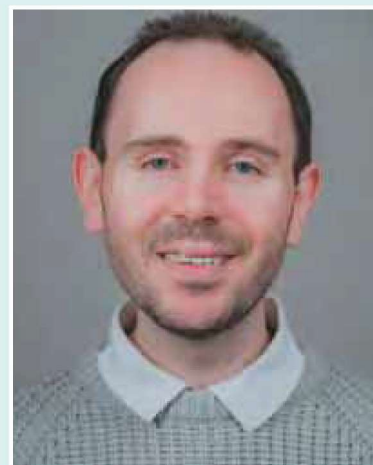


The UK's Withdrawal from the EU

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

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Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In terms of transparency, the TCA has inherited a certain hesitancy towards binding commitments. While the rules in Annex 1 provide that agendas are to be published prior to meetings and that minutes will be published after approval, neither commitment comes with a timeframe. The agendas for the first TCA committee meetings were published, at least in one case, only the day before the meeting took place.³² Furthermore, it is not mandatory for the parties to publish the decisions and recommendations of the Partnership Council. At the time of writing, the recently published UK Government consultation on the UK DAG and CSF contains only a minor commitment to 'endeavour' to publish the membership and contact details of the DAG. The EU although not immune to criticism in this area, currently has a slightly more comprehensive web space for communicating with stakeholders around potential complaints relative to the TCA³³ and for publishing materials pertaining to the work of the various specialised committees.³⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Welsh example bears further commentary as it illustrates how widely differing visions for the country and strained intergovernmental relationships are leading to an increasingly variegated social and political landscape for cross-border cooperation. Erasmus is a clear example of this: the Turing Scheme will be available UK-wide, Northern Ireland is retaining access to Erasmus+, the Welsh Government is introducing its own scheme⁵⁵ and Scotland is investigating the potential of doing the same. The Welsh Government was early in stating that the UK should seek to maintain access to as many EU programmes as possible,⁵⁶ arguing that losing access to these would be detrimental to cross-border cooperation.⁵⁷ This point was reiterated in its 2020 International Strategy which provided a policy backdrop for increasing cross-border cooperation with the EU, its Member States, regions and in particular with Ireland. Over the course of 2019 and 2020, it developed a portfolio of policy proposals which again, sought to provide the conditions necessary for cross-border cooperation in a post-Brexit landscape. Its Regional Investment Framework, for example, developed in partnership with stakeholders including civic society, provided concrete proposals for replacing EU funding in Wales.⁵⁸ It contains a section on cross-border and international working developed from proposals by its Regional Investment for Wales Steering Group, which argued that cross-border working should be ‘in the DNA’ of future regional investment.⁵⁹ The framework also contained plans for two new funds to support the development of and access to small and large scale cross-border opportunities. A significant challenge to the implementation of these plans has emerged however, as post-Brexit changes to the UK’s territorial governance are so far seeing the UK Government centralise post-EU funding. While the Levelling Up white paper, and the prospectus for the Shared Prosperity Fund are still forthcoming, there is little to suggest either will have a focus on cross-border activities. The Welsh Government has also sought to mitigate the eventual loss of the Ireland-Wales European Territorial Cooperation programme. To this end it has recently issued a call under the SCoRE Cymru grant scheme, which for the first time will have two strands:⁶⁰ one to maximise engagement in Horizon Europe by overcoming access barriers and to help build initial partnerships, and another in direct response to the recently agreed Joint Action plan with Ireland,⁶¹ to increase cooperation around the Irish Sea.

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

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

Conclusion

In answer to the introductory question, Brexit-related changes to the social, political and legal conditions for cross-border civic society cooperation are creating both new challenges and opportunities. However, the resulting landscape is still in a significant state of flux. Relatively direct impacts like the UK's withdrawal from EU cooperation programmes have yet to be fully felt and are still caught up in turbulent domestic politics. Recent comments by Mark Drakeford on the UK Internal Market Act suggest ongoing frustrations⁶⁴ – likely because its centralising effect on the UK's territorial constitution is a significant barrier to devolved ambitions like strengthening cross-border cooperation.

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

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

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

Endnotes

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- ² See Rachel Minto, 'Sticky Networks in Times of Change: The Case of the European Women's Lobby and Brexit' (2020), p.1587.
- ³ See Regulation (EU) No 232/2014 establishing a European Neighbourhood Instrument, for the instrument covering the 2014-2020 multiannual framework (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0232&from=EN>), and regulation (EU) 2021/947 for its successor covering the 2021-2027 period (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0947&from=EN>).
- ⁴ European Parliament, 'Report on Strengthening the European Neighbourhood Policy' (26 October 2007), available at: https://www.europarl.europa.eu/doceo/document/A-6-2007-0414_EN.html; European Commission, 'A Stronger European Neighbourhood Policy' (5 December 2007), COM(2007) 774 final, available at: [http://aei.pitt.edu/38883/1/COM_\(2007\)_774.pdf](http://aei.pitt.edu/38883/1/COM_(2007)_774.pdf).
- ⁵ Katy Hayward, Cathal McCall, and Ivo Damkat, 'Building peace and crossing borders: The North/South dimension' (2011).
- ⁶ Myriam Oehri, 'Comparing US and EU labour governance 'near and far' – hierarchy vs network?' (2015), p.732.
- ⁷ EU-Mexico Economic Partnership, Political Coordination and Cooperation Agreement, article 36, [2000] OJ L 276/52, https://eur-lex.europa.eu/resource.html?uri=cellar:f95ad1a3-795e-4fb0-84e1-28351b99415c.0004.02/DOC_2&format=PDF.
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- ¹⁰ See Articles 32 (2) (3) and 41 for further new civil society provisions on strengthening influence on public policy and awareness raising. See Article 10 for the institutional provisions and article 11 for a broader commitment to promoting civic dialogue.
- ¹¹ This process can also be traced in successive EU Commission policy documents see: European Commission, 'Global Europe: Competing in the World – a Contribution to the EU's Growth and Jobs Strategy', COM (2006) 567 final; European Commission, 'Trade, Growth and World Affairs – Trade Policy as a Core Component of the EU's 2020 Strategy', COM (2010) 612 final; European Commission, Trade, growth and development Tailoring trade and investment policy for those countries most in need', COM (2012) 22 final.
- ¹² Jan Orbie, Deborah Martens and Lore Van den Putte, 'Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation' (2016).
- ¹³ EU-South Korea Free Trade Agreement, [2007] OJ L 127, articles 12 and 13.
- ¹⁴ Lore Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015), p.222.
- ¹⁵ Deborah Martens, Jan Orbie, Lore Van den Putte and Yentyl Williams, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.3.
- ¹⁶ Martin Westlake, 'Asymmetrical institutional responses to civil society clauses in EU international agreements: pragmatic flexibility or inadvertent inconsistency?' (2017), pp.9-10; Jan Orbie, Deborah Martens and Lore Van den Putte, 'Civil Society Meetings in European Union Trade Agreements' (2016), p.38.
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- ¹⁸ Judith Kirton-Darling, 'EP INTA hearing on sustainable development chapters in trade agreements' (27 November 2013).
- ¹⁹ Deborah Martens et al, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.6.
- ²⁰ Lore Van den Putte et al, 'What social face of the new EU trade agreements? Beyond the "soft" approach' (2015), p.3.
- ²¹ Deborah Martens et al, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.5.
- ²² Martin Westlake, 'Asymmetrical institutional responses to civil society clauses in EU international agreements' (2017), p.11.
- ²³ Lore Van den Putte, 'Involving Civil Society in Social Clauses and the Decent Work Agenda' (2015), p.225.
- ²⁴ Evgeny Postnikov and Ida Bastiaens, 'Does dialogue work? The effectiveness of labor standards in EU preferential trade agreements' (2014), pp.927-928.

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

- ⁴⁰ James Wesley Scott and Ilkaa Liikanen, 'Civil Society and Neighbourhood – Europeanization through Cross-Border Cooperation?' (2010), p.431.
- ⁴¹ Also known as Group III in the EESC, it is made up of other representatives and stakeholders of civil society, particularly in the economic, civic, professional and cultural fields.
- ⁴² Nadia Ashraf and Jeske van Seters, 'Making it count: civil society engagement in EU Trade Agreements' (2020), <https://ecdpm.org/publications/making-count-civil-society-engagement-eu-trade-agreements/>.
- ⁴³ See TUC, 'Briefing on TUC recommendations on Domestic Advisory Group under the EU-UK TCA' (March 2021), <https://www.tuc.org.uk/sites/default/files/2021-05/TUC%20proposals%20for%20TCA%20DAG%20.pdf>.
- ⁴⁴ See Deborah Martens, Diana Potjomkina and Jan Orbie, 'Domestic Advisory Groups in EU Trade Agreements – Stuck at the Bottom of Moving up the Ladder?' (November 2020), p.56.
- ⁴⁵ See Nadia Ashraf and Jeske van Seters, 'Making it count: civil society engagement in EU Trade Agreements' (2020), p.8; Deborah Martens, Jan Orbie, Lore Van den Putte and Yentyl Williams, 'Civil Society Meetings in EU Trade Agreements – Recommendations and Lessons from EPAs' (2016), p.6.
- ⁴⁶ See ACEVO, "Gagging Clauses in Government Contracts" (2018), <https://www.acevo.org.uk/2018/11/gagging-clauses-government-contracts/>.
- ⁴⁷ House of Lords Oral Questions session, 24 June 2021: <https://hansard.parliament.uk/lords/2021-06-24/debates/DA278476-A591-4655-A19F-D352E29D2461/CivilSocietyForumUKDelegation>; see also Baroness Hayter's written question, answered on 25 May 2021: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-12/hl151>.
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- ⁴⁹ See the Institute for Government event "Creating the Department for International Trade" (13 July 2021). Recording available at: <https://www.youtube.com/watch?v=cWogXl3i79E>.
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- ⁵⁴ See the Welsh Government 'Preparing Wales' website, Community Cohesion and Disabled People pages available here: <https://gov.wales/preparing-wales>.

- ⁵⁵ Welsh Government, ‘An International Learning Exchange Programme for Wales’ (22 March 2021), <https://gov.wales/written-statement-international-learning-exchange-programme-wales>.
- ⁵⁶ Welsh Government, ‘Securing Wales’ Future’ (2018), <https://gov.wales/sites/default/files/publications/2018-10/white-paper-securing-wales-future-summary.pdf>.
- ⁵⁷ Welsh Government, ‘The Future UK/EU Relationship – Negotiating Priorities for Wales’ (20 January 2020), https://gov.wales/sites/default/files/publications/2020-01/the-future-uk-eu-relationship_0.pdf.
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