. By doing so, we capitalize on post-Foucauldian literature which allows us to distinguish these different aspects of governmentality and contribute to the existing analysis by further refining the ways in which we can disaggregate resistance.

Empirically, this framework is applied to the activities of EU DAG members between 2017 and 2019 and examines how they resist the Commission's way of managing the DAGs and the limited participation opportunities it offers. The analysis covers the DAGs established under the EU's agreements with Canada, South Korea, Georgia, Moldova, Ukraine, the multilateral agreement with Central America, the multilateral agreement with Colombia, Peru and Ecuador, as well as the similar Consultative Committee established under the EU-CARIFORUM agreement. In terms of methods, we use a qualitative approach that relies on three types of data. First, we conducted 11 confidential semi-structured interviews with ten current DAG members and one ex-

member (Brussels, December 2018 – February 2019)<sup>1</sup>. Second, we use notes from 12 DAG meetings and other meetings with DAG members dating from November 2017 until March 2019. Third, we analyse seven written comments on the European Commission's 2017 non-paper discussing possible changes in the TSD chapters (Commission Services 2017) submitted by organizations represented in the DAGs ('Feedback' 2018). (While a detailed analysis of non-members of the DAGs would be potentially illuminating, it lies beyond the scope of this article.) Although the popular opinion that EU's trade policy is heavily influenced by business interests might lead us to assume that they would not contest the Commission's way of managing the DAGs, we also identify resistance among business representatives and proceed to compare them with non-business representatives. In fact, types of resistance can be encountered in every interview and written comment; we sourced approximately 150 examples of resistance in total and structured them in a separate Excel database, which allows us to gain a first-hand insight into different DAG members' ways of dealing with the mechanisms. Admittedly, our data may be incomplete or biased because of the nature of subtle resistance, which is more difficult to identify.

The article is structured as follows. First, we offer a brief overview of the DAGs as participation mechanisms. Second, we construct a conceptual framework describing the diverse possibilities for the subjects to resist (governmental) power. Subsequently, we apply this framework to a discussion of the diverse ways in which DAG members resist the EU's governmentality. We conclude by reflecting on the main tendencies uncovered by the research and some implications for the future of the consultation mechanisms.

### **The DAGs as a consultative forum**

Before proceeding with the conceptual and empirical analysis, this background section describes the set-up of the DAGs. The DAGs were introduced in each of the 'new generation' EU free trade agreements. They are a key part of the European Commission's promise to support sustainable development in the framework of its free trade agreements (European Commission 2015; Commission Services 2018). There is an EU DAG and a partner country DAG for each trade agreement. Typically, at least on the EU side, the DAGs 'comprise independent representative organisations of civil society in a balanced representation of economic, social, and environmental stakeholders' (see for example 'Association Agreement' 2014), sometimes with the participation of other non-governmental organizations.

The Commission's rationale is that free trade and sustainable development can be reconciled (Young and Peterson 2013; European Commission 2015; Garcia and Masselot 2015; Lawrence 2018), even though in practice this has proven deeply problematic due to the overly heavy focus on trade liberalization (Dür 2008; Siles-Brügge 2014; Ulmer 2015; Hannah 2016; Orbie et al 2016). The initial intentions for the creation of DAGs were not to empower civil

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<sup>1</sup> The interviews are coded as follows: B1, B2, B3, B5, B6, B7, B8, B11 are non-business representatives (trade unions as well as other civil society organizations), B4, B9, B10 [ex-member] are business representatives. Hereafter we refer to them by code.

society, but rather to merely promote learning at the intergovernmental *and* civil society level. This would not involve sanctions or other punitive measures (Postnikov and Bastiaens 2014; Leeg 2018; Prévost and Alexovičová 2019). According to Harrison et al (2019, 267), both EU and partner country officials ‘did not see the TSD chapters as their primary responsibility’, positioning the civil society mechanisms as primary (and autonomous) drivers of sustainability instead.

The DAGs usually meet 1–3 times a year and provide recommendations on implementation of the Trade and Sustainable Development Chapters of the agreements, with an additional very weak role in enforcement (see ‘Association Agreement’ 2014; Commission Services 2017; 2018). As part of their monitoring duties, they produce joint documents with the partner country as well as, in some cases, own reports and letters, yet there are no formal follow-up procedures to ensure parties’ accountability, so the actual impact of the DAGs remains very limited (Campling et al 2016; Orbie et al 2016; Velut 2016; Harrison et al 2019; Kube 2019). The DAGs’ enforcement role sometimes foresees consultation in dispute settlement procedures (Kube 2019), yet this is rather irrelevant in practice, since until now, the Commission has been reluctant to trigger this procedure. So far it has only happened once, in the case of Korea in 2018, and even though the European DAG had requested intergovernmental consultations twice, the Commission only acted after the European Parliament adopted a resolution with the same request. Thus, the Korea case seems to illustrate the limited powers of the DAGs.

The functioning of the European DAGs is heavily dependent on the European Commission, which negotiates the treaty provisions on DAGs, recruits most European DAG participants, is present at their meetings and serves as a major source of information for many attendees, provides some financial and technical support, and ultimately decides whether, and how, to take their suggestions into account. The European Economic and Social Committee (EESC) usually delegates three members to each DAG and serves as the DAGs’ secretariat. In general, however, bureaucratic and political support and follow-up has been limited so far, even after additional funding was assigned in 2018 (see Commission Services 2018). The main complaints identified in the literature to date include the low frequency of the meetings, opaque selection mechanisms, little publicity, insufficient capacity of civil society, issues with information sharing by the governmental bodies, and, as mentioned above, lack of accountability and impact in the absence of a strong enforcement mechanism and a weak civil society role in dispute settlement (Altintzis 2013; Ebert 2016; Marx et al 2016; Orbie et al 2016; Harrison et al 2019). After conceptualizing varieties of resistance in the next section, we will turn to a more detailed analysis of stakeholders’ resistance to the current setup of the DAGs, highlighting the concerns expressed by business and non-business groups.

### **Conceptualizing varieties of resistance**

In order to provide an agency-centred perspective, we build on previous studies that have elaborated the notion of ‘resistance’ and post-Foucauldian governmentality scholarship. We construct an original conceptual framework that

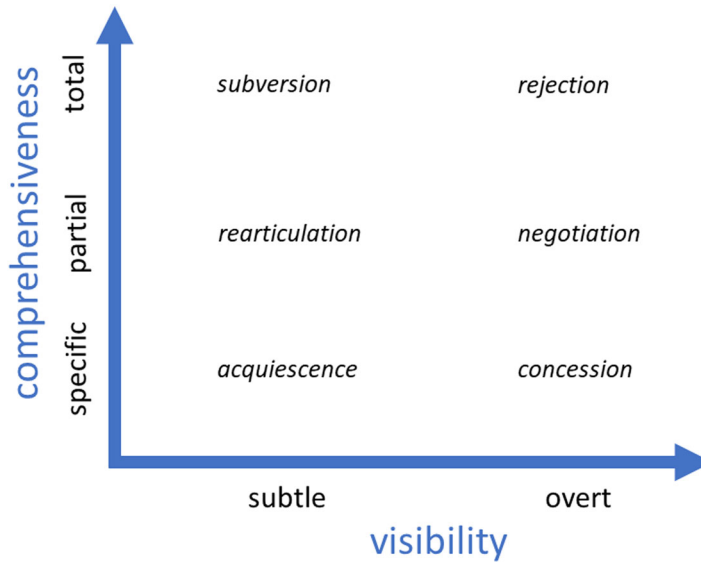


Figure 1. Typology of resistance (authors' framework).

includes three dimensions: comprehensiveness of resistance, visibility of resistance, and its targets. The typology advanced in this section can admittedly be applied to resistance against diverse forms of power. Yet insights from governmentality studies are relevant for our study in three ways: the idea that power may be hidden behind 'partnership' relations, the emphasis on how power almost inevitably generates resistance (relational view on power), and the distinction between three components of governmentality or 'targets' of resistance.

Through the prism of governmentality, the Commission's interaction with the DAGs can be interpreted as a productive, micro-level type of power, or 'conduct of conduct' which operates through ideas (Foucault 1980; McKee 2009; Joseph 2010; Kurki 2011; Merlingen 2011; Lilja and Vinthagen 2014; Lawrence 2018). Power, according to this perspective, is not total and can only be exercised over subjects who enjoy a certain degree of freedom (McKee 2009; see also Baaz et al 2016; Deros and Roeck 2019). While governmentality scholars tend to overlook agency, it is not *per se* irrelevant (Bevir 2016). In fact, Bevir (2016) calls for 'a more resolutely historicist and genealogical version of governmentality' that would decentre the analysis away from the structuralist interpretation of power and towards analyses of how practices are constructed by independent agents. He points out that the outcome is a 'messy' governmentality, where subjects' practices do not necessarily correspond to the policy documents, and specifically invites to deconstruct the notion that modern governance is uniformly 'neoliberal'. This invites us to pay attention to agency and resistance.

Like power, resistance is an essentially contested concept (Hollander and Einwohner 2004; Baaz et al 2016; Johansson and Vinthagen 2016; Mumby et al 2017; Lilja and Vinthagen 2018). It does not necessarily involve a rejection of power altogether; it may show 'the will not to be governed thusly, like that, by these people, at this price' (Foucault 1997, 72; see also McKee 2009; Kurki



2011; Lilja and Vinthagen 2014; Malmvig 2014; Death 2016), but rather based on different ideas. Resistance is structured by power (Malmvig 2014; Death 2016; Lilja and Vinthagen 2018; see also Piven and Cloward 2003; Hollander and Einwohner 2004), and analysing resistance helps us to better understand the logics of power (Baaz et al 2016).

In what follows, we develop a six-fold typology of resistance, pragmatically using post-Foucauldian and resistance literature. The framework is structured along two axes: *visibility* and *comprehensiveness* of resistance. The visibility (x-) axis goes from subtle resistance, which does not manifest itself as a clear political demand, to more overt forms which imply direct confrontation with the power nexus. This relates to Scott's (1989; 2012) work on 'everyday forms of resistance' or 'infrapolitics', which are political in character, but take a more banal form such as foot-dragging, false compliance, desertion, and even consumer activism. It is aimed at *de facto* changes, in contrast to open resistance which can mean riots, petitions, and protest voting, and purports to recognize the changes *de jure* (Scott 1989; 2012; see also Velut 2012). We use the term 'subtle' as it denotes a broader spectrum of less-than-obvious resistance than in Scott's original focus on subordinate groups (cf. Scott 1989), and is in line with terminology used by other authors (Malmvig 2014; Lilja et al 2017).

Comprehensiveness of resistance (y-axis) denotes the extent to which power is being resisted, namely, if it is rejected in its totality, only partly, or solely on specific points. Although this dimension has not been explicitly conceptualized in the literature on resistance (for example Hollander and Einwohner 2004; Johansson and Vinthagen 2016), several authors have implied that power effects on individuals can be located on a continuum from more to less comprehensive, where 'subjects ... can accommodate, adapt, contest or resist top-down endeavours to govern them' (McKee 2009, 479; see also Benjaminsen 2014; Hall et al 2015; Killick 2019). Thus, the agent may only mount token resistance; or negotiate and modify the power according to their preferences; or resist power in its entirety.

Both axes represent a continuum of possible degrees, which allows us to distinguish six ideal types of resistance as seen in Figure 1:

1. **Acquiescence** involves agents privately maintaining their own opinion while aligning with power in practice. Thus, it is different from agreement, which implies changing one's opinions or maintaining identical ones (cf. Sivaramakrishnan 2005). This limited form of resistance is still relevant, since if circumstances change the agent may decide to act on their independently held ideas.
2. **Concession** is similar to acquiescence in that the agent follows the practical demands of power while maintaining a different opinion on specific issues. However, it implies the agent overtly stating that they are adjusting against their will.
3. **Rearticulation** has been used by Baaz et al (2016, 147) to denote a form of subtle resistance whereby 'subalterns involve the categories and vocabularies of the dominating force or superior norm, precisely in order to contest them' (see also Lilja and Vinthagen 2014; 2018). Such resistance is partial: it attempts to modify power but does not reject it altogether.



**Table 1.** Conceptual framework: resistance and governmentality.

	Acquiescence	Concession	Rearticulation	Negotiation	Subversion	Rejection
Rationality						
Technology						
Subjectivity						

4. **Negotiation** is similar in nature to rearticulation, with the distinction of being overt; the agent openly voices their concerns and attempts to negotiate accommodations (see Hollander and Einwohner 2004; Benjaminsen 2014; as well as Lilja and Vinthagen 2018).
5. **Subversion** is sometimes taken to be synonymous with resistance (Baaz et al 2016), but here we use it as complete yet subtle rejection of a specific form of power in favour of an alternative arrangement—for instance, foot-dragging (Scott 1989) or circumvention. It relates to Scott’s quoting of Bishop Trelawny on a ‘pestilent pernicious people ... such as take the oaths to the Government, but underhand ... labour its subversion’ (Scott 1989, 33) and Gel’man writing about subversive institutions in Russia (Gel’man 2012).
6. **Rejection** means that a specific form of power is overtly opposed in its totality, in favour of an alternative arrangement (cf. Benjaminsen 2017).

Furthermore, we distinguish between three different empirical ‘components’ or ‘targets’ of governmentality which actors can resist: rationalities, technologies and subjectivities (Lawrence 2018; see also Kurki 2011). The **rationality** of government is the ideational foundation underlying a certain policy, for instance, the Commission’s belief that sustainable development can be promoted through the EU’s free trade agreements in their current form. Different rationalities can co-exist in time and space (Lawrence 2018). **Technologies** of governance are the tangible ‘mechanisms’ and ‘techniques’ that are used towards the objects of governance for the purpose of implementing a certain rationality (Foucault 2008)—for instance, creation of a DAG uniting three groups of non-governmental stakeholders and working on a voluntary basis. **Subjectivities** are the individual properties, or identities, of social subjects which arise from a certain rationality (Lawrence 2018), for instance, the Commission expecting civil society representatives to be able to self-govern and reconcile internal conflicts (Foucault 2008; Malmvig 2014; Deros and Roeck 2019). All three are conveyed through discourse as well as specific governing behaviours (Foucault 2007; McKee 2009; Death 2010; Kurki 2011).

The resulting conceptual framework (Table 1) shows that the six ideal types of resistance may be directed at various elements of governmentality. The same agent can resist various elements of governmentality with varying visibility, and more or less comprehensively; for instance, they may acquiesce to a specific rationality, but negotiate a technology linked to this rationality, and outright reject a subjectivity ascribed to them.

This conceptual framework calls for a nuanced and context-based approach to analysis that is open to different scenarios of resistance. This allows us to identify weaker sides of a particular governance arrangement. In the next section, we apply our framework to the empirical analysis of individual DAG members’ resistance to the Commission’s governmentality regarding the DAGs.

## Unpacking resistance

We now turn to the empirical manifestations of resistance shown by the EU's DAG members to the Commission's ways of managing participation through the DAGs. Systematically applying the conceptual framework (Table 1), we focus on three main conceptual dimensions: visibility, comprehensiveness and targets of resistance against the existing participation arrangements. In other words, we discuss how explicit the resistance is, how pronounced it is, and what the primary objects of civil society's dissatisfaction are. In doing so, we distinguish between business and non-business stakeholders, as existing studies (*supra*) and our own analysis show that differences in their opinions are significant, and because, as stated above, we should not automatically assume that businesses are part of a so-called 'neoliberal' governmentality and endorse the Commission's approach.

### *Visibility: plethora of subtle resistances*

In terms of visibility, we observe not only overt (most prevalent) but also subtle resistance on the part of civil society against the ways in which the Commission expects them to participate. While both business and non-business participants engage in various forms of resistance, the latter make use of overt resistance practices more often, possibly reflecting their traditional approach to advocacy as well as the degree of their discontent with the Commission's approach (cf. Dür and De Bièvre 2007; Del Felice 2013). These mostly consist of preparing letters, position papers and verbal criticism, which can take place within the DAG or in public fora: examples include 'continuously putting pressure on the next Commission and next Parliament in order to achieve something good' (B6), demanding official recognition of joint EU and partner countries' DAG-to-DAG meetings during a meeting where the Commission is present (participant observation 2018), or several DAGs drafting a joint letter asking to improve the organization of transnational meetings (B2; see also 'Feedback' 2018). Both business and non-business actors engage in negotiations through coalition-building within their respective DAGs as well as with members of other DAGs, but virtually always within their own subgroup. A prominent example of cooperation among non-business representatives is the informal 'DAGs for Change' alliance with participation of academics (who formally cannot be part of the DAGs), trade unions and non-business NGOs (Royal Geographical Society (with IBG) 2019). Yet another, and much more radical, practice of overt resistance would be to reject the DAGs altogether. While this analysis only concerns current members, several interviewees revealed that a 'DAG-xit' may happen if there are no improvements (for example B2). One business representative had decided not to prolong their DAG membership due to a misfit in priorities (B10).

However, much more is happening in and around the DAGs than overt advocacy. A subtle but powerful strategy that we classify as rearticulation is to reshape the work of the DAGs. Both businesses and non-businesses who wish to strengthen the groups do it, for instance, by inviting external experts to give their arguments more credibility,<sup>2</sup> pushing fellow DAG members to develop a work plan and opinion papers in order to give the work of the group more

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<sup>2</sup> One co-author of this article presented a study at a DAG meeting in 2016.

substance (B2), or creating alternative subgroups within the DAG (B11). Others, who are not so interested in the mechanisms or dislike the ways in which they are managed (for example reliance on voluntary contributions) rearticulate their membership by ‘dragging their feet’, for instance, not prioritizing preparation for DAG meetings (B5) and avoiding less interesting ones (B4). Many DAG members also rearticulate the guidelines of the Commission in a way that fits their specific purposes, especially concerning their preferred way of balancing trade and sustainable development.

A notable, and popular, strategy, which we classify as subversion, is marginalizing or circumventing the DAGs as the supposed key forum for discussing trade and sustainable development. This seems to be more popular among the larger, more influential and more internationalized organizations, while smaller and less resourceful members tend to value the DAGs as giving them a ‘window to the world’ and access to the Commission (B1; B3). While such actions may seem unrelated, they are nonetheless tied to dissatisfaction with the DAGs. As one non-business interviewee put it,

the DAGs actually come as an additional forum to present things and to work in, there is, has been a life before the trade agreements and before the DAGs and there is a life after and outside that ... I mean someone who thinks that DAG is the place where it all happens should not be there actually ... This person is completely naïve. (B11)

Several non-business players are active in promoting sustainable trade in the European Parliament, the Council, individual member states and the media, because all of these are seen by them as more effective channels than the DAGs (B11). Both business and non-business actors also use other, non-DAG channels for interacting with the Commission: informal conversations on the margins of DAG meetings (B3; B5), or separate meetings (B6). As one business representative commented, ‘the Commission listens, but usually on the bilateral basis’ (B4). The 2017 complaint against the Peruvian government for violating its commitments on labour and environmental issues under the TSD chapter (*Plataforma Europa Perú 2017*) can also be described as an example of subtle resistance against the powerlessness of the DAG. Since the DAG itself was not in a position to lodge such a complaint, it was submitted independently by a DAG member to the European Commission and later endorsed by the DAG (B2; B3; B5; B7; B11), propelling the Commission to address the issues with their Peruvian counterparts. As we see, subtle resistance is a rather popular strategy for coping with the constraints imposed by the DAGs’ set-up.

#### *Comprehensiveness: from medium to high*

Regarding comprehensiveness, most observed practices of resistance are middle-range (rearticulation and negotiation) or far-reaching (subversion and rejection), meaning that the Commission’s way of organizing the DAGs is opposed completely or to a significant extent. Both business and non-business actors engage in such practices of resistance—however, the former have been particularly active in resisting the technologies of the DAG whereas the latter have more strongly resisted the rationality behind them.

Rearticulation and negotiation, which are the two types of resistance demanding partial changes, are very pronounced with regard to the specific technologies used to govern the DAGs. Non-business stakeholders have been particularly active in coming up with suggestions. Not avoiding any form of governance, but rather engaging in productive resistance emphasizing 'the will not to be governed thusly' (supra), is rather evident; as one non-business interviewee put it, 'When one enters the game, you must respect the rules or not play. If the rules are bad, you have to try to change the rules' (B3). Comprehensive resistance to the technologies behind the DAGs is relatively scarcer among this group although very much present, perhaps because they have consistently advocated for greater civil society engagement in decision-making on trade issues and prefer renegotiating the terms of engagement rather than abandoning it altogether. Business, in the meantime, shows sometimes partial and sometimes comprehensive resistance to the Commission's technologies, arguing that 'it's potentially an interesting tool but it's not delivering' (B9). When it comes to the rationality behind the DAGs, non-business actors seem to react more strongly: rejection or subversion is more frequent than demanding piecemeal changes or accepting it with reservations. Business, in turn, negotiates or rearticulates the Commission's rationality slightly more often than subverting or rejecting it outright.

*Targets: rationalities and technologies*

Both business and non-business actors actively contest and attempt to tweak the rationality and technology behind the DAGs. The former seem to treat both targets equally critically, while the latter heavily concentrate on the technologies, although, as mentioned above, they also have spoken strongly if less frequently against the EU's rationality. However, neither invest much effort in contesting subjectivities ascribed to them by the Commission.

Business and non-business members resist the EU's rationality from opposite standpoints, putting the Commission in-between conflicting demands. This resistance capitalizes on the ambiguities in the Commission's approach, in particular its inconclusive formulation of the linkage between trade and sustainable development. It picks preferred elements and discards less interesting ones and, in doing so, produces alternative visions for the DAGs. First, the balance between the 'trade' and 'sustainable development' components of TSD chapters is hotly contested. Some business organizations tend to downplay the need for discussing sustainability issues within the DAGs due to potential economic repercussions, instead prioritizing their resolution in other cooperation formats outside of trade agreements (B9). They do not deny the importance of sustainable development altogether but rather prefer to decouple trade *and* sustainable development: 'it's written trade and sustainable development, so [in the DAG] we want to discuss trade!' (B9). Negative externalities are treated as an inevitable but not sufficient reason to halt trade (B4; B9), or sometimes denied (participant observation 2018). Other business members admit that improving sustainability in partner countries is important for achieving a 'level playing field' yet also insist that trade is in itself 'an effective driver of sustainable development' (BUSINESSEUROPE 2017, in 'Feedback' 2018). Thus, business in general actively opposes the possibilities of pre-ratification conditionality or of sanctions in TSD chapters – the latter were at some point considered by the

Commission (BUSINESSEUROPE 2017; Fooddrink Europe 2018, both in 'Feedback' 2018). It seems to be generally satisfied with Commission's monitoring-oriented approach which fits its own rationality better.

In turn, non-business interviewees prioritize sustainable development over trade (B1; B3), correspondingly believing that DAGs should aim to prevent a 'race to the bottom' in labour and other standards (B6): 'Trade can be a great opportunity only if it creates quality jobs and boosts sustainable growth' (ETUC 2017, annex to 'Feedback' 2018). So far, the Commission's implementation of TSD chapters has not been particularly assertive, which has led many non-business organizations to perceive it as biased towards business interests (B2; B3; B6; B7; B11). They mention that while the TSD Unit of DG TRADE is interested in promoting sustainability, this priority remains secondary to commerce in the general policy of DG TRADE, which is also why it is difficult for the DAGs to have any impact on sustainable development matters (B3; B11). Still, even the interviewees critical of the EU's FTAs do not go so far as to call for complete abolishment or renegotiation of the trade deals, at least not in the DAG framework,<sup>3</sup> which indicates acceptance of the Commission's trade policy on a very basic level.

Second, the Commission's focus on promoting its values internationally, which is an implicit task of the DAGs, is also contested on two different flanks. Most businesses and, surprisingly, some trade unions believe that the EU should be focussing on its own gain, especially 'to ensure a level playing field' (quote from B1; also B6; BUSINESSEUROPE 2017, in 'Feedback' 2018); at the same time, business has also stated that 'The EU should not impose its views and elevate itself to a position of superiority' regarding partner countries, implying this will harm trade (BUSINESSEUROPE 2017; also Fooddrink Europe 2018, both in 'Feedback' 2018; B9). On the opposite side of the continuum, multiple non-business representatives argue that the Commission pays *insufficient* attention to sustainability in the partner countries (B2; B3; B7; B11), for instance, twice rejecting the requests by the EU DAG for Korea to initiate formal consultations related to violations of labour rights (ETUC [n.d.] in 'Feedback' 2018; also B6).

The technologies behind the DAGs have been the main target of resistance for non-business actors. Some examples of acquiescence/concession are visible when grudgingly accepting cooperation with business organizations within the DAGs (B2; B3; B11). In turn, the lack of accountability of the Commission to the DAG and the 'soft' dialogue-based approach are often rejected altogether (B2; B6; B11). However, generally the resistance is of the negotiation and, to a lesser extent, rearticulation kind: civil society tries to reshape the DAGs for their specific purposes, reacting to power in a productive way. A key demand is to change the function of the DAGs from what is interpreted as mere 'window-dressing' (B11) to meaningful monitoring and advocacy (B6) and ultimately to policy impact (B2). This implies more vertical dialogue, political will on the side of policy-makers, substantially increased accountability of the Commission and partner governments and, possibly, legal provisions for sanctions if TSD provisions are violated (Eurogroup for Animals 2017; Client Earth 2017; ETUC [n.d.], all in 'Feedback' 2018; B6; B7; B11). Demands for improving the functioning of the DAGs are also very popular, again with the aim to

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<sup>3</sup> One interviewee admitted that while they do not criticize the agreement in dialogue with the Commission, they do maintain 'a very tough discourse' in other fora (B3).

increase their clout: clearer objectives, more substantive discussions, a higher degree of institutionalization, more meetings, better advance planning, more administrative support, more funding, and greater support for transnational dialogue with partner countries' DAGs (Friedrich-Ebert-Stiftung 2018, in 'Feedback' 2018; B1; B2; B3; B5; B7; B8; participant observation 2018).

Business organizations resist the technologies behind the DAGs based on their own preferences which centre around limiting the role of sustainability in free trade agreements. The existence of DAGs is reluctantly tolerated, insofar as sustainability remains purely voluntary for business; as one business interviewee put it, 'this is a policy which will not change, so we have to deal with this, so we will continue to be part of these groups and watch what's going on' (B9). Yet generally, businesses are very careful in their participation. Domestic Advisory Groups considered to be less interesting (for instance, if trade volume with the partner country is low) or specific meetings are ignored (B4), and priority issues are discussed directly with the Commission (B4; B9). At the same time, several organizations have also supported stronger DAGs, as long as they do not obtain increased powers in dispute settlement under the TSD chapters; this probably relates to the preference for greater transparency in trade policy, as well as monitoring needed to ensure the 'level playing field' (Fooddrink Europe 2018, in 'Feedback' 2018; participant observation 2017–2018; B9).

Interestingly, subjectivities, or individual roles and behaviours ascribed by the Commission to the DAG members, are by far the least contested aspect of the EU's governmentality both among business and non-business participants. This can probably be explained by most DAG members having sometimes decades-long experience in interacting with the Commission and accepting the EU's expectations from civil society; in particular, our EESC interviewees have shown virtually no resistance in this regard. Nonetheless, the ideas of cross-sectoral collaboration, and civil society serving as a monitor and advocate for sustainability, are not entirely uncontested. Firstly, some business as well as non-business representatives are sceptical or unwilling to cooperate with representatives of the opposite camp (B9; participant observation 2018). Some non-business representatives explicitly doubt that business belongs in the DAGs: 'I don't know under which pretext [business organizations] have the legitimacy to monitor labour and environmental commitments which are rather the topics of trade unions and NGOs' (B2). Secondly, while the Commission expects DAG members to act in a proactive yet constructive manner, this subjectivity is not always shared. Some non-business organizations see themselves as watchdogs who must 'put pressure' on the EU instead of cooperating (B6). Others reject the Commission's attempts to brand them as pro-active 'stakeholders', instead preferring the Commission to take the lead in promoting sustainable development (B6). In turn, business representatives often avoid open criticism of partner countries (B2), meaning they see themselves more as lobbyists of their own interests (B9) instead of watchdogs.

## **Conclusions**

The Domestic Advisory Groups established under EU trade agreements constitute a major avenue for civil society consultation on sustainable development. In this article, we examined how DAG members relate to the Commission's

way of governing these mechanisms, and what they do when the DAGs do not satisfy their participation needs. In contrast to some previous studies which deal with the limiting impact of EU governmentality on stakeholders, the focus here is on stakeholders' agency and their resistance. Our analysis shows the magnitude of discontent with the Commission's power over the DAGs. Both business and non-business actors engage in the same types of resistance, albeit to a different extent.

Building on an innovative conceptual framework that distinguishes six types of resistance, we have shown that contrary to more structuralist accounts which argue that the EU's discourses do not leave much space for advocacy, DAG members do engage in various subtle and outspoken forms of resistance. We believe that this shows the relevance of studying resistance in all its forms, including subtle ones, also in the case of relatively powerful actors operating in a relatively highly institutionalized 'partnership' setting. Indeed, attention to subtle resistance helps us not to mistake continued participation for cooptation. While the mere fact of participating in the DAGs constitutes a basic acceptance of the mechanisms, it does not mean that their members, including business representatives, are fully satisfied with the underlying rationalities, technologies, or subjectivities. As the variety of forms of resistance show us, the EU's attempts to direct participation of the involved stakeholders on trade issues have not entirely succeeded.

When it comes to comprehensiveness, resistance shown by civil society is rather limited, agreeing to certain elements of power but retaining alternative preferences; in particular, this concerns the DAGs' very existence and functioning as cross-sectoral consensus-seeking bodies. These types of resistance are less likely to change the status quo, but can surface in case of major upheavals. For instance, the Dutch and French governments have published a proposal to introduce sanctions for non-compliance with TSD chapters (The Netherlands and France 2020). This would effectively strengthen the role of civil society. Yet the majority of examples fall into the middle-range (rearticulation and negotiation) or comprehensive (subversion and rejection) categories, showing a substantial degree of discontent.

Much of this resistance has been productive in a Foucauldian sense, putting forward alternative visions of how and why DAGs should be operating. A variety of alternatives emerges from civil society. The Commission's rationality underlying the DAGs, namely, a present but weak link between trade and sustainable development, is one of the main targets of resistance. Notably, business organizations attempt to minimize the role of sustainability in discussions, while non-business wants it substantially reinforced. This means that the Commission occupies an in-between position in contrast with some accounts that state it strongly sides with the business interests. Yet on a very fundamental level, the Commission keeps within the trade liberalization paradigm, as demonstrated by the much more active resistance shown by non-business groups. Technology-wise, both business and non-business organizations state they want stronger DAGs, although the latter are more outspoken and demanding, and both subgroups' goals differ. On a positive note, subjectivities ascribed by the Commission to civil society are contested to a lesser extent. This seems to bide well for the existence of consultation mechanisms, as these



rely on the good will of DAG members and their continued willingness to participate.

In general, the sheer number of examples of more comprehensive resistance shows that dissatisfaction with the status quo is rather deep, and that civil society is intent on bringing about changes. However, our analysis has also demonstrated that resistance, like power, is never total. Even when a stakeholder rejects or subverts some elements of power, this does not necessarily extend to other aspects of the DAGs. The same civil society representative may acquiesce to another element of power and rearticulate yet another to suit their needs better. DAG members have nuanced, if often critical, opinions on the mechanisms, and while we can observe some broad trends, there is no single pattern of resisting.

This analysis also demonstrates why reforming the DAGs is not an easy task: while the demand for reform is clear, it comes from opposing quarters. With this in mind, the first step would be resolving the criticisms related to technologies behind the DAGs, in particular, insufficient funding and publicity. Since both business and non-business interests agree that the monitoring function of the DAGs should be enhanced, this would likely be uncontroversial and might be a starting point for improvement of the DAGs. Future studies may also wish to focus on the opinions of those organizations that are not DAG members, either because they never joined or because they decided to quit the mechanisms.

The conceptual framework elaborated upon in this article offers a nuanced, multi-faceted perspective on resistance. It shows why we cannot expect that disagreements among the DAG members and between the DAGs and the Commission will be 'ironed out' with time. It also explains why DAG members stay in the mechanisms despite widespread dissatisfaction with their functioning, and demonstrates how resistance is used productively to (attempt to) reshape the work of the DAGs. As such, we believe it can be used beyond this particular empirical study, particularly to analyse other consultative bodies established by the EU, national governments or other international bodies.

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