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Executive Summary

This report is devoted to the mapping of legal and policy instruments of the EU for human rights and democracy support. In particular, it highlights the EU´s human rights priorities in terms of themes and vulnerable groups in its external action based on a review of EU policy documents and literature. In order to do so the report first identifies the instruments that set up the frame of the human rights and democracy policy.

The framework of the EU's human rights and democracy policy is presided by the Strategic Framework on Human Rights and Democracy, which establishes the principles, objectives and priorities that must guide the EU's action. Two general objectives, each with a different scope, can be identified in the Strategic Framework: the EU's and its Member States' commitment to promote the universality of human rights and the EU's determination to promote human rights and democracy in its external action. In addition, the Strategic Framework highlights some areas of action which identify specific objectives and priority themes and groups. Although the Strategic Framework is on human rights and democracy, the emphasis throughout the document is on human rights, not on democracy. Democracy is 'an aspiration' that it is not defined. There are other relevant documents that set out the EU´s human rights and democracy policy. As well as general policy papers on mainstreaming human rights and promoting human rights and democracy in the EU external action, there are specific human rights guidelines on priority themes and vulnerable groups and human rights strategies towards particular third countries.

In order to implement its human rights and democracy policy, the EU has developed a broad range of instruments. Some of them have been especially created in order to contribute to the specific objective of the promotion of human right and democracy worldwide; in particular, the EIDHR, the human rights clauses, the human rights focal points in EU Delegations, the EUSR for Human Rights, election support and the human rights dialogues and consultations. Moreover, the EU uses other traditional instruments of its CFSP to promote human rights and democracy in its relations with third countries. These instruments respond to the EU's objective of mainstreaming human rights and democracy in all its policies and actions toward third countries. Among them, those that should be highlighted are the EU's action in multilateral fora, bilateral political dialogues, démarches and declarations, , CFSP decisions, restrictive measures and, finally, thematic and geographic financial programmes.

Regular assessment of the implementation of the EU's human rights and democracy policy is one of the outcomes stated in the Action Plan. This evaluation of policy is mainly carried out through one specific instrument: the EU's Annual Report on Human Rights and Democracy in the world. In addition, as a consequence of the EU's approach to put human rights at the core of its external action, human rights and democracy promotion constitute also an important part of other EU's Annual Reports relating to other external policies, such as CFSP and Development.

In addition to the general policy on human rights and democracy, the EU has developed specific policies in some priority themes and towards particular vulnerable groups. This report examines them individually starting with a historical perspective and considers the internal and external dimensions and the financial instruments, and the priority themes that have been translated into actions in the Action Plan. It analyses the promotion of freedom of expression online and offline, the promotion of freedom of religion or belief, the implementation of the UN Guiding Principles on Business and human rights, the support for the abolition of the death penalty, the eradication of torture and other cruel inhuman or degrading treatment or punishment, the promotion of administration of justice and compliance with IHL, responding to violations and ensuring accountability, and the effective support to human rights defenders. The majority of them are long-established objectives of the EU's human rights policy, but this does not imply that, since its formation, the EU has always devoted attention to the same particular issues. In fact, the contrary is often the case and in most of the cases the EU follows the development of events at the international level as it identifies key issues. Generally, the identification of the themes as a priority has been accompanied by the adoption of human rights guidelines providing legal and operational guidance to the EU's work in its relations with third countries. However, there are some themes that have not been covered yet by guidelines. This shows the differences in the EU policy developments between the different thematic priorities.

In particular, a thematic area in which coherence of the EU's policies is called into question is the promotion of ESCRs. The EU continually emphasises the need to promote the indivisibility of human rights and the need to protect and promote both civil and political rights and economic, social and cultural rights. However, a trend towards the marginalisation of EU policies in this field, both at domestic and international level, can be identified. Further research will be needed in this regard.

This report analyses as well the most recent and the most important instruments regarding vulnerable groups. In this regard, it focuses on LGBT's, children, Roma, asylum seekers and refugees, persons with disabilities, and women, looking at the applicable legal framework and a historical overview of policy developments and the internal and external EU policies towards these groups. The analysis of EU documents shows that the EU does not conceive vulnerability as an enduring and universal aspect of the human condition, but as something that some particular groups suffer from. In connection with the priority groups identified in the policy formulation documents, the term 'vulnerable groups' is routinely used in the EU policy documents but there is no real reflection on the content of this term. The EU tends to focus on protecting groups in extremely vulnerable situations, but the focus seems to lie less on empowerment of these vulnerable groups, although increased participation is an EU-goal for several of these groups. On the other hand, vulnerability results from the interaction between marginalised groups and dominant groups: vulnerable groups are 'created' by dominant groups. However, the EU human rights and democracy policy documents show little awareness of this dynamic

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List of abbreviations

ACP	African, Caribbean and Pacific group of States
AFSJ	Area of freedom, security and justice
CAT	Convention Against Torture
CFSP	Common Foreign and Security Policy
CIDT	Cruel, inhuman or degrading treatment or punishment
COHOM	Working Party on Human Rights
CoE	Council of Europe
CBC	Cross-Border Cooperation
CSDP	Common Security and Defence Policy
CSOs	Civil Society Organizations
CSR	Corporate social responsibility
DCI	Development Cooperation Instrument
DG	Directorate General
EC	European Commission
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EEAS	European External Action Service
EDF	European Development Fund
EED	European Endowment for Democracy
EEM	Electoral Expert Mission
EIDHR	European Instrument for Democracy and Human Rights
ENI	European Neighbourhood Instrument
ENNHRIs	European Network of National Human Rights Institutions
ENP	European Neighbourhood Policy
EOM	Election Observation Mission
ESCRs	Economic, Social and Cultural Rights
EU	European Union
EUSR	European Union Special Representative
HR	Human Rights
HR/VP	High Representative for Foreign Affairs and Security Policy
HRBA	Human rights-based approach
HRC	Human Rights Council
HRDs	Human Rights Defenders
FoRB	Freedom of religion and belief
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross and Red Crescent
ICT	Information and Communication Technologies
IHL	International Humanitarian Law
IHRB	Institute for Human Rights and Business
ILO	International Labour Organization
LAS	League of Arab States
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
NAP	National Action Plan
NHRI	European group of Nation Human Rights Institutions
NHRIs	National Human Rights Institutions
OECD/DAC	Organisation for Economic Co-operation and Development/Development Assistance

	Committee
ODA	Official Development Assistance
OIC	Organization of the Islamic Conference
OSCE	Organization for Security and Cooperation in Europe
SMEs	Small and medium-sized enterprises
TFUE	Treaty on the Functioning of the European Union
TEU	Treaty on European Union
UNGPs	Guiding Principles on Business and Human Rights

I. Introduction

This report aims to map the European Union (EU) policy and legal instruments for human rights and democracy support. It looks in particular to the EU human rights priorities in terms of themes and vulnerable groups for EU multilateral, regional and bilateral cooperation. The objective of the mapping is to create a basis for the critical assessment that will be conducted under following reports, which will then be looking at whether the aforementioned priority themes and vulnerable groups are effectively and consistently reflected across the range of EU policies.

In order to identify the EU policy instruments and priorities, a systematic review of EU policy documents and literature has been conducted. The mapping has targeted specifically the instruments developed by the European External Action Service (EEAS), Directorate General (DG) DEVCO, DG JUST, DG Home and DG CONNECT. As the end purpose of the project is to help enhance the coherence and effectiveness of the EU human rights policy, the outcome has been presented following a policy analysis perspective.

The research team is composed of researchers from different European Universities, partners in the FRAME project, and bring together many different academic backgrounds. It has raised some conceptual and methodological questions about how to address the report: What is a policy? What are policy instruments? How should the mapping of EU 'legal and policy' instruments be conducted? If the focus of the report is on the EU foreign policy (external action or even external policies for some analysts) should references to the internal dimension be included? To what extent should a normative analysis be incorporated to a, by definition, descriptive mapping exercise?

With regard to the conceptual discussion, the first issue is what a policy is. This is a key question that this report does not pretend to answer but it should be made clear that there is not a single shared understanding or response among the researchers engaged in this report . According to one view, there is no unified EU 'human rights and democracy policy' as such, but a patchwork of instruments which together represent such policy. Other views contend that there is a human rights and democracy policy. From a policy analysis perspective a ´policy' is understood as a deliberate course of (in)-action, selected from possible alternatives, in order to achieve certain outcomes. The policy cycle refers to the process of formulating, implementing and monitoring and evaluating a policy.[1] Either if we refer to the policy field or to one stage or all of the policy cycle, a policy is never to be found in one single document. There is no example of such a single document at the EU level nor at the State level.[2]

There is also some confusion about the conceptualisation of the EU's instruments. In general, policy instruments are understood as 'the actual means or devices governments have at their disposal for

[1] It is important to understand that 'policy' is not a single outcome or event and is usually seen as a cycle, which moves from agenda setting and policy formulation to implementation, monitoring and evaluation.

[2] Other question is that for some foreign policy analysts 'human rights and democracy including the rule of law is not a policy as such but a key issue among others of the foreign policy of the EU'. Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union* (2nd ed Palgrave Macmillan 2014) 135-155.

implementing policies, and among which they must selected in formulating policy'.[3] The choice of a particular policy instrument can be as significant as the choice to issue policy in a certain field. The potential range of policy instruments is vast at all levels of government and the EU is no exception.[4] But in the EU, the actors involved in the policy process do not have complete freedom to select any type of instruments they please. Treaty provisions guide this selection process and determine in many cases what instruments are available to choose from, between legal acts and a wide range of voluntary and coordinative instruments (soft law) of a various range, including for example Common Foreign and Security Policy (CFSP) declarations and Commission papers.

Some authors distinguish four sets of instruments (toolboxes) for promoting human rights and democracy in the EU's foreign policy:[5]

I. CFSP instruments: CFSP declarations and diplomatic activities (both formal and informal démarches), specific human rights dialogues, CFSP decisions (positions that lead to sanctions, civilian crisis management operations, electoral support) to third states and also in a global scale through actions in support of the International Criminal Court, etc. Among the more targeted EU human rights diplomacy the Council has adopted specific 'EU human rights guidelines' for a limited number of priority areas: the death penalty, torture, children and armed conflict. Recently, since the adoption of the Strategic Framework and Action Plan on Human Rights and Democracy (see below, sub-section II.B.1), Human Rights Country Strategies, the EU Special Representative on Human Rights and human rights specialists appointed in EU delegations.

II. Political Framework Agreements with third countries such as Association Agreements and Partnership and Cooperation Agreements which include human rights clauses as regular political dialogues, and the related geographical finantial instruments (the European Neighbourhood Instrument, the Instrument for Development Cooperation and the European Development Fund).

III. The European Instrument for Democracy and Human Rights which is more focused and flexible allowing the EU to work directly with NGOs and international organisations rather than with governmental actors.

IV. Certain internal policies with an external dimension like the fight against the erradication of trafficking of human beings.

[3] Michael Howlett, M. Ramesh and Anthony Perl, *Studying Public Policy: Policy Cycles and Policy Subsystems* (Oxford University Press 2003) 87.

[4] See Esther Versluis, Mendeltje van Keulen and Paul Stephenson, *Analyzing the European Union Policy Process* (Palgrave MacMillan 2011) 55-78.

[5] Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union* (2nd ed Palgrave Macmillan 2014) 135-155. See also Paul James Cardwell, 'Mapping Out Democracy Promotion in the EU's External Relations' (2011) 16 European Foreign Affairs Review 21.

The approach adopted by the report has been to avoid the classification of instruments based on the hierarchy of norms (legal and soft law) and on the different types of competences that give rise to the instruments (CFSP, external policies, internal policies). The focus of the report is on the main instruments in the form of policy documents that shape the human rights and democracy foreign policy, using the policy cycle or stages approach. It will map in particular the EU human rights priorities in terms of themes and vulnerable groups. As the latter can be analysed as a policy area on its own, the differentiation between internal and external, although possible, is not necessarily coherent in all cases. Therefore when it is found relevant, references to the internal dimension of the policy are made.

A note of warning to the reader should be made. There are as many types of policy analyses as there are analysts. In other words, there is not only a single way of achieving this. How one envisages EU policy analysis is shaped inter alia by his or her beliefs, ideas and objectives of the analysis. Individual perceptions of what the EU is will determine how we look at the EU. For example the analysis conducted by a researcher who perceives the EU as a political system with a policy making process and therefore as a unitary actor which is more than the sum of its different parts (the Member States), will differ from the analysis done by a researcher who thinks that the EU is just an international organisation but of a different kind. Although this report has adopted a policy stages approach there are many researchers involved who do not necessarily share the same understanding about the EU and the same perspective about how to look at its policies. This means that some inconsistencies will appear. This should not be considered a weakness but the logical result of a joint effort in a field in which different approaches coexist.

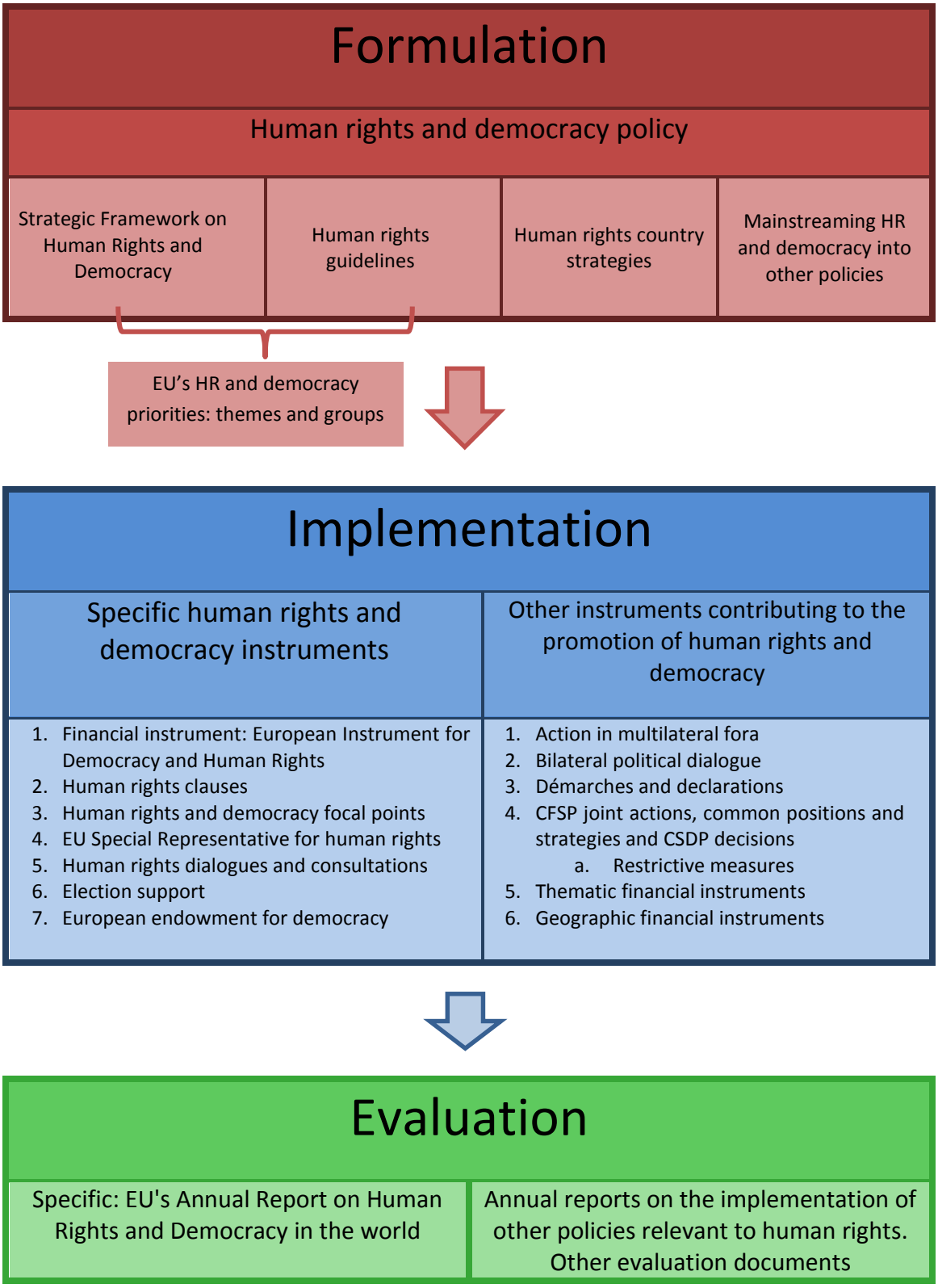
Finally, academics have difficulties in doing a descriptive exercise without including normative statements. To the extent possible these have been made in the concluding sections and in the final part.

To provide an analytical framework as a basis for a critical assessment, this report first identifies in section II the instruments that set up the frame of the human rights and democracy policy; in particular, those in its external action. Then the general instruments for the implementation and evaluation of the human rights and democracy policy are addressed in sections III and IV.

From this starting point the following sections V and VI will deal separately with the human rights priorities in terms of themes and vulnerable groups which are identified in the Strategic Framework and the other main documents that constitute the EU's human rights and democracy policy framework. In this part each priority is analysed as a single unit in terms of formulation and implementation. Nevertheless it should not be forgotten that they are part of the broader general framework of the EU´s human rights and democracy policy detailed in the first part of the report.

Chart 1 shows the overview of this policy framework in its different phases, from formulation to implementation and evaluation.

Chart 1. Human Rights and Democracy Policy Framework



II. EU's human rights and democracy policy framework

A. Introduction

The purpose of this section is to analyse the instruments that set up the frame of the human rights and democracy policy, in particular, those in its external action. The key document where the EU declares the principles, objectives and priorities of its policy in this field is the Strategic Framework on Human Rights and Democracy, adopted by the Council on 25 June 2012. Therefore this section is especially devoted to the study of this document. However there are other relevant documents that set out the EU´s human rights and democracy policy that should also be included. Among these, the general policy papers on which the Strategic Framework builds on and that are mentioned in many EU documents should be differentiated from the human rights guidelines that are adopted in a specific priority theme or towards a vulnerable group and the human rights strategies for countries which set up the framework of the EU human rights policy towards a particular third country.

B. The human rights and democracy policy

1. The strategic framework on human rights and democracy: principles objectives and priorities

The Strategic Framework on Human Rights and Democracy adopted by the Council on 25 June 2012[6] sets, as its name suggests, the framework to guide this fundamental policy area of the European Union. Although the Framework is a short six-page document designed to be as readable as possible, so as to be accessible to all citizens, it sets out the principles, objectives and priorities of EU policy in this field. It is the key document of the EU policy on human rights and democracy.

Human rights, democracy and the rule of law are core values of the EU. Embedded in its founding treaty, they are stated in Art 21.1 of the Treaty on European Union (TEU) which establishes that 'the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms [...]'. These principles were reinforced when the EU adopted the Charter of Fundamental Rights in 2000, and strengthened still further when the Charter became legally binding with the entry into force of the Lisbon Treaty in 2009. Accordingly, the Strategic Framework asserts the Union´s foundation on a 'shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law'.[7] Therefore 'these principles underpin all aspects of the internal and external policies of the European Union'.

[6] Council of the European Union, 'Human Rights and Democracy: EU Strategic Framework and EU Action Plan', 11855/12 [2012] Annex II. (Strategic Framework on Human Rights and Democracy or Strategic Framework).
[7] Strategic Framework on Human Rights and Democracy, 2.

The Strategic Framework provides, according to the Council, 'an agreed basis for a truly collective effort, involving EU Member States as well as the EU Institutions'.[8] It stresses in particular 'a commitment to genuine partnership with civil society'. It builds on the 20 December 2011 Joint Communication of the European Commission (EC) and the EU High Representative for Foreign Affairs and Security Policy (HR/VP): 'Human rights and democracy at the heart of EU external action –Towards a more effective approach' which suggested key elements for a strategic framework: a vision and actions. It sets out a vision of how the EU's external policy on human rights and democracy could be more active, more coherent and more effective, and describes necessary actions in four areas (delivery mechanisms, integrating policies, building partnerships, and speaking with one voice).[9]

The EU policy on this area is based on the following assumptions explicitly expressed in the document:

1. 'Human rights are universally applicable legal norms'.
2. 'Democracy is a universal aspiration'.
3. 'Sustainable peace, development and prosperity are possible only when grounded upon respect for human rights, democracy and the rule of law'.

The Joint Communication on human rights and democracy at the heart of EU external action establishes the link between human rights and democracy in a much more straightforward way:

> 'Human rights and democracy go hand in hand with the empowering freedoms – freedom of expression, association and assembly – which underpin democracy'.[10]

On these premises the Strategic Framework lays out general and specific objectives of the EU policy. The latter are framed in terms of areas of further action which in turn include some particular objectives.

a) General objectives

The EU and its Member States are committed *to promote the universality of human rights.* The EU reaffirms its commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural. With this aim the EU 'calls on all States to implement the provisions of the Universal Declaration of Human Rights and to ratify and implement the key international human rights treaties, including core labour rights conventions, as well as regional human rights instruments. The EU will speak out against any attempt to undermine respect for universality of human rights'.[11]

[8] Council of the European Union, 'EU adopts Strategic Framework on Human Rights and Democracy' 11737/12 PRESSE 285 [2012].
[9] European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, 'Joint communication to the European Parliament and the Council. Human Rights and Democracy at the heart of EU external Action - Towards a more effective approach' COM (2011) 886 final (The Joint Communication on human rights and democracy at the heart of EU external action or the Joint Communication).
[10] Joint Communication Human rights and democracy at the heart of EU external action, 8.
[11] Strategic Framework on Human Rights and Democracy, 4.

The other general objective is *the promotion of human rights and democracy in its external action* as it is reaffirmed in Art 21 of the TEU.

There is a difference in the scope of these general objectives. The commitment to the promotion of human rights encompasses all spheres.[12] Thus, within their own frontiers, the EU and its Member States are committed to be exemplary in ensuring respect for human rights, whilst outside those frontiers, the promotion of human rights and democracy is considered a joint responsibility of the EU and its Member States.[13] Externally the EU seeks to prevent violations of human rights throughout the world and, where violations occur, to ensure that victims have access to justice and redress and that those responsible are held to account. However, the promotion of human rights and democracy should be promoted in the EU external policies.

b) Specific objectives

With the aim of promoting these general policy objectives, the universality of human rights and human rights and democracy in its external policy, the Strategic Framework highlights some areas of action which identify specific objectives and priorities that will be addressed in more detail later in this report.

These are the following:

1. Pursuing coherent objectives in the internal and external areas of the EU's action.
    a. Internally, the EU and its Member States are committed to being 'exemplary in ensuring respect for human rights', and outside those frontiers, the promotion of human rights and democracy is considered a 'joint responsibility of the EU and its Member States.'[14]
    b. Externally, 'the EU seeks to prevent violations of human rights throughout the world and, where violations occur, to ensure that victims have access to justice and redress and that those responsible are held to account. To this end, the EU will:
        i. step up its efforts to promote human rights, democracy and the rule of law across all aspects of external action.'
        ii. strengthen its capability and mechanisms for early warning and prevention of crises that are liable to entail human rights violations.
        iii. deepen its cooperation with partner countries, international organisations and civil society, and build new partnerships to adapt to changing circumstances.
        iv. strengthen its work with partners worldwide to support democracy, notably the development of genuine and credible electoral processes and representative and transparent democratic institutions at the service of the citizen.'

[12] *Ibid*.
[13] Strategic Framework on Human Rights and Democracy, 4-5.
[14] Strategic Framework on Human Rights and Democracy, 4-5.

2. The EU will promote human rights in all EU external policies. In particular:
    a. 'It will integrate the promotion of human rights in trade, investment, technology and telecommunications, Internet, energy, environment, corporate social responsibility and development policy as well as in Common Security and Defence Policy and the external dimensions of employment and social policy and the area of freedom, security and justice, including counter-terrorism policy.'
    b. 'In the area of development cooperation, a human rights-based approach will be used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations.'

3. Implementing EU priorities on human rights, and reinforcing the EU's commitment to the promotion of these priorities, will:
    a. 'promote freedom of expression, opinion, assembly and association, both on-line and offline; democracy cannot exist without these rights.'
    b. 'promote freedom of religion or belief. '
    c. 'fight discrimination in all its forms through combating discrimination on grounds of race, ethnicity, age, gender or sexual orientation.'
    d. 'advocating for the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities.'
    e. 'continue to campaign for the rights and empowerment of women in all contexts through fighting discriminatory legislation, gender-based violence and marginalisation.'
    f. 'intensify its efforts to promote economic, social and cultural rights.'
    g. 'strengthen its efforts to ensure universal and non-discriminatory access to basic services with a particular focus on poor and vulnerable groups.'
    h. 'encourage and contribute to implementation of the UN Guiding Principles on Business and Human Rights.'
    i. campaign against the death penalty and torture.
    j. promote the right to a fair and impartial administration of justice, 'essential to safeguard human rights.'
    k. 'promote observance of international humanitarian law (IHL).'
    l. fight against impunity for 'serious crimes of concern to the international community, including sexual violence committed in connection with armed conflict, and through its commitment to the International Criminal Court.'
    m. support human rights defenders and 'step up its efforts against all forms of reprisals.'
    n. effectively engage with civil society.

4. Working with bilateral partners:
    a. 'The EU will place human rights at the centre of its relations with all third countries, including its strategic partners.'

b. The EU's policy on human rights will be tailor-made for the circumstances of each country, including the development of a country's human rights strategies.
c. 'The EU will always seek constructive engagement with third countries; in this light:'
    i. it 'will continue to deepen its human rights dialogues and consultations with partner countries and will aim to ensure that these dialogues lead to results.'
    ii. it 'will raise human rights issues vigorously in all appropriate forms of bilateral political dialogue, including at the highest level.'
    iii. it 'will work with partner countries to identify areas where EU geographic funding instruments can be used to support projects which bolster human rights, including support for human rights education and training.'
d. 'When faced with violations of human rights, the EU will make use of the full range of instruments at its disposal, including sanctions or condemnation.'
e. 'The EU will step up its effort to make best use of the human rights clause in political framework agreements with third countries.'
f. 'Human rights will remain at the heart of the EU's enlargement policy.'

5. Working through multilateral institutions which can monitor impartially the implementation of human rights standards and ensure accountabiliyt of violating States. In particular:
    a. The EU will 'speak out in the United Nations General Assembly, the UN Human Rights Council and the International Labour Organisation against human rights violations.'
    b. The EU will 'contribute vigorously to the effective functioning of the Human Rights Council' and will cooperate with countries from all regions to this end.
    c. 'The EU and its Member States are committed to raising Universal Periodic Review (UPR) recommendations which have been accepted as well as recommendations of treaty monitoring bodies and UN Special Procedures, in bilateral relations with all third countries' and to 'ensure implementation of such recommendations within their own frontiers.'
    d. The EU will continue its engagement with the Council of Europe and the OSCE.
    e. It will work in partnership with regional organisations such as the African Union, ASEAN, SAARC, the Organisation of American States, the Arab League, the Organisation of Islamic Cooperation and the Pacific Islands Forum, with a view of 'encouraging the consolidation of regional human rights mechanisms.'

6. Working together:
    'While respecting their distinct institutional roles, it is important that the European Parliament, the Council, the Member States, the European Commission and the European External Action Service (EEAS) commit themselves to working together ever more closely to realise their common goal of improving respect for human rights.'

As described above under the section titled 'Implementing EU priorities on human rights' the Framework mentions themes and groups which are a priority for the EU. These can be used as a check-list to assess to which extent the EU human rights policy prioritises what should be prioritised according to human rights standards and to what extent these priorities are addressed in the accompanying Action Plan. The chart below compares the priorities identified in the Strategic Framework with the ones adopted in the Action Plan:

Chart 2. EU's Priority themes and groups: the Strategic Framework vs. the Action Plan

PRIORITY THEMES and GROUPS	
STRATEGIC FRAMEWORK **Implementing EU priorities on HR**	**ACTION PLAN** **V. Implementing EU priorities on HR**
Promote freedom of expression, opinion, assembly and association, both on-line and offline; democracy cannot exist without these rights.	Outcome 24: Freedom of expression online and offline. Actions 24 a), b), c), d).
Promote freedom of religion or belief.	Outcome 23: Freedom of religion or belief. Actions 23 a), b), c).
Fight discrimination in all its forms through combating discrimination on grounds of race, ethnicity, age, gender or sexual orientation.	Outcome 22: Enjoyment of human rights by LGBT persons. Actions 22 a), b).
Advocating for the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities.	Outcome 19: Promotion and protection of children's rights. Actions 19 a), b), c), d). Outcome 28: Promote the respect of the rights of persons belonging to minorities. Action 28. Outcome 29: A strengthened policy on indigenous issues. Action 29. Outcome 30: Enjoyment of human rights by persons with disabilities. Action 30 a), b).
Continue to campaign for the rights and empowerment of women in all contexts through fighting discriminatory legislation, gender-based violence and marginalisation.	Outcome 20: Protection of the rights of women, and protection against gender-based violence. Actions 20 a), b), c), d), e).
Intensify its efforts to promote economic, social and cultural rights	
Strengthen its efforts to ensure universal and non-discriminatory access to basic services with a particular focus on poor and vulnerable groups.	
Encourage the implementation of the UN Guiding Principles on Business and Human Rights.	Outcome 25: Implementation of the UN Guiding Principles on Business and Human Rights. Actions 25 a), b), c).
Campaign against the death penalty and torture.	Outcome 16: Abolition of the death penalty. Actions 16 a), b), c). Outcome 17: Eradication of torture and other cruel, inhuman or degrading treatment or punishment. Actions 17 a), b), c).

Promote the right to a fair and impartial administration of justice, essential to safeguard human rights.	Outcome 26: Administration of justice. Actions 26 a), b).
Promote observance of international humanitarian law (IHL).	Outcome 21. Compliance with IHL. Actions 21 a), b), c), d).
Fight against impunity for serious crimes of concern to the international community, including sexual violence committed in connection with armed conflict, and through its commitment to the ICC.	Outcome 27: Responding to violations: ensuring accountability. Actions 27 a), b), c).
Support human rights defenders and step up its efforts against all forms of reprisals.	Outcome 18: Effective support to human rights defenders. Actions 18 a), b), c).
Effective engagement with civil society	

Chart 2 shows that not all of the priorities identified in the Strategic Framework are translated into actions in the Action Plan. In this regard, the Action Plan:

- refers only to freedom of expression online and offline while the Strategic Framework includes freedom of expression, opinion, assembly and association;
- limits the fight against discrimination to the protection of rights of the LGBT persons;
- does not establish actions regarding the protection of refugees and migrants; and
- does not identify actions for some priority themes of the Strategic Framework (promotion of ESCRs, non-discriminatory access to basic services and engagement with civil society), although these themes are addressed under other areas of the Strategic Framework.

Thus, further research will be necessary in order to determine to what extent those themes and groups that do not have actions under the Action Plan are real priorities for the EU's human rights and democracy policy and what factors explain this different treatment.

2. Strategic framework background documents

The Strategic Framework builds on some documents which are still considered main documents for the EU's human rights policy formulation. This section will be devoted to the study of those documents, including those formulated within the framework of other EU policies relevant to human rights and democracy.

a) The European Commission and Special Representative joint communication entitled 'human rights and democracy at the heart of EU external action'

As mentioned before, the Strategic Framework builds on the Joint Communication entitled 'Human rights and democracy at the heart of EU external action – Towards a more effective approach'.[15] This was adopted by the European Commission on 12 December 2011 following a proposal by Catherine Ashton. It was in turn the result of a lengthy process of consultations, dating back to the informal meeting of the EU foreign ministers (Gymnich) at Cordoba in March 2010.

[15] See fn (n9).

The objective of this Joint Communication was to open a dialogue between the European institutions in order to make the EU's external policy on human rights and democracy more active, coherent and effective and it should be considered as a fundamental step in the development of an EU human rights strategy for its external action. It proposes further action in four areas:

(i) delivery mechanisms, through the development of tailor-made approaches to maximise the impact on the ground; the identification of cross-cutting themes; the promotion of the new approach towards neighbours based on mutual accountability and commitment to the universal values of human rights, democracy and the rule of law; and the reinforcement of the partnership with civil society;

(ii) integrating policies, by means of the development of a joined-up approach to policy in order to ensure that all EU external policies relevant to human rights and democracy and the actions developed in its framework continue to be fully compatible with the respect, protection and promotion of human rights;

(iii) building partnerships, through the reinforcement of multilateral and regional cooperation; the promotion of International Justice; the improvement of the effectiveness of human rights dialogues and consultations; and responding to serious human rights violations through the adoption of targeted restrictive measures and, finally;

(iv) speaking with one voice, in order to harness Europe's collective weight in the way that it deals with human rights and democracy in its external action.[16]

This communication is based on the Commission Communication entitled 'The European Union's role in promoting human rights and democracy in third countries' which was adopted in 2001, ten years before the Joint Communication.[17] In this Communication the Commission identified three essential objectives of the EU's action at that time:

- The EU seeks to uphold the universality and indivisibility of human rights – civil, political, economic, social and cultural – as reaffirmed by the 1993 World Conference on Human Rights in Vienna.
- The EU also upholds the principle that the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights, as reaffirmed by the 1995 Beijing Declaration and Platform for Action.
- The promotion of pluralistic democracy and effective guarantees for the rule of law and the fight against poverty.[18]

[16] Joint Communication Human rights and democracy at the heart of EU external action, 7-18.
[17] Communication from the Commission to the Council and the European Parliament, 'The European Union's role in promoting human rights and democratisation in third countries' COM (2001) 252 final.
[18] *Ibid*, 3.

Moreover, the Commission proposed three areas for effective action:

- 'Promoting coherent and consistent policies in support of human rights and democratisation: This applies both to coherence between European Community policies, and between those policies and other EU action, especially CFSP. It also relates to the promotion of consistent and complementary action by the EU and Member States, in particular in the promotion and mainstreaming of human rights through development and other official assistance;
- Placing a higher priority on human rights and democratisation in the European Union's relations with third countries and taking a more pro-active approach, in particular by using the opportunities offered by political dialogue, trade and external assistance;
- Adopting a more strategic approach to the European Initiative for Democracy and Human Rights, matching programmes and projects in the field with EU commitments on human rights and democracy'.[19]

b) The 2009 Council conclusions on democracy support in the EU's external relations – towards increased coherence and effectiveness

The 2009 Council Conclusions on Democracy Support in the EU's External Relations – Towards Increased Coherence and Effectiveness, where the Council adopted an EU Agenda for action on Democracy Support in EU external relations,[20] is also a fundamental document in particular with regard to the EU´s stance on democracy. The Conclusions set forth the common values, norms and central principles that constitute the basis of the EU's action on democracy support. It is a relevant document because they are not included in the Strategic Framework.

Among these values, norms and principles, the following should be highlighted:[21]

- Human rights and democracy are inextricably connected so that only in a democracy can individuals fully realise their human rights and only when human rights are respected can democracy flourish.

- 'Progress in the protection of human rights, good governance and democratisation is fundamental for poverty reduction and sustainable development.'

- Democracies share certain common features, including respect for human rights and fundamental freedoms. Special attention should be paid to the principle of non-discrimination which requires that 'everyone is entitled to enjoyment of all human rights without discrimination as to race, sex, language, religion, political or other opinion, national or social origin, birth or other status.'

[19] *Ibid*, 5.
[20] Council of the European Union, 'Council Conclusions on Democracy Support in the EU's External Relations – Towards increased Coherence and Effectiveness' 16081/09 [2009], 11. (EU Agenda for action on Democracy Support in EU external relations).
[21] *Ibid*, 6-9.

- 'Democracy, democratic governance, development and respect for all human rights civil, cultural, economic, political and social are interdependent and mutually reinforcing.'

- NGOs and other non-state actors of partner countries play a 'vital role as promoters of democracy, social justice and human rights.'

c) Mainstreaming human rights across CFSP and other EU policies

The EU's action in the CFSP has to pursue the general objectives of the EU's external action, and among them, to 'consolidate and support democracy, the rule of law, human rights and the principles of international law'.[22] In 2006, the Council produced a note on mainstreaming human rights across CFSP and other EU policies, calling for the use of all the CFSP tools, assistance agreements and CSDP missions for raising human rights issues in the EU's relations with third countries. The Council also pointed out the need for establishing a link between all EU policies, including technical cooperation and development and the external dimension of AFSJ, and the promotion and defence of human rights.[23] In 2008, the Council also published a Compilation of EU instruments regarding mainstreaming of human rights and gender in ESDP.[24]

The strong link between security and human rights was emphasised by the 2003 European Security Strategy. According to it, 'spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order'.[25] The 2008 Report on the Implementation of the European Security Strategy: Providing Security in a Changing World, confirmed this approach, highlighting the need to continue mainstreaming human rights issues in all activities in this field, including Common Security and Defence Policy (CSDP) missions, through a people-based approach coherent with the concept of human security.[26] The Joint Communication human rights and democracy at the heart of EU external action highlights that the EU has to 'strengthen the focus on the human rights situation and on the respect for fundamental freedoms in its conflict risk analysis and in its early warning systems' and to 'reinforce its efforts to mainstream human rights and fundamental freedoms in its conflict prevention, crisis management and peace building activities.'[27]

[22] Consolidated version of the Treaty of European Union [2012] OJ C 326/13, Arts 23 and 21.2.b) (TEU).
[23] Council of the European Union, 'Mainstreaming human rights across CFSP and other EU policies' 10076/06, [2006], 2-6.
[24] Council of the European Union, 'Mainstreaming human rights and gender into European Security and Defence Policy. Compilation of relevant documents' (European Communities, 2008).
[25] European Council, 'A secure Europe in a better world. European Security Strategy' [2003] <http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC7809568ENC.pdf> accessed 23 July 2014, 10.
[26] European Council, 'Report on the Implementation of the European Security Strategy. Providing Security in a Changing World' S407/08 [2008], 10.
[27] Joint Communication Human Rights and Democracy at the heart of EU external action, 13.

In this regard, the Council's 2010 report Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions,[28] together with the Strategic Framework and Action Plan on Human Rights and Democracy and the EU guidelines on human rights,[29] have become the reference documents for the EU in this field. After the adoption of the Action Plan in 2012, major developments have been implemented such as the creation of an internal task force on human rights and gender mainstreaming in CSDP, further development of training modules on human rights, child protection and gender and the development of a conflict early warning system.[30] In 2012 the Council completed its review of the Implementation of UNSCRs on Women, Peace and Security in the context of CSDP missions and operations, adopted in 2008, which adds to the broad list of documents on human rights and gender mainstreaming in CSDP.[31]

In connection with development policy, the Strategic Framework on Human Rights and Democracy expressly states that a human rights-based approach (HRBA) must be used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations.[32] The European Consensus on Development adopted in 2005 has the objective, among others, of mainstreaming cross-cutting issues, including human rights and democracy, in the EU's development cooperation policy.[33] In 2012, the 'European Parliament Resolution, Agenda for Change: the future of EU development policy' also came back to the idea of a HRBA for the entire EU cooperation process. Finally, the 2001 Council Conclusions on the Commission's Communication entitled 'The European Union's role in promoting human rights and democratisation in third countries' should also be mentioned as it was the first to call for the adoption of a Human Rights-Based Approach (HRBA) to development[34].

Regarding trade policy, Art 207.1 of the Treaty on the Functioning of the European Union (TFEU) requires the common commercial policy to be conducted in the context of the principles and objectives of the Union's external action, among them, the principles of democracy, the rule of law, and the universality and indivisibility of human rights and fundamental freedoms, set forth in Art 21.1 TUE. The Joint Communication human rights and democracy at the heart of EU external action requires the EU's

[28] Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' 17138/1/10 REV 1 [2010].

[29] In particular, EU guidelines on violence against women and girls and combating all forms of discrimination against them; EU Guidelines on Children and Armed Conflict; EU Guidelines on promoting compliance with International Humanitarian Law (IHL); and Guidelines on the Protection of Civilians in CSDP Missions and Operations.

[30] Council of the European Union, 'EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)' 9431/13 [2013], 61-62. (Annual Report 2012).

[31] Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' 15671/1/08 REV 1 [2008].

[32] Strategic Framework on Human Rights and Democracy, 5.

[33] European Parliament, Council, Commission, 'Joint statement by the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: "The European Consensus"' 2006/C 46/01 [2006]. (The European Consensus on Development).

[34] Council of the European Union, 'Draft Council conclusions on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries' 9547/01 [2001].

trade and human rights agenda to be 'coherent, transparent, predictable, feasible and effective' and highlights that the challenge is to 'make trade work in a way that helps rather than hinders human rights concerns'.[35] According to this, one of the outcomes pursued by the Action Plan on Human Rights and Democracy is, precisely, to make trade work in a way that helps human rights for which six specific actions are foreseen.[36] The Joint Communication also clarifies that the EU approach to trade policy focuses on positive incentives, using trade preferences for promoting human rights.[37] On October 2012, Regulation No 978/2012 applying a scheme of generalised tariff preferences (GSP+)[38] was adopted. This Regulation reinforces the mechanism for monitoring compliance by its beneficiaries with international conventions, including core human rights conventions.[39] Also in 2012, the Commission Communication Trade, Growth and Development: Tailoring trade and investment policy for those countries most in need, enshrined the idea that EU trade policy is guided by the core EU values, including the promotion of human rights and sustainable development.[40] In addition, EU Free Trade Agreements are linked through 'passerelle' clauses to the corresponding political framework agreements, which include human rights clauses, or, in the cases where there is no Association or Framework Agreement in force, a human rights clause is included in the Free Trade Agreements.[41]

Finally, the Strategic Framework also provides for the inclusion of human rights issues in the external dimensions of the AFSJ, including counter-terrorism policy, and the external dimension of employment and social policy. As stated by the Joint Communication human rights and democracy at the heart of EU external action, in the external dimension of the AFSJ the protection of fundamental rights is paramount and the EU has to ensure that in its cooperation activities with third countries, human rights are fully respected. Three main fields of action in this regard are distinguished by the Joint Communication: the reinforcement of the respect for human rights of migrants within the framework of the EU's Global Approach to Migration and Mobility; the phenomenon of human trafficking where it is critical to ensure that crime control, security and human rights are considered as 'complementary dimensions of the same issue'; and the field of border management, where it is essential that persons in need of protection who present themselves at the border are given access to the appropriate assistance and procedures.[42]

Regarding counter-terrorism activities, the EU Counter-Terrorism Strategy includes the respect for human rights as a condition to combat terrorism globally. Thus, the strategic commitment declared in this document is 'to combat terrorism globally while respecting human rights, and make Europe safer,

[35] Joint Communication Human rights and democracy at the heart of EU external action, 11.
[36] Council of the European Union, 'Human Rights and Democracy: EU Strategic Framework and EU Action Plan', 11855/12 [2012] Annex III, 16. (Action Plan on Human Rights and Democracy or Action Plan).
[37] Joint Communication Human rights and democracy at the heart of EU external Action, 12.
[38] Regulation (EU) 978/2012 of the European Parliament and of the Council of 25 October of 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303/1.
[39] Annual Report 2012, 58.
[40] Commission, 'Trade, growth and development. Tailoring trade and investment policy for those countries most in need' (Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee) COM(2012) 22 final, SEC(2012) 87 final, 3.
[41] See section III.B.2.
[42] Joint Communication human rights and democracy at the heart of EU external Action, 14.

allowing its citizens to live in an area of freedom, security and justice'.[43] Moreover, the Joint Communication human rights and democracy at the heart of EU external action, states that counter-terrorism activities must be conducted in full compliance with fundamental rights and international law, including human rights law, International Humanitarian Law (IHL), refugee law, free and fair judicial proceedings and the protection of personal and private data. This Communication requires also that the EU reinforces the human rights issue in dialogues with third countries devoted to counter-terrorism cooperation and that human rights are taken into consideration in the planning and implementation of counter-terrorism assistance projects with third countries.[44]

Lastly, regarding the external dimension of its employment and social policy, the EU is committed to the promotion of universal ratification and implementation of the four International Labour Organization (ILO) core labour standards: the ban on child labour, the ban on forced labour, non-discrimination and freedom of association and collective bargaining.[45]

3. Human rights guidelines

The EU guidelines on human rights play a central role in the formulation of EU policy on human rights and democracy in its external action. These policy documents adopted since 1998 by the Council cover human rights issues of particular importance to the Union. They are not legally binding but constitute a strong political expression of EU priorities on human rights and are practical tools to support EU representations in the field 'better advance' human rights policy.[46] They constitute a very pragmatic instrument, which provides the different EU actors with elements and operational tools to carry out actions in certain human rights key areas of concern.[47] They also provide officials and staff with practical guidance on how to contribute to preventing violations of human rights and how to analyse concrete cases and to react effectively when violations occur.[48]

There are guidelines adopted towards most of the priority areas identified in the Strategic Framework:[49]

1. Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline, Foreign Affairs Council meeting, Brussels, 12 May 2014. (Guidelines on freedom of expression online and offline).
2. Council of the European Union, EU Guidelines on the promotion and protection of freedom of religion or belief, Foreign Affairs Council meeting, Luxembourg, 24 June 2013. (Guidelines on the promotion and protection of freedom of religion or belief or FoRB Guidelines).
3. Council of the European Union, Guidelines to promote and protect the enjoyment of all human

[43] Council of the European Union, 'The European Union Counter-Terrorism Strategy' 14469/7/08 REV4 [2005], 6.
[44] Joint Communication human rights and democracy at the heart of EU external Action, 13.
[45] Action Plan on Human Rights and Democracy, Action 15.
[46] Council of the European Union, 'Guidelines. Human Rights and International Humanitarian Law' (European Communities 2009), 3.
[47] Council of the European Union, 'EU Annual Report on Human Rights 2008' 14146/2/08 [2008], 6.
[48] Council of the European Union, 'EU Human Rights Guidelines on Freedom of Expression Online and Offline' [2014], 2.
[49] The updated version of the Human Rights Guidelines is available at http://eeas.europa.eu/human_rights/guidelines/index_en.htm.

rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, Foreign Affairs Council meeting, Luxembourg, 24 June 2013.

4. Council of the European Union, Guidelines on Death Penalty, Common Guidelines, Brussels, 12 April 2013, 8416/13EU.
5. Council of the European Union, Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An up-date of the Guidelines, Brussels, 20 March 2012, 6129/1/12 REV1. (Initially adopted in 2001, updated in 2008).
6. Council of the European Union, Update of the EU Guidelines on Children and Armed Conflict. Initially adopted in 2003, updated in 2008.
7. Council of the European Union, EU Guidelines for the Promotion and Protection of the Rights of the Child. Adopted in 2008.
8. Council of the European Union, EU guidelines on violence against women and girls and combating all forms of discrimination against them. Adopted in 2008.
9. Council of the European Union, Ensuring protection – European Union Guidelines on Human Rights Defenders. Initially adopted in 2004, updated in 2008
10. Council of the European Union, EU Guidelines on promoting compliance with International Humanitarian Law (IHL) - Technical update, Brussels, 1 December 2009, 16841/09. Initially adopted in 2005, updated in 2009.

Concerning the specific objective of 'working with bilateral partners', the Council updated in 2014 the EU guidelines on human rights dialogues with third countries, which had been already updated in 2008 and initially adopted in 2001.

The specific content of the guidelines will be addressed in more detail in following sections VandVI.

Chart 3 lists these human rights guidelines and includes a comparative analysis of the themes and groups that are addressed by the guidelines and those identified in the Strategic Framework and the Action Plan.

Chart 3. EU's Priority areas and groups: the Strategic Framework and Action Plan vs. the human rights guidelines

PRIORITY AREAS and GROUPS		
STRATEGIC FRAMEWORK	**ACTION PLAN**	**GUIDELINES**
Promote freedom of expression, opinion, assembly and association, both on-line and offline; democracy cannot exist without these rights.	Outcome 24: Freedom of expression online and offline. Actions 24 a), b), c), d).	EU Human Rights Guidelines on Freedom of Expression Online and Offline
Promote freedom of religion or belief	Outcome 23: Freedom of religion or belief. Actions 23 a), b), c).	EU Guidelines on the promotion and protection of freedom of religion or belief
Fight discrimination in all its forms through combating discrimination on grounds of race, ethnicity, age, gender or sexual orientation	Outcome 22: Enjoyment of human rights by LGBT persons. Actions 22 a), b).	Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, Transgender and intersex (LGBTI)

		persons
Advocating for the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities.	Outcome 19: Promotion and protection of children's rights. Actions 19 a), b), c), d). Outcome 28: Promote the respect of the rights of persons belonging to minorities. Action 28. Outcome 29: A strengthened policy on indigenous issues. Action 29. Outcome 30: Enjoyment of human rights by persons with disabilities. Action 30 a), b).	EU Guidelines for the Promotion and Protection of the Rights of the Child
Continue to campaign for the rights and empowerment of women in all contexts through fighting discriminatory legislation, gender-based violence and marginalisation.	Outcome 20: Protection of the rights of women, and protection against gender-based violence. Actions 20 a), b), c), d), e).	EU guidelines on violence against women and girls and combating all forms of discrimination against them
Intensify its efforts to promote economic, social and cultural rights		
Strengthen its efforts to ensure universal and non-discriminatory access to basic services with a particular focus on poor and vulnerable groups.		
Encourage the implementation of the UN Guiding Principles on Business and Human Rights.	Outcome 25: Implementation of the UN Guiding Principles on Business and human rights. Actions 25 a), b), c).	
Campaign against the death penalty and torture.	Outcome 16: Abolition of the death penalty. Actions 16 a), b), c). Outcome 17: Eradication of torture and other cruel, inhuman or degrading treatment or punishment. Actions 17 a), b), c).	Guidelines on Death Penalty Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An up-date of the Guidelines
Promote the right to a fair and impartial administration of justice, essential to safeguard human rights.	Outcome 26: Administration of justice. Actions 26 a), b).	

Promote observance of international humanitarian law (IHL).	Outcome 21. Compliance with IHL. Actions 21 a), b), c), d).	EU Guidelines on promoting compliance with International Humanitarian Law (IHL) - Technical update EU Guidelines on Children and Armed Conflict
Fight against impunity for serious crimes of concern to the international community, including sexual violence committed in connection with armed conflict, and through its commitment to the International Criminal Court.	Outcome 27: Responding to violations: ensuring accountability. Actions 27 a), b), c).	
Support for human rights defenders and step up its efforts against all forms of reprisals.	Outcome 18: Effective support to human rights defenders. Actions 18 a), b), c).	Ensuring protection – European Union Guidelines on Human Rights Defenders
Effective engagement with civil society		

As mentioned above, not all the priorities stated in the Strategic Framework have been translated into actions in the Action Plan (see above, comments to Chart 2 in section II.B.1). In addition, Chart 3 shows that neither has the EU adopted human rights guidelines for all the priority themes and groups set forth by the Action Plan. In this regard, there are not guidelines for the implementation of the UN Guiding Principles on Business and Human Rights, the right to a fair and impartial administration of justice and the fight against impunity.

4. Human Rights strategies for countries

According to the Strategic Framework on Human Rights and Democracy, the EU has to place human rights at the centre of its relations with all third countries, including its strategic partners, and has to carefully design its policy on human rights, in particular, through the development of country human rights strategies.[50] These human rights strategies constitute, thus, a fundamental framework for the EU's political action and financial assistance to third countries in the field of human rights. They also contribute to the overall objective of ensuring that human rights are placed at the heart of EU external action in a practical and targeted manner.[51]

The Joint Communication on human rights and democracy at the heart of EU external action, explains the change in the approach of the EU's human rights strategy that led to the adoption of these strategies: although the human rights principles and objectives remain universal, 'the immediate priorities, and therefore the route and timetables, can and must vary from country to country'. Thus, a

[50] Strategic Framework on Human Rights and Democracy, 7.
[51] *Ibid*, 12.

tailor-made approach that seeks to match objectives in a country with the realities on the ground can maximise the effects of the EU's policy towards the country concerned.

This country-specific approach in the EU's democracy support action was also noted in the EU Agenda for action on Democracy Support in EU external relations. This stated that as democracy building processes take place in different contexts, including countries emerging from or threatened by conflict or in a situation of fragility, the EU's type and level of engagement and the instruments to be used have to be determined by the referred context, so that EU action should be based on a deep understanding of the local context.[52]

The strategies were first launched in 2011 with the aim of obtaining a better and more comprehensive understanding of the key human rights challenges in partner countries; focusing EU action on key priorities in those countries in policy and financial assistance terms; facilitating the activities carried out by Member States and EU diplomatic missions in the field and contributing in a more comprehensive manner to the country and regional strategies.[53] They include an analysis of the human rights situations in the countries concerned and identify the country-specific priorities and objectives for the EU's action. These priorities and objectives can be integrated in all relevant EU external policies and so fit into the EU's overall political and economic relations with any given country.

As stated by the Joint Communication, the EU should ensure that the human rights country strategies are taken into account in human rights dialogues as well as in policy-making and when programming and implementing financial assistance with third countries, including in the post-2013 Country Strategy Papers.[54] These strategies should also be effectively mainstreamed by the EEAS, the Commission and the Member States and should be prepared in consultation with civil society.[55]

Finally, it should be mentioned that the EU plans to adopt these strategies for all countries.[56] In this regard, in 2011 the EU launched strategies for 160 countries worldwide.[57] Of these strategies, the Council endorsed 48 and another 90 were close to adoption at the time of the report.[58]

[52] Joint Communication human rights and democracy at the heart of EU external action, 7-8.
[53] Council of the European Union, 'Human Rights and Democracy in the world: report on EU action in 2011' 9238/12 [2012], 130. (Annual Report 2011).
[54] Joint Communication human rights and democracy at the heart of EU external action, 8.
[55] Action Plan on Human Rights and Democracy, 27
[56] Joint Communication human rights and democracy at the heart of EU external action, 8.
[57] *Ibid*, 13.
[58] Annual Report 2012, 12 and 130.

III. Implementation of human rights and democracy policy

Once the legal and policy framework has been examined, this chapter will be dedicated to the mapping of the instruments established by the EU in order to implement it. In section A the Action Plan on Human Rights and Democracy will be discussed, that is, the main instrument for the implementation of the Strategic Framework. Section B will analyse the instruments that have been created specifically for the implementation of the human rights and democracy policy, while section C will address other EU instruments that are not specific to this policy but contribute to its implementation.

As can be deducted from Chart 4, a broad understanding of the term 'instrument' will be used in the context of this report, including instruments of traditional diplomacy and foreign policy (e.g. démarches and declarations, human rights dialogues and consultations, restrictive measures), political conditionality (e.g. human rights clauses in agreements with third countries), financial instruments and even actors (EU Special Representative for human rights, human rights and democracy focal points).

Chart 4. Human rights and democracy instruments

Specific human rights and democracy instruments

1. Financial instrument: European Instrument for Democracy and Human Rights (see sub-s III.B.1)
2. Human rights clauses (see sub-s III.B.2)
3. Election support (see sub-s III.B.6)
4. Human rights and democracy focal points (see sub-s III.B.3)
5. EU Special Representative for human rights (see sub-s III.B.4)
6. Human rights dialogues and consultations (see sub-s III.B.5)
7. European endowment for democracy (see sub-s III.B.6)

Other instruments contributing to the promotionof human rights and democracy

1. Action in multilateral fora (see sub-s III.C.1)
2. Bilateral political dialogue (see sub-s III.C.2)
3. Démarches and declarations (see sub-s III.C.3)
4. CFSP decisions (see sub-s III.C.4)
5. Restrictive measures (see sub-s III.C.4.a))
6. Thematic financial instruments (see sub-s III.C.5)
   a. Instrument contributing to stability and peace
   b. Instrument for development cooperation - Thematic programme 'Civil Society organisations and local authorities in development'
7. Geographic financial instruments (see sub-s III.C.6)
   a. Instrument for Pre-accession assistance (IPA II)
   b. European Neighbourhood Instrument (ENI)
   c. European Development Fund (EDF)
   d. Development Cooperation Instrument (DCI) Geographic programmes (Common Areas of Cooperation) and Pan-African programme

The funding of human rights and democracy support activities is constituted by a broad range of financial instruments with its own separate budget, objectives, eligibility criteria and compatibility regime. There is one specific financial instrument for the support of human rights and democracy, that is, the European Instrument for Democracy and Human Rights (EIDHR) (see below, epigraph B.1). Along with this specific instrument, two thematic instruments (see below, epigraph C.5) and four geographic instruments (see below, epigraph C.6) also contribute to support activities in the field of human rights and democracy, although they were established to respond to other specific objectives. Chart 5 below shows this patchwork of financial instruments, including the references in each relevant Regulation to the priority themes and groups. In order to allow a comparative analysis, this Chart includes not only the priority themes and groups as formulated by the Strategic Framework and the Action Plan, but also other human rights themes and vulnerable groups that are targeted by each instrument. The critical assessment of how the priority themes and groups are reflected across these financial instruments will be subject to the following reports. However, some conclusions will be introduced in this report, in particular, in connection with the most focused financial instrument, that is, the EIDHR.

Chart 5. Financial Instruments

	Financial Instrument	General objective/s	Period (Reg in force)	Financial envelope (€ mill)	References to Priority Themes	References to Vulnerable Groups
SPECIFIC	**European Instrument for Democracy and Human Rights (EIDHR)** (see above, sub-s B.1)	Provide assistance to the development and consolidation of democracy and the rule of law and of respect for all human rights and fundamental freedoms	2014 - 2020	1,332	Support to participatory and representative democracy and the processes of democratisation, Art 2(1)(a): · Freedom of association and assembly, unhindered movement of persons, freedom of opinion and expression · The rule of law · International Criminal Court, ad hoc international criminal tribunals and processes of transitional justice · Transition to democracy and measures against corruption · Local democracy by ensuring cooperation between civil society and local authorities · Peaceful conciliation between segments of societies Promotion and protection of human rights and fundamental freedoms, Art 2(1)(b): · Abolition of the death penalty. · Prevention of torture, ill-treatment and other cruel, inhuman and degrading treatment or punishment. · Assistance to human rights defenders. · Fight against racism and xenophobia and discrimination. · Freedom of thoughts, conscience and religion or belief. · Economic, social and cultural rights. · Corporate social responsibility, in particular, implementation of UN Guiding Principles on Business and HR. · Support for local, regional, national or international civil society organisations. · Promotion of improved conditions and observance of standards in prisons. Strengthen the international framework for protection of HR, justice, gender equality, the rule of law and democracy and IHL, Art 2(1)(c).	Support to participatory and representative democracy and the processes of democratisation, Art 2(1)(a): · Political pluralism, representation and participation, in particular members of marginalised and vulnerable groups · Equal participation of women and men in social, economic and political life · Equal participation of people with disabilities in social, economic and political life Promotion and protection of human rights and fundamental freedoms, Art 2(1)(b): · Rights of indigenous peoples. · Rights of persons belonging to minorities. · Rights of LGBTI persons. · Rights of women. · Rights of the child. · Rights of persons with disabilities.

	Financial Instrument	General objective/s	Period (Reg in force)	Financial envelope (€ mill)	References to Priority Themes	References to Vulnerable Groups
THEMATIC	**Instrument contributing to Stability and Peace** (see above, sub-s C.5.a)	Direct support for EU's external policies by increasing the efficiency and coherence of its actions in the areas of crisis response, conflict prevention, peace-building, crisis preparedness and in addressing global and trans-regional threats	2014 - 2020	2,338	Promotion of democracy and good governance, Art 2(4)(a). Non-discrimination, Art 2(4)(c). Support for civil society actors, Art 3(2)(a), (p). Humanitarian law and effects of conflict on civilian population, Arts 2(4)(b), 3(2)(g) –(j), 3(2)(l). Support for international criminal tribunals and ad hoc national tribunals, truth and reconciliation commissions and settlement of human rights claims, Art 3(2)(e). ESCRs: generation of employment and establishment of conditions for sustainable social development, Art 3(2)(f); equitable access to and transparent management of natural resources, Art 3(2)(m). Respect for human rights, fundamental freedoms, democracy, the rule of law and related international instruments, Art 3(2)(m). Impact of sudden population movements, Art 3(2)(o).	Children's rights, Arts 2(4)(b), 3(2)(k). Rights of indigenous peoples, Art 2(4)(b). Women: gender equality and the empowerment of women, Art 2(4)(d); implementation of UN SC resolutions on women, peace and security, Art 3(2)(b); enhance the role of women in democratic institutions, Art 3(1)(d); needs of women in conflict, in particular gender based violence, Art (3)(2)(k).
	Development Cooperation Instrument (DCI) Thematic programme 'Civil Society organisations and local authorities in development' (see above, sub-s C.5.b)	Strengthen civil society organisations and local authorities in partner countries, in the context of the broader objective of reduction and, in the long term, the eradication of poverty	2014-2020	1,907	Cross cutting dimensions, Art 3(3) (applicable to all programmes): · Non-discrimination · Core labour rights and social inclusion · Rule of law · Capacity building for parliaments and civil society · Promotion of dialogue, participation and reconciliation · Institution building Among the general objectives of DCI (including all programmes): consolidating and supporting democracy, the rule of law, good governance, human rights and the relevant principles of international law, Art 2(1)(ii).	Cross cutting dimensions Art 3(3) (applicable to all programmes): · Rights of persons belonging to minorities, persons with disabilities, persons with life-threatening diseases and of other vulnerable groups · The empowerment of women Support for vulnerable and marginalised groups by providing basic services delivered through civil society organisations and local authorities, Annex II(B).

	Financial Instrument	General objective/s	Period (Reg in force)	Financial envelope (€ mill)	References to Priority Themes	References to Vulnerable Groups
GEOGRAPHIC	**Instrument for Pre-accession assistance (IPA II)** (see above, sub-s C.6.a)	Support the beneficiaries in adopting and implementing reforms to comply with EU's values and align to its rules, standards, policies and practices, with a view of Union membership	2014-2020	11,698	Strengthening of democracy and its institutions and of the rule of law, Art 2(1)(a)(i), Annex II(b). Promotion and protection of human rights and fundamental freedoms, Art 2(1)(a)(ii). Promotion of gender equality, non-discrimination and tolerance, Art 2(1)(a)(ii). Freedom of the media, Art 2(1)(a)(ii). Respect for cultural diversity, Art 2(1)(a)(ii). Fight against corruption and organised crime, Art 2(1)(a)(v). Strengthening of public administration and good governance, Art 2(1)(a)(vi). Law enforcement, border management and implementation of migration policy, Art 2(1)(a)(vii). Development of civil society, Art 2(1)(a)(viii) Annex II(c). Compliance with the principle of good public administration and economic governance, Annex II(a). Promoting social inclusion and combating poverty, Annex II(f). Discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, Annex II(f).	Rights of persons belonging to minorities, including LGBTI persons, Art 2(1)(a)(ii).[59] Social and economic inclusion of minorities and vulnerable groups, including persons with disabilities, refugees and displaced persons, Art 2(1)(b)(iv). Social and economic inclusion of marginalised communities such as the Roma, Annex II(f). Labour, social and cultural integration of immigrants' communities and vulnerable groups, Annex III(a).
	European Neighbourhood Instrument (ENI) (see above, sub-s C.6.b)	Advance towards an area of shared prosperity and good neighbourliness by developing a special relationship between the EU and partner countries based on a shared commitment to the universal values of democracy, the rule of law and respect for human rights	2014-2020	15,432	Promoting deep and sustainable democracy, Art 2(1), Annex II. Promoting (Art 2(2)(a)): · Human rights and fundamental freedoms · The rule of law · Principles of equality and the fight against discrimination in all its forms · Good governance · Fight against corruption · Strengthen of institutional capacity · Development of a thriving civil society Reducing poverty and social exclusion, Art 2(2)(d). Human rights, good governance and the rule of law, Annex II(1), (2). Support to civil society actors, Annex II(1), (2).	Migrants: better organisation of legal migration, Art 2(2)(c); mobility and migration management, including the protection of migrants, Annex II(1), (2).

[59]According to the Joint Declaration by the European Parliament, the Council of the European Union an the European Commission concerning the funding of horizontal programmes for minorities, Annexed to Regulation EU No 213/2014 of the Europena Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), this provision should be interpreted as including respect for and protection of minorities in line with the Copenhagen criteria.

	Financial Instrument	General objective/s	Period (Reg in force)	Financial envelope (€ mill)	References to Priority Themes	References to Vulnerable Groups
GEOGRAPHIC	**European Development Fund (EDF)** (see above, sub-s C.6.c)	Eradication of poverty in partner countries and regions in the context of sustainable development	2014-2019 (11th EDF to be approved)	21,966 (10th EDF)	Human rights, democratic principles and the rule of law are essential elements of the Cotonou Agreement, Art 9. Good governance is a fundamental element of the Cotonou Agreement, Art 9. Institutional development and capacity building, Arts 33, 60. HIV/AIDS pandemic, Art 31a.	Access to social and basic infrastructure and services by the most vulnerable and disadvantaged, Art 25. Protection of the rights of children and youth, especially girl children, Art 26. Women: gender issues, Art 31; violence against women, Art 11(3). Children: child soldiers and violence against children, Art 11(3). Migration, Art 13.
	Development Cooperation Instrument (DCI) Geographic programmes (Common Areas of Cooperation) and Pan-African programme (see above, sub-s C.6.d)	Regional and bilateral cooperation with partner countries in certain areas of activity Support the strategic partnership between Africa and the Union. Within the primary objective of DCI: reduction and, in the long term, the eradication of poverty	2014-2020	11,809	Cross cutting dimensions, Art 3(3) (applicable to all programmes): see DCI - Thematic programme 'Civil Society organisations and local authorities in development'. Common areas of cooperation, Annex I(I)(a), (c), (d), (e), (f): · Human rights, democracy and the rule of law · Public sector management at central and local level · Tax policy and administration · Fight against corruption · Civil society and local authorities	Cross cutting dimensions, Art 3(3) (applicable to all programmes):see DCI - Thematic programme 'Civil Society organisations and local authorities in development'. Common areas of cooperation, Annex I(I)(b), (g): · Gender equality, empowerment of and equal opportunities for women Promotion and protection of the rights of children

A. Action plan on human rights and democracy

The Action Plan on Human Rights and Democracy constitutes the main instrument in the implementation of the EU's human rights and democracy policy, since it provides for a list of actions that should be undertaken in order to put the Strategic Framework into practice. The purpose of the Action Plan is precisely to implement the Strategic Framework with 'sufficient flexibility so as to respond to new challenges as they arise'.[60]

The Action Plan covers the period since its approval on 25 June 2012 until 31 December 2014. The Action Plan follows the structure of the eight areas that form the Strategic Framework and sets out 36 outcomes of EU's action which are split into 97 specific actions. Responsibility for carrying out the actions resides with the HR/VP assisted by the EEAS, and with the Commission, the Council and the Member States, within their respective fields of competence. The EU Special Representative for Human Rights also has to contribute to the implementation of the Action Plan, according to their mandate.[61]

From the Action Plan the majority of actions and instruments that the EU uses to implement its human rights and democracy policy with third countries can be inferred: démarches and declarations, human rights dialogues and consultations with third countries, financing through instruments such as the EIDHR, campaigning at multilateral fora, bilateral and multilateral cooperation, supporting public education and awareness-raising campaigns, supporting the work of NGOs, human rights reporting by EU Head of Missions, encouraging States to ratify and comply with international legal instruments protecting human rights, promoting law and practices that protect human rights, training and technical exchanges, capacity building, use of restrictive measures, or political dialogue. These implementation instruments will be addressed in following sections B and C. Some of them, which will be studied in section B, have been developed in order to contribute to the specific objective of promotion of human rights and democracy worldwide, while the instruments analysed in Section C, constitute general instruments of the CFSP but also contribute to the promotion of human rights and democracy. These latter documents are the expression of the EU's approach of mainstreaming human rights concerns into all its policies and financial programmes.

[60] Action Plan on Human Rights and Democracy, 10.
[61] *Ibid*.

B. Specific instruments for the promotion of human rights and democracy

1. Financial instrument: European instrument for democracy and human rights

a) Background and main features

The EIDHR was established by Regulation 1889/2006 of 20 December 2006 with the aim of providing financial assistance contributing to the 'development and consolidation of democracy and the rule of law and of respect for all human rights and fundamental freedoms.'[62] The EIDHR replaces and builds upon the European Initiative for Democracy and Human Rights, which was in force since 2000 to 2006 and grouped the budget headings for the promotion and defence of human rights and fundamental freedoms, the support of the processes of democratisation and the prevention of conflicts.[63] It was initially created in 1994 by an initiative of the European Parliament but in 2007 Regulation 1889/2006 granted the EIDHR the category of 'instrument', a 'significant change of emphasis'.[64]

This instrument is currently governed by Regulation 235/2014 of the European Parliament and the Council replacing Regulation 1889/2006, which covered the period 2007-2013.[65] The new Regulation 235/2014 will apply from 1 January 2014 until 31 December 2020 with a total financial envelope of EUR 1,332,752,000.[66]

Partnerships with civil society actors are critical to this instrument, in order to address global, regional, national and local human rights and democratisation issues. Under Regulation 235/2014, civil society extends to 'all types of social actions by individuals or groups that are independent from the state and whose activities help to promote human rights and democracy, including human rights defenders'.[67] The assistance under this instrument is independent from the consent of third country governments and other public authorities. This makes possible the cooperation with civil society on sensitive human rights and democracy issues, including migrants' enjoyment of human rights and the rights of asylum seekers and internally displaced persons, providing great flexibility and capacity to respond to changing circumstances, or needs of beneficiaries or periods of crisis.[68] This 'grass-root' approach has been considered one of the most valuable features of the EIDHR due to its potential to strengthen the indigenous basis for democracy and human rights in third countries. However, the fact that this

[62] Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide [2006] OJ L386/1. (Regulation 1889/2006).
[63] Council Regulation (EC) 975/1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidation democracy and the rule of law and to that or respecting human rights and fundamental freedoms [1999] OJ L120/1, Art 2. (Regulation 975/1999).
[64] Peter Simmons, 'The State of the Art in the EU Democracy Promotion Literature' (2011) 7 Journal of Contemporary European Research 129.
[65] Regulation of the European Parliament and the Council 235/2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L77/85. (Regulation 235/2014).
[66] Regulation 235/2014, Arts 10, 12.
[67] *Ibid*, Preamble para 15.
[68] *Ibid*, Preamble para 16.

instrument funds hundreds of NGO's small-scale projects has also been subject to critics. In this regard, one major critic is that the limited scope and political relevance of most projects makes the EU's policy more symbolic than substantive and has not lead to broader human rights and democracy reforms.[69]

The assistance measures financed must be implemented in the territory of third countries or should be directly related to situations arising in third countries or to global or regional actions.[70]

Under the new Regulation, the EIDHR's budget has been increased with the aim to provide more support to civil society as a key actor for the promotion of human rights and democracy. The new Regulation also intends to increase the EU's capacity to react promptly to human rights emergencies and its support for international and regional human rights protection mechanisms.[71] However EIDHR's financial envelope (€1,332 mill) is really small in comparison with the budget allocated to other instruments such as the European Neighbourhood Instrument (ENI) (€15,432 mill) which funds projects in the EU's close neighbouring countries (see above, Chart 5).[72]

Finally, new Regulation 235/2014 includes certain amendments in the EIDHR such as a stronger wording of the role of civil society, a major emphasis on each vulnerable group (national, ethnic, religious and linguistic minorities, women, lesbian, gay, bisexual, transgender and inter-sex persons (LGBTI), and indigenous peoples) and on the importance of economic and social rights. Moreover, the new Regulation includes ad hoc grants in order to respond in a more flexible manner to the most difficult countries and emergency situations where human rights are in greater danger.[73]

b) Objectives and scope

The EIDHR has to support the crucial role of civil society for the defence of democracy and human rights and should also enable the EU to 'articulate and support specific objectives and measures at international level which are neither geographically linked nor crisis related' and which may require a 'transnational approach or involve operations both within the Union and in a range of third countries.' Moreover, the EIDHR should provide the necessary framework for operations, such as support for independent election observation missions.[74]

Under this instrument, the EU should pay special attention to countries and urgent situations where human rights and fundamental freedoms are most at risk, such as where disrespect for those rights and

[69] Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union* (2nd ed Palgrave Macmillan 2014) 137.
[70] *Ibid*, Art 2(3).
[71] European Commission, 'The Multiannual Financial Framework: The External Action Financing Instruments', MEMO/13/1134, 8.
[72] Peter Simmons, 'The State of the Art in the EU Democracy Promotion Literature' (2011) 7 Journal of Contemporary European Research 129.
[73] European Commission, 'The Multiannual Financial Framework: The External Action Financing Instruments', MEMO/13/1134, 8.
[74] Regulation 235/2014, Preamble (16).

freedoms is particularly pronounced and systematic, or where human rights organisations and defenders operate under the most difficult conditions.[75]

The particular aims of the EIDHR are:

(i) 'Supporting, developing and consolidating democracy in third countries, by enhancing participatory and representative democracy, strengthening the overall democratic cycle, in particular by reinforcing an active role for civil society within this cycle, and the rule of law, and improving the reliability of electoral processes, in particular by means of EU Electoral Observation Missions' (EOMs) and

(ii) 'enhancing respect for and observance of human rights and fundamental freedoms, as proclaimed in the UN Universal Declaration of Human Rights and other international and regional human rights instruments, and strengthening their protection, promotion, implementation and monitoring, mainly through support to relevant civil society organisations, human rights defenders and victims of repression and abuse.'[76]

Moreover, five specific objectives and priorities to be pursued by the EIDHR are established in Regulation 235/2014:[77]

Objective 1: Support to human rights defenders in situations where they are most at risk and where fundamental freedoms are most endangered. Attention should be paid to the fact that this theme has not been included under objective 2 and deserves its own specific objective. In this regard, support for human rights defenders is one of the priority themes mentioned by the Strategic Framework which has been translated into actions in the Action Plan and has specific human rights guidelines. Further research will be needed to clarify this special treatment.

Objective 2: Support to other priorities of the Union in the field of human rights where the EU has an added value or specific thematic commitment. Among these areas where the EU has a special commitment, Regulation 235/2014 highlights the current and future guidelines on human rights (see above, chapter II.B.3 and Chart 3) and the resolutions of the European Parliament. At this point it is interesting to highlight that although Regulation 235/2014 was adopted after the Strategic Framework, it merely mentions under this objective some of the thematic priorities and vulnerable groups included in that document (i.e. fight against the death penalty, fight against torture, economic, social and cultural rights, fight against impunity, fight against discrimination, women's rights). In addition, Regulation 235/2014 gives here special attention to 'emerging issues in the field of human rights' but does not define this concept nor gives any example of these issues.

Objective 3: Support to democracy. Actions under this objective will support peaceful pro-democracy actors in third countries with a view to enhancing participatory and representative democracy, transparency and accountability and will focus on the consolidation of political participation

[75] *Ibid*, Preamble para 18 and Art 2(4).
[76] *Ibid*, Art 1.
[77] *Ibid*, Annex.

and representation, as well as pro-democracy advocacy. One of the priority themes of the Strategic Framework is also mentioned under this objective: freedom of expression online and offline and freedom of assembly and association. As explained above (see above, comments to Chart 2 in section II.B.1) the formulation of these rights is more limited in the Action Plan, which only refers to freedom of expression online and offline, in comparison with the Strategic Framework, which also includes freedom of opinion, assembly and association. Here again the formulation is different and freedom of opinion is not included under this objective.

Objective 4: EOMs, with the focus on election observations which contributes to increasing transparency and trust in the electoral process. Full-scale EU EOMs are deemed as flagship projects of the EU's external action and, in accordance with this view, up to 25% of the budget over the period 2014-2020 should be devoted to the funding of EU EOMs, depending on annual election priorities.[78]

Objective 5: Support to targeted key actors and processes, including international and regional human rights instruments and mechanisms. Actions under this objective will include supporting local civil society's contribution to EU human rights dialogues and the development and implementation of international and regional human rights and international criminal justice instruments and mechanisms, including the International Criminal Court.

Finally, the concrete fields to be financed are also stated in Regulation 235/2014 (see above, Chart 5).[79] The manner in which these fields relate to the priority themes and groups set forth by the Strategic Framework will be analysed in following reports. However, it is interesting to introduce at this point the following conclusions:

- Art 2 of Regulation 235/2014 (Scope) includes all the priority themes and groups mentioned by the Strategic Framework.
- The formulation of the priority themes and groups is different in certain cases (e.g. engagement with civil society and freedom or religion or belief).
- The scope of the EIDHR is broader and includes themes not covered by the Strategic Framework and the Action Plan (rule of law, promotion of improved conditions and observance of standards in prisons).

c) Eligibility

Those eligible for funding are: (i) civil society organisations, including non-governmental non-profit organisations and independent political foundations, community based organisations, and private sector non-profit agencies, institutions and organisations, and networks at local, regional, national or international level; (ii) public sector non-profit agencies, institutions and organisations and networks at local, national, regional and international level; (iii) national, regional and international parliamentary bodies, when this is necessary to achieve the objectives of this instrument and the proposed measure cannot be financed under another instrument; (iv) international and regional inter-governmental

[78] Regulation 235/2014, Annex and Joint Declaration of the European Parliament, the Council of the European Union and the European Commission on Election Observation missions.
[79] Regulation 235/2014, Art 2.

organisations; (v) natural persons, entities without legal personality and, in exceptional and duly justified cases, other bodies or actors, when this is necessary to achieve the objectives of this instrument.[80]

The main principles regarding eligibility under the EIDHR derived from its strong focus on civil society organisations (CSOs) and local activities, and its prohibition of direct funding of political parties.[81] Moreover, the EIDHR, in principle, does not fund NGOs or opposition groups that directly confront third country's governments. This explains why this instrument could not be used to promote democracy during the recent Arab Spring revolts.[82] It should also be pointed out that although the NGOs should have a central position in the delivery of this instrument, some authors consider that they have not always been able to play this role in the design of the thematic components of the EIDHR due to institutional resistance.[83]

d) Programming and implementation

The assistance should be implemented through strategy papers that set out the priority areas selected for financing, the specific objectives, the expected results, the performance indicators and the indicative financial allocations.[84]

Programming is completed by annual action programmes that specify the objectives pursued for each action, as well as the expected results and main activities, the methods of implementation, the budget and an indicative timetable, any associated support measures, and performance monitoring arrangements. [85]

Under the EIDHR it is also possible to adopt individual measures on duly justified imperative grounds or urgency, such as crises or immediate threats to democracy, the rule of law, human rights or fundamental freedoms;[86] support measures;[87] and special measures in the event of unforeseen and duly justified needs or circumstances and when funding is not possible from more appropriate sources.

[80] Regulation 236/2014, Art 11(2).

[81] Concept Note for Multiannual Indicative Programme EIDHR 2014-2020 <http://www.eidhr.eu/files/dmfile/2013-12-02EIDHRdraftConceptNoteMIP.pdf> accessed 21 July 2014.

[82] Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union* (2nd ed Palgrave Macmillan 2014) 137. See also Peter Kotzian, Michéle Knodt and Sigita Urdze, 'Instruments of the EU's External Democracy Promotion' (2011) 49 JCMS 995.

[83] Anna Kárníková, 'Do They Actually Matter? The Impact of NGOs on the European Instrument for Democracy and Human Rights (EIDHR)' (2012) 20 Perspectives 83.

[84] Regulation 235/2014, Arts 4, 5.

[85] European Parliament, Council, Regulation 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action [2014] OJ L77/95, Art 2(1). (Regulation 236/2014). Action programmes shall specify for each action the objectives pursued, the expected results and main activities, the methods of implementation, the budget and an indicative timetable, any associated support measures and performance monitoring arrangements.

[86] Regulation 236/2014, Art 2(5).

[87] According to Art 3 of Regulation 236/2014, 'EU's financing may cover administrative costs associated with the preparation, follow-up, monitoring, audit and evaluation activities directly necessary for the implementation of

One of the key features of the implementation of the EIDHR is that it has worldwide coverage and can operate everywhere outside the EU.[88] However, one critic to this instrument is that the EU does not always follow clear criteria in the allocation of funds across countries so critics argue that some countries do not receive funds while others receive substantial amounts; in particular, 'focus countries'.[89]Another inconsistency highlighted in the literature is the gap between the institutional discourse and the practice which is more modest and shows a trend towards funding 'politically less controversial human rights' in 'comparatively easier countries'.[90]

The operating principles of the EIDHR are:[91]

- The EIDHR is 'flexible, reactive and tailor-made'. Thus, it can operate in the most difficult environments and situations, supporting human rights defenders at risk and non-registered NGOs.
- The EIDHR is 'able to act in a confidential manner', which is crucial for the protection of the activists involved in the projects.
- The EIDHR is a 'balanced instrument', combining targeted projects and calls for proposals.
- The EIDHR is 'untied' and acts without restriction of nationality or origin.

e) Coordination, complementarity and coherence with other instruments

The assistance provided by the EU under the EIDHR should be consistent with the overall framework of the Union's external action and be complementary to other tools for implementing EU policies relating to democracy and human rights. Moreover, the Union and the Member States should seek regular exchanges of information and consult each other in order to promote complementarity and coherence among their respective activities and the Union should also consult other donors and actors. The Commission and the EEAS should also hold regular exchanges of views and information with the European Parliament and civil society.[92]

each instrument, as well as expenditure at EU's delegations on the administrative support needed to manage operations financed under the relevant instrument'.

[88] Concept Note for Multiannual Indicative Programme EIDHR 2014-2020 <http://www.eidhr.eu/files/dmfile/2013-12-02EIDHRdraftConceptNoteMIP.pdf> accessed 21 July 2014.

[89] Peter Kotzian, Michéle Knodt and Sigita Urdze, 'Instruments of the EU's External Democracy Promotion' (2011) 49 JCMS 995.

[90] Federica Bicchi, 'Democracy Assistance in the Mediterranean: An Overview' (2009) 14 Mediterranean Politics 61.

[91] Concept Note for Multiannual Indicative Programme EIDHR 2014-2020 <http://www.eidhr.eu/files/dmfile/2013-12-02EIDHRdraftConceptNoteMIP.pdf> accessed 21 July 2014.

[92] Regulation 235/2014, Art 3.

2. Human rights clauses in EU agreements

As stated above, the Strategic Framework highlights several main areas of action, among them, working with bilateral partners with the aim of placing human rights at the centre of its relations with all third countries. In this regard, the EU will enhance its effort to make best use of the human rights clause in political framework agreements with third countries.[93] Moreover, one of the actions to be undertaken by the EU is to 'develop criteria for application of the human rights clause'.[94]

These clauses were to be included from 1995 onwards in all of the EU's political framework agreements with third countries, including Association Agreements and Partnership and Cooperation Agreements.[95] These clauses are considered the 'basis for cooperation on human rights and for promotion of human rights in relation to the areas covered by these agreements'.[96]

The clauses are also the legal basis for taking measures in order to respond to violations of human rights by third countries. In this regard, these clauses state that human rights inspire the internal and external policies of the parties and constitute an 'essential element' of the agreement concerned. This provision is usually linked to an additional clause that provides for an immediate response if breaches of the agreement occur. This additional clause could take one of two forms. On one hand, there is the non-execution clause ('Bulgarian clause'), which provides that either party of the agreement could take appropriate measures if one party considers the other party has failed to fulfil an obligation under the agreement, including the violation of the essential elements of that agreement.[97] The 'appropriate measures' could include the suspension of high level contacts or changes to cooperation programmes such as the postponement of new projects or the use of different channels of delivery.[98] Usually, priority should be given to those measures that least disturb the functioning of the agreement. On the other hand, there is the suspension clause ('Baltic clause') which authorises the parties to suspend the application of the whole or a part of the agreement in cases of serious breaches of essential provisions.[99]

In its Communication on the EU's role in promoting human rights and democratisation in third countries, the Commission clarified that the inclusion of these clauses does not follow a negative or punitive approach. Their objective is to promote dialogue (see below, section III.B.5) and positive measures such as joint support for democracy and human rights, the accession, ratification and implementation of

[93] Strategic Framework, 7.
[94] Action Plan, action 33(b).
[95] Annual Report 2011, 13 and 21. Initially, human rights were not mentioned in the contractual relations with third countries or were only mentioned in the preamble of some agreements. The first reference in the body of a contractual document was in Art 5 of the fourth Lomé Convention with ACP countries signed in 1989. During the following years, this provision gradually began to appear in these agreements.
[96] Joint Communication human rights and democracy at the heart of EU external action, 11.
[97] The inventory of agreements containing the human rights clause and of the agreements containing a suspension-human rights clause are available at <http://ec.europa.eu/world/agreements/viewCollection.do> accessed 3 June 2014.
[98] Commission, 'The European Union's role in promoting human rights and democratisation in third countries' (Communication from the Commission to the Council and the European Parliament) COM(2001) 252, 9.
[99] *Ibid*, 3.

international human rights instruments and the prevention of crises through the establishment of long-term relationships.[100] The literature also refers to them as a positive instrument due to its co-operative nature, that is, the EU is granting favours in several forms such us capacity building, development assistance or trade-related advantages. However, these 'carrots' are conditional on the third country's behaviour so the third country has to abide by the EU's standards on human rights, democratic procedures, good governance and the rule of law and in case of misbehaviour the advantages can be suspended.[101]

The Communication of the Commission on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries, includes the standard wording for these clauses and a summary of measures that may be taken in response to serious human rights violations or serious interruptions of the democratic process.[102]

Regarding Free Trade Agreements, these are linked through 'passerelle' clauses to political framework agreements which include the human rights clause. However, if no Association or Framework Agreement exists, a separate human rights clause can be inserted in these agreements as has been the case with the FTAs signed with Colombia and Peru in 2012.[103]

The use of these clauses by the EU has been considered a 'way of backing the EU's words with actions'.[104] However, its effectiveness has been contested and the interesting point to be analysed is whether the EU can impose them and the consequences of its infringement, on all States in the same manner.[105]

3. Human rights and democracy focal points across EU delegations worldwide

The establishment of human rights focal points in all EU Delegations worldwide is one of the instruments contributing to the objective of promoting the universality of human rights set forth by the Strategic Framework. This document claims not only to intensify the promotion of the ratification and implementation of international human rights treaties, but also the building of a culture of human rights and democracy in the EU's external action. To this end, one of the actions foreseen by the Action Plan is to complete a network of focal points on human rights and democracy in all EU Delegations and CSDP missions and operations.[106] This approach was also included in the Joint Communication on human

[100] *Ibid*, 9.
[101] Peter Kotzian, Michéle Knodt and Sigita Urdze, 'Instruments of the EU's External Democracy Promotion' (2011) 49 JCMS 995.
[102] COM(2001) 252, Annex 1 and 2.
[103] Annual Report 2012, 59.
[104] Peter Simmons, 'The State of the Art in the EU Democracy Promotion Literature' (2011) 7 Journal of Contemporary European Research 129.
[105] Peter Kotzian, Michéle Knodt and Sigita Urdze, 'Instruments of the EU's External Democracy Promotion' (2011) 49 JCMS 995. See also Fabienne Zwagemakers, 'The EU's Conditionality Policy: A new Strategy to Achieve Compliance' (2012) 12(3) IAI Working Papers.
[106] Action Plan, action 5(b).

rights and democracy at the heart of EU external action, which stated that human rights are not only the responsibility of experts but are also key to the work of everyone.[107]

At present, there are 140 EU delegations[108] and offices around the world[109] which represent the EU in the host countries and are under the authority of the High Representative of the Union for Foreign Affairs and Security Policy.[110] All of these EU delegations and offices have one or two focal points for democracy and human rights dealing with these matters.[111] These focal points play an important role in the coordination of the local implementation of human rights country strategies. Moreover, they provide headquarters with expertise on local developments, address individual cases, deliver démarches and conduct outreach on EU priorities at the UNGA and the Human Rights Council.[112] They are also involved in the launching of calls and selection of proposals for funding under the EIDHR. Finally, it is worth noting the role of the focal points in order to support the work of the human rights defenders worldwide. In this regard, liaison officers for human rights defenders were nominated during 2012 in 101 countries.[113]

4. EU special representative for human rights

The European Union Special Representative (EUSR) for Human Rights, Mr Stavros Lambrinidis, was appointed in July 2012 by Council Decision 2012/400/CFSP[114]. He is the first ever thematic EUSR, which reflects the EU's strong commitment to advocate for human rights worldwide. The appointment of a EUSR for Human Rights was foreseen by the Council Conclusions on Human Rights and Democracy adopted with the Strategic Framework and the Action Plan, with the purpose of enhancing the effectiveness and visibility of the EU's human rights policy.[115]

[107] Joint Communication human rights and democracy at the heart of EU external action, 17.

[108] The delegations are directed by a Head of Delegation who is appointed and receives instructions from the High Representative and is responsible for their execution. EU delegations are involved in the presentation, explanation and implementation of EU policy, including the CFSP; the analysis and report on the policies and developments of the host countries and the conduction of negotiations in accordance with a given mandate. EU delegations also provide support to the other institutions and actors of the EU, in particular the European Parliament, and must have the capacity to respond to their needs in their contacts with the third countries. Moreover, they have to work in cooperation and share information with the diplomatic services of the Member States and have to support them in their diplomatic relations and in their role of providing consular protection to the citizens of the EU. Finally, delegations also carry out an important information role to host governments and administrations, media, academia, business and civil society and provide practical support to human rights defenders.

[109] Annual Report 2012, 12. The updated information on the existing delegations is available at <http://www.eeas.europa.eu/delegations/index_en.htm> accessed 27 May 2014.

[110] TFUE, Art 221.

[111] Information available at <http://www.eidhr.eu/focal-points#> accessed 27 May 2014. Annual Report 2012, 12.

[112] Annual Report 2012, 42.

[113] Annual Report 2012, 12.

[114] Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L200/21 (Council decision 2012/440/CFSP).

[115] Council of the European Union, 'Human Rights and Democracy: EU Strategic Framework and EU Action Plan', 11855/12 [2012] Annex I Council conclusions on human rights and democracy, para 2.

The mandate of the EUSR for Human Rights is based on the policy objectives set out in the TEU, the Charter of Fundamental Rights, the Strategic Framework and the Action Plan, that is: enhancing the EU's effectiveness, presence and visibility in protecting and promoting human rights; enhancing the EU's contribution to the strengthening of democracy and institution building, the rule of law, good governance, respect for human rights and fundamental freedoms worldwide; and improving the coherence of EU action on human rights and the integration of human rights in all areas of the EU's external action.[116]

In order to achieve those objectives, the EUSR's mandate is to:

- contribute to the implementation of the EU's human rights policy, in particular the Strategic Framework and the Action Plan, including by formulating recommendations in this regard;
- contribute to the implementation of the EU's guidelines, toolkits and action plans on human rights and IHL;
- enhance dialogue with governments in third countries and international and regional organisations on human rights and with CSOs and other relevant actors in order to ensure the effectiveness and the visibility of the EU's human rights policy;
- contribute to better coherence and consistency of the EU's policies and actions for the protection and promotion of human rights, notably by providing input to the formulation of relevant policies of the Union.

One year after his appointment, the Council remarked on his important role in improving the coherence of the EU's action on human rights and expressed its full political support for his work.[117] In addition, in June 2014 the Council confirmed the appointment of Mr. Stavros Lambrinidis as EUSR for Human Rights and extended his mandate until the end of February 2015.[118]

5. Human rights dialogues and consultations

Human rights dialogues are also used by the EU in order to implement its human rights policy towards third countries. In its Communication on the EU's role in promoting human rights and democratisation in third countries, the Commission, taking into consideration the fact that the States are the primarily responsible for the protection of human rights and fundamental freedoms and are responsible to their citizens and the international community in cases of failure to respect them, defined this instrument as the 'most effective approach to achieve changes in the promotion of human rights'.[119] However, in view of the increasing use of this instrument during the recent years, the discussion now is, precisely, how to make them more effective.[120] In this regard, the Strategic Framework on Human Rights and Democracy states that the EU will continue to deepen its human rights dialogues and consultations with partner

[116] Council Decision 2012/440/CFSP, Art 2.
[117] Council of the European Union, 'Conclusions on the first anniversary of the EU Strategic Framework and Action Plan on Human Rights and Democracy and the appointment of the EUSR for Human Rights', 12559/13 [2013], para 4.
[118] Council of the European Union, '3325th Council meeting – Foreign Affairs. Luxembourg, 23 June 2014' (Press release) 111197/14 (OR.en) [2014], 21.
[119] COM (2001) 252 final, 8.
[120] *Ibid* 22.

countries and 'will aim to ensure that these dialogues lead to results'.[121] Accordingly, the Action Plan sets out several actions devoted to strengthening its impact, among them, to establish its priorities, objectives and indicators of progress in order to facilitate their review.[122]

Moreover, also in order to make them more effective, the Joint Communication on human rights and democracy at the heart of EU external action, remarks that these should be firmly embedded in the 'wider fabric of the EU's relations with a given country'. Thus, the EU should ensure a closer link of this instrument with other policy instruments and establish its priorities, objectives and benchmarks in order to allow their review in conjunction with the human rights country strategies.[123]

The principles and objectives of the human rights dialogues are governed by the Guidelines on human rights dialogues with third countries[124]. According to these guidelines, these dialogues constitute in themselves an instrument of the EU's external policy and an 'essential part of the EU's overall strategy aimed at promoting sustainable development, peace and stability'.[125] The dialogues could be of different types:[126]

- Dialogues or discussions of a general nature based on regional or bilateral treaties, agreements or conventions or strategic partnerships dealing systematically with the issue of human rights.[127]
- Dialogues focusing exclusively on human rights that are usually structured dialogues held at the level of human rights experts, although they could also be held at the level of Head of Missions. The existence of these dialogues does not exclude the possibility that human rights are also discussed at other levels of the political dialogue, for example, in some cooperation or association agreements there are specific sub-committees or groups dealing with human rights.
- Ad hoc dialogues extending to CFSP-related topics such as that of human rights.
- Dialogues in the context of special relations with third countries, on the basis of converging views, with the aim of discussing issues of common interest and cooperate in the framework of multilateral human rights bodies.

The objectives of human rights dialogues are defined on a case-by-case basis depending on the country concerned. Among these objectives, the following could be mentioned: discussing issues of mutual interest and enhancing cooperation in multilateral fora; registering the concern of the EU at the human

[121] Strategic Framework on Human Rights and Democracy, 7.
[122] Action Plan on Human Rights and Democracy, actions 32 a), b) and c).
[123] Joint Communication human rights and democracy at the heart of EU external action, 16.
[124] Council of the European Union, 'EU guidelines on human rights dialogues with third countries – Update' [2009] <http://www.eeas.europa.eu/human_rights/guidelines/index_en.htm> accessed 10 June 2014. These guidelines were Initially adopted in 2001 and updated in 2009. (EU guidelines on human rights dialogues with third countries)
[125] *Ibid*, 2.
[126] EU guidelines on human rights dialogues with third countries, 2-5.
[127] Among this type of dialogue, the Guidelines include: relations with candidate countries, the Cotonou Agreement with the ACP States, relations between the EU and Latin America, the Barcelona process, the neighbourhood policy, political dialogue with Asian countries in the context of ASEAN and ASEM and relations with the Western Balkans, and bilateral relations in the framework of association and cooperation agreements.

rights situation in the country; information gathering; or supporting the improvement of the human rights situation in that country.[128]

The issues covered in human rights dialogues are also specified on a case-by-case basis. However, the EU should pay special attention to its own priorities on human rights, such as combating the death penalty, combating torture, combating all forms of discrimination, children's rights, women's rights, freedom of expression, the role of civil society and the protection of human rights defenders, and include them on the agenda for every dialogue. The dialogues established to promote human rights cooperation with third countries could also aim at preparing the work of the Human Rights Council or the Third Committee of the UN General Assembly. The dialogues are reciprocal which means that the third country could also raise questions of the human rights situation in the EU, which is usually the case.[129]

For the initiation of a human rights dialogue, a previous assessment of the human rights situation of the country concerned is required, as well as the definition of the practical aims which the EU seeks to achieve and the assessment of the added value to be gained from the dialogue. Moreover, exploratory talks will be held before the opening of the dialogue with the aim of defining the objectives to be pursued by the country concerned and the ways of increasing its commitment towards international human rights instruments, procedures and mechanisms. The decision to initiate human rights dialogues lies with the Council and requires the prior agreement of the Working Party on Human Rights (COHOM).[130]

An essential issue of human rights dialogues is to ensure the consistency between them and the bilateral dialogues carried out by Member States. To this end, exchanges of information should be instrumented between them. Consistency should also be guaranteed in connection with the assistance afforded by the EU in the area of human rights and democratisation, notably with the EIDHR. Thus, it is required that the Commission regularly notifies the COHOM regarding the use of funds from the EIDHR.[131]

Finally, the existence of a human rights dialogue with a certain country does not prevent the EU from submitting a resolution on the human rights situation in that country to the UN General Assembly (UNGA) or the Human Rights Council (HRC) or from providing support for an initiative by the third country or from denouncing breaches of human rights in that country.[132]

6. Election support

As stated by the Joint Communication on human rights and democracy at the heart of EU external action, elections play a vital role for a wide range of human rights, such as freedom of expression, assembly and association.[133] The EU's commitment towards democracy support in its external action has been reaffirmed in the Strategic Framework, which expressly states that 'the EU will strengthen its work

[128] EU guidelines on human rights dialogues with third countries, 5-6.
[129] *Ibid*, 6.
[130] *Ibid*, 7-10.
[131] *Ibid*, 11-12.
[132] *Ibid*, 11-12.
[133] Joint Communication human rights and democracy at the heart of EU external action, 10.

with partners worldwide to support democracy, notably the development of genuine and credible electoral processes and representative and transparent democratic institutions at the service of the citizen'.[134]In this regard, the EU has been and is one of the leading global actors in supporting elections worldwide through EU Election Observation Missions (EOMs), Electoral Expert Missions (EEMs), electoral assistance, and support for domestic non-partisan observers.

The 2000 Commission Communication on Election Assistance and Observation, acknowledges that although elections do not equate to democracy, they are an 'essential step in the democratisation process and an important element in the full enjoyment of a wide range of human rights'. This Communication qualifies elections as human rights events, because they give voice to the political will of the people and because, to be free and fair, they must be conducted in an atmosphere that respects human rights.[135] The adoption of this Communication followed the entry into force of Regulations 975/99[136] and 976/99[137] which constitute a major step in the EU's change of approach towards electoral support. In this regard, the initial enthusiastic EU support for specific electoral processes according to the EU's strategic foreign policy on the country concerned, turned, by the end of the 90s, to a more reasoned and restrained approach based on a deeper analysis of the impacts of the EU's electoral support in many post-conflict countries, as well as emerging and transitional democracies.[138] These Regulations qualify the EU's support for electoral processes as an instrument contributing to the overall objectives of promoting and defending human rights and the development and consolidation of democracy and the rule of law.[139]

The EU's commitment towards democracy support was subsequently reaffirmed in the 2009 EU Agenda for Action on Democracy Support in EU External Relations, which declared that 'democratic and participatory governance and the free will of the people can best assure the right of men and women to live and raise their children in dignity, freedom from hunger and from the fear of violence, oppression or injustice' and reiterated one of the main principles of the EU's strategy in this field, which is that

[134] Strategic Framework, 5.
[135] Commission, 'Communication from the Commission on EU Election Assistance and Observation' COM(2000) 191 final, 4. (Communication on EU Election Assistance and Observation). This communication is further developed by the Commission staff working paper – Implementation of the Communication on Election Assistance and Observation, SEC (2003) 1472.
[136] *Ibid* fn(63).
[137] Council Regulation (EC) No 976/1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries [1999] OJ L120/8. (Regulation 976/1999).
[138] European Commission, 'EC Methodological Guide on Electoral Assistance' (European Communities, 2006) <http://eeas.europa.eu/eueom/key_publications_en.htm> accessed 23 July 2014, 15 (EC Methodological Guide on Electoral Assistance).
[139] Regulation 975/1999, Art 2(2)(f), Regulation 976/1999, Art 3(2)(f).

democracy support should take into account the full electoral cycle and not focus on ad hoc electoral support only.[140]

The EU's strategy on electoral assistance and observation should be guided by the principles set out by Communication on Election Assistance and Observation. These are, inter alia, the principle of partnership between the EU and the country concerned; the necessity for the strategy to allow for a case-by-case decision on provision of EU assistance and the sending of observers; and the necessity for the strategy to promote and sustain an independent national capacity and pluralism, including the promotion of local NGOs and local observers.[141]

The Communication on Election Assistance and Observation, distinguishes the two components of the EU's electoral support, assistance and observation, and establishes their complementarity in the electoral process. Election assistance is defined as the 'technical or material support given to the electoral process'. It could consist of professional help to establish a legal framework for the elections, providing voting material and equipment, helping in the registration of political parties and registration of voters, supporting NGOs and civil society, or the training of local observers or supporting the media. On the other hand, election observation is defined as 'the purposeful gathering of information regarding an electoral process, and the making of informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not inherently authorised to intervene in the process'. Thus, election observation is the political complement to election assistance and is also part of it.[142]

In connection with the first component, electoral assistance, the EU is also a leading actor in this field as well as one of the international key donors in many partner countries. The overview of the role of the EC in this field is provided by the EC Methodological Guide on Election Assistance.[143] The two fundamental areas of intervention are the support to the development of credible and transparent institutions for the administration of the electoral process (Electoral Management Bodies) and the support to the CSOs and domestic observer groups engaged with the electoral process. Other crucial activities supported are civic and voter information, media monitoring, training of journalists, dissemination of information about electoral dispute mechanisms and training in electoral conflict management.[144] The new approach to electoral assistance puts the emphasis on the operational complexities and the periodicity of the electoral processes. According to this, the support activities should ensure the strengthening of capacity and the transfer of appropriate skills and technology to the local institutions and organisations. Thus, the interventions are programmed some years in advance of the electoral date and should also provide support after the elections. Ideally, the electoral assistance should aim at: building the nation's capacity

[140] Council of the EU, 'Council Conclusions on Democracy Support in the EU's External Relations – Towards Increased Coherence and Effectiveness' 16081/09 [2009], Annex: EU Agenda for Action on Democracy Support in EU External Relations, 7.
[141] *Ibid*, 15-16.
[142] Communication on EU Election Assistance and Observation, 4.
[143] EC Methodological Guide on Electoral Assistance, (n138).
[144] EC Methodological Guide on Electoral Assistance, 36.

to finance its own elections, supporting core and permanent structures, establishing its legitimacy in the eyes of the electorate and keeping in sight the long-term objective of the assistance beyond the immediate upcoming electoral event.[145] In recent years, the EU's electoral assistance has focused on supporting national observer networks, providing technical and material support to Electoral Management Bodies, providing material support to voting and registration operations, and supporting other key stakeholders in order to increase the inclusiveness and acceptance of the electoral process.[146]

Regarding the second component, electoral observation, the EU observed the first multi-party parliamentary election in Russia in 1993[147] and since then, has deployed more than 110 observation missions. EU EOMs are only deployed to countries where certain legal and political preconditions for observation are met,[148] in particular, the precondition that franchise is genuinely universal; political parties and individual candidates are able to enjoy their legitimate right to take part in the election; there is freedom of expression allowing possible criticism of the incumbent government and the right to free movement and assembly; and all contesting parties and candidates have reasonable access to the media. An invitation to observe, received from the state and/or electoral authorities, is also required.[149] The EU has observed elections in partner countries in Africa, Latin America, Asia and the Middle East. The EU does not deploy EOMs within OSCE participating States where the election observation is undertaken by the OSCE Office for Democratic Institutions, which use a comparable methodology.[150]

The EU applies the same methodology in all countries where it observes elections, in order to ensure a consistent approach to election observation. The observation has to be comprehensive and long-term, focusing on all aspects and stages of electoral processes, although the coverage is increased on election day; EU observers must be impartial, independent, should not interfere in the election process to correct or influence the proceedings and must respect and adhere to the laws of the country being observed.[151] This EU methodology is in line with the Declaration of principles for international election observation and code of conduct for international election observers endorsed by the EU.[152]

Meanwhile, EEMs do not imply direct observation and are of a technical nature. The outcome of EEMs is a technical document that reports on the country's specific electoral situation and covers all frameworks and phases of the electoral process.

The EIDHR constitutes the key instrument which financially supports the EU EOMs. In this regard, as was mentioned above (see above, sub-section III.B.1), EU EOMs are one of the five specific objectives and

[145] EC Methodological Guide on Electoral Assistance, 43.
[146] Annual Report 2012, 50.
[147] *Ibid*, 25.
[148] Communication on EU Election Assistance and Observation, Annex III: Council Decision 9262/98 – PESC 157 – COHOM 6, Guidelines - EU policy on electoral observation, 35.
[149] European Commission, 'Handbook for EU Election Observation' (2nd ed, European Commission 2008).
[150] *Ibid*, 7.
[151] *Ibid*, 23-26.
[152] Declaration of principles for international election observation and code of conduct for international election observers, commemorated October 27, 2005, at the United Nations, New York.

priorities to be pursued by the EIDHR and are deemed as flagship projects of the EU's external action. Thus, up to 25% of the budget over the period 2014-2020 should be devoted to the funding of EU EOMs.[153]

In addition, in January 2013 the Election Observation and Democratic Support (EODS) project was launched after the completion in 2012 of the three consecutive Network for Enhanced Electoral and Democratic Support (NEEDS) projects. The EODS project, funded by the EC, aims at strengthening the EU Election Observation Mission methodology, training core team members and long term observers in EU methodology, election principles and observation techniques; and sharing this methodology with regional organisations and networks.[154]

7. European endowment for democracy

The European Endowment for Democracy (EED) was launched in 2012 in order to complement the efforts of the EU and the Member States in the field of democratic support to neighbourhood countries. It is not strictly a European instrument but, as a complementary tool to them and taking into consideration the central role that the EU played in its creation, deserves a brief mention here. The added value of this private foundation, established under Belgian law, is to reach democracy supporters that have limited access to funding, so that, the Endowment only funds initiatives that other donors may not be able to support or that cannot be funded by other means. In this regard, the awareness of the limitations of the EIDHR to support NGOs or opposition groups led to the creation of this initiative which aims to promote political pluralism by means of funding political parties and non-registered NGOs working for democratic change.[155]

Its creation was proposed by the Joint European Neighbourhood Policy Communication: A new response to a changing Neighbourhood, in order to support political actors working for democratic change in their countries and to increase the efforts of the EU, its Member States and several of the European political foundations in this field.[156]

The EED is financed through the voluntary contributions from the Member States and may also apply for funding from the EU budget.[157] The voluntary contributions of the Member States have been considered an essential element to allow the EED to act flexibly without depending on the EU budget and its

[153] Regulation 235/2014, Annex and Joint Declaration of the European Parliament, the Council of the European Union and the European Commission on Election Observation missions.

[154] Information on the EODS project can be found in its website at <http://www.eods.eu/> accessed 9 June 2014.

[155] Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union* (2nd ed Palgrave Macmillan 2014) 137.

[156] Commission, 'A new response to a changing Neighbourhood' (Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2011) 303 final, 4. See also Solveig Richter and Julia Leininger, 'Flexible and Unbureaucratic Democracy Promotion by the EU? The European Endowment for Democracy between Wishful Thinking and Reality' (2012) 26 SWP Comments 1 <http://www.swp-berlin.org/fileadmin/contents/products/comments/2012C26_rsv_Leiniger.pdf> accessed 22 July 2014.

[157] Council of the EU, 'Declaration on the Establishment of a European Endowment for Democracy' 18764/11, [2011], 3, 4.

bureaucracy. However there is great uncertainty about the financing situation of the EED, taking into account that it lacks an adequate and stable financial base and that certain appeals of the HR/VP to the Member States for donations have remained unanswered.[158]

The objective of the Endowment is to foster and encourage democratisation and deep and sustainable democracy in countries in political transition and in societies struggling for democratisation, with initial, although not exclusive, focus on the European Neighbourhood.[159]

As mentioned above, the Endowment is mainly a grant-awarding institution supporting actors that have limited access to funding including, inter alia, pro-democratic movements and actors in favour of a pluralistic multi-party system conceived on democratic grounds; social movements and actors; civil society organisations; emerging leaders, independent media and journalists (including bloggers, social media activists, etc.), non-governmental institutions, including foundations and educational institutions functioning also in exile; provided that all these beneficiaries adhere to core democratic values, respect international human rights standards and subscribe to principles of non-violence.[160]

Finally, it is important to highlight that the Endowment has to avoid duplication and ensure coherence, synergy, complementarity and added value with the activities funded by the EU financing instruments, in particular, the EIDHR, the Instrument contributing to Stability and Peace, the ENI, the Development Cooperation Instrument (DCI), and the Member States' bilateral instruments.[161] In this regard, one of the key questions about the EED is how it will relate to the EIDHR and whether an adequate division of labour will be developed between both instruments.[162]

C. Other instruments contributing to the promotion of human rights and democracy

Besides the particular instruments developed and highlighted by the EU for the promotion of human rights and democracy support, there are others which also contribute to the promotion of human rights and democracy which will be analysed in following sub-sections.

1. Action in multilateral fora (UN, OSCE, Council of Europe)

Promoting the universality of human rights and working through multilateral institutions are two of the EU central commitments reaffirmed by the Strategic Framework on Human Rights and Democracy. According to the Strategic Framework, the EU 'remains committed to a strong multilateral human rights

[158] Solveig Richter and Julia Leininger, 'Flexible and Unbureaucratic Democracy Promotion by the EU? The European Endowment for Democracy between Wishful Thinking and Reality' (2012) 26 SWP Comments 1 <http://www.swp-berlin.org/fileadmin/contents/products/comments/2012C26_rsv_Leiniger.pdf> accessed 22 July 2014.

[159] The Statutes of the European Endowment for Democracy, Art 2(1). The Statutes are available at the Endowment website at <https://www.democracyendowment.eu/about-eed/> accessed 9 June 2014.

[160] *Ibid*, Art 2(2).

[161] *Ibid*, Art 3(3).

[162] Solveig Richter and Julia Leininger, 'Flexible and Unbureaucratic Democracy Promotion by the EU? The European Endowment for Democracy between Wishful Thinking and Reality' (2012) 26 SWP Comments 1 <http://www.swp-berlin.org/fileadmin/contents/products/comments/2012C26_rsv_Leiniger.pdf> accessed 22 July 2014.

system which can monitor impartially implementation of human rights norms and call all States to account'. To this end, the EU is committed to encourage the ratification of international human rights treaties, including regional human rights instruments, international humanitarian law treaties and the Rome Statute of the International Criminal Court and to promote worldwide the universality of human rights.[163]

At the UN, the EU plays an active role in the Third Committee of the General Assembly and the Human Rights Council, through the use of statements and interventions, thematic and country-specific initiatives in cooperation with other countries, promoting accountability for human rights violations, and targeting key human rights concerns. The EU priorities on human rights at the UN Human Rights fora are established annually by the Council. For 2014, the Council reaffirms the EU's commitment to working at the UN in order to promote and protect the universality of human rights, to prevent and respond to serious human rights violations, and to express its concerns and positions, contributing to debates and pursuing thematic and country-specific initiatives.[164] In these priorities, the Council also refers to the EU's support to the HRC Special Procedures and the Universal Period Review, and to the UN Human Rights Treaty Body system.[165]

As regards the priorities in terms of themes, the EU will advocate for the abolition of the death penalty; the promotion of freedom of Religion or Belief as a fundamental human right; the promotion of the rights and the protection of children; the support for women's rights, gender equality, and women's empowerment; the inclusion of a rights-based approach, encompassing all human rights, and gender equality, in the post-2015 global agenda; the promotion of freedom of opinion and expression, offline and online, as a fundamental right of every human being, an essential foundation for democracy, the rule of law and the participation in public affairs, as well as peace, stability and sustainable inclusive development, paying special attention to the protection of journalists and bloggers; the promotion of freedom of association and assembly as key rights for the realisation of other human rights and cornerstones of democracy; the protection of human rights defenders, protecting the space and promoting a safe, enabling environment for a vibrant civil society; eradication of torture worldwide, maintaining also its support for the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the promotion of the rights of LGBTI persons and opposition to any form of discrimination and violence perpetrated against people based on sexual orientation and gender identity; the fight against racism, racial discrimination, xenophobia and related intolerance; the protection of the rights of indigenous peoples, in particular, contributing to the full and effective participation of indigenous peoples in World Conference on Indigenous Peoples; the promotion of economic, social and cultural rights, advocating for the universal, indivisible, interdependent and interrelated nature of all human rights; and, finally, the dissemination and implementation of the UN Guiding Principles on Business and Human Rights.[166]

[163] Annual Report 2012, 16; Strategic Framework on Human Rights and Democracy, actions 4 and 5.
[164] Council of the European Union, 'Council Conclusions on EU priorities at the UN Human Rights Fora' 6181/14 [2014], para 4.
[165] *Ibid*, paras 5, 6.
[166] *Ibid*, paras 14-28.

In terms of geographic concerns, priorities for 2014 include addressing the human rights situations in Syria, Democratic People's Republic of Korea, Iran, Sri Lanka, Myanmar/Burma, Belarus, Central African Republic, Democratic Republic of the Congo, South Sudan, Mali, Eritrea and Sudan.[167]

In both the Strategic Framework on Human Rights and Democracy and the 2013 Council Conclusions, the EU pays tribute to the leadership of the UN High Commissioner for Human Rights and her Office and highlights its unwavering support for the UN Human Rights Treaty Body system.[168] In addition, the EU insists on its attachment to the HRC Special Procedures and the Universal Periodic Review, calling upon all UN Member States to cooperate with these mechanisms.[169]

At the regional level, the EU's participation in the Council of Europe and the OSCE should be highlighted. The principles of cooperation between the EU and the Council of Europe are governed by the Memorandum of Understanding reached between them in 2007,[170] which recognises their shared values of democracy, the rule of law and human rights and fundamental freedoms and establishes their areas of common interest, including the promotion and protection of democracy and good governance and democratic stability, and the respect for human rights and fundamental freedoms and the rule of law.[171] They are also committed to promoting their cooperation by consulting each other regularly and closely, both at political and technical levels, on the referred common priority areas, as well as by regular exchanges of information, development of common views, initiatives, strategies and programmes and inter-institutional cooperation.[172]

The EU is one of the major contributors to CoE activities by financing joint programmes and activities. In 2012, the EU and CoE implemented joint programmes in the areas of democracy, human rights and the rule of law amounting to EUR 101 million and the EU launched the EU-CoE Programme for Strengthening Democratic Reform in the South Mediterranean with the aim of promoting human rights, rule of law and democratisation in the Southern Mediterranean countries and similar programmes are being implemented in Central Asia under the Venice Commission.[173]

Accession of the EU to the European Convention on Human Rights, which is a legal obligation for the EU following the Lisbon Treaty,[174] will constitute a major step for the EU –CoE relationship and will enhance coherence in the protection of human rights in Europe. Regarding the accession negotiations, the CoE's Steering Committee for Human Rights (CDDH) and the representatives of the EU have agreed on the Draft accession agreement of the European Union to the European Convention on Human Rights which

[167] *Ibid*, paras 7-13.
[168] *Ibid*, paras 3, 22.
[169] *Ibid*, paras 21, 23. Also reaffirmed in the Strategic Framework on Human Rights and Democracy.
[170] Memorandum of understanding between the Council of Europe and the European Union, signed in Strasbourg on 11 May 2007, (CoE – EU MoU).
[171] CoE – EU MoU, Preamble paras 1, 7, 9, 14.
[172] CoE – EU MoU, paras 11 and 41-43.
[173] Annual Report 2012, 142.
[174] Art 6(2) TEU and Protocol No. 14 of the CEDH.

was submitted to the Committee of Ministers on 14 October 2011.[175] The legal instruments for the accession are still under negotiation and the last meeting was held in April 2013.

Regarding the OSCE, the EU also constitutes a strong supporter and contributor to the three dimensions of its work, in particular, the human dimension. As the EU represents almost half of the OSCE's membership, it has a major responsibility in playing an active role within the organisation and it is engaged in ensuring that the participating States implement their commitments and activities on human rights, fundamental freedoms, democratisation (including elections), the rule of law, tolerance and non-discrimination.[176] The EU also participates in the OSCE weekly Permanent Councils and the monthly OSCE human dimension committees with the aim of contributing to the review of the referred human rights commitments of the participating States and promoting debates about their implementation. During 2012 the EU advocated in those forums for the safety of journalists, rights of LGBTI persons and civil society in general.[177]

Regarding other regional organisations, the Strategic Framework sets out that the EU is also committed to work in partnership with them, including the African Union, the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), the Organisation of American States, the Arab League, the Organisation of Islamic Cooperation and the Pacific Islands Forum, in order to support the consolidation of regional human rights mechanisms.[178]

2. Bilateral political dialogue

The Strategic Framework on Human Rights and Democracy states that the EU 'will raise human rights issues vigorously in all appropriate forms of bilateral political dialogue, including at the highest level'.[179] Thus, the EU is also committed to incorporating its human rights positions in political dialogue at every level, including the Summit level. To this end, the EU undertakes to include human rights experts in all EU delegations worldwide.

Regarding the overall approach to raising human rights issues in the context of political dialogues, the Council established in its 2006 paper Mainstreaming human rights across CFSP and other EU policies, the principles to be followed by all relevant actors:[180]

- human rights issues should not only be discussed by experts but should also be raised at the highest political level to ensure coherence between the different levels and give more political weight to human rights concerns;

[175] The Draft accession agreement of the European Union to the European Convention on Human Rights and the details of the ongoing negotiations are available at the web of the CoE <http://hub.coe.int/web/coe-portal/what-we-do/human-rights/eu-accession-to-the-convention> accessed 10 June 2014.
[176] Council of the European Union, 'Human Rights and Democracy in the world: report on EU action in 2011' 9238/12 [2012] 130. (Annual Report 2011).
[177] Annual Report 2012, 143.
[178] Action Plan on Human Rights and Democracy, Action 36.
[179] Strategic Framework on Human Rights and Democracy, 7.
[180] Council of the European Union, Mainstreaming human rights across CFSP and other EU policies, 10076/06 [2006], 4.

- they should not only criticise countries on their human rights record, but also welcome and encourage positive developments;
- they should build on common ground;
- they should use dialogue with 'like-minded' countries to seek synergies and share experience; also address human rights concerns with 'like-minded' countries to avoid allegations of double standards;
- they should refer to international standards when discussing issues such as freedom of religion or belief and freedom of expression or interfaith dialogue;
- they should address discrepancies between law and practice;
- as regards member countries of the Human Rights Council, they should refer to their pledges made upon election;
- they should consider making more use of public statements where appropriate.

However, the EU guidelines on human rights dialogues, which were updated in 2009, acknowledge that, although the EU should attempt to integrate its human rights priorities into political discussions, this kind of dialogue does not allow it to deal with human rights issues in great depth, which seems to be a contradiction with the general objective of achieving impact through dialogue that it is set forth by the Strategic Framework.[181]

3. Démarches and declarations

Public declarations and statements are used to demonstrate the EU's position and concerns on, among others, human rights and democracy issues, including the situation of individuals under threat in their countries,[182] as well as to welcome positive developments. These public declarations are made by the HR/VP in the form of declarations on behalf of the EU, statements, remarks, or fact sheets, or by her Spokesperson. They could also be issued by the EU's delegations and missions to the different countries.[183]

In order to be more effective, the EU might prefer démarches or formal diplomatic approaches to non-EU countries. Démarches constitute also an important instrument of foreign policy used to raise human rights concerns with those countries, and are usually performed confidentially by local EU representatives.[184] In the action plan démarches are mentioned only once, within the context of the priority of compliance with IHL. In this regard, the Action Plan requires the EU to adopt a more systematic approach of démarche campaigns in this field.[185] Démarches carried out by the EU also have

[181] EU guidelines on human rights dialogues with third countries, 14.
[182] Joint Communication human rights and democracy at the heart of EU external action, 5.
[183] These public declarations and statements are published at <http://eeas.europa.eu/statements/index_en.htm> accessed 2 June 2014.
[184] Annual Report 2011, 21.
[185] Action Plan, action 21(c).

the objective of promoting the universality and integrity of the Rome Statute of the International Criminal Court.[186]

The issues that have been most frequently handled through these instruments are the protection of human rights defenders, illegal detention, forced disappearances, the death penalty, torture, child protection, refugees and asylum seekers, extrajudicial executions, freedom of expression and of association, the right to a fair trial, and elections.[187]

Finally, special mention should be made of the work of the President of the European Parliament, who also raises relevant human rights issues by means of public statements.[188]

4. CFSP joint actions, common positions and strategies and CSDP missions

In addition to election support which is a specific instrument for the promotion of democracy, CFSP decisions defining actions to be undertaken by the EU, positions to be taken and arrangements for the implementation of those decisions on actions and positions, are a general instrument for the promotion of human rights and democracy, according to the CFSP objective of 'consolidate and support democracy, the rule of law, human rights and the principles or international law'.[189] The EU's common approaches on matters of CFSP set forth by Art 32 TEU also have to contribute to this objective. In this regard, the Council in its 2006 paper Mainstreaming human rights across CFSP and other EU policies, required the inclusion of human rights provisions, where applicable, in joint actions, common positions, common strategies and mandates for ESDP missions.[190] According to this, action 11 e) of the Action Plan requires that the current review of Council Common Position 2008/944/CFSP on Arms Exports takes account of human rights and IHL. Other common positions and approaches relevant to human rights that should be highlighted are the Common position on human rights, democratic principles, the rule of law and good governance in Africa,[191] the Guidelines for a Common Approach to the Fight Against Terrorism,[192] and the Common approach on the use of political clauses.[193]

As well, according to the Council's 2006 paper Mainstreaming human rights across CFSP and other EU policies, 'the protection of human rights should be systematically addressed in all phases of [CSDP] missions', including the planning and the implementation phase. Some measures were recommended in this regard by the Council, among them, were including human rights reporting in the operational duties

[186] European Union, External Action, 'Human Rights and Democracy in the world. Report on EU action. July 2008 to December 2009' (European Union 2010), 24.
[187] *Ibid*, 21.
[188] These public statements are available at <http://www.europarl.europa.eu/the-president/en/html/press-room> accessed 3 June 2014.
[189] TUE, Arts 21(2)(b) and 25 .
[190] Council of the European Union, Mainstreaming human rights across CFSP and other EU policies, Brussels, 7 June 2006, 10076/06, 9.
[191] Council of the European Union, Common position on human rights, democratic principles, the rule of law and good governance in Africa (98/350/CFSP), Brussels, 15 November 2004, 13749/2/04, REV 2.
[192] Council of the European Union, The Guidelines for a Common Approach to the Fight Against Terrorism, Brussels, 22 May 2008, 7635/04, EXT 1.
[193] Council of the European Union, Common approach on the use of political clauses, Brussels, 2 June 2009, 10491/1/09,REV1, EXT 2.

of [CSDP] missions; implementing human rights policy in the missions, in particular regarding women and children, and including human rights experts in [CSDP] missions and operations where appropriate.[194]

The Strategic Framework and the Action Plan also propose actions in order to reflect human rights in CDSP missions, requiring the 'systematic inclusion of human rights, child protection, gender equality and IHL where relevant in the mandates of EU missions and operations and in their benchmarks, planning and evaluation';[195] 'to complete a network of focal points on human rights and democracy in CSDP missions and operations';[196] and to provide training on human rights in CSDP missions and operations.[197]

a) Restrictive measures

According to the Strategic Framework, when faced with violations of human rights, 'the EU will make use of the full range of instruments at its disposal, including sanctions or condemnation'.[198] Restrictive measures or sanctions[199] can be adopted by the EU within the framework of the objectives of the CFSP in order to safeguard them, including consolidating and supporting democracy, the rule of law, human rights and the principles of international law.[200]

Following the Lisbon Treaty, the legal basis for adopting sanctions is Art 215 TFUE, which states that the Council can adopt by qualified majority the necessary measures where a decision adopted within the CFSP provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries. This decision adopted within the CFSP requires unanimity and the measures to be taken by the Council have to be based on a joint proposal of the HR/VP and the Commission. Furthermore, the European Parliament has to be informed of the measures adopted.

The Lisbon Treaty introduced some changes as a result of the case law on this matter, in particular, the case law on sanctions against the financing of terrorism and the adoption of decisions to blacklist,[201] so that the new regulation explicitly covers natural and legal persons and groups or non-State entities and both financial and trade sanctions. Moreover, the acts adopted must contain the necessary provisions on legal safeguards.[202]

In addition to the above mentioned legal basis for the adoption of restrictive measures, the Council adopted in 2003 and 2004 three policy documents in order to develop a policy framework for a more

[194] Council of the European Union, 'Mainstreaming human rights across CFSP and other EU policies', 10076/06 [2006], 6.
[195] Action Plan, action 12(b).
[196] Action Plan, action 5(b).
[197] Action Plan, action 5(a).
[198] Strategic Framework, 7.
[199] These terms are used interchangeably across the policy and legal documents.
[200] TUE, Art 21(2)(b).
[201] Cameron mentions as leading cases Organisation des Modjahedines du people d'Iran v. Council of the European Union, T-228/02, ECRII-4665 [2006] and People's Mojahedin Organization of Iran v. Council, T-284/08, ECR II-3487 [2008].
[202] Iain Cameron (ed), *EU Sanctions: Law and Policy Issues concerning restrictive measures* (Intersentia 2013), 34-35.

effective use of sanctions. First, the Basic Principles on the Use of Restrictive Measures (Sanctions)[203] intends to establish a common ground on a matter where very different views exist among the EU States on the value and advisability and feasibility of the sanctions.[204] The Basic Principles clarifies that the restrictive measures adopted to uphold respect for human rights, democracy, the rule of law and good governance must be in accordance with the EU's CFSP and in full conformity with the EU's obligations under international law.[205] The Basic Principles also set out the sanctions as part of an integrated, comprehensive policy approach which should include political dialogue, incentives, conditionality and, as last resort, the UN coercive measures[206] and require 'reducing to the maximum extent possible any adverse humanitarian effects or unintended consequences for persons not targeted or neighbouring countries.'[207] Second, the Guidelines on implementation and evaluation of restrictive measures (sanctions) aim to standardise the implementation of the restrictive measures and strengthen the methods of implementation as well as establish standard wording and common definitions to be used in the legal instruments implementing restrictive measures.[208] Finally, the Best Practices for the effective implementation of restrictive measures are general recommendations for the effective implementation of the sanctions, in accordance with EU law and national legislation.[209]

Restrictive measures have to be the subject of careful consideration by the EU, in accordance with the Basic Principles and the EU Charter of Fundamental Rights, and have to be regularly reviewed by the Council. When imposing the restrictive measures, their specific objective should be clearly stated in the corresponding legal instrument. Moreover, the 'measures should be consistent with the EU's overall strategy in the area concerned', 'must always be in accordance with international law' and 'must respect human rights and fundamental freedoms, in particular due process and the rights to an effective remedy,' and must 'be proportionate to their objective'.[210] Moreover, as stated by the Joint Communication Human rights and democracy at the heart of EU external action, it is important that:[211]

- they contribute to the stated objective,
- they are targeted,
- they do not have an adverse impact on civilian populations and that
- they comply with requirements on clear and fair procedures, including the rights to an effective remedy.

[203] Council of the European Union, 'Basic Principles on the Use of Restrictive Measures (Sanctions)' 10198/1/04 REV 1 [2004].
[204] Iain Cameron (ed), 11.
[205] Council of the European Union (n203), principle 3.
[206] *Ibid*, principle 5.
[207] *Ibid*, principle 6.
[208] Council of the European Union, 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy' 15114/05 [2005]. (Guidelines on implementation and evaluation of restrictive measures).
[209] Council of the European Union, 'Update of the EU Best Practices for the effective implementation of restrictive measures' 8666/1/08EU [2008].
[210] Guidelines on implementation and evaluation of restrictive measures, paras 5, 9.
[211]Joint Communication human rights and democracy at the heart of EU external action, 16

Targeted measures are, thus, considered by the Guidelines on implementation and evaluation of restrictive measures more effective than indiscriminate measures and minimise the adverse consequences for those who are not responsible for the policies or actions that incur the imposition of the sanctions. The adoption of these kinds of measures requires clear criteria according to each specific case for determining which entities or persons could be listed and must respect fundamental rights of the persons listed, in particular, their right to a due process.[212]

Finally, restrictive measures, as mentioned above, can be adopted against third countries, parts of countries, governments, non-State entities and individuals (including terrorist groups and terrorists).[213] They can consist of, inter alia, freezing of funds and economic resources, restrictions on admission, arms embargoes, embargoes on equipment that might be used for internal repression, export and import restrictions, flight bans, diplomatic sanctions and suspension of cooperation with a third country.[214]

5. Thematic financial instruments contributing to human rights and democracy

a) Instrument contributing to Stability and Peace

(1) Background and main features

This instrument was created in 2006 under the name 'Instrument for Stability' in the framework of the reform of the EU's external financing instruments, in order to assist the EU in addressing global security and development challenges. It was initially established by Regulation 1717/2006 of the European Parliament and of the Council which was adopted with the objective of enabling the EU to provide a consistent and integrated response to a situation of crisis or emerging crisis, to address specific global and trans-regional security threats and to enhance crisis preparedness.[215] It was designed on the basis that the 'effectiveness of EU external action is dependent on the links between security and development'.[216] In this sense, the Council and the Representatives of the Governments of the Member States meeting within the Council, in their November 2004 Conclusions on the effectiveness of EU External Action, concluded that 'peace, security and stability as well as human rights, democracy and good governance, are essential elements for sustainable economic growth and poverty eradication'.[217] This link between democracy and security is also proclaimed by the Strategic Framework, which expressly declares that 'Sustainable peace, development and prosperity are possible only when grounded upon respect for human rights, democracy and the rule of law' and that the EU 'will strengthen its capability and mechanisms for early warning and prevention of crises liable to entail

[212] Guidelines on implementation and evaluation of restrictive measures, paras 14-23.
[213] *Ibid*, para 4.
[214] The updated list of restrictive measures in force is available at <http://eeas.europa.eu/cfsp/sanctions/docs/2014_05_26-measures-in-force_en.pdf> accessed 4 June 2014.
[215] Regulation (EC) No 1717/2006 of the European Parliament and of the Council establishing an Instrument for Stability [2006] OJ L327/1. (Regulation 1717/2006).
[216] European Commission, 'The Instrument for Stability Strategy Paper 2007-2011', 3.
[217] Regulation 1717/2006, Preamble para 1.

human rights violations'.[218]

Regulation 230/2014 of the European Parliament and the Council has succeeded Regulation 1717/2006 which expired on 31 December 2013.[219] This new Regulation aims to introduce a revised instrument in order to 'increase the efficiency and coherence of the EU's actions in the areas of crisis response, conflict prevention, peace-building and crisis preparedness, in addressing security threats and challenges'.[220] This Regulation expressly recognises that 'democracy and human rights have been placed at the forefront of the EU's relations with third countries and should be considered' as guiding principles of this instrument.[221] Moreover, promotion of democracy and good governance, human rights and humanitarian law, including children's rights and the rights of indigenous peoples, non-discrimination and gender equality and the empowerment of women are cross-cutting issues expressly cited by Regulation 230/2014 and should be taken into consideration, including in programming, in the adoption of measures and granting of funding under this instrument.[222]

The new Regulation covers the period 2014 to 2020 with a financial envelope of EUR 2,338,719,000.[223] The assistance provided by the Union under this instrument could be technical, economic, financial or development cooperation measures.[224]

(2) Objectives and scope

The Instrument contributing to Stability and Peace provides direct support for the EU's external policies with the above mentioned aim of 'increasing the efficiency and coherence of the EU's actions in the areas of crisis response, conflict prevention, peace-building and crisis preparedness, and in addressing global and trans-regional threats.'[225]

The specific objectives of the instrument are: (i) in a situation of crisis or emerging crisis, to contribute swiftly to stability by providing an effective response designed to help preserve, establish or re-establish the conditions essential to the proper implementation of the Union's external policies and actions; (ii) to contribute to the prevention of conflicts and to ensuring capacity and preparedness to address pre- and post-crisis situations and build peace; and (iii) to address specific global and trans-regional threats to peace, international security and stability.[226]

Regarding point (i), the circumstances covered by the instrument are not only situations of urgency, crisis or emerging crisis or situations threatening to escalate into armed conflict, but also 'situations posing a threat to democracy, law and order, the protection of human rights and fundamental freedoms

[218] Strategic Framework on Human Rights and Democracy, 2.
[219] Regulation (EU) No 230/2014 of the European Parliament and of the Council establishing an Instrument contributing to stability and peace [2014] OJ L77/1. (Regulation 230/2014).
[220] Regulation 230/2014, Preamble para 11.
[221] *Ibid*, Preamble para 9.
[222] Regulation 230/2014, Art 2(4).
[223] *Ibid*, Art 13.
[224] *Ibid*, Art 1(2).
[225] *Ibid*, Art 1(1).
[226] *Ibid*, Art 1(4).

or the security and safety of individuals, in particular those exposed to gender-based violence in situations of instability'.[227] Among the actions financed by this instrument under objective (i) the following actions related to human rights and democracy deserve special attention:

> supporting the development of democratic, pluralistic State institutions, including measures to enhance the role of women in such institutions, effective civilian administration and civilian oversight over the security system, as well as measures to strengthen the capacity of law-enforcement and judicial authorities involved in the fight against terrorism, organised crime and all forms of illicit trafficking;
>
> supporting international criminal tribunals and ad hoc national tribunals, truth and reconciliation commissions, and mechanisms for the legal settlement of human rights claims and the assertion and adjudication of property rights, established in accordance with international standards in the fields of human rights and the rule of law; support for measures to promote and defend respect for human rights and fundamental freedoms, democracy and the rule of law, and the related international instruments; or
>
> support for measures to promote the development and organisation of civil society and its participation in the political process, including measures to enhance the role of women in such processes and measures to promote independent, pluralist and professional media.[228]

Specific objective (iii) covers threats to law and order, including support for measures aimed at 'strengthening the capacity of law enforcement and judicial and civil authorities involved in the fight against terrorism, organised crime, including cyber-crime, and all forms of illicit trafficking and in the effective control of illegal trade and transit.' As regards these measures, which should place particular emphasis on good governance and be in accordance with international law, 'priority should be given to trans-regional cooperation involving two or more third countries that have demonstrated a clear political will to address the problems arising.' Moreover, with regard to assistance to authorities involved in the fight against terrorism,

> priority should be given to supporting measures concerning the development and strengthening of counter-terrorism legislation, the implementation and practice of financial law, of customs law and of immigration law, the development of law-enforcement procedures which are aligned with the highest international standards and which comply with international law, the strengthening of democratic control and institutional oversight mechanisms, and the prevention of violent radicalism.[229]

(3) Eligibility

Regulation 230/2014 does not include, as Regulation 1717/2006 did, a list of beneficiaries of the instrument. The eligibility of this instrument is now set out by the common rules included in Regulation 236/2014 which sets forth that 'participation in the award of procurement contracts or grants, as well as

[227] *Ibid*, Art 3(1).
[228] Regulation 230/2014, Art 3(3).
[229] Regulation 230/2014, Art 5.

the recruitment of experts, shall be open without limitations'.[230] The instrument is open to 'all natural persons who are nationals of, and legal persons who are effectively established in eligible countries and to international organisations'.[231] Eligibility could, however, be restricted with regard to the 'nationality, geographical location or nature of applicants, where such restrictions are required on account of the specific nature and the objectives of the action and where they are necessary for its effective implementation. Such restrictions may apply in particular to participation in award procedures in the case of cross-border cooperation actions'.[232]

(4) Coordination, complementarity and coherence with other instruments

The actions financed under this Regulation should be consistent with the overall strategic policy framework for the partner countries and with measures adopted under the EU's external action and CFSP. The views of the Parliament should also be taken into consideration.[233]

The assistance granted under this instrument also has to be complementary to that provided under other instruments for external assistance and should only be provided to the extent that an adequate and effective response cannot be provided under those other instruments. Moreover, its use should be planned and implemented in such a way as to achieve continuity of actions under those instruments, where applicable.[234] The Commission should also promote the coordination among EU and Member States' activities and with multilateral, regional and sub-regional organisations and other donors.[235]

Finally, Regulation 230/2014 states that the EU should undertake development cooperation measures, as well as financial, economic and technical cooperation measures, with third countries, regional and international organisations and other State and civil society actors according to the rules established in this Regulation.[236]

b) Instrument for development cooperation – thematic programme: 'civil society organizations and local authorities in development'

(1) Background and main features

The Development Cooperation Instrument (DCI) is part of the EU's development cooperation policy and also supports the EU's external policies. The legal basis of this instrument is Regulation 233/2014 establishing a financing instrument for development cooperation for the period 2014-2020.[237] This

[230] Regulation 236/2014, Art 11(1).
[231] *Ibid*, Art 8(1).
[232] *Ibid*, Art 8(7).
[233] Regulation 230/2014, Art 2(1) and 2(2).
[234] *Ibid*, Art 2(3).
[235] *Ibid*, Art 2(6).
[236] *Ibid*, Art 1(2).
[237] Regulation (EU) 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 [2014] OJ L378/41. (Regulation 233/2014).

Regulation replaces Regulation 1905/2006 which expired on 31 December 2013.[238] The European Consensus on Development provides the framework for the implementation of this Regulation.[239] According to it, the primary objective of EU development cooperation is the eradication of poverty in the context of sustainable development which includes good governance, human rights and political, economic, social and environmental aspects.[240] The promotion of democracy, good governance and respect for human rights are also objectives of the EU's development policy,[241] are considered areas where the EU will be primarily active in order to respond to the needs of the partner countries,[242] and constitute cross-cutting issues and vital factors in strengthening the impact and sustainability of cooperation.[243]

The assistance under Regulation 233/2014 should also contribute to the achievement of the international commitments and objectives in the field of development that the EU has agreed to, in particular the Millennium Development Goals and post 2015 new development targets.[244]

The Regulation sets out three kind of programmes to be financed by the EU:[245]

1. Geographic programmes, which will be explained in detail in point 6.d) below.
2. Thematic programmes, which are split into two categories in order to address development-related global public goods and challenges ('Global Public Goods and Challenges' programme)[246] and to support civil society organisations and local authorities in partner countries ('Civil Society Organisations and Local Authorities' programme). This latter programme is the one which specifically contributes to support the EU's activities in the field of human rights, democracy and good governance and thus will be analysed in this section.[247]
3. A Pan-African programme to support the strategic partnership between Africa and the EU to cover activities of a trans-regional, continental or global nature in and with Africa. This programme will be analysed in section 6.d)(5).

The 'Civil Society Organisations and Local Authorities' programme replaces the previous 'Non-State Actors and Local Authorities' programme and aims to strengthen civil society organisations and local

[238] Regulation (EC) 1905/2006 of the European Parliament and of the Council establishing a financing instrument for development cooperation [2006] OJ L77/44. (Regulation 1905/2006).
[239] The European Consensus on Development, see fn(33).
[240] *Ibid*, paras 5, 7.
[241] *Ibid*, para 42.
[242] *Ibid*, paras 71, 86.
[243] *Ibid*, paras 101, 103.
[244] Regulation 233/2014, Art 2(2).
[245] *Ibid*, Art 1, 4.
[246] According to Art 7 of Regulation 233/2014, the objective of the assistance under this programme is to support actions in the following areas: environment and climate change; sustainable energy; human development, including decent work, social justice and culture; food and nutrition security and sustainable agriculture; and migration and asylum.
[247] The extinct Regulation 1905/2006 classified thematic programmes under the following categories: 'Investing in people', 'Environment and sustainable management of natural resources including energy, non-State actors and local authorities in development', 'Food security', 'Migration and asylum' and 'ACP Sugar Protocol countries'.

authorities in partner countries and, when provided for by the Regulation, in the Union, candidate countries and potential candidates.[248] The indicative amount allocated for the implementation of this programme for the period 2014-2020 is EUR 1,907 million of a total financial envelope for the DCI of EUR 19,661 million.[249]

(2) Objectives and scope

The Civil Society Organisations and Local Authorities programme aims at promoting citizen participation and civil society action and cooperation, exchange of knowledge and experience and capacities of civil society organisations[250] and local authorities[251] in partner countries in support of internationally agreed development goals.[252]

The specific objectives of the programme are to contribute to

> (i) an inclusive and empowered society in partner countries through strengthened civil society organisations and local authorities and basic services delivered to populations in need;
>
> (ii) an increased level of awareness in Europe regarding development issues and mobilising active public support in the Union, candidate countries and potential candidates for poverty reduction and sustainable development strategies in partner countries;
>
> (iii) an increased capacity of European and Southern civil society and local authority networks, platforms and alliances to ensure a substantive and continued policy dialogue in the field of development and to promote democratic governance.[253]

Among the activities that could be supported, Regulation 233/2014 includes the promotion of

> the right to a process of development in which all human rights and fundamental freedoms can be fully realised; creating an enabling environment for citizen participation and civil society action and the capacity of civil society organisations to participate effectively in policy formulation and in

[248] Regulation 233/2014, Art 8.
[249] *Ibid*, Art 20, Annex IV.
[250] *Ibid*, Annex II, Part B: For the purpose of this Regulation, 'civil society organisations' are 'non-State, non-profit making actors operating on an independent and accountable basis which include: non governmental organisations, organisations representing indigenous peoples, organisations representing national and/or ethnic minorities, diaspora organisations, migrants' organisations in partner countries, local traders' associations and citizens' groups, cooperatives, employers associations and trade unions (social partners), organisations representing economic and social interests, organisations fighting corruption and fraud and promoting good governance, civil rights organisations and organisations combating discrimination, local organisations (including networks) involved in decentralised regional cooperation and integration, consumer organisations, women's and youth organisations, environmental, teaching, cultural, research and scientific organisations, universities, churches and religious associations and communities, the media and any non governmental associations and independent foundations, including independent political foundations, likely to contribute to the implementation of the objectives of this Regulation'.
[251] For the purpose of this Regulation, local authorities 'encompass a large variety of sub-national levels and branches of government, i.e. municipalities, communities, districts, counties, provinces, regions etc'.
[252] Regulation 233/2014, Annex II, Part B.
[253] *Ibid*.

the monitoring of policy implementation processes; or strengthening the capacity of local authorities to participate effectively in the development process, acknowledging their particular role and specificities.[254]

(3) Eligibility

According to Regulation 233/2014, the actions supported should 'primarily be carried out by civil society organisations and local authorities.' However, 'in order to ensure their effectiveness, actions may be carried out by other actors for the benefit of the civil society organisations and the local authorities concerned'.[255]

The actions should directly benefit the following countries or territories: developing countries that are included in the list of recipients of Official Development Assistance (ODA) established by the Organisation for Economic Co-operation and Development (OECD)/Development Assistance Committee (DAC),[256] countries eligible for EU financing under the African, Caribbean and Pacific group of States (ACP) Partnership Agreement, the European Development Fund and the ENI and countries and territories of the Association of the Overseas Countries. In principle, the actions should be carried out in these countries or territories, but could be also carried out outside them when 'it is the most effective way of achieving the objectives of the programme concerned'.[257]

Actions to be financed should be designed so as to fulfil the criteria for ODA established by the OECD/DAC, unless the action applies to a beneficiary country or territory that does not qualify as an ODA recipient country or territory according to the OECD/DAC; or the action implements a global initiative, a Union policy priority or an international obligation or commitment of the Union, and the action does not have the characteristics to fulfil the criteria for ODA. However, at least 95% of the expenditure foreseen under this programme should fulfil the criteria for ODA established by the OECD/DAC.[258]

Actions covered by humanitarian aid programmes are not eligible for funding under this instrument, 'except where there is a need to ensure continuity of cooperation from crisis to stable conditions for development'.[259]

Finally, the Commission could decide to extend the eligibility of actions to countries non eligible under this instrument 'where the action to be implemented is of a global, regional, trans-regional or cross-border nature', 'in exceptional and duly justified circumstances', 'in order to ensure the coherence and effectiveness of Union financing or to foster regional or trans-regional cooperation'.[260]

[254] *Ibid*.
[255] *Ibid*, Art 8.
[256] Except for beneficiaries eligible for Union funding under the Instrument for Pre-accession Assistance.
[257] Regulation 233/2014, Art 1(b) and 6(3).
[258] *Ibid*, Art 2(3) and 2(4).
[259] *Ibid*, Art 2(5).
[260] *Ibid*, Art 16.

(4) Coordination, complementarity and coherence with other instruments

Regarding the complementarity between thematic and geographic programmes, Regulation 233/2014 sets out that actions financed under 'thematic programmes should add value to, and be complementary to and coherent with actions funded under geographic programmes'.[261]

Regulation 233/2014 also requires 'policy coherence for development and consistency with other areas of the EU's external action and with other relevant EU policies'. Thus, measures financed under this Regulation should 'be based on the development cooperation policies set out in instruments such as agreements, declarations and action plans between the EU and the partner countries and regions concerned, and on the relevant EU's decisions, specific interests, policy priorities and strategies'.[262]

The EU and the Member States should also promote the coordination and complementarity of their policies and could undertake joint action.[263] To this end, the 'EU and the Member States should consult each other at an early stage of and throughout the programming process'. The EU should also consult other donors and development actors, including civil society, local authorities and other implementing bodies and the European Parliament should also be informed.[264]

Finally, the EU should promote 'effective cooperation with partner countries and regions', 'align its support with their national or regional development strategies', 'reform policies and procedures' and 'support democratic ownership, as well as domestic and mutual accountability'.[265]

6. Geographic financial instruments contributing to human rights and democracy

a) Instrument for pre-accession assistance (IPA II)

(1) Background and main features

The Instrument for Pre-accession Assistance (IPA II) aims to support the enlargement policy of the EU. It is based on Art 49 of the TEU which provides that 'any European State which endorses the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, may apply to become a member of the Union' and on the Copenhagen criteria according to which 'membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities […]'.[266]

[261] *Ibid*, Art 6(1).
[262] *Ibid*, Art 3(4).
[263] *Ibid*, Art 3(5).
[264] *Ibid*, Art 10(4).
[265] *Ibid*, Art 3(8).
[266] European Council, 'European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency' DOC/93/3, 13.

It is currently governed by Regulation 231/2014 of the European Parliament and of the Council,[267] which covers the period 2014-2020 and succeeds Regulation 1085/2006 establishing the first Instrument for Pre-accession assistance that expired on 31 December 2013.[268] Through IPA II, the EU will continue to provide assistance to the candidate countries in their preparation for accession as well as regional and cross-border cooperation. This instrument is focused on areas of shared interest, notably reforms in the rule of law area and strengthening of democratic institutions and good governance.[269]

As acknowledged by Regulation 231/2014, 'strengthening the rule of law, including the fight against corruption and organised crime, and good governance, including public administration reform, remain key challenges in most of the beneficiaries of the IPA II and are essential for them to assume the obligations of EU membership'.[270] The main innovation of IPA II is the establishment of a link between the enlargement policy and the priorities for assistance. Thus, it focuses on 'defining long-term policies and strategies in a limited number of priority sectors which are adjusted to the needs and capacities of each country'. Moreover, the countries will be able to benefit from budget support, subject to the fulfilment of the necessary standards of public financial management. The Instrument also sets forth incentives for those countries that make progress in the reform path whereas in case of underperformance, funds can be reallocated.[271]

The financial envelope for the IPA II is comparable to the former instrument and amounts to EUR 11,698,668,000 from which up to 4% should be allocated to cross-border cooperation programmes between the beneficiaries and the Member States.[272]

(2) Objectives and scope

The general objective of IPA II is to 'support the beneficiaries in adopting and implementing the political, institutional, legal, administrative, social and economic reforms required by them in order to comply with the EU's values and to progressively align to its rules, standards, policies and practices, with a view to EU membership'.[273] Among the specific objectives of the instrument, Regulation 231/2014 includes the support for (i) political reforms and for (ii) economic, social and territorial development. The support for political reforms could be instrumented through, inter alia,

> the strengthening of democracy and its institutions, including an independent and efficient judiciary, and of the rule of law, including its implementation; the promotion and protection of human rights and fundamental freedoms, enhanced respect for the rights of persons belonging to minorities, including lesbian, gay, bisexual, transgender and intersex persons, promotion of

[267] Regulation (EU) 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), [2014] OJ L77/11. (Regulation 231/2014).
[268] Council Regulation (EC) No 1085/2006 establishing an Instrument for Pre-accession Assistance (IPA) [2006] OJ L2210/82.
[269] Communication from the Commission to the European Parliament and the Council, 'Enlargement Strategy and Main Challenges 2013-2014' COM(2013) 700 final, 2-3. (Enlargement Strategy 2013-2014).
[270] Regulation 231/2014, Preamble para 9.
[271] Enlargement Strategy 2013-2014, 3.
[272] Regulation 231/2014, Art 15.
[273] *Ibid*, Art 1.

> gender equality, non-discrimination and tolerance, as well as freedom of the media and respect for cultural diversity; the strengthening of public administration and good governance at all levels; capacity-building measures for improving law enforcement, border management and implementation of migration policy, including the management of migration flows; or development of civil society.

Minorities and vulnerable groups are also mentioned in the specific objective of support for economic, social and territorial development, which should promote their social and economic inclusion.[274] Progress towards these specific objectives will be 'monitored and assessed through the definition of pre-defined, clear, transparent and country-specific and measurable indicators in the country or multi-country' indicative strategy papers.[275]

Regulation 231/2014 also sets forth the thematic priorities for providing 'assistance according to the needs and capacities of the beneficiaries'. These thematic priorities can 'contribute to the meeting of one or more specific objectives'.[276] Among these thematic priorities, Regulation 231/2014 includes

> compliance with the principle of good public administration and economic governance; establishing and promoting from an early stage the proper functioning of the institutions necessary in order to secure the rule of law; strengthening the capacities of civil society organisations and social partners' organisations, including professional associations; or promoting social inclusion and combating poverty, including interventions that aim at integrating marginalised communities such as the Roma and combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.[277]

Five policy areas are addressed by IPA II: 'reforms in preparation for EU membership and related institution and capacity-building'; 'socio-economic and regional development'; 'employment, social policies, education, promotion of gender equality, and human resources development'; 'agriculture and rural development and regional and territorial cooperation'. Regulation 231/2014 also remarks that particular attention should be paid to good governance, the rule of law and the fight against corruption and organised crime.[278]

Assistance under this instrument will be 'differentiated in scope and intensity according to the needs, commitment to reforms and progress in implementing those reforms of each beneficiary and it will mainly focus on helping them to design and implement sector reforms'.[279]

Finally, IPA II should also support cross-border cooperation, both between the beneficiaries and between them and Member States or countries under the ENI in order to promote good neighbourly

[274] *Ibid*, Art 2.
[275] *Ibid*, Art 2(2) and 6(3).
[276] *Ibid*, Art 4(3).
[277] *Ibid*, Art II.
[278] *Ibid*, Art 3.
[279] *Ibid*, Art 4(2).

relations, fostering Union integration and promoting socio-economic development.[280]

(3) Eligibility

The assistance under this instrument should be granted to the beneficiaries listed in Regulation 231/2014, i.e., Albania, Bosnia and Herzegovina, Iceland, Kosovo, Montenegro, Serbia, Turkey and the former Yugoslav Republic of Macedonia.[281]

However, 'in duly justified circumstances […] and in order to ensure the coherence and effectiveness of EU financing or to foster regional cooperation, the Commission may decide to extend the eligibility to other countries, territories and regions, where the programme or measure to be implemented is of a global, regional or cross-border nature'.[282]

Finally, Regulation 231/2014 also sets forth that 'the capacities of civil society organisations [have] to be strengthened, including, as appropriate, direct beneficiaries of assistance'.[283]

(4) Coordination, complementarity and coherence with other instruments

The assistance should be coherent with the 'enlargement policy framework defined by the European Council and the Council and take due account of the Communication on the Enlargement Strategy and the Progress Reports comprised in the annual enlargement package of the Commission, as well as of the relevant resolutions of the European Parliament'.[284]

Moreover, the assistance has to be consistent with EU policies and the agreements between the EU and the beneficiaries as well as the multilateral agreements to which the EU is a party. The Commission, the Member States and the European Investment Bank should cooperate in ensuring coherence and should avoid duplications and prevent double funding in their respective assistance programmes. The Commission, in liaison with the Member States, should also take 'the necessary steps to ensure better coordination and complementarity with multilateral and regional organisations and entities, such as international financial institutions, United Nations agencies, funds and programmes, and non-Union donors'.[285]

Finally, Regulation 231/2014 states the complementarity between IPA II and other financial assistance instruments such as the European Regional Development Fund which has also to contribute to IPA II for cross–border cooperation between the beneficiaries and Member States. IPA II should also contribute to transnational and interregional cooperation programmes or measures covered by the European

[280] *Ibid*, Art 4(4).
[281] *Ibid*, Annex I.
[282] *Ibid*, Art 9(1).
[283] *Ibid*, Art 5(6).
[284] *Ibid*, Art 4(1).
[285] *Ibid*, Art 5.

Regional Development Fund,[286] to cross-border cooperation programmes or measures under the ENI and to programmes or measures introduced as part of a macro-regional strategy.[287]

b) European neighbourhood instrument

(1) Background and main features

Neighbourhood is one of the policy priorities of the EU's work with external partners. According to Art 8 of the Treaty of the European Union, 'the Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation'.[288]

This instrument is set out in Regulation 232/2014 establishing a European Neighbourhood Instrument (ENI)[289] that replaces Regulation 1638/2006 which also covered the Partnership Instrument.[290] It is the financial instrument for direct support of the European Neighbourhood Policy (ENP) and will cover the period from 2014 to 2020. This policy aims to 'offer European Neighbourhood countries a privileged relationship, building upon a mutual commitment to, and promotion of the values of democracy and human rights, the rule of law, good governance and the principles of a market economy and sustainable and inclusive development'. It also constitutes 'a framework for enhanced mobility and people-to-people contacts, particularly through visa facilitation and readmission agreements, and, on a case-by-case basis, through visa liberalisation'.[291]

The support for democratisation in the European Neighbourhood has been one of the main objectives of the ENP since it was launched. Moreover, the ENP was reviewed in 2011 in order to provide a greater support to partners committed to building democratic societies and undertaking reforms in line with the incentive-based approach ('more for more') and the principle of mutual accountability.[292] The ENP is the basis on which the EU works to achieve the closest possible political association and economic integration with its neighbours and it is built on the values of democracy, the rule of law, respect for human rights, and social cohesion.[293]

The incentive-based approach is the key aspect of the new Regulation. Thus, the EU will differentiate levels of support depending on partner countries' needs and progress. This will allow the EU to increase

[286] Regulation (EU) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal [2013] OJ L347/259.
[287] *Ibid*, Art 9(2) to 9(5).
[288] TEU, Art 8.
[289] Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument [2014] OJ L77/27. (Regulation 232/2014).
[290] Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument [2006] OJ L310/1 (Regulation 1638/2006).
[291] Regulation 232/2014, Preamble para 3.
[292] Regulation 232/2014, Preamble para 4.
[293] Commission, 'European Neighbourhood Policy: Working towards a Stronger Partnership' (Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) JOIN (2013)4, 2.

its support for the partners who are genuinely implementing deep and sustainable democracy, including respect for human rights, and agreed reform objectives and will make the assistance more relevant, more aligned with policy priorities and more flexible.[294]

Other features of the new ENI are the reduction of the complexity of the programming process and the increase of its focus for ENP partners that have jointly agreed to the EU strategic priorities in Action Plans or equivalent documents; improving provisions on Cross-Border Cooperation (CBC) programmes in order to facilitate effective and fast implementation; promoting closer links with EU internal instruments and policies with the aim to enable partner countries and their citizens to participate in EU internal programmes in areas such as research and innovation, youth programmes, development of small and medium enterprises and industrial cooperation and finally, amending Russia's eligibility for ENI funding to reflect its specific status as neighbour (Russia will remain eligible under the ENI for multi-country programmes and CBC programmes) and strategic partner (through the new Partnership Instrument).[295]

The policy framework of the ENI comprises the partnership and cooperation agreements, the association agreements and other existing or future agreements establishing a relationship with partner countries, Commission communications, European Council conclusions, Council conclusions, summit declarations or conclusions of ministerial meetings with ENP's partner countries, including in the context of the Eastern Partnership and the Union for the Mediterranean, and relevant European Parliament resolutions.[296]

The financial envelope for the implementation of the new ENI for the period 2014 to 2020 is 15,432,634,000 which is comparable to the funding for the total funding allocated under the extinct ENPI (including the new Partnership Instrument).[297]

(2) Objectives and scope

This instrument's aim is advancing towards an area of shared prosperity and good neighbourliness involving the Union and the partner countries[298] by developing a special relationship founded on cooperation, peace and security, mutual accountability and a shared commitment to the universal values of democracy, the rule of law and respect for human rights.[299]

The assistance should specifically focus on promoting enhanced political cooperation, deep and sustainable democracy, progressive economic integration and a strengthened partnership with societies between the Union and the partner countries and the implementation of partnership and cooperation agreements, association agreements or other existing and future agreements, and jointly agreed action plans or equivalent documents.

[294] European Commission MEMO/13/1134, *Ibid* (n73), 5.
[295] *Ibid*.
[296] Regulation 232/2014, Art 3(2).
[297] Regulation 232/2014, Art 17.
[298] According to Annex I of Regulation 232/2014 these countries are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, The Republic of Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine.
[299] Regulation 232/2014, Art 1(1).

Among the specific objectives of the instrument the following should be mentioned:

> (i) promoting human rights and fundamental freedoms, the rule of law, principles of equality and the fight against discrimination in all its forms, establishing deep and sustainable democracy, promoting good governance, fighting corruption, strengthening institutional capacity at all levels and developing a thriving civil society including social partners;
>
> (ii) creating conditions for the better organisation of legal migration and the fostering of well-managed mobility of people;
>
> (iii) supporting smart, sustainable and inclusive development in all aspects; reducing poverty, and social exclusion; promoting capacity-building in science, education, technology, research and innovation; promoting internal economic, social and territorial cohesion; fostering rural development; promoting public health; and supporting environmental protection, climate action and disaster resilience; and
>
> (iv) promoting confidence-building, good neighbourly relations and other measures contributing to security in all its forms and the prevention and settlement of conflicts.

As mentioned above, the incentive based approach is one of the key aspects of the implementation of the new ENI. According to this approach, the EU's support is differentiated in form and amounts taking into account the following elements regarding the partner country:[300]

(a) needs, using indicators such as population and level of development;

(b) commitment to and progress in implementing mutually agreed political, economic and social reform objectives;

(c) commitment to and progress in building deep and sustainable democracy;

(d) partnership with the EU, including the level of ambition for that partnership;

(e) absorption capacity and the potential impact of EU support.

The partner country's commitment towards democracy is one of the elements that is more decisive and should primarily be taken into account in the allocation of funds to the partner countries.[301]

However, this 'incentive-based approach should not be applied to support to civil society and people-to-people contacts, support for the improvement of human rights or crisis-related measures'.[302]

(3) Eligibility

The partner countries mentioned above in epigraph (2) are eligible for financing.[303] However, the Commission may decide on a case-by-case basis, to extend the eligibility of specific actions to other

[300] Regulation 232/2014, Art 4(1).
[301] Regulation 232/2014, Art 4(2).
[302] *Ibid*, Art 4(3).

countries, territories and 'areas in duly justified circumstances and in order to ensure the coherence and effectiveness of EU financing or to foster regional or trans-regional cooperation.'[304]

(4) Coordination, complementarity and coherence with other instruments

According to Regulation 232/2014,the implementation of this instrument should be coherent with all areas of the EU's external action and other relevant policies and with other support provided by the EU, the Member States and the European financial institutions. Moreover, 'the Union, in liaison with the Member States, should take the necessary steps to ensure complementarity, proper coordination and cooperation with multilateral and regional organisations and entities, including European and international financial institutions, United Nations agencies, funds and programmes, private and political foundations and non-Union donors.[305]

Within the framework of CBC, joint operational programmes should be co-financed by the ERDF and the Instrument for Pre-Accession (IPA II) may be also used to co-finance these programmes.[306]

c) European development fund

(1) Background and main features

The European Development Fund (EDF) is the main instrument to provide development assistance to the African, Caribbean and Pacific (ACP) countries and the overseas countries and territories (OCTs). The ACP-EC Partnership Agreement[307] aims to promote the economic, cultural and social development of the ACP countries in order to contribute to peace and security and to promote a stable and democratic political environment.[308] This Agreement expressly acknowledges the close link between sustainable development and the respect for all human rights and fundamental freedoms and democracy based on the rule of law and transparent and accountable governance. Thus, the ACP-EC Partnership should 'actively support the promotion of human rights, processes of democratisation, consolidation of the rule of law, and good governance'. These areas are deemed an important subject for the political dialogue and the progress achieved should be regularly assessed by the parties to the Agreement. Moreover, these areas are a focus of support for development strategies agreed jointly between the State concerned and the EU, including 'support for political, institutional and legal reforms and building the capacity of public and private actors and civil society'. [309]

[303] See section III.C.6.b)(2).
[304] Regulation 232/2014, Art 16.
[305] *Ibid*, Art 5.
[306] *Ibid*, Art 9(2), 9(3).
[307] Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005, revised in Ouagadougou on 22 June 2010 OJ L317, OJ L297, OJ L209, OJ L287, OJ L247, OJ L287. (ACP-EC Partnership Agreement or Cotonou Agreement).
[308] ACP-ECP Partnership Agreement, Art 1.
[309] *Ibid*, Art 9.

The ACP-EC Agreement defines democratic principles,[310] good governance[311] and the rule of law[312], which should underpin the Agreement and 'the domestic and international policies of the parties and constitute the fundamental elements of the Agreement. Violation of these elements could lead to the measures specified in Article 96 of the Agreement', including suspension. Moreover, the Agreement clarifies that these principles should apply equally to the ACP States on the one hand, and to the European Union and its Member States, on the other hand.[313]

Along with the development strategies and the economic and trade cooperation, the ACEP-EC Partnership Agreement establishes the rules for the development finance cooperation, which should 'support and promote the efforts of ACP States to achieve the objectives set out in the Agreement', by means of the adequate financial resources and technical assistance.[314]

The ACP-EC Partnership Agreement has been in force since 1 March 2000 and was agreed for a period of twenty years. Financial protocols of the Agreement are designed for each five-year period.[315] The last financial framework was agreed for the period 2008 to 2013 and specifies an overall amount of EUR 21,966 million for financial assistance for the ACP States under the 10th EDF.[316] The entry into force of the 11th EDH is still pending. Thus, for the time being, a Bridging Facility has been established in order to finance the measures and programmes.[317]

Finally, it should be noted that the EDF is an inter-governmental agreement, which has the important specification of being an extra-budgetary fund,funded by the Member States. However, the budgetisation of the EDF has been requested on several occasions by the Commission, in order to enhance the consistency and effectiveness of the EU's development policy.[318]

[310] According to Art 9(2), democratic principles are 'universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms'.
[311] Art 9(3) defines good governance as 'the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption'.
[312] According to Art 9(2), the rule of law should entail 'effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law'.
[313] ACP-EC Partnership Agreement, Art 9.
[314] *Ibid*, Art 55.
[315] *Ibid*, Art 95.
[316] Decision of the ACP-EC Council of Ministers 1/2006 (2006/608/EC) specifying the multiannual financial framework for the period 2008 to 2013 and modifying the revised ACP-EC Partnership Agreement, Annex 1b)(1) [2006].
[317] Council Decision 2013/759/EU regarding transitional EDF management measures from 1 January 2014 until the entry into force of the 11th European Development Fund, [2013], Art 1.
[318] Commission, 'Building our common Future. Policy challenges and Budgetary means of the Enlarged Union 2007-2013' (Communication from the Commission to the Council and the European Parliament) COM (2004) 101 final/2, 27. Commission, 'Towards the full integration of co-operation with ACP countries in the EU budget' (Communication from the Commission to the Council and the European Parliament) COM (2003) 590 final, 1-22.

(2) Objectives and scope

The primary and overarching objective of cooperation under the EDF is the eradication of poverty in partner countries and regions in the context of sustainable development, including pursuit of the Millennium Development Goals.[319]

ACP-EC cooperation strategies at national and regional levels should aim at, among other objectives, promoting institutional reforms and development, strengthening the institutions necessary for the consolidation of democracy, good governance and for efficient and competitive market economies; and building capacity for development and partnership.[320]

In the implementation of the cooperation attention should be paid to the thematic or cross-cutting themes mentioned by the Agreement, in particular, human rights, democracy, good governance and institutional development and capacity building.[321] In this sense, the Agreement sets forth that cooperation should support ACP States in order

> to develop and strengthen structures, institutions and procedures that help to promote and sustain democracy, human dignity, social justice and pluralism, universal and full respect for and observance and protection of all human rights and fundamental freedoms, to develop and strengthen the rule of law; and improve access to justice, and ensure transparent and accountable governance and administration in all public institutions.

Cooperation should also support the emergence of non-State actors and the development of their capacities and their access to information, dialogue and consultation with the national authorities.[322]

The issue of migration has to be subject 'to an in depth dialogue in the framework of the Agreement', and the parties acknowledge that the partnership also 'implies fair treatment of third country nationals who reside legally on their territories, integration policy aiming at granting them rights and obligations comparable to those of their citizens, enhancing non-discrimination in economic, social and cultural life and developing measures against racism and xenophobia'.[323]

The scope of financing may notably include 'support to macroeconomic and structural reforms and policies'; 'sectorial policies and reforms'; 'institutional development and capacity building or technical cooperation programmes'.[324]

(3) Eligibility

The ACP States are eligible for financial support as well as regional or inter-State bodies to which one or more ACP States belong, including the African Union or other bodies with non-ACP State members; and

[319] Council Regulation (EC) No 617/2007 on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement, [2007] OJ L152/1, Art 1.1. (Council Regulation 617/2007).
[320] ACP-EC Partnership Agreement, Art 20(1)(d).
[321] *Ibid*, Art 20(2).
[322] *Ibid*, Art 33.
[323] *Ibid*, Art 13.
[324] *Ibid*, Art 60.

'joint bodies set up by the ACP States and the Community to pursue certain specific objectives'. Moreover, subject to the agreement of the ACP States concerned, national and/or regional public or semi-public agencies and departments of ACP States could also be eligible, including Parliaments, and their financial institutions and development banks; companies, firms and other private organisations and private operators of ACP States; enterprises of a Member State, 'to enable them, in addition to their own contribution, to undertake productive projects in the territory of an ACP State'; ACP or EU's financial intermediaries 'providing, promoting and financing private or public investments in ACP States'; local decentralised authorities from ACP States and the EU and developing countries 'that are not part of the ACP Group where they participate in a joint initiative or regional organisation with ACP States'. Finally, non-State actors from ACP States and the EU 'which have a local character are also eligible for financial support, according to the modalities agreed in the national and regional indicative programmes'.[325]

The Agreement also sets forth special provisions for the least-developed countries which should be specially treated in order to enable them to overcome the difficulties hindering their development and to step up their rates of development, as well as landlocked and island ACP countries on account of their special vulnerability. Finally, the needs of countries in post-conflict situations should also be taken into consideration.[326]

(4) Coordination, complementarity and coherence with other instruments

According to the Agreement, the parties should address policy coherence for development in a targeted, strategic and partnership-oriented way, including strengthening dialogue on these matters. Union policies other than development policy can also support the development of the ACP states and the Union has to enhance the coherence of those policies with the aim of attaining the objectives of the Agreement. To this end, the EU has to inform ACP States of the measures to be taken and inform them regularly. Consultations should also be held in order to take into account ACP States' concerns regarding the impact of those measures before any final decision is made.[327]

The strategy papers and multiannual indicative programmes must also take into consideration avoiding duplication of measures and programmes to be funded under other EDF or EU instruments, in particular with DCI, EIDHR, the Instrument contributing to Stability and Peace and humanitarian aid support instruments.[328]

[325] *Ibid*, Art 58.
[326] *Ibid*, arts 84 to 89.
[327] *Ibid*, Art 12.
[328] Council Regulation 617/2007, Art 4(4).

d) Development cooperation instrument – geographic programmes (common areas of cooperation) and Pan-African programme.

(1) Background and main features

Along with thematic programmes analysed in section 5.b) above, Regulation 233/2014 also establishes the funding of geographic programmes, which support bilateral and regional cooperation with developing countries in several areas such as human rights, democracy, good governance and sustainable growth for human development and many other priorities relevant to each region.[329]

As mentioned above, the primary objective of cooperation under DCI is 'the reduction and, in the long term, the eradication of poverty', but also the assistance under this instrument should contribute to other objectives, notably 'consolidating and supporting democracy, the rule of law, good governance, human rights and the relevant principles of international law'.[330]

Geographic programmes are classified according to the areas of cooperation that should be financed. Two categories of areas of cooperation are set forth by Regulation 233/2014: Common areas of cooperation and Specific Areas of cooperation per region. The former comprises three subareas of cooperation: (i) Human rights, democracy and good governance, which will be analysed in this section; (ii) Inclusive and sustainable growth for human development which aims to finance activities carried out in the fields of health, education, social protection, employment and culture; business environment, regional integration and world markets; sustainable agriculture, food and nutrition security; sustainable energy; natural resources management and climate change and environment, and (iii) Other areas of significance for development, including migration and asylum, linking humanitarian relief and development cooperation, resilience and disaster risk reduction and development and security. The Specific Areas of Cooperation per Region should support actions and sectorial dialogues in the sectors established by the Regulation for each region (Latin America, South Asia, North and South East Asia, Central Asia, Middle East and Other countries). Among these sectors, particular consideration is given to the promotion of democratic governance.[331]

The total amount to be allocated to geographic programmes for the period 2014-2020 is EUR 11,809 million, from which at least 15% should be used to finance actions carried out within the area of cooperation of human rights, democracy and good governance.[332]

(2) Objectives and scope

These programmes should finance the areas of cooperation contained in the European Consensus on Development, as well as the areas mentioned by Regulation 233/2014. One of these latter areas is 'human rights, democracy and good governance', including the subareas included in Regulation 233/2014 (human rights, democracy and the rule of law; gender equality, empowerment of and equal opportunities for women; public sector management at central and local level; tax policy and

[329] European Commission MEMO/13/1134 *Ibid* (n73), 6
[330] Regulation 233/2014, Art 2.
[331] *Ibid*, Annex I.
[332] *Ibid*, Annex IV

administration; fight against corruption; civil society and local authorities; and the promotion and protection of the rights of children).[333]

The activities to be implemented under these programmes can be of a national, regional, trans-regional or continental nature. Regional cooperation has to be established with developing countries included in the OECD/DAC list of recipients of ODA. Bilateral cooperation should involve partner countries that 'are not upper middle income countries on the OECD/DAC list of developing countries or do not have a gross domestic product greater than 1% of global gross domestic product.' In exceptional cases bilateral cooperation may also be undertaken with more than one partner country if it is justified according to the differential approach.[334]

Regarding programming, multiannual indicative programmes for partner countries and regions have to be based on a strategy document providing a framework for cooperation between the EU and the country or region, except for countries with a national development strategy or other agreed documents or strategies or those countries receiving allocations of funds not exceeding EUR 50,000,000 for the period 2014-2020.[335]

All programming documents should 'comply with the principles of democratic ownership, partnership, coordination, harmonisation, alignment with partner country or regional systems, transparency, mutual accountability and results orientation' and should 'be based, as far as possible, on a dialogue between the Union, the Member States and the partner country or region concerned', 'should involve civil society and local authorities and […] encourage support for national development strategies'.[336]

Programming for countries and regions in crisis, post-crisis or situations of fragility should fulfil the requirements set forth by Regulation 233/2014, in particular, the 'vulnerability and special needs and circumstances of the countries or regions' should be taken into account as well as 'conflict prevention, State and peace building, post-conflict reconciliation and reconstruction measures' and the coordination between relief, rehabilitation and development amongst all relevant actors.[337]

(3) Eligibility

These programmes should support development cooperation with countries included in the list of recipients of ODA established by the OECD/DAC, except for countries that are signatories to the ACP Partnership Agreement, excluding South Africa, and countries eligible for the EDF, the ENI or the IPA.

(4) Coordination, complementarity and coherence with other instruments

See section 5.b)(4) regarding thematic programmes under the DCI.

[333] *Ibid*, Art 5(3) and Annex I.
[334] *Ibid*, Artis 5(1) and 5(2).
[335] *Ibid*, Arts 10(1) and 11(3).
[336] *Ibid*, Art 11(1).
[337] *Ibid*, Art 12(1).

(5) Pan-African programme

The objective of the Pan-African programme is to 'support the objectives and general principles of the strategic partnership between Africa and the Union', promote 'the principles of a people-centred partnership and 'treating Africa as one', as well as coherence between the regional and continental levels'.[338]

This programme should 'focus on activities of a trans-regional, continental or global nature in and with Africa, and support joint Africa-EU initiatives in the global arena'. Among the areas of partnership, Regulation 233/2014 also includes democratic governance and human rights.[339] 'At least 90% of the expenditure foreseen under [this] programme shall fulfil the criteria for ODA established by the OECD/DAC'.[340]

The indicative financial allocation for this programme for the period 2014-2020 amounts to EUR 845 million.[341]

Programming documents for this programme should comply with the principle of aid effectiveness, be based on a dialogue involving all relevant stakeholders, such as the Pan-African Parliament, and be coherent with geographic and thematic programmes.[342]

[338] *Ibid*, Annex III.
[339] *Ibid*, Art 9(1) and Annex III.
[340] *Ibid*, Art 2(4).
[341] *Ibid*, Annex IV.
[342] *Ibid*, Art 14.

IV. Evaluation of human rights and democracy policy

The evaluation of the EU's human rights and democracy policy does not fall within the scope of this report. However, in order to complete the policy cycle analysis (see above, section I), a brief mention of the 'self-evaluation' carried out by the EU, in particular through the Annual Report on Human Rights and Democracy, will be made here.

The specific actions undertaken in order to implement the above mentioned instruments and policies are specified annually in the framework of the EU's Annual Report on Human Rights and Democracy in the World adopted by the Council, which is the main instrument for evaluating EU's action in this field. This Report, first published in 1999, provides a description of the EU's work across the whole range of human rights thematic and country and regional issues.

Since the adoption in 2012 of the Strategic Framework and the Action Plan on Human Rights and Democracy, the Annual Report follows the structure of this policy document in order to reflect the EU's annual progress in the implementation of the provisions of the Action Plan. This report constitutes not only a catalogue of the EU's action on human rights across the EU's external relations but also guides the future work and the fields where progress is most urgently needed.[343] Thus, it constitutes a guide on 'what should be safeguarded, what should be improved and what should be changed in order to help make respect for human rights a universal reality'.[344]

Human rights and democracy promotion constitute also an important part of other EU's Annual Reports on the actions undertaken within other policies relevant to human rights. In this regards the Annual report from the HR/VP to the European Parliament on the main aspects and basis choices of the CFSP should be mentioned, which includes also a title devoted to the overview of the actions carried out within the CFSP regarding the promotion of human rights, democracy and the rule of law and the Annual Report on the European Union's Development and External Assistance Policies and their Implementation, which also refers to the assessment of the use, by the EU, of the range of external instruments to promote and protect human rights and good governance.

Council conclusions are also used as an instrument for the assessment of the implementation of the EU's human rights policies or other policies relevant to human rights. By means of these conclusions, the Council welcomes the developments in the implementation of the different policies and instruments, underlines the EU's current and future commitments regarding the promotion of human rights and democracy, points out the fields for improvement and proposes actions in order to fill the gaps in the implementation of the policies and instruments. In this regards, the following could be mentioned: the annual Council conclusions on democracy support in the EU's external relations, the Council Conclusions on the first anniversary of the EU Strategic Framework and Action Plan on Human Rights and Democracy and the appointment of the EUSR for Human Rights[345] or the Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between

[343] Annual Report 2012, 5
[344] Annual report 2012, 8
[345] Council of the European Union, 12559/13, *Ibid* fn(117).

internal and external aspects of human rights protection and promotion in the European Union.[346]

Finally, it should be noted that in its 2009 Conclusions on democracy support, where the EU Agenda for action on Democracy Support in EU external relations was adopted, the Council invited the EU institutions, in cooperation with Member States, to implement this Agenda and report back on the progress achieved and to include in their progress report a list of pilot countries for more specific follow-up. A first generation of pilot countries[347] were identified by the 2010 Council conclusions on Democracy Support in the EU's external relations[348] and a second generation of pilot countries has to be identified according to action 6 b) of the Action Plan.

[346] Council of the European Union, 'Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights protection and promotion in the European Union – Adoption' 10116/14 [2014].

[347] The following list of pilot countries was proposed: Republic of Moldova (for Eastern Neighbourhood); Kyrgyzstan (for Central Asia); Lebanon (for Southern Neighbourhood); Ghana, Benin, Solomon Islands and Central African Republic (for ACP); Bolivia (for Latin America); and Mongolia, Philippines, Indonesia and Maldives (in Asia).

[348] Council of the European Union, 'Council conclusions on Democracy Support in the EU's External Relations - 2010 Progress Report and list of proposed pilot countries. 3058th Foreign Affairs Council meeting' [2010].

V. Policy prioritisation: themes

A. Introduction

As mentioned above, the Strategic Framework identifies the themes and groups which are a priority for the EU under the area called 'Implementing EU priorities on human rights'. The purpose of this section is to examine these priority themes while section VI will deal with the analysis of the groups.

The priority themes that will be examined in this section are those that have been translated into actions in the Action Plan, that is, those included in Outcomes 16, 17, 18, 21, 23, 24, 25, 26 and 27 of the Action Plan. Taking into consideration that the Action Plan consists in a list of actions that should be undertaken by the EU and its Member States in order to put the Strategic Framework into practice, this report assumes that the significance of these themes is higher for the EU, since they should be first implemented.

The structure of this section will follow the order in which they are placed in the Strategic Framework:

- Freedom of expression online and offline.
- Freedom of religion or belief.
- Implementation of the UN Guiding Principles on Business and Human Rights.
- Abolition of the death penalty.
- Eradication of torture and other cruel inhuman or degrading treatment or punishment.
- Administration of justice.
- Compliance with IHL.
- Responding to violations: ensuring accountability.
- Effective support to human rights defenders.

The historical context and policy development of each theme will first be introduced. Then the legal framework and policy formulation will be addressed as well as the main instruments established by the EU in order to implement them. Finally, a brief mention to the EU's internal approach will be made. In connection with this internal approach, it should be noted that although the major focus of this report is the external dimension of the EU's human rights and democracy policy, a brief mention of the domestic approach will be made when it is found relevant, taking into consideration that pursuing coherent objectives in the internal and external areas of EU's action is one of the specific objectives of the Strategic Framework.[349] This provision of the Strategic Framework is based on the general duty of the EU to ensure consistency between the different areas of its external action and between these and its other policies[350] and has been recently reaffirmed by the Council in its Conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights protection and promotion in the European Union.[351] In these

[349] See above section [II.B.1.b)].
[350] TEU, Art 21(3) para 2.
[351] Council of the European Union, 'Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union – Adoption' 10116/14 [2014] Annex.

Conclusions the Council highlights that the issue of consistency between internal and external aspects of human rights protection and promotion is crucial in order to enhance the EU's credibility in its external relations and to strengthen its 'leading by example'role in the area of human rights. Moreover, the Council recalls that the Charter of Fundamental Rights of the European Union is also applicable to the external action of the Union and underlines that the EU and Member States' 'high standards of protection of human rights' can be applied to the EU's external activities and be presented in a consistent manner to relations with third partners.[352]

In addition, the perception of an EU double standard regarding the internal and external application of the EU's instruments for the protection of human rights has been argued by some human rights NGOs and authors in so sensitive human right issues such as homophobia, discrimination, 'dubious anti-terrorism practices' and minority protection.[353] Finally, the references to the EU's internal approach will make possible to further undertake a comparative analysis between the internal and external dimensions of the EU's promotion of human rights and democracy activities in order to identify eventual incoherences. This issue will be addressed in a future report critically assessing the consistency of policy prioritisation throughout EU policies.

B. Freedom of expression

1. Historical context and policy development

Protection of freedom of opinion and expression and media freedom have been a priority in the EU's policies since the first attempts to include human rights in the EU's external policy. Since the adoption on November 1991 of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, the EU has used a number of tools and instruments to develop its actions in this field. In 1991 the Community granted resources for projects as the creation of an 'alert network' aiming to deal with attacks on press freedom.[354] Since then, the EU has used its foreign policy and financial tools to support media freedom as well as freedom of opinion and expression and priorities issues have been updated to cover new situations arising with the development of information and communication technologies (ICT). Therefore, in its communication on Internet governance: the next steps, the European Commission established links between security and stability of Internet with human rights, especially, freedom of expression, data protection, privacy and cultural and linguistic diversity,[355] defining a new strategic focus: the relation between ICT, especially Internet and mobile communication devices, and freedom of expression and media freedom protection.

Nevertheless, the turning point came in 2011. Following the uprisings in the Arab region the EU has focused on promoting freedom of expression on the Internet and supporting bloggers and journalists

[352] *Ibid*, paras 13, 14, 19.

[353] Peter Simmons, 'The State of the Art in the EU Democracy Promotion Literature' (2011) 7 Journal of Contemporary European Research, 130-131.

[354] Commission, 'Report on the implementation of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development adopted on 28 November 1991' (Communication from the Commission to the Council and the European Parliament) SEC (92) 1915 final.

[355] Commission, 'Internet governance: the next steps' (Communication from the Commission to the European Parliament and the Council) COM(2009) 277, 5.

online.[356] One of the steps taken in this direction was the launch of the 'No disconnect strategy' aiming at the protection of human rights online and offline through three major actions: deployment of Internet survival packs' to activists, easy-to-use software/hardware packages helping people to bypass censorship and counter surveillance; stimulating EU companies to develop self-regulatory approaches (or join existing ones, such as the Global Network Initiative) so we stop selling despots their ICT tools of repression; and hosting support – to help prohibited content reach its audience (blogs and videos for example).[357] Subsequently, freedom of expression online and offline was included in the EU's Strategic Framework and Action Plan on human rights and democracy, and, recently, the Council has adopted new Guidelines on Freedom of Expression Online and Offline.

2. Legal framework and formulation of policy

Freedom of opinion and expression is enshrined in the core EU legal documents. Art 11 of the European Union's Charter of Fundamental Rights states: 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected.' However, freedom of opinion and expression is also covered by Art 7, respect for private and family life; Art 8, protection of personal data; Art 10, freedom of thought, conscience and religion; and Art 22, cultural, religious and linguistic diversity. Protection of personal data is also enshrined in Art 16 of the Treaty on the Functioning of the European Union. On the other hand the EU has adopted other instruments on key issues regarding freedom of opinion and expression as hate speech[358] and data protection.[359]

Freedom of expression online and offline is also included as a priority in the EU's Strategic Framework and Action Plan for Human Rights and Democracy. The Action Plan provides for four objectives and measures as the development of new Guidelines on freedom of expression online and offline, including

[356] European Commission, 'Freedom of expression, media and digital communications. Key issues' (European Commission 2012), 15.

[357] European Commission, 'Neelie Kroes Vice-President of the European Commission responsible for the Digital Agenda Using technology to support freedom Press conference on "No disconnect Strategy", SPEECH/11/873 <http://europa.eu/rapid/press-release_SPEECH-11-873_en.htm?locale=en> accessed 23 July 2014.

[358] Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law; Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law – COM (2014) 27 final; Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services (Audio-visual Media Services Directive).

[359] Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community Institutions and bodies and on the free movement of such data; Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (amended by Directives 2006/24/EC and Directive 2009/136/EC); Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. A comprehensive reform of the EU data protection rules is currently under discussion. For further information, see <http://europa.eu/rapid/press-release_MEMO-14-186_fr.htm>.

the protection of bloggers and journalists; measures and tools to expand internet access and to address indiscriminate censorship or mass surveillance; measures oriented towards mainstreaming human rights in policies related to cyber security and cyber-crime; including freedom of expression online and offline and violations as a cause for export restriction by Member States.

In May 2014, the Council of the EU published the EU Human Rights Guidelines on Freedom of Expression Online and Offline. The Guidelines identified several areas of action as combating all forms of attack to media actors because of their exercise of the right to freedom of expression and to combat impunity; promoting law and practices protecting freedom of opinion and expression; promoting media freedom and pluralism; promoting human rights in the Internet and other communication technologies; promoting best practices by companies; and promoting legislative measures oriented towards data protection and privacy. The Guidelines also included a number of foreign policy tools that the EU can use in its relations with bilateral partners and when cooperating with multilateral and regional organisations. The Guidelines also provided for regular consultation and coordination with CSOs and human rights defenders (HRDs) which work for the promotion of freedom of opinion and expression. Measures for the defence of individuals facing repression for their work as journalists, other media actors and defenders of freedom of opinion and expression include trial observation and prison visits.[360]

3. Implementation of policy

The EU uses general tools as public statements and démarches preventively and in reaction to violations or restrictions on the right to freedom of opinion and expression, such as the HR/VP statements on Venezuela, Libya, Ukraine, and Egypt.[361] The EU also issues statements and démarches in response to serious individual cases, as was the case of Tibetan self-immolations.[362] Finally, as in previous years, HR/VP Catherine Ashton has reiterated the EU's commitment with free, diverse and independent media in her declaration on the occasion of World Press Freedom Day, 3 May 2014.[363]

According to the Guidelines, the EU would use political dialogues and high level visits to address systemic violations or restriction of freedom of opinion and expression as well as individual cases, and to encourage partner countries to ratify and implement core international instruments and to implement the legislative measures to ensure protection of freedom of expression.[364] Although there has been

[360] In this point the Guidelines refer to HRDs' protection instruments.

[361] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on unrest in Venezuela' 140221/02; 'Statement by EU High Representative Catherine Ashton on the third anniversary of the Revolution in Libya' 140218/01; 'Statement by EU High Representative Catherine Ashton on violence and reported deaths of protesters in Kyiv' 140122/01; 'Statement by EU High Representative Catherine Ashton on the situation in Egypt ahead of the constitutional referendum' 140111/01.

[362] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on Tibetan self-immolations' 17831/1/12 REV 1 PRESSE 535.

[363] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of World Press Freedom Day, 3 May 2014' 9484/1/14 REV1 (OR. en), PRESSE 259.

[364] Council of the European Union, 'EU Human Rights Guidelines on Freedom of Expression Online and Offline' [2014], 11.

repeated criticism on the effectiveness and openness of the dialogues,[365] since the adoption of the Action Plan the EU's concerns about the restriction on the right to freedom of opinion and expression has been raised in human rights dialogues with countries as Uzbekistan and[366] Vietnam,[367] and in human rights consultations with Russia.[368] Support for press freedom and access to information was also included as a benchmark of human rights cooperation between the EU and South Africa.[369]

The EU also considers the respect and promotion of freedom of expression and media as a priority in its enlargement policy. The EC through the DG for Enlargement provides support to candidate countries in three levels: legal assistance and guidance in drafting related legislation, monitoring the policies of enlargement countries regarding freedom of expression and media, and financial assistance.[370] In 2011 and 2013, the Commission organised two 'Speak up!' conferences with the participation of stakeholders from the media community and decision makers from Western Balkans and Turkey, that have 'become important reference points in addressing the issues of media freedom and integrity in the context of the enlargement policy'.[371] In the conclusion of the 'Speak up! 2' Conference the Commission committed itself to developing a long term policy approach for EU financial assistance in the field of freedom of the media and expression covering the period 2014-2020. This has resulted in the publication of the DG Enlargement Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014-2020 aiming to 'serve as a basis for supporting media at both levels – regional (multi-beneficiary) and individual countries'.[372] The guidelines provide for financial and technical assistance through the IPA to be developed in three areas: 'the enabling environment for free expression and media; strengthening journalists and media professionals' organisations as the key drivers of the needed change; helping media outlets improve their internal governance, thus making them more resilient against external pressures and restoring audience's confidence in them'.[373]

The EU also engages with multilateral and regional organisations such as the UN, UNESCO, the Council of Europe, the OSCE and others such as the AU on freedom of opinion and expression. The EU is considered as one of the most active defenders of freedom of expression in the UN HRC.[374] As an example of this, in the 20th session of the HRC, the EU sponsored the adoption of a resolution on promotion, protection and enjoyment of human rights on the Internet, addressing the protection of

[365] Mike Harris (for Index on Censorship), *Time to step up: the EU and freedom of expression* (2013) 35, 38.
[366] EEAS, 'EU-Uzbekistan Human Rights Dialogue' (Press Release) 131108/01 [2013].
[367] EEAS, 'EU and Vietnam hold Human Rights Dialogue' (Press Release) 130912/01 [2013].
[368] The European Union – Russian Federation human rights consultations, A 566/12, [2012].
[369] Council of the European Union, 'Council conclusions on the establishment of a Human Rights Dialogue with South Africa, 3199th Foreign Affairs Council meeting' [2012].
[370] DG Enlargement, freedom of expression and media: http://ec.europa.eu/enlargement/policy/policy-highlights/media-freedom/index_en.htm> accessed on 10 May 2014.
[371] DG Enlargement, 'Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014-2020' <http://eeas.europa.eu/delegations/kosovo/documents/press_corner/elarg_guidelines_cs_support_after_online_consultation_03072013.pdf> accessed 23 July 2014, 2.
[372] *Ibid*.
[373] *Ibid*, 2.
[374] Mike Harris, 30.

freedom of speech on the Internet. In 2014, protection of freedom of opinion and expression online and offline, and protection of journalists and bloggers were identified as priorities for the EU work in UN Human Rights Bodies as stated in the Council conclusions on EU priorities at the UN Human Rights Fora.[375] However, the efficiency of EU work in UN bodies depends on whether there is a consensus among EU Member States. For example, in cases like as the issue of blasphemy laws, where there is reticence among EU Member States, the EU's action has been less effective.[376]

As will be explained in the IHL compliance section, the Commission has initiated consultation on the possibility to amend Export Control Regulation 428/2009 to control export of certain technologies that could be used in violation of human rights in conflict zones and under authoritarian regimes.[377] An example, as was also mentioned, was the Council Regulation 36/2012 'concerning restrictive measures in the view of the situation in Syria', which banned the export of software used in monitoring or interception of communications by the Syrian government. Moreover, and in accordance with the Guidelines, the EU will support multilateral export control regimes and promote action at international level to prevent the sale of technologies that could be used for surveillance or censorship by authoritarian regimes such as the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.[378]

The EU's assistance regarding freedom of opinion and expression as well as media freedom operates through a number of financial instruments such as the EIDHR, the EDF, the DCI, the Instrument contributing to Stability and Peace, and the ENI.[379] The priority in EU assistance has been on projects oriented towards training of journalists and editors.[380] As illustrated in the Guidelines, other projects include legislative reforms and support for journalists, other media actors and defenders of freedom of opinion and those facing risk situations through EIDHR's small grants for HRDs in risk situations.[381]

Finally, the EU supports internet activists and bloggers through the tools provided by the 'No Disconnect Strategy' such as funding for projects to build new ICT tools and fight cyber-censorship abroad.[382]

4. The EU's internal approach

All candidate countries are required to ratify the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in order to be accepted as an EU Member, and, thus, to respect and protect freedom of opinion and expression as well as data protection. On the other hand,

[375] Council of the European Union, 'Council conclusions on EU priorities at the UN Human Rights Fora, Foreing Affairs Council meeting, 10 February 2014' [2014].
[376] Mike Harris, 30.
[377] Annual Report 2012, 59-60.
[378] Commission, 'Report from the Commission to the Council and the European Parliament on the implementation of measures intended to promote observance of human rights and democratic principles' COM (95) 191 final, 14.
[379] Commission, 'Communication from the Commission to the Council and the European Parliamen. Report on the implementation of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991' SEC (92) 1915 final.
[380] *Ibid* 16.
[381] *Ibid*.
[382] Information on the 'No disconnect Strategy' is available at <http://ec.europa.eu/commission_2010-2014/kroes/en/tags/no-disconnect> accessed 21 July 2014.

the Guidelines on Freedom of Expression Online and Offline provide that in accordance with the TEU the EU Charter for fundamental rights and international obligations, the EU has the commitment to protect and promote freedom of opinion and expression within its borders.[383]

At the level of EU policies, one major issue in relation to freedom of expression arises from the struggle against hate speech, which is one of the themes prioritised by the Fundamental Rights Agency. This overlaps with the following point relating to freedom of religion and belief since two main questions of policy action against hate crime regard Anti-Semitism and Islamophobia or hate crime against Muslims.[384]

C. Freedom of religion or belief

1. Historical context and policy development

The defence and promotion of freedom of religion and belief (FoRB) has been a priority since the first attempts to build an EU strategy to foster human rights in its external policy. In the Communication from the Commission on The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond of November 1995, protection of religious minorities is included in the priority area for action identified by the Commission.[385] The EU's attention in the field of combating discrimination on grounds of religion was mainly focused on anti-Semitism. In 1999, in the first EU annual report on human rights, the right to freedom of opinion, expression and religion is included as a thematic priority. The report provided some examples in which the EU had acted to support FoRB as in the case of the persecution and discrimination against Bahai and Jewish communities in Iran.[386]

In recent years, the defence and promotion of FoRB continues to be a priority. It is reflected in the inclusion of FoRB in the EU Strategic Framework and Action Plan on Human Rights and Democracy, the creation in 2012 of the European Parliament Working Group on Freedom of Religion or Belief, and the adoption in 2013 of EU Guidelines on the promotion and protection of freedom of religion and belief.

2. Legal framework and formulation of policy

Respect for FoRB is enshrined in the core legal documents of the EU such as the TEU (Art 6), TFEU (Art 10 – against discrimination and 17 – respect of churches and religious associations or communities, and philosophical and non-confessional organisations in the Member States) and Arts 10, 14, 21 and 22 of the Charter of Fundamental Rights of the European Union (Freedom of thought, conscience and religion; right to education; non-discrimination; and cultural, religious and linguistic diversity, respectively). The Council Conclusions on freedom of religion or belief, adopted on 16 November 2009 and the Council Conclusions on intolerance, discrimination and violence on the basis of religion or belief, 21 February 2011, stressed the commitment of the EU to the promotion and protection of FoRB. There are other

[383] Guidelines on freedom of expression online and offline, 2.

[384] Information available at <http://fra.europa.eu/en/theme/hate-crime>.

[385] Commission, 'Communication from the Commission to the Council and the European Parliament .The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond' COM (95) 567 final.

[386] Council, 'European Union Annual report on human rights 1998/99', <https://www.consilium.europa.eu/uedocs/cmsUpload/HR1999EN.pdf>, 45.

documents such as EU Directives, decisions and Council conclusions which address FoRB and which relate to discrimination, equality and mediation.[387]

In 2012, FoRB was included as a priority in the EU Strategic Framework and Action Plan on Human Rights and Democracy. Adopting the Action Plan the Council, EEAS and Member States commit themselves to the promotion of FoRB worldwide through the development of EU Guidelines on Freedom of Religion or Belief and their cooperation with multilateral and regional organisations such as the UN, the OSCE and the Council of Europe, presenting EU initiatives concerning FoRB and contributing to the implementation of EU pledges and commitments in this field.

Pursuant to the adoption of the EU Action Plan on Human Rights and democracy, in mid-2012 the EU began to address the drafting of the guidelines on FoRB with consultations between EU officials and the European Parliament and religious and civil society groups.[388] The involvement of civil society as well as the European Parliament Working Group on Freedom of Religion or Belief played an important role throughout the process.[389] The EU Guidelines on the promotion and protection of freedom of religion or belief (FoRB Guidelines) were finally adopted in June 2013 by the EU Foreign Affairs Council. The Guidelines identify thematic issues of concern regarding FoRB and provide measures and actions that can be implemented in EU Foreign Policy – statements and démarches, political dialogue, field visits, action in multilateral fora, training, and financial assistance.[390] The Guidelines make links with other human rights guidelines such as HRDs (including visits by the EU officials or Member States to FoRB defenders in trials and in prison), torture, and violence against women and girls; as well as with EU action in the field of freedom of assembly and freedom of expression.[391]

3. Implementation of policy

As suggested in the FoRB Guidelines, the EEAS uses public statements and démarches in response to violations of FoRB. In 2014, for instance, the HC addressed FoRB in relation to the situation in the Central African Republic and condemned the killing of civilians on the basis of religion.[392] Also in the cases of Syria, Egypt, Nigeria, Iran, Iraq, Libya, Mali, Pakistan or Tunisia the EU has advocated full respect for FoRB.

Regarding the EU's bilateral relations, the EU raised FoRB considerations in some of its human rights dialogues. As an example, since the adoption of the Action Plan on Human Rights and Democracy, the

[387] EU Equal Treatment Directive (2006); EU Framework decision on combating racism and xenophobia (2008); EU Concept on strengthening EU mediation and dialogue capacities (2009); Council Conclusions on Conflict Prevention (2011).

[388] European Parliament Working Group on Freedom of Religion or Belief, '2013 Annual Report. Conclusions and Recommendations regarding the situation of Freedom of Religion or Belief in the World', 15; Council of the European Union, EU Annual Report 2012, 93.

[389] European Parliament Working Group on Freedom of Religion or Belief, *Ibid*.

[390] Council of the European Union, 'Guidelines on the promotion and protection of freedom of religion or belief' [2013]. (Guidelines on the promotion and protection of freedom of religion or belief or FoRB Guidelines).

[391] *Ibid* 1.

[392] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the extremely grave situation in the Central African Republic' [2014] 140327/02.

EU addressed the restriction of FoRB in the seventh round of the human rights dialogue with Uzbekistan on November 2013[393]; and in the third round of the annual dialogue on human rights with Vietnam in which the EU welcomed the invitation to the UN Special Rapporteur for Freedom of Religion or Belief to visit Vietnam in 2014.[394]

As stated previously, the EU promotes respect for FoRB in its cooperation with multilateral and regional partners. In 2014, FoRB is still identified as one of the priorities for the EU's work in UN Human Rights Bodies as stated in the Council conclusions on EU priorities at the UN Human Rights Fora, published in February 2014. In these conclusions, the EU reiterated its commitment to support the work of the UN Special Rapporteur on freedom of religion or belief and to promote the implementation of UN FoRB resolutions.[395] Moreover, since the adoption of the EU Action Plan the EU has implemented several steps to develop its work in the UN human rights bodies. As an example of this, during the 25th session of the HRC, in March 2014, the EU proposed a resolution on 'freedom of religion or belief' that was adopted without a vote.[396] In previous HRC sessions the EU has engaged in negotiations with the Organization of the Islamic Conference (OIC) to ensure that neither its own resolution nor the OIC resolution on the matter contained any endorsement of the concept of defamation of religions and these should be adopted by consensus.[397]

The FoRB Guidelines provide for the promotion of 'initiatives at the level of OSCE and the Council of Europe' and contribute to better implementation of commitments in the area of freedom of religion or belief'.[398] Although all Member States have ratified the ECHR, Art 9 of which recognises the right to freedom of thought, conscience and religion, only 18 Member States have ratified Protocol No. 12, which adds to the list of rights included in the Convention, a general prohibition of discrimination in the enjoyment of the rights set forth by law. The protocol also includes a prohibition of discrimination by any public authority. Both elements would increase the effectiveness and the guarantees of the prohibition of discrimination including on grounds of religion or belief.

The EU also cooperates with other regional organisations like the OIC or the League of Arab States (LAS). As an example of this cooperation in November 2012, HR/VP Catherine Ashton attended for the first time an OIC ministerial meeting. In her participation in the meeting, HR/VP stressed the importance of respecting and promoting FoRB as an 'essential pillar of safe and prosperous societies'.[399] Furthermore,

[393] EEAS, 'EU-Uzbekistan Human Rights Dialogue' (Press Release) 131108/01 [2013].
[394] EEAS, 'EU and Vietnam hold Human Rights Dialogue' (Press Release) 130912/01 [2013].
[395] Council of the European Union, 'Council conclusions on EU priorities at the UN Human Rights Fora', [2014].
[396] A/HRC/25/L.19.
[397] EU Annual Report 2012, 17.
[398] Guidelines on the promotion and protection of freedom of religion or belief.
[399] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Remarks by High Representative Catherine Ashton at the Organization of Islamic Cooperation ministerial', A 519/12, [2012].

the EU has made joint statements and declarations with the OIC and LAS calling for respect of FoRB, condemning religious hatred, and calling for dialogue.[400]

Regarding financial instruments, respect for FoRB is one of the priorities of funding through EIDHR, included in the general objective of combating discrimination. According to the EU Regulation 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, freedom of thought, conscience and religion or belief is one of the issues in which EU assistance will focus during the period 2014-2020.[401]

Freedom of religion or belief was one of the human rights themes addressed at the annual EU-NGO Forum in 2012, an annual event organised by the EEAS and DG Devco with the Human Rights and Democracy Network and the Dag Hammarskjöld Foundation. The 14th EU - NGO Forum on Human Rights had as its central theme: 'Promoting Universality, the role of regional Human Rights mechanisms and their cooperation with civil society', which was discussed through three workshops. One of them was dedicated to FoRB.[402]

Apart from that, and as sketched out above, EIDHR projects oriented toward protection of HRDs facing situations of risk are also used to defend FoRB defenders.

4. The EU's internal approach

All candidate countries are required to ratify the ECHR in order to be accepted as an EU Member, and, thereby, to respect and protect freedom of thought, conscience and religion and the other articles mentioned above [DG Just/DG Enlargement]. Moreover, FoRB Guidelines state that '[i]n line with universal and European human rights standards, the EU and its member States are committed to respecting, protecting and promoting freedom of religion or belief within their borders'.[403]

At the EU level, those standards are established both by the European Court of Human Rights jurisprudence and by EC efforts in combating discrimination, inter alia, on grounds of religion or belief.[404]

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[400] 'On 20 September 2012, a joint statement was made by the European Union High Representative, the OIC Secretary General, the Arab League Secretary General and the Chair of the Commission of the African Union, calling for peace and tolerance, condemning any advocacy of religious hatred that constitutes incitement to hostility and violence, and calling on all leaders, whether they be political, secular or religious, to promote dialogue and mutual understanding. On 13 November 2012, the EU and LAS foreign affairs ministers adopted a joint declaration in Cairo, emphasising, amongst other things, their commitment to 'the promotion of freedom of expression and freedom of religion or belief' and condemning 'all forms of incitement to hatred and intolerance, in accordance with international legislation on human rights'. They also emphasised the need to ensure gender equality and full respect of human rights for all people, and 'condemned any advocacy of religious hatred in accordance with the Human rights council resolution 16/18', see Council of the European Union, *Ibid* (n30) 94.

[401] See above, section [III.B.1].

[402] Annual Report 2012, 96.

[403] EU Guidelines on the promotion and protection of freedom of religion or belief, 5.

[404] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. The scope of the prohibition of discrimination on grounds of religion and belief would be enhanced by the approval of the Draft Directive on implementing the principle of equal treatment

D. Implementation of the UN guiding principles on business and human rights

1. Formulation of policy

In relation to business enterprises, the EU 'has an important role to play in ensuring that its corporations respect and protect human rights whenever they operate'.[405] For more than a decade business responsibilities in the field of human rights have been addressed in the EU as part of the policy on corporate social responsibility (CSR) – articulated around a voluntary approach - that was developed following the adoption of the Commission´s Green Paper on Promoting a European Framework for Corporate Social Responsibility of 2001.[406]

Alongside the process of adoption of the Framework and the Guiding Principles on Business and Human Rights (UNGPs) at the UN,[407] EU institutions and Member States have been gradually renovating their views on the theme of business and human rights.[408] Thus, in its 2009 Conclusions on Human Rights and Democratisation in third countries, the Council of the European Union emphasised 'the important role of business in achieving full respect for human rights', and expressed its appreciation for the work of the Special Representative of the UN Secretary General on human rights and transnational corporations and other business enterprises.[409] The then Swedish Presidency and the incoming Spanish Presidency of the EU valued the UN Framework as a 'key element for the global development of corporate social responsibility (CSR) practices' with a 'significant input to the CSR work of the European Union'. After the endorsement of the Guiding Principles in 2011 by the HRC,[410] the EU Danish Presidency was instrumental in addressing some of the challenges on the implementation of the UNGPs by the

between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181}.

[405] Jan Wouters and Leen Chanet, 'Corporate Human Rights Responsibility: A European Perspective' (2008) 6 Northwestern Journal of International Human Rights 262, 263.

[406] Commission, 'Promoting a European Framework for Corporate Social Responsibility' (Green Paper) COM (2001) 366 final (Commission Green Paper on CSR). For an account and evaluation of the EU's CSR policy and of the contrasting views of the Commission and European Parliament see Jan Wouters and Leen Chanet, 272-283.

[407] UNHRC, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 'Protect, Respect and Remedy: A Framework for Business and Human Rights' UN Doc A/HRC/8/5, [2008]; UNHCR, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' UN Doc A/HRC/17/31, [2011]. The Framework and Guiding Principles were developed under the mandate first of the Commission on Human Rights and later the Human Rights Council, from 2005 to 2011.

[408] On the position of the EU see Jan Wouters and Nicolas Hachez, 'Business and Human Rights in EU External Relations - Making the EU a Leader at Home and Internationally', EXPO/B/DROI/2009 <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN> accessed 15 May 2014, 8-20.

[409] 2985th Foreign Affairs Council meeting, Brussels, 8 December 2009, <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/111819.pdf> accessed 15 May 2014, para 17.

[410] UN Doc. A/HRC/RES/17/4 [2011].

European Union and Member States by hosting a remarkable expert conference in 2012 under the motto 'from principles to practice'.[411]

In the last three years since the adoption of the UNGPs the EU has made clear in numerous policy documents and interventions at multilateral fora that implementation of the UNGPs is a priority in EU policies, both externally and internally. As has been recently recognised by the EUSR for Human Rights at the United Nations, this policy priority entails 'a two-pronged approach: first, to ensure that the Guiding Principles are fully understood and adhered to at European Union level; and second, to promote their implementation through its external actions'.[412]

At the EU level, the rejoinder to the Guiding Principles in Europe has been marked by the Renewed EU Strategy 2011-2014 for Corporate Social Responsibility launched by the European Commission in October 2011.[413] The renewed strategy contains a new definition of CSR which emphasises the 'responsibility' of enterprises and constitutes a significant move away from the voluntary approach to CSR that characterised the Commission's view until then. The new definition of CSR put forward by the Commission is 'the responsibility of enterprises for their impacts on society'.[414] The new strategy and definition are in line with the UN Framework and Guiding Principles in promoting 'a smart mix' of voluntary and mandatory measures, thereby seeking alignment with the evolving international business and human rights agenda. The Commission Communication included as well an unprecedented call for member States to develop national action plans to implement the Guiding Principles.[415] The European Network of National Human Rights Institutions (ENNHRIs) has collaborated with the Commission in the preparation of a template for such action plans. This was agreed as part of the Berlin Action Plan on Business and Human Rights adopted in September 2012 at the first European regional workshop on business and human rights, hosted by the German Institute for Human Rights.[416] Several interventions by the ENNHRIs have been made in 2012 pursuant to the Berlin Action Plan, which include the publication of a discussion paper on National Action Plans to implement the UN Guiding Principles on Business and Human Rights,[417] the presentation to the EU High Level Group on Corporate Social

[411] See <http://eu2012.dk/en/NewsList/April/Uge-18/Conference-on-business-and-human-rights> accessed 15 May 2014.

[412] Special Representative for Human Rights, 'Intervention by the EU Special Representative for Human Rights and EU Delegation to the United Nations Human Rights Council Second Forum on Business and Human Rights', [2013] 3-5.

[413] Commission, 'A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2011) 886 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF> accessed 14 May 2014.

[414] *Ibid*, section 3(1), 6.

[415] *Ibid*, section 4(8)(2), 14.

[416] See at <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx> accessed 14 July 2014. The Berlin Plan recommended the development of national plans to implement the UNGPs, with attention to the impacts on vulnerable and mariginalised rights-holders.

[417] See European Group of National Human Rights Institutions Implementing the UN Guiding Principles on Business and Human Rights: Discussion paper on national implementation plans for EU Member States at <http://nhri.ohchr.org/EN/Themes/BusinessHR/Documents/EU%20NHRIs%20Paper%20on%20National%20Implementation%20Plans%20for%20UNGPs%20210612%20SHORT.docx.> accessed 14 July 2014.

Responsibility on National Action Plans on Business and Human Rights, and the co-hosting with the European Parliament Human Rights Committee of a workshop on 'The role of National Human Rights Institutions in implementation of United Nations Guiding Principles on business and human rights' in 2013.[418]

Regarding human rights external policies, the Joint Communication on human rights and democracy at the heart of EU external action [419] has been the basis for the instrument that currently sets out the EU's vision and plans for the next years, the EU Strategic Framework on Human Rights and Democracy.[420] This important policy document states among the EU human rights priorities that the 'EU will encourage and contribute to the implementation of the UN Guiding Principles on Business and Human Rights'.[421] The Action Plan lists the 'Implementation of the UN Guiding Principles' as action numbered 25 among the 36 actions that it sets forth, providing for three subsets of actions directly linked to it[422] which include human rights sector guidance and Member States national action plans.[423] These actions must be understood in the light of the self-declared objective of EU's external activities in this domain, which is 'to promote a global level playing field on business and human rights'[424] through actions and material that are of global applicability and addressed to companies that operate inside or outside the European Union.

This section will map EU policies and draft legal instruments or initiatives that address the implementation of the UNGPs on Business and Human Right. In what follows the analysis will focus on key policy areas and actions, and on their alignment with the UNGPs on Business and Human Rights.

2. Implementation of policy

a) EU external policy instruments

The Action Plan listed ninety-seven subsets of actions to be implemented by the end of 2014, including business and human rights, and provided for the publication of the 'Annual Report on Human Rights and Democracy in the World'.[425] The EU's Annual Report on Human Rights and Democracy in the World for the year 2012 contains, among others, a section dedicated to the implementation of the UNGPs, listing all the relevant initiatives where the EUSR took part during the first year of his mandate, including the first UN Forum on Business and Human Rights.[426]

[418]See NHRI actions in the field of business and human rights: update on steps to implement the 2010 Edinburgh Declaration <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/MeetingRecords.aspx> accessed 14 july 2014.
[419] Joint Communication human rights and democracy at the heart of EU External Action, *Ibid* fn(16).
[420] Strategic Framework on Human Rights and Democracy, *Ibid* fn(6).
[421] Strategic Framework on Human Rights and Democracy, 3.
[422] Action Plan on Human Rights and Democracy, 19-20.
[423] The publication of a report on EU priorities for the effective implementation of the UNGPs is listed as subheading b).
[424] Intervention by the EU Special Representative for Human Rights and EU Delegation to the United Nations Human Rights Council Second Forum on Business and Human Rights (n412).
[425] Annual Report 2012, *Ibid* fn(30).
[426] See <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209431%202013%20INIT> accessed 16 May 2014.

Since the adoption of the Strategic Framework and Action Plan the EU has made use of some of the tools at its disposal to support the implementation of the UNGPs.

The mainstreaming of human rights in the external relations of the EU entails the need to assess the implementation of the UN Guiding Principles on Business and Human Rights as a thematic priority in its incorporation in policies addressed to countries, on the one hand, and in policies addressed to corporations, on the other hand. Some examples can be mentioned in this respect: the EU has raised the business and human rights subject in some of its bilateral dialogues, for example in the human rights dialogue held with the African Union in Addis Ababa on 22 November 2012. Reference was made to an exchange of views on the implementation of the UNGP and to organise a joint seminar on human rights and business in 2013 with African and European businesses and civil society.[427]

In addition to those measures, the EU has remained an active supporter of the business and human rights agenda at the United Nations.

b) EU legal instruments

(1) Sector-specific human rights guidance

According to the 2011 CSR Agenda and the EU's Annual Report on Human Rights and Democracy in the World for 2012, in 2012 the Commission, encouraged by DG for Enterprise and Industry, selected the Institute for Human Rights and Business (IHRB)[428] and the Shift project[429] to support the project of developing practical guides for select industry sectors, concerning the implementation of the corporate responsibility to respect human rights. This project was developed in close cooperation with representatives from the industries, government, trade unions, civil society, and other experts. The consultation process was necessary to define what is expected from companies in this issue. Finally on 17 June 2013, the European Commission issued three guides for employment and recruitment agencies,[430] oil and gas companies,[431] and companies in the information and communication technologies sector, which intend to help companies to insert the corporate responsibility to respect human rights as set out by the UN Guiding Principles on Business and Human rRghts.[432]

Despite their soft-legal nature, the Guides provide a range of options to put in practice the UNGPs' provisions, leaving the firms the management for the implementation phase, based on their sector, size and location. Thus, the Guides are a means by which the European Commission has promoted self-regulation by companies in the aforementioned business sectors.

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[427] Annual Report 2012, chapter V, point 25.

[428] See at < http://www.ihrb.org/publications/reports/human-rights-guides.html> accessed 14 July 2014.

[429] See <http://www.shiftproject.org/news/european-commission-selects-sectors-new-guidance-responsibility-respect> accessed 20 May 2014 and <http://www.ihrb.org/publications/reports/human-rights-guides.html> accessed 20 May 2014.

[430] See at http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-era-hr-business_en.pdf> accessed 14 July 2014.

[431] See at <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-oag-hr-business_en.pdf> accessed 14 July 2014.

[432] See at <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business_en.pdf> accessed 14 July 2014.

The internal structure of the Guides follows the Interpretative Guide developed by the Office of the UN High Commissioner for Human Rights, together with Professor John Ruggie, the former Special Representative of the UN Secretary-General on business and human rights. For this reason, it focuses on the following matters: (i) the corporate responsibility to respect human rights, namely the second pillar of the UNGPs; (ii) the key steps required for a company to implement the UNGPs, from the business commitment and identification of the human rights risk to the provision of effective remedies to harmful acts; (iii) the role of States in promoting laws and regulations for addressing and punishing human rights abuses; (iv) the development of local-focused policies related to the territory where the company operates ('no one size fits all' approach); and, (v) the need of an on-going process for the UNGPs' implementation, due to the continuous changes of contexts and circumstances.

In general, the Guides are addressed to the whole industrial sector they refer to, cover all the internationally recognised human rights and apply to the entire supply chain and company's subsidiaries and to companies of all sizes - including the smallest ones. Although States and companies play independent roles in human rights protection and respect, the Guide points out the potential difficulties faced by companies in complying with human rights provisions when they operate in States unable to meet their human rights obligations.[433]

The Guides aim to be applicable at global level, both for EU companies operating inside and outside of EU borders. Furthermore, being the result of a field-based research period, two multistakeholder consultation roundtables and more than seventy-five interviews per sector with individual experts, the Guides' audience is not limited to the specific-sector companies, but also to practitioners, trade unions, NGOs, industry and business associations, representatives of vulnerable or affected groups and all the other involved actors.

(2) Human rights due-diligence

On 5 March 2014 the HR/VP and the EU Trade Commissioner jointly presented an integrated EU strategy to stop profits from trading in 'conflict minerals' that are funding armed groups in conflict-affected and high-risk areas,[434] where they declare they are committed to 'preventing international trade in minerals from intensifying or perpetuating conflict'.[435]

The Commission proposed a draft regulation on responsible sourcing of minerals from conflict-affected and high-risk areas[436] that responds to the European Parliament's call in 2010 for the EU to legislate

[433] For a critical appraisal of the Guides see Sofia Oliveira Pais, 'Raising Some Doubts about the Effectiveness of the European Commission Practical Guide for Employment and Recruitment Agencies' in Carmen Márquez Carrasco (ed), *España y la implementación de los Principios Rectores de las Naciones Unidas sobre empresas y derechos humanos: oportunidades y desafíos/Spain and the Implementation of the United Nations Guiding Principles on Business and Human Rights: Challenges and Opportunities* (Huygens 2014) 99-112.

[434] Commission, 'Joint Communication to the European Parliament and the Council: Responsible sourcing of minerals originating in conflict-affected and high-risk areas. Towards an integrated EU approach' JOIN(2014) 8 final, [2014] <trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152228.pdf> accessed 20 July 2014.

[435] Press communication at http://trade.ec.europa.eu/doclib/press/index.cfm?id=1032 accessed 20 July 2014.

[436] Commission, 'Proposal for a Regulation of the European Parliament and the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores,

following the model initiated by the US Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Franck Act hereinafter).[437] In particular the 'conflict minerals' provision of the Act requires companies that are subject to the reporting requirement of the federal securities laws to disclose which 'conflict minerals are necessary to the functionality or production of a product' they 'manufacture or are contracted to manufacture' sourced from the Democratic Republic of Congo or adjoining country'.[438]

The Joint Communication on the EU strategy refers the integrated approach to three main issues: (i) reducing the armed groups' trading activity in conflict affected zones; (ii) improving due diligence frameworks compliance by EU operators; and, (iii) reducing minerals related distortions in high-risk areas.[439]

The draft Regulation includes a European self-certification system for responsible importers into EU territory of tin, tantalum, tungsten and gold (the 3TG), and the provision of a supply chain due diligence process, based on the OECD's 2012 Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas, which, according to the draft text of the regulation 'is in line with the United Nations Guiding Principles',[440] which is the only scarce reference to the UNGPs throughout the entire process. This legislative initiative is the result of a public consultation process, an impact assessment and extensive consultations with the OECD, business, CSOs, as well as with institutions and stakeholders in producer countries. In the public consultation material, launched by the DG for Trade, due diligence is defined as 'the on-going, proactive and reactive process whereby companies take reasonable steps and make good faith efforts to identify and respond to risks of contributing to conflict and serious abuses in accordance with internationally agreed standards with a view to promoting progressive improvement to due diligence practices through constructive engagement with suppliers'.[441] One of the references mentions the OECD's 2012 Due Diligence Guidance but there is no explicit reference to the UN Guiding Principles.[442] No explicit reference is made

and gold originating in conflict-affected and high risks areas' COM(2014) 111 final 2014/0059 COD <http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152227.pdf.> accessed 14 July 2014.

[437] Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L 111-203, H.R 4173). This Act, passed in July 2010, was primarily designed to better identify large-scale risk in the financial markets by increasing securities regulation and government oversight over financial markets. The Dodd-Frank Act also contains certain sections, such as Sections 1502, 1503 and 1504 on conflict minerals, health and safety in mining operations, and the disclosure of payments by resource extractors, respectively. These sections introduce reforms to the financial disclosure obligations of companies contained in Section 13 of the Securities Exchange Act of 1934. In particular, they add certain disclosure requirements for companies reporting to the Securities and Exchange Commission (SEC), which is the federal independent financial services regulatory body. The companies that have to submit these reports to the SEC are care either US firms or foreign companies issuing US securities.

[438] Section 1502(b)(p)(1)(A) and (b)(p)(2).

[439] JOIN(2014) 8 final, 6-12.

[440] See at < http://europa.eu/rapid/press-release_MEMO-14-157_en.htm> accessed on 16 May 2014.

[441] European Commission, Directorate for Trade 'EU calls for input on 'conflict minerals. Definitions' (Announcement) [2013].

[442] *Ibid*.

either in this or other questions to coherence, nor to the normative sources for due diligence which the Guiding Principles invoke.[443]

The issue of conflict minerals is an important matter at the EU level, since the European Union is one of the largest markets for those minerals. The EU companies represent 25% of the global trade in 3Ts and 15% in gold.[444] The draft Regulation will differ from the US Dodd-Frank Act in several aspects: first, the EU Regulation would only cover importers of 3TG (and their ores) into the Union – roughly 400 companies. The Dodd-Frank Act, on the other hand, applies to downstream entities that manufacture or contract to manufacture products containing these metals and that are listed with the Securities and Exchange Commission – roughly 6,000 companies of different sizes and active across different industry sectors; secondly, while the Dodd-Frank Act identifies a set of 'covered countries' in the African Great Lakes region, the EU Regulation would have a broad geographical scope, targeting the supply chains of 3TG originating from any conflict-affected or high-risk area'. Finally, and perhaps most importantly, the EU Regulation would not require strict legal compliance. On the basis of responses to the consultation, fearing that a mandatory due diligence scheme would cause companies' disengagement from conflict-affected and high-risk areas, the Commission proposed a 'voluntary system for supply chain due diligence self-assessment'.[445]

As has been noted, 'this would be a system where importers can freely choose to opt in and source their minerals in accordance with the 5-step due diligence framework set out by the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas'.[446] Criticism has been expressed by non-governmental organisations that considered that the voluntary nature of the initiative fails to create a real demand for conflict-free minerals in the EU,[447] and even John Ruggie, the former SRSG on business and human rights, has expressed serious concerns with regard to the non-binding character of this due diligence exercise envisaged by the EU in the draft regulation.[448] Some other flaws of the proposed regulation have been highlighted, such as the limited kinds of companies to which the regulation applies.[449] The draft regulation adds little to existing guidelines, already endorsed by EU Member States, such as the OECD Due Diligence Guidance that envisages a voluntary system of due diligence, which the majority of European companies operating in this field do not comply with. This opt-in scheme undermines the State's duty to protect human rights

[443] *Ibid*, question 2(5).
[444] Anna Bulzomi, 'The EU draft law on conflict minerals due diligence: a critical assessment from a business and human rights' (IPIS Insight 2014) < http://ipisresearch.be/download.php?id=443> accessed 16 May 2014, 5.
[445] *Ibid*, 6.
[446] Anna Bulzomi, 6-7.
[447] For the position of Global Witness see 'New MEPs must tackle conflict minerals' <http://euobserver.com/opinion/124456> accessed on 4 June 2014.
[448]Commentary by John Ruggie, Chair of Shift, former UN SRSG on business and human rights, see at <http://business-humanrights.org/en/european-commission-announces-eu-self-certification-system-for-importers-of-conflict-minerals#c89254> accessed 20 July 2014.
[449] The scheme is limited to importers of raw materials and does not include the operators of finished products. See <http://www.ihrb.org/commentary/board/how-to-strengthen-the-eus-conflict-minerals-proposals.html> accessed 15 May 2014.

and seriously restricts the companies' commitment to comply with supply chain due diligence articulated in the UN Guiding Principles.

(3) Disclosure and access to information

To provide transparency on business practices the disclosure of environmental, social and governance information and access to information for stakeholders are essential. These issues are closely linked with due diligence and are a prerequisite for the effective management by companies of human rights, environmental and governance related violations linked to their business. This kind of information is vital for investors, other stakeholders and the general public to be able to assess the efficiency of companies' risk management mechanisms. The way the EU has incorporated these modalities needs to be assessed in the legislative proposal for enhancing non-financial reporting and in the new Accounting Directive.

On April 2013 the EC proposed amending the existing accounting legislation on transparency of enterprises on social and environmental issues. This initiative was already announced in the Single Market Act Communication (April 2011),[450] the 2011 Communication on CSR Strategy and in the Action Plan for Company Law and Corporate Governance adopted in December 2012.[451] The proposal is the result of a series of consultations with Member States, companies and stakeholders and an extensive impact assessment concluded in 2012. The EC has considered the current EU legislation in this field as unclear and ineffective,[452] due to the adoption by Member States of legislation that go beyond the EU law, such as the British, Spanish, Swedish and French updated legislation. For this reason, after the adoption by the EU Parliament in February 2013 of two Resolutions on 'CSR: accountable, transparent and responsible business' and on 'CSR: promoting society's interests and a route to sustainable and inclusive recovery behaviour and sustainable growth',[453] the EU Commission released its proposal.[454] According to this, large companies are due to disclose information regarding their activities related to human rights, labour conditions, anti-bribery and corruption and environmental standards. As underlined by the Internal Market and Services Commissioner,[455] this proposal could introduce more financial and economic benefits for companies, as demonstrated by the business performance of companies that are already experiencing non-financial reporting. Moreover, the legislation will apply to all the enterprises with more than 500 employees and not to small and medium-sized enterprises (SMEs), due to the higher level of costs for small firms.

The proposed measures identify some important aspects that companies are required to fulfil: the 'sustainability' report - published at group level and not only by one of the companies of the group - should be addressed through the disclosure of relevant environmental and social information on

[450] COM (2011) 0206.
[451] COM (2012) 740.
[452] The Fourth Company Law Directive (78/660/EEC) and all the amending acts.
[453] Respectively, (2012/2098(INI)) and (2012/2097(INI)).
[454] European Parliament, Council, 'Proposal for a Directive amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0207> accessed 20 July 2014.
[455]European Commission, Press Release 'Commission moves to enhance business transparency on social and environmental matters', 16 April 2013.

business activity in all the sectors concerned; however, the regulation does not provide a prescriptive set of steps that should be followed for elaborating the report, giving the company more flexibility; the company may take as reference the framework of standards (national, EU-based or international) which they consider more reliable for disclosing information.[456] Following the EU general corporate governance framework, the company should provide information on its internal organization and management, the respect of gender equality, educational and professional background and geographical diversity.

At the end of February 2014, the Committee of Permanent Representatives (COREPER) endorsed the agreement reached by the EU Parliament and the Council on the amendment proposed in April 2013. The Draft Directive addresses mainly large companies, but financial institutions, banks and insurance companies are also included. Furthermore, the Directive could be considered as the first step for the implementation of the provisions contained in the EU Council Conclusions of May 2013,[457] that required from companies more transparency on tax and fiscal matters and large companies and groups' reporting initiative. Though an important step in requiring non-financial reporting, the proposed Directive takes a 'flexible and non-intrusive approach', thus a first and modest step in this field.

The Commission's proposal was adopted by the European Parliament on 15 April 2014. The Directive still needs to be agreed upon by the Council, and will enter into force after its adoption and publication in the EU Official Journal. From a more general perspective, the EU has recently introduced into the new Accounting Directive[458] new reporting requirements for large companies and listed companies operating in the extraction of oil, mineral and gas and the logging of primary forests. The Directive requires companies to report the payments they make to governments in relation to their extraction activities. The requirements are set out in Chapter 10 of the new Accounting Directive. This modality of reporting

[456] European Parliament, Council, 'Proposal for a Directive of the European Parliament and of The Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups'**.** The text of the proposal literally states:

> Article 1 (a) of the proposal will require certain large companies to disclose a statement in their Annual Report including material information relating to at least environmental, social, and employee-related matters, respect of human rights, anti-corruption and bribery aspects. Within these areas, the statement will include (i) a description of its policies, (ii) results and (iii) risk-related aspects. In providing this information, without prejudice to possible more ambitious requirements set at Member States level, the company may rely on national, EU-based or international frameworks, such as the UN Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the OECD Guidelines for Multinational Enterprises, ISO 26000, the ILO Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative, and disclose which framework they have relied upon. A company that does not apply a specific policy in one or more of these areas will be required to explain why this is the case.

[457] EUCO 75/1/ 13 REV 1 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/137197.pdf> accessed 16 May 2014.

[458] European Parliament, Council, Directive 2014/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [2013] OJ L82/19. As noted in the title, the new Directive repeals the Fourth and Seventh Accounting Directives on Annual and Consolidated Accounts (78/660/EEC and 83/349/EEC).

is called country by country reporting (CBCR). The strategic relevance of those sectors in view of their potential significant impact on human rights in sourcing countries is to be noted.

The Accounting Directive regulates the information provided in the financial statements of all limited liability companies which are registered in the European Economic Area (EEA). The Directive introduces an obligation for listed and large non-listed extractive and logging companies to report all material payments to governments broken down by country and by project, when these payments have been attributed to a specific project. Reporting is required on payments related to production entitlements, taxes levied on the income, production or profits of companies; royalties; dividends; signature; discovery and production bonuses; licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and payments for infrastructure improvements.[459]

The new disclosure requirement is intended to improve the transparency of payments made to governments all over the world by the extractive and logging industries, to provide civil society in resource-rich countries with the information needed to hold governments to account for any income made through the exploitation of natural resources.[460] The information disclosed on payments to governments will be publicly available to all stakeholders either through the stock market information repository or the business registry in the country of incorporation, similar to the way in which financial statements are made available.[461]

The Directive does not mention human rights nor the Guiding Principles, although it is inspired by the Dodd-Franck Act. The Commission will have to review the feasibility of introducing obligations to disclose conflict minerals within three years after the expiration of the deadline for transposition of this legislation by the Member States. It foresees that the review will consider, inter alia, the introduction of an obligation to carry out due diligence when sourcing minerals, in order to ensure that supply chains have no connection to conflict parties and respect the Extractive Industries Transparency Initative (EITI) and OECD recommendations on responsible supply chain management.

In sum, as a result of potential human rights effects of the activities of the companies addressed by the new Accounting Directive, and the possibility for Member States to impose on companies further requirements than the minimum requirements prescribed in the Directive, ensuring policy coherence will be a significant challenge in EU Member States' transposition of the requirements of this legislative act.

c) EU financial instruments

The EU has supported some projects related to the business and human rights sector through two main financial instruments, the EIDHR and the Instrument contributing to Stability and Peace. In the framework of EIDHR the EU provides support to civil society organisations' campaigns or other actions aimed at promoting respect for human rights by EU companies operating outside the European Union.

[459] <http://europa.eu/rapid/press-release_MEMO-13-541_en.htm.> accessed 16 May 2014.
[460] <http://europa.eu/rapid/press-release_MEMO-13-541_en.htm.> accessed 16 May 2014.
[461] European Commission, 'New disclosure requirements for the extractive industry and loggers of primary forests in the Accounting (and Transparency) Directives (Country by Country Reporting)' MEMO/13/541 [2013] <http://europa.eu/rapid/press-release_MEMO-13-541_en.htm> accessed 12 May 2014.

According to the EU Annual Report on Human Rights for 2012, in the framework of EIDHR the EU provides support to civil society organisations' campaigns or other actions aimed at promoting respect for human rights by EU companies operating outside the European Union. The projects include the Clean Clothes Campaign, an alliance of organisations from 15 European countries, implementing projects to increase respect for economic and social rights in the global supply chains of international garment companies in over 30 countries. Also receiving financial support is a global project targeting 70 countries which aims to reinforce the capacity of local land-rights defenders to defend their rights over natural resources, to counter the lack of transparency regarding contracts between states and private companies, and to engage with governments and extractive industries in countries with conflicts over resource extraction. A project on defenders of indigenous rights in South-East Asia is also included in the EIDHR. The Project provides for a study on corporate social responsibility, human rights and indigenous peoples.

Another EIDHR project that includes the question of business and human rights is the Latin American Mining Monitoring Programme, which supports rural indigenous women in promoting and defending their rights, as affected by the mining industry.

Under the 'Investing in People' programme, 15 projects were awarded funding in 2011 for 'Fighting Child Labour' (EuropeAid/129339/C/ACT/Multi). These continued in 2012.

Finally, under the crisis preparedness component of the Instrument contributing to Stability and Peace, the sum of EUR 1 million was earmarked for 'promoting transparency of the minerals supply chains in conflict-affected and high-risk areas' in 2013.

3. The EU's internal approach

a) The new EU CSR policy and agenda for action

As regards internal EU policy, the Commission's proposals for a Europe 2020 Strategy, together with international initiatives on business and human rights, particularly those undertaken at the United Nations and international debate on the concept of 'corporate social responsibility' influenced the European Commission´s adoption on 2011 of a Renewed EU Strategy 2011-2014 for Corporate Social Responsibility.[462] Against the backdrop of serious and numerous human rights violations, the severe criticism attracted by the previous purely voluntary European approach to CSR policy, and the limited number of EU Member States having already applied a CSR national policy, the EC has tried to outline a new definition of CSR and a renewed Agenda for Actions which includes a stronger emphasis on business and human rights international initiatives, in order to push companies within the European Union to adopt a CSR policy according to this new paradigm. The DG Enterprise and Industry has contributed to the Communication and the DG Employment has an important role in the implementation.

[462] Commission Communication (n413), section 3(1), 6.

The Commission formulates a new definition of CSR as 'the responsibility of enterprises for their impacts on society',[463] thereby assigning to CSR a wider and more general meaning than previous European policy and legal instruments.[464] Importantly, the definition 'no longer refers to CSR as voluntary action beyond compliance but highlights that every corporation causes impacts which it is responsible for'.[465] Another important aspect of the Communication is the international dimension, which is reinforced in contrast with previous policy, by making reference to the existing guidelines and principles that the Commission commits to promote and to disseminate through its external policies.[466]

The Commission implicitly refers to the UNGP's *responsibility to respect* when it encourages enterprises to 'have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders', with the aims to 'identify, prevent and mitigate possible adverse impacts which enterprises may have on society'.[467] Express mention of the Guiding Principles is made when the Communication acknowledges that the need to improve coherence of EU business and human rights policy 'is a critical challenge'.[468]

Among the eight areas that this new CSR policy puts forward as part of the Agenda for Action for the period 2011-2014,[469] the Commission invites Member States to present or update national CSR strategies and action plans by mid-2012, sets up a peer review system of public CSR policies, and expresses its aim to monitor the commitments of large European enterprises to take account of internationally recognised guidelines and principles, including the UNGPs.[470] The Commission is also

[463] The previous definition was a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.
[464] Jan Wouters and Leen Chanet, 'Corporate Human Rights Responsibility: A European Perspective', 262.
[465] Robert-Andre Martinuzzi, Barbara Krumay and U Pissano, 'The New communication of the EU Commission on CSR and National CSR Strategies and Action Plans', (December 2011) 23 ESDN Quarterly Report 3.
[466] COM(2011) 886 final, section 4 (8)(3), 14.
[467] COM(2011) 886 final, section 3(1), 6.
[468] *Ibid*. section 4(8)(2), 14.
[469] Commission, 'Corporate Social Responsibility: a New Definition, a New Agenda for Action' MEMO 11/730 25/10/2011 < http://europa.eu/rapid/press-release_MEMO-11-730_en.htm> accessed on 10 May 2014.
[470] As regards only the area related to 'better alignment of EU and global approaches to CSR', the agenda previously indicated envisages the following actions:

-Monitor the commitments made by European enterprises with more than 1,000 employees to take account of internationally recognised CSR principles and guidelines, and take account of the ISO 26000 Guidance Standard on Social Responsibility in its own operations.
-The EC invites all large European enterprises to make a commitment by 2014 to take account of at least one of the following sets of principles and guidelines when developing their approach to CSR: the UN Global Compact, the OECD Guidelines for Multinational Enterprises, or the ISO 26000 Guidance Standard on Social Responsibility.
-The EC invites all European-based multinational enterprises to make a commitment by 2014 to respect the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.
-Work with enterprises and stakeholders in 2012 to develop human rights guidance for a limited number of relevant industrial sectors, as well as guidance for small and medium-sized enterprises, based on the UN Guiding Principles.
-Publish by the end of 2012 a report on EU priorities in the implementation of the UN Guiding Principles, and thereafter to issue periodic progress reports.

committed to presenting a report on EU priorities for the implementation of the UN Guiding Principles on Business and Human Rights, and to develop human rights guidance for a limited number of industrial sectors, and for small business enterprises.

In the Communication's conclusions, the Commission undertakes to publish, together with the European Multistakeholder Forum on CSR and the High Level Group of CSR representatives of Member States,[471] a report on the implementation on the 'Agenda for Action 2011-2014', contained in the Communication. In following-up this Agenda, the Commission released in March 2013 a Report entitled 'An Analysis of Policy References made by large EU Companies to Internationally Recognised CSR Guidelines and Principles', as part of its monitoring exercise over more than 200 European enterprises with more than 1000 employees.[472] The results of the survey conducted on the CSR/sustainability report, codes of conduct and business principles publicly available, demonstrate that 68 per cent of the enterprises refer to 'corporate social responsibility' in their policies or external activities and 40 per cent refer at least to one of the internationally recognised CSR instruments listed by the EU Commission.

Furthermore, during the 10th meeting of the High Level Group of CSR representatives of Member States, held on 20 December 2013 together with the EU CSR Multistakeholders Forum Coordination Committee and International Organizations, the results of the Eurobarometer data survey,[473] published in April 2013, on the follow-ups of the 2011 Communication were presented by the Commission. The findings demonstrate the increasing interest of EU citizens in CSR-related issues and the evident gap between the citizens' feeling of their level of information and the effective company's disclosure of information.

Regarding the implementation of the eight areas of policy measures included in the 2011 Commission's Agenda for Action, about eighty per cent have been carried out, especially through regulatory and complementary policy actions, as will be explained below. Despite the advancements, substantive alignment with the UNGPs has still a long way to go. Some commentators have noted that this new 'EU

-Expects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles.
-Invites EU Member States to develop by the end of 2012 national plans for the implementation of the UN Guiding Principles.
-Identify ways to promote responsible business conduct in its future policy initiatives towards more inclusive and sustainable recovery and growth in third countries.

[471] The High Level Group of CSR representatives of Member States meets every six months to share their perspectives on CSR and encourage peer learning. Among its objectives, the high-level group operates as a mechanism for the Commission to sound out Member States on its own initiatives.

[472] See at <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/csr-guide-princ-2013_en.pdf> accessed 16 May 2014.

[473] See at <http://ec.europa.eu/public_opinion/archives/eb/eb80/eb80_first_en.pdf> accessed 16 May 2014.

policy is oriented towards a legalised approach to CSR', but 'it constitutes only a first, modest step in that direction'.[474]

In July 2012 the European Economic and Social Committee issued an Opinion Paper on the 2011 Communication on CSR, listing some unanswered questions left by the Commission. Among the most relevant ones, the following should be pointed out: (i) the unclarified definition of 'enterprise', which should include private, public and civil society stakeholders; moreover, the Communication does not provide an assessment of the results of the last ten years of CSR.[475] (ii) Although it is essential that enterprises should be accountable for their activity, CSR should consider how to deal with the inherent connection between business and the community, through transparency actions and social dialogue. (iii) Finally, in its strategy, the EC has not included SMEs´ approach, missing the opportunity to create a comprehensive policy at that moment.

In the new CSR Strategy the EC commits to identifying priorities for the implementation of the UNGPs but the expected report has not resulted yet in a 'plan where all issues and all Guiding Principles, their mutual interdependencies and all policy and regulatory options' were appropriately addressed'.[476]

b) Implementation of UNGPs through national action plans

In general terms National Action Plans (NAPs) are policy instruments that outline government´s priorities, commitments and initiatives with regard to a specific area (human rights, women, CSR, etc.). NAPs on the implementation of the UNGPs are thus the instrument where States express their commitments and priorities for the implementation of their obligation to protect human rights, as set out in the first pillar of the Guiding Principles.

The 2011 Commission´s Communication requested Member States to develop CSR NAPs.[477] It also invited them to adopt NAPs for the implementation of the United Nations Guiding Principles. Subsequently, it included the requirement in the Strategic Framework and Action Plan for Human Rights and Democracy. Initially the deadline was set for 2012 and subsequently extended until 2013.

Several States in Europe – it is reported that 19-[478] have undertaken the process of elaboration of their NAPs on business and human rights since 2012,[479] although they are following a very slow pace. The

[474] Jan Wouters and Stephanie Biljmajers, 'Towards a legalization of CSR policy in the European Union? Critical reflections on the European Commission's 2011 Strategy on Corporate Social Responsibility', [2012] <https://lirias.kuleuven.be/handle/123456789/373090> accessed on 15 May 2014.

[475] SOC-440/ CESE 1301/2012, see at <http://www.csr-in-commerce.eu/data/files/resources/796/CES1301-2012_AC_EN.pdf> accessed 15 May 2014.

[476] European Coalition for Corporate Justice, ECCCJ' s recommendations on EU's priorities for the implementation of the United Nations Guiding Principles on Business and Human Rights May 2012 <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/46_eccjrecommen_/46_eccjrecommen_en.pdf> accessed 16 May 2012.

[477] A number of EU Member States have adopted CSR NAPs such as Cyprus, Germany, Spain and Denmark.

[478] Reported data includes Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Ireland, Italy, Lithuania, Netherlands, Poland, Romania, Slovenia, Sweden and the UK. The figures are taken from submissions to the 2012 UN Annual Forum on Business and Human Rights and from responses to the pilot survey conducted by the UN Working Group on the issue of human rights and transnational corporations and other

United Kingdom Government was the first to release the National Action Plan on 4 September 2013.[480] The British 'Good Business' Plan was the first one explicitly framed in terms of implementation of the United Nations Guiding Principles.[481]

The Netherlands published the NAP on 20 December 2013.[482] Denmark adopted the NAP on March 2014, a document that contains a summary of measures already taken by the Danish Government since the endorsement of the Guiding Principles.[483] In the next months it is expected to see NAPs adopted by other EU countries like Finland, Spain, Italy, and others coming from France and Poland at the end of the year, as well as from other European countries such as Switzerland and Norway. Italy has released a document on 'The Foundations of the National Action Plan on Business and Human Rights´ that contains a baseline study.[484] Spain is at an advanced stage of the adoption of its NAP, pending government approval of the last consolidated draft.[485]

As to the content of the already launched and upcoming plans, some of the preliminary benchmarks put forward by the ENNHRIs early in the process, in 2012, particularly those referring to the process of elaboration and certain minimum contents should be noted.[486]

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business enterprises. 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Uptake of the Guiding Principles on Business and Human Rights: practices and results from pilot surveys of Governments and corporations' UN Doc A/HRC/23/32/Add <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A> accessed 16 May 2014.

[479] The United Nations Working Group on business and human rights keeps a repository of NAPs at <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> accessed 16 May 2014.

[480] See at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf> accessed 16 May 2014.

[481] UK Secretary of State for Foreign and Commonwealth Affairs, 'Good Business. Implementing the United Nations Guiding Principles on Business and Human Rights' <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf> accessed 16 May 2014.

[482] English translation available at <http://business-humanrights.org/media/documents/dutch-national-action-plan-dec-2013.pdf> accessed 16 May 2014.

[483] See at <http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf> accessed 16 May 2014.

[484] Available at <http://business-humanrights.org/media/documents/foundations-ungps-nap-italy.pdf> accessed on 16 May 2014.

[485] The last consolidated version of the Spanish NAP (from February 2014) is not publicly available. Information on the draft dated November 2013 can be retrieved from <http://www.business-humanrights.org/UNGuidingPrinciplesPortal/ToolsHub/Governments/TypeInitiative/natlactionplans> accessed on 16 May 2014. On the challenges posed by the process in Spain see Carmen Márquez Carrasco (ed.), *España y la implementación de los Principios Rectores de las Naciones Unidas sobre empresas y derechos humanos: oportunidades y desafíos/Spain and the Implementation of the United Nations Guiding Principles on Business and Human Rights: Challenges and Opportunities*, (Huygens 2014).

[486] <http://www.ohchr.org/Documents/Issues/Business/NationalPlans/ClaireMethvenOBrien_EuropeanGroupofNHRIs.pdf> accessed 16 May 2014.

E. Abolition of the death penalty

1. Historical context and policy development

'The European Union has a strong and unequivocal opposition to the death penalty in all times and in all circumstances'. This straightforward declaration opens the text of the EU Guidelines on Death Penalty.[487] These Guidelines were last updated in 2013, so that they now include important references to the Strategic Framework on Human Rights and Democracy and the Action Plan.

Since the 1997 Council of Europe Summit, where Heads of Government, including all Member States, called for the universal abolition of the death penalty, the EU has been actively fighting against this 'serious violation of human rights and human dignity'.[488] In fact, the EU Guidelines on Death Penalty, initially adopted in 1998, were the first-ever human rights guidelines formulated by the EU. The EU has also actively participated in all the initiatives on the moratorium on the use of the death penalty that have led to the adoption of Third Committee resolutions 62/149, 63/168, 65/206 and 67/176 during the 62nd, 63rd, 65th and 67th sessions of the UN General Assembly.[489] In December of 2007 the EU declared 10th December as the 'European Day against Death Penalty' following the path of the Committee of Ministers of the Council of Europe which had declared it three months before.

Work on abolishing the death penalty is also a personal priority of the EU HR/VP, who declared so in its Speech to the European Parliament on human rights on 16 June 2010.[490]

The fight against the death penalty was reinforced by its inclusion in 2012 in the list of priorities of the Strategic Framework which expressly reaffirms the EU's commitment towards the abolition of the death penalty worldwide. In accordance with this approach, several actions have been defined in the Action Plan, including to contribute to lobbying on the UNGA 67 Resolution on the death penalty moratorium and to carry out targeted campaigns on the death penalty.[491]

[487] Council of the European Union, 'Guidelines on Death Penalty, Common Guidelines' 8416/13EU [2013]. The Guidelines were adopted in 1998, updated in 2001, 2008 and 2013. (*Guidelines on Death Penalty*). See above, section II.B.3.
[488] Guidelines on Death Penalty, 1, 5.
[489] Guidelines on Death Penalty, 1.
[490] Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Speech to the European Parliament on human rights European Parliament Strasbourg, 16 June 2010' SPEECH/10/317 [2010], 2.
[491] Strategic Framework, 6; Action Plan, actions 16 a), b), c).

2. Legal framework and formulation of policy

The EU's long-standing position against the death penalty has led some authors to declare the existence of a regional norm of *ius cogens* in Europe on abolition of the death penalty.[492] The legal framework of this EU's human rights priority is built on the Charter of Fundamental Rights, legally binding with the entry into force of the Treaty of Lisbon, which in its Art 2, in Chapter I (Dignity), sets out that '1. Everyone has the right to life. 2. No one shall be condemned to the death penalty or executed'. This provision was placed immediately after Art 1 ('Human dignity is inviolable. It must be respected and protected') which shows the prominent role of the fight against the death penalty in the European human rights system. In this regard, it has to be taken into consideration that the Court of Justice of the European Union had affirmed in the past that the fundamental right to human dignity was part of the EU Law and a legitimate interest which must be protected by the EU itself and by its Member States even if such protection is in contradiction with European Law dispositions.[493]

Other articles of the Charter that constitute the legal framework of the abolition of the death penalty are Art 3, regarding the right to the integrity of the person, which states that everyone has the right to respect for his or her physical and metal integrity; Art 4 which establishes the prohibition of torture, inhuman or degrading treatment or punishment, and Art 19.2, which sets forth the principle of non-refoulement, that is, that no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Regarding the formulation of policy, the Strategic Framework on Human Rights and Democracy sets out:

> 'The death penalty and torture constitute serious violations of human rights and human dignity. Encouraged by the growing momentum towards abolition of the death penalty worldwide, the EU will continue its long-standing campaign against the death penalty.'[494]

The objectives of the EU in this field are clearly stated in the Guidelines on Death Penalty. As clarified by the Guidelines, these objectives form part of the EU's human rights policy.[495] The general objective of the EU is 'to work towards universal abolition of the death penalty as a strongly-held policy agreed by all

[492] Carrillo Salcedo, J. A., *El Convenio Europeo de Derechos Humanos* (Tecnos, 2003). See Protocols 6 (1983) and 13 (entered into force on 1 July 2003) on the death penalty to the European Convention for the Protection of Human Rights and Fundamental Freedoms (all EU members have ratified them and abolish capital punishment in all circumstances). All EU Member States ratified the Second Optional Protocol (1989) to the International Covenant on Civil and Political Rights (ICCPR) aiming at the complete abolition of the death penalty and, furthermore, they did so without reservations allowed under its Art 2 by which the application of the death penalty pursuant to a conviction for a most serious crime of a military nature committed during wartime is allowed. This is also the position in the Organization for Security and Cooperation in Europe (OSCE).

[493] Case C-377/98, *Netherlands v. European Parliament and Council* (2001) ECR I-7079, paragraphs 70 and ff. Case C-36/02, *Omega Spielhallen und Automatenaufstellungs GmbH v. Obergurgermeiterin der Bundesstadt Bonn* (2004) ECR I-9609, paragraphs 30 to 35. Case C-456/03, *Commission v. Italy* (2005) ECR I-5335].

[494] Strategic Framework, 6.

[495] *Ibid*.

EU Member States'.[496] In addition, a subsidiary group of objectives are stated in order to guide the EU's action where the death penalty still exists: [497]

- Advocate the immediate establishment of a moratorium on the use of the death penalty with a view to abolition,
- call for its use to be progressively restricted, including by reductions in the number of offences for which the death penalty will be implemented;
- advocate that it be applied respecting the minimum standards as set out in the Guidelines on Death Penalty,
- seek accurate information about the use of the death penalty including the offence it is used for, the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the minimum standards are incorporated in national law; and
- where appropriate, seek disaggregated data on the nationality, sex, age, racial or ethnic origin, religion or belief, sexual orientation and other status, including disability, of persons executed or facing the death penalty.

The Guidelines also include a minimum standards paper, which, as it names suggest, establishes the minimum standards that the EU defends for those countries that still maintain executions. The advocacy for these standards should always be understood taking into consideration that the general objective of the EU is the full abolition of the death penalty. Among these minimum standards should be cited the following, which have particular importance for the protection of other EU's human rights priorities and for the protection of vulnerable groups:[498]

- The death penalty must not be imposed for non-violent acts such as financial or economic crimes, or because of political offences or rivalries. It shall also not be imposed for drug related crimes, religious practices or expression of conscience, or for sexual relations between consenting adults, it also being understood that the scope should never go beyond the most serious intentional crimes.
- Capital punishment shall not be imposed on persons below 18 years of age at the time of the commission of their crime; pregnant women, new mothers and nursing women; persons suffering from any mental illness or having an intellectual disability; and the elderly.
- It is necessary to have a final judgement rendered by an independent and impartial competent court after legal proceedings, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Art 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

[496] Strategic Framework, 5.
[497] *Ibid*.
[498] Guidelines on Death Penalty, 10-13

- Consideration shall be given to the length of time spent on death row and the conditions of imprisonment after having been sentenced to death, bearing in mind that the conditions of imprisonment of persons on death row should not be inferior to that of other inmates. These elements may constitute forms of torture or inhumane or degrading treatment or punishment.
- Where capital punishment occurs notwithstanding the EU's best efforts to prevent it, it shall only be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other manner intended to further degrade the person facing execution. Equally, it must not be practised in secrecy. The family and lawyers of prisoners on death row must be notified of details of their execution.
- The death penalty must not be applied or used in a discriminatory manner on any grounds including political affiliation, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

3. Implementation of policy

The Guidelines on Death Penalty list the main elements of the EU's approach towards third countries, which are classified into five areas of action:[499]

1. General démarches: the EU will raise the issue of the death penalty in its dialogues and consultations with third countries. The content of these diplomatic contacts are also explicitly covered by the Guidelines, according to the general objective and the subsidiary objectives referred to above. In this regard, the EU 'will call for the universal abolition of the death penalty, or at least for a moratorium with a view to abolition', and where the use of the death penalty is maintained, 'the EU will emphasise that States should only use the death penalty in line with the minimum standards set forth in the [Guidelines].' The Guidelines also note that particular consideration will be given to reports and findings by relevant international human rights mechanisms and that a démarche or public statement should be made where 'countries take steps towards abolition of the death penalty'.

2. Individual cases: the EU will also consider making specific démarches where it becomes aware of individual death penalty cases, in particular those which violate the minimum standards. Within this area the Guidelines also clarify that it is necessary to take into consideration the other EU human rights guidelines, in particular, the Guidelines on Torture and other inhuman or degrading treatment or punishment and the Guidelines on human rights defenders.

3. Human Rights reporting: 'EU Heads of Mission should include an analysis of the application and use of the death penalty and the effect of EU action in this respect in their human rights reporting, including in the human rights strategies.'

4. Possible results of EU interventions: other initiatives. Within this area, the Guidelines refer to the commitment of the EU to encourage countries to accede to, or ratify, the Second Optional

[499] Guidelines on Death Penalty, 6-10.

Protocol to the ICCPR and other similar regional instruments and to support the development of such regional instruments where they do not exist. In this regard, the EU will also:

- 'Encourage states to ratify, without reservations, and comply with International instruments on the use of the death penalty, including the ICCPR';
- 'Encourage and offer bilateral and multilateral cooperation, inter alia in collaboration with civil society, including in the legal field with the aim to enhance the right to a fair and impartial trial for criminal cases and to create greater transparency around the use of the death penalty'.
- 'Continue to support civil society in its actions promoting the abolition, the establishment of moratoria and restrictions on the use of the death penalty', through the EIDHR.
- 'Ensure that the actions, such as legal, financial or other technical assistance to third countries do not contribute to the use of the death penalty'.

5. Action in multilateral fora: 'the EU will raise the issue of the death penalty in relevant multilateral fora and promote initiatives aimed at introducing a moratorium on the use of the death penalty and, in due course, abolition', including references in documents produced under the proceedings of these multilateral fora. This covers recommendations by Member States as part of the Universal Periodic Review Process (UPR) of the UN HRC. 'The EU will also cooperate with requests from UN bodies for information on consultation reports, and will encourage its Member States to do likewise'. Finally, the EU 'will encourage international and regional organisations to support States to take appropriate steps to comply with minimum standards relating to the death penalty, and further encourage them to ratify, without reservations, and comply with international treaties relating to the death penalty.'

Council Regulation 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishments should be also mentioned. This Regulation lays down the EU's rules governing trade with third countries in goods that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment, and in related technical assistance.[500] These rules are 'instrumental in promoting respect for human life and for fundamental human rights and thus serve the purpose of protecting public morals'.[501] The aim of the rules is to ensure that EU's economic operators do not derive any benefits from trade which promotes or facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the Guidelines, the Charter of Fundamental Rights and international conventions and treaties.[502] The measures set forth by Regulation 1236/2005 comprise the prohibition of any export or import of goods which have no practical use other than for the purpose of capital

[500] Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, [2005] OJ L200/1, Art 1.
[501] *Ibid*, Preamble (7).
[502] *Ibid*.

punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, irrespective of the origin of such goods.[503]

Regarding financial instruments, the EU is the main financial donor to the abolition of the death penalty.[504] The fundamental financial instrument used by the EU is the EIDHR, which, within the scope of the EU's assistance, includes the promotion and protection of human rights and fundamental freedoms, as proclaimed in the Universal declaration of Human Rights and other international and regional instruments in the area of civil, political, economic, social and cultural rights, mainly through civil society organisations, relating to the 'abolition of the death penalty and the establishment of moratoria with a view to its abolition and, where the death penalty still exists, advocacy for its abolition and the observance of international minimum standards'.[505] Moreover, the EIDHR also includes the fight against the death penalty under specific objective 2 (Support to other priorities of the Union in the field of human rights).[506]

4. The EU's internal approach

The abolition of the death penalty constitutes a fundamental value of the EU and, thus, a requirement for countries seeking to become members of the EU. All Member States are fully committed to the legal framework referred to above and to implementing them in practice.[507]

At the internal level it should also be mentioned that Council Regulation 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment does not establish controls on transactions within the EU, whereas in the Member States capital punishment does not exist. [508]

F. Eradication of torture and other cruel, inhuman or degrading treatment or punishment

1. Historical context and policy development

The European Institutions have been working on the theme of torture since the first attempts were directed at establishing a common European policy on human rights and democracy even before the creation of the EU. Thus, the protection of victims of torture and organised violence was addressed through the first projects funded following the adoption of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development on November 1992,[509] which established the core principles and guidelines that oriented thereafter the Community

[503] *Ibid*, Arts 3(1) and 4(1).
[504] Guidelines on Death Penalty, 9.
[505] Regulation 235/2014, *Ibid* fn(?), Art 2(1)(b)(i).
[506] *Ibid*, Annex.
[507] Guidelines on Death Penalty, 4.
[508] Council Regulation (EC) No 1236/2005, of 27 June 2005, concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, [2005] OJ L200/1, Preamble (21).
[509] Budget heading A-3030 (Defence of Human Rights).

Institutions' and Member States' external policy on human rights and democracy.[510] In the following years, the EU continued financing projects addressing the protection of victims of torture. As an example, in 1993, included in the area of support for vulnerable groups, the EU provided financial support for an aid centre for torture victims in Nepal, which was co-financed by Denmark. Another project implemented in 1993 was a training seminar on the respect of the integrity of the human being as a means to abolish torture, directed to various developing countries. Torture has also been one of the issues covered by human rights dialogues and confidential démarches since the beginning of the implementation of 1991 resolution.[511]

The following years, under the EIDHR, the protection of torture and victims of violence was included in projects providing support for democratisation processes in third countries.[512] Due to the continuous expansion of the Community activities in the field of protection of victims of torture since 1991, and at the initiative of the European Parliament, in 1994 a special article was included in the EIDHR to finance projects providing support for rehabilitation centres for victims of torture and for organisations offering concrete help to victims of human rights abuses.[513] However, the funding was insufficient and some projects had to be funded by the allocation of B7-5240: Subsidies for certain activities of organizations pursuing human rights objectives.[514]

It was not until 1995 when the protection of victims of torture was identified as a priority area of activity that it warranted special attention, as reflected in the Communication from the Commission to the Council and the European Parliament of November 22, The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond.[515]

The fight against torture was identified in the first EU Annual Report of 1999 as one of the thematic priorities. It is notable that in 2002 the projects financed under the EIDHR not only covered the support for victims of torture and their families (mostly through treatment and rehabilitation centres), but included other areas such as the information and education of officers and the accountability of perpetrators.

2. Legal framework and formulation of policy

[510] Mercedes Candela Soriano, *Los Derechos Humanos, la Democracia y el Estado de Derecho en la Acción Exterior de la Unión Europea. Evolución, Actores, Instrumentos y Ejecución* (Dykinson 2006) 80.
[511] Commission, 'Report on the implementation of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991' (Communication from the Commission to the Council and the European Parliament) SEC (92) 1915 final [1992].
[512] Commission, 'Report from the Commission to the Council and the European Parliament of 12 July 1995 on the implementation of measures intended to promote observance of human rights and democratic principles' COM (95) 191 final [1995].
[513] *Ibid*.
[514] *Ibid*.
[515] Commission, 'The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond' (Communication from the Commission to the Council and the European Parliament) COM (95) 567 final.

The fight against torture is enshrined in the core policy documents that orient the EU action, both domestic and external, in the field of human rights and democratisation. Art 4 of the Charter of Fundamental Rights establishes the absolute ban on torture and other inhuman or degrading treatment or punishment.

In 2001 the EU adopted the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment which was reviewed in 2008 and 2012. Since 2007,[516] and in the context of its 2008 and 2012 revisions, some CSOs and NGOs have actively participated in the revision of guidelines, as well as in its implementation and dissemination. The amended Guidelines stress the need to ensure proper implementation of the recommendations of international monitoring mechanisms, such as the UN Convention against torture (CAT), and emphasise the prohibition on torture or ill-treatment while countering terrorism.

Eradication of torture and other cruel, inhuman or degrading treatment or punishment (CIDT) is included as a priority in the EU Strategic Framework and Action Plan on Human Rights and Democracy. Those objectives involve the action of all Member States, the EEAS, and the Commission. Point 17 of the Action Plan reflect three objectives related to the fight against torture and CIDT: actively and continuously to support and implement UN and Council of Europe anti-torture efforts, including support for the UN Special Rapporteur on Torture, the UN Voluntary Fund for the Victims of Torture, the OHCHR, UNCAT, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), and the European Committee for the Prevention of Torture (CPT); promote ratification and effective implementation of the CAT and its Optional Protocol (OPCAT) emphasising the role of independent and effective National Preventive Mechanisms; integrate torture prevention measures into all Freedom Security and Justice activities, including those related to law enforcement purposes.

These tools show that the fight against torture and other inhuman or degrading treatment or punishment is one of the priorities in the EU policy on human rights and democratisation. According to those policies, those objectives should be pursued both at a domestic and external level, and in close cooperation with bilateral and multilateral partners, and the civil society.

3. Implementation of policy

Regarding general external policy tools oriented towards the fight against torture the EU uses statements and démarches – either public or confidential - as a measure to raise public awareness and to exert pressure on third countries in order to take all necessary steps to prevent torture and other cruel and inhuman treatment.[517] In 2014 (until 24/04/2014), the EU HR Catherine Ashton issued three statements related to torture: onene addressing the situation in Syria on the third anniversary of the beginning of the conflict, and the other two expressing the concern of the HR/VP for the case of Dmytro

[516] Council of the European Union, 'Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An up-date of the Guidelines', 6129/1/12 REV1 [2012].
[517] Candela Soriano, 232.

Bulatov, a member of the Ukrainian opposition who was subjected to torture.[518] Every year, Catherine Ashton issues a statement on the occasion of the UN International Day in Support of Victims of Torture, 26 June 2013, reaffirming the EU commitment to the prevention and eradication of torture and other CIDT, and the EU commitment with multilateral instruments such as the CAT and other UN instruments against torture, and stressing the role of civil society on this issue.[519]

In its bilateral relations, the EU uses the human rights dialogues to promote the ratification of multilateral and regional core treaties to combat torture, and to encourage third countries towards the implementation of the legislative and institutional reforms necessary to prevent torture and fight against perpetrators' impunity. In this respect, since the implementation of the EU Action Plan on Human Rights and Democracy, it has included the fight against torture in several of its human rights dialogues. For example, in its third round of their annual dialogue on human rights with Vietnam, the EU delegation welcomed the progress as regards the plans for signing and ratifying the CAT in 2014.[520] The theme of torture was also addressed in the human rights dialogues with Kyrgyz Republic and Uzbekistan in which the EU expressed its concerns at reports of the use of torture and ill-treatment against detainees, and expressed its support to the authorities in the implementation of measures oriented towards prevention of torture.[521]

Furthermore, with regard to regional and multilateral cooperation, the EU supports international and multilateral fora such as the UN and the CAT, as well as regional organisations such as the Council of Europe and the OSCE, in its fight against torture and other forms of ill-treatment.

With respect to the UN, all EU Member Countries are signatories of the CAT. As discussed earlier in this chapter, the EU has directed it external action towards promoting the universal ratification of the CAT. It should be noted that the EU participated in the Working Group on the Draft Optional Protocol to the CAT towards the inclusion of an independent mechanism to investigate places of detention,[522] and has promoted its ratification through its external action and through the action of its Member States.[523] Moreover, the EU advocates the adoption of resolutions in the context of the HRC sessions regarding torture prevention and condemning specific countries for the use of torture. In the 25th Session of the Human Rights Council of March 2012, the EU proposed two resolutions condemning the violations of

[518] Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by the EU High Representative Catherine Ashton on the 3rd Anniversary of the Syrian uprising' [2014]; 'Statement by the EU High Representative Catherine Ashton following meeting with Ukrainian opposition' [2014], 'Statement by the EU High Representative Catherine Ashton on the case of Dmytro Bulatov' [2014].

[519] Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the occasion of the United Nations International Day in Support of Victims of Torture' A 353/13 [2013].

[520] EEAS, 'EU and Vietnam hold Human Rights Dialogue' (Press Release) 130912/01 [2013].

[521] EEAS, 'European Union-Kyrgyz Republic Human Rights Dialogue' (Press Release) 140408/04, [2014]; EEAS, 'EU-Uzbekistan Human Rights Dialogue' (Press Release) 131108/01 [2013].

[522] EU annual report on human rights 1999, 34.

[523] Candela Soriano, 233.

human rights including torture in Myanmar and the Democratic People's Republic of Korea.[524] As have been indicated above when discussing the general external policy tools, the EU also contributes to the promotion of adhesion and implementation of other international relevant instruments such as the accession to the Statute of the International Criminal Court, and the cooperation with the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

At the regional level all EU Member States are parties to the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, of the Council of Europe. The EU cooperates with the Council of Europe promoting the signature and ratification of the convention.[525] The ratification of the convention implies that the Party States are obliged to permit visits to detention centres. Moreover, the EU supports those projects oriented towards the definition of torture and other cruel and inhuman treatments as a crime; the implementation of reforms in the judicial systems to effectively prosecute this kind of crimes and the training of judges, prosecutors, lawyers, police officers, and officers at prison or other detention facilities, to assure the effective implementation of the reforms.[526]

Regarding the OSCE, the EU supports the Office for Democratic Institutions and Human Rights in its work towards the eradication of torture and the fight against impunity towards its perpetrators. In the OSCE Supplementary Human Dimension Meeting on Prevention of Torture held in Vienna on 10 and 11 April 2014, the EU Delegation reiterated its commitment with the eradication of torture and the assistance of participating States in the implementation of their commitments to prevent and eradicate torture through the EIDHR.[527]

With respect to trade in torture or capital punishment equipment, in 27 June 2005, the Council adopted the Regulation (EC) No 1236/2005 banning the trade with third countries in torture or capital punishment equipment. In December 2011, the European Commission, assisted by the Service for Foreign Policy Instruments (FPI), amended the regulation adding certain substances to the list of goods subject to export controls. The EU Action Plan on Human Rights and Democracy stipulates in point 11 the review of the Regulation (EC) No 1236/2005 in order to add new substances and other goods that could be used in torture or capital punishment equipment.

Regarding the EU border control policies, rejection at the border or the so-called 'hot returns' - illegal direct expulsions without any formal procedures - in breach of the Convention of 28 July 1951 relating to the Status of Refugees, often leads to the return of those affected to third countries where they may be at risk of torture. Restrictive immigration policies should address those situations and the implications of the right not to be tortured or to be subject to cruel, inhuman or degrading treatment in third countries as part of the EU's foreign policy as laid down by the European Court of Human Rights.

[524] Situation of human rights in Myanmar A/HRC/25/L.21/Rev.1; Situation of human rights in the Democratic People's Republic of Korea A/HRC/25/L.17.
[525] Candela Soriano, 234.
[526] *Ibid*.
[527] European Union, 'OSCE Supplementary Human Dimension Meeting on Prevention of Torture, Vienna, 10-11 April 2014' (EU Statement – Closing session) PC.SHDM.DEL/3/14.

Finally, in connection with financial instruments, the EU addressed the theme of torture between the first financial projects in the context of its human rights policies since 1991. The EIDHR is the main financial tool through which the EU implements its strategy towards the eradication of torture. In 1994 the Parliament created a specific allocation, B7-7070, for the promotion of projects providing support for torture victims through rehabilitation centres and also for organisations offering concrete help to victims of human rights abuses.[528] It was not until 2002 that the EIDHR began to support other measures aimed at the prevention of torture by reinforcing the legislation regarding the fight against torture, the abolition of solitary confinement, the fight against impunity, and training of law enforcement and other public officials, judges and prosecutors.[529] The prevention of torture and the rehabilitation of torture victims are identified as a major priority under the EIDHR. In fact, in the EIDHR Strategy Paper for 2011-2013, almost 38 million EUR is allocated to support CSOs to implement anti-torture projects in the field of torture prevention – promotion of ratification of OPCAT, investigation into the supply of torture technology, development of torture prevention and monitoring networks, torture victims' rehabilitation, and fight against perpetrators' impunity.

The DG Home Affairs of the EC financed in the period 2007-13 a Pilot Project on Victims of Torture aimed to help the creation and support rehabilitation centres and provide physical and psychotherapeutic treatment, psycho-social counselling, legal service and socio-economic support to victims of torture.[530] For the years 2014-2020, DG Home has restructured its funds into two programmes: the Internal Security Fund and Asylum, and the Migration and the Integration Fund. While the assistance of victims of torture is observed in the Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund,[531] there is no information about the new projects covered by the programme so far.

4. The EU's internal approach

As all the human rights enshrined in the ECHR signed in Rome on 4 November 1950, the prohibition of torture is one of the prerequisites for a candidate country to be accepted as an EU Member.

Regarding the Area of Freedom, Security and Justice (AFSJ) policies, and as has been discussed above, the EU Action Plan on Human Rights and Democracy included as an ongoing objective in the field of the fight against torture the integration of torture prevention measures in its activities, including those related to law enforcement. Moreover, the amended EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment stressed the importance of torture prevention measures in the implementation of counterterrorism measures.

[528] *Ibid*.
[529] Candela Soriano, 236.
[530] Commission, DG Home Affairs, 'Preparatory Action on Victims of Torture' <http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/other-programmes/pilot-project-victims-torture/index_en.htm> accessed 22 July 2014.
[531] Commission, 'Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund' COM/2011/0751 final - 2011/0366 (COD).

G. Administration of justice

1. Historical context and policy development

A fair and impartial justice administration, as a feature of rule of law, was present among the first human rights instruments and documents of the EU. Rule of law, including measures to 'strengthen the independence and efficiency of the judiciary and to make the penal system more humane'[532] is identified among the activities eligible for financial and technical support under the budget headings oriented towards human rights promotion. Projects financed in 1991 included a project to improve the justice system in Chile or initiatives to modernise the Guatemalan legal system.[533]

Since then, the rule of law has been enshrined in all founding treaties, together with the democracy and human rights, as a foundational and common value of the EU internal policy, and as a main objective, a benchmark and a guiding principle of the external policy.[534]

EU treaties do not provide a definition on rule of law and its elements. The case law of the Court of Justice of the European Union – as referred to in the Commission Communication: A new EU Framework to strengthen the Rule of Law[535] – shed some light on a number of general principles of law regarding the rule of law: the principle of legality,[536] certainty,[537] prohibition of arbitrariness of the executive powers,[538] independent and effective judicial review,[539] and equality before the law.[540] In accordance with the case law of the Court of Justice there is also a clear link between the right to a fair trial and the separation of powers.[541]

In recent years, the right to a fair trial has been identified as one of the priority areas in the work regarding the rule of law and a fair and impartial administration of justice, both at the internal and external level. In 2004 the EC presented its proposal for a Council Framework Decision aiming to set common standards as regards access to legal advice, free interpretation and translation, ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention, the right to communicate, inter alia, with consular authorities in the case of foreign suspects,

[532] Commission, 'Report on the implementation of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991' (Communication from the Commission to the Council and the European Parliament) SEC (92) 1915 final [1992], 3.
[533] *Ibid* 9.
[534] Laurent Pech, 'Rule of law as a guiding principle of the European Union's external action', (Cleer Working Papers 2012) 3, 9-10.
[535] Commission, 'A new EU Framework to strengthen the Rule of Law' (Communication from the Commission to the European Parliament and the Council) COM(2014) 158 final, Annex II.
[536] Case C-496/99 P, Commission v CAS Succhi di Frutta [2004] ECR I-03801, para 63.
[537] Joined cases 212 to 217/80 Amministrazione delle finanze dello Stato v Salumi [1981] ECR 2735, para 10.
[538] Joined cases 46/87 and 227/88 Hoechst v Commission [1989] ECR 02859, para 19.
[539] Case C-583/11 P Inuit Tapiriit Kanatami and Others v Parliament and Council, not yet published, para 91; Case C-550/09 E and F, [2010] ECR I-06213, para 44; Case C-50/00 P Unión de Pequeños Agricultores [2002] ECR I-06677, para 38 and 39.
[540] Case C-550/07 P Akzo Nobel Chemicals and Akcros Chemicals v Commission [2010] ECR I-08301, para 54.
[541] Joined cases C-174/98 P and C-189/98 P Netherlands and Van der Wal v Commission, [2000] ECR I- 00001, para 17; Case C-279/09 DEB, [2010] ECR I-13849, para 58.

and notifying suspected persons of their rights.[542] However, six countries did not support it. Nevertheless, in the following years a number of legislative developments on procedural rights in criminal proceedings were implemented and nowadays this process continues. The inclusion in 2012 of the promotion of fair trials in the Strategic Framework and Action Plan on Human Rights and Democracy identifies the right to a fair trial as a priority also in the EU's external action.

2. Legal framework and formulation of policy

The right to a fair and impartial administration of justice is enshrined in the Charter of fundamental rights of the EU Art 20 establishes the equality before the law principle while Chapter IV relating to justice issues enshrines the right to an effective remedy and to a fair trial (Art 47), presumption of innocence and right of defence (Art 48), principles of legality and proportionality of criminal offences and penalties (Art 49), and the right not to be tried or punished twice in criminal proceedings for the same criminal offence (Art 50). The principle of equality before the law is included in all Member States' Constitutions and has been recognised by the Court of Justice as a basic principle of Community law.[543]

Moreover, as stated above, in the early years, the right to a fair trial received significant attention that was accompanied by the development and adoption of a number of directives regarding procedural rights in criminal proceedings. In 2009, a roadmap on procedural rights was adopted by the Council of the EU, setting out six priority areas to be developed by the Commission through legislative initiatives: i) translation and interpretation; ii) information on rights and information about the charges; iii) legal advice and legal aid; iv) communication with relatives, employers and consular authorities; v) special safeguards for suspected or accused persons who are vulnerable; vi) pre-trial detention.[544] Directives on the right to interpretation and translation in criminal proceedings,[545] on the right to information in criminal proceedings,[546] and on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,[547] were adopted in 2010, 2012 and 2013 respectively. Finally, on 27 November 2013, the EC presented a package of proposals to strengthen procedural safeguards for citizens in criminal proceedings in the EU including: a Directive on the presumption of innocence and the right to be present at trial in criminal proceedings; a Directive on special safeguards for children; and a Directive on the right to provisional

[542] Commission, 'Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union' COM (2004) 328 final, 2004/0113 (CNS).
[543] Judgment of 13 November 1984, Case 283/83, Racke; judgment of 17 April 1997, Case C-15/95, EARL; and judgment of 13 April 2000, Case C-292/97, Karlsson.
[544] Council of the European Union, 'Resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings' 15434/09 [2009].
[545] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, [2010] OJ L280/1.
[546] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L142/1.
[547] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1.

legal aid. These legislative proposals were complemented by two Commission Recommendations to Member States on procedural safeguards for vulnerable people and on the right to legal aid.[548]

The prioritisation of support for the right to a fair trial, both at the internal and external level, is also reflected in its inclusion in the Strategic Framework and Action Plan on Human Rights and Democracy as a priority. The Action Plan provides for two measures for its implementation at the international level, namely to: 'conduct a campaign on justice, focusing on the right to a fair trial; continue to ensure monitoring of important human rights related trials, in particular trials against human rights defenders'.[549]

The Guidelines on Human Rights Defenders also provides for local actions in support of HRDs as attending their trials as a practical means of engagement with HRDs' protection.

3. Implementation of policy

Following the provisions enshrined in the Strategic Framework and Action Plan, the EU's external action in the field of the administration of justice is focused on but not limited to the defence of fair trials through the monitoring of sensitive trials as mentioned above in the HRDs section. In fact, in 2012, the EU conducted regular monitoring of sensitive trials in countries such as Algeria, Azerbaijan, Kazakhstan, Thailand, and Vietnam.[550]

The EU also addresses other aspects relative to a fair and impartial administration of justice as the independence of the judiciary and the legal profession in its political and human rights dialogues with third countries.[551] For example, in 2013, constitutional, legal and judicial reforms were addressed in the third round of the EU-Vietnam annual enhanced dialogue on human rights.[552] Judicial system reforms were also discussed with Kyrgyzstan in 2014, focusing on the right to a fair trial.[553] In the context of dialogues, the EU also raises its concern and condemns threats to or attacks on defence lawyers.[554]

Regarding EU work with multilateral partners, and in spite of the fact that there is no explicit mention of issues regarding fair and impartial administration of justice in the Council conclusions on EU priorities at the UN Human Rights Fora published in 2014, the EU supports the work of UN bodies covering justice administration issues and has participated in rule of law promotion initiatives. In this regard the EU participated in the first high-level meeting on the rule of law at national and international levels held at the UN General Assembly on 24 September 2012. The political declaration stressed the importance of

[548] The Right to… - a Fair Trial! Commission wants more safeguards for citizens in criminal proceedings (Press release) [2013].
[549] Strategic Framework on Human Rights and Democracy, *Ibid* fn(6).
[550] Annual Report 2012, 109.
[551] *Ibid*.
[552] EEAS, 'EU and Vietnam hold Human Rights Dialogue' (Press Release), 130912/01 [2013].
[553] EEAS, European Union-Kyrgyz Republic Human Rights Dialogue (Press Release) 140408/04 [2014].
[554] Council of the European Union, *Ibid* (n30) 109.

the independence, impartiality and integrity of the judiciary and emphasised the right of equal access to justice for all.[555]

Finally, the EU includes among the Copenhagen criteria for candidate countries the guarantee of the respect for the rule of law.

Regarding financial instruments, a fair and impartial administration of justice is identified as one of the priority areas for EU assistance through the EIDHR for the period 2014-20. In this regard, the assistance will aim in particular at 'strengthening the rule of law, promoting the independence of the judiciary and of the legislature, supporting and evaluating legal and institutional reforms and their mplementation, and promoting access to justice, as well as supporting national human rights institutions'.[556]

As included in the Copenhagen criteria, the EU provides training and financial assistance for projects oriented towards the development of rule of law and justice administration through enlargement instruments such as IPA, the DCI, the Instrument contributing to Stability and Peace and the ENI.

H. Compliance with international humanitarian law

1. Historical context and policy development

Focused on economic and political issues in its early stages, the European Community, and its successor, the European Union, began to address International Humanitarian Law (IHL) in the late 1980s, and especially after the Yugoslavia and the Gulf war in 1991. Since then, the EU has been dealing with IHL issues on a regular basis.[557] Firstly, IHL was addressed in bilateral relations and statements to be later included in broad politics such as the CFSP.[558] As regards EU work on compliance with IHL, the Geneva Conventions were gradually incorporated in CFSP instruments and since the late 1990s the EU has adopted codes of conduct and guidelines to promote observance of human rights and international humanitarian law in CSDP missions.[559]

In recent years the EU has taken major steps regarding IHL policy development. In December 2005 the Council adopted the Guidelines on promoting compliance with international humanitarian law. Likewise, the European Parliament, the European Council and the EEAS incorporate IHL in their mandates adopting instruments in different fields connected with IHL, such as the proliferation of weapons of mass destruction, chemical and nuclear weapons, trafficking of arms, etc.[560]

[555] Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels A/RES/67/1.
[556] Regulation 235/2014, Art 2.
[557] Daniel Thürer, *International Humanitarian Law: Theory, Practice, Context* (Brill | Nijhoff, 2011) 336.
[558] British Institute of International and Comparative Law, 'Implementation of International Humanitarian Law & International Human Rights Law in the European Union' (2009), 3-4.
[559] María Luisa Sánchez Barrueco, 'Human rights during security and defence policy operations' in Jan Erik Wetzel, *The EU as a 'Global Player' in Human Rights?* (Routledge 2011) 160.
[560] Daniel Thürer, 339.

EU action in the promotion of compliance with IHL is also implemented through its financial instruments and in cooperation with multilateral institutions such as the UN and international organisations such as the International Committee of the Red Cross and Red Crescent (ICRC).

2. Legal framework and formulation of policy

As mentioned above, in 2005 the EU adopted the Guidelines on promoting compliance with international humanitarian law. The Guidelines were amended in 2009 and provide the operational framework for integration of IHL in the EU's CFSP and its relations with third countries.[561] Their purpose, as set out in the Guidelines themselves, is 'to set out operational tools for the European Union and its institutions and bodies to promote compliance with international humanitarian law (IHL)'. Notwithstanding the legal personality of the EU, the Guidelines do not address compliance with IHL by the EU or its Member States, and limits itself to measures to enforce 'compliance with IHL by third States, and, as appropriate, non-State actors operating in third States'.[562] The operational section of the guidelines provides different measures to enforce compliance with IHL. Apart from general external policy instruments such as political dialogues, statements and démarches, restrictive measures and sanctions, and cooperation with international and regional organisations; the EU has other means of action such as crisis-management operations, prosecution of individuals responsible for violating international humanitarian law, training and education of populations, military personnel and law enforcement officials, and the control of arms sales.

The Guidelines devote special attention to reporting, assessment and recommendations for action in situations where IHL may apply. This part is addressed to all European institutions cooperating with international organisations such as the ICRC, the UN and the International Humanitarian Fact-Finding Commission (IHFFC); EU Heads of Mission and other EU representatives (Heads of EU Civilian Operations, Commanders of EU Military Operations and EU Special Representatives); the Working party on Public International Law (COJUR) and all relevant Council Working Groups. The Guidelines establish links between IHL and Human Rights Law and with measures oriented towards the fight against impunity for war crimes perpetrators (See section 'Responding to violations: ensuring accountability'). Apart from the IHL guidelines, the EU Guidelines on Children and armed conflict and Violence against women and girls and combating all forms of discrimination against them, both of them adopted in 2008, include provisions related to compliance with IHL.

Furthermore, the EU has adopted several instruments related to the means and methods of warfare, such as the Basic Principles for an EU Strategy against Proliferation of Weapons of Mass Destruction, adopted in 2003; the EU strategy to combat the illicit accumulation and trafficking of small arms and light weapons (SALW) and their ammunition (2006); or, in the trade field, the Council Common Position defining common rules governing control of exports of military technology and equipment, adopted in 2008, which replaced the European Code of Conduct on arms export.

[561] *Ibid*, 337.

[562] Pål Wrange, 'The EU Guidelines on Promoting Compliance with International Humanitarian Law' (2010) 78 Nordic Journal of International Law 545.

The promotion of compliance with IHL was included as a priority in the EU Strategic Framework and Action Plan on Human Rights and Democracy of 2012 with the following objectives: the implementation of the pledges made by the EU at the 31st International Conference of the Red Cross and Red Crescent;[563] supporting IHL dissemination to all warring parties, including armed non State actors; a systematic use of political dialogue and démarches campaigns to encourage third countries to ratify core IHL instruments and implement IHL obligations; and, promotion of adhesion by third countries to the Montreux Document on Private Military and Security Companies.

In recent years Private Military and Security Companies (PMSC) have emerged as a central subject in the EU policy to enforce compliance with IHL. This has been translated into practice by the communication of support of the EU to the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict in 2012, it being the first international organisation to do so.

3. Implementation of policy

As mentioned above, the EU has at its disposal several instruments to implement its objective of the promotion of compliance with IHL, such as statements and démarches, restrictive measures and sanctions, and political dialogue. The EU has regularly used these instruments to call on all warring parties in conflict zones to comply with and to condemn violations of IHL in conflicts such as Afghanistan, Iraq, Chechnya, Sierra Leone,[564] and, more recently, Libya, Mali and Syria[565]. There is a widespread opinion that, regarding sanctions and negative measures, the EU prefers to use other measures rather than sanctions, especially with allies and partners.[566] However, since May 2010 the EU has imposed restrictive measures against Syria, including an arms embargo, and suspended bilateral cooperation. According to the EEAS Human rights and democracy in the world report on EU action in 2011, 'at the end of 2011 the EU had imposed ten rounds of sanctions on 86 individuals and 30 entities, including many military and security officials responsible for the violence and repression'.[567]

As previously discussed, the EU has adopted several instruments oriented towards promoting compliance with IHL in trade policies such as the Council Common Position defining common rules governing control of exports of military technology and equipment. In addition, other measures have been adopted, like Regulation 1236/2005 concerning trade in certain goods which could be used for capital punishment or torture. In 2012, the Commission initiated a consultation on the possibility to amend Export Control Regulation 428/2009 to control export of certain technologies that could be used

[563] 31st International Conference of the Red Cross and Red Crescent, <http://www.icrc.org/appweb/p31e.nsf/pledgeListSearchResults.xsp?fieldToSort=PledgeNr&searchValue=%28*_European%20Union%29> accessed22 July 2014.
[564] Daniel Thürer, 340.
[565] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by the EU High Representative Catherine Ashton on the 3rd Anniversary of the Syrian uprising' [2014]; 'Remarks by EU High Representative Catherine Ashton following the Foreign Affairs Council' 140414/02 [2014].
[566] María Luisa Sánchez Barrueco, 150-151.
[567] Annual Report 2011, 169.

in violation of human rights in conflict zones and under authoritarian regimes.[568] And, in 2012, the EU adopted the Council Regulation 36/2012 concerning restrictive measures in view of the situation in Syria, which banned the export of software used in monitoring or interception of communications by the Syrian government.[569]

Regarding EU cooperation with multilateral organisation and instruments, the EU is a long-standing supporter of the ICRC and the UN mechanisms connected to IHL.

The EU considers the promotion of compliance with IHL as a priority of its action in the UN fora. In the Council conclusions on EU priorities at the UN Human Rights Fora, the EU reiterated its commitment to IHL and called all warring parties to end all violations of IHL and ensure accountability in conflicts such as Central African Republic or, especially, Syria.[570] The EU has repeatedly stressed the importance of implementing IHL and fighting impunity in its statements made at the UN.[571]

The EU considers the Red Cross Movement as an essential player in 'providing humanitarian assistance and advocating for humanitarian principles'.[572] Therefore, the EU, apart from the repeated pledges reaffirming its support to IHL, maintains close working contacts with the ICRC, in the Geneva headquarters and in field, and has included among its objectives in the Action Plan on Human Rights and Democracy the implementation of the pledges made by the EU at the 31st International Conference of the Red Cross and Red Crescent.[573] The Annual Report on Human Rights and Democracy in the World in 2012 contains the main progress made by Member States in this respect.

The commitment of the EU to the ICRC was also reiterated in the declaration by the HR/VP, Catherine Ashton, on the occasion of the 150th anniversary of the ICRC.[574] The EU and its Member States also support ICRC through financial instruments, being in 2012 its largest financial contributor.[575]

Another relevant international instrument is the International Humanitarian Fact-Finding Commission (IHFFC), created under Art 90 of the First Additional Protocol to the Geneva Conventions. Officially constituted in 1991, the IHFFC's purpose is to investigate allegations of grave breaches and serious

[568] Annual Report 2012, 59-60.
[569] *Ibid*.
[570] Council of the European Union, 'Council conclusions on EU priorities at the UN Human Rights Fora', [2014].
[571] Council of the European Union (n14) 123.
[572]EEAS, Working with the Red Cross family, <http://eeas.europa.eu/delegations/un_geneva/eu_un_geneva/humanitarian_affairs/red_cross/index_en.htm> accessed 12 May 2014.
[573] 31st International Conference of the Red Cross and Red Crescent, <http://www.icrc.org/appweb/p31e.nsf/pledgeListSearchResults.xsp?fieldToSort=PledgeNr&searchValue=%28*_European%20Union%29> accessed 22 July 2014.
[574] Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the 150th anniversary of the International Committee of the Red Cross (ICRC), 6542/13, 15 February 2013.
[575] EEAS, Working with the Red Cross family, <http://eeas.europa.eu/delegations/un_geneva/eu_un_geneva/humanitarian_affairs/red_cross/index_en.htm> accessed on 12/05/2014.

violations of international humanitarian law.[576]. All EU Member States except France and Latvia have recognised the competence of the IHFFC.[577]

According to the International Criminal Court Statute of 1998, certain serious violations of international Humanitarian law are defined as war crimes. In this sense, as accepted by EU countries, they shall ensure that those responsible for war crimes are brought before their domestic courts, the courts of another State or the ICC.

As mentioned above, the EU and its Member States are the mains donor to ICRC. Through its financial instrument the EU supports different projects oriented towards promotion of compliance with IHL conventions and instruments, and training on IHL. As an example, in 2012, the EU provided funding for projects to identify how humanitarian principles are applied in practice; to provide training in international humanitarian law and related humanitarian norms to armed non-State actors; and to increase awareness of international humanitarian law and humanitarian principles among European humanitarian organisations and their implementing partners working in conflict-prone or post-conflict countries.[578]

I. Responding to violations: ensuring accountability

1. Historical context and policy development

The EU has been working on the fight against impunity for the most serious crimes for the last 10 years and, thereby, has been considered as one of the world leading advocates for international justice and the fight against impunity for war crimes and international crimes.

However, the role of the EU in the field of international criminal justice is undermined by the fact that economic, commercial and political interests of EU Member States makes the EU not always able to converge in a single common position. As stated regarding the differences raised in the 64th UNGA in the voting over the Goldstone Report: 'This outcome is indicative of the EU's position as a collective of independent states, susceptible to political division and not always able to speak with one voice regarding issues of international criminal justice'.[579]

Nevertheless, the EU has continuously been developing its policy in support of international criminal justice mechanisms such as the International Criminal Court (ICC) and other ad hoc tribunals. Currently, the EU continues to support accountability mechanisms and to fight against impunity through its external relations with third States, démarche campaigns, the organisation of seminars and financial support for international criminal justice instruments. In recent years, the EU has being placing greater attention to transitional justice mechanisms, cooperation with the ICC and the response to crisis, particularly in the context of the conflict in Syria.

[576] International Humanitarian Fact-Finding Commission, <http://www.ihffc.org/index.asp?page=aboutus_general> accessed on 22 July 2014.
[577] *Ibid*.
[578] Council of the European Union (n14) 128.
[579] Olympia Bekou and Mark Chadwick, 'The EU commitment to international criminal justice. Achievements and possibilities' in Jan Erik Wetzel (ed), *The EU as a "Global Player" in Human Rights?* (Routledge 2011) 82.

2. Legal framework and formulation of policy

The EU bases its action towards combating impunity for the perpetrators of crimes against humanity, war crimes and genocide on Art 2 and 3 of the TEU.[580] The EU's policies in that field have been developed in the area of freedom, security and justice policies, as well as in the external policy, and focuses on cooperation with the ICC and, in recent years, on transitional justice.

In 2010 the European Council adopted the Stockholm Programme and its Action Plan that have set the priorities for the area of freedom, security and justice for the period 2010-2014. The Stockholm Programme provides for a two level strategy to fight against impunity: cooperation between Member States, third countries and international tribunals, in particular the ICC, and developing exchange of judicial information and best practices in relation to the prosecution of such crimes through the European Network of Contact Points in respect of persons responsible for crimes of genocide, crimes against humanity and war crimes.[581] However, the Stockholm Programme and its Action Plan will come to an end on 1 December 2014 and the future of the EU's policies regarding justice and home affairs will be discussed on June 2014.[582] Furthermore, the Council has adopted several Decisions regarding the cooperation between Member States on the fights against impunity for perpetrators of crimes against humanity and war crimes.[583]

Regarding cooperation between the EU and the ICC, in 2003 the Council of the European Union adopted the Common Position on the International Criminal Court. On 21 March 2011 it was repealed by the Council Decision on the International Criminal Court. The objective of the Council decision is to advance universal support for and preserve the integrity of the Rome Statute; support the independence and functioning of the ICC; support cooperation with the ICC and the principle of complementarity.[584] It also provides for a number of instruments and practical measures that the EU can use in order to contribute to the above mentioned objectives. In accordance with the Council Decision, the Council has also adopted an Action Plan to follow-up on the Decision on the International Criminal Court that focused on and developed the objectives advanced in the Decision. Furthermore, in April 2006, the EU and the ICC signed an agreement on cooperation and assistance.[585] The agreement defined the terms of cooperation and assistance between the EU and the ICC in terms of promotion of the Rome Statute, exchange of information and documents of mutual interest including EU classified information, cooperation with the

[580] EEAS, 'EU efforts to combat impunity', <http://eeas.europa.eu/human_rights/icc/index_en.htm> accessed on 22 July 2014.
[581] European Council, 'The Stockholm Program – An open and secure Europe serving and protecting citizens' 2010/C 115/01 [2010].
[582] Commission, 'The Future EU Justice and Home Affairs Agendas: Questions and Answers' MEMO/14/174 [2014].
[583] Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes OJ L 167/1; Framework Decision 2002/584/JHA, of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States OJ L 190/1; and Decision 2003/335/JHA of 8 May 2003 concerning the investigation and prosecution of genocide, crimes against humanity and war crimes OJ L 118/12.
[584] Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court and repealing Common Position 2003/444/CFSP, Art 1(2).
[585] Agreement between the International Criminal Court and the European Union on cooperation and assistance, ICC-PRES/01-01-06, [2006].

prosecutor and cancellation of privileges and immunities for perpetrators. Finally, in 2013, the Council adopted the EU's response to non-cooperation with the International Criminal Court by third States which provides for a number of measures that the EU and Member States can use to respond to cases of non-cooperation with the ICC by third countries.

The fight against impunity for international crimes is also included as a priority in the EU Strategic Framework and Action Plan on Human Rights and Democracy. In order to ensure accountability for violations of human rights and international law the EU commits itself to: implementing the updated Decision on the ICC adopted on 21 March 2011 and the associated Action Plan, including by promoting ratification and implementation of the Rome Statute; promoting and contributing to strengthening the capacity of national judicial systems to investigate and prosecute grave international crimes; and developing policy on transitional justice.[586]

Finally, and in order to advance the development of the implementation of the principle of complementarity, the EC and the EEAS developed in 2013 a Joint Working Document on Advancing the Principle of Complementarity.

3. Implementation of policy

Following the provisions enshrined in the Council Decision on the International Criminal Court and its Action Plan, the EU uses its foreign policy instruments to support the ICC mandate. The EEAS issues démarches and public statements in reaction to acts of grave violations of human rights and international humanitarian law and calling for accountability instruments to be implemented as in the cases of Syria,[587] Ukraine[588] and South Sudan.[589] The EEAS also issues statements regarding the transitional justice processes in countries such as Tunisia.[590] The EU includes the issue of the ratification or the implementation of the Rome Statute in a number of human rights dialogues, including the human right dialogue with Vietnam,[591] Colombia[592] and the African Union;[593] and cooperation is set as a benchmark in the human rights dialogues with South Africa.[594] The EU also includes ICC issues in its

[586] Strategic Framework on Human Rights and Democracy, *Ibid* fn(6).

[587] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the 3rd Anniversary of the Syrian uprising' 140315/01 [2014].

[588] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on recent events around the Parliament of Ukraine' 140328/04 [2014].

[589] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on South Sudan' 140102/01 [2014].

[590] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the adoption of the constitution and the appointment of the new government in Tunisia' 140127/02 [2014].

[591] EEAS, 'EU and Vietnam hold Human Rights Dialogue' (Press Release) 130912/01 [2013].

[592] EU-Colombia Human Rights Dialogue 8th session, Brussels, 17 June 2013, Joint Statement, Brussels, 18 June 2013 A 328/13.

[593] Joint Statement: 10th AU-EU Human Rights Dialogue - 20 November 2013.

[594] Council of the European Union, 'Council conclusions on the establishment of a Human Rights Dialogue with South Africa 3199th Foreign Affairs Council meeting' [2012].

agreements with third countries, as in the case of the EU Ukraine Association Agreement initialled on 30 March 2012.[595]

Moreover, the EU and its Member States are the main supporters of the ICC in terms of financial and technical assistance. As indicated above, the EU also supports the ICC in its relation with partners countries and regional and multilateral organisations advocating for universal support for the Rome Statute. As an example, in 2005, in the revision of the Cotonou Agreement between the EU and 79 ACP countries, a legally binding provision on the ratification and implementation of the Rome Statute was included.[596]

The EU has also provided assistance to other ad hoc tribunals such as the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), the Extraordinary Chambers of the Courts of Cambodia, and the Special Court for Sierra Leone, the trial of the former Chadian president Hissène Habré in Senegal, and the Special Tribunal for Lebanon.[597] In the context of the EU's Enlargement policy, cooperation with the ICTY was fixed as a condition for candidate countries from the Western Balkans.[598] The EU works in close relationship with the civil society and NGO community whom it considers a 'valuable ally in these efforts by facilitating public outreach, reinforcing victims' participation and building complementarity links to efforts of other donors'.[599] Regarding EU missions, although there are examples of EU missions' cooperation with international criminal justice mechanisms, such as the CSDP mission EUFOR Althea that contributed to arrests of Stojan Zuplijanin and Radovan Karadzic in 2008, full use of its potential has yet to be.[600]

With respect to the work of the EU in UN institutions, the fight for accountability is identified as one of the EU priorities in the Council conclusions on EU priorities at the UN Human Rights Fora, published in February 2014.[601] It must be noted that its inclusion in the EU priorities at that level is related to the situation and EU policy priorities in Syria, DPRK, and Sri Lanka.[602] The EU participated in the high-level meeting on the rule of law at the UN General Assembly on 24 September 2012. In its statement at the meeting, the President of the EC Durão Barroso reiterated the EU support to the ICC and pledged that the EU would extend its drive to promote transitional justice by working with the UN in conflict and post conflict situations.[603]

[595] Annual Report 2012, 110.
[596] Laura Davis, 12.
[597] *Ibid*, 13.
[598] *Ibid*.
[599] Council of the European Union, *Ibid* (n30) 109.
[600] Laura Davis, 14.
[601] Council of the European Union, 'Council conclusions on EU priorities at the UN Human Rights Fora, Foreign Affairs Council meeting' [2014].
[602] *Ibid*.
[603] José Manuel Durão Barroso, President of the European Commission, 'Statement at the General Assembly High Level Meeting on the Rule of Law on "The European Union and the rule of law"' [2012].

Finally, the EU also promotes support for accountability instruments through training courses and public awareness campaigns.[604]

In connection with financial instruments, as mentioned above, the EU and its Member States are the main donors of the ICC; moreover, the EU also provides financial support for transitional justice instruments and projects supporting the ICC and transitional justice measures through its financial instruments such as the EIDHR and the Instrument contributing to Stability and Peace.

The promotion of the work of the ICC is also included in the financial priorities of the EIDHR. Since 1995, this instrument have been granting funds to civil society's projects supporting the effective functioning of the ICC,[605] and since 2003, the European Commission has provided funding of more than €20 million to global ratification campaigns.[606] The EIDHR has also financed public awareness campaigns such as the EU-NGO Forum. As an example, the main themes of the EU 15th EU-NGO Forum on Human Rights were 'the fight against impunity' and 'accountability of economic, social and cultural rights'.[607]

The EU has also financed a number of projects supporting the functioning of the ICC such as the Internship and Visiting professional programme, seminar and training of lawyers on the ICC List of Counsel, and the ICC legal Tools project.[608]

Finally, in 2008, the EC established a Transitional Justice facility in order to assist transitional justice measures.[609]

4. The EU's internal approach

Most of the issues related to transitional justice within the EU remain the domain of the Member States.[610] The Stockholm Programme provided that: 'Each Member State has its own approach to this issue but, in the interests of reconciliation, the memory of those crimes must be a collective memory, shared and promoted, where possible, by us all. The Union must play the role of facilitator'.[611]

In order to better coordinate EU and Member States' efforts towards the implementation of the Common position on the ICC, the EU established a Focal Point in the General Secretariat of the Council and each Member State established as well a national Focal Point, for its external contacts and for the exchanging of information on the implementation of the current Council Decision.[612]

[604] Council of the European Union, *Ibid* (n30) 110.
[605] General Secretariat of the Council, 'The European Union and the International Criminal Court' (2010) 16.
[606] *Ibid*.
[607] <http://www.eidhr.eu/events/15th-eu-ngo-forum-on-human-rights> accessed 23 July 2014.
[608] General Secretariat of the Council, *Ibid* (n605) 17.
[609] Laura Davis, 11.
[610] Laura Davis, The European Union and Transitional Justice (Initiative for Peacebuilding, 2010) 11.
[611] European Council, *Ibid* (n581).
[612] General Secretariat of the Council, *ibid* (n-605) 27.

J. Support to human rights defenders

1. Historical context and policy development

As reflected in EU human rights policy literature, support of human rights defenders (HRDs) is a long-established element and one of the major priorities of the EU's external policy related to human rights.[613] Support for CSOs specialising in the promotion and defence of human rights and democracy, as well as the defence of HRDs, are both included among the historical priorities for the financial instruments in the field of human rights and democratisation.[614] As an example, in 1988 the EP established the Sakharov Prize for Freedom of Thought, endowed with €50,000 to honour HRDs individuals or organisations.

Regarding financial assistance, as in 1991, funds were granted to projects as assistance for the publication of a Human Rights Litigation Manual in Nigeria, the organisation of a seminar on the role of women in Mozambique, the promotion of human rights in Cambodia and the Philippines and a human rights training project for representatives indigenous peoples in Costa Rica and Panama, a project granted to the Madres de Plaza de Mayo in Argentine to carry on a report on the political situation and human rights violations in Argentine.[615] In the field of HRDs protection, in the same year, 20000 ECUS were allocated to a project of legal assistance for a trade unionist in Malawi.[616] Through its financial programs directed to supporting vulnerable groups and NGOs working in the field of human rights and democracy in the following years the EU's financial assistance to HRDs increased both quantitatively and qualitatively.

In 1995, in the communication, The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond, the Commission stressed the role of grassroots organisations involved in the promotion and protection of fundamental rights in the consolidation of the rule of law and the promotion of human rights, and extended the areas of cooperation between the European Community and the grassroots organisations.[617] In the same communication the necessity for a rapid reaction mechanism to respond to situations such as attending political trials, serious human rights violations and conflict prevention was underlined.[618] The response to trials involving HRDs and serious human rights violations are two of the major tools concerning HRDs protection in the EU human rights

[613] Directorate General for External Policies of the Union – Policy Department, 'Assessing the implementation of the European Union Guidelines on human rights defenders. The cases of Kyrgyzstan, Thailand and Tunisia', EXPO/B/DROI/2012/11, PE 410.221 [2013] 22; Council of the European Union, 'EU Guidelines on Human Rights and International Humanitarian Law' [2009] 40.

[614] Commission, 'Report on the implementation of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991' (Communication from the Commission to the Council and the European Parliament) SEC (92) 1915 final [1992], 6.

[615] *Ibid* 9, 23.

[616] *Ibid* 18.

[617] Commission, 'The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond' (Communication from the Commission to the Council and the European Parliament COM (95) 567 final, 23.

[618] *Ibid*.

policies.[619] Negative measures, such as public or confidential démarches and public statements, have been traditionally used to denounce the situation of human rights defenders when facing a situation of risk, imprisonment or unfair trials and sentences.

In the same 1995 communication the NGOs and grassroots movements were recognised as important partners of the EU's human rights policies, and this was also reflected in the multilateral activities of the EU. In 1998 the EU was one of the major advocates of making the cause of HRDs a main theme of the 50th anniversary of the Universal declaration of Human Rights, and was a driving force behind the adoption of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).[620]

2. Legal framework and formulation of policy

Support for HRDs within the EU's human rights policies is based on the 1999 UN Declaration on Human Rights Defenders. The main legal document regarding support for human rights defenders is the Guidelines on human rights defenders, published in 2004 and revised and updated in 2008.[621] It identifies the main tools and mechanisms for EU action in this field within the context of the CFSP, and the Development Policy. In the first place, actions within the CFSP include: monitoring and reporting to COHOM on the situation of HRDs; coordination with HRDs when preparing local strategies for the implementation of the guidelines; promotion of respect for HRDs in the EU's bilateral relations and participation in multilateral fora; inclusion of the situation of HRDs in the human rights dialogues between the EU and third countries or regional organisations; and support for multinational and regional protection mechanisms, especially the UN special procedures and the UN Special Rapporteur on HRDs. The EU Missions are called to adopt a proactive policy towards HRDs, maintain contacts and give recognition to HRDs; appoint liaison officers; and, when appropriate, conduct local actions in support of HRDs such as visits to HRDs in custody or attending their trials.

Secondly, and regarding the Development Policy, the Guidelines provide guidance on practical supports for HRDs by providing financial assistance through the EIDHR: capacity building activities for HRDs and NGOs; assistance for the utilisation of resources, especially financial resources such as the EIDHR; and swift assistance and protection measures for HRDs such as emergency visas or temporary shelter in the EU Member States. The Guidelines also establish that COHOM should review the implementation of the Guidelines and report to the Council on an annual basis on progress made towards implementing the Guidelines. Since the adoption in 2004 of the Guidelines, successive evaluations have led to the revision of the Guidelines in 2008, and the EU has taken successive measures to develop the implementation of the Guidelines.[622]

[620] EU annual report on human rights 1999.
[621] Council of the European Union, 'Ensuring protection – European Union Guidelines on Human Rights Defenders' [2008].
[622] For more information see: Directorate General for External Policies of the Union – Policy Department (n613) 24-26.

In 2012, protection of HRDs was also included as a priority in the EU Strategic Framework and Action Plan on Human Rights and Democracy in which the EU pledged to reinforce its financial and political support for some of the features described in the Guidelines. The Action Plan defines three objectives – to be implemented in the short term and in a continuous way- related to the protection of HRDs:

(a) Develop and implement a voluntary initiative to facilitate the provision of temporary shelter to human rights defenders at risk.

(b) Promote improved access by human rights defenders to the UN and regional human rights protection mechanisms, and address the issue of reprisals against defenders engaging with those mechanisms.

(c) Publish contact details of the human rights focal points of all EU missions, as well as EU Liaison Officers on human rights defenders on the websites of the EEAS and EU Delegations.[623]

Since then, the EU has made some progress in the implementation of the Action Plan objectives.

3. Implementation of policy

General foreign policy tools such as statements and démarches have been traditionally used by the EU to support HRDs, to condemn human rights violations against HRDs or to express its concern for HRDs when facing a situation of risk. As an example, in 2014, the VP/HR Catherine Ashton has issued public statements expressing concern for the treatment of HRDs and their relatives in China and expressing it condolences for the death of Ms Cao Shunli, a Chinese human rights defender.[624] Also in 2014, the EU has issued a local statement expressing regret for the sentencing of 4 years of imprisonment to HRD Xu Zhiyong, and expressing concern for the situation faced by several Chinese HRDs.[625] However, the study Assessing the implementation of the European Union Guidelines on human rights defenders of the DG for External Policies, published in 2013, stated that there is concern about the fact that EU public declarations are reactive and weak. Some participants in the study suggested that in some situations, the EU may best refrain from making a statement and to implement another intervention measure.[626]

Another area in which the EU raises its concern about the situation of HRDs is human rights dialogues. Although human rights dialogues usually address general issues such as the constant violation of fundamental rights or the adhesion to international and regional human rights treaties, mechanisms and instruments, one of the main strengths of human rights dialogues is that they offer the opportunity to

[623] Strategic Framework on Human Rights and Democracy, *Ibid* fn(6).
[624] Statement by the EU High Representative Catherine Ashton regarding the death of Chinese Human Rights defender, Ms Cao Shunli, Brussels, 140315/02, 21 March 2014; Declaration by High Representative Catherine Ashton on behalf of the European Union regarding the treatment of human rights defenders and their relatives in China, Brussels, 6025/1/14 REV 1, (OR. en), PRESSE 48, 1 February 2014.
[625] Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU Delegation on the sentence of Dr. Xu Zhiyong' [2014) <http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2014/20140126_en.htm> accessed 30 April 2014.
[626] Directorate General for External Policies of the Union – Policy Department (n613) 69-70.

raise and discuss individual cases of HRDs.[627] Since the adoption of the EU Strategic Framework and Action Plan, the EU has raised cases involving HRDs in several human rights dialogues (25 in 2012).[628]

Regarding practical measures included in the Guidelines, EU diplomatic missions have implemented actions to protect HRDs as trial monitoring and field visits. As an example, in 2012 EU diplomatic mission actions in support of HRDs included the trial monitoring in the case of Hilal Mammadov in Azerbaijan and the EU Ambassador's visit to San Luis Potosí in Mexico, and EU political counsellors' visit to Baja California and Michoacán.[629] In the EU Annual Report on Human Rights and Democracy in the World in 2012 it is stated that EU diplomats have reinforced contacts with human rights defenders and annual meetings between human rights defenders and EU diplomats have become an established practice.[630] However, in its study assessing the implementation of the EU Guidelines on HRDs, the DG for External Policies reported that engagement with civil societies and HRDs organisations varies from mission to mission and that the limited knowledge of the Guidelines among diplomats and HRDs – especially those based in remote areas – limited the engagement.[631]

In addition, following the objectives of the Action Plan on Human Rights and Democracy e-mail contacts of the 106 focal points for democracy and human rights are published in the EEAS website and in 2012 the EU appointed 97 EU Liaison Officers on Human Rights Defenders (see above, section III.B.3).[632]

Regarding the multilateral dimension, the EU plays an important role in support of UN works. The Guidelines establish that the EU should work to cooperate with the UN Special Procedure mechanisms such as the UN Special Rapporteur on Human Rights Defenders and to encourage third countries to implement the legal reforms needed to comply with the international standards such as the UN Declaration on Human Rights Defenders. Both the Guidelines and the Action Plan provides that the EU should support HRDs regarding their accessing of UN and regional human rights protection mechanisms and provide an assessment of possible reprisals made against them. In its conclusions on EU priorities at the UN Human Rights Fora, published on February 2014, the Council of the EU reiterated that HRDs are one of the priorities for the EU and stressed the commitment of the EU to protect HRDs and other civil society representatives from reprisals when working in multilateral fora.[633] Moreover, the EU has participated in coordination meetings with other international and regional organisations – including the Council of Europe, UN and OSCE - and mandate holders to address HRDs' issues.[634]

Given its flexibility and the possibility to grant funds directly to NGOs because it does not require government consent, the EIDHR is the main tool to deliver support for HRDs. As a part of the 2007-2013

[627] Milena Costas Trascasas, 'Los derechos humanos y las políticas de democratización de la Unión Europea: Una visión crítica' in Carmela Pérez Bernárdez (ed.), *La proyección exterior de la Unión Europea: desafíos y realidad* (Tirant lo Blanch 2007) 300.
[628] Annual Report 2012, 77-80.
[629] *Ibid*.
[630] *Ibid*, 78.
[631] Directorate General for External Policies of the Union – Policy Department (n613) 25, 67.
[632] Council of the European Union (n30) 78.
[633] Council of the European Union, 'Council conclusions on EU priorities at the UN Human Rights Fora' [2014], 4.
[634] Council of the European Union (n30) 79.

funding strategy, EIDHR granted projects focused on strengthening the status of HRDs and their fundamental rights against repression, capacity building of HRDs organisations, and providing swift assistance to HRDs at risk.[635] However, a number of barriers on HRDs' access to EU financial instruments remain in place, especially for women human rights defenders and HRDs organisations or individuals based in remote areas (complexities in the application process, access to diplomats or other NGOs colleagues, language barriers, and lack of infrastructure or capacity to manage grants of a considerable size).[636]

The EIDHR also has a program for small grants especially for HRDs at risk, the emergency fund for human rights defenders at risk, that allows the Commission to give direct grants (up to 10,000 euro) to HRDs organisations or individuals in need of urgent support. This urgent support covers any protection measure considered necessary from medical expenses to legal assistance or the evacuation of an HRD to another country.[637] Moreover, the application to the fund can be made through an NGO or EU delegation and there is no prescribed application procedure.[638]

An initiative to facilitate the provision of temporary shelter to HRDs was introduced by the Czech EU Presidency in 2009. The 'EU Shelter Initiative' aimed to engage cities of Member States in hosting HRDs at risk.[639] Since the adoption of the EU Action Plan on Human Rights and Democracy, the EEAS and GD DEVCO have been considering different ways to assist HRDs at risk in coordinating with existing initiatives carried out by NGOs, universities, etc.[640] In February 2012, the report Mapping of Temporary Shelter Initiatives for Human Rights Defenders in Danger in and Outside the EU was published and since 2012 the initiative for the temporary relocation of human rights defenders in a third country has been included among the projects financed by the EIDHR (see above,III.B.1).

Finally, the EU has promoted and financially supported the establishment of the European Endowment for Democracy, a joint initiative of European States and EU institutions that supports actors of democratic change in and for the European Neighbourhood.[641]

[635] European Commission – External Relations, 'European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2011-2013' C(2010) 2432. For a more detailed explanation on EIDHR funded projects addressing HRDs see: European Commision – DG DEVCO, 'Delivering on Human Rights Defenders.
Highlights of the Semester January-June 2012'.
[636] Directorate General for External Policies of the Union – Policy Department (n613) 32.
[637] <http://www.eidhr.eu/side-panels/human-rights-defenders/small-grants>, accessed 23 July 2014.
[638] Directorate General for External Policies of the Union – Policy Department (n613) 33.
[639] *Ibid*, 25.
[640] *Ibid*, 32.
[641] European Endowment for Democracy, <https://www.democracyendowment.eu/> 22 July 2014.

VI. EU policy prioritisation: vulnerable groups

A. Setting the scene

This part of the report will map EU human rights policies that are targeted at 'vulnerable groups'.
In what follows, four questions have guided the analysis of the EU policy documents. These questions are:

1. Does the EU give a definition of this particular group?
2. What makes this group vulnerable according to the EU: what vulnerability-enhancing factors does the EU emphasise?
3. Does the document recognise any particular vulnerabilities? In other words, does it focus on vulnerable sub-groups of people (e.g. Roma women; disabled children etc.)?
4. What are the key priority areas and actions that this document identifies?

Several issues complicated the analysis. First was the issue of how to delineate the scope of this report. The amount of potentially relevant EU policy documents is vast. Therefore, this part of the report only focuses on the most recent and the most important policy documents regarding children, women, Roma, asylum seekers and refugees, persons with disabilities and LGBTI's. Inevitably, however, because of the decision to discuss vulnerability by way of focusing on several vulnerable groups, some cross-cutting topics – such as for example reducing health inequalities[642] – fall outside the scope of the report.

Next arose the issue of intersectionality, meaning that often societal practices intersect to create specific vulnerabilities/groups of vulnerable people, like Roma women and disabled children. It was decided to pay attention to the question of intersectionality in the analysis of each policy document separately (see question 3 above). The findings (if any) are then included in the discussion of that particular document.

The structure of this part of the report is as follows: each section examines a specific vulnerable group and starts by discussing the EU's formulation of policy regarding that group (Parts 1); then follows a summary of the EU's implementation of its policy (Parts 2); then a brief discussion on the internal EU dimensions (Parts 3); and finally each part finishes with a short conclusion (Parts 4). Again, in this part of the report, the EU's internal approach will be mentioned although the main focus of the report is the external dimension of the EU's activities on human rights and democracy promotion. As mentioned before (see above, section **Error! Reference source not found.**), the EU has to be 'exemplary' when implementing its human rights protection system within its borders. This will provide the EU with the necessary credibility in order to address human rights issues in its relations with third countries. The alleged inconsistency in the EU's approach to certain internal human rights issues (e.g. discrimination against Roma) is currently a key issue highlighted by the policy documents and the literature.[643] Thus,

[642] See, e.g., Commission, 'Solidarity in health: reducing health inequalities in the EU' COM (2009)567 final.
[643] See Council of the European Union, 'Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights'

this issue will be introduced here and will be analysed in more depth in the next report which will deal, among other issues, with the manner in which the vulnerable groups are reflected across the range of EU policies.

In numerous policy documents the EU has made it clear that 'vulnerable groups' are a priority in EU (human rights) policy both externally and internally.

The key document that set out the EU's vision and plans regarding its human rights external policies for the past years, the Strategic Framework on Human Rights and Democracy, states that the EU will advocate:

> for the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities. The EU will continue to campaign for the rights and empowerment of women in all contexts through fighting discriminatory legislation, gender-based violence and marginalisation. The EU will intensify its efforts to promote economic, social and cultural rights; the EU will strengthen its efforts to ensure universal and non-discriminatory access to basic services, with a particular focus on poor and vulnerable groups.[644]

Moreover, the key document that sets out the EU's priorities for the areas of justice, freedom and security for the period 2010-2014 – the Stockholm Programme – also explicitly adopts the term 'vulnerable groups'.[645] According to paragraph 2.3.3, these groups require greater legal protection. The Union and the Member States are required to make 'a concerted effort to fully integrate' these groups into society and tackle discrimination against them.[646]

1. Understanding the concept and its risks

The concept of 'vulnerable groups' raises many pertinent issues, however. The notion that there are 'vulnerable groups' which require specific attention and protection is not without pitfalls. Some of these issues and pitfalls of the concept – which have been theorised elsewhere[647] – are briefly highlighted in this section.

protection and promotion in the European Union – Adoption' 10116/14 [2014] Annex, and Peter Simmons, 'The State of the Art in the EU Democracy Promotion Literature' (2011) 7 Journal of Contemporary European Research, 130-131.

[644] Strategic Framework on Human Rights and Democracy, 2-3.

[645] European Council, 'The Stockholm Program – An open and secure Europe serving and protecting citizens' 2010/C 115/01 [2010], para 2(3)(3).

[646] *Ibid*.

[647] See, e.g., Martha Albertson Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013); Laurence Burgorgue Larsen (ed), *La Vulnérabilité Saisie par les Juges en Europe* (Editions Pedone, 2014); Peroni, Lourdes and Alexandra Timmer, 'Vulnerable Groups: the Promise of an Emerging Concept in European Human Rights Convention Law' [2013] 11 I*CON 1056; Bryan S. Turner, *Vulnerability and Human Rights* (Pennsylvania State UP, 2006).

The first question is how vulnerability can be conceived. To start with, people are vulnerable because they are embodied.[648] This applies to all people: vulnerability is inescapably part of the human condition. In this sense, vulnerability is *universal*.[649] At the same time, however, vulnerability is also *particular*.[650] Depending on the particularities of our body, geographical location, social resources and a host of other factors, everybody experiences their vulnerability differently. Moreover, vulnerability is not only physical: people can also be economically, emotionally, or socially vulnerable. Depending on these different factors, some are more vulnerable than others.

The EU uses the term in its particular sense: EU policy documents do not conceive of vulnerability as an enduring and universal aspect of the human condition, but as something that some particular groups suffer from. The problems with this kind of discourse have been persuasively theorised by Martha Fineman and others.[651] In brief, when policy-makers only address 'vulnerable groups', this easily creates a stigma. When 'vulnerable' is an epithet that is only used to describe marginalised subjects such as Roma, people with a disability, and LGBT's, the term is not empowering. It plays into a victim-narrative. When only marginalised groups are held to be 'vulnerable', the norm (from which they inescapably deviate) is still to be *in*vulnerable. The norm of invulnerability is then associated with autonomy and independence.[652]

The professed purpose of the EU is to do good for vulnerable groups: the purpose is to protect their fundamental rights and empower them. The danger is however that the EU does exactly the opposite: by applying the term 'vulnerable' only to certain disfavoured groups in society, the EU risks reinforcing the very vulnerability that it seeks to address.

B. LGBTI

1. Formulation of policy

The Joint Communication on human rights and democracy at the heart of EU external action included sexual orientation, one area in which the EU is active in human rights promotion.[653] Subsequently, the Strategic Framework and Action Plan on Human Rights and Democracy (2012)[654] specifically highlights the enjoyment of human rights by LGBT persons and the development of an EU strategy on how to cooperate with third countries on these rights. The development of this framework can be seen through

[648] See, e.g., Anna Grear, 'Challenging Corporate "Humanity": Legal Disembodiment, Embodiment and Human Rights' [2007] 7 Human R L Rev 511.
[649] Martha A. Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' [2008] 20 Yale J. of L. and Feminism 1.
[650] *See,* e.g., Martha A. Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' [2008] 20 Yale J. of L. and Feminism 1, 10.
[651] See, e.g., Martha A. Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' [2008] 20 Yale J. of L. and Feminism 1; Martha Albertson Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013).
[652] Martha A. Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' [2008] 20 Yale J. of L. and Feminism 1.
[653] Joint Communication human rights and democracy at the heart of EU external action, 5-6.
[654] Strategic Framework on Human Rights and Democracy.

the Council's Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons ('LGBTI Guidelines') (2013).[655] These Guidelines were based on the non-binding Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People ('LGBTI Toolkit') (2010),[656] which will be discussed in the next section.

First a note on terminology. As is apparent from the respective titles of the LGBT Toolkit and the LGBTI Guidelines, EU foreign policy first used the term 'LGBT' and later expanded that to include intersex people, turning the acronym to 'LGBTI'. The Guidelines provide a working definition of these terms, which is worth quoting here in full:

> The acronym **LGBTI** describes a diverse group of persons who do not conform to conventional or traditional notions of male and female gender roles. LGBTI people are also sometimes referred to as "sexual, gender and bodily minorities".
> A **lesbian** is a woman whose enduring physical, romantic and/or emotional attraction is to other women. **Gay** is often used to describe a man whose enduring physical, romantic and/or emotional attraction is to other men, although the term can be used to describe both gay men and lesbians. **Bisexual** describes an individual who is physically, romantically and/or emotionally attracted to both men and women. **Transgender** describes people whose gender identity and/or gender expression differs from the sex they were assigned at birth. The term **intersex** covers bodily variations in regard to culturally established standards of maleness and femaleness, including variations at the level of chromosomes, gonads and genitals.
> **Sexual orientation** refers to each person's capacity for emotional, affective and sexual attraction to, and intimate and sexual relations with, individuals of a different or the same gender or more than one gender.
> **Gender identity** refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.[657]

Overall, the Guidelines describe LGBTI as 'a diverse group of persons who do not conform to conventional or traditional notions of male and female gender roles'[658] and who could be referred to as 'sexual, gender and bodily minorities'.[659]

The Guidelines specifically address LGBTI as a 'vulnerable group' in need of special protection. According to the Guidelines, what renders LGBTI vulnerable – and exposes them to discrimination – is the fact that

[655] Council of the European Union, 'Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons' [2013].
[656] Council of the European Union, 'Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People' 11179/10 [2010].
[657] Council of the European Union, 'Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons' [2013], 4.
[658] Council of the European Union, 'Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons' [2013], para 13.
[659] *Ibid*.

they do not conform to traditional social norms and roles.[660] The Guidelines emphasise that '[t]he EU is gravely concerned that sexual orientation and gender identity continue to be used to justify serious human rights violations around the world.'[661] The Guidelines underline that LGBTIs are victims of a wide range of human rights abuses, ranging from extreme forms of violence to limits on their freedom of assembly and freedom of expression. Also, discrimination affects LGBTI persons' access to jobs, healthcare and education. At the same time, the Guidelines recognise that LGBTI issues 'can lead to sensitive discussions'[662] and therefore the EU aims to advance LGBTI rights in 'a meaningful and respectful way', taking into account the local realities for human rights defenders.[663] The Guidelines identify four priority areas of action:

1. Decriminalization of consenting same-sex relations and Combatting discriminatory laws and policies
2. Promoting equality and non-discrimination
3. Combating LGBTI-phobic violence
4. Support and Protection for Human Rights Defenders

These are the same priorities that the 2010 LGBT Toolkit identified (see further below), except number three: the issue of LGBTI-violence was added to the EU foreign policy agenda by the Guidelines.

The Guidelines identify lesbian, bisexual and transgender women as particularly vulnerable to bias-motivated violence 'due to gender inequality and gender norms within family structures'. Also, the EU unanimously supports the December 2008 United Nations General Assembly Statement on human rights, sexual orientation and gender identity, which identifies transgender persons as 'a particularly vulnerable group' within LGBT people.[664]

In the context of EU enlargement, no LGBT-specific policy documents have been developed. However, the DG Enlargement Guidelines for EU support to civil society in enlargement countries 2014-2020[665] stress that 'the Treaty on the European Union (Art 49) establishes that any European State which respects and is committed to promoting the principles of human dignity, freedom, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, may apply to become a member of the Union.'[666]

2. Implementation of policy

The 2010 'LGBT Toolkit' was formed to protect the human rights enjoyed by LGBT people within the EU's external action. It provides a list of operative tools to help LGBT's in partner countries, multilateral fora,

[660] *Ibid*, para 2
[661] *Ibid*.
[662] *Ibid*, para 8.
[663] *Ibid*.
[664] *Ibid*, para 26.
[665] DG Enlargement, 'Guidelines for EU support to civil society in enlargement countries 2014-2020' 14 October 2013, available at: DG Enlargement, 'Guidelines for EU support to civil society in enlargement countries 2014-2020' [2013] available at <http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf>.
[666] *Ibid*, 1.

and a list of Human Rights instruments. In addition, it provides a checklist of LGBT-related issues for countries to assess LGBT human rights violations. This checklist includes whether LGBT persons are:

> Subject to the death penalty for same sex relations; targeted for extra-judicial killings; systematically subject to torture, offered adequate protection by police; given equal and effective protection against discrimination under the law; allowed to change gender designation on official documents; able as transgender persons to enjoy all the rights of his/her new reassigned gender including right to marry; able to establish associations; allowed to assemble (e.g. gay pride march), permitted freedom of information for LGBT subjects; discriminated against at work; given access to health facilities; able to obtain appropriate health care for transgender people; or suffer discrimination as result of sexual orientation or gender identity as children.[667]

The checklist singles out transgender persons and LGBT children as particularly vulnerable sub-groups.

In the Annual Action Programme 2011 for EIDHR,[668] the Commission included the rights of LGBT persons. Relevant stakeholders listed include 'marginalized and vulnerable groups including women, children, minorities including sexual minorities and people with disabilities'. LGBT people are further listed under examples of fields of intervention. Prioritized activities under the action, to be combined with, *inter alia*, the rights of LGBT persons, include:

- Freedom of thought, conscience and religion or belief;
- Freedom of opinion and expression, including artistic and cultural expression;
- Access to information and the right to communicate, including freedom of the media, fight against censorship, and access to the internet;
- The right to peaceful assembly and association, including the right to form and join a trade union and the right to collective bargaining;
- Freedom of movement within the borders of a state, and the right to leave any country, including one's own, and to return to it.
- The protection, situation and capacities of human rights defenders.[669]

The Commission Decision on the Annual Action Programme 2013 for the EIDHR[670] reinforces the aims of the previous annual action decision, and recognises discrimination of LGBTI persons and the importance of the above mentioned European strategy.[671]

[667] Council of the European Union, 'Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People' (Annex 2 – Elements for analysis/checklist of situation regarding LGBT human rights issues) 11179/10 [2010], 17-22.
[668] Commission, 'Decision on the Annual Action Programme 2011 for the European Instrument for the promotion of Democracy and Human Rights worldwide (EIDHR) to be financed under Articles 19 04 01 and 19 04 03 of the general budget of the European Union' (Draft).
[669] Commission, 'Decision on the Annual Action Programme 2011 for the European Instrument for the promotion of Democracy and Human Rights worldwide (EIDHR) to be financed under Articles 19 04 01 and 19 04 03 of the general budget of the European Union' (Draft), para 3(2).

3. The EU's internal approach

External EU Policy goes much farther than internal EU policy in explicitly identifying LGBT people as a specific vulnerable group.

Art 13 of the Treaty of Amsterdam put 'sexual orientation' for the first time on the EU's equality agenda. On this basis, the 2000 Employment Equality Directive was adopted, which prohibits direct and indirect discrimination (including harassment) based on sexual orientation in the labour market.[672] Additionally, Art 21 of the Charter prohibits discrimination on the grounds of sexual orientation.

Thus the legislative framework just mentions discrimination on grounds of 'sexual orientation', as opposed to the broader term that is used in foreign policy namely 'LGBTI'. However, to some extent this gap is filled by ECJ case law: since the Court of Justice's judgment in *P. v. S.* (1994) discrimination on the grounds of gender reassignment is conceived as sex discrimination.[673] What this entails is that there is no European legal framework specifically addressing the rights of transgender (or intersex) people, but that EU sex discrimination law applies to transgender people.

The Commission and the European Parliament seek to extend the legislative framework with a broader anti-discrimination Directive, but so far without success. The Proposal for a Council Directive on Implementing the Principle of Equal Treatment Between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation (2008),[674] presented as part of the EU's Renewed Social Agenda,[675] aims at providing a uniform level of protection outside the labour market, including on the ground of sexual orientation. The proposal was adopted in 2008,[676] but has not yet entered into force due to resistance of the Council. The proposed Directive prohibits discrimination based on, inter alia, sexual orientation, in both public and private sectors on four main platforms: [677]

- social protection, including social security and health care;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including

[670] Commission, 'Annual Action Programme 2013 for the European Instrument for the promotion of Democracy and Human Rights (EIDHR) to be financed under budget line 19 04 01 of the general budget of the European Union' (Summary), available at <http://www.eidhr.eu/files/dmfile/AAP2013.pdf>.
[671] *Ibid*, para 2(2).
[672] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303.
[673] Case C-13/94 *P. v. S. and Cornwall County Council* [1994].
[674] Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM (2008) 426 final.
[675] Commission, 'Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe' COM (2008) 412 final.
[676] Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM (2008) 426 final (Annex) 2008/0140 (CNS).
[677] Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM (2008) 426 final, Art 3, 18-19.

housing.

Other identified areas include positive action, minimum requirements, victimisation and dissemination of information. The proposal outlines both direct and indirect discrimination, and permits measures by 'organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons'.[678]

The proposed Directive does not infringe upon Member States' decision-making on issues such as same-sex marriage, relying on diversity as one of European societies' strengths and stating such questions (such as education, family status, adoption and reproductive rights) are 'best decided at a national level'.[679]

4. Conclusion

There appears to be no EU internal policy that addresses LGBTs' rights exclusively: 'sexual orientation' is always mentioned alongside other prohibited grounds of discrimination (such as disability). When it comes to the EU's external action, however, the picture is different. The Council of the EU's 'Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People' (2010), and the subsequent 'Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons' (2013) go the farthest in explicitly defining LGBT (and for the latter LGBTI) as a specific vulnerable group, with specific vulnerable sub-groups such as women, transgender people and human rights defenders of LGBT (who are most at risk from LGBT-phobic violence).

C. Children

1. Formulation of policy

Since the mid-2000 the children's rights agenda has moved to the forefront of EU policy-making, both in internal and external action.[680] From that time onwards, the developments in the field of children's rights follow each other rapidly. DG Justice has created a useful overview of all the law and policies now in place, entitled EU acquis and policy documents on the rights of the child (2014).[681] This document has aided the creation of the present analysis.

In 2007, the Council of the EU endorsed the EU Guidelines for the Promotion and the Protection of the Rights of the Child.[682] These Guidelines form the basis of the EU's protection of children's rights in its

[678] Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM (2008) 426 final, Art 3, para 21.
[679] Commission, 'Non-discrimination and equal opportunities: A renewed commitment' COM (2008) 420 final, 5.
[680] See, e.g., Jean Grugel and Ingi Iusmen, 'The European Commission as guardian angel: the challenges of agenda-setting for children's rights' [2013] JEPP 77; Helen Stalford, *Children and the European Union: Rights, Welfare and Accountability* (Hart, 2012); Helen Stalford and Mieke Schuurman, 'Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda', (2011) 19 International Journal of Children's Rights 381.
[681] Commission, 'EU acquis and policy documents on the rights of the child' JUST.C1/MT.
[682] Council of the European Union, 'EU Guidelines for the Promotion and the Protection of the Rights of the Child' <http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf> accessed 6 June 2014.

external policy, and affirm that children's rights are a priority for the EU. These Guidelines proclaim important basic principles, like non-discrimination; best interests of the child; child participation and child survival and development.[683] Moreover, they stress the EU's commitment to the UN Convention on the Rights of the Child (UN CRC).

The Commission Communication entitled A Special Place for Children in EU External Action (2008)[684] gives children's vulnerability as a justification for the EU's focus on children:

> Children must be placed at the centre of the EU's external relations, development and humanitarian aid policies because of their vulnerability. This is due to their youth, their relative inexperience and their dependence on adult care. They are especially vulnerable to the effects of family breakdown, to commercial exploitation and to trafficking. They are particularly at risk from the effects of state fragility and from armed conflict. They are vulnerable to nutritional and health risks which can threaten their normal development or even their very lives.[685]

The Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action - the development and humanitarian dimensions (2008) emphasise, however, that children should be considered foremost as rights-holders and actors.[686] Children are not only vulnerable victims; they are also actors. In line with the UN CRC, the Council Conclusions affirm that the EU uses a 'rights-based approach' towards children's rights.[687]

At the same time these Guidelines stress the fact that some children are more vulnerable to other human rights abuses. Particularly vulnerable groups of children include:

> children belonging to ethnic minorities, migrants, displaced children or refugees, children affected by armed conflicts, orphans, separated or unaccompanied children, children living in extreme poverty, street children, children affected by HIV/AIDS, children with disabilities and indigenous children.[688]

The Staff Working paper annexed to this Communication – The European Union's Action Plan on Children's Rights in External Action (2008)[689] – states the four guiding principles of the EU's external action regarding children's rights:

1. the application of a holistic and coherent children's rights-based approach rooted in the UN Convention on the Rights of the Child;

[683] *Ibid*, 6.
[684] Commission, 'A Special Place for Children in EU External Action' COM (2008) 55 final.
[685] *Ibid*, 3.
[686] Council of the European Union, 'Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action - the development and humanitarian dimensions' [2008], para 21.
[687] Council of the European Union, 'Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action - the development and humanitarian dimensions' [2008], para 3.
[688] *Ibid*, para 22.
[689] Commission, 'The European Union's Action Plan on Children's Rights in External Action' (Staff Working Document) COM (2008) 55 final, SEC (2008) 135.

2. respect for the views of the child;
3. gender mainstreaming;
4. local ownership.

Gender mainstreaming (the third guiding principle) entails that, in all external actions '[i]t is important to recognise the different needs of girls and boys. Girl children may be particularly vulnerable and face specific risks of abuse and violation of their rights.'[690]

The Action Plan has identified four key areas of concern and action when it comes to children's rights: children in armed conflict; violence against children, child labour and child trafficking.[691] These areas will be discussed below. As this part will show, the intensity of the EU's actions and policy making in these four areas varies considerably.

a) Children in armed conflict

In its own words, the EU has a 'solid framework' in place for EU action to prevent the abuse of children's rights in the context of armed conflict and post-conflict situations.[692] The EU Guidelines on Children and Armed Conflict (2003) are a watershed in this respect,[693] as they were 'the EU's first attempt to summarize EU Policy on this issue'.[694] The Guidelines state that the EU wants to address the short, the medium, as well as the long term impact of armed conflict on children. The needs of children will be taken into account in the EU's response to conflict and post-conflict situations:

> the EU will seek to ensure that specific needs of children will be taken into account in early-warning and preventive approaches as well as actual conflict situations, peace negotiations, peace agreements, ensuring that crimes committed against children be excluded from all amnesties, post-conflict phases of reconstruction, rehabilitation, reintegration and long-term development.[695]

Implementation of the 2003 Guidelines remained poor, however.[696] This led to the Revision of the Guidelines in 2008.[697] The revised version of the Guidelines state that, where appropriate, the EU will

[690] *Ibid*, 3
[691] Commission, 'The European Union's Action Plan on Children's Rights in External Action' (Staff Working Document) COM (2008) 55 final, SEC (2008) 135.
[692] *Ibid*, 8.
[693] Council of the European Union, 'EU Guidelines on Children and Armed Conflict' 15634/03 [2003] <http://eeas.europa.eu/delegations/china/documents/eu_china/human_rights/caafguidelines.pdf> accessed 6 June 2014.
[694] Mirjam van Reisen and Georgina Hrabovszki, 'The Implementation Of The EU Guidelines On Children In Armed Conflict: Assessment Of The Policy Framework And Its Implementation' [2012], 10 <http://www.eepa.be/wcm/dmdocuments/publications/The_Implementation_of_the_EU_Guidelines_on_Children_in_Armed_Conflict.pdf> accessed 6 June 2014.
[695] Council of the European Union, 'EU Guidelines on Children and Armed Conflict' 15634/03 [2003] <http://eeas.europa.eu/delegations/china/documents/eu_china/human_rights/caafguidelines.pdf> accessed 6 June 2014, 5.
[696] Mirjam van Reisen and Georgina Hrabovszki, 'The Implementation Of The EU Guidelines On Children In Armed Conflict: Assessment Of The Policy Framework And Its Implementation' [2012], 10

coordinate with the international mechanisms that have been established dealing with children and armed conflict, in particular, the Special Representative of the UN Secretary General for Children and Armed Conflict, and the Security Council Working Group on Children and Armed Conflict. The revised guidelines also mention coordination within different fields of EU policy.

b) Violence against children

'All Forms of Violence against Children' was already selected as first Priority Area in the EU Guidelines for the Promotion and the Protection of the Rights of the Child (2007).[698] In this context the vulnerability of children is emphasised:

> Although the consequences of violence for children may vary according to its nature and severity, the short- and long-term repercussions are in most cases grave and damaging. The vulnerability of children and their dependence on adults demand special care and determined international action to protect them from all forms of violence.[699]

c) Child labour[700]

Since 2008, prevention of all forms of child labour has been selected as a priority area for children's rights in external action.[701]

d) Child trafficking

Child labour and child trafficking are closely related. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 identifies child labour as a root cause of trafficking in human beings.[702]

In its efforts to eradicate child trafficking, the Commission can draw on the 2011 Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.[703] Art 1 paragraph 2 of this Directive defines a 'position of vulnerability' as 'a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved'. Art 10 governs the jurisdiction of Member

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<http://www.eepa.be/wcm/dmdocuments/publications/The_Implementation_of_the_EU_Guidelines_on_Children_in_Armed_Conflict.pdf> accessed 6 June 2014.

[697] Council of the European Union, 'Update of the EU Guidelines on Children and Armed Conflict' [2008] <http://www.consilium.europa.eu/uedocs/cmsUpload/10019.en08.pdf> accessed 6 June 2014.

[698] Council of the European Union, 'EU Guidelines for the Promotion and the Protection of the Rights of the Child' ([2007] <http://www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf> accessed 6 June 2014, 16.

[699] *Ibid*.

[700] For thorough discussion see Nuno Ferreira, 'Child labour and EU law and policy: A regional solution for a global issue' [2014]. In: Helen Stalford and Ingi Iusmen (eds.), *The EU and the Global Protection of Children's Rights: Norms, Laws and Policy Dimensions* (Leverkusen: Budrich Academic 2014) (forthcoming) <http://www.uaces.org/documents/papers/1301/ferreira.pdf> accessed 6 June 2014.

[701] Commission, 'The European Union's Action Plan on Children's Rights in External Action' (Staff Working Document) COM (2008) 55 final SEC (2008) 135, 7.

[702] Commission, 'The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016' COM (2012) 286 final.

[703] Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L101/1.

States in cases of trafficking. Under certain circumstances a Member State can establish jurisdiction over the offense of trafficking even when this occurs outside of its territory. This is, for example, the case when a national is trafficked.

In addition to the four above-mentioned policy priority areas, DG DEVCO seeks to mainstream children's rights in its development work. In particular, it relates children's rights to Millennium Development Goal (MDG) no 1, on halving the proportion of people who suffer from hunger. The Communication entitled Enhancing Maternal and Child Nutrition in External Assistance: an EU Policy Framework (2013) observes that: 'one in six children [are] still underweight. These children are victims of a vicious cycle, where poverty, inadequate diet and disease combine to give them the worst possible start in life, trapping individuals and societies in poverty'.[704]

2. Implementation of policy

a) Children in armed conflict

The EU adopted an Implementation Strategy on Children in Armed Conflicts in 2006.[705] This strategy identified a number of priority countries, namely: Afghanistan, Burma, Burundi, Colombia, Cote d'Ivoire, DRC, Liberia, Nepal, Philippines, Somalia, Sri Lanka, Sudan, Uganda. Six countries were added in 2007. 'Apart of the general Implementation Strategy, each priority country has an individual implementation strategy that responds to the particular needs of each country separately'.[706] The Implementation Strategy was updated in 2010. Based on interviews with policy makers in Brussels, Van Reisen and Hrabovszki are of the opinion that 'no formal review is expected in the coming years'.[707]

In addition, the EU created a Checklist for the Integration for the Protection of Children affected by Armed Conflict into ESDP operations (2006),[708] which was later updated in 2008.[709] The checklist 'seeks to ensure that child rights and protection concerns are systematically addressed from the early planning through the implementation' of European Security and Defence Policy (ESDP) operations,[710] especially the missions outside of the EU.

[704] Commission, 'Enhancing Maternal and Child Nutrition in External Assistance: an EU Policy Framework' COM (2013) 141 final SWD (2013) 72 final, 2.
[705] Council of the European Union, 'Implementation strategy for guidelines on children and armed conflict' [2006] 8285/1/06.
[706] Council of the European Union, '2010 Review of The Implementation Strategy of the EU Guidelines on Children and armed conflicts Concept Note' [2010] 1 <http://www.eeas.europa.eu/human_rights/child/ac/2010_hr_child_ac_strategy_en.pdf> accessed 6 June 2014.
[707] Mirjam van Reisen and Georgina Hrabovszki, 'The Implementation of the EU Guidelines on Children in Armed Conflict: Assessment of the Policy Framework and its implementation' [2012] <http://www.eepa.be/wcm/dmdocuments/publications/The_Implementation_of_the_EU_Guidelines_on_Children_in_Armed_Conflict.pdf> accessed 6 June 2014, 10.
[708] Council of the European Union, 'Checklist for the Integration of the Protection of Children affected by armed conflict into ESDP operations' 9767/06 [2006].
[709] Council of the European Union, 'Draft General Review of the Implementation of the Checklist for the Integration of and Protection of Children affected by Armed Conflict into ESDP Operations' 9822/08 [2008].
[710] *Ibid*, 9.

Related to the EEAS's efforts on behalf of children in armed conflict situations is the work of the Directorate-General for Humanitarian Aid and Civil Protection (DG ECHO), regarding Children in Emergency and Crisis Situations (2008).[711] This policy document calls attention to the fact that children are not only vulnerable in situations of armed conflict, but also in humanitarian crises:

> The majority of international legal instruments concerns children in armed conflicts, but children are also disproportionately affected by natural disasters. . . . Children are the part of the population most affected by humanitarian crises. They are both particularly vulnerable and particularly exposed, often without resources of their own or protection. They suffer disproportionately from malnourishment and illness which leads to a high mortality rate.[712]

The document goes on to mention specific groups of children, such as children who are separated from their families, disabled, HIV positive, and displaced children.

b) Violence against children

The Commission has undertaken various initiatives to combat child abuse. Notable is the Global Alliance against Child Sexual Abuse Online which was established in 2012.[713] 53 Countries have so far joined the alliance. The four key policy targets of the alliance are: [714]

- enhancing efforts to identify victims and ensuring that they receive the necessary assistance, support and protection;
- enhancing efforts to investigate cases of child sexual abuse online and to identify and prosecute offenders;
- increasing awareness among children, parents, educators and the community at large about the risks;
- reducing the availability of child pornography online and the re-victimization of children.

c) Child labour

A Commission Staff Working Document entitled Combating Child Labour (2010) was produced in 2010.[715] This is a report which analyses the overall context and the impact of different forms of child labour. It also describes the current measures that exist to combat child labour. Following up on that report is another Commission Staff Working Document entitled Trade and Worst Forms of Child Labour (2013).[716] This document provides additional detail of the trade dimension of the phenomenon of child labour. Also in 2013, High Representative of the Union for Foreign Affairs and Security Policy/Vice President of the Commission Catherine Ashton, Vice-President Viviane Reding, the EU's Justice

[711] Commission, 'Children in Emergency and Crisis Situations' (Staff Working Document) COM(2008) 55 final SEC (2008) 136.
[712] *Ibid*, 5.
[713] Commission, 'Declaration on the Launch of the Global Alliance against child sexual abuse online' (2012) MEMO/12/944.
[714] See <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/index_en.htm> last accessed 24 July 2014.
[715] Commission, 'Combating Child Labour' (Staff Working Document) SEC (2010) 37 final.
[716] Commission, 'Trade and Worst Forms of Child Labour' SWD (2013) 173 final.

Commissioner, Development Commissioner Andris Piebalgs, Commissioner for Employment, Social Affairs and Inclusion László Andor and Commissioner for Home Affairs Cecilia Malmström, made a joint statement that called for the elimination of child labour by 2016.[717]

d) Child trafficking

The Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings: Towards Global EU Action against Trafficking in Human Beings (2009),[718] is the primary document as regards the implementation of the EU's external anti-trafficking policy. As regards children who are trafficked, the Action-Oriented Paper stresses that:

> an integrated, holistic and multidisciplinary approach is needed, having as its basis the respect for human rights and the rule of law, including a gender and child rights perspective. In particular the principles laid down in the UN Convention on the rights of the child and its two optional protocols, i.e. that children who are victims of trafficking have a right to protection and care and should not be detained or punished for their involvement in criminal activities they have been compelled to commit as a direct consequence of being subjected to THB, as well as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its optional protocols must be respected.[719]

There are regular reports on the implementation of the Action-Oriented Paper.

Finally, as regards the implementation of EU external policy on children's rights a recent joint effort between the EU and UNICEF requires mention. Together, the EU and UNICEF have developed a Child Rights Toolkit: Integrating child rights in development cooperation (2014).[720] This toolkit is intended to strengthen the capacity of the European Commission staff as well as other development actors in integrating children's rights development.

[717] Commission, 'Joint Statement on the occasion of the World Day Against Child Labour' MEMO/13/543 <http://europa.eu/rapid/press-release_MEMO-13-543_en.htm> accessed 6 June 2014.

[718] Council of the European Union, 'Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings' 11450/5/09 [2009].

[719] Council of the European Union, 'Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings' (2009) 11450/5/09 [2009], 10.

[720] EU-UNICEF, 'Child Rights Toolkit: Integrating child rights in development cooperation' [2014] <http://www.unicef.org/eu/crtoolkit/downloads/Child-Rights-Toolkit-Web-Links.pdf> accessed 23 July 2014.

3. The EU's internal approach

Art 24 of the Charter of Fundamental Rights is devoted to the rights of the child. Other binding legal instruments that are important in the area of children's rights internally are the 2011 Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography,[721] and the above-mentioned 2011 Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.[722]

The Communication from the Commission entitled Towards an EU Strategy for the Rights of the Child (2006)[723] has been described as 'a watershed document', as it is 'the first Commission attempt to agenda-set for children's rights in line with the principles and provisions of the CRC, and, moreover, the first time the EU's commitment to children's rights in internal policy and external policy is brought together'.[724] The Communication states that it is 'vital that children's rights be recognised as a self-standing set of concerns and not simply subsumed into wider efforts to mainstream human rights in general'.[725]

In 2011, the EU Agenda for the Rights of the Child was established.[726] In a section entitled 'targeting EU action to protect children when they are vulnerable', it extensively discusses the EU commitment to protect children when they are vulnerable. The EU Agenda identifies several situations in which children are held to be particularly vulnerable, namely: children at risk of poverty and social exclusion; disabled children; victims of sexual exploitation and trafficking; children seeking asylum; unaccompanied or separated children (coming from outside the EU); Roma children; runaway children; children exposed to (cyber-)bullying and grooming. These children therefore 'require and deserve special protection'.[727]

Building on these policy instruments, the Stockholm Programme affirms in paragraph 2.3.2 that children's rights concern all Union policies. In the programme, the Council calls on the Commission to identify in which areas of children's rights the Union can bring added value. It states that '[c]hildren in particularly vulnerable situations should receive special attention, notably children that are victims of sexual exploitation and abuse as well as children that are victims of trafficking and unaccompanied minors in the context of Union migration policy'.[728] The Council also highlights the issue of parental child abduction and the need to continue to develop abduction alert mechanisms.

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[721] Council Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA [2011] OJ L335/1.

[722] Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L101/1.

[723] Commission, 'Towards an EU Strategy for the Rights of the Child' COM (2006) 367 final.

[724] Jean Grugel and Ingi Iusmen, 'The European Commission as guardian angel: the challenges of agenda-setting for children's rights' [2013] JEPP 77, 82.

[725] Commission, 'Towards an EU Strategy for the Rights of the Child' COM (2006) 367 final, 3.

[726] Commission, 'An EU Agenda for the Rights of the Child' COM (2011) 60 final.

[727] *Ibid*, 8.

[728] European Council, 'The Stockholm Program – An open and secure Europe serving and protecting citizens' 2010/C 115/01 [2010], para 2(3)(3).

A final internal initiative worth mentioning is that DG CONNECT has developed a European Strategy for a Better Internet for Children (2012).[729] This strategy builds on the Commission Communication on Protecting Children in the Digital World (2011).[730] Interestingly, the European Strategy explicitly includes both a child-participation and a child-protection perspective. It recognises that the internet provides children with many positive opportunities, but also that children need to be protected, for example in their privacy settings.

4. Conclusion

In recent years the DG JUST and the EEAS are both very active in the field of children's rights. Helen Stalford has criticised the EU for concentrating almost exclusively on children 'in crisis', in other words on children in extremely vulnerable situations.[731] According to her, the EU's focus is too narrowly on child protection, instead of also including child participation; the EU tends to overlook children's capacity. This part of the report bears out some of Stalford's worries. At least in its external policies, the EU refers to children as such as a vulnerable group, but focuses mostly on children in extreme circumstances (such as children in armed-conflict situations and children who are trafficked).

D. Roma

1. Formulation of policy

The Roma are the EU's largest ethnic minority. It is thought that there are between 10 and 12 million Roma, 6 million of whom reside in the EU and are often EU citizens. According to recent EU policy documents:

> The term "Roma" is used – similarly to other political documents of the European Parliament and the European Council – as an umbrella which includes groups of people who have more or less similar cultural characteristics, such as Sinti, Travellers, Kalé, Gens du voyage, etc. whether sedentary or not;[732]

There is a significant body of scholarship that critically examines the EU's engagement with Roma.[733] Several authors question the very use of the term 'Roma' and argue that it is essentialist.[734] However,

[729] Commission, 'European strategy for a better internet for children' COM (2012) 196 final, 2.
[730] Commission, 'Protecting children in the digital world; Analysis of implementation of 1998 and 2006 recommendations' COM (2011) 556 final.
[731] Helen Stalford, *Children and the European Union: Rights, Welfare and Accountability* (Hart 2012) 224.
[732] Commission, 'An EU Framework for National Roma Integration Strategies up to 2020' COM (2011) 173 final, 2 note 1.
[733] Nando Sigona and Nidhi Trehan (eds.), *Romani Politics in Contemporary Europe Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke: Palgrave MacMillan, 2009); Mark Dawson And Elise Muir, 'Individual, Institutional And Collective Vigilance In Protecting Fundamental Rights In The EU: Lessons From The Roma' (2011) 48 C.M.L Rev. 751; Tawhida Ahmed, *The Impact of EU Law on Minority Rights* (Oxford and Portland: Hart, 2011) (Chapter 8); D Bigo and S Carrera and E Guild, *Foreigners, Refugees or Minorities? : Rethinking People in the Context of Border Controls and Visas* (Ashgate, 2013).
[734] Katrin Simhandl, 'Beyond Boundaries? Comparing the Construction of the Political Categories 'Gypsies' and 'Roma' Before and After EU Enlargement', in: Nando Sigona & Nidhi Trehan (eds.), *Romani Politics in Contemporary Europe Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke: Palgrave MacMillan, 2009), 72-93, 74

the Commission does emphasise that the Roma, who live in all 28 EU Member States, are not a homogeneous group.[735]

The EU enlargement process, and the resulting Westward migration of Roma, has created a demographic change of Roma in Europe.[736] The result is that Roma were no longer seen as a purely external issue. Thus, whereas in the past Roma policies were mostly a matter of external action, nowadays it is largely a matter of internal action. External EU Roma policy primarily concerns EU candidate countries. The fact that Roma have become a matter of internal policy has, in turn, led to a 'policy shift': from a migration-based approach to a more rights-based approach which recognises that Roma are a vulnerable minority who require special protection.[737] Indeed, nowadays, the Roma are often seen as Europe's 'vulnerable group' par excellence; an image that is strengthened by the case law of the ECtHR.[738] The recent Council Recommendation on Effective Roma Integration Measures in the Member States (2013) summarises why Roma are held to be vulnerable:

> The situation of Roma children in the Union is particularly worrying, due to a range of factors that may make them especially vulnerable and exposed, *inter alia*, to poor health, poor housing, poor nutrition, exclusion, discrimination, racism and violence. The social exclusion of Roma children is often linked to the lack of birth registration and identity documents, to low participation in early childhood education and care as well as higher education, and to elevated school drop-out rates. Segregation is a serious barrier preventing access to quality education. Some Roma children also fall victim to trafficking and labour exploitation. Roma who are third-country nationals staying legally in the Member States can also be placed in a vulnerable position, particularly when they share the same poor living conditions as many Roma who are citizens of the Union, whilst also facing the challenges of many migrants coming from outside the Union.[739]

What has been termed 'the dilemma of the European Union's Roma policy', is the classic tension between the demands of inclusion/assimilation and identity/difference.[740] There are two perceived 'roads to emancipation',[741] and the EU has to walk both. On the one hand, the disadvantaged and

[735] Commission, 'The social and economic integration of the Roma in Europe' COM (2010) 133 final, 9.
[736] Sigona, Nando & Nidhi Trehan (eds.), *Romani Politics in Contemporary Europe Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke: Palgrave MacMillan, 2009), 9.
[737] Rachel Guglielmo and Timothy William Waters, 'Migrating Towards Minority Status: Shifting European Policy Towards Roma' (2005) 43 JCMS 763; Marina Kolb, *The European Union and the Council of Europe* (Palgrave Macmillan: 2013), 115.
[738] Lourdes Peroni and Alexandra Timmer, 'Vulnerable Groups: the Promise of an Emerging Concept in European Human Rights Convention Law' [2013] 11 I*CON 1056.
[739] Council of the European Union, 'Council recommendation on effective Roma integration measures in the member states' (2013), 2.
[740] Aidan McGarry, 'The dilemma of the European Union's Roma policy', (2012) 32 Critical Social Policy 126; Marina Kolb, *The European Union and the Council of Europe* (Palgrave Macmillan: 2013), p 178; Etienne Balibar, 'Foreword' in: Nando Sigona & Nidhi Trehan (eds.), *Romani Politics in Contemporary Europe Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke: Palgrave MacMillan, 2009), 72-93, xii.
[741] Etienne Balibar, 'Foreword' in: Nando Sigona & Nidhi Trehan (eds.), *Romani Politics in Contemporary Europe Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke: Palgrave MacMillan, 2009), 72-93, xii.

marginalised situation that many Roma find themselves in calls for greater inclusion. Roma have to be able to enjoy the same rights as all other people. On the other hand, Roma also want to – and have the right to – maintain their own cultural identity.

The Communication from the Commission entitled The social and economic integration of the Roma in Europe (2010)[742] set the stage for the EU Framework on national Roma integration strategies which will be discussed below. In this 2010 Communication, the Commission emphasises that mainstreaming is the key to successful Roma policy: 'the mainstreaming of Roma issues into all relevant European and national policies is the most promising way to achieve inclusion'.[743] This is in contrast with children's rights and women's rights, where the EU has explicitly chosen to follow a dual approach of both mainstreaming and specific measures (see above section C on children and below section G on women).

The EU Framework for National Roma Integration Strategies up to 2020 (2011)[744] begins by stressing that improving the situation of Roma requires a dialogue with Roma, and that Roma themselves have a responsibility here: it is a 'two-way process'.[745]

The primary responsibility for Roma integration lies with the States. This Framework seeks to aid and encourage States to adopt a comprehensive Roma integration approach. The Framework identifies four policy priority areas: access to education, employment, healthcare and housing: [746]

1. Access to education: Ensure that all Roma children complete at least primary school;
2. Access to employment: Cut the employment gap between Roma and the rest of the Population;
3. Access to healthcare: Reduce the gap in health status between the Roma and the rest of the population;
4. Access to housing and essential services: Close the gap between the share of Roma with access to housing and to public utilities (such as water, electricity and gas) and that of the rest of the population.

The Framework pays particular attention to the situation of Roma in enlargement countries:

> Roma in enlargement countries face similar or even more serious problems than in many EU Member States: social exclusion, segregation and marginalisation leading to lack of education, chronic unemployment, limited access to healthcare, housing and essential services as well as widespread poverty. In addition, due to the wars in the Balkan region, many Roma families had to move as displaced persons to other countries in the region or to Western Europe. In

[742] Commission, 'The social and economic integration of the Roma in Europe' COM (2010) 133 final.
[743] *Ibid*, 7.
[744] Commission, 'An EU Framework for National Roma Integration Strategies up to 2020' COM (2011) 173 final.
[745] *Ibid*, 2.
[746] *Ibid*, 5-7.

> Turkey, Roma groups are diverse, but a large proportion suffers from multidimensional social exclusion.[747]

The EU Framework for National Roma Integration Strategies focuses heavily on the socio-economic integration of Roma.[748] Significantly, the Council of the EU, consisting of the national Ministers in the area of Employment, Social Policy, Health and Consumer Affairs, in a Council Recommendation on Effective Roma Integration Measures in the Member States (2013) takes a broader perspective.[749] This recommendation has been heralded as 'the first ever legal instrument for Roma inclusion at EU-level'.[750] Rather than just focusing on socio-economic integration, the Council also explicitly calls on Member States to '[i]mplement measures to combat discrimination and prejudice against Roma, sometimes referred to as anti-Gypsyism, in all areas of society'.[751] The Council also emphasises the multiple forms of discrimination faced by Roma women and children.[752] It also includes a section on 'empowerment': the goal is to 'Support the active citizenship of Roma by promoting their social, economic, political and cultural participation in society, including at the local level'.[753]

2. Implementation of policy

In response to the 'EU Framework for National Roma Integration Strategies up to 2020', each country produced a Roma strategy or a set of integrated policy measures. These were assessed by the European Commission in a Communications adopted in 2012, 2013 and 2014.[754] There will be yearly reports on this Framework until 2020. Also, national contact points have been set up in each EU country for the implementation of the national Roma integration strategy.[755]

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[747] *Ibid*, 11.

[748] This focus has been criticized in the scholarly literature. McGarry argues that: 'The EU concerns itself primarily with the politics of redistribution and treats Roma as a social group with fundamentally social problems and is unwilling to recognize the ethnic identity of minorities within the EU polity. The key problem with such a conviction is that it segregates economic and cultural injustices and ignores the fact that most Roma are exploited in and excluded from the labour market because of racial discrimination.' Aidan McGarry, 'The dilemma of the European Union's Roma policy', (2012) Critical Social Policy 32 126, p 129-130.

[749] Council of the European Union, 'Council recommendation on effective Roma integration measures in the member states' (2013) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf> accessed 6 June 2014.

[750] Commission, 'First ever EU instrument for Roma inclusion adopted' (Press Release) [2013] IP/13/1226 <http://europa.eu/rapid/press-release_IP-13-1226_en.htm> accessed 6 June 2014.

[751] Council of the European Union, 'Council recommendation on effective Roma integration measures in the member states' (2013) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf> accessed 6 June 2014, 9.

[752] *Ibid*.

[753] *Ibid*, 10.

[754] Commission, 'National Roma Integration Strategies: a first step in the implementation of the EU Framework' COM (2012) 226 final; Commission, 'Steps Forward In Implementing National Roma Integration Strategies' COM/2013/0454 final; Commission, 'Report on the implementation of the EU Framework for National Roma Integration Strategies' COM (2014) 209 final.

[755] The list of contact points is available here: 'National contact points for the implementation of national Roma integration strategies' <http://ec.europa.eu/justice/discrimination/files/roma_nationalcontactpoints_en.pdf> accessed 6 June 2014.

DG Enlargement is of the opinion that the 'Framework for National Roma Integration Strategies' is also relevant for candidate countries, as many of the integration goals will also be applicable to them.[756] The IPA II regulation, which is the main pre-accession assistance instrument for the countries of Central and Eastern Europe (see section III.C.6.a) for a brief description of this instrument), identifies promoting Roma rights and 'integrating marginalised communities such as the Roma' amongst the thematic priorities for assistance.[757]

At the EU level, the participation of Roma in policy-making is facilitated through the European Platform for Roma Inclusion, since 2008.[758] This Platform is designed to enable dialogue between national governments, the EU, international organizations and Roma civil society representatives. It aims to exchange best-practices as regards Roma inclusion. The platform was created during the European Roma Summit which was held in Brussels in 2008.[759] One of the main contributions of this Platform has been the development of the 10 Common Basic Principles on Roma Inclusion (2009).[760] These principles are: 1) constructive, pragmatic and non-discriminatory policies 2) explicit but not exclusive targeting 3) inter-cultural approach 4) aiming for the mainstream 5) awareness of the gender dimension 6) transfer of evidence-based policies 7) use of EU instruments 8) involvement of regional and local authorities 9) involvement of civil society 10) active participation of Roma.

DG Justice has recently released a report which gives a useful overview of the available policy tools and financial instruments as regards Roma inclusion. It is entitled 'What works for Roma inclusion in the EU: policies and model approaches' (2012).[761]

3. The EU's internal approach

As the Roma are nowadays primarily treated as a 'vulnerable group' within the EU itself, the relevant policy documents have already been discussed in section 1 above ('Formulation of Policy').

From an institutional point of view, it is important to emphasise that Roma integration (and questions about minorities more in general) does not fall under the EU competences. The primary responsibility for Roma integration remains with the Member States. This has not stopped the EU from becoming very active in the field of Roma integration. Policy documents rely on EU equal treatment legislation which

[756] See: Detlev Boeing, European Commission Enlargement DG, 'Roma policy in the enlargement context', Slide 17 <http://romadecade.org/cms/upload/file/9347_file13_roma-policy-in-the-enlargement-context.pdf> accessed 6 June 2014.

[757] Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), OJ L 77/21, Annex II, paras (b) and (f).

[758] See: Commission, Justice, 'Roma Platform' <http://ec.europa.eu/justice/discrimination/roma/roma-platform/index_en.htm> accessed 6 June 2014.

[759] For more information regarding the European Roma Summit, which is held every few years see: Commision, Justice, 'Roma 'Summits' <http://ec.europa.eu/justice/discrimination/roma/roma-summits/index_en.htm> accessed 6 June 2014.

[760] Commission, 'Vadecum The 10 Common Basic Principles on Roma Inclusion' (Brochure) <http://www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf>accessed June 6 2014.

[761] Commission, DG Justice, 'What works for Roma inclusion in the EU: policies and model approaches' (2012) <http://ec.europa.eu/justice/discrimination/files/whatworksfor_romainclusion_en.pdf> accessed 6 June 2014.

prohibits discrimination based on racial and origin (Art 10 and Art 19(1) TFEU, and the 2000 Employment Equality Directive), as well as the basic Art 3(3) TEU, which states that the Union shall combat social exclusion and discrimination and promote the protection of the rights of the child. Policy documents also refer to Art 21 of the Charter which prohibits discrimination, inter alia on the basis of race, colour, ethnic or social origin, genetic features, language or membership of a national minority.

4. Conclusion

Whereas in the past Roma policies were mostly a matter of external action, due to enlargement, nowadays they are largely a matter of internal action. DG JUST has the lead in Roma policy. The policy documents emphasise both the protection and the participation of Roma. However, the EU's primary focus – witness the EU Framework for National Roma Integration Strategies – is on the socio-economic integration of Roma. The 2013 Council Recommendation 'on effective Roma integration measures in the member states' has been heralded as taking a broader view, because it requires Member States to combat anti-Gypsyism and also to facilitate the cultural participation of Roma.

E. Asylum seekers and refugees

1. Introduction: toward a common policy on 'asylum seekers' and 'refugees' in the EU

One of the first EU policies on migration was the common system of asylum seekers and refugees. Asylum and refugee have never been seen primarily by the EU as an issue of human rights and compliance with its international obligations, since economic and security considerations have always conditioned the approach taken by the EU.

This policy has evolved with a different pace if compared with the rest of migration issues. Today we can say that there is a convergence between external and internal policies on asylum seekers and refugees.

All EU Member States have common international obligations as a result of commitments under the United Nations Convention relating to the Status of Refugees, adopted in 1951,[762] and its 1967 Protocol.[763] Both the EU and Member States have a need to address the massive flows of refugees from countries in conflict, which requires a common approach.

The internal policy is marked by differences of treatment in each of the EU Member States in relation to the conditions of entry of asylum seekers, as well as in terms of their living conditions. This situation requires a serious harmonisation effort by the EU.

[762] United Nations General Assembly Resolution 429 (V) of 14 December 1950. The Convention entered into force on 22 April 1954.
[763] United Nations General Assembly Resolution 2198 (XXI) of 16 December 1967.

2. External EU policy

a) Geneva Convention relating to the status of refugees, 28 July 1951, and Protocol relating to the Status of Refugees, New York, 31 January 1967

All EU Member States are High Contracting Parties of the Geneva Convention relating to the status of refugees (1951) and its Protocol (1967). The Geneva Convention is the only international treaty where we can find a definition of the term 'refugee'. According to Art 1-A-2, for the purposes of the Convention, the term shall apply to any person who:

> as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

Many EU Member States have formulated reservations or declarations to this definition, creating a different framework of obligations. However, the uniform concept of refugee and the standard of the obligations for the international protection of these persons established in the abovementioned Joint Position of 4 March 1996 mark the progressive harmonisation of the refugee policy of the EU.

b) The temporary protection

Another priority of the EU has been the temporary protection of refugees. The EU recognises the need to offer some protection to those who present specific needs of protection in situations of massive flows of people. The EU has issued a Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons.[764]

The maximum temporary protection that can be offered extends for two years, a period that is not always sufficient in light of the circumstances that cause a mass influx of displaced persons. Besides, the European Council can put an end to temporary protection at any time (Art 6).

There is an issue in which the Directive does not give a satisfactory answer in Prof. Kalin's opinion: the lack of a procedure to identify those who completed the temporary protection but are unable to return to their country of origin.[765] But the effectiveness of this system remains to be seen since the system has not been activated thus far.

[764] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons.

[765] Walter Kälin, 'Temporary Protection in the EC: Refugee Law, Human Rights and the Temptations of Pragmatism' (2012) German Yearbook of International Law, 26-27.

3. The EU's internal approach

a) The Member State responsible for examining an asylum application

The Dublin Convention[766] was developed to provide EU Member States with a system for determining which State is responsible for examining applications concerning refugee status. The applications are processed following domestic regulations.[767]

The first criteria establishes that the State that has the priority of examining an asylum application which examines whether there is already a close family member such as aspouse, children, descendants or ascendants, or a father, mother or guardian if the applicant is a minor. Therefore, the Dublin Convention has prioritised the right to family reunification.

A practical problem that has arisen is when relatives are in different Member States. Who is the one that would be required to consider a request based on these circumstances? The problem is solved with the new regulation known as Dublin II which substituted the Dublin Convention.[768]

The second criteria relates to those Member States that have given a resident permit to an asylum seeker or, if applicable, a valid visa.

The third criteria refers to illegal immigrants. The EU member State in which those illegal immigrants entered will be the responsible for examining their applications, unless they have resided more than six months in another EU Member State.

The fourth criteria is that the States that control the legal entry of a foreigner will be responsible for examining asylum and refugee applications unless they have entered through a State that does not require them to submit the visa application or they have applied for asylum in another State that does not require a visa.

But the Dublin Convention has not worked properly in practice. The EC,[769] UNHCR[770] and other institutions[771] recognise that the Dublin Convention has created numerous problems in its application.[772]

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[766] The Dublin Convention was signed in Dublin, Ireland, on 15 June 1990, and entered into force on 1 September 1997 for the first twelve signatories.

[767] See Agnès Hurwitz, 'The 1990 Dublin Convention: A Comprehensive Assessment', (1999) 11 International Journal of Refugee Law 646.

[768] Regulation (EC) No 343/2003 of 18 February 2003 determining the Member State responsible for examining an asylum application.

[769] See the Document 'Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member State', Doc. SEC (2000) 522.

[770] See http://www.acnur.org/biblioteca/pdf/1212.pdf.

[771] See http://www.derechos.org/nizkor/espana/doc/dublin.html.

[772] Friedrich Löper, 'The Dublin Convention on Asylum: Interpretation and Application Problems' in Clotilde Marihno (ed) *The Dublin Convention on Asylum: Its essence, Implementation and Prospect* (European Institute of Public Administration 2000), 17.

Therefore, the EU has modified the Regulation establishing the so-called Dublin III,[773] supplemented by the establishment of EURODAC technical aspects, creating a European Agency for the Operational Management of Large-Scale IT Systems in the area of freedom, security and justice,[774] implemented by the European Commission.[775]

b) The uniform status of refugees

The starting point concerning the uniform status of refugees was the Joint Position of 4 March 1996 defined by the Council on the basis of Art K.3 of the Treaty of the European Union on the harmonised application of the definition of the term 'refugee' in Art 1 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees.[776] However, we must recognise that both State practice and the progressive jurisprudence of the European Court of Human Rights in this field have facilitated significantly the work.

The Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted[777] departs from the idea that there are two different types of protection. The first is the international protection established under the 1951 Geneva Convention relating to the Status of Refugees; the second one is the subsidiary protection granted when people cannot be governed by that Convention because they do not fall under its provisions. Subsidiary or complementary protection covers all cases of people who fall outside the definition of a refugee under

[773] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

[774] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes; and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

[775] Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

[776] OJ L63, 13 March 1999. According to it, 'the determining factor for granting refugee status... is the existence of a well-founded fear of persecution on grounds of race, religion, nationality, political opinions or membership of a particular social group...'.

[777] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

the Geneva Convention but who cannot be returned to the country of origin due to a threat to life or freedom or fear of torture or other cruel, inhuman or degrading treatment.[778]

However, a new revised Directive of 2011 clarifies the grounds for granting international protection. The new Directive improves the access to rights and integration measures for asylum seekers, refugees or beneficiaries of subsidiary protection.[779]

c) A dignified standard of living for asylum seekers

One of the most important measures developed by the EU has been the dignification of living standards of asylum seekers, refugees and other beneficiaries of international protection. In this sense, the EU has tried to adequately ensure their human rights and fundamental freedoms. The conditions of the reception of asylum seekers have been greatly humanised.[780] In 2011, the Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents was amended to extend its scope to all beneficiaries of international protection.[781]

More recently, the EU has approved the Directive 2013/33/EU of the European Parliament and the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

On the other hand, the right to family reunification has been granted,[782] and the minimum content of the rights of beneficiaries of temporary protection has been recognised in a Directive.

As far as temporary protection is concerned, the minimum content is regulated by the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons. It comprehensively details the minimum rights that must be recognised, distinguishing between adults and children, whether accompanied or not, and other vulnerable groups. For example, access to education for children is fully guaranteed. Likewise, access to health care is also granted for unaccompanied children or for people who have undergone torture, rape or other serious forms of moral, physical or sexual violence (Art 13). The protection of the whole family is one of the main aims of EU safeguards.

[778] Cristina J. Gortázar Rotaeche, 'La Protección Subsidiaria como concepto diferente a la Protección Temporal' in, Pablo Antonio Fernández Sánchez (ed) *La revitalización de la protección de los refugiados* (Universidad de Huelva 2002) 234.
[779] Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status of refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).
[780] Council Directive 2003/9(EC) of 27 January 2003 laying down minimum standards for the reception of asylum seekers. See also Commission, Report of 26 November 2007 on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
[781] Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.
[782] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

d) Procedures for granting and withdrawing refugee status

The EU has set standards for the harmonisation of procedures for granting and withdrawing refugee status.[783] As the Commission has stated, this is not to impose 'the Member States to apply uniform procedures... nor to force them to adopt common concepts and practices that they do not wish to apply. In addition, all rules to implement an efficient and fair procedure are fixed without prejudice to the discretion of Member States to give priority preference to cases based on national policies'.

These procedural safeguards can be considered as core principles of international law, and, accordingly, they have acquired a non-derogable nature, even when applied to illegal immigrants.

One of the most relevant standards is the right to appeal against a decision to refuse refugee status and, of course, to be informed, in a language that can be understood by the applicant, of all phases of the procedure, including information on possible recourses.

European legislation proclaims a general principle of non-discrimination in favour of certain vulnerable groups, while noting specific measures for children, accompanied or not, and for victims of torture and organised violence.

Recently, following a report of the European Commission,[784] the EU has approved a new Directive to extend the minimum standards on procedures for granting and withdrawing international protection.[785]

e) Establishment of a European asylum support office

The EU has established a European Asylum Support Office[786] to play a key role in the development of the Common European Asylum System.

The aim is to help Member States to comply with their international legal obligations, and to enhance intra-EU solidarity in the field of asylum.[787]

[783] Council Directive 2005/85 of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.
[784] Commission, Report from the Commission on the application of Directive 2005/85 of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status COM(2010) 465.
[785] Directive 2013/32/EU of the European Parliament and of the Council on common procedures from granting and withdrawing international protection (recast).
[786] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [2010] OJ L132/11.
[787] Commission Communication on enhanced intra-EU solidarity in the field of asylum: An EU agenda for better responsibility-sharing and more mutual trust COM(2011) 835 final. See also European Parliament Resolution on enhanced intra-EU solidarity in the field of asylum 2012/2032(INI).

4. Conclusions

The regulation of a common asylum system has been a priority for the EU. In spite of it, however, regulatory differences in the different EU Member States on asylum are a significant difficulty in the context of creating an area of freedom, security and justice.

The harmonisation of a common refugee definition, conditions of access of asylum seekers, the responsible State to examine the application for asylum, the social, economic and cultural rights attached to refugee status, etc. are all issues that deserve proper attention.

Moreover, Member States have common international obligations affecting the EU external policy. The EU has had to offer adequate answers to eventual mass influxes of displaced persons, developing the temporary protection status, which could facilitate not only the management of a given crisis but also the humanitarian policy and the external security of the EU.

F. Persons with disabilities

1. Formulation of policy

The EU has acceded to the United Nations Convention on the Rights of Persons with Disabilities (the UN CRPD), after actively participating in its drafting.[788] The UN CRPD is the first legally-binding international human rights instrument to which the EU has become a party. This Convention now guides both the EU's internal and external action in the field of disability. As this part will show, 'disability is being mainstreamed in different areas of EU law and policy.'[789]

Before continuing to discuss EU disability policy, it is important to stress that an EU-wide definition of disability does not exist. In policy documents the Commission regularly refers to the open-ended definition used in Art 1 of the UN CRPD,[790] namely: 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.' Based on the CRPD, the Commission recognises that disability is an evolving concept and one, moreover, that is context-specific:

> disability is an 'evolving concept' and one that 'results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'. In practice, the definition of disability depends on its intended use: non-discrimination laws

[788] Grainne De Burca, 'The EU in the negotiation of the UN Disability Convention' (2010) 35 ELR 2.

[789] Academic Network of European Disability experts (ANED), 'Annotated review of European Union law and policy with reference to disability' (2012), 2. <http://www.disability-europe.net/theme/eu-law-and-policy> accessed 6 June 2014.

[790] See for example: Commission, 'Staff working document accompanying the European Disability Strategy 2010-2020: A Renewed Commitment to Barrier-Free Europe' SEC (2010) 1323 final COM (2010) 636 final, 4.

> may be based on different criteria from those used to determine eligibility for state benefits.[791]

The European Disability Strategy 2010-2020,[792] which is now in force, has been termed 'the main reference document for all initiatives in the disability field until 2020'.[793] Its aim is to empower people with disabilities so that they can fully enjoy their human rights, and also fully benefit from participation in society and the European economy (notably through the Single market). The Strategy focuses on eight key areas for action:

1. Accessibility: make goods and services accessible to people with disabilities and promote the market of assistive devices.
2. Participation: ensure that people with disabilities enjoy all benefits of EU citizenship; remove barriers to equal participation in public life and leisure activities; promote the provision of quality community-based services.
3. Equality: combat discrimination based on disability and promote equal opportunities.
4. Employment: raise significantly the share of persons with disabilities working in the open labour market.
5. Education and training: promote inclusive education and lifelong learning for students and pupils with disabilities.
6. Social protection: promote decent living conditions, combat poverty and social exclusion.
7. Health: promote equal access to health services and related facilities.
8. External action: promote the rights of people with disabilities in the EU enlargement and international development programmes.

Concerning the Commission's *equality policy* (key area no. 3), it is notable that the Commission proclaims that it wants to pay attention to what is known as 'intersectional' discrimination:[794] 'The Commission will also pay attention to the cumulative impact of discrimination that people with disabilities may experience on other grounds, such as nationality, age, race or ethnicity, sex, religion or belief, or sexual orientation'.[795] This means that the Commission will have to pay attention to the ways in which people with disabilities are differently situated (depending on their sex etc.), and the many different kinds of vulnerabilities that can play a role in the lives of disabled people. This is related to the UN CRPD framework. That treaty includes specific provisions on the rights of women with disabilities (CRPD Art 6) and children with disabilities (CRPD Art 7).

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[791] *Ibid*.

[792] Commission, 'European Disability Strategy 2010-2020: A Renewed Commitment to Barrier-Free Europe' COM(2010) 636 final.

[793] Academic Network of European Disability experts (ANED), 'Annotated review of European Union law and policy with reference to disability' (2012), p 11. <http://www.disability-europe.net/theme/eu-law-and-policy> accessed 6 June 2014.

[794] See generally Dagmar Schiek and Anna Lawson (eds), *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination* (Ashgate 2011).

[795] Commission, 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' COM (2010) 636 final, 6.

In the field of development, the Commission has also focused on disability. This work has been strengthened by the European Parliament (EP). The EP Resolution of 19 January 2006 on disability and development, stresses that disability issues should be reflected in the Commission's development policies.[796] Although the Resolution is not legally binding, a report by the Academic Network of European Disability experts notes that: 'it is now widely used to advocate the human rights approach to disability and mainstream disability in all EU development cooperation projects'.[797] A further European Parliament resolution – Resolution of 15 June 2010 on progress towards the achievement of the Millennium Development Goals – calls on the EU to 'target the neediest groups in [LDC's], focusing especially on women, children and people with disabilities, and to mainstream more effectively the interests of vulnerable groups in its development strategies'.[798]

2. Implementation of policy

A staff document that accompanies the European Disability Strategy 2010-2020 provides a list of actions to be taken in each of these key areas.[799] Interesting to point out, with regards to the issue of *accessibility* (key area no. 1 of the Strategy), is the projected European Accessibility Act.[800] This is probably the most noteworthy action that is mentioned in the staff document.[801] The act is a legislative initiative to improve accessibility of goods and services in the Internal Market. At the time of writing it has not yet been enacted, but it is on the Commission's agenda for 2014.

Following the European Year of Persons with Disabilities (2003), the Commission created a Guidance Note on Disability and Development for European Union Delegations and Services (2004).[802] This note explains what a human rights approach to disability is. It highlights the 'vulnerability' of people with a disability as a key issue. It sets out 10 principles according to which European services and delegations can move forward. The first principle is: 'Understand the scale and impact of disability in the country

[796] European Parliament Resolution on Disability and Development, 2006 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0033+0+DOC+XML+V0//EN> accessed 7 June 2014.

[797] Academic Network of European Disability experts (ANED), 'Annotated review of European Union law and policy with reference to disability' (2012), 31. <http://www.disability-europe.net/theme/eu-law-and-policy> accessed 6 June 2014.

[798] European Parliament Resolution of 15 June 2010 on progress towards the achievement of the Millenium Development Goals: mid-term review in preparation of the UN high-level meeting in September 2010 (2010/2037(INI), P7_TA(2010)0210, para 46.

[799] Commission, 'Accompanying the European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe Initial plan to implement the European Disability Strategy 2010-2020 List of Actions 2010-2015' SEC (2010) 1324 final COM(2010) 636 final.

[800] Commission, 'Roadmap European Accessibility Act: legislative initiative to improve accessibility of goods and services in the Internal Market', < http://ec.europa.eu/smartregulation/impact/planned_ia/docs/2012_just_025_european_accessibiliy_act_en.pdf> accessed 24 July 2014.

[801] Academic Network of European Disability experts (ANED), 'Annotated review of European Union law and policy with reference to disability' (2012), p 12. <http://www.disability-europe.net/theme/eu-law-and-policy> accessed 6 June 2014.

[802] Commission, 'Guidance Note on Disability and Development' (DG Development Note) [2004] <http://bookshop.europa.eu/en/guidance-note-on-disability-and-development-pbNH6004175/> accessed 6 June 2014.

setting and recognise the diversity of the disabled population'.[803] The second is 'Advocate and support the human rights model of disability rather than the charitable or medical approach'.[804] In light of the CRPD, this Note was updated in (2012).[805] It emphasises that in order to be successful European development cooperation needs to be 'disability inclusive'.[806] Building on the CRPD, the Updated Note identifies four essential elements of disability when viewed as a human rights issue. These are: '(a) a person, (b) a long-term impairment, (c) barriers to participation created by both the impairment and interaction with the social and physical environment, and (d) equality as the objective'.[807] The Updated Note also extensively refers to Art 32 of the CRPD, which concerns international cooperation.

Like the first Guidance Note, the Updated Note provides guiding principles. The Updated Note stresses that the first principle ('adopt and advocate the human rights approach to disability') entails both empowerment and accountability:

> Empowerment means that people with disabilities should be able to participate as active stakeholders, while accountability means that public institutions and structures must justify what they do to uphold these rights and how they do it. In line with the UN Convention, the EU should continue to uphold and advocate respect for the human rights of people with disabilities in the relevant international fora and in its dialogues with partner countries and development cooperation programmes.[808]

3. The EU's internal approach

Besides acceding to the UN CRPD, there is a firm EU legal framework in place regarding the rights of persons with a disability.[809] Art 21 of the Charter, as well as Art 10, prohibits discrimination on the grounds of disability. Art 26 of the Charter recognises the rights of persons with a disability to be integrated in the community. Additionally, Art 19 TFEU – formerly Art 13 EC Treaty – enables the EU to take action to combat discrimination on the grounds of disability.[810] On the basis of Art 13 EC Treaty the 2000 Employment Equality Directive was adopted, which prohibits direct and indirect discrimination

[803] *Ibid*, 10.
[804] *Ibid*.
[805] DEVCO, D3 Social and Human Development & Migration, 'Guidance Note for EU Staff Disability Inclusive Development Cooperation' (2012) <http://ec.europa.eu/europeaid/what/social-protection/documents/disability_guidance_note_en.pdf> accessed 6 June 2014.
[806] *Ibid*, 1-2.
[807] *Ibid*, 2.
[808] *Ibid*, 6.
[809] The premier resource for EU disability law and policy is: Academic Network of European Disability Experts <http://www.disability-europe.net/> accessed 6 June 2014.
[810] The first paragraph of Art 19 TFEU provides:
Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

(including harassment) of people with disabilities in the labour market.[811] Art 5 of the Directive requires reasonable accommodation of people with a disability.

4. Conclusion

Since the EU has ratified the CRPD, this Convention guides both the EU's internal and external action in the field of disability. The EU's understanding of disability is therefore based on the UN CRPD. The EU's approach to disability can be said to be quite sophisticated, as EU policy recognises that 'disability' is an evolving concept and that its definition depends on the context in which it is used.

G. Women

1. Formulation of policy

Including a section on 'women' as a vulnerable group in this report is not without problems. The EU does not usually refer to women as such as a vulnerable group. The EU does not seem to view all women as vulnerable, like it does with children. However, the EU regularly refers to women as 'vulnerable' in specific contexts. Therefore it was decided to incorporate this section in the report.

Since the Treaty of Amsterdam (effective from 1999), the EU takes a 'dual approach' when it comes to gender equality: the Union is both committed to *gender mainstreaming* and to adopting *specific measures* targeting particular issues.[812] This holds true for both its internal and external actions. Gender mainstreaming is 'the integration of a gender equality perspective into every stage of policy process - design, implementation, monitoring and evaluation - with a view of promoting equality between women and men.'[813]

The EU's external action on women's rights is focused on three areas: violence against women (1), women in armed conflict (2), and gender equality and development (3).

a) Violence against women

In 2008, the Council of the EU adopted the EU Guidelines on violence against women and girls and combating all forms of discrimination against them.[814] These guidelines mark the political will of the EU to 'treat the subject of women's rights as a priority and to take long-term action in that field'.[815] Based on the Declaration on the Elimination of Violence Against Women, the Guidelines define violence against women ('VAW') as follows:

[811] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303.
[812] Commission, 'Gender quality in the European Union' (Brochure) (2011) <http://ec.europa.eu/justice/gender-equality/files/brochure_equality_en.pdf> accessed 6 June 2014, 7.
[813] *Ibid*.
[814] Council of the European Union, 'EU guidelines on violence against women and girls and combating all forms of discrimination against them' [2008] <http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf> accessed 6 June 2014.
[815] *Ibid*, 1.

> the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.[816]

The Guidelines state that combating VAW has three interrelated aims: (i) prevention of violence; (ii) protection of and support for victims; and (iii) prosecution of the perpetrators of such violence.[817] The first Annex to the Guidelines, which gives background information to the issue of VAW, highlights that, due to multiple discrimination, certain female victims of violence are more vulnerable than others.[818]

Both in external and internal policy, the EU pays a lot of attention to female genital mutilation (FGM) as a specific form of violence against women. Eliminating FGM is high on the agenda both within the EU and abroad. In a Communication entitled Towards the elimination of female genital mutilation (2013),[819] the Commission sets out its mission to eliminate FGM. This Communication covers internal as well as external policies. Building on this framework, the 2014 Council Conclusions Preventing and combating all forms of violence against women and girls, including female genital mutilation, calls on both the Member States and the EEAS and the Commission to 'strengthen their support to partner countries in combating all forms of violence against women, including the elimination of female genital mutilation, inter alia through support to non-state actors'.[820]

b) Women in armed conflict

The position of women in armed conflict and women's role in peace and security is another spearhead of EU foreign policy on women's rights. The EU is committed to implementing the UN Security Resolution no. 1325 from 2000;[821] the first – and highly influential – Security Council Resolution on the topic of women, peace and security. In the past decade, it has expressed this commitment repeatedly. The Council of the EU approved a joint document prepared by the Council Secretariat and the Commission entitled a Comprehensive Approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security (2008).[822] This is complemented by the document entitled 'Implementation of SCR 1325 as reinforced by 1820 in the context of European Security and Defence Policy' (2008).[823] In the 'Comprehensive Approach', the EU identifies the prevention and responsiveness to sexual and gender-based violence as the biggest

[816] *Ibid*, 2.
[817] *Ibid*.
[818] *Ibid*, 15.
[819] Commission, 'Towards the elimination of female genital mutilation (2013)' COM (2013) 833 final.
[820] Council of the European Union, 'Council Conclusions Preventing and combating all forms of violence against women and girls, including female genital mutilation' [2014] <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/143103.pdf> accessed 24 July 2014.
[821] UNSC Res 1325 (31 October 2000) S/RES/1325.
[822] Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1380 on women, peace and security' (2008) 15671/1/08 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015671%202008%20REV%201> accessed 6 June 2014.
[823] Council of the European Union, 'Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP' (2008) 15782/3/08 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015782%202008%20REV%203> accessed 6 June 2014

challenge confronting the EU and the UN is this area.[824] The Comprehensive Approach also identifies women's participation as a key issue: 'women continue often to be excluded from positions of decision-making in the sphere of peace and security'.[825]

c) Gender equality and development

The EU pursues the goal of the empowerment of women in developing countries both as an end in itself and as a tool to reduce poverty and increase economic development.[826] These twin goals are, for example, mentioned explicitly by the Council in the EU Agenda for Action on MDGs (2008):

> The promotion of gender equality and the enjoyment of human rights by women and girls are goals in their own right and also instrumental and essential to achieving internationally agreed development goals, including the MDGs. Gender equality is a core value of the EU and is crucial for the effectiveness and sustainability of the partner countries' development processes.[827]

This approach has been criticised in the scholarly literature; the argument being that a real commitment to gender equality would entail more than seeing women just as human capital.[828] As in other areas of internal and external policy, the EU pursues women's empowerment through a double track: gender mainstreaming on the one hand, and adopting specific measures on the other.

The Commission Communication Gender Equality and Women Empowerment in Development Cooperation (2007) explores the connection between the status of women and sustainable poverty reduction.[829] Thus, this document does not really focus on (gender) equality as a goal and right in itself (although the document does mention that this is so), but rather as a tool for something else, namely economic development. The document does include some analysis of why gender equality is so hard to achieve:

> at the social and cultural level there are important factors which serve to slow progress towards the achievement of Gender Equality. Thus, traditional social structures may offer only limited incentives for changing the existing distribution of power between men and women, especially to those with a vested interest in maintaining the *status quo*. This may go some way to explaining why specific gender-related actions are not always regarded as high priority and why, in most country strategies, gender is a subsidiary issue.[830]

[824] Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1380 on women, peace and security' (2008) 15671/1/08, 6.
[825] *Ibid*, 7
[826] Commission, 'EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015' (Staff Working Document) SEC (2010) 265 final, 3.
[827] Council of the European Union, 'The EU as a global partner for pro-poor and pro-growth development: EU Agenda for Action on MDGs' 11096/08 [2008] 9.
[828] See for example: Petra Debusscher, 'Mainstreaming gender in European Commission development policy: Conservative Europeanness?' (2011) 34 Women Stud Int. Forum 39.
[829] Commission, 'Gender Equality and Women Empowerment in Development Cooperation' COM (2007) 100 final.
[830] *Ibid*, 4.

The document does not really go into the question of what makes specific groups of women more vulnerable than others in the context of development cooperation; nor does it explain what is meant by the term 'gender'. The Annex to the Communication Gender Equality and Women Empowerment in Development Cooperation (2007) delves deeper into this issue.[831] For example, the Annex explains why women are particularly likely to suffer from sexually transmitted diseases:

> Women have a dual vulnerability to sexually transmitted diseases, like HPV (Human papilloma virus) and HIV, both biological – as they are twice as likely as men to be infected through a single act of unprotected sex – and social – given gender inequities. Beyond the toll borne by individual infected women, the burden of caring for those with HIV-related illness and for children orphaned by AIDS typically falls on women and girls.[832]

As regards specific vulnerable groups, the subsequent Council Conclusions on Gender Equality and Women's Empowerment in Development Cooperation (2007), calls on the Commission and the Member States:

> to take measure to end impunity and significantly scale up effective prevention and assistance programs, paying particular attention to the groups whose vulnerability to discrimination and violence is heightened by such factors as disability, lack of parental care, or HIV/AIDS, or who belong to minority groups, are refugees or internally displaced persons.[833]

2. Implementation of policy

a) Violence against women

The 'Guidelines on violence against women and girls and combating all forms of discrimination against them' outline what general intervention tools the EU has its disposal to combat VAW, such as encouraging states to ratify the CEDAW Convention. In addition, these guidelines also state that the EU can take specific measures if this is warranted:

> the EU will consider taking specific measures if it becomes aware of individual cases of exceptional gravity, in particular violence perpetrated or tolerated by the State contrary to international commitments and fundamental rights to physical integrity and non-discrimination, and in the absence *inter alia* of satisfactory action at national level.[834]

The Guidelines are implemented by means of country-specific strategies.

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[831] Commission, 'Annex to the Communication From The Commission To The European Parliament and the Council Gender Equality and Women Empowerment In Development Cooperation' SEC (2007) 332.
[832] *Ibid*, 8.
[833] Council of the European Union, 'Gender Equality and Women's Empowerment in Development Cooperation - Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council' 9561/07 [2007], 4.
[834] Council of the European Union, 'EU guidelines on violence against women and girls and combating all forms of discrimination against them' [2008] <http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf> accessed 6 June 2014, 8.

b) Women in armed conflict

Following the commitment that is laid down in the 'Comprehensive Approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security', the EU has taken a few steps such as creating a EU Task Force on Women, Peace and Security. Also, through the Instrument for Stability (IfS), the EU collaborates with the UN on a pilot program on Women, Peace and Security in Kosovo, Timor-Leste and Liberia.[835] Then, in 2010, the Council of the EU developed a set of indicators to measure the implementation of the comprehensive approach ('Indicators for the Comprehensive Approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security 2010').[836]

c) Gender equality and development

Building on the above mentioned Commission Communication and Council Conclusions on 'Gender Equality and Women's Empowerment in Development Cooperation', the EU Plan of Action on Gender Equality and Women Empowerment in Development 2010-2015[837] is 'an operational document that concentrates on a selected number of objectives where the EU has a clear comparative advantage. It proposes a series of activities to be carried out by the EU Member States and the EC for the period 2010 to 2015'.[838] The list of concrete actions that this Plan communicates is as follows:[839]

1. Strengthen the lead role of the EU in promoting gender equality in development;
2. Build in-house capacity on gender equality issues in development;
3. Place gender equality issues systematically on the agenda of political and development policy dialogue with Partner countries;
4. Ensure that gender is mainstreamed in EU funded projects and that EU funded general budget support and sector support programmes (SWAPs) use gender disaggregated data and gender-sensitive performance indicators where relevant;
5. Prioritise in-country civil society participation, capacity building and advocacy on Gender Equality and Women's Empowerment (GEWE);
6. Improve the EU monitoring, accountability and transparency on allocation of funds for Gender equality in development;
7. Strengthen EU support to partner countries in their efforts to achieve MDG 3 and MDG 5;
8. Strengthen EU support to partner countries in combating gender-based violence in all its manifestations, as well as discrimination against women and girls;

[835] See: European External Action Service, 'EU supports Women's Participation in Peacebuilding and Post-Conflict Planning' (Press Release) <http://eeas.europa.eu/ifs/docs/20120201_pressrelease_eu-undp_en.pdf> accessed 6 June 2014.
[836] Council of the European Union, 'Indicators for the Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' 11948/10 [2010] <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011948%202010%20INIT> accessed 6 June 2014.
[837] Commission, 'EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015' (Staff Working Document) SEC (2010) 265 final.
[838] *Ibid*, 4.
[839] Commission, 'EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015' (Staff Working Document) SEC (2010) 265 final, 6-7.

9. Support partner countries in fully implementing UNSCR 1325, 1820, 1888, and 1889, including through the development of national action plans and policies on women, peace and security.

Finally, DG DEVCO has created an online Toolbox for mainstreaming gender equality in development cooperation.[840] DG EMPL has also created a Gender Mainstreaming Manual (2008) for policy-makers.[841]

3. The EU's internal approach

Equal treatment between men and women has been a core value of the EU since its inception as the EEC. In the Treaty of Rome (1957) the Member States committed themselves to the right to equal pay for equal work. The 1975 Equal Pay Directive and the 1976 Equal Treatment Directive followed.[842] These directives were followed by others concerning social security, equal treatment of the self-employed, the safety and health at work of pregnant workers, parental leave, the burden of proof in sex discrimination cases, and part-time work (amongst others). Art 2 and 3 TEU commit Member States to non-discrimination and equality between men and women. The Union itself is committed to these same rights. Art 23 of the Charter of Fundamental Rights proclaims that: 'Equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex'. The TFEU provides that the Union will aim to eliminate inequalities and promote equality between men and women (TFEU Art 8). It also stipulates that the Union will aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (TFEU Art 10).

The Commission emphasises that EU action aimed at achieving gender equality is necessary both as a matter of fundamental rights and to strengthen the EU's own position: 'EU action aiming at achieving gender equality is needed to protect fundamental rights, combat discrimination, strengthen social cohesion and reaffirm shared values, but also to mobilise women's full potential in order to boost EU competitiveness, growth and prosperity'.[843] Thus, the EU makes no secret of the fact that gender equality is – at least partly – viewed *instrumentally*. Likewise, a key goal of the EU is to increase women's economic activity.

[840] Commission, 'Toolkit on mainstreaming gender equality in EC development cooperation' [2004] <http://ec.europa.eu/europeaid/sp/gender-toolkit/> accessed 24 July 2014.
[841] Commission, 'Manual for Gender Mainstreaming: Employment, Social Inclusion and Social Protection Policies' (DG Employment Manual) [2008] <http://eige.europa.eu/content/manual-for-gender-mainstreaming-employment-social-inclusion-and-social-protection-policies> accessed 6 June 2014.
[842] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L 045; Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L 039.
[843] Commission, 'Accompanying the Strategy for Equality between Women and Men 2010-2015' (Staff Working Document) SEC (2010) 1080 final, 7.

On the occasion of the 2010 International Women's Day, the Commission (DG EMPL had the lead) declared a Women's Charter (2010).[844] The Charter proclaimed five principles of gender equality:

1. Equal economic independence: equality in the labour market and equal economic independence for women and men, namely through the Europe 2020 strategy;
2. Equal pay for equal work and work of equal value: by working with Member States to reduce significantly the gender pay gap over the next five years;
3. Equality in decision-making: through EU incentive measures;
4. Dignity, integrity and an end to gender-based violence: through a comprehensive policy framework;
5. Gender equality beyond the EU: by pursuing the issue in external relations and with international organisations.

Building on this Charter, and also on the Roadmap for equality between women and men 2006-2010,[845] the current Strategy for Equality between Women and Men 2010-2015[846] outlines actions under the five priority areas defined in the Women's Charter, and one area addressing cross-cutting issues. The Strategy thus implements the Charter. The Strategy follows the familiar dual approach of gender mainstreaming and adopting specific measures.

A Staff Working Document that lists the concrete actions to be undertaken (Actions to implement the Strategy for Equality between Women and Men 2010-2015)[847] supplements the Strategy, as well as a Staff Working Document that is a Background Document Accompanying the Strategy for Equality between Women and Men 2010-2015.[848] This background document outlines several key areas where women are still falling behind men, such as participation in the labour market, the gender pay gap, educational attainment, social exclusion and poverty risks, decision-making, gender-based violence and health. The document does not describe women as such as a vulnerable group. It does highlight that specific groups of women are at particular risk of suffering from exclusion and poverty. For example, as regards women with disabilities, this background document notes: 'women with disabilities are under-represented in democratic processes and decision-making more generally. Women with mental or psychological disability are at greater risk of being abused than are men with disabilities or women without disabilities'.[849] And regarding Roma women, the document states that: 'Roma women are even more disadvantaged than Roma men and members of other ethnic minority groups in almost all respects. They are particularly disadvantaged in accessing employment, education, health and social

[844] Commission, 'A Strengthened Commitment to Equality between Women and Men A Women's Charter' COM (2010) 78 final.
[845] Commission, 'A Roadmap for equality between women and men 2006-2010' COM (2006) 92 final.
[846] Commission, 'Strategy for equality between women and men 2010-2015' COM (2010) 491 final.
[847] Commission, 'Actions to implement the Strategy for Equality between Women and Men 2010-2015 Accompanying the Strategy for Equality between Women and Men 2010-2015' (Staff Working Document) SEC (2010) 1079/2.
[848] Commission, 'Background Document Accompanying the Strategy for Equality between Women and Men 2010-2015' (Staff Working Document) SEC (2010) 1080 final.
[849] *Ibid*, 16.

services, a result of multiple causes, including also the gender roles that persist in the Roma community'.[850]

What impedes an effective EU policy to VAW is the lack of a specific legal basis.[851] Therefore, the Daphne III Programme (2007),[852] the financial instrument aimed at preventing and combating violence against women and children, was creatively based on Art 129 of the Treaty of Amsterdam (public health).[853]

4. Conclusion

The Commission does not refer to women as such as 'vulnerable'; apparently it does not consider *all* women vulnerable, in contrast to children. This report provides some indications that 'vulnerability' is more closely associated with women outside the EU: the term comes up more in external policies than in internal policies. When women are considered vulnerable in internal policies it is often in situations of violence and/or trafficking. In the policy documents which have been discussed here, the most thorough analysis of what renders women vulnerable can be found in communications from DG DEVCO, such as the Commission Communication entitled 'Gender Equality and Women Empowerment in Development Cooperation' (2007) and its Annex.

The EU has opted for a double approach when it comes to empowering women: it seeks to achieve this goal both via gender mainstreaming and by adopting specific measures. The impact of the EU's gender mainstreaming policy is contested in the academic literature. Sonia Mazey, for example, writes that: 'In theory, mainstreaming is a transformative, horizontal, strategy for achieving material equality between men and women by 'engendering' mainstream policies. In practice, it has been associated with methodological tools such as gender-auditing of policies and soft policy instruments such as voluntary codes of conduct and benchmarking'.[854] In addition, and more fundamentally, feminist scholars have long questioned whether women's interests can actually be reconciled with the liberal economic EU paradigm.[855] These debates are beyond the scope of the present report, but it bears emphasis that the EU's women's rights agenda has generated lively academic interest and contestation.

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[850] *Ibid*, 16-17.

[851] Sonia Mazey, 'Policy Entrepeneurship, Group Mobilisation and the Creation of a New Policy Domain: Women's Rights and the European Union' (2012), p 23 < http://www.bsec.canterbury.ac.nz/documents/Constructing_a_Policy-making_State_Policy_Dynamics_in_the_European_Union_Chapter_7_Mazey.pdf > accessed 7 June 2014.

[852] Decision No 779/2007 EV of the European Parliament and of the Council of 20 June 2007 establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme 'Fundamental Rights and Justice' [2007] OJ L173/19.

[853] Sonia Mazey, 'Policy Entrepeneurship, Group Mobilisation and the Creation of a New Policy Domain: Women's Rights and the European Union' (2012), <http://www.bsec.canterbury.ac.nz/documents/Constructing_a_Policy-making_State_Policy_Dynamics_in_the_European_Union_Chapter_7_Mazey.pdf > accessed 7 June 2014, 23.

[854] *Ibid*, 3.

[855] *Ibid*, 20-21.

VII. General Conclusions

A. Regarding the human rights and democracy policy framework and instruments

Human rights and democracy are core values of the EU enshrined in Art 21.1 of the TEU. The EU is committed to putting these values at the core of its external relations with third countries and, accordingly, has developed a broad range of legal and policy instruments in order to promote human rights and democracy worldwide. The framework of the EU's human rights and democracy policy is presided by the Strategic Framework on Human Rights and Democracy, which is the key document of the EU's policy in this field, since it establishes the principles, objectives and priorities that must guide the EU's action.

Two general objectives can be identified in the Strategic Framework: on the one hand, the EU's and its Member States' commitment to promote the universality of human rights and, on the other, the EU's determination to promote human rights and democracy in its external action, as stated in Art 21 of the TEU. The scope of these two general objectives is different: the commitment to the universal promotion of human rights encompasses all spheres, internal and external, while the promotion of human rights and democracy is limited to the EU's external policies.

Along with these general objectives, the Strategic Framework highlights some areas of action which identify specific objectives and priorities: pursuing coherent objectives; human rights in all EU external policies; implementing EU priorities on human rights; working with bilateral partners; working through multilateral institutions; and the EU working together. Under the area called 'Implementing EU priorities on human rights' the Strategic Framework mentions themes and groups which are a priority for the EU. However, not all the priorities identified in this document are translated into actions in the Action Plan, the document which aims to put the Strategic Framework into practice. In this regard, the Action Plan refers only to freedom of expression online and offline while the Strategic Framework includes freedom of expression, opinion, assembly and association; it limits the fight against discrimination to the protection of rights of the LGBT persons; it does not establish actions regarding the protection of refugees and migrants; and it does not identify actions for some priority themes previously identified in the Strategic Framework (promotion of ESC rights, non-discriminatory access to basic services and engagement with civil society), although these themes are addressed under other areas of the Strategic Framework. Thus, further research will be necessary in order to determine to what extent those themes and groups that do not have actions under the Action Plan are real priorities for the EU's human rights and democracy policy and what factors explain this different treatment.[856]This issue will be addressed in following reports.

Two other sets of documents form, along with the Strategic Framework, the policy formulation framework of the EU in this field: the human rights guidelines, which have been adopted for all the priority themes and groups identified in the Strategic Framework that have been translated into actions

[856] See above Chart 2.

in the Action Plan except for the UN Guiding Principles on Business and Human Rights, the right to a fair and impartial administration of justice, and the fight against impunity;[857] and the human rights strategies for countries, which aim to maximise the EU's policy impact on the ground through tailor-made approaches.

It should be underlined that although the Strategic Framework is on human rights and democracy, the emphasis through the document is on human rights, not on democracy. Although there is a clear position on the EU´s understanding of human rights, democracy is an 'aspiration' that it is not defined.[858] This is an issue that should be addressed in the following report on the assessment of EU policies. Democracy can be considered a universal aspiration but this does not mean that democracy can be integrated automatically within the protection and promotion of human rights without any consideration and that human rights and democracy can be used interchangeably as is done in the document. The link should be made clear as the Joint Communication states: 'Human rights and democracy go hand in hand with the empowering freedoms – freedom of expression, association and assembly – which underpin democracy.'[859]

As mentioned above, in order to implement its human rights and democracy policy, the EU has developed a broad range of instruments. Some of them have been specially created in order to contribute to the specific objective of the promotion of human rights and democracy worldwide, in particular, the EIDHR, the human rights clauses, the human rights focal points in EU Delegations, the EUSR for Human Rights, the human rights dialogues and consultations, the election support and the European Endowment for Democracy. Moreover, the EU uses other traditional instruments of its CFSP to promote human rights and democracy in its relations with third countries. These instruments respond to the EU's objective of mainstreaming human rights and democracy in all its policies and actions toward third countries. Among them, can be highlighted the EU's action in multilateral fora, bilateral political dialogues, démarches and declarations, CFSP decisions, restrictive measures and, finally, thematic and geographic financial programmes.

The manner in which the priority themes and groups set forth by the Strategic Framework are reflected across this range of instruments will be analysed in following reports. However, it is interesting to introduce at this point some conclusions regarding the EIDHR: (i) the EIDHR includes all the priority themes and groups mentioned by the Strategic Framework however; (ii) the formulation of the priority themes and groups is different in certain cases (e.g. engagement with civil society and freedom or religion or belief) and; (iii) the scope of the EIDHR is broader and includes themes not covered by the Strategic Framework and the Action Plan (rule of law, promotion of improved conditions and observance of standards in prisons).

Regular assessment of the implementation of EU's human rights and democracy policy is one of the outcomes stated in the Action Plan. This evaluation of policy is mainly carried out through one specific

[857] See above Chart 3.
[858] Strategic Framework on Human Rights and Democracy, 3.
[859] Joint Communication human rights and democracy at the heart of EU external action, 8.

instrument: the EU's Annual Report on Human Rights and Democracy in the world. In addition, as a consequence of the EU's approach to put human rights at the core of its external action, human rights and democracy promotion constitute also an important part of other EU's Annual Reports relating to other external policies, such as CFSP and Development.

B. Regarding the human rights and democracy priority themes

In connection with the thematic priorities addressed in section III, it should be concluded that the majority of the thematic priorities are long-established objectives of the EU's human rights policies. This does not imply that since the beginning the EU has always devoted attention to the same particular issues. In fact, the contrary is often the case, and in most of the cases the EU follows the development of events at international level to identify key issues. This tendency is evident, for example, in the case of freedom of opinion and expression in which the development of new ICT, in the first place, and its role on the Arab uprisings, in the second, have led to the prioritisation of measures oriented towards the protection of freedom of expression on-line and the protection and assistance of bloggers, online journalist and other media actors. However, this trend is also evident in other cases such as torture, and the shift toward the inclusion of anti-torture measures in counterterrorism measures; IHL, with the inclusion of measures directed towards the ban on trade of certain sensitive technology to authoritarian regimes and places of conflict; or in the fight against impunity for grave international crimes with the focus on transitional justice mechanism resulting from both the new transitional processes in places such as the Arab region and the development of transitional justice as an academic discipline and a practical tool to address the post-conflict context.

Generally, the identification of the themes as a priority has been accompanied by the publication of guidelines providing legal and operational guidance to the EU's work in its relations with third countries. In this regard there are three different groups. A first group of guidelines was published before the adoption of the Strategic Framework, that is, the EU Guidelines on Death Penalty (first adopted in 1998), the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment (first adopted in 2001), EU Guidelines on human rights defenders (first adopted in 2004), and the EU Guidelines on promoting compliance with international humanitarian law (first adopted in 2005) – which were reviewed and amended, some of them after the adoption of the Strategic Framework as the Guidelines on Death Penalty. Secondly, there are the guidelines adopted following a provision of the Strategic Framework and Action Plan - EU Guidelines on the promotion and protection of freedom of religion or belief (2013) and the EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014). Last, it is important to mention that there are some themes that have not yet been provided with guidelines such as the case of transitional justice. This fact shows the differences in the EU policy developments between the different thematic priorities.

Finally, another thematic area in which coherence of EU's policies is called into question is the promotion of ESCRs. The EU consistently emphasises the need to promote the indivisibility of human rights and the need to protect and promote both civil and political rights and economic, social and cultural rights (ESCRs). However, a trend towards the marginalisation of EU policies in this field, both at domestic and international level, can be identified. Further research will be needed in this regard.

C. Regarding the priority groups

As this report shows, the term 'vulnerable groups' is routinely used in EU fundamental rights discourse. Often, however, there is no real reflection on the content of this term. It can be concluded on the basis of the present overview that the EU tends to focus on protecting groups in extremely vulnerable situations: for example children or women who are victims of trafficking or (sexual) abuse, and LGBT's who suffer from violence. The focus seems to lie less on empowerment of these vulnerable groups, although increased participation is an EU-goal for several of these groups (including people with a disability and Roma).

It is now widely recognised that, as is stated in the preamble to the UN CRPD: 'disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society'. In the same vein, vulnerability results from the interaction between marginalised groups and dominant groups: vulnerable groups are 'created' by dominant groups. The EU policy documents which have been analysed here show little awareness of this dynamic. EU policy should focus less on individual characteristics, and more on the societal arrangements that construct these vulnerabilities.

Bibliography

A. Legal and policy instruments

1. European Union

a) European Council

European Council, 'European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency' DOC/93/3.

European Council, 'A secure Europe in a better world. European Security Strategy' [2003] <http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC7809568ENC.pdf> accessed 23 July 2014.

European Council, 'Report on the Implementation of the European Security Strategy. Providing Security in a Changing World' S407/08 [2008].

European Council, 'The Stockholm Program – An open and secure Europe serving and protecting citizens' 2010/C 115/01 [2010].

b) European Parliament and Council of the EU

Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation [2006] OJ L378/41.

Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide [2006] OJ L386/1.

Regulation (EC) No 1717/2006 of the European Parliament and of the Council establishing an Instrument for Stability [2006] OJ L327/1.

Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument [2006] OJ L310/1.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L 204/23.

European Parliament, Council, Commission, 'Joint Statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: "The European Consensus" C46/01 [2006].

Decision No 779/2007 EV of the European Parliament and of the Council of 20 June 2007 establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme 'Fundamental Rights and Justice' [2007] OJ L173/19.

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L280/1.

Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [2010] OJ L132/11.

Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund COM/2011/0751 final - 2011/0366 (COD) [2011].

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L142/1.

Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime [2012] OJ L315/57.

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

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1.

Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal [2013] OJ L347/259.

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action [2014] OJ L77/95.

Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L77/85.

Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 [2014] OJ L77/44.

Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument [2014] OJ L77/27.

Regulation (EU) No 231/2014 of the European Council and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) [2014] OJ L 77/11.

Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace [2014] OJ L77/1.

Directive 2014/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [2013] OJ L82/19.

European Parliament, Council, 'Proposal for a Directive amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0207> accessed 20 July 2014.

c) Council of the EU

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L 045.

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L 039.

Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms [1999] OJ L120/1.

Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries [1999] OJ L120/8.

Council, 'European Union Annual report on human rights 1998/99', <https://www.consilium.europa.eu/uedocs/cmsUpload/HR1999EN.pdf> accessed 20 July 2014.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

Council of the European Union, 'Draft Council conclusions on the European Union's Role in Promoting Human Rights and Democratisation in Third Countries' 9547/01.

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2003] OJ L 50/1-50/10.

Council Directive 2003/9(EC) of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L304/12.

Council of the European Union, Basic Principles on the Use of Restrictive Measures (Sanctions), 10198/1/04 REV 1 [2004].

Council Directive 2005/85 of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Council of the European Union, 'Common position on human rights, democratic principles, the rule of law and good governance in Africa' 13749/2/04 REV 2 [2005].

Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment [2005] OJ L200/1.

Council of the European Union, 'The European Union Counter-Terrorism Strategy' 14469/7/08 REV4 [2005].

Council of the European Union, 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy' 15114/05 [2005].

Council of the European Union, 'Mainstreaming human rights across CFSP and other EU policies' [2006] 10076/06.

Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-accession Assistance (IPA) [2006] OJ L210/82.

Council of the European Union, 'Checklist for the Integration of the Protection of Children affected by armed conflict into ESDP operations' 9767/06 [2006].

Council Regulation (EC) No 617/2007 OF 14 May 2007 on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement [2007] OJ L152/1.

Council of the European Union, 'Gender Equality and Women's Empowerment in Development Cooperation - Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council' 9561/07 [2007].

Council of the European Union, 'Gender Equality and Women's Empowerment in Development Cooperation - Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council' 9561/07 [2007].

Council of the European Union, 'Update of the EU Guidelines on Children and Armed Conflict' [2008].

Council of the European Union, 'Council Conclusions on the promotion and protection of the rights of the child in the European Union's external action - the development and humanitarian dimensions' [2008].

Council of the European Union, 'EU guidelines on violence against women and girls and combating all forms of discrimination against them' [2008].

Council of the European Union, 'Update of the EU Best Practices for the effective implementation of restrictive measures' 8666/1/08EU [2008].

Council of the European Union, 'Draft General Review of the Implementation of the Checklist for the Integration of and Protection of Children affected by Armed Conflict into ESDP Operations' 9822/08 [2008].

Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [2008] OJ L350/60.

Council of the European Union, 'EU Guidelines for the Promotion and Protection of the Rights of the Child' [2008].

Council of the European Union, 'EU Annual Report on Human Rights 2008' 14146/2/08 REV2 [2008].

Council of the European Union, 'Ensuring protection – Updated European Union Guidelines on Human Rights Defenders' [2008].

Council of the European Union, 'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' 15671/1/08 REV 1 [2008].

Council of the European Union, 'Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP' (2008) 15782/3/08 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015782%202008%20REV%203> accessed 6 June 2014.

Council of the European Union, 'The EU as a global partner for pro-poor and pro-growth development: EU Agenda for Action on MDGs' 11096/08 [2008].

Council of the European Union, 'Council Conclusions on Democracy Support in the EU's External Relations – Towards increased Coherence and Effectiveness' 16081/09 [2009].

Council of the European Union, 'Resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings' 15434/09 [2009].

Council of the European Union, 'Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings' 11450/5/09 [2009].

Council of the European Union, 'Guidelines Human Rights and International Humanitarian Law' [2009].

Council of the European Union, 'Common approach on the use of political clauses' 10491/1/09 REV1 EXT 2 [2009].

Council of the European Union, 'Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People' 11179/10 [2010].

Council of the European Union, '2010 Review of the Implementation Strategy of The EU Guidelines on Children and Armed Conflicts Concept Note' [2010] <http://www.eeas.europa.eu/human_rights/child/ac/2010_hr_child_ac_strategy_en.pdf> accessed 6 June 2014.

Council of the European Union, 'Lessons and best practices of mainstreaming human rights and gender into CSDP military operations and civilian missions' 17138/1/10 REV 1 [2010].

Council of the European Union, 'Indicators for the Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security' 11948/10 [2010] <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011948%202010%20INIT> accessed 6 June 2014.

Council of the European Union, 'Human Rights and Democracy in the world. Report on EU action. July 2008 to December 2009' [2010] <http://eeas.europa.eu/human_rights/docs/2010_hr_report_en.pdf> accessed 23 July 2014.

Council of the EU, 'Declaration on the Establishment of a European Endowment for Democracy' 18764/11 [2011].

Council Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA [2011] OJ L335/1.

Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L101/1.

Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court and repealing Common Position 2003/444/CFSP [2011] OJ L76/56.

Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status of refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

Council of the European Union, 'Human Rights and Democracy: EU Strategic Framework and EU Action Plan' 11855/12 [2012].

Council of the European Union, 'Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An up-date of the Guidelines' 6129/1/12 REV1 [2012].

Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L200/21.

Council of the European Union, 'Council Conclusions on the establishment of a Human Rights Dialogue with South Africa - 3199th Foreign Affairs Council meeting' [2012].

Council of the European Union, 'Human Rights and Democracy in the world: report on EU action in 2011' 9238/12 [2012].

Council of the European Union, 'Conclusions on the first anniversary of the EU Strategic Framework and Action Plan on Human Rights and Democracy and the appointment of the EUSR for Human Rights' 12559/13 [2013].

Council of the European Union, 'Council recommendation on effective Roma integration measures in the member states' [2013] <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf> accessed 6 June 2014

Intervention by the EU Special Representative for Human Rights and EU Delegation to the United Nations Human Rights Council Second Forum on Business and Human Rights, 3-5 December 2013.

Council of the European Union, 'Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons' [2013].

Council of the European Union, 'Council recommendation on effective Roma integration measures in the member states' [2013].

Council of the European Union, 'Guidelines on Death Penalty, Common Guidelines' 8416/13EU [2013].

Council Decision 2013/759/EU of 12 December 2013 regarding transitional EDF management measures from 1 January 2014 until the entry into force of the 11th European Development Fund [2013] OJ L335/48.

Council of the European Union, 'EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)' 9431/13 [2013].

Council of the European Union, 'EU Guidelines on the promotion and protection of freedom of religion or belief' [2013].

Council of the European Union, 'Human Rights Guidelines on Freedom of Expression Online and Offline' [2014].

Council of the European Union, 'Council conclusions on EU priorities at the UN Human Rights Fora' [2014].

Council of the European Union, 'Conclusions of the EU Foreign Affairs Council held in February 2014' [2014] <http://www.gr2014.eu/sites/default/files/UN%20human%20rights.pdf> accessed 16 May 2014.

Council of the European Union, 'Council Conclusions Preventing and combating all forms of violence against women and girls, including female genital mutilation' [2014] <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/143103.pdf> accessed 24 July 2014.

d) European Commission

Commission, 'Report on the implementation of the Resolution of the Council and of the Member States meeting in the Council on human rights, democracy and development, adopted on 28 November 1991' (Communication from the Commission to the Council and the European Parliament) SEC (92) 1915 final.

Commission, 'Report from the Commission to the Council and the European Parliament on the implementation of measures intended to promote observance of human rights and democratic principles' COM (95) 191 final.

Commission, 'The European Union and the external dimension of human rights policy: from Rome to Maastricht and beyond' (Communication from the Commission to the Council and the European Parliament) COM (95) 567 final.

Commission, 'Communication from the Commission on EU Election Assistance and Observation' COM(2000) 191 final.

Commission, 'The European Union's role in promoting human rights and democratisation in third countries' (Communication from the Commission to the Council and the European Parliament) COM(2001) 252 final.

Commission, 'Promoting a European Framework for Corporate Social Responsibility' (Green Paper) COM (2001) 366 final.

Commission, 'Towards the full integration of co-operation with ACP countries in the EU budget' (Communication from the Commission to the Council and the European Parliament) COM (2003) 590 final.

Commission, 'Toolkit on mainstreaming gender equality in EC development cooperation' [2004] <http://ec.europa.eu/europeaid/sp/gender-toolkit/> accessed 24 July 2014.

Commission, 'Building our common Future. Policy challenges and Budgetary means of the Enlarged Union 2007-2013' (Communication from the Commission to the Council and the European Parliament) COM (2004) 101 final/2.

Commission, 'Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union' COM (2004) 328 final 2004/0113 (CNS).

Commission, 'Guidance Note on Disability and Development' (DG Development Note) [2004] <http://bookshop.europa.eu/en/guidance-note-on-disability-and-development-pbNH6004175/> accessed 6 June 2014.

Commission, 'A Roadmap for equality between women and men 2006-2010' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2006) 92 final.

Commission, 'Towards an EU Strategy for the Rights of the Child' COM (2006) 367 final.

Commission, 'Report of 26 November 2007 on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers'.

Commission, 'Gender Equality and Women Empowerment in Development Cooperation' COM (2007) 100 final.

Commission, 'Annex to the Communication from the Commission to the European Parliament and the Council Gender Equality and Women Empowerment in Development Cooperation' SEC (2007) 332.

Commission, 'Non-discrimination and equal opportunities: A renewed commitment' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2008) 420 final.

Commission, 'Manual for Gender Mainstreaming: Employment, Social Inclusion and Social Protection Policies' (DG Employment Manual) [2008] <http://eige.europa.eu/content/manual-for-gender-mainstreaming-employment-social-inclusion-and-social-protection-policies> accessed 6 June 2014.

Commission, 'A Special Place for Children in EU External Action' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2008) 55 final.

Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM (2008) 426 final.

Commission, 'Children in Emergency and Crisis Situations' (Staff Working Document) COM(2008) 55 final SEC (2008) 136.

Commission, 'Renewed Social Agenda: Opportunities, access and solidarity in 21st century Europe' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2008) 412 final.

Commission, 'Internet governance: the next steps' (Communication from the Commission to the European Parliament and the Council) COM (2009) 277 final.

Commission, 'The social and economic integration of the Roma in Europe' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2010) 133 final.

Commission, Report from the Commission on the application of Directive 2005/85 of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status COM(2010) 465.

Commission, 'Staff working document accompanying the European Disability Strategy 2010-2020: A Renewed Commitment to Barrier-Free Europe' SEC (2010) 1323 final COM (2010) 636 final.

Commission, 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2010) 636 final.

Commission, 'Combating Child Labour' (Staff Working Document) SEC (2010) 37 final.

Commission, 'The social and economic integration of the Roma in Europe' COM (2010) 133 final.

Commission, 'Accompanying the European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe Initial plan to implement the European Disability Strategy 2010-2020 List of Actions 2010-2015' SEC (2010) 1324 final COM(2010) 636 final.

Commission, 'EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015' (Staff Working Document) SEC (2010) 265 final.

Commission, 'Accompanying the Strategy for Equality between Women and Men 2010-2015' (Staff Working Document) SEC (2010) 1080 final.

Commission, 'A Strengthened Commitment to Equality between Women and Men A Women's Charter' COM (2010) 78 final.

Commission, 'Actions to implement the Strategy for Equality between Women and Men 2010-2015 Accompanying the Strategy for Equality between Women and Men 2010-2015' (Staff Working Document) SEC (2010) 1079/2.

Commission – External Relations, 'European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2011-2013' C(2010) 2432.

Commission, 'Strategy for equality between women and men 2010-2015' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2010) 491 final.

European Commission, 'Neelie Kroes Vice-President of the European Commission responsible for the Digital Agenda Using technology to support freedom Press conference on "No disconnect Strategy"' SPEECH/11/873 <http://europa.eu/rapid/press-release_SPEECH-11-873_en.htm?locale=en> accessed 23 July 2014.

Commission, 'Communication on enhanced intra-EU solidarity in the field of asylum: An EU agenda for better responsibility-sharing and more mutual trust' COM (2011) 835 final.

Commission, 'Decision on the Annual Action Programme 2011 for the European Instrument for the promotion of Democracy and Human Rights worldwide (EIDHR) to be financed under Articles 19 04 01 and 19 04 03 of the general budget of the European Union' (Draft).

Commission, 'An EU Agenda for the Rights of the Child' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2011) 60 final.

Commission, 'Protecting children in the digital world; Analysis of implementation of 1998 and 2006 recommendations' COM (2011) 556 final.

Commission, 'An EU Framework for National Roma Integration Strategies up to 2020' COM (2011) 173 final.

Commission, 'Vadecum The 10 Common Basic Principles on Roma Inclusion' (Brochure) <http://www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf>accessed June 6 2014.

Commission, 'A new response to a changing Neighbourhood' (Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2011) 303 final.

Commission, 'An EU Framework for National Roma Integration Strategies up to 2020' COM (2011) 173 final.

Commission, 'National Roma Integration Strategies: a first step in the implementation of the EU Framework' COM (2012) 226 final.

Commission, DG Justice, 'What works for Roma inclusion in the EU: policies and model approaches' [2012] <http://ec.europa.eu/justice/discrimination/files/whatworksfor_romainclusion_en.pdf> accessed 6 June 2014.

Commission, 'Roadmap European Accessibility Act: legislative initiative to improve accessibility of goods and services in the Internal Market' [2011] <http://ec.europa.eu/smartregulation/impact/planned_ia/docs/2012_just_025_european_accessibiliy_act_en.pdf> accessed 24 July 2014.

Commission, 'Steps Forward in Implementing National Roma Integration Strategies' COM/2013/0454 final.

Commission, 'Towards the elimination of female genital mutilation (2013)' COM (2013) 833 final.

Commission, 'First ever EU instrument for Roma inclusion adopted' (Press Release) [2013] IP/13/1226 <http://europa.eu/rapid/press-release_IP-13-1226_en.htm> accessed 6 June 2014.

Commission, 'Corporate Social Responsibility: A New Definition, a New Agenda for Action' MEMO 11/730 <http://europa.eu/rapid/press-release_MEMO-11-730_en.htm> accessed 10 May 2014.

Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

Commission, 'Report on the implementation of the EU Framework for National Roma Integration Strategies' COM (2014) 209 final.

Commission, 'Proposal for a regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund' COM/2011/0751 final - 2011/0366 (COD).

European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, 'Human Rights and Democracy at the heart of EU external Action - Towards a more effective approach' (Joint communication to the European Parliament and the Council) COM (2011) 886 final.

José Manuel Durão Barroso President of the European Commission, 'Statement at the General Assembly High Level Meeting on the Rule of Law on "The European Union and the rule of law"' [2012].

Commission, 'The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016' (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions) COM (2012) 286 final.

Commission, 'European strategy for a better internet for children' COM (2012) 196 final.

Commission, 'Trade, growth and development. Tailoring trade and investment policy for those countries most in need' (Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee) COM (2012) 22 final SEC(2012) 87 final.

Commission, 'Single Market Act II: Together for new growth' (Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee) COM(2012) 573 final.

Commission, 'Declaration on the Launch of the Global Alliance against child sexual abuse online' (2012) MEMO/12/944.

Commission, 'European strategy for a better internet for children' (Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee) COM (2012) 196 final.

Commission, 'Annual Action Programme 2013 for the European Instrument for the promotion of Democracy and Human Rights (EIDHR) to be financed under budget line 19 04 01 of the general budget of the European Union' (Summary), available at <http://www.eidhr.eu/files/dmfile/AAP2013.pdf>.

European Union, 'EU-Colombia Human Rights Dialogue 8th session, Brussels, 17 June 2013' (Joint Statement) A 328/13.

Commission, 'Trade and Worst Forms of Child Labour' SWD (2013) 173 final.

Commission, 'Joint Statement on the occasion of the World Day Against Child Labour' MEMO/13/543 <http://europa.eu/rapid/press-release_MEMO-13-543_en.htm> accessed 6 June 2014.

Commission, 'European Neighbourhood Policy: Working towards a Stronger Partnership' (Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) JOIN (2013)4.

Commission, Directorate for Trade, 'Announcement: EU calls for input on "conflict minerals"' [2013].

DG Enlargement, 'Guidelines for EU support to civil society in enlargement countries 2014-2020' <http://eeas.europa.eu/delegations/kosovo/documents/press_corner/elarg_guidelines_cs_support_after_online_consultation_03072013.pdf> accessed 23 July 2014.

DEVCO, D3 Social and Human Development & Migration, 'Guidance Note for EU Staff Disability Inclusive Development Cooperation' (2012) <http://ec.europa.eu/europeaid/what/social-protection/documents/disability_guidance_note_en.pdf> accessed 6 June 2014.

Commission, 'Enlargement Strategy and Main Challenges 2013-2014' (Communication from the Commission to the European Parliament and the Council) COM (2013) 700 final.

Commission, 'The Multiannual Financial Framework: The External Action Financing Instruments' MEMO/13/1134.

Commission, 'New disclosure requirements for the extractive industry and loggers of primary forests in the Accounting (and Transparency) Directives (Country by Country Reporting)' MEMO/13/541 <http://europa.eu/rapid/press-release_MEMO-13-541_en.htm> accessed 12 May 2014.

Commission, 'Responsible sourcing of minerals originating in conflict-affected and high-risk areas. Towards an integrated EU approach' (Joint Communication to the European Parliament and the Council) JOIN (2014) 8 final.

Commission, 'A new EU Framework to strengthen the Rule of Law' (Communication from the Commission to the European Parliament and the Council) COM (2014) 158 final.

DG Enlargement, 'Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014-2020' <http://ec.europa.eu/enlargement/pdf/press_corner/elarg-guidelines-for-media-freedom-and-integrity_210214.pdf> accessed 23 July 2014.

Commission, 'Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law' COM (2014) 27 final.

European Commission, 'The Future EU Justice and Home Affairs Agendas: Questions and Answers' MEMO/14/174.

Commission, 'Proposal for a Regulation of the European Parliament and the Council setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high risks areas' COM(2014) 111 final 2014/0059 COD <http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152227.pdf.> accessed 14 July 2014.

e) European Parliament

European Parliament, 'Resolution on Disability and Development' [2006] <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0033+0+DOC+XML+V0//EN> accessed 7 June 2014.

European Parliament, 'Resolution of 15 June 2010 on progress towards the achievement of the Millenium Development Goals: mid-term review in preparation of the UN high-level meeting in September 2010' (2010/2037(INI), P7_TA(2010)0210.

European Parliament Working Group on Freedom of Religion or Belief, '2013 Annual Report. Conclusions and Recommendations regarding the situation of Freedom of Religion or Belief in the World'.

European Parliament Resolution on enhanced intra-EU solidarity in the field of asylum 2012/2032(INI).

f) EU High Representative for Foreign Affairs and Security Policy

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Speech to the European Parliament on human rights' SPEECH/10/317.

Council of the EU, 'Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on Tibetan self-immolations' 17831/1/12 REV 1, PRESSE 535.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Remarks by High Representative Catherine Ashton at the Organization of Islamic Cooperation ministerial', A 519/12.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the 150th anniversary of the International Committee of the Red Cross (ICRC)', 6542/13.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the occasion of the United Nations International Day in Support of Victims of Torture' A 353/13.

European Union, 'OSCE Supplementary Human Dimension Meeting on Prevention of Torture, Vienna, 10-11 April 2014' (EU Statement – Closing session) PC.SHDM.DEL/3/14.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by the EU High Representative Catherine Ashton regarding the death of Chinese Human Rights defender, Ms Cao Shunli' [2014] 140315/02.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Declaration by High Representative Catherine Ashton on behalf of the European Union regarding the treatment of human rights defenders and their relatives in China' 6025/1/14 REV 1 (OR. en) PRESSE 48.

Delegation of EU to China, 'Statement by EU Delegation on the sentence of Dr. Xu Zhiyong' <http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2014/20140126_en.htm> [2014] accessed 30 April 2014.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on recent events around the Parliament of Ukraine' [2014] 140328/04.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on South Sudan' [2014] 140102/01.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the adoption of the constitution and the appointment of the new government in Tunisia' [2014] 140127/02.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by the EU High Representative Catherine Ashton on the 3rd Anniversary of the Syrian uprising' [2014].

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Remarks by EU High Representative Catherine Ashton following the Foreign Affairs Council' [2014] 140414/02.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by the EU High Representative Catherine Ashton on the 3rd Anniversary of the Syrian uprising' [2014].

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by the EU High Representative Catherine Ashton following meeting with Ukrainian opposition' [2014].

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by the EU High Representative Catherine Ashton on the case of Dmytro Bulatov' [2014].

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on unrest in Venezuela' [2014] 140221/02.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the third anniversary of the Revolution in Libya' [2014] 140218/01.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on violence and reported deaths of protesters in Kyiv' [2014] 140122/01.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the situation in Egypt ahead of the constitutional referendum' [2014] 140111/01.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of World Press Freedom Day, 3 May 2014' 9484/1/14 REV1 (OR. en) PRESSE 259.

Catherine Ashton - EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, 'Statement by EU High Representative Catherine Ashton on the extremely grave situation in the Central African Republic' [2014] 140327/02.

g) European External Action Service

European External Action Service, 'EU supports Women's Participation in Peacebuilding and Post-Conflict Planning' (Press Release) [2012] <http://eeas.europa.eu/ifs/docs/20120201_pressrelease_eu-undp_en.pdf> accessed 6 June 2014.

EEAS, 'EU and Vietnam hold Human Rights Dialogue' (Press Release) 130912/01 [2013].

EEAS, 'EU-Uzbekistan Human Rights Dialogue' (Press Release) 131108/01 [2013].

EEAS, 'European Union-Kyrgyz Republic Human Rights Dialogue' (Press Release) 140408/04 [2014].

h) Treaties, agreements, dialogues

Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005, revised in Ouagadougou on 22 June 2010, OJ L317, OJ L297, OJ L209, OJ L287, OJ L247, OJ L287.

Decision of the ACP-EC Council of Ministers specifying the multiannual financial framework for the period 2008 to 2013 and modifying the revised ACP-EC Partnership Agreement [2006] 1/2006 (2006/608/EC).

Agreement between the International Criminal Court and the European Union on cooperation and assistance, ICC-PRES/01-01-06, [2006].

The European Union – Russian Federation human rights consultations, A 566/12 [2012].

AU-EU human rights dialogue, Joint Statement: '10th AU-EU Human Rights Dialogue - 20 November 2013, Brussels' (Joint Communication).

Memorandum of understanding between the Council of Europe and the European Union [2007] CM (2007)74.

Consolidated version of the Treaty of European Union [2012] OJ C 326/13.

Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C 326/49.

AU-EU human rights dialogue, Joint Statement: '10th AU-EU Human Rights Dialogue - 20 November 2013, Brussels' (Joint Communication).

i) Special representative for human rights

Special Representative for Human Rights, 'Intervention by the EU Special Representative for Human Rights and EU Delegation to the United Nations Human Rights Council Second Forum on Business and Human Rights' [2013].

2. United Nations

United Nations Convention relating to the Status of Refugees United Nations General Assembly Resolution 429 (V) of 14 December 1950.

Protocol to the United Nations Convention relating to the Status of Refugees United Nations General Assembly Resolution 2198 (XXI) of 16 December 1967.

UNHRC, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 'Protect, Respect and Remedy: a Framework for Business and Human Rights' UN Doc A/HRC/8/5 [2008].

UNHCR, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' UN Doc A/HRC/17/31 [2011].

European Group of Nation Human Rights Institutions (NHRI), 'Implementing the UN Guiding Principles on Business and Human Rights: Discussion paper on national implementation plans for EU Member States'<http://www.ohchr.org/Documents/Issues/Business/NationalPlans/ClaireMethvenOBrien_EuropeanGroupofNHRIs.pdf> accessed 16 May 2014.

General Assembly, 'Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels' [2012] A/RES/67/1.

EU-UNICEF, 'Child Rights Toolkit: Integrating child rights in development cooperation' [2014] <http://www.unicef.org/eu/crtoolkit/downloads/Child-Rights-Toolkit-Web-Links.pdf> accessed 23 July 2014.

3. OECD

OECD, '2012 Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas' <http://europa.eu/rapid/press-release_MEMO-14-157_en.htm> accessed 16 May 2014.

B. Literature

1. Books

Ahmed T, *The Impact of EU Law on Minority Rights* (Oxford and Portland Hart 2011).

Barranco M.C and Churruca C (ed), *Vulnerabilidad y Protección de los Derechos Humanos* (Tirant lo Blanch 2013).

Bigo D, Carrera S and Guild E, *Foreigners, Refugees or Minorities?: Rethinking People in the Context of Border Controls and Visas* (Ashgate 2013).

Burgorgue Larsen L (ed), *La Vulnérabilité Saisie par les Juges en Europe* (Editions Pedone 2014).

Cameron I (ed), *EU Sanctions: Law and Policy Issues concerning Restrictive Measures* (Intersentia 2013).

Candela Soriano M, *Los Derechos Humanos, la Democracia y el Estado de Derecho en la Acción Exterior de la Unión Europea. Evolución, Actores, Instrumentos y Ejecución* (Dykinson 2006).

Carrillo Salcedo J.A, *El Convenio Europeo de Derechos Humanos* (Tecnos 2003).

Davis L, *The European Union and Transitional Justice* (Initiative for Peacebuilding 2010).

Fineman MA and Grear A (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013).

Keukeleire S and Delreux T, *The Foreign Policy of the European Union* (2nd edn, Palgrave Macmillan 2014).

Kolb M, *The European Union and the Council of Europe* (Palgrave Macmillan 2013).

Schiek D and Lawson A (eds), *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination* (Ashgate 2011).

Sigona N and Trehan N (eds), *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke Palgrave MacMillan 2009).

Stalford H, *Children and the European Union: Rights, Welfare and Accountability* (Oxford and Portland Hart 2012).

Thürer D, *International Humanitarian Law: Theory, Practice, Context* (Brill Nijhoff 2011).

Turner B.S, *Vulnerability and Human Rights* (Pennsylvania State UP 2006).

Versluis E, Van Keulen M and Stephenson P, *Analyzing the European Union Policy Process* (Palgrave MacMillan 2011).

Waddington L, *From Rome to Nice in a Wheelchair: the Development of a European Disability Policy* (Europa Law Publishing 2006).

2. Book chapters

Bekou O and Chadwick M, 'The EU Commitment to International Criminal Justice. Achievements and Possibilities' in Wetzel JE (ed), *The EU as a 'Global Player' in Human Rights?* (Routledge 2011).

Costas Trascasas M, 'Los Derechos Humanos y las Políticas de Democratización de la Unión Europea: Una Visión Crítica' in Pérez Bernárdez C (ed), *La proyección exterior de la Unión Europea: Desafíos y Realidad* (Tirant lo Blanch 2007).

Cristina J. Gortázar Rotaeche, 'La Protección Subsidiaria como concepto diferente a la Protección Temporal' in, Pablo Antonio Fernández Sánchez (ed) *La revitalización de la protección de los refugiados* (Universidad de Huelva 2002) 234.

Ferreira N, 'Child Labour and EU Law and Policy: A Regional Solution for a Global Issue' in Stalford H and Iusmen I (eds), *The EU and the Global Protection of Children's Rights: Norms, Laws and Policy Dimensions* (forthcoming, Leverkusen Budrich Academic 2014) <http://www.uaces.org/documents/papers/1301/ferreira.pdf>.

Guy W, 'EU Initiatives on Roma: Limitations and Ways Forward' in Sigona N and Trehan N (eds), *Romani Politics in Contemporary Europe Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke Palgrave MacMillan 2009).

Löper F, 'The Dublin Convention on Asylum: Interpretation and Application Problems' in Clotilde Marihno (ed) *The Dublin Convention on Asylum: Its essence, Implementation and Prospect* (European Institute of Public Administration 2000).

Sánchez Barrueco ML, 'Human Rights during Security and Defence Policy Operations' in Wetzel JE, *The EU as a 'Global Player' in Human Rigths?* (Routledge 2011).

Simhandl K, 'Beyond Boundaries? Comparing the Construction of the Political Categories 'Gypsies' and 'Roma' Before and After EU Enlargement' in Sigona N and Trehan N (eds), *Romani Politics in Contemporary Europe Poverty, Ethnic Mobilization, and the Neo-liberal Order* (Basingstoke Palgrave MacMillan 2009).

Mazey S, 'Policy Entrepeneurship, Group Mobilisation and the Creation of a New Policy Domain: Women's Rights and the European Union' in Richardson J (ed), Constructing a Policy-Making State? Policy Dynamics in the EU (Oxford University Press 2012), <http://www.bsec.canterbury.ac.nz/documents/Constructing_a_Policy-making_State_Policy_Dynamics_in_the_European_Union_Chapter_7_Mazey.pdf >.

Oliveira Pais S, 'Raising Some Doubts about the Effectiveness of the European Commission Practical Guide for Employement and Recruitment Agencies' in Márquez Carrasco C (ed), *España y la implementación de los Principios Rectores de las Naciones Unidas sobre empresas y derechos humanos: oportunidades y desafíos/Spain and the Implementation of the United Nations Guiding Principles on Business and Human Rights: Challenges and Opportunities* (Huygens Barcelona 2014).

3. Journal articles

Bicchi F, 'Democracy Assistance in the Mediterranean: An Overview' (2009) 14 Mediterranean Politics 61.

Cardwell PJ, 'Mapping Out Democracy Promotion in the EU's External Relations' (2011) 16 European Foreign Affairs Review 21.

Dawson M and Muir E, 'Individual, Institutional And Collective Vigilance In Protecting Fundamental Rights In The EU: Lessons From The Roma' (2011) 48 CML Rev 751.

De Burca G, 'The EU in the negotiation of the UN Disability Convention' (2010) 35 ELR 2

Debusscher P, 'Mainstreaming gender in European Commission Development Policy: Conservative Europeanness?' (2011) 34 Women Stud Int Forum 39.

Fineman M A, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 Yale J of L and Feminism 1.

Grear A, 'Challenging Corporate "Humanity": Legal Disembodiment, Embodiment and Human Rights' [2007] 7 Human R L Rev 511.

Grugel J and Iusmen I, 'The European Commission as Guardian Angel: the Challenges of Agenda-Setting for Children's Rights', 20 Journal of European Public Policy (2013) 77.

Guglielmo R and Waters TW, 'Migrating Towards Minority Status: Shifting European Policy Towards Roma' (2005) 43 JCMS 763.

Hurwitz A, 'The 1990 Dublin Convention: A Comprehensive Assessment', (1999) 11 International Journal of Refugee Law 646.

Iusmen I, 'When Good Intentions Go Astray: Policy Framing Processes and the Europeanization of Children's Rights', (2013) British Journal of Politics and International Relations.

Kälin W, 'Temporary Protection in the EC: Refugee Law, Human Rights and the Temptations of Pragmatism' (2012) German Yearbook of International Law, 26.

Kárníková A, 'Do They Actually Matter? The Impact of NGOs on the European Instrument for Democracy and Human Rights (EIDHR)' (2012) 20 Perspectives 83.

Kotzian P, Knodt M and Urdze S, 'Instruments of the EU's External Democracy Promotion' (2011) 49 JCMS 995.

Martinuzzi A, Krumay B and Pissano U, 'The New communication of the EU Commission on CSR and National CSR Strategies and Action Plans' (2011) 23 ESDN Quaterly Report 3.

Mc Garry A, 'The dilemma of the European Union's Roma policy' (2012) 32 Critical Social Policy.

Peroni L and Timmer A, 'Vulnerable Groups: the Promise of an Emerging Concept in European Human Rights Convention Law' (2013) 11 I*CON 1056.

Richter S and Leininger J, 'Flexible and Unbureaucratic Democracy Promotion by the EU? The European Endowment for Democracy between Wishful Thinking and Reality' (2012) 26 SWP Comments 1.

Simmons P, 'The State of the Art in the EU Democracy Promotion Literature' (2011) 7 Journal of Contemporary European Research 129.

Stalford H and Schuurman M, 'Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda' (2011) 19 International Journal of Children's Rights 381.

Wouters J and Chanet L, 'Corporate Human Rights Responsibility: A European Perspective' (2008) 6 Nothwestern Journal of International Human Rights.

Wrange P, 'The EU Guidelines on Promoting Compliance with International Humanitarian Law' (2010) 78 Nordic Journal of International Law 545.

Wouters J and Biljmajers S, 'Towards a legalization of CSR policy in the European Union? Critical Reflections on the European Commission's 2011 Strategy on Corporate Social Responsibility' (2012) <https://lirias.kuleuven.be/handle/123456789/373090>.

Zwagemakers F, 'The EU's Conditionality Policy: A new Strategy to Achieve Compliance' (2012) 12(3) IAI Working Papers.

4. Policy and other reports

Academic Network of European Disability Experts (ANED), 'Annotated review of European Union law and policy with reference to disability' (2012) <http://www.disability-europe.net/theme/eu-law-and-policy>.

British Institute of International and Comparative Law, 'Implementation of International Humanitarian Law & International Human Rights Law in the European Union' (2009).

Bulzomi A, 'The EU Draft Law on Conflict Minerals Due Diligence: A Critical Assessment from a Business and Human Rights' (IPIS Insight 2014) <http://ipisresearch.be/download.php?id=443>.

Council of the European Union, General Secretariat of the Council 'The European Union and the International Criminal Court' (2010) 27.

Council of the European Union, 'Mainstreaming human rights and gender into European Security and Defence Policy. Compilation of relevant documents' (European Communities, 2008).

European Coalition for Corporate Justice, 'ECCCJ's recommendations on EU's priorities for the implementation of the United Nations Guiding Principles on Business and Human Rights. May 2012'

<http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/46_eccjrecommen_/46_eccjrecommen_en.pdf> accessed 16 May 2014.

European Commission – DG DEVCO, 'Delivering on Human Rights Defenders. Highlights of the Semester January-June 2012' (European Commission 2012).

European Commission, 'Freedom of expression, media and digital communications. Key issues' (European Commission 2012).

European Commission, *Handbook for EU Election Observation* (2nd ed, European Commission 2008).

European Commission, 'Gender quality in the European Union' (Brochure) (2011) <http://ec.europa.eu/justice/gender-equality/files/brochure_equality_en.pdf> accessed 6 June 2014, 7.

European Commission, 'EC Methodological Guide on Electoral Assistance' (European Communities, 2006) <http://eeas.europa.eu/eueom/key_publications_en.htm> accessed 23 July 2014.

European Parliament, Directorate General for External Policies of the Union, Directorate B, Policy Department, 'Assessing the implementation of the European Union Guidelines on human rights defenders. The cases of Kyrgyzstan, Thailand and Tunisia' EXPO/B/DROI/2012/11 PE 410.221 (2013).

European Commission, 'Delivering on Death Penalty' (European Commission 2012), <www.eidhr.eu/library> accessed 19 May 2014.

European Group of National Human Rights Institutions Implementing the UN Guiding Principles on Business and Human Rights: Discussion paper on national implementation plans for EU Member States <http://nhri.ohchr.org/EN/Themes/BusinessHR/Documents/EU%20NHRIs%20Paper%20on%20National%20Implementation%20Plans%20for%20UNGPs%20210612%20SHORT.docx.> accessed 14 July 2014.

European Union, External Action, 'Human Rights and Democracy in the world. Report on EU action. July 2008 to December 2009' (European Union 2010].

Ford M, 'Can Europe End the Death Penalty in America?' (The Atlantic 2014) <http://www.theatlantic.com/international/archive/2014/02/can-europe-end-the-death-penalty-in-america/283790>.

Harris M, 'Time to step up: the EU and freedom of expression' (Index on Censorship 2013) <http://www.indexoncensorship.org/wp-content/uploads/2013/12/Time-to-Step-Up-The-EU-and-freedom-of-expression.pdf>.

Lowe H, 'PRI welcomes the revised EU Guidelines on the Death Penalty' (Penal Reform International 2013) <http://wwwpenalreform.org/blog/pri-welcomes-revised-eu-guidelines-death-penalty/> .

Pech L, 'Rule of Law as Guiding Principle of the European Union's External Action', (Cleer Working Papers 2012) 3.

The Foundations of the Italian National Action Plan on Business and Human Rights, available at <http://business-humanrights.org/media/documents/foundations-ungps-nap-italy.pdf> accessed on 16 May 2014.

Van Reisen M and Hrabovszki G, 'The Implementation of The EU Guidelines on Children in Armed Conflict: Assessment of the Policy Framework and its Implementation' (Europe External Policy Advisors 2012) <http://www.eepa.be/wcm/dmdocuments/publications/The_Implementation_of_the_EU_Guidelines_on_Children_in_Armed_Conflict.pdf>.

UK Secretary of State for Foreign and Commonwealth Affairs, 'Good Business. Implementing the United Nations Guiding Principles on Business and Human Rights' Cm 8695 [2013] <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf> accessed 16 May 2014.

Wouters J and Hachez N, 'Business and Human Rights in EU External Relations-Making the EU a Leader at Home and Internationally' (EXPO/B/DROI/2009) <http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>.