

Submission to the Senedd Legislation, Justice, and Constitution Committee

Charles Whitmore, Research Associate, Cardiff University – Wales Governance Centre & Wales Council for Voluntary Action.

August 2023

About this evidence

This evidence has been written by Charles Whitmore as a part of the Wales Civil Society Forum project (Forum). This is a partnership between Wales Council for Voluntary Action (WCVA) and Cardiff University's Wales Governance Centre (WGC) funded by The Legal Education Foundation. It is being submitted following oral evidence session as a part of the Committee's inquiry into UK-EU Governance.

Questions

1. Could you share your views on how the PPA has developed over the last 12 months, the role it has played to date and how this could be improved in future. How could UK and Welsh civil society be better engaged in the work of the PPA?

- 1.1 The Parliamentary Partnership Assembly (PPA) has shown promising developments in terms of inclusivity and collaboration. There were initial concerns in our sector regarding the inclusion of civil society stakeholders on the UK's side as there were opportunities and consultations taking place in the EU, with civil society actors that were not paralleled at the UK level. Engagement with the Senedd provided an effective and welcome channel into the PPA, though this is inherently limited by virtue of the devolved legislatures being restricted to observational roles.
- 1.2 We are now seeing increased interconnections between the PPA and the UK's Domestic Advisory Group (DAG). Sir Oliver Heald's participation in the last DAG meeting and the involvement of DAG chairs in PPA breakouts are welcome developments that have brought key civil society concerns to the fore in PPA discussions. The further inclusion and coordinated engagement with civil society stakeholders in Wales and at the UK level as part of the PPA's work should be encouraged. This would facilitate advocacy for strengthened cooperation in numerous areas, including *inter alia*, youth work, mobility, regulatory cooperation, EU and UK citizens, association and / or partnerships with EU programmes (e.g. between Taith and Erasmus) and joint research opportunities.
- 1.3 Providing a more active role for the devolved legislatures would be welcome in terms of future improvements. More generally it is currently difficult to envisage a pathway to a more active devolved role in the TCA bodies under current UK Government, though more could be done in coordinating, consulting and supporting information sharing at the devolved and UK levels in the run-up to the relevant Intergovernmental Relations and TCA body meetings. **There should be a transparent process by which Wales can input into relevant PPA and other TCA body agendas and discussions around which stakeholder coordination and consultation can take place.**

2. In evidence to the House of Lords Committee you called for better and more structured engagement between the Welsh Government and Welsh civil society on its work within the

UK-EU governance structures and wider EU work. What mechanisms or structures would you like to see developed to support this?

- 2.1 The Wales Civil Society Forum led a body of work UK wide following the agreement of the TCA to raise awareness and understanding with voluntary sector stakeholders of TCA governance and opportunities like the TCA civil society forum and domestic advisory group. We felt it was important to advocate for a four nations approach for our sector to ensure that there was scope for a distinct devolved voice in these fora. The voluntary sector was ultimately given a number of seats on the DAG and first CSF, including WCVA and its counterparts from England, Scotland and Northern Ireland.
- 2.2 However these new opportunities have come in a context where EU and post-EU membership activities require more capacity than prior to Brexit. There is a desire in the sector to maintain and build relationships at the EU level, as well as to follow EU policy and legislative developments. Not least because this is necessary for the purposes of the level playing field provisions, but also to understand opportunities for regulatory cooperation and sharing good practice and learning. These must now however be balanced more carefully against competing domestic UK level developments, especially as the end of structural funds has drained capacity from these priorities.
- 2.3 There are several steps that might be explored at the devolved level to help mitigate these and other challenges (like those around transparency).
 - 2.3.1 There is clearly a financial barrier to civil society participation in EU – UK Governance in terms of having staff with time dedicated to EU related affairs. WCVA and the WGC currently hold a third sector grant from the Legal Education Foundation to support with this, but this is only up to August 2024.
 - 2.3.2 Now that the governance of various TCA bodies is starting to crystallise, there is an opportunity for the Welsh Government to strategically review Wales’ overarching participation and input into UK – EU governance. An update to the International Strategy, or the separate development of a European Strategy developed collaboratively with stakeholders would help coordinate approaches to different TCA bodies.
 - 2.3.3 A more coordinated and strategic approach to information sharing put on a formal standing at the devolved level would also help address transparency and scrutiny issues around the involvement of the Welsh Government in the TCA committees. It may also be an opportunity to address the lack of transparency around the new IGR structures, which should provide a space for the Welsh Government to inform UK positions prior to TCA body discussions.
 - 2.3.4 A more regular and formal approach to coordination and information sharing would also provide an opportunity to inform civil society and Senedd participation in the DAG, CSF and PPA. Indeed there is arguably still a need for a structure akin to the EU Advisory Group that was previously convened by the Welsh Government.

3. Could you outline your views on the operation of the UK Domestic Advisory Group to date and the need for improvements in its operation?

- 3.1 The DAG is a group of independent civic society organisations convened to advise the UK Government on implementation of the TCA. Its governance has involved a learning curve for both stakeholders and the UK Government, not least because its remit covers the entire agreement - a novelty for EU FTA civil society mechanisms. It meets twice yearly at least and has a joint meeting with the EU DAG once a year ahead of the annual CSF. It can express views and make recommendations to the UK Government.
- 3.2 There were some initial challenges in setting up the UK DAG, for instance around the balance of representation being skewed heavily towards the private sector; ensuring fair decision making under these circumstances across private sector, trade union and wider civic society representatives; whether feedback loops could be committed to by the UK Government etc..
- 3.3 Governance and representational issues were dealt with via the nomination of an decision making executive council comprising one representative of each of the above sectors. Early issues relating to the need for timely dissemination of agendas and asks of DAG members have seen some improvements. Issues around resourcing of DAG members, at least for travel where face to face meetings are beneficial and adequate resourcing of the DAG secretariat remain, however.
- 3.4 There is still a need for a more purposive approach to the DAG at the UK level. A clear forward workplan has yet to be established, and there is an ongoing need to receive substantive items in time for us to organise any meaningful consultation / engagement in Wales. Similarly, a more formal cross-sector approach involving civil society, the Senedd and the Welsh Government around input into TCA governance may support a stronger Welsh voice in these structures, though the timely receipt of relevant information and invitations from the central level appears to be a barrier across the board.
- 3.5 Resourcing of participants involved in the DAG and CSF is also a clear need. By way of example, WCVA received a one-off grant from the Trade Unions Congress to support its physical participation at the first CSF in Brussels, but this was ad hoc and unexpected. Particularly where the CSF could also serve the wider purpose of building relationships between UK and EU actors, we feel that in person participation is important, yet the cost of doing so is prohibitive for many voluntary sector organisations.
- 3.6 Overall, it is still too early to fully gauge the effectiveness and need for improvements as the DAG has only just established a series of working sub-groups on key themes in Summer of 2023. Crucially, these are open for participation by non-DAG representatives, thereby providing a potentially useful vehicle to broaden engagement. The following groups have been established initially:
- 3.6.1 *Regulatory cooperation and the level playing field*
 - 3.6.2 *Mobility*
 - 3.6.3 *Trade and Customs*
 - 3.6.4 *Energy and Climate Change*
 - 3.6.5 *Nations and Regions*

- 3.7 WCVA is involved in the work of the groups on regulatory cooperation, mobility and nations/regions, however it is not yet clear whether the substantive focus of these groups will encompass voluntary sector issues. From early meetings this will depend to some extent on whether work focuses purely on the technical implementation of the TCA, or more broadly on issues encountered by stakeholders in the UK – EU relationship that may be addressed via the TCA and/or broader cooperation built around the TCA. For example, this may mean the difference between a focus on mutual recognition of qualifications and professional mobility, as opposed to one which would also include addressing barriers to educational and youth mobility. Similarly, it remains to be seen whether the Level Playing Field group will focus on the technical provisions of the TCA, or whether broader aspects of divergence, like in the area of the human rights, may also come under scrutiny.
- 3.8 Early meetings suggest an intent to focus on the upcoming and future TCA reviews, which may itself provide some steer in due course, though there is currently uncertainty around the political will in the UK and EU surrounding this review cycle.

4. What lessons could be learned from the first Civil Society Forum under the TCA?

- 4.1 There are substantive and procedural lessons to be learned from the first civil society forum. Procedurally the organisation of the first CSF took place at too short a notice to enable organisations from across the UK to attend in person in – the cost of last-minute travel and accommodation was too prohibitive. Similarly, there was no time to consult wider stakeholders on requests for the agenda.
- 4.2 There was initial confusion stemming from the original UK expression of interest for members, which seemed to suggest organisations were seeking ‘membership’ of the CSF, whereas in practice it is more of an annual summit, open to a wide variety of participants. As a result of this participants have expressed confusion to us around the next steps of the CSF or whether they will be automatically invited to the CSF in 2024 for example.
- 4.3 Substantively speaking there was uncertainty on part of many stakeholders as to the nature of the CSF as a TCA body and its core purpose. The text of the TCA is relatively vague on this stating merely that its aim is to ‘conduct a dialogue on the implementation of part 2’. Initially there was some misaligned expectations between civil society and the contracting parties as some representatives **hoped for an opportunity for meaningful strategic discussion on the issues facing the relationship and even about deepening cooperation in the future.** In practice however the first CSF played out more as a technical Q&A with all focus on trade and no focus on cooperation. Any points made about the latter, were ultimately included in the minutes.
- 4.4 This is in part a result of the negotiations narrowing the scope of the CSF to part 2 which presents a paradox whereby the CSF has potentially wider representation than the DAG, but a much narrower remit. Compounding this, some voluntary sector participants felt it odd that issues falling within the ‘essential elements’ of the TCA, which include climate change, human rights and the rule of law and which are therefore relevant to the whole TCA, were not featured on the agenda (despite growing concern around divergence in the field of human rights relating to *inter alia*, the UK Bill of Rights Bill). Indeed with no space to raise these issues, and limited ability for the Welsh Government and Senedd to actively participate in their respective fora,

participants felt that there was little formal space to highlight the different domestic interpretations of UK Government activity relevant to the TCA (which in the case of human rights, has largely been considered heavily regressive).

4.5 This narrow approach to the CSF it was felt, left a vacuum for high level strategic and inclusive discussions on policy and cooperation. It remains to be seen whether this will be filled by the DAG and joint UK – EU DAG system, or indeed whether there is a need for a supplementary space falling outside the TCA. Indeed the EESC UK – EU Follow-up Committee has been filling some of this function on the EU’s side while being very inclusive to devolved voices.

4.6 The UK will host the CSF in 2023, this should be used as an opportunity to set a precedent for flexibility in the organisation and remit of the event relative to the 2022 iteration. There should be ample opportunity for consulting stakeholders UK wide on the agenda, with space provided procedurally and substantively for building relationships and discussing ongoing cooperation, in addition to addressing issues of technical implementation. **As the agenda is technically set by the UK Government and EU Commission, the Welsh Government should be consulted on this as well.**

5. Could you tell us about your views on the role of the UK’s legislatures in providing oversight and scrutiny of UK-EU decision-making and how this could be improved.

5.1 Recognising that capacity is limited, there are several ways the Senedd can play a key role in this space.

5.1.1 There is a clear transparency gap so scrutiny of the Welsh Government’s participation in the IGR and TCA structures is crucial.

5.1.2 It is currently difficult to gauge any objective or strategy being pursued through participation in the TCA structures, nor is it clear how much influence, regularity or scope the Welsh Government has to influence the agendas of the joint TCA bodies. Recommending the formulation of a strategy based on experience to date of navigating post-Brexit UK – EU governance, would provide direction in building strategic connections in Europe, approaches to governance and the TCA bodies, would help frame any scrutiny, and help to better define civil society work and relevant support needs.

5.1.3 The Senedd can also play a crucial role in continuing to participate, encourage and support intra Wales dialogue and coordination between institutions and sectors. There may be a case for recommending the formalisation of coordination in the way that the EU advisory Group did. It is also crucial that resources continue to be devoted to building and maintaining relationships directly at the EU level and supporting sectors in Wales to do the same. **Indeed the Senedd’s support of the voluntary sector’s efforts to do so have made a significant positive impact in Wales and the EU.**

5.1.4 There may still be scope to continue to influence the development of the TCA governance bodies, as there are elections due domestically and at the EU level prior to the review in 2025/2026. In this context and as governance is starting to crystallise, it remains important to continue to make the case for embedding good practice and raising awareness of the need for sensitivity to devolved participation.

6. Do you have views on the balance of power and decision-making between the executive, legislatures and civil society in the post-Brexit institutional architecture compared to arrangements under EU membership?

6.1 The UK's withdrawal from the EU has marked a notable shift in power away from legislatures, towards executive function, as well as challenged the Sewell convention and diminished the role of independent civil society consultation and engagement around significant policy and legal change. A recent example of this has been the passage of the Retained EU Law (Revocation and Reform) Act and the broad executive powers it grants enact policy change with minimal parliamentary scrutiny.

6.2 Another instance of this institutional shift can be observed in the procedures surrounding the consultation, engagement and scrutiny of trade mandates and trade negotiations. At the EU level, established procedures such as the EU Trade Civil Society Dialogue have guided interactions. However, with the transition to the UK level, formal engagement frameworks have become scarce, and parliamentary scrutiny is minimalist.

6.3 These transitions might be qualified as a culture shock for civil society organisations in Wales as they stand in stark contrast to the formal arrangements under the Third Sector Scheme and wider context open engagement in Wales. Similarly, organisations in Wales have been active in participating in known EU procedures, where engagement with civil society in the legislative process is institutionalised by virtue of the role of the European Economic and Social Committee.

6.4 However at the UK level there is no similar culture of facilitating meaningful engagement and consultation with civil society. Brexit has also brought with it an increase in the use of Henry VIII clauses, rises in legislation going ahead despite the Senedd withholding consent and challenging consultation exercises on fundamental questions (like the Bill of Rights Bill where upwards of 90% -100% of thousands of responses expressed serious concern with seemingly no impact on the resulting legislation). This is concerning because an increasing amount of policy capacity in Wales must now be directed towards the UK level. Collectively these developments have shrunk the civic society space and shifted away from parliamentary scrutiny and democratic engagement towards unilateral central executive decision making.

7. As a committee, we have spoken of the challenges associated with navigating the new arrangements as a devolved parliament. An area of particular interest to us is the transparency and accountability of these new UK-EU governance structures. Professor Catherine Barnard told this committee that it 'feels pretty much like the transparency of a black box'. Could you share your views on how the transparency of decisions taking within these new UK-EU governance structures could be improved?

7.1 The transparency in the operation and governance of the bodies under the TCA is a challenge, though the commitments in the text of the TCA itself are very limited. For example, Rules 10 and 13 in Annex 1 of the TCA on the *Rules of Procedure of the Partnership Council and Committees* provide that minutes shall be made public, but neither set of commitments contains a timeframe for this to happen. Meanwhile, other key commitments to transparency are optional,

such as in rule 10(2) which provides that the parties *may* publish the decisions and recommendations of the Partnership Council. We have seen some improvement in communication upcoming meeting dates via the DAG, but there is little in the way of public information which will invariably frustrate wider independent scrutiny and analysis.

- 7.2 Furthermore, at the devolved level, the question of TCA body transparency cannot be dissociated from the transparency of the new structures for Intergovernmental Relations, as these should provide the fora for the Welsh Government to feed into the joint UK-EU agendas and discussions. Yet transparency is also challenging on this front. It is unclear from the information publicly available, the extent to which the IGR structures provide for meaningful co-decision. In some cases this seems unlikely, for example the Inter-ministerial Group on Trade's Terms of Reference suggest that policy formulation actually still follows the devolution memorandum of understanding and international relations concordat. Yet these are out of date and arguably no longer suited to the level of intergovernmental decision making required post-Brexit.
- 7.3 Illustrating some of these challenges at the TCA level, at the meeting of the trade partnership committee on 1 Dec 2022,¹ the EU requested that the parties start exchanging agendas earlier because it needed more time to consult the Member states in the Council to inform its position. It is unclear on the UK side what the process and governance is for the UK Government to consult the Welsh Government. Similarly, it is unclear whether this takes place in sufficient time for the Welsh Government to consult stakeholders prior to feeding up to the UK.
- 7.4 There are also practical examples where there is arguably cause for concern stemming from the UK's representation of issues at the partnership council where there has been significant divergence in views at the devolved level. For instance, at the Partnership Council meeting on the 24 March 2023,² the joint UK – EU statement reflects discussion of the Bill of Rights Bill and the Retained EU Law Bill with no further detail. Yet the UK Government has systematically represented both pieces of legislation as unproblematic, despite significant and near universal concern about both at the devolved level (and indeed more widely across the UK). Owing to the lack of transparency it is very unclear how the UK's positions for these meetings are arrived at and indeed how effective the IGR bodies are at providing input for the Welsh Government

¹ UK Government, "Minutes: second meeting of the Trade Partnership Committee under the UK-EU Trade and Cooperation Agreement, 1 December 2022", Available at: <https://www.gov.uk/government/publications/uk-eu-trade-and-cooperation-agreement-trade-partnership-committee-meeting-1-december-2022-agenda/minutes-second-meeting-of-the-trade-partnership-committee-under-the-uk-eu-trade-and-cooperation-agreement-1-december-2022>

² UK Government, EU Commission, "Joint statement on the Withdrawal Agreement Joint Committee and Trade and Cooperation Agreement Partnership Council meetings, 24 March 2023", Available at: <https://www.gov.uk/government/news/joint-statement-on-the-withdrawal-agreement-joint-committee-and-trade-and-cooperation-agreement-partnership-council-meetings-24-march-2023>