

Mapping Variation of Civil Society Involvement in EU Trade Agreements: A CSI Index★

Deborah MARTENS^{**}, Lore VAN DEN PUTTE^{**}, Myriam OEHRI^{**} & Jan ORBIE^{**}

Civil society has apparently been granted an important role in the monitoring of the sustainable development chapters in the new generation European Union (EU) trade agreements. While a debate about the role and functioning of these civil society mechanisms is emerging, we lack a profound comparative analysis of the treaty provisions establishing them. In order to address this gap and to map the extent to which civil society is included in the agreements, a Civil Society Involvement (CSI) Index is developed inductively and applied to the ten relevant EU trade agreements. It concludes that although some form of template is used, large variation exists. A distinction is made between three categories of CSI score: high (Canada, Korea), medium (Georgia, Moldova, Vietnam, Ukraine), and low (Central America, Singapore, Peru-Colombia, Ecuador). The outcome also reveals interesting nuances within these categories and calls for further research on the rationale for and consequences of this variation.

1 INTRODUCTION

Civil society organizations have, apparently, been granted an important role in the discussion and monitoring of the sustainable development chapters¹ in the new generation of European Union (EU) trade agreements.² Although civil society was

* Author's note: Earlier versions of this article were presented in 2016 at the Annual Conference of the University Association for Contemporary European Studies, the fifth Workshop on Governance and Integration through Free Trade Agreements and an ad hoc meeting at the Centre of EU Studies at Ghent University. We thank the various attendees, and in particular Maria Garcia, Patricia Duran, Adrian Smith and our colleagues at the Centre of EU Studies, for their valuable questions and comments.

** Deborah Martens is a PhD researcher at the Centre for EU Studies, Department of Political Science, Ghent University, Belgium. Email: Deborah.Martens@UGent.be. Dr Lore Van den Putte is a research and training officer at ESSEC IRENE (Paris, France) and associated researcher at the Centre for EU studies, Ghent University, Belgium Email: lorevdputte@gmail.com. Dr Myriam Oehri is a lecturer and researcher at the Global Studies Institute and the Department of Political Science and International Relations, University of Geneva, Switzerland. Email: Myriam.Oehri@unige.ch. Dr Jan Orbie is a professor at the Centre for EU Studies, Ghent University, Belgium. Email: Jan.Orbie@UGent.be.

¹ While the formal name of these chapters is the 'chapter on trade and sustainable development', we refer to them as the 'sustainable development chapter' to ensure reader-friendliness.

² Our definition of 'civil society' follows the practice of the EU, referring to a wide range of non-state actors including most importantly labour, environmental and business groups, but also organizations working on human rights, animal rights, and consumer interests, for instance. P. Bouwen, *Business Interest Representation and Legitimate European Governance*, in *Civil Society and Legitimate European*

mentioned in previous trade agreements,³ it is only since the EU-Korea agreement that civil society mechanisms have become a standard and quite prominent feature of EU trade agreements. While the US and Canada include civil society to some extent in their agreements,⁴ the EU has opted for a more specific and elaborate approach towards civil society involvement (CSI). These mechanisms arguably reflect the distinctive, cooperative approach of the EU, which emphasizes dialogue and collaboration over sanction-based enforcement.⁵ The approach also reflects the EU's ambition to involve civil society more in its internal⁶ and external⁷ policy-making and implementation.

A debate about the role and functioning of the civil society mechanisms created in the context of EU trade agreements is emerging.⁸ While the number of such mechanisms has grown exponentially in recent years, alongside the increasing number of EU trade agreements entering into force, there are no systematic and comparative analyses of these mechanisms as yet. The limited number of evaluations of the functioning of the meetings that have taken place so far are mainly policy-oriented and their assessments diverge from a negative 'talking shop' to a positive 'empowerment opportunity'.⁹ Indeed, we lack a profound analysis of the treaty provisions on these civil society mechanisms, hampering a sound evaluation.

Governance (S. Smismans ed., Edward Elgar 2006); European Commission, *The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations* (2012).

³ The EU trade agreements with Mexico (1997), South Africa (2000), and Chile (2002) mention a vague possibility or desirability to consult civil society organizations.

⁴ US and Canadian trade agreements foresee the possibility for any person with an interest, in practice often civil society organizations, to file a complaint if one of the Parties to the trade agreement is not respecting its labour commitments. Both the US and Canada also established a permanent advisory system to involve civil society in the implementation of the trade agreement. ILO, *Assessment of Labour Provisions in Trade and Investment Arrangements* (ILO 2016).

⁵ M. Oehri, *Comparing US and EU Labour Governance 'Near and Far': Hierarchy vs Network?*, 22 J. Eur. Pub. Pol'y (2015); E. Postnikov & I. Bastiaens, *Does Dialogue Work? The Effectiveness of Labor Standards in EU Preferential Trade Agreements*, 21 J. Eur. Pub. Pol'y (2014); ILO, *supra* n. 4.

⁶ European Commission, *European Governance: A White Paper* (2001); K. Armstrong, *Rediscovering Civil Society: The European Union and the White Paper on Governance*, 8 Eur. L.J. (2002).

⁷ European Commission, *supra* n. 2.

⁸ J. Orbie, D. Martens & L. Van den Putte, *Civil Society Meetings in European Union Trade Agreements: Features, Purposes, and Evaluation* (Centre for the Law of EU External Relations 2016).

⁹ EESC, *Civil Society in Action – Monitoring Sustainable Development and Wider FTA Implementation: Lessons to Be Drawn From the EU Experience*, in *Summary Report: EESC Session at Public Forum WTO 2012* (C. Miglioli ed., 2012); EESC, *Briefing Note to the Attention of Mr. Dumitru Fornea for Trade Policy Committee Dinner Organized by the Dutch EU Presidency, Discussion about the Trade and Sustainable Development Chapters in EU Trade Agreements, including Civil Society Monitoring Mechanisms* (2016); EESC, *EESC Evaluation of Civil Society Advisory Mechanisms in EU Free Trade Agreements* (2016); D. Martens, et al., *Civil Society Meetings in EU Trade Agreements: Recommendations and Lessons for EPAs* (ECDPM 2016); Y. Altintzis, *Civil Society Engagement and Linkages in EU Trade Policy*, in *Linking Trade and Non-Commercial Interests: The EU as a Global Role Model?* (T. Takacs & A. Dimopoulos eds, Centre for the Law of EU External Relations 2013).

As Postnikov and Bastiaens but also Lechner highlight, knowledge on the design of the social provisions in trade agreements is key to understanding the implementation and ultimate success of these provisions.¹⁰ In fact, during the civil society meetings observed by the authors, the legal texts were used as a source to discuss the mandate and set-up of the mechanisms and were referred to on several occasions.¹¹ We therefore expect the provisions on CSI to affect the practical functioning and effectiveness of the mechanisms so a systematic and comparative analysis seems indispensable. Only then will we be able to assess whether civil society has been granted an important role in discussing and monitoring the sustainable development chapters of recent EU trade agreements.

This comparative mapping is all the more relevant since there is uncertainty about the extent to which civil society provisions actually differ across agreements. On the one hand, there seems to be a common template with several key features (see *infra*). In this context, the sustainable development chapter in the EU-Korea agreement is often considered to be a ‘blueprint’ or ‘gold standard’ for the subsequent agreements.^{12,13} From an institutionalist theoretical perspective and according to existing research on EU external democracy promotion, EU negotiators follow specific templates that are based on domestic institutional prerequisites.¹⁴ If it is true that the civil society meetings are ‘toothless’ and merely a ‘talking shop’, one can also expect that these ‘declaratory’ provisions do not require thorough negotiations and therefore the same provisions would reappear in every subsequent agreement. On the other hand, existing studies on EU external

¹⁰ L. Lechner, *The Domestic Battle over the Design of Non-Trade Issues in Preferential Trade Agreements*, 23 *Rev. Int'l Pol. Econ.* (2016); Postnikov & Bastiaens, *supra* n. 5.

¹¹ The authors attended the following civil society meetings: the transnational public meeting of the EU-Peru-Colombia agreement (Dec. 2016), the transnational meeting of the EU-Central America agreement (June 2016 and May 2015), the EU domestic mechanism of the EU-Peru-Colombia agreement (Apr. 2016), a transnational meeting of the EU-CARIFORUM agreement (Apr. 2016), the EU domestic mechanism of the EU-Central America Association Agreement (Mar. 2016) and a meeting of the EU Delegation in Colombia with local civil society (Dec. 2015).

¹² This is the main reason why we do not examine the EU-CARIFORUM agreement (2007). This agreement constitutes an Economic Partnership Agreement implementing the trade provisions of the Cotonou Agreement (2000). Therefore this agreement does not fall within the ‘new generation’ of EU trade agreements. Specifically, it does not have a separate chapter on sustainable development and it does not establish domestic civil society meetings (only a transnational meeting), which makes it difficult to compare with the 10 agreements since Korea.

¹³ Personal interview, DG Trade, (Aug. 2016); F. Bossuyt, *The Social Dimension of the New Generation of EU FTAs with Asia and Latin America: Ambitious Continuation for the Sake of Policy Coherence*, 14 *Eur. Foreign Aff. Rev. Special Issue*, 703–722 (2009); F. Hoffmeister, *The Deep and Comprehensive Free Trade Agreements of the European Union – Concept and Challenges*, in *Trade Liberalisation and Standardisation – New Directions in the ‘Low Politics’ of EU Foreign Policy* (M. Cremona & T. Takács eds, Centre for the Law of EU External Relations 2013).

¹⁴ See F. Bicchì, ‘Our Size Fits All’: *Normative Power Europe and the Mediterranean*, 13 *J. Eur. Pub. Pol’y* (2006); T. Börzel & T. Risse, *One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law*, Workshop on Democracy Promotion (2004).

relations found that there may be variations within the same template.¹⁵ Also when it comes to CSI in the sustainable development chapter, Bartels alluded to differences across EU agreements.¹⁶

Accordingly, a new comparative study is timely for at least three reasons. First, since Bartels' study many more agreements containing civil society provisions have been concluded and consequently one can expect even more variation. Second, interviews and existing studies found that the sustainable development chapters of at least some agreements involved tough negotiations between the EU and third countries, thereby disqualifying the suggestion that they would be irrelevant and unvarying.¹⁷ Third, growing contestation, especially since the negotiations with the US and Canada, has been questioning the legitimacy of the EU trade agreements. Ambitious CSI provisions can be a way to address current criticisms.¹⁸

We therefore take up the challenge of creating a more nuanced and accurate picture of the design of CSI. In essence, we will provide a comprehensive overview of the variation in civil society provisions that exists between the different agreements. Our main objective is to thoroughly map the extent to which civil society is included in the sustainable development chapter of EU trade agreements. For this purpose we develop a CSI Index based on five clusters and twenty-one criteria and apply this to the ten 'new generation' trade agreements¹⁹ signed by the EU. In doing so, we provide an innovative analytical tool that contributes to existing databases mapping the design of trade agreements, such as the Design of Trade Agreements (DESTA) database, which does not consider CSI as a separate

¹⁵ A. Wetzel & J. Orbie, *The Substance of EU Democracy Promotion: Concepts and Cases* (Palgrave 2015).

¹⁶ L. Bartels, *Human Rights and Sustainable Development Obligations in EU Free Trade Agreements*, 40 *Legal Issues Econ. Integration* (2013).

¹⁷ Personal interview, *supra* n. 13; personal interview, Secretary of Economic Development Honduras (June 2016); personal interview, EESC (Nov. 2016); ICAES & Konrad Adenauer Stiftung, *Guía didáctica de formación: Las Rondas de Negociación sobre un Acuerdo de Asociación U.E. – C.A.* (2013).

¹⁸ More critically, increasing EU trade agreement's legitimacy through CSI can also be interpreted as co-optation of civil society. See J. Orbie, D. Martens, M. Oehri & L. Van den Putte, *Promoting Sustainable Development or Legitimising Free Trade? Civil Society Mechanisms in EU Trade Agreements*, Third World Thematics (2017).

¹⁹ EU-Korea Free Trade Agreement (negotiations concluded in 2009), EU-Peru-Colombia Trade Agreement (2010), EU-Central America Association Agreement (2010), EU-Ukraine Association Agreement (2011), EU-Moldova Association Agreement (2013), EU-Georgia Association Agreement (2013), EU-Peru-Colombia-Ecuador Trade Agreement (2014)*, EU-Canada Comprehensive Economic and Trade Agreement (2014), EU-Singapore Free Trade Agreement (2014), EU-Vietnam Free Trade Agreement (2016). For the sake of simplicity we will refer to these preferential trade agreements uniformly as 'trade agreements'.

*In this analysis the accession of Ecuador to the EU trade agreement with Colombia and Peru is treated separately because the provisions establishing the civil society mechanisms could – in theory – have been renegotiated. Art. 329 on accession by other Andean countries states that the EU 'shall aim at preserving the integrity of this Agreement', suggesting that 'flexibility' should be limited to concessions on market and investment related issues in the annexes, 'and any aspect for which such flexibility were necessary for the accession'. The question what is 'necessary' is of course a political one.

category in its codebook, and the TRade & ENvironment Database (TREND), which maps environmental provisions in trade agreements, including public involvement in the implementation of the agreements.²⁰

Methodologically, this article applies an inductive approach, starting from the empirical observations in the different EU agreements. Throughout this process, a codebook was developed, resulting in an overall CSI Index, allowing us to comparatively assess the agreements. From this, several provisional conclusions and findings concerning the involvement of civil society in the monitoring of EU trade agreements will emerge that can be used for further, theory-testing research.

The article is structured as follows. After this introduction, the CSI Index will be developed in the section 2. A section 3 will then apply this CSI Index systematically to map the civil society provisions in the new EU trade agreements. This will reveal a surprising amount of variation between the agreements which will then be analysed. The conclusions will outline the main findings and suggest avenues for further research.

2 DOWN TO THE LAST DETAIL: THE CSI INDEX

Overall, three recurrent features characterize all the CSI in the sustainable development chapter of EU trade agreements. First, they refer to a domestic group (mostly called ‘domestic advisory group’) in which representatives of three constituencies (labour, environment, and business) of each signatory Party (both within the EU and within its trading partner(s)) participate. Second, they establish a transnational mechanism where the members of the domestic mechanism and/or other civil society organizations of both the EU and its trading partner(s) meet annually. Third, they foresee some interaction between these two mechanisms and the inter-governmental body (between the EU and its trading partner(s), the so-called Parties) that meets annually in relation to the implementation of the sustainable development chapter. However as will be illustrated throughout the article, within this common template, there is significant diversity between different EU trade agreements. The CSI Index spelled out below was developed in order to identify and map all these differences. For this purpose, we elaborated several clusters and criteria of CSI, resulting in an overall CSI Index that provides a general indication of the extent to which civil society is involved in a particular EU trade agreement.

The codebook and the scores for the different criteria were developed in an inductive way. The criteria and their scores were informed by the authors’ earlier

²⁰ See at: <http://www.designoftradeagreements.org/>, and <http://www.chaire-epi.ulaval.ca/trend> (accessed Nov. 2016).

research based on document analysis, interviews, field research, and participant observation.²¹ The development of the codebook and the attribution of the scores were fine-tuned through a ‘double blind’ approach that proceeded in five phases in order to increase the intercoder reliability. First, two researchers independent from each other constructed a codebook deriving general clusters and specific criteria from the CSI provisions in all recent EU trade agreements. Second, both researchers shared their codebook with each other in order to agree on the clusters, specific criteria, and operationalization of the different codes. In the third phase the researchers applied the aggregated codebook to the provisions of the agreements. Fourth, the results were once again compared and final decisions on the codes and operationalization were made. Finally, the criteria and results were shared with policymakers working on the topic who largely subscribed to this coding as well as to its results.

This exercise resulted in twenty-one criteria which are categorized into five clusters (see Annex for the codebook). These clusters concern (1) the participants’ independence from the Parties, (2) the scope of membership, (3) the operation of the transnational meetings, (4) the interaction among civil society and interaction with the government(s), and (5) the involvement in the dispute settlement mechanism. By engaging in this coding exercise described above, the criteria are able to cover all relevant variation existing in the agreements since the EU-Korea agreement.²² Each of the criteria is scored according to the authors’ assessments of their CSI.²³ The subsequent paragraphs set out the five clusters and their (sub) criteria in general terms. A more detailed overview can be found in the codebook in the Annex.

2.1 INDEPENDENCE OF PARTICIPANTS

The first cluster concerns the independence of participants from the Parties taking part in the civil society mechanisms. First, there is variation regarding the explicit *terms* used to indicate the concept of ‘civil society’. In the EU-Singapore (Article 13.15.4) and EU-Vietnam agreement (Article 15.4) the term ‘stakeholders’ is employed, while the term ‘civil society’ is used for all other agreements. This is relevant because even though this word choice stems from cultural preferences, it may have significant implications for the kind of organizations that participate in

²¹ List of observed meetings, *supra* n. 11.

²² The codebook might need to be updated if current negotiations, such as the EU-Japan agreement or the Transatlantic Trade and Investment Partnership (TTIP) with the United States, lead to novelties.

²³ The scores provided in Table 1 merely reflect variation in the involvement of civil society and are not intended to be interpreted as if a score of 18 (EU-Ukraine) would mean that CSI is twice as much as a score of 9 (EU-Peru-Colombia).

the mechanisms and the links they have with the state.²⁴ Second, *independence* of civil society determines whether the autonomy of participating civil society is explicitly mentioned. This is the case in all agreements except for the EU-Peru-Colombia and EU-Ecuador agreements. Third, *selection* reflects the way civil society representatives will be designated. Specifically, there is variation in whether the composition and consultation of the domestic mechanisms should be in accordance with domestic law. Such a provision gives a considerable amount of leeway to the governments to organize the mechanism according to their own preferences, as is the case for the EU-Vietnam (Article 15.4) and EU-Peru-Colombia agreements (Article 281). In this cluster, CSI will be rated higher when the meetings are more independent from the Parties.

2.2 SCOPE OF MEMBERSHIP

The second cluster concerns the scope of membership which is characterized by great diversity. Four criteria were discerned. A first criterion refers to the *specificity of membership of the domestic mechanism*. While some agreements such as the EU-Korea, EU-Peru-Colombia, and EU-Ukraine agreements only vaguely mention the groups that can participate, others are much more specific. For instance, the EU-Canada agreement mentions that the domestic labour mechanism involves ‘employers, unions, labour and business organizations, as well as other relevant stakeholders as appropriate’ (Article 23.8.4). The CSI is higher when the membership of a group is more concretely described, as it reflects a more specific commitment to include certain groups. A second criterion, *novelty*, concerns the need to establish a new domestic mechanism. In most cases the use of existing mechanisms is allowed. The EU-Central America agreement enables the employment of existing mechanisms but points out that the Parties ‘shall offer existing bodies the opportunity to reinforce and develop their activities with the new perspectives and areas of work provided by this Title’ (Article 294.4 footnote 45). Only the EU-Korea agreement obliges the governments to set up a new mechanism to deal with sustainable development (Article 13.12.4). CSI will be higher in this case because there is a separate mechanism that is specifically mandated to deal with the sustainable development dimension of the trade agreement. When existing mechanisms can be used, there is less certainty that these will discuss or monitor the trade agreement, let alone the sustainable development chapter. A third

²⁴ Personal interview, *supra* n. 13; H. Volkhart, *Studying Civil Society Across the World: Exploring the Thorny Issues of Conceptualization and Measurement*, 1 J. Civil Soc’y (2005); C. Spurk, *Understanding Civil Society*, in *Civil Society and Peacebuilding: A Critical Assessment* (T. Paffenholz ed., Lynne Rienner Publishers 2010).

criterion indicates the *specificity of membership of the transnational mechanism*. In the EU-Vietnam agreement, for example, it is mentioned that members of the domestic mechanisms meet in the transnational meeting (Article 15.5), while the EU agreement with Peru-Colombia and Ecuador only foresee a session with civil society organizations and the public at large (Article 281.1). CSI is scored higher when the participants in the transnational mechanisms include the members of the domestic mechanisms together with other additional groups than when the public at large can meet without any continuity in membership whatsoever. A final criterion concerns the *potential presence of state actors*. The possibility for ‘local public authorities’ to take part in the civil society mechanisms is only explicitly mentioned in the case of the EU-Central America agreement (Article 294.5). As their presence could potentially limit the possibility to speak out freely and may strengthen the governmental interference in the ‘selection’ (see criteria *supra*), CSI is rated higher when their presence is not explicitly permitted.

2.3 OPERATION OF TRANSNATIONAL MECHANISM

A third cluster concerns the operation of transnational meetings and consists of three criteria. The first criterion refers to the *deadline* for the Parties to agree on the operation of the transnational mechanism. While in most agreements it is specified that the Parties should determine the operation within one year after the entry into force of the agreement, this is not explicitly stated in the cases of the EU-Central America, EU-Singapore, and EU-Canada agreements. As we expect such a deadline to ensure that the transnational mechanism is on the agenda of the Parties and their intergovernmental body and will therefore take place in time, we provide a higher CSI score for it. The second criterion relates to the *reoccurrence* of the transnational meetings. In the EU-Singapore agreement the transnational meetings are to take place within the first two years after the entry into force of the agreement and thereafter ‘as necessary’ (Article 13.15.3), whereas all other agreements mention that this mechanism shall meet once a year. We expect CSI to be higher when they are to meet frequently. A third criterion concerns the *dependence of the transnational meeting on the intergovernmental body to be convened or organized* (sometimes in conjunction with the Parties’ own meetings). For example in the case of the EU-Central America agreement ‘the Parties agree to organize and facilitate a bi-regional Civil Society Dialogue Forum for open dialogue’ (Article 295.1). Only in the case of the EU-Korea and EU-Ukraine agreements does the organization of the transnational meeting not depend formally on the Parties. We give CSI a higher score in these cases, as it provides more possibilities for the transnational mechanism to determine its own meeting frequency.

While the first three clusters refer to the establishment and functioning of the civil society mechanisms, the last two clusters concern the relationship of these mechanisms with other bodies or processes created in the context of the sustainable development chapters. The latter clusters mirror the interaction between the civil society mechanisms, their relationship to the governments, and their involvement in the dispute settlement procedure.

2.4 INTERACTION

A fourth cluster concerns interaction, both among civil society mechanisms and between them and the Parties. The first criterion reflects the *interaction among civil society mechanisms*. In the cases of the EU-Korea, EU-Ukraine, and EU-Canada agreements, the possibility for direct interaction between the transnational and the domestic mechanism is created. In our codebook, CSI is rated higher when it is explicitly mentioned that both mechanisms can communicate as it creates a formal communication channel between them.

A second criterion covers the *interaction between civil society and the Parties*. Four subcriteria are identified to describe the variation in the interaction. The first subcriterion concerns interaction between the *domestic mechanism and the Parties*. The EU-Moldova agreement, for example, mentions that the domestic mechanisms may submit views or recommendations to the Parties, including on their own initiative (Article 376.4). The second subcriterion refers to interaction between the *domestic mechanism and its own government*. This is the case in the EU-Peru-Colombia (Article 281), EU-Ecuador (Article 281), EU-Singapore (Article 13.15.5), EU-Canada (Article 23.8.4), and EU-Vietnam (Article 15.4) agreements where the domestic mechanisms may, ‘on their own initiative’, submit views or recommendations to their respective Parties on the implementation of the sustainable development chapter. The third subcriterion highlights interaction between the *transnational mechanism and the Parties*. This interaction is, for example, explicitly included in the case of the EU-Georgia agreement, where ‘the Parties shall present an update on the implementation of this Chapter to the joint civil society dialogue forum’ (Article 241.3) and the views and the opinions of the joint civil society dialogue forum ‘shall be submitted to the Parties’ (*ibid.*). The fourth subcriterion reflects the interaction between the *transnational mechanism and the Parties by means of the domestic mechanism*. This possibility is only foreseen in the cases of the EU-Korea, EU-Ukraine, and EU-Canada agreements.

The above-mentioned interaction between civil society and the government (s) can take place at different levels, ranging from one-way communication (e.g. the EU-Moldova agreement where the domestic mechanisms ‘may submit views or recommendations on the implementation of this Chapter, including on its

(their) own initiative' (Article 376.4)) to two-way communication in which civil society and governments are obliged to react to each other's communications. This is the case for the EU-Canada agreement (see *infra*). This gradation was also taken into account while scoring the different provisions.

2.5 DISPUTE SETTLEMENT MECHANISM

A fifth and final cluster reflects the involvement of civil society in the *settlement of disputes between the Parties*.²⁵ CSI in these mechanisms creates more opportunities for civil society organizations to provide input and enforce the commitments made in the sustainable development chapter. We can identify six criteria. A first criterion concerns whether *communications of the domestic mechanism can form the basis of government consultations*. This is only the case for the EU-Korea agreement (Article 13.14.1). CSI is rated higher when this possibility is explicitly mentioned. A second criterion concerns the *involvement of the domestic mechanism in government consultations*. In the EU-Georgia (Article 242.5) and EU-Moldova (Article 378.5) agreements, it is mentioned that 'where appropriate, that Sub-Committee may seek the advice of the DAG(s) [domestic mechanism(s)] of either or both Party(ies) or other expert assistance'. CSI is rated higher when a domestic mechanism can take the initiative to provide input to the consultations. A third criterion concerns the *advisory role of the domestic mechanism to the Panel of Experts during its proceedings*. This role is again explicit in the EU-Korea agreement (Article 13.15.1) as well as in the EU-Ukraine agreement (Article 301.1). CSI is rated higher when the Panel of Experts is expected to seek its advice than when this possibility is not foreseen. A fourth criterion concerns whether the *Panel of Experts informs the domestic mechanism about the outcome of its proceedings*. This is the case both in the EU-Korea (Article 13.15.2) and EU-Ukraine (Article 301.2) agreements. In the case where it is mentioned that the outcome of the Panel of Experts report shall be made available to the domestic mechanism, CSI is rated higher, since the civil society are kept abreast and as such involved. A fifth criterion refers to the *governments informing the domestic mechanism about the implementation of the report drawn up by the Panel of Experts*. CSI is scored higher when both the responding and requesting governments are required to inform their domestic mechanism. This is, for example, the case in the EU-Canada (Article 23.10.12) and EU-Singapore (Article 13.17.9) agreement. A sixth criterion determines the involvement of the *civil society*

²⁵ In EU trade agreements, the sustainable development chapters are excluded from the general dispute settlement system of the trade agreement as a whole. When a violation of labour or environmental provisions arises, the issue can be discussed in government consultations. As a last resort, a panel of experts can be established. However, no sanction is foreseen if the panel's recommendations are not followed up.

mechanisms in monitoring the implementation of the report drawn up by the Panel of Experts. In the EU-Georgia agreement this possibility is explicitly mentioned while it is not the case in, for instance, the EU-Peru-Colombia agreement. CSI is rated higher when civil society may submit observations in this regard.

3 SIGNIFICANT VARIATION: OUTCOME AND COMPARATIVE ANALYSIS

Table 1 presents the scores on the different criteria and clusters, based on the codebook that was developed for this purpose. This mapping exercise shows a strong variation between the different EU trade agreements. Overall (see ‘Total’ in Table 1), some agreements score much higher on the CSI Index than others. In addition, there is variation within and between different clusters. Some agreements have a similar score on the overall CSI Index while featuring significantly different scores on separate clusters and criteria, respectively.

This section provides a more general picture of the broad variation found and elaborates on the substantial differences between the CSI provisions. It is structured around the overall scores of the CSI Index. Therefore a distinction between three groups is made. First, the EU-Canada and EU-Korea agreements belong to the group with the highest score. This can mainly be attributed to their emphasis on participants’ independence, membership scope, and most of all dispute settlement. Second, the EU-Georgia, EU-Moldova, EU-Vietnam, and EU-Ukraine agreements constitute the intermediate group. All of them score relatively high on the criteria referring to membership scope, transnational meeting, and interaction between civil society and the Parties. Third, the EU-Central America, EU-Singapore, EU-Peru-Colombia, and EU-Ecuador agreements constitute the group with the lowest scores on each cluster.

3.1 HIGH CSI

In the first group, the EU-Canada agreement scores comparatively high. Concerning the membership scope, it is the only agreement that creates separate domestic groups for labour and environmental issues. Another unique provision is the obligation of the governments to follow up annually on the communications from the transnational civil society meetings: ‘any view or opinion of the Civil Society Forum shall be presented to the Parties directly, or through the consultative mechanisms (...) The Committee on Trade and Sustainable Development shall report annually on the follow-up to those communications (Art. 22.4.4(b))’. This obligatory two-way communication results in a remarkably high score for the criterion on interaction with the Parties. The EU-Canada trade agreement also

Table 1 CSI Index (* Year Conclusion Negotiations)

Cluster	Criterion	Peru-Colombia (2010)*	Ecuador (2014)	Central America (2010)	Singapore (2014)	Ukraine (2011)	Vietnam (2015)	Georgia (2013)	Moldova (2013)	Korea (2009)	Canada (2014)
	Term	2	2	1	0	2	0	2	2	2	2
Independence participants	Independence mentioned	0	0	1	1	1	1	1	1	1	1
	Selection	0	0	1	1	1	0	1	1	1	1
	SUBTOTAL	2	2	3	2	4	1	4	4	4	4
Scope membership	Domestic mechanism	0	0	1	1	0	1	1	1	0	2
	Novelty	0	0	1	0	0	0	0	0	2	0
	Transnational mechanism	0	0	1	1	2	4	2	2	3	2
	Presence state actors	1	1	0	1	1	1	1	1	1	1
	SUBTOTAL	1	1	3	3	3	6	4	4	6	5
	Deadline	1	1	0	0	1	1	1	1	1	0
	Reoccurrence	1	1	1	0	1	1	1	1	1	1
Operation transnational mechanism	Independence for organization	0	0	0	0	1	0	0	0	1	0
	SUBTOTAL	2	2	1	0	3	2	2	2	3	1

<i>Cluster</i>	<i>Criterion</i>	<i>Peru-Colombia (2010)*</i>	<i>Ecuador (2014)</i>	<i>Central America (2010)</i>	<i>Singapore (2014)</i>	<i>Ukraine (2011)</i>	<i>Vietnam (2015)</i>	<i>Georgia (2013)</i>	<i>Moldova (2013)</i>	<i>Korea (2009)</i>	<i>Canada (2014)</i>
	Civil society (CS) mechanisms	0	0	0	0	1	0	0	0	1	1
	CS & Government (Gov): Domestic mechanism & Parties	0	0	0	0	0	0	1	1	0	1
	CS & Gov: Domestic mechanism & own government	1	1	0	1	0	1	0	0	0	2
Interaction	CS & Gov: Transnational mechanism & Parties	3	3	4	3	4	5	5	5	1	6
	CS & Gov: Domestic mechanism intermediate for transnational	0	0	0	0	1	0	0	0	1	1
	SUBTOTAL	4	4	4	4	6	6	6	6	3	11

<i>Cluster</i>	<i>Criterion</i>	<i>Peru-Colombia (2010)*</i>	<i>Ecuador (2014)</i>	<i>Central America (2010)</i>	<i>Singapore (2014)</i>	<i>Ukraine (2011)</i>	<i>Vietnam (2015)</i>	<i>Georgia (2013)</i>	<i>Moldova (2013)</i>	<i>Korea (2009)</i>	<i>Canada (2014)</i>
	Domestic mechanism basis initiation	0	0	0	0	0	0	0	0	1	0
	Domestic mechanism advice to Government Consultation	0	0	0	0	0	1	1	1	3	2
	Domestic mechanism advice to Panel of Experts (PoE)	0	0	0	0	1	0	0	0	2	0
	PoE informs domestic mechanism on outcome	0	0	0	0	1	0	0	0	1	0
Dispute settlement mechanism	Parties inform domestic mechanism about implementation PoE report	0	0	0	1	0	1	1	1	0	2
	Domestic mechanism involvement monitoring implementation PoE report	0	0	0	1	0	2	2	2	0	2
	SUBTOTAL	0	0	0	2	2	4	4	4	7	6
	TOTAL	9	9	11	11	18	19	20	20	23	27

scores high on the dispute settlement cluster where the domestic group can give advice to the government consultation and is involved in the monitoring of the implementation of the report of Panel of Experts.

The EU-Korea trade agreement was the first EU agreement creating civil society mechanisms. It also scores high, however with a different emphasis on certain criteria than the agreement with Canada: the determining clusters here concern the scope of membership and dispute settlement. First, the EU-Korea trade agreement is the only agreement establishing new domestic groups for the specific purpose of this agreement. Contrary to the other agreements, it is not stipulated that existing groups can be consulted for this purpose. Moreover, it is the only agreement where the closed transnational meeting comprises only the members of each domestic group and not additional members. In addition, this transnational mechanism does not depend on the Parties to convene these meetings and can determine its own meeting frequency. This strong independence is a rare provision, only shared with the EU-Ukraine agreement.

Second, in the EU-Korea trade agreement the domestic groups can play a more important role in providing input for the dispute settlement mechanisms. This is different from the EU-Canada agreement where civil society can play a role in the follow-up of these mechanisms. It should also be noted that this agreement scores remarkably low on interaction with the Parties. Contrary to the EU-Canada agreement, no interaction is foreseen between the domestic group and the Parties, and the provision describing the interaction between the transnational meeting and the Parties is much weaker: ‘The Parties can present an update on the implementation of this Chapter to the Civil Society Forum. The views, opinions or findings of the Civil Society Forum can be submitted to the Parties directly or through the Domestic Advisory Group(s)’ (Art. 13.12.3).

3.2 MEDIUM CSI

In the intermediate group, the CSI Index scores are close to each other. The civil society provisions in the EU-Georgia and EU-Moldova agreements are identical.²⁶ Interestingly, however, there are significant differences between the scores on the clusters and criteria of these agreements and the EU-Vietnam and EU-Ukraine agreements.

For some criteria, the EU-Georgia, EU-Moldova, and EU-Vietnam agreements display strong resemblances. For instance, the three agreements score relatively high on interaction with the Parties. First, two-way communication is

²⁶ An interesting difference with the other agreements is the explicit reference to civil society organizations established in their ‘own territories’.

created by the obligation of the governments to report on the implementation of the sustainable development chapter during the transnational meetings together with the submission of the report (EU-Vietnam) and views and opinions (EU-Georgia and EU-Moldova) of these transnational meetings to the Parties. Second, the possibility is created for the domestic mechanisms to communicate their views and recommendations to their own government (specified in the EU-Vietnam agreement) or potentially to both governments through the intergovernmental body as it is not specified in the EU-Georgia and EU-Moldova trade agreements. This explicit reference to ‘its respective party’ in the EU-Vietnam trade agreement (Article 15.4) is a notable difference. In addition, the criteria on civil society interaction with the dispute settlement mechanism are exactly the same in all three agreements. Here, the domestic mechanisms may give their advice during government consultations, and they are informed about and may submit, together with the transnational mechanism, observations on the implementation of the report of the Panel of Experts. These agreements do not score as high as the EU-Korea or EU-Canada agreements because the provisions referring to the consultation of the domestic groups to receive input for the dispute settlement mechanisms remain more voluntary.

However, the EU-Vietnam trade agreement scores differently on several other criteria and shows some peculiarities. On the one hand, it scores very high on the membership score of the transnational meetings as it involves both the domestic groups and other stakeholders. This is unique compared to all the other agreements. On the other hand, it scores low on other criteria. As indicated in the previous section, the agreement only refers to ‘stakeholders’ and never to ‘civil society’ (similar to the EU-Singapore agreement). In addition, the selection of the members of the domestic groups is determined by domestic procedures (as with the EU-Peru-Colombia and EU-Ecuador agreements).

Interestingly, the EU-Ukraine agreement differs from the others in the intermediate category, including the agreements with the other Eastern Partnership countries Georgia and Moldova. The following provisions are noteworthy. First, regarding the transnational meeting, and similarly to the EU-Korea trade agreement, this meeting in the EU-Ukraine agreement is more ambitious since it does not depend on the Parties to be convened. Second, even though the EU-Ukraine agreement scores similar to the others on civil society interaction, a closer look at the criteria reveals significant differences. For instance, the EU-Ukraine agreement foresees the possibility for the domestic group to function as an intermediary for communications of the transnational meeting. The latter is a provision only shared with the EU-Korea and EU-Canada agreements, and is the only communication channel created for interaction between civil society organizations in the domestic

groups and transnational meetings. Third, the EU-Ukraine agreement scores particularly low on dispute settlement, where it does not involve civil society in the government consultation and the follow-up of the Panel of Expert report.

3.3 Low CSI

The third group consists of the EU-Central America, EU-Singapore, EU-Peru-Colombia, and EU-Ecuador trade agreements. These agreements score low on all clusters. For instance, they all score very low on scope of membership and operation of the transnational meeting, and extremely low on the cluster on dispute settlement. However, there are noteworthy peculiarities and differences, which will be discussed here.

There are two particularities that are unique to the EU-Central America agreement. First, there is a provision creating the opportunity to enforce existing bodies should they be consulted as domestic groups; this positively influences the CSI score. Second, there is a possibility to involve state actors, namely ‘local public authorities’; this negatively influences the CSI score.

Even though the EU-Singapore agreement has the same overall score as the EU agreement with Central America, it differs from the other agreements in this group on certain criteria. First, the EU-Singapore agreement contains, albeit weak, CSI provisions in the dispute settlement mechanism. This is contrary to the EU-Central America and EU-Colombia-Peru agreements, which do not refer at all to CSI in dispute settlement. Second, the EU-Singapore, EU-Peru-Colombia, and EU-Ecuador agreements score lower than the EU-Central America agreement on the interaction between the transnational meetings and the Parties; however, the three agreements level this by mentioning the possibility for the domestic group to submit views or recommendations to their respective Parties. Third, the EU-Singapore agreement only refers to ‘stakeholders’ and never to ‘civil society’. Fourth, it also scores the lowest of all the agreements on the operation of the transnational meetings. In this context, the agreement does not mention a deadline by when the Parties should agree on the operation of the transnational meeting. This provision is included in all agreements except for the EU-Singapore and EU-Central America agreements. In addition, and contrary to all other agreements, the EU-Singapore agreement does not explicitly foresee an annual transnational meeting. The organization of these meetings depends entirely on whether a meeting of the intergovernmental body takes place, which is not guaranteed as it ‘shall meet during the first two years after the agreement enters into force and thereafter as necessary’ (Article 13.15.3). This explains the low score on the criteria ‘reoccurrence’ and ‘dependence to intergovernmental body’.

The EU agreements with Peru-Colombia and Ecuador score lowest on the CSI Index for a number of reasons. First, in contrast to all other agreements, there is no mention of the need for the members of the domestic groups to be 'independent'. Second, their selection should be 'in accordance with domestic law', thus depending on domestic procedures as is the case in the EU-Vietnam trade agreement. Third, the transnational meeting constitutes a 'session with the public at large' where the members of the domestic group 'are allowed to participate', resulting in a very vague description of the required participants, which is much weaker than in most other agreements.

In sum, we have shown that there is considerable variation between CSI in EU trade agreements. The CSI Index makes it possible to distinguish three categories of trade agreements: those with a high, medium, and low level of CSI. In addition, we identified more subtle variations between agreements within the same category, and a number of particularities that make 'high CSI' trade agreements score lower on some criteria and 'low CSI' agreements score higher on specific criteria. We have thus largely confirmed that there is a significant degree of flexibility within the general template of CSI in the sustainable development chapter.

4 CONCLUSION

This article aimed to shed light on a new phenomenon in the most recent generation of EU trade agreements, namely the involvement of civil society in the sustainable development chapter. Drawing on an innovative CSI Index consisting of twenty-one criteria in five different clusters (i.e. participants' independence from governments, scope of membership, operation of transnational mechanism, interaction, and dispute settlement mechanism), it allowed comparison of different degrees of CSI in ten EU agreements concluded with sixteen countries. This detailed mapping revealed a remarkable degree of variation in the extent to which civil society organizations can be involved. We found that, notwithstanding the fact that a common template is used, there appears to be crucial variation between agreements. We identified three categories of agreements (high, medium, and low CSI) and analysed relevant differences between and within these categories.

With this study we aimed to provide a nuanced picture of how EU trade agreements exhibit CSI. We can thus increase our knowledge on the role of civil society in EU trade agreements beyond *ex ante* involvement of interest groups, that is during EU trade agreement negotiations,²⁷ and beyond *ex post* learning and

²⁷ A. Dür & D. De Bièvre, *Inclusion Without Influence? NGOs in European Trade Policy*, 27 J. Pub. Pol'y (2007).

dialogues of civil society actors after the EU-Korea trade agreement,²⁸ inaugurating a new generation of CSI. The study also emphasizes that transnational civil society engagement in trade agreements is not limited to the North American context²⁹ but has also evolved in recent years in the EU approach. Even more, while CSI on labour-related issues in US trade agreements is normally linked to public complaints and, if deemed appropriate by decision makers, to state-actor meetings,³⁰ the EU has pioneered a promising multifaceted approach for CSI which in the best case allows for regular, independent, and transparent interactions on trade-related issues of interest to a broader public.

Now that the CSI provisions in EU trade agreements have been meticulously mapped and their variation thoroughly analysed, the stage is set for further research on the explanations for this large variation. These could relate, for example, to institutional EU path dependency, leading to an incremental CSI ambition; trade power asymmetries, where the strongest partner can impose its will; the level of sustainable development in the trade partners, where the trade partner with the lowest level of sustainable development strives for a low level of CSI; EU competitiveness interests, where the EU aims to reduce or eliminate the trade partners' comparative advantages by increasing their sustainable development standards; existing civil society participation, where high civil society participation in the trade partners is reflected in high CSI in the trade agreement; and finally the trade partners' negotiation skills and capacity. This knowledge would lead to a better understanding of the conducive and hindering conditions for CSI, which will be relevant even beyond the scope of CSI in EU trade agreements.

In addition to the explanations for CSI variation, our findings invite further research on the implications for the implementation of the CSI provisions. While we could show that CSI varies considerably between EU agreements, there is still uncertainty to what extent higher CSI in agreements also leads to higher CSI in practice. To be sure, the more precise the requirements are in a trade agreement, the more legal inducement exists to actually involve civil society actors. To illustrate, due to a lack of specific requirements, the transnational mechanism of the EU-CARIFORUM Economic Partnership Agreement (EPA), the so-called Consultative Committee, was only inaugurated six years after the EPA had been signed.³¹ Moreover, a recent study on Peru's compliance with the sustainable development chapter of the EU-Peru-Colombia agreement indicated how on eight different criteria the low level of commitment in the treaty had already had

²⁸ Postnikov & Bastiaens, *supra* n. 5.

²⁹ T. Kay, *NAFTA and the Politics of Labor Transnationalism* (Cambridge University Press 2011).

³⁰ M. Oehri, *US and EU Labor Governance in the Dominican Republic: Contrasting the DR-CAFTA and the CARIFORUM-EPA De Jure and De Facto*, 89 Bull. Comp. Lab. Rel. (2015).

³¹ Oehri, *supra* n. 5 and n. 30.

consequences in policy practice, including the domestic mechanisms' little or no independence and the use of existing but not effectively functioning advisory groups.³² And yet, while relevant articles in EU trade agreements set a starting point for CSI, procedural guidelines on the actual functioning of CSI mechanisms are normally agreed upon during the inauguration of these mechanisms. Accordingly, further research should look into the actual functioning and effectiveness of CSI in EU trade agreements.

ANNEX: CODEBOOK CIVIL SOCIETY INVOLVEMENT INDEX

A. **Independence participants:**

- i. Term:
 - stakeholder: 0
 - civil society mentioned once: 1
 - civil society mentioned more than once: 2
- ii. Independence mentioned:
 - not mentioned: 0
 - mentioned: 1
- iii. Selection domestic mechanism:
 - explicit mention of domestic procedures: 0
 - no mention of domestic procedures: 1

B. **Scope membership:**

- i. specificity domestic mechanism:
 - labour, environment, sustainable development: 0
 - other groups (e.g. workers' organizations) explicitly mentioned: 1
 - separate domestic mechanisms for labour & environmental issues: 2
- ii. Novelty:
 - new or existing: 0
 - new or existing with comment to reinforce existing groups: 1
 - new: 2
- iii. Transnational:
 - public at large: 0
 - list relevant organizations: 1
 - include members domestic mechanism, open: 2
 - include members domestic mechanism, closed: 3

³² J. Orbie & L. Van den Putte, *Labour Rights in Peru and the EU Trade Agreement: Compliance with the Commitments Under the Sustainable Development Chapter*, ÖFSE Working Paper Series (Austrian Foundation for Development Research 2016).

- include domestic mechanism as a whole, open: 4
- iv. Presence state actor:
 - yes: 0
 - not mentioned: 1
- C. Operation transnational meeting:**
 - i. Deadline for Parties
 - no: 0
 - yes: 1
 - ii. Reoccurrence:
 - 'as necessary': 0
 - once a year, unless otherwise agreed by the Parties: 1
 - iii. Independence from the intergovernmental body for organization:
 - no: 0
 - yes: 1
- D. Interaction:**
 - i. Among domestic and transnational mechanisms:
 - no communication: 0
 - one way communication (domestic to transnational or *vice versa*): 1
 - ii. Civil society mechanisms and governmental actors:
 - a. Domestic mechanism & Parties
 - b. Domestic mechanism & own government
 - c. Transnational & governmental actors (Parties/intergovernmental body)
 - d. Domestic mechanism as intermediate for transnational
 - no communication: 0
 - one-way communication (X to Y or Y to X) can/may: 1
 - one-way communication (X to Y or Y to X) shall/will: 2
 - exchange of views or conduct a dialogue: 3
 - two-way communication (X <-> Y) can/may: 4
 - two-way communication (X <-> Y) shall/will: 5
 - follow-up: X reacts to communication Y: shall/will: 6
- E. Dispute Settlement mechanism:**
 - i. Domestic mechanism communication basis for initiating Government Consultations
 - no: 0
 - may/can: 1

- ii. Government consultation/Committee asks advice from domestic mechanism (during proceedings):
 - no: 0
 - may/can: 1
 - will/shall/should: 2
 - own initiative DAG: 3
- iii. Panel of Experts asks advice from domestic mechanism (during proceedings):
 - no: 0
 - may/can: 1
 - will/shall/should: 2
- iv. Panel of Experts informs domestic mechanism about outcome:
 - no: 0
 - may/can: 1
 - will/shall/should: 2
- v. Parties inform domestic mechanism about implementation Panel of Experts' report :
 - no: 0
 - responding Party shall inform: 1
 - responding and requesting Party shall inform: 2
- vi. Civil society mechanisms involvement in monitoring of implementation Panel of Experts' report:
 - no: 0
 - stakeholders may submit observations: 1
 - domestic mechanism may submit observations: 2