

Consultation on Government engagement with business and civil society groups on implementation of the Trade and Cooperation Agreement

14 September 2021

Greener UK is a coalition of 12 major environmental organisations that came together to ensure that environmental standards and protections are maintained and enhanced during the Brexit process. We welcomed the explicit recognition in the EU-UK Trade and Cooperation Agreement (TCA) of the importance of civil society participation in its implementation (Article 12) and look forward to engaging in this process.

The TCA is a broad, deep and complex agreement, providing a framework for the UK's relationship with the EU for years to come. The environment is a key aspect woven through several different parts of the TCA. The scope for engagement with civil society groups including environmental organisations with regards to the implementation of this agreement is therefore significant.

1. How should the UK Government engage formally on TCA implementation issues through a domestic advisory group? The Government is planning a meeting once or twice a year with one group and would welcome your comments on the format, scope, and other ways of consultation. How do you see this group operating effectively?

The UK Government's proposed approach of requiring a single group to oversee the implementation of the entire TCA in just one or two meetings a year will not be effective. The TCA is unusual in that it tasks the domestic advisory group (DAG) with overseeing the entirety of the agreement, not simply the environment or sustainable development chapters. Members of EU DAGs have previously noted that this meeting frequency is not sufficient for existing advisory groups, which monitor only a limited proportion of agreements. It is therefore clear that it will be insufficient to oversee the TCA, where the engagement of civil society is envisaged to be both deeper and broader in scope.

The participation of civil society in trade agreements is an indispensable means of ensuring their effective implementation. The breadth and depth of the TCA and need for effective monitoring of its implementation on the ground – including the impact of the agreement on environmental standards – means government will benefit from obtaining a broad range of stakeholder input. The DAG should offer stakeholders the chance to raise the alert where the terms of the TCA are not being respected. A balanced representation of civil society interests on the DAG including groups representing environmental issues will be crucial.

The DAG should have a balanced membership of non-governmental organisations, workers organisations and business. Separate working groups could be utilised, including for example, a working group focused on the environmental implications of the TCA and how to manage these. The format and scope of meetings should remain flexible with different formats utilised to cover different issues. Meetings should include more informal updates and information sharing as well as more formal consultation about specific issues.

The DAG should also have a balance of representatives from the four nations of the UK so that different implications of the TCA in each nation can be worked through jointly. Members will need to be able to dedicate sufficient time to the group. To achieve balanced and diverse representation particularly from non-governmental organisations, sufficient resourcing must be available. The UK Government should make funds available to support full participation but in a manner that does not impede the independence or impartiality of members – for example by offering grants and covering meeting costs. This will help ensure DAG membership remains accessible and open to any participants. The European Commission funds all DAG meetings and meets travel and accommodation costs of all DAG members.¹

The DAG's impact and effectiveness will be enhanced through clear terms of reference and work programmes. The provision of adequate notice of meetings, agendas and preparatory materials will support members' effective participation. Regular meetings will also be crucial – the suggested approach of one to two meetings a year will be too infrequent to provide for meaningful dialogue. Observers and substitutes should be accepted to facilitate regular meetings, or in the case of a coalition or alliance of organisations applying for a place, they should be able to rotate the individual filling it. The DAG will be most effective if its members are not constrained by non-disclosure agreements and are able to talk about the TCA publicly. EU DAGs do not require confidentiality agreements and where specific texts requiring confidentiality have been discussed, these were under very specific and limited agreements.

Secretarial support provided by UK Government will be an important aspect of ensuring the proper functioning of the DAG. They will need to be able to assist in drawing up agendas, meeting notes and potential outputs including joint statements, facilitate information provision and advice to members where needed, and assist exchanges with other groups or organisations including the EU's TCA DAG.

The DAG should be a forum where stakeholders can ask questions and gather information on the implementation of the TCA. The DAG will benefit from engagement with well prepared, relevant officials at meetings, who are able to provide both specific updates and a broad perspective on implementation. This should include receiving timely updates on implementation from relevant officials from both sides of the agreement, in tandem with bilateral governmental updates. This ongoing two-way engagement should mean that the DAG has a clear understanding of upcoming opportunities to feed into monitoring, updating or renegotiation processes, and are able to structure their discussions, outputs and interventions so that they feed into these at the most opportune times.

Lastly, the government should set out how the advice of the DAG will be taken on board and acted upon. This should include a commitment to seek the views of the DAG on proposed amendments to the TCA or on complaints raised under the dispute settlement mechanism.

2. If a selection had to be made, what further criteria, additional to those set out in Article 14 of the TCA, could be prioritised to decide the members of the UK delegation to the Civil Society Forum, e.g. the size of the economic or public interest, geographical interest, trade knowledge and experience or ability to protect and represent the UK's interest effectively?

Given the different remit of the Civil Society Forum, compared to the DAG, we suggest that the UK Government avoids limiting its membership and does as much as possible to enable access by all interested groups. Learnings from recent online working culture can be used to support an inclusive approach.

It will be essential for there to be effective representation of the four nations in all aspects of TCA's institutional framework including the Civil Society Forum, particularly with regards to environmental issues as these are largely a devolved policy matter. Given the specific circumstances of Northern Ireland, we strongly support the establishment of a Northern Ireland subgroup.

3. What role should the UK Government play in supporting interactions between UK and EU stakeholders on TCA implementation, in addition to the sharing of contact information under the terms of the TCA and facilitating the CSF meetings?

Civil service capacity must be available for the provision of data and research to the DAG and Civil Society Forum. This would allow members to commission studies to properly understand the impacts of the agreement and to inform their proposals for measures to mitigate identified issues and magnify identified benefits. Ex-post assessments of the impacts of existing FTAs regularly conclude that insufficient data is available to determine the ways in which agreements have impacted on our environment. The UK could lead the way in developing good practice and lay the groundwork for an evidence based approach to improve the development and implementation of future trade agreements.

Information about the DAG and Civil Society Forum including minutes and reports produced, plus upcoming work, must be easily available for public access.

UK Government should provide support by facilitating contact with wider groups. The UK's DAG must have a direct relationship including joint meetings with the EU's TCA DAG, and other groups within the agreement such as the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development.

The DAG must also have a direct link to the UK Parliament and be able to interact with the Office for Environmental Protection, Environmental Standards Scotland and the equivalent Welsh governance body once it is established. This will be valuable given these bodies are well placed to fulfil the function of supervisory bodies as referred to in Article 395 of the TCA.

Finally the UK Government should support engagement between UK DAGs working on different free trade agreements, including through the establishment of thematic working groups where appropriate. These groups should take into account differences in implementation across the four nations of the UK.

We note that the EU's call for expressions of interest to participate in its TCA DAG closed on 5 July 2021. It is imperative that the UK Government progresses the setup of its DAG without delay – as well as the DAGs for other new trade agreements. Some consideration is also needed about how civil society engagement could be included in older agreements where it did not previously exist. This should be part of a drive to ensure the experiences of the TCA and the learnings from this consultation are replicated across government departments.

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Endnotes

¹ TUC (March 2021) *Briefing on TUC recommendations on Domestic Advisory Group under the EU-UK TCA*

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