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Resource Security Through External Trade and Investment – A Human Rights Challenge for the EU

ARTICLES

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ABSTRACT

Resource security, namely the EU's capacity to reduce dependence on third-country imports, diversify supply chains and increase the extraction of raw materials within its territory, is essential for its green and digital transition, as well as for its defence capabilities. Using trade and investment policy as a vehicle, the EU has sought, especially over the past five years, to meet its resource security needs while navigating evolving geopolitical and geoeconomic challenges.

This paper critically examines the Union's choice to advance its resource security objective relying on 'hard' and 'soft' law trade and investment instruments, with particular attention to the human rights implications of raw materials projects in host states. In doing so, it explores the extent to which these instruments include preventative and remedial mechanisms for human rights abuses arising from raw materials mining within and beyond EU borders, and what this means for the EU, which is constitutionally bound to respect and uphold human rights when acting externally. In all, the paper argues that resource security and human rights protection are mutually reinforcing objectives. Yet, this complementarity remains only partially realised, particularly in the context of the EU's non-binding raw materials partnerships, where human rights safeguards are weaker than those found in its trade and investment agreements with third countries.

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1. INTRODUCTION

The European Union's (EU) ambition to become resource secure, namely to reduce dependence on third-country imports, diversify supply chains and increase raw materials extraction within its borders, is central to its economic resilience and to its twin – green and digital – transition.[1] It is also vital for its defence capabilities as a bloc.[2] Pursuant to the EU's Economic Security Strategy adopted in 2023, the extraction, processing and supply of raw materials of 'vital importance for Europe's economic security'.[3] Lithium and cobalt fuel the batteries that store renewable energy, while light rare earth metals like neodymium and dysprosium are the heart of powerful magnets driving wind turbines and electric vehicles. Titanium is crucial for the EU's aerospace industry.[4] These are just a few examples of raw materials deemed 'critical' for the EU, with the full list provided in EU Regulation No 1252/2024, commonly known as the Critical Raw Materials Act (CRMA or the Act).[5]

The EU is one of the biggest raw materials consumers worldwide, but has constantly been exposed to bottleneck supply risks.[6] Illustratively, most of the world's lithium deposits are found in Chile (40%) and Argentina (29%), while 54% of cobalt is extracted from the Democratic Republic of Congo.[7] China possesses the biggest share of the world's processed lithium and cobalt (45% and 46%, respectively).[8]

Bridging the gap between supply and demand of raw materials has been a key driver in the EU's current geopolitical and geoeconomic turn, which requires, as the former High Representative of the European Union for Foreign Affairs and Security Policy, Joseph Borrell, noted in 2020, 'strengthen[ing] all the instruments beyond security and defence, in particular those competences and instruments of the Commission that we have at our disposal' to defend the Union's interests and values on the external plane, thereby ensuring its 'strategic autonomy'.[9] A clear manifestation of this securitisation trend is traced in the field of external trade and investment policy.

Although significant for the EU's resource security, the operation of raw materials projects raises serious human rights concerns. Disputes over land and territorial rights often lead to the forced eviction of indigenous communities.[10] Environmental degradation due to mining activities, in particular, poses health risks to local populations.[11] As for countries like the Democratic Republic of Congo, Zimbabwe, Mozambique and Myanmar, which are simultaneously producers of raw

1 European Commission, 'The European Green Deal' (Communication) COM(2019) 640 final; European Commission, 'European Economic Security Strategy' (Joint Communication) JOIN (2023) 20 final.

2 European Commission, *Critical Raw Materials for Strategic Technologies and Sectors in the EU: A Foresight Study* (2020) <https://ec.europa.eu/docsroom/documents/42881> accessed 18 December 2025.

3 European Commission, 'European Economic Security Strategy' (Joint Communication) JOIN (2023) 20 final 7.

4 Małgorzata Jakimów and others, 'Achieving European Union strategic autonomy: circularity in critical raw materials value chains' (2024) 100(4) International Affairs 1735.

5 Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 [2024] OJ L2024/1252.

6 European Commission, *Study on the Critical Raw Materials for the EU 2023 – Final Report* (Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs 2023) 7.

7 European Commission, *Critical Raw Materials for Strategic Technologies and Sectors in the EU* (n 3).

8 ibid 19.

9 Josep Borrell, 'Why European Strategic Autonomy Matters' (*HR/VP Blog, European Union External Action*, 3 December 2020) <https://www.eeas.europa.eu/eeas/why-european-strategic-autonomy-matters_en> accessed 18 December 2025; Charlotte Beaucillon, 'Strategic Autonomy: A New Identify for the EU as a Global Actor' (2023) 8(2) European Papers 417.

10 This is, for example, documented in 'UN Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people' (21 January 2003) UN Doc E/CN.4/2003/90, 2; 'UN Report of the Special Rapporteur on the rights of Indigenous Peoples, Visit to Denmark and Greenland' (3 August 2023) UN Doc A/HRC/54/31/Add.1, paras 40–41.

11 'UN Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to Denmark and Greenland' (14 November 2018) UN Doc A/HRC/39/48/Add.2, paras 69–74; See also Bárbara Jerez, Ingrid Garcés and Robinson Torres, 'Lithium Extractivism and Water Injustices in the Salar de Atacama, Chile: The Colonial Shadow of Green Electromobility' (2021) 87 Pol Geography 102382.

materials and conflict-affected regions according to the World Bank, human rights abuses are commonplace.[12]

The EU's resource *in*security has grown significantly since COVID-19 and the Russia- Ukraine war.[13] As it increasingly uses trade and investment to meet its resource security needs, the number of raw materials projects contributing to this objective is set to rise. This in turn prompts the following question: do the Union's trade and investment legal instruments provide sufficient political and legal accountability mechanisms to prevent or remedy human rights violations? For present purposes, political accountability refers to the public's meaningful engagement in the decision-making process of raw materials projects, as well as their capacity to shape the EU's decision to pursue its resource security objective through trade and investment. Legal accountability, on the other hand, focuses on access to justice opportunities for individuals and communities who are, or may be, affected by the operation of raw materials projects covered by these instruments.[14]

On the premise that resource security now constitutes a key pillar of the EU's economic security agenda, this paper examines its interconnection with the Union's external policies and objectives and, in particular, with trade and investment (an exclusive Union competence)[15] as well as with human rights protection (an external Union policy objective).[16] This triple nexus is reflected in the EU's bilateral relationships with non-EU countries and the unilateral measures it has recently adopted. Considering, more specifically, the environmental effects of extraction activities on local populations and indigenous communities, the paper focuses on whether and how the EU can prevent or remedy human rights violations within the raw materials supply chain, a topic that remains underexplored in EU legal scholarship. The analysis is limited to human rights breaches arising *from* the operation of mines within the EU or in the territory of its 'resource security' partners. That said, the paper does not directly address the pressing question of whether and to what extent the EU is legally entitled to pursue its resource security objective with countries at war or countries that have been condemned for systematically breaching their international human rights obligations.[17]

In terms of structure, the paper first explores the linkages between resource security – an emerging policy objective of the EU – and human rights protection, which the EU is legally bound to uphold when acting on the international plane (Section 2). Section 3 then maps the main EU trade and investment instruments – both 'soft' and 'hard' – through which resource security is pursued. Finally, Section 4 addresses the extent to which these instruments ensure democratic and legal accountability, both of which are essential for the protection of human rights.

Far from developing a normative argument as to whether the EU should exercise its external competences to address its resource insecurity problem, this paper exposes the extent to which the *means* currently used by the EU to safeguard human rights. Offering a critical account of the state of play, the paper argues that, despite notable efforts, the EU has not yet struck the right balance between resource security and human rights protection.

2. RESOURCE SECURITY AS A UNION POLICY OBJECTIVE

Under customary international law, states are considered to have permanent sovereignty over natural resources.[18] That being the case, the exploration and exploitation of raw materials is,

12 UNEP, 'Critical Transition: Circularity, Equity, and Responsibility in the Quest for Energy Transition Minerals' (Working Paper, October 2024), 15–16 <https://wedocs.unep.org/bitstream/handle/20.500.11822/46623/critical_transitions.pdf?sequence=3&isAllowed=y> accessed 18 December 2025.

13 Lorenzo Cotula, '"Critical minerals": International economic law in a global resource rush' (2023) 15(2) Trade, Law and Development 19, 25–26.

14 Deirdre Curtin and André Nollkaemper, 'Conceptualizing accountability in international and European law' (2005) 36 Netherlands Yearbook of International Law 11.

15 Treaty on the Functioning of the European Union (TFEU) [2012] OJ C326/47, art 207.

16 Treaty on European Union (TEU) [2012] OJ C 202/1, arts 3(5) and 21(1), (2)(b).

17 See, notably, discussions concerning the suspension of the EU-Israel association agreement for breach of human rights.

18 United Nations General Assembly Resolution 1803 (XVII) of 14 December 1962, 'Permanent sovereignty over natural resources'.

like any other natural resource, a state prerogative; located within their territory, they form part of their jurisdiction. This does not mean, though, that resource security is not an EU policy objective or that the EU does not play a role in the management of these resources. As this section will demonstrate, albeit not a standalone policy objective, resource security relates to and is pursued through different policy areas of Union action, both internal and external.

More specifically, a core objective of EU environmental policy is the 'prudent and rational utilisation of natural resources', applying to all raw materials extracted from the Earth.[19] Raw materials also hold economic value as tradeable commodities, whether they have been sourced from within the EU or imported from third countries. That said, their access and supply are associated with the EU's internal market policy as well as its common commercial policy (CCP), the latter encompassing market access and investment liberalisation, protection and facilitation as key components.[20]

The European Commission has flagged the importance of ensuring access to raw materials through trade and investment more than 15 years ago. Under its 2008 Raw Materials Initiative, 'reliable and undistorted' access to raw materials is considered a 'priority in EU trade and regulatory policy'.[21] Driven by the 2019 European Green Deal strategy, which aims to gradually phase out fossil fuels and transition to net zero by 2050, the 2020 Strategy on Raw Materials has elevated raw materials access to a 'strategic security question for Europe's ambition to deliver the Green Deal', emphasising the reinforced role of EU trade policy in achieving resilience of raw materials supply from resource-rich third countries that is sustainable.[22] The strategy further emphasised the importance of 'responsible sourcing', considering that many of its non-EU supplier countries have a low human rights record.[23] Weak governance frameworks, the Commission noted, increase the potential of supply disruption and exacerbate environmental and social problems.[24]

Resource security elements are also included in the 2021 EU Trade Policy Review: the EU shall strive to provide 'undistorted trade and investment in the raw materials and energy goods',[25] which in turn contributes to its objective of 'open strategic autonomy'.[26] Openness, however, cannot trump, as the European Commission underlined, the EU's 'adherence to universal values, notably the promotion and protection of human rights … [including] core labour standards, and social protection in line with the European Pillar of Social Rights, gender equality, and the fight against climate change and biodiversity loss'.[27] More recently, the 2023 Economic Security Strategy brought access to raw materials to the forefront of the EU's effort to strengthen its competitiveness and its economic resilience through joined-up action across internal and external policies, reiterating the commitment to 'open and rules-based trade and investment'.[28] Although the strategy contains a commitment to maintain a 'coherent' approach to economic security,[29] it does not explicitly articulate the connection with the EU's values and non-economic objectives as the 2021 EU Trade Policy Review does.

The EU is legally bound to integrate the principle of sustainable development into its trade and investment policy. In Opinion 2/15, the European Court of Justice (ECJ) recognised that

19 TFEU, art 191(1).

20 The scope of the CCP policy has been determined by the Court of Justice. For an overview, see M Cremona, 'Defining the Scope of the Common Commercial Policy' in M Hahn and G Van der Loo (eds), *Law and Practice of the Common Commercial Policy The first 10 years after the Treaty of Lisbon* (Brill 2020) 47.

21 European Commission, 'The raw materials initiative — meeting our critical needs for growth and jobs in Europe' (Communication) COM(2008) 699 final 2.

22 European Commission, 'Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability' (Communication) COM(2020) 474 final 8.

23 ibid 16.

24 ibid.

25 European Commission, 'Trade Policy Review – An Open, Sustainable and Assertive Trade Policy' (Communication) COM(2021) 66 final 12.

26 Gesa Kübek and Isabella Mancini, 'EU Trade Policy between Constitutional Openness and Strategic Autonomy' (2023) 19(3) European Constitutional Law Review 518.

27 European Commission, 'Trade Policy Review' (n 24) 6.

28 European Commission, 'European Economic Security Strategy' (Communication) JOIN(2023) 20 final 3.

29 ibid 6.

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all aspects of sustainable development fall within the scope of the CCP.[30] It is important to note that the Court arrived at this conclusion based on article 207(1) Treaty on the Functioning of the EU (TFEU), which stipulates that CCP is conducted 'in the context of the principles and objectives of the Union's external action', the latter specified in articles 3(5), 2(1) and (2) Treaty on European Union (TEU).[31] Accordingly, through trade and investment legal instruments, the EU is compelled, among others, to foster economic, environmental and social development in developing countries,[32] as well as consolidate and support human rights and the principles of international law.[33] Furthermore, article 21(3) TEU obliges the EU to ensure *consistency* between the different areas of its external action and between these and its other policies. In that vein, resource security and human rights protection emerge as mutually reinforcing objectives of the EU's trade and investment policy.

For the EU's resource security, only specific raw materials matter. The CRMA defines raw materials as any 'substance in processed or unprocessed state used as an input for the manufacturing of intermediate or final products, excluding substances predominantly used as food, feed or combustion fuel'. Based on their contribution to resource security, raw materials are classified as 'strategic' if they are of 'high strategic importance' for the Union's digital and green transition and defence according to the methodology laid down in Annex I applied by the European Commission.[34] Strategic raw materials are distinguished from 'critical' raw materials (CRMs), which constitute a broader category, including 'strategic' and any other raw material of 'high importance' for the overall Union economy for which there is a high risk of supply disruption.[35]

3. RESOURCE SECURITY THROUGH EXTERNAL TRADE AND INVESTMENT: A CARTOGRAPHY OF LEGAL INSTRUMENTS

In pursuit of its resource security objective which, as the foregoing demonstrates, flows, even if indirectly, from the EU Treaties, the Union relies on a combination of 'hard' and 'soft' trade and investment legal instruments. Although bilateral forms of cooperation are still predominant, there is a growing shift towards unilateralism, combined with a preference for non-binding agreements with third countries.[36] The aim of this section is to provide a cartography of the Union's resource security instruments. To this end, subsection 3.1 focuses on binding EU agreements concluded by the EU using article 207 TFEU as a legal basis (3.1.1), as well as non-binding agreements commonly referred to as raw materials 'strategic partnerships' (3.1.2), followed by the EU's key unilateral instruments (subsection 3.2).

3.1. BILATERAL INSTRUMENTS

3.1.1. 'Hard' law instruments

Leaving aside the EU's efforts to ensure access to raw materials within the World Trade Organization,[37] the EU has extensively used bilateral channels of cooperation for the same purpose since the Lisbon Treaty entered into force and, more precisely, over the last five years.

30 Opinion 2/15 (EU-Singapore FTA), ECLI:EU:C:2017:376, para 147.

31 ibid paras 143–46.

32 Treaty on European Union (TEU) [2008] OJ C115/13, art 21(2), point d.

33 ibid art 21(2), point c.

34 Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020 (Critical Raw Materials Act (CRMA)) [2024] OJ L2024/1252, art 3 and recital 6.

35 ibid art 4.

36 Thomas Verellen and Alexandra Hofer, 'The Unilateral Turn in EU Trade and Investment Policy' (2023) 28(SI) European Foreign Affairs Review 1.

37 Victor Crochet and Weihuan Zhou, 'Critical insecurities? The European Union's strategy for a stable supply of minerals' (2024) 27 Journal of International Economic Law 147, 153–155.

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In more detail, standalone raw materials chapters are incorporated into EU free trade agreements (FTAs) that have been recently negotiated.[38] Illustrative examples are the EU-Chile Interim Trade Agreement, which entered into force on 1 February 2025, and the EU-Mercosur Partnership Agreement with Brazil, Argentina, Paraguay and Uruguay as contracting parties. It is important to note that human rights references included thereunder relate to the protection of the environment and sustainable development. Based on chapter 8 of the EU-Chile Interim Trade Agreement, the parties commit *inter alia* to 'foster[ing] sustainable and fair trade and investment', to 'regulat[ing] within their respective territories in order to achieve legitimate policy objectives in the areas of energy and raw materials', as well as to undertaking environmental impact assessments before authorising raw materials projects in their territory in so far as the latter have a 'significant impact on population, human health, biodiversity, land, soil, water, air or climate, or cultural heritage or landscape'.

Raw materials chapters are accompanied by trade and sustainable development (TSD) chapters of EU FTAs, which include additional references to raw materials. For instance, the EU-Mercosur TSD chapter provides regulatory safeguards for the hosts of raw materials projects, underlining the importance of favouring 'investment and industrial development in raw-material-producing countries'.[39] Further to this, there is an explicit recognition of the need to build 'inter-regional value chains that are responsible, sustainable, transparent, unimpeded and resilient', including 'responsible mining, beneficiation and transformation of metals and minerals which are critical for the energy transition'.[40]

Regardless of whether they are included in a separate chapter of the FTA, as is the case in the Comprehensive Economic and Trade Agreement (CETA) the EU concluded with Canada, or in a standalone investment protection agreement (IPA), their substantive standards protect economic operators active in the raw materials sector during the lifecycle of their investments in the host state. Take, for example, the EU-Singapore and EU-Vietnam IPAs, which have been negotiated and signed alongside FTAs with the same third countries. Given the broad definition of covered investments under these agreements as 'every kind of asset which has the characteristics of an investment', including 'licenses, authorisations, permits, and similar rights conferred pursuant to domestic law, including any concessions to search for, cultivate, extract or exploit natural resources',[41] an EU company granted a resource extraction license from Vietnam or Singapore can take advantage of the regulatory protections provided by the relevant EU IPAs.

Another mechanism that the EU employs to access resource-rich countries is the implementation of sustainable investment facilitation agreements (SIFAs). The first of its kind was signed with Angola in 2024, an African country with significant raw materials reserves.[42] The EU-Angola SIFA does not contain substantive standards of investment protection, but 'aims at facilitating the attraction, expansion and retention of foreign direct investment between the Parties for the purposes of economic diversification and sustainable development'.[43] While an EU IPA with Angola does not exist, several Member States maintain IPAs with the country.[44] This example demonstrates that the EU's resource security can also be pursued through the Member States' trade and investment legal instruments.

38 Colette van der Ven, Sunayana Sasmal and Gabriela Alcántara Torres, 'Towards a Better Balance: Leveraging EU Free Trade Agreements to advance responsible and resilient raw materials trade' (Tulip Consulting 26 June 2024) 11–17 <https://www.transportenvironment.org/uploads/files/2024_06_26_Tulip_study_Towards_a_better_balance_2024-06-26-105606_pwip.pdf> accessed 18 December 2025.

39 Annex to the TSD chapter, art 32.

40 ibid art 32(a).

41 eg EU-Singapore IPA, art 1.2(1)(h).

42 Sustainable Investment Facilitation Agreement between the European Union and the Republic of Angola [2024] OJ L2024/830.

43 Art 2(3) of EU-Angola SIFA clarifies that its provisions do not create or modify existing 'rules' offering substantive and procedural protection of investors in the territories of the parties.

44 eg Portugal-Angola IPA; France-Angola IPA; Italy-Angola IPA; Spain-Angola IPA; Germany-Angola IPA.

3.1.2. 'SOFT' LAW INSTRUMENTS

In addition to the 'hard' law instruments through which resource security is pursued, the Union has adopted soft law instruments which place resource security as their main objective.[45] In most cases, these take the form of a memoranda of understanding (MoU) between the EU, represented by the European Commission, and a resource-rich third country or an overseas territory of the EU (OCT).[46] Commonly referred to as 'strategic raw materials partnerships', they are defined in article 2(63) CRMA as:

> [a] commitment between the Union and a third country or an overseas country or territory to increase cooperation related to the raw materials value chain that is established through a *non-binding instrument* setting out actions of mutual interest, which facilitate beneficial outcomes for both the Union and the relevant *third country or overseas countries or territories* (emphasis added).

Strategic partnerships provide a firm ground for the operation of raw materials projects in third countries as they reduce the regulatory risk for investors and their dependence on political support by the government of the host state.[47] One of their main functions is to strengthen existing bilateral trade and investment agreements between the EU and third countries/OCTs. To give some examples, the EU-Canada raw materials strategic partnership is established 'within the mandate' of the EU-Canada CETA;[48] the EU-Kazakhstan partnership builds upon their Enhanced Partnership and Cooperation Agreement;[49] while the EU-Ukraine partnership is based on the EU-Ukraine Association Agreement.[50]

At the time of writing, the EU has established a total of 14 raw materials partnerships.[51] Unlike the hard law instruments mentioned previously, these are not published in the Official Journal of the EU. Instead, the European Commission maintains a list of all concluded partnerships on its website, accompanied by the full texts of the agreements.[52] While the legal implications of these agreements will be addressed below in Section 4, the difference in their publication formalities already indicates that, under EU law, they do not have the same legal effects as binding international agreements.[53]

In parallel to the EU, Member States negotiate their own raw materials partnerships with third countries, having an obligation to inform the European Commission when the scope of their bilateral cooperation 'includes critical raw materials value chain'.[54] The Canadian government, for example, has negotiated partnerships with a number of EU countries.[55]

Alongside raw materials strategic partnerships, the EU has sought to develop its raw materials diplomacy through the so-called Critical Raw Materials Club that brings together 'consuming

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45 Cecilia Nota, 'The Critical Raw Materials Act and Strategic Partnerships: A Sound Foundation for an Enhanced Geopolitical Role of the European Union?' in Narin Idriz, Eva Kassoti and Joris Larik (eds), *The Legal Implications of the EU's Geopolitical Awakening* (CLEER PAPERS 2025/1) 95.

46 OCTs are sovereign countries with varying degrees of dependence from EU Member States. For example, Greenland is linked to Denmark, French Polynesia and New Caledonia to France.

47 CRMA, recital 65.

48 Framework for a Strategic Partnership on Raw Materials between Canada and the EU, adopted in 2021.

49 Memorandum of Understanding between the Republic of Kazakhstan and the EU on a strategic partnership on sustainable raw materials, batteries and renewable hydrogen value chains, adopted in 2022.

50 Memorandum of Understanding between the EU and Ukraine on a strategic partnership on raw materials, adopted in 2021.

51 The list is available at 'Raw materials diplomacy' (*European Commission*) <https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/raw-materials-diplomacy_en> accessed 18 December 2025.

52 ibid.

53 Case C-181/73, *Haegeman v Belgian State*, EU:C:1974:41.

54 CRMA, art 37(3)(a).

55 Canada's 'critical minerals' strategic partnerships are available at 'Our critical minerals strategic partnership' (*Government of Canada*) <https://www.canada.ca/en/campaign/critical-minerals-in-canada/our-critical-minerals-strategic-partnerships.html> accessed 18 December 2025.

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and resource-rich countries to promote the secure and sustainable supply' of raw materials.[56] In April 2024, the Union also joined the Minerals Security Partnership (MSP) led by the United States, which constitutes a platform of cooperation between resource-rich countries and countries with 'high demand' for raw materials.[57] It is noteworthy that the MSP is open to participation from any country that commits to its guiding principles and, more specifically:

> [t]he principles of sustainable development, including the importance of *human health*, *human rights, internationally recognized worker rights*, good governance, local community benefit, indigenous consultation, stakeholder engagement, financial transparency, supply chain traceability and *accountability*, affordability, the circular economy, and environmental protection.[58]

As for the MSP projects, economic operators must demonstrate *inter alia* responsible stewardship of the natural environment, ensure land acquisition through consultative and participatory processes and meaningful engagement and transparent communication with affected communities. There is also a requirement that they receive accreditation based on 'internationally recognised' environmental and social governance standards.[59] Although the MSP was established under the Biden administration, it has remained intact notwithstanding the election of Donald Trump and his declared intention to reverse the policies of his predecessor.[60]

Finally, special emphasis should be placed on the so-called 'clean trade and investment partnerships' (CTIP) that the European Commission has announced for the first time in its Clean Industrial Deal strategy published in February 2025.[61] Concluded as non-binding agreements (MoUs), they are designed to complement rather than substitute binding FTAs and investment agreements with third countries, CTIPs aim to provide 'a faster, more flexible, and more targeted approach, tailored to the concrete business interests of the EU and its partners' and to better align the EU's external action with its (internal) industrial policy objectives.[62] In March of the same year, the EU announced the negotiation of a CTIP with South Africa to operate under the umbrella of the EU-Southern African Economic Partnership Agreement.[63] Although not focusing on raw materials, the Commission explicitly refers to them as a tool for better managing strategic dependencies and securing access to raw materials.[64]

3.2. UNILATERAL INSTRUMENTS

Turning to the EU's unilateral resource security instruments, two stand out: the recently adopted CRMA and the 2019 Foreign Direct Investment (FDI) Screening Regulation. Although not a 'pure' trade and investment instrument given its internal market legal basis,[65] the CRMA is closely connected to the operationalisation of the EU trade and investment legal instruments analysed above. More specifically, the Act sets up a licensing framework for 'strategic' raw

56 The Club was announced by the European Commission in its 2023 Communication titled 'A secure and sustainable supply of critical raw materials in support of the twin transition' COM(2023) 165 final 8. See also Francesco Findelsen, 'The Club Approach: Towards Successful EU Critical Raw Materials Diplomacy' (Policy Brief, Hertie School, Jacques Delors Centre 31 October 2023).

57 European Commission, 'EU and international partners agree to expand cooperation on critical raw materials' (Press release, 5 April 2024).

58 US Department, Minerals Security Partnership (MSP) Principles for Responsible Critical Mineral Supply Chains (February 2023) <https://www.state.gov/wp-content/uploads/2023/02/MSP-Principles-for-Responsible-Critical-Mineral-Supply-Chains-Accessible.pdf> accessed 18 December 2025 (emphasis added).

59 ibid.

60 Alberto Prina Cerai, 'Mineral (In)Security: Why the Global North Wants Deals on Critical Mineral' ISPI (26 June 2025) <https://www.ispionline.it/en/publication/mineral-insecurity-why-the-global-north-wants-deals-on-critical-mineral-211961> accessed 8 January 2025.

61 European Commission, 'The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation' (Communication) COM(2025) 85 final 17.

62 ibid.

63 European Commission, 'President von der Leyen in South Africa: launches talks on a new trade and investment deal, unveils €4.7 billion Global Gateway package' (13 March 2025) <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_774> accessed 8 January 2026.

64 COM(2025) 85 final 17.

65 TFEU, art 114.

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materials projects relating to extraction, processing and recycling that *meaningfully* contribute to the Union's access to a 'secure and sustainable supply of critical raw materials' and meet specific eligibility criteria and conditions listed in article 7 and annex III.[66]

A project is recognised as strategic by the European Commission after taking into account the opinion of the European Critical Raw Materials Board (ECRMB) established thereunder.[67] Following this, a permit-granting process takes place in the host state.[68] The host of strategic projects can be an EU Member State, a third country or an OCT. This effectively means that the Union-wide licensing framework under the CRMA functionally extends beyond EU borders.

The CRMA also contains specific provisions on strategic partnerships. In particular, within the auspices of the ECRMB, the implementation of existing partnerships and the negotiation of new ones is discussed. These discussions cover their 'consistency and potential synergies with Member States' bilateral cooperation',[69] without affecting the Council's powers under article 218 TFEU. Put differently, the Council retains its right to authorise the opening of treaty negotiations by the European Commission, including the right to 'address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted'.[70] In 2023, for example, the European Commission received authorisation from the Council to negotiate a *binding* strategic partnership with the United States on raw materials, which has not yet been signed.[71] Even so, although the CRMA does not make this explicit – nor does the Commission's proposal provide an indication – it appears that the adoption of non-binding agreements on raw materials has now become the default.

In contrast with the CRMA, the FDI Screening Regulation is a unilateral CCP instrument that contributes indirectly to the EU's resource security objective as it requires EU Member States to screen inward investments in order to protect 'critical European assets against investment that would be detrimental to legitimate interests of the Union or its Member States'.[72] The Regulation provides a non-exhaustive list of sensitive sectors, among which we find the 'supply of critical inputs, including energy or raw materials'.[73] France, for example, screens the likely impact of foreign direct investments on infrastructure, goods or essential services concerning the extraction, processing and recycling of critical raw materials.[74] If the Commission's 2024 proposal for a revised FDI Screening Regulation goes ahead, there will be *mandatory* screening of investments involving raw materials on the basis that they 'may affect security or public order in more than one Member State or in the Union as a whole through an Union target, which does not participate in or receive funds from a project or programme of Union interest'.[75]

66 CRMA, art 6(1)(a) in conjunction with art 5.

67 When the host state is a non-EU country, explicit approval is required. See CRMA, art 7(7)-(9). See the list of strategic projects published by the European Commission in Commission Decision of 25 March 2025 recognising certain critical raw material projects as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council, C(2025) 1904 final <https://webgate.ec.europa.eu/circabc-ewpp/d/d/workspace/SpacesStore/1958718b-21e9-40f4-9c9f-42a58dc4c5a3/file.bin> accessed 18 December 2025.

68 CRMA, s 3.

69 CRMA, recital 64.

70 TFEU, art 218(2)(4).

71 Council Decision (EU) 2023/1560 of 20 July 2023 authorising the opening of negotiations with the United States of America for an agreement on strengthening supply chains for critical minerals [2023] OJ L190/8. On 21 August 2025, the EU and the United Stated, issuing a joint statement agreeing on a Framework Agreement on Reciprocal, Fair, and Balanced Trade and, in this context, committed *inter alia* to strengthening cooperation and action related to the imposition of export restrictions on critical mineral and other similar resources by third countries. See European Commission, 'Joint Statement on a United States-European Union framework on an agreement on reciprocal, fair and balanced trade' (Statement) <https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en> point 11.

72 Regulation of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union OJ L 79 I/1 [FDI Screening Regulation].

73 FDI Screening Regulation, art 4(1)(c).

74 Decree no 2023-1293 of 28 December 2023, entered into force on 1 January 2024.

75 European Commission, Proposal for a regulation on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452, COM (2024) 23 final 8.

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4. RECONCILING RESOURCE SECURITY WITH HUMAN RIGHTS PROTECTION IN EU TRADE AND INVESTMENT LEGAL INSTRUMENTS

While the EU relies on both hard and soft law instruments in its cooperation with third countries on raw materials and, in the majority of cases, multiple instruments apply simultaneously, the *choice* of legal instrument – 'hard' vs 'soft' – and their interconnectedness have considerable legal implications.[76] The analysis below will demonstrate that, far from being a formality, said choice determines the extent to which the public, whether directly or indirectly, can have a say in the decision-making process (Section 4.1). It also provides different possibilities for seeking judicial recourse for affected individuals, local communities and non-governmental organisations (NGOs) representing the public interest (Section 4.2).

4.1. PROTECTING HUMAN RIGHTS THROUGH POLITICAL ACCOUNTABILITY

EU trade and investment policy is a highly politicised area.[77] Particularly since the backlash against the Transatlantic Trade and Investment Partnership (TTIP) with the United States, civil society has become actively engaged in trade and investment policy matters, focusing most of its criticism on the lack of sufficient procedural and substantive safeguards for the EU's regulatory space.[78] A detailed account of the EU's reaction to the breakdown of the TTIP negotiations is beyond the scope of this article.[79] Suffice it here to note that, having taken into account civil society concerns and a number of European Parliament resolutions, the European Commission has updated its trade policy in 2015 – and has continued to do so ever since – with a view to better integrating non-trade and investment objectives in its legal instruments as well as strengthening their enforceability.[80] In tandem, the quest for raw materials has ignited the public debate within the EU, and at the global level, about whether resource-rich countries get out with a 'fair' deal or whether their quest constitutes a 'resource grab'.[81] This has also brought back to the surface criticism against the EU's colonial past,[82] especially considering that former colonies of EU Member States like Greenland are key suppliers of raw materials to the EU.[83]

To a greater or lesser degree, the Union's resource security legal instruments outlined above provide several avenues for political accountability. Most notably, the European Parliament has a veto over the signing and conclusion of binding EU trade and investment agreements.[84] For example, in 2020, the European Parliament openly declared its intention to veto the signing of the EU-Mercosur trade agreement if no legal safeguards on biodiversity conservation were

76 For instance, the EU signed an Association Agreement (AA) with Ukraine in 2014 containing a chapter on mining and materials, followed by a MoU establishing a Strategic Energy Partnership in 2016, a MoU dedicated to Raw Materials in 2021 and a High-Level Industrial and Regulatory Dialogue in 2017 covering, among other things, the extractive sector.

77 Luca Cabras, 'Explaining the Politicization of EU Trade Agreement Negotiations over the Past 30 Years' [2024] Italian Political Science Review/Rivista Italiana di Scienza Politica 1.

78 Sophie Meunier and Kalypso Nicolaidis, 'The Geopoliticization of European Trade and Investment Policy' (2019) 57 Journal of Common Market Studies 103.

79 See, indicatively, Maria Garcia, 'The future of EU trade policy in turbulent times' in Chad Damro, Elke Heins and Drew Scott (eds), *European Futures Challenges and Crossroads for the European Union of 2050* (1st edn, Routledge 2021) 133–34.

80 The first revision was in 2015 with European Commission, 'Trade for All: Towards a more responsible trade and investment policy' (Communication) COM (2015) 497 final.

81 On resource grabbing, see indicatively Francesca Romanin Jacur, Angelica Bonfanti and Francesco Seatzu, *Natural Resources Grabbing: An International Law Perspective* (Brill 2015); Tomaso Ferrando, 'Land Rights at the Time of Global Production: Leveraging Multi-Spatiality and "Legal Chokeholds" (2017) 2 Business and Human Rights Journal 275; Federica Violi, 'Contracting in Land and Natural Resources: A Tale of Exclusion' (2021) 17 International Journal of Law in Context 145.

82 Indicatively, Ntina Tzouvala, 'A False Promise? Regulating Land-Grabbing and the Post-Colonial State' (2019) 32 Leiden Journal of International Law 235; Kalypso Nicolaïdis, Berny Sebe and Gabrielle Maas (eds), *Echoes of Empire Memory, Identity and Colonial Legacies* (Hart Publishing 2014), particularly pt 3; Signe Rehling Larsen, 'European public law after empires' (2022) 1(1) European Law Open 6.

83 Greenland, whose raw materials are critical for the EU's resource security, ceased to be a Danish colony in 1953.

84 TFEU, arts 218(6)(v) and 207(2). See also Markus Krajewski, 'New Functions and New Powers for the European Parliament: assessing the changes of the Common Commercial Policy from the perspective of democratic legitimacy' in Marc Bungenberg and Christoph Hermann (eds), *European Yearbook of International Economic Law*: *Special Issue: Common Commercial Policy after Lisbon* (Springer 2013).

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included.[85] Pursuant to article 218(10) TFEU, the European Parliament also has a right to be informed by the Commission at all stages of the treaty-making process that can be enforced before the ECJ. As the ECJ has held in *Mauritius*, parliamentary treaty scrutiny is an 'expression of the democratic principles on which the European Union is founded', namely that the 'people should participate in the exercise of power through the intermediary of a representative assembly'.[86] This comes in addition to democratic scrutiny at the national level since EU Member States are required to ratify these agreements before they can enter into force, to the extent that they are negotiated and concluded as mixed. However, given that mixity is increasingly supplanted by EU-only action – more specifically, the EU tends to conclude interim 'EU-only' FTAs with third countries to be later replaced by EU mixed agreements – this layer of political accountability is quietly slipping away.[87]

In contrast, strategic partnerships on raw materials and CTIPs provide for less democratic involvement at the EU level. This is because they are adopted outside the procedural framework of article 218 TFEU, thus precluding the European Parliament from having a say during the process.[88] Furthermore, considering that domestic formalities (eg, referenda) for this type of 'informal' treaty-making are rare, if not absent, political accountability at the national level is significantly limited. Expressing its concerns over the lack of effective scrutiny in the context of the EU's raw materials partnership with the Democratic Republic of Congo, the European Parliament stressed the need to increase 'parliamentary oversight and civil society involvement in the preparation, signing and implementation of raw material MoUs and roadmaps'.[89] It must be said, though, that the ECJ has recognised that the Council gets to have a say, from the authorisation of the negotiations to the signing and conclusion of the non-binding agreement.[90]

While the European Parliament is not formally involved in the 'making' of strategic partnerships, the CRMA provides it with certain 'privileges'. First, it always participates as an observer in the ECRMB's discussions. These discussions cover, among other things, the potential for new partnerships and the implementation of existing ones.[91] Second, the Commission has an obligation to inform the European Parliament about the outcome of the ECRMB's discussions.[92] Still though, the CRMA safeguards are not commensurate with a veto right, meaning that the European Parliament cannot block the adoption of a strategic partnership or the licensing of strategic project under the CRMA. Effectively, then, a key weapon of parliamentary scrutiny is the submission of questions by members of the European Parliament to the European Commission in line with its Rules of Procedure.[93] Relevantly, the same day that the latter published its long-awaited list of strategic projects on its website, a question regarding the selection process was tabled.[94]

Although the CRMA guarantees observer status to the European Parliament in the ECRMB, civil society can only take part in the discussions within the ECRMB if invited by its Chair.[95] Of particular note is also that indigenous communities are not explicitly mentioned among the

85 European Parliament resolution of 7 October 2020 on the implementation of the common commercial policy – annual report 2018 (2019/2197(INI)), para 36.

86 Case C-658/11, *Parliament v Council* (Mauritius), EU:C:2014:2025, para 81.

87 Gesa Kübek, *EU Trade and Investment Treaty-Making Post-Lisbon Moving Beyond Mixity* (Hart 2024).

88 Council, Contribution of the legal service, procedure to be followed for the conclusion by the EU of a MoU, Joint Statements and other text containing policy commitments with third countries and international organisations (5707/13, Brussels, 1 February 2013); Andrea Ott, 'Informalization of EU bilateral instruments: Categorization, Contestation and Challenges' (2020) 39 Yearbook of European Law 569.

89 European Parliament resolution of 13 February 2025 on the escalation of violence in the eastern Democratic Republic of the Congo 2025/2553 (RSP), para 14.

90 C-233/02, *France v Commission*, EU:C:2004:173, para 40; C-660/13, *Council v Commission*, EU:C:2016:616, para 42; Thomas Verellen, 'On Conferral, Institutional Balance and Non-binding International Agreements: The Swiss MoU Case' (2016) 3(1) European Papers 1225.

91 CRMA, art 36(2).

92 ibid art 37(4).

93 Rules of Procedure of the European Parliament <https://www.europarl.europa.eu/doceo/document/lastrules/TOC_EN.html?redirect> accessed 8 January 2026.

94 'Criteria for a strategically important project in Sakatti's nature reserve' (Parliamentary question of 25 March 2025) <https://www.europarl.europa.eu/doceo/document/P-10-2025-001239_EN.html> accessed 18 December 2025.

95 CRMA, art 36(3).

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stakeholders that may be invited by the Chair of the ECRMB in its discussions. In any event, they are not entitled to influence the Board's opinion on whether the applicants of strategic projects meet the necessary criteria under the CRMA, let alone block the licensing of a project by the European Commission.[96]

Notwithstanding these, there are certain opportunities for local residents to get involved in the licensing of strategic raw materials projects at the national level given that it is the host state, not the Commission, that ultimately decides whether the operation of strategic projects will actually go ahead.[97] Understandably, where a strategic project is undertaken outside EU borders, the level of political accountability is entirely left to the host state. For strategic projects under the CRMA, a maximum duration cap for public consultations taking place within an EU Member State is set therein.[98] As explained in the Act's recitals, this serves to speed up the licensing process and reduce the regulatory risks associated with it, which clearly favours the economic operators of raw materials projects, not those that may be affected by their operation. In contrast, given that Member States are not prevented from licensing raw materials projects that are outside of the scope of the CRMA, public consultations are mandatory only to the extent that this is required by other Union legislation or national law.[99]

Particular attention must be given to strategic projects licensed under the CRMA despite affecting the livelihoods of indigenous peoples. While their right of 'free, prior and informed' consent (FPIC) – that is to say, the right of indigenous peoples to be consulted prior to the operation of a project within their lands – is recognised in the 169 International Labour Organization (ILO) Convention, the EU's trade and investment legal instruments fall short of effectively safeguarding this.[100] The EU-Chile Interim Trade Agreement, for instance, merely affirms the 'importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities'.[101] Because the EU cannot itself become a party to ILO Convention No 169, which is open only to states, and because most Member States have not ratified it, the Convention is legally binding only on those Member States that are parties to it. Thus, while the European Parliament has urged national governments to take steps towards the full implementation of the 169 ILO Convention, the ratification process is still ongoing for many.[102] Consequently, whether FPIC will ultimately be obtained in the host state remains uncertain.

The European Parliament has strongly emphasised the need for EU economic operators to uphold the FPIC requirement in the past. In 2016, it condemned the continuing operation of a hydraulic dam project in Honduras by an EU-based company that had failed to consult the affected indigenous communities.[103] Specifically, it urged the European Commission and the European External Action Service 'not [to] promote or permit development projects unless they meet the requirement for prior, free and informed consultation with indigenous communities, ensure meaningful consultation of all affected communities and have strong human rights, labour rights and environmental safeguards in place'.[104] In the context of the CRMA, whether FPIC will ultimately be obtained in the host state remains uncertain, however, as the Commission's decision rests on a commitment that is expected to be fulfilled in the future.[105] What is certain is that granting recognition status to three raw materials projects on

96 ibid art 36(7)(c).

97 ibid art 7(7)-(9).

98 ibid art 11.

99 ibid recital 6.

100 On FPIC in general, see, eg, Jane A. Hofbauer, 'Free, Prior and Informed Consent (FPIC)' in Christina Binder and others (eds), *Elgar Encyclopedia of Human Rights* (Elgar 2022).

101 EU-Chile Interim Trade Agreement, art 26.13(3).

102 European Parliament resolution of 3 July 2018 on violation of the rights of indigenous peoples in the world, including land grabbing (2017/2206(INI)) (2020/C 118/03), points 3 and 4.

103 European Parliament resolution of 14 April 2016 on Honduras: situation of human rights defenders (2016/2648(RSP)).

104 ibid recital I and para 9.

105 Sanja Bogojević, 'The European Green Deal, the rush for critical raw materials, and colonialism' (2024) 15(4) Transnational Legal Theory 600, 611–612.

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Sámi lands – an indigenous community – in March 2025 has raised concerns about Sweden's (host state) compliance with the FPIC requirement.[106]

Arguably, the CRMA moves in the direction of compliance with the FPIC requirement to the extent that operators of raw materials projects applying for recognition are compelled to submit a plan to the Commission that includes measures dedicated to meaningful consultations, measures for fair compensation, where appropriate, and measures to address the outcome of consultations.[107] For projects outside the EU, operators are also bound to ensure that their projects will comply with OECD's Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, 'including where referring to the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples'.[108] The plan, however, commits operators to conduct consultations *after* the Commission recognises a project as strategic, and as such, does not guarantee that FPIC will actually be obtained.[109] The recognition of three raw materials projects on Sámi lands in March 2025 has been criticised precisely on these grounds.[110]

4.2. PROTECTING HUMAN RIGHTS THROUGH LEGAL ACCOUNTABILITY

After discussing both the advantages and limitations of political accountability in the EU's resource security instruments, attention now turns to legal accountability. The analysis below shows the extent to which human rights breaches linked to raw materials projects can be subject to judicial review at the international, EU or national level. Although it is generally assumed that non-binding international agreements entail no legal accountability, it is argued that strategic partnerships on raw materials generate legal effects that give rise to enforceable obligations.

Mechanisms of legal accountability are both preventative and remedial, triggered, respectively, before and after a breach of human rights has occurred. To start with the EU's bilateral resource security instruments, a key preventative tool at its disposal is assessing the human rights impacts of EU trade and investment agreements prior to their adoption. Although the European Commission has established the practice of undertaking sustainability impact assessments (SIA) since 1999,[111] the extent to which human rights concerns form part thereof has been debated.[112] Arguably, where a SIA identifies adverse human rights impacts but treaty negotiations nonetheless proceed, an action for annulment could be filed against the Council decision approving the signing and conclusion of the agreement due to failure to ensure consistency with fundamental rights protection as an external policy objective of the EU.

The European Ombudsman has taken the view that, after the Lisbon Treaty entered into force, the conduct of human rights impact assessments at the negotiating stage is implicitly required by articles 3(5) and 21 TEU. On the basis that the latter set out the EU's obligation to pursue human rights protection in its 'relations with the wider world', the SIA is an integral part of the treaty-making process. Not only that, but the obligation to conduct a SIA covering human rights extends, according to the European Ombudsman, to non-binding EU international agreements.[113] By contrast, for the Commission, MoUs and strategic partnerships are not subject to this requirement on the grounds that they do not give rise to legally binding

106 The projects are said to operate in Nunasvaara, in Malmberget and in Kiruna; See also C Österlin and K Raitio, 'Fragmented Landscapes and Planscapes – The Double Pressure of Increasing Natural Resource Exploitation on Indigenous Sámi Lands in Northern Sweden' (2020) 9 Resources 104.

107 CRMA, art 7(1)(j).

108 ibid annex III, point 5(d).

109 Bogojević (n 106) 11.

110 See Carl Österlin and Kaisa Raitio, 'Fragmented Landscapes and Planscapes – The Double Pressure of Increasing Natural Resource Exploitation on Indigenous Sámi Lands in Northern Sweden' (2020) 9 Resources 104.

111 See European Commission, 'Handbook for Sustainability Impact Assessment' (2006) 46.

112 European Ombudsman, '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) (7 July 2021).

113 European Ombudsman, Decision on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding (OI/2/2024/MHZ) (12 April 2024), paras 28–30; Decision on the European Commission's failure to carry out a human rights impact assessment before agreeing to new OECD provisions on export credits for coal-fired electricity generation projects (150/2017/JN) (27 March 2017), para 5.

obligations.[114] Specifically, since they are not concluded in accordance with article 218 TFEU, which sets out the procedural framework of Union treaty-making, they are not assimilated to binding international agreements which are binding on both EU institutions and Member States within the meaning of article 216(2) TFEU. While the ECJ does distinguish between binding and non-binding agreements, its case law nonetheless suggests a horizontal obligation to comply with articles 3(5) and 21 TEU on the part of the EU, thereby reinforcing the position taken by the European Ombudsman mentioned above.[115] Particularly in the aftermath of its landmark *Front Polisario II* judgment, which was delivered in 2024, a failure to assess their human rights impacts can be deemed contrary to primary EU law.[116] In that judgment, the Court of Justice held that the discretion of the Council to sign and conclude an international agreement is not unlimited but circumscribed by its obligation to observe international (human rights) law and, more specifically, the principle of self-determination.[117]

Another technique for minimising violations of human rights is the insertion of substantive safeguards into EU FTAs which the treaty parties are bound to observe. In most cases, human rights provisions are found in TSD chapters, eg a right-to-regulate clause reaffirming the parties' right to legislate for public policy objectives; a clause committing them not to lower their regulatory standards; and explicit references to multilateral agreements relating to human rights, notably the ILO Conventions. More recent agreements further incorporate corporate social responsibility provisions, compelling the parties to adopt due diligence measures domestically, notably to conduct environmental impact assessments prior to the authorisation of raw materials projects.[118] Although this does not, by itself, guarantee that the host state will exercise its right to regulate, it suggests that a treaty party can maintain a regulatory framework that does not provide high standards of human rights protection. The agreements also contain an obligation to improve domestic laws and regulations.[119] That said, considering the framing of said obligation ('shall strive to'), the treaty parties are still left with considerable leeway at the implementation stage.

Furthermore, one indirect approach to safeguarding human rights is to restrict the range of investment protection standards addressed in a dedicated chapter of EU free trade agreements or in EU IPAs entered into with the same country.[120] While there are many drafting variations, there is an ongoing trend to revise the content of investment agreements with a view to recalibrating the rights of foreign investors with the host states' regulatory space, including the right to adopt human-rights-related measures.[121] That is because, under 'old-generation' investment agreements, foreign investors have successfully argued that modifications to the host state's legal framework breached their rights and, in most cases, the standards of fair and equitable and indirect expropriation.[122] Considering the risks of litigation, and in line with its evolving investment protection policy, the EU – and its Member States on their bilateral agreements with third countries – have added several treaty safeguards to their post-Lisbon agreements.[123] In addition, the EU has sought to recalibrate the content of investment

114 Reply of the European Commission to the questions from the European Ombudsman – Strategic initiative SI/5/2023/MHZ on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding (16 February 2024), Case SI/5/2023/MHZ.

115 Case C-660/13, *Council v Commission (Swiss MoU)*, EU:C:2016:616, para 39.

116 Joined Cases C-778/21 P and C-798/21 P, *Front Polisario*, EU:C:2024:833, para 133.

117 ibid para 163.

118 eg EU-New Zealand TSD Chapter, art 19.12.

119 eg EU-Mercosur Partnership Agreement (agreed in principle on 6 December 2024), art 18.2.

120 Caroline Henckels, 'Protecting Regulatory Autonomy through Greater Precision in Investment Treaties: The TPP, CETA and TTIP' (2016) 19(1) Journal of International Economic Law 27.

121 Lise Johnson, Lisa Sachs and Nathan Lobel, 'Aligning Investment Treaties with Sustainable Development Goals Aligning Investment Treaties with Sustainable Development Goals' (2019) 58 ColumJTransnatlL 58, 106.

122 Elsa Sardinha, 'The Right to Regulate Towards a (Not Entirely) New Regulatory Paradigm under Recent FTA Investment Chapters' in Mesut Akbaba and Giancarlo Capurro (eds), *Investment Challenges in Investment Arbitration* (Routledge 2018) 81.

123 Eleftheria Asimakopoulou, 'EU Member States as Distinct Actors from the EU in International Investment Law The case of greening bilateral investment protection treaties after Lisbon' (PhD Thesis, Queen Mary University, submitted in 2024) chs 2 and 3.

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protection standards through joint declarations, signed in parallel with or after the signing of an EU trade and investment agreement with a third country.[124]

In the event of an alleged human rights breach in the host state relating to the operation of a mine, the question is *whether* and *who* can seek recourse to the dispute settlement mechanism included under the EU FTA or EU IPA. Consider the following hypothetical: Chile, which has ratified the 169 ILO Convention, licenses a mine in its territory despite the lack of FPIC. In principle, the EU could trigger the TSD dispute settlement mechanism against Chile in accordance with article 26.20 of the EU-Chile Interim Trade Agreement on the basis that Chile's conduct constitutes a violation of article 26.16(3). Pursuant to this provision, 'each Party shall effectively implement the ILO Conventions ratified by Member States and Chile respectively'. In light of the *Korea-Labour Commitments* dispute,[125] the EU would not need to prove that trade or investment has been affected as a result of the breach committed by Chile.[126] In other words, a breach of the 169 ILO Convention would suffice. Supposing that article 26.20 were activated, the first step would be the opening of consultations between the parties; should these fail, a panel of experts would be appointed to resolve the dispute. In the event that the final report issued by the latter found Chile in breach of its obligations, 'appropriate measures' would need to be implemented in discussion with the EU and in accordance with the procedure laid down in the agreement.[127]

The above scenario differs from when a treaty party has breached its trade and investment obligations but relies on the TSD chapter to justify its breach. In the latter case, the main dispute settlement mechanism as opposed to the abovementioned TSD-specific mechanism would be triggered.[128] In a similar dispute, the panel in Ukraine-*Wood Export Ban* conditioned the interpretative value of the TSD chapter under the EU-Ukraine Association Agreement on their effects on trade, dismissing their status as self-standing obligations.[129] A detailed analysis of the panel's reasoning and the differences with the *Korea-Labour Commitments* panel report falls out of the scope of this article.[130] What these precedents underscore, however, is a more fundamental problem: having separate dispute settlement mechanisms for TSD and non-TSD breaches creates confusion as to the correct legal basis of a dispute with significant implications for legal accountability.[131] To name just one, non-compliance with the final report of the TSD-specific mechanism is typically not sanctioned. The EU-New Zealand FTA is the only FTA to provide, for both dispute settlement mechanisms, trade sanctions in the event of non-compliance with the panels' report.[132] Whether sanctions are appropriate for this type of violations is another question that is open to debate.[133]

For the most part, the EU-Angola SIFA provides the same accountability mechanisms as EU FTAs, ie it is subject to a SIA before its adoption and contains human rights references akin to

124 eg Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States [2017] OJ L11/3.

125 The dispute arose under the TSD chapter of the EU-Korea FTA, following the EU's allegation that South Korea had failed to comply with its labour commitments by not making sustained efforts to ratify core ILO conventions and by inadequately protecting freedom of association and collective bargaining in domestic law.

126 Panel of Experts Proceeding Constituted Under Article 13.15 of the EU-Korea Free Trade Agreement, 'Report of 20 January 2021', paras 68 and 107.

127 EU-Chile Interim Trade Agreement, art 26.16(2).

128 ibid art 31.2.

129 Restrictions Applied by Ukraine on Exports of Certain Wood Products to the European Union, 'Final Report of the Arbitration Panel of 11 December 2020', para 251.

130 See Geraldo Vidigal, 'Regional Trade Adjudication and the Rise of Sustainability Disputes: Korea-Labor Commitments and Ukraine – Wood Export Bans' (2022) 116(3) American Journal of International Law 567.

131 Gesa Kübek, 'Sustainable development chapters in EU FTAs and dispute settlement: lessons learned from Ukraine – Wood Products and Korea – Labour Rights' in Elaine Fahey and Isabella Mancini (eds), *Understanding the EU as a good global actor* (Elgar 2022) 277, 292.

132 EU–New Zealand FTA, art 26.4.

133 Compare Gracia Marín Durán, 'Sustainable development chapters in EU free trade agreements: Emerging compliance issues' (2020) 57(4) CMLR 1031 who is against economic sanctions with Marco Bronckers and Giovanni Gruni, 'Improving the Enforcement of Labour Standards in the EU's Free Trade Agreements' in Denise Prévost, Iveta Alexovicova and Jens Hillebrand Pohl (eds), *Restoring Trust in Trade: Liber Amicorum in Honour of Peter Van den Bossche* (Hart Publishing 2018) 157 who proposes private enforcement.

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those included in the TSD chapters of EU trade and investment agreements. In more detail, commitments to observe international law obligations, including the protection of labour rights and gender equality, to promote 'the uptake by enterprises and investors of corporate social responsibility or responsible business practices' and to 'facilitate and encourage' investments 'in a way that is consistent' with the conservation and sustainable management of forests and marine ecosystems and, more broadly, with 'sustainable production and consumption, in environmental goods and services, and investment of relevance for climate change mitigation and adaptation' are included.[134] An explicit reference to raw materials is found in article 30(4), according to which 'an effective labour inspection system for all economic sectors, including for agriculture and mining activities' shall be maintained by both parties.

Similarly to EU FTAs, inter-state arbitration is available but, unlike FTAs, the EU-Angola SIFA does not subject compliance of its TSD-style provisions to a specialised dispute settlement mechanism.[135] As article 2 stipulates, the agreement does not modify or create new rules on investor protection and investor-state dispute settlement. That said, disputes between the EU and Angola regarding the application of the agreement are first resolved through consultations and, as a last resort, through inter-party arbitration.[136]

Compared to binding EU trade and investment agreements, strategic partnerships on raw materials provide a lower degree of legal accountability. The main reason for this is that all strategic partnerships explicitly provide that their provisions are 'not intended to create rights or obligations under international or domestic law'.[137] However, while such provisions indicate that the partnerships that the EU has so far concluded do not introduce *new* rights or obligations under international law, they do not erase the parties' existing international commitments. To elaborate, a closer examination of the content of strategic partnerships reveals that they all contain cross-references to the parties' binding human rights commitments under existing trade and investment agreements. For example, the EU-Serbia strategic partnership commits the parties to conduct the partnership 'fully in accordance with' the provisions of the Stabilisation and Association Agreement (SAA) and to respect 'the principles of transparency, predictability, and non-discrimination'.[138] What can be inferred from this is that non-compliance with existing obligations included in binding agreements between the EU and the same third country – in this example, the EU-Serbia SAA – can have spill-over effects. In particular, non-compliance with existing human rights obligations can lead to a suspension of the partnership through the 'essential elements' clauses, also known as human rights or democratic clauses.[139]

A drastic mechanism for sanctioning human rights violations in the host state, 'essential elements' clauses are often included in EU framework and association agreements, which, as their title suggests, provide the basis for broad cooperation between the EU and third countries that goes beyond trade and investment. For example, article 763 of the EU-UK Trade and Cooperation agreement commits the parties to respect and uphold human rights and democratic principles in their territory.[140] What makes these clauses stand out is that, unlike non-compliance with the TSD chapters and relevant provisions in the EU-Angola SIFA, when human rights violations are committed by one party, the other party can trigger the essential elements clause and, ultimately, request to suspend the application of the agreement as well as *other* agreements that form part of a 'common institutional framework' of cooperation. As Bartels notes, most framework agreements make this explicit.[141] Where this is not the case, a

134 EU-Angola SIFA, art 33(1).

135 See further Nicolò Andreotti, 'Is EU Investment Policy Fit for Promoting Sustainable Development? Insights from the EU-Angola SIFA' [2024] European Papers 229, 243.

136 EU-Angola SIFA, arts 36–38.

137 ibid 13.

138 Memorandum of Understanding between the European Union and the Republic of Serbia on a strategic partnership on sustainable raw materials, battery value chains and electric vehicles (19 July 2024) 8.

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

140 Art 771 recognises art 763 part of the 'essential elements' of the EU-UK TCA.

141 eg EU-Singapore PCA, art 43(3); Lorand Bartels, 'Assessment of the implementation of the human rights clause in international and sectoral agreements' (In-depth analysis, May 2023) (EP/EXPO/DROI/2022/01 EN) 10–11. The practice of legally connecting EU agreements with third countries is not new. See also the so-called "guillotine clause' of the EU-Switzerland agreements, stipulating that if one agreement is terminated, the rest will also cease to apply six months later.

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linkage clause is provided in that other agreement. Although there are variations in existing treaty practice, the essential elements clause can, in principle, lead to the suspension of the application of a raw materials partnership as a last resort. Beyond suspension, if an essential elements clause is breached, suspension of development aid and cooperation is a classic 'appropriate measure' that is adopted following consultations and political dialogue between the parties; this was the case against Liberia as a party to the Cotonou Agreement.[142]

Despite repeated calls from the European Parliament to trigger these clauses in response to human rights violations in third countries,[143] essential elements clauses have been invoked only in a limited number of cases. More recently, there have been calls to suspend the EU-Israel association agreement due to the rapidly deteriorating humanitarian situation in Gaza in breach of article 2 of the agreement.[144]

Another recent example concerns Rwanda with whom the EU has adopted a raw materials partnership. In February 2025, the European Parliament highlighted that Rwanda failed to observe the commitments under the MoU on raw materials concluded by the EU, namely to promote 'due diligence and traceability, cooperation in fighting against the illegal trafficking of raw materials, and alignment with international environmental, social and governance standards'.[145] As a result, it urged the Council to 'immediately suspend the EU-Rwanda MoU on sustainable raw materials value chains until Rwanda proves that it is ceasing its interference and its exportation of minerals mined from M23-controlled areas'.[146] Although not mentioned in the Parliament's resolution, the EU's partnership agreement with the Organisation of African, Caribbean and Pacific States (OACPS),[147] to which Rwanda is a party, could also be suspended. That is because, pursuant to article 9(7) of the latter, 'respect for human rights, democratic principles and the rule of law shall underpin their domestic and international policies and constitute an essential element', while under article 101(7), human rights breaches constitute a 'case of special urgency' that can lead to suspension. Given that the implementation of the MoU falls within the institutional framework of the EU-OACPS Agreement, and that the MoU expressly reaffirms the parties' commitment to their international obligations, the suspension of both the strategic partnership and the EU-OACPS Agreement could be invoked on the grounds of Rwanda's human rights violations.[148]

As regards the adoption of 'appropriate measures', which activates an institutional framework under the agreement – typically a treaty-based body tasked to decide on this matter – a Council decision is required on the part of the EU in line with article 218(9) TFEU. Qualified majority is the norm, but in certain cases, unanimity is required,[149] eg to suspend an association agreement. It is also noteworthy that, in some cases, the agreements themselves require unanimity when it comes to suspension, posing additional difficulty in achieving consensus. Notable examples are the EU-Canada, EU-Australia and EU-New Zealand agreements.[150]

Beyond the legal accountability that the EU and its treaty partners may incur under the EU's resource security instruments, can economic operators be sanctioned for breaching human rights? Since none of the trade and investment instruments concluded by the EU imposes legally binding obligations on them, it all depends on the host state's accountability mechanisms.

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142 See Council Decision 2003/631/EC of 25 August 2003 adopting measures concerning Liberia under Article 96 of the ACP-EC Partnership Agreement in a case of special urgency [2003] OJ L220/3.

143 Most recently, European Parliament resolution of 11 September 2025 on Gaza at breaking point: EU action to combat famine, the urgent need to release hostages and move towards a two state solution (2025/2852(RSP)), paras 22–23.

144 Suspension is possible via art 79 of the EU-Israel agreement.

145 European Parliament resolution of 13 February 2025 on the escalation of violence in the eastern Democratic Republic of Congo (2025/2553(RSP)), recital Q.

146 ibid para 11.

147 Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part [2003] OJ L2023/2862, which replaces the Cotonou Agreement.

148 Implementation of the MoU is monitored by a working group which itself reports and refers to the political dialogue under the OACP; See also EU-OACP agreement, art 86(2).

149 TFEU, art 218(8).

150 EU-Canada agreement, art 6(a); EU-New Zealand partnership agreements, art 6; EU-Australia framework agreement, art 57(5).

As far as the EU is concerned, due diligence obligations, including respect for human rights, burden economic operators active in the raw materials sector. To start with, a set of obligations is laid down in the Conflict Minerals Regulation and the Corporate Sustainability Due Diligence Directive (CSDDD).[151] It must be said, though, that their scope of application is limited.[152] For instance, the Conflict Minerals Regulation covers only a few raw materials that are listed as 'critical' under the CRMA, namely nickel, copper, aluminium/bauxite and manganese, and only when these are sourced from conflict areas outside the EU.[153] As for the CSDDD, although it applies in principle to upstream activities, including raw materials extraction,[154] its application is subject to size and turnover thresholds.[155]

Looking at these thresholds, the scope of application becomes even narrower. In essence, the Directive applies to large EU companies with more than 1,000 employees and a net worldwide turnover exceeding 450 million euros, large non-EU companies with more than 1,000 employees, as well as companies that do not individually meet these thresholds but are part of a group whose ultimate parent company does.[156] This still leaves outside its scope a significant number of large companies, as well as small and medium-sized enterprises. Notably, an examination of the list of project promoters approved by the Commission reveals that not all companies meet these thresholds.[157] If Omnibus I is adopted – the text has been provisionally agreed in December 2025 – the scope of application of the CSDDD will be further narrowed.[158] Nevertheless, even if operators of CRM projects fall outside the scope of the CSDDD, undertakings elsewhere in their supply chains that are covered by the Directive are required 'to conduct a scoping exercise, based solely on reasonably available information, to identify general areas across their own operations, those of their subsidiaries and, where related to their chains of activities, those of their business partners where adverse [environmental and human rights] impacts are most likely to occur'.[159] Directly or indirectly, therefore, the CSDDD is likely to affect the operation of CRM projects within the EU after being transposed into domestic law by July 2029.[160]

To the extent that economic operators apply for recognition of their projects as strategic under the CRMA, specific due diligence obligations apply. In particular, article 6(1)(c) of the Act stipulates that projects acquire strategic status only if they 'would be implemented sustainably', ie they ensure the 'monitoring, prevention and minimisation of environmental impacts, [and] the prevention and minimisation of socially adverse impacts through the use of socially responsible practices including respect for human rights, indigenous peoples and labour rights'.[161] Annex III of the CRMA lays down the 'elements' and 'evidence' for compliance with the sustainability requirement. Without entering into much detail, sustainability standards apply differently depending on the type of project – extraction, processing or recycling – and

151 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas [2017] OJ L130/1 (Conflict Minerals Regulation); Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L2024/1760 (CSDDD).

152 European Environmental Bureau and others, 'A Turning Point: The Critical Raw Material Act's needs for a Social and Just Green Transition' (10 July 2023).

153 Conflict Minerals Regulation, art 1(1).

154 CSDDD, art 3(1)(g).

155 ibid art 2.

156 ibid arts 2(1)(a), 2(2)(a), 2(1)(b) and 2(2)(b).

157 Available at: 'Selected strategic projects' (*European Commission*) <https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/strategic-projects-under-crma/selected-projects_en> accessed 18 December 2025.

158 Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements 2025/0045 (COD).

159 ibid Annex I, recital 21.

160 The CSDDD is estimated to apply to approximately 6,000 large EU companies and around 900 non-EU companies.

161 CRMA, arts 7 and 6(1)(c).

its location, ie whether it will operate within or outside the EU. In a nutshell, EU-based projects must comply with 'relevant Union law or national law', whereas projects outside the EU are required to adhere to 'applicable national law where that national law provides sufficient assurance of compliance with the [sustainability] criterion or aspects of it', as well as to abide by specific international soft law instruments listed in annex III.[162]

In this regard, what can be considered as a remedial mechanism of human rights breaches is the European Commission's power to withdraw the strategic status of a project if it is no longer sustainable, or if it is found that it had been incorrectly classified as sustainable in the first place. In such case, the project promoter 'shall lose all rights connected to that status'.[163] Although this is not specified in the CRMA, it can be argued that the Member State hosting the relevant project can no longer consider it as having 'priority status' domestically which presupposes, among others, a fast-track licensing process.[164] Be that as it may, even if the Commission concludes that a project is unsustainable, it has the discretion ('may'), not the obligation, to withdraw its status as strategic, which in turn shows that economic operators may escape accountability for human rights breaches.[165]

The foregoing due diligence obligations complement domestic obligations that may be in place for economic operators in the host state. French companies, for example, are required to submit a 'vigilance plan' documenting the measures taken to prevent environmental and human rights harm.[166] Beyond all these, one must not overlook that raw materials projects receiving EU funding are required to respect the human rights standards set out in their financing agreements. Illustratively, the European Bank for Reconstruction and Development (EBRD) has set extensive environmental and social requirements that project operators are required to meet over the period of their investment. These requirements are incorporated into the financing agreements concluded between them and the EBRD.[167]

As far as those affected by economic operators of raw materials projects are concerned, the EU's resource security instruments establish certain procedural safeguards. Notably, through the Single Entry Point (SEP) set up by the European Commission, complaints relating to the implementation of EU trade and investment agreements, including TSD chapters, can be filed. Managed by the Chief Enforcement Officer, SEP receives complaints from EU citizens and, provided that they are based in the EU, by companies, trade unions, labour organisations and NGOs.[168] Additionally, domestic advisory groups (DAGs) established under EU trade and investment agreements, are eligible for lodging a complaint,[169] provided that human rights issues fall within their mandate.[170] One of SEP's shortcomings is that it is not available to non-EU citizens, which feeds into the ongoing debate as to whether SEP's scope should be extended, or whether a specific human-rights complaints mechanism that would also cover strategic partnerships should be established instead.[171]

162 ibid annex III, para 5.

163 ibid art 7(12) and recital 23.

164 ibid arts 10–12.

165 ibid art 7(11).

166 Loi no 2017–399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (French Due Diligence Law).

167 The 2024 Environmental and Social Policy (ESP), arts 6.2 and 6.4 <https://www.ebrd.com/home/news-and-events/publications/institutional-documents/environmental-and-social-policy-2024.html> accessed 18 December 2025.

168 European Commission, Operating guidelines for the Single Entry Point and complaints mechanism for the enforcement of EU trade agreements and arrangements (2003) <https://trade.ec.europa.eu/access-to-markets/en/form-assets/operational_guidelines.pdf> accessed 18 December 2025.

169 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) 10, 20 and 46.

170 Compare, for example, art 24.6(1) of the EU-New Zealand FTA which establishes a broad mandate for DAGs with the Vietnam DAGs that focus on environmental and labour matters only.

171 See, eg, 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 to open public consultation on the Trade and Sustainable Development (TSD) Review' (31 October 2021).

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Beyond filing a complaint which, in any event, does not compensate for the damage incurred, affected individuals have access to the investor-state dispute settlement mechanism (ISDS) of EU IPAs and EU FTAs containing investment protection provisions.[172] Designed to provide procedural protection to foreign investors exclusively, ISDS is triggered against the host state (not vice versa). A typical claim involves a request for compensation due to the adverse effects that domestic legislation has had on a foreign investment, even if pursued for the public interest, eg to protect human rights. Instead, ISDS cannot be triggered by those whose rights of life and health have been breached. Depending on the tribunals' rules of procedure, they could file an *amicus curiae*.[173] Despite calls for increasing the levels of third-party participation in ISDS proceedings as part of the broader reform of the investment treaty system, progress has been minimal so far.[174]

Consequently, the main accountability fora for those affected are provided by the host state of raw materials projects. Since *locus standi* requirements differ, the extent to which individuals and NGOs can receive judicial protection varies. A particular note deserves to be made about the litigation avenues opened under the CRMA. Given that the licensing process takes place at the national level, national courts are tasked to adjudicate claims related to strategic projects. Interestingly, article 9(8) of the Act prescribes that project promoters shall have 'easy access to information on and procedures for the settlement of disputes concerning the permit-granting process for critical raw materials projects', but similar safeguards are not provided to affected individuals, notably those living in the proximity.

Fundamentally, the host state of raw materials projects is responsible for providing access to justice opportunities when human rights allegations are made. At the same time, as the European Commission issues a binding decision on the recognition of projects as 'strategic' in the exercise of its implementing powers under the CRMA, can individuals seek relief against the EU for its share in the harm caused by a mine? Individuals can, in principle, file an action for damages invoking the EU's non-contractual liability,[175] but the regime of joint (or shared, as is often referred to) liability is ambiguous under EU law.[176] In light of the ECJ's case law, unlawful conduct, actual damage and a causal link are the basic requirements to be fulfilled. Although, as recently affirmed by the General Court, even non-binding acts have the potential to give rise to liability,[177] the causality criterion remains strict. Relevantly, a less restrictive interpretation is provided by the Court of Justice, which, in *Kampffmeyer*, a 1967 ruling, upheld an action for damages against the Commission for the way it had exercised its supervisory powers under secondary EU law. In its view, when approving a national measure, the Commission 'is required in respect of each [measure] notified to it to conduct as exhaustive an examination as that required to be made by the Member States and bears independent responsibility' for its failure to do so.[178] By analogy, the Commission's recognition of a project as strategic despite not meeting the sustainability criterion within the meaning of article 6(1)(c) and annex III of the CRMA could give rise to its liability alongside the host state that is responsible for the licensing process.

Apart from an action for damages, individuals and NGOs could seek the annulment of the Commission's recognition decisions through actions for annulment. While this scenario remains hypothetical to date, individuals living in the proximity of a mine allege that a project impacts negatively their right to health and life, rights protected by the European Charter of Fundamental Rights and the European Convention on Human Rights,[179] could pursue this

172 CETA, art 8.18; EU-Vietnam IPA, art 3.1.

173 Nicolette Butler, 'Non-Disputing Party Participation in ICSID Disputes: Faux Amici?' (2019) 66 Netherlands International Law Review 143.

174 Lorenzo Cotula and Nicolás Perrone, 'Reforming investor-state dispute settlement: what about third-party rights?' (IIED Briefing paper, February 2019).

175 TFEU, arts 268 and 340(2).

176 Melanie Fink, 'EU Liability for Contributions to Member States' Breaches of EU Law' (2019) 56 CMLR 1227.

177 Case T-771/20 RENV, *KS and KD*, EU:T:2025:923, para 107.

178 Joined cases 5, 7 and 13 to 24–66, *Firma E Kampffmeyer and others v Commission of the EEC,* ECLI:EU:C:1967:31, 262.

179 Charter of Fundamental Rights of the European Union [2012] OJ C326/391; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

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avenue, albeit not compensatory in nature. In accordance with article 263(1) TFEU, acts of the Commission 'other than recommendations and opinions' are reviewable before the CJEU, thus including implementing decisions binding on their addressees (ie project promoters).[180] In light of the CJEU's interpretation of article 263(4) TFEU, the conditions of legal standing are unlikely to be satisfied.[181] It is, however, possible to reach the CJEU indirectly if litigation is initiated at an EU Member State hosting a raw materials project and the national court files a preliminary reference request concerning the validity of these decisions.[182] It remains to be seen whether disputes relating to the licensing of new raw materials projects within the EU will reach the CJEU any time soon. Undoubtedly, though, with multiple – and often overlapping – avenues for legal accountability currently in place, the scholarly and institutional debate over the very rationale of human rights safeguards under the EU's trade and investment instruments is far from settled.[183]

5. CONCLUSION

An existential challenge for the EU, resource security demands the full mobilisation of its legal powers. As the paper revealed, the number of bilateral and unilateral trade and investment instruments adopted by the EU has grown in recent years with a view to diversifying its supply chain and strengthening cooperation with resource-rich countries. Particularly in the aftermath of the CRMA, with which the EU aims to expand its domestic mining capacity while simultaneously imposing sustainability requirements and due diligence obligations on economic operators active in the raw materials, resource security is placed at the centre of the EU's policy-making.

Building a complex regulatory network comprising binding and non-binding instruments in the name of resource security is not an end in itself, however. 'Critical minerals are a critical opportunity', the Secretary General of the United Nations, António Guterres, noted in April 2024 when he appointed the Panel on Critical Energy Transition Minerals, and 'we cannot replace one dirty, exploitative, extractive industry with another dirty, exploitative, extractive industry'.[184]

Against this backdrop, and in light of the trade and investment instruments analysed in this paper, it is clear that the EU has taken significant steps towards reconciling resource security with the protection of human rights. Yet, despite the inclusion of several substantive and procedural safeguards, significant democratic and legal accountability gaps remain. The argument advanced here is not that accountability mechanisms are absent, nor that the EU merely pays lip service to human rights in its pursuit of raw materials. Rather, the point has been to highlight both the complexity and the interconnectedness of the mechanisms in place – and to stress that their mere existence does not guarantee meaningful protection for affected individuals. Metaphorically, the paper's conclusion can be captured by the Red Queen's advice to Alice in Lewis Carroll's *Through the Looking-Glass*: 'It takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!'.

180 See European Commission, Commission Decision of 25.3.2025 recognising certain critical raw material projects as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council (C(2025) 1904 final) and Commission Decision of 4.6.2025 recognising certain critical raw material projects located in third countries and in overseas countries or territories as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council (C(2025) 3491 final).

181 For an early post-Lisbon critique on the limitations of legal standing see, eg, Steve Peers and Marios Costa, 'Judicial Review of EU Acts after the Treaty of Lisbon' (2012) 8(1) European Constitutional Law Review 82.

182 TFEU, art 267.

183 On this, see Joyce De Coninck and Peter Van Elsuwege, 'Human Rights Respectful Trade' (2024) 42(2) Berkeley Journal of International Law 247, 307–308.

184 United Nations, 'Secretary-General's remarks for the Launch of the Panel on Critical Energy Transition Minerals [As delivered]' (26 April 2024) <https://www.un.org/sg/en/content/sg/statement/2024-04-26/secretary-generals-remarks-for-the-launch-of-the-panel-critical-energy-transition-minerals-delivered> accessed 18 December 2025.

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The author has no competing interests to declare.

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