

ECONOMY AND FINANCE

# DOMESTIC ADVISORY GROUPS IN EU TRADE AGREEMENTS

Stuck at the Bottom or Moving up the Ladder?

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Domestic Advisory Groups (DAGs) have been established and meet regularly at EU level and in most of the EU's trading partner countries.



However, insufficient information-sharing and a lack of interest and interaction on the part of governments and the European Commission hamper the DAGs' work.



Governments' and the European Commission's limited accountability also constrains the potential leverage of the DAGs' work.



Due to a lack of enforcement tools, the DAGs' impact on decision-making remains very low.

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## Foreword

The Friedrich-Ebert-Stiftung (FES) takes a stand for rule-based trade policies on a global level that shape globalisation, respect sustainability and allow for a fair development. The FES division for international development cooperation has been working on the question how sustainability aspects can be effectively embedded within the framework of EU trade policy.

Sustainability chapters of recent EU trade agreements have been analysed and reviewed in terms of feasibility. They contain provisions on aspects of social and ecological sustainability and refer to the observation of international environmental standards such as the Paris Agreement or guarantees for the protection of labour rights by reference to existing ILO conventions. Sustainability chapters of all agreements signed since 2011 require trade partners to set up civil society advisory bodies, so-called Domestic Advisory Groups (DAG), so that adherence to these standards are not supervised in inter-governmental consultations only. The DAGs are supposed to keep in mind aspects of sustainability and monitor the implementation of agreed standards.

The approach of the Trade Directorate of the European Commission to involve civil society players on an institutional level is an important step in the right direction. It takes account of a pluralistic political understanding and invites to a permanent exchange of decision-makers and civil society players to monitor the efficiency of political measures. This could be a possible model to overcome the often-criticised lack of democracy in the EU's decision-making processes. On the other hand, there is a risk of increasing distrust if this turns out to be merely a tool for pseudo-participation.

There are nine EU agreements containing sustainability chapters (the most recent agreement with Vietnam being the tenth one) and there are more than 20 DAGs worldwide. The FES is a member of the EU-DAGs linked to the Andean countries (Columbia, Peru, Ecuador), South Korea and Ukraine. Through our international network of offices, we maintain close contacts to DAGs of partner countries, too. In this way, we have gained many insights and experiences on the operating principle and the efficiency of DAGs inside and outside the EU.

The present study is a comprehensive evaluation of the DAGs' work so far around the globe. We are very pleased to have been able to win over a team of researchers headed by Prof. Dr. Jan Orbie, Dr. Deborah Martens and Diana Potjomkina from the Ghent University to cooperate in this evaluation.

Below you find the independent analysis of the researchers on behalf of the Friedrich-Ebert-Stiftung.

We heartily thank the team from the Ghent University for this comprehensive and valuable study. It will be an important contribution to the debate on the feasibility and sustainability of European trade policies as well as the role of DAGs as civil society counselling bodies.

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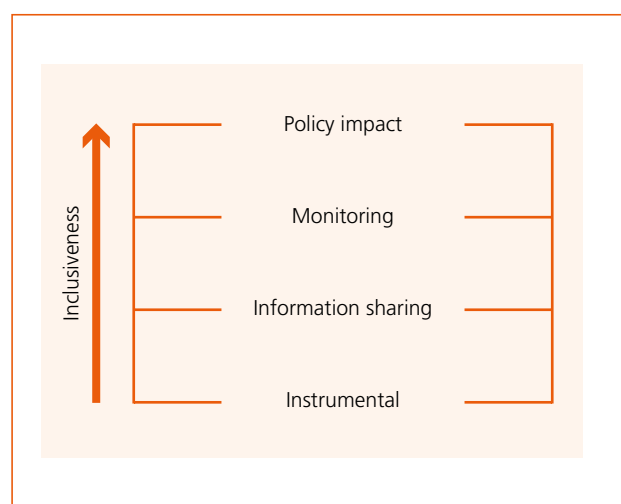
# Executive Summary

Since the EU–Korea trade agreement in 2011, all chapters on trade and sustainable development (TSD) establish civil society mechanisms to monitor the commitments made in this chapter: a domestic advisory group (DAG) for each party and an annual transnational civil society meeting. The former is a membership-based closed mechanism, while the latter is not member-based and therefore more open and less structured than the DAGs.

In this report, we focus on DAGs, the most institutionalised and permanent civil society bodies under the TSD chapters. The objective of this study is to conduct a comprehensive evaluation of DAGs, identify their main challenges, distinguish teething problems from structural issues and put forward solutions to address them. Original data collection was carried out through a survey, to which 50 EU and 74 Non-EU DAG members responded, and 18 interviews with EU and Non-EU DAG members.

## ANALYTICAL FRAMEWORK

Evaluating DAGs is not as straightforward as it might seem at first glance. A key problem is that we lack clear criteria. We therefore developed an analytical framework that can be used pragmatically to evaluate DAGs. This ›ladder of inclusiveness‹ combines two dimensions. First, it indicates that inclusiveness is a matter of gradation. Second, it captures several kinds of participation. Depending on what is considered the main purpose of the civil society meetings, different types of inclusiveness might be pursued. This results in four steps or rungs of the ladder: instrumental purpose, information sharing, monitoring and policy impact.



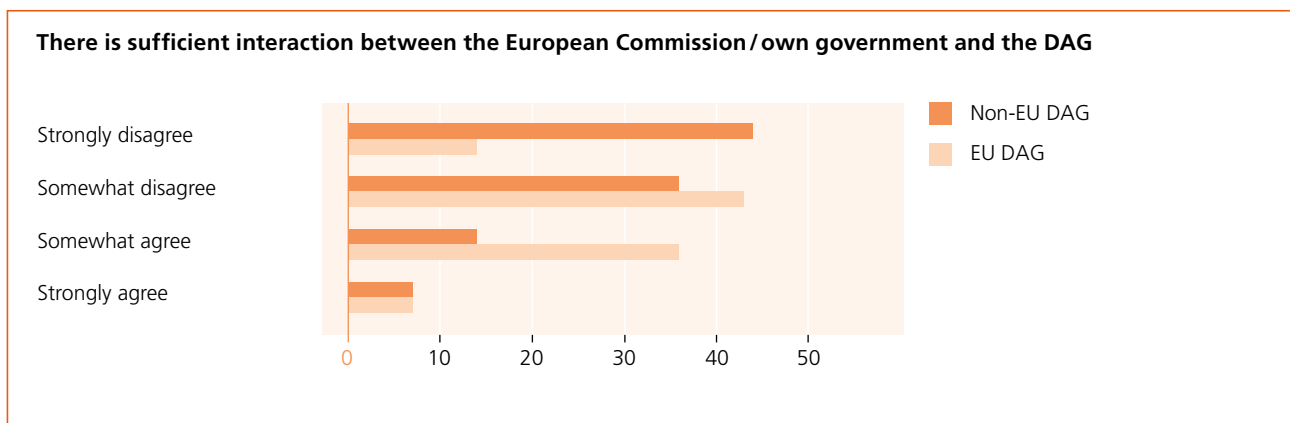
## CAN THEY MEET?

- Yes, in principle most of DAGs can hold meetings.
- Nevertheless, there is still room for improvement, especially in Non-EU DAGs. The main organisational issues include the frequency and timely notification of meetings, support of a secretariat, and funding.
- Moreover, logistical issues still take up large parts of the meetings, at the expense of substantive discussions.
- DAGs are not considered to be merely a tool for legitimising trade agreements. Given their multiple weaknesses, however, there remains a risk that they may relapse into mechanisms that serve to legitimise free trade.

Level	Purpose	Role	Question	Criteria
<b>Bottom</b>	Instrumental	Fig leaf	Can they meet?	- Logistics - Legitimation
<b>Low</b>	Information-sharing	Forum	Can they talk?	- Horizontal and vertical exchange - Independent, representative and balanced - Genuine dialogue
<b>Medium</b>	Monitoring	Watchdog	Can they oversee?	- Evaluation capacity - Accountability contracting parties
<b>High</b>	Policy impact	Policy-maker	Can they influence?	- Involved in decisions - Triggering dispute mechanism

### CAN THEY TALK?

- Overall, the essential ingredients for dialogue are present.
- Horizontal information exchange between civil society has been established. There is, however, a need for more genuine dialogue and a better defined work programme. Mainly in Non-EU DAGs, important tensions exist between business and non-business representatives.
- Vertical information exchange between civil society and governments is evaluated less positively. The latter do not share sufficient information on the implementation of trade agreements and there is insufficient interaction between the governments and DAGs. Non-EU DAG respondents are more vocal about these issues than their EU DAG colleagues.
- The impact of a given trade agreement on sustainable development is discussed during DAG meetings. Labour issues are generally high on the agenda. EU DAGs in particular often address compliance with labour rights in partner countries.

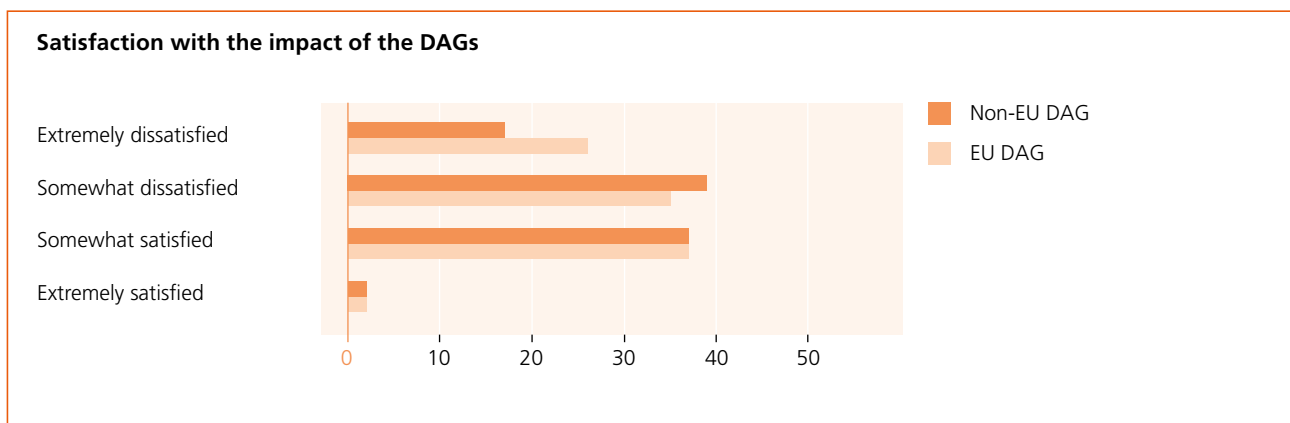


### CAN THEY OVERSEE?

- Monitoring is the most aspired-to purpose of the respondents, mirroring the European Commission’s discourse. It has not fully materialised, however.
- This mismatch is due to, first, insufficient resources for DAG members to conduct research.
- Second, governments’ limited accountability constrains DAGs in playing their monitoring role. There is no feedback loop between DAGs and their governments, and governments do not sufficiently follow up on DAGs’ input.
- This accountability deficit also occurs at transnational level. Nevertheless, Non-EU DAGs appreciate the potential leverage enabled by the European Commission and EU DAGs.

### CAN THEY INFLUENCE?

- The DAGs’ influence is very limited. This is a major source of dissatisfaction for their members.
- Little impact is ascribed to DAG members because they are not actively involved in decision-making and governments do not act upon DAGs’ recommendations.
- In addition, impact is limited because of the non-enforceability of TSD chapters and impossibility for DAGs to directly trigger disputes.
- Views on the enforceability of sustainable development commitments tend to be polarised.



## CONCLUSIONS

Even though some DAGs still face organisational issues, the main challenges start at the second step, because of the lack of genuine dialogue between DAG members and between DAGs and governments. This culminates in the accountability deficit which undermines civil society efforts to monitor adequately, which, in its turn, leads to a very limited policy impact.

As a result of this dynamic DAGs have to date achieved little political relevance, which is a source of frustration for their members. It is therefore crucial for all actors involved that actions be taken to address these bottlenecks. While practical or organisation tweaks are necessary, they are in themselves insufficient. In particular a mentality shift on the part of policy-makers to take DAGs and their work more seriously and to increase DAGs' political relevance is much needed. Otherwise there is a risk that DAGs will get stuck (if this is not already the case) in a negative feedback loop, entailing that no progress is made, and the interest and commitment of civil society may be eroded. In other words, much effort is being made to move up the ladder, but if participants feel it is impossible to climb further, DAGs risk losing meaning and the ladder might tip over. This would, in turn, contribute to the already vocal criticism of the EU's trade policy.



## 1

# INTRODUCTION

All new-generation EU trade agreements since the EU–Korea trade agreement in 2011 contain a chapter on trade and sustainable development (TSD), which refers to labour and environmental standards that should be respected by the parties. The TSD chapters may be said to perform several functions: they serve to signal the EU’s commitment to sustainable development, respond to societal criticism that trade policy is conducted undemocratically and unsustainably, and are supposed to prevent a ›race to the bottom‹ in labour and environmental standards, which could lead to unfair competition for EU-based producers. The TSD chapter establishes civil society mechanisms to follow up on, give advice about and monitor the commitments made in this chapter: a domestic advisory group (DAG) for each party and an annual transnational civil society meeting. The former is a membership-based closed mechanism, while the latter is not member-based and therefore more open and less structured than the DAGs.

In this report, we focus on DAGs, the most institutionalised and permanent civil society bodies under the TSD chapters. Since the first DAG meeting in 2012, numerous others have taken place in the context of a growing number of trade agreements and both the governments and civil society organisations involved have learned by doing, shaping this novelty along the way. The DAGs have been criticised for not being effective and often the counter-argument that ›it was still too soon to tell‹ was advanced.

Now that the DAGs have been around for more than eight years it is time to take stock of how they have developed in and outside the EU, and what they have achieved, and to distinguish teething problems from structural issues. The objective of this study is therefore to conduct a thorough evaluation of the DAGs, to identify their main challenges and to put forward solutions to address them. For this purpose, original data was collected through a survey, to which 50 EU and 74 Non-EU DAG members responded, and 18 interviews with EU and Non-EU DAG members.

In what follows, we will first elaborate the research approach, then introduce the DAGs and the analytical framework. The subsequent section contains the body of this study, namely the evaluation of DAGs in accordance with the analytical framework, the ›ladder of inclusiveness‹. Based on this comprehensive evaluation, conclusions and

policy recommendations are then formulated. The annex presents more in-depth case studies, as well as the survey questionnaire.

## 1.1 RESEARCH APPROACH

This report relies primarily on new data collected for this study based on a mixed-methods research design; more concretely, this involves combining surveys and case studies. The survey, sent to all current EU and Non-EU DAG members, enabled a broad evaluation of the DAGs by their members. In addition, three case studies were conducted to create a deeper understanding of the DAGs. Each pillar of the research design is described in more detail below.

The survey builds on a previous survey conducted by the authors with EU DAG members in 2016 and 2018. The original questionnaire has been elaborated in collaboration with FES and the new version contains questions on the functioning, perceived purpose, content, monitoring and impact of DAGs (see Annex for the full questionnaire). Although the questions are essentially identical, a separate survey was sent to EU and to Non-EU DAGs in order to keep the wording of the questions simple and to facilitate analysis. The survey was anonymous, which meant that no personal data or other identifying information was collected and that the answers cannot be associated with the respondent.

For both surveys, the entire population, so all current EU and Non-EU members, was invited to participate. In the analysis of the results, we also included the surveys that were only partly completed, as they contain valuable data. The survey data was collected in June and July 2020.

For the EU DAGs this includes the DAGs with the EU trade agreements with Canada, Central America, Colombia/Peru/Ecuador, Georgia, Japan, Moldova, South Korea and Ukraine. A total of 94 personal invitations were sent, 43 surveys were entirely completed and seven partly filled in, resulting in 50 answers or a response rate of 53 per cent. Table 1, gives a more detailed account of the EU DAGs respondents. There are also DAG members that belong to more than one EU DAG. In that case, the respondent was invited to select one trade agreement and to answer the survey for that particular DAG.

Table 1

**EU DAG respondents by group and trade agreement**

	Business associations	Labour / trade unions	NGOs (environmental, developmental, etc.)	Other	Total per DAG
Andean Community (excl. Bolivia)	1	2	3		6
Canada	3	3	4		10
Central America	1	5	3		9
Georgia	1	1	1	1	4
Japan	2	3	1		6
Moldova		2			2
South Korea	3	4	2	1	10
Ukraine		1	1		2
Unknown	1				1
<b>Total per group (%)</b>	<b>12 (24 %)</b>	<b>21 (42 %)</b>	<b>15 (30 %)</b>	<b>2 (4 %)</b>	<b>50 (100%)</b>

For the Non-EU DAGs the analysis includes the DAGs of Canada (environmental and labour DAG), Colombia, Costa Rica, El Salvador, Ecuador, Georgia, Guatemala, Moldova, Nicaragua, Panama, Peru (official and shadow DAG), South Korea and Ukraine.<sup>1</sup> For some Non-EU DAGs (notably the official Peruvian DAG, Honduras and Nicaragua) only very limited or even no information was available on DAG mem-

bership and members' contact details, affecting the response from these countries. In total, 190 personal invitations were sent. Some 63 surveys were completed fully and 11 were only partly filled in, resulting in 74 answers or a response rate of 39 per cent. Table 2 gives a more detailed account of the Non-EU DAGs respondents.

Table 2

**Non-EU DAG respondents by group and country**

	Business associations	Labour/ trade unions	NGOs	Government	Other	Total per country
Canada	1	2	3		2	8
Colombia	1	3	2			6
Costa Rica	2	1	3		1	7
Ecuador		4	3		1	8
El Salvador	1		1			2
Georgia	1	2	6			9
Guatemala		2	2		1	5
Honduras			1	1		2
South Korea	1	1	2		4	8
Moldova	1	3	3			7
Nicaragua						/
Panama						/
Peru official		1				1
Peru shadow		2	5		1	8
Ukraine	1		1		1	3
<b>Total per group (%)</b>	<b>9 (12%)</b>	<b>21 (28%)</b>	<b>32 (43%)</b>	<b>1 (1%)</b>	<b>11 (15%)</b>	<b>74 (100%)</b>

<sup>1</sup> At the time of the survey the Japanese DAG was still in the process of being established.

When analysing the data we did not differentiate between agreements, as the number of responses per agreement are too small to allow for generalisations or comparisons. We did compare different constituencies, especially between business and non-business respondents (labour/trade unions and NGOs, excluding the ›other‹ and government category). Nevertheless, these comparisons need to be approached with caution, as the number of observations for business respondents is small. For all percentages mentioned in the report, we include the ratio in absolute numbers to be fully transparent. Blanks and ›don't know‹ answers were excluded from the analysis.

The three case studies are the EU trade agreements with Georgia, Peru and South Korea. These vary in terms of years of existence, geography and economic relevance of the trade agreement, as well as level of civil society involvement in the provisions of the trade agreements. For each case study, virtual interviews were conducted with EU and Non-EU DAG members. In all cases, interviews were carried out with a representative of each group in each DAG. If this was not possible, other DAG members were contacted. In total, 18 interviews were conducted, six per EU trade agreement, in June and July 2020. For reasons of anonymity, the list of interviewees is not shared. They are identified as EU or Non-EU respondents and numbered chronologically (for example, EU1 and NEU1). The interviews were complemented with previous field research and existing literature.

## 1.2 THE ABC OF DAGS

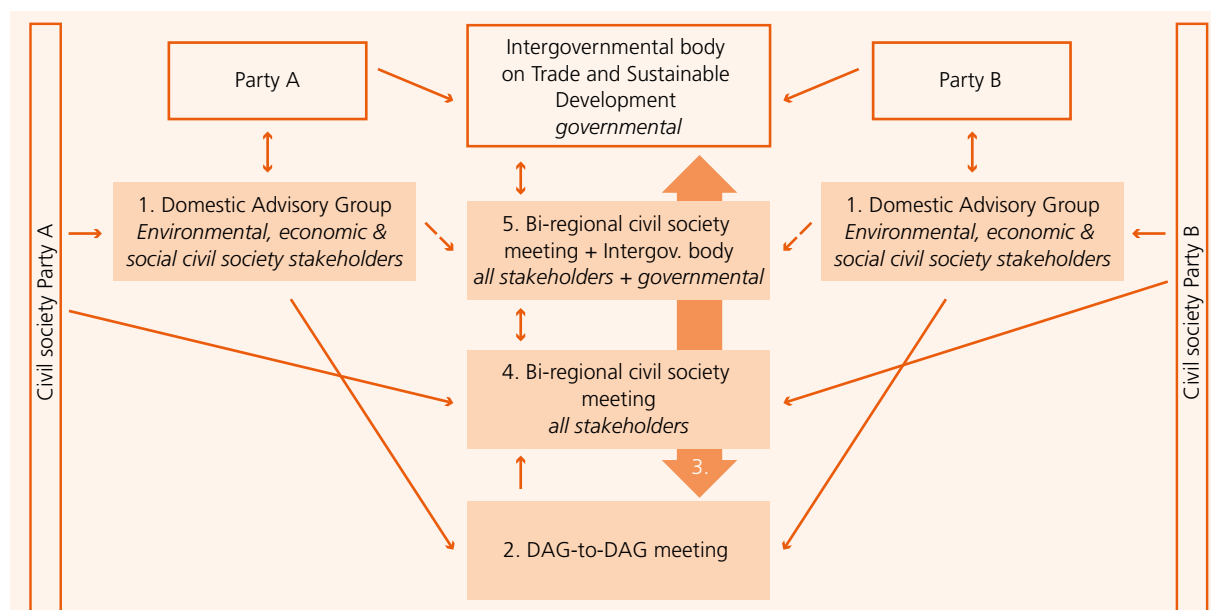
Domestic advisory groups were introduced in the European Union's ›new-generation‹ free trade agreements, starting with the EU–Korea agreement that was provisionally applied in 2011. So far, DAGs have been established under agreements with the Andean Community (Colombia, Ecuador, Peru), Canada, Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama), Georgia, Japan, Korea, Moldova and Ukraine.

The DAGs are civil society mechanisms intended to monitor the implementation of the chapters on trade and sustainable development. TSD chapters came into existence as part of the European Commission's ›value-based trade agenda<sup>2</sup> in response to the broader societal debate, both in the EU and abroad, about the negative ramifications of free trade. Unlike other parts of the agreements, they rely on dialogue between civil societies and governments and on a soft dispute settlement mechanism that does not provide for sanctions. The purpose of the TSD chapters is to safeguard labour rights and environmental standards, alleviating fears about a ›race to the bottom‹ – in which parties may attempt to lower sustainable development protection to maximise their competitiveness – as well as reasserting the EU's commitment to values and sustainability.

Along with the member-based DAGs, TSD chapters also foresee annual transnational civil society forums, which are more open and in most cases involve both DAGs and other

Figure 1

### Institutional set-up of TSD chapters



Source: Orbie, J., et al. (2016). Civil Society Meetings in European Union trade agreements: Features, purposes, and evaluation. The Hague, Centre for the Law of EU External Relations.

<sup>2</sup> Commission Services. 2017. ›Non-Paper of the Commission Services: Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements (FTAs).‹ Available at: [https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf).

civil society representatives. Nonetheless, DAGs remain the most permanent and institutionalised bodies under the TSD chapters. While joint meetings exclusively between parties' DAGs (DAG-to-DAG meetings) are not foreseen in the agreements (except in the case of Korea), they have become a stable practice and usually take place once a year in advance of the open transnational meeting (see Figure 1 for an overview of the institutional structure of the TSD chapters).

The membership of a DAG is supposed to be balanced between independent and representative business associations, trade unions and (environmental)<sup>3</sup> non-governmental organisations (NGOs), reflecting the three pillars of sustainable development – social, economic and environmental<sup>4</sup> – and also mirroring the structure of the European Economic and Social Committee (EESC). In practice, some DAGs (or equivalent national bodies) also include representatives of human rights and other organisations, academics and even government representatives. Three members of each EU DAG, one per constituency, are delegated by the EESC and the rest are recruited by the European Commission; in partner countries, procedures differ widely.

Outputs of the DAGs can include letters, opinions, reports, studies and other documents. In practice, the most visible output comprises the joint declarations of the DAG-to-DAG meetings, which are shared with the intergovernmental board and published on the website of the EESC (which serves as the secretariat for the EU DAGs).

While all TSD chapters to date have followed a similar blueprint, specific provisions establishing DAGs vary.<sup>5</sup> For instance, while most agreements stipulate that DAG members should be independent, this is not the case as regards the Peru-Colombia-Ecuador free trade agreement (FTA). In addition, this FTA and the one with Central America also foresee that existing domestic mechanisms can be used as DAGs. Some of the agreements provide for DAGs to take part in the transnational civil society meeting, while others are less specific. There are also differing provisions on interaction between the DAGs and the parties (either all parties or the national one), and the transnational mechanisms or meetings and the parties. In some cases, civil society entities are explicitly allowed to submit views or recommendations to governments, and the EU–Canada agreement even mandates that both sides respond to each other. Finally, in what concerns dispute settlement, different provisions exist on whether DAGs may proactively submit recommendations, or be asked to do so, and whether they will be informed of the results or even monitor the implementation of the panel of experts' report. In the Korean case, parties can request consultations on the basis of DAGs' communications. Overall, this leads to a broad variation between the agreements and different levels of civil society involvement in practice.

The activity of the DAGs differs depending on the agreement. On the EU side, the average frequency of meetings varies from zero to four meetings per year (see Table 3). Information concerning the EU DAG is centralised in the EESC. Similar information for Non-EU DAG meetings is not publicly available.

Table 3

**Number of DAG meetings on the EU side (excluding DAG-to-DAG meetings with partners)**

	2012	2013	2014	2015	2016	2017	2018	2019	(jan-sep) 2020	total	average / year
<b>Canada</b>							2	3	1	<b>6</b>	2,00
<b>Central America</b>			2	4	3	4	3	3	1	<b>20</b>	2,86
<b>Colombia-Peru-Ecuador</b>				2	2	3	3	2	1	<b>13</b>	2,17
<b>Georgia</b>					2		1	1	1	<b>5</b>	1,00
<b>Korea</b>	2	3	2	2	3	3	2	2	1	<b>20</b>	2,22
<b>Moldova</b>				1	1	1	1	1		<b>5</b>	0,83
<b>Ukraine</b>					1	1	3	2	1	<b>8</b>	1,60

Source: EESC Members' portal, <https://memportal.eesc.europa.eu/Meeting/CommitteeAgenda>; secondary source: EESC Document Search, <https://dmsearch.eesc.europa.eu/search/public>.

<sup>3</sup> All EU FTAs, except for the EU trade agreement with Ukraine, refer explicitly to environmental stakeholders or organisations. Nevertheless, in practice this group also includes NGOs working on other topics such as human rights or development (see below).

<sup>4</sup> Purvis, Ben, Yong Mao, and Darren Robinson. 2019. 'Three Pillars of Sustainability: In Search of Conceptual Origins.' *Sustainability Science* 14 (3): 681–95. Available at: <https://doi.org/10.1007/s11625-018-0627-5>.

<sup>5</sup> Martens, Deborah, Lore Van Den Putte, Myriam Oehri, and Jan Orbie. 2018. 'Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index.' *European Foreign Affairs Review* 23 (1): 41–62.

In recent years, the debate about reforming TSD chapters and DAGs in particular has intensified. In 2017 and 2018, Commission services published two non-papers on the TSD chapters. The EESC, the European Parliament, civil society, academics and some EU member countries have made further contributions to the debate. While the 2018 non-paper contains a list of 15 actions intended to strengthen the TSD provisions – including an extension of DAGs’ monitoring mandate to the entire FTA<sup>6</sup> – further reforms are possible as the debate continues.

### 1.3 ANALYTICAL FRAMEWORK: ›CLIMBING THE LADDER?‹

Evaluating the DAGs is not as straightforward as it might seem at first glance. A key problem for any assessment of the civil society meetings is that we lack clear criteria. Much confusion about the (ir)relevance of the DAGs in European trade policy-making revolves around the lack of clarity about benchmarks for measuring success.

We have therefore developed an analytical framework that can be used pragmatically to evaluate the DAGs. This ›ladder of inclusiveness‹ combines two dimensions. First, it denotes that inclusiveness is a matter of gradation. It is commonly accepted among all stakeholders that inclusiveness is not a yes-or-no issue and that there are different degrees. Second, it captures the existence of several kinds of participation. Depending on what is considered the main purpose of the civil society meetings, different types of inclusiveness might be pursued.

This results in four steps or rungs of the ladder, which will be briefly explained below.

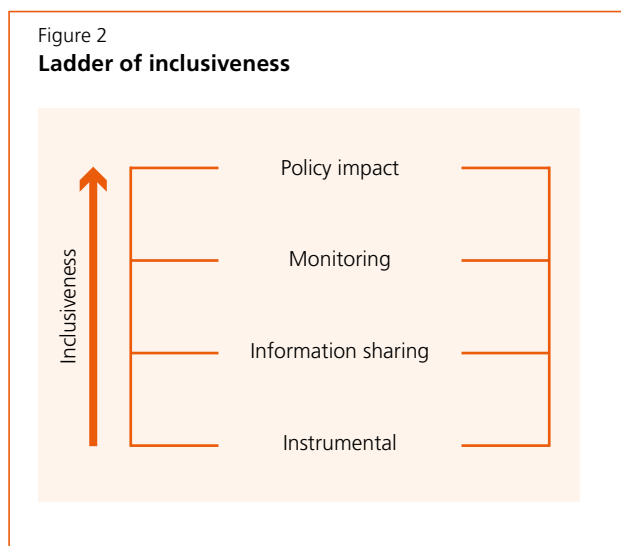


Table 4

**Summary of the ›ladder of inclusiveness‹**

Level	Purpose	Role	Question	Criteria
<b>Bottom</b>	Instrumental	Fig leaf	Can they meet?	- Logistics - Legitimation
<b>Low</b>	Information-sharing	Forum	Can they talk?	- Horizontal and vertical exchange - Independent, representative and balanced - Genuine dialogue
<b>Medium</b>	Monitoring	Watchdog	Can they oversee?	- Evaluation capacity - Accountability contracting parties
<b>High</b>	Policy impact	Policy-maker	Can they influence?	- Involved in decisions - Triggering dispute mechanism

<sup>6</sup> Commission Services. 2018. ›Non Paper of the Commission Services. Feedback and Way Forward on Improving the Implementation and Enforcement of Trade and Sustainable Development Chapters in EU Free Trade Agreements.‹ Available at: [https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](https://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf).

## 1 INSTRUMENTAL: CAN THEY MEET?

First, the instrumental step implies that DAGs are organised because this is required under the trade agreement; more specifically, by the commitments in the TSD chapter. Policy-makers' main commitment is a logistical one, namely to make sure that meetings are organised. This may involve the assignment of organisational tasks to a secretariat or another body that guarantees that participants are invited and meeting facilities are available.

At this level, inclusiveness is a formality. Meetings are unlikely to produce meaningful results. Instead, they might serve merely to legitimise the free trade agreement. Hence the purpose is a rather cynical one: civil society dialogues are introduced in trade agreements in order to create goodwill and to ensure ratification. By accepting the invitation, civil society members risk being co-opted and therefore less critical – the so-called ›participation trap‹.

The logistical level is a necessary one, however, not always self-evident, especially outside the EU. Moreover, once meetings are starting to take place, they might entail more far-reaching forms of interaction that were not originally intended by the contracting parties. Hence, they might be stepping-stones for the next rungs on the ladder.

## 2 INFORMATION SHARING: CAN THEY TALK?

Second, the information-sharing step involves more substantive discussion of the implementation of the FTA and its impact on sustainable development. Participants share their expertise and broaden their networks. Information sharing can be ›horizontal‹, between the civil society members of the DAG, or ›vertical‹, between the DAG members and their respective governments (the European Commission and partner-country government). Information sharing could also extend to other DAGs and civil society groups (horizontally) and to the intergovernmental committee that deals with trade and sustainable development (vertically).

The basic requirements are that civil society members be independent from government; that they be representative of their constituencies (for example, labour, business and environment); and that they be represented in a balanced way within the DAG. When these conditions are fulfilled, information sharing can turn into a real dialogue and therefore to a better understanding of the different positions relating to trade and sustainable development. Such ›deliberation‹ may even make it possible to reach a consensus and eventually to enhance the empowerment of members that would otherwise be marginalised.

Although there is more emphasis on having substantive discussions than on any possible outputs, adequate information sharing is necessary in order to be able to play the watchdog role.

## 3 MONITORING: CAN THEY OVERSEE?

Third, monitoring means that civil society is able to oversee the sustainability dimension of trade. Knowledge and expertise are key resources for enabling civil society to become an independent ›watchdog‹ that provides detailed opinions and critically evaluates policy decisions. In contrast to the previous purpose, monitoring entails a concrete output, namely policy evaluation. Output can be shared with policy-makers (vertically) or disseminated (horizontally) through traditional or social media and member outreach.

Accountability of the contracting parties is key at this stage. While the parties do not necessarily need to endorse the input from the DAG, they do take the recommendations seriously by engaging with their content and formulating feedback; they may also proactively contact the DAGs for advice on trade and sustainable development issues. Ideally, there are clear procedures on such interactions between civil society and the parties.

Monitoring is often highlighted by the European Commission as being the primary objective of the DAGs. Although DAG evaluations are advisory and not enforceable, they may help to hold policy-makers accountable and potentially induce policy changes.

## 4 POLICY IMPACT: CAN THEY INFLUENCE?

Fourth, policy impact entails that decision-makers actively involve civil society in decision-making. Hence the latter has a direct influence in decisions related to the implementation of the sustainable development chapter of the trade agreement.

This may involve, for instance, the triggering of the dispute settlement mechanism. Policy impact may also result from a combination of the previous steps, for example when DAG evaluations successfully pressurise one of the parties to change or implement certain policies. Policy impact involves tangible results through legal or institutional changes (intermediate impact) and possibly through compliance with the sustainable development commitments (ultimate impact).

## A PRAGMATIC FRAMEWORK

This framework provides a pragmatic tool for the systematic examination of the DAGs' role. The metaphor of the ladder denotes, first, that the lower steps need to be taken before one can move up to higher levels, and second, that each rung represents a distinct type of inclusiveness. The ladder depicts how increasing inclusiveness is related to the growing power of civil society. The ladder does not necessarily imply any normative preference, however. A lower or higher degree and a different kind of inclusiveness is not automatically better or worse. While few would dispute that the bottom rung needs to be exceeded, this study will show that there are different views among stakeholders on whether information sharing, monitoring or policy impact constitute the desirable levels to be achieved.

## 2

## EVALUATION OF DAGS

## 2.1 CAN THEY MEET?

Box 1

**Main takeaways concerning the instrumental purpose**

- Yes, in principle most of the DAGs can hold meetings and meetings are taking place. (A1)
- DAGs' functioning has taken off, but issues remain, especially in Non-EU DAGs, as regards to the frequency and timely notification of meetings, the support of a secretariat, and funding. (A2)
- Moreover, discussions on logistical issues still take up large parts of the meetings, at the expense of substantive issues. (A3)
- DAGs are not considered to be merely a tool for legitimising the trade agreements, but some members remain suspicious about the legitimising effect of their participation. (A4)

**A1 Worldwide, DAG meetings are taking place.**

In principle, DAGs have been established in all EU partner countries. That being said, there are important differences between the Non-EU DAGs: some DAGs were only very recently created (such as in Japan – no data was collected for this Non-EU DAG), while others do exist on paper but have been difficult to reach for our research (such as Nicaragua and Panama), leaving doubts about their functioning. In other cases, existing domestic mechanisms are being used nominally, but without actually discussing issues related to the FTA (see Box 2). Thus, not all DAGs meet effectively.

- »European Commission officials will say: »we have achieved most of the TSD chapter because the chapter says we need two DAGs, a Civil Society Forum, and we've done that, so we're 80 per cent there.« But just because you establish the institutions mentioned in the chapter, doesn't mean that the chapter's goal is achieved.« (interview EU1)

Box 2

**The Peruvian shadow DAG**

For several years, Peruvian civil society expressed concerns regarding its involvement in the trade agreement with the EU, in particular in view of Peruvian authorities' unwillingness to create a dedicated DAG for this purpose. In 2017, several Peruvian organisations that were already monitoring the implementation of the agreement established a DAG with the aim of demanding accountability and solutions from the government.\* It has been called »a shadow« or »self-constituted« (autoconformado) DAG because it remains unrecognised by the Peruvian government. The shadow DAG includes environmental and human rights NGOs, as well as trade union organisations. Peruvian business representatives were invited, but did not wish to participate, which in some cases was linked to the government's failure to recognise the DAG.

The »shadow« DAG has been active both nationally – attempting to establish a better dialogue with the Peruvian authorities and writing a number of letters – and internationally, in dialogue with the Colombian and Ecuadorian DAGs (belonging to the same regional trade agreement), the EU DAG and EU institutions (European Commission, EU delegation in Lima, European Parliament, EESC). It is demanding official recognition. Because it has managed to achieve international visibility, members' dedication and donor support, it can continue independent monitoring of the FTA and manages to participate in transnational meetings.

As a result of the shadow DAG bringing attention to the participation issues to the European Commission, and the latter to pressure the Peruvian government on more transparency concerning its DAG, the Peruvian government entrusted the DAG roles to two existing mechanisms in 2018 (the National Commission on Climate Change and the National Council for Labour and the Promotion of Employment) instead of entrusting it to nine bodies, as before. These mechanisms are led by government representatives, however, and have serious functional issues (for instance, the quorum needed to be able to take decisions is almost never reached), which makes them weak platforms and prevents real dialogue.\*\* Moreover, their members are largely unaware that they are expected to monitor FTA implementation. In 2019, only the National Commission on Climate Change discussed the FTA at only one meeting, without engaging in genuine dialogue on the matter. Government communication with civil society at large has improved somewhat, but most civil society requests remain ignored.

→



The Peruvian case demonstrates the importance of having strong treaty provisions able to enforce civil society participation in a dedicated, empowered and independent setting, as well as political accountability regarding sustainable development. The ambiguous provisions in the current agreement (the legal text doesn't stipulate that the DAG members have to be independent) have enabled the Peruvian government to offer merely tokenistic participation managed by state representatives.

In addition, it shows the need for greater flexibility on the part of the EU when dealing with grassroots civil society initiatives. For instance, at the moment, the EU does not finance the participation of ›shadow DAG‹ members in transnational meetings and does not include them in official communications unless they are delegated by an officially designated body. As the officially designated mechanisms do not meaningfully discuss the FTA, it leaves a consultation vacuum.

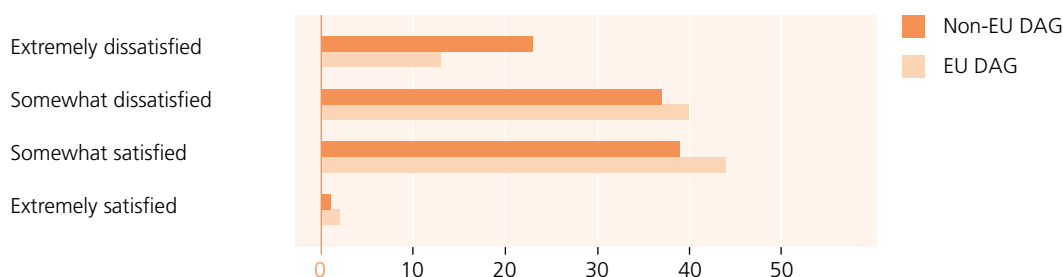
- \* RedGE, 2018. ›Campaña.‹ Available at: <http://www.redge.org.pe/node/2841>.
- \*\* RedGE, 2019. ›Sociedad Civil: una participación que no espera.‹ Available at: <http://www.redge.org.pe/index.php/node/2884>.

**A2 Overall, the DAGs' functioning has taken off. Issues remain in both EU and Non-EU DAGs, although they figure more prominently in the latter.**

By ›functioning‹, we mean the organisational, operational and logistical aspects of the DAGs. Generally, the DAGs are functioning in the sense that meetings are taking place. DAG members prepare the meetings well (according to 65 per cent [30/46]<sup>7</sup> of EU DAG and 56 per cent [36/64] of Non-EU DAG respondents) and attend them (according to 77 per cent [36/46] of EU DAG and 69 per cent [43/62] of Non-EU DAG respondents). The work of the chair is also considered mainly positively by the respondents (71 per cent [32/45] of EU and 49 per cent [35/72] of Non-EU DAG respondents).

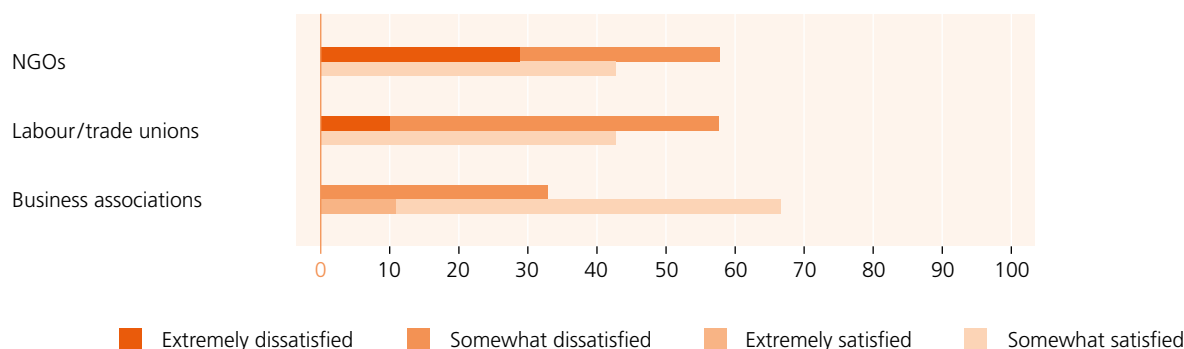
This functioning is still characterised by difficulties, however. Across the different EU and Non-EU DAGs, the majority of members are not satisfied with their functioning. Both in EU and Non-EU DAGs, the respondents representing business associations are more satisfied with the DAG functioning than the non-business (trade unions and NGOs) respondents (see Figure 4 and 5).

Figure 3  
**Satisfaction with functioning**



Satisfaction with DAG functioning

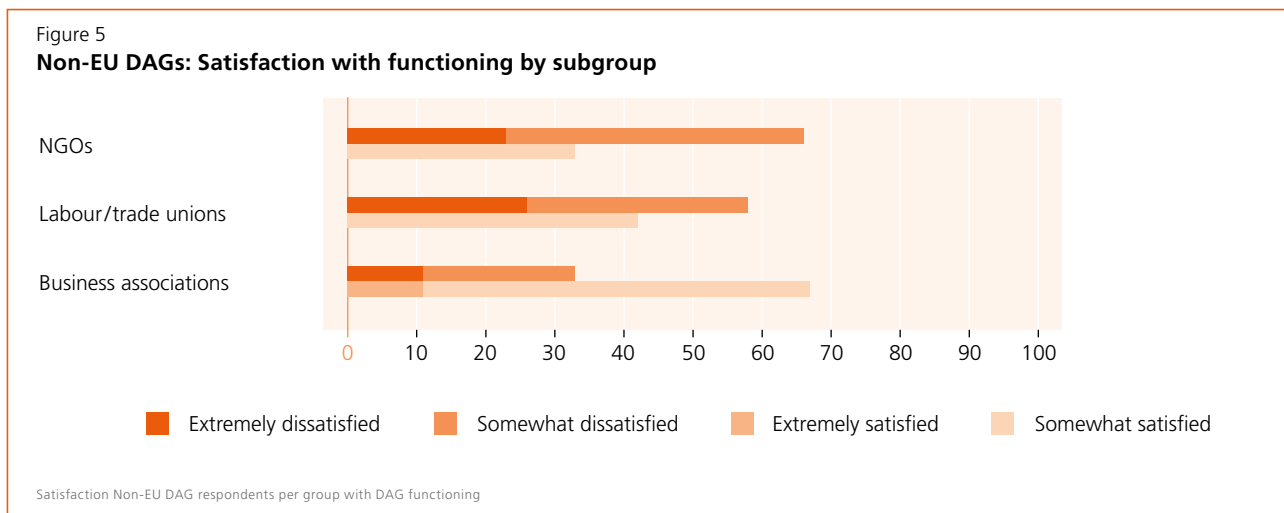
Figure 4  
**EU DAGs: Satisfaction with functioning by subgroup**



Satisfaction EU DAG respondents per group with DAG functioning

<sup>7</sup> Blank and ›don't know‹ answers have been omitted from the analysis. Considering the relatively low number of observations, the ratio in absolute numbers is mentioned in addition to the percentage.



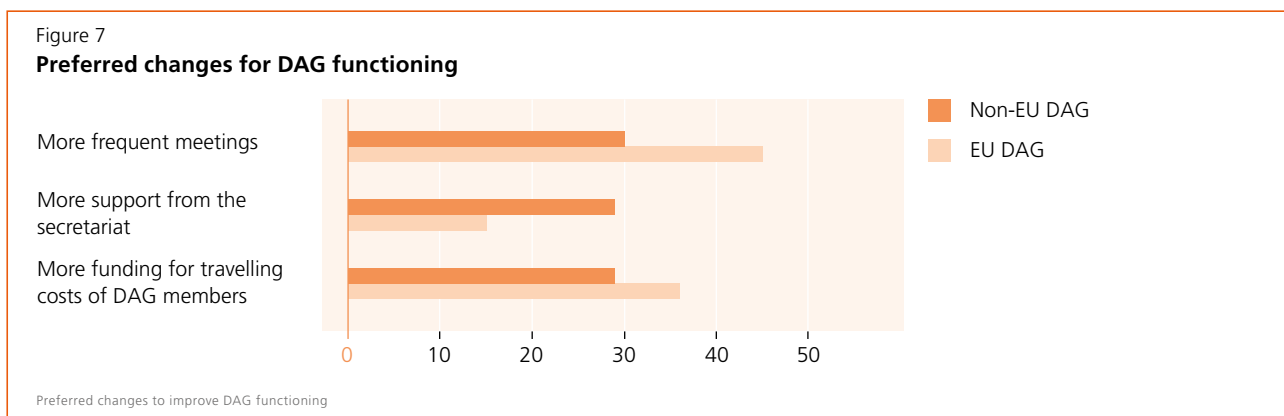
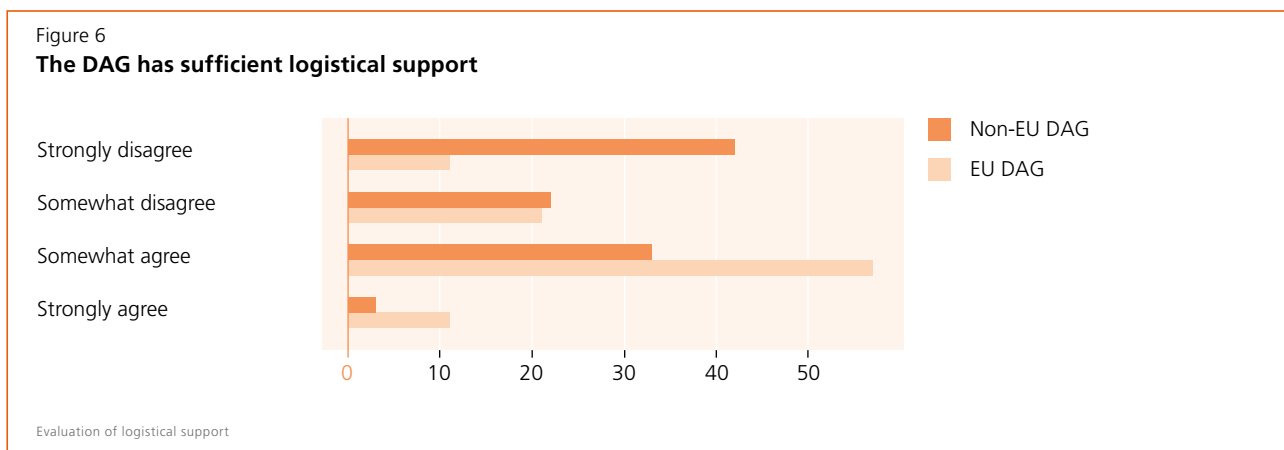


One major problem is that EU and Non-EU DAGs cannot always interact meaningfully because of the latter’s weaknesses. Issues concerning DAG functioning are more prominent outside the EU, which is a concern for EU DAGs. »Issues related to DAG(s) in the partner country/region« is ranked third among the topics discussed by EU DAGs, and 20 per cent (9/44) of EU DAG respondents would recommend improving the functioning of DAG(s) in the partner country/region to improve DAG monitoring. This is understandable considering that the discussion within both EU and Non-EU DAGs is heavily concentrated on the situation in the partner countries; sustainability in the EU is barely

discussed (see Figure 14). EU DAGs rely, to a large extent, on the information provided by their Non-EU counterparts, requiring close interaction between both sides.

Whereas the majority of EU DAG respondents agree that their DAG has sufficient logistical support, most Non-EU DAG respondents argue that they do not (see Figure 6).

For the active DAGs, the most important functional aspects identified in the surveys and interviews are the frequency and timely notification of meetings, the support of a secretariat and funding.



Respondents' comments on the frequency of meetings imply that the current system, whereby the DAGs meet up twice a year on average for several hours, is insufficient to enable DAGs to serve as a platform for meaningful dialogue. Some 45 per cent (21/47) of EU DAG respondents and 30 per cent (22/73) of Non-EU DAG respondents wish that meetings were held more frequently. In the case of the EU this is even the most preferred change to improve the functioning of DAGs.

- »We lack time, the DAG has only two meetings a year. It is not much and it is not enough to carry out this monitoring work.« (interview EU4)
- »I haven't been invited to any regular meetings, there is no particular continuation of the work.« (interview NEU7)
- »The exchange between the DAGs is also essential and is made difficult by being limited to an annual meeting.« (open answer survey NEU)

Related to the frequency of the meetings, there is also criticism that meetings are announced at too short notice. Especially in the case of the annual transnational meetings with the DAGs and the intergovernmental board, where travelling is required, the dates of the meetings should be announced sufficiently in advance. This also gives the impression that the meetings are not a priority.

- »The final confirmation comes pretty late, there are often changes in the schedule. It gives the wrong political sign. There must be a 100 per cent commitment on proper scheduling. Commitment that whatever happens, the meeting will take place.« (interview EU10)

Given the fact that DAG members meet only occasionally and work on a voluntary basis, secretarial support is important to ensure continuity of the meetings, information exchange and links to the counterpart DAG(s). The EESC provides the secretariat of all EU DAGs. Some 78 per cent (36/46) of EU DAG respondents consider that DAG meetings are well prepared by the secretariat. Most Non-EU DAGs, however, do not have similar support to help them organise and prepare their work. The bulk of their work is often carried out by their president (and sometimes vice-presidents), who are limited in their capacity to dedicate a lot of time to these activities. This explains why »more support from the secretariat« is highest on the wish list of Non-EU DAG respondents.

- »The DAGs cannot maintain their dynamics due to lack of support in their operation. We have requested to have the help of a secretariat that takes care of the meeting dates and agenda, drafts the minutes, supports the follow-up, centralizes the information and exchanges it, etc.« (open answer survey NEU)
- »There should be a technical secretariat to coordinate activities and actions, and of course this with a budget from the EU and national governments.« (open answer survey NEU)

Funding, especially for Non-EU DAGs, has been considered a very critical issue over the years. Whereas the EU has always provided for financial support by making the secretariat available and covering the travelling costs of at least one EU DAG member per group, Non-EU DAGs do not enjoy similar support. Experts therefore consider the funding of Non-EU DAGs to be one of the weak points of the civil society mechanisms established in the TSD chapter, undermining DAGs as a whole. This issue does not appear particularly high on respondents' agenda when it comes to DAG functioning, but it is an important concern with regard to DAG monitoring capacity (see section 2.3, C2). The corollary is that meetings can indeed take place regardless of funding, but it is necessary for more effective participation. The lack of funding also imposes limitations on the ability to recruit support staff, such as a technical secretary or someone could follow-up on DAG recommendations, to travel outside formal meetings or organise events.

- »Participation is limited since we do not have economic resources; the state does not support the logistics that are required.« (open answer survey NEU)
- »Each DAG should have resources for its operations and for executing actions that contribute to government decision-making on the trade agreement.« (open answer survey NEU)
- »The DAG must have real financing for its activities because otherwise it will not cease to be simply a mechanism without real action.« (open answer survey NEU)
- »If you decide that participation of civil society is important, you must finance participation. Participation of civil society organisations must be in the official budget of the agreement. This is a political position, and I'm insisting on this position, it's a matter of coherence.« (interview EU5)

#### Box 3

#### **Three-year EU project to support the civil society mechanisms in the TSD chapters**

Several issues related to DAG functioning, as mentioned above, have been repeatedly criticised over the years. In order to address them, in 2019 the EU launched a three-year project with a budget of 3 million euros to support the implementation of TSD chapters through increased civil society participation. The project provides, through a consultant, assistance with the logistics of organising meetings in and outside the EU and supports travelling costs for EU and Non-EU DAG members. In addition, the funding can also be used to commission studies and organise workshops.

The project is still at an early stage, so it is too early to make a definitive assessment. Nevertheless, the feedback given on the first year of the project is mixed. Some Non-EU DAG members were not aware of the project (NEU2, NEU3, NEU5), whereas others confirmed a positive impact on the civil society participation and coordination in the case of Central America (NEU9) and the Andean countries (NEU4). On the EU side, some DAG members were less satisfied. According to them, the quality of the workshops has deteriorated compared with the period





when they were organised by the Commission and the EESC, because the consultants hired for this purpose are still unfamiliar with the topic (EU8). In addition, the funding can be considered merely »a temporary present« (EU5) as it remains ad hoc financial support and does not improve the resources of the DAGs in a sustainable way.

### A3 Logistics are still (too) high on the agenda.

Even though most DAGs have already been operating for more than five years, they still struggle with logistical and procedural issues. This takes valuable time and human resources away from their primary substantive tasks, as defined in the agreements. While the situation is worse in the Non-EU DAGs, EU DAGs also face issues in this area, despite the support provided by the Commission and the EESC.

Table 5 gives an overview of the ranking of the topics discussed in the meetings. It should be noted that the differences between the top three of the Non-EU DAGs are extremely small. Logistics, impact on sustainable development issues and participation basically share first place.

- »We should spend less time on procedures and operating rules and more time on substance and topics« (open answer survey EU)

Table 5

**Content discussed during DAG meetings** (ranked from most often to least discussed)

Ranking	EU DAGs	Non-EU DAGs
1	Impact of the trade agreement on sustainable development issues	Logistics (funding, meeting places & dates, etc.)
2	Logistics (funding, meeting places & dates, etc.)	Impact of the trade agreement on sustainable development issues
3	Issues relating to DAG(s) in the partner country/ region	Participation (membership, representativeness, attendance)
4	Rules of procedure	Rules of procedure
5	Impact of the trade agreement on other issues	General sustainable development issues
6	Participation (membership, representativeness, attendance)	Impact of the trade agreement on other issues
7	General sustainable development issues	Issues relating to EU DAG
8	Other	Other

### A4 The DAGs are not considered to be merely a tool for legitimising trade agreements. However, some members, especially non-business respondents, remain suspicious about the legitimising effect of their participation.

In both EU and Non-EU DAGs there is broad consensus as to what the purpose of DAGs should be: they should monitor the agreement, enhance policy impact, be a platform to voice opinions and give access to information (see Table 7). But when we look at how DAGs function currently, we find that the actual purpose (see Table 6) differs from the above mentioned aspired purpose(s).

The survey also shows that in general the DAGs are not considered to be mechanisms created to legitimise trade

agreements (see Table 6). This means that the establishment of the civil society mechanism and the organisation of the meetings, while weak, is still recognised as serving meaningful ends. The purpose »control critical voices« is ranked as the least important for both the EU and Non-EU DAG respondents. Opinions are more divided about the actual purpose of »creating goodwill for the trade agreement: while it has been ranked as unimportant by the majority of the Non-EU DAG respondents, it takes fourth spot (out of eight) in the EU DAG's ranking. A closer look at the numbers reveals that this opinion is held mainly by non-business members, especially NGOs. This means there is divergence between the different groups concerning the evaluation of the purpose of the EU DAGs and that non-business representatives are more sceptical of the rationale behind the establishment of these mechanisms.

Table 6

**Ranking of actual purpose of the civil society meetings** (What is the purpose of the civil society meetings?)

Ranking	EU DAGs	Non-EU DAGs
1	Voice opinions	Voice opinions
2	Access to information	Access to information
3	Network with civil society organisations	Network with civil society organisations
4	Create goodwill for the trade agreement	Monitor the agreement
5	Network with officials	Network with officials
6	Monitor the agreement	Policy impact
7	Policy impact	Create goodwill for the trade agreement
8	Control critical voices	Control critical voices

Table 7

**Ranking of desired purpose of the civil society meetings** (What should be the purpose of the civil society meetings?)

Ranking	EU DAGs	Non-EU DAGs
1	Monitor the agreement	Monitor the agreement
2	Policy impact	Voice opinions
3	Voice opinions	Policy impact
4	Access to information	Access to information
5	Network with civil society organisations	Network with officials
6	Network with officials	Network with civil society organisations
7	Create goodwill for the trade agreement	Create goodwill for the trade agreement
8	Control critical voices	Control critical voices

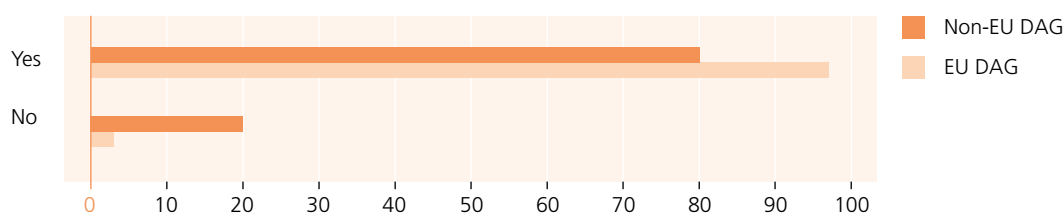
When looking into the achievements of the DAGs, we learn that 20 per cent (10/50) of the EU DAG respondents think the DAGs have legitimised the agreement with the larger public (see Figure 17). Moreover, the risk of being used as a tool to legitimise the agreement has been mentioned in both the open answers of the survey and during our interviews. This shows that some DAG members do take this risk into account when participating, leading to an insider/outsider dilemma: either to stay in a consultation format that might be used to legitimise the trade agreement against their own interests, or to refuse to participate and thereby lose a formal channel of communication through which to make one’s views heard.

- »I will be frank, I think they’re »tick the box« meetings.« (interview NEU7)
- »The DAGs should stop being a simple artificial mechanism to comply with what the agreement requires and must be a real instance of advocacy, monitoring and exchange with the government on the progress and limitations of the agreement.« (open answer survey NEU)
- »My impression is that the Commission wants to have those kinds of DAGs just on paper and in reality they just want to take a picture and say yes we have several DAGs.« (interview EU8)

That being said, a large majority of DAG members who participated in the survey want to stay in the DAGs (see Figure 8). This indicates that, although a lot of members are critical of the intentions behind the mechanisms, they do want to make use of the DAGs and to continue to advocate functional improvements. They also advocate combining insider and outsider strategies.

- »We will continue to fight to get it installed and working.« (open answer survey NEU)
- »Yes, it is worth continuing to participate, however its operation must be considerably improved.« (open answer survey NEU)
- »We’re reflecting on whether we want to stay in this DAG. It serves more as a pretext for the European Commission to say »we have an advisory group, everything is fine.« But we cannot leave this space to the business sector alone, it is necessary to have a counter-power and also for the Andean organisations it is important to have allies in this space.« (interview EU8)

Figure 8

**Continue DAG participation**

Wish of DAG members to continue DAG participation

## 2.2 CAN THEY TALK?

**Box 4****Main takeaways concerning the information-sharing purpose**

- Information sharing is considered an important purpose of the DAGs (even though it is not the most desired goal). (B1)
- Dialogue happens and independence, representativeness and the composition of DAGs are evaluated positively. (B2)
- Horizontal relations between DAG members are considered positive, but there still is need for more genuine dialogue and a better-defined work programme. Mainly in Non-EU DAGs, important tensions exist between business and non-business representatives. (B3)
- The DAG-to-DAG interaction is considered very useful. Most Non-EU respondents demand greater involvement of the DAGs in the annual transnational civil society meeting. (B4)
- So far, vertical relations between governments and their DAGs are evaluated more negatively. The latter do not share sufficient information on the implementation of the trade agreements and there is insufficient interaction between the governments and the DAGs. Non-EU DAG respondents are more vocal about these issues than their EU DAG colleagues. (B5)
- The impact of the trade agreement on sustainable development is being discussed during the DAG meetings. Labour issues are generally high on the agenda. Especially EU DAGs often address compliance with labour rights in partner countries, while the impact of the agreements in the EU remains largely unaddressed. (B6)

**B1 Information sharing is considered to be an important purpose of the DAGs (even though it is not the most desired goal).**

In practice, information sharing has proved to be one of the most important purposes of the DAGs. On the positive side, it is mentioned much more often than mere legitimisation, but on the negative side, this data shows that much DAG activity stops at this rung of the ladder without reaching monitoring or policy impact. Two answer options that fit into this category – ›access to information‹ and ›networking with civil society organisations‹ – are ranked fairly high as the actual purpose of DAGs by both EU and Non-EU DAG members (see Table 6). Building alliances with other civil society organisations was mentioned as one of the

most important achievements both in the EU (58 per cent [25/43]) and in the partner countries (42 per cent [27/65]) (see Figure 17).

Additionally, DAG members attribute high importance to engaging with policy-makers, as most of them ultimately aim to have policy impact. This is also a major value added of the DAGs, which, at least for some civil society organisations, open a new channel of communication with officials. Even though the third answer option in the information sharing category – ›network with officials‹ – is not indicated to be an important actual or desired purpose by either EU or Non-EU respondents, ›facilitate discussions with officials‹ is considered to be the most important achievement of DAGs by EU DAG respondents and ranks second for Non-EU DAG respondents.

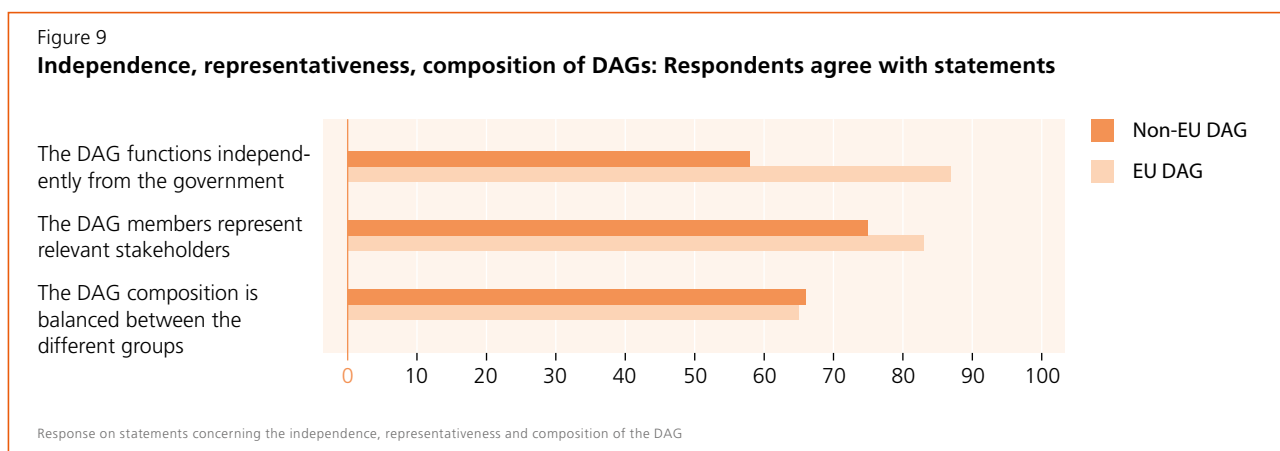
- ›The meetings empowered and gave visibility to civil society organisations that have little recognition from their government; it enabled the exchange of best practices and meaningful discussions by relevant stakeholders on issues that matter.« (open answer survey EU)

**B2 The independence, representativeness and composition of DAGs are evaluated positively. Nevertheless, improved representativity of Non-EU DAG members features high on the recommendations list.**

Our data shows that, in general, DAGs are able to promote free and balanced exchange of independently sourced information, and that this exchange happens among representative stakeholders. These are the basic preconditions for meaningful information exchange.

The majority of the respondents consider that the DAGs function independently of governments. In addition, ›more independent DAG members‹ has not often been selected as a preferred improvement by either group of respondents (11 per cent [5/45] of EU DAG and 14 per cent [10/71] of Non-EU DAG respondents). There is, however, a notable difference between DAGs: whereas 87 per cent (39/45) of EU DAG respondents confirm the DAG's independence, only 58 per cent (37/64) of the Non-EU DAG respondents agree with regard to their DAG. Thus, lack of independence

is one more shortcoming of Non-EU DAGs, which also negatively affects their EU counterparts' ability to receive information, conduct monitoring and have policy impact.



In line with the previous positive assessments, most respondents consider that DAG members represent relevant stakeholders' organisations (83 per cent [39/47] of EU DAG and 75 per cent [52/69] of Non-EU DAG respondents). That being said, better representativity of DAG members also scores quite high on the list of preferred changes to improve DAGs: 23 per cent (11/47) of the EU DAG and 33 per cent (24/73) of the Non-EU DAG respondents chose this improvement. Representativity is important for making sure that DAGs, in fact, contribute to promoting sustainable development by being able to represent the most affected societal groups. Thus, issues with representativeness affect DAG effectiveness and may also contribute to a lack of legitimacy of the EU's FTAs.

Many of the members, albeit to a lesser extent than for the two other statements, consider DAG composition to be balanced between the different groups, namely the business, labour and diverse interest organisations (65 per cent [30/46] of EU DAG and 66 per cent [42/64] of Non-EU DAG respondents). It should nevertheless be mentioned that the treaty provisions (except the EU trade agreement with Ukraine) refer explicitly to environmental organisations, in addition to employers and trade unions. In practice, this has become the ›various interests‹ group, including developmental and human rights NGOs. This is the group that experiences the most difficulties attracting members in the EU DAGs.

- »We have three groups, overall, we can monitor the situation, if there are problems affecting a particular sector, we know it immediately because representatives of this sector can raise the problem ... Only with the participation of civil society organisations, representatives of employers and trade unions, can you have real control and really work together for real benefits.« (interview EU5)
- »The first step is having the right people at the table because otherwise you cannot have meaningful dis-

cussions; once this was achieved, we started to talk about substance. It's a big achievement.« (interview EU9)

- »I don't think the DAG really represents the wider society.« (interview NEU3)
- »Representatives of organised civil society and the organised business sector should be equitably represented in the DAGs. It is obvious that the organised business sector is always in the majority participation, so decisions are taken by majority and not by consensus.« (open answer survey NEU)

As already indicated, some problems remain concerning the composition of DAGs, especially in Non-EU DAGs. Moreover, we should recall that these DAGs also face logistical problems – described in the previous section – which means they cannot always dedicate sufficient time and resources to information exchange.

#### Box 5

#### Representativeness and independence of Korean DAG members

The representativeness of the Korean DAG and the independence of its members has been a thorny issue, especially in the early days. To start with, these civil society meetings were the first of their kind and both the EU and the Korean government and civil society had to learn how to develop such mechanisms. However, given the distinct cultures and Korea's different take on civil society, the parties had different starting points. The tripartite structure of the EESC was used as a basis for the DAG, even though Korean employers and trade unions are not used to this type of dialogue. Also, »the environmental NGOs are not the same, they have different functions than we have in our European DAG« (EU1). In addition, academics and researchers were included as Korean DAG members, more concretely as public interest representatives. They currently account for almost half of the DAG. Their legitimacy is being challenged as,





even though these actors might have substantial expertise, »they don't represent a constituency« (EU1).

The independence of Korean DAG members has also been questioned. Some of the employers and academics are perceived to have strong ties with the government. In addition, the Korean government seems to hold the reins of DAG membership. There is no open call for members. The Ministries of the Environment and of Labour ask relevant organisations to put forward members, who are then nominated, except for the public interest group, where it is the ministry that nominates and appoints. Nevertheless, EU DAG members have witnessed an evolution:

»the Korean government somewhat changed its attitude and nominated slightly more people from European style civil society, but it was a process« (EU7). An important event in this context was the membership of the Korean Confederation of Trade Unions, one of the country's most important unions. They were not included in the DAG at first, which caused major criticism. An interviewee explained how »in Korea the government has the right to select members but it cannot be a unilateral decision« (NEU1). That being said, the Korean government still keeps a close eye on its DAG as »it attends the Korean DAG meeting but they do not engage. They present, then stay the whole meeting and monitor what is being said.« (NEU2).

### B3 Overall, horizontal relations between DAG members are considered positive, but there still is need for more genuine dialogue and a better-defined work programme. Mainly in Non-EU DAGs, important tensions exist between business and non-business representatives.

Information exchange among DAG members is a first step on the way to genuine dialogue. It involves opening and using communication channels without the need to actually consider the position of the other or to make joint decisions. In general, information exchange between the DAG members seems to have taken off, whereas genuine dialogue and setting priorities for collaboration remain more difficult to achieve.

When it comes to information sharing between DAG members a difference is noted between the EU and Non-EU DAGs: whereas 63 per cent (25/40) of EU DAG respondents agrees there is sufficient information sharing amongst DAG members, only 44 per cent (28/63) of the Non-EU DAG respondents think alike, 16 per cent even strongly disagrees with this statement. Similarly, where 62 per cent (28/45) of the EU DAG respondents say the availability of information has a positive impact on the functioning of the DAG, 53 per cent (36/67) of the Non-EU DAG respondents share this view. Again, issues on the Non-EU side can affect the EU DAGs as well.

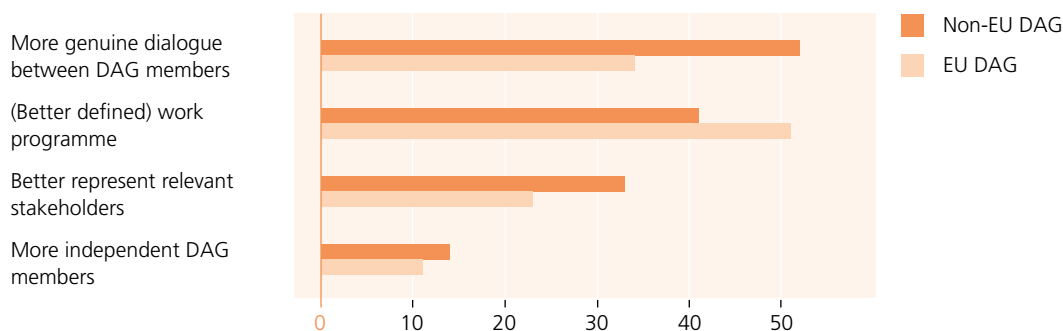
Even though most respondents state that the relationship between the DAG members has a positive impact on the

functioning of the DAG, there is a notable difference between the EU DAG (86 per cent, [39/45]) and Non-EU DAG (60 per cent [40/66]) respondents. Some of the probable reasons for this include the novelty of engaging in this kind of dialogue (which is very much based on the EU tripartite tradition), as well as conflicts or tensions between business and non-business DAG members (see also Box 6). Antagonistic relations between these two groups have, in some (Non-EU DAG) cases, been very strong and have even paralysed the functioning of the DAG.

- »It is also sometimes difficult in the Andean region to bring together civil society and companies. There is no culture of social dialogue like in Europe, it is not easy to reach consensus. I think that sometimes it is better to collect the observations of civil society, and of companies separately. (open answer survey NEU)
- »The DAGs should be restructured completely and they should not include actors whose purpose is to dismantle the participation of civil society.« (open answer survey NEU)
- »In our case, decisions are mainly made by the business sector.« (open answer survey NEU)
- »I think it is a process of learning and maturing. We do not have a culture of civil society participation. However, it seems important to me to continue the process to achieve greater interaction between the groups and greater ownership about our role.« (open answer survey NEU)

Figure 10

#### Preferred changes for horizontal information sharing



Preferred changes as regards information sharing between civil society

The majority of the EU and Non-EU DAG respondents – 67 per cent (31/46) and 56 per cent (36/64), respectively – agree that there is genuine dialogue between DAG members. At the same time, genuine dialogue is the most demanded change as regards the functioning of Non-EU DAGs, at 52 per cent (38/73), and also ranks high for EU DAG respondents, at 34 per cent (16/47). This is an important call for improvements in the quality of dialogue. Constructive interaction among DAG members seems to be the main factor.

DAG members' wish for improved information exchange is also reflected in the fact that a (better defined) work programme is also very high on their wish list: for EU DAG respondents, it is the most preferred improvement related to functioning, at 51 per cent (24/47); for Non-EU DAGs, the work programme ranks second, at 41 per cent (30/73). At the moment, not all DAGs have clearly defined and up-to-date work programmes, which makes discussions less structured and productive.

- »There are no clear deliverables, no clear targets for a specific year.« (interview EU10)
- »We only have random meetings, and no follow up,... for instance, we're also part of another council, a progress-oriented organisation, it's a functional place, we have the chance to speak to the government on a regular basis, when we are mandated to work on this or that topic, we create a working group, we bring in experts, we exchange ideas, we come up with a position paper, we present it to the government and things are done. That's what I call a working process.« (interview NEU7)

#### **B4 DAG-to-DAG interaction is considered very useful. Most Non-EU respondents demand greater involvement of DAGs in the annual transnational civil society meeting.**

The majority of respondents want more interactions between the DAGs of particular agreements – to date, DAG-to-DAG meetings between the EU and partner countries' stakeholders have not been formally included in the agreements (except for the EU–Korea FTA), but have become a stable practice carried out once a year. This form of information exchange is considered especially useful in fostering the impact of DAGs. More concretely, 62 per cent (37/60) of Non-EU respondents and 68 per cent (28/41) of EU respondents think the interaction with DAG(s) of the partner country(-ies) has a positive effect on their own DAG's impact.

More involvement of the DAGs in the annual transnational civil society meeting therefore ended up high on the wish list of the Non-EU DAG respondents: 31 per cent (20/64) indicated this as a preferred change to increase the impact of the DAG. The open annual meetings – often called the Forum – as they are organised today are not considered very useful.

- »The DAGs don't have privileged space or recognition in the Forum, it does not allow for dialogue, it's just a series of questions and very formal answers.« (interview EU4)
- »It is important to institutionalise the DAGs' structure, to provide permanent coordination for communication and monitoring between the DAGs.« (open answer survey NEU)

#### Box 6

#### **Tensions, mainly between business and non-business participants, in attempting to reach joint conclusions**

An important obstacle to the DAGs' work surfaced in the case studies. In all three cases, the DAG-to-DAG meetings encountered significant difficulties as regards reaching joint conclusions because of disagreements between business and non-business DAG members on the content of the statements to be shared with the inter-governmental board. The conflicts mainly concerned the wording of statements on labour issues, as the positions of business actors (of Non-EU DAGs in particular) and of non-business actors diverge with regard to the level of ambition.

In Georgia, this situation has led to »tough discussions« (NEU5); it has also been described as a »painful process« (NEU7). The solution to the disagreements has been to include a disclaimer in the joint conclusions referring to the issues that are not supported by Georgian business DAG members.

Similarly, in Peru, the collaboration between the groups has been difficult and confrontational: »Every year we are faced with this Group 1, with whom it is very difficult to talk, they block the actions that we want to do« (EU4). In 2018, the Colombian and Ecuadorian employers group decided not to sign the joint statement: »we have

not achieved a joint statement, because we cannot reconcile many things with the business sector« (NEU5). Another interviewee explained that »Group 2 [trade unions] and 3 [NGOs] are not as strong in South America. Business is always taking a big part, changing all the documents.« (EU8).

In Korea, relations between employers and trade unions in the Korean DAG are rather hostile, making it difficult or even »impossible« (NEU2) for them to work together. Another interviewee confirmed that the atmosphere in the Korean DAG has »not been harmonious or peaceful« (NEU1). The main controversy concerns the labour obligations in the TSD chapter. Especially on the occasion of the last transnational meeting in 2018, when it came to deciding on the joint conclusions concerning the ratification and implementation of the core ILO conventions, in particular freedom of association and the incarceration of two Korean trade union members, »things became rather tense« (EU1). In the end, the Korean employers left the room and some academics were also not supportive, which meant that no common position could be concluded. A joint statement by the chairs of each DAG was presented to the intergovernmental board instead.



**B5 Vertical relations between governments and their DAGs are evaluated more negatively. Discussions with officials are much appreciated when they happen. However, DAG members demand more interaction, more information sharing and more interest from governments. Non-EU DAG respondents are particularly vocal about this.**

The majority of DAG members appreciate that the DAGs facilitated discussions with officials, as indicated by the achievements mentioned above. Most EU DAG respondents – namely 69 per cent (31/45) – consider the attendance of the European Commission at DAG meetings to be positive. In contrast, only 48 per cent (30/63) of Non-EU DAG respondents think similarly about their governments attendance at their DAG meetings, which is probably related to their concerns about DAGs' independence of government and less cordial relations between governments and civil society. There is also more variation in how these governments participate. For instance, in some cases government officials attend as members (Honduras), or preside over the meetings (Peru).

- »Relations between the DAG and the European Commission are good, the Commission comes to every DAG meeting, they report on progress, we tell them what we feel, regular dialogue, it is working well. The Commission is generally approachable I think... there is always room for improvement but I cannot say that the Commission isn't listening.« (interview EU9)
- »The government attends the DAG meeting but they do not engage. They present [their position], then stay for the whole meeting and monitor what is being said.« (interview NEU2)
- »The government has met with us but not to conduct real dialogue nor to take joint decisions.« (interview NEU4)
- »Relations with government officials are very limited, same goes for real decision-makers.« (open answer survey NEU)

Nevertheless, both EU and Non-EU DAG members want more from the vertical information exchange with the governments. The majority of respondents consider that there is insufficient interaction between governments and DAGs. Here we notice a difference, however, as the EU DAG respondents are more divided about this issue: 57 per cent (24/42) disagree with the statement that there is sufficient interaction between the European Commission and the DAG, whereas for the Non-EU DAG respondents 80 per cent (47/59) disagreed there is sufficient interaction with their national government, of which 44 per cent (26/59) strongly disagreed. These numbers show that the vast majority of DAG members want to interact more with their government.

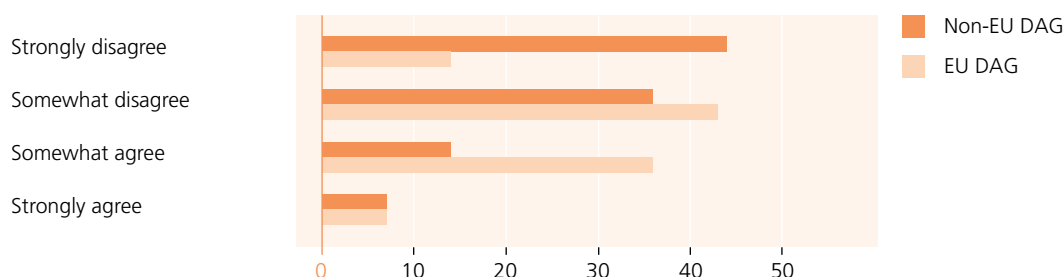
- »There has not been a real interaction between the DAG and the Commission, and the DAGs of the partner countries do not have resources and legitimacy from their governments, so all the effort and investment that is being made does not produce the desired impact.« (open answer survey EU DAG)

Moreover, both EU and Non-EU DAG respondents indicate that the government does not share sufficient information: 61 per cent (26/43) of EU DAG respondents and 64 per cent (39/61) of Non-EU DAG respondents disagree with the statement that the European Commission/own government shares sufficient information about the implementation of the trade agreement. Some 41 per cent (25/61) of Non-EU DAG respondents even strongly disagree with this statement, showing greater dissatisfaction than their EU counterparts. Consequently, more information sharing by governments has been indicated in the survey as a much-desired change to improve monitoring by both EU DAG respondents (43 per cent [19/44]) and Non-EU DAG respondents (32 per cent [21/65]).

- »Access to pseudo-information, because yes there is access to information but not really relevant [information]!« (open answer survey EU)

Figure 11

**There is sufficient interaction between the government and the DAG**



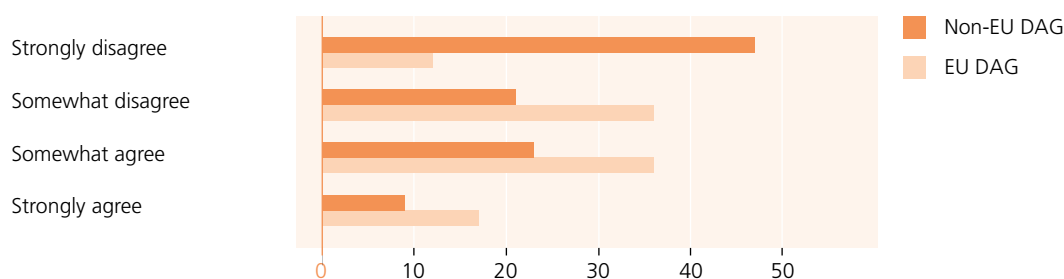
Response on statement concerning the interaction between DAG and European Commission/own government

Finally, the majority of Non-EU respondents perceive that their government is not interested in the work of the DAG. This explains criticisms of vertical dialogue with governments, but also the low government accountability (see below) and low policy impact. It also resonates with the finding that there is a risk that DAGs are convened merely for legitimising purposes. Some 68 per cent (39/57) of Non-EU respondents disagree with the statement that »the government is interested in the DAG’s work«, and 47 per cent (27/57) even strongly disagree. Accordingly, the change »more interest by own government in the DAG’s work« ranked high (34 per cent [22/65]) on the list of improvements for monitoring. The EU DAG respondents have mixed views on this issue: 52 per cent (22/42) agree that the European Commission is interested in their work, while 48 per cent (20/42) do not.

- »DAGs should be real interlocutors of the governments of the region and the EU. This is not the case because for the governments of both regions, the requirements of civil society are not important or significant. Governments are only interested in the requirements of the business sector.« (open answer survey NEU)
- »There is no interest from the government or parliament in this matter; the government carries out activities only to comply with protocols. It does not disseminate information and it is not interested in the participation of civil society; it is interested only in the economic aspect of the agreement, it does not care about the social. (open answer survey NEU)
- »It is necessary to improve the institutional system to reflect the results of open exchange of opinions, listening to the opinions of the advisory group and discussions.« (open answer survey NEU)

Figure 12

**The government is interested in the DAG’s work**



Response on statement concerning the interest of the European Commission/own government in the DAG’s work

Box 7

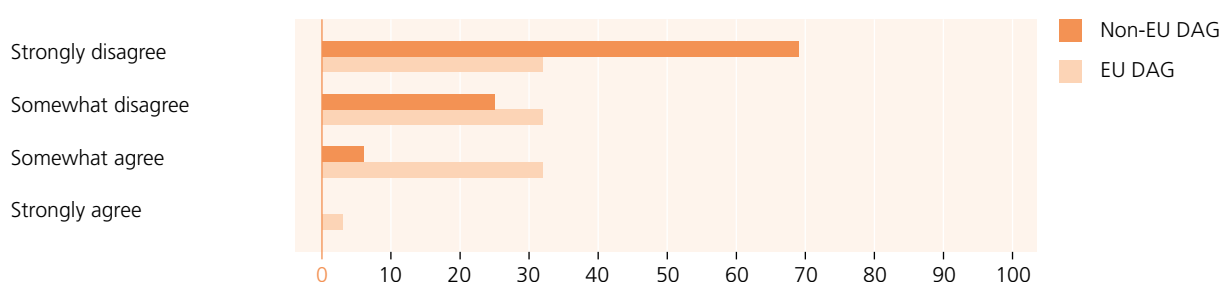
**Relations between the DAGs and their respective parliaments**

The European Parliament and the national parliaments of the different trade partners have to ratify the trade agreement before it enters into force (the FTAs are usually applied provisionally, awaiting the European Parliament’s ratification). In addition, parliaments – at least in the case of the EU – have been influential proponents of civil society in their endeavours to be more involved in trade policy and their quest for sustainable development. As parliaments traditionally have the power to hold governments accountable, they could therefore be important allies for DAG members.

Nevertheless, the parliaments have been remarkably absent concerning civil society involvement in the TSD chapter. Overall, DAG members consider that their parliament is not interested in the DAG’s work: 64 per cent (22/34) of EU DAG respondents and 94 per cent (49/52) of Non-EU DAG respondents indicate this. It is very explicit in the case of Non-EU DAGs, with 69 per cent strongly disagreeing that their parliament is interested in the DAG’s work. Consequently, the vast majority of respondents disagree that there is sufficient interaction between their own parliament and the DAGs: 84 per cent (30/36) of EU DAG respondents disagree (of which 53 per cent strongly disagree) and 91 per cent (52/57) of Non-EU DAG respondents (of which 70 per cent strongly disagree).

Figure 13

**The parliament is interested in the DAG’s work**



Response on statement concerning the interest of the European/own parliament in the DAG’s work





That being said, the European Parliament has been involved in the follow-up of the implementation of FTAs and their TSD chapter, for instance through diplomatic missions, oral and written questions to the Commission and resolutions. They have also put pressure on the European Commission to increase trade partners' compliance with the commitments made in the TSD chapter. For instance, the European Parliament's request to trigger the dispute settlement mechanism in the EU–Korea FTA played a crucial role in this process. It has also organised hearings and listened to Non-EU DAG members, which has been evaluated positively. There is, however, no institutional dialogue between the DAGs and the European Parliament:

»it's still formal-informal in a way, they sometimes take part in the meetings as observers, but their participation is not mandated by any decision.« (EU1)

In the trade partners covered in the case studies, no interviewees were aware of existing links between the DAGs and their national parliament: »I don't think they know we exist.« (NEU2)

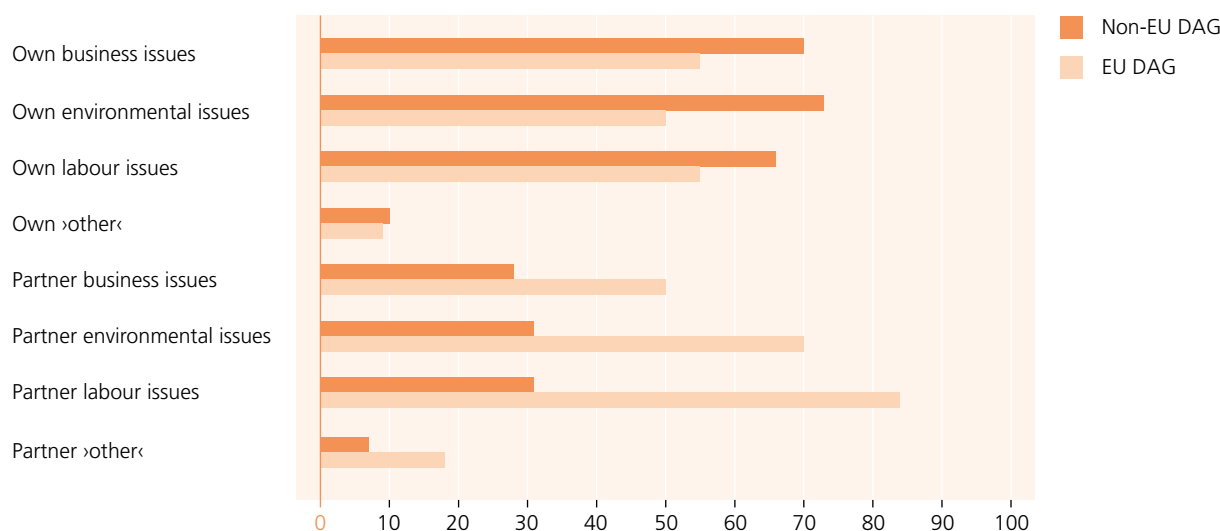
A more institutionalised dialogue between these potential allies could be beneficial in terms of information exchange, monitoring and, ultimately, policy impact.

**B6 The impact of the trade agreement on sustainable development is discussed in the DAG meetings, but most discussions evolve around the situation in partner countries.**

Table 5 shows how »Impact of the trade agreement on sustainable development issues' is the main topic discussed in the EU DAGs, although it also ranks very high for Non-EU DAGs. The fact that both EU DAGs and Non-EU DAGs rank the impact of the FTA as so important is a testament to the DAGs' ability to serve as platforms for information exchange. Side issues such as logistics, DAG membership and rules of procedure also take up much of the limited time in DAGs' meetings, however.

In the EU DAGs, most attention is given to labour issues outside the EU (see Figure 14). This shows, on one hand, that labour issues are not being swept under the rug, as some have feared. On the other hand, in some cases labour issues tend to dominate the agenda, which can be at the expense of other sustainable development issues. This importance given to labour issues can be explained by the high level of organisation, institutionalisation and motivation of EU and Non-EU trade unions to use the DAGs as a platform to advocate for improved labour conditions, while environmental organisations are less active on trade issues in the EU and indeed are often underrepresented in the DAGs. In addition, even though the scope of the TSD chapter is quite broad (and in the latest EU FTAs the scope of the DAGs' monitoring role has been expanded to the whole agreement), the time provided for discussing these matters is very limited.

Figure 14  
**Sustainable development issues discussed**



Sustainable development topics discussed in the DAGs

Nevertheless, some respondents expressed a wish to focus more on economic issues during the meetings.

- »Almost no business opportunities have been discovered in recent years, no new direct business cooperation was highlighted.« (open answer survey EU)
- »In my view, all negotiations of the DAGs should result in tangible/concrete business outcomes, specific

business cooperation, FDI, high level education exchange, advice on EU standards in energy, climate change and environmental issues. This is all needed to establish a better level playing field for the parties, to create new jobs or at least job opportunities, clearly demonstrating for the other side why this cooperation is much needed.« (open answer survey EU DAG)

We see that, across the board, the discussions are heavily centred on the situation in the partner countries, while the impact of the agreements on the EU itself (and potentially unsustainable practices within the EU) remain largely un-addressed. Trade partners such as South Korea and Canada have already shown their interest in also discussing EU issues, such as labour conditions in certain EU member states, which could give a new turn to the content of these DAGs.

### 2.3 CAN THEY OVERSEE?

Box 8

#### Main takeaways concerning the monitoring purpose

- Monitoring is the key purpose for DAG members, mirroring the European Commission’s discourse. However, it has not materialised. (C1)
- DAG members don’t have sufficient resources to monitor. (C2)
- Governments’ limited accountability constrains the DAGs in playing their monitoring role: there is no feedback loop between DAGs and their governments and governments do not sufficiently follow up on DAGs’ input. (C3)
- This accountability deficit also occurs at transnational level. Nevertheless, Non-EU DAGs appreciate the potential leverage enabled by the European Commission and EU DAG. (C4)

Monitoring is ranked as the purpose of the civil society meetings to which both the EU and Non-EU DAG respondents aspire above all (Table 7). Thus, while not all of them aim to have (direct) policy impact, DAG members nonetheless are in favour of a direct and accountable dialogue with policy-makers that goes beyond (occasional) information exchange. The DAGs are generally capable of providing quality recommendations to policy-makers. Most respondents evaluate the expertise of the DAG members as adequate for DAG monitoring. Some 93 per cent (40/43) of EU DAG respondents are convinced that their expertise has a positive effect on monitoring (of whom 30 per cent are extremely positive). Non-EU DAG are also positive, albeit to a lesser extent, at 74 per cent (44/59).

The monitoring purpose is ranked only sixth (EU DAGs) and fourth (Non-EU DAGs), respectively, as the actual purpose of the meetings. This mismatch between expectations and implementation with regard to the purpose of the meetings and the role of civil society was expressed explicitly by several respondents:

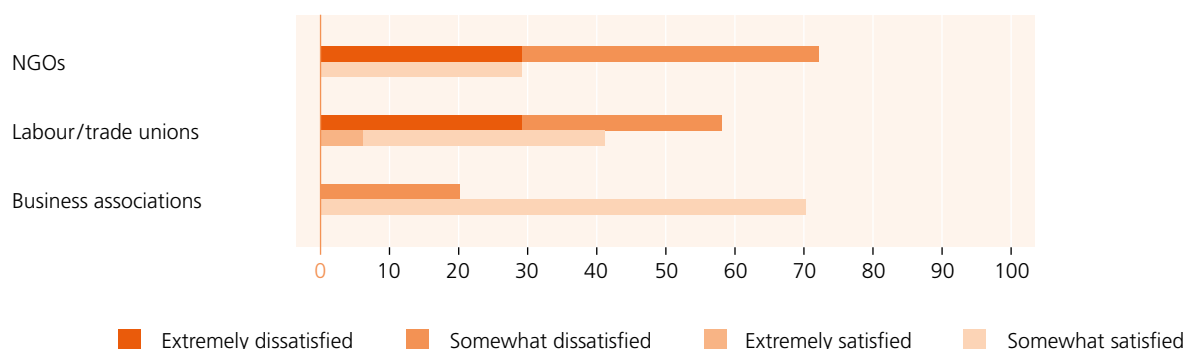
- »DAGs should have a clearly defined role in monitoring the agreement; but they are so far only a talking shop without any political relevance (not even regarding TSD questions!). If there was this clear role, then the DAGs could serve as a contact point for problems/violations of standards etc.« (open answer survey EU)
- »The DAGs must be recognised by governments as advisers on the implementation of the trade and sustainable development chapter of trade agreement, otherwise, they are only an adornment.« (open answer NEU)

Accordingly, the majority of the respondents is not satisfied with the DAG monitoring. Similarly to the evaluation of the DAG functioning, business respondents in both EU and Non-EU DAGs are more positive than non-business respondent (trade unions and NGOs) (see Figure 15 and 16).

#### C1 Monitoring is a key purpose for DAG members. However, it has not materialised

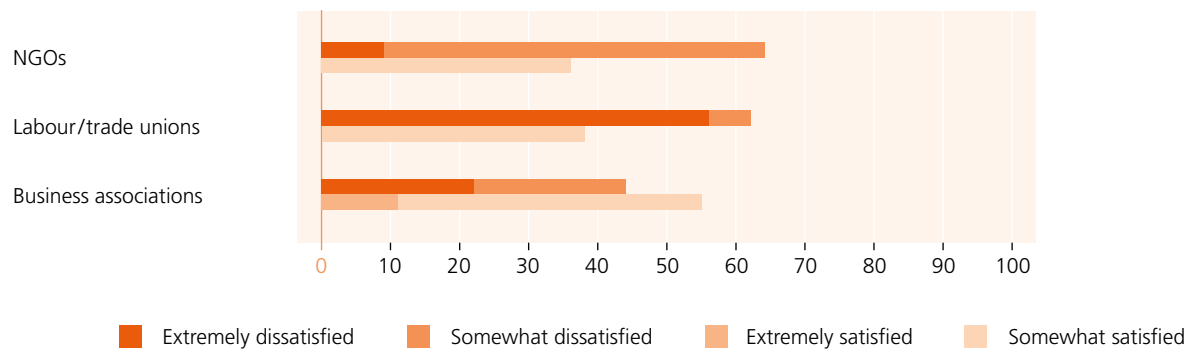
Figure 15

#### EU DAGs: Satisfaction with monitoring by subgroup



Satisfaction EU DAG respondents per group with DAG monitoring

Figure 16  
**Non-EU DAGs: Satisfaction with monitoring by subgroup**

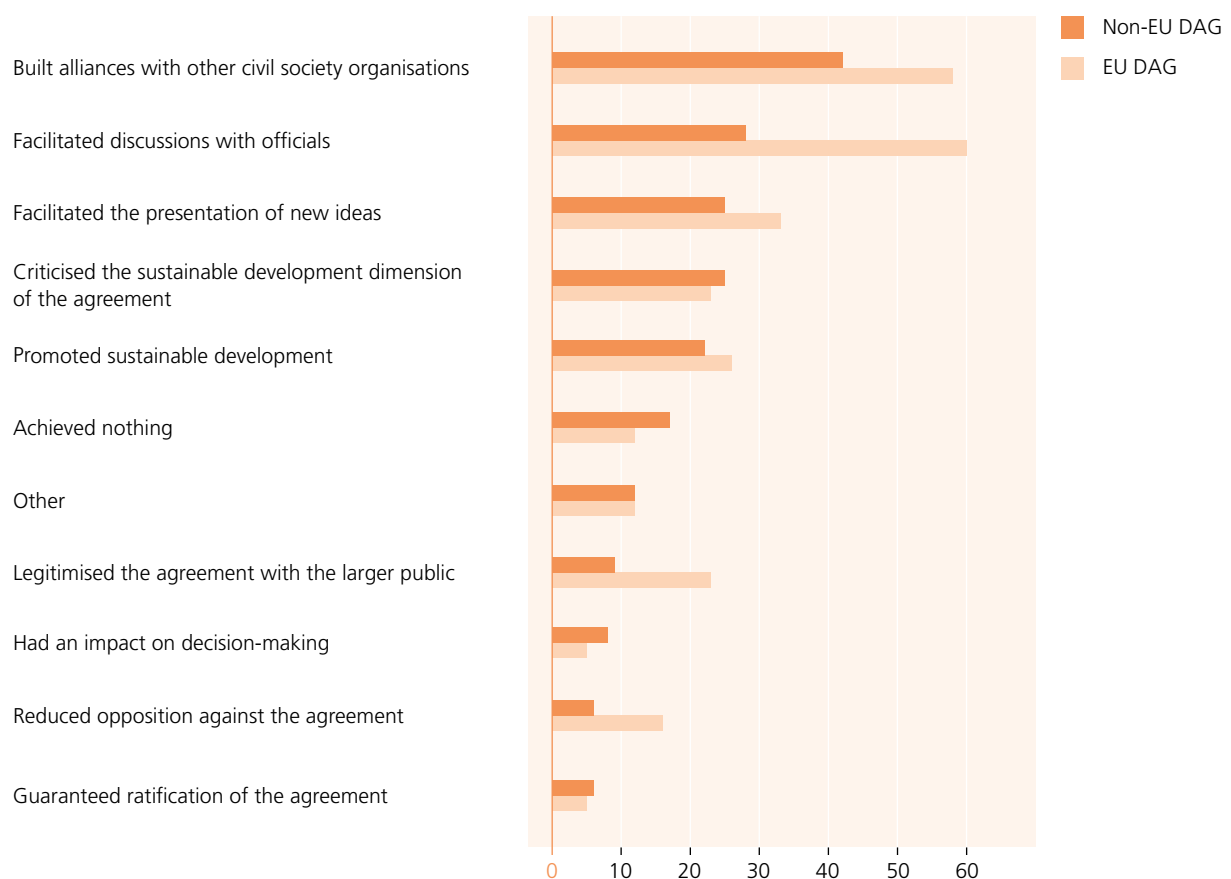


Satisfaction Non-EU DAG respondents per group with DAG monitoring

Accordingly, the achievements related to the monitoring role do not score very high (see Figure 17). ›Promoted sustainable development‹ is in fourth place (EU DAGs, 26 per cent [11/43]) and fifth place (Non-EU DAGs, 22 per cent [14/65]), whereas ›criticised the sustainable development

dimension of the agreement‹ was ranked sixth (EU DAGs, 23 per cent [10/43]) and fourth (Non-EU DAGs, 25 per cent [16/65]). Below, we discuss the most important obstacles in the way of the DAGs playing a greater monitoring role in the FTAs.

Figure 17  
**DAG achievements**

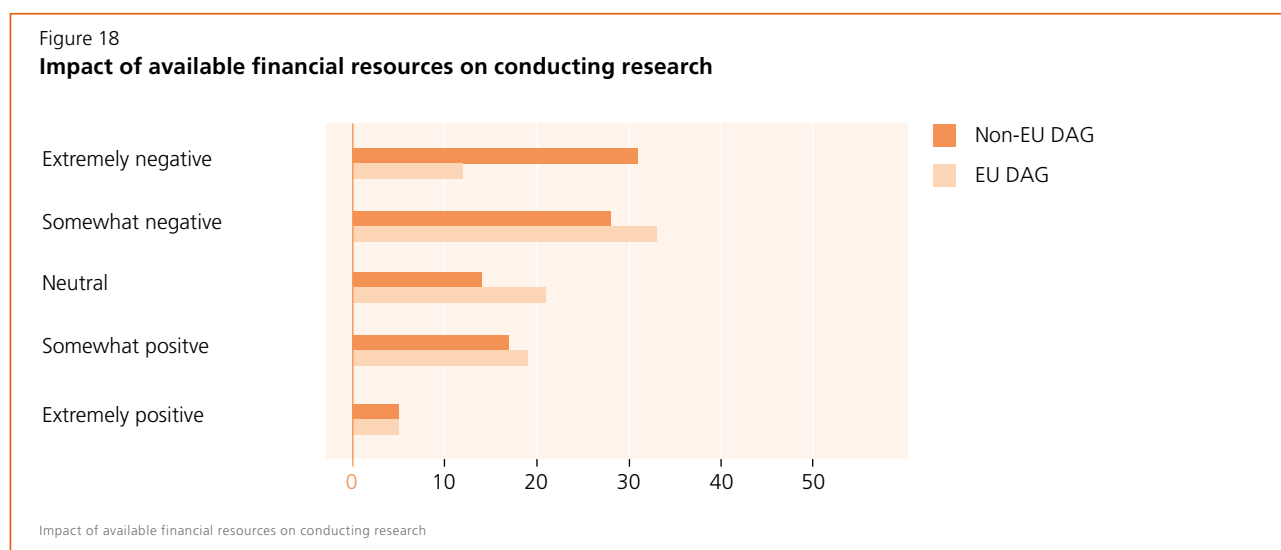


Achievements of the DAGs

**C2 DAG members don't have sufficient resources to monitor adequately.**

The limited financial resources available for conducting research are considered to have a very negative impact on the monitoring role of the DAGs, both in the EU and outside. Some 44 per cent (19/43) of the EU DAG respondents indicated this, and 62 per cent (38/61) of the Non-EU DAG respondents, of whom 33 per cent were extremely negative. In line with these results, more financial resources for conducting research are important aspired-to changes for EU DAGs (36 per cent [16/44]) and Non-EU DAGs (54 per cent [35/65]).

It should be noted that the complaint concerning the lack of resources is stronger for Non-EU DAG respondents. We should recall that, even though DAG-related activities are in the line of work of the members, both EU and Non-EU DAG members perform their functions voluntarily. While EU organisations have, on average, relatively more resources than most partner country representatives – which also explains the differences in assessment – all civil society organisations need to prioritise their activities and, given the DAGs' limited policy impact, they are often not their highest priority.



- »The biggest problem for civil society organisations as regards participating actively and constructively in DAGs is very often the lack of resources, especially the lack of people in organisations who work on trade issues and who could follow various trade agreements.« (open answer survey EU)
- »Resources are required to improve the investigation of the impact of agreement and from there improve the recommendations.« (open answer survey NEU)
- »Monitoring is the result of research, which is expensive and difficult to carry out.« (interview NEU5)

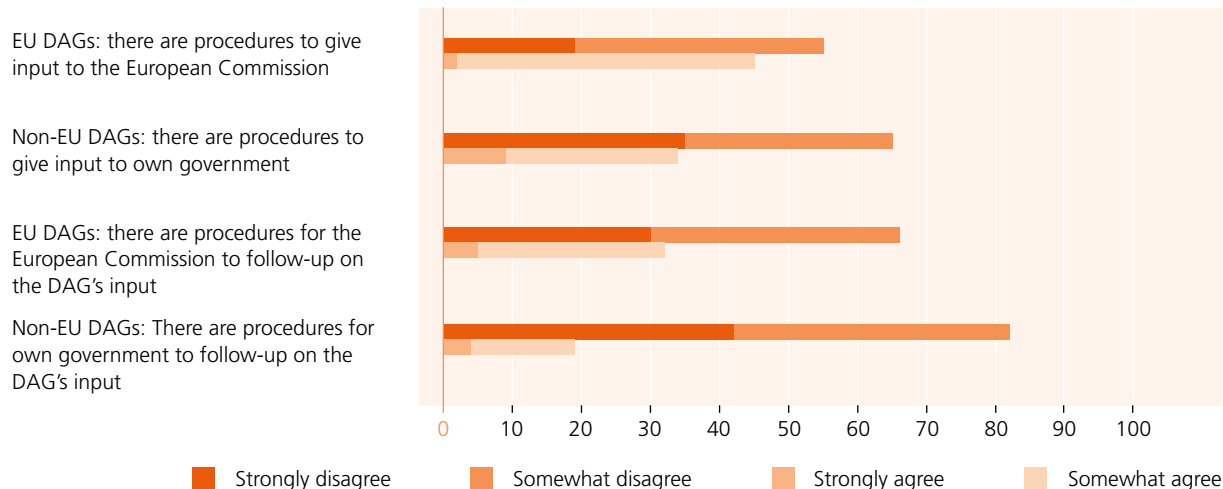
**C3 An accountability deficit persists: there is no procedural feedback loop between DAGs and their governments. In addition, governments do not sufficiently follow up on input provided by DAGs.**

Given the difficulties in vertical information sharing between DAGs and their governments discussed above, it is indeed not surprising that there are issues concerning government accountability.

The accountability deficit has two main elements: the lack of established procedures to provide input to and receive feedback from the governments, and the lack of follow-up by governments. In other words, while the DAGs want to raise concerns, there are no dedicated procedures to formalise this input. In addition, there are no clear procedures for governments to consider such input, incorporate it into policy-making, and report on the decisions made. Because such procedures are lacking, follow-up depends on the goodwill of government officials. There is no predictability or continuity of engagement at the government level, and recommendations may easily fall into the void, obliging DAGs to issue basically unchanged statements year after year.

Figure 19

**Procedural feedback loop**



Response on statements concerning the existence of a procedural feedback loop between DAGs and their governments

The data shows that both EU and Non-EU DAGs do not see properly defined procedures (see Figure 19): respondents disagree whether procedures exist for providing governments with input (EU DAG respondents: 55 per cent [23/42]; Non-EU DAG respondents: 65 per cent [37/57]). They also disagree whether procedures exist for governments to follow up on DAG input (EU DAG respondents: 68 per cent [25/37]; Non-EU DAG respondents: 81 per cent [43/53]). The situation is worse outside the EU, but the European Commission is also criticised for the same reason.

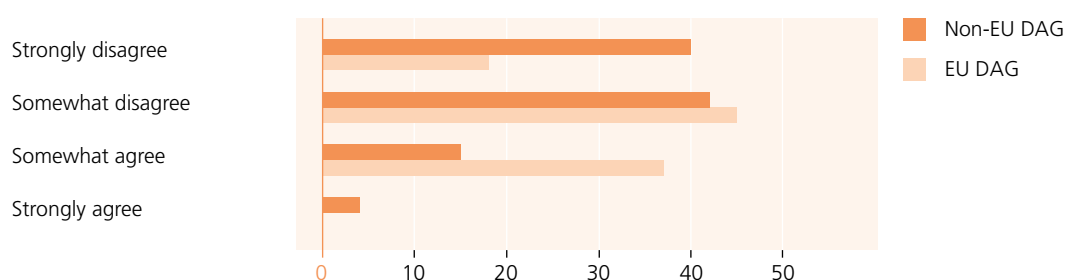
- »A strict follow-up session should take place at each DAG session, focusing on whether any step was taken based on the above lists, and government and Commission representatives have to be invited to explain or look into reasons for failure.« (open answer survey EU)
- »A better (quicker, clear procedures, powerful instruments) and obligatory follow-up process for the violations raised by the DAG for EU institutions and partner-countries is necessary. It has to be clear and transparent what happens if a violation is confirmed: mere ›dialogue‹ is so meaningless and seems to change nothing.« (open answer survey EU)

- »I would like them to have more competences, other instruments, other possibilities to act, not only to send these letters that can be left unanswered.« (interview EU4)
- »The DAGs should be an instrument of accountability for trade early reviews and subsequent reviews. DAG work should also be shared with parliament and parliamentary committees responsible for the oversight of trade agreements.« (open answer survey NEU)

In addition, governments do not follow up on DAGs' recommendations, according to many respondents, which has a negative impact on the DAGs' work. As a result, both EU and Non-EU DAGs put a high priority on improving the process of giving feedback and holding governments accountable. More concretely, the majority of respondents disagreed that governments follow up on the input provided by DAGs (EU DAGs: 63 per cent [24/38]; Non-EU DAGs: 82 per cent [45/55], of which 40 per cent strongly disagree). This lack of follow-up has a negative impact on the DAGs' work, according to many respondents (EU DAGs: 48 per cent [19/40], Non-EU DAGs: 48 per cent [27/56], of which 27 per cent are extremely negative).

Figure 20

**Own government / European Commission follows up on DAG input**



Response on statement concerning the follow-up of European Commission / own government on DAG input

- »The European Commission is willing to provide info, but when it comes to the final result we're still waiting, they attend the meetings, they provide info, they create workshops, they facilitate meetings with counterparts, the EU Delegation is also working very well, but then when we present the final declaration, the results of work of the year or several years, they don't have capacity to provide an answer or a follow-up, that's the pity. Yes, they are committed to the DAGs but just to be able to say, yes we have a DAG, that's done.« (interview EU8)
- »DAGs can provide research assistance, and should be consulted by officials in a true advisory role – not just receiving updates. Officials could take notes on the key takeaways/points of advice from DAGs and recap on this at each meeting. Officials also keep DAGs as informed as possible about updates so there is relevant info to work with.« (open answer survey NEU)
- »We need really a strong commitment from the Commission. If we send a document, we need to receive an answer; that is not the case now.« (interview EU1)

When looking into the preferred changes for improving the impact of the DAGs, Non-EU DAG respondents ranked »more accountability of own government« as their most preferred change (38 per cent [24/64]) (see Figure 28). Similarly, 37 per cent (16/43) of the EU DAG respondents wish for »a better follow-up by the European Commission on the DAG's input«.

**C4 The accountability deficit also occurs between the DAG-to-DAG meetings and intergovernmental boards. Nevertheless, Non-EU DAGs appreciate the potential leverage that is enabled by the European Commission and EU DAGs.**

Both EU and Non-EU DAG respondents lament the lack of follow-up by their governments on the joint statements issued during the annual transnational meetings. Nevertheless, as indicated above, the DAG-to-DAG meetings and their joint statements are considered to be very important, especially by the Non-EU DAG members. The connections they have with the EU DAG and the European Commission, which is increasingly willing to meet with Non-EU civil society, are considered highly useful leverage in advocating for

policy changes when their own governments are not accessible or do not follow up on their input.

- »I believe that without the exchange with the EU DAG, the Korean DAG has no role, because without this exchange or forum, the Korean government isn't willing to meet us and to listen to us.« (interview NEU2)
- »I think these changes come very much from this international encouragement, the government is much more responsible when it comes to international recommendations than national ones, so it's a very good way to encourage government to make changes.« (interview NEU5)

**2.4 CAN THEY INFLUENCE?**

Box 9

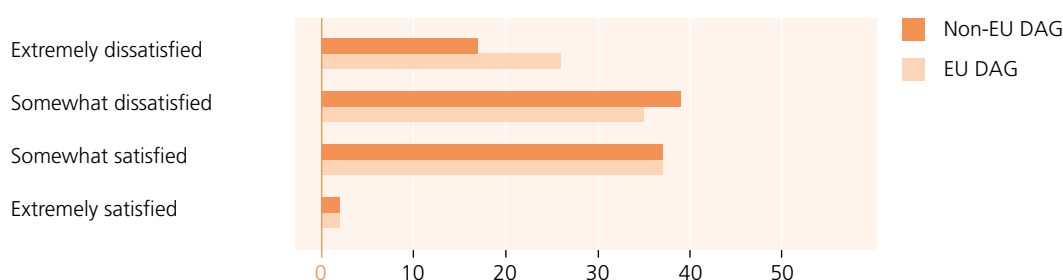
**Main takeaways concerning the policy-impact purpose**

- ➔ The DAGs' influence is very limited. This is an important source of dissatisfaction for their members. (D1)
- ➔ Governments do not act upon the recommendations of the DAGs, which is the major cause for the little impact in the DAGs have on decision-making. (D2)
- ➔ The non-enforceable nature of the TSD chapter limits the DAGs' potential policy impact. However, not all respondents agree on the need for sanctions and views on the enforceability of sustainable development commitments tend to be polarised. (D3)
- ➔ Especially EU DAG members wish to have the capacity to trigger the dispute settlement mechanism. However, there is little confidence that the current dispute system can make a difference. (D4)

**D1 The DAGs have very limited impact on decision-making, which is a major source of dissatisfaction for their members.**

Given what we have already learned about numerous logistical, communication, accountability and other difficulties affecting the DAGs, it is not surprising that their policy impact has been very low. Accordingly, the majority

Figure 21  
**Satisfaction with impact**



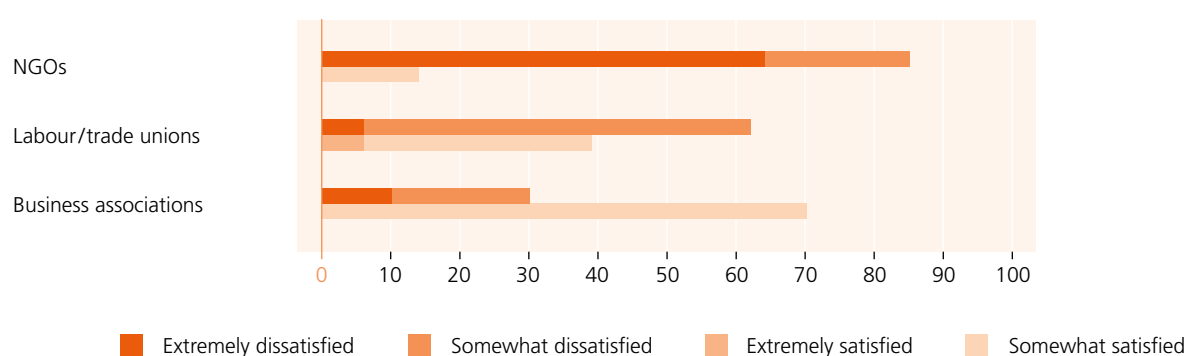
Satisfaction with the impact of the DAGs



of respondents are dissatisfied with the impact of DAGs (EU DAGs: 61 per cent [26/43]; Non-EU DAGs: 56 per cent [36/64]). Nevertheless, when looking at the evaluation across the different interest groups, business respondents are – in line with their position on the DAG functioning and monitoring – more satisfied than their non-business colleagues (trade unions and NGOs), both in the EU and Non-EU DAGs.

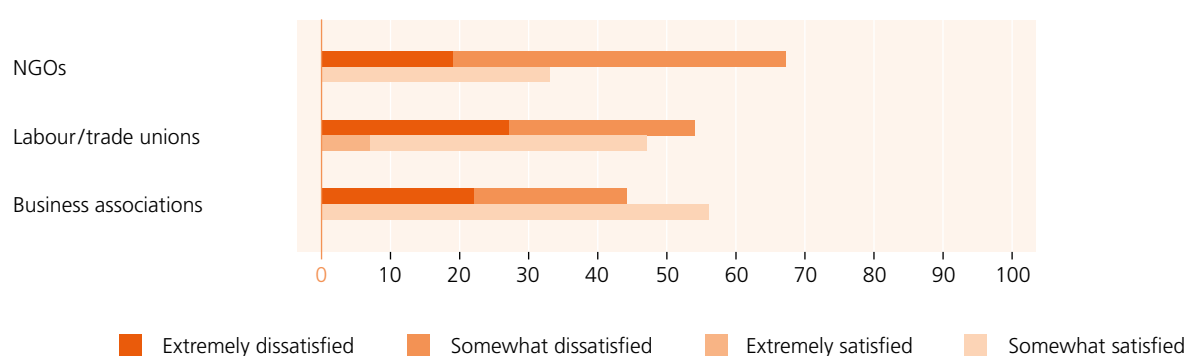
- »It has not achieved anything concrete.« (open answer survey NEU)
- »It has allowed space for dialogue, but none of the criticisms of the agreement have had an impact.« (open answer survey NEU)
- »The DAG has met frequently and works, but has had no significant impacts to date.« (open answer survey NEU)
- »I'm very critical of the DAGs because, in the end, we spent a lot of time talking and writing letters but in the end we got nothing.« (interview EU8)

Figure 22

**EU DAGs: Satisfaction with impact by subgroup**

Satisfaction EU DAG respondents per group with DAG impact

Figure 23

**Non-EU DAGs: Satisfaction with impact by subgroup**

Satisfaction Non-EU DAG respondents per group with DAG impact

**D2 Governments do not act upon DAG recommendations**

While most DAGs have by now spent years discussing the implementation of commitments made in the TSD chapter, little can be shown in terms of tangible results of these meetings. In line with governments' limited accountability, they also do not act upon DAGs' recommendations. Most DAG members observe little impact at present and wish to have more policy impact in the future (see Figure 17). Only five per cent (2/43) of the EU DAG respondents and 8 per cent (5/65) of the Non-EU DAG respondents indicated that

the DAGs have had an impact on decision-making. More respondents believe the DAGs have achieved nothing (EU DAGs: 12 per cent; Non-EU DAGs: 17 per cent).

- »So far the DAG seems to be a purely formal space for national governments, without any of the opinions on the agreement being taken into account.« (open answer survey NEU)
- »Governments do not take DAGs into account; it is more of an obstacle that must be tolerated, and they try to be as inactive and ineffective as possible.« (open answer survey NEU)

- »It's not yet clear how the DAGs can actually be used as an accountability tool of the trade agreement.« (open answer survey NEU)
- »There was no real impact. European Commission and DAG interactions only serve for the legitimization of EU trade policy, it does not guarantee sustainable development: all violations on the TSD chapters raised only had a pseudo-follow up by the EU-Commission without any larger impact.« (open answer survey EU)
- »The set-up doesn't allow [DAGs] to have a big impact on policy making... We recognise that it is good to have civil society meetings, but they need to be optimised to have greater impact.« (interview EU10)

The case studies in this report provide some examples in which the DAGs did contribute to policy changes. Nevertheless, they are often one of a number of channels used to advocate for sustainable development issues and it is difficult to isolate a DAG's impact.

#### Box 10

#### Policy impact of the DAGs on Georgian labour code reform

Protection of labour rights remains very weak in Georgia, both at the practical and the legislative level. Labour legislation reform has been advocated by civil society for years. Some progress has been achieved in 2020, with new legal provisions set to be adopted soon, introducing such measures as protecting female workers against discrimination, protection for minors, and further strengthening labour inspection.\* Additionally, improvements are already observable in such areas as occupational health and safety legislation, as well as the creation and gradually expanded mandate of the labour inspectorate (interview EU2; NEU5). However, labour rights protection remains insufficient and faces strong business opposition, also within the DAG.

One actor that has consistently advocated for improvements in labour rights has been the Georgian DAG, together with their EU counterparts. Indeed, there is a significant overlap between the recommendations of both DAGs and the content of the labour reform. At the same time, any direct influence of the Georgian DAG is difficult to identify. The Georgian government receives DAG recommendations, but does not – or rarely – act upon them. In this regard, one of the suggestions from civil society was the appointment of a paid DAG employee who would ensure follow-up of its documents and put pressure on the authorities. This is because currently dialogue between the Georgian government and civil society is very occasional and formalistic and does not touch on the problems raised by the DAG (NEU5).

At the same time, the Georgian government is much more receptive towards recommendations from international organisations, the European Union in particular. Pressure on the side of the European Commission has been one of the key factors in reforms to date (EU2). Labour reforms have been advocated not only by the EU but also by the International Labour Organization, Eastern Partnership Civil Society Forum (a coalition of civil society organisations established on the initiative of the European Commission, whose Georgian National Platform has more resources than the DAG, as well as

memoranda of understanding with Georgian government and parliament), and other actors. They have been discussed in the Georgian tripartite commission and in other forums. The actions of various actors are generally complementary. As a result, the DAG, which is not particularly visible in the Georgian context, is only an additional platform (NEU3; NEU5).

Moreover, under the association agreement itself, the TSD chapter is not the only part containing provisions on labour rights. In particular, Article 354 in Part III of the agreement (Economic Cooperation) refers to Annex XXX, obliging Georgia to implement a substantial list of items in the EU *acquis communautaire* related to employment, social policy and equal opportunities, and including several Council Directives on occupational health and safety, as well as equal treatment in employment and occupation (AA 2014). As a result, occupational health and safety is also discussed in the Civil Society Platform created under the AA, which discusses the implementation of the agreement as a whole, and it is difficult to separate the impact of the Platform and the DAG (EU2; NEU5). In turn, the strengthening of labour inspection could be linked mainly to the ILO Conventions referred to in the TSD chapter, although it is also mandated in the EU-Georgia Association Agenda. In fact, for a long time, labour inspection was concerned only with occupational health and safety issues, which is part of the mandatory *acquis*. It was criticised by the Georgian and EU DAGs for this reason.\*\*

\* OC Media, Sweeping labour reforms go ahead in Georgia despite opposition from business groups. Available at: <https://oc-media.org/sweeping-labour-reforms-go-ahead-in-georgia-despite-opposition-from-business-groups/>.

\*\* Conclusions of the 4th joint meeting of the European and Georgian Domestic Advisory Groups within the EU-Georgia Association Agreement, 2019; Emerson, M. and Kovziridze, T., eds., 2018. Deepening EU-Georgian Relations: What, why, and how? Brussels, Tbilisi, London: CEPIS, Reformatics, Rowman & Littlefield International; Tchanturidze, G., 2018. Abolition of Labour Inspection in Georgia. Tbilisi: Friedrich-Ebert-Stiftung.

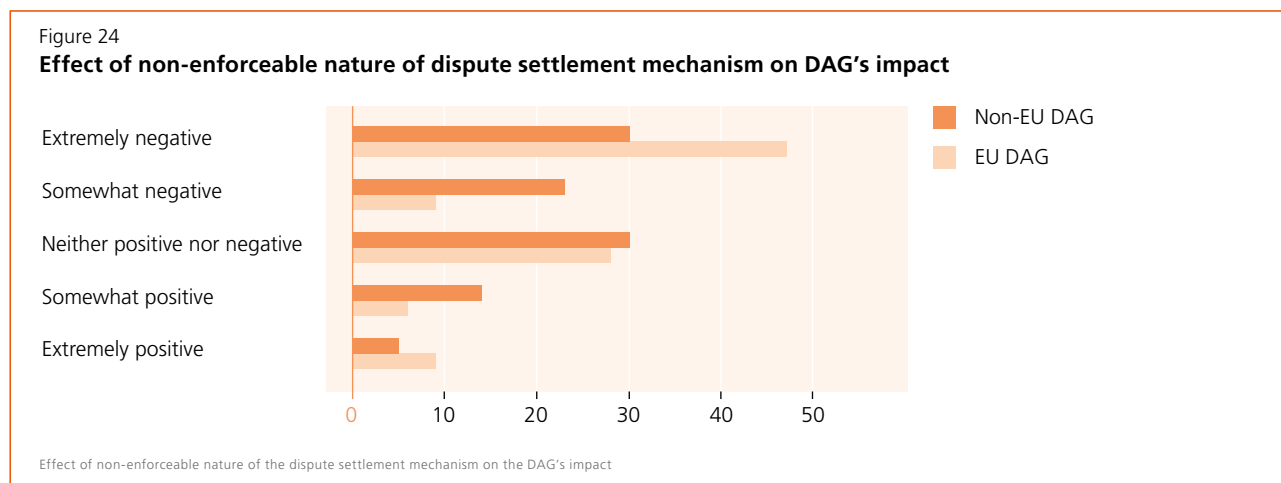
### D3 The non-enforceable nature of the TSD chapter limits the DAGs' potential policy impact. Not all respondents agree on the need for sanctions, however.

The enforceability of the sustainable development commitments has been much debated as regards both the implementation of the TSD chapter and its consequences for the DAGs. At the moment, parties cannot be sanctioned for violating trade and sustainable development provisions.

Unlike the rest of the agreement, TSD chapters are subject to a specific dispute settlement mechanism, which foresees government consultations and potentially the convening of a panel of experts, but no sanctions. The DAGs' role in dispute settlement varies slightly, but none of them play an influential role or can automatically trigger the procedure. The majority of respondents perceive the non-enforceable nature of the dispute settlement mechanism to have a negative effect on DAGs' impact (EU DAG: 56 per cent [18/32]; Non-EU DAG respondents: 53 per cent [23/44]).

- »The non-binding nature of the recommendations means that there is no greater interest from the government and makes it difficult for the DAGs to influence.« (open answer survey NEU)
- »DAG’s main purpose should be to allow civil society organisations to intervene in and contribute to changing policies. The problem is related to the voluntary

- approach in the sustainable chapter, where there isn’t any useful provision or binding mechanism to protect human and environmental rights.« (open answer survey EU)
- »We lack the means for complaints about breaches of the agreement to be verified by the authorities.« (open answer survey NEU)



A substantial proportion of respondents are in favour of introducing sanctions to enforce the TSD chapter. The »possibility to enforce sustainable development commitments through sanctions« is one of the preferred changes aimed at improving the DAGs’ impact, selected by 33 per cent (21/64) of EU DAG respondents and 28 per cent (12/43) of Non-EU DAG respondents. Nevertheless, not all respondents subscribe to the idea that there should be a stick to enforce the TSD commitments. The majority of »extremely negative« answers is remarkable, showing a relatively high degree of polarisation, especially in the EU. In addition, a closer look at the number shows that only non-business respondents (both EU and Non-EU) responded with »extremely negative«, showing that there is a discrepancy between business and non-business on this issue (see Figure 25 and 26).

- »It should not be a forum to present disputes, but rather to support governments in implementing practices that facilitate making sustainability an integral part of trade.« (open answer survey NEU)
- »If you know that there are breaches or a situation is getting out of hand, you report the problem to the institutions, and you hope that this is taken up by the institutions. After reporting, for me, it’s the highest level you can have. You should stop there. It’s for the government to take action. Sometimes there is a variation between what CS has identified and what government chooses to work on.« (interview EU9)

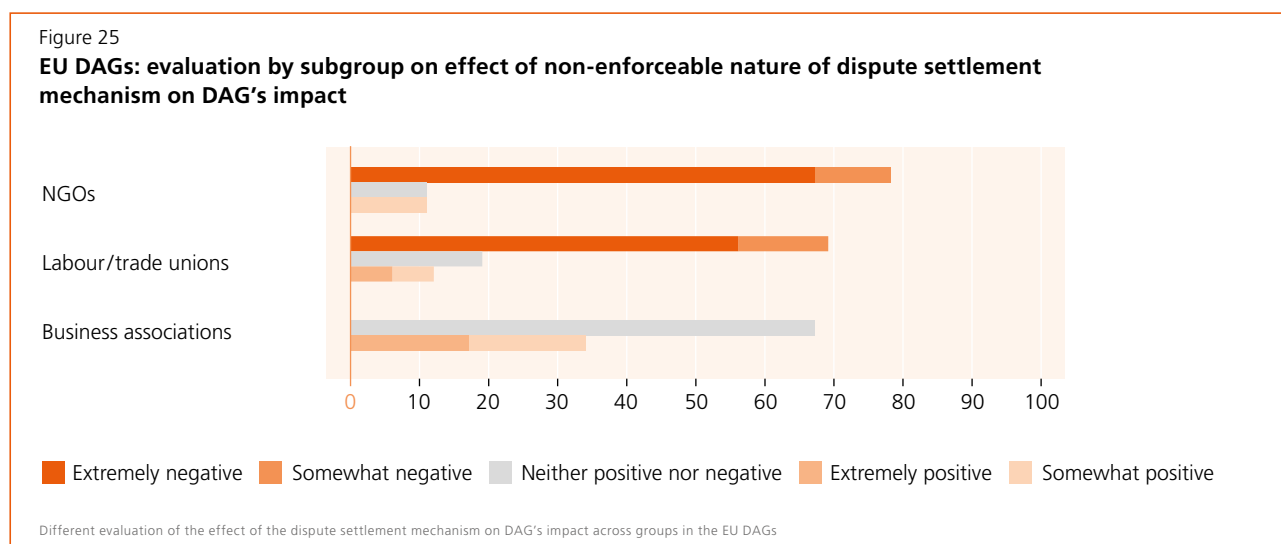
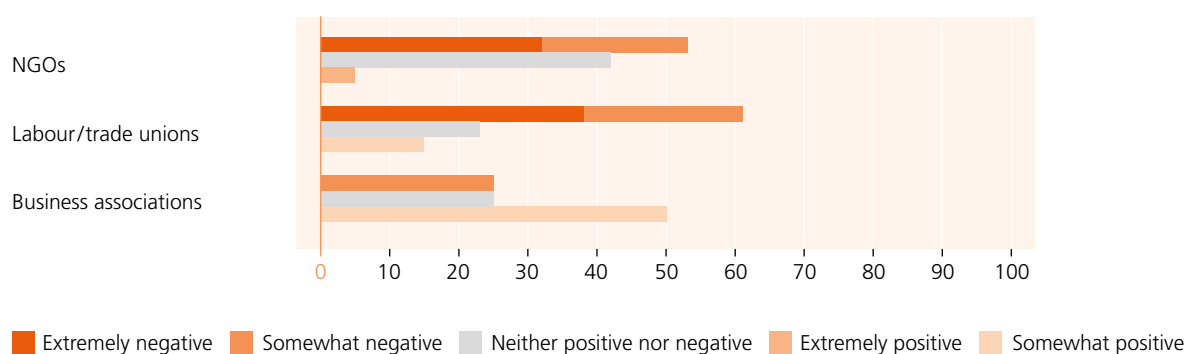


Figure 26

**Non-EU DAGs: evaluation by subgroup on effect of non-enforceable nature of dispute settlement mechanism on DAG's impact**



Different evaluation of the effect of the dispute settlement mechanism on DAG's impact across groups in the Non-EU DAGs

**D4 Especially EU DAG members wish to have the capacity to trigger the dispute settlement mechanism. However, there is little confidence that the current dispute system can make a difference.**

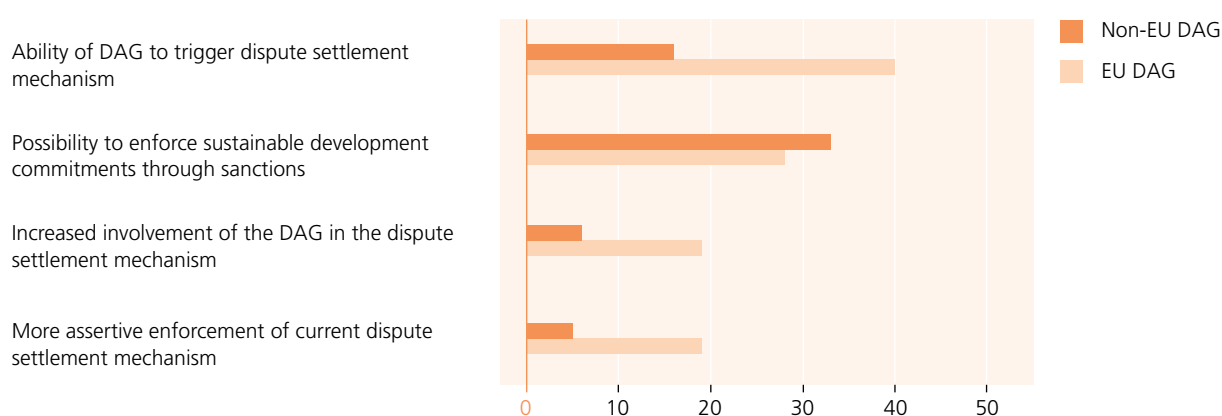
The most favourite change to improve DAG impact of EU DAG respondents (40 per cent [17/43]) is to be able to trigger the dispute settlement mechanism. There is, however, little interest in increasing involvement in the current dispute settlement mechanism (EU DAG: 19 per cent [8/43]; Non-EU DAG: six per cent [4/64]), or in enforcing

the current dispute settlement mechanism more assertively (EU DAG: 19 per cent [8/43]; Non-EU DAG: five per cent [3/64]). The debate on the dispute settlement mechanism seems to be less intense or polarised than the one on the enforceability of the TSD chapter.

■ Involvement in review processes (enforceability provisions) should be a purpose of the DAGs.« (open answer survey EU)

Figure 27

**Preferred changes for DAG impact related to the enforceability of the TSD chapter**



Preferred changes to improve DAG impact related to the enforceability of the TSD chapter

Figure 28 shows an overview of the preferred changes to improve the impact of the DAGs. Given the 'ladder of inclusiveness' and the need to fulfill the instrumental, information sharing and monitoring steps before reaching the final one on policy impact, some of the favourite changes

put forward are related to these other steps. This table helps to put the desired changes concerning the enforceability of the TSD chapter into perspective, illustrating their importance for the EU DAG respondents.

Figure 28

**Overview of preferred changes for improving DAG impact**



Overview of preferred changes for improving DAG impact

Box 11

**The first dispute settlement to be triggered: the EU-South Korea case**

The EU-South Korea trade agreement is the first and to date the only FTA regarding which a dispute settlement mechanism has been triggered under the TSD chapter.

Korea has not ratified four out of eight fundamental ILO Conventions, dealing with the right of association, collective bargaining and forced labour, and has imprisoned trade union members and leaders. In view of this, in 2014 and 2016, the EU DAG sent two letters to the EU's trade commissioners De Gucht and Malmström, demanding that they instigate intergovernmental consultations. It did not prompt immediate action by the commissioners, however, despite the progressively deteriorating situation in Korea. Only after the European Parliament adopted a resolution in 2017 urging the Commission to launch formal consultations did the Commission proceed with the dispute settlement procedure.

The procedure has proved lengthy and, so far, inconclusive. Moreover, the ITUC, the ETUC, the International Federation for Human Rights and subsequently the EESC have criticised the EU for limiting the list of breaches it aims to address through the dispute settlement procedure. The EU formally requested consultations in December 2018. They took place in January 2019, but «unfortunately, the consultations did not lead to the matters being satisfactorily addressed and thus failed to settle all the issues raised by the EU». Therefore, in July 2019, the EU requested the establishment of a Panel of Experts. The Panel started its work on 30 December 2019 (announcement on 19 December) and was supposed to deliver its report by March 2020, with submissions of amicus curiae briefs allowed only until 10 January 2020. So far, no report has been delivered.

Within South Korea, the dispute settlement procedure has helped to draw attention to the linkage between labour rights and trade. However, Korea has also demonstrated some «whitewashing» activities, for instance, submitting a motion of convention ratification

to the Parliament while simultaneously introducing an amendment bill that would take away the newly acquired rights (interview KR2, 19.06.2020).

The South Korea case sets a very important precedent for the EU. Some EU stakeholders see it as an important learning opportunity and wish to apply their lessons in the future (interview 10.06.2020). Nonetheless, the added value of the precedent will depend on the outcome of the dispute settlement procedure. If the verdict is lenient, or not implemented/enforced (also in view of the lack of «binding enforcement tools»), it may discourage further complaints and actions by stakeholders. Implementation of the panel report, in partnership with the newly appointed Chief Trade Enforcement Officer, will be a key test for the EU's commitment to the TSD chapter, as expressed in, among other things, the 2018 fifteen-point plan.

This case has demonstrated the importance of collaboration between civil society and the European Parliament in promoting trade and sustainable development, as the DAGs alone were not successful in advancing their complaints. This case has also demonstrated the weak accountability of the Commission and the limited impact of monitoring conducted by stakeholders. While the best way to enhance the role of the DAGs would be to allow civil society to automatically trigger the dispute settlement procedure, at the very least, Commission's accountability to civil society should be strengthened, for example, allowing possibilities of appeal. It is important to note that there was a consensus among business and non-business actors, and this arguably facilitated the triggering of the dispute settlement procedure. On the other hand, the Korean case also demonstrates that some Korean DAG members strongly prefer the dialogue approach and would like to avoid any sort of dispute settlement procedure, even a non-binding one, which is seen as overly confrontational. Thus, while some believe that the Commission's current approach is too lenient, others consider it too strict.

## 3

## CONCLUSION

The objective of this study was to take stock of how the domestic advisory groups (DAGs), established in the chapters of trade and sustainable development (TSD) in EU trade agreements, have developed and what they have achieved, as well as to identify their main challenges. For this purpose, original data was collected through a survey, to which 50 EU and 74 Non-EU DAG members responded, and 18 interviews with EU and Non-EU DAG members. The analysis was structured along a 'ladder of inclusiveness', comprising four steps: instrumental purpose, information sharing, monitoring, and policy impact. Analogous to a physical ladder, the lower steps need to be passed before being able to move up the ladder.

The first step, instrumental purpose, seems to have been achieved in the EU and several partner countries. Some Non-EU DAGs are still facing severe organisational shortcomings, hindering their proper functioning, however. Overall, the main issues in this context are the frequency and timely notification of meetings, support for a secretariat, and funding. The DAGs are not considered to be merely a tool for legitimising the trade agreement. Some members, especially non-business respondents, do remain vigilant about this potential risk.

In information sharing, the second step, we see that the essential elements for dialogue are present. Horizontal relations between DAG members are considered to be positive. Nevertheless, genuine dialogue between DAG members is still lacking. There are often tensions between business and non-business DAG members, especially in Non-EU DAGs and at transnational level. The vertical relations between civil society and governments are evaluated negatively as there is insufficient interaction, information sharing and interest from governments. The second step is therefore only partly achieved, which will undermine the fulfilment of the following steps.

Indeed, even though the third step, monitoring, is the objective DAG members most aspire to, it has not materialised. DAG members do not have enough resources to conduct research and outreach to broader society in order to monitor the implementation of the TSD commitments. Moreover, an accountability deficit persists as there is no clear procedural feedback loop between the DAGs and their governments, and the latter do not sufficiently follow

up on input given by the DAGs. Interestingly, Non-EU DAGs do appreciate the potential leverage provided by the European Commission and EU DAGs to access and influence their own government.

Finally, the fourth step, policy impact, has not been realised either. The DAGs' influence is very limited. DAG members are not actively involved in decision-making and governments do not act upon DAGs' recommendations. The non-enforceability of TSD chapters and the impossibility for DAGs to directly trigger disputes also play a role here, even though views on enforceability are polarised.

In sum, even though there are still organisational issues in some cases, the main challenges start with the lack of genuine dialogue between DAG members, and between DAGs and governments. This culminates in the accountability deficit, which undermines civil society efforts to monitor adequately, which, in turn, leads to very limited policy impact.

Because of this dynamic the DAGs have had little political relevance, which is a source of frustration for their members. It is therefore crucial for all actors involved that actions be taken to address these bottlenecks. While practical or organisational tweaks are necessary, they are in themselves insufficient. A mentality shift on the part of policy-makers to get them to take the DAGs and their work more seriously and to increase the DAGs' political relevance is much needed. Otherwise there is a risk that the DAGs will get stuck (if this isn't already the case) in a negative feedback loop, as a result of which no progress will be made, and the interest and commitment of civil society would be eroded. In other words, much effort is being made to move up the ladder, but if participants feel it is impossible to climb further, the DAGs risk losing meaning and the ladder might tip over. This would, in turn, contribute to the already vocal criticisms of EU trade policy.

# 4

## POLICY RECOMMENDATIONS

In this final section, we formulate recommendations to improve the success of the DAGs. We follow the same structure as in the report, namely the different steps of the ›ladder of inclusiveness‹. As already mentioned, it is important to achieve the lower steps before moving up the ladder. More concretely, it means that the DAGs need to function properly before expecting the desired information sharing, which is in turn fundamental to the DAGs’ monitoring role. Similarly, good monitoring is a precondition for policy impact.

The research presented in this report has shown that the vast majority of DAG members agree that monitoring is the purpose to which the DAGs most aspire. It is therefore crucial for all actors involved that actions be taken to achieve this particular step, especially concerning government accountability.

Otherwise there is a risk that DAGs will get stuck (if this has not happened already) in a negative feedback loop, as a result of which no progress is made, and that the interest and commitment of civil society is eroded. In other words, much effort is being made to move up the ladder, but if participants feel it is impossible to climb further, the DAGs risk losing meaning and the ladder might tip over.

Recent initiatives to improve the organisational aspect of the DAGs by the European Commission can be applauded, as it is indeed essential to get the functioning of these mechanisms right. However, while practical tweaks are necessary, they are in themselves insufficient. In particular a mentality shift is much needed on the part of policy makers to take the DAGs and their work more seriously and to increase the DAGs’ political relevance.

Table 8  
**Summary of the recommendations**

Step ladder	Recommendation	Directed to
<b>Instrumental purpose</b>	Ensure regular meetings take place and set dates for the DAG and transnational meetings well in advance to allow for substantive preparation	DAG members, secretariats and governments*
	Provide sufficient resources for participation and the support of a secretariat	DAG members and governments
	Proactively address remaining organisational and logistical issues	DAG members and governments
<b>Information-sharing purpose</b>	Ensure independent, representative and balanced DAG membership	DAG members and governments
	Foster genuine dialogue within the DAGs	DAG members
	Establish a clear work programme	DAG members
	Institutionalise and invest in DAG-to-DAG relations	DAG members and governments
	Forge and sustain thematic transnational alliances	DAG members
	Improve the process of developing joint statements	DAG members (and governments)
	Establish more and better interaction between the DAGs and governments	Governments and intergovernmental board
Institutionalise the relations between the DAGs and parliaments	DAG members and parliaments	

\* With the word ›governments‹ we refer to the governments of all the parties, namely the European Commission and the national governments of the trade partners. The same logic applies to ›parliaments‹.







<b>Monitoring purpose</b>	Provide structural resources to conduct research	DAG members and governments
	Establish feedback loop procedures with governments	Governments and intergovernmental board
	Follow up on DAGs' input	Governments and intergovernmental board
<b>Policy impact purpose</b>	Maximise enforceability of the TSD chapter	European Commission and EU-Parliament
	Clarify expectations on DAGs' impact	DAG members and Governments
	Peeping outside the box	DAG members and Governments

#### 4.1 INSTRUMENTAL PURPOSE: HOW CAN THEY MEET BETTER?

##### ENSURE REGULAR MEETINGS TAKE PLACE AND SET MEETING DATES WELL IN ADVANCE

An often repeated criticism is that DAGs do not meet frequently enough for their work to progress substantially and in a timely manner. Another frustration is that the dates of meetings are decided too late, hindering the effective participation of DAG members.

For DAG meetings, the DAG chair and secretariat should, in agreement with the other DAG members, plan to convene frequently (this could be quarterly or even monthly if DAG members wish it), set the dates at least one month in advance and provide for the possibility for DAG members to attend virtually. The organisation of transnational meetings is more complicated as more agendas need to be aligned. DAG-to-DAG meetings and meetings between civil society and the intergovernmental board depend on when the latter meets. It is therefore up to governments to set a date early on, for instance at least three months in advance, in order to allow civil society to be informed and prepare for participation. Practice shows that often meetings occur during the same period every year. It should therefore be possible for government officials to commit to a date well in advance, showing the DAG members their commitment, interest and respect. DAG members should organise additional (virtual) DAG-to-DAG meetings between annual meetings in order to maintain momentum.

##### PROVIDE SUFFICIENT RESOURCES FOR PARTICIPATION AND THE SUPPORT OF A SECRETARIAT

Insufficient resources for the organisation of DAG members to employ staff to prepare and attend the meetings, as well as resources to cover the travelling costs of DAG members are concrete obstacles to the functioning of most DAGs. In addition, a large majority of Non-EU DAGs cannot rely on a secretariat for organisational support and preliminary work.

These issues should be addressed by securing long-term funding dedicated to the functioning of DAGs. This should

ideally be provided by each signatory of the EU trade agreement, hence committing to the establishment of a DAG. This funding could, for instance, be derived from economic benefits engendered by the trade agreement. If this funding is unavailable, a common EU-partner country funding scheme should be envisaged or, as a last resort and as is currently the case, only EU funding. The experience of the current three-year Partnership Instrument dedicated to increase the participation of civil society in the TSD chapters could be helpful in determining how much funding is required and what the range of tasks of the secretariat should be. A detailed assessment of this funding instrument, involving the evaluation of the DAG members, would therefore be pertinent. In any case, funding needs to be extended beyond this particular instrument and should be included in the legal provisions establishing the DAGs.

Secretariats can be organised differently depending on the local context of each country and the existing institutions. It can be managed by an official existing institution (for example, EESC), a government agency (for example, within the economic, environmental or labour ministry), as long as the DAG's independence is guaranteed, a civil society organisation, an external private consultant or an organisation established for this purpose.

##### PROACTIVELY ADDRESS REMAINING ORGANISATIONAL AND LOGISTICAL ISSUES

Given the persisting issues concerning DAG functioning, especially the Non-EU DAGs, it is necessary to repeat that it is critical to get the basics right as they influence the other steps of the ladder and consequently the overall success of the DAGs.

The practical obstacles to the organisation of meetings or member attendance need to be identified and addressed in a timely matter. Since the introduction of DAGs in EU trade agreements, a lot of work has been done in the EU and abroad. Experiences and lessons from other trade agreements can be shared in order to speed up the smooth organisation and well-functioning of the DAGs. Given the high percentage of DAG members dissatisfied with their DAG's functioning, it would be appropriate to have a yearly evaluation on how the practicalities of these mechanisms should be improved.

DAG members should be self-critical and determine how the functioning of their DAG should improve. In parallel, their government should be a partner in the success of the DAG, creating and supporting an enabling environment for DAGs to prosper. If the DAG's voice is too weak and/or its government is neglecting or curbing the DAG's potential, the other DAG of the agreement and its government have the responsibility to raise the matter and exert pressure for changes.

## 4.2 INFORMATION PURPOSE: HOW CAN THEY TALK BETTER?

### ENSURE INDEPENDENT, REPRESENTATIVE AND BALANCED DAG MEMBERSHIP

Obviously, who the DAG members are matters for substantive discussions within the DAGs. The basic requirements are that the DAG members be independent from government and represent relevant stakeholders. In addition, they should represent their constituencies in a balanced way within the DAG.

If it is necessary to adapt the EESC tripartite model to the domestic context of the trade partner – in other words, to move beyond the current business, labour and environmental or other interest organisations – then an open debate should be held about this topic among the DAGs, as well as between the DAGs and intergovernmental board. In addition, it is important that sufficient awareness is raised and the visibility of the DAGs increased among relevant civil society organisations. This can be done, for instance, by circulating DAG outputs more widely, holding open debate sessions at the national level, and even organising press conferences. Moreover, application procedures should be simple, transparent and unbiased. In other words, the DAG should be easily accessible for all organisations that can contribute to its objectives. For the EU that should entail communicating and recruiting beyond the currently used DG Trade Civil Society Dialogue database. The membership of all DAGs should be monitored and, if necessary, addressed. It is therefore essential that governments are transparent about their DAG's members.

Governments should create an enabling environment and establish an accessible and transparent application procedure. Governmental interests should never be criteria for DAG membership. Civil society plays an important role in raising awareness and informing peers about the DAG. The membership should be monitored by civil society in both trading partners so they can give notice if there are issues concerning these aspects of membership.

### FOSTER GENUINE DIALOGUE WITHIN THE DAGS

Even though there is currently interaction between DAG members and information is being shared, this should be scaled up to genuine dialogue in order to optimise relations between the members, the working method of the

DAGs, the content of their discussions and, consequently, the quality of their work.

Genuine dialogue involves members' really listening to each other, building bridges between their positions and moving away from representing solely their primary interests and from power asymmetries. In order to allow the DAGs to be deliberation forums of proper, power imbalances between the members should be acknowledged and addressed, if necessary by an impartial moderator and by allocating sufficient speaking time to all participants and developing adequate decision-making procedures.

This should be done firstly by the DAG members themselves. If the partner DAG and/or government observes problematic dynamics in a DAG, however, they also have the responsibility to report this and insist on improvements, both at governmental and civil society level.

### ESTABLISH A CLEAR WORK PROGRAMME

A better-defined work programme is very high on the wish list of DAG members. Indeed, many respondents complained about the lack of a clear working programme or concrete targets. In some cases, respondents recognised that their DAG does not have a true internal dynamic and that it is only active around the time of the annual transnational meetings.

Given that the lack of a better-defined work programme is often the result of a combination of inadequate resources to participate substantively and poor relations between the DAG members, it is important to take the previous recommendations into account. If the governmental board's work programme has been shared with the DAGs, they can for instance take this document as a starting point to decide which issues the DAG will work on. If this is not the case, DAG members can proactively develop their own agenda, setting targets both for the short and long term and organise accordingly to achieve their objectives.

DAG members play an important role here as it is their responsibility to be committed and constructive, to find common ground and move forward. Governments can assist them by being transparent as regards their own programmes, making the DAGs' work more politically relevant.

### INSTITUTIONALISE AND INVEST IN DAG-TO-DAG RELATIONS

The research presented in this report shows how beneficial good relations between DAGs can be to empower civil society and increase the policy impact of the relevant mechanisms. It is therefore important to establish ties between civil societies in the different trade partners and to reinforce existing ones. Moreover, the civil societies of all parties should be attentive to dynamics that undermine the DAGs' legitimacy, such as excluded or silenced voices.

DAG-to-DAG relations can be fostered in several ways. First, even though DAG-to-DAG meetings have been taking place de facto during the annual meetings on the implementation of the TSD chapter, it would be better to specify such meetings or mechanisms in the treaty provisions. Future trade agreements could even provide for more DAG-to-DAG meetings, for instance a minimum of two per year. Second, DAG members should liaise proactively with their counterparts. In doing so, continuity between the annual meetings would be ensured, avoiding that annual meetings become isolated, one-off events. Virtual meetings or joint work can boost DAG-to-DAG relations. In addition, the interest of DAGs in one another and the commitment of their members increases participants' motivation and DAGs' relevance. Third, DAG members and their respective governments have a responsibility to ensure that transnational meetings are prepared and organised with attention to existing power asymmetries. These should at least be acknowledged and ideally be neutralised in order to enable genuine dialogue.

DAG members should connect proactively across the DAGs and be vigilant in relation to dynamics that affect these mechanisms' potential. There is also an important role for governments, however, as they should provide an enabling environment for the DAGs, for instance by providing for an official DAG-to-DAG meeting (and with this constellation) or make available infrastructure for meetings (as EU delegations have been doing).

### FORGE AND SUSTAIN THEMATIC TRANSNATIONAL ALLIANCES

The study has shown that existing ties across the DAGs were reinforced through their activities and that collaboration among DAGs increases their potential impact. This has especially been the case for labour issues.

Forging and sustaining thematic transnational alliances are therefore recommended in order to pool resources, in terms of both capacity and expertise. In addition, if a certain group or DAG does not have access to the policy-making level, then its counterpart can try to address this through its own government. This can be done by collaborating formally or informally on a certain topic, sharing information and resources, and supporting each other's endeavours.

Even though this strategy is already being implemented in several DAGs, it should be reinforced where possible by DAG members. Collaboration should not be limited to organisations with similar interests.

### IMPROVE THE PROCESS OF DEVELOPING JOINT STATEMENTS

Reaching joint DAG-to-DAG statements has proven to be a thorny endeavour. This is due mainly to conflicting and irreconcilable interests, often between business and non-business actors. DAG-to-DAG conclusions are consid-

ered to be one of, if not the most important deliverable for DAG members as they are the only formal statement shared with the intergovernmental board (even though the DAG-to-DAG meeting is not formally provided for in the trade agreement).

Given the conflicting interests, one should consider whether joint statements endorsed by all DAG members are really the only way forward. Can and should tensions resulting from disagreements about compliance with the commitments made in the TSD chapter be overcome during DAG-to-DAG meetings? In some cases it could be more fruitful to agree to disagree and, at the same time, to aspire to achieve some sort of rapprochement on disputed issues in the future. It would be worth considering the help of a neutral facilitator or establishing coalitions among DAGs to draft the statements. Ultimately, even if a joint statement is not endorsed by all members, the intergovernmental board should take up the signals sent by the DAGs in their statement.

Again, both DAG members and governments have a shared responsibility to address this issue. First, it is up to the DAG members to try to find solutions to deal with conflicting interests. If no compromise is satisfactory, they should be able to communicate this situation to their governments or the intergovernmental board. If a statement has been endorsed by all DAG members, it should still be considered by the intergovernmental board.

### ESTABLISH MORE AND BETTER INTERACTION BETWEEN THE DAGS AND GOVERNMENTS

In general, the DAGs are considered to have facilitated discussions with officials. Nevertheless, there is still a lot of room for improvement concerning relations between DAGs and their governments.

To start with, more interaction should be arranged. The DAGs should be able to meet on a regular basis with their government to exchange views, not only once a year to prepare the annual transnational meeting. In addition, formal interaction should be foreseen at this transnational meeting between the DAGs and the intergovernmental board. The quality of the interaction should also be improved. It is important for a government to show interest in the DAG's existence and work. Moreover, continuity in the official dealing with the DAGs would be beneficial as it allows for a relationship to develop between the DAG members and the government representatives. In addition, governments should share more information about the implementation of the trade agreement in general and the TSD chapter in particular. If this information is not available, it can be developed in collaboration with the DAGs.

### INSTITUTIONALISE THE RELATIONS BETWEEN THE DAGS AND PARLIAMENTS

In both the EU and the trade partners, parliaments are rarely involved in the work of the DAG. Nevertheless, parliaments

ratify trade agreements and should also keep the government accountable for implementation. They therefore could and should be more effective allies for the DAGs.

To this end, an institutionalised dialogue between the parliament and the DAG should be established. Depending on the local context, this dialogue can be organised in different ways, such as regular meetings, written debriefs, or ad hoc follow-up when certain issues persist. The most important objective here is that the parliaments take up more responsibility in enforcing the commitments made in the TSD chapter and assist the DAGs in their work as parliament can support the DAGs' monitoring and policy impact.

More concretely, the DAGs and the relevant parliamentary services should have contacts and develop a working method to collaborate.

#### **4.3 MONITORING PURPOSE: HOW CAN THEY OVERSEE BETTER?**

##### **PROVIDE STRUCTURAL RESOURCES FOR CONDUCTING RESEARCH**

In both EU and Non-EU DAGs, limited financial resources for conducting research are considered to have a substantial negative impact on the DAGs' monitoring role. Even though the implementation of the TSD chapter already lies within the remit of the DAG members, they often do not have sufficient means for supplementary monitoring activities concerning the complexities of a specific trade agreement and its impact on sustainable development. Enlarging the scope of the DAGs' work to the whole agreement will only make additional resources for monitoring more critical.

In line with the suggestion made above concerning resources for participation and secretarial support, different avenues for funding can be envisaged. Individual DAG members could try to secure their own funding for research, as some have done in the past. In addition, DAG members could pool available resources and conduct/commission research for the DAG as a whole.

Nevertheless, in most cases own funding is not possible, not only because it is not available, but also because the (perceived) political relevance of the DAGs has been rather low, making DAG members reluctant to invest more in the DAGs than their precious time. The parties should therefore also step in and support the DAGs in fulfilling their monitoring role. If the EU and its trading partners are serious about tasking a group of experts with monitoring a complex issue such as the impact of a trade agreement on sustainable development, it only seems logical that concomitant funding should be provided. The three-year Partnership Instrument foresees a limited amount of studies per DAG. Even though at the time of writing no concrete studies have been conducted, this initiative can only be applauded. Equally, it should be sustained and extended.

##### **ESTABLISH FEEDBACK LOOP PROCEDURES WITH GOVERNMENTS**

A major bottleneck for the DAGs is the lack of government accountability. One aspect of this weak accountability is that few to no established procedures exist for the DAGs to give input to and receive feedback from their government. This recommendation, along with the next one, apply to relations between DAGs and their respective governments, as well as DAG-to-DAG relations and relations with the intergovernmental TSD board.

A feedback loop should therefore be established with clear procedures on how to provide governments with input. This includes accessible instruments that enable the DAG to raise questions and share concerns or findings, on one hand, and for governmental replies on the other hand. In addition, governments could more often initiate a feedback cycle by consulting the DAG on a particular matter. This feedback loop is not supposed to be too rigid and it can differ between the parties. The main objective is to increase the responsiveness and good governance of the governments involved.

For DAGs, several avenues can be explored, such as physical meetings between government officials and the DAG, be it only with the DAG's presidency or the whole DAG on the occasion of the latter's meetings. Written communication is also possible. At transnational level, ways to ensure that DAG input feeds into the intergovernmental board meeting should be pursued. Existing best practices include the submission of joint conclusions, the organisation of back-to-back meetings between the DAG-to-DAG and intergovernmental meetings, or the invitation of DAGs' chairs to this meeting.

Governments have an important responsibility here to establish such clear procedures. This can best be coordinated with the DAGs.

##### **FOLLOW UP ON DAGS' INPUT**

A second aspect of weak governmental accountability, is that when input is given by the DAGs, governments' follow-up is generally extremely (s)low.

In relation to the feedback loop mentioned above, governments should reply to input from the DAGs. Of course, this recommendation does not require that governments necessarily take into account or accept DAGs' input. Rather, it implies that no matter what the content of the contribution, the government acknowledge it, consider it and reply to the DAG in a timely manner. Without such follow-up, DAGs' work loses its relevance. In addition to preventing ›DAG fatigue‹, such an approach would improve predictability for DAG members and increase their commitment to the DAG.

## 4.4 POLICY IMPACT PURPOSE: HOW CAN THEY INFLUENCE BETTER?

### MAXIMISE ENFORCEABILITY OF THE TSD CHAPTER

A debate on the weak implementation of the TSD chapters is ongoing at EU level, and the European Commission has recognised the need for improvements on this matter in its fifteen-point plan.<sup>8</sup> The EU shies away from trade sanctions as they do not correspond to its preferred cooperative approach. Because of the non-enforceable nature of this particular chapter, there does not seem too much at stake if the commitments made are not respected. Hence, civil society organisations and governments do not have many incentives to be interested and invest in the DAGs.

For existing trade agreements, the EU should continue its efforts to develop a conducive setting for the enforcement of the TSD chapter. The newly appointed trade enforcement officer,<sup>9</sup> as well as the triggered dispute settlement mechanism in the EU-Korea trade agreement are two concrete examples of such efforts. Nevertheless, the proof of the pudding is in the eating, and the burden of proof to show how these recent developments will lead to timely, effective and assertive implementation of the TSD chapter remains with the EU and its trading partners who have chosen a cooperative approach.

For new trade agreements, there are several ways to increase enforceability. For instance, France and the Netherlands<sup>10</sup> have suggested lowering or raising tariffs based on trade partners' progress in implementing the TSD chapter. This, in essence, is equivalent to sanctions, but from the diplomatic standpoint it is a much milder measure. In addition, the dispute settlement mechanism could be optimised by foreseeing a formal role for the DAGs to trigger cases, to give input during investigations, and to be kept informed of the proceedings. In addition, this mechanism should be a last resort if governmental consultations and panels of expert do not bring about the desired changes. When a free trade agreement has a demonstrably negative impact on sustainable development and fails to foster the parties' commitments in this regard, suspending the agreement should not be ruled out.

As already described, the European Commission has an important role to play in this context. Moreover, the European Parliament should be even more vigilant and demanding

to make sure that the TSD chapters are being implemented. In doing so, there should also be sufficient focus on possible shortcomings of the EU and its member states.

### CLARIFY EXPECTATIONS REGARDING DAGS' IMPACT

While it seems obvious that the DAGs are created to have an impact on sustainable development, there is significant confusion and vagueness as regards what DAGs are supposed to achieve and how this could be done.

Therefore, it is important to specify what is the expected process of change or causal linkage between DAGs' activities and sustainable development. For instance, a theory of change, a method explaining the process of change by describing the causal linkages in an initiative with regard to the potential influence of DAGs on sustainable development should be elaborated in order to make explicit what can realistically be expected. Such theorisation would specify what the impact of information sharing and monitoring between DAG members could/should be (common positions? better monitoring? empowerment of weaker members?) and what kind of tangible impact may be expected (institution building? ratification of conventions? transnational advocacy alliances?).

In doing so, the parties to the trade agreement would contribute to managing expectations with civil society organisations that participate in the DAGs. For DAG members, an explicit ›theory of change‹ would have the advantage of setting benchmarks in terms of what they want to achieve through these mechanisms.

### PEEPING OUTSIDE THE BOX

DAGs are part and parcel of free trade agreements. While they might contribute to enhancing the sustainability of these trade arrangements, especially if the abovementioned recommendations are taken to heart, it still remains doubtful that they would be able to counterbalance the major effects of free trade. Also trade sanctions may not entail desirable effects, as they risk targeting the most vulnerable people and reproducing neo-colonial logic. And to the extent that DAGs would have an impact on sustainable development in practice, this may be undone by (f)actors outside the trade framework.

DAG members and the parties should be aware of the structural limitations within which they are operating. In order to have a meaningful impact, they should not only narrowly account for the impact of free trade on sustainable development, but also address underlying factors that reinforce inequalities and injustices within and across countries. Otherwise, there is a risk that DAGs will merely serve to legitimise the free trade agreement.

DAG members should therefore envisage both an ›insider‹ and an ›outsider‹ impact strategy and remain critical of the framework in which they operate. Their participation can

<sup>8</sup> Commission Services. 2017. ›Non-Paper of the Commission Services: Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements (FTAs).‹ Available at: [http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf).

<sup>9</sup> European Commission, European Commission appoints its first Chief Trade Enforcement Officer. Available at: [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>10</sup> Non-paper from the Netherlands and France on trade, social economic effects and sustainable development. Available at: <https://nl.ambafrance.org/Non-paper-from-the-Netherlands-and-France-on-trade-social-economic-effects-and>.

only be one element of a wider sustainable development strategy. Meanwhile, the parties should refrain from presenting the TSD chapter, and the DAGs that form part of it, as a magic bullet for sustainable development. In order to seriously address wider issues of global justice, more needs to be done than advancing sustainable development commitments through trade instruments.



# Annex

- A **Case study on the domestic advisory groups in the EU-Georgia Deep and Comprehensive Free Trade Area**
- B **Case study on the domestic advisory groups in the EU-South Korea Free Trade Agreement**
- C **Case study on the domestic advisory groups in the EU-Colombia, Peru and Ecuador Free Trade Agreement, focus on Peru**
- D **Survey questionnaire**

## 5

## ANNEX A

## CASE STUDY ON THE DOMESTIC ADVISORY GROUPS IN THE EU-GEORGIA DEEP AND COMPREHENSIVE FREE TRADE AREA

## 5.1 GENERAL INTRODUCTION

The EU-Georgia Deep and Comprehensive Free Trade Area (DCFTA) is part of the Association Agreement (AA), signed on 27 June 2014. The AA, in turn, is one of the three such agreements concluded with Eastern Partnership countries (the other two being Moldova and Ukraine). Unlike many other EU trade agreements, the DCFTA foresees ›gradual regulatory approximation‹ of Georgia’s legislation ›towards key elements of the EU acquis‹ (hence ›deep and comprehensive‹).<sup>1</sup>

Georgia is a staunch supporter of free trade. Already before the DCFTA, since 2006 it has undertaken unilateral liberalisation of its trade and investment policy towards the EU.<sup>2</sup> Until the end of 2016, it was a beneficiary of the EU’s GSP+ scheme. Nonetheless, its trade relationship with the EU is highly asymmetrical. While the EU is Georgia’s largest trade partner, responsible for 23.4 per cent of its external trade in goods, Georgia only accounts for 0.1 per cent of the EU’s external trade in goods.<sup>3</sup>

The DCFTA with Georgia is seen by many Georgian and EU stakeholders in geopolitical, not only economic terms, and as a means to bring the country closer to the EU. Arguably, the political support to a certain extent overshadows an objective appraisal of the DCFTA’s economic and sustainability aspects (EU3 and EU6).

While Georgia undertakes to promote ›common values‹ with the EU in the AA framework, at the moment, Freedom House classifies it as ›partly free‹. According to Freedom House, ›oligarchic influence affects the country’s political affairs, policy decisions, and media environment,

and the rule of law is undermined by politicization. Civil liberties are inconsistently protected.‹<sup>4</sup> At the same time, while ›the civil society sector in Georgia is fairly robust, nevertheless ›some groups are included in policy discussions, though others report facing political pressure, largely in the form of public criticism by government officials and opposition figures.‹ Similarly, freedom of trade unions scores 2 out of 4. This demonstrates that large business interests may prevail over trade unions and non-governmental organisations representing other interests, which manifests in such cases as labour market reforms. Civil society also faces other challenges, such as (in some cases) politicisation, limited ties with society at large, and high dependency on donors.<sup>5</sup>

Both Georgia and the EU have established their own domestic advisory groups within the framework of the DCFTA. Unlike in the case of Peru, the Georgian DAG has been created as a new mechanism, which includes representatives of business, trade unions, environmental NGOs and one NGO dealing with human rights, including labour rights. According to the Civil Society Involvement Index developed by Martens et al. (2018), treaty provisions in the case of Georgia put it in the intermediate group; provisions on communication with the parties are quite strong, but provisions on submitting input to the dispute settlement mechanism are relatively weaker.

## 5.2 PARTICULARITY: OVERLAPPING CIVIL SOCIETY MECHANISMS

The civil society mechanisms established in the TSD chapter of the EU-Georgian DCFTA (the DAG and the Forum), are not the only civil society mechanisms existing in the EU-Georgia relations. At least four other mechanisms exist: the EU-Georgia Civil Society Platform of the Association Agreement and the Georgian National Platform, which is part of the Eastern Partnership Civil Society Forum (see Table 9).

- 1 ›Association Agreement between the European Union and the European Atomic Energy Community and Their Member States, of the One Part, and Georgia, of the Other Part.‹ 2014. Official Journal of the European Union. Available at: [https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02)).
- 2 Messerlin, Patrick, Michael Emerson, Gia Jandieri, and Alexandre Le Vernoy. 2011. ›An Appraisal of the EU’s Trade Policy towards Its Eastern Neighbours.‹ CEPS. 1 March 2011. Available at: <https://www.ceps.eu/ceps-publications/appraisal-eus-trade-policy-towards-its-eastern-neighbours-case-georgia/>.
- 3 European Union, Trade in goods with Georgia. Available at: [https://webgate.ec.europa.eu/isdb\\_results/factsheets/country/details\\_georgia\\_en.pdf](https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_georgia_en.pdf).

4 Freedom House, Georgia. Available at: <https://freedomhouse.org/country/georgia/freedom-world/2020>.

5 Piñol Puig, Gemma. 2016. ›Situation Analysis of Civil Society in Georgia.‹ Europe Foundation, 2016. Available at: <http://www.epfound.ge/wp-content/uploads/2016/12/Situation-Analysis-of-CSOs-in-Georgia.pdf>.



The purpose of these mechanisms is to monitor and discuss the implementation of the policy instruments in which they have been established and to make recommendations to a joint council or their respective governments. As there is an

overlap between the content of these different policy instruments working on broad topics such as sustainable development, good governance, economic integration, there is also an overlap in participation in these mechanisms.

Table 9

**Main civil society mechanisms in EU-Georgia relations**

Name	Established in	Members	Role	Substantive scope
<b>Georgian National Platform</b>	Eastern Partnership	Georgian mechanism	To support the Eastern Partnership and represent the interests of Georgian civil society at the Eastern Partnership Civil Society Forum	<ul style="list-style-type: none"> <li>- Democracy, good governance</li> <li>- Economic &amp; EU integration</li> <li>- Energy, climate change &amp; environment</li> <li>- Network in country, across region and with EU</li> </ul>
<b>EU-Georgia Civil Society Forum</b>	Association Agreement	Joint, membership-based, incl. Members of the EESC and the Eastern Partnership Civil Society Forum	To meet and exchange views and to make recommendations to the Association Council	The Association Agreement as a whole
<b>Domestic Advisory Groups</b>	TSD Chapter of the DCFTA	Separate EU and Georgian mechanism	To advise, submit views or recommendations, including on its (their) own initiative	The implementation of the TSD chapter
<b>Joint Civil Society Platform</b>	TSD Chapter of the DCFTA	Joint, not membership-based	Conduct a dialogue	Sustainable development aspects of the DCFTA
<b>DCFTA Advisory Group</b>	Ministry of Economy and Sustainable Development of Georgia	Georgian mechanism	To ensure involvement of civil society in the process of effective implementation of the DCFTA	DCFTA implementation as a whole

The existence of multiple similar civil society mechanisms is not unique to EU-Georgian relations and occur in the EU's relations with several parts of the worlds. However, the number of mechanisms is quite particular to Ukraine, Georgia and Moldova, three EU Eastern Partnership countries that have concluded an Association Agreement, including a DCFTA. Georgia is the frontrunner in the Eastern Partnership, strongly committed to European integration. It is also a staunch supporter of trade liberalisation and considers trade to be key to its economic development.

There are different opinions about this situation among the (EU and Georgian) DAG members. For some, these multiple platforms are a maze:

»It's confusing, I don't have a straight idea of what is connected to what, I only hear abbreviations, these random ad hoc meetings, quick, quick, we need to meet and there's no follow-up« (NEU7); or »I cannot see a difference between these meetings« (EU6). Indeed, another interviewee states that »when you understand where you do what, know the history etc., you can follow and use it. But for those that are just coming, it's a nightmare to understand« (EU2).

The EU and Georgian DAG members who are involved in different mechanisms and can differentiate between them,

evaluate this overlap more as an advantage than a disadvantage. They explain how, even though there is no explicit substantial link between the Association Agreement, its TSD chapter, and the Eastern Partnership mechanisms, they use them to reiterate their point of view, ensuring that the messages are similar in the documents these mechanisms produce. In addition, membership of one mechanism can lead to involvement in another mechanism, for instance as a speaker.

Some mechanisms are preferred to others. The Civil Society Forum of the Eastern Partnership has (EU-funded) resources and a secretariat, making it more efficient, whereas the Georgian DAG has no resources and it is mainly the chair who takes care of the substantive preparations and coordination. In addition, according to some stakeholders, the recommendations given by the Eastern Partnership Civil Society Forum and the EU-Georgia Civil Society Platform (under the AA) are considered to provide a more comprehensive and consolidated view of civil society and have therefore more political weight. They are used, for example, as a reference document by the European Parliament. Government actors tend to participate more in the EU-Georgia Civil Society Forum, which also explains why more organisations are interested in joining these mechanisms than the DAG and why some have suggested merg-

ing the civil society mechanism of the Association Agreement and the TSD chapter. Nevertheless, the DAGs' focus is narrower than the other mechanisms and there is direct contact with DG Trade, which can be useful in terms of influence, too. In addition, the TSD chapter in which the DAGs and Forum operate, has a higher level of obligation than the other policy instruments, which has been put forward as an advantage as regards potential policy impact.

Finally, tensions exist between the mechanisms regarding legitimacy, and their representativeness is also questioned. The Eastern Partnership Civil Society Forum and its National Platforms wished to be involved in the selection of the members of the civil society mechanisms of the Association Agreement and the TSD chapter. This has been perceived as a desire to monopolise the interaction of Georgian civil society with the EU and has been opposed by EU civil society actors. This is also linked to issues of representativeness. As one interviewee stated, »for some members you know what or who they represent, for others it's difficult to say. Certain personalities used this to promote their own organisations« (EU2). The EU-Georgia Civil Society Forum is a joint mechanism and is considered to be more representative by EU members. The DAGs, on the other hand, are national mechanisms and there is not a lot of room for the EU side to influence its formation.

In sum, the existence of multiple civil society platforms helps civil society to convey their messages to the EU and the Georgian authorities. Their set-up tends to be preferred by several civil society organisations and this situation therefore dilutes the potential clout of the DAGs. In addition, most mechanisms deal with representativeness, efficiency, visibility and influence.

## 5.3 LADDER OF INCLUSIVENESS OF THE EU AND GEORGIAN DAGS

### 5.3.1 Instrumental: Can they meet?

As for all EU trade agreements, the organisation of EU DAG meetings is taken care of by the secretariat in the EESC. They meet three times a year, on average. The Georgian DAG, which doesn't have a secretariat or its own resources, does not meet regularly. Its activity is centred around the annual transnational meeting. Coordination is carried out mainly by the chair of the Georgian DAG. Several interviewees stressed that the lack of resources has had a negative impact on the work of the DAG and participation in meetings. The limited frequency of the meetings was also put forward as an obstacle to achieving more.

The annual meetings have been taking place at transnational level. There are, however, complaints that the dates for these meetings are communicated too late, which hampers participation. When meetings take place in Brussels, they are organised by the EESC. In Georgia, »it's always a last-minute arrangement« (EU2).

Despite the attainment of this instrumental purpose of the civil society mechanism, there is also a perception among

some DAG members that these meetings »only take place for the sake of having meetings« and that they are »tick the box meetings« (NEU7). Another called the meetings a »courtesy call from the government« (EU6).

### 5.3.2 Information sharing: Can they talk?

The information-sharing purpose also seems to be achieved, even though the DAGs' level of activity and their representativeness have been criticised.

Concerning content, labour issues have always been high on the agenda. More concretely, labour inspection, occupational health and safety, social dialogue, women's rights and child labour and the Georgian labour code reform have been discussed. Over the years, more attention has been paid to the implementation of the environmental agreements covered in the TSD chapter and to a limited extent the economic pillar of sustainability. There have been calls from business representatives to discuss more trade-related questions in the DAGs.

Information exchange has been mentioned as an important objective of the DAGs: »the possibility to discuss with people from both sides, not to give formal information, but humanized information about what we really do in our countries, not what's written in papers but how it really works. That is a strong part of the DAG« (EU6). A Georgian member considers there is still a lot of room for improvement, nevertheless, »the DAGs could be a good instrument for networking between players from different sides. It's always good to exchange« (NEU7).

Horizontal exchange seems strongest between trade union members from both sides, especially because they already had ties prior to the trade agreement. For the other groups, this exchange is limited to the actual meetings. There have been tensions in DAG-to-DAG meetings with regard to agreeing on joint conclusions as the Georgian business side did not always agree on the content. This has led to »tough discussions« (NEU5) and has also been described as a »painful process« (NEU7). The solution to the disagreements has been to include a disclaimer in the joint conclusions, referring to the issues that are not supported by Georgian DAG members. Vertical exchanges between DAGs and governments occur at EU level and are evaluated positively (see monitoring). The situation in Georgia is different as according to some DAG members there have been sporadic meetings between the Georgian DAG and the Ministry of the Economy, while others are not aware of such meetings.

All members agree that the DAGs lack activity, frequent contact and interested members, which tends to be a vicious circle. The lack of activity and frequency of contacts within and between the DAGs go hand in hand. Nevertheless, the members acknowledge that a more proactive approach from both sides would be beneficial for the DAGs' work. In addition, there is little interaction between the DAGs, and the Georgian DAG members perceive a lack of interest from EU civil society organisations, which has been confirmed by an EU DAG member.

The representativeness of the DAG members has also been questioned. First, the selection procedure is not clear to all DAG members. Some state that the procedure is biased by the Georgian government, while others claim that it is just fine. Second, DAG members acknowledge that the Georgian DAG does not represent Georgian society and some organisations are missing. NGOs are well represented and trade unions are also active. Questions have been raised, however, whether other Georgian trade union organisations should also be included in the DAGs. One of the most active business representatives is from the American Chamber of Commerce in Georgia, although this organisation does not represent the majority of Georgian businesses. As regards the EU DAG, some Georgian DAG members appreciate the collaboration with it, while others feel they operate in an ivory tower.

### 5.3.3 Monitoring: Can they oversee?

Several achievements have been made concerning the monitoring purpose of the DAGs, especially concerning labour issues. However, this is not only due to the DAGs' work. For example, there remains an accountability deficit on the part of the Georgian government towards the Georgian DAG, and on the part of the European Commission and the Georgian government towards the joint conclusions and recommendations made by the DAGs.

Georgian interviewees made clear that their DAG does not have the capacity to conduct formal monitoring. Their monitoring activities are limited to updating their priorities – which do not change much, given the limited progress – on an annual basis, and collecting relevant information on these topics from DAG members. Substantive preparation for the annual DAG-to-DAG meeting is done mainly by the Georgian DAG, coordinated by its chair. No specific monitoring activities are carried out as regards implementation of the TSD chapter.

When it comes to procedures for advising governments, EU DAG members, especially labour representatives, have access to European Commission officials and are fairly satisfied with their follow-up. The picture is different on the Georgian side, where there are no established or institutionalised ties between the DAG and government. A Georgian DAG member nevertheless notes an evolution in the government's attitude: »Working with our government is a problem. However, there is growing access to [it]. It is still difficult, but it is expanding« (NEU3).

The joint conclusions are agreed during the DAG-to-DAG meeting (this meeting is not provided for in the formal institutional set-up of the civil society mechanisms) and are considered to constitute the most important document, as it is submitted to the intergovernmental board, the Trade Sustainable Development Sub-Committee. The recommendations given in these conclusions have been fairly similar over the years, although they have become more specific. Government accountability is mixed. The EU DAG members seem satisfied with the European Commission's follow up, even though there is no real formal communication.

One interviewee explained that on some issues the Commission prefers to work behind closed doors with Georgian officials instead of through official communications. In contrast, the Georgian DAG has never received a substantial follow-up to their input: »there is no real consultation, they only send the work plans immediately after the meetings«(NEU3). The accountability concerning the joint conclusions is very low. The conclusions contain recommendations for prioritising government work. However, the DAGs »don't receive a written answer. In the next [annual] meeting we speak about it but it is not a formal some statement about the execution of our paper« (EU6).

Turning to the potential to induce policy changes, interviewees acknowledge that the DAGs' work has helped to push the labour code reforms through. They emphasise, however, that the reforms cannot be attributed to the DAG alone, as different channels were necessary. According to the Georgian interviewees, international pressure was needed because »the Georgian government feels more accountable to the European side than to national organisations. The DAGs are a very good way to encourage government to make changes« (NEU5).

### 5.3.4 Policy impact: Can they influence?

The previous section made clear that the DAGs have induced at least some policy impact.

The European Commission, both in DG Trade and DG EMPL, have been listening to the recommendations made by the EU DAG, especially by the labour representatives. The Georgian DAG, however, needs to use its contacts with the EU DAG to reach the Georgian government. That being said, the DAGs have not been involved in decision-making and have no direct influence on government decisions.

## 5.4 CONCLUSION

There is something of a paradox as regards the EU and Georgian DAGs in the fact that, even though there has not been much activity or coordination between them, their existence has helped to put – and keep – a number of labour issues on the agenda. Moreover, they have also managed to contribute to policy changes in this area. Georgian civil society has used these mechanisms mainly as channels to reach the Georgian government as the latter responds more to international pressure than to national demands.

## 6

## ANNEX B

CASE STUDY ON THE DOMESTIC ADVISORY GROUPS  
IN THE EU–SOUTH KOREA FREE TRADE AGREEMENT

## 6.1 GENERAL INTRODUCTION

The EU–South Korea Free Trade Agreement was the first of the new generation of FTAs launched by the ›Global Europe‹ EU trade strategy (2006). Since then the conclusion of bilateral trade agreements securing reciprocal market access to foster EU competitiveness has been an explicit trade policy objective. Korea was identified as a priority partner for EU FTA negotiations, given its large market potential, high level of protection as regards EU imports, and active trade negotiations with the EU’s trade competitors.<sup>1</sup> The negotiations on this FTA were concluded in 2009. The agreement was provisionally applied in July 2011 before being formally ratified in December 2015.

At the time, this FTA was the most comprehensive trade agreement ever negotiated by the EU. It includes extensive tariff liberalisation and addresses non-tariff barriers to trade in various sectors. It also contains provisions in the areas of competition policy, government procurement, intellectual property rights and sustainable development. As the first of its generation, it served as a blueprint or benchmark for subsequent EU FTAs.

The EU is Korea’s third largest export market, while Korea is the EU’s eighth largest export destination for goods.<sup>2</sup> The trade balance between the two trade partners has fluctuated, with both parties achieving positive balances at various points over the years.<sup>3</sup> The EU’s most important goods exports to the country are machinery and appliances, transport equipment and chemical products. In turn, the main EU imports from South Korea are machinery and appliances, transport equipment and plastics.

Civil society in Korea has contributed significantly to both the transition to and the consolidation of democracy in the

country.<sup>4</sup> Nevertheless, it has become divided and embattled, which has considerably diminished its unity, influence, credibility and legitimacy vis-à-vis the state, political society and the market. Human rights groups and other NGOs are active and generally operate freely, though they face political pressure when criticising the government or other powerful interests.<sup>5</sup> Turning to labour rights, Korea has been given the rating ›no guarantee of rights‹ by the International Trade Union Confederation (ITUC).<sup>6</sup>

The treaty provisions establishing the civil society mechanisms in the EU-Korea FTA are considered to be high, according to the Civil Society Involvement Index developed by Martens et al.<sup>7</sup> This score is attributed mainly to the emphasis on participants’ independence, membership scope and, most of all, dispute settlement.

6.2 PARTICULARITY: TRIGGERING OF  
THE DISPUTE SETTLEMENT MECHANISM

The EU-South Korea trade agreement is the first – and to date the only – FTA in which a dispute settlement mechanism under the TSD chapter has been triggered.

Korea has not ratified four out of eight fundamental ILO Conventions, dealing with the right of association, collective bargaining and forced labour, and has imprisoned trade union members and leaders. In view of this, in 2014 and 2016, the EU DAG sent two letters to the EU’s trade commissioners De Gucht and Malmström, demanding the instigation of intergovernmental consultations. This did not prompt immediate action by the commissioners, however, despite the progressively deteriorating situation in Korea. Only after the European Parliament adopted a resolution in 2017 urging the Commission to launch formal consultations did it proceed with the dispute settlement procedure.

<sup>1</sup> European Commission (2018). Evaluation of the Implementation of the Free Trade Agreement between the EU and its Member States and the Republic of Korea: Final report.

<sup>2</sup> European Commission, Trade picture South Korea. Available at: <https://ec.europa.eu/trade/policy/countries-and-regions/countries/south-korea/>.

<sup>3</sup> European Commission (2020), Trade in goods with South Korea. Available at: [https://webgate.ec.europa.eu/isdb\\_results/factsheets/country/details\\_south-korea\\_en.pdf](https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_south-korea_en.pdf).

<sup>4</sup> Fiori, A. and S. Kim (2018). Civil Society and Democracy in South Korea: A Reassessment. Korea’s Quest for Economic Democratization. Y. Kim. New York, Springer International Publishing.

<sup>5</sup> Freedom House, South Korea. Available at: <https://freedomhouse.org/country/south-korea/freedom-world/2020>.

<sup>6</sup> ITUC (2019). Global Rights Index. Available at: <https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-en-2.pdf>.

<sup>7</sup> Martens, D., et al. (2018). ›Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index.‹ European Foreign Affairs Review 23(1): 41-62.

The procedure has proved lengthy and, so far, inconclusive. Moreover, the ITUC, the ETUC, the International Federation for Human Rights and subsequently the EESC have criticised the EU for limiting the list of breaches it aims to address through the dispute settlement procedure. The EU formally requested government consultations in December 2018. They took place in January 2019, but unfortunately, the consultations did not lead to the matters being satisfactorily addressed and thus failed to settle all the issues raised by the EU.<sup>8</sup> Therefore, in July 2019, the EU requested the establishment of a Panel of Experts. The Panel started its work on 30 December 2019 (announcement on 19 December) and was supposed to deliver its report by March 2020, with submissions of amicus curiae briefs allowed only until 10 January 2020. So far, no report has been delivered.

Within South Korea, the dispute settlement procedure helped to draw attention to the linkage between labour rights and trade. However, Korea has also engaged in a number of ›whitewashing‹ activities, such as submitting a motion to the parliament to ratify the ILO Convention, while simultaneously introducing an amendment bill that would take away the newly acquired rights (NEU2).

The South Korea case sets a very important precedent for the EU. Some EU stakeholders see it as an important learning opportunity and wish to apply their lessons in the future (EU1). Nonetheless, the added value of the precedent will depend on the outcome of the dispute settlement procedure. If the verdict is lenient, or not implemented or enforced (also in view of the lack of binding enforcement tools), it may discourage further complaints and action by stakeholders. Implementation of the panel report, in partnership with the newly appointed Chief Trade Enforcement Officer, will be a key test for the EU's commitment to the TSD chapter, as expressed in, among other things, the fifteen-point plan of 2018.

This case has demonstrated the importance of collaboration between civil society and the European Parliament in promoting trade and sustainable development, as the DAGs alone were not successful in advancing their complaints. It also demonstrates the rather weak accountability of the Commission and the limited policy impact of stakeholders' monitoring. The best way to enhance the DAGs' role would be, at the very least, to allow civil society to trigger the dispute settlement procedure automatically. But the Commission's accountability to civil society should be strengthened, for example, by allowing possibilities of appeal. It is important to note that there was consensus between business and non-business actors, and this arguably facilitated the launch of the dispute settlement procedure. On the other hand, some Korean DAG members strongly prefer the dialogue approach and would like to avoid any sort of dispute settlement procedure, even a non-binding

one, because this is seen as overly confrontational. Thus, while some believe that the Commission's current approach is too lenient, others consider it too strict.

### 6.3. LADDER OF INCLUSIVENESS OF THE EU AND KOREAN DAGS

#### 6.3.1 Instrumental: Can they meet?

Concerning organisation, both the EU and Korean DAGs have a secretariat. The former has the EESC, while in Korea the Labour and the Environment ministries alternate in the role. Similar to the EESC, its Korean counterpart communicates with members to convene meetings, which it also prepares, and communicates with the EU DAG secretariat.

The EU DAG's rules of procedure stipulate that the European Commission provide funding for its operations. The EU DAG has been meeting two to three times a year. The Korean DAG has also been meeting regularly, with between two and four meetings a year. In Korea, there have occasionally been separate meetings on environmental and labour issues.<sup>9</sup> Both Korean and EU DAG interviewees agreed that the logistical aspect of meetings is taken care of.

The annual transnational civil society meetings established in the EU-Korea trade agreement – known as the Civil Society Forum – are closed meetings for the DAGs of both parties. This is a unique feature, as in the other EU trade agreements, these meetings are open to civil society at large. This feature entails that the annual EU–Korea transnational civil society meeting established in the agreement is the equivalent of the DAG-to-DAG meetings organised in the context of other EU trade agreements. In addition to the official transnational civil meeting, DAG members of the EU Korea trade agreement requested the addition of a further day to the existing Forum to organise a seminar open to the wider public on topics of mutual interest. This was granted by the governments and has become common practice for transnational meetings in other trade agreements as well. These seminars and the prolongation of the meetings in general, help members socialise and help to make travelling such a distance worthwhile. No transnational meetings have been organised since 2018, however, when the dispute settlement mechanism was triggered (see above).

Interviewees have lamented that the dates and schedule of the DAG and transitional meetings are not set long enough in advance and are subject to change. DAG meetings are sometimes scheduled only one or two weeks in advance, hindering members' participation. The dates of the transnational meetings are set by the governments. Interviewees consider the late notice of the dates and rescheduling of the agendas as a sign of weak commitment on the part of the governments. In general, it has been difficult to ›reconcile or ›tetrise‹ all the agendas« (EU9).

<sup>8</sup> European Union, ›Request for the establishment of a Panel of Experts by the European Union‹, Brussels, 4 July 2019, [http://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_157992.pdf](http://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_157992.pdf).

<sup>9</sup> European Commission (2018). Evaluation of the Implementation of the Free Trade Agreement between the EU and its Member States and the Republic of Korea: Final report.

The perception that the civil society meetings may be exploited as tools to legitimise the trade agreements has been tempered because of the activation of the dispute settlement mechanism (see below). Nevertheless, some scepticism prevails in the EU as the design of the civil society mechanism and the dispute settlement mechanism remains suboptimal. On the Korean side, an interviewee explained how, in his view, Korean negotiators underestimated the potential importance of the TSD chapter and the civil society mechanisms it established. Because the EU-South Korea trade agreement is the first of its kind, there was no precedent or reference. The Korean government was nevertheless reluctant to give civil society a formal role within the institutional mechanisms of the trade agreement.<sup>10</sup> As one interviewee explained: »the Korean government accepted because the EU insisted, but they were more interested in the trade aspect of the agreement. It is not something culturally established in South Korea« (EU10).

### 6.3.2 Information sharing: Can they talk?

The information-sharing purpose is only partly achieved as there are issues concerning horizontal relations within the Korean DAG and vertical relations between the DAGs and governments, especially in Korea, and between the DAGs and the intergovernmental board.

Concerning the content of the domestic and transnational meetings, attention has been given to economic, environmental and labour issues. Topics such as digitalisation, the circular and green economy, the emissions trading system and climate change, have been regularly on the agenda of the transnational meetings. Labour issues have always been high on the agenda. As one interviewee states, »in other EU DAGs we can have a lot of topics, but for Korea the DAG is more focused on labour issues« (EU2).

Fairly uncontested topics such as the gender pay gap, corporate social responsibility and non-discrimination have been addressed. In 2016, two labour projects were developed: one on corporate social responsibility and another on the implementation of the ILO Convention on non-discrimination. These topics were, especially in the early years of the civil society meetings, »a strategic choice« (NEU1) as they represented »a good starting point because they are less sensitive« (EU9). In addition to labour issues in Korea, the transnational civil society mechanism has also been used to request, on the initiative of the Korean DAG, that EU member states address labour issues domestically based on comments made by the ILO.

But much more sensitive and contested issues, such as the ratification and effective implementation of the ILO fundamental conventions and, more concretely, freedom of association and collective bargaining have been given a lot of importance. They have been reiterated annually and have

also been included in the recommendations of the Civil Society Forum. Even though the agenda is agreed upon by both DAGs, the contested labour issues in particular have created tensions between the members of the Korean DAG, especially between employers and trade unions, as well as between the EU and the Korean DAG (see below). In addition, some EU DAG members have lamented that »everything was dominated by ILO conventions and freedom for trade union leaders and they felt as if there was insufficient space to raise other issues« (EU7).

In addition to these substantive matters, both EU and Korean DAG members state that they still dedicate a considerable amount of time at meetings to logistical issues and to preparing the next transnational meeting.

Information exchange, and especially the exchange of best practices, has been suggested as an important purpose of the DAGs. On the EU side, a DAG member confirmed that »it's an exchange of practices and different perspectives« (EU9). From the Korean DAG an interviewee stated that »from the treaty point of view the Forum should be a place for the shared evaluation of implementation by both parties, but some members believe that this is a space for general exchange or where they can have seminars or workshops on broad issues« (NEU2). This shows that there is disagreement among the members about what the civil society meetings are for.

Similar to the EU-Georgia civil society meetings, horizontal exchange is strongest between trade union members from both sides. They also had good connections prior to the agreement, which were reinforced by the transnational meetings. There are, however, communication issues between the two DAGs, as a lack of contact between the annual transnational meetings and the need for simultaneous translation hamper the interaction. Within the EU DAG, there seems to be good relations between the members, also across the different groups. In contrast, the relations between employers and trade unions in the Korean DAG are fairly hostile, making it difficult or even »impossible« (NEU2) for them to work together. Another interviewee confirmed that the atmosphere in the Korean DAG has »not been harmonious or peaceful« (NEU1). The need for regular contact and continuity of membership was highlighted both for the relations within the DAGs – »you can work if you have a bit of trust, an atmosphere which helps you to work together, by meeting each other a few times a year« (EU9) – and across the DAGs: »in Asia it's very important that people know each other, they will not trust you immediately« (EU7).

Similarly, it has proven to be challenging for the EU and Korean DAGs to find common positions. The main controversy concerns the labour obligations in the TSD chapter. Especially on the occasion of the last transnational meeting in 2018, when it came to deciding on the joint conclusions on the ratification and implementation of the core ILO Conventions – in particular freedom of association and the incarceration of two Korean trade union members –

<sup>10</sup> Smith, A., et al. (2020). *Free Trade Agreements and Global Labour Governance: The European Union's Trade-Labour Linkage in a Value Chain World*. London, Routledge.

»things became rather tense« (EU1). In the end, the Korean employers left the room and some academics, too, were not supportive. As a result, no common position could be reached. Instead, a joint statement by the chairs of each DAG was presented to the intergovernmental board. The fact that the EU DAG did manage to have a common position, even though, according to some, it amounted to the lowest common denominator, it has been perceived across the different groups as a positive signal that helped things to move forward.

There are differences between the EU and Korean DAGs concerning vertical exchanges. At EU level, there is information exchange between the DAG and the European Commission at least once a year, as a Commission official usually attends a part of the DAG meetings. There are also contacts with the European External Action Service. The high turnover of officials, however, means that there is little continuity of attendance, which has been criticised. In addition, there have been contacts between the EU DAG and the European Parliament, although there is no formal or institutionalised dialogue between them. The EU DAG also met twice with the Korean ambassador to receive first-hand information. Even though there is regular exchange between the EU DAG and official institutions, according to one interviewee the problem is that »the government and the DAG are not considered to be equal partners« (EU10). In Korea, the government is considered to be »pretty difficult to get in contact with« (EU10). The Korean DAG has received little recognition from their government – as one interviewee stated, »the government has not done much, there is no respect« (NEU1). Nevertheless, an EU DAG member emphasised how they have tried to empower civil society through the DAG: »for me, it's a big achievement that the DAGs have created a platform for discussion and it has obliged the Korean government to acknowledge that trade unions and business and trade organisations are independent, because they are members of the Korean DAG« (EU9).

The representativeness of the Korean DAG and the independence of its members has been a thorny issue, especially in the early days. To start with, these civil society meetings were the first of their kind, and both the EU and Korean governments and civil society had to learn how to develop such mechanisms. Given the distinct cultures and Korea's different take on civil society, however, the two parties had different starting points. The tripartite structure of the EESC was used as a basis for the DAG, even though Korean employers and trade unions are not used to this type of dialogue. Also, »the environmental NGOs are not the same ... they have different functions than we have in our European DAG« (EU1). In addition, academics and researchers were included as Korean DAG members, more concretely as public interest representatives. They currently account for almost half of the DAG members. Their legitimacy has been challenged because, even though these actors might have substantial expertise, »they don't represent a constituency« (EU1). A final point on DAG representativeness concerns the membership of environmen-

tal organisations. Korea has an important environmental movement, which is not reflected in the DAG. Similarly, the EU DAG, and basically all the EU DAGs except for the one pertaining to the trade agreement with Canada, lacks environmental – or »diverse interests« – members.

The independence of Korean DAG members has also been questioned. Some of the employers and academics are perceived to have strong ties with the government. In addition, the Korean government seems to hold the reins of DAG membership. There is no open call for members. The ministries of the environment and of labour ask relevant organisations to put forward members, who are then nominated, except for the public interest group, where it is the ministry that nominates and appoints. Nevertheless, EU DAG members have witnessed an evolution: »the Korean government has changed its attitude somewhat and nominated slightly more people from European style civil society, but it was a process« (EU7). An important event in this context was the membership of the Korean Confederation of Trade Unions, one of the country's most important. They were not included in the DAG at first, which led to major criticisms. One interviewee explained how »in Korea the government has the right to select members but it cannot be a unilateral decision« (NEU1). That being said, the Korean government still keeps a close eye on its DAG: »it attends the Korean DAG meetings but do not engage. They stay for the whole meeting and monitor what is being said« (NEU2).

### 6.3.3 Monitoring: Can they oversee?

Concerning labour rights in Korea, the monitoring purpose has been achieved to a certain extent for the EU DAG in collaboration with the Korean trade unions.

Monitoring activities have taken place on both sides. One of the EU DAG's most significant outputs has been its »Opinion on the fundamental rights at work in the Republic of Korea. Identification of areas for action«, issued in 2013. Its content is based on ILO evaluations, and the report laid the foundations for the monitoring of labour issues in Korea. The DAG also published reports on green growth (2013), corporate social responsibility (2014) and climate change (2015). Nevertheless, one interviewee explained that »because of budgetary issues, the scope of activities is very limited« (EU7). In the Korean DAG, members have mainly worked individually, as they »never attempted to make a joint statement in the name of the Korean DAG« (NEU2). According to another interviewee, »each DAG member does their own independent monitoring. But this should be better organised in order to develop a common position and to [facilitate] exchange between both DAGs« (NEU1). That being said, Korean and EU trade unions collaborate on the monitoring of labour issues.

Concerning the procedures to provide governments with input, the EU DAGs have several options. First, there are the DAG meetings, at which the members can address the European Commission during the dedicated time or approach them less formally during the coffee break. Second,

there is the possibility to send written statements, such as the opinions mentioned above. The EU DAG also wrote two formal letters to the European Commissioner for Trade concerning serious violations of the TSD chapter in the EU-Korea trade agreement in 2014 and 2016, urging the Commission to initiate the dispute settlement mechanism. Even though relations between the DAG and the European Commission »could be more structured, they contribute to global institutional development in the area of trade and labour governance« (EU1). In sum, the EU DAG members know how to reach the Commission, even though this interaction could be organised better. The communication channels for the Korean DAG seem to be less open. Even though Korean officials attend the DAG meetings, there is little to no possibility to interact with the Korean government. Korean DAG members emphasised the importance of the DAG-to-DAG meeting: »personally I believe that without the exchange with the EU DAG, the Korean DAG has no role. Without this exchange or the Civil Society Forum, the Korean government isn't willing to meet the Korean DAG and to listen to our recommendations and what we have to say about implementation« (NEU2).

This brings us to the joint conclusions of the DAG-to-DAG meetings. These statements, including their wording, are considered to be very important, as »it goes to the inter-governmental board, which then has to acknowledge it. It is the official outcome produced by the institution mandated to monitor and advise, so it is the most official document we would give them« (EU1). It has, however, proven very difficult for the DAG members, especially labour on both sides and Korean employers, to agree on a common position, more concretely concerning the requirements concerning the ratification and implementation of the core ILO Conventions (see above). Even though the emphasis has mostly been on labour issues, the statements always include references to economic and environmental issues. The EU-Korea Civil Society Forum has another unique feature (in addition to being a closed DAG-to-DAG meeting). A practice has developed of organising back-to-back meetings between the Forum and the intergovernmental board. The chairs of each DAG are invited together »for a few minutes to present and then go out, because the Korean government did not want to have any externals at the meeting, and they treat civil society as external« (EU7). This entails that the joint conclusions of the DAGs are presented to officials of both parties by the chairs of the DAGs. This practice has »always been requested by civil society« (EU10) and is considered to be »very important institutionally. If you don't do that, it becomes a talking shop that is responsible for thousands of tonnes of CO<sub>2</sub> emissions a year and nothing else. You need structured processes« (EU1).

Differences can be observed as regards government accountability. In the EU, the DAG members agree that the Commission reacts to their input: »basically, we send a letter and get a letter back« (EU10). However, another interviewee explains that »when we ask for something, we need something back ... the Commission does reply to us

but they don't address the core of our concerns« (EU1). In Korea, the government has been less reactive as »they have never responded« (NEU2). At transnational level, the fact that the DAGs' input feeds into the discussions of the board does not guarantee that the DAGs will receive a response: »we don't receive a response from the board, the communication lines are EU–EU and Korea–Korea« (EU10). The DAG members agreed that their pressure concerning labour issues in Korea has the potential to induce policy change. There are complaints about the lengthy process and the DAGs' recommendations mainly not taken into account. However, the ongoing dispute settlement procedure gave an important signal that their work has not been in vain. For Koreans, the DAG-to-DAG meeting (more than the DAG) is an additional platform for advancing their concerns: »actually we make use of all the mechanisms we can, [including] the Civil Society Forum« (NEU2).

### 6.3.4 Policy impact: Can they influence?

Civil society has not been involved directly in the EU's decision-making. Its constant pressure over the years, however, has contributed significantly to the activation of the dispute settlement mechanism (see below). At the time of writing, all eyes are on the outcome of the Panel of Experts. According to some, there is a limit to the DAGs' influence: »it's up to the government to take action, because of course civil society is one level, and we have an agenda and have agreed priorities, and then you have intergovernmental level. They establish their own priorities. Sometimes it coincides, sometimes there is variation between what civil society has identified and what the government chooses to work on« (EU9). Nevertheless, »the fact that Korean government decided to look into the ratification of the ILO conventions is partly the result of our activities, but of course if many people knock on the door sooner or later it will open« (EU7).

## 6.4 CONCLUSION

In this case, the EU DAG has been very active for several years. Even though the DAGs have worked on other sustainable development issues, their main substantive focus has been on labour issues. Their constant pressure, in addition to that of the European Parliament, contributed to the activation of the dispute settlement mechanism. Nevertheless, this position has also created tensions between the DAGs and, within the Korean DAG, between employers, trade unions and other stakeholders. The question of whether it will be possible to maintain constructive relations across the different interests remains inconclusive as no joint transnational civil society meetings have taken place since the dispute settlement mechanism was triggered in 2018. All eyes are currently on policy changes in Korea and the outcome of the Panel of Experts. The EU–Korean civil society meetings were the first of their kind and all the actors involved shaped these mechanisms along the way, gaining insights into how they should or could function.



## 7

## ANNEX C

## CASE STUDY ON THE DOMESTIC ADVISORY GROUPS IN THE EU-COLOMBIA, PERU AND ECUADOR FREE TRADE AGREEMENT WITH A FOCUS ON PERU

## 7.1 GENERAL INTRODUCTION

The free trade agreement between the EU, Peru and Colombia was signed in 2012 and, in the case of Peru, provisionally applied from 1 March 2013. Ecuador joined in 2016 (in force since 2017). Before the conclusion of the FTA, these countries benefited from preferential access to the European market under the EU Generalised System of Preferences (GSP). More specifically they were beneficiaries of a special incentive arrangement geared toward promoting good governance and sustainable development, known as GSP+. Due to the reform of the GSP, the countries risked losing this preferential market access to the EU in 2014. This potential loss led to the negotiation and conclusion of the FTA.

The trade relationship between the EU and Peru is asymmetrical. In 2019, the EU27 was Peru's third largest trading partner in goods, accounting for 12.5 per cent of its total external trade. In turn, Peru accounted for 0.2 per cent of the EU's external trade in goods.<sup>1</sup> The economic impact assessment predicted that the EU's exports to Peru would increase by a much larger proportion (48 per cent) than the EU's imports from Peru (15 per cent), and that Peru's GDP growth would be limited to 0.2–0.25 per cent.<sup>2</sup> Additionally, while Peru mainly exports products with low added value (food, raw materials, fuels and mining products), it imports from the EU mostly manufactured goods with high added value.<sup>3</sup>

Peru conducts a liberal trade policy, characterised by a high level of foreign trade. The country has concluded numerous free trade and bilateral investment agreements over the years. In comparison with trade liberalisation, sustain-

able development has not been prioritised. Additionally, Peruvian business is generally against implementing the sustainable development provisions of the EU FTA.<sup>4</sup> This situation reflects the generally weak position of civil society organisations (apart from business associations, which support the government's neoliberal economic policy<sup>5</sup>) in Peru. Peru has a strong anti-union climate and low unionisation.<sup>6</sup> It also has high levels of socio-economic inequality marginalising, among others, regional and indigenous communities and women.<sup>7</sup> Civil society is weak and fragmented, cannot effectively hold the government accountable<sup>8</sup> and some NGOs, such as environmental activists, who dare to protest against land development have been subjected to intimidation.<sup>9</sup> These are structural constraints on the possibility for civil society to promote sustainable development in the country.

The conclusion of the agreement with the EU was strongly opposed by EU civil society, due to concerns about human, labour and environmental rights, while EU business associations expressed their support for the trade deal.<sup>10</sup> Before concluding the FTA, the European Parliament asked Peru and Colombia to make improvements in the area of human rights, to establish a 'binding road map on human, environmental and labour rights' and to prepare action plans on sustainable development. Peru and Colombia have duly

1 European Union, Trade in goods with Peru. Available at: [https://webgate.ec.europa.eu/isdb\\_results/factsheets/country/details\\_peru\\_en.pdf](https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_peru_en.pdf).

2 European Parliamentary Research Service. 2018. Trade Agreement between the European Union and Colombia and Peru: European Implementation Assessment. Brussels: European Union. Available at: <https://data.europa.eu/doi/10.2861/846773>.

3 European Commission, Peru: Main Indicators. Available at: [https://webgate.ec.europa.eu/isdb\\_results/factsheets/country/overview\\_peru\\_en.pdf](https://webgate.ec.europa.eu/isdb_results/factsheets/country/overview_peru_en.pdf); European Parliamentary Research Service. 2018. Trade Agreement between the European Union and Colombia and Peru: European Implementation Assessment. Brussels: European Union. <https://data.europa.eu/doi/10.2861/846773>.

4 European Parliamentary Research Service. 2018. Trade Agreement between the European Union and Colombia and Peru: European Implementation Assessment. Brussels: European Union. Available at: <https://data.europa.eu/doi/10.2861/846773>.

5 Alberto Vergara and Aaron Watanabe, 'Peru since Fujimori', *Journal of Democracy* 27 (3) (2016).

6 Orbie, Jan, and Lore Van Den Putte. 2016. 'Labour Rights in Peru and the EU Trade Agreement: Compliance with the Commitments under the Sustainable Development Chapter.' Working Paper 58. Vienna: ÖFSE.

7 Center for Economic and Social Rights, Peru: Financing a Just Recovery to Achieve the Sustainable Development Goals, [2020]. Available at: <https://www.cesr.org/peru-financing-just-recovery-achieve-sustainable-development-goals>.

8 Alberto Vergara and Aaron Watanabe, 'Peru since Fujimori', *Journal of Democracy* 27 (3) (2016).

9 Freedom House, Peru. Available at: <https://freedomhouse.org/country/peru/freedom-world/2020>.

10 European Parliamentary Research Service. 2018. Trade Agreement between the European Union and Colombia and Peru: European Implementation Assessment. Brussels: European Union. Available at: <https://data.europa.eu/doi/10.2861/846773>.

prepared road maps and action plans, and the EU has established dialogues on human rights with both countries.<sup>11</sup> The European Parliament continues to strongly advocate for sustainable development in this FTA.<sup>12</sup>

Despite the concerns expressed by civil society and the European Parliament before the conclusion of the agreement, the FTA with Colombia, Peru and Ecuador is one of the weakest in terms of its provisions on civil society involvement.<sup>13</sup> Unlike other new-generation FTAs, the parties are not obliged to set up a dedicated ad hoc DAG, but could instead use existing consultative mechanisms, with no requirement for them to be independent of the government. Moreover, provisions on participation in the dispute settlement process are also very weak.

## 7.2 PARTICULARITY: THE PERUVIAN SHADOW DAG

For several years, Peruvian civil society has expressed concerns regarding its involvement in the trade agreement with the EU. This refers in particular to the Peruvian authorities' unwillingness to create a dedicated DAG for this purpose, as well as the lack of real dialogue in the existing mechanisms and the fact that the implementation of the TSD chapter was not being discussed. In 2017, several Peruvian organisations that were already monitoring the implementation of the agreement, established a DAG with the aim of demanding accountability and solutions from the government.<sup>14</sup> It has been called ›a shadow‹ or ›self-constituted‹ (autoconformado) DAG because it remains unrecognised by the Peruvian government. The shadow DAG includes environmental and human rights NGOs, as well as trade union organisations. Peruvian business representatives were invited, but did not wish to participate. In some cases this was linked to the government's refusal to recognise the DAG.

The ›shadow‹ DAG has been active both nationally – attempting to establish better dialogue with the Peruvian authorities and writing a number of letters – and internationally, in dialogue with the Colombian and Ecuadorian DAGs (belonging to the same regional trade agreement), the EU DAG and EU institutions (European Commission, EU delegation in Lima, European Parliament, EESC). It maintains its demands for official recognition. Because it has been able to achieve international visibility, as well as be-

cause of the dedication of its members and donor support, it can continue independent monitoring of the FTA and manages to participate in the transnational civil society meetings.

The shadow DAG was able to draw the attention of the European Commission to the problems concerning participation, causing the latter to pressure the Peruvian government to increase transparency concerning its DAG. As a result, the government assigned the DAG role to two existing mechanisms in 2018 (the National Commission on Climate Change and National Council for Labour and the Promotion of Employment), having previously entrusted it to nine bodies. However, these mechanisms are led by government representatives and have serious functional issues (for instance, the quorum to be able to take decisions is almost never reached) which makes them weak platforms and prevents real dialogue.<sup>15</sup> Moreover, their members are largely unaware of the fact that they are supposed to monitor FTA implementation.<sup>16</sup>

## 7.3 LADDER OF INCLUSIVENESS OF THE EU AND PERUVIAN DAGS

### 7.3.1 Instrumental: Can they meet?

The instrumental purpose is achieved in the EU, but not in Peru. On both sides, civil society is concerned about the legitimising potential of their participation.

Similar to the other EU DAGs, the secretarial duties for the EU DAG of this particular agreement are taken care of by the EESC. The DAG has been meeting regularly, between two and four times a year, since 2014.

Each of the parties to this regional agreement has their own DAG: at first Colombia also used existing national mechanisms but decided to create an ad hoc DAG in 2016. Ecuador also established a dedicated DAG when it joined the agreement and, as described above, the Peruvian DAG comprises existing Peruvian bodies. Until 2018, nine Peruvian councils had been entrusted with this role. Since then, this has been limited to two bodies: the National Labour Council and the National Commission for Climate Change. These bodies meet several times a year (the Commission for Climate Change, for instance, met approximately six times in 2019). This is irrelevant for the purpose of analysing the work of DAGs, however, because these bodies do not discuss the FTA. They are aware neither of their mandate nor of when the annual transnational meetings are supposed to take place. This means that there is no activity whatsoever on the part of the Peruvian official DAG: ›this is the weakest part of our job, the Peruvian DAG doesn't really exist. We can only count on people that participate volun-

<sup>11</sup> Parliamentary questions, Answer given by Ms Malmström on behalf of the Commission, Question reference: P-002362/2016, 31 May 2016. Available at: [https://www.europarl.europa.eu/doceo/document/P-8-2016-002362-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/P-8-2016-002362-ASW_EN.html).

<sup>12</sup> European Parliament resolution of 16 January 2019 on the implementation of the Trade Agreement between the European Union and Colombia and Peru (2018/2010(INI)). Available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0031\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0031_EN.html).

<sup>13</sup> Martens, D., et al. (2018). ›Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index.‹ European Foreign Affairs Review 23(1): 41-62.

<sup>14</sup> RedGe, Campaña. Available at: <http://www.redge.org.pe/node/2841>.

<sup>15</sup> RedGE, Sociedad Civil: una participación que no espera. Available at: <http://www.redge.org.pe/sites/default/files/8%20%20Info%20sociedad%20civil%20%20GMI%20%28%29.pdf>.

<sup>16</sup> Orbie, J., et al. (2017). ›The Impact of Labour Rights Commitments in EU Trade Agreements: The Case of Peru.‹ Politics and Governance 5(4): 6-18.

tarily to the shadow DAG« (EU5). The shadow DAG, which was created in 2017, meets around two to three times a year.

The annual transnational civil society meetings have been taken place since 2014. It was one of the first agreements concluded after the first new-generation FTA, EU–Korea, and also one of the first with no formal DAG-to-DAG meetings. DAG members »decided to force the interpretation of the rules. There was nothing written excluding that the DAGs couldn't meet, and we decided to do it« (EU5). This practice has continued ever since for all the transnational civil society meetings. From 2016 onwards, it was possible to attend the transnational meeting through video conferencing in order to allow more civil society participants to attend.

Funding has been an issue for Peruvian civil society. In order to allow Peruvian organisations to participate in the transnational civil society meetings, they have been funded by European and international civil society organisations. Even though the interviewees agree that »each government should fund its own DAG [and] this should be provided for in the agreement« (EU4), they acknowledge that the current EU funding project has improved coordination and participation of civil society from the three Andean countries. Nevertheless, the concerns about funding are not limited to the capacity to attend meetings. There is a bigger underlying issue in Peru, namely the general lack of resources of civil society, which affects the quality and quantity of what it can do.

Within both the EU DAG and Peruvian civil society there is a strong feeling that the DAGs are a tool to legitimise the trade agreement. The existence of the civil society mechanisms has helped opponents of the FTA to accept that the governments involved were going to sign it anyway, as »there was a place where we could play a role« (EU5). Nevertheless, civil society from both regions faces the insider/outsider dilemma. In the EU, one interviewee stated that »we're reflecting on whether we want to stay in this DAG. It serves more as a pretext for the European Commission to say ›we have an advisory group, everything is fine‹. But we cannot leave this space to the business sector alone, it is necessary to have a counter-power and also for the Andean organisations it is important to have allies in this space« (EU4). As for Peru, there is a consensus among our interviewees that Peru does not want to create an ad hoc DAG and that it does the absolute minimum to comply with its legal obligations. They therefore do not expect the shadow DAG to be recognised any time soon. At the same time there are hesitations concerning this recognition because if the shadow DAG were to be officially recognised there is a risk that it would be – or at least it would be perceived as being – co-opted by the government. In other words, on one hand the shadow DAG wants to be a mechanism for real civil society participation; on the other hand, »we were criticised a lot from other platforms for endorsing the FTA, because if we want to enter a mechanism of this FTA in some way you are accepting it« (NEU5).

### 7.3.2 Information sharing: Can they talk?

The information-sharing purpose has been achieved for the EU DAG and the joint DAG-to-DAG meetings (which also include representatives of the Peruvian shadow DAG) as they have been able to exchange information and have fairly good horizontal relations. Nevertheless, the relations between the Latin American business sector and the other groups are confrontational. The vertical relations with the governments have been evaluated positively only in the case of the EU. The Peruvian official DAG bodies are neither independent nor representative.

The legitimacy and representativeness of the EU DAG has not been questioned, even though one interviewee suggested that »it would be better to have more members but you can't force people to be in that kind of group« (EU8). In contrast, the legitimacy of the official Peruvian DAG bodies has been strongly criticised. First, the selected official bodies are not independent. They are organised and chaired by the relevant minister or high-level officials: »the purpose of the DAG is to have a platform to exchange with the government, but if the government is also part of the DAG, there is a big contradiction« (EU5). Second, these bodies are heavily dominated by the Peruvian business sector: »they have direct access to the government. We are not sitting at a table as equals« (NEU5). To illustrate: »unions tend not to participate in the National Labour Council because the business weight is so strong that when they attend, they basically validate the agenda of the private sector against their own interests. Many times the unions have even withdrawn, they officially renounced their participation« (NEU8). The business sector is well-represented at the transnational meeting as they »were always present, because they have money and contact with the government. The problem is with Group II or III, they don't have money or people to attend the meetings« (EU8). Third, according to the interviewees, these bodies do not function properly, no real dialogue is happening and no decisions are taken there: »the council does not function as an advisory group, it only exists on paper« (NEU4) and »it is a merely formal space, we almost never reached a quorum, the existing procedures hinder dialogue instead of facilitating it« (NEU8). Fourth, the official bodies are not aware of their mandate to monitor the FTA and they don't have the expertise to do so: »in reality, if it weren't for information we receive from the shadow DAG, we wouldn't be aware of this... The people constituting the Climate Change Commission do not have expertise in this field« (NEU8).

Because of the inadequacy of the official bodies as regards functioning as a DAG, several voices in both regions would prefer to see the shadow DAG official recognised and mandated: »I sincerely believe that it should be another group; that is, the self-convened group should be accredited, because they are the ones who are following up on the agreement and there is no one else who is doing that« (NEU8). The shadow DAG does not include representatives of the business sector, however. They have been invited, but are not interested in joining. It does include a number

of international NGOs. The shadow DAG is open to all relevant organisations and they proactively liaise with potential members: »the door is always open and we are always looking for other organisations to join us« (NEU4).

In the case of Peru, the interviews indicated that information exchange was of minor importance compared with exerting pressure for changes concerning civil society participation, as well as monitoring implementation of the TSD chapter. Sharing experiences among the Andean DAGs and the EU DAG was nonetheless considered beneficial.

Concerning horizontal relations within the DAGs, there have been tensions and robust debates among the groups in the EU DAG, especially between business and the two other groups, as »perhaps there are more economic interests involved than in other FTAs, which makes people more insistent on defending them« (EU8). Nevertheless, the EU DAG has agreed on a working programme with their priorities, which are shared with the European Commission. In the Peruvian mechanisms, as mentioned above, the tensions between the business sector and the others are much more explicit. Between other civil society organisations relations are cordial and they coordinate and share information. There is also an ongoing dialogue between members of the shadow DAG and members of the official DAG bodies. One criticism has been that there should be more coordination with organisations outside Lima. Regional coordination between the Andean DAGs has also been advanced as necessary and beneficial for grappling with country-specific and common regional issues.

Concerning horizontal relations across the DAGs, there are, in addition to existing strong ties between the trade unions of the regions, also established relations between developmental and human rights organisations. These existing contacts have been crucial for the shadow DAG, as these particular EU DAG members have supported its creation and tried to give it as much access to the official civil society meetings as possible. That being said, there is not much coordination between the DAGs of both regions. There are for instance no regular videoconference meetings among the DAGs between the annual meetings. In addition, there is limited or no contact between the EU DAG and the official Peruvian DAG bodies: »I don't know anyone in the official DAG« (EU4).

According to the interviewees, the DAGs have yet to reach a common understanding of what the DAGs are and what they are for. This has led to clashes, especially between business and non-business actors. That is why a workshop was organised recently on the content of the TSD chapter. As in the cases of Georgia and Korea, these tensions culminate, or are most explicit when the joint declaration is being drafted. Whereas the EU DAG is ultimately fairly united and the members have a similar vision during the transnational meetings, this is not the case at all in the Andean countries, between the business sector on one side and the trade unions and NGOs on the other. Both Peruvian and EU civil society representatives confirmed that business

actors have been more involved since 2018. The reason for this increased engagement could be the complaint filed by a coalition of Peruvian and EU civil society (see below), but this remains unclear. In any case, the collaboration between the groups has been difficult and confrontational: »Every year we are faced with this Group 1, with whom it is very difficult to talk, they block the actions that we want to do' (EU4). In 2018, the Colombian and Ecuadorian employers group decided not to sign the joint statement: »we have not achieved a joint statement, because we cannot reconcile many things with the business sector« (NEU5). The EU DAG sent a separate statement to the European Commission, instead. Another difficulty has been that the shadow DAG has also participated in the negotiation of the official joint statements as their right to contribute to the document was questioned. In the end, they were accepted as interlocutors because they have been monitoring the FTA for years (and they were strongly supported by several EU DAG members), even though they do not have an official mandate.

Vertical relations at EU level are evaluated positively: »they [the European Commission] attend the meetings, provide info, create workshops, facilitate meeting with counterparts, the EU Delegation is also working very well, but then when we present the final declaration, the results of our work of the year or several years, they don't have the capacity to provide an answer or a follow-up. That's a pity« (EU8). The relations between the Peruvian government and the shadow DAG are unusual, in the sense that even though the former has not officially recognised the latter, it has not blocked its participation in the civil society meetings. Since the complaint, the Peruvian government has been more reactive to the shadow DAG; they have answered their letters and even met with them. Nevertheless, this has not led to a real dialogue: »for them, we are a group of experts, not a consultative body... What we want is a real dialogue. When we meet, they [Peruvian government] always place themselves above us, like a teacher who is going to explain something to a student« (NEU5).

Content-wise, the agenda of the EU DAG has become diverse over the years: »in the first years we spent a lot of time establishing the DAG, the way we work and so on; three years later we started to address substantive, political problems... in this DAG we can discuss a lot of topics« (EU8). In the official Peruvian DAG bodies, the FTA has not been discussed, except for one informative session in the Commission for Climate Change. In the shadow DAG, topics concerning organisation, as well as monitoring of sustainable development issues and human rights have been discussed. The agenda and joint declarations of the transnational meetings comprise labour standards, human rights, environmental standards, access to markets and the situation of small producers, as well as civil society participation as such. Even though the DAGs have existed for over six years, practical and logistical issues are still important during the transnational meetings: »some people don't know what a DAG is, or the obligations or benefits of the DAGs; there's a long learning path to be traversed for the

counterparts« (EU8). Labour rights violations persist in the three Andean countries, which has been given considerable attention in the EU DAG and transnational meetings. In Peru the main labour issues are related to labour inspection, freedom of association and collective bargaining.

### 7.3.3 Monitoring: Can they oversee?

In the context of the EU trade agreement with Peru, monitoring the implementation of the commitments made in the TSD chapter was often referred to as a crucial function of the DAGs. Civil society organisations, also outside the DAGs, have been using the FTA actively as a way to denounce Peru's non-compliance with these commitments. In general, the European Commission has been responsive to the calls of civil society, whereas the Peruvian government has followed only in a formalistic way. The potential to induce change is nevertheless considered low.

Monitoring activities have been undertaken by the EU DAG and the Peruvian shadow DAG. In the EU DAG, labour and human rights have been followed up closely. In addition, the development of the Andean DAGs and civil participation in the region have been monitored closely. The shadow DAG has been looking into the consequences of trade liberalisation on human rights in general. In addition, they have also issued statements and reports concerning labour rights violations and environmental standards in Peru. An important monitoring exercise, executed by a coalition of EU and Peruvian civil society, including an EU DAG member, resulted in the submission of a formal complaint against the Peruvian government to the European Commission in 2017 for failing to comply with the labour and environmental commitments made in the trade agreement (which was updated in 2018). Such monitoring is »the result of research, which is expensive and difficult« (NEU5).

Turning to the procedures for providing input, the EU DAG has made use of the possibility to request meetings with the Commission, the latter's attendance at some DAG meetings, as well as formal correspondence, namely writing letters to the European Commission. The shadow DAG has been very active (even before the shadow DAG was created as a distinct entity in 2017) as they wrote several letters to the Peruvian Ministry of Trade and Tourism and the Ministry of Environment, the EU Delegation in Peru, and the European Commission, and also reached out the Walloon parliament in Belgium.<sup>17</sup> The complaint or *queja* presented to the European Commission is peculiar, as it is not a document issued by the official civil society mechanisms and does not rely on an existing procedure in the TSD chapter for filing a complaint. Finally, the creation of the joint conclusions by the DAG-to-DAGs in the transnational meeting is an additional way of providing the government with input. On one occasion the DAGs held a separate meeting with the governmental board. This was very much welcomed by the DAGs, even though »a one-

hour meeting is not enough time to discuss the implementation of the trade agreement during one year« (EU8). The transnational open forum is not considered to be a useful platform for the DAG or civil society in general as »during the Forum they only read the minutes of the junta [inter-governmental board]« (EU8) and »the DAGs don't have privileged space or recognition in the Forum; it does not allow for dialogue, it's just a series of questions and very formal answers« (EU4).

Government accountability concerning the input given by civil society has evolved over the years. In the EU, it took time before the European Commission responded formally to the EU DAG's concerns. The formal complaint was a game-changer and accelerated communications between the European Commission and both the EU and shadow DAGs. It replied in writing to both mechanisms, and sent a formal letter to the Peruvian government. A fact-finding mission took place in Peru in 2018 and the issues raised in the complaint were discussed during the intergovernmental board meeting that year. In 2019, the European Commission informed the chair of the EU DAG that its exchanges with the Peruvian government had led to a common understanding between the authorities on the path to follow in order to improve the implementation of the TSD chapter. This gave rise to disappointment among the civil society actors involved (in Peru and the EU), because they consider the issues concerning human and labour rights violations, environmental standards and inadequate mechanisms for civil society involvement to be still valid and ongoing. The European Parliament has also been active in this case: it mentioned the complaint and sustainable development issues in a resolution<sup>18</sup> and a written question.<sup>19</sup> In Peru, no follow-up has been given to the joint statements.

This brings us to the potential of these efforts to induce policy change. In the EU, civil society is aware that even though the European Commission has followed up on the concerns raised, this does not guarantee any concrete improvements: »year by year we repeat the same things, the same problems, nothing really changes« (EU4). Whereas the complaint influenced the responsiveness of the Peruvian government, it has not led to more openness or potential for policy change: »More attention is now given to the participation of civil society. It has opened this possibility to improve communications with the government, but it is still insufficient. It is a checklist which serves to enable Peru to go to the subcommittee meeting and say, there it is, the DAG is participating in the meeting ... but it is by no means a real dialogue« (NEU5).

<sup>17</sup> An overview of the Peruvian shadow DAG's activities can be found here: [http://www.redge.org.pe/sites/default/files/linea-de-tiempo\\_final\\_web.pdf](http://www.redge.org.pe/sites/default/files/linea-de-tiempo_final_web.pdf).

<sup>18</sup> European Parliament, Resolution of 16 January 2019 on the implementation of the Trade Agreement between the European Union and Colombia and Peru. Available at: [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0031\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0031_EN.html).

<sup>19</sup> European Parliament, Parliamentary question on the formal complaint against the Peruvian Government for failing to comply with the labour and environmental commitments provided for in the Trade Agreement. Available at: [https://www.europarl.europa.eu/doceo/document/E-8-2018-006261\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-8-2018-006261_EN.html).

### 7.3.4 Policy impact: can they influence?

Even though for some EU DAG members, policy impact was their main motivation for participating – »it was obvious for us to get involved in this group, as we saw it as a possibility to exert influence at the political level« (EU4) – concrete policy changes have not been observed as a result of the DAGs' work. The DAGs are not involved in decision-making and whereas the European Commission has followed up on the complaint, the DAGs have had no direct influence on government policy decisions. Because of Peru's collaborative attitude to the EU's follow-up on the complaint, it is improbable that the EU will want to activate the dispute settlement mechanism at some point.

## 7.4 CONCLUSION

In the case of Peru, a number of civil society organisations have been very proactive, striving for better representation and participation of Peruvian civil society in the Peruvian DAG. Their efforts have shown some results, even though, to date, they have not achieved their objectives. This case confirmed that good horizontal relations between EU and Non-EU civil society are beneficial in achieving the DAGs' monitoring purpose. Nevertheless, government accountability remains at their own discretion and is unpredictable. Even though the European Commission has been fairly responsive and has taken actions to follow up on the concerns shared by civil society (even organisations operating outside the formal DAGs), there is currently a standstill (or even a setback, according to some) as Peru's complained-of non-compliance persists.

## 8

## ANNEX D

## SURVEY QUESTIONNAIRE

A separate questionnaire was sent to EU and Non-EU DAG members. The questions were identical, except for those asking which DAG and group they belong to, as well as references to the European Commission/Parliament which were adapted to refer to national government/parliament.

The Non-EU DAG survey was available in English, Spanish, Georgian, Korean, Romanian and Ukrainian.

## 1. INTRODUCTION

Thank you for filling in this survey, your input is invaluable for a better understanding of the DAGs and the formulation of policy recommendations.

The survey consists of eight brief sections on your participation background, opinion on trade and sustainable development, the DAG's purpose, its functioning, content, monitoring and impact and, finally, recommendations and conclusions.

Your participation is anonymous.

Please note that you are not required to fill in the open-ended questions.

## 2. PARTICIPATION BACKGROUND

## A) EU DAG SURVEY

**To which group do you /does your organisation belong in the DAG?**

- Business associations
- Labour/trade unions
- NGOs (for example, developmental, environmental and so on)
- Other: please specify

**In which DAG meetings have you participated?**

EU DAG of EU trade agreement with	Member Yes	How many times? ≤2   3–6   7–10   ≥11
Andean Community (excl. Bolivia)		
Canada		
Central America		
Georgia		
Japan		
Moldova		
South Korea		
Ukraine		

**If you are a member of more than one DAG, we invite you to answer the following questions for the DAG in which you have been most actively involved. Please indicate for which DAG you will be answering the survey:**

- Andean Community (excluding Bolivia)
  - Canada
  - Central America
  - Georgia
  - Japan
  - Moldova
  - South Korea
  - Ukraine
- (tick the box, a maximum of one answer)

**B) NON-EU DAG SURVEY**

**To which group do you / does your organisation belong in the DAG?**

- Business associations
- Labour/trade unions
- NGOs (for example, developmental, environmental, and so on)
- Government
- Other: please specify

**In which DAG meetings have you participated?**

EU DAG of EU trade agreement with	You're a member of the national DAG of	Number of DAG meetings you've attended ≤2   3-6   7-10   ≥11
Canada		
Colombia		
Costa Rica		
Ecuador		
El Salvador		
Georgia		
Guatemala		
Honduras		
Japan		
Moldova		
Nicaragua		
Panama		
Peru (official DAG)		
Peru (civil society DAG)		
South Korea		
Ukraine		

**If relevant, please indicate any peculiarity concerning your membership or participation (for example, participation as an observer):**

(open answer)



### 3. TRADE AND SUSTAINABLE DEVELOPMENT

**What is your / your organisation's opinion on the impact of free trade on sustainable development?**

- Extremely positive
- Somewhat positive
- Neither positive nor negative
- Somewhat negative
- Extremely negative

**What is your / your organisation's opinion on the impact on sustainable development of the EU trade agreement in which you are involved as a DAG member?**

- Extremely positive
- Somewhat positive
- Neither positive nor negative
- Somewhat negative
- Extremely negative

### 4. PURPOSE OF DAGS

By ›purpose‹, we mean the reason why the DAGs exist. The first question refers to your personal opinion on what the main purpose of the DAGs should be; the second examines the reason why DAGs are established by the EU.

**What should be, according to your experience, the main purpose of DAGs? Please rank according to importance (1: most important, 8: least important)**

- Voice opinions
- Policy impact
- Create goodwill for the trade agreement
- Network with officials
- Network with civil society organisations
- Monitor the agreement
- Access to information
- Control critical voices

**What is, according to your experience, the main purpose of the civil society meeting(s)? Please order according to importance (1: most important, 8: least important)**

- Voice opinions
- Policy impact
- Create goodwill for the trade agreement
- Network with officials
- Network with civil society organisations
- Monitor the agreement
- Access to information
- Control critical voices

**Here you can add other purposes that should be (according to you) or are (according to the European Commission) the DAG's main purpose. You can also share any comment you might have regarding the purpose of the DAGs:**

(open answer)

### 5. FUNCTIONING

By ›functioning‹, we mean the organisational, operational and logistical aspects of the DAG. (The questions are not about impact, this will be surveyed next.)

**Are you satisfied with the functioning of the DAG?**

- Extremely satisfied
- Somewhat satisfied
- Somewhat dissatisfied
- Extremely dissatisfied
- I don't know

**To what extent do you agree with the following statements? The DAG...**

- ...has sufficient logistical support
- ...has legitimate rules of procedure
- ...has a clear work programme
- ...takes decisions in a legitimate way
- ...functions independently from the government
- ...members represent relevant stakeholders
- ...members generally attend the meetings
- ...composition is balanced between the different groups
- ...meetings are well-prepared by the secretariat
- ...meetings are well-prepared by the members
- ...meetings involve genuine dialogue between the members

**Answer options:**

- Strongly agree
- Somewhat agree
- Somewhat disagree
- Strongly disagree
- I don't know

**Do the following factors affect the functioning of the DAG in a positive or negative way?**

- Travelling costs for DAG members
- Functioning of the chair
- Relations between DAG members
- Frequency of the meetings
- Availability of information
- Presence of European Commission/own government
- Other: please specify
- Answer options:
- Extremely positive
- Somewhat positive
- Neither positive nor negative
- Somewhat negative
- Extremely negative
- I don't know

**How could the DAG's functioning be improved?****Please select up to three of your preferred changes:**

- Higher attendance of DAG members
  - DAG members that better represent relevant stakeholders
  - More independent DAG members
  - More genuine dialogue between DAG members
  - More funding for travelling costs DAG members
  - More frequent meetings
  - More support from the secretariat
  - (Better) rules of procedure
  - (Better defined) work programme
  - Better preparation of the meetings
  - Other: please specify
  - Nothing should change
- (tick the box, a maximum of three answers)

## 6. CONTENT

By ›content‹, we mean the substance of the topics discussed in the DAG.

### Which topics were discussed during the DAG meetings you attended?

Please order the issues according to most/least often discussed

(1: most often discussed, 7: least often discussed)

- Logistics (funding, meeting places and dates, etc.)
- Participation (membership, representativeness, attendance)
- Rules of procedure
- Impact of the trade agreement on sustainable development issues
- Impact of the trade agreement on other issues
- General sustainable development issues
- Issues related to DAG(s) in the partner country/region/EU DAG
- Other

If ›sustainable development‹ was discussed, this was related to:

	In the EU	In partner country/region
Business issues		
Labour issues		
Environmental issues		
Other: please specify		

## 7. MONITORING

By ›monitoring‹, we mean the DAG's activities and abilities to oversee, examine and evaluate the sustainability dimension of the EU trade agreement.

### Are you satisfied with the monitoring activities of the DAG?

- Extremely satisfied
- Somewhat satisfied
- Somewhat dissatisfied
- Extremely dissatisfied
- I don't know

### To what extent do you agree with the following statements?

- Own DAG members share sufficient information about FTA implementation
- The European Commission/own government shares sufficient information about FTA implementation
- The European Commission/own government is interested in the DAG's work
- There are procedures to provide input to the European Commission/own government
- There are procedures for the European Commission/own government to follow up on the DAG's input
- The European Commission/own government follows up on the input given by the DAG
- There is sufficient interaction between the European Commission/own government and the DAG
- The European Parliament/own parliament is interested in the DAG's work
- There is sufficient interaction between the European Parliament/own parliament and the DAG

#### Answer options:

- Strongly agree
- Somewhat agree
- Somewhat disagree
- Strongly disagree
- I don't know

**Do the following factors affect the monitoring of the DAG in a positive or negative way?**

- Expertise of DAG members
- Complexity of the trade agreement
- Complexity of the concept of sustainable development
- Financial resources to conduct research
- Functioning of own DAG
- Degree of consensus among DAG members
- Functioning of DAG(s) in partner country/region
- Interaction with DAG(s) in partner country/region
- Follow-up by European Commission/own government on DAG's work
- Other: please specify

**Answer options:**

- Extremely positive
- Somewhat positive
- Neither positive nor negative
- Somewhat negative
- Extremely negative
- I don't know

**How could the DAG's monitoring improve? Please select up to three of your preferred changes:**

- Increased expertise of DAG members
- More financial resources to conduct research
- More information sharing by own DAG members
- More information sharing by the European Commission/own government
- Better functioning of own DAG
- Better functioning of DAG(s) in partner country/ region/EU DAG
- Better interaction with DAG(s) in partner country/region/EU DAG
- Clear procedures to provide input to the European Commission/own government
- Clear procedures for follow-up by the European Commission/own government on DAG's work
- More interest by the European Commission/own government in the DAG's work
- More interaction between the European Commission/own government and the DAG
- More interaction between the European Parliament/own parliament and the DAG
- Other: please specify
- Nothing should change  
(tick the box, a maximum of three answers)

**8. IMPACT OF DAGS**

By ›impact‹, we mean the consequences of the DAG's work.

**Are you satisfied with the impact of the DAG?**

- Extremely satisfied
- Somewhat satisfied
- somewhat dissatisfied
- Extremely dissatisfied
- I don't know

**According to you, what has the DAG achieved so far? Multiple answers can be selected****The DAG has...**

- ...promoted sustainable development
- ...guaranteed ratification of the agreement
- ...built alliances with other civil society organisations
- ...reduced opposition to the agreement
- ...had an impact on decision-making
- ...facilitated discussions with officials
- ...criticised the sustainable development dimension of the agreement
- ...legitimised the agreement with the larger public
- ...facilitated the presentation of new ideas
- ...other: please specify
- ...achieved nothing

**Here you can clarify more specifically what the achievements or failures of the DAG have been:**

(open answer)

**Do the following factors affect the impact of the DAG in a positive or negative way?**

- Functioning of the DAG
- Monitoring capacity of the DAG
- Interaction with DAG partner country/region/ EU DAG
- Involvement of the DAG in annual transnational civil society meeting
- Involvement of the DAG in annual transnational meeting with government
- Instruments at DAG's disposal to provide input to European Commission/own government
- Follow-up by European Commission/own government on DAG's input
- Accountability of European Commission/own government
- Accountability of government partner country/region/European Commission
- DAG involvement in dispute settlement mechanism
- Non-enforceable nature of the dispute settlement mechanism
- Other: please specify

**Answer options:**

- Extremely positive
- Somewhat positive
- Neither positive nor negative
- Somewhat negative
- Extremely negative
- I don't know

**How could the DAG's impact be improved? Please select up to three of your preferred changes:**

- Better functioning of the DAG
  - Better monitoring activities of the DAG
  - More involvement of the DAG in annual transnational civil society meeting
  - More involvement of the DAG in annual transnational meeting with government
  - Having a separate meeting between all the trade agreement's DAGs and governments
  - Better instruments at DAG's disposal to give input to the European Commission/own government
  - Better follow-up by the European Commission/own government on DAG's input
  - More accountability of the European Commission/ own government
  - More accountability of the partner country/region/ European Commission
  - Increased involvement of the DAG in the dispute settlement mechanism
  - Ability of DAG to trigger dispute settlement mechanism
  - More assertive enforcement of current dispute settlement mechanism
  - Possibility to enforce sustainable development commitments through sanctions
  - Other: please specify
  - Nothing should change
- (tick the box, a maximum of three answers)

**9. RECOMMENDATIONS AND CONCLUSION****Do you have any other recommendation(s) for the improvement of the DAG's work other than the changes selected in the previous questions? (open answer)****In your opinion, would it be worth continuing your/ your organisation's participation in the DAG as it is currently functioning?**

- Yes, please specify
- No, please specify
- I don't know

**Do you have any additional comments or remarks related to the DAG that you would like to share?**

(open answer)

**10. OUTRO**

Thank you very much for completing the questionnaire!

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## LIST OF ABBREVIATIONS

CSR	Corporate social responsibility
DAG	Domestic advisory group
EU	European Union
EESC	European Economic and Social Committee
FTA	Free trade agreement
ILO	International Labour Organization
TSD chapter	Chapter on trade and sustainable development





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# DOMESTIC ADVISORY GROUPS IN EU TRADE AGREEMENTS

## Stuck at the Bottom or Moving up the Ladder?



Since the EU–Korea trade agreement was signed in 2011, all chapters on trade and sustainable development (TSD) have established civil society mechanisms to monitor the commitments made in this chapter: a domestic advisory group (DAG) for each party and an annual transnational civil society meeting.

This study focusses on DAGs, the most institutionalised and permanent civil society bodies under the TSD chapters of EU trade agreements. The objective is to conduct a comprehensive evaluation of DAGs, identify their main challenges, distinguish teething problems arising from structural issues and put forward solutions to address them. Original data collection was carried out through a worldwide survey among DAG members, as well as interviews with EU and Non-EU DAG members.



Even though most DAGs have been established according to the regulations in the TSD chapters, to date they have attained little political relevance. There are numerous reasons for this, starting with organisational issues, such as the frequency and timely notification of meetings, the support of a secretariat and funding. At a more substantive level, DAG members criticise a lack of genuine dialogue between DAGs and both governments and the European Commission, which constitutes an accountability deficit. And besides the perceived neglect of DAGs and their work, DAG members view their limited political impact also as a result of missing instruments: there are still no tools for DAGs to start a dispute settlement mechanism.



To make better use of DAGs' expertise and enable them to fulfil their assigned monitoring role, improvements should be made at various levels: ensure that regular meetings take place; provide sufficient resources for participation and the support of a secretariat; ensure independent and representative DAG membership; establish clear work programmes; invest in DAG-to-DAG relations; improve the process of developing joint statements; establish more interaction between DAGs and governments: institutionalise relations between DAGs and parliaments; provide structural resources for conducting research; establish feedback loops with governments and the European Commission; and maximise enforceability of the TSD chapters.

Further information on the topic can be found here:  
[www.fes.de/themenportal-die-welt-gerecht-gestalten/  
weltwirtschaft-und-unternehmensverantwortung](http://www.fes.de/themenportal-die-welt-gerecht-gestalten/weltwirtschaft-und-unternehmensverantwortung)