

Environmental Democracy in the Economic Partnership Agreement between the EU and Japan

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1. INTRODUCTION

The European Union (EU) issued a joint press statement with Japan on 28 May 2011, which referred to the possibility of a Free Trade Agreement (FTA) between them. After the European Commission completed its scoping exercise, the EU and Japan began to negotiate on 19 April 2013 and finished on 7 April 2017. On 17 July 2018, during the 25th Japan-EU Summit, they signed the Economic Partnership Agreement (EPA). The EPA entered into force on 1 February 2019. This EPA is the so-called “new generation” FTA. It regulates not only customs issues, but also intellectual property including geographical indications (GI), sustainable development, and other emerging areas. It comprises 23 chapters. The EPA is an EU-only agreement and the first FTA that the EU concluded alone without the participation of its member states because it has exclusive competence over the subject matter of the EPA.

Civil society influenced the EPA throughout the negotiations. The EPA assigns an important role to civil society to complete or reinforce democracy in the EU and in the third countries, this ensures that civil society is involved in a form of participatory democracy. In this article, I investigate environmental democracy in the EPA with a focus on civil society. The article will show how civil society in-

fluenced the EPA and how the EPA regulates civil society. It will also discuss how the EPA can influence non-governmental organisations (NGOs) and the civil society of Japan in the future. I begin by explaining environmental democracy in the EU, and then analyse the EPA because the EU's environmental democracy is reflected in it. Next, I highlight the transparency of the EPA. Third, I analyse "the right to regulate" provision, and finally, I examine Chapter 16 of the EPA, which speaks of Trade and Sustainable Development.

2. ENVIRONMENTAL DEMOCRACY IN THE EU

Participatory democracy was first introduced in environmental policy in the EU. The fifth environmental action programme titled "Towards Sustainability" was published in 1993 by the European Commission (OJ of the EU 1993 C 138: 5). According to this document, three *ad hoc* dialogue groups had to be convened by the Commission, namely the General Consultative Forum, the Implementing Network, and the Environmental Policy Review Group. The General Consultative Forum comprises representatives of enterprises, consumers, unions, professional organisations, NGOs, and local and regional authorities (*ibid.*: 17). Economic and social stakeholders are planned to be involved in the Commission's activity. It is said that those groups would serve to promote a greater sense of responsibility among the principal actors in the partenariat, and to ensure effective and transparent application of measures. This role can be also in the EPA, as mentioned later. The Commission's practice of consulting with stakeholders in the environmental context, that is, with economic and social partners, NGOs, and others, was extended to other policy areas through a white paper titled "European Governance" in 2001 (COM (2001) 428, "European Governance-A White Paper", OJ of the EU 2001 C 287). The white paper enumerated five guiding principles: openness, participation, accountability, effectiveness, and coherence. Specifically, openness (transparency) and participation in decision-making are related to participatory democracy.

The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, or the Aarhus Convention, was signed in 1998. It entered into force in 2001. The Aarhus Convention lays down three rights: the right to receive environmental information held by public authorities, the right to participate in environmental decision-making, and the right to review procedures to challenge public decisions. The EU ratified the Aarhus Convention and implemented the right to access information and the right to participation in decision-making through Directive 2003/4/EC on public access to environmental

information (OJ of the EU 2003 L 41, pp. 26), and Directive 2003/35/EC providing for participation in respect of the drawing up of certain plans and programmes relating to the environment, in addition to amending Directive 85/337/EEC and Directive 96/61/EC (OJ of the EU 2003 L 156, pp. 17).

The EU has not implemented the right to access justice, although Regulation 1367/2006 (OJ of the EU 2006 L 263, pp. 13) was adopted only for EU institutions to do so. The Commission adopted a Notice on Access to Justice in Environmental Matters (OJ of the EU 2017 C 275, pp. 1) on how to enforce EU environmental law before national courts. Public consultations were launched in December 2018 with the aim of identifying measures for the implementation of the Aarhus Convention to facilitate access to justice.

The Treaty of Lisbon, which entered into force in December 2009, strengthens democracy in the EU. Democracy is one of the EU's values (Article 2 of the Treaty on European Union or TEU). However, democracy in the EU differs from democracy in its Member States. Democracy in the EU is complemented by participatory democracy, which is provided for, particularly under Title II: Provisions on Democratic Principles (Articles 9-12, TEU; see Mendes 2016: 155, 173). Article 10 (3) of the TEU lays down thus: «Every citizen shall have the right to participate in the *democratic life* of the Union. Decisions shall be taken as openly and as closely as possible to the citizens» (emphasis added). Article 11 of the TEU lays down that «1. The Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in *all areas of Union action*. 2. The Institutions shall maintain an open, transparent and regular dialogue with representative associations and *civil society*. 3. The European Commission shall carry out broad *consultations* with parties concerned in order to ensure that the Union's actions are coherent and *transparent*» (emphasis added).

Thus, the practice of participatory democracy in the context of the environment has been extended to include other policy areas, to the extent that participatory democracy is now seen as a general rule in the EU. The transparency, regular dialogues, and/or consultations with representative associations and civil society as mentioned these provisions are also found in the EPA.

Article 21 of the TEU addresses political principles such as democracy, the rule of law, and the universality and indivisibility of human rights, among others, which are also the EU's values (Article 2 TEU). It also lays down that the EU shall develop relations and build partnerships with third countries that share similar principles. The EU applies these values and principles to its FTAs through Article 21 of the TEU (Nakanishi 2014: 11 ff.).

3. TRANSPARENCY

Transparency is a necessary precondition for participatory democracy. According to Article 11 (3) of the TEU, the Commission is obliged to consult with parties concerned to ensure that the EU's actions are transparent. The principle of transparency enables citizens to participate in decision-making and guarantees the legitimacy, efficiency, and accountability of the government towards citizens in a democratic system (Huber 2018). Transparency is addressed in other articles of the Treaty on the Functioning of the EU (TFEU) and the Charter of the Fundamental Rights of the EU (EU Charter) as well. Article 15 of the TFEU provides that the EU's institutions must conduct their work as openly as possible to ensure the participation of civil society and notes that citizens and natural or legal persons shall have a right of access to the documents of the EU's institutions. Article 42 of the EU Charter guarantees the right of access to documents.

There are some exceptions to the right of access to documents. For example, documents related to international relations can be maintained confidential. Thus, the negotiations of the FTAs between the EU and third countries were not published and access to these documents by citizens and NGOs was limited. The negotiations of the EPA between the EU and Japan were not published either. There is no information on these negotiations on the websites of both the EU and the Japanese Ministry of Foreign Affairs.

There was strong request by NGOs and civil society in Europe to publish relevant documents towards the Commission during the negotiations of the Transatlantic Trade and Investment Partnership (TTIP). Under pressure, the Commission published a communication document titled "Trade for All" in October 2015 (COM (2015) 497, 14.15.2015, "Trade for All: Towards a more responsible trade and investment policy"). In this document, the Commission considered the consumers' concerns pertaining to social and environmental conditions and expressed its view that policymaking needs to be transparent, that the debate needs to be based on facts, and that policymaking must respond to people's concerns with regard to the EU's social model. The Commission produced a new set of guidelines, according to which it publishes documents at all stages of the negotiating process on its website (COM (2015) 497: 13). After these guidelines, some documents from the negotiations with Japan were published on the EU's website, although Japan did not publish any relevant documents on the Japanese website until the EPA was signed.

As a general rule, the Council adopts negotiating directives and instructs the Commission to negotiate on behalf of the EU according to Article 218 of the TFEU. The Council gives the Commission a mandate before it begins negotiations. A mandate refers to requests or guidelines from the EU Member States on

how and what subjects the Commission should negotiate with third countries. The mandate document for the EU's negotiations with Japan was confidential at the time. The EU and Japan concluded their negotiations in April 2017. After this, the European Commissioner, Cecilia Malström requested the Council to disclose the negotiating directive, and referred to the communication document titled "Trade for All", saying, «*transparency is a fundamental democratic principle that enhances the legitimacy of policymaking and the accountability of decision-makers to citizens. It also contributes to a better-informed debate with citizens, business and the civil society*» (emphasis added; see Ref. Ares (2017)2639445-24/05/2017). In response to this request, the Council published the mandate document 15864/12, dated 29 November 2012, on 14 September 2017. This was done before the EPA was signed in July 2018.

In this mandate document, we can find the following text: «The Agreement will foresee the monitoring of the implementation of these commitments and of the social and environmental impacts of the Agreement through a mechanism involving *civil society*, as well as one to address any disputes» (emphasis added). This idea is reflected in Chapter 16 of the EPA, which addresses Trade and Sustainable Development.

The EPA contains a specific chapter on transparency, namely Chapter 17. Article 17.2 requires the parties to provide for a transparent regulatory environment.

4. THE RIGHT TO REGULATE

NGOs and the civil society in Europe influenced the negotiations of the FTAs and made sure that the relevant documents were published. They influenced the content of the FTAs, too. Their influence led to the introduction of the right to regulate in the EU's FTAs. The Commission responded to their requests to maintain EU standards. The NGOs and civil society were concerned about the deterioration of the EU's standards, particularly in the fields of environmental and labour protection. The EU's FTAs, like the EU-South Korea FTA, EU-Singapore FTA, EU-Vietnam FTA, and the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, contain provisions addressing the right to regulate (Nakanishi 2020). The EPA between the EU and Japan also contains a provision to this effect, Article 16.2 Right to regulate and levels of protection: «1. *Recognising the right of each party to determine its sustainable development policies and priorities, to establish its own levels of domestic environmental and labour protection, and to adopt or modify accordingly its relevant laws and regulations, consistently with its commitments to the internationally recognised standards and international agreements*

to which the Party is party, each Party shall strive to ensure that its law, regulations and related policies provide *high levels of environmental and labour protection* and shall strive to continue to improve those laws and regulations and their underlying levels of protection [...]» (emphasis added).

Each party has the right to regulate the domestic environmental and labour protection standards and has the right to maintain high levels of protection in these fields. Whereas the EU is not obliged to ease its standards, it can definitely strive to improve them. The right to regulate may cause problems in the context of investment such as when a party tries to legitimise the nationalisation of enterprises while relying on environmental protection as the reason. Therefore, Article 16.2 (3) provides that parties shall not use their respective environmental or labour laws and regulations in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other party, or a disguised restriction on international trade.

The right to regulate is often related to investment issues. A typical case is that an enterprise X in State A has invested in a project in State B. Suddenly, State B decides to nationalise or orders that the project be stopped on grounds of environmental protection. The EU and Japan have not concluded any investment protection agreement thus far. If an investment protection agreement were to be concluded in the future, Article 16.2 would gain more importance.

5. INVESTMENT COURT

Whereas the EU has not concluded any investment agreement with Japan, it signed the CETA with Canada, which contains a chapter on investment. During the negotiations, the CETA text did not contain provisions for an investment court. However, NGOs and civil society criticised the Investor-State Dispute Settlement (ISDS) mechanism and sought the establishment of an investment court during their negotiations with the USA, citing the lack of transparency and objectivity and no possibility of appeal as reasons. In response, the CETA was amended to incorporate rules for the establishment of an investment court.

The EPA between the EU and Japan does not contain provisions for an investment court, either. The Court of Justice of the EU (CJEU) held in Opinion 2/15 dated May 2017 on the EU-Singapore FTA that the EU has exclusive competence except in the context of non-direct investment and ISDS issues (Case Opinion 2/15, Opinion 16 May 2017, ECLI:EU:C:2017:376). The EPA was separated into two parts, where had no investment issues and the other contained the investment agreement. Japan has preferred the ISDS. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTP), which entered into

force on 30 December 2018, provides for the ISDS, but does not establish an investment court. Whereas the USA did not participate in the CPTPP, 11 other countries continued to negotiate and concluded it (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam).

Japan ratified the CPTPP and is now bound by it.

Japan had been waiting for Opinion 1/17 (Opinion of 30 April 2019, ECLI:EU:C:2019:341) on the CETA, in which the Court examined the compatibility of the CETA with the investment court under EU law. The Court declared that they were compatible. The establishment of the investment court is in line with the autonomy of the EU law. Since the Commission can now negotiate the investment protection agreement with Japan, both parties are in the process of negotiations as of October 2019.

6. CIVIL SOCIETY IN THE EPA

6.1. *Introduction*

Chapter 16 of the EPA speaks about Trade and Sustainable Development, and comprises 19 articles (16.1 to 16.19). Sustainable development can be understood in the economic, environmental, and social contexts (Article 16.1 (2)). This chapter also lays down the right to regulate (Article 16.2).

The EU and Japan are obliged to ensure that any measure for general application in pursuit of the objectives of Chapter 16 is administered in a transparent manner, in accordance with the laws and regulations prevailing at the time, as well as with Chapter 17. Such measures should be implemented only after giving the public reasonable opportunities and sufficient time to comment on and respond to such measures by publishing them in advance (Article 16.10). Transparency is a precondition for a participatory democracy. It enables NGOs and civil society to participate in decision-making.

Chapter 16 contains provisions addressing civil society participation. It is a characteristic feature of all FTAs that the EU enters. Civil Society refers to independent economic, social, and environmental stakeholders, including employers' and workers' organisations and environmental groups (OJ of the EU 2018 L 330, p. 139, footnote (1)). The Committee on Trade and Sustainable Development is responsible for the effective implementation and operation of Chapter 16 (Article 16.13 (1)). One of the functions of this Committee is to interact with civil society under Articles 16.15, 16.16, and 16.18.

6.2. Consultation and Dialogue

Articles 16.15 and 16.16 are related to consultation with domestic advisory groups (DAG) and joint dialogue with civil society, respectively.

(1) DAG

The EPA rules governing the participation of civil society are explicitly listed under Article 16.15 Domestic Advisory Group (DAG), which says thus: «1. Each Party shall convene meetings of its own new or existing *domestic advisory group or groups* on economic, social and environmental issues related to this Chapter and consult with the group or groups in accordance with its laws, regulations and practices. 2. Each Party is responsible for ensuring a balanced representation of *independent* economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups, in the advisory group or groups [...]» (emphasis added).

The EPA obliges the EU and Japan to convene meetings of the DAG and to consult with it. The EU and Japan are obliged to form DAG to ensure a balanced representation of independent economic, social, and environmental stakeholders. Consultations with the DAG is a legal obligation. It is mandatory for the DAG to remain independent throughout the process. The influence of the EU can be found here, as mentioned before.

Civil society participation is part of the EU's system.

According to the explanatory memorandum of a proposal on signing the EPA between the EU and Japan, before concluding negotiations with Japan, stakeholder consultations were carried out (COM (2018) 193, 18.4.2018, "Proposal for a Council Decision on signing on behalf of the European Union, of the Economic Partnership Agreement between the European Union and Japan"). A Trade Sustainability Impact Assessment (TSIA) of the EPA was conducted by an external contractor who consulted with both internal and external experts, organised public consultations, and held bilateral meetings and interviews with civil society. Based on the TSIA, the European Commission Services' Position Paper revealed the following as their policy recommendations for the social pillar: «EU negotiators should seek to use the opportunity of the FTA to obtain greater compliance, implementation and monitoring of the Convention of the International Labour Organisation (ILO). A clear priority is to seek Japan's ratification of two core conventions to which it is not a Party: Convention 111 on non-discrimination and Convention 105 on forced labour. [...] provide for enhanced engagement of Civil Society representatives, including employer and trade union bodies, in the monitoring and implementation of labour provisions via a Domestic Advisory Group (DAG) and a Civil Society Forum [...]» (European Commission Services' Position

Paper on the Trade Sustainability Impact Assessment in Support of Negotiations of a Free Trade Agreement between the European Union and Japan, February 2017).

This document is proof that there is a practice of consulting with civil society. It also presents the expectations of the role of civil society after the EPA enters into force.

The following mechanisms encourage civil society participation in the EU.

The first is the European Economic and Social Committee (EESC), which is an advisory organ of the EU (Article 13 (4) TEU). The EESC comprises organisations of employers, employees, and other parties who represent civil society, notably in the socio-economic, civic, professional, and cultural areas (Article 300 (2) TFEU). The EESC reported in November 2018 that the EPA would have both social and environmental effects that would be monitored by representatives of civil society from both sides, namely the EESC for the EU and relevant socio-economic stakeholders for Japan (EESC, “Civil society will monitor the environmental and social impact of the EU-Japan trade agreement”). The second mechanism is civil society dialogue (<https://trade.ec.europa.eu/civilsoc/>). The European Commission established the Directorate General (DG) Trade’s Civil Society Dialogue. The EU has a transparency register system to facilitate dialogue with civil society organisations and representatives of interest (OJ of the EU 2011 L 191, pp. 29, Agreement between the European Parliament and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation; cf. COM (2009) 612, “European Transparency Initiative: the Register of Interest Representatives, one year after”; COM (2016) 627, “Proposal for Interinstitutional Agreement on a Mandatory Transparency Register”). Registered NGOs and other stakeholders can be consulted regularly by the Commission. All civil society organisations and representatives of interest that seek to influence policy formulation and decision-making can register for the dialogue. For example, after the EU and Japan arrived at an agreement in principle on the main elements of the EPA, Civil Society Dialogue on the EPA took place on 18 July 2017. Organisations that registered to participate in this meeting included Association des Constructeurs Européens d’Automobiles, BUSINESSEUROPE, the European Centre of Employers and Enterprises providing Public Services and Services of General Interest, Deutscher Gewerkschaftsbund, Greenpeace (European Unit), Japan Automobile Manufacturers Association, Inc. (European Office), the Japan Business Council in Europe, and other organisations.

After the EPA entered into force, members of the DAG on the side of the EU were and are still called. The Commission published a call for expressions of interest to invite civil society members and representatives of interest to

sign up to be members of the EU Domestic Group under Chapter 16 (European Commission, A.3. Information, Communication and Civil Society, TRADE/A/3/MM/DB/Inb). To become a member of the DAG, the following criteria need to be fulfilled: (1) the organisation should be an independent and not-for-profit establishment, (2) it must represent and promote EU interests, (3) it must be registered on the EU transparency register and in the civil society database of the Directorate General for Trade, and (4) it must have specific expertise or competence on areas covered by the chapter on Trade and Sustainable Development. The DAG will select its core members with the aim of building a balanced composition that represents the economic, environmental, and social pillars, by choosing from, for example, business organisations, trade unions, and NGOs. The EESC will provide room in the Secretariat for the DAG to facilitate the work of the group. In September 2019, the Commission issued a second call for expressions of interest because although it received several applications from business organisations and trade unions, there were only a few applications from NGOs. Article 16.15 (2) of the EPA mandates the balanced representation of independent economic, social, and environmental stakeholders in the DAG (European Commission, A.3 Information, Communication and Civil Society, Ref. Ares(2019)5828772-18/09/2019). In Japan, there is no organ on the lines of the EESC in the EU. There is no register maintaining details of civil society and representatives of interest. The Keidanren (the Federation of Economic Organisations)¹, Keizaidouyukai (Japan Association of Corporate Executives), Nihonshokokaigisho (The Japan Chamber of Commerce and Industry), and Shinkeizairenmei (Japan Association of New Economy) may be considered as constituting an economic interest group. The Japanese Trade Union Confederation (JTUC-RENGO)² may be considered a social interest group. The Japan Climate Initiative (JCI) and Kiko Network, Environmental Partnership Council (EPC), Japan Wildlife Conservation Society (JWCS), TRAFFIC for CITES, Greenpeace Japan, and other similar initiatives may be considered as constituting an environmental interest group. The Japan NGO Center for International Cooperation (JANIC) is a non-profit, not-partisan networking NGO that was founded in 1987. One of the missions of the JANIC is to facilitate collective action by mobilising its members and wider Japanese civil society to influence

¹ Keidanren has made recommendations and statements regarding the EPA towards Japanese government. For example, Chairman Nakanishi's comments on the signature of the EPA, <https://www.keidanren.or.jp/en/speech/comment/2018/0717.html> (last accessed on 7 November 2019).

² For example, JTUC-RENGO made a statement on the signing of the EPA, <http://www.jtuc-rengo.org/updates/index.cgi?mode=view&no=385&dir=2018/07> (last accessed on 7 November 2019).

the policies and practices of governments and institutions at national and international levels (<https://www.janic.org/en/>).

The key questions are as follows. How can NGOs and other representatives of interest be made part of the Japanese DAG? How can they contribute to the effective implementation of Chapter 16? Environmental NGOs are not strong enough to influence policies and decision-making when compared with economic and social interest organisations.

The Central Environmental Council was established under the Ministry of the Environment in line with Article 41 of Japanese Basic Environmental Law. The Council is vested with the duty to study and discuss basic and important matters with respect to environmental conservation. It is allowed to submit its opinions to the Prime Minister, the Director General of the Ministry of the Environment, and other relevant ministers concerned.

The Japanese government checks before signing, whether the draft of the agreement complies with Japanese law and whether Japan can comply with the terms of the agreement once it signs it. Therefore, it will be interesting to see how the Japanese government would convene the DAG.

(2) Joint Dialogue with civil society

Article 16.16 governs joint dialogue with civil society of both the EU and Japan. It says: «1. The Parties shall convene the Joint Dialogue with civil society organisations situated in their territories, including members of their domestic advisory groups referred to in Article 16.15, to conduct a dialogue on this Chapter. 2. The Parties shall promote in the Joint Dialogue a balanced representation of relevant stakeholders, including independent organisations which are representative of economic, environmental and social interests as well as other relevant organisations as appropriate. 3. *The Joint Dialogue shall be convened no later than one year after the date of entry into force of this Agreement. Thereafter, the Joint Dialogue shall be convened regularly, unless the Parties agree otherwise.* The Parties shall agree on the operation of the Joint Dialogue before the first meeting of the Joint Dialogue. Participation in the Joint Dialogue may take place by any appropriate means of communication as agreed by the Parties [...]» (emphasis added).

The joint dialogue requires the balanced representation of all relevant stakeholders including members of the Japanese and EU DAGs. The EPA mandates that the EU and Japan should convene a joint dialogue with civil society organisations. This is not only legal binding, but also has to be performed within the given deadline. The joint dialogue must be convened within one year after the date of entry into force of the EPA, that is, within one year of 1 February 2020. Joint dialogues must be carried out regularly thereafter. The EPA is not the end,

but rather marks the beginning of the cooperation between the EU and Japan including civil society on both sides.

7. INVOLVEMENT OF THE CIVIL SOCIETY IN IMPLEMENTATION

The mandate refers to the involvement of civil society in the implementation of Chapter 16. This means that the involvement of the civil society in the EPA was a request on part of the EU. Following negotiations with Japan, the EPA was drafted to contain provisions on the involvement of civil society in the implementation phase.

Article 16.15 (3) says: «The advisory group or groups of each Party *may meet on its or their own initiative and express its or their opinions on the implementation of this Chapter independently of the Party and submit those opinions to that Party*» (emphasis added). The Japanese DAG can express its opinions on the implementation of Chapter 16 independently and can submit them to the Japanese government. Article 16.16 (4) says: «*The Parties will provide the Joint Dialogue with information on the implementation of this Chapter. The view and opinions of the Joint Dialogue may be submitted to the Committee and may be made publicly available*» (emphasis added). The joint dialogue is equipped with information on the implementation of Chapter 16, so that appropriate views and opinions from the joint dialogue can be submitted to the Committee on Trade and Sustainable Development. The Committee on Trade and Sustainable Development is responsible for the implementation of Chapter 16 (Article 16.13 (1)). One of the functions of the Committee is to interact with civil society on the implementation of Chapter 16 (Article 16.3 (2) (c)). Further, these views and opinions may be made available to the public.

Chapter 16 also provides for the concrete involvement of civil society in the dispute settlement mechanism under the EPA. Article 16.18 governs the dispute settlement mechanism. This mechanism is specific to Chapter 16 and issues therein, while the EPA also has a general dispute settlement mechanism under Chapter 21 for other issues. A panel of experts in the dispute settlement mechanism issues both interim and final reports to the parties, detailing the facts, the interpretation or the applicability of relevant articles, and the rationale behind the findings inferred and suggestions provided after certain procedures.

Article 16.18 (6) says: «Each Party shall *inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures no later than three months after the date of issuance of the final report*. The follow-up actions or measures shall be monitored by the Committee. *The domestic advisory group or groups and the Joint Dialogue may submit their observations in this regard to the Committee*» (empha-

sis added). Each party is obliged to inform its own DAG of any follow-up actions or measures after the final report is issued by the panel of experts. Both parties are obliged to equip the joint dialogue with the information it requires for the implementation of Chapter 16 (Article 16.16 (4)). The Committee on Trade and Sustainable Development monitors these follow-up actions and measures. The DAG and the Joint Dialogue can submit their observations to the Committee. Although the DAG and the Joint Dialogue cannot initiate the process involving the panel of experts by themselves, they are involved in the dispute settlement mechanism under Chapter 16.

The EU's FTAs have chapters on trade and sustainable development (Nakanishi 2017). In February 2018, "non-paper" by the Commission Services regarding feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU FTAs was published³. It detailed concrete and practicable actions that could be taken to promote the chapter on Trade and Sustainable Development. It also aimed to build on the recommendations received that were categorised under four broad headings, namely working together, enabling civil society including social partners to play greater roles in implementation, delivering, transparency and communication. The Commission is expected to take additional steps to support DAGs in the EU and other partner countries to facilitate the monitoring of the implementation of the FTA by civil society and to enable civil society to perform its advisory role in support of the parties. To this end, a EUR 3 million project supporting civil society is underway and will be launched under the EU's Partnership Instrument. It has also been pointed out that recurring requests were made for clear and transparent rules and procedures for the establishment and functioning of civil society structures (DAGs of both parties and the joint civil society forums (CSFs)).

8. CONCLUSIONS

Participatory democracy is gaining importance in the EU. The EU Treaties, especially after the Treaty of Lisbon, generally lay down several rules governing participatory democracy. The concept and practice of environmental democracy in the EU has influenced the EPA between the EU and Japan in many ways, such as through the prioritisation of transparency, the right to regulate, and the enhanced participation of civil society. Transparency has improved both during and after the negotiations. As a result of pressure from civil society in Europe, a new provision on "the right to regulate" was laid down in the EPA, so that envi-

³ See <https://www.borderlex.eu/wp-content/uploads/2018/02/2018-02-26-TSD-non-paper-FINAL.pdf>. (last accessed on 7 November 2019).

ronmental and social standards would not be disregarded and parties can work to improve these standards further. The decisive point was the introduction of Chapter 16, which provides a mechanism for the participation of civil society. Relevant provisions cover the legal obligations for this mechanism, which may enable Japanese civil society, especially environmental NGOs, to become more conscious about policy and decision-making processes and to influence them.

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