Multistakeholderism in the EU’s Trade Governance

Diana Potjomkina*

This policy brief contributes practical insights to the intense debate on engagement of stakeholders in the European Union’s trade policy. In response to growing demand for a constructive dialogue with stakeholders on trade, the EU is developing new mechanisms and adjusting existing ones. However, overall, its current system for consultation remains disjointed and weak. This brief analyses gaps in the consultation regime and provides recommendations.¹

Introduction

This policy brief contributes practical insights and recommendations to the intense debate on engagement of stakeholders in the European Union (EU)’s trade policy. Various arrangements for consultations exist, such as civil society mechanisms established under the new generation of EU free trade agreements, or the Civil Society Dialogue. However, they have been criticised for ineffectiveness and inability to make trade policy more legitimate. The EU has recently made steps to improve its consultation system. These include the new Group of Experts on EU Trade Agreements and a new 15-point plan (non-paper) of the Commission services on improving engagement with civil society under the Trade and Sustainable Development chapters in trade agreements.² However, multiple shortcomings remain.

¹ This brief represents a shortened version of a policy paper originally published by the Institute for European Studies at the Vrije Universiteit Brussel here. The author is most grateful to Jan Orbie, Jamal Shahin, Lotte Drieghe, Austin Ruckstuhl, Niels Gheyle and Beatriz Porres for their invaluable comments and suggestions on the original paper. This brief has been developed in the framework of the project – GREMLIN: Global and Regional Multistakeholder Institutions on the contribution of global and regional multistakeholder mechanisms in improving global governance. Responsibility for the content, including all omissions and errors, lies solely with the author.


* Diana Potjomkina is a PhD Fellow affiliated with Vrije Universiteit Brussel, Ghent University and United Nations University – CRIS. All the opinions expressed in this briefing are the sole view of the author, and do not represent the position of Vrije Universiteit Brussel, Ghent University and United Nations University, nor of the Trans European Policy Studies Association (TEPSA).
This brief focuses on the formal mechanisms operating in the framework of the EU’s trade policy (see Table 2).

What is multistakeholderism and why is it important?

We can broadly define multistakeholderism as “policy processes which allow for the participation of the primary affected stakeholders, or groups of these who represent different interests”. In addition to civil society, multistakeholder arrangements can include individual citizens, businesses, consultancies, academia, public authorities, social movements etc.

Multistakeholderism is an advanced form of participatory democracy, increasingly accepted as a solution to the infamous “democracy deficit”. If done well, it helps to bridge the gap between the society and the policy-makers and brings two major benefits: improved quality and legitimacy of policies.

What is a “good” arrangement for consulting multiple stakeholders?

A meaningful stakeholder arrangement should fulfil the following criteria:

1. representing the views of all groups within a society with a significant interest in a policy;
2. ensuring balanced participation of stakeholders;
3. accountability of the multistakeholder body and individual stakeholders to each other;
4. accountability of multistakeholder fora to the wider public;
5. political, institutional and legal environment which enables stakeholders to develop positions on policy issues, take part in consultations and have impact on policies.

The EU faces certain issues with all five points. Moreover, it does not have a clearly defined and universally respected objective for consultations in the field of trade.

Systemic challenges

These are fundamental challenges affecting the functioning of the consultation process as a whole. Their resolution calls for political will and, in some cases, legal adjustments.

- Lack of legitimate and independently acknowledged information about the impact of EU’s trade policy due to failures to conduct impact assessments of EU’s trade agreements.

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4 Ibid.
deals and problems with methodology used. This harms the policy’s legitimacy.

• **Weak links and gaps in the consultation system.** Consultation arrangements are weak or non-existent in some institutions and in some trade formats. In other cases, there is no continuity between policy-making stages.

• Certain trade agreements suffer from excessive fragmentation of civil society consultation mechanisms in the framework of a single agreement. This is inefficient and creates confusion for stakeholders.

• **Stakeholders’ recommendations are not always translated into policies:** this process is at the discretion of the EU institutions and partner governments. Moreover, accountability of governments is weak.

• The EU’s stakeholders are not equally interested in all trade agreements. Some deals largely pass “under the radar” of public scrutiny.

• The European Commission is **insufficiently sensitive** to the fact that multistakeholder structures in partner countries often operate by different principles and, as a consequence, fails to adjust its consultation standards. Also, realities in the partner countries are not always understood by EU stakeholders.

• The EU’s formal and informal consultations in the field of trade are frequently dominated by business representatives, while civil society (except for business associations) and other not-for-profit interests are somewhat side-lined. This tarnishes the public image of the EU’s trade policy.

**Procedural challenges**

Procedural challenges to dialogue with stakeholders are easier to resolve than the systemic ones, although they do require putting new procedures in place and investing additional resources.

1. **Stakeholders lack funds** for analysing the EU’s policies and engaging with EU representatives and their own members. Stakeholders from the “new”, “small” and less prosperous EU member states, most partner states’ representatives, as well as not-for-profit groups coming from civil society are particularly disadvantaged.

2. **Existing civil society mechanisms** (in the framework of free trade agreements) have insufficient organisational support, especially on the partner countries’ side.

3. **The EU’s efforts for engaging stakeholders are not getting sufficient public attention**, as many consultation mechanisms are closed to the press.

4. **The selection of stakeholders is insufficiently transparent**, and the current system largely excludes certain types of interests, such as individual businesses or academia.

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5. **EU’s engagement with national level stakeholders remains insufficient.**

**Recommendations for improving systemic conditions for multistakeholderism**

1. The inclusiveness of the EU’s consultation mechanisms will benefit from a **consistent use of a broad definition of “stakeholder”** (as in the 2017 Better Regulation Toolbox).

2. An ambitious but necessary recommendation is **streamlining the consultation process and “filling the gaps”** in cases where consultation mechanisms are non-existent or weak.

3. Applying the principle of **“one agreement, one civil society body”** to avoid fragmentation.

4. **Strengthening the EU institutions’ own capacity for engagement with stakeholders.** The institutions need human resources to engage stakeholders proactively and channel the outputs of consultations into the policy-making process.

5. **More assertive enforcement of provisions on consultations:** in particular, the EU should make better use of the dispute settlement mechanisms under the Trade and Sustainable Development (TSD) chapters, as requested by civil society.

6. **Ensuring accountability:** providing stakeholders with feedback on how and why their recommendations have or have not been implemented in practice.

7. The EU may consider **formats** where both independent and government, or quasi-government, stakeholders from third countries are present. This could help to minimise the hostility of certain partner governments to civil society consultations.

8. **Promoting horizontal ties among business and non-economic interests on trade issues.**

9. Building **mutual awareness between EU and partners’ representatives**, for instance through dedicating more resources to field trips and EU-to-partner meetings.

**Recommendations for improving procedural aspects of multistakeholderism**

1. **Adapting financial support guidelines** to enable a broader range of organisations to take part in consultations, in particular, improving the availability of operational grants to civil society.

2. **Reimbursing stakeholders** for costs incurred during participation, providing micro-grants for analytical work, supporting civil society organisations in liaising with their members (for instance, organising surveys).

3. **Implementing a massive publicity strategy for multi-stakeholder mechanisms,** offering a voice to their participants. In addition to more traditional media channels, civil society organisations in particular can be

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8 See e.g. European Economic and Social Committee, Opinion: Trade and Sustainable Development Chapters (TSD) in EU Free Trade Agreements (FTA), REX/500, Rapporteur: Tanja Buzek.
supported in disseminating the results of the meetings and collecting feedback. In parallel, it is necessary to create a “one stop shop” information service providing a clear overview of the different possibilities for engagement.

4. Carrying out a comprehensive stakeholder mapping and engaging stakeholders in a proactive manner.

5. Improving efficiency of consultation mechanisms through such measures as: producing discussion papers, inviting qualified moderators / mediators, engaging dedicated experts in support roles, and developing realistic working plans as well as interim / final reports.

6. Strengthening engagement with stakeholders on the national level (including civil society and other interest groups in partner countries) in national languages.

Conclusions

The European Commission can be commended for several recent initiatives to improve openness of its trade policy-making. However, these measures are not yet sufficient, and a broader overhaul of the Commission’s consultation practices is needed. The EU should adopt a holistic approach, identifying and filling the gaps in the overall consultation regime. Its current system for engaging civil society and other stakeholders is disjointed and lacks continuity. There is a multitude of sometimes overlapping mechanisms which do not ensure similar possibilities of participation at all stages of decision-making, to all stakeholders, on all topics in all trade deals. It is also important to adhere to a broad and inclusive definition of multistakeholderism when developing formal consultation mechanisms.

In addition, the EU faces multiple difficulties of a more technical nature when setting up consultations on trade. Among the recommendations offered in this brief are providing appropriate financial and organisational support which would enable a diverse range of stakeholders to participate in a meaningful way; increasing efficiency of the mechanisms; and ensuring that the EU’s consultations and stakeholders’ views enjoy wide publicity. It is crucial to align consultations in the field of trade with general standards set in, among others, 2017 Better Regulation Toolbox.9

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Table 1. Consultation and dialogue mechanisms on trade policy, by institution and policy-making stage (source: authors compilation)

<table>
<thead>
<tr>
<th>Institution</th>
<th>General strategic debate and agenda-setting</th>
<th>Proposal and ex ante assessment</th>
<th>Negotiations</th>
<th>Conclusion and ratification</th>
<th>Implementation</th>
<th>Monitoring of implementation and ex post assessment</th>
<th>Enforcement and dispute settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Commission*</td>
<td>CSD (seldom); Group of Experts (GoE) on EU Trade Agreements; other expert groups; Citizens’ Dialogues in member states; ad hoc meetings; European Economic and Social Committee (EESC) opinions</td>
<td>Online public consultations; GoE on EU Trade Agreements; other expert groups; “scoping exercises” &amp; impact assessments (also incl. consultations) – some agreements only; possibility to give input to SIAs – some agreements only; CSD; EESC opinions</td>
<td>Meetings with stakeholders; online public consultations; GoE on EU Trade Agreements; environmental and social studies conducted; updates published after each round; EESC opinions</td>
<td>Meetings with civil society and other interested parties</td>
<td>Market Access Committee – open to business participation; in some cases, partners participate in implementation, e.g. as contractors</td>
<td>Monitoring: GoE on EU Trade Agreements; other expert groups; DAGs – economic, labour and environmental rights only – some agreements only; GSP+ Monitoring Process and stakeholder participation in GSP Review; interim or ex post assessment: some countries only; feedback through review clauses and annual FTA implementation reports; EESC opinions</td>
<td></td>
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<tr>
<td>European External Action Service</td>
<td>Mostly ad hoc; civil society roadmaps exist for engagement with civil society but do not always touch on trade issues or stipulate a structured dialogue on these topics</td>
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<td>DAGs can suggest signatories on their respective sides to initiate complaint procedure regarding implementation of the TSD chapters; some agreements only</td>
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<td>Council</td>
<td>Ad hoc, non-transparent; Council Committees seem to prefer dealing with business to other stakeholders</td>
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<td>Individual states</td>
<td>In general, no single approach; member states consult stakeholders and are lobbied as a gateway to the Council; stakeholders lobbying “big” and “old” MS have more chances to succeed at the EU level thanks to these states’ greater influence. Some attempts to coordinate dialogue of individual member states with third country stakeholders (also prioritised by civil society roadmaps)</td>
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<tr>
<td>European Parliament**</td>
<td>Hearings; INTA Monitoring Groups and Sub-Committees; ad hoc engagement including public events (may be organised by individual groups or MEPs) (role of the Parliament very limited at this stage)</td>
<td>Hearings; ad hoc engagement; INTA Monitoring Groups and Sub-Committees</td>
<td>Hearings; some lobbying; INTA Monitoring Groups and Sub-Committees</td>
<td>Some lobbying; ad hoc engagement (role of the Parliament very limited at this stage)</td>
<td>Hearings, ad hoc engagement including public events (may be organised by individual groups or MEPs) (role of the Parliament very limited at this stage)</td>
<td>(Role of the Parliament very limited at this stage)</td>
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<tr>
<td>Stakeholder-to-stakeholder</td>
<td>Cooperation and competition; mostly ad hoc + sectoral NGO platforms’ meetings + joint projects; EU-to-EU, third country-to-third country, EU-to-third country</td>
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<tr>
<td>Third countries and stakeholders</td>
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*Only DG TRADE considered here: due to “silo mentality”, different DGs do not have a well-developed cooperation among themselves

**Only INTA considered here: due to “silo mentality”, different committees do not have a well-developed cooperation among themselves.
**Table 2. European Commission’s Directorate-General for Trade’s mechanisms for dialogue with stakeholders and main procedural challenges by mechanism (source: author’s compilation)**

<table>
<thead>
<tr>
<th>Mechanism for dialogue with stakeholders</th>
<th>Description</th>
<th>Comments</th>
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</thead>
<tbody>
<tr>
<td>Domestic Advisory Groups (DAGs)</td>
<td>Introduced under “new generation” agreements to monitor implementation of Trade and Sustainable Development (TSD) chapters. Exist on both EU and partners’ side</td>
<td>DAG membership is not balanced between economic, labour and environmental interests, although this is expected. DAGs have no legal power to affect the implementation process. Partner countries tend not to take into account their recommendations; DAGs themselves are not particularly productive in issuing ones. There is “little evidence that vigorous monitoring has been conducted”.10 In many partner countries DAGs do not exist, are weak or lack independence. There are no legal provisions for joint DAG-to-DAG meetings, relations between EU and non-EU DAGs are weak.</td>
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<tr>
<td>Civil Society Dialogue (CSD)</td>
<td>European Commission’s oldest (since 1999) and most universal mechanism for engagement with civil society. 494 registered organisations as of September 2018. Ad hoc meetings as reaction to major developments</td>
<td>It is more technical than strategic, topics are often selected by the Commission. Mainly debriefing by the Commission not two-way dialogue. Meetings do not generate clear outputs for Commission’s work; only a few organisations use the option of preparing “position papers”. Observations show that only about 5 to 20% of registered organisations attend each meeting. The CSD is oriented at “representative” organisations; universities and academics cannot register in the CSD database. Oriented towards English-speaking, Brussels-based organisations. The Commission is not proactive in engaging stakeholders on specific topics.11</td>
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<tr>
<td>Online public consultations</td>
<td>Organised through “Your Europe” online portal. Open to all interested parties</td>
<td>May gather excessive number of responses, thus being very taxing to analyse, or not gather a sufficient number of responses to be representative.12 It can be difficult to obtain balanced input from various groups. The system may be intentionally abused. Sometimes too difficult for target groups to understand terminology-wise. Summaries of results and follow-up measures are not always published.</td>
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<tr>
<td>Group of Experts on EU Trade Agreements</td>
<td>Established in 2018 as a high-level initiative for liaison with major EU-level organisations and networks. 28 members + 2 observers, meets every 2 months</td>
<td>Paradoxically very limited in membership and consists of EU-level organisations but is ambitiously tasked with advising on “perception and public debate” on trade agreements and in particular with providing insight into national-level debate. Overall very broad and somewhat unclear mandate. Some stakeholders argue the number of participants is still too large to get their message across.</td>
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<tr>
<td>Other consultative committees, expert groups, business contact groups</td>
<td>Convened by the Commission; both formal and informal</td>
<td>Non-transparent. Sometimes engage with non-governmental stakeholders but the criteria are not clear, nor are the steps that must be taken to be invited to a meeting.</td>
</tr>
<tr>
<td>Bilateral meetings</td>
<td>Informal, take place throughout policy-making cycle</td>
<td>Non-transparent. Approx. 70% of the meetings take place with business representatives.13 Only data about meetings with Commissioners and most senior civil servants is public.</td>
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13 Author’s calculations using data from Transparency International EU, “EU Integrity Watch,” [http://www.integritywatch.eu](http://www.integritywatch.eu)
References


Trans European Policy Studies Association
Rue d’Egmont 11, B-1000
Brussels, Belgium

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