

Assessment of the implementation of the human rights clause in international and sectoral agreements



Author:

Lorand BARTELS, Professor of International Law,
University of Cambridge, United Kingdom

European Parliament coordinator:

Policy Department for External Relations
Directorate General for External Policies of the Union



IN-DEPTH ANALYSIS

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ABSTRACT

This study examines the EU's policy on human rights clauses in its international agreements since 2014. It focuses on the inclusion of human rights clauses in framework agreements, in line with the 2009 'Common Approach', and how these clauses apply to more 'specific' agreements between the parties in sectoral agreements. It also looks at human rights clauses in sectoral agreements, especially sustainable fisheries partnership agreements and financing agreements, contrasting these with timber and selected investment agreements. The study emphasizes the importance of proper monitoring and enforcement to ensure compliance with human rights norms. It makes several recommendations including ensuring consistent coverage of human rights clauses across all types of agreements, clarifying their scope and giving consideration to making specific reference to newer human rights, tailoring benchmarks to individual countries, expanding the remit of Domestic Advisory Groups, and exploring additional avenues for reporting potential violations, similar to the Single Entry Point mechanism. It also recommends expanding the 'general exceptions' routinely included in trade and investment agreements to allow parties to take measures, not otherwise permitted by the agreement, to implement their human rights obligations.

AUTHOR

- Lorand BARTELS, Professor of International Law, University of Cambridge, United Kingdom

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CONTACTS IN THE EUROPEAN PARLIAMENT

Coordination: Marika LERCH , Policy Department for External Relations

Editorial assistant: Daniela ADORNA DIAZ

Feedback is welcome. Please write to Marika.Lerch@europarl.europa.eu

To obtain copies, please send a request to poldep-expo@europarl.europa.eu

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1 Introduction

Since the early 1990s, the EU¹ has included human rights clauses in its international agreements.² These are clauses that require the parties to respect human rights and democratic principles (in an ‘essential elements’ clause),³ and, in the event that one party fails to respect these norms, permit the party to adopt ‘appropriate measures’, which can include the suspension of the agreement.

As Section 2 describes in more detail, human rights clauses have two rationales, reflecting the EU’s twin obligations in Article 21(3) of the Treaty on European Union to respect and promote human rights norms in its external action. First, human rights clauses enable the EU to ensure that it does not contribute to any human rights violations, and thereby to respect human rights in its external action. They do this by permitting the EU to suspend obligations which, if performed, would risk contributing to those violations. Second, human rights clauses can help the EU comply with its obligation under Article 21(3) TEU to promote human rights in its external action, and this is in several ways. Human rights clauses can serve as a normative basis for human rights dialogues; they can prevent third countries from objecting to EU promotional activities in their territories, such as funding of human rights defenders; and, by allowing the EU to threaten to withdraw benefits (and to restore benefits that have been withdrawn), they can be used to induce third countries to comply with human rights.

Against this background, this study considers the EU’s recent policy of including human rights clauses in its international agreements, as well as its use of these clauses.⁴ Section 3 begins by examining the EU’s recent policy on including human rights clauses in international agreements, including not only framework agreements and standalone trade and cooperation agreements, but also sustainable fisheries partnership agreements and agreements (but not Voluntary Partnership Agreements for sustainable timber). It looks also at recent changes to the wording of essential elements clauses, and to the implementation of the 2009 ‘Common Approach’, according to which human rights clauses should be included in framework agreements, where possible, and should by these means cover ‘specific’ sectoral agreements, such as trade and investment agreements. It notes certain successes of the Common Approach, but also points out that this policy has led to the trade agreements with Canada and Japan not being covered by a human rights clause. It also observes that a higher standard for triggering appropriate measures has been introduced in the agreements with Canada, Japan, Australia, New Zealand, and the UK.

Section 4 turns to the post-2014 implementation of human rights clauses in practice. It notes that the EU has only adopted ‘appropriate measures’ once in this period (Burundi, 2016-2022), and seeks to explain this apparent lack of practice by reference to the alternative tools available to the EU, in particular its CFSP sanctions practice. It also considers why the EU-Russia Partnership and Cooperation Agreement remains in force despite having a human rights clause, even if in practice this agreement is essentially inoperative. Beyond ‘appropriate measures’, this section also looks at ‘positive’ uses of human rights clauses to promote human rights in third countries: to support human rights dialogues; to establish normative benchmarks

¹ For convenience, the term ‘EU’ is used to refer to the European Union (2009), the European Economic Community (1958-1993), and the European Community (1993-2009).

² Lorand Bartels, *Human Rights Conditionality in the EU’s International Agreements* (OUP, 2005).

³ Over the years, ‘essential elements’ clauses have come to be used to include other norms, for example weapons of mass destruction, terrorism, and more recently the objectives of the Paris Agreement on Climate Change. These are not discussed in this study.

⁴ This study covers all EU agreements since 2014, including those that have not yet been signed or are not yet in force (such as the post-Cotonou ACP-EU Partnership Agreement that was initialled in 2021). It does not include, however, the EU-MERCOSUR FTA, for which the human rights clause is not yet publicly available. These are listed, and their relevant provisions are extracted in annexes to this study. An earlier study covered the EU’s agreements up to 2014. See Lorand Bartels, *The European Parliament’s role in relation to human rights in trade and investment agreements* (European Parliament 2014).

more generally, and to prevent third countries from objecting to EU human rights policies that, at least in part, take place in their territories.

Building on this analysis, Section 5 discusses four ways to improve the utility and effectiveness of human rights clauses by improving their operability, their standards, their monitoring, and their enforcement. First, it notes that human rights clauses are structured to allow one party to adopt measures in response to human rights violations by another party. It points out that this is unduly limited, because it may be that a party wishes to adopt appropriate measures precisely in order to avoid violating its own obligations under an essential elements clause. This is primarily important for investment agreements. To this end, this section proposes adding an exception to international agreements so that a party has the right to adopt measures necessary to comply with the norms in an essential elements clause. Second, it proposes improving the standards in human rights clauses by establishing more detailed benchmarks tailored to the human rights situation in a third country, ideally before an agreement is concluded, and then following up with monitoring and enforcement. Third, and related to this, it proposes improvements to the monitoring of human rights clauses, and these more detailed benchmarks, by expanding the mandate of Domestic Advisory Groups to cover essential elements clauses. Fourth, and also related to these points, it proposes improving the enforcement of human rights clauses by adding them to the list of instruments about which complaints can be made by private actors to the European Commission's Single Entry Point.

Section 5 summarises the discussion, as a set of policy conclusions, and Section 6 sets out some concrete recommendations for improving the coverage, wording, implementation, and enforcement of human rights clauses in the future.

2 Rationales for human rights clauses

As briefly mentioned in the introduction, it is possible to distinguish two rationales for human rights clauses. First, they enable the EU to ensure that it does not worsen the human rights situation in third countries, by permitting the EU to suspend obligations that might contribute to human rights violations by the other party. Among such obligations are financial obligations requiring the EU to pay funds to states or persons involved in human rights violations, investment obligations requiring the EU to protect their assets, or trade obligations requiring the EU not to restrict trade in goods and services with states or persons involved with human rights violations. Second, human rights clauses can enable the EU to improve human rights in third countries, and this is in several ways. First, by permitting the EU to threaten to withdraw benefits, and to promise to restore already withdrawn benefits, human rights clauses give the EU a tool to influence the conduct of parties responsible for human rights violations. Second, human rights clauses can be used as a basis for human rights dialogues; and third, they can prevent third countries from objecting to EU promotional activities in their territories, such as funding of human rights defenders, or imposing sustainability due diligence obligations on companies in relation to activities in the third country bound by the human rights clause.

It is naturally difficult, both in theory and in practice, to keep these two rationales disentangled. But this is important, not only conceptually, but also legally, because these two rationales appear as distinct legal obligations in Article 21(3) TEU. This provision states:

The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

This provision sets out two separate obligations applicable to the EU's external action.⁵ First, the EU must respect the 'principles' listed in Article 21(1), namely 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.' Concretely, this means that the EU must not contribute to violations of the principles of human rights, democracy and international law in third countries (in other words, not worsen the human rights situation). Second, and separately, the EU must 'pursue the objectives' listed in Article 21(2), which include, relevantly, 'consolidat[ing] and support[ing] democracy, the rule of law, human rights and the principles of international law'.⁶ This means that the EU must endeavour to improve compliance with those principles in third countries (in other words, seek to improve the human rights situation).

For ease of understanding, the first obligation can be termed a *negative* obligation (the EU is obliged to refrain from making matters worse), while the second can be termed a *positive* obligation (the EU is obliged to seek to make matters better). Because it is more difficult to require actors to achieve a given result, and there are different means by which objectives can be pursued, this second positive obligation is understandably couched in the language of 'best endeavours'. Human rights clauses are of course not the only way that the EU can meet these two obligations, but in the right circumstances they can be an important means of ensuring that the EU is able to do so.

3 The EU's post-2014 policy on human rights clauses in international agreements

Indeed, the two rationales for human rights clauses just discussed predate Article 21(3) TEU. While conceived in the late 1970s, human rights clauses actually date from the early 1990s, when they were introduced into EU international agreements with countries in Latin America, and, following the fall of the Berlin Wall, in central and eastern Europe. In 1995 this practice was formally adopted as policy by the EU Council, which stated that henceforth all EU international trade and cooperation agreements must include human rights clauses permitting the suspension of these agreements, in appropriate cases.⁷

In 2009, the EU Council tweaked this policy, in what is termed a 'Common Approach', stating a preference for including such clauses in framework cooperation agreements, which could then apply to all other agreements (including trade agreements) that were concluded between the parties in the context of that overall framework.⁸ In theory, this is merely a matter of legal design. However, as will be shown, by splitting framework and specific agreements, the Common Approach has had the effect, in some cases, of reducing the application of human rights clauses to those specific agreements. In addition, and separate from the Common Approach, since 2014, the EU has also adopted new policies on the inclusion of human rights clauses in Sustainable Fisheries Partnership Agreements and related protocols, and it has firmed up its policy of including human rights clauses in financing agreements with third countries.

⁵ Lorand Bartels, 'The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects' (2014) 25(4) European Journal of International Law 1071.

⁶ Article 21(2)(b) TEU.

⁷ Commission Communication on the Inclusion of Respect for Democratic Principles and Human Rights in Agreements between the Community and Third Countries', COM (95) 216 and European Council Conclusions of 29 May 1995 (reported in EU Bulletin 1995-5, point 1.2.3).

⁸ European Council, Reflection Paper on Political Clauses in Agreements with Third Countries, Doc 7008/09, 27 February 2009 (partially derestricted). In fact, it is not legally accurate to describe human rights clauses as 'political', even if they have mainly been applied in cases of political disruption.

This section considers all of these types of agreement, as well as the EU's sustainable timber agreements (Voluntary Partnership Agreements) which do not include human rights clauses.

3.1 Framework agreements

Since 2014, the EU has concluded framework agreements with Canada (2016), Vietnam (2016), New Zealand (2016), Australia (2017), Japan (2018), Singapore (2018), Malaysia (2022), and Thailand (2022).⁹ In 2021, it also initialled a new partnership agreement with the African, Caribbean and Pacific (ACP) countries, intended to replace the Cotonou Agreement.¹⁰ The following analyses and compares their essential elements clauses, appropriate measures clauses, and – with an eye to the 2009 'Common Approach' – the techniques by which these clauses link to other 'specific agreements' between the parties.

3.1.1 Essential elements

All essential elements clauses contain a set of 'core norms', which are usually (but not always) identified by reference to international human rights instruments, and respect for these norms is said to 'underpin' the parties' internal and international policies; respect for these norms is also said to be an 'essential element' of the agreement.¹¹

The 'core norms' differ somewhat between the framework agreements under discussion. The essential elements clause in the initialled EU-African Caribbean Pacific (ACP) Partnership Agreement is worthy of special attention. This clause, which is materially identical to its predecessor in the Cotonou Agreement, states:

The Parties agree that respect for human rights, democratic principles and the rule of law shall underpin their domestic and international policies and constitute an essential element of this Agreement.¹²

The terms 'human rights, democratic principles and the rule of law' are undefined. But in line with Article 31 of the Vienna Convention on the Law of Treaties, according to which a treaty must be interpreted in light of the other provisions in the treaty¹³ as well as (inter alia) other relevant rules of international law applicable in relations between the parties,¹⁴ these norms cover all norms described as human rights elsewhere in the agreement, norms that are part of customary international law, and other norms that are binding on all the parties to the agreement. Many standard human rights will therefore be covered.¹⁵ However, there are gaps, such as newer human rights concerning sexual orientation or gender identity,¹⁶

⁹ These framework agreements are given different names, including 'Strategic Partnership Agreement' and 'Partnership and Cooperation Agreement'.

¹⁰ The Cotonou Agreement applies until 30 June 2023. See Decision No 1/2022 of the ACP-EU Committee of Ambassadors of 21 June 2022 (OJ L 176, 1.7.2022).

¹¹ The reason for this complicated drafting lies in the first versions of human rights clauses (1990-92), which did not have 'non-fulfilment' clauses. At that time, these two statements were intended to establish triggers for the treaty law doctrines of fundamental change of circumstance and material breach respectively. However, since 1993 all human rights clauses have come with express 'non-fulfilment' clauses, which displace these default treaty doctrines, as per Article 60(4) of the 1969 Vienna Convention on the Law of Treaties (VCLT). It is therefore incorrect to say, as is still routinely said, that human rights clauses operate on the basis of Article 60 VCLT 1969.

¹² Article 9(7) of the initialled ACP-EU Partnership Agreement. The wording is essentially the same as in the Cotonou Agreement, Article 9(2)(4) of which states that '[r]espect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership Agreement, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.'

¹³ Article 31(1) and (2) VCLT 1969.

¹⁴ Article 31(3)(c) VCLT 1969.

¹⁵ This includes, for example, core labour standards.

¹⁶ These particular human rights have been controversial in ACP-EU negotiations: See for example Géraldine Dezé (translated by Inji Achour), 'The rights of LGBTI people and the sacrifices of the (post)Cotonou agreement', Gender in Geopolitics Institute, 26 April 2021, <https://igg-geo.org/?p=5228&lang=en>. In its legislative resolution of 13 June 2013 on the second amendment to the

and a prohibition on the death penalty, and these would have to be mentioned specifically to be covered by this essential elements clause.

All of the essential elements clauses in the other framework agreements define the core norms at issue by reference to a set of international instruments. One example is the essential elements clause in the Canada framework agreement. This states:

Respect for democratic principles, human rights and fundamental freedoms, as laid down in the Universal Declaration of Human Rights and existing international human rights treaties and other legally binding instruments to which the Union or the Member States and Canada are party, underpins the Parties' respective national and international policies and constitutes an essential element of this Agreement.¹⁷

In addition to the 1948 Universal Declaration of Human Rights and other human rights norms binding on the parties,¹⁸ this clause refers to other existing 'international human rights treaties and other legally binding instruments to which the Union or the Member States and Canada are party'. This excludes future human rights treaties,¹⁹ and may also exclude other future 'legally binding instruments'. The other essential elements clauses in framework agreements (in agreements with Vietnam, New Zealand, Australia, Singapore, Malaysia, and Thailand) refer to other legally binding instruments, but without the limitation on existing agreements. That, naturally, expands their scope and keeps them up to date.

The Canada essential elements clause also references treaties and human rights instruments that are legally binding on the parties. The clause in the Australia framework agreement is the same. The others do the same, although they mostly express the condition differently. The clause in the Malaysia framework agreement refers to instruments that are 'applicable' to both parties, and the clauses in the Thailand and New Zealand framework agreements refer to 'other relevant international human rights instruments'.²⁰ On the other hand, the Vietnam and Singapore framework agreements refer to instruments to which the parties are 'contracting parties'.²¹ Under treaty law, the terms 'contracting State' and 'contracting organization' mean parties that have consented to be bound by an instrument, even where the treaty has not entered into force.²² This wording is therefore somewhat broader.

Cotonou Agreement of 23 June 2000, at para 3, the Parliament '[u]rge[d] all parties to revise the unsatisfactory clauses ... during a third revision of the Agreement, including the explicit introduction of non-discrimination on the basis of sexual orientation within Article 8(4)'.

¹⁷ Article 2 EU-Canada Strategic Partnership Agreement (SPA).

¹⁸ Universal Declaration of Human Rights (UDHR), at <http://www.un.org/en/documents/udhr/>, which contains obligations covering civil, political, economic, social and cultural rights. Some of the most significant are rights of non-discrimination on grounds of race, sex and religion, as well as the right to life, liberty and security of the person, freedom from arbitrary arrest and torture, access to justice and a fair trial, privacy, rights to work, leisure and social security, the right to education and rights of political participation. The essential elements clause also gives legal force to all of the rights and freedoms in the Universal Declaration. This is important, because the Universal Declaration is not itself a binding legal instrument, and only some of its rights and freedoms have legally binding effect under customary international law. For example, the democratic principles set out in the Universal Declaration do not have a solid foundation in customary international law. See Linda Wittor, *Democracy as an International Obligation of States and Right of the People* (Peter Lang, 2016), at 164; William Schabas, *The Customary International Law of Human Rights* (OUP, 2021), at 269.

¹⁹ This probably overrides the ordinary rule of interpretation, in Article 31(3)(c) VCLT 1969, that treaties are to be interpreted by taking into account 'any relevant rules of international law applicable in the relations between the parties.' This includes future agreements.

²⁰ Article 2(2) EU-Australia Framework Agreement (FA); Article 1(1) EU-Malaysia Partnership and Cooperation Agreement (PCA); Article 2(1) EU-Thailand Partnership and Cooperation Agreement (PCA); Article 2(1) EU-New Zealand Framework Agreement (FA).

²¹ Article 1(1) EU-Vietnam Partnership and Cooperation Agreement (PCA); Article 1(1) EU-Singapore Partnership and Cooperation Agreement (PCA).

²² Article 2(1)(f) VCLT 1969 and Article 2(1)(f) VCLT 1986.

The Japan framework agreement deserves special mention. Article 1(2) states:

The Parties shall continue to uphold the shared values and principles of democracy, the rule of law, human rights and fundamental freedoms which underpin the domestic and international policies of the Parties. In this regard, the Parties reaffirm the respect for the Universal Declaration of Human Rights and the relevant international human rights treaties to which they are parties.

This clause was controversial for Japan due to its position on the death penalty,²³ and the resulting wording reflects of a compromise. By undertaking only to ‘continue to uphold’ those principles which underpin their domestic and international policies, this clause apparently excludes principles that do not underpin their domestic or international policies.

3.1.2 Positive obligations

Many agreements with essential elements clauses also contain an obligation in the following terms (or words to equivalent effect):

The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.²⁴

Such clauses are found in the framework agreements with Canada, Vietnam, New Zealand, Australia, Japan, and Thailand²⁵ (but not with Singapore or Malaysia). While often overlooked, such clauses come to have some importance. They are based on the ‘duty of sincere cooperation’ provision in Article 4(3)(2) of the Treaty on European Union (TEU),²⁶ and set out a positive obligation to comply with the norms in the essential elements clause.

3.1.3 ‘Appropriate measures’

Aside from setting a normative basis for relations between the parties, one of the main functions of essential elements clauses is to permit the adoption of ‘appropriate measures’ in the event that they are violated. There are certain variations on how this is done.

Initialled ACP-EU Partnership Agreement

The post-Cotonou initialled ACP-EU Partnership Agreement is deserving of special attention, both because it establishes relatively elaborate procedures for the adoption of appropriate measures, and because historically almost all ‘appropriate measures’ have been adopted under the Cotonou Agreement, and the Lomé Agreement before it.

Article 3 provides for a regular ‘partnership dialogue’, which according to Article 101(4) is supposed to ‘prevent[...] situations arising in which one party might deem it necessary to have recourse to the consultations provided [in Article 101(6)]’. In ‘cases of special urgency’, which Article 101(7) defines as ‘exceptional cases of particularly serious and flagrant violation of one of the essential elements’, a party ‘may take appropriate measures with immediate effect, without prior consultations’. In other cases, Article 101(6) states that, if either Party considers that the other Party is in violation of any of the essential elements’ it shall notify the other party, and present it with information with a view to finding a solution within 60 days. If that is ‘deemed not sufficient’, the parties are to hold ‘structured and systematic consultations’, advised by a ‘special joint committee’ comprising equal EU and ACP representatives, ‘so

²³ Enrico D’Ambrogio, *The EU-Japan Strategic Partnership Agreement (SPA). A Framework to Promote Shared Values* (European Parliamentary Research Service, 2019), at 4.

²⁴ Article 54(1) EU-New Zealand FA.

²⁵ Article 28(1) EU-Canada SPA; Article 57(1) EU-Vietnam PCA; Article 54(1) EU-New Zealand FA; Article 57(1) EU-Australia FA; Article 43(1) EU-Japan Strategic Partnership Agreement (SPA); Article 55(1) EU-Thailand PCA.

²⁶ On Article 4(3) TEU, see eg, Barbara Guastaferrro, ‘Sincere Cooperation and Respect for National Identities’ in Robert Schütze and Takis Tridimas (eds), *Oxford Principles of European Union Law: The European Union Legal Order (Volume I)* (OUP, 2018), at 355.

that the Party concerned takes the necessary actions to comply with the obligations arising from this Agreement'. Where the parties fail to reach a mutually acceptable solution within 90 days, the notifying party may take 'appropriate measures'. The reference to consultations is far more truncated than in Article 96 of the Cotonou Agreement. It is also not clear whether consultations after the adoption of appropriate measures are mandatory or voluntary.

As to the nature of 'appropriate measures', Article 101(8) states as follows:

'Appropriate measures' shall be taken in full respect of international law and shall be proportionate to the failure to implement obligations under this Agreement. Priority shall be given to those which least disturb the functioning of this Agreement. Appropriate measures may include the suspension, in part or in full, of this Agreement. After taking the appropriate measures, at the request of either Party, consultations may be called in order to examine the situation thoroughly and find solutions allowing the withdrawal of appropriate measures.

This provision is similar to appropriate measures provisions in other international agreements.

Other framework agreements

The other framework agreements (with Canada, Vietnam, New Zealand, Australia, Japan, Singapore, Malaysia, and Thailand) generally follow the same pattern, though there are some differences. The Singapore and Vietnam framework agreements are the simplest. They allow for 'appropriate measures' for all violations of the essential elements clause. However, they term all violations of essential elements clauses a case of 'special urgency'²⁷ or 'material breach',²⁸ to distinguish these from violations of other provisions. While appropriate measures may be immediate, consultations may be requested, for a maximum of 15 days for Singapore²⁹ and 30 days for Vietnam.³⁰

The Malaysia and Thailand framework agreements distinguish between ordinary and 'substantial' violations of the essential elements clause and, like the initialled ACP-EU Partnership Agreement, for these agreements this distinction is of procedural importance. In ordinary cases, the parties are to consult (for an unspecified period), following which the non-violating party may take 'appropriate measures', which include the suspension of the agreement.³¹ Where there is a 'substantial' violation, the parties must consult for up to 30 days, following which the non-violating party may take 'appropriate measures'.³²

The framework agreements with Canada, Japan, Australia, and New Zealand adopt a different approach. These agreements distinguish between ordinary and serious violations of the essential element clause, but rather than drawing this distinction for procedural reasons, they confine 'appropriate measures' to 'a particularly serious and substantial violation' of the essential elements clause.³³ The Canada agreement goes further, referring to a case which has a 'gravity and nature' which 'would have to be of an exceptional sort such as a coup d'État or grave crimes that threaten the peace, security and well-being of the international community.'³⁴ The Australia and New Zealand framework agreements refer to violations of 'an exceptional sort that threatens international peace and security' and that require an 'immediate

²⁷ Article 44(4) EU-Singapore PCA.

²⁸ Article 57 of the EU-Vietnam PCA and Joint Declaration on Article 57.

²⁹ Article 44(2) EU-Singapore PCA. This provision also (contradictorily) states that appropriate measures 'may apply' if consultations fail within 15 days.

³⁰ Joint Declaration on Article 57 of the EU-Vietnam PCA.

³¹ Article 55(3), (4) and (6) EU-Thailand PCA; Article 53(3), (4) and (6) EU-Malaysia PCA.

³² Article 55(6) EU-Thailand PCA; Article 53(6) EU-Malaysia PCA.

³³ In all these agreements except with New Zealand this is described as a case of 'special urgency'. See Article 28.6 EU-Canada SPA; Article 43(6) EU-Japan SPA.

³⁴ Article 28(3) EU-Canada SPA.

reaction’.³⁵ The Japan framework agreement refers to ‘a particularly serious and substantial violation ... with its gravity and nature being of an exceptional sort that threatens peace and security and has international repercussion [sic]’.³⁶ The standard in these four agreements is high. It is difficult to say, in the abstract, what might be covered, but it may only cover conduct prohibited by international law as *ius cogens* (peremptory norms), such as torture, genocide, slavery, and apartheid. Intended appropriate measures must be notified to the other party, and may only be taken after a consultation period of 45 days,³⁷ or for an unspecified (though by implication short) period.³⁸

As to the nature of the appropriate measures that can be adopted, some of these agreements clarify that ‘appropriate measures’ includes the suspension of obligations,³⁹ and some further state that this can be in whole or in part,⁴⁰ or include termination.⁴¹ All contain a proportionality rule, whether described as a condition that suspension is a measure of last resort, or that ‘appropriate measures’ be chosen that ‘least disturb’ the functioning of the agreement, or that they must be proportionate to the violation, or that they must be taken in accordance with international law. Some add that the measure must be withdrawn when no longer warranted.⁴²

It is finally noteworthy that the framework agreements with Canada, Australia and New Zealand specify that decisions to adopt appropriate measures must, on the EU side, be taken by unanimity.⁴³ Normally, these measures are adopted on the basis of qualified majority voting, as they are decisions adopted under Article 207 (and, for suspension, though not termination, Article 218(9)) Treaty on the Functioning of the European Union (TFEU). This obviously increases the difficulty of approving such a decision in the EU Council.

3.1.4 Third country ‘situations’

The framework agreements with Canada and Australia contain a provision stating that ‘[i]n cases where a situation occurring in a third country could be considered equivalent in gravity and nature to a case of special urgency, the Parties shall endeavour to hold urgent consultations, at the request of either Party, to exchange views on the situation and consider possible responses.’⁴⁴ This appears to be directed to establishing joint policy positions. Such a clause has to do with cooperation, not with non-fulfilment of an obligation binding on both parties, and it should be located somewhere else in these agreements.

3.2 Specific agreements under framework agreements

An important issue concerns the way that framework agreements with human rights clauses relate to the other specific agreements that are concluded between the parties, in line with the EU Council’s 2009 ‘Common Approach’. In principle, this can be done either by making a cross-reference in the framework agreement to the other agreement or by a cross-reference in the other agreement back to the essential elements clause in the framework agreement. Both techniques are used, and one way or another, there is

³⁵ Article 57(7) EU-Australia FA; Article 54(6) EU-New Zealand FA.

³⁶ Article 43(4) EU-Japan SPA.

³⁷ Article 54(6) EU-New Zealand FA; Article 57(5) EU-Australia FA.

³⁸ Article 28(6)(a) EU-Canada SPA. For Japan, it is 15 days plus an unspecified time for a meeting at ministerial level: Articles 43(5) and (6) of the EU-Japan SPA.

³⁹ Article 54(7) EU-New Zealand FA; Article 57(4) EU-Australia FA; Article 28(6)(a) EU-Canada SPA; Article 44(4) EU-Singapore PCA; Article 85(3) EU-Cuba Political Dialogue and Cooperation Agreement (PDCA).

⁴⁰ Article 54(7) EU-New Zealand FA; Article 44(4) EU-Singapore PCA (referring both to suspension and non-performance of obligations for the time being).

⁴¹ Article 54(7) EU-New Zealand FA; Article 28(7) EU-Canada SPA; Article 57(4) EU-Australia FA.

⁴² Article 28(6)(b) EU-Canada SPA; Article 54(8) EU-New Zealand FA; Article 43(7) EU-Japan SPA ; Article 57(6) EU-Australia FA.

⁴³ Article 28(6)(a) EU-Canada SPA; Article 54(6) EU-New Zealand FA; Article 57(5) EU-Australia FA.

⁴⁴ Article 28(4) EU-Canada SPA; Article 57(8) EU-Australia FA.

an appropriate relationship between the framework and specific agreements with Singapore, Vietnam, New Zealand, Malaysia, and Thailand, and potentially with Australia (this depends on the Free-Trade Agreement (FTA) currently under negotiation). Practice is not however perfect. There is an ambiguous relationship between initialled ACP-EU Partnership Agreement and other specific agreements between the parties (other than their Economic Partnership Agreements), and – of particular note – there is no effective human rights clause coverage of the trade agreements with Canada and Japan.

3.2.1 Initialled ACP-EU Partnership Agreement

It was concluded in an earlier study on the Cotonou Agreement that, by default, ‘appropriate measures’ under Article 96 of that Agreement can extend to the suspension of other agreements between the parties, based on the fact that the meaning of ‘appropriate measures’ is sufficiently flexible to have this effect.⁴⁵ In the case of the initialled ACP-EU Partnership Agreement, Article 50(6) is relevant. It states:

The Parties to the respective Economic Partnership Agreements agree that the references contained therein to the provisions on appropriate measures in the Cotonou Agreement are understood as references to the corresponding provision in this Agreement.

The reference to ‘provisions on appropriate measures’ makes it clear, as it says, that the Economic Partnership Agreements (EPAs) are fully covered by the human rights clause in the initialled ACP-EU Partnership Agreement. On the one hand, Article 50(6) can be read as a mere confirmation that appropriate measures have an extended function. However, based on the maxim *expressio unius est exclusio alterius* (the expression of one is to the exclusion of another), it can also be taken to mean that ‘appropriate measures’ cannot be used to suspend agreements other than the EPAs. This is more probable, in particular because the initialled ACP-EU Partnership Agreement makes reference to several of these agreements (relevantly, investment agreements, FLEGT Voluntary Partnership Agreements, and sustainable fisheries partnership agreements) in other contexts.⁴⁶ If appropriate measures were applicable to these agreements, one might expect Article 50(6) to have included them.

This means that future agreements between the parties cannot, without an express legal provision to this effect, be subject to appropriate measures under the initialled ACP-EU Partnership Agreement. Concretely, this is already the case for the Angola investment facilitation agreement. The preamble to this investment agreement states that the parties ‘[bear] in mind the ... ‘Cotonou Agreement’ [or its successor agreement ...], including its essential and fundamental elements’, and Article 8.3 states that ‘[n]othing in this Agreement shall be construed so as to prevent the adoption ... of appropriate measures pursuant to the Cotonou Agreement [or its successor ...]’. But this presupposes that, under the Cotonou Agreement (or its successor), such appropriate measures are applicable to the investment agreement. In fact, as just explained, this is not the case. This may all be the result of poor drafting, but the implication is that while the Angola investment agreement is currently covered by the human rights clause in the Cotonou Agreement, it is unlikely to be covered by the human rights clause in the initialled ACP-EU Partnership Agreement.

3.2.2 Framework agreements and ‘specific agreements’

Somewhat like the initialled ACP-EU Partnership Agreement, but with more extensive reach, the packages of agreements with Canada, Singapore, Vietnam, New Zealand, Australia, Malaysia and Thailand adopt a technique whereby the framework agreement makes a cross-reference to other ‘specific agreements.’ In

⁴⁵ Lorand Bartels, Human Rights Provisions in Economic Partnership Agreements in Light of the Expiry of the Cotonou Agreement in 2020 (European Parliament, 2017), at 12-13.

⁴⁶ See, eg, Articles 42(2) and 48(4) of the initialled ACP-EU Partnership Agreement, and Article 46(12) of the Africa Regional Protocol.

the case of all of these (except the Canada agreement), these are defined as agreements within the areas of cooperation within the scope of the framework agreement. Such agreements, moreover, it is stated, 'shall be an integral part of the overall bilateral relations as governed by this Agreement'⁴⁷ and (except for the Australia agreement) they 'shall form part of a common institutional framework'.⁴⁸ All of these framework agreements (except the Canada agreement) also expressly state that 'appropriate measures' for violations of the norms in the essential elements clause may include the suspension (and in some cases termination) of these specific agreements. However, they do this in different ways.

The framework agreement with Singapore is the most straightforward, as it states that any violation of its essential elements clause permits the adoption of appropriate measures including the suspension of a 'specific agreement'.⁴⁹ The framework agreement itself describes the EU-Singapore free trade agreement as a 'specific agreement'.⁵⁰ The Singapore investment protection agreement is not so described in the framework agreement, but this agreement describes itself as a 'specific' agreement giving effect to the framework agreement.⁵¹ That means that, according to the Singapore framework agreement, a violation of the essential elements clause would permit the suspension of the trade and investment agreements. The Malaysia and Thailand framework agreements are similar, but somewhat more limited, only permitting the suspension of a specific agreement for 'substantial' violations of the essential elements clause.⁵² There are not yet any specific trade or investment agreements with these countries.

The Vietnam package adopts a different approach. The Vietnam framework agreement makes no reference to the suspension of specific agreements, but the 'specific' Vietnam trade and investment agreements contain non-fulfilment clauses stating expressly that '[i]f a Party considers that the other Party has committed a material breach of the Partnership and Cooperation Agreement, it may take appropriate measures with respect to this Agreement in accordance with Article 57 of the Partnership and Cooperation Agreement'.⁵³ This is an effective link between the two specific agreements and the framework agreement.

The Canada framework agreement is quite different. Article 28.7 states:

[T]he Parties recognise that a particularly serious and substantial violation of human rights ... could also serve as grounds for the termination of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in accordance with Article 30.9 of that Agreement.⁵⁴

In fact, this adds nothing, because Article 30.9 of CETA permits CETA to be terminated for any reason, with 180 days' notice. It can be said with confidence that there is no effective human rights clause governing CETA. Article 28(8) adds, for good measure, that '[t]his Agreement shall not affect or prejudice the interpretation or application of other agreements between the Parties.'

The Japan framework agreement is different again. Article 43(6) states that '[i]n a case of special urgency [a party] may take other appropriate measures outside the framework of this Agreement, in accordance

⁴⁷ Article 55(1) EU-Australia FA; Article 52(1) EU-New Zealand FA; Article 54(1) EU-Vietnam PCA; Article 43(3) EU-Singapore PCA; Article 52(2) EU-Malaysia PCA; Article 53(1) EU-Thailand PCA.

⁴⁸ Article 52(1) EU-New Zealand FA; Article 54(1) EU-Vietnam PCA. The Singapore and New Zealand specific trade agreements contain matching clauses stating that they are 'part of the common institutional framework' created by the framework agreement: EU-Singapore Free-Trade Agreement (FTA), Article 16.18; EU-New Zealand Free-Trade Agreement (FTA), Article 27.4; Articles X.4 and X.7 of the EU text for the Australia Free-Trade Agreement (FTA) are to the same effect.

⁴⁹ Article 44(4) EU-Singapore PCA. In addition, the Singapore framework agreement states that 'in the selection of appropriate measures, priority must be given to those that least disturb the functioning of this Agreement or any specific agreement'.

⁵⁰ Article 9(2) EU-Singapore PCA.

⁵¹ Article 4.12 EU-Singapore Investment Protection Agreement (IPA).

⁵² Article 53(3) EU-Malaysia PCA; Article 55(6) EU-Thailand PCA.

⁵³ Article 17.18 (2) EU-Vietnam Free Trade Agreement (FTA); Article 4.16(2) EU-Vietnam Investment Protection Agreement (IPA).

⁵⁴ Article 28(7) EU-Canada SPA.

with international law.⁵⁵ This indicates that appropriate measures might be able to take the form of a suspension of other agreements, such as the EU-Japan Economic Partnership Agreement. However, this is undercut by Article 43(8), according to which '[t]his Agreement shall not affect or prejudice the interpretation or application of other agreements between the Parties.' As the Japan EPA does not include its own appropriate measures provision (like CETA, but unlike the New Zealand FTA), the result is that it cannot be suspended in the event of a violation of human rights norms.⁵⁶

The New Zealand framework agreement is superficially similar to the Canada framework agreement in that it also states that suspension or termination of specific agreements is possible, provided that this is done pursuant to the relevant provisions of the specific agreement itself.⁵⁷ In theory, this could be as redundant as the Canada framework agreement's reference to CETA's termination provision. However, unlike CETA, the New Zealand 'specific' trade agreement itself permits 'appropriate measures' for violations of the essential elements clause in the framework agreement – albeit only in the serious cases mentioned in that agreement.⁵⁸

The Australia framework agreement is similar to the New Zealand agreement, though it is confusingly drafted. Article 55(3) states:

The Parties recognise that a case of special urgency as defined in Article 57(7) could also serve as grounds for the suspension or termination of other agreements between the Parties. In such circumstances, the Parties shall defer to the dispute resolution, suspension and termination provisions of such other agreements to resolve any such dispute.

In addition, Article 57(4) states:

[E]ither Party may decide to take appropriate measures with regard to this Agreement, including the suspension of its provisions or its termination ... The Parties recognise that a case of special urgency may also serve as grounds for taking appropriate measures outside this Agreement, in accordance with the rights and obligations of the Parties under other agreements between the Parties or under general international law. In the Union, the decision to suspend would entail unanimity.

Both Article 57(4) and Article 55(3) deal with suspension and termination of other agreements, and both include the same condition, namely, that such measures can only be taken as permitted under those agreements. This is reinforced by Article 55(2), which states that '[t]his Agreement shall not affect or prejudice the interpretation, operation or application of other agreements between the Parties'. This is unnecessary repetition. It is presently unknown whether the Australia-EU FTA will follow the New Zealand model, and allow for appropriate measures for violations of the essential elements clause in the framework agreement, or whether it will follow the more redundant Canada model.⁵⁹

⁵⁵ Article 43(6) EU-Japan SPA.

⁵⁶ See also Yumiko Nakanishi, 'Significance of the Strategic Partnership Agreement between the European Union and Japan in International Order', <https://blogdroiteuropeen.com>, at 3, and Julia Schmidt, 'The European Union and the Promotion of Values in its External Relations – The Case of Data Protection' in Joseph Lee and Aline Darbellay (eds), *Data Governance in AI, Fintech and Legaltech* (Edward Elgar, 2022), at 259.

⁵⁷ Article 54(7) EU-New Zealand FA.

⁵⁸ Article 27.4(3) EU-New Zealand FTA.

⁵⁹ Article X.4 of the EU's proposed text for the EU-Australia FTA proposes a New Zealand model.

3.3 Standalone and hybrid trade, association, cooperation, and investment agreements

As mentioned, the 2009 'Common Approach' does not always apply, and there are still occasional 'standalone' trade, association and cooperation agreements that include human rights clauses of their own. Since 2014 these include trade agreements with Ukraine, Armenia, Kazakhstan, Kosovo, and the United Kingdom (UK) and an agreement with Cuba that does not provide for trade preferences.

All of these agreements have essential elements clauses with 'core norms' defined by reference to the Universal Declaration of Human Rights, and (except with Ukraine) to other international human rights instruments binding on the parties (by stating either that they are 'parties' to these instruments,⁶⁰ or that these instruments are 'applicable' to the parties,⁶¹ or that they are 'relevant'⁶²). In addition, Armenia, Kazakhstan, and Ukraine are members of the Council of Europe and of the Organization for Security and Cooperation in Europe (OSCE), and their essential elements clauses all reference the European Convention on Human Rights (ECHR) and the OSCE Helsinki Final Act and Charter of Paris.⁶³ The European Convention establishes a relatively high level of human rights protection in relation to the rights mentioned by the Universal Declaration. The Helsinki Final Act and, in particular, the Charter of Paris emphasise minority rights and provide detail on the nature of democratic principles. The agreement with Kosovo also contains a reference to all these instruments, despite Kosovo not being a Council of Europe or an OSCE member.⁶⁴ On the other hand, even though the UK is both a member of both the Council of Europe and the OSCE, the essential elements clause in the UK-EU Trade and Cooperation Agreement (TCA) does not include references to their relevant documents.

Each of these agreements contains a positive obligation 'to take any general or specific measures required to fulfil their obligations'. They also provide for appropriate measures in the event of violations of their essential elements clauses. The Kosovo agreement provides for immediate suspension in the event of non-compliance.⁶⁵ The agreement with Cuba permits immediate appropriate measures for any violation of its essential elements clause, albeit the affected party may call for a meeting within 15 days.⁶⁶ The agreements with Armenia and Ukraine also permit immediate appropriate measures for any violation of their essential elements clauses, but they also state that such measures may be the subject of consultations and also dispute settlement.⁶⁷ The agreement with Kazakhstan seemingly contains a legal conflict. It expressly allows for immediate appropriate measures following a violation of the essential elements clause, but it also says that the affected party may ask for consultations for up to 20 days, and states that '[a]fter this period, the measure shall apply'.⁶⁸

The UK TCA is different from the other standalone agreements discussed here. It is similar to the framework agreements with Canada, Australia, New Zealand and Japan, in that it only permits appropriate measures to be adopted in the event of 'a serious and substantial failure to fulfil any of the obligations described as essential elements in [the essential elements clause]'.⁶⁹ Such a violation, moreover, would have to be such

⁶⁰ Article 763(1) EU-UK Trade and Cooperation Agreement (TCA).

⁶¹ Article 1(5) EU-Cuba PDCA.

⁶² Article 2 EU-Ukraine Association Agreement (AA); Article 1 EU-Kazakhstan Enhanced Partnership and Cooperation Agreement (EPCA); Article 2 EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA).

⁶³ *ibid.*

⁶⁴ Article 3 EU-Kosovo Stabilisation and Association Agreement (SAA).

⁶⁵ Article 140(3) EU-Kosovo SAA.

⁶⁶ Article 85(3) and (4) EU-Cuba PDCA.

⁶⁷ Article 379(2) and (3) EU-Armenia CEPA; Article 478(2) and (3) EU-Ukraine AA.

⁶⁸ Article 279(2) EU-Kazakhstan EPCA.

⁶⁹ Article 772(1) EU-UK TCA.

that 'its gravity and nature would have to be of an exceptional sort that threatens peace and security or that has international repercussions.'⁷⁰ The remarks made in the context of those agreements apply equally here. In addition, a 30 day consultation period applies before these measures can be adopted.⁷¹

An additional comment might be made about the Armenia and UK agreements. Although these are both trade agreements, they have a hybrid character, in that they also function as framework agreements for other 'specific' agreements. The Armenia agreement refers to 'specific agreements in any area falling within its scope' and states that '[s]uch specific agreements shall be an integral part of the overall bilateral relations governed by this Agreement and shall form part of a common institutional framework.'⁷² It does not expressly say that 'appropriate measures' may not include the suspension of such specific agreements, but that might be a possibility. In contrast, where there is a 'serious and substantial' violation of the essential elements clause, the UK TCA expressly permits appropriate measures in the form of a termination or suspension of any 'supplementing agreement'.⁷³

Finally, brief reference needs to be made to the standalone EU-China Comprehensive Agreement on Investment (CAI) concluded in 2020, but now on hold. This agreement does not contain a human rights clause. It is therefore not further discussed in this study.

3.4 Sustainable fisheries partnership agreements (SFPAs)

Since the end of 2013, it has been mandatory to include human rights clauses in all new sustainable fisheries partnership agreements (SFPAs), which are agreements that allow for EU fishing in the waters of the third country in exchange for financial payments.⁷⁴ This policy was set out in Article 31(6) of the Common Fisheries Policy Regulation, which states:

The Union shall ensure that Sustainable fisheries partnership agreements include a clause concerning respect for democratic principles and human rights, which constitutes an essential element of such agreements.⁷⁵

In addition, fisheries partnership agreements that were concluded before this date have also been brought in line with this policy. This has been done by including human rights clauses in their updated implementing protocols, which are the instruments by which the EU makes financial payments to the other state (their validity is usually between four and six years)⁷⁶. In practice, it does not make any difference where the human rights clause is located.

3.4.1 SFPAs with ACP countries

With two exceptions (Morocco and Greenland), the post-2014 SFPAs or Protocols have been concluded with African, Caribbean and Pacific States that are parties to the Cotonou Agreement. The first of the new agreements was the Côte d'Ivoire Protocol in 2018, which states that the protocol could be suspended upon activation of the consultation mechanisms in Articles 8 and 96 of the Cotonou Agreement 'owing to a violation of essential and fundamental elements regarding human rights set out in Article 9 of that

⁷⁰ Article 772(4) EU-UK TCA.

⁷¹ Article 772(2) EU-UK TCA.

⁷² Article 380(4) EU-Armenia CEPA.

⁷³ Article 771(1) EU-UK TCA.

⁷⁴ Fisheries agreements (FPAs), signed before 2013 with no human rights clauses are distinguished from 'sustainable' fisheries agreements (SFPAs) which were signed after 2013 and contain human rights clauses. Compare, for example, the EU-Cabo Verde FPA (2006) with EU-Mauritius SFPA (2013).

⁷⁵ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (OJ L 354 28.12.2013).

⁷⁶ Eg, unlike the EU-Cabo Verde FPA (2006), its Protocol signed in 2019 has a human rights clause in Article 1.

Agreement'. No notice needs to be given. The 2019 Protocol with Cabo Verde has the same trigger, and expressly states that suspension 'shall apply immediately after the suspension decision has been taken.' The 2019 Guinea-Bissau Protocol introduced a condition that suspension requires consultation within the Joint Committee established under the 2008 Fisheries Partnership Agreement. Other SFPAs and Protocols concluded since 2019 have introduced a three month cooling off period, except for Gabon (in 2021), which has a one month period.

One question concerns the effect of these provisions following the expiry of the Cotonou Agreement. Beginning in 2021, SFPAs and Protocols (with Gabon, Mauritania and Mauritius) have added a reference to the human rights clause of the successor agreement to the Cotonou Agreement.⁷⁷ As for the earlier agreements, as explained in the previous study, one has to distinguish between those agreements that simply refer to the norms set out in the essential elements clause of Article 9 of the Cotonou Agreement, and those that refer to the mechanisms set out in Articles 8 or 96 of the Cotonou Agreement.⁷⁸ For example, the Cabo Verde SFA Protocol states this:

The implementation of this Protocol, including the payment of the financial contribution, may be suspended at the initiative of one of the Parties if one or more of the following conditions apply: ... (c) activation of the consultation mechanisms laid down in Article 96 of the Cotonou Agreement owing to violation of essential and fundamental elements of human rights and democratic principles set out in Article 9 of that Agreement.⁷⁹

The reason is that while the norms described in the Cotonou Agreement survive its expiry, the institutional mechanisms set out in that agreement cannot. This is a problem for the SFPAs with Cabo Verde, Cook Islands, Côte d'Ivoire, Gambia, Guinea-Bissau, São Tomé and Príncipe, Senegal, and Seychelles.

There are some possible workarounds. One would be to amend the initialled ACP-EU Partnership Agreement to extend Article 50(6), which so far only applies to the EPAs, to the SFPAs or their relevant Protocols. Another would be for the SFPAs to include a reference to the equivalent provision in the successor to the Cotonou Agreement. This is done for the SFA Protocol with Mauritius. A third would be to sidestep the problem by not mentioning Article 96 of the Cotonou Agreement, and instead for the SFPAs to create their own suspension mechanism, as is done for the Gabon and Mauritania SFPAs.

3.4.2 Non-ACP SFPAs

The Greenland SFA contains a standalone essential elements clause in a rather unusual form. It does not refer to the Universal Declaration on Human Rights, but it does refer to the ECHR and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Concretely, it states that:

The application of this Agreement may be suspended at the initiative of either of the Parties where: ... (d) either of the Parties ascertains a breach of fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁸⁰

There are no preconditions to triggering this clause.

Similar to the SFPAs with ACP countries, the Morocco SFA makes a cross-reference to the essential elements clause in the EU-Morocco association agreement. Its Article 3(11) states that the SFA 'shall be implemented in accordance with ... Article 2 of the Association Agreement concerning the respect for democratic principles and fundamental human rights.' Article 20 of the SFA then states that, upon three months' notice, the agreement may be suspended 'where either Party fails to comply with this Agreement'

⁷⁷ Article 5 EU-Gabon FPA Protocol; Article 3(6) EU-Mauritania SFA; Article 4(7) EU-Mauritius SFA Protocol.

⁷⁸ Bartels, n 45, at 14.

⁷⁹ Article 10(1) EU-Cabo Verde FPA Protocol.

⁸⁰ Article 3(6) EU-Greenland SFA.

(Article 20 of the SFPA Protocol states the same for the Protocol). The implication is that Article 3 (11) constitutes an obligation to comply with the norms set out in Article 2 of the association agreement. This is probably effective, but the drafting might have been improved.

3.5 FLEGT Voluntary Partnership Agreements for sustainable timber

The EU only permits the marketing of sustainably produced timber. In part, this policy is based on a set of EU-FLEGT Voluntary Partnership Agreements (VPAs) with third countries. These are agreements that establish certification mechanisms but also promise funding from the EU and the EU Member States.⁸¹ Since 2014, the EU has concluded VPAs with Indonesia, Vietnam, Honduras, and Guyana.⁸²

The Indonesia VPA permits suspension on any grounds at all, which means that it can be suspended on human rights grounds.⁸³ But this cannot be said for the VPAs with Honduras, Vietnam, or Guyana. The Honduras and Vietnam VPAs have a suspension clause that states as follows:

Either Party may suspend the application of this Agreement in the event that the other Party ... (c) acts in a way that poses significant risks to the environment, health, safety or security of the people of the Union or [Honduras/Vietnam respectively].⁸⁴

The norms 'environment, health safety and security' overlap with some human rights, but certainly not all of them.

The Guyana VPA is even more limited. This agreement permits suspension only in cases of 'material breach'. A material breach under Article 60(3)(b) VCLT 1969 is 'the violation of a provision essential to the accomplishment of the object or purpose of the treaty.' The objective of the VPA is stated as follows:

The objective of this Agreement, consistent with the Parties' common commitment to the sustainable management of all types of forests, is to provide a legal framework aimed at ensuring that all imports into the Union from Guyana of timber products covered by this Agreement have been legally produced and, thereby, to promote trade in timber products.⁸⁵

There are some references to human rights in the preamble of the Guyana VPA. But it is not straightforward to say that a failure by one of the parties to respect human rights would constitute a material breach justifying its suspension.

Overall, the non-inclusion of references to human rights in the VPAs suspension clauses must be described as anomalous. There is no reason why the EU should not include human rights in FLEGT-VPAs. That said, it is true that all of these agreements are concluded with third countries that are party to an international agreement containing human rights clauses.⁸⁶ None of these agreements specifically permits appropriate measures to be taken by suspending other agreements, such as the VPAs. However, in the absence of contrary indications, that does not mean that appropriate measures in this form could not be taken.

There are however contrary indications in two cases. One concerns the initialled ACP-EU Partnership Agreement, which, as discussed, by implication does not permit appropriate measures suspending other agreements (except the EPAs). The other concerns the Vietnam framework agreement. The reason is that

⁸¹ See, eg, Voluntary Partnership Agreement between the European Union and the Republic of Honduras on forest law enforcement, governance and trade in timber products to the European Union (OJ L 217, 18.6.2021), Article 15(1) and Annex VIII, para 8 ('Funding Mechanisms for Supplementary and Support Measures').

⁸² The EU-Côte d'Ivoire VPA was initialled in October 2022.

⁸³ Article 21(2) EU-Indonesia VPA.

⁸⁴ Article 23(2)(c) EU-Vietnam VPA; Article 25(2)(c) EU-Honduras VPA.

⁸⁵ Article 1 EU-Guyana VPA.

⁸⁶ EU-Indonesia Framework Agreement on Comprehensive Partnership and Cooperation; EU-Central America Political Dialogue and Cooperation Agreement and EU-Central America Association Agreement (Honduras), and Vietnam-EU Partnership and Cooperation Agreement, and Cotonou Agreement (Guyana).

the Vietnam trade and investment agreements expressly say that they can be suspended as an ‘appropriate measure’ under the framework agreement. That might be taken as indicating that, in the absence of such an express mention in the VPA, such a possibility does not exist for the VPA.

In summary, the Indonesia VPA can be suspended on any grounds, including human rights grounds. For the VPAs with Honduras and Vietnam suspension is only possible on the grounds of ‘environment, health, safety or security of the people of the EU or [the other party]’, and in addition it is likely to be possible for the Honduras agreement, at least, to be suspended in the form of appropriate measures under the Central America framework or Central America association agreements. The Guyana agreement can probably be suspended in the form of appropriate measures under the Cotonou Agreement, but not under the initialled ACP-EU Partnership Agreement.

These inconsistencies are obviously undesirable. In addition, there is no evident policy reason to exclude the VPAs from human rights clauses. There are two ways to ensure that VPAs are properly covered, either by stating this in the relevant framework agreements (as the initialled ACP-EU Partnership Agreement does for the EPAs), or by stating this in the VPAs themselves (as is done by the Vietnam trade and investment agreements). It is recommended that this be done.

3.6 EU financing agreements

It was noted above that the human rights clauses were originally intended to enable the EU to terminate financial assistance, otherwise guaranteed in an international agreement, in cases of human rights violations. This is no longer necessary, as international agreements (in the form of formal treaties) no longer guarantee financial assistance. However, the EU still grants financial assistance by means of financing agreements with third countries, and it is of the utmost importance to note that these agreements, which have the status of executive agreements under international law,⁸⁷ themselves contain human rights clauses.

This has been the EU’s practice for a number of years, but in 2018 it was made a formal requirement under Article 236(4) of the Financing Regulation. This provision, introduced at the behest of the European Parliament on first reading,⁸⁸ states:

The corresponding financing agreements concluded with the third country shall contain: ... (b) a right for the Commission to suspend the financing agreement if the third country breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.⁸⁹

It is further notable that Article 236 is also incorporated by reference in two of the regulatory instruments governing budgetary support, namely the EDF Regulation⁹⁰ and the Instrument for Pre-Accession assistance (IPA III).⁹¹ On the other hand, the Neighbourhood, Development and International Cooperation

⁸⁷ Philipp Dann, *The Law of Development Cooperation* (CUP, 2013), at 391. In principle, executive agreements also have treaty status under international law: Fred Morris, ‘Executive Agreements’, *Max Planck Encyclopaedia of International Law* (OUP, 2007). Nonetheless, the term ‘international agreements’ is used in this study to refer only to treaties of the traditional type.

⁸⁸ Interinstitutional File 2016/0282 A (COD), Council Doc 10551/18, 5 July 2018, p 546.

⁸⁹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018); consolidated version at <http://data.europa.eu/eli/reg/2018/1046/2022-12-14>.

⁹⁰ Article 36 of Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund (OJ L 307, 3.12.2018).

⁹¹ Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession assistance (IPA III) (OJ L 330, 20.9.2021), Article 9(5); Recital 40 of IPA III adds that ‘[a]s the respect for democracy, human rights and the rule of law is essential for sound financial management and effective Union funding as referred to in the

Instrument (NDICI) – (Global Europe) does not contain such a clause, despite the European Parliament's efforts to include such a clause when the initial proposal for legislation was first introduced into the Parliament.⁹² It is not however clear that this makes any difference, given, as noted, the inclusion of suspension clauses in the actual financing agreements with third countries.

4 Human rights clauses in practice

This section considers the use of human rights clauses since 2014 (the period under review in this study), while also appreciating that, in some cases, what could be done using human rights clauses can also be done (and is being done) by means of other instruments and techniques. This is important, because such instruments and techniques have evolved significantly since human rights clauses first entered the EU's human rights armoury. One could draw the wrong conclusion about the EU's external human rights policy if one focused simply on invocations and applications of human rights clauses (which have indeed declined in number and intensity) without acknowledging that human rights clauses are now just one among many means of achieving the same objectives. That said, the following also considers several situations in which the EU did *not* use human rights clauses when this might have been expected. This also leads to certain recommendations for improving the human rights clauses, and practice under these clauses.

4.1 Appropriate measures under human rights clauses

4.1.1 Appropriate measures since 2014

In terms of the use of human rights clauses to suspend benefits guaranteed under international agreements, it is notable that in the 8 years since 2014 (the period covered by this study), there has only been one instance of the EU withdrawing financing under a human rights clause in an international agreement, namely in relation to Burundi (from 2016-2022).⁹³

This contrasts with the 16 instances in which appropriate measures were taken under Article 96 of the Cotonou Agreement in the period 2000-2014,⁹⁴ plus the suspension of the EEC-Syria Cooperation Agreement in 2011, which was for human rights reasons, though based on a reference to the UN Charter in its preamble,⁹⁵ and around two dozen in total in the period since the advent of human rights clauses in 1990.⁹⁶ There are also several cases in which the European Parliament has called for appropriate measures to be adopted under agreements with human rights clauses without success.

Financial Regulation, assistance could be suspended in the event of the degradation of democracy, human rights or the rule of law by a beneficiary listed in Annex I'.

⁹² See proposed new Article 15a in the European Parliament legislative resolution of 27 March 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument (COM(2018)0460 — C8-0275/2018 — 2018/0243(COD)).

⁹³ Council Decision (EU) 2016/394 of 14 March 2016 concerning the conclusion of consultations with the Republic of Burundi under Article 96 of the [Cotonou Agreement] (OJ L 73, 18.3.2016); terminated by Council Decision (EU) 2022/177 of 8 February 2022 (OJ L 29, 10.2.2022) and Council Decision (EU) 2022/178 of 8 February 2022 (OJ L 29, 10.2.2022). The termination of appropriate measures was criticised as premature by 43 MEPs in a letter to the High Commissioner: <https://mariearena.eu/wp-content/uploads/2021/02/Letter-to-High-Commissioner-on-the-situation-in-Burundi.pdf>.

⁹⁴ Joint Staff Working Document Evaluation of the Cotonou Partnership Agreement, SWD(2016) 250 final, 15 July 2016, 38-39. In one case consultations concluded without the adoption of appropriate measures.

⁹⁵ EU Council Decision of 2 September 2011 partially suspending the application of the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic (2011/523/EU) (OJ L 228, 3.9.2011), as amended by Council Decision 2012/123/CFSP of 27 February 2012 (OJ L 54, 28.2.2012).

⁹⁶ Johanne Døhlie Saltnes, *The EU's Human Rights Policy – Unpacking the literature on the EU's implementation of aid conditionality*, Working Paper No 2, Centre for European Studies, University of Oslo, March 2013.

4.1.2 Sanctions as an alternative

Sometimes, it appears, appropriate measures under human rights clauses are not adopted, even though – or perhaps because – human rights abuses are targeted instead by individual sanctions in the context of the Common Foreign and Security Policy. For example, the 2016 Burundi appropriate measures followed the adoption in 2015 of travel restrictions and an asset freeze against those individuals and entities responsible for political violence, repression, and human rights abuses.⁹⁷ Individual sanctions can be expected to increase as a result of the adoption in 2020 of the EU Global Human Rights Sanctions Regime, which allows the EU to impose targeted sanctions, in the form of visa bans and asset freezes, on individuals and other entities associated with human rights violations anywhere in the world.⁹⁸ This new regime complements the EU's country-specific sanctions legislation affecting individuals and trade in products and services with specific countries.⁹⁹

The European Parliament has sometimes criticised this preference for CFSP sanctions instead of appropriate measures under human rights clauses. This can be seen in the case of Nicaragua, which is bound by a human rights clause in the 2014 EU-Central America Political Dialogue and Cooperation Agreement (PDCA)¹⁰⁰ (but not the EU-Central America Association Agreement, which Nicaragua has not ratified, and concerning which only the trade chapter, and not the human rights clause, is being provisionally applied).¹⁰¹ There have been human rights concerns in relation to Nicaragua for many years, and since 2017 the European Parliament has called for the triggering of the 'democratic clause' in the EU-Central America Association Agreement¹⁰² on no fewer than 7 occasions, the latest in September 2022.¹⁰³ Still, despite the Parliament's frequent calls to this effect, no suspension has taken place. What did happen, in October 2019, was the adoption of CFSP sanctions, which have been extended until September 2023.¹⁰⁴ In November 2021, the High Representative explained its sanctions-based approach:

[T]he European Union has carefully avoided any measures that could potentially add to the hardship of the Nicaraguan people and has consistently targeted only those responsible for the

⁹⁷ Council Decision (CFSP) 2015/1763 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi (OJ L 257, 2.10.2015); Council Regulation (EU) 2015/1755 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi (OJ L 257, 2.10.2015). One individual remains on the list: Council Implementing Regulation (EU) 2022/2043 of 24 October 2022 (OJ L 275, 25.10.2022).

⁹⁸ Council Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses, (OJ L 410 I, 7.12.2020) and Council Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses, (OJ L 410, 7.12.2020) (amended by Council Decision (CFSP) 2023/433 of 25 February 2023 (OJ L 59 I, 25.2.2023); Council Implementing Regulation (EU) 2023/430, (OJ L 59 I, 25.2.2023).

⁹⁹ See EU Sanction Map, at <https://www.sanctionsmap.eu/#/main>.

¹⁰⁰ Article 1(1) EU-Central America PDCA.

¹⁰¹ Council Decision of 25 June 2012 on the signing, on behalf of the European Union, of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, and the provisional application of Part IV thereof concerning trade matters, (OJ L 346, 15.12.2012); The trade pillar has been provisionally applied since 1 August 2013 with Nicaragua, Honduras, and Panama; since 1 October 2013 with Costa Rica and El Salvador, and since 1 December 2013 with Guatemala.

¹⁰² In fact, the human rights clause in the EU-Central America association agreement is not binding on Nicaragua, as this agreement is not in force, and the human rights clause is excluded from the provisional application of the agreement. However, the human rights clause in the Central America PDCA, which is in force, could be triggered.

¹⁰³ European Parliament resolution of 15 September 2022 on Nicaragua, in particular the arrest of the bishop Rolando Álvarez (2022/2827(RSP)), para 13; European Parliament resolution of 9 June 2022 on the instrumentalisation of justice as a repressive tool in Nicaragua (2022/2701(RSP)), para 11; European Parliament resolution of 16 December 2021 on the situation in Nicaragua (2021/3000(RSP)), para 14; European Parliament resolution of 8 July 2021 on the situation in Nicaragua (2021/2777(RSP)), para 11; European Parliament resolution of 8 October 2020 on the 'Foreign Agents' Law in Nicaragua (2020/2814(RSP)), para 12; European Parliament resolution of 19 December 2019 on the situation of human rights and democracy in Nicaragua, (2019/2978(RSP)), para 10; European Parliament resolution of 14 March 2019 on the situation in Nicaragua (2019/2615(RSP)), para 9.

¹⁰⁴ Council Decision (CFSP) 2019/1720 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua, (OJ L 262, 15.10.2019); Council Regulation (EU) 2019/1716 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua, (OJ L 262, 15.10.2019).

anti-democratic developments in Nicaragua ... [i]n that spirit, we will consider all instruments at our disposal to take additional measures, including those that may go beyond individual restrictions.¹⁰⁵

It is not possible here to comment on the EU's choice of instrument in this case. These are matters for diplomatic judgment. What can be said, however, is that, as noted above, 'appropriate measures' under human rights clauses are also subject to principles of proportionality.¹⁰⁶

There are however also indications that the European Parliament is aligning with individual sanctions as an appropriate policy tool. In 2017, when the Parliament considered the situation in The Gambia, it reiterated earlier calls for the commencement of 'consultations' under Article 96 of the Cotonou Agreement, but it also suggested that 'if no agreement can be reached within the consultation process, [the Council should] consider imposing targeted sanctions on those responsible for the post-electoral violence and human rights abuses, and for undermining the democratic process in the country'.¹⁰⁷ A resolution on the DRC, adopted the same day, was similar: the Parliament '[welcomed] the adoption of the EU targeted sanctions, including travel bans and asset freezes, on those responsible for the violent crackdown and for undermining the democratic process in the DRC [and called] on the Council to consider extending these restrictive measures in the event of further violence, as provided for in the Cotonou Agreement'.¹⁰⁸ Similarly, in 2017 the Parliament '[c]alled on the EU to make use of all available instruments and tools to ensure that the Eritrean Government respects its obligations to protect and guarantee fundamental freedoms, including by considering the launch of consultations under Article 96 of the Cotonou Agreement'.¹⁰⁹ But by 2020, its approach had changed. While regretting the fact that 'despite gross and systematic violations by Eritrea of the essential and fundamental elements of the Cotonou Agreement regarding human rights, the EU never initiated consultations as provided for in Article 96 thereof, despite Parliament's calls to do so', the Parliament then shifted its focus, calling on the Council to adopt 'a global EU human rights mechanism, the so-called European Magnitsky Act'.¹¹⁰

It may well be, then, that individual CFSP sanctions are a preferable alternative to appropriate measures under human rights clauses. But this does not mean that human rights clauses are irrelevant. In fact, depending on their form, these sanctions may depend on human rights clauses for their legality. The reason is that, if these sanctions involve the suspension of economic benefits (ie financial, trade or investment benefits) guaranteed by an international agreement, they will need a legal basis under that agreement. It is true that trade agreements (and some investment agreements) contain general exceptions for measures to protect public morals, as well as national or international security.¹¹¹ But there are conditions attached to these exceptions – including, for sanctions based on a public morals justification, that the measure be 'necessary' – which could make it desirable to obtain additional legal cover under a

¹⁰⁵ Nicaragua: Declaration by the High Representative on behalf of the European Union, 8 November 2021.

¹⁰⁶ This is also reflected in the EU's 2024 GSP program. See Draft European Parliament legislative resolution on the proposal for a regulation on applying a generalised scheme of tariff preferences, amendments 68 and 92, contained in Committee on International Trade, European Parliament, Report on the proposal for a regulation on applying a generalised scheme of tariff preferences, A9-0147/2022, 17 May 2022.

¹⁰⁷ European Parliament resolution of 2 February 2017 on the rule of law crisis in the Democratic Republic of the Congo and in Gabon (2017/2510(RSP)), para 10.

¹⁰⁸ Ibid, para 17.

¹⁰⁹ European Parliament resolution of 6 July 2017 on Eritrea, notably the cases of Abune Antonios and Dawit Isaak (2017/2755(RSP)), para 10.

¹¹⁰ European Parliament resolution of 8 October 2020 on Eritrea, notably the case of Dawit Isaak (2020/2813(RSP)), recital R and para 13.

¹¹¹ See, eg, CETA, Joint Declaration on Articles 8.16, 9.8 and 28.6: 'With respect to Articles 8.16, 9.8 (Denial of benefits) and 28.6 (National security), the Parties confirm their understanding that measures that are 'related to the maintenance of international peace and security' include the protection of human rights'.

human rights clause that does not have these conditions. This consideration is not purely speculative. In 2002 the provision on free movement of capital in the Cotonou Agreement was suspended as an 'appropriate measure' to permit the EU to impose targeted financial sanctions on individuals from Zimbabwe.¹¹² It cannot be excluded that even when human rights clauses are not used as a primary tool, they can be used as legal support for those primary tools.

4.1.3 Appropriate measures and diplomatic isolation

There is also one special case to discuss, which is the EU's decision not to suspend or terminate the 1997 EU-Russia Partnership and Cooperation Agreement,¹¹³ despite Russia's extremely serious violations of human rights since its invasions of Ukraine in 2014 and, in particular, 2022. In this case, perhaps even more so, such a suspension would have merely symbolic meaning. The EU has terminated all financial and other cooperation, including under financing agreements,¹¹⁴ in addition to its CFSP sanctions, and it is not necessary to analyse these measures here. What is worth noting is the reason for the EU not to suspend or terminate this agreement.

Reportedly, the reason is that terminating this agreement would require engagement with Russia at a time when the EU is diplomatically isolating Russia. Arguably, in the context of this particular agreement, this concern is exaggerated, for reasons to be mentioned, but the more general lesson is that mandatory consultations may indeed hinder the suspension of an agreement under a human rights clause.

As to the merits of this particular case, Article 107(2) of the PCA states:

If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Cooperation Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

These measures shall be notified immediately to the Cooperation Council if the other Party so requests.

A suspension on the basis of the essential elements clause is such a case of 'special urgency'. At most, then, the EU would have been obliged to notify the suspension or termination of the PCA to the Cooperation Council, if so requested by Russia. It is also possible that if the suspension or termination of the agreement were immediate, there would be no Cooperation Council to notify. The risk of engagement at this stage appears to be rather small.¹¹⁵ Still, this is not quite the end of the matter, because appropriate measures adopted under Article 107(2) are subject to dispute settlement.¹¹⁶ Article 101 states that:

1. Each of the Parties may refer to the Cooperation Council any dispute relating to the application or interpretation of this Agreement.
2. The Cooperation Council may settle the dispute by means of a recommendation.
3. In the event of it not being possible to settle the dispute in accordance with paragraph 2, either Party may notify the other of the appointment of a conciliator; the other Party must then appoint a second conciliator within two months. ... The Cooperation Council shall appoint a third conciliator.

¹¹² Council Decision of 18 February 2002 concluding consultations with Zimbabwe under Article 96 of the ACP-EC Partnership Agreement (OJ L 50, 21.2.2002).

¹¹³ Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part (OJ L 327, 28.11.1997).

¹¹⁴ European Commission, Commission suspends cross-border cooperation and transnational cooperation with Russia and Belarus, Press Release, 4 March 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1526.

¹¹⁵ There is also a more general consultation obligation in Article 102, but these do not apply in cases of special urgency. Article 102 states that '[t]he provisions of this Article shall in no way affect and are without prejudice to [Article 107].'

¹¹⁶ Moreover, by virtue of the doctrine of severability of arbitration clauses, this breach would still be likely to be applicable even if the agreement were suspended.

In practice, then, this dispute settlement clause depends upon the respondent party firstly to appoint a conciliator, and secondly to participate in the Cooperation Council to appoint a third conciliator. Technically, non-cooperation would be a breach of the agreement, but if the agreement is effectively suspended or terminated, there is no practical legal recourse for the complaining party (in this case Russia). In short, while this is not entirely a clean option, it would appear to be possible for the EU to suspend or terminate the PCA without the need to engage in consultations with Russia, or even (in practice) to notify Russia of this suspension or termination, and it would appear that even if Russia were to challenge the suspension or termination of the PCA in dispute settlement proceedings the EU would be able to prevent such proceedings from taking place (even if perhaps not entirely lawfully).

This excursus on the merits of terminating the Russia PCA serves to make the point that, regardless of whether the EU is able to suspend this PCA without engaging with Russia, there might be a need to rethink the EU's policy on provisions which require mandatory consultation or dispute settlement in the event one party seeks to adopt 'appropriate measures'. To be sure, this is only an issue for agreements that (no longer) have any political or economic relevance. There is little doubt that for meaningful agreements, the EU would suspend the agreement even if this did involve formal engagement with the other side. But the anomaly presented by the continuing existence of a cooperation agreement with Russia at a time of diplomatic isolation indicates that something needs to be changed.

4.2 Assisting the EU in its promotion of human rights

As mentioned, under Article 21(3) TEU the EU has an obligation to refrain from worsening human rights situations, but also an obligation to seek to improve human rights situations in third countries. As noted above, human rights clauses can help the EU to achieve this second obligation, and in several respects.

4.2.1 Human rights dialogues

One means by which this can be achieved is via human rights dialogues between the EU and third countries.

There are several formats for such dialogues. One format is 'agreement-based', which are institutionalised dialogues under agreements containing human rights clauses. This is most institutionalised under fourteen agreements under which the parties have established dedicated subcommittees or working groups in which human rights discussions take place. These agreements are with Sri Lanka, the Philippines, Vietnam, Uzbekistan, Kazakhstan, Iraq, and the Mediterranean countries involved in the Barcelona Process: Tunisia, Algeria, the Palestinian Authority, Egypt, Morocco, Jordan, Lebanon and Israel. Detailed public information about these dialogues is not always available. It would be hoped that they are based on the norms set out in the respective essential elements clause, and that they reference the positive obligations to implement those norms, backed by the possibility of adopting appropriate measures under those agreements. In addition, the EU is conducting around 40 human rights dialogues with ACP countries in the more *ad hoc* framework of Article 8 of the Cotonou Agreement. Beyond these dialogues, the EU conducts annual human rights dialogues with almost 50 other countries and country groupings, most of which are party to agreements with human rights clauses.¹¹⁷

Human rights clauses can play a useful role in such dialogues, because it can be useful, during human rights dialogues, to have a binding bilateral standard-setting obligation (in an essential elements clause) as a common normative reference point.¹¹⁸ This was reflected in a 2013 note issued by the EU Council's Working

¹¹⁷ Information provided by EEAS.

¹¹⁸ The European Commission has said that '[i]n general, the purpose of essential elements clauses should not be considered as limited merely to the withdrawal of concessions from trading partners. The primary aim of essential element clauses is rather to

Party on Human Rights on best practices in human rights dialogues, which suggested that '[d]ialogues taking place under PCAs could also be used as a forum to examine systematically the application of the human rights clause by the partner country.'¹¹⁹ It can also make sense to connect human rights dialogues with essential elements clauses, where they exist, and in particular to the possibility of appropriate measures. The reason, as noted, is that a dialogue is likely to be enhanced by the possibility of a threat of withdrawal of benefits, and the promise of restoration of benefits that have been withdrawn. That said, human rights clauses are not legally necessary for such dialogues to take place, and there are reasons not to draw sharp distinctions between human rights dialogues with countries according to whether they have a human rights clause in place. It is perhaps relevant in this respect that the 2021 Revised EU Guidelines on Human Rights Dialogues do not even mention human rights clauses.¹²⁰ In practice, the EEAS does not distinguish in its dialogues between countries that have human rights clauses in trade agreements with the EU and those that do not.¹²¹

4.2.2 Using normative benchmarks for measures outside of the agreement

It can also be useful for the EU to be able to refer to human rights norms reflected in bilateral agreements as support for action outside of the framework of that agreement. An example is in the European Parliament's 2022 response to human rights violations in the Philippines, where the Parliament referred to human rights norms in the Philippines framework agreement as a support for suspending GSP+ benefits on human rights grounds.

The Parliament said the following:

A. ... whereas through ratification of the Partnership and Cooperation Agreement, the European Union and the Philippines have reaffirmed their joint commitment to the principles of good governance, democracy, the rule of law, human rights, the promotion of social and economic development, and to peace and security in the region ...

21. ... [the Parliament] [c]alls on the Commission to set clear, public, time-bound benchmarks for the Philippines to comply with its human rights obligations under the GSP+ scheme and strongly reiterates its call on the Commission to immediately initiate the procedure which could lead to the temporary withdrawal of GSP+ preferences if there is no substantial improvement and willingness to cooperate on the part of the Philippine authorities; ...¹²²

It should be noted that the reference to the Philippines framework agreement was legally unnecessary, as the GSP Regulation is perfectly sufficient for the suspension of preferences on those grounds. But there is still value in pointing out that the Philippines has agreed to certain norms, rather than simply acting in a certain way to comply with EU conditions on the granting of tariff preferences.

That said, it is regrettable that the Parliament only referred to the Philippines' 'joint commitment' to human rights and related norms in the Philippines framework agreement, and not to the harder essential elements

create a platform for discussion on human rights so as to incentivise partner countries to engage in political dialogues, consultations and cooperation efforts and to improve their track record with regard to the respect of human rights and democracy.' See Comments of the Commission on a request for information from the European Ombudsman: SI/5/2021/VS on how the European Commission ensures respect for human rights in the context of international trade agreements,' at 12.

¹¹⁹ EU Council, Working Party on Human Rights (COHOM), Note to Political and Security Committee, Best Practices in Human Rights Dialogues, Doc 14819/1, 14 October 2013 (partially derestricted).

¹²⁰ Revised EU Guidelines on Human Rights Dialogues with Partner/Third Countries, EU Council Doc 6279/21, 22 February 2021.

¹²¹ The EU holds human rights dialogues with third countries even when there is no framework or trade agreement in place. See, eg, the annual EU-India human rights dialogues; negotiations for a trade agreement with India were relaunched in June 2022.

¹²² European Parliament resolution of 17 February 2022 on the recent human rights developments in the Philippines (2022/2540(RSP)). An earlier resolution was similar: European Parliament resolution of 17 September 2020 on the situation in the Philippines, including the case of Maria Ressa (2020/2782(RSP)).

clause in this agreement, nor to the obligation in the non-fulfilment clause that '[t]he Parties shall take any general or specific measures required to fulfil their obligations under this Agreement'.¹²³ This statement risks undermining the applicable human rights clause, by not referring to its binding obligations and the possibility to use the clause to adopt 'appropriate measures' outside the PCA framework, such as GSP preferences.

4.2.3 The human rights clause as a shield

Another important way that human rights clauses can help the EU promote human rights is by precluding the other state from objecting to EU promotional activities in its territory. An example is the EU's support, including financial support, for human rights defenders in third countries.¹²⁴ An essential elements clause can counteract objections that such activities contravene the principle of non-interference in another country's affairs. As the European Commission has rightly put it, '[the human rights clause] gives the EU a clear legal basis for raising human rights issues and it makes it impossible for both parties to claim that human rights are a purely internal matter.'¹²⁵

5 Improving the functioning of human rights clauses

Based on the foregoing analysis, this section considers four ways to improve the functioning of human rights clauses. These are to allow the parties, by means of an exception, to rely on essential elements clauses to adopt measures that would otherwise violate their own obligations, by developing concrete benchmarks for the implementation of human rights clauses, by improving their monitoring, and by improving their enforcement.

5.1 Improving tools: using human rights clauses to avoid violations

As currently drafted, human rights clauses distinguish between the party that has violated a human rights norm and the party that is entitled to adopt appropriate measures in response. They do however not permit parties to suspend treaty obligations in order to ensure that they comply with their *own* human rights obligations under essential elements clauses. This can be limiting, in particular in relation to investment agreements, where a party may wish to suspend its investment obligations for human rights reasons.¹²⁶ One way of addressing this is via the general exceptions that are now often included in investment agreements (these are modelled on Article XX of GATT and Article XIV of GATS). For example, Article 4.6 of the EU-Vietnam IPA states that:

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on covered investment, nothing in Articles 2.3 (National Treatment) and 2.4 (Most-Favoured-Nation Treatment) shall be construed as preventing the adoption or enforcement by any Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order;

¹²³ Articles 1 and 53(1) of the EU-Philippines Partnership and Cooperation Agreement.

¹²⁴ Support is operationalised via the Human Rights Defenders Mechanism and is managed by <https://protectdefenders.eu/>. See International Federation for Human Rights (FIDH) submission to European Commission Consultation on Trade and sustainable development in EU trade agreements, Contribution ID: 44520de8-1a5c-490b-8805-b9bdce073751, 31 October 2021.

¹²⁵ Commission Staff Working Document, Human Rights and Sustainable Development in the EU-Vietnam Relations with specific regard to the EU-Vietnam Free Trade Agreement, Brussels, 26.1.2016 SWD (2016) 21 final, at 4.

¹²⁶ Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic, ICSID Case No ARB/07/26.

(b) necessary to protect human, animal or plant life or health;

...

(e) necessary to secure compliance with laws or regulations which are not inconsistent with Articles 2.3 (National Treatment) and 2.4 (Most-Favoured-Nation Treatment) including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts; ...

There is no reason why a paragraph could not be added to this list stating ‘necessary to secure compliance with the essential elements of this agreement’, or wording to similar effect. This can be done relatively easily, if the political will exists.

With more significant redrafting, human rights clauses could also help establish obligations for foreign investors.¹²⁷ One way they could do this is by serving as a normative basis for disabling investor protection, in full or in part, for investors that have violated human rights.¹²⁸ This would build on ‘legality’ (or ‘clean hands’) provisions in investment agreements stating that investors may only bring a claim to an investment tribunal if they have complied with domestic law (which may include human rights norms) or if they have complied with international standards of human rights conduct.¹²⁹ Compensation for investor claims could also be reduced to the extent that any damage caused results from human rights violations, again, linked to an essential elements clause. Third, human rights clauses could be expanded by adding an obligation requiring the parties to institute a system of investor liability,¹³⁰ such as is foreseen in the EU’s draft Corporate Sustainability Due Diligence Directive.¹³¹ Unlike the previous suggestion, however, all of these suggestions would require significant changes to existing human rights clauses. It may be preferable simply to detach these suggestions from human rights clauses, as they currently exist, and treat them separately.

5.2 Improving standards: benchmarks and roadmaps

There are also several ways in which the implementation of human rights clauses can be improved. One is by setting clear performance benchmarks, tailored to specific situations, and tied to the possibility of proportionate sanctions. The European Parliament has been vocal on this point. Its 2023 resolution on human rights and democracy in the world stated (with emphasis added) as follows:

Human rights clauses in international agreements

[The European Parliament] [r]eiterates its call to include robust clauses on human rights in agreements between the EU and third countries, supported by a clear set of benchmarks and procedures to be followed in the event of violations; calls on the Commission and the EEAS to actively reflect on how to ensure that the human rights clauses in existing international

¹²⁷ European Parliament resolution of 23 June 2022 on the future of EU international investment policy (2021/2176(INI)); see also European Parliament resolution of 25 November 2010 on corporate social responsibility in international trade agreements (2009/2201(INI)) and European Parliament resolution of 6 April 2011 on the future European international investment policy (2010/2203(INI)), para 27.

¹²⁸ See recommendations of the European Parliament in its resolution of 23 June 2022 on the future of EU international investment policy (2021/2176(INI)), para 21 and the follow-up response of the European Commission on 5 October 2022 (SP(2022)484).

¹²⁹ The standard instruments in this regard are the OECD Guidelines for Multinational Enterprises, the United Nations Global Compact or the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and the UN Guiding Principles on Business and Human Rights.

¹³⁰ See Nicolas Bueno, Anil Yilmaz Vastardis and Isidore Ngueueu Djeuga, ‘Investor Human Rights and Environmental Obligations: The Need to Redesign Corporate Social Responsibility Clauses’ (2023) *Journal of World Investment and Trade*, advance access, <https://brill.com/downloadpdf/journals/jwit/aop/article-10.1163-22119000-12340278/article-10.1163-22119000-12340278.xml>.

¹³¹ Eg Article 22 of the European Commission’s Proposal for a Directive on Corporate Sustainability Due Diligence, COM (2022) 71 final, 23 February 2022.

agreements are monitored and effectively enforced; stresses that the EU should react swiftly and decisively to persistent breaches of human rights clauses by third countries, including by suspending the relevant agreements if other options prove ineffective.¹³²

In its previous 2022 resolution, the Parliament also specifically linked benchmarks to proportionate sanctions for violations. It stated:

The importance of strong human rights clauses in international agreements

The European Parliament ... calls for [human rights] clauses to be enforced through clear benchmarks and to be monitored, with the involvement of Parliament, civil society and the relevant international organisations; underlines that the establishment of specific benchmarks could lead the EU to explore the introduction of proportionality into sanctions for non-compliance; underlines that breaches of agreements should trigger clear consequences, including, as a last resort, suspension or the withdrawal of the EU from the agreement for the most severe or persistent cases of human rights violations; recommends the inclusion of monitoring mechanisms on human rights in all trade and foreign investment agreements, as well as complaints mechanisms, in order to ensure effective recourse to remedy for affected citizens and local stakeholders.¹³³

These are worthy suggestions. However, even with clear benchmarks, implementation can be challenging, as can be seen in the European Parliament's efforts to secure promises from Colombia to comply with labour and environmental standards as a condition of approving the EU-Colombia/Peru association agreement. The story is worth recounting.

On 13 June 2012, prior to consenting to the association agreement, the European Parliament '[c]all[ed] on the Andean countries to ensure the establishment of a transparent and binding road map on human, environmental and labour rights'.¹³⁴ Colombia responded with a detailed action plan on 26 October 2012, which it explained as follows:

The set of concrete measures and progress that we make available to you today seeks to achieve concrete, time-bound and results-based objectives in each of these areas. There are 56 clear, concrete, verifiable, ambitious and realistic targets on human rights, labour and environmental issues related to international trade, which are being followed up and monitored by the Office of the President of the Republic. In order to implement them, we have adopted more than 100 measures that have produced at least 37 tangible advances or results in the above-mentioned areas.¹³⁵

As it turned out, this promise did not generate the desired results. An ex post evaluation conducted for the European Parliament in 2018 documented several serious failings, concluding that '[d]espite the European

¹³² European Parliament resolution of 18 January 2023 on human rights and democracy in the world and the European Union's policy on the matter – annual report 2022 (2022/2049(INI)), para 34.

¹³³ European Parliament resolution of 17 February 2022 on human rights and democracy in the world and the European Union's policy on the matter – annual report 2021 (2021/2181(INI)), para 101.

¹³⁴ European Parliament resolution of 13 June 2012 on the EU trade agreement with Colombia and Peru (2012/2628(RSP)), para 15.

¹³⁵ Letter from the Colombian Ambassador to the President of the European Parliament, 26 October 2012. Translation of the original: 'El conjunto de medidas avances concretos que hoy ponemos a su disposición, busca alcanzar objetivos claros, sujetos a un calendario y basados en resultados en cada uno de esos ámbitos. Son 56 metas claras, concretas, verificables, ambiciosas y realistas en materia de derechos humanos, laborales y medioambientales relacionados con el comercio internacional, cuyo seguimiento y control se realiza desde la Oficina del Presidente de la República. Para su ejecución hemos adoptado más de 100 medidas que han producido al menos 37 avances o resultados tangibles en las áreas mencionada.'

Parliament's requirement and the existence of an action plan on the subject, five years after the Agreement was signed, there are still concerns about human rights in Colombia.¹³⁶

There has been debate as to why this might be the case, and whether sanctions might help. Marx et al see the compliance gap as a result of '[t]he absence of a binding enforcement mechanism, and the lack of adequate engagement with CSOs.'¹³⁷ Postnikov, on the other hand, is more positive, reporting that '[t]he EU's dialogue was also instrumental in making existing domestic institutional structures work more effectively, potentially leading to deeper institutional and policy changes over time', and concluding that 'the positive effect of EU provisions might be more cumulative in the long run compared to the threat of US sanctions, which are more effective during the negotiation stage and less effective in the long term.'¹³⁸ As far as labour standards are concerned, there are additional complexities resulting from different ways of understanding the relationship between trade and labour, sometimes even within the European Commission itself.¹³⁹

This discussion has lessons for human rights clauses. It appears that detailed benchmarking of standards and objectives is necessary, but not sufficient, to ensure compliance with broadly described legal norms. In addition, monitoring and enforcement of these benchmarks are critical, alongside more positive supportive action.

5.3 Improving monitoring: Domestic Advisory Groups

To some extent, such monitoring can take place in inter-governmental subcommittees and working groups, as mentioned above. More generally, though, effective monitoring depends on civil society input.¹⁴⁰ In this regard, the Domestic Advisory Groups (DAGs), which are established to assess the implementation of the sustainable development chapters of trade agreements, and an important first step.¹⁴¹ DAGs sometimes include groups that, inter alia, are active in human rights matters.¹⁴² And it has been suggested that DAGs should be able to look at human rights issues in the context of implementing the obligations of the agreement at issue. In response to an investigation by the European Ombudsman into the Vietnam free trade agreement, the Commission stated that '[t]he free trade agreement will set up Domestic Advisory Groups with the task of monitoring the human rights impact of the Free Trade Agreement.'¹⁴³ Strictly speaking, though, mandate of the Vietnam FTA DAGs is limited to the labour and environment obligations in that agreement, which are on different topics, even though there are some

¹³⁶ Isabel Alvarez et al, Implementation of the Trade Agreement between the EU and Colombia and Peru – Ex-Post Evaluation, at 74; Part II of Anna Zygierewicz (ed), Trade agreement between the European Union and Colombia and Peru (EPRS 2018).

¹³⁷ Axel Marx et al, 'The Protection of Labour Rights in Trade Agreements: The Case of the EU-Colombia Agreement' (2016) 50 Journal of World Trade 587, at 606.

¹³⁸ Evgeny Postnikov, *Social Standards in EU and US Trade Agreements* (Routledge, 2020), at 126.

¹³⁹ James Harrison et al, 'Governing Labour Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development Chapters' (2019) 57 Journal of Common Market Studies 260; Adrian Smith et al, *Free Trade Agreements and Global Labour Governance* (Routledge, 2021).

¹⁴⁰ A potential role for civil society to have input into the implementation of human rights clauses via the European Commission's Single Entry Point is discussed in the next section.

¹⁴¹ Eg Article 13.15 of the EU-Vietnam FTA.

¹⁴² Deborah Martens, Diana Potjomkina and Jan Orbie, *Domestic Advisory Groups In EU Trade Agreements: Stuck at the Bottom or Moving up the Ladder?* (Friedrich Ebert Stiftung, 2020), at 10, 20, 46 and 56; also European Commission, Communication on the power of trade partnerships, Brussels, COM(2022) 409 final, 22.6.2022, at 8.

¹⁴³ European Ombudsman, Decision in case 1409/2014/MHZ on the European Commission's failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement, 26/02/2016, para 20.1.

overlaps, from human rights.¹⁴⁴ At any rate, in practice DAGs generally refrain from referring to human rights clauses in discussing the implementation of the agreement.¹⁴⁵

Against this background, it is noteworthy that the more recent DAG mandates are broader. The Australia and New Zealand agreements say:

The domestic advisory group shall advise the Party concerned on issues covered by this Agreement. It shall comprise a balanced representation of independent civil society organisations including nongovernmental organisations, business and employers' organisations as well as trade unions active on economic, sustainable development, social, human rights, environmental and other matters. The domestic advisory group may be convened in different configurations to discuss the implementation of different Chapters and Provisions of this Agreement.

These DAGs are thus mandated to advise on 'issues covered by this Agreement.'¹⁴⁶ But this does not necessarily mean that it is legitimate for these DAGs to consider the human rights effects of implementing the trade agreement, because human rights clauses are still only essential elements of the framework agreements, not the trade agreements. An argument could be made that the DAGs can look at human rights clauses on the basis that trade agreements are an 'integral part of the overall bilateral relations' governed by the respective framework agreement, and 'form part of a common institutional framework'. But this is not certain.

The 2020 UK agreement represents an improvement, in that it states that the essential elements clause is also an essential element 'of ... any supplementing agreement.'¹⁴⁷ This widens the scope of the mandate of DAGs established under those supplementing agreements. This has been picked up by the European Economic and Social Committee, which in 2021 made a recommendation that the EU should '[e]xtend the scope of DAGs to all aspects of EU trade agreements, while maintaining a special focus on TSD implementation and the impact of trade on sustainable development more widely.' It referred to the TCA, it said that '[t]his new scope ... could be extended to the DAGs' scope in all existing and future FTAs by means of revised agreement texts or via harmonised practices under the DAG rules of procedure.'¹⁴⁸ This may indeed be a sensible way forward.

5.4 Improving enforcement: the Single Entry Point

In November 2020, the European Commission established a Single Entry Point (SEP), which is a mechanism by means of which EU Member States and EU private actors may lodge complaints about violations of sustainable development obligations in EU FTAs or the EU's GSP Regulation.¹⁴⁹ At present, the Single Entry Point is not available for complaints concerning human rights violations under the essential elements clause.

This has been criticised by the European Ombudsman. In a Closing Note on 15 July 2022, she made two recommendations relating to the SEP. First, she recommended that a new complaint-handling portal for alleged human rights abuses should be established. Second, she recommended that the Commission

¹⁴⁴ Lorand Bartels, 'Human Rights and Sustainable Development Obligations in EU Free Trade Agreements' (2013) 40(4) Legal Issues of Economic Integration 297.

¹⁴⁵ There are two exceptions: EU-Moldova Domestic Advisory Groups, Statement, 15 October 2020; and EU-Vietnam Domestic Advisory Groups, Statement, 19 October 2022 where human rights clauses are mentioned, though not applied to any facts.

¹⁴⁶ Article 24.6 (1) EU-New Zealand FTA; Article X.6. EU-Australia FTA (EU proposal).

¹⁴⁷ Article 771 EU-UK TCA.

¹⁴⁸ European Economic and Social Committee (EESC), Non-paper: Strengthening and Improving the Functioning of EU Trade Domestic Advisory Groups, October 2021, Recommendation 21.

¹⁴⁹ DG Trade, Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements, 22 June 2022.

should examine how it can facilitate stakeholders based in the countries with which the EU has agreements who want to raise human rights issues through this new portal.¹⁵⁰ On 8 February 2023, the Commission replied, rejecting both suggestions. It rejected the first on the grounds that there were already ample opportunities for bringing human rights complaints to the Commission and the European External Action Service (to both the headquarters and via the network of EU Delegations). It also noted that many human rights related issues were comprehended by the trade and sustainable development chapters, and thereby open to complaints to the Single Entry Point. It rejected the second on the grounds that it ‘must balance the use of its tools and limited resources with the need to ensure that our trade instruments deliver benefits to EU actors’ and suggested that non-EU actors could raise issues via EU actors.¹⁵¹

The Commission is certainly right to note that there is no lack of opportunity for stakeholders, EU and non-EU, to bring matters to the attention of the EEAS and the Commission. The non-use of human rights clauses, and non-enforcement of human rights obligations more generally, is rarely, if ever, a result of an absence of information. The Ombudsman is however surely right to point to the inconsistencies in the EU’s complaints mechanisms for sustainable development obligations under FTAs and the GSP Regulation. If the European Commission can establish an SEP for those complaints, which include human rights complaints under the GSP Regulation, it is difficult to understand why it cannot do so for complaints about human rights violations under human rights clauses. It is important to note in this respect that the human right treaties that the Commission potentially has to assess under the GSP Regulation are extremely wide, and cover essentially the same obligations as essential elements clauses.

The question then is where such a complaints mechanism should be created. One possibility is to add human rights clauses to the SEP mechanism. The European Commission’s assertion that a new mechanism is not necessary because the SEP already deals with human rights issues complaints is not an argument against this option; it is in fact an argument *for* this option. If the SEP mechanism is competent to conduct an assessment of a country’s human rights compliance under one instrument (the GSP Regulation), there is no reason why it cannot conduct the same assessment under another (an essential elements clause). But there is a difference between an assessment of human rights compliance, and the response to a finding of non-compliance. The SEP is located within DG Trade, and its mandate includes responding to human rights violations by investigation and enforcement procedures under trade agreements and the GSP Regulation. The response to a complaint about human rights clauses might involve broader political considerations and hence be better suited to the EEAS than DG Trade (although, having said this, DG Trade and the EEAS already work closely together on these matters).

These are institutional considerations that should inform the location of any mechanism for addressing violations of human rights clauses. Whether this should be done by expanding the SEP, and perhaps also giving the EEAS an enhanced role, or by creating a standalone procedure, as suggested by the Ombudsman, is a matter on which no recommendation can be made here. What can be said, however, and a recommendation is made to this effect, is that there is no argument either as a matter of principle or of practice against the establishment of a complaints mechanism at all.

¹⁵⁰ Closing note on the Strategic Initiative concerning how the European Commission ensures respect for human rights in the context of international trade agreements (SI/5/2021/VS), 15 July 2022.

¹⁵¹ Reply of the European Commission on a suggestion for improvement on the Strategic Initiative concerning how the European Commission ensures respect for human rights in the context of international trade agreements from the European Ombudsman (SI/5/2021/VS), 13 December 2022.

6 Conclusions

The foregoing discussion can now be summarised, and general conclusions drawn.

For around thirty years, the EU's policy has been to ensure that its international agreements are covered by human rights clauses requiring the parties to these agreements to respect human rights and democratic principles, and permitting either side to adopt 'appropriate measures', including the suspension of the agreement, in the event of violations of these standards. In the last decade, there have been some notable developments. First, the EU has had time to implement its 2009 'Common Approach', according to which human rights clauses should be included in framework agreements and, by these means, cover 'specific' agreements on sectoral issues. In most cases, this policy has been effectively carried out. But for one reason or another, the human rights clause in the framework agreements with Canada and Japan does not apply to the specific trade agreements with these countries, and while the human rights clause in the initialled ACP-EU Partnership Agreement applies to the ACP Economic Partnership Agreements, it does not apply to any other agreements, including investment agreements. In addition, and more generally, it appears that with some countries at least (to date, Canada, Japan, Australia, New Zealand and the UK, and to a lesser degree Malaysia and Thailand), the standard for adopting appropriate measures is higher than usual. Rather than any violation of essential elements triggered such measures, it is only serious, or very serious violations that can have this effect (leading one to wonder what is 'essential' about norms that are not violated to this extent).

A second development represents a departure from the 2009 Common Approach, and this is the inclusion of human rights clauses in certain sectoral agreements. Since 2013, the EU has included human rights clauses in new Sustainable Fisheries Partnership Agreements (SFPAs), as well as the financial protocols attached to older fisheries partnership agreements, which enable the suspension of these agreements in the event of human rights violations. There are some technical difficulties in this practice, in that the wording of pre-2021 versions of these clauses makes a link to the human rights clause in the Cotonou Agreement, including its operational consultation mechanisms, which will expire when that agreement expires and, as just mentioned, the human rights clause in the initialled ACP-EU Partnership Agreement does not cover agreements other than the Economic Partnership Agreements. It might be worth revising this point. This study also identifies one important gap in the coverage of the human rights clauses, namely the EU's Voluntary EU-FLEGT Voluntary Partnership Agreements for sustainable timber imports. These agreements cannot be suspended on human rights grounds, which seems anomalous, given the importance of indigenous rights, among others, to the production of sustainable timber. To some extent, this inconsistent coverage can be explained by negotiation dynamics. It is well known that Canada, Australia and Japan objected to human rights clauses, and that is reflected in the outcomes. However, this is unlikely to explain the EU's failure to effectively cover fisheries or sustainable timber agreements. That seems rather have internal causes.

In terms of the EU's practice under human rights clauses, at a superficial level, it appears that human rights clauses are no longer as fashionable as they were. Whereas in the period up to 2014, the EU had formally activated human rights clauses on around two dozen occasions, since then it has only adopted 'appropriate measures' under human rights clauses on one occasion (Burundi) and at present there are no appropriate measures in place. This cannot be explained by the absence of cases in which appropriate measures could have been adopted, as the frequent calls for such measures by the European Parliament make clear.

One reason for this is that the EU now also has additional tools that serve the functions originally marked out for human rights clauses. Two are particularly pertinent. The EU now routinely includes human rights clauses in financing agreements with third states, which is one of the primary means by which the EU implements its development policy and, broadly speaking, its foreign policy as well. Such clauses are the

direct descendants of the human rights clause in international agreements at treaty level, and they are actively used. For example, the EU has terminated all cooperation with Russia following its invasion of Ukraine under such clauses. Second, a tool gaining in popularity is individual sanctions against human rights violators. With the recent adoption of a new global human rights sanctions regime, enabling the EU to target states and non-state actors that violate human rights on a more agile basis than before, this tool can be expected to be used more frequently, perhaps further lessening the attractiveness of appropriate measures under human rights clauses.

It is also worth noting that human rights clauses have subtler applications that are not always visible. First, they can be used as a normative basis for human rights dialogues. Some agreements containing human rights clauses have even institutionalised such dialogues in the form of human rights subcommittees established under these agreements. But human rights clauses are not mandatory for such dialogues, and, importantly, the practice of the EEAS is to pursue human rights dialogues regardless of whether or not relations with third countries are covered by a human rights clause. On the other hand, a dialogue backed by sanctions may, in the right circumstances, be more potent than one that is not. A second way that human rights clauses operate behind the scenes is by blocking third countries from complaining about the EU's promotional human rights activities in its territory. Concretely, for example, a country that has agreed that respect for human rights is an essential basis of its partnership with the EU cannot easily claim that the EU should not be protecting its human rights defenders, or that the EU should not impose due diligence requirements on companies doing business in the EU in relation to activities in its territory.

All of this said, the fact remains that appropriate measures are not as fully utilised as they might be. In fact, this has always been the case. The EU's preference for treating human rights clauses as 'political' clauses has always undersold them. The fact of the matter is that they have been used in the most serious of cases, usually involving significant violence or political disruption. But, except in the recent agreements with Canada, Japan, Australia, and New Zealand, where they can only be used in serious cases, human rights clauses are able to be used when there is any violation of any human rights norms set out in the essential elements clause. To this, one can add another dimension, which is that human rights clauses should be used as a standard to ensure that the implementation of the agreements in which they are contained does not worsen the human rights situation. This is done for agreements involving a direct transfer of funds to a third country (for example, financing agreements and fisheries agreements), but human rights problems arise in other contexts, involving trade, and investment, to mention just a few. For such cases, however, human rights clauses need innovation. A paragraph should be added to the 'general exceptions' provision that is routinely included in some of these agreements (eg trade and investment agreements) permitting the parties to adopt measures necessary to comply with the essential elements of the agreements.

To ensure that human rights clauses can be used to guard against these negative effects of the EU's international agreements, it is important that the norms in human rights clauses are properly understood, and that compliance with these norms is properly monitored. Both elements can be improved. Detailed benchmarking, tailored to the circumstances of individual countries, is fundamental, but depends on effective monitoring and enforcement. One way of doing this is by expanding the remit of the Domestic Advisory Groups established under sustainability chapters in trade agreements to cover human rights clauses. Some recent agreements are doing this, but the mandate of the older DAGs should also be updated. In addition, there should be additional avenues for bringing potential violations of human rights clauses to the attention of the European Commission. One option is to add human rights clauses to the list of instruments about which complaints can be made to the Single Enforcement Point. The European Commission takes the view that this is unnecessary, because it already possesses sufficient information about human rights violations. But the same could be said about those instruments that are already covered. In fact, there is no reason at all not to add human rights clauses to the list, and doing so will assist the European Commission in ensuring that its external fishing, trade and investment policies comply with human rights norms, as it is obliged to do under Article 21(3) TEU.

Overall, this study has sought to identify the ways in which human rights clauses are being used effectively and ways that they can be used to greater effect. It is perhaps also appropriate to note some of the limitations of human rights clauses. First, operating an external human rights policy is difficult. While it is sometimes straightforward to know when and how the EU should act in order to comply with its legal obligation not to contribute to human rights violations in third countries, this is not always the case. Human rights violations often involve numerous actors and complicated causal chains, and sometimes attempts to improve a situation in a third country (such as an import ban) are not only ineffective, but even counterproductive. Second, considering how to improve the human rights situation in other countries, which is also a legal obligation for the EU, is also difficult and often requires diplomatic skill and discretion. Again, there may not be a simple solution to a complex problem. Third, there are some situations for which human rights clauses are not optimally designed. This is particularly the case for the imposition of obligations on private actors, for example, EU foreign investors in third countries. As noted, a human rights clause can prevent a third country from objecting to the EU imposing such obligations on its nationals, directly or indirectly, but human rights clauses are not well designed for imposing those obligations on nationals directly, both because they are addressed to states and because their primary enforcement mechanism is to suspend rights granted under a treaty. And just as human rights treaties are not enforced by suspending the human rights of foreign nationals in the enforcing state, investment treaties cannot be enforced by suspending the rights of foreign investors in the EU.

These considerations serve as background to recommendations concerning the EU's policy on human rights clauses, which are set out in the next section of this study.

7 Recommendations

7.1 Inclusion in agreements

1. EU treaty relations with all third countries should be governed by an effective human rights clause consisting of an 'essential elements' clause, a 'positive obligations' clause, and a 'non-fulfilment' clause providing for the adoption of appropriate measures in the event of a failure to comply with these obligations.
2. It is commendable that effective human rights clauses are now routinely included in all new framework agreements, and that these clauses apply to other specific agreements between the parties. However, the trade agreements with Canada and Japan are not effectively covered by human rights clauses. This appears to be a departure from EU policy.
3. It is commendable that effective human rights clauses are now routinely included in new sustainable fisheries partnership agreements. However, some of these clauses are dated. Efforts should be made to ensure that the SFPAs making reference to the consultation mechanisms in the Cotonou Agreement are legally effective under the initialled post-Cotonou initialled ACP-EU Partnership Agreement once the Cotonou Agreement expires.
4. For the avoidance of doubt, FLEGT voluntary partnership agreements on sustainable timber should be expressly subject to human rights clauses permitting suspension in appropriate cases.
5. Investment agreements present different issues and are addressed separately (see para 7.4 below).

7.2 Wording

1. It is to be commended that essential elements clauses now routinely contain references to human rights as described in other relevant human rights agreements concluded by the parties. In some cases, this applies when the parties have ratified a human rights instrument even if it has not yet entered into force. This broader coverage is desirable.
2. There may be a need to consider adding further references to specific human rights in essential elements clauses when these are not already reflected in norms binding on both parties. This is particularly relevant to newer human rights relating to sexual orientation and gender identity.
3. The 'appropriate measures' that can be taken under human rights clauses should expressly permit the partial or full suspension or termination of all agreements between the parties. Redundant 'linkage' clauses, such as Article 28.9 of CETA, are to be avoided.
4. Recent agreements with Canada, Japan, Australia, New Zealand, and the UK limit the adoption of appropriate measures to situations of serious human rights violations involving threats to peace and security. This is a significantly higher standard than that which applies to the adoption of appropriate measures under agreements with other countries. Consideration should be given to the implications of such a double standard.
5. The conditions applicable to the taking of appropriate measures should be designed for maximum flexibility. Consultations should be optional, in order to avoid situations in which the EU is required to engage with a country that it is diplomatically isolating.
6. Dispute settlement for appropriate measures, if at all, should be available on the same conditions as for national security measures (ie measures should only be subject to a good faith test).

7.3 Monitoring and enforcement

1. Benchmarks, based on essential elements clauses, should be established prior to the conclusion of international agreements, and these benchmarks should be monitored following their implementation. Consideration should be given to establishing such benchmarks in a Memorandum of Understanding, or in treaty form, with specific reference to the possibility of appropriate measures being taken under the agreement in the event of non-compliance.
2. All agreements containing human rights clauses should provide for permanent human rights committees with a mandate to monitor the implementation of the parties' obligations, as set out in the respective essential elements clause.
3. All agreements containing human rights clauses should provide for Domestic Advisory Groups with an express mandate to consider human rights issues, in addition to environmental and labour issues, in the context of assessing the implementation of the agreement. The recent provisions in the Australia and New Zealand framework agreements are an appropriate model.
4. A complaints mechanism, based on DG Trade's Single Entry Point (SEP), should be adapted to allow for private and public actors to complain about failures of the parties to the agreement to comply with human rights clauses. Given that the response to a finding of violation may go beyond DG Trade's current competence, it may make sense for such a mechanism to be established on a sui generis basis, with an EEAS lead. However, it may also make sense to expand the SEP to this end. Subject to adequate resourcing, this mechanism should also be available to non-EU actors.
5. Except in the agreements discussed above at 7.2.4, where appropriate measures can only be adopted in the most serious cases of human rights violations, it is possible to adopt appropriate measures for any human rights violations covered by the relevant essential elements clause. Where this is a possibility, consideration should be given to targeted uses of appropriate measures to improve human rights situations. Human rights clauses are human rights clauses, not 'political' clauses.

7.4 Human rights clauses and general exceptions to agreements

1. The design of human rights clauses is based on an enforcement model according to which one party is entitled to adopt 'appropriate measures', which would otherwise not be permitted under the agreement, when the other party violates human rights norms in the essential elements clause. This fails to account for situations in which obligations in the agreement are themselves an obstacle to a party complying with the human rights norms in the essential elements clause. This is particularly an issue for investment agreements, where it may be necessary for a party to act in a way not foreseen by a particular obligation in order to comply with its human rights obligations.
2. To account for such situations, it is recommended that an 'essential elements clause' paragraph be added to the standard 'general exceptions' provisions that are routinely included in trade and investment agreements. These provisions allow a party to adopt measures necessary to protect public morals, public health, and to comply with otherwise legal domestic laws (among other reasons). It is recommended that a paragraph be added to the effect that measures may be adopted that 'are necessary to secure compliance with the essential elements of this agreement'.

Annexes

Annex 1 - List of Agreements

Framework/Trade Agreements

African, Caribbean and Pacific (ACP) countries

- Partnership Agreement between [The European Union / The European Union and its Member States], of the one part, and members of the Organisation of African, Caribbean and Pacific States, of the other part ([text initialled on 15 April 2021](#))

Signature: -

Provisional application: -

Entry into force: -

Armenia

- Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part OJ L 23, 26.1.2018, p. 4–46

Signature: 24/11/2017

Entry into force: 01/03/2021

Australia

- Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part OJ L 237, 15.9.2017, p. 7–35

Signature: 07/08/2017

Entry into force: 21/10/2022

- EU-Australia Trade Agreement ([EU proposed text](#))

Signature: -

Provisional application: -

Entry into force: -

Canada

- Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part OJ L 11, 14.1.2017, p. 23–1079

Signature: 30/10/2016

Provisional application: from 21/09/2017

Entry into force: -

- Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part OJ L 329, 3.12.2016, p. 45–65

Signature: 30/10/2016

Provisional application: from 01/04/2017

Entry into force: -

Cuba

- Political Dialogue and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Cuba, of the other part OJ L 337I, 13.12.2016, p. 3–40

Signature: 12/12/2016

Provisional application: from 01/11/2017

Entry into force: -

Indonesia

- Framework Agreement on Comprehensive Partnership and cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part OJ L 125, 26.4.2014, p. 17–43

Signature: 09/11/2009

Entry into force: 01/05/2014

Japan

- Agreement between the European Union and Japan for an Economic Partnership OJ L 330, 27.12.2018, p. 3–899

Signature: 17/07/2018

Entry into force: 01/02/2019

- Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part OJ L 216, 24.8.2018, p. 4–22

Signature: 17/07/2018

Provisional application: from 1 February 2019.

Entry into force: -

Kazakhstan

- Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part OJ L 29, 4.2.2016, p. 3–150

Signature: 21/12/2015

Entry into force: 01/03/2020

Kosovo

- Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part OJ L 71, 16.3.2016, p. 3–321

Signature: 27/10/2015

Entry into force: 01/04/2016

Malaysia

- Council Decision (EU) 2022/1987 of 13 October 2022 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Government of Malaysia, of the other part OJ L 273, 21.10.2022, p. 1–2

Signature: 14/12/2022

Provisional application: -

Entry into force: -

New Zealand

- Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part OJ L 321, 29.11.2016, p. 3–30

Signature: 05/10/2016

Entry into force: 21/07/2022

- Free Trade Agreement between the European Union and New Zealand ([conclusion of negotiations on 30 June 2022](#))

Signature: -

Provisional application: -

Entry into force: -

Philippines

- Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part OJ L 343, 22.12.2017, p. 3–32

Signature: 11/07/2012

Entry into force: 01/03/2018

Singapore

- Council Decision (EU) 2018/1047 of 16 July 2018 on the signing, on behalf of the Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part OJ L 189, 26.7.2018, p. 2–2

Signature: 19/10/2018

Provisional application: -

Entry into force: -

- Free Trade Agreement between the European Union and the Republic of Singapore OJ L 294, 14.11.2019, p. 3–755

Signature: 19/10/2018

Entry into force: 21/11/2019

Thailand

- Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Kingdom of Thailand, of the other part OJ L 330, 23.12.2022, p. 72–108

Signature: 14/12/2022

Provisional application: -

Entry into force: -

Ukraine

- Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part OJ L 161, 29.5.2014, p. 3–2137

Signature: 27/06/2014
Entry into force: 01/09/2017

United Kingdom

- Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part OJ L 149, 30.4.2021, p. 10–2539

Signature: 30/12/2020
Entry into force: 01/05/2021

Vietnam

- Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part OJ L 329, 3.12.2016, p. 8–42

Signature: 27/06/2012
Entry into force: 01/10/2016

- Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam OJ L 186, 12.6.2020, p. 3–1400

Signature: 30/06/2019
Entry into force: 01/08/2020

Investment Agreements

Angola

- EU-Angola Sustainable Investment Facilitation Agreement ([conclusion of negotiations on 18 November 2022](#))

Signature: -
Provisional application: -
Entry into force: -

China

- EU-China Comprehensive Agreement on Investment ([agreement in principle](#))

Signature: -
Provisional application: -
Entry into force: -

Singapore

- Council Decision (EU) 2018/1676 of 15 October 2018 on the signing, on behalf of the European Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part OJ L 279, 9.11.2018, p. 1–2

Signature: 19/10/2018
Provisional application: -
Entry into force: -

Vietnam

- Council Decision (EU) 2019/1096 of 25 June 2019 on the signing, on behalf of the Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part OJ L 175, 28.6.2019, p. 1–2

Signature: 30/06/2019

Provisional application: -

Entry into force: -

(Sustainable) Fisheries Partnership Agreements and their Protocols

Cabo Verde

- Fisheries partnership agreement between the European Community and the Republic of Cape Verde OJ L 414, 30.12.2006, p. 3–7

Signature: 12/02/2007

Entry into force: 30/03/2007

- Protocol on the implementation of the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde (2019-2024) OJ L 154, 12.6.2019, p. 3–29

Signature: 20/05/2019

Entry into force: 08/07/2020

Cook Islands

- Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands OJ L 131, 20.5.2016, p. 3–33

Signature: 03/05/2016

Entry into force: 10/05/2017

- Protocol on the implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands OJ L 228, 2.9.2022, p. 5–7

Signature: 21/12/2021

Provisional application: -

Entry into force: -

Côte d'Ivoire

- Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire OJ L 48, 22.2.2008, p. 37–63

Signature: 18/04/2008

Entry into force: 18/04/2008

- Protocol on the implementation of the Fisheries Partnership Agreement between the European Union and the Republic of Côte d'Ivoire (2018-2024) OJ L 194, 31.7.2018, p. 3–20

Signature: 01/08/2018

Provisional application: from signature

Entry into force: -

Gabon

- Fisheries partnership agreement between the Gabonese Republic and the European Community OJ L 109, 26.4.2007, p. 1–7

Signature: 04/06/2007

Entry into force: 11/06/2007

- Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) OJ L 242, 8.7.2021, p. 5–51

Signature: 29/06/2021

Provisional application: from signature

Entry into force: -

Gambia

- Sustainable Fisheries Partnership Agreement between the European Union and the Republic of The Gambia OJ L 208, 8.8.2019, p. 3–41

Signature: 31/07/2019

Provisional application: from signature

Entry into force: -

Greenland

- Sustainable Fisheries Partnership Agreement between the European Union, of the one part, and the Government of Greenland and the Government of Denmark, of the other part OJ L 175, 18.5.2021, p. 3–40

Signature: 22/04/2021

Entry into force: 18/02/2022

Guinea-Bissau

- Fisheries Partnership Agreement between the European Community and the Republic of Guinea-Bissau for the period 16 June 2007 to 15 June 2011 OJ L 342, 27.12.2007, p. 1–37

Signature: 15/04/2008

Entry into force: 15/04/2008

- Protocol on the implementation of the Fisheries Partnership Agreement between the European Community and the Republic of Guinea-Bissau (2019-2024) OJ L 173, 27.6.2019, p. 3–34

Signature: 15/09/2019

Provisional application: from signature

Entry into force: -

Mauritania

- Partnership Agreement on sustainable fisheries between the European Union and the Islamic Republic of Mauritania OJ L 439, 8.12.2021, p. 3–101

Signature: 15/11/2021

Provisional application: from signature

Entry into force: -

Mauritius

- Fisheries Partnership Agreement between the European Union and the Republic of Mauritius OJ L 79, 18.3.2014, p. 3–8

Signature: 21/12/2013

Entry into force: 28/01/2014

- Protocol implementing the Fisheries Partnership Agreement between the European Union and the Republic of Mauritius (2022-2026) OJ L 338, 30.12.2022, p. 6–34

Signature: 21/12/2022

Provisional application: from signature

Entry into force: -

Morocco

- Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco OJ L 77, 20.3.2019, p. 8–55

Signature: 14/01/2019

Entry into force: 18/07/2019

São Tomé and Príncipe

- Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community OJ L 205, 7.8.2007, p. 35–58

Signature: 30/10/2007

Entry into force: 29/08/2011

- Protocol on the implementation of the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community OJ L 333, 27.12.2019, p. 3–30

Signature: 19/12/2019

Provisional application: from signature

Entry into force: -

Senegal

- Agreement on a sustainable fisheries partnership between the European Union and the Republic of Senegal OJ L 304, 23.10.2014, p. 3–40

Signature: 20/11/2014

Provisional application: from signature

Entry into force: -

- Protocol on the implementation of the Agreement on a Sustainable Fisheries Partnership between the European Union and the Republic of Senegal OJ L 299, 20.11.2019, p. 13–42

Signature: 18/11/2019

Provisional application: from signature

Entry into force: -

Seychelles

- Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Seychelles OJ L 60, 28.2.2020, p. 5–44

Signature: 24/02/2020

Entry into force: 27/11/2020

FLEGT- Voluntary partnership agreements

Guyana

- Council Decision (EU) 2022/1974 of 13 October 2022 on the signing, on behalf of the Union, of the Voluntary Partnership Agreement between the European Union and the Cooperative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union OJ L 271, 19.10.2022, p. 1–2

Signature: 15/12/2022

Entry into force: -

Honduras

- Voluntary Partnership Agreement between the European Union and the Republic of Honduras on forest law enforcement, governance and trade in timber products to the European Union OJ L 217, 18.6.2021, p. 3–13

Signature: 23/02/2021

Entry into force: 01/09/2022

Indonesia

- Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products into the European Union OJ L 150, 20.5.2014, p. 252–330

Signature: 30/09/2013

Entry into force: 01/05/2014

Vietnam

- Voluntary Partnership Agreement between the European Union and the Socialist Republic of Viet Nam on forest law enforcement, governance and trade OJ L 147, 5.6.2019, p. 3–209

Signature: 19/10/2018

Entry into force: 01/06/2019

Annex 2 – Framework agreements

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
Essential elements	Article 1(1)	Article 2(1)	Article 2(1)	Article 2(2)	Article 1(1)
	The Parties confirm their commitment to ... the respect for democratic principles and human rights, as laid down in the UN General Assembly Universal Declaration of Human Rights and other relevant international human rights instruments to which the Parties are Contracting Parties, which underpin the internal and international policies of both Parties and which constitute an essential element of this Agreement.	Respect for democratic principles, human rights and fundamental freedoms, as laid down in the Universal Declaration of Human Rights and existing international human rights treaties and other legally binding instruments to which the Union or the Member States and Canada are party, underpins the Parties' respective national and international policies and constitutes an essential element of this Agreement.	Respect for democratic principles and human rights and fundamental freedoms as laid down in the Universal Declaration of Human Rights and other relevant international human rights instruments, and for the principle of the rule of law, underpins the domestic and international policies of the Parties and constitutes an essential element of this Agreement.	... Respect for democratic principles and human rights and fundamental freedoms as laid down in the Universal Declaration of Human Rights, as given expression in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and other international human rights instruments which the Parties have ratified or acceded to, and for the principle of the rule of law, underpins the domestic and international policies of the Parties and constitutes an essential element of this Agreement.	Respect for democratic principles, the rule of law and fundamental human rights, as laid down in the Universal Declaration of Human Rights and other applicable international human rights instruments to which the Parties are Contracting Parties, underpins the internal and international policies of the Parties and constitutes an essential element of this Agreement.

¹⁵² Included as reference for Vietnam FTA and IPA.

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
Positive obligation	Article 57(1)	Article 28(1)	Article 54(1)	Article 57(1)	None
	The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement and shall ensure that they comply with the objectives and purposes laid down in this Agreement.	[T]he Parties shall take the general or specific measures required to fulfil their obligations under this Agreement.	The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.	[T]he Parties shall take the general or specific measures required to fulfil their obligations under this Agreement.	
Appropriate measures	Article 57	Article 28	Article 54	Article 57	Article 44
Trigger for appropriate measures (standard of human rights violations)	2. If either Party considers that the other Party has failed to fulfil any of its obligations under this Agreement it may take appropriate measures.	3. [T]he Parties consider that a particularly serious and substantial violation of the obligations described in [Article 2(1)] may be addressed as a case of special urgency. The Parties consider that, for a situation to constitute a 'particularly serious and substantial violation' of Article 2(1), its gravity and nature would have to be of an exceptional sort such as a coup d'État or grave crimes that threaten the peace, security and	3. [I]f either Party considers that the other Party has committed a particularly serious and substantial violation of any of the obligations described in Articles 2(1) ... as essential elements, which threatens international peace and security so as to require an immediate reaction	57(4). [In case of special urgency] ... either Party may decide to take appropriate measures 57(7). ... the term 'case of special urgency' means a particularly serious and substantial violation of the obligations described in [Article 2(2)] ... of this Agreement by one of the Parties leading to a situation which requires an immediate reaction by the other. The Parties consider that a particularly serious and substantial	1. If either Party considers that the other Party has failed to fulfil any of its obligations under this Agreement it may take appropriate measures ...

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
		well-being of the international community.		violation of Article 2(2) ... would have to be of an exceptional sort that threatens international peace and security.	
Suspension as an appropriate measure		6. (a) In a case of special urgency ... either Party may decide to suspend the provisions of this Agreement ...	7. '[Appropriate] measures' means the suspension in part, suspension in full or termination of this Agreement	57(4). ... either Party may decide to take appropriate measures with regard to this Agreement, including the suspension of its provisions or its termination	4. ... the term 'appropriate measures' in this Article means the suspension of, or the non-performance for the time being of obligations under this Agreement ...
Proportionality	4. ... the term 'appropriate measures' as referred to in Article 57(2) means measures taken in accordance with international law which are proportionate to the failure to implement obligations under this Agreement. In the selection of these measures, priority must be given to those which least disturb the functioning of this Agreement.		In the selection of appropriate measures, priority must be given to those which least disturb the relations between the Parties. These measures, which are subject to Article 52(2), shall be proportionate to the violation of obligations under this Agreement, and shall be in accordance with international law.	57(5). ... any such measures must be proportionate and must be consistent ... with the general principles of international law.	4. Appropriate measures shall be taken in accordance with international law and shall be proportionate to the failure to implement obligations under this Agreement.
Prior notification and/or consultations	4. ... [Appropriate] measures shall be notified immediately	5. In ... a case of special urgency ..., either Party may seize	3. ... it shall immediately notify the other Party of this fact	57(3). In a case of special urgency, either Party shall	2. In cases of special urgency, the intended appropriate measure

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
	<p>to the other Party and shall be the subject of consultations within the Joint Committee if the other Party so requests.</p> <p><i>Article 57 Joint Declaration</i></p> <p>... the term 'material breach of the Agreement' in Article 57(3), in line with Article 60 (3) of the Vienna Convention on the Law of Treaties of 1969 ('Vienna Convention'), consists of: ... (b) violation of an essential element of the Agreement, as described in Article 1(1) and (2) and Article 8.</p> <p>In cases of a material breach of the Agreement, the measure shall be notified immediately to the other Party. At the request of the other Party, the Joint Committee shall hold urgent consultations within a period of up to 30 days for a</p>	<p>the JMC of the matter. The JMC may ask the JCC to hold urgent consultations within 15 days. The Parties shall provide the relevant information and evidence required for a thorough examination and a timely and effective resolution of the situation. Should the JCC be unable to resolve the situation, it may submit the matter to the JMC for urgent consideration.</p> <p>6. (a). In a case of special urgency where the JMC is unable to resolve the situation, [a] Party shall immediately notify the other Party, in writing, of the decision and shall apply the decision for the minimum period of time necessary to resolve the issue in a manner acceptable to the Parties.</p>	<p>and the appropriate measure(s) it intends to take under this Agreement. The notifying Party shall advise the Joint Committee of the need to hold urgent consultations on the matter.</p> <p>5. ... Where the Joint Committee is unable to reach a mutually acceptable solution [to a situation of special urgency] within 15 days from the commencement of consultations, and no later than 30 days from the date of [notification], the matter shall be referred for consultations at the ministerial level, which shall be held for a further period of up to 15 days.</p> <p>6. If no mutually acceptable solution has been found within 15 days from the commencement of consultations at the</p>	<p>immediately refer the matter to the Joint Committee and present all the information required for a thorough examination of the situation, with a view to seeking a timely and mutually acceptable resolution. Should the Joint Committee at the level of senior officials be unable to resolve the situation within a period of up to 15 days from the commencement of consultations and no later than 30 days from the date of the referral of the matter to the Joint Committee, the matter shall be submitted to ministers for urgent consideration for a further period of 15 days.</p> <p>57(4). In the unlikely and unexpected event that no mutually acceptable solution has been found after</p>	<p>to be taken shall be notified immediately to the other Party. At the request of the other Party, consultations shall be held for a maximum period of 15 days with a view to seeking a mutually satisfactory solution to the matter. After this period, an appropriate measure may apply.</p>

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
	thorough examination of any aspect of, or the basis for, the measure with a view to seeking a solution acceptable to the Parties.		ministerial level, and no later than 45 days from the date of notification, the notifying Party may decide to take the appropriate measures notified ...	15 days from the commencement of consultations at the ministerial level and no later than 45 days from the date of the referral of the matter to the Joint Committee, the Party may decide to take appropriate measures. 57(5). ... any decision to take appropriate measures in accordance with paragraph 4 must be duly substantiated. The decision shall be notified immediately to the other Party in writing	
EU procedure		6(a). In the Union, the decision to suspend [this Agreement in case of special urgency] would entail unanimity	6. In the Union, the decision to suspend [this Agreement in case of special urgency] would entail unanimity	57(5). In the Union, the decision to suspend [this Agreement in case of special urgency] would entail unanimity	
Review		6(b) The Parties shall keep under constant review the development of the situation which prompted that decision and which could serve as grounds for other	8. The Parties shall keep under constant review the development of the situation which prompted action under this Article. The Party taking the appropriate measures	57(6). If any measure is taken in accordance with paragraph 4 [special urgency] it shall be revoked as soon as the reason for taking it has been removed. The Party invoking paragraph 4	

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
		appropriate measures taken outside the framework of this Agreement. The Party invoking the suspension or other measures shall withdraw them as soon as warranted.	shall withdraw them as soon as warranted, and in any event as soon as the circumstances that gave rise to their application no longer exist.	shall keep under constant review the development of the situation which prompted the decision and shall withdraw the measures taken as soon as warranted.	
Specific agreements	Article 54(1)	None	Article 52	Article 55	Articles 9 and 43
	The Parties may by mutual consent expand the scope of this Agreement with a view to enhancing the level of cooperation, including by supplementing it by means of agreements or protocols on specific sectors or activities. Such specific agreements shall constitute an integral part of the overall bilateral relations as governed by this Agreement and shall form part of a common institutional framework.		1. The Parties may complement this Agreement by concluding specific agreements or arrangements in any area of cooperation falling within its scope. Such specific agreements and arrangements concluded after the signature of this Agreement shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of a common institutional framework. Existing agreements and arrangements between the Parties do not form part of the	1. The Parties may complement this Agreement by concluding specific agreements or arrangements in any area of cooperation falling within its scope. Such specific agreements shall be an integral part of the overall bilateral relations as governed by this Agreement.	9(2). [T]he Parties shall give effect to their mutual cooperation in trade and investment including through the Free Trade Agreement [which] shall constitute a specific agreement giving effect to the trade provisions of this Agreement and shall be an integral part of the overall bilateral relations and the common institutional framework, as referred to in Article 43(3). 43(3) [T]he Parties may also complement this Agreement by concluding specific agreements in any area of cooperation falling within its scope.

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
			common institutional framework.		Such specific agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of a common institutional framework.
Suspension or termination of specific agreements		<p>7. [A] particularly serious and substantial violation of human rights or non-proliferation, as defined in paragraph 3, could also serve as grounds for the termination of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in accordance with Article 30.9 of that Agreement.</p> <p>8. This Agreement shall not affect or prejudice the interpretation or application of other agreements between the Parties.</p>	<p>4. [T]he particularly serious and substantial violation of the essential elements could serve as grounds for appropriate measures under the common institutional framework as referred to in Article 52(1).</p> <p>7. '[A]ppropriate measures' means the suspension in part, suspension in full or termination of this Agreement or, as the case may be, of another specific agreement that forms part of the common institutional framework as referred to in Article 52(1), pursuant to the relevant provisions of such agreement.</p>	<p>55(3). ... a case of special urgency as defined in Article 57(7) could also serve as grounds for the suspension or termination of other agreements between the Parties. In such circumstances, the Parties shall defer to the dispute resolution, suspension and termination provisions of such other agreements to resolve any such dispute.</p> <p>57(4). ... The Parties recognise that a case of special urgency may also serve as grounds for taking appropriate measures outside this Agreement, in accordance with the rights and obligations of the Parties under</p>	<p>4. [T]he term 'appropriate measures' in this Article means the suspension of, or the non-performance for the time being of obligations under this Agreement or any specific agreement referred to under Article 9(2) and Article 43(3) or any other measure recommended by the Joint Committee.</p>

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
			Appropriate measures taken by a Party to suspend this Agreement in part, shall only apply to the provisions falling within Titles I to VIII.	other agreements between the Parties or under general international law. 57(5). The Parties agree that any decision to take appropriate measures in accordance with paragraph 4 must be duly substantiated. The decision shall be notified immediately to the other Party in writing. The Parties agree that any such measures must be proportionate and must be consistent with Article 55(2) as well as with the general principles of international law. 55(2). This Agreement shall not affect or prejudice the interpretation, operation or application of other agreements between the Parties.	
'Situations' in third countries		4. In cases where a situation occurring in a third country could be considered		57(8). In cases where a situation occurring in a third country could be considered	

Framework agreements Part I	Vietnam FA (2012) ¹⁵²	Canada SPA (2016)	NZ PA (2016)	Australia FA (2017)	Singapore PCA (2018)
		equivalent in gravity and nature to a case of special urgency the Parties shall endeavour to hold urgent consultations, at the request of either Party, to exchange views on the situation and consider possible responses.		equivalent in gravity and nature to a case of special urgency the Parties shall endeavour to hold urgent consultations, at the request of either Party, to exchange views on the situation and consider possible response.	

Framework agreements Part II	Japan SPA (2018)	ACP-EU PA (2021)	Thailand FA (2022)	Malaysia PCA (2022)
Essential elements	Article 2(1) The Parties shall continue to uphold the shared values and principles of democracy, the rule of law, human rights and fundamental freedoms which underpin the domestic and international policies of the Parties. In this regard, the Parties reaffirm the respect for the Universal Declaration of Human Rights and the relevant international human rights treaties to which they are parties.	Article 9(7) [R]espect for human rights, democratic principles and the rule of law shall underpin their domestic and international policies and constitute an essential element of this Agreement.	Article 1(1) Respect for democratic principles and human rights, as laid down in the Universal Declaration of Human Rights and in other relevant international human rights instruments applicable to the Parties, and for the principle of the rule of law, underpins the internal and international policies of the Parties, and constitutes an essential element of this Agreement.	Article 1(1) Respect for democratic principles and human rights, as laid down in the Universal Declaration of Human Rights and in other relevant international human rights instruments applicable to the Parties, and for the principle of the rule of law, underpins the internal and international policies of the Parties, and constitutes an essential element of this Agreement.
Positive obligation	Article 43(1) The Parties shall take any general or specific actions required to fulfil their obligations under this Agreement, based on the principles of mutual respect, equal partnership and respect for international law.	Article 101(1) The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement ...	Article 55(1) The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.	None

Framework agreements Part II	Japan SPA (2018)	ACP-EU PA (2021)	Thailand FA (2022)	Malaysia PCA (2022)
Appropriate measures	Article 43(4)	Article 101	Article 55	Article 53
Trigger for appropriate measures (standard of human rights violations)	[A] particularly serious and substantial violation of the obligations described in paragraph 1 of Article 2 ... [which] constitutes an essential element of the basis of the cooperation under this Agreement, with its gravity and nature being of an exceptional sort that threatens peace and security and has international repercussion, may be addressed as a case of special urgency.	6. ... if either Party considers that the other Party is in violation of any of the essential elements as set out in Article 9 ..., except in case of special urgency, ... the notifying Party may take appropriate measures. 7. If either Party considers that a violation of any of the essential elements constitutes a case of special urgency, it may take appropriate measures with immediate effect, without prior consultations. Cases of special urgency shall refer to exceptional cases of particularly serious and flagrant violation of one of the essential elements referred to in [Article 9]	3. If either Party considers that the other Party has failed to fulfil any of its obligations under this Agreement, it may take appropriate measures in accordance with international law. 4. [for ordinary violations] ... [a] Party may take appropriate measures. 5. If either Party has serious grounds to consider that the other Party has failed to fulfil in a substantial manner any of the obligations that are described as essential elements in [Article 1(1)] ... [it] may apply appropriate measures.	3. If either Party considers that the other Party has failed to fulfil any of the obligations that are described as essential elements in [Article 1(1)] ... the notifying Party may take the appropriate measures.

Framework agreements Part II	Japan SPA (2018)	ACP-EU PA (2021)	Thailand FA (2022)	Malaysia PCA (2022)
Suspension as an appropriate measure	6. In a case of special urgency [a party] may decide to suspend the provisions of this Agreement ...	8. Appropriate measures may include the suspension, in part or in full, of this Agreement.	6. For the purposes of paragraph 4, 'appropriate measures' may include the suspension of this Agreement, in whole or in part. For the purposes of paragraph 5, 'appropriate measures' may include the suspension of this Agreement, in whole or in part, or of any specific agreement referred to in Article 53(1).	3. For the purpose of this paragraph 'appropriate measures' means any measure recommended by the Joint Committee or the suspension, in part or in full, of this Agreement or of any specific agreement within the meaning of Article 52(2).
Proportionality	6. In a case of special urgency [a party] may decide to suspend the provisions of this Agreement in accordance with international law	8. 'Appropriate measures' referred to in paragraphs 6 and 7 shall be taken in full respect of international law and shall be proportionate to the failure to implement obligations under this Agreement. Priority shall be given to those which least disturb the functioning of this Agreement...	6. In the selection of the appropriate measures, priority must be given to those which least disturb the functioning of this Agreement or, as the case may be, of any other specific agreement referred to in Article 53(1). Such measures shall be temporary in nature and proportionate to the violation with a view to encouraging the eventual fulfilment of the obligations.	4. Any appropriate measure taken shall be proportionate to the failure to implement obligations under this Agreement and shall not affect the continuation of other obligations under this Agreement not affected by the situation. In the selection of the appropriate measure, priority must be given to those which least disturb the functioning of this Agreement or of any specific agreement within the meaning of Article 52(2).

<p>Notification and/or consultations</p>	<p>5. In the unlikely and unexpected event that a case of special urgency as referred to in paragraph 4 occurs within the territory of either Party, the Joint Committee shall hold an urgent consultation within 15 days upon the request of the other Party. In case the Joint Committee is unable to reach a mutually acceptable solution, it shall convene urgently at ministerial level on that matter.</p> <p>6. ... In a case of special urgency where no mutually acceptable solution has been found at ministerial level, the Party which made the request referred to in paragraph 5 may decide to suspend the provisions of this Agreement in accordance with international law. The Party shall immediately notify the other Party, in writing, of its decision and shall apply that decision for the minimum period of time necessary to resolve the issue in a manner acceptable to the Parties.</p>	<p>6. [I]f either Party considers that the other Party is in violation of any of the essential elements as set out in Article 9 and Article 18, except in case of special urgency ... it shall notify the other Party, presenting all relevant information required for a thorough examination of the situation, with a view to seeking a mutually acceptable solution within 60 days of the date of notification. Should this be deemed not sufficient, the Parties shall hold structured and systematic consultations. While preserving the bilateral character of the consultations, a special joint committee shall be involved upon agreement of the Parties concerned during the structured and systematic consultations phase. The Special Joint Committee, consisting of an equal number of representatives of the [EU Party] and OACPS Members abiding by the principles of genuine partnership and mutual accountability, shall provide advice on the fulfilment of obligations and assist as appropriate so that</p>	<p>4. Before taking appropriate measures referred to in paragraph 3, except in the cases referred to in paragraph 5, such Party shall present to the Joint Committee all the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. The Parties shall hold consultations under the auspices of the Joint Committee. Where the Joint Committee is unable to reach a mutually acceptable solution, such Party may take appropriate measures.</p> <p>5. If either Party has serious grounds to consider that the other Party has failed to fulfil in a substantial manner any of the obligations that are described as essential elements in [Article 1(1)], it shall immediately notify the other Party of such non-fulfilment. At the request of either Party, the Joint Committee, or another body designated by mutual agreement of the Parties, shall hold immediate consultations within a period of up to 30 days for a thorough examination of</p>	<p>3. ... it shall immediately notify the other Party of this fact and the appropriate measures it intends to take. The notifying Party shall advise the Joint Committee of the need to hold urgent consultations on the matter. Where the Joint Committee is unable to reach a mutually acceptable solution within 15 days from the commencement of consultations, and no later than 30 days from the date of the notification, the notifying Party may take the appropriate measures.</p>
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Framework agreements Part II	Japan SPA (2018)	ACP-EU PA (2021)	Thailand FA (2022)	Malaysia PCA (2022)
		<p>the Party concerned takes the necessary actions to comply with the obligations arising from this Agreement. The Party concerned remains solely responsible for complying with its obligations under this Agreement. Where they are unable to reach a mutually acceptable solution within 90 days from the commencement of consultations, the notifying Party may take appropriate measures.</p> <p>7. If either Party considers that a violation of any of the essential elements constitutes a case of special urgency, it may take appropriate measures with immediate effect, without prior consultations. Cases of special urgency shall refer to exceptional cases of particularly serious and flagrant violation of one of the essential elements referred to in [Article 9]</p>	<p>any aspect of, or the basis for, the measure with a view to seeking a solution acceptable to the Parties. After that period, the notifying Party may apply appropriate measures.</p>	

Framework agreements Part II	Japan SPA (2018)	ACP-EU PA (2021)	Thailand FA (2022)	Malaysia PCA (2022)
EU procedure	None	None	6. The decision to suspend would be taken by each Party in accordance with their respective laws and regulations.	None
Review	7. The Parties shall keep under constant review the development of the case of special urgency which has prompted the decision to suspend the provisions of this Agreement. The Party invoking the suspension of the provisions of this Agreement shall withdraw it as soon as warranted, and in any case as soon as a case of special urgency no longer exists.	8. ... After taking the appropriate measures, at the request of either Party, consultations may be called in order to examine the situation thoroughly and find solutions allowing the withdrawal of appropriate measures.	7. Either Party may request the Joint Committee to review the circumstances that gave rise to the application of appropriate measures, with a view to seeking a mutually acceptable solution for the Parties. The Party taking the appropriate measures shall withdraw them as soon as warranted.	None
References to specific agreements	Article 43	Article 50(6)	Article 53(1); Art 55(6)	Article 52(2); Art 53(3)
		The Parties to the respective Economic Partnership Agreements agree that the references contained therein to the provisions on appropriate measures in the Cotonou Agreement are understood as references to the corresponding provision in this Agreement.	The Parties may, by mutual consent, expand this Agreement with a view to enhancing the level of cooperation, including through supplementing it by means of agreements or protocols on specific areas, sectors or activities. Such specific agreements or protocols shall be an integral part of the overall bilateral relations between the Parties and shall be	The Parties may complement this Agreement by concluding specific agreements in any area of cooperation falling within the scope of this Agreement. Such specific agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of a common institutional framework.

Framework agreements Part II	Japan SPA (2018)	ACP-EU PA (2021)	Thailand FA (2022)	Malaysia PCA (2022)
			subject to a common institutional framework.	
References to suspension or termination of specific agreements	<p>6. ... In addition, the Parties note that the Party which made the request referred to in paragraph 5 may take other appropriate measures outside the framework of this Agreement, in accordance with international law.</p> <p>8. This Agreement shall not affect or prejudice the interpretation or application of other agreements between the Parties. In particular, the dispute settlement provisions of this Agreement shall not replace or affect in any way the dispute settlement provisions of other agreements between the Parties.</p>		<p>55(6). ... For the purposes of paragraph 5, 'appropriate measures' may include the suspension of this Agreement, in whole or in part, or of any specific agreement referred to in Article 53(1).</p>	<p>53(3) For the purpose of this paragraph, 'appropriate measures' means any measure recommended by the Joint Committee or the suspension, in part or in full, of this Agreement or of any specific agreement within the meaning of Article 52(2).</p>

Annex 3 – Specific trade and investment agreements

Specific FTAs/IPAs	Singapore FTA (2018)	Singapore IPA (2018)	Vietnam FTA (2019)	Vietnam IPA (2019)	New Zealand FTA (2022)	Angola SIFA (2022)
Link to framework agreement	Art 16.18(1). This Agreement shall be an integral part of the overall relations between the [parties], as governed by the Partnership and Cooperation Agreement, and shall form part of a common institutional framework. It constitutes a specific agreement giving effect to the trade provisions of the Partnership and Cooperation Agreement.	Article 4.12(1). This Agreement shall be an integral part of the overall bilateral relations as governed by the EUSPCA and shall form part of a common institutional framework. It constitutes a specific agreement giving effect to the trade provisions of the EUSPCA.	[Preamble]... RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Partnership and Cooperation Agreement, and their important economic, trade and investment relationship ...	Article 4.20(2). This Agreement shall be part of the overall relations between the Union and its Member States, of the one part, and Viet Nam, of the other part, as provided for in the Partnership and Cooperation Agreement and it shall form part of the common institutional framework.	Article 1.5(2). This Agreement shall be an integral part of the overall bilateral relations as governed by the Partnership Agreement and shall form part of the common institutional framework.	[Preamble]... Bearing in mind the [Cotonou Agreement] [or its successor agreement, or whatever agreement is in force at the time this agreement is concluded], including its essential and fundamental elements
Appropriate measures	None	None	Article 17.18(2). If a Party considers that the other Party has committed a material breach of the Partnership and Cooperation Agreement, it may take appropriate measures with respect to this	Article 4.16(2). If either Party considers that the other Party has committed a material breach of the Partnership and Cooperation Agreement, it may take appropriate measures with respect to this	Article 27.4(3). A Party may take appropriate measures relating to this Agreement in the event of a particularly serious and substantial violation of any of the obligations described in Article 2(1) ... of	8.13 Nothing in this Agreement shall be construed so as to prevent the adoption by either Party of appropriate measures pursuant to the Cotonou Agreement [or its successor or

Specific FTAs/IPAs	Singapore FTA (2018)	Singapore IPA (2018)	Vietnam FTA (2019)	Vietnam IPA (2019)	New Zealand FTA (2022)	Angola SIFA (2022)
			Agreement in accordance with Article 57 of the Partnership and Cooperation Agreement.	Agreement in accordance with Article 57 of the Partnership and Cooperation Agreement.	the Partnership Agreement as essential elements, which threatens international peace and security so as to require an immediate reaction.	whatever agreement is in force at the time this agreement is concluded].

Annex 4 – Standalone and hybrid trade, association, cooperation and investment agreements

Standalone trade and cooperation agreements	Ukraine AA (2014)	Kosovo SAA (2015)	Kazakhstan EPCA (2015)	Cuba PDCA (2016)	Armenia CEPA (2017)	UK TCA (2020)
Essential elements	Article 2	Article 3	Article 1(1)	Article 1	Article 2	Articles 763(1), 771
	Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Helsinki Final Act ... and the Charter of Paris ..., and other relevant human rights instruments, among them the UN Universal	Respect for the democratic principles and human rights as proclaimed in the United Nations Universal Declaration of Human Rights of 1948 and as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms ..., in	Respect for democratic principles and human rights as laid down in the Universal Declaration of Human Rights, the OSCE Helsinki Final Act and the Charter of Paris ..., and other relevant international human rights instruments, and for the principle of	5. Respect for and the promotion of democratic principles, respect for all human rights and fundamental freedoms as laid down in the Universal Declaration of Human Rights and in the core international human-rights instruments and	1. Respect for the democratic principles, the rule of law, human rights and fundamental freedoms, as enshrined in particular in the UN Charter, the OSCE Helsinki Final Act and the Charter of Paris for a New Europe of 1990, as well as other relevant	763 (1). The Parties shall continue to uphold the shared values and principles of democracy, the rule of law, and respect for human rights, which underpin their domestic and international policies. In that regard, the Parties reaffirm their respect for the

Standalone trade and cooperation agreements	Ukraine AA (2014)	Kosovo SAA (2015)	Kazakhstan EPCA (2015)	Cuba PDCA (2016)	Armenia CEPA (2017)	UK TCA (2020)
	Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement ...	the Helsinki Final Act and the Charter of Paris ..., respect for international law principles, ... and respect for the rule of law ... shall form the basis of the policies of the EU and of Kosovo and constitute essential elements of this Agreement.	the rule of law, underpins the internal and international policies of both Parties and constitutes an essential element of this Agreement.	their optional protocols which are applicable to the Parties, and respect for the rule of law constitute an essential element of this Agreement.	human rights instruments such as the UN Universal Declaration on Human Rights and the European Convention on Human Rights, shall form the basis of the domestic and external policies of the Parties and constitute an essential element of this Agreement.	Universal Declaration of Human Rights and the international human rights treaties to which they are parties. 771. Article 763(1), ... constitute[s] [an] essential element ... of the partnership established by this Agreement and any supplementing agreement.
Positive obligation	Article 476(1)	Article 136(1)	Article 277(1)	Article 85(1)	Article 377(1)	Article 3(2)
	The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.	The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.	The Parties shall take any measures required to fulfil their obligations under this Agreement.	The Parties shall adopt any general or specific measures required for them to fulfil their obligations under this Agreement ...	The Parties shall take any measures required to fulfil their obligations under this Agreement.	They shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement and from any supplementing agreement, ...
Appropriate measures	Article 478	Articles 136(4); 140(3)	Article 279(2)	Article 85	Article 379	Article 772

Standalone trade and cooperation agreements	Ukraine AA (2014)	Kosovo SAA (2015)	Kazakhstan EPCA (2015)	Cuba PDCA (2016)	Armenia CEPA (2017)	UK TCA (2020)
Trigger for appropriate measures (standard of human rights violations)	<p>1. A Party may take appropriate measures, if the matter at issue is not resolved [within three months] if the complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement. The requirement for a three-month consultation period shall not apply to exceptional cases as set out in paragraph 3 of this Article.</p> <p>3. ... (b) violation by the other Party of any of the essential elements of this Agreement, referred to in Article 2 of this Agreement.</p>	<p>136(4) If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures</p> <p>140(3) Either Party may suspend all or part of this Agreement, with immediate effect, in the event of the non-compliance by the other Party of one of the essential elements of this Agreement.</p>	<p>2. [A] Party may take appropriate measures with regard to this Agreement in accordance with international law in case of: ... (b) violation by the other Party of any of the essential elements of this Agreement ...</p>	<p>2. If a Party considers that another Party has failed to fulfil an obligation under this Agreement it may have recourse to appropriate measures.</p>	<p>A Party may take appropriate measures if a matter in dispute is not resolved [within three months] if the complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement. The requirement for a three-month consultation period shall not apply to exceptional cases set out in paragraph 3 of this Article.</p> <p>3. ... (b) violation by the other Party of any of the essential elements of this Agreement, referred to in Article 2 paragraph 1 ...</p>	<p>1. If either Party considers that there has been a serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements in Article 771 ...[i.e. special urgency]...</p> <p>4. The Parties consider that, for a situation to constitute a serious and substantial failure to fulfil any of the obligations described as essential elements in Article 771, its gravity and nature would have to be of an exceptional sort that threatens peace and security or that has international repercussions.</p>

Standalone trade and cooperation agreements	Ukraine AA (2014)	Kosovo SAA (2015)	Kazakhstan EPCA (2015)	Cuba PDCA (2016)	Armenia CEPA (2017)	UK TCA (2020)
Suspension as an appropriate measure		140. Either Party may suspend all or part of this Agreement with immediate effect in the event of the non-compliance by the other Party of one of the essential elements of this Agreement.		It is understood that suspension would be a measure of last resort.		1. [The party adopting appropriate measures for violation of essential elements] ...may decide to terminate or suspend the operation of this Agreement in whole or in part.
Proportionality	2. In the selection of appropriate measures, priority shall be given to those which least disturb the functioning of this Agreement ...	136(4). ... In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. [NB 140. No conditions]	3. In the selection of appropriate measures, priority shall be given to those which least disturb the functioning of this Agreement and are proportionate to the nature and gravity of the breach	2. ... In selecting which measures to adopt, priority shall be given to those which are least disruptive to the implementation of this Agreement ... 3. ... 'appropriate measures' referred to in paragraph 2 means measures taken in accordance with international law.	2. In the selection of appropriate measures, priority shall be given to those which least disturb the functioning of this Agreement.	3. The measures ... shall be in full respect of international law and shall be proportionate. Priority shall be given to the measures which least disturb the functioning of this Agreement and of any supplementing agreements.
Notification and/or consultations	2. ... These measures shall be notified immediately to the Association Council and shall	136(4). ... These measures shall be notified immediately to the SAC and shall be the subject of	2. ... In those cases [violation of essential elements], the appropriate measure shall be	3. The Parties agree that the term 'cases of special urgency' in paragraph 2 means a case of	2. ... The measures referred to in paragraph 1 of this Article shall be notified immediately to	2. Before [a Party takes appropriate measures in accordance with paragraph 1] [that Party] shall

Standalone trade and cooperation agreements	Ukraine AA (2014)	Kosovo SAA (2015)	Kazakhstan EPCA (2015)	Cuba PDCA (2016)	Armenia CEPA (2017)	UK TCA (2020)
	be the subject of consultations ..., and of dispute settlement ...	consultations, if the other Party so requests ... [NB 140. No conditions]	notified immediately to the other Party. At the request of the other Party, consultations shall be held for a period of up to 20 days. After this period, the measure shall apply.	material breach of this Agreement by one of the Parties. ... A material breach of this Agreement consists in: ... (b) violation of the essential elements of this Agreement, as described in Article 1(5) 4. If a Party has recourse to a measure in a case of special urgency, the other Party may request that an urgent meeting be called to convene the Parties within 15 days.	the Partnership Council and shall be the subject of consultations ... and of dispute settlement ...	request that the Partnership Council meet immediately with a view to seeking a timely and mutually agreeable solution. If no mutually agreeable solution is found within 30 days from the date of the request to the Partnership Council, the Party may take the measures referred to in paragraph 1.
Specific agreements	N/A	N/A			380(4). The Parties may complement this Agreement by concluding specific agreements in any area falling within its scope. Such specific agreements shall be an integral part	2(1). Where the Union and the United Kingdom conclude other bilateral agreements between them, such agreements shall constitute supplementing agreements to

Standalone trade and cooperation agreements	Ukraine AA (2014)	Kosovo SAA (2015)	Kazakhstan EPCA (2015)	Cuba PDCA (2016)	Armenia CEPA (2017)	UK TCA (2020)
					of the overall bilateral relations governed by this Agreement and shall form part of a common institutional framework.	<p>this Agreement, unless otherwise provided for in those agreements. Such supplementing agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of the overall framework.</p> <p>2(2). Paragraph 1 also applies to: (a) [EU/MS-UK agreements] and (b) [EAEC-UK agreements]</p>
Suspension of specific agreements						<p>Article 763(1) ... constitute[s] [an] essential element ... of the partnership established by this Agreement and any supplementing agreement.</p> <p>772(1) If either Party considers that there has been a serious and</p>

Standalone trade and cooperation agreements	Ukraine (2014) AA	Kosovo (2015) SAA	Kazakhstan EPCA (2015)	Cuba (2016) PDCA	Armenia (2017) CEPA	UK TCA (2020)
						substantial failure by the other Party to fulfil any of the obligations that are described as essential elements in Article 771, it may decide to terminate or suspend the operation of this Agreement or any supplementing agreement in whole or in part.

Annex 5 - Sustainable Fisheries Partnership Agreements (SFPAs) and Protocols¹⁵³

ACP SFPAs/Protocols Part I	Côte d'Ivoire		Cabo Verde	
	FPA (2008)	Protocol (2018)	FPA (2006)	Protocol (2019)
Essential elements	None	None	None	Art 1(2)
				The Parties shall undertake to ensure that the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde ... is implemented in accordance

¹⁵³ Ordered by date of SFPA or Protocol (relevant instrument in bold)

ACP SFPAs/Protocols Part I	Côte d'Ivoire		Cabo Verde	
	FPA (2008)	Protocol (2018)	FPA (2006)	Protocol (2019)
				with Article 9 of the [Cotonou Agreement], concerning essential elements regarding human rights, democratic principles and the rule of law, and fundamental elements regarding good governance, sustainable development and sound environmental management.
Suspension	None	Article 9	None`	Article 10
		1. The implementation of this Protocol may be suspended at the initiative of one of the two Parties after consultation within the Joint Committee, if one or more of the following conditions apply: (c) activation of the consultation mechanisms laid down in Articles 8 and 96 of the Cotonou Agreement owing to a violation of essential and fundamental elements regarding human rights set out in Article 9 of that Agreement		1. The implementation of this Protocol, including the payment of the financial contribution, may be suspended at the initiative of one of the Parties if one or more of the following conditions apply: (c) activation of the consultation mechanisms laid down in Article 96 of the Cotonou Agreement owing to violation of essential and fundamental elements of human rights and democratic principles set out in Article 9 of that Agreement
Prior notification or consultation				Suspension of this Protocol for the reasons given in point (c) of paragraph 1

ACP SFPAs/Protocols Part I	Côte d'Ivoire		Cabo Verde	
	FPA (2008)	Protocol (2018)	FPA (2006)	Protocol (2019)
				shall apply immediately after the suspension decision has been taken.
Post notification or consultation				3. In the event of suspension, the Parties shall continue to consult with a view to finding an amicable settlement to their dispute. Once such settlement is reached, application of this Protocol shall resume and the amount of the financial contribution shall be reduced proportionately and pro rata temporis according to the period during which application of this Protocol was suspended.

ACP SFPAs/Protocols Part II	Guinea-Bissau		São Tomé and Príncipe	
	FPA (2008)	Protocol (2019)	FPA (2007)	Protocol (2019)
Essential elements	None	Art 3 Protocol	None	Article 1
		2. The Parties undertake to ensure that this Protocol is implemented in accordance with Article 9 of the [Cotonou Agreement], as last amended ... concerning essential elements		3. The Parties undertake to ensure that this Protocol is implemented in accordance with Article 9 of the [Cotonou Agreement] as regards the essential elements concerning

ACP SFPAs/Protocols Part II	Guinea-Bissau		São Tomé and Príncipe	
	FPA (2008)	Protocol (2019)	FPA (2007)	Protocol (2019)
		regarding human rights, democratic principles and the rule of law,		human rights, democratic principles and the rule of law ...
Suspension	None	Article 14	None	Article 9
		1. The implementation of this Protocol, including payment of the financial contribution referred to in points (a) and (b) of Article 4(2), may be suspended, ... if one or more of the following conditions apply: (c) activation of the consultation mechanisms laid down in Article 96 of the Cotonou Agreement for reason of violation of one of the essential and fundamental elements of human rights set out in Article 9 of that agreement.		1. The implementation of this Protocol may be suspended at the instigation of one of the Parties if one or more of the following conditions apply: (c) where one of the Parties notes that there has been a violation of the essential elements concerning human rights provided for in Article 9 of the Cotonou Agreement, following the procedure provided for in Articles 8 and 96 of that Agreement;...
Prior notification or consultation		1. The implementation of this Protocol, ... may be suspended, after consultation within the Joint Committee....		2. Suspension of this Protocol's application shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect.
Post notification or consultation		2. Payment of the financial contribution shall resume, after consultation and agreement between the		3. In the event of suspension, the Parties shall continue to consult with a view to finding an amicable

ACP SFPAs/Protocols Part II	Guinea-Bissau		São Tomé and Príncipe	
	FPA (2008)	Protocol (2019)	FPA (2007)	Protocol (2019)
		Parties, as soon as the situation prior to the events referred to in paragraph 1 has been restored. Nevertheless, the specific financial contribution provided for in point (b) of Article 4(2) shall not be paid out beyond a period of six months after this Protocol expires		settlement to their dispute. Where a settlement is reached, application of this Protocol shall resume and the amount of the financial contribution shall be reduced proportionately and pro rata temporis according to the period during which application of this Protocol was suspended.

ACP SFPAs/Protocols Part III	Gambia		Senegal	
	SFPA (2019)	Protocol (2019)	SFPA (2014)	Protocol (2019)
Essential elements	Article 3	N/A	Article 3	
	6. The Parties undertake to ensure that this Agreement is implemented in accordance with Article 9 of the Cotonou Agreement concerning the essential elements of respect for human rights, democratic principles and the rule of law, and the fundamental element of good governance.		3. The Parties undertake to ensure that this Agreement is implemented in accordance with Article 9 of the Cotonou Agreement on essential elements regarding human rights, democratic principles and the rule of law, and the fundamental element regarding good governance, following the procedure set out in Articles 8 and 96 thereof.	

ACP SFPAs/Protocols Part III	Gambia		Senegal	
	SFPA (2019)	Protocol (2019)	SFPA (2014)	Protocol (2019)
Suspension	Article 15	Article 14	Article 13	Article 8
	1. Application of this Agreement may be suspended at the initiative of either Party in one or more of the following cases: ... (b) where one of the Parties ascertains a breach of essential and fundamental elements on human rights as laid out by Article 9 of the Cotonou Agreement and following the procedure set out in Articles 8 and 96 thereof.	The application of this Protocol may be suspended at the initiative of either Party under the conditions referred to in Article 15 of the Agreement.	1. Application of this Agreement may be suspended unilaterally by either Party in the following cases: (c) violation by one of the Parties of the provisions of this Agreement, in particular of Article 3(3) with respect to human rights.	The application of this Protocol, including payment of the financial contribution, may be suspended unilaterally by either Party in the cases and on the conditions set out in Article 13 of the Agreement.
Prior notification or consultation	2. Suspension of the application of this Agreement shall be notified by the interested Party to the other Party in writing and shall take effect three months after receipt of notification.		2. Suspension of the Agreement shall be notified to the other Party in writing and shall take effect three months after receipt of the notification.	
Post notification or consultation	2. The receipt of the notification shall open consultations between the Parties with a view to finding an amicable solution to their dispute within three months. 3. Where differences are not resolved amicably and suspension is implemented,		On notification of suspension the Parties shall enter into consultations with a view to resolving their differences amicably within three months. These consultations may continue after suspension has taken effect. Should an amicable solution be	

ACP SFPAs/Protocols Part III	Gambia		Senegal	
	SFPA (2019)	Protocol (2019)	SFPA (2014)	Protocol (2019)
	the Parties shall continue to consult each other with a view to finding a settlement to their dispute. Once such settlement is reached, implementation of this Agreement shall resume and the amount of the financial contribution referred to in Article 7 shall, unless otherwise agreed, be reduced proportionately and pro rata temporis according to the period during which implementation was suspended.		reached, application of the Agreement shall be resumed without delay and payment of the financial contribution referred to in Article 6 shall be reduced proportionately and pro rata temporis.	

ACP SFPAs/Protocols Part IV	Seychelles		Cook Islands	
	SFPA (2020)	Protocol (2020)	SFPA (2016)	Protocol (2021)
Essential elements	Art 3		Article 3(4)	None
	6. The Parties undertake to implement this Agreement in accordance with Article 9 of the Cotonou Agreement concerning essential elements regarding human rights, democratic principles and the rule of law, and		The Parties undertake to implement the Agreement in accordance with Article 9 of the Cotonou Agreement regarding human rights, democratic principles and the rule of law and following the procedure set	

ACP SFPAs/Protocols Part IV	Seychelles		Cook Islands	
	SFPA (2020)	Protocol (2020)	SFPA (2016)	Protocol (2021)
	fundamental elements regarding good governance.		out in Articles 8 and 96 thereof.	
Suspension	Article 16	Article 12	Article 13	Article 6
	1. The application of this Agreement may be suspended at the initiative of either of the Parties in the event of: (c) one of the Parties ascertains a breach of essential and fundamental principles of human rights as laid out by Article 9 of the Cotonou Agreement and in accordance with the procedure set out in Article 8 and 96 thereof.	This Protocol may be suspended at the initiative of either of the Parties under the conditions set out in the relevant provisions of the Agreement.	1. Application of this Agreement may be suspended at the initiative of either one of the Parties in the event of: ... (c) a breach of the Agreement by either one of the Parties in particular Article 3(4) on the respect of human rights;	1. This Protocol, including payment of the financial contribution as referred to in Article 2, paragraph 2(a) and (b), may be suspended at the initiative of either one of the Parties in the cases and under the conditions referred to in Article 13 of the Agreement.
Prior notification or consultation	2. Suspension of the application of this Agreement shall be notified by either of the Parties to the other Party in writing and shall take effect three months after receipt of such notification.		2. Suspension of application of the Agreement shall be notified by the interested Party to the other Party in writing and shall take effect three months after receipt of notification.	
Post notification or consultation	2. The receipt of that notification shall open consultations between the Parties within the Joint Committee with a view to finding an amicable solution		2. ... Dispatch of this notification shall open consultations between the Parties with a view to finding an amicable solution to their dispute within three months.	2. Without prejudice to Article 3 of this Protocol, payment of the financial contribution may resume as soon as the situation existing prior to the events mentioned in Article 13 of

ACP SFPAs/Protocols Part IV	Seychelles		Cook Islands	
	SFPA (2020)	Protocol (2020)	SFPA (2016)	Protocol (2021)
	to the dispute within a reasonable period. 3. Once such settlement is reached, the application of this Agreement shall resume and the amount of the financial contribution referred to in Article 8 shall, unless otherwise agreed, be reduced proportionately and pro rata temporis according to the period during which the application of this Agreement was suspended.		3. In the event differences are not resolved amicably and suspension is implemented, the Parties shall continue to consult each other with a view to finding a settlement to their dispute. Where such settlement is reached, implementation of the Agreement shall resume and the amount of the financial contribution referred to in Article 5 shall be reduced proportionately and pro rata temporis according to the period during which implementation of the Agreement was suspended, unless otherwise agreed.	the Agreement has been reestablished or a settlement has been reached in accordance with the Agreement.

ACP SFPAs/Protocols Part V	Gabon		Mauritania	
	FPA (2007)	Protocol (2021)	SFPA (2021)	Protocol (2021)
Essential elements	None	Article 5	Article 3(6)	
		The provisions of this Protocol shall be interpreted and applied in accordance with: (e) the essential elements referred to in	The Parties undertake to implement this Agreement in accordance with Article 9 of the Cotonou Agreement, or the corresponding	

ACP SFPAs/Protocols Part V	Gabon		Mauritania	
	FPA (2007)	Protocol (2021)	SFPA (2021)	Protocol (2021)
		Article 9 of the [Cotonou Agreement], or included in the equivalent article of the agreement between the European Union and the ACP countries that succeeds it	article of the agreement between the Union and the ACP countries that will succeed the Cotonou Agreement on the date of its provisional application or of its entry into force, concerning the essential elements of human rights, democratic principles and the rule of law, and the fundamental elements of good governance.	
Suspension		Article 22	Article 21	Article 14
		1. The implementation of this Protocol may be suspended at the initiative of one of the Parties if one or more of the following conditions is met: (a) one of the Parties finds that there has been a breach of the instruments and principles set out in Article 5 of this Protocol;	1. Application of this Agreement may be suspended at the initiative of the Parties ...: (c) where there is a violation, by one of the Parties, of the provisions of this Agreement, in particular Article 3(6), concerning respect for human rights;	Application of this Protocol may be suspended at the initiative of either Party in accordance with Article 21 of the Fisheries Agreement.
Prior notification or consultation		2. ... the Parties shall consult each other with a view to reaching an amicable settlement. If no such settlement is reached, the suspension of the application of this Protocol shall be notified to the other Party in writing and shall	2. Suspension of application of this Agreement shall be notified by the Party concerned to the other Party in writing and shall take effect 3 months after receipt of the notification.	

ACP SFPAs/Protocols Part V	Gabon		Mauritania	
	FPA (2007)	Protocol (2021)	SFPA (2021)	Protocol (2021)
		take effect after a period of one month from the date of notification		
Post notification or consultation			<p>Dispatch of that notification shall open consultations between the Parties with a view to finding an amicable solution to their dispute within 3 months.</p> <p>3. Where differences are not resolved amicably and suspension is implemented, the Parties shall continue to consult each other with a view to finding a solution to their dispute. Once such a solution is found, implementation of this Agreement shall resume and the amount of the financial contribution referred to in Article 13(2) shall, unless otherwise agreed, be reduced proportionately and pro rata temporis according to the period during which this Agreement was suspended.</p>	

ACP SFPAs/Protocols Part VI	Mauritius	
	SFPA (2013)	Protocol (2022)
Essential elements	None	Article 4(7)
		7. The Parties hereby undertake to implement this Protocol in accordance with the essential elements referred to in Article 9 of the [Cotonou Agreement], or included in the equivalent article of the agreement that succeeds it.
Suspension	Article 13	Article 13
	1. Application of this Agreement may be suspended at the initiative of one of the Parties in the event of a serious disagreement as to the application of provisions laid down in the Agreement.	1. Implementation of this Protocol shall be suspended at the initiative of either one of the Parties in the event of: (c) either of the Parties failing to comply with the provisions of this Protocol and its Annex, in particular in relation to a breach of essential and fundamental elements on human rights as laid down in Article 9 of the Cotonou Agreement, and following the procedure set out in Articles 8 and 96 thereof; or included in the equivalent article of an agreement between the Union and the ACP countries that succeeds it...
Prior notification or consultation	Suspension of application of the Agreement shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect.	2. Before taking any decision to suspend the implementation of this Protocol, the Parties shall hold meaningful consultations to find an amicable solution. 3. Suspension of the implementation of this Protocol shall require the Party concerned to notify its intention in writing at least three months before the date on which the suspension is due to take effect and shall take the form of a written notice served on the other Party.
Post notification or consultation	On receipt of this notification, the Parties shall enter into consultations with a view to resolving their differences amicably.	The receipt of that notification shall open consultations between the Parties within the Joint Committee with a view to finding an amicable

ACP SFPAs/Protocols Part VI	Mauritius	
	SFPA (2013)	Protocol (2022)
	2. Payment of the financial contribution referred to in Article 7 shall be reduced proportionately and pro rata temporis, according to the duration of the suspension.	<p>solution to the dispute within a reasonable period. ...</p> <p>5. The amount of the compensation provided for in point (a) of Article 6(2) shall be reduced in proportion to the period when the suspension takes effect.</p> <p>6. In the event of suspension of implementation, the Parties shall continue to consult with a view to finding an amicable settlement to their dispute. Where such settlement is reached, implementation of this Protocol shall resume and the amount of the financial contribution referred to in Article 6 shall be reduced proportionately and pro rata temporis according to the period during which implementation of this Protocol was suspended.</p>

Non-ACP SFPAs/ Protocols	Morocco		Greenland	
	SFPA (2019)	Protocol (2019)	SFPA (2021)	Protocol (2021)
Essential elements	Article 3		Article 3	N/A
	11. The Agreement shall be implemented in accordance with Article 1 of the Association Agreement on developing dialogue and cooperation, and Article 2 of the Association Agreement concerning the respect for democratic principles and fundamental human rights.		6. The Parties undertake to implement this Agreement in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).	

Non-ACP SFPAs/ Protocols	Morocco		Greenland	
	SFPA (2019)	Protocol (2019)	SFPA (2021)	Protocol (2021)
Suspension	Article 20	Article 18	Article 16	Article 8
	1. Application of this Agreement may be suspended at the initiative of either Party ... (c) where either Party fails to comply with this Agreement	Application of this Protocol may be suspended at the initiative of either Party in accordance with Article 20 of the Fisheries Agreement.	1. The application of this Agreement may be suspended at the initiative of either of the Parties where: ... (d) either of the Parties ascertains a breach of fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).	1. The application of this Protocol, including payment of the financial contribution, may be suspended, or reviewed as for the financial contribution, at the initiative of either of the Parties under one or more of the following circumstances: (d) where either of the Parties ascertains a breach of fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
Prior notification or consultation	3. Suspension of application of this Agreement shall be notified by the interested Party to the other Party in writing and shall take effect 3 months after receipt of notification.		None	None
Post notification or consultation	Dispatch of this notification shall open consultations between the Parties with a view to finding an amicable		None	None

Non-ACP SFPAs/ Protocols	Morocco		Greenland	
	SFPA (2019)	Protocol (2019)	SFPA (2021)	Protocol (2021)
	<p>solution to their dispute within 3 months.</p> <p>3. Where differences are not resolved amicably and suspension is implemented, the Parties shall continue to consult each other with a view to finding a solution to their dispute. Once such solution is found, implementation of this Agreement shall resume and the amount of the financial contribution referred to in Article 12(2) shall, unless otherwise agreed, be reduced proportionately and pro rata temporis according to the period during which implementation of this Agreement was suspended.</p>			

Annex 6 - FLEGT- Voluntary Partnership Agreements (VPAs)

VPAs	Indonesia VPA (2013)	Vietnam VPA (2018)	Honduras VPA (2021)	Guyana VPA (2022)
Essential elements	None	None	None	Article 18
	2. Either Party may suspend the application of this Agreement.	2. Either Party may suspend the application of this Agreement in the event that the other Party: ... (c) acts in a way that poses significant	2. Either Party may suspend the implementation of this Agreement if the other Party ... (c) acts or fails to act in a way that poses	The Parties reaffirm their commitment to the effective implementation of international and regional agreements, treaties and

VPAs	Indonesia VPA (2013)	Vietnam VPA (2018)	Honduras VPA (2021)	Guyana VPA (2022)
		risks to the environment, health, safety or security of the people of the Union or of Viet Nam.	significant risks to the environment, health, safety or security of the people of either the Union or Honduras.	conventions to which they are party, including multilateral environmental agreements and agreements on climate action, treaties on human rights and indigenous people's rights and labour and trade agreements. ...
Suspension	Article 21	Article 23	Article 25	Article 28
	<p>2. Either Party may suspend the application of this Agreement.</p> <p>3. The conditions of this Agreement will cease to apply thirty calendar days after such notice is given.</p>	<p>2. Either Party may suspend the application of this Agreement ...</p> <p>3. The conditions of this Agreement shall cease to apply 30 calendar days after the notice referred to in the second subparagraph of paragraph 2 has been given.</p>	<p>2. Either Party may suspend the application of this Agreement ...</p> <p>3. The conditions of this Agreement shall cease to apply 30 working days after notice under paragraph 2 is given.</p>	<p>2. Either Party may suspend the application of this Agreement in the event of a material breach of this Agreement by the other Party.</p> <p>4. This Agreement shall cease to apply 30 calendar days after a notification as referred to in paragraph 3 is made.</p>
Prior notification or consultation	<p>1. A Party wishing to suspend this Agreement shall notify the other Party in writing of its intention to do so. The matter shall subsequently be discussed between the Parties.</p> <p>2. The decision on suspension and the reasons for that decision shall be notified to the other Party in writing.</p>	<p>1. A Party wishing to suspend this Agreement shall notify the other Party in writing of its intention to do so. The matter shall subsequently be discussed between the Parties, taking into consideration relevant stakeholders' views.</p> <p>2. ... The decision on suspension and the reasons for that decision shall be notified and sent to the other Party in writing.</p>	<p>1. A Party wishing to suspend this Agreement shall notify the other Party in writing of its intention to do so. The matter shall subsequently be discussed between the Parties, taking into consideration relevant stakeholders' views.</p> <p>2. ... The decision on suspension and the reasons for that decision shall be notified and sent to the other Party in writing.</p>	<p>1. A Party wishing to suspend this Agreement shall notify the other Party in writing of its intention to do so. The matter shall subsequently be discussed between the Parties, within one month of receipt of such a notification.</p> <p>3. The decision on suspension and the reasons for that decision shall be notified to the other Party in writing.</p>

VPA	Indonesia VPA (2013)	Vietnam VPA (2018)	Honduras VPA (2021)	Guyana VPA (2022)
Post notification or consultation	4. Application of this Agreement shall resume thirty calendar days after the Party that has suspended its application informs the other Party that the reasons for the suspension no longer apply	4. Application of this Agreement shall resume 30 calendar days after the Party that has suspended its application informs the other Party that the reasons for the suspension no longer apply.	4. Application of this Agreement shall resume 30 working days after the Party that has suspended its application informs the other Party that the reasons for the suspension no longer apply.	5. Application of this Agreement shall resume 30 calendar days after the Party that has suspended its application informs the other Party that the reasons for the suspension no longer apply.

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