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# EU Trade Policy and Transnational Corruption: Leading the Fight for Clean Trade

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## ABSTRACT

This paper examines how the European Union can leverage its position as a global leader in trade to tackle corruption. The issue is timely given the changing character of the EU's trade policy that is poised to become more assertive, particularly in light of open strategic autonomy objectives. Furthermore, existing international and domestic anti-corruption frameworks, despite some positive steps such as extraterritoriality, fall short in addressing a novel type of corruption that has benefitted from globalisation and become truly transnational. Such 'transnational' or 'international' corruption means that, in an interconnected world, corruption in one part of the world can have an effect elsewhere, allowing malicious actors to cross borders and exploit jurisdictions with weaker anti-corruption measures to circumvent the stronger frameworks.

The paper argues in favour of incorporating anti-corruption provisions into EU trade policy. It proposes to address the issue both through including robust anti-corruption provisions in EU trade agreements and through making compliance with such provisions a condition for receiving preferential trade. Through this 'carrot-and-stick' approach, the EU can assertively use its economic leverage to instil anti-corruption prevention, identification and penalisation among its trading partners.


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# 1 INTRODUCTION

While international trade has generally liberalised, the nature of corruption has changed too. It is now significantly more transnational – a novel problem, the consequence of which is that the actions of a single state or jurisdiction are rendered less effective. Although many existing anti-corruption solutions are commendable, including the use of extraterritorial anti-corruption laws, this paper argues that this solves the problem only partially. The EU, as a global trade leader, should use its influence to promote anti-corruption policies among its partners abroad, particularly in the developing world. The problem is urgent. Transparency International observed that the global Corruption Perception Index (CPI) average remained at an alarmingly low level for ten years in a row, with 148 states failing to improve despite their commitments.[1] The global cost of corruption also remains considerable, running at trillions of US dollars per year: a sizeable proportion of global GDP.[2]

In an effort to address the problem and frame a solution, Section 2 of this paper first explains why the EU is uniquely placed to address challenges posed by internationalised corruption by considering its trade policy objectives. It places the problem in the context of the EU's growing assertiveness in exercising its trade policy. Section 3 emphasises the severe consequences of corruption and considers the novel phenomenon of internationalised corruption, explaining how it differs from the corruption of the past. It observes that this new threat cannot be effectively addressed at the domestic or regional level but requires a considerable degree of harmonisation and cooperation among jurisdictions. Section 4 provides an overview and assessment of existing frameworks. It notes that several measures, such as extraterritorial anti-corruption laws, are commendable, but it also observes the lack of strict enforcement mechanisms in various international frameworks coupled with poor harmonisation across different jurisdictions. Section 5 considers two solutions for how the EU can use trade to tackle corruption. The first solution is to incorporate robust anti-corruption provisions in its trade agreements that contain both soft and hard law measures. Secondly, the EU should ensure compliance with those anti-corruption measures through conditionality. Section 6 concludes by arguing that the urgency of the problem justifies a shift in EU trade policy.

# 2 TRADE POLICY OBJECTIVES OF THE EUROPEAN UNION

As part of the common commercial policy and the progressive liberalisation of trade, the creation of a customs union has led to the development of an external trade policy under the exclusive jurisdiction of the European Union.[3] As a consequence, the EU has one of the largest networks of free trade agreements through which it can integrate other jurisdictions into its regulatory framework.[4]

In order to determine how the EU could leverage trade to address corruption, it is necessary to first establish the fundamental elements and objectives of EU trade policy. The Treaty on European Union (TEU) sets out the central trade policy objectives of the EU. Article 21(1) of the TEU provides that the EU's action on the international stage is to be guided by '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'. The provision adds that the EU must seek to develop relations with third countries. Article 21(2) then lists more precisely the various EU trade objectives. Of those, several are relevant from the angle of anti-corruption:

**(a)** safeguard its values, fundamental interests, security, independence and integrity;
**(b)** consolidate and support democracy, the rule of law, human rights and the principles of international law;
(…)

1 Transparency International, 'Corruption Perceptions Index' (Transparency International, 2024) <https://www.transparency.org/en/cpi/2024> (last visited 13 March 2025).

2 Artificial Fiscal Intelligence, 'Working Paper: Estimating the Costs of Corruption and Efficiency Losses from Weak National and Sector Systems' (Artificial Fiscal Intelligence, 9 May 2023) <https://artificialfiscalintelligence.com/wp-content/uploads/2023/02/Costs-Corruption-and-Efficiency-Losses-Draft.pdf> (last visited 13 March 2025).

3 Treaty on the Functioning of the European Union (TFEU), Arts 206 and 207; H Hestermeyer, 'Trade Law in Europe' in D Bethlehem (ed.), *Oxford Handbook of International Trade Law* (OUP, 2022), 307–308.

4 The WTO lists 59 trade agreements with the EU as a signatory that are in force as of July 2025: <https://rtais.wto.org/UI/PublicSearchByCr.aspx> (last visited 31 July 2025).

**(d)** foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

(...)

**(h)** promote an international system based on stronger multilateral cooperation and good global governance.

A more proactive role in rooting out corruption should hence form part of the EU's rethinking of its external trade policy. In particular, the EU published the revised Trade Policy Review in February 2021 (Trade Policy Review) and committed itself to the pursuit of open strategic autonomy on the international stage. Open strategic autonomy was defined as the 'EU's ability to make its own choices and shape the world around it through leadership and engagement, reflecting its strategic interests and values'.[5] The concept plays a strong role in the context of trade and has evolved into a concept of geoeconomics.[6] It also pertains both to the EU's internal measures as well as to its external action: the EU's role on the global stage.[7] Given the international nature of modern corruption, discussed further in Section 3 below, this paper focuses on the EU's external action in particular. The Trade Policy Review breaks down open strategic autonomy into three intersecting pillars that explain the policy's application to extra-EU relations and, in particular, to international trade:

**(i)** *Resilience and competitiveness* that relate to the strengthening of the EU's economy through 'open and undistorted access to international markets, including new market access and open trade flows to the benefit of both our industry, workers and citizens'.[8] The Trade Policy Review, for example, specifically identifies tackling climate change under this policy pillar. Presumably, a reference to resilience could be understood broadly, making it a good policy basis for anti-corruption efforts.

**(ii)** *Sustainability and fairness* that purportedly reflect the need for responsible and fair EU action. The Trade Policy Review notes that open strategic autonomy can 'contribute to resilience by providing a stable, rules-based trading framework, opening up new markets to diversify sources of supply, and developing cooperative frameworks for fair and equitable access to critical supplies'.[9] The EU takes the view that, following the COVID-19 pandemic, the resilience of supply chains goes hand-in-hand with the objective of sustainability.[10]

**(iii)** *Assertiveness and rule-based cooperation* that, by contrast, reflects the 'EU's preference for international cooperation and dialogue, but also its readiness to combat unfair practices and use autonomous tools to pursue its interests where needed'.[11] In the context most relevant to corruption, the EU expresses its intention to strengthen international trade agreements and ensure their effective enforcement. The single market was identified as a considerable factor for the attractiveness of the EU as an economic partner.[12]

Open strategic autonomy has been applied to numerous policy issues such as defence, foreign, industrial and trade policy and also financial governance, climate change, energy policy and digital sovereignty.[13] Although the concept expressly tackles several geopolitical challenges –

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5 European Commission, 'Trade Policy Review – An Open, Sustainable and Assertive Trade Policy' COM (2021) 66 final, 4.

6 T Gehrke, 'EU Open Strategic Autonomy and the Trappings of Geoeconomics' (2022) 27 *European Foreign Affairs Review* 61, 61.

7 C Beaucillon, 'Strategic Autonomy: A New Identity for the EU as a Global Actor' (2023) 8 *European Papers* 417, 418–419.

8 European Commission (n 5), 4–5.

9 ibid, 8.

10 OECD, 'COVID-19 and Responsible Business Conduct' (2020) <https://www.oecd.org/en/publications/2020/04/covid-19-and-responsible-business-conduct_9f3bb62c.html> (last visited 10 March 2025).

11 European Commission (n 5), 5.

12 ibid, 6.

13 J Miró, 'Responding to the Global Disorder: the EU's Quest for Open Strategic Autonomy' (2022) 37 *Global Society* 315, 316.

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COVID-19, climate change and the possible volatility of US-EU relations[14] – corruption has been largely missing from the debate.[15]

Against this background, it is important to emphasize the problem of corruption and its changing character.

## 3 THE INTERNATIONALISATION OF CORRUPTION

Corruption lacks a universally accepted definition, reflecting the discrepancies between various domestic legal, cultural and political systems. For example, in Kenya, the notion of a 'harambee' donation – a donation from a private entity to the government for public purposes – is considered customary in concluding transactions and not an example of corruption, despite payments in similar circumstances being prohibited in many jurisdictions.[16] Various sources have instead labelled corruption as an umbrella term for various criminal offences such as bribery, abuse of function, embezzlement or even money laundering.[17] Therefore, corruption is perhaps best identifiable from its aftermath rather than its constituent elements.

Following decades of work by international organisations, scholarly research, media coverage and electoral campaigns, corruption is universally perceived as a bad thing.[18] It has several specific consequences including the distortion of government, deepening poverty, increasing costs for businesses and challenging the legitimacy of the market economy.[19]

Therefore, corruption has a primarily economic impact which, in turn, sends shockwaves across communities, governance structures and industries. Since the strength and attractiveness of the EU economy lie at the heart of open strategic autonomy, the financial costs of corruption represent perhaps the strongest argument in favour of a paradigm shift. A 2016 report by the European Parliament suggested that corruption causes an annual loss of between €179 billion to €990 billion to the GDP of the EU.[20] However, corruption does not only have direct pecuniary consequences. A perception of corruption correlates with a reduction in international trade.[21] It also dissuades foreign investments and causes economic growth to stagnate.[22]

From the angle of the private sector, corruption impacts the ease of doing business, rendering the processes of customs controls or business permits more opaque and causing uncertainty as to the scope of legal protection. Corruption can hence lead to high levels of legal and compliance costs, while companies grapple with the inability to pay these extra costs.[23] It can also distort competition where it excludes businesses from certain markets or contracts.[24] Corruption also hampers competitiveness and investment by giving rise to an environment of uncertainty and

14 L Schmitz & T Seidl, 'As Open as Possible, as Autonomous as Necessary: Understanding the Rise of Open Strategic Autonomy in EU Trade Policy' (2022) 61 *Journal of Common Market Studies* 834, 834.

15 See generally A Godhe, 'Anti-corruption as a Dimension of Open Strategic Autonomy: Shifting EU's Role on the International Stage' in J Fechter & J Wiesenthal (eds.), *The Age of Open Strategic Autonomy* (Nomos, 2025).

16 A Peters, 'Corruption as a violation of international human rights' (2018) 29 *European Journal of International Law* 1251, 1281.

17 United Nations, 'The Global Programme Against Corruption. Anti-Corruption Toolkit' (United Nations 2004) <https://www.unodc.org/documents/treaties/corruption/toolkit/toolkitv5_foreword.pdf> (last visited 10 March 2025).

18 Y Tverdova, 'See No Evil: Heterogeneity in Public Perceptions of Corruptions' (2011) 44 *Canadian Journal of Political Science* 1, 1–2.

19 V Tanzi, 'Corruption Around the World: Causes, Consequences, Scope and Cures' (1998) Working Paper of the International Monetary Fund 1, 26–27.

20 European Parliament Research Service, 'The Cost of Non-Europe in the Area of Organised Crime and Corruption' (European Parliament 2016) <https://www.europarl.europa.eu/RegData/etudes/STUD/2016/579319/EPRS_STU(2016)579319_EN.pdf> (last visited 13 March 2025).

21 M Shirazi, 'The Impact of Corruption on International Trade' (2011) 40(1) *Denver Journal of International Law & Policy* 435, 435.

22 A Osipian, *The Impact of Human Capital on Economic Growth. A Case Study in Post-Soviet Ukraine, 1989–2009* (Springer, 2009), 256.

23 Department for International Development, 'Why Corruption Matters: Understanding Causes, Effects and how to Address Them' (Department for International Development 2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf> (last visited 13 March 2025).

24 OECD, 'Global Trade Without Corruption: Fighting the Hidden Tariff' (OECD Publishing, 2017) <https://www.oecd.org/en/publications/global-trade-without-corruption_9789264279353-en.html> (last visited 13 March 2025).

fear.[25] A reduction in incoming investments would directly contradict a key strength of the EU's economy as the biggest importer and exporter of goods and services globally.[26] Whilst there is a counter argument that, in some countries, corruption can have the effect of 'greasing the wheels' and facilitating trade as it compensates for the weaknesses of government agencies, this does not mean that trade in the long term would not be aided by measures to tackle corruption.[27]

Turning to the EU specifically, despite the far-reaching consequences of corruption for the economy and trade, it could be argued that these risks do not pose a material threat to it. Indeed, according to the CPI, Europe is considered the least corrupt region in the world. Six out of the ten least corrupt states are EU Member States.[28] Unfortunately, contemporary corruption has become an increasingly transboundary phenomenon, caused by deepening economic integration between states, the digitalisation of finance and companies exploiting open borders to export their corrupt practices, including engagement in bribery, embezzlement or extortion, abroad.[29] It means that corruption in one part of the world can have a knock-on effect elsewhere.

Internationalised corruption has had two main effects. First, measures taken by individual actors – for instance through domestic laws – have become less effective. In an interconnected world, a mischievous actor can bypass a strong anti-corruption framework by targeting a weaker one and achieve the same or similar outcome. Secondly, the consequences of wrongful conduct are amplified – corruption at a local or regional level may have consequences resonating across the world. This not only makes anti-corruption efforts more complex, but it challenges the notion that the issue should be tackled by individual states through their domestic laws and regulation. Instead, anti-corruption should be a collective undertaking.[30]

There are many examples of transborder corruption. For instance, the Petrobras scandal, also known as 'Operation Car Wash', was a massive corruption case in Brazil involving the state-owned energy company, Petrobras. High-level executives, politicians, and contractors were found to have participated in a vast network of kickbacks and embezzlements related to contracts with Petrobras. The scandal led to political instability in Brazil and had ramifications for regional and international energy markets, as Petrobras was a major player in the global oil industry.[31]

There are other examples closer to the EU. The Siemens bribery scandal was a significant corruption case that involved the German multinational conglomerate, Siemens AG. The company was found to have engaged in widespread bribery to secure contracts in various countries around the world. Siemens paid bribes to government officials and intermediaries in countries like Argentina, Bangladesh, Iraq and Venezuela, among others, to gain a competitive advantage in its business operations.[32]

In 2022, corruption was found within the European Parliament where several MEPs received cash payments from state actors, including Morocco and Qatar, which were discovered by Belgian authorities. The 'Qatargate' scandal was quickly tied to the poorly regulated lobbying rules, lack of transparency and the presence of unvetted interest groups.[33]

These examples illustrate that corruption can affect the most reputable and influential institutions and international companies operating abroad; even those that operate in full legal compliance in their state of origin. The transnational nature of corruption means that

25 C Malgwi, 'Corollaries of Corruption and Bribery on International Business' (2016) 23 *Journal of Financial Crime* 948, 960.

26 European Commission (n 5), 5.

27 Shirazi (n 21), 439–440.

28 Transparency International (n 1).

29 K Elliott, *Corruption and the Global Economy* (Institute for International Economics, 1997), 12–15; Tanzi (n 19), 5.

30 C Fletcher & D Herrmann, *The Internationalisation of Corruption: Scale, Impact and Countermeasures* (Routledge, 2012), 1–2.

31 J Dutra Sallaberry, 'Measurement of Damage from Corruption in Brazil' (2020) 27 *Journal of Financial Crime* 1239, 1240–1241.

32 A Adeyeye, 'Bribery: Cost of Doing Business in Africa' (2017) 24 *Journal of Financial Crime* 56, 61.

33 O Costa, 'The European Parliament and the Qatargate' (2024) 62(1) *Journal of Common Market Studies* 76, 76–77.

even despite strong measures in one location, actors can exploit weaknesses and deficiencies elsewhere in the global chain of financial transactions.[34]

Another dimension of corruption is that it does not affect all regions equally. It disproportionately affects developing states, hence exacerbating inequality. This is because corruption diverts public funds away from development initiatives, affecting governments' ability to provide essential services, eventually increasing inequality and discouraging investment.[35] Since the poor are less able to pay bribes or walk away, the impact of corruption on them is the greatest. Therefore, there is a strong correlation between states having low CPI scores and high poverty.[36]

The issue of corruption taking place abroad is connected to the EU's role as an international economic powerhouse. The Trade Policy Review itself acknowledged: 'The EU is the *number one* trading partner for 74 countries around the world. It is the number one trading partner for Asia, Africa, the US, the Western Balkans and the EU's Neighbourhood' (emphasis in original).[37] Although open strategic autonomy strongly supports the EU's role as an international trade leader, this status quo comes under threat from international corruption by having a deterrent effect on investment flows and resulting in billions of euros-worth of untaxed, illegal activity. This makes the EU's partners poorer and less able to benefit from mutual trade.

To conclude the point, three types of corruption can be identified from the standpoint of the EU: (i) corruption within the EU itself. This is not a considerable threat with EU Member States being among the least corrupt jurisdictions globally; (ii) corruption taking place internally among EU trade partners; and (iii) transboundary corruption that can affect the EU through its foreign trade partners. While the two former types of corruption are widely appreciated, transboundary corruption is a recent phenomenon and poorly addressed by the existing legal frameworks, as the following Section 4 argues.

## 4 LIMITED EFFECTIVENESS OF EXISTING ANTI-CORRUPTION FRAMEWORKS

There are several existing domestic and international initiatives aimed at tackling and reducing corruption. However, they tend to have mixed results in practice and to be particularly ineffective when faced with transnational corruption. This Section first argues that, while the various instruments exist at international, regional and national levels, the key obstacle is the low level of harmonisation between the different frameworks.[38] Secondly, the frameworks tend not to be subject to strong enforcement mechanisms in any case.

### 4.1 INTERNATIONAL TRADE LAW

There are several international conventions dealing with corruption, such as the United Nations Convention against Corruption (UNCAC) and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention).[39] The World Trade Organisation (WTO) treaties contain no specific provisions relating to anti-corruption,[40] meaning that any express anti-corruption efforts are left to free trade agreements (FTAs). Nonetheless, the WTO treaties contain several good governance provisions that broadly capture anti-corruption measures, such as those relating to independent administration of measures,

34 A Cooley & J Sharman, 'Transnational Corruption and the Globalised Individual' (2017) 15 *American Political Science Association* 732, 733.

35 Malgwi (n 25), 955.

36 ibid, 957.

37 European Commission (n 5), 6.

38 I Carr, 'Corruption, legal solutions and limits of law' (2007) 3(3) *International Journal of Law in Context* 227, 228 and 230.

39 UN General Assembly, 'United Nations Convention Against Corruption' (2003) A/58/422; OECD, Convention on Combating Bribery of Foreign Public Officials (1997) OECD/LEGAL/0293.

40 However, calls have been growing for the WTO treaties to address corruption. See K Nadakavukaren Schefer, 'Corruption and the WTO Legal System' (2009) 43(4) *Journal of World Trade* 737, 768.

procedural fairness or transparency obligations.[41] This being said, the various international frameworks tackling corruption vary as to scope and comprehensiveness.[42]

Many of the EU's FTAs contain anti-corruption provisions. For example, the EU-Mexico FTA contains several anti-corruption provisions that both criminalise corrupt conduct in the public and private sectors, and includes several transparency measures, all with reference to UNCAC.[43] However, a study into the effectiveness of EU trade policies with 34 countries in Africa found that the EU has not effectively used its asymmetric trade relationship to convince African countries to adopt better governance practices.[44] Any anti-corruption provisions in bilateral and regional trade agreements are particularly vulnerable to non-enforcement as they are excluded from the operation of the WTO Dispute Settlement System. In consequence, such provisions are only as effective as the institutions by which they are enforced. Without adequate enforcement at the international level, these instruments are wholly aspirational, functioning as 'myth systems' rather than providing practical, enforceable obligations.[45] As one European Parliament report said:

> If being actually politically determined, the rule of law and independence of the judiciary are difficult to change because to do so would mean that deep power allocation would have to be changed too and that would in turn be difficult to influence from outside, then it follows that the purely legal tools promoted by treaties and anticorruption conventions in countries with worse than average rule of law could not but fall short.[46]

A possible counterargument is that the absence of enforcement mechanisms should not be a concern. It could be argued that the increase in trade would, over time, intrinsically lead to enshrining anti-corruption practices among trade partners. Trade agreements can introduce fair competition into economies in which market access and opportunities are conditioned by engaging in corrupt practices such as paying bribes. In corrupt economies, firms can benefit from the rents associated with abusing government restrictions on economic activity.[47] Where there is less competition, firms can achieve higher rents. For governments and officials, higher rents increase the economic incentives to engage in corrupt practices.[48] Indeed, governments may manipulate legislation to generate rents which they can exploit to strengthen their own economic and power positions.[49] For businesses, the competition for these rents can be legal, but it can also involve activities like bribery, corruption, smuggling and participation in black markets.[50] Trade agreements can remove these restrictions to a great extent by reducing tariffs and non-tariff barriers. In consequence, there is less scope for 'rent-seeking' companies to influence domestic legislation in their favour through corruption while fair competition is preserved.[51]

Critics of this argument maintain that trade liberalisation can increase corruption for several reasons. The first is that the growth of international trade has created an incentive for companies to pay bribes to gain privileged access to contracts or markets.[52] The second is

41 For example, see Arts X: 3(a), (b) and X:1 and X:2 respectively of the General Agreement on Tariffs and Trade (GATT).

42 Carr (n 38), 230.

43 See <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/47cf0f6c-137d-4bc5-9f6f-e5171748bfa7/details> (last visited 19 June 2025).

44 O Gokcekus & Y Suzuki, 'Trade with the EU Reduce Corruption in Africa?' (2013) 28 (4) *Journal of Economic Integration* 610.

45 A Llamzon, *Corruption in Investment Arbitration* (OUP, 2014), 8.

46 A Mungiu-Pippidi, 'Anti-corruption provisions in EU free trade and investment agreements: Delivering on clean trade' (European Parliament, 2018) 29, <https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603867/EXPO_STU(2018)603867_EN.pdf> (last visited 13 March 2025).

47 A Krueger, 'The Political Economy of Rent-Seeking Society' (1974) 64(3) *American Economic Review* 291, 291–292.

48 See generally A Ades & R Di Tella, 'Rents, Competition, and Corruption' 89 (4) *American Economic Review* 982.

49 A Shleifer & R Vishny, *The Grabbing Hand: Government Pathologies and Their Cures* (Harvard University Press, 2002).

50 Krueger (n 47), 291–292.

51 Mungiu-Pippidi (n 46).

52 Tanzi (n 19), 7.

that barriers to trade increase the importance of monitoring bureaucratic activities, which in turn helps to reduce corruption.[53] By removing these barriers and opening economies to trade, the opportunities for corruption are likely to rise.[54] However, the results of these studies are rarely conclusive, and the other view is that opening economies to trade can indirectly disrupt corruption without reliance on regulatory initiatives or enforcement mechanisms.[55]

Finally, in the area of investment protection – a key priority of open strategic autonomy[56] – treaties increasingly contain provisions that prohibit corruption, albeit they remain small in number. Only 45 out of 2,584 international investment treaties contain anti-corruption provisions.[57] Of those, five were entered into by the EU and 17 by Japan, suggesting that such measures are rare and limited to specific states. Their content is also wanting. Anti-corruption provisions enclosed in investment treaties often lack an enforcement mechanism and are of doubtful practical value, since they typically make no reference to specific obligations.[58]

To conclude the point, international frameworks ranging from conventions and WTO treaties to trade agreements lack consistency when it comes to the content of their anti-corruption measures and are often not subject to strong enforcement mechanisms. This is regrettable given that international agreements, and trade agreements in particular, are among the best tools for ensuring harmonisation of laws and regulations,[59] making them uniquely suitable to tackling internationalised corruption.

### 4.2 INTERNAL EU AND DOMESTIC FRAMEWORKS

While international frameworks grapple with concerns over implementation and adequacy of enforcement mechanisms, domestic and intra-EU measures have had more success in addressing the problem of internationalised corruption.

The Treaty on the Functioning of the European Union (TFEU) specifies that (i) the EU should ensure a high level of security, including through the prevention and combating of crime and the approximation of criminal laws; (ii) corruption is designated as a 'euro-crime' with cross-border dimensions; and (iii) the EU and its Member States have a duty to protect the EU budget.[60] These duties led to the adoption of a number of anti-corruption instruments tackling various contexts in which corruption arises. The Convention on the fight against corruption involving officials (EU Corruption Convention) tackles, as the name suggests, corruption among civil servants of Member States and the EU itself.[61] A Council Framework Decision, on the other hand, fights corruption in the private sector providing for rules and definitions of corruption-related offences in the private sector.[62]

A curious feature of the EU Corruption Convention is its extraterritorial scope, meaning that entities can be prosecuted for corruption even if the corruption took place abroad or they are

53 Ades and Di Tella (n 48), 985–986.

54 D Treisman, 'The causes of corruption: a cross-national study' (2000) 76 (3) *Journal of Public Economics* 399, 408.

55 Mungiu-Pippidi (n 46).

56 M Sattorova, 'EU Investment Law at a Crossroads: Open Strategic Autonomy in Times of Heightened Security Concerns' (2023) 60 *Common Market Law Review* 701, 703.

57 As of July 2023. See <https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping> (last visited 19 June 2025).

58 Y Kryvoi & A Godhe, 'Enhancing anti-corruption via investment arbitration: from red flags to due diligence' (2025) 16(1) *Journal of International Dispute Settlement* 1, 16–17; Y Yan, 'Anti-Corruption Provisions in International Investment Agreements: Investor Obligations, Sustainability Considerations, and Symmetric Balance' (2020) 23 *Journal of International Economic Law* 989, 989.

59 I Bantekas et al., *UNCITRAL Model Law on International Commercial Arbitration* (CUP, 2020), 38–49; P Webb, *International Judicial Integration and Fragmentation* (OUP, 2013), Chapter 5; S Bazinas, 'Harmonisation of International and Regional Trade Law: The UNCITRAL Experience' (2003) 8(1) *Uniform Law Review* 53, 53–54; C Cutler, 'Public meets private: The international unification and harmonisation of private international trade law' (1999) 13(1) *Global Society* 25, 35–37.

60 ibid, Arts. 67, 83 and 325.

61 Convention on the fight against corruption involving officials of the European Communities or officials of the EU MS [1997] OJ C 195/2.

62 Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector [2003] OJ L 192/54.

not residents of the jurisdiction. Such a measure has been implemented specifically to address the transnational nature of modern corruption.[63] The EU Corruption Convention hence provides:

> Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with the obligations arising out of Articles 2, 3 and 4 where:
>
> **(a)** the offence is committed in whole or in part within its territory;
>
> **(b)** the offender is one of its nationals or one of its officials;
>
> **(c)** the offence is committed against one of the persons referred to in Article 1 or a member of one of the European Community institutions referred to in Article 4 (1) who is at the same time one of its nationals;
>
> **(d)** the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State in question.[64]

Therefore, the EU Corruption Convention enables the prosecution of corruption even if the offence took place entirely abroad, by or against a national of the state and particularly civil servants. Another key framework is the Council Framework Decision on combating corruption in the private sector ('Council Framework Decision').[65] It recognises in the preamble that:

> Along with globalisation, recent years have brought an increase in cross-border trade in goods and services. Any corruption in the private sector within a Member State is thus not just a domestic problem but also a transnational problem, most effectively tackled by means of a European Union joint action.[66]

Nonetheless, the Council Framework Decision then follows the same approach as most international frameworks: by delegating anti-corruption to EU Member States.[67] It also attempts to promote anti-corruption extraterritorially. The Council Framework Decision states:

> Each Member State shall take the necessary measures to establish its jurisdiction with regard to the offences referred to in Articles 2 and 3, where the offence has been committed:
>
> **(a)** in whole or in part within its territory;
>
> **(b)** by one of its nationals; or
>
> **(c)** for the benefit of a legal person that has its head office in the territory of that Member State.[68]

Other measures include the establishment of the EU contact-point network against corruption through which authorities and law enforcement agencies can collaborate in combating corruption.[69] Corruption is also dealt with through harmonised training of civil servants, whistle-blower protections and the establishment of transparent and independent auditing procedures.[70]

However, both the EU Corruption Convention and the Council Framework Decision will be replaced by a proposed Directive of the European Parliament and the Council on combating corruption (Proposed EU Directive on Corruption).[71] Its aim is to foster corruption prevention

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63 S Salbu, 'Redeeming Extraterritorial Bribery and Corruption Laws' (2017) 54 *American Business Law Journal* 641, 643.

64 Convention (n 62), Art. 7.

65 Council Framework Decision (n 63), 54–56.

66 ibid, Preamble.

67 ibid, Art. 2.

68 ibid, Art. 7.

69 Established by Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption [2008] OJ L 301/38.

70 Regulation (EC) No. 1606/2002 of the EP and of the Council of 19 July 2002 on the application of international accounting standards [2002] OJ L 243/1; Directive 2006/43/EC of the EP and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC [2006] OJ L 157/87.

71 Proposal for a Directive of the European Parliament and of the Council on combating corruption, COM (2023) 234 final.

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and further harmonisation of criminal law in the area. The Proposed EU Directive on Corruption will also contain extraterritorial scope.[72] Therefore, existing and future EU initiatives evidence a trend of mobilisation against international corruption. This supports the change in paradigm and the inclusion of anti-corruption as a part of open strategic autonomy efforts.

The internal EU anti-corruption frameworks represent some of the strongest international anti-corruption instruments. The progress elsewhere is slow, piecemeal and inconsistent across different international and domestic efforts with mixed results.[73] Furthermore, EU frameworks benefit from strong enforcement in the form of the Court of Justice of the European Union.

The issue is far more dire in non-EU states and less economically developed states, many of which are EU trade partners.[74] In these jurisdictions, the domestic anti-corruption measures tend to be less effective, as a result of poverty and overall weakness of the state authority.[75] In relation to such states, anti-corruption measures were typically led by international organisations. These included using lending and debt relief to enforce anti-corruption monitoring and auditing[76] or using aid to instil a culture of anti-corruption by, for example, insisting on the involvement of beneficiaries of the aid in decision-making.[77] Nonetheless, despite the EU being one of the largest providers of foreign aid, the measures had limited success in tackling corruption in less economically developed states.[78] Other measures include the disbursement of resources being conditional upon the adoption of specific policies and the tackling of foreign businesses using corruption to their advantage in order to gain market access.[79]

Tackling transborder corruption has not been solely addressed by international and regional frameworks. In fact, anti-corruption regulations have become one of the few areas in which diverse legal and political systems converge, particularly when it comes to capital-exporting states, many of which are EU members.[80] An increasing number of jurisdictions extend the application of their anti-corruption laws extraterritorially. The US Foreign Corrupt Practices Act of 1977 was the first such domestic framework and served as an inspiration to many subsequent international and domestic frameworks.[81] In the EU, anti-corruption laws of Germany,[82] France[83] and the Czech Republic[84] have a similar extraterritorial application, following a similar approach to the EU anti-corruption frameworks. Such anti-corruption laws are not limited to Western jurisdictions. The extraterritorial approach also exists in China,[85] Brazil[86] and Hong Kong.[87]

The UK Bribery Act 2010 represents a considerable success story for the application of extraterritorial provisions. The UK Serious Fraud Office recently charged the Swiss oil giant

72 ibid, Art. 20.

73 D Hough, 'International Approaches to Tackling Corruption' (2017) 12 *Frontiers of Law in China* 339, 352.

74 J Newell, *Corruption in contemporary politics: A new travel guide* (Manchester University Press, 2018), 202–207; M Zhang et al., 'Corruption, anti-corruption, and economic development' (2023) 10 *Humanities and Social Sciences Communications* 1, 1–3.

75 Newell (n 75), 207; G Ayittey (2000), 'Combatting Corruption in Africa: Analysis and Context' in RH Kempe & C Bornewell (eds.), *Corruption and Development in Africa: Lessons from Country Case Studies* (Macmillan, 2000), 104–118.

76 R Theobald, 'Can Debt Be Used to Combat Political Corruption in Africa?' (1997) 27(3–4) *Crime, Law and Social Change* 299, 299.

77 A Alesina & B Weder, 'Do Corrupt Governments Receive Less Foreign Aid?' (2002) 92(4) *American Economic Review* 1126, 1135–6; Transparency International, 'Policy Paper: Poverty, Aid and Corruption' (Transparency International 2007) <https://www.transparency.org/en/press/20070617-transparency-international-discussion-paper-on-poverty-aid-and-cor> (last visited 6 March 2025).

78 Mungiu-Pippidi (n 46).

79 Newell (n 75), 210; J Andvig, 'International Corruption' in M Bull & J Newell (eds.), *Corruption in Contemporary Politics* (Palgrave Macmillan, 2003), 212.

80 M Erie, 'Anticorruption as Transnational Law: The Foreign Corrupt Practices Act, PRC Law, and Party Rules in China' (2019) 67(2) *The American Journal of Comparative Law* 233, 257.

81 M De la Torre, 'The Foreign Corrupt Practices Act: Imposing an American Definition of Corruption on Global Markets' (2016) 49(2) *Cornell International Law Journal* 469, 470.

82 German law against corruption (*Gesetz zur Bekämpfung der Korruption*), s 9(2).

83 French Criminal Code, Art. 435-11-2.

84 Czech Act No. 40/2009 Coll., s 4.

85 Amendment No. 8 of the Criminal Law of 25 February 2011, Arts. 6–8.

86 Law No. 12.846/2013, Art. 1.

87 Cap 201 Prevention of Bribery Ordinance, s 4.

Glencore with seven counts of bribery, for a culture of corruption that surrounded its operations in Africa and South America. It became the first company prosecuted under the prohibition of bribery of the Act and was ordered to pay £280 million.[88]

To conclude: there are numerous international soft and hard law frameworks that attempt to tackle corruption. One of the strongest tools available to states is to adopt extraterritorial anti-corruption laws, allowing the prosecution of corrupt activities conducted abroad. The EU is a part of this trend as well, which is commendable, but it does not fully resolve the problem of transnational corruption. After all, extraterritorial anti-corruption frameworks are an exception rather than the rule – most frameworks remain territorial in character. The missing element, therefore, is the low degree of harmonisation. The following Section will look at the possible measures that the EU can adopt to encourage such change from the angle of trade policy.

## 5 ADDRESSING CORRUPTION THROUGH ROBUST TRADE POLICY

The EU's leadership in the fight for clean trade and the ability to address the novel challenge of transnational corruption depends on whether the EU can leverage its regulatory power to pursue broader geopolitical goals.[89] As Section 2 above argued, the open strategic autonomy policy should point towards an affirmative answer.[90] This Section 5 turns to the possible solutions. It argues in favour of a two-tiered approach. First, the EU should pursue both soft and hard law obligations in its trade agreements. Secondly, those obligations should be enforced through a carrot-and-stick/conditionality approach that is a known and tested tool in international trade.

### 5.1 STRONG ANTI-CORRUPTION PROVISIONS IN EU TRADE AGREEMENTS

Corruption can be tackled through two types of measures: preventing it from occurring in the first place or, if it did occur, taking appropriate measures to investigate and punish it.[91] Investigating and punishing corruption can be addressed primarily through the effective application of domestic law. In this regard, transnationalised corruption can be addressed through the adoption of laws extraterritorially – a solution to some extent already successfully pursued by the EU, its Member States and some other leading economies, as was discussed above in Section 4. Nonetheless, the extraterritorial reach of domestic anti-corruption frameworks is not a universal concept. This is where trade agreements can come into play as tools for promoting effective anti-corruption measures. The inclusion of anti-corruption provisions in trade agreements is a relatively recent phenomenon. Its success cannot be conclusively measured yet, albeit there is some scope for cautious optimism.[92] Nonetheless, those anti-corruption provisions tend to be rudimentary and those found in EU agreements are no exception.

The first issue is what specific anti-corruption provisions should the EU trade agreements contain. The majority of existing international frameworks represent soft law and this includes provisions found in instruments that would be typically thought of as 'hard law'. For example, many international conventions including UNCAC contain non-mandatory wording or wording that is vague. Other soft law instruments include the various guidelines of international organisations.[93]

88 Serious Fraud Office, 'Sentencing Remarks of Mr Justice Fraser' (SFO, 2022) <https://www.judiciary.uk/wp-content/uploads/2022/11/Sentencing-Remarks-Glencore.pdf> (last visited 13 March 2025).

89 E Korkea-aho & P Leino-Sandberg (eds.), *Law, Legal Expertise and EU Policy-Making* (Cambridge University Press, 2022), 171.

90 See generally Godhe (n 15); see also M Rabinovych, 'Standardization of the Rule of Law and Anti-Corruption Clauses in EU Regional Trade Agreements with Developing Countries: Quo Vadis?' in F Duina & C Viju-Miljusevic (eds.), *Standardizing the World: EU Trade Policy and the Road to Convergence* (OUP, 2023), 79–81.

91 Newell (n 75), 125.

92 X Zhang et al., 'Do deep regional trade agreements strengthen anti-corruption? A social network analysis' (2023) 46(8) *The World Economy* 2478, 2502–2503.

93 A Boyle & C Chinkin, *The Making of International Law* (OUP, 2007), 211–214; see for example the various OECD recommendations: OECD, Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (26 November 2009, amended on 18 February 2010) C(2009)159/Rev1/FINAL, C(2010)19; OECD, Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (25 May 2009) C(2009)64; OECD, Recommendation on Bribery and Officially Supported Export Credits (18 December 2006) TD/ECG(2006)24.

Soft law solutions tend not to be implemented fully.[94] Despite these concerns, however, soft law measures have a value in combating corruption by contributing to the establishment of an anti-corruption culture which is one of the best solutions to the problem.[95] Encouraging anti-corruption culture requires a multifaceted approach that includes strengthening civil society organisations, promoting media freedom and citizen engagement. It should also encompass the independence and effectiveness of public sector auditing.[96] Furthermore, tackling corruption necessitates a shift in mindset from viewing corruption solely as a governance or development issue to recognising it as a fundamental obstacle to achieving sustainable development goals. This broader perspective underscores the need for a comprehensive strategy that integrates anti-corruption measures across all relevant sectors and policy areas.[97] Therefore, EU trade agreements should embrace (i) soft law measures and (ii) holistic measures which, although not concerned with corruption directly, strengthen the society and freedoms. This latter measure exceeds what can be achieved through trade agreements and could involve the provision of aid and other capacity-building mechanisms.[98]

Such a multi-faceted approach to anti-corruption was acknowledged by the EU Commission in the context of open strategic autonomy and its aims:

> Global trade rules are in urgent need of being updated to reflect today's economic environment and the challenges the global community faces. Making globalisation more sustainable and fairer should be the underlying driver of trade policy, delivering on the expectations of Europeans and other people around the world. EU trade policy should use all the tools at its disposal to support social fairness and environmental sustainability.[99]

Turning to hard law solutions, the EU trade agreements should first promote extraterritorial anti-corruption laws as discussed in Section 4 above. Such a solution has already been promoted by UNCAC and the OECD Convention.[100] Another example of effective hard law provisions are transparency measures.[101] Transparency provisions can reduce administrative discretion and subject decision-making to scrutiny.[102] Discretionary decision-making is a target of corruption because outcomes are often valuable to individuals or enterprises and the temptation to benefit from the outcome is high.[103] In fact, in many cases, the 'temptation price' of an official will be less than the value of the potential benefit to the interested party.[104] Where greater transparency is created around these processes and decision-making is subject to scrutiny, trade agreements can create a deterrent which may increase the 'temptation price' of officials. The OECD has proposed a framework for transparency in trade agreements, categorising trade-related transparency into the following four policy actions: (i) publishing and notifying relevant information; (ii) allowing scrutiny of decision-making by stakeholders; (iii) ensuring predictability and fairness in the application of rules; and (iv) taking action on corruption and bribery.[105]

94 J Firth, 'When do anti-bribery laws affect international trade?' (2023) 169 *World Development* 1, 3–5.

95 S Wolf & D Schmidt-Pfister, 'Between Corruption, Integration, and Culture: the Politics of International Anti-Corruption‘ in S Wolf & D Schmidt-Pfister (eds.), *International Anti-Corruption Regimes in Europe* (Nomos, 2010), 13; I Yusubboevich, 'Anti-Corruption Culture: Reforms and Main Directions Socio-Philosophical Analysis‘ (2022) 8 *Texas Journal of Multidisciplinary Studies* 50, 53; RR Lutz, 'On Combating the Culture of Corruption' (2004) 10 *Southwestern Journal of Law and Trade in the Americas* 263, 263–268.

96 A Mungiu-Pippidu, 'The Good, the Bad and the Ugly: Controlling Corruption in the European Union' (European Research Centre for Anti-corruption and State-building, 2013), 47–50.

97 M Ronceray & K Sergejeff, 'No Time Like the Present to Fight Corruption: Innovative Practice for a Wicked Development Problem' (ECDPM, 2023), 12–15.

98 R Theobald, 'Can Debt Be Used to Combat Political Corruption in Africa?' (1997) 27(3–4) *Crime, Law and Social Change* 299, 299; Alesina and Weder (n 78), 1135–1136; Newell (n 75), 210; Andvig (n 80), 212.

99 European Commission (n 5), 10.

100 UNCAC, Art. 42; OECD Convention, Art. 4.

101 Tanzi (n 19).

102 Mungiu-Pippidu (n 98), 31.

103 Tanzi (n 19).

104 ibid.

105 I Lejárraga, Multilateralising Regionalism: Strengthening Transparency Disciplines in Trade (OECD Trade Policy Papers, 2013), 15.

In practice, there has been a growth in the number of transparency provisions in trade agreements in recent years.[106] A recent example is the bilateral trade agreement between the EU and Chile, which is pending ratification by Chile.[107] The interim agreement contains extensive provisions on transparency, including a requirement that the parties 'publish promptly in a non-discriminatory and accessible manner, including online, and prior to their application, new laws and regulations related to customs and trade facilitation matters, as well as amendments to, and interpretations of, those laws and regulations'.[108]

However, a considerable share of corrupt activities takes place on a small scale.[109] Such petty corruption is typically well integrated in existing governance and social frameworks, and involves the exchange of relatively small amounts of money in return for minor favours. It is hence too small in scale to distort the central functions of government.[110] By extension, the scale of such corrupt activities is too small for the various foreign agencies to detect and investigate extraterritorially.[111]

The first step, therefore, is for the EU to incorporate more comprehensive anti-corruption provisions in its trade agreements combining soft and hard law commitments, particularly in connection with those states with a higher corruption risk. The Proposed EU Directive on Corruption provides a good reference point as it instructs Member States to adopt extraterritorial anti-corruption frameworks, engage in cross-border cooperation and implement a range of soft law measures such as training. The Directive, of course, cannot be directly transplanted into trade agreements due to its distinct scope and purpose as an intra-EU measure, as well as its connection with the EU court enforcement system, but it provides an inspiration for some available measures.

A different available blueprint of an international trade agreement going further than most in relation to anti-corruption is provided by the US-Mexico-Canada FTA (USMCA).[112] The Agreement follows UNCAC provisions in relation to anti-corruption,[113] with several concrete soft and hard law measures such as the following:

- Reaffirmation of adherence to the leading international anti-corruption conventions including UNCAC, the OECD Convention and the Inter-American Convention Against Corruption ('IACAC')
- Commitment to leading soft law anti-corruption frameworks such as the documents published by the G20 or the Asia-Pacific Economic Cooperation forum
- Prompting state parties to adopt or maintain anti-corruption legislation that criminalises corrupt conduct, including legislation of extraterritorial application
- Promoting national measures that promote transparency of financial transactions such as auditing standards or maintenance of books while penalising activities such as the establishment of off-the-books accounts or the use of false documents
- Promoting states parties to adopt whistleblower protection or discourage facilitation payments

106 M Jenkins, 'Anti-corruption and Transparency Provisions in Trade Agreements' (Transparency International, 2018) <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Anti-corruption-and-transparency-provisions-in-trade-agreements-2018.pdf> (last visited 13 March 2025).

107 See <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/chile/eu-chile-agreement_en> (last visited 19 June 2025).

108 Interim Agreement on Trade between the European Union and the Republic of Chile, Art. 4.13.

109 A Shacklock & F Galting, *Measuring Corruption* (Routledge, 2016), 104; A Lambert-Mogiliansky et al., 'Petty corruption: A game-theoretic approach' (2007) 4 *International Journal of Economic Theory* 273, 273; R Carvajal, 'Large-Scale Corruption: Definition, Causes, and Cures' (1999) 12 *Systemic Practice and Action Research* 335, 340.

110 Shacklock and Galting (n 110), 9.

111 S Kaczmarek & A Newman, 'The Long Arm of the Law: Extraterritoriality and the National Implementation of Foreign Bribery Legislation' (2011) 65 *International Organization* 745, 748–749; D Das, 'Introduction: Policing of Corruption: Exploring Practice through Research' in R Sarre et al. (eds.), *Policing Corruption: International Perspectives* (Lexington Books, 2005), 13–14.

112 C Chijioke-Oforji, 'Regulating Corruption Through Free Trade Agreements: An Analysis of the NAFTA 2.0 Anti-corruption Provisions' (2020) 3 *Transnational Dispute Management* 1, 10–13.

113 Y Yan, 'Returning the Home State to the Global Anti-Corruption Campaign' (2023) 14(4) *Journal of International Dispute Settlement* 469, 476–477.

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- Promoting integrity among public officials including through training, internal policies and reporting obligations
- Measures to involve the private sector and society through education programmes, encouragement of professional associations or NGOs, company management reporting on compliance measures, the freedom to disseminate information concerning corruption and establishment of internal audit controls
- Cooperation between the state parties to USMCA in relation to anti-corruption.[114]

Of course, anti-corruption measures should not be viewed in isolation from other elements which are necessary to ensure clean trade. Therefore, trade policy should also involve considerations relating to the rule of law such as the promotion of an independent judiciary among trade partners. While there are available blueprints and examples that can guide what anti-corruption provisions can be included in future trade agreements, the major obstacle relates to implementation and enforcement of those provisions, which is discussed further immediately below.

### 5.2 ANTI-CORRUPTION AS A CONDITION FOR EU TRADE

National laws of trade partners and governance practices are notoriously difficult to change in the absence of an incentive.[115] While this paper argues that strong anti-corruption provisions are essential to trade agreements, the challenge relates to their successful implementation and enforcement. This Section proposes extending the 'conditionality' or 'carrot-and-stick' mechanisms in trade agreements – which are a known and a tested tool – to anti-corruption provisions.

As has already been discussed, modern corruption is centred on less economically developed states. On this basis, global anti-corruption measures, in an effort to be most effective, should target in particular these weaker links in the global anti-corruption chain. The EU, as a strong business partner of many such key markets and a leading global regulator, would have the gravitas to take such measures and encourage the implementation of anti-corruption culture in consistency with its own open strategic autonomy policy. In doing so, the EU can leverage the asymmetry between it and its foreign partners – the power of the EU to prompt less economically developed states to improve their anti-corruption mechanisms in an effort for them to retain or enhance access to the EU market.[116]

Pursuing governance objectives through trade is not new.[117] EU trade policy has already been used in the past to promote social and environmental norms.[118] In this context a 'carrot-and-stick' or 'conditionality' approach constitutes a punish-and-reward mechanism that promotes change that is otherwise difficult to achieve through the mere aspirational wording of many international instruments. Therefore, the EU could incorporate leverage mechanisms through its trade policy to offer trade incentives, such as tariff preferences, conditional on certain anti-corruption measures, such as those already adopted within the EU as discussed above in Section 5.1.

By virtue of the GATT rules, an approach of directly rewarding anti-corruption measures is restricted, although the EU could incentivise such measures before the trade agreements are in place, for example by refusing to negotiate with non-compliant states. Conversely, a 'stick' approach of punishing for anti-corruption shortfalls appears more feasible as the EU could, for example, sanction its trading partners for non-compliance. The issue is that such measures are currently hardly ever used in practice,[119] albeit this may change with the advent of open

114 United States-Mexico-Canada Agreement (USMCA), Arts. 27.2–27.9.

115 Mungiu-Pippidi (n 46).

116 A Hirschman, *National Power and the Structure of Foreign Trade* (University of California Press, 1945), 17; in the context of African jurisdictions, see generally Gekcekus and Suzuki (n 44), 610.

117 See generally C Damro, 'Market Power Europe and New EU Trade Policies' in J Wouters et al. (eds.), *Global Governance through Trade: EU Policies and Approaches* (Edward Elgar, 2015).

118 For instance, in relation to social norms or environmental protection. See S Koch, 'A Typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union' (2015) 75 *World Development* 97, 100–101.

119 L Beke & N Hachez, 'The EU GSP: A Preference for Human Rights and Good Governance? The Case of Myanmar' in Wouters et al. (n 119), 185–189.

strategic autonomy and the emergence of an internationally assertive EU. Such measures may, however, require some amendments to the EU trade agreements themselves.[120]

The EU is already a world leader in including conditionality clauses in its trade agreements. Such conditionality is commonplace in the EU's neighbourhood and enlargement policy measures. For example, the EU has requested Ukraine to implement seven steps on its path to full EU membership including reform of the judiciary, anti-corruption measures and protection of minorities.[121] However, and with more relevance to anti-corruption, the EU has introduced conditionality into its trade agreements as a method of ensuring the compliance of its trade partners with democratic and human rights values.[122] Such conditionality can be positive or negative. Positive conditionality connotes that certain additional trade benefits are conferred on the trade partner if it complies with certain commitments. Negative conditionality, on the other hand, is stronger and the non-compliance of a trade partner with a norm can lead to the suspension or even termination of the trade agreement.[123]

The EU Generalised Scheme of Preferences Plus (GSP+), a non-reciprocal trading regime unilaterally established by the EU, is an example of a conditionality regime through which prospective lower-middle income countries receive favourable trade conditions – tariff reductions for non-sensitive products. The GSP+ scheme is conditional on the state ratifying 27 international conventions relating to environmental protection, good governance, human rights and labour rights coupled with their adequate implementation. UNCAC is among them and the scheme is an example of positive conditionality.[124] The GSP+ scheme also contains negative conditionality through which preferential treatment may be suspended or withdrawn by the EU if the trade partner is found to have seriously and systematically violated Convention, but the mechanism notably does not extend to UNCAC and many other environmental and governance conventions.[125]

While the inclusion of UNCAC in GSP+ is a welcome development, particularly due to its opt-in character and applicability to less economically developed states, it should nonetheless be noted that participation in GSP+ is far from universal, even if it is aimed at less economically developed states which typically have higher levels of corruption.[126] The problem with transnational corruption, as has been argued in Section 3 above, is that it can exploit jurisdictions with weaker anti-corruption frameworks. Unless the GSP expands more significantly or includes more stringent anti-corruption frameworks, it is unlikely to have a material effect on solving the problem although it does raise awareness of the problem. The negative conditionality element must also be subject to strict enforcement in cases of non-compliance. So far, the GSP+ has only been suspended in relation to four jurisdictions and the suspension never lasted for longer than a few years.[127] Therefore, the GSP+ faces the inefficiency risk of having lax anti-corruption measures whilst also having no teeth through which the commitments are enforced.

However, a more strict and hence effective approach would be to include a conditionality mechanism in the anti-corruption provisions of the individually negotiated trade agreements. Some of the trade agreements already prompt trade partners to enter into international conventions such as UNCAC, but the corruption-related conditionality stops there.[128] Instead, it

120 Such as in clarifying the scope of the 'essential elements' clauses. See N Hachez, '"Essential Elements" Clauses in EU Trade Agreements Making Trade Work in a Way that Helps Human Rights?' (2015) 53 *Cuadernos Europeos de Deusto* 81, 86–87.

121 M Rabinovych & A Pintsch, 'Political conditionality as an EU foreign policy and crisis management tool. The case of EU wartime political conditionality vis-à-vis Ukraine' (2024) *Journal of European Integration* 1, 11–13.

122 K Meissner & L McKenzie, 'The paradox of human rights conditionality in EU trade policy: when strategic interests drive policy outcomes' (2018) 26(9) *Journal of European Public Policy* 1273, 1275; M Szymanski & M Smith, 'Coherence and Conditionality in European Foreign Policy: Negotiating the EU–Mexico Global Agreement' (2005) 43(1) *Journal of Common Market Studies* 171, 177–179.

123 K Smith, 'The use of political conditionality in the EU's relations with third countries: How effective?' (1998) 3(2) *European Foreign Affairs Review* 253, 254–6; Koch (n 119), 99.

124 Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, OJ L 303/1, Art. 9.

125 ibid, Art. 19(1)(a) referring only to Conventions listed in Part A of Annex VIII and not those in Part B.

126 See https://gsphub.eu/country-info.

127 For Myanmar, Belarus, Sri Lanka and Cambodia: J Wouters & M Ovádek, *The European Union and Human Rights: Analysis, Cases, and Materials* (OUP, 2021), 660.

128 P Eeckhout, *EU External Relations Law* (OUP, 2011), 452.

is worth considering how conditionality is deployed in relation to other areas of policy that are subject to stricter conditionality regimes. Human rights commitments in EU trade agreements provide a good example of perhaps the most common good governance measure that is subject to conditionality in all EU trade agreements since the 1990s.[129] For example, some of the more recent EU trade agreements, such as the EU-Armenia Comprehensive and Enhanced Partnership Agreement, provide the following in relation to human rights:

> 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 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.[130]

The Agreement then contains a robust, tiered dispute resolution mechanism applicable to instances of non-compliance of a state party. However, a temporary suspension of trade concessions remains an option in cases of non-compliance with a decision of an arbitrator and is subject to periodic review.[131] The suspension of concessions – negative conditionality – is hence a last resort measure for non-compliance with human rights obligations.

An earlier EU-Central America trade agreement contains simpler clauses relating to non-compliance with agreement obligations, including those related to human rights. The process starts with 30-day consultations between the parties aimed at framing least disruptive solutions to the issue. In cases of material breaches, including breaches of human rights, suspension of the agreement is available as a measure of last resort.[132]

As with the example of human rights, anti-corruption efforts could be integrated more deeply into the conditionality mechanisms of EU trade agreements. As was mentioned, in their current form anti-corruption provisions tend to be rudimentary in EU trade agreements. This risks such anti-corruption provisions becoming merely aspirational, akin to the EU's sustainable development clauses in trade agreements, which are primarily promotional and are subject to limited enforcement mechanisms beyond amicable consultations.[133]

This being said, despite the severity of breaches of human rights allegations, negative conditionality in EU trade agreements has rarely been enforced so far.[134] It could be argued, of course, that taking severe measures in such circumstances could backfire and not contribute to meaningful change. Instead, softer and less adversarial measures should be preferred.[135] Corruption, however, is different from the other non-trade related objectives that trade agreements attempt to address. Corruption has a direct economic impact and, therefore, has the potential to shake the foundations of the EU. For this very reason, corruption is the antithesis of the EU trade policy and in particular its open strategic autonomy ambitions. Also, with the emergence of transnational corruption, mitigation of harm is directly linked to instigating action among trade partners given that the corruption is likely to cross borders into the EU with or without a trade deal.

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129 J Wouters & M Ovádek, *The European Union and Human Rights: Analysis, Cases, and Materials* (OUP, 2021), 666; Commission of the European Communities, 'Communication from the Commission on the inclusion of respect for human rights in agreements between the community and third countries', COM(95) 216 final (Brussels, 23 May 1995).

130 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, Document 22018A0126(01), Art. 2(1).

131 ibid, Arts. 330 and 331.

132 Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other [2012] OJ L 346/3, Art. 355.

133 K Lukas & A Steinkellner, *Social Standards in Sustainability Chapters of Bilateral Free Trade Agreements* (Ludwig Boltzmann Institute of Human Rights, 2010), 10–12. However, recent reforms have begun to introduce stronger enforcement tools, including dispute settlement and potential sanctions. The EU–New Zealand FTA, signed in July 2023 and entering into force in May 2024, is the first to fully integrate this new approach, allowing for the suspension of trade preferences in cases of serious violations of core commitments such as the Paris Agreement and ILO labour standards.

134 J Saltnes, 'The EU's Human Rights Policy: Unpacking the Literature on the EU's Implementation of Aid Conditionality' (2013) 2 *Arena Working Paper* 1, 7.

135 Hachez (n 121), 102.

One can raise at least one objection to the EU taking such 'carrot-and-stick' or conditionality measures. After all, it could be argued that the measures are overly interventionist, and that EU trade is not the right forum for advancing such non-trade related policy.[136] This is where open strategic autonomy comes into play to provide the policy backing for more assertive measures.[137] As the Trade Policy Review acknowledges:

> Supporting multilateralism and being open for cooperation is not in contradiction with the EU being ready to act assertively in defending its interests and enforcing its rights. The EU should strengthen its toolbox as necessary to defend itself against unfair trading practices or other hostile acts, while acting in accordance with its international commitments.[138]

## 6 CONCLUSION

Corruption significantly impacts the economy, causing measurable losses to budgets, reducing international trade and disproportionately affecting the poorest and most vulnerable states. Its consequences are felt across the public and private sectors alike. The problem is aggravated by the internationalisation or transnationalisation of corruption, which has rendered existing local or regional initiatives less effective in addressing the problem in full. As a result, corruption in one location can have a knock-on effect anywhere else in the world. The EU, despite its Member States being among the least corrupt, is not immune to these trends, but, as a leading global regulator and trade partner, it is uniquely well-placed to address the issue.

The majority of existing international frameworks address the issue of corruption only partially. They typically delegate anti-corruption efforts to domestic regulation, but without any corresponding sanction for non-compliance. Although many extraterritorial laws exist, they are only likely to detect the largest instances of corruption, while what is needed is a global implementation of anti-corruption culture. Using trade to pursue such governance objectives provides a viable and tested solution.

At the same time, EU trade policy is changing and moving towards greater assertiveness. The EU should, therefore, use its position of strength as a leader in trade and regulation to double its efforts to project anti-corruption culture onto its trade partners, particularly less economically developed states.

Trade policy can be adjusted to the challenge of internationalised corruption through two complementary solutions. First, the EU trade agreements should contain robust anti-corruption mechanisms that adopt both a soft and hard law approach. Secondly, the EU should expand conditionality in its trade agreements. This conditionality could be both positive and negative. That is, the policy could reward states that adopt robust anti-corruption measures through trade incentives, but also, in appropriate cases, suspend or revoke trade privileges of those states that fall short of their anti-corruption commitments. This carrot-and-stick approach should tackle internationalised corruption better than local, regional or piecemeal measures while being fully in line with the new EU trade policy.

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## COMPETING INTERESTS

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