



Regulating and Mobilising the Private Sector for Democracy Protection in the European Union's Trade Policy

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Summary

The European Union (EU) conditions access to its market on compliance with human rights, labour standards, and environmental policy and regulation. Its trade-related legislation falls into two categories: measures addressing partner governments and measures targeting the private sector. Within these two groups, only the first includes an instrument that specifically mentions democracy, namely the essential elements clause, which appears frequently in EU trade agreements yet has been invoked only once since 2014.

The EU is under domestic political pressure to deregulate in order to strengthen its competitiveness. The competitiveness agenda is cutting into the instruments the EU already has, especially amid geopolitical competition with China, making suspension-led conditionality against partner governments harder to enact.

Our recommendations are as follows:

- Democracy protection stakeholders should **shift their attention from suspension-led democracy support and conditionality aimed at partner governments towards the rules and incentives that run through the private sector**. Even after the Omnibus reform's narrowing scope, firm-facing rules remain in place. They are default-on and run through existing regulatory arrangements, and their potential geopolitical repercussions are smaller in comparison.

- Tender processes are one particular set of firm-facing rules. With the momentum behind the European Commission's legislative proposal to revise the public procurement directive, **corruption-based exclusion rules should be applied against operators linked to state capture in partner countries**, as democratic backsliders often use public procurement to consolidate patronage networks.
- Firm-facing regulations also permit a different case to be made: **stronger due diligence carries no measurable competitiveness penalty**. Companies are not just subjects of regulation. They are also stakeholders with their own interest in transparent procurement and predictable rules. To bolster such a narrative, **development cooperation should invest in developing compliance capacity, especially in auto-cratising states**.

The EU and democracy protection

Article 21 of the Treaty on the European Union (EU) states that the EU's actions on the global scene must be guided by certain core principles, which include democracy, the rule of law and human rights, areas where much progress has been made in the various states that have joined the EU, including more than a few former autocracies. These principles also feature centrally in cooperation with prospective member states and are a key focus in the EU's international cooperation.

Democracies face threats from both within and outside their borders. In her 2026 State of the Union Address, the European Commission President therefore advocated building “global coalitions for our resilience and democracies” (Von der Leyen, 2026). However, the EU's unanimity requirement in foreign policy means that it is not able to provide measured and similar responses to similar events in different countries. This incon-

sistency undermines its legitimacy. In this brief, we explore a key area of the EU's external action in terms of its potential to safeguard democracy, namely its trade policy.

The current policy landscape

The trade and procurement regulations of the EU condition market access on compliance with standards for human rights, labour and the environment through two groups of instruments (see Table 1): those targeting third (i.e. partner) country governments and those targeting the private sector in the EU and its trading partners. The first is exemplified by the inclusion of essential elements clauses in bilateral agreements or the Trade and Sustainable Development (TSD) chapters of new-generation free trade agreements (FTAs). The second set of instruments includes regulations such as the Forced Labour Regulation and the Corporate Sustainability Due Diligence Directive.

Table 1: An overview of EU policy instruments

Instrument	Primary target	What it conditions today	Democracy content
Essential elements (“democracy”) clause	Partner government	Human rights, democratic principles, rule of law	Mentioned, but activated only once since 2014
TSD chapters	Partner government	ILO labour rights, environment, climate	Mostly through freedom of association
GSP+/EBA	Partner government	27 core conventions (32 from 2027): rights, labour, environment, governance	Through human rights conventions (e.g. ICCPR)
Forced Labour Regulation	Companies (no size threshold)	Forced labour at any stage of production	None
Corporate Sustainability Due Diligence Directive	Large companies	Human rights and environmental harm	Through human rights frameworks, but 2026 Omnibus reform narrowed scope

EBA, Everything But Arms; GSP+, Generalised Scheme of Preferences Plus; ICCPR, International Covenant on Civil and Political Rights.

Source: Authors.

The essential elements clause is the oldest of these instruments and the only one that explicitly mentions democracy. Since 1995, the EU has included a standard human rights clause in its association and cooperation agreements governing trade. The clause states that democratic principles and the rule of law are essential elements of the agreement and stipulates that a serious breach allows appropriate measures to be taken, up to and including the suspension of the association agreement (Bartels, 2023, p. 6). One recent example concerns public calls to suspend the EU-Israel Association Agreement (European Citizens' Initiative, 2025).

Another illustrative example is the Cotonou Agreement, the overarching trade and development cooperation framework for the EU's relations with African, Caribbean and Pacific (ACP) countries. Its essential elements clause (Article 96) has been activated 16 times against 13 states, for example following coups in Côte d'Ivoire, Guinea and Niger and against Zimbabwe due to electoral violence. However, the clause has been invoked only once since 2014, namely against Burundi. These procedures were almost always targeted at development cooperation (e.g. aid suspension), and trade was largely unaffected. Since 2007, Economic Partnership Agreements have been signed with smaller groups and individual ACP states, with the Cotonou Agreement's essential elements clause effectively being "downloaded" into these trade and development agreements.

TSD chapters are another policy tool. They cite the International Labour Organization (ILO)'s core conventions and multilateral environmental agreements and prohibit the weakening of labour or environmental protections and standards to attract trade. Their distinctive feature is a structured enforcement process: breaches go to government consultations and Domestic Advisory Groups. In agreements concluded before 2022, this track was expressly exempted from the general dispute settlement mechanism of EU FTAs (Jütten, 2023, p. 3). Following the Commission's 2022 TSD review, new-generation agreements (beginning with the EU-New Zealand FTA) subject TSD

provisions to that general mechanism and allow trade sanctions as a last resort (European Commission, 2022). The sanctionable core, however, is limited to serious breaches of the ILO's fundamental principles.

Unlike this TSD enforcement mechanism, the essential elements clause has no standing body to monitor it and is not as binding as human rights treaties, which is why some ex-post impact assessments of the agreements found the enforceability of such provisions to be modest at best (Van Elsuwege & De Coninck, 2022, p. 34).

In addition to FTAs, the EU also has a standardised system for granting unilateral trade preferences (GSP) to its trading partners in return for ratifying and implementing core international conventions. A separate scheme, GSP+, lowers the same tariffs to 0% as a special incentive for vulnerable countries that commit to protecting human rights, good governance, labour laws and the environment. Finally, the system includes the Everything But Arms (EBA) scheme, which provides least-developed countries with duty- and quota-free access to every product except arms and ammunition.

These preferences can be withdrawn in the event of systematic violations of international conventions. In 2020, the EU partially withdrew Cambodia's EBA status over Phnom Penh's violations of the political participation and freedom of expression principles of the International Covenant on Civil and Political Rights (ICCPR). The withdrawal was deliberately partial, covering roughly a fifth of Cambodia's exports to the EU while leaving the rest duty-free in order to pressure the state to respond. However, the effectiveness of this measure remains debated, especially since China pledged to support Cambodia with loans and increased bilateral trade (Bland, 2024, p. 106).

The second group of instruments directly targets the private sector. The Forced Labour Regulation bans any product made with forced labour from the EU market. The Corporate Sustainability Due Diligence Directive requires large companies to identify and address human rights and environ-

mental harm across their chains of activities. However, the recent Omnibus simplification reform (European Parliament & Council of the EU, 2026), which sought to increase the EU's competitiveness, raised the due diligence thresholds to 5,000 employees and EUR 1.5 billion in turnover, taking some previously covered companies out of its scope, and removed the EU-wide civil liability regime, with liability intact through national civil and criminal law in several member states.

The geopolitical context

Conditionality, one key source of the EU's trade-based normative power, has mostly been effective as a potential threat to those partners that strongly depend on the European market. However, over the past decade, Europe's relative market power has gradually declined, and with it, the effectiveness of its market-based threats (Garcia, 2022). Several structural pressures make democratic conditionality in trade preferences less likely to be enacted today and, if enacted, less likely to be effective.

Firstly, the EU faces domestic political pressures to increase its competitiveness. The famous Draghi report identified the Due Diligence Directive as a source of regulatory burden to be cut, culminating in the Omnibus Directive.

This selective legislative response to the Draghi report is, in part, pushed by the new composition of the European Parliament. It initially rejected the Due Diligence Directive's negotiating mandate that had been agreed with the Council and Commission in October 2025, but subsequently passed the mandate by a simple majority, with the European People's Party votes being supplemented by the Patriots for Europe and the European Conservatives and Reformists. The largest pro-European party is thus increasingly working with non-democratic political groups, also turning on some of the gains made under the previous Commission's European Green Deal.

Furthermore, with increased geopolitical competition and greater emphasis on national interests, the EU's trade-related democracy protection

toolbox will be applied unevenly. Where strategic stakes are high and market power is low, Europe will subordinate democracy to strategic necessity. For example, the EU has refrained from applying meaningful trade or association agreement pressure on Tunisia and Egypt despite documented autocratisation, because both are partners in containing and readmitting migrants (do Céu Pinto Arena, 2024). The effectiveness of the traditional democracy support toolkit is thus also open to debate in this new geopolitically competitive environment with a global wave of autocratisation (Sinanoglu & Leininger, 2026).

This geopolitical tension also shapes Global Gateway, the EU's external investment initiative that seeks to compete with China. Although the EU claims to offer a positive option grounded in its commitment to democracy and human rights, in recent years its overriding motivation appears to have shifted towards involving the European private sector in the "flagships" of Global Gateway. This reflects overarching discussions on "European preference" and "strategic procurement" that aim to promote the involvement of European actors in delivering Europe's international cooperation actions.

In other words, it may be increasingly difficult to convince trade officials of the utility and effectiveness of trade-related, suspension-led and government-facing democratic conditionality. This is also because the European Parliament and the Council of the EU are less likely to welcome such measures. The EU's trade policy toolbox (Table 1) was largely crafted when the EU was still a firm believer in the multilateral trade regime and the free market. It thus needs to reconsider these tools under its new, more interventionist identity.

Regulating and mobilising the private sector

Given increased geopolitical competition and ongoing tariff wars, it has become politically more costly to withdraw trade preferences and impose sanctions on partner governments. However, that does not change the fact that trade cooperation

requires reliable partners and secure supply chains. European economies do not benefit from opaque licensing, cronyism in the award of public contracts, expropriation and authoritarian coercion over strategic chokepoints. They instead thrive on rules-based, reliable trade frameworks.

As a remedy, democracy protection stakeholders should shift their focus from democratic conditionality in bilateral trade agreements to rules that apply to the private sector for democracy protection, in other words from the first to the second group of measures, as shown in Table 1. The criminal conviction of executives for complicity with abusive actors and civil liability for financing repression are possible through national civil liability regimes (Mundy, 2026). The Due Diligence Directive is also enforceable, even after its rollbacks.

Private sector-facing regulations are politically more viable than preferential status withdrawal with a smaller geopolitical impact and are also more reliable since they are not at the whim of the 27 EU member states' current governments and their respective foreign policies (and specific feelings about certain companies and industry branches). While it may be difficult to withdraw preferential status from a strategically important partner country, it may be less costly to prevent crony businesses from benefiting from these economic partnerships through existing regulations that apply by default.

Tender rules are one particular area of such firm-facing regulation. Autocratic consolidation is strongly connected to public procurement processes. Autocratising governments use discretionary licensing and tenders are steered to insiders, who in turn capture media and create patronage machines to support backsliders' election campaigns, as exemplified by two European states that experienced autocratisation: the public tender economies of Hungary and Serbia (Fazekas & Tóth, 2016). By excluding businesses linked to patronage and state capture, EU and member state tenders could raise the cost of financing that erodes democracy.

Several instruments already wire accountability directly into EU tenders and also into public procurement by the EU member states. State capture can thus easily be appended to existing institutional arrangements as a criteria following some preparatory work on how to operationalise and identify it. The European Commission could use the momentum with the revision of the public procurement directives (European Parliament & Council of the EU, 2014) in September (COM(2026) 590) and enable the existing corruption-based exclusion grounds to be used against operators linked to state capture. Such inclusion would also be aligned with strategic priorities of increased supply chain resilience and reduction of harmful dependencies. The same terms for public procurement should govern tenders co-financed under Global Gateway, protecting European funding rather than conditioning a partner government.

There is one caveat: their effectiveness would be limited against autocratic superpowers such as China, as exemplified by the Chinese tit-for-tat response to the EU's International Procurement Instrument restricting access to EU public contracts for Chinese medical device suppliers. Nevertheless, there are several instances in which a firm has been sanctioned without straining the geopolitical relationship with the partner country, as illustrated by the limited geopolitical effect of US import bans on Malaysian glove makers over forced labour in 2020-2021 or the 2017 Telia/Coscom settlement over bribes in Uzbekistan.

This shift of focus to the private sector could also help reframe the narrative: competitiveness does not necessarily come at the cost of the democracy agenda. Instead of trading off democracy for short-term gains, the EU should make a business case for democracy, and the private sector should underline how it benefits in this context. For example, a 2025 United Nations Development Programme (UNDP) study finds no evidence of a competitiveness penalty from stronger human rights due diligence and reports a positive association with return on assets (Milatović et al., 2025, p. 35).

Such a shift in narrative should be supported by expanding development cooperation, for example by developing compliance capacity through collaborations with business associations, especially in autocratising states. Companies are not only subjects of regulation. They can make their parti-

cipation in the EU's development cooperation actions contingent on transparent, fair bidding and can build human rights and anti-corruption pre-qualifications into their own contracting (Nilova & O'Connell, 2024, pp. 81-82).

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