Frame

Improving EU Engagement with Non-State Actors

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Executive Summary

This report, FRAME 7.2, provides analysis of the EU's engagement with non-state actors. In the context of FRAME, non-state actors (NSAs) are understood to encompass businesses, international financial institutions (IFIs), civil society organisations (CSOs) and human rights defenders (HRDs), and the report is divided along these lines of analysis.

The report relies on both desk research and qualitative, interview-based research to identify and evaluate the means through which the EU and the different types of NSAs engage with each other on human rights. The report begins with contextualising introductions to each of the areas of engagement with NSAs before analysing engagement with each group individually in the subsequent chapters. The report concludes by identifying some cross-cutting issues.

The report establishes that engagement with NSAs has the potential to add a great deal of value to the EU's human rights policies and activities both internally and externally. The EU can draw on the expertise and experience of NSAs when forming policies, utilise NSA infrastructures in third states to gather information or implement policy and, through working with NSAs, generate greater political and financial leverage than the EU would be able to generate on its own. The report identifies a number of cross-cutting issues that need to be addressed in order to strengthen engagement with NSAs, such as improving the quality and consistency of public consultations, which serve as a key point of engagement across the EU, and improving the transparency of the process of EU engagement with various NSAs.

The EU's Corporate Social Responsibility (CSR) agenda has evolved as the key source of engagement on human rights issues with businesses. Interviews have provided a rich source of practical experiences of CSR from both the EU institutional and business perspectives. Also, one of the researchers participated in the recent Multistakeholder Forum on CSR where debate took place on further refinements of the balance between voluntary and mandatory measures in a 'smart mix' of CSR initiatives. However, as this is a broad policy area, which engages multiple DGs of the Commission and other institutions and bodies within the EU's infrastructure, there is a risk that the EU's overall CSR policy will lack coherence and focused direction. This risk is, if anything, amplified by recent changes in configurations of DGs within the EU. We also foresee the need for better engagement with businesses to successfully operationalise the non-financial reporting directive and to improve the remedial structures for human rights violations perpetrated by, or arising in the supply chains of, businesses.

Our research shows that the EU's engagement with IFIs on the subject of human rights both at project and policy level is limited. While the EIB has made some laudable steps to incorporate human rights standards in its work practice, as part of its obligations as an internalised 'EU Bank', the other IFIs demonstrated a more limited appreciation for the human rights impacts of their activities. The report considers that the EIB's experience of incorporating human rights norms into its project activities could serve as a useful template for other IFIs and that the EU should actively facilitate this exchange and commence a more regular dialogue with the other IFIs on the subject of human rights.

The report also identifies some issues surrounding the EU's engagement with CSOs on human rights both within the Union and as part of its external action, for example as part of development co-operation and the European Neighbourhood Policy. While we identified a number of useful fora in which the EU engaged with CSOs, including the European Instrument for Democracy and Human Rights (EIDHR) Forum and EU-NGO Forum, our research showed that the EU engaged with a relatively narrow spectrum of CSOs, favouring large, professional, Brussels-based CSOs and CSO platforms. There is a need for the EU to broaden and diversify the range of CSOs it engages with. Our research also highlighted the need to improve communication channels between the EU and CSOs. On one side, the EU needs to improve its communication with CSOs on policy changes and public consultations. On the other side, the EU needs to improve its communication channels between it and CSOs on the ground in order to receive accurate and up-to-date information on the human rights situations in third countries.

Finally, while EU engagement with HRDs on human rights was broadly positive and beneficial for both parties, especially with regard to their receipt of funding under instruments such as the European Instrument for Democracy and Human Rights, our research revealed some problematic issues that need to be addressed if the EU wishes to strengthen engagement. Engagement between EU delegations and HRDs in third countries is worryingly inconsistent. Equally, while there have been significant improvements in the delivery of funding to HRDs in third countries, accessing EU funding remains difficult for them and needs to be made more flexible and less administratively onerous across the board.

Table of Contents

List of Abbreviations

ACP	African, Caribbean and Pacific Group of States
CEPS	Centre for European Policy Studies
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CoE	Council of Europe
COHOM	European Council's Working Group on Human Rights
CSDP	Common Security and Defence Policy
CSF	Civil Society Facility
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DEVCO	Directorate General of Development Cooperation
DG	Directorate General
DROI	European Parliament Sub-Committee on Human Rights
EBRD	European Bank for Reconstruction and Development
ECA	Europe and Central Asia (World Bank)
ECB	European Central Bank
ECOFIN	Economic and Financial Affairs Council
ECR	External and Corporate Relations (World Bank)
EDF	European Development Fund
EEAS	European External Action Service
EED	European Endowment for Democracy
EESC	European Economic and Social Committee
EIB	European Investment Bank
EIDHR	European Instrument for Democracy and Human Rights

ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
EP	European Parliament
ESF	European Social Fund
ETUC	European Trade Union Confederation
EU	European Union
EUSR	European Union Special Representative for Human Rights
FRAME	Fostering Human Rights among European Policies
GFDRR	Global Facility for Disaster Reduction and Recovery
HRBA	Human Rights Based Approach
HRCS	Human Rights Country Strategies
HRD	Human Rights Defender
HRFASP	High Representative of the Union for Foreign Affairs and Security Policy
IcSP	Instrument contributing to Stability and Peace
IFC	International Finance Corporation
IFI	International Financial Institution
IfS	Instrument for Stability
IHL	International Humanitarian Law
IMF	International Monetary Fund
IO	International Organisation
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MENA	Middle East and North Africa region
MEP	Member of the European Parliament
MS	Member State
NGO	Non-Governmental Organisation

NSA	Non-State Actor
OCT	Overseas Countries and Territories
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal
PMSC	Private Military and Security Company
SBI	Social Business Initiative
SME	Small and Medium-sized Enterprises
TCA	Transnational Company Agreements
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNGA	United Nations General Assembly
UNHRC/HRC	United Nations Human Rights Council
US	United States
WB	World Bank

I. Introduction

A. Research Context

The EU's engagement with non-state actors (NSAs), including international financial institutions (IFIs), civil society organisations (CSOs), businesses and human rights defenders (HRDs) is central to the development of a cohesive human rights policy and the realisation of the EU's international objectives.[1] This report is part of an international, multidisciplinary research project examining the EU's human rights policy and practice entitled 'Fostering Human Rights Among European (External and Internal) Policies' (FRAME).[2] It is the second report in work package seven (WP7), which looks specifically at the EU's engagement with Private Actors, TNCs and Civil Society. The previous report in this work package (D7.1) evaluated the positive and negative human rights impacts of NSAs.[3] Understanding both the positive and negative human rights impacts of these different NSAs is central to strengthening the EU's engagement with them and delivering a coherent and effective human rights policy.[4] This research report builds on the findings of the previous report by scrutinising how the EU engages with NSAs with a view to determining how to minimise the negative human rights impacts of NSAs and accentuate the positive impacts.

Examining the EU's engagement with NSAs is no easy task. The diversity of NSAs engaging with the EU in different ways is difficult to fathom. The need to consult with NSAs and pursue common interests and partnerships has fuelled the development of a diverse range of fora aimed at engaging with NSAs both within and outside the EU. Generally these fora have centred on groups,[5] funding instruments,[6] and thematic issues.[7] These mechanisms have developed on a largely *ad hoc* basis following specific initiatives, which prompts questions over whether there is unnecessary duplication in their mandates, whether the plethora of forums is detrimental to co-ordination and whether more streamlined and embedded mechanisms would better serve the EU's needs.

[1] See, the general provisions on the Union's external action set out in Consolidated Version of the Treaty on European Union [2012] OJ C 326/01 (TEU), art 21.
[2] See FRAME, 'Fostering Human Rights Among European Policies' <www.fp7-frame.eu> accessed 7 October 2014.
[3] Nicolas David, Mary Dowell-Jones, Mary Footer, Jeffrey Kenner, Maija Mustaniemi-Laakso, Aoife Nolan, Petr Pribyla 'Report on the positive and negative human rights impacts of non-state actors' (FRAME D7.1 2014). (hereinafter FRAME D7.1)
[4] FRAME D7.1, 114.
[5] See, for example, the annual EU-NGO Forum on Human Rights – European External Action Service, '16th EU – NGO Forum on Human Rights' <http://www.16th-ngo-forum-human-rights.eu/> accessed 30 January 2015.
[6] See, for example, the European Instrument for Democracy and Human Rights Forum – European Commission, 'EIDHR Forum 2014' <http://www.eidhr.eu/events/eidhr-forum-2014> accessed 30 January 2015.
[7] See, for example, the Multistakeholder Forum on Corporate Social Responsibility – Commission, 'Multistakeholder Forum on Corporate Social Responsibility' <http://www.csrmsf.eu/index.html> accessed 30 January 2015.

The roles assumed by NSAs also vary widely depending on the context and three central roles are identifiable. Firstly, the NSAs often operate as policy advisers to the EU, for example, by participating in public consultations on specific legislation or initiatives.[8] Secondly, the NSAs have an important fulfilment role, offering technical expertise and managing projects on behalf of the EU or sponsored by the EU.[9] Thirdly, the NSAs operate as monitors for the EU, offering feedback to the EU on the results of their actions on the ground.[10] This research explores how the EU utilises NSAs in these roles and the overall efficacy of the process of engagement.

B. Research Objectives and Methodology

The objective of the research project was to critically examine the EU's engagement with NSAs. The project employed both doctrinal research methods and qualitative research methods to achieve this aim. Doctrinal research was used to identify both the direct and indirect mechanisms for engagement with NSAs utilised by the EU and to contextualise the project as a whole. The qualitative research aspect of this project involved carrying out semi-structured interviews with a range of different actors both within the EU's institutions and representatives of NSAs. The majority of the interviews were carried out in person with the interviewees, but where this was not possible interviews were carried out over the phone or via video conferencing. Each participant received a document in advance of the interview informing them of the project's research objectives, the nature of their participation in the project and offering information on how the interview data would be used and stored. They were each asked to consent to the collection and use of interview data. The content of each interview has been transcribed and transcripts of each interview are held on record at the respective universities carrying out the study. Documents verifying the consent of each interviewee are also held on file at each university. The purpose of these interviews was to evaluate how the mechanisms utilised by the EU to engage with NSAs work in practice and to gather impressions on the overall efficacy of the engagement. One of our researchers also attended the European Multistakeholder Forum on CSR held on 3-4 February 2015 and some quotes from the attendees of the conference have also been included in the report.

[8] See, for example, the expert group on disclosure of non-financial information by EU companies, which involved an array of social partners, CSOs and EU representatives in the drafting of legislation on non-financial reporting – Commission, 'Expert group on disclosure of non-financial information by EU companies' <http://ec.europa.eu/finance/accounting/governance/committees/disclosure/index_en.htm> accessed 30 January 2015. The work of this expert group resulted in European Parliament and Council Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L 330/1.

[9] See, for example, the technical assistance offered by the World Bank and IMF to the EU for its work in different countries and the projects undertaken by CSOs under the aegis of the EIDHR.

[10] See for example, the creation of domestic advisory groups comprised of CSOs to monitor the implementation of the sustainability chapters of free trade agreements since the first such agreement with Korea in 2011 - Council Decision 2011/265/EU of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2011] OJ L 127/1, chapter 13.

The semi-structured interview approach involves asking several key questions to help define the areas to be explored while allowing the interviewer or interviewee to diverge in order to pursue individual ideas or responses in more detail. It was felt that this method of data collection was preferable as the viewpoints of interviewees are more likely to be expressed in an openly designed interview situation than in a standardised interview or questionnaire.[11] As the researchers working on this project are experts in this field and will have already carried out extensive desk research on the subject area, there is a risk that they have formed their own opinions about the EU's engagement with NSAs in certain areas and that this can introduce biases into their questions. The risk of bias can typically be counteracted through a greater standardisation of questions and the use of more structured interviews.[12] However, it was felt that the benefits of semi-structured interviews outweighed the risks and other methods were used to counteract the risk of bias. The interviewers consistently asked open-ended questions, which allowed the interviewees to freely express their views and mitigated the risk of bias. The contributions of the interviewees have been completely anonymised for the purposes of this research project. This facilitated open and frank discussions. The interviews were assigned a number in the order in which they were carried out and a prefix letter indicates the institution that carried out the interview, N denotes an interview undertaken by researchers at the University of Nottingham, G denotes an interview undertaken by researchers at the University of Graz and A denotes an interview undertaken by researchers at the Åbo Akademi University.

A second issue encountered with this research methodology is that the quality of the data derived from the interview depends largely upon the quality of the interaction between the interviewer and interviewee. The interview method is heavily dependent on people's capacities to verbalise, interact, conceptualise and remember.[13] As the interviews were carried out in English, some of the interviewees were not responding to the questions in their native language and this could have impacted upon the quality of the interaction between the parties. Equally, the semi-structured form of the interviews meant that the interviewees could also have been asked unexpected follow-up questions as the researcher probed certain areas. These potential problems were mitigated in a number of ways. Firstly, interviewees received an interview guide in advance of the interview, which allowed them to familiarise themselves with the subject matter in advance. Secondly, the questions were formulated in simple everyday English and technical terms and language were avoided wherever possible. Thirdly, the use of face-to-face interviews as a method also permitted the interviewer to explain any questions that the interviewee may not have fully understood.

Overall the responses to requests for interviews with EU officials and members of NSAs were positive. As part of the research carried out for the section on Business and TNCs, our research team interviewed a representative sample of civil society organisations dealing with corporate social responsibility, social partners and officials from EU institutions.[14] As part of the research carried out for the section on IFIs, our

[11] Uwe Flick, *An Introduction to Qualitative Research* (4th edn, Sage 2009) 150.
[12] Jennifer Mason, *Qualitative Researching* (2nd edn, Sage 2002) 65.
[13] *Ibid*. 64.
[14] The researchers tried to interview officials from DG Enterprise and Industry (now DG GROW) and the ETUC but they did not respond to our requests in time for publication.

research team interviewed officials from the World Bank, the International Monetary Fund, officials at DG DEVCO and the European Investment Bank.[15] As part of the research carried out for the section on CSOs, our research team interviewed officials from various DGs, the EEAS as well as trade union officials and members of other civil society groups.

Finally, as the majority of the chapters have been written collaboratively, and involve more than one FRAME partner, the authors of each part are not identified separately. The full listing of authors in alphabetical order is on the front sheet of the report.

[15] The researchers tried to interview officials from the EBRD but they did not respond to our requests in time for publication.

II. Contextualising EU Engagement with Non-State Actors

A. Business

In the area of business, the EU has struggled to negotiate a path between encouraging high standards of corporate social responsibility (CSR) within Europe, while dealing with the impetus to reduce regulations imposed on businesses. At the recent European Multistakeholder Forum on CSR, 3-4 February 2015, EU officials were keen to stress that the European CSR agenda should continue to be business-led with the EU intervening only where it can add value. Officials were also keen to voice their support for continuing to create a 'smart mix' of voluntary and mandatory rules. Efforts to create a smart mix are evident in recent legislation and legislative proposals at EU level. For example, the Non-Financial Reporting Directive[16] contains mandatory provisions which compel certain companies, *inter alia*, to disclose information on environmental matters, human rights and diversity. While the directive was welcomed by many businesses at the European Multistakeholder Forum on CSR, especially those already reporting on such issues, concerns were voiced from many sides about how the directive would be implemented and whether it would be accompanied by sufficient capacity building amongst companies to undertake these new reporting obligations. By contrast, the EU's attempt to emulate the US Dodd-Frank Wall Street Reform and Consumer Protection Act with its own conflict minerals regulation has adopted a more voluntary approach with a self-certification plan for importers of tin, tantalum, tungsten and gold.[17] This approach has been criticised by NGOs and others.[18] While the EU has been pressing forward with this secondary legislation, it has also been undertaking a broader reflection on its role in the CSR sphere. As the Commission's 2011 strategy for CSR reaches the end of its term,[19] the Commission has begun to assess the results of this policy and contemplate its next steps in the field of CSR. The Commission undertook a public consultation on its work in the area of CSR and more specifically on its actions within the context

[16] European Parliament and Council Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L 330/1.

[17] Dodd–Frank Wall Street Reform and Consumer Protection Act (2010) 12 USC 5301 (US), s 1502; Commission Proposal for a Regulation of the European Parliament and of the Council (EU) of 5 March 2014 on 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-risk areas (Communication) COM (2014) 0111 final.

[18] See, for example, Business and Human Rights Resource Centre 'Proposed EU regulation on conflict minerals: commentaries & media coverage' <http://business-humanrights.org/en/conflict-peace/conflict-minerals/proposed-eu-regulation-on-conflict-minerals-commentaries-media-coverage> accessed 30 January 2015; Global Witness, 'Proposed EU law will not keep conflict resources out of Europe, campaigners warn' (London, 5 March 2014) <http://www.globalwitness.org/sites/default/files/library/Press%20release%20-%20Proposed%20EU%20law%20will%20not%20keep%20conflict%20resources%20out%20of%20Europe.pdf> accessed 5 March 2014; Mary Footer, 'Human Rights Due Diligence and the Responsible Supply of Minerals from Conflict-affected Areas: Towards a Normative Framework?' in Jernej Letnar Černič and Tara van Ho (eds), *Direct Human Rights Obligations of Corporations* (forthcoming Wolf Publishing 2015).

[19] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final.

of its CSR policy.[20] The outcome of this consultation was discussed at the European Multistakeholder Forum on CSR in February 2015. While the results of the consultation revealed respondents were broadly satisfied with the EU's involvement in this sphere, there were specific calls for action in a number of fields. Businesses were keen for the EU to get involved in recognising and rewarding positive CSR initiatives among companies and creating a level regulatory playing field across Europe, which actively encourages CSR. They also acknowledged the need for the EU to adapt its CSR policy to cater for SMEs and address the broader issues of implementing CSR during times of crisis. The NGOs and human rights organisations at the conference were keen for the EU to improve access to justice for victims of human rights abuses perpetrated by businesses, to encourage responsible investment and to build human rights and sustainability criteria into EU public procurement rules. However, it remains to be seen what longer term impacts this consultation and the recent institutional changes to the Commission's directorates will have on the broader policy area.

B. International Financial Institutions

The reverberations of the financial crisis of 2007-8 are also still being felt within Europe and beyond. The austerity measures implemented in response to the crisis have drawn a great deal of academic and civil society scrutiny toward the human rights implications of financing operations.[21] The changes in sovereign debt levels and difficulties in restructuring debts have had an enduring negative impact on human rights enjoyment throughout the world and have dominated the EU's interaction with IFIs.[22] The IFIs, broadly speaking, have demonstrated reluctance to incorporate human rights standards in their due diligence assessments. Yet, the recent past has also seen significant developments in the field of human rights and IFIs. The World Bank (WB) has undertaken to revise its safeguards policy, which is used to ensure that environmental, social and sustainability standards are used as a means of assessing projects. The safeguards have hitherto failed to incorporate human rights standards.[23] Indeed, ongoing recent efforts

[20] Commission, 'The Corporate Social Responsibility Strategy of the European Commission: Results of the Public Consultation Carried out between 30 April and 15 August 2014' (DG Enterprise and Industry, 21 November 2014) <http://www.csrmsf.eu/pdf/Report-public%20consultation%20CSR%20-FINAL-14-12-08%20.pdf> accessed 6 February 2015.

[21] The role financial markets play in human rights enjoyment and development was covered in great detail in the previous report. - FRAME D7.1, 59-75. For more on the human rights implications of financing operations in the context of the recent financial and economic crises, see Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (CUP 2015).

[22] Juan Letnar Cernic, 'Sovereign Financing and Corporate Responsibility for Economic and Social Rights' in Juan Pablo Bohoslavsky and Jernej Letnar Cernic (eds), *Making Sovereign Financing and Human Rights Work* (Hart 2014) 139-141; Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (CUP 2015); Eva Maria Lassen, Monika Mayrhofer, Peter Vedel Kessing, Hans-Otto Sano, Daniel García San José, Rikke Frank Jørgensen, 'Report on factors which enable or hinder the protection of human rights' (FRAME D2.1 2014) Chapter V.

[23] Jessica Evans, 'Abuse-Free Development: How the World Bank Should Safeguard against Human Rights Violations' (2013) 107 American Society of International Law Proceedings 298, 299.

to recalibrate those safeguards,[24] which have involved the EU as a consultee, have drawn significant criticism from human rights advocates.[25] At the same time, the EIB has been at the forefront of incorporating human rights standards into its work. In 2013, it updated its social and environmental handbook, which is used to assess all projects that the EIB sponsors, to include human rights standards.[26] It has also introduced a new three pillar assessment to ensure that the projects it takes forward align with the EU's broader policy objectives,[27] while the results measurement framework, adopted by the EIB in 2012, measures and reports on the impacts of EIB operations.[28] In theory, this move to align financing operations with policy objectives via the three pillar assessment should ensure that the EIB's activities are coherent with the EU's human rights policy.[29] At the same time, the results measurement framework can help us to see whether the principles incorporated in the environmental and social handbook are actually achieving tangible and beneficial outcomes in individual projects.

C. Civil Society Organisations

The EU has historically demonstrated a strong commitment to engagement with civil society organisations. This is perhaps most evident in the EU's binding commitment to dialogue with the social partners.[30] Yet over time the EU's relationships with civil society have expanded and evolved from limited early consultations, to partnerships and ultimately to the enhanced participation of CSOs in the European arena that we see today.[31] The relationship between the CSOs and the EU has become almost symbiotic. The EU provides support to CSOs in various ways, internally for example, through the European Social

[24] World Bank, 'Review and Update of the World Bank Safeguard Policies' (World Bank, 6 February 2015) <https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies> accessed 6 February 2015.

[25] United Nations Office of the High Commissioner for Human Rights, 'Letter to Jim Yong Kim' OL OTH 13/2014 (OHCHR, 12 December 2014) <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf> accessed 6 February 2015; Human Rights Watch, *Abuse-Free Development How the World Bank Should Safeguard Against Human Rights Violations* (Human Rights Watch 2013); Suzanne Zhou, 'Reassessing the Prospects of a Human Rights Safeguard Policy at the World Bank' (2012) 15(3) Journal of International Economic Law 823.

[26] European Investment Bank, 'Environmental and Social Handbook' (Projects Directorate, 2 December 2013) <http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf> accessed 6 February 2015.

[27] For an overview see European Investment Bank, 'The EIB's Three Pillars: Outcomes assessment framework of operations within the EU' (Projects Directorate, 7 November 2013) <http://www.eib.org/attachments/general/events/2013_11_07_roundtable_added_value_briefing_note_en.pdf> accessed 6 February 2015.

[28] European Investment Bank, 'The EIB Results Measurement (ReM) Framework' <http://www.eib.org/projects/cycle/monitoring/rem.htm> accessed 6 February 2015.

[29] Indeed the EIB has an obligation to perform its functions and carry on its activities in accordance with the provisions of the EU Treaties, see Treaty on the Functioning of the European Union Protocol (No. 5) on the Statute of the European Investment Bank [2012] OJ C 326/47, art 1.

[30] TFEU, arts 152 and 154.

[31] Christine Quittkat and Barbara Finke, 'The EU Commission Consultation Regime' in Beate Kohler-Koch, Dirk De Bièvre, William Maloney (eds), *Opening EU-Governance to Civil Society: Gains and Challenges*, CONNEX Report Series Vol. 5 (University of Mannheim 2008) 183, 187-188.

Fund and European Regional Development Fund,[32] and externally through mechanisms such as the European Instrument on Democracy and Human Rights (EIDHR).[33] The symbiosis arises because the EU considers that its engagement with CSOs lends democratic legitimacy to its activities as CSOs are seen as a link to citizens of the EU.[34]

The EU sees itself as conducting a 'structured dialogue' with CSOs, with ongoing engagement in various fields.[35] The EU has also, over time, placed greater faith in the abilities of CSOs to achieve EU foreign policy objectives. The EIDHR, for example, which follows what political scientists have described as a developmental approach toward fostering democracy, focuses on incremental and long term changes in the supported States, good governance, equality and justice.[36] Through this approach the EU has shown a willingness to bypass the political institutions of supported States and directly fund CSOs through the EIDHR. In a similar vein, the EU aims to tailor its approach to development to the specific circumstances of each supported State through human rights country strategies, which evaluate the specific situation of each State in order to identify capacity gaps and to attempt to remedy them.[37] The CSOs have direct input into these strategies.[38] Overall the EU sees CSOs as having a fundamental role in the realisation of their rights-based approach to development particularly in the areas of empowering rights-holders, raising awareness and fostering accountability and transparency within public authorities.[39]

[32] Council Regulation (EU) 1304/2013 of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 [2013] OJ L 347/470, art 6(3); Council Regulation (EU) 1301/2013 of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 [2013] OJ L 347/289, art 3(1)(f).

[33] Council Regulation (EC) 1889/2006 of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (EIDHR) [2006] OJ L 386/1, art 1 (2)(a).

[34] Commission, 'Towards a Reinforced Culture of Consultation and Dialogue-General Principles and Minimum Standards for Consultation of Interested Parties by the Commission' (Communication) COM (2002) 704 final; Commission, 'The Commission and Non-Governmental Organisations: Building a Stronger Partnership' (Discussion Paper) (Brussels 2000).

[35] The term structured dialogue is referred to in many commission communications see *Ibid*.; Commission, 'Increasing the Impact of EU Development Policy: an Agenda for Change' (Communication) COM (2011) 637; Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final.

[36] Thomas Carothers, 'Democracy Assistance: Political vs. Developmental?' (2009) 20(1) Journal of Democracy 5, 5-6.

[37] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (Luxembourg 2012) section 31; Laura Beke, David D'Hollander, Nicolas Hachez, Beatriz Pérez de las Heras 'Report on the integration of human rights in EU development and trade policies' (FRAME D9.1 2014) 121ff

[38] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 29.

[39] EU Council, 'Council conclusions on a rights-based approach to development cooperation, encompassing all human rights' (European Union 2014) para 7.

D. Human Rights Defenders

The EU's engagement with HRDs as a distinct group is perhaps the most recent development in its engagement with NSAs. There have been a number of significant developments in this field over recent years. The refinement of the EU guidelines on the HRDs in 2008 represented a significant development in the EU's HRD policy. This document sets out the EU's definition of HRDs, establishes ways and means of protecting and promoting HRDs in third countries and places the situation of HRDs firmly on the agenda of its political discussions with third countries.[40] Another significant recent development was the creation of a network of liaison officers for HRDs within the EU's delegations in countries abroad, which have served as a point of contact for HRDs to access the EU.[41] The EU is also in the process of implementing a series of measures to offer practical support to HRDs in the field. The EU Human Rights Defenders mechanism aims at providing longer-term assistance and access to shelter for HRDs, as well as a means of temporarily relocating HRDs deemed to be in danger.[42] This is a new and evolving field of engagement for the EU, which will likely see numerous developments in the near future.

E. Reform of EU Instruments for Engagement with NSAs

This overview of the research context would be incomplete without reference to the broader geo-political landscape and how this has impacted on the EU's activities in various fields. The political and legal backdrop against which this research is carried out is constantly shifting. As the EU's foreign policy fundamentally seeks to consolidate and support democracy in third countries, the Commission's specific policy on CSOs aims to create an environment in third countries in which basic human rights and civil liberties are guaranteed so that CSOs can thrive.[43] However the shifting political, economic and humanitarian landscape in the EU's partner countries has cast doubt on the EU's ability to secure its foreign policy objectives. The ongoing crises in Syria, Ukraine and the partial failure of the Arab Spring movement to bring about enduring democratic reforms have called into question the grand ambitions and efficacy of the EU's European Neighbourhood Policy (ENP). In spite of these difficulties, the EU is pressing on with reforms. It is in the process of reshaping its relationship with the African, Caribbean and Pacific (ACP) states for the next number of years as it revises the primary framework agreement between the two groups, the Cotonou agreement, this is expected to be completed by 2015. This revision will undoubtedly have knock on effects on the way the EU engages with many NSAs. There have also been significant changes in the administration of the EU's long-term and short-term financial tools, which

[40] EU Council, 'EU Guidelines on Human Rights Defenders' (General Affairs Council, 8 December 2008) <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.
[41] Commission, 'Focal Points' <http://www.eidhr.eu/focal-points> accessed 6 February 2015.
[42] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85, art 2.1 (b)(iii).
[43] Commission, 'The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations' (Communication) COM (2012) 492 final.

directly impact upon how some NSAs, particularly CSOs and HRDs are funded. The EU's main crisis response fund, the Instrument for Stability, has been overhauled and replaced by a new Instrument contributing to Stability and Peace.[44] The European Instrument for Democracy and Human Rights was renewed in 2014 and is expected to carry on distributing funding until 2020.[45] Similarly the European Development Fund was renewed for the 11th time and will now run from 2014-2020. The European Endowment for Democracy is beginning to distribute funds aimed at fostering sustainable democracy in third countries, especially among the EU's close neighbours. The European Neighbourhood and Partnership Instrument has been replaced by the new European Neighbourhood Instrument.[46] The new instrument promises to deliver funding more quickly than the previous instrument and offer financial incentives for the most ambitious reformers.[47] Each of these evolutions places a greater emphasis on speed and flexibility in the way funds are distributed to NSAs and others, allowing the EU to respond quickly to evolving situations on the ground. All of these changes will clearly have implications for the EU's engagement with NSAs in the future.

[44] Council Regulation (EU) 230/2014 of 11 March 2014 establishing an instrument contributing to stability and peace [2014] OJ L 77/1.

[45] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85.

[46] European Parliament and Council Regulation (EU) 232/2014 of 11 March 2014 establishing a European Neighbourhood Instrument [2014] OJ L 77/27.

[47] Commission, 'Proposal for a regulation of the European parliament and of the council establishing a European Neighbourhood Instrument' (Communication) COM (2011) 839 final, 2-3.

III. Business and TNCs

A. General context

As we noted in the last report on the positive and negative human rights impacts of non-state actors (NSAs), over the past 15 years various initiatives have been taken at the international level with respect to businesses, including transnational corporations (TNCs) in order to establish standards of corporate social responsibility (CSR), all of which have something to say about human rights.[48] These include, but are not limited to, the UN Global Compact,[49] the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,[50] the ISO 26000 Guidance Standard on Social Responsibility,[51] the revised OECD Guidelines for Multinational Enterprises[52] and the UN Guiding Principles.[53] Each of these sets out CSR standards or principles that seek to encourage businesses to respect human rights in their ordinary every-day activities.

While there is no single definition of CSR,[54] it is generally understood within the broader business community to refer to a company's commitment to respect ethical values and to manage the economic, social, environmental and, more recently the human rights, impacts of its business operations on society. Until the turn of the century, the EU's understanding of CSR emphasised the role of European companies in responding to a variety of environmental, social and governance (ESG) pressures. The EU's engagement with human rights in the business context has been seen through the lens of CSR.

Initially, the EU saw CSR as part of its aim to combat social exclusion and environmental degradation.[55] The EU recognises today that CSR for companies and other business entities goes beyond regulatory and conventional requirements, to cover voluntary commitments in social development, environmental

[48] FRAME D7.1, Chapter VI.

[49] The UN Global Compact was launched by former UN Secretary-General, Kofi Annan, at the World Economic Forum in Davos, Switzerland, on 31 January 1999 - United Nations, 'United Nations Global Compact' <http://www.unglobalcompact.org/> accessed 20 January 2015.

[50] ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (204th Conference Session Geneva November 1977) as amended at (279th Conference Session Geneva November 2000) and (295th Conference Session Geneva March 2006).

[51] ISO 26000 is an international 'guidance' standard on social responsibility (SR). International Standards Organisation, 'ISO 26000' (ISO, 1 November 2010) <http://www.iso.org/iso/socialresponsibility.pdf> accessed 20 January 2015.

[52] OECD Guidelines on Multinational Enterprises adopted in 1976, revised in 2000 and 2011. See OECD, 'OECD Guidelines on Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Environment' (OECD, 25 May 2011) <http://www.oecd.org/daf/inv/mne/48004323.pdf> accessed 20 January 2015.

[53] UNHRC, 'Report by Special Representative John Ruggie on Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (2011) UN Doc. A/HRC/17/31.

[54] Alexander Dahlsrud, 'How Corporate Social Responsibility is Defined: an Analysis of 37 Definitions' (2008) 15 Corporate Social Responsibility and Environmental Management 1.

[55] The EU's engagement with CSR stems from the time of Jacques Delors' Presidency of the European Commission (1985-1995).

protection, fundamental rights and governance.[56] At the same time, the range of stakeholders with which the EU engages through its CSR policy is not necessarily confined to TNCs, or similar large companies operating in the internal market. Instead, it may include any enterprises, whether public or private, social enterprises, as well as small and medium-sized enterprises (SMEs) and cooperatives, i.e. any business or commercial entity that engages in socially responsible practices.

It is only more recently, following a series of consultations and growing international concern about the impact of companies and other business entities on human rights, that the EU has integrated the human rights aspect of CSR into several of its policy instruments. These instruments include: the renewed EU Strategy for CSR;[57] the EU Strategic Framework and Action Plan on Human Rights and Democracy;[58] and the European Instrument for Democracy and Human Rights.[59] The EU and Member States have also focused on human rights in various forms of bilateral engagement, involving trade and cooperation, and through other mechanisms, such as human rights dialogue, with third countries and regions of the world. Similarly, the EU's engagement with business and human rights has remained a central topic for the EU in international fora.

This chapter analyses the EU's engagement with businesses on the subject of human rights. It opens with a discussion of early policy developments in the field of CSR and the engagement between the EU and businesses through the European Multistakeholder Forum on CSR. More recent policy developments and points of engagement, such as the public consultation on CSR in 2014 and the recent European Multistakeholder Forum on CSR are assessed. The chapter also discusses projects funded by the EU within the field of CSR, including academic projects and projects carried out by CSOs under the auspices of the EIDHR. The chapter concludes with an analysis of gaps in the EU's policy on CSR, looking at issues such as the regulation of Private Military and Security Companies and the incorporation of CSR in EU public procurement rules.

B. A renewed EU Strategy for Corporate Social Responsibility: modes of engagement

The EU's primary means of engagement with business and TNCs is through human rights aspects of CSR in a series of policy instruments, which have broadened in terms of their scope and coverage since 2001. Despite the initial focus on combatting social exclusion and environmental degradation mentioned above, the social segment of CSR has gradually evolved to incorporate human rights standards. Beginning with

[56] Radu Mares, 'Global Corporate Social Responsibility, Human Rights and Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy' (2010) 1 Transnational Legal Theory 221, 232-233.
[57] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681.
[58] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (Luxembourg 2012).
[59] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85.

core labour standards, the EU's CSR policy has since moved on to embrace fundamental human rights more generally.[60] The consultations and debate generated by this policy area have been used as a medium to deepen the EU's partnership with companies and other business enterprises in promoting CSR at the European and international levels.

1. Green Paper 'Promoting a European Framework for Corporate Social Responsibility'

The EU introduced CSR into its policy agenda in 2001, when the European Commission presented its Green Paper 'Promoting a European Framework for Corporate Social Responsibility'.[61] In adopting this document, the EU aimed to develop a European framework for the promotion of CSR,[62] thereby facilitating a debate about the notion of CSR among businesses within the EU.[63]

At the time, CSR was seen as making a positive contribution to the strategic Lisbon Summit goal of building a competitive, dynamic and cohesive knowledge-based economy in Europe.[64] The Commission's European Social Agenda would form the backdrop for those aspects of CSR that addressed the social consequences of market integration, employment, equal opportunities and social inclusion.[65] Also, the Commission's Communication on sustainable development would emphasise the integration of environmental and social considerations into business operations.[66]

CSR was defined in the Green Paper of 2001 'as a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis'.[67] The Commission did, however, recognise that CSR has 'a strong human rights dimension'. In particular, 'companies face challenging questions, including how to identify where their areas of responsibility lie as distinct from those of governments, how to monitor whether their business partners are complying with their core values, and how to approach and operate in countries where

[60] Radu Mares, 'Global Corporate Social Responsibility, Human Rights and Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy' (2010) 1 Transnational Legal Theory 221, 233.
[61] Commission, 'Promoting a European framework for Corporate Social Responsibility' (Communication) COM (2001) 366 final.
[62] *Ibid*, para. 19.
[63] Jean-Pascal Gond, Nahee Kang and Jeremy Moon, 'The government of self-regulation: on the comparative dynamics of corporate social responsibility' (2011) 40(4) Economy and Society 640, 656.
[64] European Parliament, 'Lisbon European Council 23 and 24 March 2000 - Presidency Conclusions' para. 39 <http://www.europarl.europa.eu/summits/lis1_en.htm> accessed 22 January 2015.
[65] *Ibid*, para. 34; see further Commission, 'Social Agenda' (Communication) COM (2005) 33 final (updated in 2008 and 2010).
[66] Commission, 'Corporate Social Responsibility: A business contribution to Sustainable Development' (Communication) COM (2002) 347 final; Marcel van Marrewijk, 'Concepts and Definitions of Corporate Social Responsibility and Corporate Sustainability: Between Agency and Commission' (2003) 44 Journal of Business Ethics 99, 101.
[67] Commission, 'Promoting a European framework for Corporate Social Responsibility' (Commission) COM (2001) 366 final, para. 20.

human rights violations are widespread'.[68] Two years previously, the European Parliament had already adopted a resolution calling for a binding code of conduct to govern EU companies' compliance with environmental and labour standards and human rights when operating in developing countries.[69]

2. European Multistakeholder Forum on CSR

The Commission sought to promote CSR in Europe and elsewhere by means of partnerships among all relevant stakeholders, but particularly among companies and other business enterprises. Thus, on 16 October 2002, the Commission established the European Multistakeholder Forum on CSR to provide a space for dialogue with relevant stakeholders i.e. European representatives of business networks, employer organisations, trade unions and NGOs, with the overall goal of promoting innovation, transparency and convergence of CSR practices and instruments.[70]

This goal of the European Multistakeholder Forum on CSR was to be achieved by 'facilitating the exchange of experience and good practices and bringing together existing CSR instruments and initiatives'.[71] It was also intended that the Forum should 'explore the appropriateness of establishing common guiding principles for CSR practices and instruments' and in so doing, should take into account existing EU initiatives and legislation as well as internationally agreed instruments, such as the OECD Guidelines for Multinational Enterprises, the Council of Europe's Social Charter, ILO core labour conventions and the International Bill of Human Rights.[72]

In terms of engagement, the EU originally saw the establishment of the Forum back in 2002 as a platform for dialogue among all the relevant stakeholders, which in turn would improve public understanding of CSR. It was intended that the Forum would incorporate 'an innovative process of learning and dialogue' and would agree on 'recommendations for more and effective CSR practice'.[73]

The EU has played an active role in facilitating CSR through its establishment of the European Multistakeholder Forum on CSR,[74] including chairing and facilitating its activities, in close cooperation with

[68] *Ibid*, para. 52.
[69] EU Parliament Resolution of 15 January 1999 on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct [1999] OJ C 104/180, which recommended the creation of a European Model Code of Conduct supported by a European Monitoring Platform.
[70] Commission, 'Corporate Social Responsibility: A business contribution to Sustainable Development' (Communication) COM (2002) 347 final; and Commission, 'Multi-stakeholder Forum on Corporate Social Responsibility' <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index_en.htm> accessed 20 January 2015.
[71] *Ibid*, 9-12.
[72] *Ibid*, 6-7.
[73] Commission, 'Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility' (Communication) COM (2006) 0136 final.
[74] Jean-Pascal Gond, Nahee Kang and Jeremy Moon, 'The government of self-regulation: on the comparative dynamics of corporate social responsibility' (2011) 40(4) Economy and Society 640, 649.

the Forum's Coordination Committee.[75] The latter currently comprises the following business organisations and NGOs: Amnesty International,[76] Business Europe (formerly UNICE),[77] CSR Europe,[78] Cooperatives Europe,[79] EUROCADRES,[80] European Savings Banks Group (ESBG),[81] European Sustainable Investment Forum (EUROSIF),[82] European Trade Union Confederation (ETUC)[83] and Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME) or European Association of Craft, Small and Medium Sized Enterprises.[84] Currently, there are two inactive members of the Coordination Committee.[85] One is the Social Platform or the Platform of European Social NGO's,[86] which, as part of its civil dialogue, maintains links with the EU institutions across all policy areas involving citizens. The other is the European

[75] For a list of current members of the Coordination Committee of the European Multistakeholder Forum on CSR see Commission, 'Coordination Committee of the European Multistakeholder Forum on CSR' <http://ec.europa.eu/enterprise/policies/sustainable-business/files/forum-members_en.pdf> accessed 21 January 2015.

[76] See Amnesty International, 'The EU and Business and Human Rights' <http://www.amnesty.eu/en/news/statements-reports/eu/business-and-human-rights/#.VM59iC42dE4> accessed 21 January 2015.

[77] Business Europe, founded in 1958, was originally known as the Union des Industries de la Communauté européenne or Union of Industrial and Employers' Confederations of Europe (UNICE), only changing its name as recently as 2007; Business Europe, 'History of the Organisation' <http://www.businesseurope.eu/content/default.asp?PageID=601> accessed 21 January 2015.

[78] CSR Europe, 'The European Business Network for Corporate Social Responsibility' <http://www.csreurope.org/participate-eu-platform-diversity-charters-high-level-event-23-october> accessed 22 January 2015.

[79] Cooperatives Europe represents cooperative enterprises throughout Europe with 82 member organisations from 33 European countries - Cooperatives Europe, 'Cooperatives Europe' <https://coopseurope.coop/> accessed 21 January 2015.

[80] Associated with the ETUC, the Council of European Professional and Managerial Staff or EUROCADRES represents those working at professional and managerial staff levels – EUROCADRES 'Council of European Professional and Managerial Staff' <http://www.eurocadres.org/> accessed 21 January 2015.

[81] Since 1963 the European Savings Bank Group (ESBG) brings together savings and retail banks of the European Union and European Economic Area – ESBG, 'About ESBG' <http://www.wsbi-esbg.org/Who-we-are/About-ESBG/Pages/About-ESBG.aspx> accessed 21 January 2015.

[82] European Sustainable Investment Forum (Eurosif) is a not-for-profit pan-European sustainable and responsible investment (SRI) membership organisation that promotes sustainability through European financial markets – Eurosif, 'Promoting Sustainability through European Financial Markets' <http://www.eurosif.org/> accessed 21 January 2015.

[83] European Trade Union Confederation, 'Home' <http://www.etuc.org/> accessed 21 January 2015.

[84] Founded in 1980 in Munich, Germany, the Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises (UEAPME) or European Association of Craft, Small and Medium Sized Enterprises, is the employers' organisation representing the interests of European crafts, trades and SMEs at EU level; UEAPME, 'The voice of SMEs in Europe' <http://www.ueapme.com/> accessed 21 January 2015.

[85] See note to the list of members of the Coordination Committee of the European Multistakeholder Forum on CSR - Commission, 'Coordination Committee of the European Multistakeholder Forum on CSR' <http://ec.europa.eu/enterprise/policies/sustainable-business/files/forum-members_en.pdf> accessed 21 January 2015.

[86] Social Platform or the Platform of European Social NGO's – Social Platform, 'Home' <http://www.socialplatform.org/> accessed 21 January 2015.

Consumers Organisation or Bureau Européen des Unions de Consommateurs (BEUC),[87] which represents independent national consumer organisations at the European level.

The Multistakeholder Forum was tasked with reporting to the Commission before the summer of 2004 and providing a framework of conclusions and recommendations, based on four themed round tables: improving knowledge about CSR and facilitating the exchange of experience and good practice; fostering CSR among SMEs; diversity, convergence and transparency of CSR practices and tools; and the development aspects of CSR. None of those Multistakeholder roundtables explicitly concentrated on the human rights aspects of CSR, although human rights NGOs, such as Amnesty International and the Fédération Internationale des Droits de l'Homme (FIDH)[88] did participate in them. Instead, there was more emphasis on the sustainable development aspect of CSR in the wake of the Johannesburg Summit,[89] and the Johannesburg Plan of Implementation.[90]

While it appears that the Multistakeholder Forum did contribute to the dissemination of best practices on CSR, the EU's potential role as a promoter and enabler of CSR in Europe fared less well. In the 2004 Report, it was recommended that the EU and public authorities have a 'key role in promoting sustainable development', as part of CSR. The Forum specifically recommended that 'the EU institutions and governments [should] be consistent across policy areas' in fulfilling this role.[91]

The Multistakeholder Forum on CSR, as originally conceived, disappeared in 2006[92] when all the NGOs stepped out in protest at the setting-up by the Commission of the European Alliance on CSR – a business organisation-led body (see below).[93] The NGOs were of the view that the public authorities needed to shift gear from 'moderating dialogue [on CSR] to developing policies, setting standards and where necessary enforcing them'. Their view was that the EU (Commission, Council and Parliament) should take

[87] European Consumers Organisation or Bureau Européen des Unions de Consommateurs (BEUC) – European Consumers Organisation, 'We defend the Interests of European Consumers' <http://www.beuc.org/> accessed 21 January 2015.

[88] Fédération Internationale des Droits de l'Homme (FIDH) or International Federation of Human Rights Organisations brings together 178 human rights organisations throughout the world - International Federation of Human Rights Organisations, 'Home' <https://www.fidh.org/International-Federation-for-Human-Rights/> accessed 21 January 2015.

[89] World Summit on Sustainable Development (Johannesburg, 26 August - 4 September 2002).

[90] *Ibid*. See also United Nations, 'Report of the World Summit on Sustainable Development' (2002) UN Doc A/COINF.199/20, which refers to corporate social responsibility, while stressing the need to strengthen the contribution of industrial development to poverty eradication and sustainable natural resources management. In particular it calls for 'enhanced corporate social responsibility and accountability' in developing sustainable patterns of production and consumption (para. 55).

[91] European Multistakeholder Forum on CSR, 'Final results and recommendations' (Final Report 2004) 16 <http://www.corporatejustice.org/IMG/pdf/CSR_20Forum_20final_20report.pdf> accessed 22 January 2015.

[92] This came about specifically through the Commission's endorsement of the European Alliance for CSR in the Commission, 'Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility' (Communication) COM (2006) 136 final (see below).

[93] Social Platform, Amnesty International, iied, BEUC, solidar, Oxfam, Traidcraft and FIDH, 'NGOs call on Commission and Council to shift gears after Multi-Stakeholder Forum: European CSR process must move from dialogue to action' <http://www.corporatejustice.org/IMG/pdf/NGOCSRopenletterFINAL290604.pdf> accessed 22 January 2015.

the lead in developing an effective EU framework for CSR.[94] The NGOs subsequently re-grouped in the European Coalition for Corporate Justice (ECCJ).[95]

In 2009, the EU convened a meeting of the European Multistakeholder Forum on CSR with 250 key stakeholders to review the progress made on CSR and to discuss future initiatives. However, since the EU insisted on dealing only with voluntary initiatives for European business to practice, which go beyond what is required by law, and excluded all reference to regulation and mandatory measures, trade unions and NGOs decided to boycott it. This fundamental difference in approach to CSR, which exists between the key stakeholders in the Forum, continues to this day. It has not been helped by the fact that the Commission has consistently taken the position of rejecting regulation, instead putting the emphasis on voluntary CSR measures for companies and other business enterprises. Meanwhile, the European Parliament, together with the NGO community and trade unions, continues to demand mandatory regulation and the reporting of corporations' social and environmental impacts and transparency.

Eventually in November 2010, the Commission managed to host a plenary meeting of the European Multistakeholder Forum on CSR. The aim of the meeting was to take stock of developments in the field of CSR over the previous two years, and to explore possible ways forward for a new Communication on European policy in the field of CSR. The conference addressed the following fields as part of a future Communication on the EU CSR policy: responsible consumption, responsible investment, the links between CSR and competitiveness, transparency and disclosure of non-financial information, business and human rights, and the global dimension of CSR. On this occasion, the participants in the Forum once again included representatives from all major stakeholder groups, including business, trade unions, investors, NGOs, academics and national governments. A key outcome of the engagement during this period was the adoption of a Commission strategy on Corporate Social Responsibility.[96] As this policy comes to end of its lifecycle, the most recent European Multistakeholder Forum on CSR in 2015 discussed the future direction of the EU's CSR policy.

a) The European Alliance on CSR

Instead of the European Multistakeholder Forum on CSR meeting again in 2006, as originally planned,[97] the Commission announced the creation of a new business-led initiative – the European Alliance on CSR – in its 2006 Communication. This Alliance was meant to further promote and encourage a voluntary approach to CSR. It was to be 'a key component of a wider partnership' that the Commission wished to

[94] *Ibid*.

[95] European Coalition for Corporate Justice (ECCJ) is a European coalition that brings together European campaigns and national platforms of NGOs, trade unions, consumer organisations and academics to promote corporate accountability – ECCJ, 'Home' <http://www.corporatejustice.org/> accessed 21 January 2015.

[96] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final.

[97] European Multistakeholder Forum on CSR, 'Final results and recommendations' (Final Report 2004) 18 <http://www.corporatejustice.org/IMG/pdf/CSR_20Forum_20final_20report.pdf> accessed 22 January 2015.

pursue 'with all stakeholders involved in CSR'. Even so, the Commission offered no guidance as to how this wider partnership might be maintained other than stating its intention to reconvene meetings of the Multistakeholder Forum at regular intervals so as to review progress on CSR in the EU.[98] The Communication was criticised by the Parliament on the grounds of its 'lack of transparency and balance in the consultation undertaken before publication'.[99]

The split in the Forum (and the creation of the new Alliance) was the culmination of a long-standing conflict in which companies and other business enterprises had claimed the right to define the CSR standards that they should apply – a move that was implicitly endorsed by the EU in its 2006 Communication.[100] The NGOs, however, believed that a common set of standards needed to be worked out between all stakeholders, as originally envisaged in the 2002 Communication, and possibly enforced through regulation.

The European Alliance on CSR is still in existence. It is supported by Business Europe, European Centre of Employers and Enterprises providing Public Services (CEEP) or European Confederation of Public Enterprises,[101] CSR Europe, European Academy of Business in Society (EABiS),[102] Eurochambres,[103] EuroCommerce,[104] European Round Table of Industrialists (ERT),[105] ESBG, Foreign Trade Association (FTA/BSCI)[106] and PostEurop[107] and UAEPME. The Commission does not directly manage the Alliance. Instead, it relies on the business community itself to do this, with the support of the aforementioned business organisations that make up the Alliance. The European Alliance on CSR is, thus, representative

[98] Commission, 'Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility' (Communication) COM (2006)136 final, 1-2 and 11-13.

[99] Euractiv, 'Parliament criticises Commission on CSR' (Euractiv 14 March 2007) <http://www.euractiv.com/socialeurope/parliament-criticises-commission-csr/article-162431> accessed 22 January 2015.

[100] See Jean-Pascal Gond, Nahee Kang and Jeremy Moon, 'The government of self-regulation: on the comparative dynamics of corporate social responsibility' (2011) 40(4) Economy and Society 640, 649 and 655 for the role of endorsement by the Commission in assuring that European CSR is closely aligned with government policy.

[101] The European Centre of Employers and Enterprises providing Public Services (CEEP) is a European association that represents enterprises that since 1961 have been carrying out services of general economic interest, irrespective of ownership or status - European Centre of Employers and Enterprises providing Public Services, 'Home' <http://www.ceep.eu/> accessed 21 January 2015.

[102] European Academy of Business in Society (EABiS), which was launched in 2001, is a global alliance of companies, business schools and research institutions, committed to integrating CSR (possibly inactive).

[103] Eurochambres is the Association of European Chambers of Commerce and Industry – Eurochambres, 'The Association of European Chambers of Commerce and Industry' <http://www.eurochambres.be/Content/Default.asp?> accessed 21 January 2015.

[104] EuroCommerce represents national commerce federations in 31 countries, including Europe's 27 leading retail and wholesale companies, and federations representing specific sectors of commerce – Eurocommerce, 'The Voice for Retail and Wholesale in Europe' <http://www.eurocommerce.eu/> accessed 21 January 2015.

[105] European Round Table of Industrialists, 'Welcome by Benoît Potier, Chairman' <http://www.ert.eu/> accessed 17 February 2015.

[106] Foreign Trade Association (FTA), and its Business Social Compliance Initiative (BSCI), is a Brussels-based business association of European and International commerce - Foreign Trade Association, 'About us' <http://www.fta-eu.org/> accessed 21 January 2015.

[107] PostEurop is the trade association that represents European public postal operators - PostEurop, 'Home' <http://www.posteurop.org/> accessed 21 January 2015.

of an institutionalised form of business organisation that is mainly about 'self-government' through collective action.[108] In terms of engagement, the Alliance's main interlocutors with EU institutions are Business Europe, CSR Europe and UAEPME.

Separately, Business Europe (representing private sector employers), CEEP (representing public sector employers), UEAPME (representing craft, trades and SMEs), and ETUC (representing employees but not part of the European Alliance on CSR) are recognised by the Commission as social partners in the European Social Dialogue.[109] This opportunity provides Alliance members Business Europe, CEEP and UEAPME with an additional avenue of engagement with EU institutions on social issues, many of which pertain to various areas of social and economic rights protection, particularly where it concerns the right to work[110] and rights at work.[111] A further point here is that the social partners enjoy a very special – if somewhat privileged – role in the EU, under the TFEU, in the area of social policy, representing their members during consultations with the Commission and in the negotiation of framework agreements.[112]

The Commission also sees the social dialogue as a form of engagement through which it can gather information from the social partners and their contacts about labour issues. It meets with the social partners (both European and international ones) on an *ad hoc* basis and a more structured basis and tries to have at least one annual co-ordination meeting with them.[113]

b) CSR Europe: The European Business Network for CSR

Former Commission President, Jacques Delors, and 20 business leaders signed the European Business Declaration against Social Exclusion in early 1995,[114] calling for the development of a European network for the exchange of information and experience on CSR. The European Business Network for Social Cohesion was established the following year.[115] Since 1998, it has been known as CSR Europe but, as an

[108] Jeremy Moon, Andrew Crane and Dirk Matten, 'Corporations and Citizenship in New Institutions of Global Governance' in Colin Crouch and Camilla Maclean (eds), *The Responsible Corporation in a Global Economy* (Oxford University Press 2011) 216.

[109] For details of the European Social Dialogue and details of consultations with the Social Partners – DG Employment, Social Affairs and Inclusion, 'Social Dialogue' <http://ec.europa.eu/social/main.jsp?catId=329&langId=en> accessed 22 January 2015.

[110] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, in force 3 January 1976) 999 UNTS 3 (ICESCR), art 7; European Social Charter (revised) (adopted 3 May 1996, in force 1 July 1999) CETS No. 163.

[111] ICESCR, *ibid*, arts 8-10; European Social Charter, *ibid*.

[112] TFEU, art 152.

[113] Interview N2 (Commission Representative).

[114] The European Business Declaration against Social Exclusion was part of the *Manifesto of Enterprises against Social Exclusion*, launched in 1995 by a group of European companies in the presence of Jacques Delors; Radu Mares, 'Global Corporate Social Responsibility, Human Rights and Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy' (2010) 1 Transnational Legal Theory 221, 233.

[115] The European Business Network for Social Cohesion was established on 4 January 1996 under the umbrella of the King Baudouin Foundation and with the support of the European Commission.

organisation which 'is more closely organized with and through business associations', it still conveys the original concept of a European Business Network for CSR.[116] In fact, CSR Europe brings together 36 membership-based, business-led CSR organisations from 30 different countries across Europe, not just from EU Member States. In total, the network reaches out to over 5000 companies throughout Europe, and counts some 70 TNCs among its members. The Commission considers CSR Europe to be the key business-led organisation in Brussels when it comes to partnering with EU institutions on CSR.

During the course of its 20-year existence, CSR Europe has helped to define the European CSR agenda. It also remains a major partner for other stakeholders on CSR and sustainability issues, including the European Multistakeholder Forum on CSR, which it helped to found in 2002, and the European Expert Group on the Reporting of Non-Financial Information, which was formed in 2011.[117] The latter is an Expert group, consisting of companies, investors and other users of non-financial reports, such as consumer, business and trade organisations, accountants and auditors, rating agencies, international guideline-setting organisations and academia. The Expert Group was tasked with providing specific advice to the Commission in light of an impact assessment carried out by the latter on the disclosure of non-financial information by companies. The work of the Expert Group eventually led to the preparation of the 2014 Directive on non-financial reporting.[118]

CSR Europe engages with the EU through a number of different channels, including through dialogue with the Commission, Council and Parliament.[119] It also offers so-called 'EU Services for members' by four different means. First, there is a series of 'EU update calls' whenever the organisation feels that there is a need to communicate important CSR policy activity at EU level. Update calls are hosted by CSR Europe staff and take the form of members-only, dial-in webinars for participants to gain insight into the latest CSR developments, and to debate and ask questions that may impact their companies.[120] Although CSR Europe claims over the past four years to have held more than 40 webinars it is unclear what impact they have in terms of dissemination of information and exchange of views on CSR policy in general, and business and human rights in particular.

[116] Jean-Paul Gond, Nahee Kang and Jeremy Moon, 'The government of self-regulation: on the comparative dynamics of corporate social responsibility' (2011) 40(4) Economy and Society 640, 655.

[117] Directorate General Internal Market and Services, 'First Meeting of the Expert Group on Disclosure of Non-Financial Information by EU Companies' (Brussels, 11 July 2011) <http://ec.europa.eu/finance/accounting/docs/11072011_minutes_en.pdf> accessed 15 February 2015.

[118] European Parliament and Council Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L 330/1.

[119] See more generally CSR Europe, 'EU Dialogue' <http://www.csreurope.org/eu-dialogue> accessed 11 February 2015, for a specific example of such dialogue see details of CSR Europe's first Enterprise 2020 Summit, which appear below in main text in section III C.1

[120] Details of CSR's 'EU update calls' are provided on their web-site – CSR Europe, 'EU services for members' <http://www.csreurope.org/eu-services-members> accessed 11 February 2015 with a rolling list of forthcoming webinars in the right-hand side-bar.

However, at the beginning of 2014, CSR Europe launched the European Hub on Business and Human Rights,[121] with a webinar for participating members.[122] The European Hub is intended to be a platform for companies across Europe to exchange knowledge, to learn from peers and experts and to share best practices on the topic of business and human rights, with a view to embedding human rights across different departments. There are just three areas where the European Hub has initially concentrated its efforts: human resources; procurement; and risk assessment. In 2014, four webinars were held on these topics whilst there was a series of local events on embedding human rights across Europe, which were organised in Finland, Greece, Serbia, Slovenia and Turkey (kick-off events) and Germany, Italy, Spain, Sweden, the UK and Brussels (function specific events).[123]

Second, CSR Europe regularly produces briefing publications that provide timely and relevant information on key CSR policy developments at European Institution level. Again, it has been active in the field of business and human rights, with a recent publication on company-level grievance mechanisms,[124] which draws on Principe 31 of the UN Guiding Principles on Business and Human Rights and spells out eight criteria for measuring the effectiveness of such mechanisms.[125]

Third, meetings are organised by CSR Europe with representatives of relevant Directorate-Generals in the Commission, as well as members of the European Parliament,[126] with the aim of strategically positioning and influencing CSR policy and exploring potential collaboration opportunities. Fourth, by means of the organisation of regular, high-level meetings with relevant DGs, CSR Europe aims to help members engage directly with EU institutions. It also organises tailored stakeholder dialogues for companies to help them engage with expert stakeholder and EU representatives on company CSR strategies.

Finally, in terms of CSR policy and in the context of the EU's Europe 2020 Strategy, CSR Europe launched the Enterprise 2020 initiative in 2010.[127] The aims of Enterprise 2020 are to provide the foundation for a better partnership between business and European institutions, and to highlight the contribution that

[121] CSR Europe, 'CSR Europe launches European Hub on Business and Human Rights' (CSR Europe, 27 January 2014) <http://newsbundle.csreurope.org/newsbundle/jnkw6ia656l> accessed 1 February 2015.

[122] Aside from CSR Europe, the participating CSR and business organisations are the UK-based Business In the Community (BITC), BLF Serbia, CSR Sweden, CSR Turkey, econsense (Germany), FIBS (Finland), Fondazione Sodalitas (Italy), Forética (Spain), Hellenic Network for Corporate Social Responsibility (Greece) and IRDO & Network for SR (Slovenia); for further details and the webinar schedule – CSR Europe, 'European Hub on Business and Human Rights' (CSR Europe, 3 September 2014) <http://www.csreurope.org/sites/default/files/European%20HUB%20on%20BHR_Overview%20CSRe.pdf> accessed 1 February 2015.

[123] For details of the events organised under the auspices of the European Hub on Business and Human Rights – CSR Europe, 'Business and Human Rights' <http://www.csreurope.org/business-and-human-rights#.VNeXYi42dE5> accessed 1 February 2015.

[124] CSR Europe, *Assessing the Effectiveness of Company Grievance Mechanisms: CSR Europe's Management of Complaints Assessment (MOC-A) Results* (CSR Europe 2013).

[125] UNHRC, 'Report by Special Representative John Ruggie on Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (2011) UN Doc. A/HRC/17/31, Principle 31.

[126] The current spokesperson on corporate social responsibility in the European Parliament is MEP Richard Howitt.

[127] For further details about Enterprise 2020 – CSR Europe 'About Europe 2020' <http://blog.csreurope.org/about-enterprise-2020/> accessed 5 February 2015.

business can make to the EU 2020 goals for building a smart, sustainable and inclusive economy. While its current focus is on skills for jobs and sustainable living in cities, Enterprise 2020 also highlights its focus on combining good governance and accountability (in terms of performance and reporting and business and human rights) with social innovation.[128] Although Enterprise 2020 was launched by CSR Europe, the Commission was invited to contribute to the initiative, which the Barroso Commission seized upon. It called for a speedy delivery to coincide with its own launch of Europe 2020.[129]

A further example of CSR's dialogue with EU institutions is the first Enterprise 2020 Summit, which it hosted at the end of 2012, with over 250 high-level business representatives and policy representatives from the European Commission, Council and Parliament. The Summit's aim was to determine how far the European Commission's Europe 2020 Strategy (discussed below) and Enterprise 2020[130] could be aligned, thereby strengthening the business and policy partnership on CSR with EU authorities.[131] The next Summit is planned to take place at the Milan Universal Expo in 2015.[132]

C. EU Communication on CSR

In the wake of the 2007-2008 global financial crisis and its socio-economic consequences, consumer confidence and levels of trust among members of the business community dropped. Following calls from the Council and the European Parliament for the Commission to further develop its CSR policy, the Commission undertook, as part of its Europe 2020 Strategy, to renew its strategy on CSR. The Commission`s 2011 Communication on CSR set out this renewed EU Strategy in support of entrepreneurship and responsible business.[133]

The EU Communication on CSR achieves three goals. First, it redefines the concept of CSR. The new definition notes the benefits to an organisation of CSR and addresses how different company sizes and levels of complexity can affect the application of internal and external CSR practices. Second, there is an Agenda for Action for the period 2011-2014 to put the Strategy into practice. Third, the Communication pledges support to other EU business-related policy instruments.

[128] For details of CSR Europe's Enterprise 2020 policy and ongoing strategy – CSR Europe, 'Our Strategy' <http://www.csreurope.org/our-strategy> accessed 5 February 2015.
[129] Interview N9 (Business organisation representative).
[130] The first Enterprise 2020 Summit was held in Brussels, on 29 November 2012, with the intention of '[accelerating] the cooperation between business, the European Commission (EC) and the national governments of European Member States' – CSR Europe, 'Enterprise 2020 Summit' <http://www.csreurope.org/enterprise-2020-summit#.VNillS42dE4> accessed 8 February 2015.
[131] Interview N9 (Business organisation representative).
[132] *Ibid*.
[133] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681.

1. Europe 2020 Strategy: a new understanding about CSR

In its renewed Strategy for CSR, the EU provides a new understanding of CSR, which it defines as 'the responsibility of enterprises for their impacts on society'.[134] This revised definition of CSR brings about a subtle change in EU policy on CSR by stressing 'the expectation of responsible behaviour rather than the origins of such behaviour'.[135] It could also be read as 'an acknowledgement that the dichotomy between public regulation and voluntary CSR programs is increasingly unproductive or problematic.'[136] The 'new' definition of CSR is accompanied by a recommendation that to 'fully meet their corporate social responsibility, enterprises should 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'.[137]

The aim of the renewed CSR Strategy is both to enhance businesses' positive impacts (sustainable growth, responsible business behaviour and durable employment generation) and, according to the Communication, 'to identify, prevent and mitigate their possible adverse [or negative] impacts', which could include human rights violations.[138] Businesses are therefore encouraged 'to adopt a long-term, strategic approach to CSR, and to explore opportunities for developing innovative products, services and business models that contribute to societal wellbeing and lead to higher quality and more productive jobs'.[139] Similarly, they are 'encouraged to carry out risk-based due diligence, including throughout their supply chains'.[140]

The EU recognises that there is no 'one-size-fits-all' approach when referring to CSR.[141] Nevertheless, compliance with legislation and collective agreements, negotiated between social partners, is regarded as a basic requirement that applies to all companies.[142] Likewise, when it comes to 'small and medium-sized enterprises, especially micro-enterprises, the CSR process is likely to remain informal and intuitive'.[143]

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[134] *Ibid*, 6.
[135] Jeremy Moon, Rieneke Slager, Stephanos Anastasiadis, Christoph Brunn, Peter Hardi and Jette Steen Knudsen, 'Analysis of the National and EU Policies Supporting Corporate Social Responsibility and Impact' (2012) IMPACT Working Paper No. 2, 8 <http://csr-impact.eu/documents/documents-detail.html?documentid=5> accessed 8 February 2015.
[136] *Ibid*.
[137] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 6, para 3.1.
[138] *Ibid*.
[139] *Ibid*.
[140] *Ibid*.
[141] Commission, 'Corporate Social Responsibility: a new definition, a new agenda for action' (Brussels 25 October 2011) <http://europa.eu/rapid/press-release_MEMO-11-730_en.htm> accessed 8 February 2015.
[142] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 6, para 3.1.
[143] *Ibid*.

The EU's renewed CSR Strategy makes explicit reference to the possibilities for companies to adopt a more formal approach to CSR.[144] The revised OECD Guidelines on Multinational Enterprises, the ten principles of the UN Global Compact, the ISO 26000 Guidance Standard, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights are mentioned as examples of internationally recognised principles and guidelines that companies can turn to for authoritative guidance. In particular, the inclusion of the UN Guiding Principles in the renewed CSR Strategy is significant because it recognises that business enterprises have a responsibility to respect human rights,[145] and should have grievance mechanisms in place that provide access to remedies for individuals that have suffered from business-related human rights abuses.

The Communication refers specifically to the integration of human rights concerns into business management as part of what is required of a company. This picks up on the language of the Guiding Principles,[146] which has clearly inspired the Communication, as does the reference to 'a smart mix of voluntary policy measures and, where necessary, complementary regulation',[147] and a call for transparency in reporting.[148]

The shift in emphasis in the EU's new understanding of CSR is premised on the notion that CSR requires engagement with internal and external stakeholders and that it is in the interest of society as a whole.[149] On one hand, this new policy helps enterprises address and benefit from CSR to build long-term employee, consumer and citizen trust as a basis for sustainable business models and creating an environment where enterprises can innovate and grow. On the other hand, through CSR, enterprises may significantly contribute to the EU's objectives of sustainable development and a highly competitive social market economy. CSR underpins the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth, including the 75% employment target.[150]

The renewed CSR Strategy also seeks to reaffirm the EU's global influence in this field, enabling the EU to better promote its interests and values in relations with other regions and countries. It is also intended to guide and

[144] *Ibid*, para. 3.2.
[145] *Ibid*, see also Guiding Principle 11, which states 'Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved'.
[146] *Ibid*, see also Guiding Principle 19, which states 'In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action. (a) Effective integration requires that: (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise; (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts. (b) Appropriate action will vary according to: (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship; (ii) The extent of its leverage in addressing the adverse impact'.
[147] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 7, para 3.4, echoing the language of the Commentary to Guiding Principle 3.
[148] *Ibid*, 11, para 4.5 of the Agenda for Action, reflecting the tone of the Commentary to Guiding Principle 21.
[149] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 3, para 1.2.
[150] *Ibid*.

coordinate EU Member State policies and so reduce the risk of divergent approaches that could create additional costs for enterprises operating in more than one Member State.[151]

2. Agenda for Action for the period 2011-2014

The EU's renewed CSR Strategy is tied into an Agenda for Action for the period 2011-2014, the purpose of which is to put the Strategy into practice. This agenda, which is taken up in the Communication,[152] contains commitments from the EU itself, as well as suggestions for businesses, Member States and other stakeholders.

Among other things, the agenda foresees a better alignment between the European and global approaches to CSR, in particular with the UN Global Compact, the revised OECD Guidelines, the ILO Tri-partite Declaration of Principles and the ISO 26000 Guidance Standard on Social Responsibility. This action requires companies in the EU to adopt a CSR approach while the Commission will monitor the commitments of large European enterprises to take account of internationally recognised guidelines and principles.[153]

Improving the coherence of EU and international policies on CSR is intended to contribute to EU objectives regarding 'specific human rights issues and core labour standards, including child labour, forced prison labour, human trafficking, gender equality, non-discrimination, freedom of association and the right to collective bargaining.'[154] Particular attention is paid to implementing the UN Guiding Principles in '[A] process involving enterprises, EU delegations in partner countries, and local civil society actors, in particular human rights organisations and defenders'.[155] This is effectively a means by which governments (and the EU as an institutional actor) can shape CSR through partnership.[156] The EU foresees such a partnership as improving understanding about 'the challenges companies face when operating in countries where the state fails to meet its duty to protect human rights'.[157]

Nevertheless, the Agenda for Action may not go as far as the earlier call in 1999, by the European Parliament, for the Commission and the Council 'to develop the right legal basis for establishing a European multilateral framework governing companies operations worldwide and to organise for this purpose consultations with companies' representatives, the social partners and those groups in society

[151] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 5-6, para 2.
[152] *Ibid*, 8-15, para 4 in extenso.
[153] *Ibid*, 13, para 4.8.1.
[154] *Ibid*, 14, para 4.8.2.
[155] *Ibid*.
[156] Jean-Paul Gond, Nahee Kang and Jeremy Moon, 'The government of self-regulation: on the comparative dynamics of corporate social responsibility' (2011) 40(4) Economy and Society 640, 655.
[157] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 8-15, 14, para 4.8.2.

which would be covered by the code'.[158] That same European Parliament Resolution proposed a process involving 'voluntary and binding approaches to corporate regulation', which 'are not mutually exclusive' combined with the adoption of 'an evolutionary approach to the question of standard-setting for European enterprises.'[159] This is what is known as a regulatory 'smart-mix', specific reference to which is made in the UN Guiding Principles[160] and in the EU's renewed CSR strategy.[161]

The Agenda for Action for the period 2011-2014 includes a further seven complementary areas. These are:

1) 'enhancing the visibility of CSR and disseminating good practices' through the establishment of sector-based platforms for enterprises and stakeholders to make commitments and jointly monitor progress;[162]
2) 'improving and tracking levels of trust in business' through public debate on the role and potential of enterprises, and surveys on citizen trust in business;[163]
3) 'improving self- and co-regulation processes' through the development of a code of good practice to guide the development of future regulation initiatives;[164]
4) 'enhancing market reward for CSR' leveraging EU policies in the field of consumption, investment and public procurement for responsible business conducts, including better integration of social and environmental considerations into public procurement;[165]
5) 'improving company disclosure of social and environmental information' through a new European Commission legislative proposal on this issue;[166]
6) 'further integrating CSR into education, training and research' through the exploration of opportunities for funding more research;[167]
7) 'emphasising the importance of national and sub-national CSR policies' inviting EU Member States to present or update their own plans for the promotion of CSR.[168]

[158] EU Parliament Resolution of 15 January 1999 on EU standards for European Enterprises operating in developing countries: towards a European Code of Conduct [1999] OJ C 104/180, para 11.
[159] *Ibid*, para F.
[160] UNHRC, 'Report by Special Representative John Ruggie on Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (2011) UN Doc. A/HRC/17/31, commentary to Guiding Principle 3 (General State regulatory and policy functions).
[161] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 7, para. 3.4.
[162] *Ibid*, 8-9, para 4.1.
[163] *Ibid*, 9, para 4.2.
[164] *Ibid*, 9-10, para 4.3.
[165] *Ibid*, 10-11, para 4.4, especially at para 4.4.2. with reference to the Commission's publication of a guide on 'Socially Responsible Public Procurement (SRPP)'; See Section III I.2 below.
[166] *Ibid*, 11-12, para 4.5; see further European Parliament and Council Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups [2014] OJ L 330/1.
[167] *Ibid*, 12, para 4.6.
[168] *Ibid*, 12-13, para 4.7.

3. 2014 CSR Public Consultation

A public consultation was held between 30 April and 15 August 2014 in order to receive feedback from interested stakeholders on implementation over the previous three years of the renewed EU CSR Strategy and its related Agenda for Action, and on the role the EU should play in the future.[169] The results of this public consultation have been made available in the form of a consolidated report[170] and were discussed at the plenary meeting of the European Multistakeholder Forum on CSR, which was held from 3-4 February 2015 (see next section).

Feedback on the Commission's work in the areas of CSR focused specifically on its recent and on-going actions, which were set out in the Agenda for Action for the period 2011-2014, and was obtained in response to an on-line questionnaire. However, some 45 stakeholders chose to submit written contributions,[171] mostly in the form of position papers, which were submitted separately to the public consultation.[172] Altogether responses were received from 10 national and nine regional authorities in EU Member States, 70 industry associations, 97 companies with more than 250 employees, 68 companies with fewer than 250 employees, 21 international organisations, 85 civil society representatives, 72 individual EU citizens and 95 other responses from academia, think tanks and not-for-profit foundations.[173]

Although the Commission claims in its report to have 'studied and evaluated' all of the 45 written contributions it received, it is unclear from the report's methodology, which is largely a statistical exercise, whether any views contained in the written contributions, have been incorporated in the report. An interviewee, who criticised the public consultation process as a means of engagement, was one of the 45 stakeholders who submitted a position paper. The criticism was directed at the Commission's use of an online questionnaire, combined with a quantitative approach, which does not allow for the expression of the views of individual companies in a member organisation, nor does it permit any qualitative data to be presented.[174]

The main findings in the public consultation report focus on four main issues: the role of the Commission in CSR; its agenda, as set out in the 2011 CSR Strategy, noting most important achievements as well as

[169] Commission, DG Enterprise and Industry [now DG GROWTH], Unit D.1 Entrepreneurship and Social Economy.
[170] Commission 'The Corporate Social Responsibility Strategy of the European Commission: Results of the Public Consultation Carried out between 30 April and 15 August 2014' (DG Enterprise and Industry, 21 November 2014) <http://www.csrmsf.eu/pdf/Report-public%20consultation%20CSR%20-FINAL-14-12-08%20.pdf> accessed 6 February 2015.
[171] A list of the 45 stakeholders that submitted written contributions can be found in the report, *ibid*, Annex I.
[172] Commission 'The Corporate Social Responsibility Strategy of the European Commission: Results of the Public Consultation Carried out between 30 April and 15 August 2014' (DG Enterprise and Industry, 21 November 2014) 7 <http://www.csrmsf.eu/pdf/Report-public%20consultation%20CSR%20-FINAL-14-12-08%20.pdf> accessed 6 February 2015.
[173] A statistical overview of the number respondents per stakeholder group as well as per country can be found in the report, *ibid*, at Annexes II and III respectively.
[174] Interview N3 (Business organisation representative).

shortcomings; the role of CSR in the context of other EU policies; and future issues on CSR, including within the broader economic context.

The role of the Commission in CSR dealt largely with how stakeholders perceive this and how the Commission has fulfilled this role over the past three years. As to whether the Commission should engage in a policy on CSR, the overwhelming majority of respondents thought that it should, with the largest response coming from CSOs and industry the lowest.[175] As to whether the Commission adequately focuses on CSR, a mixed picture appeared with most respondents giving it an average performance. The most influential actors in promoting CSR were considered to be the private sector (companies, social enterprises, business associations, investment communities), followed by CSOs, public authorities, academia, consumers and business customers.[176]

In terms of what the most important contribution of the Communication on CSR had been, the response was that it had emphasised the importance of CSR with companies and society as a whole, it had led to the proposal for a Directive on non-financial reporting and a new definition of CSR. The importance and success of the Commission's Agenda for Action was also rated. Overall, the respondents considered all the work streams as important or very important, but as far implementation was concerned there was general agreement that the Commission could improve upon its CSR activities [177]

Some of the shortcomings that it was felt the Commission's Agenda for Action fell short on were *inter alia*: the creation of a website with all available guidelines on CSR; best practices and reporting criteria; the need for greater coherence of CSR with other policies; the need for more focus on SMEs in terms of capacity building; the need to collaborate with other relevant stakeholders working on the promotion of CSR including in particular international organisations; *better convergence* in the *national plans* regarding the *implementation* of the *UN Guiding Principles on Business and Human Rights*; development of national CSR plans; linking CSR to the fight against corruption; and *working with Member States* on promoting *aspects of the UN Guiding Principles*, including *due diligenc*e and *access to justice*, including *extra-territorial application*.[178] [emphasis added]

The EU is also aware of the fact that, from a policy perspective, CSR is of a 'transversal nature'. Therefore, the consultation sought specifically to elicit feedback on the role of CSR policy in the context of other EU policies. Almost all respondents believed that the renewed CSR Strategy provided an impetus for other Commission policy initiatives. The consultation also confirmed that policy coherence and coordination between Commission services are of utmost importance.[179]

[175] Commission, 'The Corporate Social Responsibility Strategy of the European Commission: Results of the Public Consultation Carried out between 30 April and 15 August 2014' (DG Enterprise and Industry, 21 November 2014) 9 <http://www.csrmsf.eu/pdf/Report-public%20consultation%20CSR%20-FINAL-14-12-08%20.pdf> accessed 6 February 2015.
[176] *Ibid*, 10.
[177] *Ibid*, 12.
[178] *Ibid*, 26-7.
[179] *Ibid*, 28-9.

Finally, with respect to future issues on CSR, the highest ranking response was for international standard setting and leadership in CSR, followed by the importance of raising awareness and visibility of CSR, bringing stakeholders together around CSR issues and supporting companies in implementing CSR. When it came to free responses or suggestions for future issues on CSR, there was support for developing a policy and implementation plan regarding business and human rights.[180]

4. Multistakeholder Forum on CSR: Policy Guidance on Human Rights

The most recent Multistakeholder Forum on CSR was held on 3-4 February 2015 in Brussels, primarily to discuss the results of the 2014 public consultation on CSR, to provide the Commission with feedback on its renewed EU CSR Strategy and its related Agenda for Action for the period 2011-2014 and to set the stage for subsequent EU policy on CSR.[181] After some discussion as to whether the term CSR was synonymous with the notions of 'sustainability', 'responsible business conduct' or 'business and human rights', it was determined that all three address 'the responsibility of enterprises for their impacts on society', as defined in the renewed EU CSR strategy.[182] The Commission should acknowledge variances in typology 'in order to speak the same language as the business community'. [183]

The general conclusions arising from the Forum were that: 'the ultimate goal of CSR should be to embed social responsibility into the DNA of companies'; the Commission should continue 'to play an important role in providing open platforms for exchanging dialogue, best practices and collaboration among stakeholders'; 'the media needs to be engaged in CSR'; companies need 'clear frameworks that allow for the successful implementation of CSR, such as the UN Guiding Principles' and the new CSR strategy should 'continue to be aligned with global principles and guidelines'; and most companies welcome overarching legislation (Guidelines)' because they create a level playing field but the 'effects of reporting must not come with additional legislation that burdens enterprises'.[184] This latter statement reflects an underlying concern that even relatively soft reporting obligations will implicitly lead to harder, more burdensome norms.

Other conclusions were that the EU should promote CSR in its external relations by including chapters on human rights and labour, environmental protection and sustainable development in its trade agreements. For European companies doing business in states with weak governance, the EU should facilitate dialogue with their governments in order to limit corruption and the EU should provide more support to companies

[180] *Ibid*, 30.
[181] DG GROW, 'Executive Summary' (EU Multi Stakeholder Forum on Corporate Social Responsibility, Brussels, 3-4 February 2015).
[182] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 6, para. 3.1.
[183] DG GROW, 'Executive Summary' (EU Multi Stakeholder Forum on Corporate Social Responsibility, Brussels, 3-4 February 2015) 1.
[184] *Ibid*, 2.

performing due diligence of their supply chains and continue to work on implementing standards with international bodies. Finally, the EU and Member State governments should encourage responsible corporate conduct in its public procurement and investment policies.

From the outset EU officials were keen to stress that the European CSR agenda should continue to be business-led with the EU intervening only where it can add value. Officials were also keen to voice their support for continuing to create a 'smart mix' of voluntary and mandatory measures on CSR. Richard Howitt, MEP and rapporteur on CSR in the European Parliament, went as far as to state that 'We've ended a destructive argument about definition and about the old false dichotomy between voluntary or mandatory approaches. Instead, we've built a consensus that a '*smart mix*' between the two provides the only constructive basis for action.' [original emphasis][185]

However, this view was countered by a representative from Amnesty International (AI). In a speech to the Forum, Audrey Gaughran, Director of Global Issues at AI's International Secretariat, stated that this argument had not been settled, claiming that the EU was still 'stuck in a very voluntary mind-set' and that this disempowered victims. She called for meaningful accountability and posed the question: 'if human rights due diligence is accepted as the right thing to do, why should it not be obligatory?'[186] Thus, while it would appear from the Forum conclusions that EU officials and businesses were keen to leave this issue in the past, the debate over whether to adopt mandatory or voluntary rules continues to influence engagement between the EU, businesses and CSOs.

Specific issues that were raised during some of the Forum panels and are relevant to the EU's engagement with business and TNCs, as noted in sub-sections of this report, concern European SMEs, CSR and international development cooperation and business and human rights. There were also separate panels on public procurement and responsible supply chain management, both of which we have identified as revealing gaps in the EU's CSR policy and engagement on human rights in the business sphere.[187]

As far as the first cluster of issues are concerned, the main outcomes from the panel on European SMEs were that the Commission should 'promote the potential of integrating good practice that boost business'; this would enable SMEs to consider CSR an opportunity rather than a burden. The Commission should not add to the administrative burden of SMEs but instead it 'should encourage a culture of partnership with government and civil society to leverage what small businesses can do to solve social

[185] Richard Howitt, Member of the European Parliament, 'Opening Address' (Speech at the European Commission Multi-Stakeholder Forum on Corporate Social Responsibility, Brussels, 3 February 2015) <http://t.co/q6u1OKM0y4> accessed 5 February 2015.
[186] Audrey Gaughran, Director of Global Issues at Amnesty International, 'How can the EU strengthen cooperation and collaboration across stakeholders to achieve more impact in CSR?' (Speech at the European Commission Multi-Stakeholder Forum on Corporate Social Responsibility, Brussels, 3 February 2015).
[187] See section III I.2-3.

challenges'. It could also seek to re-inforce the 'visibility and social recognition of CSR through CSR award schemes for SMEs' and through education.[188]

In the CSR and international development context, it was important for DG DEVCO not to take a 'one-size fits all' approach and that '[W]hen companies conduct business in developing countries, it is important that their initiatives complement – and do not replace – the development of a local culture of social responsibility'. CSR should be 'locally owned' and fostered from the 'bottom up' so as to respond to development needs. Similarly, the EU's engagement with its 'development partners in implementing CSR' should 'help align the local private sectors with the global development agenda' and the EU should work on 'common CSR standards'.[189] From the floor it was also suggested that the EU should address the issue of how voluntary standards could be enforced in the developing world; in this respect it was noted that the EU position on due diligence in its Regulation on conflict minerals was too weak.

On business and human rights more generally, it was concluded that the EU 'should integrate and implement the UN Guiding Principles in all of its activities' and promote them among SMEs. It was also felt that 'the National Action Plan (NAP) process must be participatory, transparent and inclusive' and that the EU could 'assist in exchanging good practice and lessons learned from its Member States'. It should also 'continue to expand support for mandatory corporate disclosure of non-financial information, including environmental, governance and labour risks'. And it should consider providing 'guidance notes for investors on 'responsible investment' practices' as well as providing 'examples of risk involving finance and human rights'.[190] When it came to 'access to remedy' under the third pillar of the UN Guiding Principles, the main outcomes focused on: the availability and harmonisation of collective actions and pre-trial disclosure; the usefulness of non-judicial remedies, such as the OECD National Contact Points, and third-party funding for challenging human rights violations.[191] The emphasis, therefore, was for more accessible remedies, which might be achieved by changing the rules on group litigation at both domestic and supra-national levels.

Finally, with respect to the two areas in which this report has identified gaps, it was suggested for public procurement that the Commission should identify the major barriers to sustainable EU public procurement and consider how the Commission could overcome such hindrances in its next Communication on CSR. Therefore, the panel largely discussed means for clarifying and simplifying the mechanisms of the Public Procurement Directive and ways in which the Commission should encourage the exchange of best practices in implementing and rewarding good practice by public authorities through awards.[192]

[188] DG GROW, 'Executive Summary' (EU Multi Stakeholder Forum on Corporate Social Responsibility, Brussels, 3-4 February 2015) 3-4.
[189] *Ibid*, 4.
[190] *Ibid*, 4-5.
[191] *Ibid*, 6.
[192] *Ibid*, 5. See section III I.2.

However, the panel did not deal with some of the more pernicious aspects of public procurement and human rights, which were raised by Claire O'Brien of the Danish Institute of Human Rights in the panel on Business and Human Rights. These extend to the lessons that can be learnt from some Member States NAPs indicating that EU public procurement law may effectively block implementation of the UN Guiding Principles at the national level. In practice, public procurement authorities are unable to operationalise the relevant Principle due to EU case law on the award and contract stage of some bids that, for example, effectively prevents payment of a living wage. Moreover, as more and more services are being 'outsourced' (or privatised) by Member State governments, the human rights of users of public services were often not adequately safeguarded in the tendering process.[193] It was felt that the Commission needed to be more proactive in establishing the public procurement and human rights laboratory, for which it had only provided very limited support so far.

On the matter of responsible supply chains the EU was asked to consider how it might encourage responsible supply chain management (RSCM) in terms of regulating transparency in the supply chains of European businesses and TNCs. It was concluded that '[D]ue diligence is not a threat, but an opportunity to improve supply chain management' and thus the EU could report on best practices and instances in which firms have used supply chains to their advantages so as to demonstrate to stakeholders what has worked'. [194] In another panel on business and human rights – access to remedy – the issue of RSCM arose in connection with France's draft proposal for parent company liability for violations in a company's supply chain and the lack of a centralised fund for redressing claims arising out of supply chain incidents such as Rana Plaza factory collapse in Bangladesh on 24 April 2013. On this latter incident, it was claimed by a Forum participant that the Bangladesh Accord on Fire and Building Safety,[195] signed by global brands and retailers and trade unions in the immediate aftermath of the Rana Plaza disaster, shows the relevance of having legally binding commitments on RSCM and this was an approach that the EU should promote.

D. Other EU policy instruments supported by the EU CSR Strategy

The EU's renewed CSR Strategy was adopted as part of a whole package of measures to support entrepreneurship and responsible business. The Communication on CSR makes it clear that corporate social responsibility is multidimensional in nature,[196] extends to all enterprises, including social entrepreneurship, and furthermore applies to transnational company agreements between companies and workers' organisations as well as SMEs. The extent to which there are other policy instruments that support the EU's

[193] See section III I.2.
[194] DG GROW, 'Executive Summary' (EU Multi Stakeholder Forum on Corporate Social Responsibility, Brussels, 3-4 February 2015) 7.
[195] The Bangladesh Accord on Fire and Building Safety is a legally binding agreement between global brands and retailers and trade unions, designed to build a safe and healthy Bangladeshi Ready Made Garment (RMG) Industry - Accord on Fire and Building Safety in Bangladesh (adopted 15 May 2013).
[196] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final, 7, para 3.3.

revised CSR strategy is considered below. This is followed by a brief review of some EU-funded CSR research projects, including those involving business and human rights.

1. Social Business Initiative

The Social Business Initiative (SBI), in which CSR plays a central role, is aimed at social enterprises. Through the SBI, the EU seeks to promote and develop social innovation among social enterprises, which is something that was initiated by a former EU Commission President, Jose Manuel Barroso, in 2009.[197] In 2011, the Commission adopted a Communication on the Social Business Initiative,[198] on the same day as the Communication on CSR.

In the Communication on the SBI, the Commission understands a social enterprise (also known as a social business) to be engaged in commercial activity in the social economy, whose main objective is social or societal rather than profit-driven, and often displays a 'high level of social innovation'.[199] Where profits are made, it is not for the owners or shareholders of the enterprise, but mainly for reinvestment 'with a view to achieving [its] social objective'.[200] Social enterprises are managed in an open and responsible manner, through an organisation or ownership system, that 'reflects their mission, using democratic or participatory principles or focusing on social justice'.[201] It is recognised that social enterprises cover specific bodies such as cooperatives, foundations, associations and mutual societies as well as some ordinary private or public limited companies.[202]

In terms of CSR generally, and human rights in particular, the Communication on the SBI portrays social enterprises as mostly 'exhibit[ing] an especially high level of social and environmental responsibility'.[203] The Communication on the SBI is therefore seen as supplementing the contemporaneous Communication on CSR, and helping to assert the social added value of this type of enterprise in the field of CSR.[204]

In view of the fact that the social enterprise model of doing business in the Europe often comes up against three fundamental difficulties – funding, a low degree of recognition of social entrepreneurship and an indifferent regulatory environment – the Communication on SBI proposed a short-term action plan (2011-

[197] Agnès Hubert, 'Empowering people, driving change: Social innovation in the European Union, Bureau of Policy Advisers (BEPA)' (2010), 11 and 109 <http://ec.europa.eu/ewsi/UDRW/images/items/docl_17731_35611801.pdf> accessed 12 February 2015.

[198] Commission, 'Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation' (Communication) COM (2011) 682.

[199] *Ibid*, 2.

[200] *Ibid*.

[201] *Ibid*, 2-3.

[202] *Ibid*, 3. For further information about the legal forms and organisational models that social enterprises take in selected EU Member States – Fabrizio Cafaggi and Paola Iamiceli, 'New frontiers in the legal structure and legislation of social enterprises in Europe: a comparative analysis' in Antonella Noya (ed), *The Changing Boundaries of Social Enterprises* (OECD 2008).

[203] *Ibid*, 4.

[204] *Ibid*.

2012) to support social innovation. This covered, among other things, improving social businesses' access to funding,[205] including EU funding as a priority for social enterprises in the EU Structural Funds, namely the European Regional Development Fund[206] and the European Social Fund,[207] which would be regulated from 2014. It was also intended that there should be a financial instrument to provide social investment funds and financial intermediaries with equity, debt, and risk-sharing instruments, namely the European Social Entrepreneurship Funds (EuSEF)[208] as well as a political agreement between the European Parliament and the Council on the EU programme for Employment and Social Innovation (EaSI).[209]

The action plan also proposed increasing the visibility of social entrepreneurship through the development of tools to gain a better understanding of the sector and to reinforce the managerial capacities, professionalism and networking of social businesses.[210] This included things like the establishment of an electronic data exchange platform for social investors and entrepreneurs, the so-called Social Innovation Europe platform.[211] Finally, the action plan aimed to simplify the legal environment,[212] including a Commission proposal for a European Foundation Statute to make it easier for foundations to support public benefit causes across Europe,[213] a forthcoming revision of the public procurement rules and state aid measures for social and local services.

As a follow up to the Communication on the SBI, a conference on the 'Social Economy and Social Business' was held in Brussels in late 2011, the objective of which was to gather the main EU policy-makers and stakeholders of social business in the EU in order to take stock of the potential for the development of social business as well as the barriers in the Single Market.[214] There was some, limited support for social

[205] Commission, 'Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation' (Communication) COM (2011) 682, 7-8 (Key actions nos. 1-4).

[206] Council Regulation (EU) 1301/2013 of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 [2013] OJ L 347/289, art 5(9)(c).

[207] Council Regulation (EU) 1304/2013 of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 [2013] OJ L 347/470, art 3(b) (v); see also the recitals at paras 6 and 20.

[208] European Parliament and Council Regulation (EU) No 346/2013 of 17 April 2013 on European Social Entrepreneurship Funds [2013] OJ L 115/18.

[209] The EU programme for Employment and Social Innovation (EaSI) was launched in mid-2013 with a proposed budget of €815 million for the period 2014-20 to cover a range of social entrepreneurship and social innovation programme in Europe - Commission, 'New programme for Employment and Social Innovation' <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1093&furtherNews=yes> accessed 12 February 2015.

[210] Commission, 'Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation' (Communication) COM (2011) 682, 8-9 (Key actions nos. 5-8).

[211] For details of the Social Innovation Europe platform see Commission, 'Social Innovation Europe' <https://webgate.ec.europa.eu/socialinnovationeurope/> accessed 13 February 2015.

[212] Commission, 'Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation' (Communication) COM (2011) 682, 9-12 (Key actions nos. 9-11).

[213] Commission, 'Proposal for a Council Regulation on the Statute for a European Foundation' (Communication) COM (2012) 035 final [not yet adopted].

[214] See Minutes of the 2011 conference at - Commission 'Social Economy and Social Business' (Commission, 18 November 2011)

business through CSR, which came mainly from Denmark, where such reporting has been mandatory since 2008. Subsequently around 87% of large Danish companies have chosen to account for CSR in their annual reports.[215]

More recently, in 2013 the OECD and DG Employment, Social Affairs and Inclusion published a joint Policy Brief on Social Entrepreneurship.[216] The report noted that the SBI was an important milestone for European policy makers and other stakeholders involved in promoting national and sub-national environments for socially-orientated business.[217]

2. Expert Group on Transnational Company Agreements

Moreover, the EU's renewed CSR Strategy implicitly revitalises the EU's commitment to supporting the Commission's Expert Group on Transnational Company Agreements (TCAs).[218] The Communication on CSR makes reference to the number of EU companies signing TCAs with global or European workers' organisations covering issues such as labour standards and human rights, which rose from 79 in 2006 to over 140 in 2011.[219] A TCA is an 'an agreement comprising reciprocal commitments, the scope of which extends to the territory of several States and which has been concluded by one or more representatives of a company or a group of companies on the one hand, and one or more workers' organisations on the other hand, and which covers working and employment conditions and/or relations between employers and workers or their representatives.' [220]

Operating since 2009, the mission of the Expert Group on TCAs is 'to monitor developments and exchange information on how to support the process';[221] this may include the promotion and development of effective CSR policies through TCAs. As an informal group within the meaning of the framework for

<http://ec.europa.eu/internal_market/social_business/docs/conference/18112011_minutes_en.pdf> accessed 13 February 2015.

[215] This CSR reporting requirement became mandatory in Denmark with the introduction of the Danish Financial Statements Act (Accounting for CSR in large businesses) on 16 December 2008; see Karin Buhmann, 'The Danish CSR Reporting Requirement: Migration of CSR-related International Norms into Companies' Self-regulation through Company Law?' (2011) 8(2) European Company Law 65.

[216] OECD/European Commission, *Policy Brief on Social Entrepreneurship: Entrepreneurial Activities in Europe* (European Commission 2013).

[217] *Ibid*, 3.

[218] The Expert Group on Transnational Company Agreements was formed in 2009; see Commission, 'First Meeting of the Expert Group on Transnational Company Agreements' (2009) EMPL/F2/EP, 1.

[219] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final, 4, para 2.

[220] Commission, 'The Role of Transnational Company Agreements in the Context of Increasing International Integration' (Communication) COM (2008) 419, 3, and fn 2 for the definition of TCAs.

[221] Commission, 'First Meeting of the Expert Group on Transnational Company Agreements' (2009) EMPL/F2/EP, 1.

Commission expert groups,[222] the Expert Group on TCAs comprises national and/or private-sector experts who assist the Commission in exercising its powers of initiative and in its tasks of monitoring and coordination or cooperation with the Member States.[223]

The Expert Group on TCAs consists of EU Governmental experts (with one expert per EU Member State, nominated by the respective Permanent representations to the EU) and the social partners (nine experts from the employers' organisations, nominated by Business Europe, and nine experts from the trade-union organisations, nominated by ETUC). European Economic Area (EEA) Governmental experts and representatives from various institutions, including the ILO, are permitted to attend the Expert Group meetings, as observers.[224]

In practice, the Expert Group specifically supports the adoption of TCAs through organising exchanges of experience and studies, reviewing the effects produced by such agreements and the way in which norms relate to each other in the Member States, and clarifying the rules of international private law in connection with TCAs.[225]

Increasingly, TCAs are seen as 'new forms of social dialogue in multinational companies'.[226] Aside from the importance of TCAs in providing 'voluntary, innovative and socially agreed solutions in companies across Europe', at the 'global level, such agreements, often called International Framework Agreements (IFAs), focus on corporate social responsibility and respect of fundamental rights.'[227] A searchable database of TCAs was launched in 2011.[228]

3. CSR and Small and Medium-sized Enterprises

There has long been recognition that while CSR is promoted by many TNCs, the concept remains relevant for small and medium-sized enterprises (SMEs) too. The importance of CSR to SME's, including micro-businesses, given their contribution to the economy and employment, was already recognised over a decade ago in the Green Paper.[229]

[222] Commission, 'Framework for Commission's Expert Groups: Horizontal Rules and Public Register' (Communication) COM (2005) 2817, 2.
[223] *Ibid*.
[224] Commission, 'First Meeting of the Expert Group on Transnational Company Agreements' (2009) EMPL/F2/EP, 2.
[225] Commission, 'Report of the Expert Group, Transnational Company Agreements' (European Commission, 31 January 2012) <http://ec.europa.eu/social/BlobServlet?docId=7679&langId=en> accessed 14 February 2015.
[226] Commission, 'Transnational company agreements: realising the potential of social dialogue' SWD (2012) 264 final, 2.
[227] *Ibid*.
[228] See Commission, 'Database on transnational company agreements' <http://ec.europa.eu/social/main.jsp?catId=978&langId=en> accessed 14 February 2015.
[229] Commission, 'Promoting a European framework for Corporate Social Responsibility' (Communication) COM (2001) 366 final, para 23.

In line with the Commission's 'Think Small First' strategy, it was decided that CSR practices and instruments should be adapted to suit the specific SME situation, given that they 'make up the vast majority of European enterprises.'[230] While many SMEs may not know or use the term CSR in their day-to-day activities they retain close relations with employees, the local community and their business partners, which is inherently inspired by responsible entrepreneurship.[231]

However, it was also acknowledged that even if many SMEs did 'already carry out socially and environmentally responsible activities for the benefit of their external stakeholders' this 'community and social engagement' was 'local in scope, occasional in nature, and unrelated to business strategy'.[232] It was acknowledged that in order to 'draw value for their engagement' there was a need 'to assist SMEs in adopting a more strategic approach'. This could best be done *inter alia* by collecting evidence on SME-specific aspects of CSR and the business case, by raising awareness among SMEs about the impacts of their activities on developing countries, and by promoting SME proactive policies in the field of core labour standards.[233]

As part of its SME awareness-raising campaign, DG Enterprise and Industry set up an 'Awareness-raising questionnaire', the purpose of which was for SMEs to determine the extent to which a company thought about its efforts towards responsible entrepreneurship.[234] The questionnaire, which was made available on-line, was self-referential and from the outset no apparent attempt was made by the Commission to gather the views of participating SMEs in order to evaluate their responses. It is therefore unclear to what extent, if any, this action had on the engagement of the EU with the broader SME community in Europe. In 2007, a group of European experts on CSR and SMEs published a report under the auspices of DG Enterprise and Industry on how to integrate social and environmental issues into small business operations.[235]

Meanwhile, at the centre of the Commission's strategy for SME's was the development of the Small Business Act (SBA) for Europe, which was adopted in June 2008,[236] and aimed to provide a comprehensive SME policy for the EU and its Members States. The main thrust of the SBA was to improve the overall approach to entrepreneurship and permanently anchor the 'Think Small First' principle in the business

[230] Commission, 'Corporate Social Responsibility: A business contribution to Sustainable Development' (Communication) COM (2002) 347 final, 11, para 4.5.

[231] This was based in part on a European Network for SME Research (ENSR) survey of over 7,000 SMEs in the 7th Observatory of European SMEs, which is taken up in KPMG and EIM Business & Policy, 'SMEs in focus: Main results from the 2002 Observatory of Europe SMEs' (2012) <http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=1614> accessed 15 February 2015.

[232] Commission, 'Corporate Social Responsibility: A business contribution to Sustainable Development' (Communication) COM (2002) 347 final, 11, para 4.5.

[233] *Ibid*, 12, para 4.5.

[234] Commission, 'Awareness-raising questionnaire, corporate social responsibility' <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/campaign/documentation/download/questionaire_en.pdf> accessed 15 February 2015.

[235] European Expert Group on CSR and SMEs, *Opportunity and Responsibility: How to help more small business to integrate social and environmental issues into what they do* (DG Enterprise and Industry, 2007).

[236] Commission, '"Think Small First": A "Small Business Act" for Europe' (Communication) COM (2008) 394 final.

community while promoting the growth of SMEs in Europe. The SBA did not, however, touch upon the requirement for SMEs to incorporate CSR into their form of entrepreneurship let alone touch upon the need to incorporate respect for human rights into their form of entrepreneurship.

This only came about in 2011, with the inclusion of specific language directed at SMEs, in the Commission's communication on CSR.[237] In setting out its renewed definition of CSR, the Commission recognised that for most SMEs, especially microenterprises, the CSR process was likely to remain informal and intuitive.[238] As the EU was aware of the fact that several initiatives had already been undertaken in Member States, it sought to build on those various initiatives by supporting 'capacity-building for SME intermediary organisations to improve the quality and availability of CSR advice for SMEs' in the Agenda for Action 2011-2014'.[239]

The EU's revised definition of CSR called for the integration of 'social, environmental, ethical, human rights and consumer concerns' into the operations of all business enterprises.[240] Thus, as part of its renewed CSR strategy, the Commission decided to work with enterprises and stakeholders from 2012 onwards to develop human rights guidance for SMEs based on the UN Guiding Principles.[241]

Alongside this initiative, a CSR handbook for small business advisors, in the form of a set of tips and tricks, was issued by the Commission.[242] It makes reference to the fact that the Commission has developed a particular guide on human rights for SMEs and refers to the 'SME blog of the Network for Business Sustainability' that 'translates academic studies from around the world into practical resources for businesses'.[243] However, without any evaluation of the dissemination and use of this CSR handbook among the SME business community, it is unclear whether the tips and tricks toolkit has had any impact at all on the CSR policies of SMEs in general and their responsibility to respect human rights in particular.

Finally, at the beginning of 2014, DG Enterprise and Industry issued a set of five human rights case studies of different SMEs in Europe at the beginning of 2014. The idea behind these five cases studies was to demonstrate to the SME community what the baseline expectations are for all EU enterprises, irrespective of their size, location and type of business, in terms of making sure that they respect human rights.[244] The

[237] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final.
[238] *Ibid*, 6, para 3.1.
[239] *Ibid*, 8 para 4.1.
[240] *Ibid*, 8, para 4.1.
[241] See section III E.1.
[242] Jutta Knopf and Barbara Mayer-Scholl, *Tips and Tricks for Advisors: Corporate Social Responsibility for Small and Medium-Sized Enterprises* (European Commission 2013) 7.
[243] The Network for Business Sustainability is a Canadian not-for-profit organisation that seeks to foster collaboration between research and practice in the field of business sustainability – Network for Business Sustainability, 'Home' <http://nbs.net/> accessed 15 February 2015.
[244] Commission, 'De-mystifying Human Rights for Small and Medium-sized Enterprises' <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-case-studies_en.pdf> accessed 25 February 2015. The five SMEs that contributed case studies were: Sealock – industrial adhesives (France); startpeople – temporary employees and HR consultations (Poland), Danimex – communications technology

two key messages that the five case studies sought to convey were: first, that human rights are relevant to ordinary European SMEs; and second, they do not have 'to start from zero when addressing human rights' because they often have 'attitudes, policies, processes and practices in place on which they can build, even if they have not explicitly addressed human rights before'.[245] Some of the comments from the case studies had previously been incorporated in the guide to human rights for SMEs that was published in December, 2012 (see below).

4. EU-funded research on CSR

Since the adoption of the Green Paper of 2001, there has been a considerable amount of research carried out on CSR in Europe, which has been funded in whole or in part by the EU. While some of that research has touched upon human rights within the broader context of CSR, other research has focused more specifically on the legal framework for business and human rights in specific areas, e.g. the supply chain, or in the business operations of European companies operating extraterritorially. This brief overview is divided into two parts.

The first part reviews four EU-funded research projects under the Sixth Framework Programme (FP6) for research and technological development within the Socio-Economic, Science and Humanities Programme (SSH). The second part concentrates on three other EU-funded research projects for DG Enterprise and Industry and for DG Employment, Social Affairs and Inclusion respectively.

The first research project is the INSEAD consortium of business schools that developed RESPONSE (2004-2007).[246] The research involved a behavioural study, based on 427 interviews, approximately 1,000 questionnaires and direct observations, engaging 20 global companies and 180 stakeholder organisations. The project aimed to understand the nature of societal expectations regarding corporate behaviour. In particular, it studied the alignment, or lack thereof, between managers' and stakeholders' perceptions of what constitutes the social responsibility of business corporations.[247]

(Denmark); van Bavel – business gifts (Belgium); and Farmahem – laboratory supplies and environmental consultancy (FYR Macedonia).

[245] *Ibid*, 1.

[246] The RESPONSE consortium, led by INSEAD (France), included the Copenhagen Business School (Denmark), Bocconi University (Italy) and the Leon Kozminski Academy (Poland), in addition to Impact, an Austrian training company. The project was also actively supported by the European Academy of Business in Society (EABiS), a network of business schools and large multinational companies, as well as founding business partners IBM, Johnson & Johnson, Microsoft, Shell and Unilever. It was funded under the EU's 6th Framework Project (FP6), CIT2-CT-2004- 506462 Understanding and Responding to Societal Demands on Corporate Responsibility.

[247] There is very little information available on RESPONSE due to a re-ordering of INSEAD's web-site, but some information is available here - INSEAD, 'Results of Major research project on Corporate Social Responsibility' (INSEAD, 15 October 2007) <http://www.insead.edu/media_relations/press_release/2007_response.cfm> accessed 14 February 2015. See also INSEAD, 'Understanding Corporate Responsibility: An Executive Briefing, Results and Insights from Project RESPONSE (INSEAD, 5 October 2007) <http://www.insead.edu/media_relations/press_release/docs/RESPONSE-Executive-Briefing.pdf> accessed 14 February 2015.

The second research project on CSR is RARE (Rhetoric and Realities: Analysing Corporate Social Responsibility in Europe), led by the Öko Institut.[248] It also ran from 2004-2007. The research project aimed to improve understanding of how CSR can be enhanced in the EU and to further contribute to sustainable development through a combination of theoretical and practical research.

The main findings of the research project have subsequently appeared as academic publications,[249] and in the form of a brochure, which is available on-line.[250] Of particular note is the fact that during the course of 2006 the RARE Consortium carried out surveys on CSR practices and performance in different European industries – the banking, oil and fish processing sectors.[251] An additional, evidence-based study analysed CSR in SMEs belonging to the automotive supply chain in Hungary and Austria.[252]

The third research project, undertaken by EABiS (European Academy of Business in Society) and the CSR Platform (European platform for excellence in CSR research), which ran from 2004-2007,[253] aimed to mobilise researchers in order to support and develop research excellence in CSR and business in society in the European Research Area (ERA). The project identified ways and means to bolster and strengthen CSR research in Europe, with the overall approach designed to have a direct impact on the established institutions, structures and mechanisms by which research is developed, funded, conducted and disseminated in the ERA.

The key findings of the CSR PLATFORM project were that research on CSR should involve 'more and better-connected knowledge', with its base in connections between research centres and disciplines, between research and practice and between research and education. This should occur in parallel with the reconfiguration of the relationship between business and society and the complex relationship between

[248] The Öko-Institut/ Institute for Applied Ecology (Germany) led the research team, which included researchers from the Fridtjof Nansen Institute (FNI, Norway), the Stockholm Environment Institute (SEI, Sweden), the Fondazione Eni Enrico Mattei (FEEM, Italy), Budapest University of Technology and Economics (BUTE, Hungary), the Institut für sozial-ökologische Forschung (ISOE)/ Institute for Social-Ecological Research (ISOE, Germany) and Peter Wilkinson Associates (UK), Project Consultant to Transparency International for the 'Business Principles for Countering Bribery'. It was funded under EU FP6, Contract No. CIT2-CT-2004-506043 Rhetoric and Realities: Analysing Corporate Social Responsibility in Europe.

[249] The main publication is Regine Barth and Franziska Wolff (eds), *Corporate Social Responsibility In Europe Rhetoric and Realities* (Elgar 2009). An overview of the project and main findings is also available from Regine Barth, Franziska Wolff and Katharina Schmitt 'Analysing the contribution of CSR to the achievement of EU policy goals: CSR between Rhetoric and Reality' (2007) 22(4) Ökologisches Wirtschaften 30.

[250] The main findings and the project brochure from the RARE research project can be found here – RARE, 'Home' <http://www.rareeu.net/index.php?id=4> accessed 14 February 2015.

[251] A summary of the RARE survey findings, together with the three case studies of CSR in the banking, oil and fish processing sectors, can be found at Öko-Institut, 'Release of CSR Surveys of selected European industries' <http://www.rare-eu.net/index.php?id=4> accessed 14 February 2015.

[252] Öko-Institut, 'CSR in small and medium-sized companies: Evidence from a survey of the automotive supply chain in Hungary and Austria' (RARE, 30 November 2006) <http://www.rare-eu.net/fileadmin/user_upload/internal/project_documents/Sector_Survey/RARE_CSR_Survey_-_SMEs_in_Automotive_Supply_Chain.pdf> accessed 14 February 2015.

[253] CSR Platform (European platform for excellence in CSR research), was funded under FP6, Contract no. CIT2-CT-2004-506423.

research, education and practice, both of which are undergoing significant changes.[254] One of the more innovative features of the CSR PLATFORM project was its study of the 'state of the art' of stakeholder engagement in CSR research and issues.[255]

A fourth research project, coordinated by the University of Bordeaux between 2004 and 2007, was ESTER (The International Dimension of Corporate Social Responsibility).[256] It examined the social practices of European firms in the context of economic globalisation, exploring the relationship between social responsibility, international trade, and the rights of people at work.

ESTER focused on the CSR of European transnational companies and analysed how CSR may have contributed to achieving the Lisbon strategic objective (March 2000-2010) and the European strategy on sustainable development. The project concentrated on observing the existence of a European model of CSR, the exportability of the European social model, and examined the hypothesis of a 'codification of ethics'.[257] It analysed the impact of legislation on CSR, based on legal and sociological research, using a scenario methodology,[258] together with theoretical and applied economic analysis of CSR.

All four FP6 research projects on CSR were independently evaluated by the Commission together with an external reviewer.[259] The research results are summarised as follows: 'The ESTER project assumes that far-reaching regulation is required, while the RESPONSE project seems averse to creating any restrictions for businesses. The RARE project seems to favour a middle way, broadly in line with a stimulated CSR approach, while the CSR PLATFORM project was mainly concerned with stimulating and moderating a dialogue between academia, business and policy makers, including discussions on the future CSR research agenda'.[260]

[254] Commission, 'Final Report - CSR PLATFORM (European platform for excellence in CSR research)' (CORDIS, 10 September 2008) <http://cordis.europa.eu/publication/rcn/12698_en.html> accessed 14 February 2015.
[255] *Ibid*, 11-12.
[256] The Centre National de la Recherche Scientifique, COMPTRASEC, Université Montesquieu-Bordeaux IV (France), was the main coordinator of a research team that included the following partners: Université Libre de Bruxelle (Belgium); Université Montesquieu-Bordeaux IV (France); Université Toulouse II (France); Universität Hamburg (Germany); Universita Degli Studi di Trento (Italy); Universidad de Castilla-La Mancha (Spain); Universidad Complutense de Madrid (Spain); Utrecht University (The Netherlands); and University of Essex (UK). It was funded under FP6, Contract no. CIT2-CT-2004-506323 Social regulation of European transnational companies.
[257] Details of those findings can be found at ESTER, 'The International Dimension of Corporate Responsibility' <http://cordis.europa.eu/documents/documentlibrary/127029951EN6.pdf> accessed 14 February 2015.
[258] Interviews were conducted with NGOs, standards organisations, trade unions, companies, and civil servants in several Ministries concerned with CSR or sustainable development. Five different scenarios were used: Scenario 1: Binding regional regulation (EU); Scenario 2: Non-binding regional regulation (EU): Scenario 3: International regulation (ILO/UN): Scenario 4: Transnational regulation (Company); Scenario 5: National regulation (Head office country); see ESTER Project, *ibid*, 5.
[259] The study was conducted by the Commission together with an external consultant, Albert Schram, a CSR specialist from Maastricht University (The Netherlands) see Commission, 'Towards greater corporate responsibility: conclusions of EU-funded research' <http://ec.europa.eu/research/social-sciences/pdf/policy_reviews/policy-review-corporate-social-responsibility_en.pdf> accessed 16 February 2015.
[260] *Ibid*, 46.

The main conclusions of the evaluation were that while these research projects had contributed substantially to clarifying CSR principles and drivers and had laid the ground for empirically-based outcomes, there was a need for a body of research that could be complemented by more focused management research, which was related to business processes in four areas. First, mainstreaming CSR in firms' strategic process, including SMEs; second, linking CSR and innovation; third, research performance and impact indicators; and fourth global supply chain management.[261] The main findings of the FP6 research were considered to have been largely conceptual while future research needed to be more empirical and cover the field of interdisciplinary CSR research in order to enhance its policy relevance.

Another research project, which was co-funded by the EU, but does not fall under the FP6 programme, examined the 'Innovative strategies for CSR project'. It was undertaken jointly by ICEP (Austria) and Codespa (Spain) together with the Boston Consulting Group, Barcelona (Spain) and others (2005-2008).[262] The project describes nine leading European corporations as well as their challenges in developing and implementing global CSR strategies. This led to the publication of *Business and Poverty: The global CSR case-book* in 2009, which aside from CSR reporting contains a chapter on corporate responsibility for human rights, focusing mainly on the human rights principles of the UN Global Compact.[263]

Two more recent EU-funded research projects concentrate specifically on areas of the business and human rights aspects of CSR. One is the 2010 study by the University of Edinburgh (UK) for DG Enterprise and Industry, which examined the current legal framework for human rights and the environment, applicable to European companies when they operate outside the EU.[264] The study found that 'the existing legal framework on human rights and the environment applicable to European Union enterprises operating outside the EU is complex and multifaceted, consisting of law at national, European and international levels. The existing European legal framework already contributes in some respects to the implementation of the UN Framework on business and human rights. However, in other respects legal gaps and policy incoherencies persist.'[265]

The study went on to say that it had identified 'a number of opportunities for legal reforms that could be explored, with a view to better contributing to the further implementation of the UN Framework'. It was therefore intended 'to provide a solid legal basis for policy makers, corporations and civil society

[261] *Ibid*, 47.
[262] *Innovative Strategies for CSR* (also known as *Global CSR*), undertaken and co-funded with the EU, by Institut zur Cooperation bei Entwicklungs-Projekten (ICEP) and CODESPA, BCG (Boston Consulting Group), mondi, respect – Austrian Business Council for Sustainable Development and WKO (Wirtschaftskamer Österreich) – Global CSR, 'Global CSR Cases' <http://www.globalcsr.at> accessed 26 February 2015.
[263] Klaus M. Leisinger, 'On Corporate Responsibility for Human Rights' in ICEP and CODESPA, *Business and Poverty: Innovative Strategies for Global CSR: How to develop global CSR strategies, manage risks and find new opportunities for your business in emerging and developing countries* (European Union 2009) 33-41.
[264] Daniel Augenstein, 'Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union' <http://ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025_ec_study_final_report_en.pdf> accessed 14 February 2015.
[265] *Ibid*, 77.

organisations to consider how best to effectively respond to the (legal) challenges posed by extraterritorial corporate violations of human rights and environmental law'.[266]

However, Amnesty International (AI), as one of the participants in the project's Multistakeholder Steering Committee, expressed the view that the study failed to make a clear distinction between legal and voluntary or non-binding frameworks.[267] It was particularly critical of the way in which the OECD Guidelines on Multinational Enterprises and the OECD National Contact Points (NCPs) had been, in its view, misleadingly represented. This is because the OECD NCPs cannot result in a 'remedial outcome for those who have suffered human rights harm', but rather they are 'dependant on the voluntary cooperation of the company that is alleged to have harmed rights in the first place'.[268]

Similarly, AI criticised the study for lacking 'conceptual and structural clarity'. In its view, it failed to 'clearly frame its analysis of the different legal and non-legal regimes. In terms of: (a) a clear description of the existing legal framework; and (b) the connection between the specific legal framework and the human rights'.[269] The consequence of this was that 'at several points the legal frameworks that can address corporate misconduct are referenced without clarity on whether human rights impacts can be specifically considered'.[270] This critique chimes with concerns that such studies have tended to lack a strong human rights orientation.

Another piece of EU-funded research for DG Employment, Social Affairs and Inclusion in 2011, that focuses on the human rights aspects of CSR, is the 'Study on Responsible Supply Chain Management', which was led by consulting group 'adelphi' together with a consortium of NGOs, consultants and academics.[271] It moves in the same direction as the Edinburgh study by examining the potential success factors and challenges for responsible supply chain management, in terms of the human rights aspects of CSR, in the supply chains of European companies operating outside the EU.[272]

The study focuses on three industrial sectors that are important to the EU, namely cotton, sugar from sugar cane, and mobile phones. It looks at each in relation to five key CSR supply chain management issues, three of which related to fundamental rights: child labour; freedom of association and collective bargaining.[273] The issues of unfair pricing and biodiversity, against which responsible supply management

[266] *Ibid*.
[267] *Ibid*, 78 (V. Annex: Comments from the Multistakeholder Steering Committee – 1 Amnesty International).
[268] *Ibid*.
[269] *Ibid*, 78-9.
[270] *Ibid*, 79.
[271] Led by adelphi, the research project team included CREM BV, SOMO (Stichting Onderzoek Mulitnationale Ondernemingen), Universität München – Research Center for Law and Management of Public Procurement (PPRC) and ICLEI – Local Governments for Sustainability.
[272] Marjon van Opijnen and Joris Oldenziel, *Responsible Supply Chain Management, Potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies: Final Report* (2011) <http://ec.europa.eu/social/main.jsp?langId=es&catId=331&newsId=1014&furtherNews=yes> accessed 14 February 2015.
[273] *Ibid*, Appendix 1 – Sector Analysis, together with 37-58.

was also measured, are not specific to business and human rights. The results from the study – as far as they concern human rights – were correlated with the UN Business and Human Rights 'Protect, Respect, Remedy' framework, proposed by John Ruggie, the UN Secretary-General's special representative on business and human rights.[274]

5. FP7-funded IMPACT project on CSR impacts

Launched in March 2010, the FP7-funded CSR IMPACT project, which brought together researchers at 16 university business-and-management schools and business-related think tanks,[275] was the largest systematic investigation of CSR ever conducted in Europe. More than 5,300 small and medium enterprises and more than 200 large firms based in Europe were surveyed. Additionally, econometric analyses, case studies, and a Delphi study involving more than 500 experts were used to track CSR impacts.[276]

The project's objective was to determine whether CSR measures contributed to meeting the EU goals of the Gothenburg and Lisbon strategies, i.e. growth, innovation, competitiveness, high job quality and environmental sustainability. The results were published in 2013 and coincided with a Final Conference held in September of that year, the objective of which was to discuss the project's main findings and to understand their implications, in the context of emerging EU policies, and on management. The final publication and main findings of IMPACT appeared in early 2014.

The main findings of the IMPACT project were that: first, 'companies regard CSR practice as a necessity' but 'firms have a pretty uneven view of what CSR involves'; second, 'identification of individual CSR issues is highly dependent on their materiality to core business and strategy'; third, 'there are no established and accepted methodologies to measure societal impact from companies or their CSR/sustainability activities'; and fourth, 'where outcomes and impacts are measured, there is no convincing evidence that there are significant improvements over time large enough to create change [in behaviour] and reach major policy goals'.[277]

[274] *Ibid*, Appendix II – Case Studies, together with 61-85.

[275] Öko-Institut took the lead in the IMPACT Project, assisted by Aalto, the Academy of Business in Society (ABIS), Copenhagen Business School (CBS), CentERdata, Central European University (EU), IESE, INSEAD, ISOE, Kozminski, KU Leuven, MIP Milan, Nottingham University Business School (ICCSR), Universiteit Tilburg, Univesitäat Wien, Vlerick, ZEW.

[276] Originally used by the RAND Corporation, Delphi is a forecasting method, whose object is to obtain the most reliable consensus of opinion of a group of experts. This is done by means of rounds of intensive questionnaires, interspersed with controlled opinion feedback by a facilitator, who after each round provides an anonymous summary of the experts' forecasts from the previous round. Based on these forecasts, the experts revise their earlier answers in light of the replies of other members of their panel. With the ever decreasing range of answers the group of experts eventually converges towards the 'correct' answer - Norman Dalkey and Olaf Helmer, 'An Experimental Application of the Delphi Method to the use of experts' (1963) 9 Management Science 458-467.

[277] Regine Barth, 'Executive Summary: Headline findings, insights & recommendations for policy makers, business and stakeholders' (2014) 41 <http://csr-impact.eu/documents/documents-detail.html?documentid=32> accessed 16 February 2015.

Furthermore, company responsibility needs to be analysed in terms of impact – both within the firm and by key stakeholders, there is no practice in companies that discerns the effects stemming from voluntary activities (former CSR definition) and other company activities (regulatory approach in current CSR definition) due to the way the data is collected. There is also a poor understanding of what constitutes EU 'policy', the actual EU policy on CSR and company strategy and CSR practices across Europe.[278]

Overall, and one of the most striking findings of the IMPACT study, was that: '[T]he aggregate CSR activities of European companies [had] not made a measurable positive contribution to achieving the economic, social and environmental goals of the European Union, as framed in the Lisbon and Gothenburg Agendas'.[279]

E. Strategic Framework and Action Plan for Human Rights and Democracy

The EU launched its first-ever Strategic Framework on Human Rights and Democracy in June 2012,[280] in which principles, objectives and priorities are set out to improve the effectiveness and consistency of the EU human rights policy by better integrating human rights into all areas of its external policies. The Strategic Framework presents the key principles for taking human rights into account in EU policies, among them the fact that the EU will encourage and contribute to implementation of the UN Guiding Principles on Business and Human Rights.[281]

Attached to the Strategic Framework is an Action Plan that was intended to run up to 31 December 2014. It specifically mentions three actions in respect of business and human rights. The first action point called upon the Commission to ensure implementation of the Communication on CSR in 2013. In particular, it was required to develop and disseminate human rights guidance for three business sectors – ICT, oil and gas, and employment and recruitment agencies, as well as for SMEs.[282] The second action point called upon the Commission to publish a report by the end of 2012 on EU priorities for the effective implementation of the UN Guiding Principles.[283] The third action point was for the EU Member States to develop national action plans on implementation of the UN Guiding Principles during 2013.[284] A proposed new Action Plan, made up of 36 separate initiatives, was still under negotiation at the end of 2014.

[278] *Ibid*, 42.
[279] *Ibid*, 5.
[280] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (Luxembourg 2012).
[281] *Ibid*, 3.
[282] *Ibid*, Action 25 (a).
[283] *Ibid*, Action 25(b).
[284] *Ibid*, Action 25(c).

1. Human Rights guidance for different businesses and business sectors

In fulfilment of one aspect of the Agenda for Action under the Communication on CSR in 2013,[285] DG Enterprise and Industry announced at the beginning of 2012 that it had selected three business sectors that would be the focus of a year-long project to develop sector-specific guidance on the corporate responsibility to respect human rights, based on the UN Guiding Principles on Business and Human Rights.[286] The sectors selected for coverage were employment and recruitment agencies, information and communication technology (ICT) and the oil and gas industry. The reason for this was that all three sectors face a wide range of significant human rights challenges that could benefit from detailed guidance for companies. It was, however, thought that such guidance would prove invaluable for business in other sectors of the economy that face similar human rights-related issues. [287]

In commissioning the guidance on human rights for the ICT sector, it was envisaged that this would also contribute to the Commission's 'No Disconnect Strategy' on Internet freedom. This is an EU policy commitment to ensure that human rights and fundamental freedoms are respected both online and off-line, and that the Internet and other forms of ICT can remain a driver of political freedom, democratic development and economic growth.[288]

Shift[289] and the Institute for Human Rights and Business (IHRB)[290] were chosen by the Commission to develop the guidance documents over a period of 18 months. This was done by means of extensive research, fieldwork and 75 multistakeholder interviews with representatives from each of the three industries as well as governments, trade unions, civil society, academia and other experts, combined with two multi-stakeholder roundtable discussions, hosted by the European Commission.

[285] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final, 14, para 4.8.2., action point 11.

[286] According to a communiqué from DG Enterprise and Industry [now DG GROW] see Commission, 'European Commission selects three business sectors for the development of human rights guidance' (Brussels, 14 February 2012) <http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=5752&lang=en> accessed 26 February 2015.

[287] *Ibid*.

[288] More information about the 'No Disconnect Strategy', which falls under the EU's Digital Agenda can be found at Commission, 'Digital Agenda: Karl-Theodor zu Guttenberg invited by Kroes to promote internet freedom globally' (Brussels, 12 December 2011) <http://europa.eu/rapid/press-release_IP-11-1525_en.htm?locale=en> accessed 26 February 2015.

[289] Shift is an independent, non-for-profit centre for business and human rights practice that helps governments, business and their stakeholders to put the UN Guiding Principles into practice – SHIFT, 'Putting Principles into Practice' <http://www.shiftproject.org/> accessed 16 February 2015.

[290] The Institute for Human Rights and Business (IHRB) is a London-based not-for-profit organisation. It considers itself to be a 'think and do tank' dedicated to: undertaking cutting edge research and analysis on key thematic issues at the interface of human rights and private sector activity; communicating and raising awareness about human rights and business issues; and working directly with business leaders, government officials and others to evaluate the effectiveness of current policies, operational practices and multi-stakeholder initiatives relevant to human rights – Institute for Human Rights and Business, 'About us' <http://www.ihrb.org/about/mission.html> accessed 14 February 2015.

Each sector guide is intended to provide practical advice on how to implement the corporate responsibility to respect human rights in day-to-day business operations by means of a step-by-step guidance for that particular sector. At each step, the sector guides on employment and recruitment agencies,[291] ICT,[292] and oil and gas[293] set out what the UN Guiding Principles expect, offer a range of approaches and examples for how to put them into practice, and link users to additional resources that can support their work.

Furthermore, as part of the same action point, the Commission undertook to publish an introductory guide to human rights for small and medium-sized enterprises (SMEs).[294] The guide to human rights for SMEs was launched at the 2012 UN Forum on Business and Human Rights.[295] It seeks to explain why human rights, such as the right to non-discrimination, the right to equal remuneration for work of equal value, the right to privacy or the right to freedom of association, are relevant for European SMEs. It also explains how SMEs can respect human rights as well as offering advice on how they can address potential human rights risks.[296] The guide is informed by illustrative examples and case studies involving human rights in the EU economy from an enterprise point of view.

2. Report on priorities for effective implementation of UN Guiding Principles

The Commission had a standing commitment within the CSR Action Plan to publish a report on EU priorities for effective implementation of the UN Guiding Principles by the end of 2012 and thereafter to issue periodic progress reports. An initial discussion paper was published by the Commission services, as an input for the Danish Presidency Conference on implementation of the UN Guiding Principles in May 2012.[297] However, final publication of the report was delayed in order to better process the outcome of the first UN Forum on Business and Human Rights, which was held in December 2012, and to ensure an

[291] SHIFT and Institute for Human Rights and Business, 'Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights' (2013) <http://shiftproject.org/sites/default/files/ECHRSG.ERA_.pdf> accessed 14 February 2015.

[292] SHIFT and Institute for Human Rights and Business, 'ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights' (2013) <http://shiftproject.org/sites/default/files/ECHRSG.ICT_.pdf> accessed 14 February 2015.

[293] SHIFT and Institute for Human Rights and Business, 'Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights' (2013) <http://shiftproject.org/sites/default/files/ECHRSG.OG_.pdf> accessed 14 February 2015.

[294] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final, 14, para 4.8.2, action point 11.

[295] United Nations Office of the High Commissioner for Human Rights, 'First Annual UN Forum on Business and Human Rights was held in Geneva, 3-5 December 2012' <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2012ForumonBusinessandHumanRights.aspx> accessed 16 February 2015.

[296] Commission, 'My business and human rights: A guide to human rights for small and medium-sized enterprises' (2013) <http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf> accessed 16 February 2015.

[297] Danish EU Presidency 'From Principles to Practice: The European Union operationalizing the United Nations Guiding Principles on Business and Human Rights' (Conference on Business and Human Rights Principles to Practice, Copenhagen, May 2012).

in depth elaboration of all aspects.[298] There is no certainty that the report on EU priorities has ever seen the light of day.

3. National action plans on business and human rights

In the Action Plan on Human Rights and Democracy, EU Member States are specifically encouraged to develop national plans on business and human rights in accordance with the UN Guiding Principles on Business and Human Rights.[299] By January 2015 many but not all of the 28 EU Member States had prepared a national plan or are in the process of doing so. Those Members States that had completed this task by the end of 2014 included the UK, the Netherlands, Italy, Denmark and Spain and Finland,[300] while France and Slovenia were in the process of doing so.[301] The Greek and Portuguese governments are planning to refer to the UN Guiding Principles in their national action plans on CSR.[302]

The UK was the first country to adopt a national action plan in 2013 in order to demonstrate its commitment to help 'UK companies understand and manage human rights' by supporting, motivating and giving incentives to UK businesses 'to meet their responsibility to respect human rights throughout their operations both at home and abroad'. The UK government authorities made a particular call on businesses to help put this UK action plan into effect.[303]

The Netherlands followed soon after with their national action plan, which was launched in December 2013.[304] According to the Dutch action plan, the 'guiding principle is that businesses have a social

[298] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)* (European Union 2013) 103.
[299] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (Luxembourg 2012).
[300] The list of the states that have produced a national action plan on business and human rights can be consulted here - United Nations Office of the High Commissioner for Human Rights, 'State national action plans' <www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> accessed 16 February 2015. The Commission has so far only listed the national action plans on business and human rights from the UK, the Netherlands, Italy and Denmark see Commission, 'Business and Human Rights' <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm> accessed 16 February 2015.
[301] Damiano de Felice and Andreas Graf, 'The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights' (2015) 7(1) Journal of Human Rights Practice, 49 and 53 respectively.
[302] *Ibid*, 53; see also UNHRC, Third session - Forum on Business and Human Rights 3 December 2014 'Summary of discussions of the Forum on Business and Human Rights, prepared by the Chair, Mo Ibrahim' (2014) UN Doc A/HRC/FBHR/2014/3 para. 36.
[303] Foreign and Commonwealth Office, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights* (Cm 8695, 2013).
[304] The Dutch national action plan on business and human rights is available here – Dutch Ministry of the Interior and Kingdom Relations, 'National Action Plan on Business and Human Rights' <http://www.netherlandsmission.org/binaries/content/assets/postenweb/v/verenigde_staten_van_amerika/the-permanent-mission-to-the-un/actionplanbhr.pdf> accessed 16 February 2015.

responsibility to apply the same human rights norms both in the Netherlands and elsewhere'.[305] Italy launched its national action plan in March 2014,[306] while that of Denmark appeared the following month, in April 2014.[307] The Danish national action plan is innovative in one respect – it contains a descriptive part first, where some of the initiatives taken to implement the Guiding Principles are highlighted, followed by an annex at the end of the publication that includes a schematic overview of the Danish implementation of the UNGPs principle by principle.

Furthermore, Spain adopted its national action plan in the summer of 2014, subject to approval by the Spanish Council of Ministers[308] while Finland has recently launched its national action plan.[309] Some of Finland's key aims are the legislative report, a definition of the due diligence obligation and the application of social criteria in public procurement as well as greater dialogue between businesses and civil society and companies requiring information on human rights aspects to support their risk management work.[310] The action plan has been drawn up in such a way that it not only facilitates the realisation of listed actions in the coming years, but also provides a foundation for new actions to be added. The Finnish national action plan provides for annual monitoring by the Committee for Corporate Social Responsibility.[311]

When it comes to the evaluation of individual Member States' actions plans, it has been proposed that the EU should set up 'criteria to evaluate the progress States make in implementing the action plans in the years to come'.[312] So far, this has not happened, possibly because there have been an insufficient number of finalised national action plans in the EU. However, the International Corporate Accountability

[305] *Ibid*.

[306] Italian Government, 'The Foundations of the Italian Action Plan on the United Nations "Guiding Principles on Business and Human Rights' <www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> accessed 1 February 2015.

[307] Danish Government, 'Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights' <http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf> accessed 16 February 2015.

[308] Spanish Government, 'Plan de Empresa y Derechos Humanos' <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx> accessed 16 February 2015; see also Carmen Márquez Carrasco (ed), *España y la implementación de los Principos Rectores de las Naciones Unidas sobres 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 Editorial 2014).

[309] Ministry of Employment and the Economy, 'National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights, Competitiveness' (46/2014) <http://www.tem.fi/files/41214/TEMjul_46_2014_web_EN_21102014.pdf> accessed 18 February 2015.

[310] *Ibid*, 3.

[311] *Ibid*.

[312] European Cooperation in Science Technology, 'The Role of the EU in UN Human Rights Reform: A Policy Debate' (ISCH, 22 February 2013) para 77 <http://www.cost.eu/media/newsroom/humanrights> accessed 16 February 2015.

Roundtable (ICAR) and ECCJ have conducted a preliminary assessment of all national action plans, as of November 2014,[313] and some commentators have done the same.[314]

F. The European Instrument for Democracy and Human Rights and other TCN's initiatives

The European Instrument for Democracy and Human Rights (EIDHR) is another EU policy instrument that was launched in 2006 and is designed to provide financial assistance for the promotion of democracy and human rights in third countries.[315] Under the EIDHR, the EU 'shall provide assistance to the development and consolidation of democracy and the rule of law and of respect for all human rights and fundamental freedoms'.[316] More specifically, the EIDHR provides financial assistance to local CSO actors, in particular human rights organisations and defenders, operating outside the EU, thereby complementing EU bilateral and multilateral development cooperation policies and tools.[317] Specifically, in the context of business and TNCs, the EIDHR supports CSOs and their role in raising awareness about the responsibility of business to respect human rights, particularly in countries where the state fails to meets its duty to protect human rights. The EIDHR was renewed in 2014.[318]

1. Clean Clothes Campaign (CCC)

The EU currently supports the Clean Clothes Campaign (CCC),[319] which is an organisation that relies on a network of trade unions and NGOs in 16 European countries, and more than 200 unions, individuals and organisations in implementing projects that increase respect for economic and social rights in the global supply chains of international garment companies in over 30 countries, outside the EU, some of which are funded

[313] International Corporate Accountability Roundtable (ICAR) and European Coalition for Corporate Justice (ECCJ), *Assessments of Existing National Action Plans (NAPs) on Business and Human Rights* (ECCJ/ICAR, 1 November 2014) <http://www.corporatejustice.org/IMG/pdf/icar-eccj_assessments_of_existing_naps.pdf> accessed 30 January 2015

[314] Damiano de Felice and Andreas Graf, 'The Potential of National Action Plans to Implement Human Rights Norms: An Early Assessment with Respect to the UN Guiding Principles on Business and Human Rights' (2015) 7(1) Journal of Human Rights Practice 40.

[315] Council Regulation (EC) 1889/2006 of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (EIDHR) [2006] OJ L 386/1, art 1.

[316] Commission, *European Instrument for Democracy and Human Rights (EIDHR): Strategy Paper 2014 - 2020* (European Union 2014) art 1.

[317] *Ibid*, para 14. see section III G.

[318] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85.

[319] Details about the Clean Clothes Campaign can be found here – Clean Clothes Campaign, 'Home' <http://www.cleanclothes.org/> accessed 16 February 2015.

under the EIDHR. So too, are a couple of projects involving a living wage since CCC is committed to ensuring that factory workers are fairly treated.

The CCC urges well-known brands to work out improvement plans with factories in order to meet good labour standards.[320] It also acts as an urgent action network and sounds the alarm when workers' rights are violated, which can range from poor working conditions, low or no wages, harassment, violence, suspension and dismissals, even death.

Many of the 250 cases raised through the CCC initiative have been resolved, whether improving health and safety conditions, reinstating dismissed workers, or getting unions recognised and activists released from prison. Other positive outcomes of the CCC have been the adoption of codes of conduct or the drafting of CSR policies by some companies. Some brand name companies have responded by adopting codes of conduct and drafting policies on corporate responsibility, which is considered an important first step in the process of abolishing sweatshop conditions.

Based on the premise that the public has a right to know where and how their clothes and sports shoes are produced, the EU has supported this defence of workers' human rights over three years. Cases recorded by the CCC early last year include daily harassment and threats to workers protesting against conditions that include working weeks in excess of 80 hours with no sanitary provisions, wages below survival level, unsafe buildings and lack of ventilation. Two cases concerned the killing of 85 workers.[321]

2. NGO Friends of the Earth International Global project on land-rights' defenders

A global project, led by the international NGO Friends of the Earth International (FoEI), aims to reinforce the capacity of local land-rights' defenders and their families in more than 70 countries 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 natural resource extraction.[322] The overall objectives of FoEI's land rights defenders project are to increase observance of human rights by ensuring that environmental activists are safely able to support local communities in claiming their rights, to document and report human rights violations, and to assist communities in local struggles related to sustainable, democratic control over natural resources.[323] Between March and September 2012, ten campaigns supported groups from Africa, Europe and Latin

[320] European Union, 'Involving: Campaigning for Clean Clothes' <www.eidhr.eu/files/dmfile/eidhr-campaign-factsheet-4_en.pdf> accessed 16 February 2015.
[321] *Ibid*.
[322] Commission, 'Project information: Mobilising Global Protection for Environmental and Human rights defenders, EIDHR' <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/505_projectinfo_/505_projectinfo_en.pdf> accessed 16 February 2015.
[323] Information about the types of projects that this initiative supports can be found here - Friends of the Earth International, 'Human rights defenders' <http://www.foei.org/what-we-do/hrd/> accessed 16 February 2015.

America by providing them with direct material and financial support, the means to approach relevant players and to organise online petitions in support of land rights.[324] More recently FoEI has been engaged in assisting local communities in Uganda concerning land grabs in connection with palm oil exploitation.[325]

3. Regional NGO Asia Indigenous Peoples Pact project on indigenous rights' defenders

Similarly, the regional NGO Asia Indigenous Peoples Pact (AIPP) has previously been funded by the EIDHR. The AIPP is a regional organisation founded in 1988 by indigenous peoples' movements. It is committed to the cause of promoting and defending indigenous peoples' rights and human rights as a whole. It seeks to strengthen the movements of the indigenous peoples of Asia for recognition of their collective rights, and protection of their traditional knowledge, bio-diversity and the environment for sustainable and self-determined development.

AIPP delivered a study on CSR, human rights and indigenous peoples to the UN Working Group on Business and Human Rights in 2013. The study dealt specifically with the plight of indigenous women in Lao PDR, Philippines and Indonesia and their struggles against destructive mining operations in their communities in general, and relating to women in particular.[326]

4. Latin American Mining Monitoring Programme (LAMMP)

Finally, the EIDHR supports the Latin American Mining Monitoring Programme (LAMMP), an international NGO dedicated to rural indigenous women and their communities in their campaign for human rights, sustainable and participatory development, CSR and gender mainstreaming in the mining sector.[327] In particular, LAMMP focuses on strengthening the capacity of rural and indigenous women to become agents of positive change and for stakeholders in the extractive industry to recognise rural and indigenous women as rights-holders and apply a gendered perspective to their activities.[328]

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[324] Commission, 'Delivering on Human Rights Defenders: Highlights of the Semester January –June, 2012' 20 <http://www.eidhr.eu/files/dmfile/EIDHR_DeliveringonHumanRightsDefenders_Report.pdf> accessed 16 February 2015.

[325] Friends of the Earth International, 'No news is bad news: land grabs and palm oil exploitation in Uganda' (FOEI, 29 January 2015) <http://foeeurope.org/no-news-bad-news-land-grabs-palm-oil-uganda> accessed 16 February 2015.

[326] Asia Indigenous Peoples Pact (AIPP) Foundation, 'Mining the Womb of the Earth: Struggles of Indigenous Women against Destructive Mining' <http://iphrdefenders.net/mediabox/docs/Women%20and%20Mining_finalbookforweb.pdf> last accessed 16 February 2015.

[327] For more information about the Latin American Mining Monitoring Programme see – Latin American Mining Monitoring Programme, 'Inspiring leadership among rural and indigenous women' <http://lammp.org> accessed 16 February 2015.

[328] *Ibid*.

More specifically, LAMMP seeks to contribute to improved mining policy and practice, corporate social responsibility and gender mainstreaming in the industry; to promote transparency, accountability and effective community consultation; facilitate women's active participation in decision-making processes and all stages of mining policy development and practice; and promote gender equality and empower women to become agents for democratic social change.

At the third UN Forum on Business and Human Rights in 2014, LAMMP made a presentation on the challenges and obstacles faced by rural and indigenous women in accessing a remedy, involving human and environmental rights defenders from Guatemala and Peru who were given the opportunity to make direct representations to the Working Group on Business and Human Rights.[329]

5. Investing in People

The Commission has also funded projects that fight child labour under the 'Investing in People' programme, which is funded under another financial instrument, the Development Cooperation Instrument (DCI).[330] The overall aim of Investing in People has been *inter alia* to support partnership and networking between key stakeholders, in particular public entities, the private sector and other non-state actors. The Investing in People initiative pursues a broad approach to development and poverty reduction, with the general aim of improving human and social development levels in third countries in order to achieve the UN Millennium Development Goals.[331]

6. Appraisal of the EIDHR by beneficiaries

During the course of our research interviews were held with representatives of some NGOs that have received financial aid under the EIDHR in support of their work. While those beneficiaries acknowledged the importance of EU financial assistance for project-based activities and the activities of human rights defenders, there was some criticism of the process.

Responsibility for the EIDHR budget is often spread over different Directorate Generals, e.g. DG DEVCO, DG Trade, DG Employment, Social Affairs and Inclusion, and the EEAS. For an NGO, which is a network organisation and which is working with a variety of partners on the ground in different countries, engagement with the EU can be a hurdle because it is not always clear with whom they should be dealing.

[329] Latin American Mining Monitoring Programme, 'Rural and Indigenous women denounce the failure of the State and Extractive industry in being accountable for human rights violations' (UN Forum on Business and Human Rights, Geneva, 3 December 2015).

[330] The most recent instrument is European Parliament and Council Regulation (EU) No 233/2014 of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 [2014] OJ L 77/44.

[331] Further information about the 'Investing in People' programme is available here – Commission, 'Investing in People' <http://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments/geographic-instruments/investing-people_en> accessed 16 February 2015.

As one CSO explained in an interview, finding one's way around in Europe, and having 'constant interaction with the EU' on relevant issues, can be difficult.[332]

In particular, engagement with DEVCO is not always easy. While there may be ready access to the Commission's officials, there is a tendency for some of them to be somewhat resistant to talking through issues or problems with NGOs or they may be insufficiently informed or have a naïve understanding of a particular situation, especially when dealing with governmental authorities in some developing countries.[333]

An alternative strategy that such NGOs employ is to work more closely with the European Parliament and national governments to raise issues and develop policies, etc. As noted by one interviewee, recipients of EIDHR funding could 'benefit very much from a more active approach from the EU'.[334] In terms of human rights defenders, some NGOs adopt the twin strategy of targeting the MEPs and policy makers in Europe while targeting the EU delegations at the local level. Generally speaking it was felt by those that were interviewed that MEPs were 'a lot more open and they know what is happening'.[335]

A form of engagement used under the EIDHR is consultation, including a consultative forum on social, economic and cultural rights. Here again, one NGO expressed the view that while the EU placed social and economic rights high on its agenda, it failed to make the link with trade unions. The fact that the EU works closely with the ILO does not allay this concern because, when it comes to holding an EIDHR forum, it is important to have the trade unions involved, not just the NGOs. However, trade unions do not always feel that they can approach the EU with issues because they do not necessarily see their activities as human-rights based.[336]

One possible explanation for this gap might be that, from an EU perspective, where there is an in-country EIDHR-funded project, the EU delegation develops a relationship with the NGO through the funding whereas trade unions are looking more for political support. This cuts both ways because the EU may distrust the political motivations of trade unions.[337] Even so, the fact that at an EIDHR forum the EU is able to get NGOs around the table, but not trade unions, is perceived to be a serious deficiency.[338]

More generally, there was also praise for the EIDHR consultative forum process. One interviewee remarked that the personnel involved were 'really very good and very supportive' and understood the issues raised.[339]

One suggestion to improve engagement between EIDHR beneficiaries and the EU would be to have more 'feedback loops', i.e. better communication and more transparency in the relationship. The point was

[332] Interview N8 (CSO representative).
[333] Interview N1 (CSO representative).
[334] Interview N8 (CSO representative).
[335] Interview N1 (CSO representative).
[336] Interview N8 (CSO representative).
[337] *Ibid*.
[338] *Ibid*.
[339] Interview N1 (CSO representative).

made that the EU needs to actually live by its own guidelines, i.e. interacting and reporting back to human rights defenders, which is not always done.

Another suggestion for improving the terms of engagement with the EU, suggested by an interviewee, would be 'to have [a] situation where [the NGOs] are part of the discussions' to the extent that NGOs, as human rights defenders, 'should be the ears and eyes of the EU on the ground'. This is because if the EU is paying for them, 'they should really listen to what we have to say'.[340] Again, an improvement arising from the consultative forum and similar forms of engagement would be for the EU to be more consistent about preparations, to set aims and objectives in which officials are clear about what they want from the NGOs, or as one interviewee put it, 'do they want [NGOs] to help and frame and formulate [policy]?'.[341]

G. EU MS bilateral engagement and mechanisms

Another area in which the EU addresses business and human rights topics is in its bilateral relations and through various other mechanisms on the external plane. For instance, since 2011, which saw the EU's renewed policy on CSR and the adoption of the UN Guiding Principles, business and human rights have featured more frequently on the agenda of political dialogues and trade negotiations.

This section focuses on two forms of engagement where it concerns business and TNCs in EU external relations. One is the EU and Member States bilateral engagement with third countries and other regions of the world through certain cooperation and trade agreements, including the negotiation of such agreements. The other is EU engagement through human rights dialogue and consultations with various states and regional arrangements, which may take the form of bi-annual structured human rights dialogue, *ad hoc* dialogue or consultations.

1. Bilateral engagement through trade and cooperation agreements

Bilateral engagement by the EU and Member States with third countries and other regions of the world takes place through a wide range of cooperation and trade agreements. Globally the EU has more than 200 Free Trade Agreements (FTAs) in place, covering more than 35% of global trade. In addition to duties, bilateral agreements may also address government procurement, intellectual property rights, transparent regulation, sustainable development, services and investments. Together, these measures make trade cheaper, faster and more predictable.

Since 1995, all EU framework agreements with third countries should contain a clause stipulating that human rights are an 'essential element' in relations between the parties (the 'essential elements

[340] *Ibid*.
[341] Interview N8 (CSO representative).

clause').[342] The objective of this essential elements clause is for the Union, in its relations with the rest of the world, to uphold and promote the EU's values and political principles based on respect for human rights, democracy and the rule of law, as stated in the Treaty on European Union.[343] Moreover, as explained in the EU Strategic Framework on Human Rights and Democracy of 2012, the EU has pledged 'to make trade work in a way that helps human rights'. This translates into developing a methodology to assess the human rights situation in third countries when launching or concluding trade and/or investment agreements.[344]

In practice, however, human rights considerations are often taken into account in a so-called 'Trade and Sustainable Development Chapter' in each EU Free Trade Agreement (FTA) with a third country. [345] The content of those chapters may differ substantially from one FTA to the next. Insofar as social issues are concerned, the main aim of the Chapter is to engage the partner country in a cooperative process, based on constructive dialogue and engagement, in order to strengthen compliance with domestic and international labour standards.[346]

Rather than covering human rights more broadly, the focus of the Trade and Sustainable Development Chapter is usually on the parties assuming obligations under the ILO Declaration on Fundamental Principles and Rights at Work.[347] The ILO Declaration covers the four fundamental principles and rights at work, namely freedom of association and the right to collective bargaining, elimination of all forms of forced or compulsory labour, abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

Additionally, the parties usually commit to making continued and sustained efforts towards ratifying and effectively implementing the fundamental ILO conventions underpinning the ILO Declaration and to promoting the development and implementation of the ILO's Decent Work Agenda at national level.[348] There are no sanctions for failing to comply with these obligations thereby weakening the overall effect of such clauses.

[342] Laura Beke, David D'Hollander, Nicholas Hachez, Beatriz Pérez de la Heras, 'Report on the integration of human rights in EU development and trade policies' (FRAME D9.1 2014), 60-61 and Annex I to the Report, which lists all such agreements with essential elements clauses.

[343] Treaty on European Union [2007] OJ C 306/01, article 2.

[344] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012) Outcome and Action 11 of the 'Action Plan'.

[345] Lorand Bartels, 'Human Rights and Sustainable Development Obligations in EU Free Trade Agreements' (2013) 40 Legal Issues of Economic Integration 297, 306.

[346] Interview N6 (Commission representative).

[347] ILO Declaration on Fundamental Principles and Rights at work and Follow-up (86th International Labour Conference Geneva June 1998).

[348] ILO Governing Body, 297th Session Geneva November 2006 'United Nations Economic and Social Council (ECOSOC) ministerial declaration on generating full and productive employment and decent work for all, 'Ministerial declaration of the high-level-segment of the United Nations Economic and Social Council, July 2006, on "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development" (2006) GB.297/WP/SDG/1.

Even so, the genesis of the Trade and Sustainability Chapter in EU-third country FTAs, with a strong emphasis on non-binding ILO instruments, has been bolstered since 2004 by the EU's strategic partnership with the ILO. This form of cooperation is particularly prevalent in developing countries and the EU co-finances ILO initiatives. The overall thrust of DG Trade's policy is to rely on voluntary initiatives, self-regulation and monitoring rather than sanctions.[349]

To date the EU has negotiated or is in the process of negotiating FTAs, which include such chapters, with a number of States such as South Korea,[350] Singapore,[351] Georgia[352] and Moldova.[353] Negotiations for an EU-India FTA, which began in 2007,[354] appear to be making little progress.[355] The EU-South Korea FTA chapter on sustainable development is monitored by civil society by means of so-called 'Domestic Advisory Groups' or DAGs from the EU and DAGs from South Korea, each consisting of 12 representatives of environment, labour and business organisations. There is also a Civil Society Forum under the FTA, composed of 12 members of the EU DAG and 12 members of the Korean DAG that meets at least once a year. Already in 2013, three DAG meetings had taken place and Members of the EU DAG form part of the DG Trade's Civil Society Dialogue (CSD) network.[356]

Recently, the EU has signed a Comprehensive Trade and Economic Agreement (CETA)[357] with Canada that contains an essential elements clause in its preambular text, whereby parties recognise 'the importance of international security, democracy, human rights and the rule of law for the development of international trade and economic cooperation'. Otherwise, the CETA is sparing on human rights language apart from a reference in the service chapter to the parties understanding that 'measures that are "related

[349] Interview N6 (Commission representative).

[350] Council Decision 2011/265/EU of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2011] OJ L 127/1. It was amended in 2014 to allow for new EU Member State, Croatia, to be included. Chapter thirteen is the 'Trade and Sustainable Development' chapter.

[351] Commission, 'Draft EU-Singapore Free Trade Agreement' (DG Trade, 20 September 2013) chapter 13 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961> accessed 1 March 2015.

[352] Commission, 'EU and Georgia conclude talks on Deep and Comprehensive Free Trade Area' (Brussels, 22 July 2013) <http://europa.eu/rapid/press-release_IP-13-721_en.htm> accessed 5 March 2015.

[353] EU Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [2014] OJ L 260/4.

[354] For the status of the negotiations for an EU-India FTA, see Commission, 'Countries and Regions: India' (DG Trade 23 September 2014) <http://ec.europa.eu/trade/policy/countries-and-regions/countries/india/> accessed 1 March 2015.

[355] Jan Wouters, Idesbald Goddeeris, Bregt Natens and Filip Ciortuz, 'Some Critical Issues in EU-India Free Trade negotiations' (2013) Leuven Centre for Global Governance Studies, Working Paper No. 102 <https://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp101-110/wp102-wouters-goddeeris-natens.pdf> accessed 1 March 2015.

[356] Commission, *Annual report 2013, Civil society dialogue on trade, Summary of activities in 2013* (European Union 2014) 7.

[357] Commission, 'Consolidated Text of the draft Comprehensive Trade and Economic Agreement between the EU and Canada' (DG Trade, 26 September 2014) <http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf> accessed 1 March 2015.

to the maintenance of international peace and security" include the protection of human rights'.[358] The EU is also currently in negotiations with the US over a Transatlantic Trade and Investment Partnership (TTIP).

Civil society advisory and dialogue processes have been established for other FTAs that the EU has signed with Colombia and Peru,[359] and Central America[360] and there are plans to do the same when the EU-Singapore FTA and the CETA enter into force. In fact, DG Trade launched the CSD some 15 years ago. DG Trade's CSD was evaluated in 2014 by Coffey International Development.[361] Based on extensive sampling and questionnaires to CSOs, and on evidence from inside the Commission, the United States Trade Representative (USTR) and the World Trade Organization (WTO), as well as the UK and Danish governments, the evaluation study made three recommendations. First, DG Trade needs to define what it wants to achieve with the CSD. Second, DG Trade needs to reset the aspirations for CSD in line with its strategic intent. And third, DG Trade needs to set clear and specific objectives form the CSD process and CSD meetings.

We understand from talking to the Commission that every new agreement now comes with a sustainability development chapter and, in terms of engagement both a DAG and a Civil Society Forum are established under each agreement.[362] Therefore, the recommendations in the Evaluation study are very timely and should be taken into consideration.

However, the role of public consultations, as a means for DG Trade to engage with CSOs, only comes about when a new initiative is launched or a new negotiation takes place,[363] such as the TTIP, which is currently under negotiation. A criticism frequently raised by civil society is that there is a general lack of transparency and insufficient consultations during EU-third country FTA negotiations.

This is despite the fact that the Commission has issued a Fact Sheet on the matter,[364] which makes it clear that there are several avenues for engagement. Aside from public consultations and the CSD, the Commission has called for sustainability impact assessments (SIAs) from independent sources for each new initiative on bilateral trade agreements and there is also a regular dialogue with the Council and the

[358] *Ibid*, Joint Declaration relating to draft Article X.07: Denial of Benefits, 186 and 191 respectively.
[359] Council Decision 2012/735/EU of 31 May 2012 on the signing, on behalf of the Union, and provisional application of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part [2012] OJ L 354/1. This free trade agreement does not have a specific 'Trade and Sustainable Development' chapter.
[360] Commission, 'EU-Central America Association Agreement' (DG Trade, 22 March 2011) Title VIII in general and article 286 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689> accessed 1 March 2015.
[361] Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015.
[362] Interview N6 (Commission Representative).
[363] *Ibid*.
[364] Commission, 'Factsheet – Transparency in EU trade negotiations' <http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151381.pdf> accessed 1 March 2015.

European Parliament. However, it appears that it is not possible for non-corporate stakeholders and CSOs to make SIAs of their own or at the request of the Commission.

Finally, there is sometimes a fear that trade negotiations cater mostly for important economic actors whereas they are supposedly for the benefit of all market participants and other stakeholders, such as CSOs, who might have societal or human rights concerns. One interviewee even went as far as to state that they saw a 'tension between the trade interests and the human rights interests'.[365]

2. Human rights dialogues with third countries and regions

In December 2001, the Council adopted a set of Guidelines on Human Rights Dialogues, which was subsequently updated in 2009.[366] The human rights dialogues are an essential part of the EU's external relations policy,[367] which is motivated by the principle that: 'the issue of human rights, democracy and the rule of law will be included in all future meetings and discussions with third countries and at all levels, whether ministerial talks, joint committee meetings or formal dialogues led by the Presidency of the Council, the Troika, heads of mission or the Commission'.[368] The Guidelines further specify the aims and objectives of such human rights dialogues with third countries and regions,[369] the criteria for their initiation, conduct and evaluation and the issue areas that may support them.[370]

Despite the EU's renewed policy on CSR and the emergence of the UN Guiding Principles as key instruments in the development of business and human rights in Europe, the transposition of this change in policy direction into the formal human rights dialogue process with third country partners remains limited. Moreover, such dialogue is mostly *ad hoc* and/or takes place on a case-by-case basis. More generally – although not specific to the relationship between human rights and business and TNCs – the human right dialogue process has come in for strong criticism.[371] Human Rights Watch has described the EU as being 'particularly infatuated with the idea of dialogue and cooperation' and some individual Member States as considering human rights dialogues to be a 'justification for not speaking concretely about human rights violations and remedies in more meaningful settings.'[372]

[365] Interview N8 (CSO representative).
[366] European External Action Service, 'EU guidelines on human rights dialogues with third countries – Update' <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> accessed 2 January 2015.
[367] Karen Smith, 'The EU as a Diplomatic Actor in the Field of Human Rights' in Joachim Koops and Gjovalin Macaj (eds), *The European Union as a Diplomatic Actor* (Palgrave MacMillan 2015) 162.
[368] European External Action Service, 'EU guidelines on human rights dialogues with third countries – Update' 5, para. 3.1 <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> accessed 2 January 2015.
[369] *Ibid*, 4, para. 2.14 and 5-6, para. 4, respectively.
[370] *Ibid*, 5, para. 5.
[371] See for a critique of the EU's Human Rights Dialogues process, Karen Smith, 'The EU as a Diplomatic Actor in the Field of Human Rights' in Joachim Koops and Gjovalin Macaj (eds), *The European Union as a Diplomatic Actor* (Palgrave MacMillan 2015) 162-3.
[372] Kenneth Roth, 'A Facade of Action: The Misuse of Dialogue and Cooperation with Human Rights Abusers' in Human Rights Watch, *World Report 2011* (Human Rights Watch 2011) 3-4 and 8-9.

The EU and the African Union (AU) have maintained a regular Human Rights Dialogue since 2008 to keep each other up-to-date on regional initiatives, discuss sensitive issues and identify joint areas of cooperation between the two organisations.[373] In 2012, the EU-AU Human Rights Dialogue was upgraded from a technical to a political meeting.

Following a recommendation from its regular Human Rights Dialogue meeting in November 2013,[374] a Joint Seminar on 'Fostering the implementation of the UN Guiding Principles through regional cooperation', was held back-to-back with the UN African Regional Human Rights and Business Forum in Addis Ababa, Ethiopia, in September 2014.[375] The joint seminar was attended by a broad range of stakeholders, including government officials, officials from the AU and EU, policy makers and experts from CSOs, Chambers of Commerce and national human rights institutions. Two outcomes of the joint seminar were the AU's commitment to develop an African-owned framework to implement the UN Guiding Principles and the EU's potential assistance to individual African countries in developing their own national plans on business and human rights.[376]

An example of a more individualised approach towards business and human rights, in a third country context, is the commitment undertaken by the EU and South Africa, within the overall framework of the EU-South Africa Human Rights Dialogue. As part of the progressive realisation of economic, social and cultural rights, it has been agreed that the 'Responsibilities of Trans-National Corporations (TNCs) and Other Business Enterprises with respect to Human Rights' shall be one of the sets of issues that will form part of the EU-South Africa Human Rights Dialogue.[377]

[373] The EU-African Union (AU) Human Rights Dialogue has been held since 2008, under the auspices of the Joint Africa-EU Strategy (JAES); see European External Action Service, 'The Africa-EU Strategic Partnership - A Joint Africa-EU Strategy' <http://www.africa-eu-partnership.org/sites/default/files/documents/eas2007_joint_strategy_en.pdf> accessed 27 February 2015.

[374] European Union, 'AU-EU, Joint Communiqué, 10th AU-EU Human Rights Dialogue' (Brussels, 20 November 2013) 1 <http://www.africa-eu-partnership.org/sites/default/files/documents/10th_au-eu_dialogue_communique_en.pdf> accessed 27 February 2015.

[375] European Union, 'Joint Statement on Business and Human Rights' (Addis Ababa, 16 September 2014) <http://www.africa-eu-partnership.org/sites/default/files/userfiles/joint_statementdpa_0.pdf> accessed 27 February 2015.

[376] European Union, 'Final Report of the African Union – European Union seminar on 'Fostering the implementation of the UN Guiding Principles on Business and Human Rights through regional cooperation'' (Addis Ababa 16 September 2014) 2 <http://www.africa-eu-partnership.org/sites/default/files/userfiles/final_report_-_au-eu_hrb_seminar_held_on_16_sept_2014.pdf> accessed 27 February 2015.

[377] EU Council, '3199th Council meeting – Foreign Affairs Council meeting' (Brussels, 19 November 2012) 3 and 4, paras. 3.a.4(c) and point 8 respectively <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133571.pdf> accessed 28 February 2015.

H. International fora

The EU has been involved in different initiatives to promote human rights in business activities with a large range of stakeholders in recent years. They include conferences that have been held under the auspices of a Member State's presidency of the EU, engagement with business and human rights as part of EU relations with the UN,[378] and some individual CSO initiatives.

The EU has been involved in different initiatives to promote human rights in business activities with a large range of stakeholders in the last few years. In May 2012, a conference entitled 'From principles to practice: the European Union operationalising the UN Guiding Principles on Business and Human Rights' was organised in Copenhagen by the Danish Presidency. High-level representatives from Member States, European institutions, business, civil society and academia were invited to engage in a forward-looking dialogue on business and human rights. One of the main challenges discussed during this conference was reaching policy coherence among the EU Member States to 'exercise necessary leverage to adequately protect the human rights of potential victims through aligning public procurement, export credit and bilateral trade policies with international human rights commitments, as with investments, development aid and in-country diplomatic assistance'.[379]

The EU is also an active supporter of the business and human rights agenda at the United Nations. After endorsing the UN Global Compact and the more recent UN Guiding Principles in 2011, the EU Member States played an important role in the adoption of the Human Rights Council's resolution on the '[c]ontribution of the United Nations system as a whole to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles on Business and Human Rights' in September 2012.[380] Additionally, the EU has been actively involved in the annual UN Forum on Business and Human Rights since its initial meeting in December 2012. The UN Forum is open to all relevant stakeholder groups, including States in the UN system, intergovernmental and regional organisations, businesses, labour unions, national human rights institutions, NGOs, and affected stakeholders. It offers the opportunity to 'discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices'.[381] EU Special Representative for Human Rights, Stavros

[378] For more information concerning EU-UN relations – European External Action Service, 'The EU's relations with the United Nations' <http://eeas.europa.eu/organisations/un/index_en.htm> accessed 28 February 2015.
[379] Danish EU Presidency, 'Report - From principles to practice: the European Union operationalising the United Nations Guiding Principles on Business and Human Rights' (Conference on Business and Human Rights Principles to Practice, Copenhagen, May 2012) 3.
[380] United Nations, 'Report of the Secretary-General on the Contribution of the United Nations System as a Whole to the Advancement of the Business and Human Rights Agenda and the Dissemination and Implementation of the Guiding Principles on Business and Human Rights' (2012) UN Doc A/HRC/21/21.
[381] UNHRC Res 17/4 (2011) UN Doc A/HRC/RES/17/4.

Lambrinidis, addressed the first UN Forum on Business and Human Rights in December 2012 where he emphasised that the UN Guiding Principles were a key point of reference for EU policy.[382]

At the third UN Forum on Business and Human Rights in December 2014, a Commission representative reported on the fact that the EU was promoting 'the Guiding Principles through its policy on corporate social responsibility (CSR), which is aligned with the United Nations Framework in terms of its understanding of the corporate responsibility of businesses to prevent and address adverse impacts of their activities and focus on the "smart mix" of voluntary and regulatory action.'[383]

The EU has also appealed to UN expertise in its efforts to implement the UN Guiding Principles. Members of the UN Working Group on Business and Human Rights have been closely associated in the development of the previously-mentioned EU human rights guidance for three business sectors – ICT, and gas, and employment and recruitment agencies[384] – and for SMEs.[385] The Office of the High Commissioner for Human Rights contributed in November 2012 to the EU CSR Annual Review Meeting, which brought EU Member States, stakeholders and relevant international organisations together.[386]

Finally, the EU has been involved in a number of civil society initiatives on business and human rights in third countries that have either arisen out of the human rights dialogues process,[387] such as the civil society seminar in Bangladesh on decent work,[388] or from a more formalised inter-institutional arrangement, such as the EU-CELAC (Community of Latin America and Caribbean States) seminar on CSR, held in Santiago, Chile.[389] The latter involved experts from the private sector and officials from the EU, EU

[382] Stavros Lambrinidis, European Union Special Representative for Human Rights 'Keynote address by European Union Special Representative for Human Rights, Mr Stavros Lambrinidis' (UN Forum on Business and Human Rights, Geneva, 4-5 December 2012) <http://www.ohchr.org/Documents/Issues/Business/ForumSession1/SubmissionsStatements/StavrosLambrinidis.pdf> accessed 28 February 2015.

[383] UNHRC, Third session - Forum on Business and Human Rights 3 December 2014 'Summary of discussions of the Forum on Business and Human Rights, prepared by the Chair, Mo Ibrahim' (2014) A/HRC/FBHR/2014/3 para. 36.

[384] Dr Alexandra Guáqueta of the UN Working Group on Business and Human Rights was a member of the Expert Advisory Committee for all three business sector reports while her colleagues, Dr Michael Addo and Dr Margaret Jungk, also made contributions to the three sectoral reports; see above section III E.1.

[385] Dr Alexandra Guáqueta of the UN Working Group on Business and Human Rights was a member of the Expert Advisory Committee for the Commission Study on human rights guide for SME, see above section III E.1.

[386] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)* (European Union 2013) 106.

[387] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2011* (European Union 2012) 81.

[388] As part of the EU-Bangladesh Civil Society Seminar on Human Rights and Decent Work, which was held from October 2001 to March, 2012 and funded by the EU – European External Action Service, 'European Union - Bangladesh Civil Society Seminar on Human Rights and Decent Work' <http://eeas.europa.eu/delegations/bangladesh/projects/list_of_projects/274362_en.htm> accessed 28 February 2015.

[389] The EU-CELAC (Community of Latin American and Caribbean States) seminar was held in October 2013 and arose directly out of the Santiago Declaration, 27 January 2013 - EU Council, 'Santiago Declaration' (Santiago de Chile, 27 January 2013) <http://europa.eu/rapid/press-release_PRES-13-31_en.htm> accessed 3 March 2015. The EU and CELAC agreed to renew and deepen their Strategic Partnership, which included promoting 'respect for recognised

Member States, CELAC countries and relevant international organisations. The seminar discussed the state of play and the latest developments concerning international instruments on CSR. The experts reviewed existing national CSR plans, discussed challenges that the public and private sectors in Latin American and Caribbean countries face when implementing CSR instruments, looked at the specificities of SMEs in the context of CSR and considered innovative grievance mechanisms for community–company conflicts.[390]

I. Gaps in the EU'S CSR policy

1. Private military and security companies (PMSCs)

Private Military and Security Companies (PMSCs)[391] are business entities that perform and provide military actions, services and activities, which are increasingly being used by states and NSAs alike. There are several reasons for this development, *inter alia* the reduced number of own troops needed by states to perform certain tasks if they use PMSCs, combined with the large number of military personnel needed to guard key personnel and infrastructure in asymmetrical warfare and the general trend of privatising and outsourcing services which formerly have been provided by the state with the aim of cost reduction.

As a matter of fact, the export of private military activities 'to third states –either during an armed conflict or in crisis or post-conflict situations – has proven to entail a particularly high risk of violations of human rights or IHL'.[392] Nonetheless, there has been an expansion of the 'role and functions' of private military actors 'within the EU's crisis-management operations'.[393] However, no legally binding international mechanism for the regulation and oversight of private military activities exists. Globally, as well as within the EU, there are huge disparities when it comes to legislation and regulation with regard to PMSCs, which 'may result in [...] failure to ensure the required minimum safeguards for the protection of human rights

international principles, good practices and guidelines on corporate social responsibility, taking into account the special needs of small- and medium enterprises and of developing countries, in particular for capacity-building' and holding a seminar on the matter, *ibid*, 12, para. 41.

[390] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 89.

[391] There is no consensus within scientific discourse or the industry itself on the (self-)definition of private military companies. Some of the literature uses the term 'PMSC', which encompasses both, 'PSCs' (private security companies) as well as 'PMCs'. However, the definitional mix of civil security in stable environments and military security in conflict regions, which goes along with the use of the term 'PMSC'. conceals the increased danger of human rights violations in the context of private military companies. For an analysis of the definitional problems with regard to PMCs and the suggestion of a broader legal definition of the term 'PMCs' under international law, see: Reinmar Nindler, 'Die Grenzen der völkerrechtlichen Regulierung und Regulierbarkeit privater Militärunternehmen' (Limits of the Regulation of Private Military Companies) in Matthias Kettemann, *Grenzen im Völkerrecht* (Borders/Limits in/of International Law) (Jan Sramek Verlag 2013).

[392] Priv-War Consortium, 'Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services' (Priv War, 1 March 2011) 3 <http://ec.europa.eu/research/social-sciences/pdf/priv-war-recommendations_en.pdf> accessed 16 January 2015.

[393] Valentina Falco, 'Private Military and Security Companies and the EU's Crisis Management: Perspectives under Human Rights and International Humanitarian Law' in Francesco Francioni and Natalino Ronzitti (eds), *War by Contract - Human Rights Humanitarian Law and Private Contractors* (Oxford University Press 2011) 318.

and IHL'.[394] Instead of legally binding instruments, self-regulation instruments and voluntary initiatives, such as the Montreux Document[395] and the International Code of Conduct for Private Security Service Providers,[396] prevail as the international community's primary means of regulating PMSCs. The EU is aware of the problematic issue of the adherence of militarily active business actors to human rights. For example, the EEAS, 'an employer of certain services provided by PMSCs [...] began to review contracts with PMSCs in order to ensure their full compatibility with international humanitarian law and other applicable legal norms, with a view to ensuring accountability for any violations that might occur.'[397] In fact, the EU's funding of the PRIV-WAR project[398], a DROI meeting on 'PMSCs in relation to the violation of human rights'[399] and the fact that the EU was the first international organisation which expressed its 'public support for the Montreux Document'[400] indicate the EU's grasp of the issue.

In conclusion, it must be stressed that while the EU is aware of the fact that PMSCs perform military activities, which are substantially different from the activities of most other businesses and create unique scope for human rights violations, the EU has not yet developed or established a legal framework for effective regulation of PMSC activities. While the EU supports soft-law instruments like the Montreux Document, there still is a need for a legally binding regulatory framework, which compels PMSCs and their employees to uphold human rights obligations. The EU should therefore not only make sure that its own use of PMSCs is in accordance with regional and international human right standards, but also actively support international regulatory initiatives aimed at compelling PMSCs to uphold human rights obligations globally, such as the UN Human Rights Council's 'Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies'.[401]

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[394] Priv-War Consortium, 'Priv-War Recommendations for EU Regulatory Action in the Field of Private Military and Security Companies and their Services' (Priv War, 1 March 2011) 3 <http://ec.europa.eu/research/social-sciences/pdf/priv-war-recommendations_en.pdf> accessed 16 January 2015.

[395] International Committee of the Red Cross, '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' (Montreux 17 September 2008) <http://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf> accessed 20 January 2015.

[396] Swiss Government, 'International Code of Conduct for Private Security Service Providers' (Swiss Government 9 November 2010) <http://www.icoc-psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf> accessed 20 January 2015.

[397] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012* (European Union 2013) 127.

[398] The PRIV-WAR project was an EU funded collaborative research project, conducted from January 2008 to August 2011, which aimed, *inter alia* to 'foster knowledge on the impact of private military activities on the enjoyment of human rights' and to 'explore ways in which the EU could regulate or facilitate the regulation of PMCs/PSCs with a view to assure compliance with human rights and IHL'. Priv War, 'About the Project' <http://priv-war.eu> accessed 16 February 2015.

[399] European Parliament, *Subcommittee on Human Rights Activity Report - 7th parliamentary term 2009-2014* (European Union 2014) 97.

[400] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012* (European Union 2013) 127.

[401] OHCHR, 'Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies' <http://www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitaryIndex.aspx> accessed 20 January 2015.

2. Public procurement

Public procurement is an important policy domain for the EU. Recent estimates place public sector spending on goods, services and works somewhere between €1.78 trillion[402] to €2 trillion annually, which amounts to approximately 12%[403] to 15% of EU GDP.[404] According to an evaluation of EU public procurement, conducted by the Commission in 2011, a very large and heterogeneous collection of more than 250,000 contracting authorities in Europe manage procurement budgets of varying sizes and possess very different administrative capacities. Similarly, 'the money is spent in a wide variety of ways and disbursed via an enormous number of distinct procedures (over 2 million procedures for the award of public contracts per year).'[405]

Given that governments 'wield great influence over respect for and enjoyment of human rights through their procurement of good and services', as part of the procurement activity, it is perhaps somewhat surprising to find that human rights has not been fully incorporated into EU public procurement law and policy.[406] This is even more so, considering that 'beyond the state duty to protect, and their role as business regulator, governments may be implicated in human rights violations through their procurement activities and [supplier] relationships'.[407] It will be recalled that under the first pillar of the UN Guiding Principles governments 'should promote respect for human rights by business enterprises with which they conduct commercial transactions'.[408]

Again the UN Guiding Principles call on states to 'exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights'.[409] This is because governments

[402] Commission, 'Public Procurement Indicators 2012 DG Markt C4 - Economic Analysis and e-Procurement' (DG MARKT, 12 November 2014) 1 <http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/20141105-indicators-2012_en.pdf> accessed 16 March 2015.

[403] Commission, 'Evaluation Report Impact and Effectiveness of EU Public Procurement Legislation - Part 1' SEC (2011) 853 final, I.

[404] Danish EU Presidency, 'From Principles to Practice: The European Union operationalizing the United Nations Guiding Principles on Business and Human Rights' (Conference on Business and Human Rights Principles to Practice, Copenhagen, May 2012).

[405] Commission, 'EU Public Procurement Legislation: Delivering Results: Summary of Evaluation Report' 6 <http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/executive-summary_en.pdf> accessed 3 March 2015.

[406] Danish Institute for Human Rights and International Corporate Accountability Roundtable, 'Essential Elements of State National Action Plans for Implementation of the UN Guiding Principles on Business and Human Rights' (Expert Workshop organised by the UN Working Group on Business and Human Rights, Geneva, 7 May 2014) 1.

[407] *Ibid*.

[408] UNHRC, 'Report by Special Representative John Ruggie on Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (2011) UN Doc A/HRC/17/31, Guiding Principle 6, 10. The accompanying Commentary clarifies that the procurement activities of states provide them with 'unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the term of contracts', *ibid*.

[409] Guiding Principle, 5, *ibid*.

'set the terms for delivery of public services following privatization' or when 'contracting out' public services, such as immigration, criminal justice and security services, public utilities, housing, or health and social care.[410]

In the area of EU public procurement there is a gap when it comes to incorporating human rights norms despite a recent overhaul by the EU of its procurement legislation. There are two factors that need to be considered. First, there is an important 'distinction between the requirement that public procurement respects human rights, which is a matter of legal compliance, and the discretion that public authorities have to prefer bids that advance public policy aims'.[411]

The matter is not helped by the fact that current EU use of terms such as 'sustainable procurement' or 'socially responsible public procurement' often mixes issues of labour rights and human rights, 'where public and private sector compliance is a requirement as a matter of law, with discretionary public policy goals'.[412] As far as the Commission is concerned, socially responsible public procurement (SRPP) activities cover 'a wide spectrum of social considerations, which may be taken into account by contracting authorities at the appropriate stage of the procurement procedure'. These may include things like 'employment opportunities, decent work, compliance with social and labour rights, social inclusion … equal opportunities … sustainability criteria … and wider voluntary compliance with corporate social responsibility (including human rights)'.[413]

While EU public procurement rules exist to bring about a set of common disciplines to regulate this critical exercise of governmental function, based on the principles enshrined in the four internal market freedoms, it is acknowledged that those same principles may actually constrain governments in promoting social standards, including human rights. It has been questioned whether the award and contract criteria that require businesses to comply with social criteria are consistent with a requirement on public purchasers to select the 'most "efficient" or "most economically advantageous tender"' (also known as the 'MEAT' criteria).[414]

[410] Antenor Hallo de Woolf, *Reconciling Privatisation with Human Rights* (Intersentia 2012).
[411] Northern Ireland Human Rights Commission, *Public Procurement and Human Rights in Northern Ireland* (Northern Ireland Human Rights Commission 2013) 12.
[412] *Ibid*.
[413] Commission, 'Evaluation Report Impact and Effectiveness of EU Public Procurement Legislation - Part 1' SEC (2011) 853 final, 82; see also Commission, *Buying Social A Guide to Taking Account of Social Considerations in Public Procurement* (European Union 2010) 7, para. 1.1.
[414] In the past there have been challenges before the CJEU, as in Case 513/99 *Concordia Bus Finland Oy Ab* (formerly *Stagecoach Finland Oy Ab*) *v* (1) *Helsingen Kaupunki* (2) *HKL-Bussiliikenne*, [2002] ECR I-7213 on using social criteria in awards, which have to be (a) linked to the subject matter of the contract, (b) must allow an unrestricted freedom of choice on the public authority, (c) be expressly mentioned in the contract documents or tender notice, and (d) comply with all the fundamental principles of EU law, in particular the principle of non-discrimination.

Second, the EU has enacted a new public procurement Directive that provides a binding framework for national public procurement laws and policies in EU Member States.[415] The overall aim of the reform is to increase 'simplification and flexibilisation' in the procurement regime to enable, *inter alia* lower cost participation by SMEs and to allow for greater consideration of social standards, in line with SRPP, while retaining the fundamental principle of equal treatment of all bidders.

The new Directive on Public Procurement specifically addresses the inclusion of societal characteristics in the technical specifications of the tender, contract award criteria, and conditions for contract performance.[416] The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

It also mandates contracting authorities to reject abnormally low tenders if the price is due to non-compliance with EU or international law on social, labour or the environment. However, there is no general clause calling on public procurers and businesses that are awarded contracts to respect human rights generally.

3. Responsible supply chain management

The gap in the EU's engagement on business and human rights in the matter of responsible supply chain management (RSCM) stems less from inactivity and more from the fact that the EU lacks a holistic approach to the responsibility of EU-based companies for conducting human rights due diligence on their supply chains. The EU is to some extent aware of this, as is evident from the Commission's study of responsible supply chain management (RSCM), which was published in February 2011.[417]

The study's objective was to examine 'why RSCM ha[d] not yet proven to be a solution for some of the CSR-issues encountered in supply chains and to provide recommendations that the EU and/or Member States could use.'[418] The starting point for the study was an examination of the interaction between different stakeholders – principally governments and companies – in their supply chains, which were mapped against the three pillars of the 'Protect, Respect, Remedy Framework', on which the UN Guiding

[415] The legislative framework includes: European Parliament and Council Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L 94/65; European Parliament and Council Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors (repealing Directive 2004/17/EC) [2014] OJ L 94/243 and European Parliament and Council Directive 2014/23/EU of 26 February 2014 on the award of concession contracts [2014] OJ L 94/1.

[416] See for example European Parliament and Council Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L 94/65, art 67; paras 3 and 4 of this provision partly reproduce the relevant sections of the 'Concordia Buses' decision.

[417] Marjon van Opijnen and Joris Oldenziel, *Responsible Supply Chain Management, Potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies: Final Report* (2011) <http://ec.europa.eu/social/main.jsp?langId=es&catId=331&newsId=1014&furtherNews=yes> accessed 14 February 2015.

[418] *Ibid*, 14, para. 1.2.

Principles are based.[419] The rationale behind using the Framework, which pre-dated the UN Guiding Principles and informed their elaboration, is that it uses the three pillars of the 'state duty to protect against human rights abuses', the 'corporate responsibility to respect human rights' and the emphasis on grievance mechanisms that may form part of 'access to a remedy' when company and supplier-related abuses occur.[420]

The study focused on an analysis of twelve case studies across three sectors of importance to the EU, namely cotton, sugar from sugar cane, and mobile phones. Each sector was looked at in relation to five key CSR supply chain management issues,[421] three of which related to fundamental rights: namely child labour; freedom of association and collective bargaining; and the right to an adequate standard of living.[422] In terms of child labour in supply chains, there is particular concern for children and minors who often work in a country's informal economy where their presence and involvement in the 'workplace' may be difficult to trace and monitor. Although international regulation, in the form of ILO Conventions[423] and international business codes, exist they are rarely enforced. In terms of the right to associate and collective bargaining in many countries, with which the EU has trade or cooperation agreements, these rights may be neglected at the national level or else be poorly enforced. The right to an adequate standard of living mostly concerns the payment of a living wage and this presents a very serious challenge to some suppliers when it comes to lead time and production costs that may cause unfair price levels in their supply chains.[424]

The report for the Commission on RSCM made a number of recommendations to EU policy makers and EU Member States. In order to meet the social and environmental challenges, faced by many EU businesses in their operations and value chains, both in the internal market and externally, the report recommended that companies: increase supply chain transparency; conduct due diligence in high-risk sectors or high risk areas of particular countries; enhance access to remedy for victims of supply chains;

[419] *Ibid*, 17-22.

[420] UNHRC, 'Protect, Respect Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises' (2008) UN Doc A/HRC/8/5.

[421] The issue of unfair pricing and loss of biodiversity, against which RSCM was also measured, may not necessarily be specific to business and human rights but may form part of a company's CSR. For the purposes of this report they are not discussed further.

[422] Marjon van Opijnen and Joris Oldenziel, *Responsible Supply Chain Management, Potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies: Final Report* (2011) 37-58, more specifically at 35-50, together with Appendix 1 – Sector Analysis <http://ec.europa.eu/social/main.jsp?langId=es&catId=331&newsId=1014&furtherNews=yes> accessed 14 February 2015.

[423] ILO Convention No. 138 concerning the Minimum Age for Admission to Employment (adopted 26 June 1973, in force 19 June 1976) and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted 17 June 1999, in force 19 November 2000).

[424] Marjon van Opijnen and Joris Oldenziel, *Responsible Supply Chain Management, Potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies: Final Report* (2011) 37-58, more specifically at 35-50, together with Appendix 1 – Sector Analysis <http://ec.europa.eu/social/main.jsp?langId=es&catId=331&newsId=1014&furtherNews=yes> accessed 14 February 2015.

strengthen the OECD Guidelines for Multinational Enterprises; support multistakeholder initiatives aimed at enhancing RSCM; address competition affecting labour rights; and promote RSCM through public procurement.[425]

In terms of the policy options and tools available to address them, the report proposed that EU institutions adopt 'a combination of voluntary measures to support the efforts of frontrunners with regulatory measures to ensure laggards meet minimum standards', i.e. a regulatory smart mix. It recognised that 'there may be an ongoing debate regarding the *voluntary versus mandatory* nature of CSR and EU policies' but that 'there [was] scope for both approaches to exist alongside and actually reinforce each other.' [426] [emphasis in the original]

Following on from this report the Commission subsequently published its Communication on October 2011, which included reference to RSCM, given its importance in promoting 'social and environmental responsibility through the supply-chain'.[427] It called upon business enterprises 'to identify, prevent and mitigate their possible adverse impacts', and noted that 'large enterprises, and enterprises at particular risk of having such impacts, are encouraged to carry out risk-based due diligence, including through their *supply chains*.'[428] [emphasis added]

Thereafter, the EU Accounting Directive[429] and the Transparency Directive[430] were amended in 2013 to require in part that EU-listed companies, which are active in the extractive industry or the logging of primary forest, provide for enhanced transparency on payments made to governments, large undertakings and public-interest entities. Both amended directives are intended to complement the initiative of the EU's Forest Law Enforcement, Governance and Trade Action Plan (EU FLEGT)[431] and the

[425] *Ibid*, 87-98.
[426] *Ibid*, 99
[427] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681, 7, para. 3.3.
[428] *Ibid*, 6, para. 3.1.
[429] European Parliament and Council Directive 2013/34/EU 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 L 182/19, para. 44.
[430] European Parliament and Council Directive 2013/50/EU of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC [2013] OJ L 294/13, para. 7.
[431] The legal basis for FLEGT is Council Regulation (EC) 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community [2005] OJ L 347/1 and Commission Regulation (EC) 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community [2008] OJ L 277/23.

provisions of the EU Timber Regulation.[432] The latter instrument requires traders of timber products to exercise due diligence when supplying the EU market so as to prevent the entry and circulation of illegally logged wood in the EU.

However, the mandatory reporting requirement found in the Accounting and Transparency Directives, with respect to extractives and logging, has not been carried through in the minerals sector. This is despite the fact that already in 2010 the European Parliament had called on the Commission and Council to follow the US lead in introducing a piece of mandatory legislation on the responsible sourcing of minerals such as tin, tantalum and tungsten and gold (known collectively as '3TG') from conflict-affected areas,[433] along the lines of the Section 1502 of the US Dodd-Frank Act.

Instead, there has been a fragmented response. In 2013, DG Trade organised a public consultation to gauge responses as to whether an EU conflict minerals initiative should follow the EU Timber Regulation in requiring that the business entity first placing a selected mineral (processed or not) on the EU market must provide evidence of having carried out due diligence on that mineral. However, the proposed EU Regulation on conflict minerals,[434] which was launched in 2013 and has still not been adopted, relies on a system of 'self-certification as a responsible importer', i.e. self-regulation, rather than introducing a mandatory reporting rule on the sourcing of 3TG from conflict-affected and high risk areas.[435]

Likewise, following the Rana Plaza incident in April 2013 and the binding legal agreement between global brands and retailers and trade unions – the Bangladesh Accord on Fire and Building Safety in May 2013[436] – the EU, together with the ILO and the Bangladeshi Government launched the so-called 'Sustainability Compact for Bangladesh'.[437] The Sustainability Compact specifically sets out how labour, health and safety conditions for garment workers will be improved and monitored in accordance with international standards and encourages responsible behaviour by businesses in the Bangladeshi ready-made garment (RMG) industry. The EU offered assistance[438] through some of its existing development cooperation initiatives with Bangladesh, such as the EU-funded 'Technical and Vocational Education and Training'

[432] EU Parliament and Council Regulation (EU) No 995/2010 of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market [2010] OJ L 295/23.
[433] EU Parliament Resolution of 7 October 2010, on failures in protection of human rights and justice in the Democratic Republic of Congo [2010] OJ C 371 E/5, para.14.
[434] Commission, 'Proposal for a Regulation of the European Parliament and of the Council setting up a Union system for a supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict –affected and high risk areas' (Communication) COM (2014) 111, 2014/0059 (COD), article 3.
[435] See Mary E Footer, 'Human Rights Due Diligence and the Responsible Supply of Minerals from Conflict-affected Areas: Towards a Normative Framework?' in Jernej Letnar Černič and Tara van Ho (eds) *Direct Human Rights Obligations of Corporations* (forthcoming Wolf Publishing 2015).
[436] Accord on Fire and Building Safety in Bangladesh (adopted 15 May 2013).
[437] Bangladesh Government and European Union, 'Joint Statement - Staying engaged: A Sustainability Compact for continuous improvements in labour rights and factory safety in the Ready-Made Garment and Knitwear Industry in Bangladesh' (Geneva, 8 July 2013) <http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151601.pdf> accessed 6 March 2015.
[438] *Ibid*, 6.

(TVET) project, implemented by the ILO[439] and the 'Better Work and Standard' (BEST) programme with Bangladesh,[440] and stated its readiness to provide additional capacity building and financial resources as part of the EU's future development assistance for the years 2014-2020. However, the European social partners in the textile and clothing sector are implementing a pilot project supported by the EU on 'Harmonisation Guidelines for Implementation and promotion of Corporate Social Responsibility in the European Textile and Clothing Industry'. It aims to develop a risk assessment and management linked to CSR compliance.[441]

In conclusion, the EU's engagement with business and TNCs on RSCM has manifested itself in a fragmented response. The EU continues to pursue a sectoral approach that remains inconsistent from one sector to the next in terms of the nature, scope and depth of engagement. Whereas for the extractive industry and logging, EU-listed companies are faced with mandatory reporting requirements combined, in the timber supply chain, with due diligence requirements, when it comes to conflict minerals a process of business self-regulation has been proposed. For the textiles and apparel sector, the EU relies on its existing development cooperation programme. The EU has supported more intensive action in Bangladesh as a reaction to a major incident concerning suppliers in the RMG industry but, thus far, the EU has failed to adopt a proactive and cohesive approach towards RSCM.

J. Preliminary findings

When it comes to business, TNCs, SMEs and social enterprises, the EU's engagement is multifarious with responsibility for such engagement residing primarily in the Commission where it is often shared over several different DGs. The Council and the Parliament also shoulder some of the responsibility for engagement, either in tandem or jointly with the Commission, as in the case of the EEAS. The Commission's approach towards engaging with all forms of business enterprise over human rights diverges depending upon the policy framework in which that engagement takes place. There are two distinct trends.

The first and more obvious trend is for the EU to see engagement on human rights and business through the lens of CSR although this approach has been largely restricted to Europe with some limited forays into the EU's external policy. Until recently there was a common understanding that EU-based companies and other business enterprises were expected voluntarily to integrate environmental, social and governance

[439] The Technical and Vocational Education and Training (TVET) Reform Project is a Government of Bangladesh initiative, assisted by the International Labour Organisation and funded by the EU (2008-2015) ILO, 'Technical and Vocational Education and Training (TVET) Reform Project in Bangladesh' <http://www.ilo.org/dhaka/Whatwedo/Projects/WCMS_106485/lang--en/index.htm> accessed 6 March 2015.
[440] UNIDO, 'Better Work and Standards Programme' <http://www.best-bd.org/> accessed 6 March 2015.
[441] Bangladesh Government and European Union, 'Implementation review and progress stocktaking' (Brussels, 20 October 2014) 4 <http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152853.pdf> accessed 6 March 2015.

issues into their business operations and in their relationships with stakeholders. When it came to applying human rights in their ordinary, everyday activities most businesses largely understood this to be a reference to rights at work, including observance of core labour standards.

Already in 2001, with the launch of its Green Paper on CSR, the Commission recognised that CSR has a 'strong human rights dimension'. A decade later, the EU adopted a new definition on CSR, as 'the responsibility of enterprises for their impacts on society' and endorsed the UN Guiding Principles, as part of its 2011 CSR strategy, with a firm commitment to their implementation in Europe. The EU's engagement with human rights and business remains largely in the CSR sphere notwithstanding its endorsement of a more human rights-orientated approach. This view is reinforced by the range of stakeholders engaged with CSR in Europe, which covers a broad spectrum of companies, including TNCS, SMEs and other business enterprises, such as social enterprises, as well as the social partners, CSOs and academics.

EU policy on CSR is horizontal and transversal, i.e. it intersects several policy domains. This is reflected in the range of Directorate General's that are responsible for applying the EU's renewed CSR Strategy notwithstanding the fact that DG Enterprise and Industry (now DG GROW) normally takes the policy lead; there is also relevant input from DG Employment, Social Affairs and Inclusion (now DG EMPLOYMENT). There is one group of actors with which the EU appears to have less – and at times no – engagement on CSR - trade unions. This is reflected in the fact that ETUC is not part of the European Alliance on CSR nor is it present in the Multistakeholder Forum on CSR. We have tried unsuccessfully to interview an ETUC representative to understand the reasons behind their lack of visible presence and engagement with the EU on CSR in general and human rights in particular.

The second trend is the EU's approach to business and human rights in its external policy. One mechanism is the EIDHR, which provides financial assistance to CSOs operating outside the EU, including those CSOs engaged in defending workers' human rights. Here, the messages concerning EU engagement are mixed. While some beneficiaries felt that the EU was generally proactive and doing a good job through DEVCO, and the in-country EU delegations, others felt a sense of distance from and marginalisation by EU officials whose aims and objectives, as to what they wanted from CSOs, were not always clear. The other mechanism where the EU has prioritised business and human rights is in its EU Action Plan on Human Rights and Democracy of 2012 where once again the EU is seen as engaging with third country partners and across regions, to greater or lesser effect.

There are also gaps in the EU'S engagement with business on human rights issues that relate to PMSCs and public procurement, the latter notwithstanding the recent approval of new Directives on Public Contracts, Utilities and Concessions, as well as RSCM, especially where it concerns the EU's sectoral approach.

IV. International Financial Institutions

A. General Context

We observed in the last report, 7.1, on the positive and negative human rights impacts of non-state actors that it is to define the wide range of international financial institutions' (IFIs) impacts on human rights partly due to the complex nature of their activities.[442] In particular, IFIs lack a firm legal and practical commitment to the promotion and protection of human rights. The last report also stresses that two of the IFIs examined in that report - the World Bank (WB) and the International Monetary Fund (IMF) have only recently acknowledged that a link existed between their activities and human rights. The WB and the IMF are both IFIs of which the EU is not a member, but of which all EU Member States are.[443] There are similarities between the EU and both organisations in terms of mandate, functions and priorities.[444] We are still far from seeing 'internalisation' of human rights in their processes and there is still only very limited scope for accountability and redress with regard to WB or IMF activities that have adverse human rights impacts. Indeed, a range of UN experts recently expressed concern that the WB in particular is taking backward steps in terms of preventing and mitigating such impacts.[445] The third IFI considered in the previous report 7.1, the EIB, is bound both by the EU Treaties and the Charter of Fundamental Rights and this restricts its financing to projects that must respect human rights.

Against this backdrop, EU institutions engage with those IFIs in a range of different ways, in which it appears that human rights are taken into account to very different degrees. This section will cover the main areas of engagement between the EU and the IFIs. In doing so, it will consider when – and to what extent – human rights have been considered as part of that engagement process. As it is part of the EU legal order, the EIB will receive particular attention. It is important to note that there is limited relevant academic literature on IFIs and human rights. For this report we have relied mainly on official documentation and insights gained from interviews we have conducted.

[442] FRAME D7.1, 94-107.

[443] Wolfgang Bergthaler, 'The Relationship between International Monetary Fund Law and European Union Law: Influence, Impact, Effect and Interaction' in Ramses Wessel and Steven Blockmans (eds), *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations* (Springer 2013) 159.

[444] For more on this from an EU-IMF perspective, see *ibid*. For more from the perspective of the EU-WB, see section IV B below.

[445] The WB's recent efforts to revise and adapt its safeguards approach, has been subject to extensive criticism from human rights advocates for going 'out of its way to avoid any meaningful references to human rights and international human rights law' and risking the 'dilution of the [existing] human rights components of the Safeguards' – United Nations Office of the High Commissioner for Human Rights, 'Letter to Jim Yong Kim' OL OTH 13/2014 (OHCHR, 12 December 2014) <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf> accessed 6 February 2015.

B. EU Engagement with the World Bank

A key actor in ensuring collaboration between the WB and EU institutions, the role of the WB's European Office in Brussels is to bring the WB and the EU closer.[446] Reflecting the multifaceted nature of the engagement of the WB and EU institutions, a wide range of WB Vice-Presidencies and institutions are represented at this office. These include: the External and Corporate Relations (ECR) section, the role of which is, amongst other things, to facilitate relations between the WB and the EU institutions; Europe and Central Asia (ECA) section, which facilitates the overall partnership between ECA and the EU institutions and stakeholders, in particular the Commission. According to the WB website, the ECA 'works on deepening and broadening the partnership with the European Union for the benefit of its client countries, leveraging complementarities with and funding from the European institutions'.[447] The unit maintains day-to-day contacts and policy dialogue with the European institutions on a variety of topics, such as economics, energy, environment, climate change and Roma inclusion. The Europe office also engages with the EU to manage specific instruments, such as the Global Facility for Disaster Reduction and Recovery (GFDRR). The GFDRR is a partnership of 37 countries and seven international organisations, including the WB Group and the EU, which focuses on assisting developing countries to reduce their vulnerability to natural hazards and adapt to climate change. The Brussels office coordinates 'relations with EU institutions and European Donors, managing the African Caribbean and Pacific (ACP)-EU Natural Disaster Risk Reduction Program and facilitating the overall global policy partnership on [disaster risk reduction] between the EU and GFDRR'.[448] Finally, the International Finance Corporation (IFC), whose Europe Office branch manages the IFC's relations with the EU (particularly the Commission and the EIB) including an ongoing strategic dialogue and cooperation related to private sector development.[449]

The WB and the EU have four main areas of partnership, namely aid coordination, financing, policy dialogues and global public goods.[450] This partnership extends to a range of EU bodies, including the Commission, Council, Parliament and European Investment Bank (EIB). The EU-WB partnership has been described by the WB as 'underpinned by regular consultations and a strong administrative and fiduciary framework'.[451] There are a number of key elements to this partnership.

These include 'upstream consultations on programming' on country and thematic and other priority issues, which are held in several regions, including Europe and Central Asia and the Middle East and North Africa (MENA) and Africa more broadly.[452] With regard to the MENA region, there is a specific process –

[446] Interview N5 (WB).

[447] World Bank, 'European Union Overview' (World Bank, 17 July 2014) <http://www.worldbank.org/en/country/eu/overview> accessed 9 January 2015. Details of the different WB entities can be found at *ibid* under the 'Engagement' tab.

[448] *Ibid.*

[449] *Ibid*.

[450] For more on these activities, see World Bank, 'The EU and World Bank Group' <http://go.worldbank.org/WHA065IJO0> accessed 13 January 2015.

[451] World Bank, 'Implementing the Partnership' <http://go.worldbank.org/X4RWKWIJF0> accessed 13 January 2015.

[452] *Ibid*. In this context, for example, the WB hosts 'country days' where stakeholders from specific countries are invited to the WB's offices along with EU officials and other interested parties to discuss issues that are germane to that country – Interview N5 (WB).

the Luxembourg Group Process - which has brought together a number of actors, including the Commission, the EIB, the IMF and the WB, semi-annually for high-level consultations on common strategic and operational issues in the region.[453]

Another key area of EU-WB cooperation arises in the context of the Trust Fund Framework. In terms of the Framework, the Commission uses WB-administered Trust Funds (to which the former contributes) as an aid channel. The general principles that govern this cooperation are set out under the 2003 and 2009 EU-WB Framework Agreements.[454] EU-WB financing and aid cooperation also takes place through parallel co-financing of specific operations.[455] The institutions work as bi-lateral donors on the same projects, for instance in activities relating to the WB's GFDRR.

In interviews, the EU was described as the WB's 'partner of choice' – 'an inter-governmental policy setter', 'not just a donor' - and both interviewees and the websites of the institutions emphasise a concern with ensuring synergy between their programmes and that said programmes all contribute to the same goal.[456] Shared goals upon which the WB and EU institutions collaborate include the reduction of global poverty and 'shifting economies onto environmentally sustainable growth paths'.[457] The EU also relies on the WB to a certain extent for technical expertise in specific areas, benefiting from the WB's country officers' knowledge and expertise, as well as the WB's longer-term institutional engagement in particular countries (e.g. the Balkans).[458]

It was notable from interviews with WB representatives that there appeared to be a failure to fully appreciate the human rights impacts of WB-financed austerity policies in developing economies – or indeed to recognise the impact of such policies on the most vulnerable in society – who interviewees described the WB as primarily concerned with.[459] As will be evident from the section below, a failure to appreciate the human rights impacts of post-crisis policies in particular was evident also on the part of the IMF in the context of loan assistance to EU Member States.[460]

[453] World Bank, 'The Middle East and North Africa' <http://go.worldbank.org/VSGMDTQLG0> accessed 13 January 2015.
[454] Trust Funds and Cofinancing Framework Agreement (European Community – International Bank for Reconstruction and Development, International Development Association and International Finance Corporation) (adopted 20 March 2009).
[455] For more detail see *ibid*.
[456] Interview N5 (WB).
[457] World Bank, 'The EU and World Bank Group' <http://www.worldbank.org/en/country/eu> accessed 17 July 2014.
[458] Interview N5 (WB).
[459] *Ibid*.
[460] For an overview of the impact of post-crisis policies on a range of EU states, see Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (CUP 2015). See, e.g., UNHRC, Seventeenth Session 17 March 2011 'Report of the Independent Expert on the question of human rights and extreme poverty, Ms. Maria Magdalena Sepúlveda Carmona on the human rights based approach to recovery from the global economic and financial crises, with a focus on those living in poverty' (2011) UN Doc A/HRC/17/34; UNHRC, Tenth Session 4 February 2009 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik' (2009) UN Doc A/HRC/10/7; Council of Europe Commissioner for Human Rights, 'Safeguarding Human Rights in times of Economic Crisis' (Council of Europe 2013).

A prominent feature of the information provided by the WB was its 'structured dialogue' with the EU and its institutions (which is not codified in the form of, for instance, a strategy for engaging with the EU on Europe and Central Asia).[461] This dialogue takes place from both a geographic and thematic perspective and engages actors from the EU and the WB at the technical programme and management levels.[462] It involves meetings between different actors on an *ad hoc* basis, including WB official attendance at EU institution Committee meetings, as well as EU official and European Parliamentarian attendance at WB Annual and Spring Meetings in Washington. Every year, the WB's European Executive Directors, who represent the EU Member States on the WB Board, hold a series of meetings with representatives of the EU institutions and European civil society during a visit to Brussels on 'salient development issues'.[463] According to interviewees, while WB/EU dialogue may focus on issues related to human rights, human rights do not appear to play a central, express part of that dialogue.[464] When describing that dialogue, the WB interviewees emphasised the rule of law (which has been a key element and preoccupation of the WB's approach to development since the early 1990s)[465] 'which is obviously related to human rights and respecting human rights'.[466]

Our research shows that there have been some limited exchanges between the EIB and the WB on their human rights policies and practices. One interviewee noted that the EIB and other EU officials had attended one of the WB's consultation events on updating their safeguards policy.[467] As a result, the EIB has been asked to provide information to the WB on how the EIB had engaged with the human rights agenda.[468]

The Independent Accountability Network, which is an international network for the accountability mechanisms of IFIs, has served as a point for *ad hoc* engagement on human rights between the EU and the WB in the past. At the 9th Annual Meeting of the Independent Accountability Mechanisms in 2012, for example, the entire conference was oriented around the subject of Accountability and Human Rights and featured engagement between the EIB, WB and different EU officials on the subject.[469] However, overall it does not appear – either from EU or WB documentation or interview evidence – that human rights constitute a significant factor in EU-WB engagement as it currently stands.

[461] Language from interview N5 (WB).
[462] *Ibid*.
[463] See, e.g., World Bank, 'World Bank Group's European Executive Directors Engage with the EU' <http://go.worldbank.org/FHE4B1R040> accessed 13 January 2015.
[464] Interview N5 (WB).
[465] See, e.g., Gordon Barron, 'The World Bank and Rule of Law Reforms' (2005) LSE Development Studies Institute Working Paper WP70 <http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP70.pdf> accessed 13 January 2015.
[466] Both quotes are from interview N5 (WB).
[467] Interview N10 (EIB).
[468] *Ibid.*
[469] European Investment Bank, 'IFIs Independent Accountability Mechanisms' (EIB, 17 July 2012) <https://institute.eib.org/wp-content/uploads/2012/11/2012-07-17-Draft-agenda-of-the-9th-Annual-Meeting-of-the-IAMs-September-2012-Luxembourg.pdf> accessed 12 February 2015.

C. EU Engagement with the IMF

The IMF has stated that it is 'actively engaged with European institutions, in particular the European Commission and the European Central Bank, as a provider of policy advice, financing, and technical assistance'.[470] The three most important areas of engagement between the EU and the IMF are Member State-focused Article IV consultations in terms of the IMF's surveillance role,[471] the annual Eurozone consultation[472] and joint activities in the context of the Commission, European Central Bank (ECB) and IMF 'Troika'.[473] Formal internal engagement with the European Parliament and the Commission takes place as part of the annual Eurozone consultation.[474] The IMF also contributes informally to European Parliament inquiries on issues of mutual concern through meetings and briefings,[475] while MEPs are also able to submit comments as part of the IMF's formal policy consultation processes and the ECB is entitled to send a resident observer (non-voting) to the IMF Executive Board.[476] In contrast, regular engagement with the EU in the context of Article IV consultations is done on an informal basis.[477] The EU is represented in the IMF in a range of different ways, including through the EURIMF Committee which is composed of all IMF Executive Directors representing EU Member States at the IMF Executive Board.[478]

With regard to its developmental cooperation programmes with the EU, the IMF participates in the OECD Development Assistance Committee (the OECD's Committee which deals with development co-operation matters) as an observer, with the EU and multiple EU Member States being members.[479] There are other informal linkages between EU and IMF development activities; for instance, in practice, the EU often

[470] IMF, 'The IMF and Europe' (IMF, 1 September 2014) <www.imf.org/external/np/exr/facts/pdf/europe.pdf> accessed 17 July 2014.

[471] 'Under Article IV [of the IMF's Articles of Agreement], member countries undertake to collaborate with the IMF and with one another to promote stability. For its part, the IMF is charged with (i) overseeing the international monetary system to ensure its effective operation, and (ii) monitoring each member's compliance with its policy obligations.' - IMF, 'IMF Surveillance' <https://www.imf.org/external/np/exr/facts/surv.htm> accessed 8 January 2015. For more on the Article IV process in the context of the EU see Wolfgang Bergthaler, 'The Relationship between International Monetary Fund Law and European Union Law: Influence, Impact, Effect and Interaction' in Ramses Wessel and Steven Blockmans (eds), *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations* (Springer 2013) 159, 173-5.

[472] The IMF also 'provides economic analysis of the euro area as a whole and gives it policy advice' under the Article IV mechanism - Eurozone Portal, 'International Monetary Fund' (European Council, 8 January 2015) <http://www.eurozone.europa.eu/euro-area/institutions-and-partners/international-monetary-fund-%28imf%29/> accessed 8 January 2015.

[473] Interview N7 (IMF).

[474] *Ibid*.

[475] *Ibid*.

[476] Wolfgang Bergthaler, 'The Relationship between International Monetary Fund Law and European Union Law: Influence, Impact, Effect and Interaction' in Ramses Wessel and Steven Blockmans (eds), *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations* (Springer 2013) 159, 176.

[477] Interview N7 (IMF).

[478] For more on representation of the EU at the IMF, see Roberto Cisotta, 'The Representation of the EU in the International Monetary Fund' (Institute for European Studies, 22 April 2010) <http://www.ies.be/files/Cisotta-A1.pdf> accessed 14 January 2015.

[479] OECD, 'Development Co-operation Directorate (DCD-DAC): DAC Glossary of Key Terms and Concepts' <http://www.oecd.org/dac/dac-glossary.htm#DAC> accessed 8 January 2015.

makes their own assistance dependent on whether the country is performing well under an IMF or WB programme.[480]

The recent financial and subsequent economic crisis saw a number of EU Member States turn to the IMF to request the use of IMF financial resources. This increased the IMF's interaction with the EU,[481] for instance through the activities related to the European Financial Stabilisation Mechanism, the European Stability Mechanism and the European Financial Stability Facility, including the work of the Troika. The IMF's cooperation with the EU and the ECB in the context of the Troika was aimed at 'ensuring maximum coherence and efficiency in staff-level program discussions with governments on the policies that are needed to put their economies back on the path of sustainable economic growth'.[482] While the Troika involves cooperation and coordination between the EU and the IMF, IMF decisions on financing and policy advice are ultimately taken by the IMF's Executive Board - independently of the Troika process.[483]

The activities of the Troika have been subject to significant criticism in terms of the impacts of the agreements made with borrower states that have, amongst other things, entailed public sector reforms and significant cuts to social protection programmes related to human – particularly economic and social – rights enjoyment.[484] Human rights impact assessments have not formed part of EU-IMF bailout programmes and, indeed, one interviewee stated that human rights concerns feature in the IMF's analysis of post-crisis domestic economic and financial policy only in terms of how such policy impacts on the most vulnerable.[485] Whilst the IMF can be criticised in this respect, the EU cannot remain detached from this criticism because its institutions in the Troika – the Commission and the ECB – are directly subject to human rights obligations by virtue of Article 6 of the Treaty on European Union and Article 51 of the Charter of Fundamental Rights. For some, the Troika can be seen as an enterprise which potentially violates human rights, rather than a positive force for good, which is problematic for the EU's engagement on human rights and its legitimacy as a human rights' actor both within and beyond the EU. The crisis in Greece-EU, Greece-Troika, relations following the election of the Syriza-led Government in Greece in January 2015, has brought these issues even more sharply into focus.

On at least one occasion, the Troika has tacitly criticised the harshness of national post-crisis macroeconomic and structural programmes. In the Troika's October 2012 statement on its Review

[480] Interview N7 (IMF).

[481] Wolfgang Bergthaler, 'The Relationship between International Monetary Fund Law and European Union Law: Influence, Impact, Effect and Interaction' in Ramses Wessel and Steven Blockmans (eds), *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organisations* (Springer 2013) 159, 161. Bergthaler also highlights in particular the establishment of EU and euro-area financing mechanisms that frequently refer to IMF terminology and practices and even encourage IMF involvement.

[482] IMF, 'The IMF and Europe' (IMF, 1 September 2014) <www.imf.org/external/np/exr/facts/pdf/europe.pdf> accessed 17 July 2014.

[483] *Ibid*.

[484] See, e.g., Aoife Nolan (ed), *Economic and Social Rights after the Global Financial Crisis* (CUP 2015); Bruno De Witte and Claire Kilpatrick (eds), 'Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges' (2014) EUI Working Paper 2014/05 <http://cadmus.eui.eu/handle/1814/31247> accessed 13 January 2015.

[485] Interview N7 (IMF).

Mission to Ireland it emphasised that 'the measures adopted in Budget 2013 should be durable, as growth-friendly as possible, and minimise the burden of adjustment on the most vulnerable'.[486] The Troika has not, however, required that such programmes be 'human rights-proofed' for the purposes of a bailout or other loan assistance.

Overall, there is little evidence that human rights form a key part of EU engagement with the IMF – a fact that is troubling given the very significant implications that EU-IMF cooperation and collaborative activities have for human rights enjoyment.

D. EU Engagement with the EIB

In the previous report, 7.1, the special nature of the EIB as an IFI governed by the EU treaties and with the Member States as the shareholders was outlined. It follows from this that, whilst the EIB has considerable operational autonomy, it styles itself as the 'EU bank' and it is not easy to classify it as an NSA. Most importantly, in the context of this report, it has responsibilities, when engaging with the EU institutions, to fulfil the EU's mission to protect and promote human rights. It is therefore important to analyse the effectiveness of its human rights engagement and, in preparation for FRAME 7.3, consider the extent to which it can, and should, provide a model for IFIs such as the WB and IMF.

On its website, the EIB emphasises that it maintains close working ties with the EU institutions in pursuit of the Union's objectives, most importantly fostering European integration and the balanced development of the Union, and supporting the EU's development aid and cooperation policies throughout the world.[487] Hachez and Wouters have emphasised that the EIB's work has both 'intra-EU' and 'extra-EU' dimensions, contributing to a range of EU activities and aims, including 'the balanced and steady development of the internal market in the interest of the Union' in terms of Article 309 TFEU[488] and 'the implementation of development cooperation policy' under Article 209 TFEU.[489] According to Regulation (EU) No 236/2014 of the European Parliament and of the Council:

> the EIB contributes to the implementation of the measures necessary to further the objectives of the Union's development and other external policies, and intervenes in complementarity with the Union's instruments for external action. Opportunities should be seized to combine EIB

[486] For more, see Aoife Nolan, 'Welfare Rights in Crisis: The Case of Ireland' (2014) 2(1) European Journal of Social Law 37.
[487] EIB, 'Part of the EU Family' <www.eib.org/about/eu-family/index.htm> accessed 13 January 2015.
[488] The EIB's intra-EU role is also addressed in TFEU, arts 174, 175, 289.
[489] Nicolas Hachez and Jan Wouters, 'A Responsible Lender? The European Investment Bank's Environmental, Social and Human Rights Accountability' (2012) 49 Common Market Law Review 50-51.

> financing with Union budgetary resources. The EIB is consulted in the Union programming process where appropriate.[490]

The expectation of engagement between the EIB and a range of EU institutions is reflected in the fact that the Commission is represented on the EIB's Board of Directors,[491] as is the fact that applications for financing may be made through the Commission[492] and that, in certain cases, legislative acts may be adopted on the initiative of the European Parliament or a group of Member States at the request of the EIB.[493] The EU has granted the EIB a budgetary guarantee for financing operations carried out outside the Union in support of Union external policy objectives,[494] including local private sector development, development of social and economic infrastructure and climate change mitigation and adaptation.[495] This will be discussed further below in the context of discussing engagement with the European Parliament.[496]

Such engagement is further evidenced by the fact that the Commission is obliged to report annually to the European Parliament and to the Council on EIB financing of investment projects based outside the EU.[497] The EIB is required to furnish the Commission with all its independent evaluation reports assessing the practical results achieved by its activities in this area.[498] It is also obliged to provide annual reports on its financing activities, which must include information on the fulfilment of Union external policy and strategic objectives, including cooperation with the Commission and other IFIs and European Bilateral Financial Institutions, and an appraisal of human rights aspects of projects when presenting its development impact assessment of the operations financed during the year in question.[499] The EIB and the Commission's annual reports are discussed by Parliament.[500] This reporting process provides a key opportunity for direct and indirect engagement on human rights. On the specific subject of human rights policy, the EIB is obliged to take into account the policy changes within the EU on the subject of human rights. It has expressly incorporated specific policy guidance from the EU related to human rights in its Environmental and Social Handbook. The handbook incorporates policy documents such as the Renewed

[490] European Parliament and Council Regulation (EU) 236/2014 of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action [2014] OJ L 77/95, recital 16.
[491] TFEU Protocol on the Statute of the European Investment Bank, art 9(2).
[492] TFEU Protocol on the Statute of the European Investment Bank, art 19(1).
[493] TFEU, art 289(4).
[494] Council and European Parliament Decision 466/2014 of 11 March 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [2014] OJ L 135/1. See section IV E.3 for more on the limitations of this guarantee.
[495] Council and European Parliament Decision 1080/2011/EU of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC [2011] OJ L 280/1, art 3(1).
[496] Please note that this section will not discuss the Bank's engagement with the European Court of Justice and the Court of Auditors which takes place in circumstances specified in Articles 271 and 287, respectively.
[497] See Council and European Parliament Decision 1080/2011/EU of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC [2011] OJ L 280/1, arts 11(1) and 2. See also section IV D.3 below.
[498] *Ibid*, art 11(2).
[499] *Ibid*, arts 11(3) and 7(3).
[500] *Ibid*, art 7(3).

EU Strategy 2011-2014 for Corporate Social Responsibility,[501] the EU Strategic Framework and Action Plan on Human Rights and Democracy,[502] and human rights obligations arising from the Charter of Fundamental Rights.[503]

Although the EIB's activities are focused predominantly within the EU,[504] the engagement between the EU, the EIB and Member States on the subject of human rights policy is much less problematic than it is for external countries and as a result we will not dwell on it here. As one EIB interviewee pointed out, when it comes to issues like gender equality or human rights there is 'no split in the EU's policy missives' between internal and external policies.[505] The interviewee also pointed out that the regulatory environment was unified across the EU as both the EU and the Member States were legally bound by the Charter of Fundamental Rights and each Member State had 'ombudsman structures'.[506] This means that in principle at least there should be no discrepancies between the human rights standards applied in different Member States. Our interviewee stated that these structures help by 'providing assurances of existing mechanisms and procedures safeguarding citizens' and general stakeholders' access to recourse, if required'. This rather rosy portrayal offers the EIB 'more comfort in the sense that there is already an endorsement and a framework and corresponding obligations by Member States to apply the Charter, something that is not the case if you work outside the EU'.[507]

1. Engagement with the Commission

We have already highlighted that the Commission is represented on the EIB's Board of Directors, and that that applications for financing by the EIB may be made through the Commission. The EIB also cooperates with the Commission in a range of other ways with the EIB website stating that the Bank 'maintains further strong operational links with the Commission, as initiator and executive body for many areas of EU policies

[501] Commission, 'A renewed EU strategy 2011-14 for Corporate Social Responsibility' (Communication) COM (2011) 681 final; European Investment Bank, 'Environmental and Social Handbook' (Projects Directorate, 2 December 2013) 97 <http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf> accessed 6 February 2015.

[502] *Ibid*; EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012).

[503] European Investment Bank, 'Environmental and Social Handbook' (Projects Directorate, 2 December 2013) 65 <http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf> accessed 6 February 2015; See also generally FRAME D7.1, 98-100.

[504] The split is approximately 90% internal and 10% external - Interview N10 (EIB).

[505] *Ibid*; See also the statement from the EIB that 'in the rest of the world, though EU law formally does not apply, the benchmark for the EIB is again the legal principles and standards of the EU' - European Investment Bank, 'The EIB Statement of Environmental and Social Principles and Standards 2009' 8 para 19 <http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf> accessed 10 March 2015.

[506] The ombudsman structure is important in the context of the EIB because one level of the mechanism for complaints about the EIB's activities utilises the EU's ombudsman structure. Overall the complaints structure utilised by the EIB helps to ensure compliance with the Charter and the due diligence operations of the EIB – FRAME D7.1, 99-100.

[507] Interview N10 (EIB).

relevant to the Bank, with a view to maximising the synergies between EIB lending and EU budgetary resources in furthering common objectives.'[508]

According to one interviewee, the mandate of the DG for International Cooperation and Development (DEVCO) encourages DEVCO to work with the EIB and the European Bank for Reconstruction and Development (EBRD) as development partners as much as possible.[509] DEVCO does not generally engage in major policy discussions with the EIB and EBRD on subjects like human rights policy; rather, the focus is on financing individual projects – as part of which DEVCO, the EIB and the EBRD discuss all relevant development issues, 'including human rights'.[510] Applications made directly to the EIB for EIB financing operations in relation to countries outside the EU must be submitted to the Commission for an opinion.[511] When the EIB and EBRD present projects to DEVCO seeking finance and file applications for funding, they are expected to carry out due diligence assessments of the projects, which include consulting local authorities, organisations and CSOs in the relevant third countries about the impacts of the projects, including human rights impacts.[512] As discussed in the previous FRAME report 7.1, such assessments are carried out in terms of the EIB's own rules and procedures.[513] In addition to this *ex-ante* assessment of development-related aspects, the EIB must require project promoters to carry out thorough monitoring during project implementation until completion on, amongst other things, the human rights impact of the project, and the EIB is to assess the information provided by the project promoters.[514] An EIB interviewee described this as 'human rights-responsive due diligence'.[515]

The EIB itself has various project assessment processes, which facilitate engagement with the EU more generally and the alignment of EIB activities with broader EU human rights policy. Article 19 of the EIB's Statute enjoins the Bank to seek an opinion from the Commission, and in some cases Member States, when it receives financing requests.[516] This serves as a point of engagement between the EIB and the Commission on human rights because the Commission is supposed to offer an opinion on the conformity of the project with relevant EU legislative acts and policies,[517] which include human rights obligations. On

[508] European Investment Bank, 'The European Commission' <http://www.eib.org/about/eu-family/ec.htm> accessed 16 January 2015.
[509] Interview N4 (DEVCO).
[510] *Ibid*.
[511] TFEU Protocol on the Statute of the European Investment Bank, art 19.
[512] For details of the obligations of the EIB with regard to assessment of development-related projects, see Council and European Parliament Decision 1080/2011/EU of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC [2011] OJ L 280/1, art 7; See also FRAME D7.1 for more on these assessments.
[513] FRAME D7.1, 98-100.
[514] Council and European Parliament Decision 1080/2011/EU of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC [2011] OJ L 280/1, art 7(2).
[515] Interview N10 (EIB).
[516] TFEU Protocol on the Statute of the European Investment Bank, art 19.
[517] See reference to Article 21 procedure (Article 21 was renumbered to Article 19 in Statute) here – DG Economic and Financial Affairs, 'Coordination with the European Investment Bank' <http://ec.europa.eu/economy_finance/financial_operations/coordination/eib/index_en.htm> accessed 13 February 2015.

the Commission side, the DG for Economic and Financial Affairs takes a central role in liaising with the EIB throughout this process.[518] Within the EIB, individual project teams, led by members of the projects directorate of the Bank, are responsible for liaising with 'relevant services' of the Commission under the Article 19 procedure.[519] The EIB submits a note to the Commission, appended to the other project documents, which offers details on the likely environmental and social impacts of the proposed project.[520]

The interviewee was keen to stress that any human rights concerns raised by a project are dealt with as part of the Bank's social due diligence stating 'the Bank does not have a human rights framework: it has a social due diligence framework, articulated through standards. Human rights considerations inform these, yet at the end of the day human rights are subsumed under social due diligence'.[521] The note is then assessed by an inter-service consultation group within the Commission, which evaluates the project's compliance with EU policy and law and issues an opinion to the EIB. The notes are also circulated to the European External Action Service (EEAS) delegations in the country where the project is to take place and they offer feedback on the project plan.[522] This is a process of dialogue and a number of rounds of consultation may be required with the EIB responding to specific points raised by different services and updating the brief provided under Article 19 accordingly.[523] An adverse opinion from the Commission can have seriously detrimental consequences for a prospective project and can in some cases halt the project entirely.[524] A negative opinion on a project can also mean that the EU guarantee of the external lending mandate is withdrawn for the specific project at issue.[525] Thus as a mechanism for engagement between the EU and EIB on adherence to human rights policy, Article 19 has a very strong potential capacity to influence the activities of the EIB.

The EIB has also introduced a three pillar assessment system for projects presented to it. This assessment includes analysis of how the project aligns with EU and EIB policy objectives, in particular whether the project contributes to environmental and social sustainability.[526] This serves as a point of engagement between the EU and the EIB. One of the key strategic objectives of the EIB outside the EU is to provide funding for social infrastructure projects, which include access to health, education and housing and

[518] Interview N10 (EIB); DG Economic and Financial Affairs, 'DG Economic and Financial Affairs 2014 Management Plan' 27 <http://ec.europa.eu/atwork/synthesis/amp/doc/ecfin_mp_en.pdf> accessed 13 February 2015.
[519] European Investment Bank, 'Environmental and Social Handbook' (Projects Directorate, 2 December 2013) 98 <http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf> accessed 6 February 2015.
[520] *Ibid.* 113.
[521] Interview N10 (EIB).
[522] *Ibid*.
[523] *Ibid*.
[524] *Ibid*; TFEU Protocol on the Statute of the European Investment Bank, art 19(6).
[525] Council and European Parliament Decision 466/2014/EU of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [2014] OJ L 135/1, art 5(2).
[526] European Investment Bank, 'The EIB's Assessment Framework of operations within the EU' (European Investment Bank, 7 November 2013) <http://www.eib.org/attachments/general/events/2013_11_07_roundtable_added_value_presentation_en.pdf> accessed 13 February 2015.

contribute to the broader protection of economic, social and cultural rights.[527] The results measurement framework adopted by the EIB in 2012 also helps in the 'assessment of a project's consistency with EIB mandate objectives as well as its contribution to EU priorities and country development objectives'.[528] The combination of these assessment mechanisms has the capacity to ensure that projects align with policy goals, adhere to human rights standards and to measure the success of projects in achieving their desired outcomes.

As mentioned above, the EIB is required to report to the Commission on the 'development impacts' of its projects on an annual basis.[529] The Commission's report to the Parliament (discussed above) must include 'an assessment of the contribution of those financing operations to the fulfilment of Union external policy and strategic objectives',[530] which objectives include human rights.[531] According to one interviewee we spoke to from DEVCO, the DG broadly trusts the impact assessments carried out by the EIB, but concern was expressed about the resources at DEVCO's disposal to effectively assess the human rights element of the EIB/EBRD assessments or the human rights issues arising from development projects more broadly, given the limited human rights expertise at the disposal of DEVCO.[532] This indicates a clear need for more effective engagement on human rights in the practical implementation of EIB projects.

One method that may facilitate this engagement, and enhance coherence, is the EU Platform for blending funds in external cooperation, launched in December 2012 by the Commission.[533] Building on existing blending mechanisms, the Platform will provide recommendations and guidance on the use of blending in EU external cooperation to help 'unlock additional public and private resources and thereby increase the impact of EU external cooperation and development policy'.[534] This 'blending' of public and private resources has the potential to provide additional finances for development, neighbourhood and

[527] European Investment Bank, 'Results financing: EIB operations outside the EU' (European Investment Bank, 1 September 2013) 2 <http://www.eib.org/attachments/country/rem_results_financing_en.pdf> accessed 13 February 2015.

[528] European Investment Bank, 'The EIB Results Measurement (ReM) Framework' <http://www.eib.org/projects/cycle/monitoring/rem.htm> accessed 13 February 2015.

[529] See Council and European Parliament Decision 1080/2011/EU of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC [2011] OJ L 280/1, arts 7(3) and 11(2), respectively.

[530] *Ibid*, art 11(1).

[531] *Ibid*. states that this report must 'include sections on added value for the achievement of Union policy objectives, on the assessment of the estimated development impact at an aggregated level and the extent to which the EIB has taken into account environmental and social sustainability in the design and monitoring of the projects financed, as well as on cooperation with the Commission and other IFIs and EBFIs, including co-financing'.

[532] Interview N4 (DEVCO).

[533] Commission, 'EU launches new Platform for blending funds in external cooperation' (Brussels, 21 December 2012) <http://ec.europa.eu/economy_finance/articles/financial_operations/pdf/2012-12-21-blending-funds_en.pdf> accessed 24 March 2015.

[534] *Ibid.* Since 2007, the EU, together with the Member States, has set up eight regional blending facilities, covering the entire region of EU external cooperation. Contributions from the EU budget, the EDF and Member States, totalling €1.8 billion, have financed more than 320 operations of EU 'blending mechanisms'to individual projects and have leveraged more than €20 billion of loans by elegible financial institutions, unlocking private finance of at least €45 billion, in line with EU policy objectives.

enlargement and can therefore put together resources from the EIB, the Commission and the European Central Bank acting in concert as the European Financial Institutions and also to 'deepen cooperation' with other international institutions such as the WB and the IMF.[535] It is therefore a tool for coordination between the relevant actors. The EIB has a central role in both participating in and reviewing the effectiveness of this blending, sharing expertise and developing new ideas. The potential of the blending Platform for strengthening engagement and improving coherence between IFI funding mechanisms across the EU, to advance and protect human rights will be explored further in the next report, FRAME 7.3.

2. Engagement with the European External Action Service (EEAS)

Decision No 1080/2011 of the European Parliament and of the Council stated that '[t]he consistency of EIB external actions with Union external policy objectives shall be strengthened, with a view to maximising synergies between EIB financing and Union budgetary resources, in particular through the establishment of the regional technical operational guidelines … as well as through regular and systematic dialogue and early exchange of information'.[536] This dialogue and exchange is to take place on: strategic documents prepared by the Commission and/or the EEAS, such as country and regional strategy papers, indicative programmes, action plans and pre-accession; the EIB's strategic planning documents and project pipelines; and other policy and operational aspects. This EEAS-EIB cooperation is to take place on a region-by-region basis.[537]

There is also a country-level input on the EIB's activities. As we noted above, the EEAS country delegations can contribute to the Article 19 consultation process and have the ability to raise any human right concerns they may have with an EIB project at this point. The parameters of the EIB-EEAS cooperation are further detailed in the 2013 Memorandum of Understanding between the Commission and the EIB in respect of Cooperation and Coordination in the Regions covered by the External Mandate.[538] This instrument emphasises that there should be enhanced cooperation and early mutual exchange of information between the relevant Commission services, the EEAS and the EIB at operational level[539] and seeks to pursue strengthened coherence between the financing operations of the EIB and the Commission 'with a view to maximising the synergies of EIB financing and EU budget based instruments'.[540] The EIB is

[535] *Ibid.*
[536] Council and European Parliament Decision 1080/2011/EU of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC [2011] OJ L 280/1, art 8.
[537] Council and European Parliament Decision 466/2014/EU of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [2014] OJ L 135/1, art 6.
[538] Memorandum of Understanding between the European Commission and the European Investment Bank in respect of Cooperation and Coordination in the Regions covered by the External Mandate (12 September 2013) <http://www.eib.org/attachments/strategies/mou_ec_eib_on_external_mandate_en.pdf> accessed 16 January 2015.
[539] *Ibid*, recital 3.
[540] *Ibid*, art 1.2.2.

further required to contribute an account of its activities to the annual report on human rights in the EU submitted by the EEAS.[541] This is a measure that has the potential to strengthen monitoring of the delivery of positive human rights outcomes from EIB projects.

It is important to note that the financial power of the EIB also generates political leverage for the EU to influence the human rights standards applied in third States. An EIB interviewee was keen to point out that they work closely with the EEAS in this regard and in their words '[the] EIB's job is not to change policy at the country level'.[542] However, the interviewee stated that they are 'acutely aware' of the potential leverage they have through financing arrangements.[543] The interviewee noted that as the EIB has the power to accept or reject projects proposed by the project promoters, even if the State in which a project is to be implemented has adopted limited human rights standards, they can still compel the project promoter to adopt and enforce higher human rights standards. The interviewee gave the example of the adoption of freedom of association and trade union access rights noting that 'at the project level we will expect and encourage our client to put in place arrangements that will ensure exercise of [the right to freedom of association and the right to join a trade union] by labour'.[544] These conditions can be built into the financing agreements and monitored at the project level, even if the State has not adopted the same standard. In this way, the EIB can provide a further avenue for the EEAS and other EU bodies to project their foreign policy and human rights objectives into other States.

3. Engagement with the European Parliament

The relationship between the EIB and the European Parliament has evolved significantly over the past decade. A major development occurred in the context of the EIB's external lending mandate. As mentioned above, given that lending to developing countries involves a higher degree of financial risk than lending within the EU, the EU has historically provided guarantees on a periodic basis to the EIB for any losses under loans and loan guarantees for EIB projects outside the EU. This is so that loans to developing countries do not have an adverse effect on the credit standing of the EIB.[545] This guarantee is known as the external lending mandate (ELM).

Historically, this guarantee was grounded in a decision of the Council of the EU. In 2006, as usual, the ELM was set out in a decision by the Council.[546] However, there was a dispute between the Council and European Parliament over the legal basis for this decision, which eventually ended up before the CJEU.[547] the EIB's lending activities encompassed development cooperation and that the decision (and hence

[541] Interview N10 (EIB).
[542] *Ibid*.
[543] *Ibid*.
[544] *Ibid*.
[545] Council and European Parliament Decision 466/2014 of 11 March 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [2014] OJ L 135/1, recital 3.
[546] Council Decision 1016/2006 of 19 December 2006 granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community [2006] OJ L 414/95.
[547] Case 155/07 *European Parliament v Council of the European Union* (EIB Guarantee) [2008] ECR I-8103.

the guarantee) should have a dual legal basis under what was Article 179 TEC (now amended in Article 209 TFEU) and Article 181a TEC (now amended in Article 212 TFEU).[548] The CJEU sided with the Parliament and annulled the decision.[549] The judgment had a double impact, simultaneously requiring the EIB to take greater account of development cooperation policy and increasing engagement between the EIB and the European Parliament. The central role now played by the European Parliament in defining the EIB's ELM was echoed in our interview with an EIB official.[550]

The ELM is a strong point for engagement on human rights policy changes between the EU and the EIB. A separate annex to the ELM, which is overseen by the European Commission, defines the countries that the EIB can lend to. This annex communicates changes in diplomatic relations between the EU and other states. In the most recent ELM, for example, Myanmar and Bhutan are identified as potential countries for the EIB to lend to.[551] One of our interviewees noted that the ELM is a place where 'the policy driven element comes much more stronger [sic], because we cannot just decide to go and invest in Myanmar before there was an official EU decision. We cannot say that we want to go to Brazil and invest […] in a sector that has not been endorsed by the Parliament'.[552] In the cases of Myanmar and Bhutan, for example, the policy link is very explicit and the EIB's activities must 'support the ongoing political and economic reforms in both countries'.[553] The ELM also explicitly requires the EIB to align its activities with various development and human rights policies, including the EU Strategic Framework and Action Plan on Human Rights and Democracy.[554] This policy document was described by one of our interviewees as 'a very good case of an existing and concrete policy framework to which we look towards and see how we can foster alignments'.[555] The ELM also compels the EIB to make sure that its actions are in line with international law, the Millennium Development Goals of the UN and other human rights law.[556] It has the effect of mainstreaming human rights across all EIB activities and, following the CJEU decision referred to above, subjects those activities to strict oversight by the European Parliament.

[548] If the sole legal basis was art 181a TEC, the Council would only be required to consult the Parliament, whereas if the decision was adopted under the dual legal bases, art 179 TEC required co-decision between the Parliament and the Council - Case 155/07 *European Parliament v Council of the European Union* (EIB Guarantee) [2008] ECR I-8103, paras 177 and 182; Marcus Klamert, 'Conflicts of legal basis: no legality and no basis but a bright future under the Lisbon Treaty?' (2010) 35 (4) European Law Review 497, 510.
[549] Case 155/07 *European Parliament v Council of the European Union* (EIB Guarantee) [2008] ECR I-8103, para 89.
[550] Interview N10 (EIB).
[551] Council and European Parliament Decision 466/2014 of 11 March 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [2014] OJ L 135/1, annexes 2 and 3.
[552] Interview N10 (EIB).
[553] Council and European Parliament Decision 466/2014 of 11 March 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [2014] OJ L 135/1, art 4(2).
[554] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012).
[555] Interview N10 (EIB).
[556] Council and European Parliament Decision 466/2014 of 11 March 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union [2014] OJ L 135/1, recital 21 and 22.

Moving beyond the ELM, the EIB maintains regular policy dialogue with the Members of the European Parliament (MEPs), which focuses on the EIB's activity in support of the EU's objectives.[557] Dialogue between the EIB and Parliament takes place at multiple levels (plenary, committee and with individual MEPs), enabling MEPs to incorporate EIB activity into the discharge of their legislative, budgetary and political responsibilities, thereby, according to the EIB website, 'making for greater consistency of all EU initiatives'.[558] The European Parliament also exercises an oversight role over the activities of the EIB through various committees, including the Committee on Budgets, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs and the Committee on Development. Furthermore, individual MEPs can address questions to the Commission on EIB activity, the answers to which the EIB contributes to.

One interviewee noted that the Parliament often sends requests for information to the EIB and the employees 'feed content into the Bank's responses to the Parliament's requests'.[559] Engagement on a personal level occurs at more senior levels of the Bank where 'members of the management committee, or vice-presidents, heads of directorate' are asked by the Parliament to go there and 'engage with the Parliament and the different Parliament committees'.[560] The interviewee also mentioned that the Parliament had planned a specific event for later in 2015, which involved a 'closed doors discussion on human rights and IFIs'.[561]

4. Engagement with the Council of the European Union

The EIB has close ties with the Council of the EU. The EIB attends the meetings of the Economic and Financial Affairs (Ecofin) Council - composed with the Finance Ministers of the Member States - and preparatory bodies, such as the Economic and Financial Committee, making available its expertise on economic issues and capital investment financing.[562] There is also an overlap in personnel between Ecofin and the EIB, members of the Ecofin Council are also generally Members of the EIB's Board of Governors.[563]

According to the EIB website, the EIB helps to prepare the work of the Council, informing the Council through reports of the EIB's contributions to the furtherance of the EU's objectives and the possible expansion of these in line with economic needs.[564] The EIB provides information to the Council for its

[557] European Investment Bank, 'The European Parliament' <http://www.eib.org/about/eu-family/europarl.htm> accessed 14 January 2015.
[558] *Ibid*.
[559] Interview N10 (EIB).
[560] *Ibid*.
[561] *Ibid*.
[562] European Investment Bank, 'The Council of the European Union (known as the Council of Ministers)' <http://www.eib.org/about/eu-family/consilium.htm> accessed 14 January 2015.
[563] *Ibid*.
[564] European Investment Bank, 'The European Council' <http://www.eib.org/about/eu-family/european-council.htm> accessed 14 January 2015.

annual reports on Human Rights and Democracy.[565] Furthermore, both the Council and the Parliament have been instrumental in changing the EIB's corporate activities through legislative measures so that they align more closely with human rights' norms. Thus, for example, decisions of the two prompted the revisions to the environmental and social handbook and the ReM mentioned above.[566] The Council also frequently requests the EIB to implement new EU initiatives requiring banking or financial instruments.[567]

We also see instances of the Council directing the EIB's activities in response to human rights concerns.[568] Thus in 2011, the Foreign Affairs configuration of the Council directed the suspension of bilateral cooperation programmes with Syria in response to the outbreak of civil war in the country. As part of this action, the Council 'invited the European Investment Bank (EIB) to not approve new financing operations in Syria'.[569] In subsequent meetings, the Council decided to discontinue EIB disbursements on existing loans and suspend the technical assistance that the EIB was offering to Syria.[570] Concerns over human rights issues have also prompted similar restrictions on EIB activity in Belarus.[571]

E. Preliminary findings

While the EU has many points of contact with IFIs, which understandably focus upon technical aspects of financing and economic data, the EU's interaction with the IFIs on human rights issues remains quite limited. The IFIs themselves, with the notable exception of the EIB, remain far from internalising human rights in their processes and have limited human rights accountability frameworks to underpin their financing operations. Where the IFIs do address human rights issues, these tend to be in narrow fields and may not be expressed in rights language e.g. the WB's focus on rule of law issues and the IMF's concern about social security floors. Thus it seems that the WB and IMF do not appear to fully appreciate the potential breadth and depth of the implications their activities can have on human rights enjoyment. This omission is perhaps also reflected in their own approach to human rights, where there appears to be a pervasive reticence on the part of the WB and IMF to engage with human rights as such. Instead human

[565] See, for example, EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 23, 37, 96, 100; EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)* (European Union 2013) 30-31.

[566] Council and European Parliament Decision 1080/2011/EU of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC [2011] OJ L 280/1, arts 6(2) and 7.

[567] European Investment Bank, 'The Council of the European Union (known as the Council of Ministers)' <http://www.eib.org/about/eu-family/consilium.htm> accessed 14 January 2015.

[568] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)* (European Union 2013) 15.

[569] EU Council, '3091st Council meeting - Foreign Affairs Council meeting' (Brussels, 23 May 2011) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122168.pdf> accessed 16 February 2015.

[570] Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP [2011] OJ L 319/56, art 14(a).

[571] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012 (Country Reports)* (European Union 2013) 23-24.

rights have been subsumed within 'social due diligence' and sustainability criteria or safeguards. The sparing use of the language of human rights and the couching of human rights in restrictive terms of social sustainability supports what appears to be a limited understanding of the impact of their activities on human rights. We also note a broader issue of transparency across the activities of the IFIs. A lot of the information generated, for example, from the Article 19 process (which is carried out as part of the EIB's project assessments) has not, hitherto, been publicly available, making it difficult to assess the interactions on human rights issues that occurred between the EIB and other parts of the EU as part of this process.[572] Equally, we found that a significant amount of the interaction that occurred between IFIs and the EU was informal in nature. For instance, the fact that a great deal of interaction surrounding the Article IV consultations carried out by the IMF was informal rendered it difficult to assess the extent to which human rights issues featured, if at all, in those consultations. The enhancement of 'blending mechanisms' under the new Platform is, perhaps, one possible method to improve coordination and engender more coherence between the IFIs and all the relevant actors, public and private, in funding external cooperation and development projects that can lead to positive human rights outcomes.

The WB is currently reviewing its safeguards and, as a large aid donor and partner to the WB, the EU can and should actively encourage that body to expressly include human rights guarantees in its safeguards. Finally, at present the processes of engagement between the EU and these IFIs are distinctly opaque and the EU should work toward making its interactions with the IFIs more transparent and open to public scrutiny.

We think the EU can do a great deal more to improve the human rights accountability of IFIs. The experience and knowledge of the EIB, which has made some strides in improving its human rights accountability over recent years, could be extremely beneficial to the other IFIs. The EU (including the EIB) should exhort the other IFIs, such as the WB and IMF, to incorporate human rights standards into their financing activities. The EIB should provide support and guidance to them in doing so based on its own experience. The EU should actively facilitate greater engagement between the parties discussed in this section on the subject of human rights compliance. In particular, we feel that the EU has a unique opportunity to influence the WB to incorporate more human rights standards in their safeguards. Also, the EU Member States, which are the main WB shareholders and have significant influence also with the IMF, should be mobilised to pressure these IFIs to strengthen their mechanisms for human rights accountability and make them more transparent.

[572] It should be noted, however, that the EIB is seeking to address this through a new transparency policy published on 6 March 2015 <http://www.eib.org/infocentre/publications/all/eib-group-transparency-policy.htm> accessed 22 March 2015.

V. Civil Society Organisations

A. General context

The first decades of European integration were driven by economic concerns and marked by a relative absence of civil society engagement in European affairs.[573] However, the role of civil society has grown in prominence and momentum since the establishment of the EU that brought to the fore questions of democratic legitimacy and participation in the European integration process.[574] As economic cooperation shifted more toward political integration, civil society was increasingly seen as a means of combating the perceived democratic and accountability deficit of EU governance as civil society organisations (CSOs) were seen to have the capacity to bridge the gap between citizens and the supranational authority.[575]

Quittkat and Finke identify three generations of the regime of EU consultation of non-state actors, ranging from the emphasis on 'consultations' of primarily economic actors in the 1960s and 1970s, to 'partnerships' through the Social Dialogue in the 1980s all the way to the view of 'participation' characterising EU-CSO interaction since the beginning of the 21st century.[576] The restraints on democratic representation within the EU's multilevel governance structure, coupled with the absence of a shared common identity among EU citizens, have meant that engagement with CSOs, especially since the beginning of the 21st century, is seen as supplementing the representative mode of democracy and contributing to participatory democracy within the EU.[577]

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[573] Beate Kohler-Koch and Christine Quittkat, 'What is civil society and who represents it in the European Union?' in Ulrike Liebert and Hans-Jörg Trenz (eds), *The New Politics of European Civil Society* (Routledge 2011) 20.

[574] Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7(2) Living Reviews in European Governance 1, 5 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015.

[575] *Ibid*, 5, 8 and 27; Justin Greenwood, *Interest Representation in the European Union* (3rd edn, Palgrave Macmillan 2011) 232. See, generally, also Beate Kohler-Koch, 'Governing with the European Civil Society' in Beate Kohler-Koch and Christine Quittkat (eds), *De-Mystification of Participatory Democracy: EU-Governance and Civil Society* (OUP 2013) 18-19.

[576] Quittkat and Finke describe the economic integration period as the first of the so far three generations of the EU consultations regime: 'A first generation of instruments was established in the context of European economic integration. It was dominated by ideas of output legitimacy and efficiency and aimed at the involvement of economic experts and powerful business actors whose consent was perceived a necessary prerequisite for the efficient implementation of Community policies'. The transition to the second generation, characterised by the introduction of the partnership thinking and an increasing social dialogue within EU policies, is placed at the mid-1980s by Quittkat and Finke. See, Christine Quittkat and Barbara Finke, 'The EU Commission Consultation Regime' in Beate Kohler-Koch, Dirk De Bièvre and William Maloney (eds), *Opening EU-Governance to Civil Society: Gains and Challenges*, CONNEX Report Series Vol. 5 (University of Mannheim 2008) 183, 187-188.

[577] Justin Greenwood, *Interest Representation in the European Union* (3rd edn, Palgrave Macmillan 2011) 1; Beate Kohler-Koch, 'Civil society and democracy in the EU: High expectations under empirical scrutiny' in Beate Kohler-Koch and Christine Quittkat (eds), *De-Mystification of Participatory Democracy: EU-Governance and Civil Society* (OUP 2013) 1-2; and Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7(2) Living Reviews in European Governance 1, 5 and 8 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015.

The contours of CSO involvement in EU policy-making, as well as the main policy documents and instruments adopted by the EU institutions to operationalise the engagement with CSOs, will be described in the subsequent Sections C and D of this Chapter. Against that background, tentative findings on the effectiveness of the methods of EU's engagement with CSOs will be presented in Section E. First, however, it is necessary to understand what it is that we refer to when we speak of CSOs. An outline of the conceptualisation of the term will be given in Section B below.

B. Definition of CSOs

As it was stated in the previous FRAME report 7.1., there is no recognised legal or commonly acknowledged definition of the civil society.[578] In fact, a survey into the literature indicates that a multitude of varying, and to an extent contradicting, attributes are attached to the concept.[579] For some authors, for example, civil society does not necessarily take the form of a social body but presents, essentially, a particular 'logic of social action', a domain for social interaction and communication within the public or other spheres operating under a set of rules crystallised through insights into what is necessary for peaceful coexistence.[580] Other approaches envisage the civil society as being composed of (to varying degrees) self-organised associations, networks and social movements operating connected to, but distinct from, the government, collectively enunciating and advocating the general interests or the interests of their respective constituencies.[581] There are differing views on whether civil society exists as

[578] See FRAME D7.1, Chapter VII.

[579] For an overview, see, e.g., Beate Kohler-Koch and Christine Quittkat, 'What is civil society and who represents it in the European Union?' in Ulrike Liebert and Hans-Jörg Trenz (eds), *The New Politics of European Civil Society* (Routledge 2011); Beate Kohler-Koch and Christine Quittkat 'What is civil society and who represents civil society in the EU?—Results of an online survey among civil society experts' (2009) 28(1) Policy and Society 11; Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7(2) Living Reviews in European Governance 1, 6-8 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015; Beate Kohler-Koch, 'Civil society and democracy in the EU: High expectations under empirical scrutiny' in Beate Kohler-Koch and Christine Quittkat (eds), *De-Mystification of Participatory Democracy: EU-Governance and Civil Society* (OUP 2013) 1-17; Stijn Smismans, 'Civil society and European Governance: From concepts to research agenda' in Stijn Smismans (ed), *Civil Society and Legitimate European Governance* (Edward Elgar Publishing Limited 2006) 3, 6-8; and Norman Uphoff and Anirudh Krishna, 'Civil Society and Public Sector Institutions: More than a Zero-Sum Relationship' (2004) 24 Public Administration and Development 357, 358-359; and Helmut Anheier, *Civil Society. Measurement and Policy Dialogues* (Earthscan 2004) 20-23.

[580] See, e.g., Jörg Wischermann, 'Civil Society Action and Governance in Vietnam: Selected Findings from an Empirical Survey' (2010) 29(2) Journal of Current Southeast Asian Affairs 3, 10. Wischermann draws inspiration from Dieter Gosewinkel and Dieter Rucht, '"History meets sociology:" Zivilgesellschaft als. Prozess' in Dieter Gosewinkel, Dieter Rucht, Wolfgang van der Daele et al. (eds), *Zivilgesellschaft—National und Transnational WZB-Jahrbuch 2003* (Sigma Verlag 2004) 29, 51-52.

[581] See, generally, e.g., Stijn Smismans, 'Civil society and European Governance: From concepts to research agenda' in Stijn Smismans (ed), *Civil Society and Legitimate European Governance* (Edward Elgar Publishing Limited 2006) 3, 6-8.

separate from the market,[582] or whether organisations representing the interests of profit-making entities can be characterised as CSOs.[583]

Generally, including within the EU, the concept of the civil society is, however, understood broadly and comprehensively in order to encompass a wide range of types of organisations within civil society, including non-governmental organisations (NGOs), charities, trusts, foundations, advocacy groups, and national and international non-state associations.[584] The Commission has also explicitly incorporated labour market players, i.e. trade unions and employers' federations, within the definition of CSOs, as well as social and economic organisations, such as consumer organisations; community-based organisations; and religious communities.[585] According to the Commission, civil society is seen as composed of 'the principal structures of society outside of government and public administration'.[586] In its consultation procedures no firm distinction is made between CSOs and other interest groups, opening up consultations to all 'interested parties' wishing to participate.[587]

Within its development cooperation policy, the EU seems to employ a somewhat narrower definition of civil society, expressly excluding for-profit, partisan and violent structures from its understanding of the concept of CSOs. Asserting its recognition of the diversity and specificities of the roles and mandates of CSOs, the Commission considers CSOs to include formal and informal organisations 'through which people organise to pursue shared objectives and ideals, whether political, cultural, social or economic'. The definition covers, according to the Commission, membership-based, cause-based and service-oriented CSOs, including community-based organisations, professional and business associations, foundations, research institutions, cooperatives, social partners and associations.[588]

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[582] Anheier characterizes civil society as "the sphere of institutions, organizations and individuals located between the family, the state and the market in which people associate voluntarily to advance common interests". See Helmut Anheier, *Civil Society. Measurement and Policy Dialogues* (Earthscan 2004) 22. In a similar vein, Kohler-Koch characterizes CSOs, among other variables, as not-for-profit organisations. See Beate Kohler-Koch, 'Civil society and democracy in the EU: High expectations under empirical scrutiny' in Beate Kohler-Koch and Christine Quittkat (eds), *De-Mystification of Participatory Democracy: EU-Governance and Civil Society* (OUP 2013) 5. Similarly, Kohler-Koch states, 'Civil society encompasses the wide range of voluntary associations that follow a ''logic of action'' that is distinct from that of the state or the market or the private sphere.' See, Beate Kohler-Koch, 'The three worlds of European civil society – What role for civil society for what kind of Europe?' (2009) 28(1) Policy and Society 47, 50.

[583] See, e.g., Commission, 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission' (Communication) COM (2002) 704 final, 6.

[584] See Commission, 'Civil Society' <http://ec.europa.eu/transparency/civil_society/general_overview_en.htm#5> accessed 6 May 2014; Bridget M. Hutter and Joan O'Mahony, 'The Role of Civil Society Organisations in Regulating Business' (2004) ESRC Centre for Analysis of Risk and Regulation, discussion paper No. 26 <http://www.lse.ac.uk/researchAndExpertise/units/CARR/pdf/DPs/Disspaper26.pdf> accessed 6 May 2014.

[585] Commission, 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission' (Communication) COM (2002) 704 final, 6.

[586] *Ibid*.

[587] *Ibid*, 5; Commission, 'Civil Society' <http://ec.europa.eu/transparency/civil_society/general_overview _en.htm#5> accessed 18 August 2014.

[588] Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 3.

For the purposes of this report we adopt the Commission definitions of CSOs. Reference is made to CSOs except where the reference is specific to a narrower concept of NGOs, religious communities or other sub-entities of the civil society. Attention will be paid merely to the interaction between the EU and CSOs, leaving out questions related to the civil society engagement by EU Member States.[589]

C. EU's engagement with CSOs

1. A renewed EU's institutional view of CSOs

Since the turn of the millennium, the involvement of civil society has figured prominently on the EU agenda.[590] The relation between CSO participation and the legitimacy of EU governance, as well as the outlines of the EU's engagement with civil society, find expression, for example, in the 2000 Commission Discussion Paper on Non-Governmental Organisations,[591] the 2001 White Paper on European Governance,[592] the 2002 Communication to establish a consultation process,[593] and in the 2005 Plan D for Democracy, Dialogue and Debate.[594]

The 2000 Commission Discussion Paper presents the Commission's long-term principles and commitments towards the NGO sector,[595] aimed at giving new impetus to an on-going process of internal

[589] For an account of EU Member States' Consultation with Civil Society on European Policy Matters, see, Didier Chabanet and Alexander H. Trechsel, 'EU Member States' Consultation with Civil Society on European Policy Matters' (European Union Democracy Observatory 2011).

[590] Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7(2) Living Reviews in European Governance 1, 9 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015.

[591] Commission, 'The Commission and Non-Governmental Organisations: Building a Stronger Partnership' (Discussion Paper) (Brussels 2000). The Discussion Paper follows up earlier documents on civil society participation within the European policy agenda. See, for example, European Parliament, 'Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights on non-profit making associations in the European Community (Rapporteur: Mrs N Fontaine)' (Document A 2-196/86, 8 January 1987); European Parliament Resolution of 13 April 1987 on non-profit-making associations in the European Community [1987] OJ C 99/205; and Commission, 'Promoting the role of voluntary organisations and foundations in Europe' (Communication) COM (1997) 241 final.

[592] Commission, 'European Governance: a White Paper' (Communication) COM (2001) 428 final.

[593] Commission, 'Towards a Reinforced Culture of Consultation and Dialogue-General Principles and Minimum Standards for Consultation of Interested Parties by the Commission' (Communication) COM (2002) 704 final.

[594] Commission, 'The Commission's contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate' (Communication) COM (2005) 494 final; and Commission, 'Action Plan to improve communicating Europe by the Commission' SEC (2005) 985. Plan D has been criticised for not enabling true impact in the decision-making processes within the EU; for failing to provide pathways for deliberative democracy; and for failing to facilitate meaningful participation on a large scale at the local level. See, e.g., Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 47-48 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 20 January 2015; and Sanja Ivic, 'European commission's plan D for democracy, dialogue and debate: The path towards deliberation?' (2011) 3 (2) Journal of Law and Conflict Resolution 14.

[595] Commission, 'The Commission and Non-Governmental Organisations: Building a Stronger Partnership' (Discussion Paper) (Brussels 2000) 3.

and external appraisal of the way in which the Commission works with NGOs. The paper emphasises the Commission's desire to establish a more coherent and stronger approach to its partnership with the growing number of NGOs.[596] It suggests ways of providing a more coherent Commission-wide framework for co-operation, which had previously been organised on a sector-by-sector basis.[597] Proposals for improvement are focused on establishing regular dialogue through formalised consultations, simplifying EU funding procedures for NGO-managed activities and facilitating access to information.[598] At the same time as providing an initial basic statement of the Commission's own perspective, the Paper was regarded by the Commission as an important first step in a process involving an extensive exchange of views with the NGO community.[599] Indeed, the Commission later set up a website where the NGOs could publish their comments on the Discussion Paper, which were used in further development of the Commission's relations with NGOs.[600]

The importance of CSOs for the EU policy-making process is further stressed in the 2001 White Paper on European Governance. In this document, the Commission proposes opening up its governance processes 'to get more people and organisations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved. This is meant to help people to see how Member States, by acting together within the Union, are able to tackle their concerns more effectively'.[601] For some academics, this White Paper represents a very noticeable shift from an output to an input-oriented argumentation within the Commission.[602] Indeed, the Communication evokes 'the civil society's role in contributing to the EU's input legitimacy by referencing the importance of authentic participation of European citizens through civil society involvement' as it is a chance to get citizens more actively involved in achieving the EU's objectives and to offer them a structured channel for feedback, criticism and protest.[603] The White Paper promises more dialogue and consultation, more communication and wider involvement of civil society throughout the policy chain, to ensure the quality, legitimacy, accountability, relevance and effectiveness of EU policies. Improved participation of civil society is expected to create better ownership of the policies and more confidence in the EU institutions.[604] The guidelines set in the White Paper, most noticeably the consultation regime, are seen to present a normatively important development in the EU's engagement with civil society.[605]

[596] *Ibid*, 4.
[597] *Ibid*, 2-3.
[598] *Ibid*, 7-23.
[599] *Ibid*, 1-2.
[600] Commission, 'The NGO Discussion Paper' <http://ec.europa.eu/transparency/civil_society/ngo/index_en.htm> accessed 8 February 2015.
[601] Commission, 'European Governance: a White Paper' (Communication) COM (2001) 428 final, 3.
[602] Marcus Höreth, 'The European Commission's White Paper on Governance: A 'Tool-Kit' for Closing the Legitimacy Gap of EU Policymaking?' (ZEI 2001) Centre for European Integration Studies, 11.
[603] Meike Rodekamp, *Their Members' Voice: Civil Society Organisations in the European Union* (Springer VS 2014) 82; Commission, 'European Governance: a White Paper' (Communication) COM (2001) 428 final, 15.
[604] *Ibid*, 4, 8, 10 and 11.
[605] Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7(2) Living Reviews in European Governance 1, 15 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015.

As a result of the consultations held after the presentation of its 2000 Discussion Paper and fulfilling the commitments assumed in its 2001 White Paper, the Commission adopted a Communication to establish a consultation process in 2002.[606] In doing so, the Commission encouraged the participation of external stakeholders in the development of EU policies. Starting the consultation at an early stage in the policy-making procedure is expected to improve the effectiveness of policies while reinforcing the involvement of interested parties and the general public. Through this Communication, the Commission sets up a coherent and flexible framework of consultation and dialogue in the EU, ensuring that all relevant parties are directly and properly consulted.[607] The CSOs are particularly considered because they are seen to play a specific role as facilitators of a broad policy dialogue between the EU institutions and citizens.[608] The EU institutions are thus encouraged to conduct systematic structured dialogue with CSOs respecting certain general principles (participation, openness, accountability, effectiveness and coherence) and a set of minimum standards, such as the content of the consultation is clear; the relevant parties have an opportunity to express their opinions; the Commission publishes consultations widely; participants are given sufficient time for responses; and acknowledgement and adequate feedback is provided.[609]

The role of the civil society was further enhanced in the 'Lisbon Agenda', which underlines in Clause 38 the active involvement of the social partners and civil society in the spirit of subsidiarity and partnership.[610] Another push for civil society participation began in the aftermath of the rejection of the European Constitution in 2005,[611] in the form of Plan D for Democracy, Dialogue and Debate aimed at facilitating an open debate on the future of the EU 'involving citizens, civil society, social partners, national parliaments and political parties'.[612]

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[606] Commission, 'Towards a Reinforced Culture of Consultation and Dialogue-General Principles and Minimum Standards for Consultation of Interested Parties by the Commission' (Communication) COM (2002) 704 final, 3.

[607] *Ibid*.

[608] *Ibid*, 5.

[609] *Ibid*, 16-22; Irina Tanasescu, *The European Commission and Interest Groups: Towards a Deliberative Interpretation of Stakeholder Involvement in EU Policy-making* (VUBPRESS 2009) 73.

[610] EU Parliament, 'Lisbon European Council 23 and 24 March Presidency Conclusion' <http://www.europarl.europa.eu/summits/lis1_en.htm> accessed 12 January 2015.

[611] Despite the rejection of the Constitutional Treaty, Will and Kendall find that the activism generated by the negotiation process towards the treaty in the first half of the 2000s generated third-sector processes and networks with long-term effects. See, Catherine Will and Jeremy Kendall, 'A new settlement for Europe: towards "open, transparent and regular dialogue with represenative associations and civil society"?' in Jeremy Kendall (ed), *Handbook on Third Sector Policy in Europe: Multi-level Processes and Organized Civil Society* (Edward Elgar Publishing 2009) 293, 293.

[612] Commission, 'The Commission's contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate' (Communication) COM (2005) 494 final; and Commission, 'Action Plan to improve communicating Europe by the Commission' SEC (2005) 985. Plan D has been criticised for, for example, not enabling true impact in the decision-making processes within the EU; for failing to provide pathways for deliberative democracy; and for failing to facilitate meaningful participation on a large scale at the local level. See Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 47-48 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015; and Sanja Ivic, 'European commission's plan D for democracy, dialogue and debate: The path towards deliberation?' (2011) 3 (2) Journal of Law and Conflict Resolution 14, 19.

A formal expression of the role of the civil society as a relevant actor in EU matters was introduced in the Treaty of Lisbon in 2009 under the 'Provisions on the Democratic Principles', which are now set out in the TEU.[613] In order to facilitate civil society participation, the institutions are required to 'maintain an open, transparent and regular dialogue with representative associations and civil society';[614] to enable citizens and representative associations to 'make known and publicly exchange their views in all areas of Union action', as well as to 'carry out broad consultations with parties concerned' to ensure the coherence and transparency of the Union's actions.[615] Further, under Article 17(3) TFEU, EU institutions are to maintain open, transparent and regular dialogue with churches and religious associations or communities as well as philosophical and non-confessional organisations. To further these objectives, a public Transparency Register was created in 2011 with a view to informing citizens of the actors involved in influencing EU policy making, and the interests advocated.[616]

As an element of the requirements for 'good governance', transparency finds a legal expression in Article 15 of the TFEU: the different entities of the Union, institutions, bodies, offices and agencies, are to 'conduct their work as openly as possible' and to ensure that their proceedings are transparent.[617] To that end, when considering and voting on a draft legislative act, the European Parliament and the Council shall meet in public.[618] Access to documents is guaranteed subject to the general principles and limits defined by the European Parliament and the Council, in accordance with the requirements set on openness and transparency.[619] Notably, the legislature is not allowed discretion to define the 'principles and conditions' limiting such access, but it is meant to work by the 'absolute requirement' of abiding by the general principles or legislative procedure and its duty to implement the right of access to EU citizens.[620]

[613] TEU, arts. 9-12.For an overview on the role of the civil society within the Lisbon Treaty, see, e.g., Juan Mayoral, 'Democratic improvements in the European Union under the Lisbon Treaty: Institutional changes regarding democratic government in the EU' (European Union Democracy Observatory 2011) 5 <http://www.eui.eu/Projects/EUDO-Institutions/Documents/EUDOreport922011.pdf> accessed 20 January 2015.
[614] TEU, art 11(2).
[615] TEU, art 11.
[616] EU, 'Why a transparency register?' <http://ec.europa.eu/transparencyregister/info/about-register/whyTransparencyRegister.do?locale=en> accessed 15 January 2015.
[617] TFEU, art 15(1) and (3). This provision is granted the status of a fundamental rights in the EU Charter for Fundamental Rights. See, CFR, art 42.
[618] TFEU, art 15(2).
[619] TFEU, art 15(3).
[620] Henri Labayle, 'Openness, transparency and access to documents and information in the European Union - note requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs' (European Union 2013) 11 <http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493035/IPOL-LIBE_NT(2013)493035_EN.pdf> accessed 21 January 2015.

2. CSOs in the EU development policy

As a vital element of the *partnership* methodology characterising the discourse on development assistance since the beginning of the millennium, the EU has also adopted a new approach to a genuine participation of civil society in terms of its human rights and development policy.[621]

The EU's renewed approach to the partnership with civil society within its development policy is outlined, most notably, in the 2012 Commission Communication on The Roots of Democracy and Sustainable Development, which is meant to 'boost EU relations with civil society organisations and adapt them to current and future challenges'. The Communication puts forth proposals with a view to 'primarily empower local CSOs' and to enhance 'greater coherence, consistency and impact of EU actions' through strategic partnerships.[622] In its Communication on the Roots of Democracy and Sustainable Development, the Commission sets guidelines for more strategic, structured and effective cooperation with CSOs in developing, neighbourhood and partner countries to be mainstreamed in all sectors, instruments and programmes.[623]

The 2012 Communication builds on and develops earlier policy documents outlining the EU's engagement with CSOs, starting with the 2002 Commission Communication on Participation of Non-State Actors in EU Development Policy emphasising partnership and local ownership of development policies.[624] The 2006 Joint Communication on Human Rights and Democracy elaborates further on working in partnership with CSOs, noting that the EU needs to work closely with civil society and to draw on its expertise and alternative channels of communication.[625] The political commitment to ensuring participation by CSOs as important promoters of democracy, social justice and human rights is reiterated in the 'European Consensus on Development'.[626] The document presents a shared vision to guide the EU's activities in the field of development cooperation, both at member state and EU level. A framework of common principles is defined within which the EU and its Member States should each implement their development policies in a spirit of complementarity.[627] The 2011 Commission communications on Increasing the Impact of EU Development Policy and on Human Rights and Democracy at the Heart of EU External Action further asserted the importance of strengthening the EU's engagement with CSOs and emphasised the regular dialogue and systemic consultations with civil society, especially at the local level.[628] To that end, the EU

[621] Stephen R. Hurt, 'Civil Society and European Union Development Policy' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 109.
[622] Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 12.
[623] *Ibid*.
[624] Commission, 'Participation of Non-State Actors in Development Policy' (Communication) COM (2002) 598 final, 4.
[625] 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] OJ C 46/01, para 18.
[626] *Ibid*.
[627] *Ibid*.
[628] Commission and the High Representative for Foreign Affairs and Security Policy, 'Human Rights and Democracy at the Heart of the EU External Action-Towards a more Effective Approach' (Communication) COM (2011) 886 final,

is invited to maintain regular dialogue with the CSOs and to use best practices building on the structured dialogue.[629]

Notably, the EU is also committed to moving towards a human rights-based approach in its development cooperation.[630] This means, in line with, for example, the UN Common Understanding on a human rights-based approach to development, that the EU aims at ensuring meaningful participation on the goals and processes of its development cooperation work.[631]

a) Role of CSOs in the EU development policy

CSOs are considered the EU's 'vital partners' both in terms of actively participating in the EU policy-making process and enhancing the quality and legitimacy of EU governance on the input side, but also as beneficiaries of EU funding and in implementing EU projects on the output side.[632] On the input side their role as service deliverers and in enhancing the coordination, innovativeness, mainstreaming, relevance, effectiveness and sustainability of service provision through multi-actor partnerships is widely recognised.[633] The CSOs are, however, no longer regarded as mere implementing agencies of EU-funded aid projects. They are also considered as legitimate social and political agents of democratisation and governance in third countries particularly through participation in dialogue processes, advocacy campaigns and increased demands for accountability.[634]

The main contours of the EU's partnership with CSOs within development cooperation, which clearly goes beyond the role of CSOs in service delivery, are defined by the Commission in its 2002 Communication on

9; Commission, 'Increasing the Impact of EU Development Policy: an Agenda for Change' (Communication) COM (2011) 637 final 6.

[629] *Ibid*.

[630] EU Council, '3166th Council meeting - Foreign Affairs Council meeting' (Brussels 14 May 2012) <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130243.pdf> accessed 1 January 2015; and EU Council, '3179th Council meeting - Foreign Affairs Council meeting' (Luxembourg 25 June 2012) <http://europa.eu/rapid/press-release_PRES-12-282_en.htm? locale=en> accessed 18 August 2014; EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012); See also generally Laura Beke, David D'Hollander, Nicolas Hachez, Beatriz Pérez de las Heras 'Report on the integration of human rights in EU development and trade policies' (FRAME D9.1 2014) especially Chapter IV; Axel Marx, Siobhan McInerney-Lankford, Jan Wouters and David D'Hollander, 'Human Rights and Service Delivery: A Review of Current Policies, Practices and Challenges' (2015) 6 World Bank Legal Review 39-58; David D'Hollander, Axel Marx and Jan Wouters, 'Integrating Human Rights in EU Development Cooperation Policy: Achievements and Challenges' (2014) 14 European Yearbook of Human Rights 255-268.

[631] UN, 'The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies' (UN, 5 May 2003) <http://hrbaportal.org/?page_id= 2127> accessed 14 January 2015.

[632] See FRAME D7.1, Chapter VII. Commission, 'Civil Society, a Vital Development Partner' <http://ec.europa.eu/europeaid/who/partners/civil-society/index_en.htm> accessed 18 August 2014.

[633] Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 8.

[634] *Ibid*, 7. Commission, *Engaging Non-State Actors in New Aid Modalities: for Better Development Outcomes and Governance* (European Union 2011) 19.

Participation of Non-State Actors in EU Development Policy.[635] The Communication is explicit on the participatory role of CSOs and recommends involving the latter in key stages of the development process: preparation of a national development strategy and of the EU country response strategy; policy dialogue in sectors of intervention; and implementation and review. Through their aptitude to reach out to different layers of the society, including the marginalised populations, the role of CSOs in public policy processes and in dialogues is seen as a fundamental factor in designing development policies that are inclusive, empowering, effective and that respond to the needs of the people.[636] Notably, this EU engagement with civil society does not have to depend on parallel effective engagement with government in the countries where those CSOs are from,[637] which accentuates the role of the CSOs in reaching to the people in situations of political sensitivity.[638]

b) Aims of engagement with CSOs in the EU development policy

The main priority of the EU's engagement with the civil society is set at building 'stronger democratic processes and accountability systems and to achieve better development outcomes'.[639] To that end, the aims of EU engagement with CSOs, as outlined in the 2012 Commission Communication on The Roots of Democracy and Sustainable Development,[640] are to: 1) promote a favourable environment for CSOs in partner countries; 2) contribute to meaningful and systematised CSOs participation in domestic, EU and international processes; and 3) contribute to local CSOs' capacity as independent development actors. [641]

In terms of supporting enabling conditions for CSOs in third countries, one of the central aims of the EU's development cooperation,[642] the EU commits to strengthening its efforts to 'monitor legislation, regulations and operational issues which may affect CSOs', as well as to 'promote CSO-led initiatives and support

[635] Commission, 'Participation of Non-State Actors in Development Policy' (Communication) COM (2002) 598 final.
[636] Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 3 and 6.
[637] Commission and High Representative for Foreign Affairs and Security Policy, 'Human Rights and Democracy at the Heart of the EU External Action-Towards a more Effective Approach' (Communication) COM (2011) 886 final, 9.
[638] See, Djurdja Knezevic, 'Women's Voices against the War: the Internet in the Fight for Human Rights during the War in Former Yugoslavia' in Steven Hick, Edward F. Halpin and Eric Hoskins (eds), *Human Rights and the Internet* (Macmillan Press 2000) 166-173. The Communication underlines that 'should a country loosen its commitment to human rights and democracy, the EU should strengthen its cooperation with non-state actors and local authorities and use forms of aid that provide the poor with the support they need. At the same time, the EU should maintain dialogue with government and non-state actors'. See, Commission, 'Increasing the Impact of EU Development Policy: an Agenda for Change' (Communication) COM (2011) 637. 'When countries loosen their commitment to human rights and fundamental values, the EU can suspend cooperation with national authorities and strengthen its support to local populations through CSOs.' See, Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 5-6.
[639] Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 4.
[640] *Ibid*.
[641] Capacity building of CSOs is called for also, for example, in the 2002 Commission Communication. See, Commission, 'Participation of Non-State Actors in Development Policy' (Communication) COM (2002) 598 final, 7.
[642] See Commission and High Representative for Foreign Affairs and Security Policy, 'Human Rights and Democracy at the Heart of the EU External Action-Towards a more Effective Approach' (Communication) COM (2011) 886 final, 9.

international arrangements to promote and monitor an enabling environment for CSOs'.[643] In order to enhance the capacity of CSOs for meaningful participation, the EU has pledged to bolster its support for capacity building of CSOs, in particular at the local level.[644] The EU is also encouraged to support the emergence of an organised local civil society able to act as a watchdog and partner in dialogue with national governments.[645]

Furthermore, policy documents give some guidance on the principles guiding EU's engagement with civil society within its development cooperation policies. The EU approach to consultation with international and local human rights NGOs is, for example, meant to be 'systematic' in all aspects of the EU's human rights policy.[646] The Joint Communication of the European Commission and EU High Representative for Foreign Affairs and Security Policy spells out, in addition, the need for coherence in mainstreaming human rights into the EU's external policies.[647] In addition, the 2002 Commission Communication acknowledges that in order to be meaningful, dialogues are to be 'timely, predictable and transparent'.[648] Adaptability and relevance to the local needs is emphasised in the Communication, which calls for tailored funding allowing increased accessibility 'to best respond to the widest possible range of actors, needs and country contexts in a flexible, transparent, cost-effective and result focused manner'.[649]

A recent initiative to support the implementation of these objectives is the elaboration of EU roadmaps for engagement with CSOs at country level aimed at stimulating 'structured dialogue and strategic cooperation, increasing consistency and impact of EU actions'.[650] To enhance predictability and transparency of the policies, the roadmaps are to identify long-term objectives and working modalities for EU-CSO engagement at the country level.[651] The exercise is to be carried out taking into account the views of civil society.[652] A notable development is also the adoption by the Commission of a Human Rights-Based Approach to Development (HRBA) toolbox, which conceptualises the core elements of the human rights-based approach to development and describes the guidelines for systematic operationalisation of the approach into EU development cooperation throughout the project cycle management.[653] The

[643] Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final 5.
[644] *Ibid*, 10. See, similarly, EU 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] OJ C 46/01, para 18.
[645] Commission, 'Increasing the Impact of EU Development Policy: an Agenda for Change' (Communication) COM (2011) 637, 6.
[646] Commission and High Representative for Foreign Affairs and Security Policy, 'Human Rights and Democracy at the Heart of the EU External Action-Towards a more Effective Approach' (Communication) COM (2011) 886 final 9.
[647] *Ibid*.
[648] Commission, 'The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations' (Communication) COM (2012) 492 final, 7.
[649] *Ibid*, 10-11.
[650] *Ibid*, 4.
[651] *Ibid*, 9.
[652] *Ibid*, 10.
[653] Commission, 'Tool-box: a rights-based approach, encompassing all human rights for EU development cooperation' SWD (2014) 152 final.

document acknowledges participation as an essential element of the HRBA and declares that participation may not be reduced to mere 'consultations or a technical step in project or programme preparation' but should be understood to presuppose, *inter alia*, transparency, capacity building and efforts to increase access to information.[654] The role of civil society is emphasised in this regard and it is seen as an instrumental player in awareness-raising.[655]

D. EU implementation instruments to engage with CSOs

The EU has developed a wide range of policy tools to effectively implement its engagement policy towards CSOs in human rights matters. The main instruments, exposed in the following sections, are in accordance with the expressed will to better involve CSOs from EU and/or non-EU countries both in the EU policy-making process and in the implementation of EU projects for the promotion of democracy and human rights in third countries.

1. EU Strategic Framework on Human Rights and Democracy

Based on the 2011 Joint Communication, the EU launched its first-ever Strategic Framework on Human Rights and Democracy in June 2012,[656] where principles, objectives and priorities are set out to improve the effectiveness and consistency of the EU human rights policy as a whole for the following ten years. The Strategic Framework presents the key principles for taking human rights into account in EU policies. It commits to strengthening the EU's cooperation with civil society and to 'build new partnerships to adapt to changing circumstances'.[657] It regards a 'vigorous and independent' civil society as 'essential to the functioning of democracy and the implementation of human rights' and affirms that 'effective engagement with civil society is a cornerstone of a successful human rights policy'.[658]

A new Action Plan to put into practice this Strategic Framework is currently being negotiated to review the previous Action Plan, composed of 36 initiatives that were to be completed by year-end 2014. Human rights CSOs call for a 'new ambitious' and coherent Action Plan, 'with clear benchmarks for monitoring and accountability'. A 'joined-up' approach is proposed to ensure an 'inclusive, transparent process leading up to the adoption of the future Action Plan as well as throughout its implementation'.[659]

[654] *Ibid*, 17 and 19.
[655] *Ibid*, 19.
[656] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012).
[657] *Ibid*, 2.
[658] *Ibid*, 3; EU Council, '3179th Council meeting - Foreign Affairs Council meeting' (Luxembourg 25 June 2012) <http://europa.eu/rapid/press-release_PRES-12-282_en.htm? locale=en> accessed 18 August 2014.
[659] Concord, 'Concord input into the review of the EU Action Plan on Human Rights and Democracy' <http://www.concordeurope.org/publications/item/381-concord-input-into-the-review-of-the-eu-action-plan-on-human-rights-and-democracy> accessed 15 January 2015.

Under the recently expired Plan, on one side, a notable number of benchmarked actions have direct impact on the EU's and EU Member States' engagement with CSOs.[660] In particular, under the first outcome called 'human rights and democracy throughout EU policy', the EU commits to establishing genuine partnership with civil society, including at the local level. Three actions shall be implemented to reach that commitment: a) heads of EU delegations, heads of Mission of EU Member States, heads of civilian missions and operation commanders shall work closely with human rights NGOs active in the countries of their posting; b) effective support to CSOs should be ensured, including via the Civil Society Facility, the EIDHR and other relevant programmes and instruments; c) consultations consolidated with civil society, notably on policy initiatives and dialogues on human rights, and work in full partnership with civil society in the Annual EU-NGO Forum.[661]

On the other side, the Action Plan establishes that priorities for EU action in third countries for the first time should be based on a tailor-made Human Rights Country Strategy (HRCS), which should serve as a main reference point for the EU's engagement with civil society and other NSAs.[662] Each EU mission in partner countries is therefore expected to draft its HRCS. Even though the latter are not made public and are meant only for internal use – which has been criticised – they should allow the EU to focus on some thematic priorities according to the local reality, such as freedom of association, women's rights or human rights defenders.[663] Moreover, the HRCSs should be the result of an inclusive process at the country level, reflecting the outcome of broad consultation held, especially, with local CSOs, and should be updated annually following the same process.

2. EU-NGO Human Rights Forum

Every year an EU-NGO Forum on Human Rights, financed from the budget of EIDHR, is organised as a joint venture by the EEAS, Commission and the Human Rights & Democracy Network. This annual conference provides a venue for dialogue on the protection of human rights between different actors, including global CSOs, human rights defenders, EU institutions, EU Member States and international organisations.[664]

The forum allows the delegates to exchange best practices and lessons learned in various fields related to the promotion and protection of human rights. The CSOs are particularly invited to express their views on the way in which the EU promotes and protects human rights in the world. The conclusions and

[660] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012) 6-24.
[661] *Ibid*, 6.
[662] *Ibid*, 22.
[663] About the criticism received, see for example European Parliament, 'Report on the Review of the EU's Human Rights Strategy' (2012) 2012/2062(INI).
[664] Commission, '16th EU-NGO Forum on Human Rights' <http://www.16th-ngo-forum-human-rights.eu/> accessed 18 January 2015; European External Action Service, 'Freedom of Expression online and offline: 16th EU-NGO Human Rights Forum' (Brussels, 5 December 2014) <http://eeas.europa.eu/statements-eeas/2014/141205_03_en.htm> accessed 18 January 2015; European External Action Service 'Cooperation with Civil Society' <http://eeas.europa.eu/human_rights/cooperation_with_ngo/index_en.htm> accessed 18 January 2015.

recommendations of the forum are presented to the Council Working Group on Human Rights (COHOM), thereby helping to strengthen future EU strategy and policy making, as well as the development and implementation of EU programmes and projects related to human rights.

3. Social Dialogue

CSOs play an important role in terms of economic partnership with the EU and, more specifically, in co-regulating the European labour market.[665] The European Social Dialogue, which includes organisations representing employers and workers', i.e. employers' associations and trade unions, takes two basic forms and occurs at two levels. Its form can be either bipartite, involving only the social partners (organisations representing employers and workers), and/or tripartite, where the EU interacts with the social partners. The two levels can take both cross-industry and sectoral forms.[666]

In issues concerning possible EU action in the area of social policy, the Commission is required to consult the social partners on the content of any proposal before submitting it,[667] and to enable them to 'respond individually or jointly and, if they wish, to negotiate agreements on the issues in question'.[668] The social partner budget lines are used to support transnational projects by social partners and capacity-building of social partner organisations at the national level are supported financially from the social partner budget lines and through the European Social Fund (ESF).[669]

In addition, within the European Platform against Poverty and Social Exclusion Initiative, the Commission aims at enhancing the increased involvement of EU-based CSOs in the fields of employment, social inclusion and protection, working conditions, anti-discrimination, and gender equality.[670] The Platform is one of the initiatives of the EU's growth strategy for 2020, intended to help EU countries tackle poverty and social exclusion. The annual EU Stakeholder Dialogue taking place in the framework of this Platform is important for the Commission in its partnership with civil society in order to support the implementation of social policy reforms more effectively. [671]

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[665] Paul Marginson and Maarten Keune, 'European social dialogue as multi-level governance: Towards more autonomy and new dependencies' in Jean-Claude Barbier (ed), *EU Law, Governance and Social Policy* (2012) 16 European Integration Online Papers 1, Special Mini-Issue, art 4.

[666] Commission, *Social Dialogue, Social Europe Guide* (European Union 2012) vol 2, 7.

[667] TFEU, art 154.

[668] Commission, *Social Dialogue, Social Europe Guide* (European Union 2012) vol 2, 7 Commission, 'Social Dialogue' <http://ec.europa.eu/social/main.jsp?catId=329&langId=en> accessed 15 January 2015.

[669] *Ibid*. The role of social partners and non-governmental organisations in the ESF is emphasised in the Council Regulation on the European Social Fund, and Member States are called upon to 'ensure the participation of social partners and non-governmental organisations in the strategic governance of the ESF, from shaping priorities for operational programmes to implementing and evaluating ESF results'. See, Council Regulation (EU) 1304/2013 of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 [2013] OJ L 347/470, recital 17.

[670] Commission, 'Non-Governmental Organisations' <http://ec.europa.eu/ social/main.jsp?catId=330&langId=en> accessed 18 August 2014; Commission, 'European Platform against Poverty and Social Exclusion' <http://ec.europa.eu/social/main.jsp?langId=en&catId=961> accessed 15 January 2015

[671] *Ibid*.

A key player in involving the civil society in the area of social dialogue is the European Economic and Social Committee (EESC), a formal consultative platform for socio-occupational interest groups to interact on European issues. As the Commission has a duty to refer certain issues to the Committee, the EESC has a formal role in EU decision-making. The Commission is organised under three groups representing employers, workers and other civil society stakeholders.[672] A Liaison Group, with representation of the civil society and the Commission, was set up in 2004 to monitor joint initiatives, to enhance political discussion and to ensure a coordinated approach by the EESC towards its networks.[673]

4. European Neighbourhood Instrument

The European Neighbourhood Instrument (ENI) is a financial instrument, which supports the European Neighbourhood Policy (ENP) through concrete assistance actions. The policy was revised in 2011 to incorporate changes necessitated by the 'Arab Spring' events. Building on the work done under the previous European Neighbourhood and Partnership Instrument,[674] the current scheme continues to have as its objective the strengthening of the prosperity, stability and security of Europe's neighbourhood in order to avoid the emergence of any new dividing lines between the enlarged EU and its direct neighbours.[675]

One of the ENP's strategic areas of cooperation is to support democratisation by enhancing the role of CSOs, in particular local civil society organisations, and fostering the development of civil society and NGOs through capacity-building.[676] CSOs, as other eligible NSAs, may particularly apply to ENI funding for projects supporting democratic transition and promoting human rights.

A notable addition to enhancing contacts with civil society in the EU neighbouring areas is the EU-Eastern Partnership Civil Society Forum, established in 2009 to further interaction between CSOs in the Eastern Partnership countries in the interest of 'promoting democratic and market-oriented reforms based on shared values'.[677] In April 2014, the first EU-Southern Neighbourhood Civil Society Forum was held in

[672] EESC, 'About the Committee' <http://www.eesc.europa.eu/?i=portal.en.about-the-committee> accessed 15 January 2015.
[673] EESC, 'Liaison Group' <http://www.eesc.europa.eu/?i=portal.en.liaison-group> accessed 15 January 2015.
[674] European Parliament and Council Regulation (EU) 1638/2006 of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument [2006] OJ L 310/1, arts.2.2.l and m.
[675] Commission, 'European Neighbourhood Policy' <http://ec.europa.eu/enlargement/neighbourhood/overview/index_en.htm> accessed 18 January 2015; and EEAS, 'What is the European Neighbourhood Policy?' <http://eeas.europa.eu/enp/about-us/index_en.htm> accessed 18 January 2015.
[676] European Parliament and Council Regulation (EU) 232/2014 on establishing a European Neighbourhood Instrument [2014] OJ L 77/27, art 2(2)(a); and Commission, 'European Neighbourhood Policy' <http://ec.europa.eu/enlargement/neighbourhood/overview/index_en.htm> accessed 18 January 2015.
[677] European Union, 'Eastern Partnership Civil Society Forum Concept paper' 1 <http://eap-csf.eu/assets/files/Documents/concept_en.pdf> accessed 15 January 2015; and Commission, 'Eastern Partnership' (Communication) COM (2008) 0823 final, 14.

Brussels with CSOs in the Southern Neighbourhood countries aimed at improving dialogue with the EU and promoting reform in the region.[678]

5. Civil Society Facility

The Civil Society Facility (CSF) was established in 2008 to financially support the development of a dynamic civil society in countries engaged in the accession process to the EU with a view to empower CSOs to participate more actively in the public debate on democracy, human rights, social inclusion and the rule of law, and have the capacity to better influence policy and decision making processes.[679]

For the period 2011-12, the CSF was focused on three outcomes: 1) improved national legal and financial frameworks and improved dialogue with state institutions; 2) greater commitment and capacity of CSO networks to give citizens a voice and influence public sector reform processes through analysis, monitoring and advocacy etc; and 3) increased access of grass-roots organisations and civic initiatives to financial resources, in-kind contributions or expertise from established CSOs and CSO networks.[680]

The CSF was part of the wide range of financial and political support that the EU can offer to CSOs in candidate countries to join the EU. The DG ENLARG has recently been promoting such support, essentially within the Western Balkans and Turkey, through the publication of Guidelines for EU support to civil society in enlargement countries (2014-2020).[681]

6. European Endowment for Democracy

The European Endowment for Democracy (EED) is the most recent step to enhance the EU's effectiveness of democracy and human rights support.[682] The EED is a private foundation, funded by the EU Member States, it is designed 'to foster and encourage democratisation and deep and sustainable

[678] Commission, 'First EU- Southern Neighbourhood Civil Society Forum takes place in Brussels' (Brussels, 28 April 2014) <http://europa.eu/rapid/press-release_IP-14-492_en.htm> accessed 23 March 2015.
[679] Commission, 'Support for Civil Society' <http://ec.europa.eu/enlargement/tenders/support-for-civil-society/civil-society-facility/index_en.htm> accessed 18 August 2014.
[680] *Ibid*; and Commission, 'Commission Implementing Decision of 5.12.2011, adopting the Civil Society Facility Programme under the IPA-Transition Assistance and Institution Building Component for the years 2011-2012 by Common Financing Decision' C(2011) 9081 final, 2.
[681] Commission, 'Guidelines for EU Support to Civil Society in Enlargement Countries, 2014-2020' (DG Enlargement, 14 October 2013) <http://ec.europa.eu/enlargement/pdf/civil_society/doc_guidelines_cs_support.pdf> accessed 18 January 2015.
[682] EU Council, 'Declaration on the Establishment of a European Endowment for Democracy' 18764/11 20 December 2011; and Commission, 'The European Endowment for Democracy-Support for the Unsupported' (Brussels, 12 November 2012) <http://europa.eu/rapid/press-release_IP-12-1199_en.htm> accessed 18 August 2014.

democracy in countries in political transition and in societies struggling for democratisation, with initial, although not exclusive focus, on the European Neighbourhood'.[683]

The CSOs, as possible beneficiaries of the EED, shall respect core democratic values, international human rights standards and principles of non-violence in order to apply for financial support.[684] The added value of the EED lies in its capacity to support actors for change and emerging players with a rapid and flexible funding mechanism where they urgently need financial support for their activities, as some of them may face obstacles in gaining access to the other existing EU financing instruments (for example the EIDHR) because of the administrative burden associated with applying for them.[685]

7. Instrument contributing to Stability and Peace

The Instrument contributing to Stability and Peace (IcSP), which replaces the Instrument for Stability (IfS),[686] is a key EU instrument to help prevent and respond to crises and create a safe and stable environment through technical and financial assistance with third countries, regional and international organisations and other state and non-state actors, such as CSOs.

The IcSP provides funding to CSOs for projects in response to situations of crisis or emerging crisis to prevent conflicts.[687] CSOs may benefit from the technical and financial assistance proposed by the IcSP in their actions to promote and defend respect for human rights and fundamental freedoms, democracy and the rule of law, as a way to prevent future conflict or crisis.[688] Through the IcSP mechanism, the EU aims also to support the development and organisation of civil society and its participation in the consultation process of EU assistance in the IcSP recipient countries.[689]

8. European Instrument for Democracy and Human Rights

The European Instrument for Democracy and Human Rights (EIDHR) is another EU policy instrument, through which the EU provides 'assistance to the development and consolidation of democracy and the

[683] EU Council, 'Statutes: European Endowment for Democracy' art 2.1 <https://www.democracyendowment.eu/handlers/download.php?id=414&object_id=14> accessed 26 February 2015.
[684] *Ibid*, art 2.2.
[685] *Ibid,* art 3.3; Commission, 'The European Endowment for Democracy-Support for the Unsupported' (Brussels, 12 November 2012) <http://europa.eu/rapid/press-release_IP-12-1199_en.htm>.
[686] Commission, 'Proposal for a Regulation of the European Parliament and of the Council Establishing an Instrument for Stability' (Communication) COM (2011) 845 final.
[687] European Parliament and Council Regulation (EU) 230/2014 on establishing an instrument contributing to stability and peace [2014] OJ L 77/1, art 3(2)(a).
[688] European Parliament and Council Regulation (EU) 232/2014 on establishing a European Neighbourhood Instrument [2014] OJ L 77/27, art 3(2)(m).
[689] Ibid, art 3(2)(p).

rule of law and of respec for all human rights and fundamental freedoms'.[690] More concretely, the EIDHR provides financial assistance to CSOs in non-EU countries to complement EU bilateral and multilateral development cooperation policies and tools.[691] CSOs are by far the biggest group of actors receiving support under the EIDHR, receiving roughly ninety per cent of the total support.[692] Notably, this instrument does not require governmental consent to fund a CSO within the targeted country, which can be especially important for those working in particularly difficult situations enabling cooperation on sensitive human rights and democracy issues.[693]

Such assistance has a dual ambition. First, the EIDHR aims to support, develop and consolidate 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, the rule of law and improving the reliability of electoral processes, in particular by means of election observation missions. Second, it seeks to enhance respect, implementation and observance of human rights and fundamental freedoms, as proclaimed in the Universal Declaration of Human Rights and other international and regional human rights instruments, and to strengthen their protection, promotion and monitoring, mainly through support to relevant CSOs, HRDs and victims of repression and abuse.[694]

The CSOs may access the EIDHR funds through three channels: 1) global calls for proposals when the projects cover all the objectives of EIDHR and are selected by the Commission in consultation with its local delegations; 2) country calls for proposals when the projects proposed are specific to one country and they cover local projects designed to reinforce the role of civil society in promoting human rights and democratic reforms, in facilitating the peaceful reconciliation of group interests and in consolidating

[690] Commission, *European Instrument for Democracy and Human Rights (EIDHR): Strategy Paper 2014-2020* (European Union 2014) art 1.

[691] Commission, *European Instrument for Democracy and Human Rights (EIDHR): Strategy Paper 2014-2020* (European Union 2014) para 14; Commission, 'International Cooperation and Development' <http://ec.europa.eu/europeaid/subsites/european-instrument-democracy-and-human-rights-eidhr_en> accessed 11 January 2015; and Council Regulation (EC) 1889/2006 of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (EIDHR) [2006] OJ L 386/1. The Council Regulation provides that 'the Community provides assistance under this Regulation that addresses global, regional, national and local human rights and democratisation issues in partnership with civil society understood to span all types of social action by individuals or groups that are independent from the state and active in the field of human rights and democracy promotion'.

[692] Commission, 'Democracy and human rights funding - EIDHR partners and actors' <https://ec.europa.eu/europeaid/sectors/human-rights-and-governance/democracy-and-human-rights/partners-and-actors_en> accessed 11 January 2015.

[693] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85. Council Regulation (EC) 1889/2006 of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide (EIDHR) [2006] OJ L 386/1, art 13.

[694] *Ibid*, art 1(a-b) and art 2 (1) (a-b). See also, Commission, 'Concept Note for Multiannual Indicative Programme EIDHR 2014-2020' <www.eidhr.eu/files/dmfile/2013-12-02EIDHRdraftConceptNoteMIP.pdf> accessed 19 January 2015.

political participation and representation and are managed by local EU delegations;[695] or 3) direct support to Human Rights Defenders through minor grants.[696]

Each year, the Commission organises an EIDHR Forum, which brings together beneficiaries or potential beneficiaries of the EIDHR from all over the world to share experiences, lessons learnt and best practices in order to improve the EIDHR operational support to CSOs, and to present the new EIDHR calls for proposals.[697] Consultations with CSOs and exchange of information between the Union and the civil society shall take place on a continuing basis at all levels both within the Union and in Third Countries.[698] Such consultations are to take place 'as early as appropriate in the programming process, in order to facilitate civil society's respective contributions and to ensure that it plays a meaningful role in that process.'[699] Consultations are called for, in particular, when priorities for the EIDHR funding periods are being set.[700] The EU shall also give information and guidance to assist CSOs in the funding application process.[701]

9. European Parliament's meetings with non-EU civil society organisations

The European Parliament engages with parliaments worldwide through its inter-parliamentary co-operation and joint parliamentary assemblies. The inter-parliamentary delegations responsible for relations with third countries engage in a range of activities related to human rights, based on the 'Guidelines for EP Inter-parliamentary Delegations on promoting human rights and democracy in their visits to non-EU countries' adopted in 2011.[702] As an integral part of their missions to third countries, EP delegations usually include meetings with the local NGOs and CSOs active in human rights.[703]

10. European Development Fund

[695] Commission, 'Apply for a Grant' <www.eidhr.eu/funding> accessed 18 March 2015; Commission, 'How We Support Democracy and Human Rights?' <www.eidhr.eu/supporting-dandhrs> accessed 18 August 2014.
[696] Commission, 'Democracy and Human Rights' <http://www.eidhr.eu/ funding> accessed 11 January 2015.
[697] Commission, 'EIDHR Forum' <www.eidhr.eu/events/eidhr-forum> accessed 18 August 2014.
[698] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85, art 3(4).
[699] *Ibid*.
[700] Commission, 'The EU's work with NGOs' <http://eeas.europa.eu/human_rights/cooperation_with_ngo/index_en.htm> accessed 25 January 2014.
[701] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85, art 3(4).
[702] EU Parliament, 'Guidelines for EP Interparliamentary Delegations on Promoting Human Rights and Democracy in their Visits to Non-EU Countries' PE460.114 (2011) <http://www.europarl.europa.eu/document/activities/cont/201203/20120329ATT42170/20120329ATT42170EN.pdf> accessed 18 January 2015; and EU Parliament, 'Human Rights' <www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_6.4.1.html> accessed 18 January 2015.
[703] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012* (European Union 2013) 139.

Another channel for interaction with civil society is provided for through the European Development Fund (EDF),[704] the financial instrument of the Cotonou Agreement providing development aid to African, Caribbean and Pacific (ACP) countries and to overseas countries and territories (OCTs) renewed in 2014 for the period of 2014-2020.[705] The Cotonou Agreement, the 'flagship' of EU development cooperation,[706] was concluded in 2000 and is subject to revision every five years.[707] A revised agreement is hence expected to be completed in 2015.

The Cotonou Agreement adopted in 2000 provided for the first time that civil society shall be involved in the various phases of EU programming of development assistance. [708]Whereas the ACP-EU partnership support channelled through the EDF under the Lomé regime was mainly disbursed through governments, the reinforced role of CSOs and other non-state actors in the Cotonou Agreement enabled them to act as implementing agencies for projects and programmes funded through the EDF under decentralised cooperation activities.[709] As stated by Poul Nielson, European Commissioner for Development Co-operation and Humanitarian Aid:

> The Agreement offers a stimulating framework to help supporting the consolidation of participative structures and to contribute to the viability and effectiveness of development co-operation centred on the objective of reducing poverty. The implementation and success of this strategy will depend on the way in which each group will be able to work in the new framework.[710]

[704] Council Regulation (EU) 567/2014 amending Regulation (EC) No 215/2008 on the Financial Regulation applicable to the 10th European Development Fund as regards the application of the transition period between the 10th European Development Fund and the 11th European Development Fund until the entry into force of the 11th European Development Fund Internal Agreement [2014] OJ L 157/52.

[705] Partnership agreement between the members of the ACP Group of States on the one part, and the European Community and its Member States, on the other part, signed in Cotonou on 23 June 2000, 2000/483/EC, [2000] OJ L 317/3 as rectified in [2004] OJ L 385/88. The Agreement has been revised twice: [2006] OJ L 209/26 (entered into force 1 July 2008); and [2010] OJ L 287/3 (applicable on a provisional basis from 1 November 2010).

[706] Jean Bossuyt, 'Mainstreaming Civil Society in ACP-EU Development Cooperation' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 123, 123.

[707] Commission, 'European Development Fund (EDF)' <https://ec.europa.eu/europeaid/funding/about-funding/where-does-money-come/european-development-fund_en> accessed 18 January 2015.

[708] For an account of the participatory approaches under Cotonou Agreement, see, e.g., Jean Bossuyt, 'Mainstreaming Civil Society in ACP-EU Development Cooperation' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 123.

[709] Gordon Crawford, 'The European Union and Strenghtening Civil Society in Africa' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 139, 142; and Commission, *The European Development Fund in a few words* (Office for Official Publications of the European Communities 2002) 19. For an overview on the negotiation processes concerning civil society participation, see, e.g., Maurizio Carbone, 'Mainstreaming Non-State Actors: Assessing Participation in EU-Pacific Relations' in Paul Hoebink (ed), *European Development Cooperation: In Between the Local and the Global* (Amsterdam University Press 2010) 73, 77-78. The value of this increased weight put on civil society participation is acknowledged, for example, by Nyambo in relation to Cameroon. See, Temngah Joseph Nyambo, 'The Legal Framework of Civil Society and Social Movements' in Emmanuel Yenshu Vudo (ed), *Civil Society and the Search for Development Alternatives in Cameroon* (CODESRIA 2008) 46, 56.

[710] Poul Nielson, European Commissioner for Development Co-operation and Humanitarian Aid, 'Participation of Civil Society in the Implementation of the Cotonou Agreement' (ACP-EU Conference, Brussels, 6-7 July 2001). For an

Support to enhance the emergence and capacity of an organised civil society is seen as vital to the 'maintenance and consolidation of a stable and democratic political environment' in the Cotonou Agreement.[711] Open partnership with CSOs, including them into the 'mainstream of political, economic and social life', is referred to as one of the fundamental principles underlying the Cotonou Agreement.[712] To that end, the Council of Ministers is to conduct an on-going dialogue with the civil society.[713] A Joint Parliamentary Assembly composed of equal numbers of EU and ACP representatives is, in addition, in regular interaction with civil society representatives to assess the implementation of the Agreement.[714]

11. Human Rights Dialogues

Among the variety of dialogue tools at its disposal to consult CSOs in relation to its development policy, the EU includes civil society in the preparation of the human rights dialogues with third countries. The EEAS conducts consultations with CSOs in connection with the official human rights dialogues.[715] In regular meetings CSOs are provided with an opportunity to present their views before the official dialogue takes place and they are subsequently informed about the outcomes of the dialogues both in Brussels and in third countries.[716]

The CSOs are seen to have a role to play in the preparation, conduct and assessment of the dialogues and the EU is committed to ensuring a 'degree of genuine transparency vis-à-vis civil society' in the dialogue process.[717] Although this is not always the case, due to reluctance by governments to include CSOs, civil society representatives have been present in some official human rights dialogues, such as those conducted with the African Union and Moldova, as well as Mexico.[718] In conjunction with the official dialogues, the CSOs may also be involved, and feed into the dialogues, through formal Civil Society Seminars within the framework for human rights dialogues to discuss specific thematic issues related to

account on the role of CSOs under EU development policy until 2008, see, e.g., Maurizio Carbone, 'Theory and practice of participation: Civil society and EU development policy' 9(2) (2008) Perspectives on European Politics and Society 241.

[711] 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 (adopted 23 June 2000, entered into force 1 April 2003) [2000] OJ L 317/3 (Cotonou Agreement) art 7.

[712] *Ibid*, art 2 and 10(1).

[713] *Ibid*, art 15(3).

[714] *Ibid*, art 17(1 and 3).

[715] European External Action Service, 'EU Guidelines on Human Rights Dialogues with Third Countries: Update' <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> accessed 15 January 2015; and EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 29.

[716] Commission, 'Factsheet on Human Rights Dialogues' <http://eeas.europa.eu/factsheets/docs/factsheets_europe_day_2014/factsheet_human-rights_dialogues_en.pdf> accessed 15 January 2015.

[717] European External Action Service, 'EU Guidelines on Human Rights Dialogues with Third Countries: Update' <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> accessed 15 January 2015, para 7 and 10.

[718] A request by the civil society to attend the first ten minutes of the dialogue with Colombia is currently being negotiated by the EU with the Government of Colombia. Interview A3 (EU representative).

the dialogues.[719] The assessment by the EU to initiate a dialogue with a third country should, furthermore, be based on reports by the various NGOs working in the field of human rights and consultations with CSOs, among other sources.[720]

12. Other instruments and structures to support EU-CSO engagement

To support the above-mentioned instruments, the EU has adopted specific structures for interaction with the CSOs on particular thematic issues or with specific types of CSOs. One such structure is the Dialogue with churches, religious associations or communities and philosophical and non-confessional organisations that implements Article 17(3) TFEU calling for 'open, transparent and regular dialogue' with these types of organisations in the Member States.[721] To this end the Commission holds regular consultations with churches and such organisations upon their request, and the Dialogue organises events to further the interaction between the EU and the partners.[722]

In addition, the Commission specifically supports interaction and information-sharing between the EU and CSOs in the field of anti-drug policies through the Civil Society Forum on Drugs, which meets on an annual basis, at the minimum.[723] Similarly, a HIV/AIDS Civil Society Forum was set up by the Commission in 2005 as an informal consultative group to advice the HIV/AIDS Think Tank and to provide an interface between civil society, including CSOs representing people living with HIV/AIDS, and the EU.[724]

Further, an EU Civil Society Platform against trafficking in human beings was launched by the Commission in 2013 to enable CSOs working in areas relevant for the victims of trafficking to exchange views, information and ideas on practices and challenges in victim support and the prevention of trafficking. [725] The Platform is to assemble regularly in meetings organised by the Commission. Civil society representatives also regularly engage with the Council working group on human rights (COHOM) and are debriefed on its conclusions.

[719] Toby King, 'The European Union as a Human Rights Actor' in Michael O'Flaherty, Zdzisław Kędzia, Amrei Müller et al. (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Nottingham Studies on Human Rights 2011) 77-100, 95; European External Action Service, 'EU Guidelines on Human Rights Dialogues with Third Countries' <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> accessed 15 January 2015, para 7.

[720] *Ibid,* para 6(1).

[721] Commission, 'Dialogue with religions, churches and communities of conviction' (Bureau of European Policy Advisers 22 February 2010) <http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/index_en.htm> accessed 15 January 2015.

[722] *Ibid*.

[723] Commission, 'Civil Society Forum' <http://ec.europa.eu/justice/anti-drugs/civil-society/index_en.htm> accessed 15 January 2015.

[724] Commission, 'HIV/AIDS Civil Society Forum' <http://ec.europa.eu/health/sti_prevention/hiv_aids/civil_society_forum/index_en.htm> accessed 18 January 2015.

[725] Commission, 'Commission launches EU Civil Society Platform against trafficking in human beings' (Brussels, 31 May 2013) <http://europa.eu/rapid/press-release_IP-13-484_en.htm> accessed 18 January 2015.

E. Assessment of methods of engagement

Despite initially being treated as mere information providers and implementing bodies by the EU, European CSOs are nowadays viewed as representatives of citizens and legitimising agents through participatory democracy for European governance that is perceived to suffer from a democratic deficit.[726]

The following sections offer a reflection on the effectiveness of the EU-CSO policies and their current implementation with a view to analysing how such policies respond to the democratising and legitimising objectives they are meant to fulfil. The need to develop more institutionalised structures and mechanisms to engage in consultation with CSOs will be explored through literature studies and interview data collected from CSO and EU representatives gathered from November 2014 to January 2015.

Different distinctive legitimising and democratising roles for civil society within EU governance are distinguished in the academic literature. In an analytical model by Kohler-Koch, three different images of the European polity are appraised to define the particular understanding of the legitimising and democratising roles civil society may take within them, functionally and normatively.[727] The first role, as defined by Kohler-Koch, relates to the conception of the EU as a regulatory quasi-government with both intergovernmental and supranational traits. In this image of the EU, the involvement of the civil society is seen as an answer to the lack of a sense of legitimacy of EU governance deriving from the absent common European identity and limitations in democratic accountability within the Union.[728] The second conception of the EU as an entity for cooperative policy-making, sees civil society as playing the role of a 'co-producer' in 'participatory governance' through its input in terms of experiences and interests of the people.[729] In this functional sense, as Heidbreder describes, the involvement of civil society 'builds strongly on the output-based legitimacy by force of the "better" policy results', hence the involvement of CSOs is seen as 'an essential condition of system effectiveness'.[730] The third category distinguished by Kohler-Koch describes the EU as being in the process of transforming into an autonomous and authoritative body of

[726] Luis Bouza Garcia, 'From Civil Dialogue to Participatory Democracy: The Role of Civil Society Organisations in Shaping the Agenda in the Debates on the European Constitution' (2010) 6(1) Journal of Contemporary European Research 85, 88. Meike Rodekamp, 'Their Members' Voice: Civil Society Organisations in the European Union' (Springer VS 2014) 83. See, however, Moravcsik, who argues that 'concern about the EU's "democratic deficit" is misplaced' and that EU decision making practices are in line with standard modern democracies. See, Andrew Moravcsik, 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union' (2002) 40 (4) Journal of Common Market Studies 603. In identifying benefits of EU-CSO interaction some authors attach specific importance to the contribution by the civil society to improvement of regulation and legislation. See, Michal Mejstřík and Jana Chvalkovska, 'Impact Assessment: Engaging civil society in policy-making' (Civil Society Dialogue Seminar, 24 March 2010).

[727] Beate Kohler-Koch, 'The three worlds of European civil society – What role for civil society for what kind of Europe?' (2009) 28 (1) Policy and Society 47, 50.

[728] *Ibid*.

[729] *Ibid*, 51.

[730] Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7 (2) Living Reviews in European Governance, 9 and 12 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015.

decision-making of its own, requiring the emergence of a European civil society, an 'emergent trans-European public sphere',[731] contributing to the legitimacy of political decision-making.[732]

Roughly drawing from the attributes identified in this categorisation, this section comprises three main parts: 1) methods and processes; 2) access and representativeness; and 3) quality of interaction.[733] The analysis suggests that, while significant progress at the policy and outreach levels is being achieved, important challenges in terms of access, representativeness and quality prevent the EU-CSO engagement scheme from making the CSOs a true legitimising agent for EU governance in any of the three meanings attached to the term by Kohler-Koch above. That being said, the role of the modality in enabling and facilitating a space for interaction between the different agents of civil society should not be underestimated.

The focus in the assessment is exclusively on EU policies; while some issues in terms of the *modus operandi* of the CSOs may be highlighted, these will not be assessed in any comprehensive manner.[734]

1. Methods and processes

In assessing the overall viability and effectiveness of EU methods and processes for CSO engagement, the normative recognition of the duty of the EU institutions to engage with the civil society is generally considered to be of significant value.[735] A survey on civil society engagement between ACP countries, where civil society involvement is made mandatory under the Cotonou Agreement and countries where this is not the case, indicates that where civil society participation is not a mandatory requirement for the delegations, they may have little incentive to involve civil society.[736] The formal inclusion of CSO participation in the Cotonou Agreement has been experienced as empowering by the civil society. Research carried out on transformations in trade politics in West Africa indicates that CSOs felt that the

[731] *Ibid*, 19.

[732] Beate Kohler-Koch, 'The three worlds of European civil society – What role for civil society for what kind of Europe?' (2009) 28 (1) Policy and Society 47, 51-52.

[733] This structure reflects also the attributes for effective CSO consultation identified in a Volont Europe report on effective consultation with citizens in the EU: 'Consultation is most effective when CSOs have open access to governmental institutions, where processes are transparent and adequate information is available, where policy-makers actively respond to CSOs' concerns, and where institutions make efforts to include a diverse range of organisations.' See, Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 2 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015.

[734] For examples on enhancing CSO effectiveness, see, e.g., Aurora Steinle, *Can Aid Be Effective without Civil Society? The Paris Declaration, Accra Agenda for Action and Beyond* (ICSW 2008).

[735] E.g., Interview A3 (EU representative); Interview A10 (CSO representative); and Interview A2 (EU representative). The uniqueness of the mandatory base of, for example, the legal base for consultations with religions, churches and communities of conviction under art 17 of TFEU is also recognised. Interview A2 (EU representative).

[736] Janice Giffen, 'Creating Space for Civil Society in Policy Dialogue' in Wil Hou (ed), *EU Development Policy and Poverty Reduction: Enhancing Effectiveness* (Ashgate 2007) 149, 163.

Agreement enabled them to participate in partnership negotiations, despite the reluctance of their governments.[737]

Many of the CSO representatives interviewed felt that the engagement mechanisms are, generally speaking, working relatively well and that their voice is being listened to within the EU.[738] It is recognised that positive developments have taken place in EU-CSO involvement lately and that, at the same time as the mutual understanding between the EU and CSOs is growing, the EU is gradually improving its approach towards civil society.[739] There is a discernible momentum around CSO engagement within the EU.[740] As one interviewee remarked, the CSO engagement is slowly 'becoming part of the EU DNA';[741] there is an observable shift towards more interest in making the approach work.[742]

A number of positive developments were mentioned, including the overall receptiveness of the EU towards CSOs,[743] the progresses in formal and semi-formal outreach to the South;[744] the creation of a Policy Forum on Development with regular meetings twice a year with a participatory agenda;[745] structured dialogue;[746] regular consultations;[747] the roadmaps for engagement with CSOs at country level;[748] the establishment of a specific Communication and Civil Society Unit within the Commission;[749] and the revised Cotonou Agreement and EIDHR.[750] The EESC is also considered to be a helpful, although not very well resourced, structure in facilitating interaction between the EU and CSOs.[751] The channels of access to the EU most commonly mentioned by the CSOs in the interview survey were the Commission, Parliament, Council, DG Trade, EEAS, EESC, DEVCO, DG Trade, country focal points and the Policy Forum on Social Development.

Many of the existing mechanisms have also been enhanced and specified, with a noticeable move from 'open, horizontal, soft-instrument based dialogue' developing in the direction of a 'more institutionalized, partner-specific and instrument-based interaction'.[752] The different modalities of support within EU

[737] Silke Trommer, *Transformations in Trade Politics: Participatory Trade Politics in West Africa* (Routledge 2014) 90.
[738] E.g., Interview A12 (CSO representative); interview G7 (EU representative); and interview A1 (CSO representative).
[739] Interview A2 (EU representative); interview A10 (CSO representative); and Interview A12 (CSO representative).
[740] Interview A8 (EU representative).
[741] Interview A9 (CSO representative).
[742] Interview A8 (EU representative).
[743] Interview A9 (CSO representative).
[744] Interview A9 (CSO representative).
[745] Interview A8 (EU representative); Interview A9 (CSO representative).
[746] Interview A5 (EU representative); and interview A9 (CSO representative).
[747] Interview A5 (EU representative).
[748] Interview A9 (CSO representative)
[749] Interview A10 (CSO representative).
[750] Interview A8 (EU representative); and interview A10 (CSO representative).
[751] Interview A7 (CSO representative).
[752] Pieterjan de Vlieger and Irina Tanasescu, 'Changing Forms of Interactions between the European Commission and Interest Groups: The Case of Religious Lobbying' (2012) 34 (5) Journal of European Integration 447, 1.

development cooperation are being reviewed with the aim to better tailor them to the needs of the organisations.[753]

Between the formal established mechanisms for dialogue, and the informal, unofficial mechanisms for communication, some CSO actors showed a slight preference in terms of effectiveness for the latter. The importance of face-to-face discussions is emphasised in this regard.[754] The formal mechanisms, seen by some commentators to have more of a ceremonial value, are sometimes experienced as process-heavy and as putting the EU in the driver's seat for the exercise.[755] They may, in addition, not allow the CSOs to express their views in a satisfactory manner. Electronic consultation forms, for example, are seen by some as too restrictive in terms of the liberty of expression they give to the CSOs.[756] Formal channels may, on the other hand, be seen as more reliable in terms of the quality of the information received by the CSOs.[757]

Most respondents, however, are of the opinion that the two types of communication complement each other in a satisfactory manner.[758] Typically, CSOs report that they 'need to play on every field' to get their message through as effectively as possible.[759] The informal and formal methods of communication are seen to interplay, and to function in a continuum with informal consultations often preceding formal ones; often no clear borderlines exist between the two.[760] Both forms are seen to be of relevance, the choice for a particular model of communication depending on the context and the aim of the consultation.[761] For example, while the formal channels of communication would typically be used to invite advice to prepare an upcoming policy paper, to analyse general and upcoming trends or in a situation where written input is preferred, the informal mode of communication may prove useful in the local contexts or to explore the EU's policy options in politically or otherwise sensitive situations.[762]

Overall, while it is recognised that there is considerable room for improvement,[763] the EU is seen to have taken some important (first) steps towards engaging CSOs in EU decision-making;[764] it is generally held that sufficient mechanisms and principles are in place for CSO involvement.[765] 'The frame is good', [766] as one commentator noted; now the issue is to implement it effectively,[767] with increased visibility,[768] and

[753] Interview A8 (EU representative).
[754] Interview A12 (CSO representative)
[755] Interview A9 (CSO representative)
[756] Interview A12 (CSO representative)
[757] Interview A1 (CSO representative).
[758] *Inter alia*, interview A12 (CSO representative); interview G7 (EU representative); interview G3 (CSO representative); interview A2 (EU representative); interview A10 (CSO representative); and interview A2 (EU representative).
[759] Interview A4 (CSO representative).
[760] Interview A3 (EU representative).
[761] Interview A5 (EU representative); interview A6 (EU representative); interview G7 (EU representative); and interview A7 (CSO representative).
[762] Interview A5 (EU representative); and interview A6 (EU representative).
[763] Interview A10 (CSO representative).
[764] *Ibid*.
[765] Interview A6 (EU representative); and Interview A3 (EU representative).
[766] Interview A6 (EU representative).
[767] Interview A12 (CSO representative); and Interview A3 (EU representative).
[768] Interview A3 (EU representative).

with due attention paid to the mandatory character of the CSO involvement. More stringent adherence to the established mechanisms and principles are considered to be of utmost importance.[769] As various organisational, structural and technical problems are reported to hamper the effectiveness and meaningfulness of the EU's approach to the CSOs,[770] a 'new wave of inclusiveness' through treaty changes is called for by CSOs to remedy the implementation hiccups in the EU-CSO agenda.[771]

Similar concerns are voiced in terms of operationalising the EU's commitments towards human rights and the human rights-based approach to development. An entry-point to integrating human rights into EU policies exists;[772] human rights have been high on the EU policy agenda on paper for 10-15 years.[773] Important challenges however remain in terms of circulating them down to the policy implementation and practice levels,[774] with other interests, such as cost-effectiveness, often trumping human rights along the lines of the policy making processes,[775] as well as in the dialogue processes.[776] Structural issues are, reportedly, more challenging to advance through consultations and dialogue than individual human rights issues.[777] In addition, considerable variance across sectors and institutions is observed in terms of attitudes and adherence to and observation of the EU's human rights and development commitments.[778] For example, while agriculture, fishing and food security units seem to top the class in this regard, the 'non-human' sectors, such as climate change and energy, leave a lot of room for improvement. [779]

One of the interviewees welcomed the adoption of the EU-HRBA toolbox. While they viewed the toolbox as having some shortcomings, they considered that it represented a significant step toward systematising and operationalising adherence to human rights in EU policies.[780] Although there has been a gradual realisation that human rights are related to all fields of EU action and as a result need to be mainstreamed in all sectors,[781] according to one EU representative, human rights are mainly still considered to be a 'theme' and not a framework embedded in all types and levels of policy fields.[782] In the field of development, the above-mentioned roadmap exercise is a welcome initiative and should help to alleviate

[769] Interview A6 (EU representative).
[770] *Ibid*; and EurActiv, 'EU's civil society giants push for treaty change' (EurActiv, 10 July 2014) <http://www.euractiv.com/sections/future-eu/eus-civil-society-giants-push-treaty-change-303409> accessed 19 January 2015.
[771] *Ibid*.
[772] Interview A6 (EU representative.
[773] Interview A12 (CSO representative); interview A6 (EU representative); and interview A7 (CSO representative).
[774] Interview A12 (CSO representative); interview A6 (EU representative); and interview A7 (CSO representative). A different view, that human rights are relatively well integrated in the EU policies, was, however, also voiced. Interview A3 (EU representative).
[775] Interview A7 (CSO representative). The level of attention paid to human rights is also dependent on whether the country context is conducive to that. Interview A8 (EU representative); and interview A6 (EU representative).
[776] Interview A12 (CSO representative)
[777] Interview G6 (CSO representative).
[778] Interview A6 (EU representative); interview A4 (CSO representative); and interview A8 (EU representative).
[779] Interview A10 (CSO representative).
[780] *Ibid*.
[781] Interview A5 (EU representative).
[782] Interview A8 (EU representative).

such problems.[783] Other interviewees suggested that enhanced efforts in education and awareness-raising on human rights, particularly labour and social rights,[784] and the establishment of a specific minimum standard of engagement,[785] could also help to remedy the situation. The role of human rights in furthering the mainstreaming of human rights and development concerns is considered as vital.[786]

2. Access

While some respondents in the interviews felt that the EU should more actively take the initiative in inviting CSOs for interaction,[787] access to EU institutions is generally considered to be good and the channels for engagement sufficient.[788] Lack of resources and other challenges are, however, considered to set significant impediments to the EU fairly dividing its time and attention among different types of CSOs,[789] with the local level CSOs being most disadvantaged.[790] Issues of legitimacy, coherence and transparency in this regard will be identified in sections a-c below.[791]

a) Representativeness and legitimacy

The top-down Europeanisation characterised by a donor-driven 'competitive' environment, coupled with resource constraints is seen to drive the CSOs to maximise operations at the EU (or national) level to enhance their effect at the European level. For example, being present in Brussels is considered vital for CSOs to having meaningful influence on EU policy-making,[792] something which is usually not a problem for bigger CSO platforms and networks representing a large group of CSO,[793] but may not be possible or

[783] *Ibid*.
[784] Interview A12 (CSO representative); and interview A4 (CSO representative).
[785] Interview A5 (EU representative).
[786] Interview A8 (EU representative).
[787] Interview A1 (CSO representative).
[788] Interview G5 (CSO representative); interview A3 (EU representative); interview A2 (EU representative); interview G4 (CSO representative); interview G3 (CSO representative); interview A5 (EU representative); and interview A1 (CSO representative).
[789] Interview A7 (CSO representative).
[790] For an example from Western Balkans and Turkey, see, e.g., Dragan Crnjanksi, Petrus Theunisz, Marcus Wilke et al., 'Thematic Evaluation of EU's Support to Civil Society in the Western Balkans, Draft Final Report 2' (2012) IPA Programme for Western Balkans and Turkey, 40 <http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2012_eval_cs_final_report_2.pdf> accessed 20 January 2015.
[791] The analysis draws inspiration from a five step empirical analysis by Guasti that identifies four attributes for procedural legitimation through civil society, namely transparency, inclusion, balance of interests, and representation. See, Petra Guasti, 'A Panacea for Democratic Legitimation? Assessing the Engagement of Civil Society with EU Treaty Reform Politics' in Ulrika Liebert, Alexander Gattig and Tatjana Evas (eds), *Democratising the EU from Below? Citizenship, Civil Society and the Public Sphere* (Ashgate 2013) 135, 157.
[792] Interview A5 (EU representative); and Interview N8 (CSO representative).
[793] Interview A2 (EU representative); interview A9 (CSO representative); and interview A5 (EU representative).

is difficult for smaller CSOs with limited economic and human resources.[794] The same challenges apply with EU funding mechanisms for CSOs, which are felt to require a level of professionalism, experience of financial administration and multiple reporting systems for co-financing, and human resources that may not be found in smaller grassroots organisations.[795]

The current structures and processes of EU-CSO interaction have led to a clear bias towards more inclusion of large, professional, institutionalised, Brussels-based platforms of CSOs at the expense of more grassroots-level organisations with small constituencies and resources. Such professionalisation of CSOs engaging with the EU is, at least in part, attributed to the requirement of 'representativeness' of interest groups.[796] In order to count within the EU, CSOs are increasingly uniting into large umbrella groupings of CSOs.[797] In particular, the donor-driven 'competitive' environment has favoured project-based empowerment and the resulting stronger growth of larger CSOs.[798] Overall, in the interest of cost-effectiveness, the EU also actively seeks contact with larger umbrella and platform CSO groupings in order to reach a wider group of organisations and actors.[799] Also the stress on results may dissuade the EU from supporting small grassroots-organisations.[800] As a consequence, the CSOs, and the EU, 'unwillingly contribute to widening the gap between civil society and citizens',[801] thereby counteracting the project of

[794] Interview A12 (CSO representative); interview A3 (EU representative); interview A5 (EU representative); interview A8 (EU representative); interview A1 (CSO representative).

[795] Interview A1 (CSO representative); interview A8 (EU representative); interview A10 (CSO representative); interview N1 (CSO representative); interview A11 (CSO representative); International NGO Training and Research Centre, 'Support to Civil Society: Emerging Evaluation Lessons' (2013) 8 Evaluation Insights 5 <http://www.oecd.org/dac/evaluation/Evaluation%20Insight%20Civil%20Society%20FINAL%20for%20print%20and%20WEB%2020131004.pdf> accessed 20 January 2015; and Dragan Crnjanksi, Petrus Theunisz, Marcus Wilke et al., 'Thematic Evaluation of EU's Support to Civil Society in the Western Balkans, Draft Final Report 2' (2012) IPA Programme for Western Balkans and Turkey, 40 <http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2012_eval_cs_final_report_2.pdf> accessed 20 January 2015. A similar concern is expressed in an evaluation of EU's civil society engagement within its neighbourhood policies. See Julien Bousac, Laure Delcour, Vera Rihackova, Iryna Solonenko, Gevorg Ter-Gabrielyan, *Improving the EU's Support for the Civil Society in its Neighbourhood: Rethinking Procedures, Ensuring that Practices Evolve* (European Union 2012) 5-6.

[796] Justin Greenwood, *Interest Representation in the European Union* (3rd edn, Palgrave Macmillan 2011) 22 and 218-223.

[797] The need for CSOs to 'team up' is recognised also in our survey. Interview A2 (EU representative); interview A9 (CSO representative); and interview A7 (CSO representative).

[798] Dragan Crnjanksi, Petrus Theunisz, Marcus Wilke et al., 'Thematic Evaluation of EU's Support to Civil Society in the Western Balkans, Draft Final Report 2' (2012) IPA Programme for Western Balkans and Turkey, 40 <http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2012_eval_cs_final_report_2.pdf> accessed 20 January 2015.

[799] Interview A8 (EU representative); and interview A6 (EU representative).

[800] International NGO Training and Research Centre, 'Support to Civil Society: Emerging Evaluation Lessons' (2013) 8 Evaluation Insights 5 <http://www.oecd.org/dac/evaluation/Evaluation%20Insight%20Civil%20Society%20FINAL%20for%20print%20and%20WEB%2020131004.pdf> accessed 20 January 2015.

[801] Petra Guasti, 'A Panacea for Democratic Legitimation? Assessing the Engagement of Civil Society with EU Treaty Reform Politics' in Ulrika Liebert, Alexander Gattig and Tatjana Evas (eds), *Democratising the EU from Below? Citizenship, Civil Society and the Public Sphere* (Ashgate 2013) 135, 158.

legitimising European governance through civil society.[802] As formulated by Guasti, 'the condition of *representation* through CSOs is weakened by the relative marginalisation of citizens in civil society's vertical communication and cooperation networks'.[803] The cleavage hence created,[804] both in distance as in thinking, to the actual citizens, has attached a certain degree of elitism to the EU-CSO interaction.[805] For this reason, the often-perceived role of civil society as a legitimiser of European governance in terms of increasing the level of accountability and participatory democracy is increasingly questioned by many.[806] As citizens lack a truly meaningful channel to influence the policies of CSOs, it is argued that participation through civil society does not add to the democratic legitimacy or democratic, nor social, accountability within EU decision-making.

In terms of access it is, in addition, reported that the EU implementation partners, the beneficiaries, are most likely to receive a privileged amount of time and access to the different parts of the EU, at least to their usual interlocutors, as compared to other CSOs.[807] Also, some level of favouritism is reported to take place, with preferential access and contact to CSOs with which the EU has developed good relationships.[808] A common concern is that different groups of CSOs are provided uneven access to EU policy making, with economic organisations advantaged at the expense of the NGOs.[809] A related

[802] Magnette criticises such elitism for failing to embrace the citizenry. See, Paul Magnette, 'Democracy in the European Union: why and how to combine representation and participation' in Stijn Smismans (ed), *Civil Society and Legitimate European Governance* (Edward Elgar Publishing Limited 2006).

[803] Petra Guasti, 'A Panacea for Democratic Legitimation? Assessing the Engagement of Civil Society with EU Treaty Reform Politics' in Ulrika Liebert, Alexander Gattig and Tatjana Evas (eds), *Democratising the EU from Below? Citizenship, Civil Society and the Public Sphere* (Ashgate 2013) 135, 158.

[804] Hrant Kostanyan, 'The Civil Society Forum of the Eastern Partnership Four Years on: Progress, Challenges and Prospects' (2014) CEPS Special Reports, 5 <http://www.ceps.eu/system/files/HK%20EaP%20Civil%20Society%20Forum_0.pdf> accessed 27 February 2015.

[805] See, e.g., Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7 (2) Living Reviews in European Governance 10 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015. For an account of debates on representativeness in the context of participatory trade politics in West Africa, see Silke Trommer, *Transformations in Trade Politics: Participatory Trade Politics in West Africa* (Routledge 2014) 127-132. Trommer's empirical research suggests that while there were calls from the side of the EU officials to better understand the legitimacy of participation and mandate of CSO representatives, the CSOs did not see themselves as representing the West African civil society, but merely as citizens part of the civil society, questioning the whole idea of CSOs having to be representative. Kohler-Koch points to similar problems in the context of European Citizen's Consultations, which she sees as characterised by a high degree of selectivity and lack of public dissemination Beate Kohler-Koch, 'The Role of Civil Society Beyond Lisbon' (2011) Maastricht Monnet Paper Series No. 2/2011, 7 <http://www.mceg-maastricht.eu/pdf/2011%282%29%20Kohler-Koch.pdf> accessed 27 February 2015.

[806] See, e.g., Beate Kohler-Koch, 'The three worlds of European civil society – What role for civil society for what kind of Europe?' (2009) 28 (1) Policy and Society 47, 53; and Beate Kohler-Koch and Christine Quittkat, 'What is civil society and who represents it in the European Union?' in Ulrike Liebert and Hans-Jörg Trenz (eds), *The New Politics of European Civil Society* (Routledge 2011) 19-21. Notably, as Kohler-Koch points out, associations may be more closely linked to their constituencies, than many other types of CSOs, such as NGOs. See, Beate Kohler-Koch, 'Civil society and EU democracy: "astroturf" representation?' (2010) 17(1) Journal of European Public Policy 100, 112.

[807] Interview A8 (EU representative); and interview N8 (CSO representative).

[808] Interview A9 (CSO representative); and interview N8 (CSO representative).

[809] Interview A9 (CSO representative); Interview A7 (CSO representative); and Petra Guasti, 'A Panacea for Democratic Legitimation? Assessing the Engagement of Civil Society with EU Treaty Reform Politics' in Ulrika Liebert,

apprehension is the perceived preference in EU-NSA policies attached to NSAs supportive of EU politics and policies mainly in terms of economic concern, primarily the private sector, at the expense of the CSOs.[810]

The interview data also suggested that a certain preference in EU-CSO interaction is given to CSOs that are sympathetic to the EU cause and values, while CSOs that adopt a more critical approach towards the EU or some of its policies have less access.[811] This has been found to shift the policies of some CSOs towards less polemic approaches.[812] The goals of the EU's engagement with CSOs may partly be the reason for this. The aims of partnership and civil society engagement in EU development cooperation are sometimes seen, in academic critiques, as a legitimising pretext for exporting European neo-liberal values to other countries, a goal which is perceived to lead to policies which contradict the aim of enhancing the legitimacy and effectiveness of EU policies through civil society engagement.[813] One account perceives the EU's CSO policies as being built on an image of the civil society as a 'counter-balance to state power', a watchdog on state policies. Instead of supporting the development of the civil society sector as such, this is argued to have led to the EU civil society support being primarily geared towards a narrow sector of professionalised elite groups with a capacity to further pro-market values and exercising control over government policies.[814]

As such, EU policies towards CSOs are not seen as conducive to the enhancement of the plurality of CSO actors in the country, nor is such selectivity likely to further the principles of accountability and legitimacy of both EU operations and those of the favoured CSOs, or the CSO sector more generally.[815] The representativeness criteria are also seen as an impediment to the autonomy of the partners.[816] The elitism in the EU's approach to civil society may have traits that shape the self-image of CSOs as elements of the democratic society.[817] Top-down pressure for CSOs to unite into artificially created platforms and

Alexander Gattig and Tatjana Evas (eds), *Democratising the EU from Below? Citizenship, Civil Society and the Public Sphere* (Ashgate 2013) 135, 158.

[810] Stephen R. Hurt, 'Civil Society and European Union Development Policy' in Marjorie Lister and Maurizio (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 109, 119. For a similar experience, see, Paraskevi Bessa-Rodrigues, 'EU-Mercosur Relations: The Challenge of Civil Society Cooperation' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 159, 165.

[811] Interview A11 (CSO representative); interview A8 (EU representative); and Milja Kurki, 'Governmentality and EU Democracy Promotion: The European Instrument for Democracy and Human Rights and the Construction of Democratic Civil Societies' (2011) 5 International Political Sociology 362.

[812] *Ibid*.

[813] Stephen R. Hurt, 'Civil Society and European Union Development Policy' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 109, 119.

[814] Gordon Crawford, 'The European Union and Strengthening Civil Society in Africa' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 139, 152-153.

[815] *Ibid*.

[816] Bruno Veneziani, 'The Role of the Social Partners in the Lisbon Treaty' in Niklas Bruun, Klaus Lörcher and Isabelle Schömann (eds), *The Lisbon Treaty and Social Europe* (Hart 2012).

[817] Milja Kurki, 'Governmentality and EU Democracy Promotion: The European Instrument for Democracy and Human Rights and the Construction of Democratic Civil Societies' (2011) 5 International Political Sociology 362.

groupings for strategic purposes may be counterproductive,[818] for example in terms of alienating CSOs from genuinely representing the interests of their constituencies. Heidbreder aptly summarises the situation when she states, 'the conditions civil society has to meet to participate limit the very virtues for which the Commission pursues its normative and material activation strategy.'[819] The lack of plurality in the EU's approach to CSOs may contribute to increasing the cleavages between different groups within the society thus potentially reinforcing existing power relations.[820]

Hence, as Guasti points out, 'civil society does not offer a panacea for resolving the democratic legitimation deficit of the European Union'.[821] The involvement of the civil society through a broad spectrum of actors is seen as an important factor contributing to the effectiveness of the consultations.[822] Greater inclusion of the local civil society on a broad base is, for example, seen as pivotal for the 'legitimacy, rootedness and thus long-term effectiveness' of EU policies in conflict prevention through its first-hand understanding of conflicts and their underlying causes.[823] If local CSOs are left out of the picture, the national CSOs may have little incentive to consult 'their local base'.[824] Civil society involvement should, hence, not be limited to 'elite' advocacy groups often based in urban areas, but should also embrace grassroots organisations operating locally.[825]

With the constantly increasing number of community and dialogue partners, there is, in other words, a pressing need to identify more inclusive approaches to also reach the smaller local grassroots level

[818] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 2 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[819] Eva G. Heidbreder, 'Civil society participation in EU governance' (2012) 7 (2) Living Reviews in European Governance 10 <http://europeangovernance.livingreviews.org/Articles/lreg-2012-2/download/lreg-2012-2Color.pdf> accessed 11 January 2015.

[820] Gordon Crawford, 'The European Union and Strengthening Civil Society in Africa' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 139, 152-153.

[821] Petra Guasti, 'A Panacea for Democratic Legitimation? Assessing the Engagement of Civil Society with EU Treaty Reform Politics' in Ulrika Liebert, Alexander Gattig and Tatjana Evas (eds), *Democratising the EU from Below? Citizenship, Civil Society and the Public Sphere* (Ashgate 2013) 135, 159. See, similarly, Beate Kohler-Koch, 'The Role of Civil Society Beyond Lisbon' (2011) Maastricht Monnet Paper Series No. 2/2011, 15-16 <http://www.mceg-maastricht.eu/pdf/2011%282%29%20Kohler-Koch.pdf> accessed 27 February 2015.

[822] Janice Giffen, 'Creating Space for Civil Society in Policy Dialogue' in Wil Hou (ed), *EU Development Policy and Poverty Reduction: Enhancing Effectiveness* (Ashgate 2007) 149, 162.

[823] Nathalie Tocci, 'The European Union, Civil Society and Conflict: An Analytical Framework' in Nathalie Tocci (ed), *The European Union, Civil Society and Conflict* (Routledge/UACES 2011) 1, 4-5.

[824] An Huybrechts and Patrick Develtere, 'Civil Society Participation in PRS and Cotonou Agreement Processes: The Role of Donors in Senegal and Rwanda' (Katholieke Universiteit Leuven 2006) 28.

[825] Janice Giffen, 'Creating Space for Civil Society in Policy Dialogue' in Wil Hou (ed), *EU Development Policy and Poverty Reduction: Enhancing Effectiveness* (Ashgate 2007) 149, 163.

CSOs,[826] marginalised groups and minorities.[827] Gausti notes the need for strong political will to review and change the structures and practices in civil society's involvement in European governance.[828] An important lesson to draw from recent surveys is that small grassroots CSOs may be more efficiently supported through more simple thematic calls 'focussing on certain fundamental issues of local and regional […] day-to-day concern'.[829] All-in all, it is suggested that more diversity and flexibility could be introduced in the funding schemes to enable smaller, individual and non-registered CSOs to operate within the realm of funding mechanisms.[830] Also the avenues for more flexibility in co-financing requirements and the possibility for applicants to use the local language in the application and reporting procedures should be further considered.[831] One interviewee stressed the importance of developing more established contacts at the country level, beyond the capital cities and in addition to the Policy Forum on Development. [832]

It is also suggested that more awareness-raising and more specific information on consultation processes and on accessing EU funding, as well as more clearly identified contact points within the EU are necessary to make the possibilities for accessing EU funding opportunities and decision-making more equal.[833] It is positive that some initiatives within the EU are being made to simplify the processes,[834] and to step up

[826] Interview A5 (EU representative); interview A10 (CSO representative); and interview A8 (EU representative). See, also, e.g., Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 38 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

[827] Interview A2 (EU representative).

[828] Petra Guasti, 'A Panacea for Democratic Legitimation? Assessing the Engagement of Civil Society with EU Treaty Reform Politics' in Ulrika Liebert, Alexander Gattig and Tatjana Evas (eds), *Democratising the EU from Below? Citizenship, Civil Society and the Public Sphere* (Ashgate 2013) 135, 159. See, similarly, Beate Kohler-Koch, 'The Role of Civil Society Beyond Lisbon' (2011) Maastricht Monnet Paper Series No. 2/2011, 15-16 <http://www.mceg-maastricht.eu/pdf/2011%282%29%20Kohler-Koch.pdf> accessed 27 February 2015.

[829] Dragan Crnjanksi, Petrus Theunisz, Marcus Wilke et al., 'Thematic Evaluation of EU's Support to Civil Society in the Western Balkans, Draft Final Report 2' (2012) IPA Programme for Western Balkans and Turkey, 37 <http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2012_eval_cs_final_report_2.pdf> accessed 20 January 2015.

[830] EU Parliament, *Improving the EU's Support for the Civil Society in its Neighbourhood: Rethinking Procedures, Ensuring that Practices Evolve* (European Union 2012) 7. See, similarly, Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 39 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

[831] EU Parliament, *Improving the EU's Support for the Civil Society in its Neighbourhood: Rethinking Procedures, Ensuring that Practices Evolve* (European Union 2012) 7; Dragan Crnjanksi, Petrus Theunisz, Marcus Wilke et al., 'Thematic Evaluation of EU's Support to Civil Society in the Western Balkans, Draft Final Report 2' (2012) IPA Programme for Western Balkans and Turkey, 40 <http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2012_eval_cs_final_report_2.pdf> accessed 20 January 2015.

[832] Interview A6 (EU representative). See, similarly, Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 38 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

[833] Interview A1 (CSO representative); and interview A11 (CSO representative).

[834] Interview A8 (EU representative); and Interview A5 (EU representative).

the capacity of both CSOs and EU officials in this regard.[835] It is also considered helpful, particularly for non-Brussels-based CSOs, that facilities are provided by the EU for meetings and seminars organised by CSOs.[836] More efforts should be geared towards including CSOs in articulating the interests of the marginalised sectors of the society.[837]

b) Coherence

Despite considerable advances, our assessment indicates that the EU approach to civil society is still marked by a degree of incoherence. The gap between the policy and practice is still reported to be wide.[838] In 2006, paraphrasing the concept of the three 'C's – coordination, complementarity and coordination – guiding EU development cooperation, Bossuyt playfully attributed to the Cotonou-based EU-CSO engagement the attributes of complexity, confusion and chaos. Complexity of the exercise is mainly ascribed to the very vagueness of the concept of the civil society itself; the wide conceptualisation by the EU of the CSOs presents a widespread and dynamic arena of varying agendas and actors. Sometimes it is questionable whether some CSOs are independent of the State. All this makes the identification of the 'genuine change agents' challenging. Partly interlinked to this, significant confusion arises from the management of the 'multi-actor partnerships', the share of duties among the multitude of actors, beside CSOs, operational in the development field. Further, a degree of conflict is unavoidable in participatory development approaches where different actors operate on the same playing field sharing and competing for resources, power and democratic legitimacy.[839]

Not only is there a problem of coherence between theory and practice, but also between the different EU institutions and bodies; different sectors; as well as between the EU and its Member States.[840] CSO engagement may also at times be personalised in individual officials.[841] Frequent staff rotation and

[835] Interview A6 (EU representative).
[836] Interview A1 (CSO representative); and interview A7 (CSO representative).
[837] Gordon Crawford, 'The European Union and Strengthening Civil Society in Africa' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 139, 154.
[838] Interview A7 (CSO representative); and Maurizio Carbone, 'Theory and practice of participation: Civil society and EU development policy' (2008) 9 (2) Perspectives on European Politics and Society 241, 252.
[839] See, Jean Bossuyt, 'Mainstreaming Civil Society in ACP-EU Development Cooperation' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 123, 131.
[840] Interview A5 (EU representative); interview A4 (CSO representative); interview A10 (CSO representative); interview A12 (CSO representative); Paraskevi Bessa-Rodrigues, 'EU-Mercosur Relations: The Challenge of Civil Society Cooperation' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 159, 166; and Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 50 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015.
[841] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 2

inadequate institutional memory may result in a loss of coherence.[842] Furthermore, staff members may not share the same commitment to CSO interaction at the personal level.[843] To remedy this situation and enhance the homogeneity of the EU's approach to CSOs, one interviewee called for more visibility of the CSO issue within the EU,[844] and for the identification of best/good practices – a common understanding of CSO engagement.[845]

The consultation practices of some parts of the EU are reported to still leave much scope for improvement.[846] There is, first of all, reportedly considerable variation in the relationships the different Directorates-General of the Commission, and the Directorates-General and the EEAS, maintain with civil society.[847] Some units, according to one interviewee, have 'extremely poor methods of consultation', or fail to consult civil society in the first place, which, allegedly, has contributed to keeping the role of human rights low on the agenda of such units.[848] Some interviewees report that some institutions and bodies, for example DG Trade, DG Energy, the EEAS and the Council were mentioned,[849] have seemingly been more difficult to reach, or have, reportedly, solicited CSO involvement less actively, than some other institutions and bodies.[850] Such differences are usually attributed, *inter alia*, to the different characteristics of the

<http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[842] Interview G3 (CSO representative).

[843] Interview G3 (CSO representative).

[844] Interview A2 (EU representative).

[845] Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 51 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015; and interview A5 (EU representative). See, also, Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 2 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015; and Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 38 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

[846] Interview A5 (EU representative); and interview A10 (CSO representative).

[847] Interview A12 (CSO representative); and Christine Quittkat and Beate Kohler-Koch, 'Involving civil society in EU governance: The consultation regime of the European Commission' in Beate Kohler-Koch and Christine Quittkat (eds), *De-Mystification of Participatory Democracy: EU-Governance and Civil Society* (OUP 2013) 41, 52-53. See, also, Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 2 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[848] Interview A10 (CSO representative).

[849] Interview G6 (CSO representative); interview A3 (EU representative); interview G5 (CSO representative); interview A9 (CSO representative); and interview A12 (CSO representative).

[850] Interview A12 (CSO representative); interview A3 (EU representative); interview G6 (CSO representative); and interview A10 (CSO representative). It is noted, however, that DG Trade, among others, has taken steps towards more actively engaging with the civil society - Interview N6 (EU representative). See also Chapter I above; and Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015.

respective policy fields,[851] and to the different levels of (political) will to involve civil society within different sectors.[852] For example, technical and conceptual development is called for in order for the social partners to be more systematically consulted, especially on issues where such consultation is mandatory.[853] Challenges of consistency are found also between the different EU delegations in third countries, with some of them adopting advanced approaches to engaging CSOs meaningfully in policies, while others still remain closed in this regard mainly seeing CSO engagement within the purview of mere CSO funding.[854] Leaving aside attitudinal questions, this may also have something to do with the different challenges the delegations face in terms of human resources.[855]

Further, the levels of consultation may be uneven in consistency on the internal-external axis,[856] as Iusmen points out:

> It is argued that a 'bifurcated' pattern of civil society engagement has emerged in relation to EU internal and external policy dimensions: While Commission external services developed a structured and inclusive relationship with children's organizations, Directorate General Justice, on the other hand, has ended up disengaging the same stakeholders. It is argued that the 'bifurcated' pattern of civil society engagement entailed the adoption of divergent policy frames on children's rights at the Commission level and limited the Europeanization effects at the domestic level.[857]

More generally, while the mechanisms for CSO relations typically are relatively developed within the EU external relations, in the EU-internal policies there is considerable scope for development.[858] It is positive that efforts are currently underway to rethink such structures.[859] An important initiative in this regard is, for example, the organisation, starting in 2015, of an annual colloquium on the state of play of fundamental rights in Europe.[860]

Issues of consistency arise also between the EU and its Member States.[861] As one respondent pointed out, 'European policies are not always made in Brussels'. Because of this, and especially because the Union may lack competency in certain matters,[862] the Member State level should be better integrated in EU's

[851] Interview A8 (EU representative); and Christine Quittkat and Beate Kohler-Koch, 'Involving civil society in EU governance: The consultation regime of the European Commission' in Beate Kohler-Koch and Christine Quittkat (eds), *De-Mystification of Participatory Democracy: EU-Governance and Civil Society* (OUP 2013) 41, 52-53.
[852] Interview A5 (EU representative); interview A4 (CSO representative).
[853] Interview A12 (CSO representative); and interview A4 (CSO representative).
[854] Interview A10 (CSO representative).
[855] *Ibid*.
[856] Interview A5 (EU representative).
[857] Ingi Iusmen, 'Civil Society Participation and EU Children's Rights Policy' (2012) 8 (2) Journal of Civil Society 137.
[858] Interview A5 (EU representative).
[859] Interview A5 (EU representative).
[860] *Ibid*. See, also, EU Parliament, 'Commitments made at the hearing of Frans Timmermans First Vice-President of the Commission, Commissioner for Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights' (briefing) <http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/509994/IPOL_BRI(2014)509994_EN.pdf> accessed 20 January 2015.
[861] Interview G3 (CSO representative).
[862] Interview A2 (EU representative).

CSO policies.[863] In the interest of increasing coordination and impact, it is suggested that Member States could, for example, play a more active role in the operationalisation of EU country roadmap processes.[864]

c) *Transparency*

Despite the Regulation on open access to documents and the welcome introduction of the Transparency Register,[865] shortcomings in terms of transparency are reported,[866] *inter alia*, in terms of access to country strategies, which are reported on, but held confidentially by the EU.[867] Also a certain level of unevenness in the transparency framework was flagged in the interviews. Some CSO representatives interviewed were of the view that the private sector has preferential access to EU documents through its perceived privileged status in the EU-NSA engagement policies.[868] Likewise, the EU implementing partners (CSOs receiving EU funding) were perceived by some to have advantaged access to documents as compared to the rest of the CSOs.[869] Notably, increased transparency is called for also in terms of the selection criteria for partners to be consulted,[870] and in publishing data on grants awarded to CSOs.[871]

3. Quality of interaction

a) *Genuineness, effectiveness and sustainability*

(1) Knowledge about CSOs

Both in terms of effectiveness and genuineness of EU-CSO interaction, it is considered to be of upmost importance that the EU takes efforts to get to know the CSOs it interacts with.[872] Often the diversity and

[863] Interview A4 (CSO representative).
[864] Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 39 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.
[865] Interview A7 (CSO representative); and interview A5 (EU representative).
[866] Interview A9 (CSO representative)
[867] Interview G6 (CSO representative).
[868] Interview A7 (CSO representative).
[869] Interview A9 (CSO representative).
[870] Interview A4 (CSO representative); and interview N8 (CSO representative).
[871] Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 39 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.
[872] Herkenrath points, for example, to the importance of understanding how different aspects of globalisation each have a different effect on CSOs, and are conceptualised differently by CSOs, in different contexts; and what effects such differences have for viable and sustainable transnational and transcultural cooperation in terms of coordination and exchanging information. See, Mark Herkenrath, 'Civil Society: Local and Regional Responses to Global

heterogeneity of CSOs is not acknowledged to the full and the involvement of CSOs is perceived to automatically correlate with positive results.[873] Seeing CSOs as a uniform group of actors may, however, result in a system that is exclusionary of certain groups of organisations as insufficient regard is paid to their resources, potential and capabilities.[874] As stated by the Human Rights and Democracy Network:

> [g]enuine engagement comes through the joint knowledge, willingness and experience of officials and civil society actors. […] Consultations based on limited knowledge of the actors will result in unnecessary exclusions/inclusions, unclear messaging and unfulfilled expectations on both sides.[875]

An 'actor-focused approach' is, therefore, recommended for the EU in its civil society engagement that would raise awareness through staff trainings on the working modalities of CSOs, as well as the challenges and constraints under which they operate.[876] This entails that differentiated attention is also paid to the different local and national contexts, and also in relation to other possible actors, such as other donors; a contextual understanding of CSOs on a case-by-case basis is, therefore, crucial.[877] In planning consultations attention should, hence, be paid to choosing a format for engagement that reflects the nature and added value of the civil society partner being consulted.[878]

Challenges: An Introduction' in Mark Herkenrath (ed), *Civil Society: Local and Regional Responses to Global Challenges* (Lit Verlag 2007) 1, 2. For a similar recommendation, see, e.g., Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 3 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[873] Interview A10 (CSO representative); interview A9 (CSO representative); and Stephen R. Hurt, 'Civil Society and European Union Development Policy' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 109, 111.

[874] Herkenrath points, for example, to the importance of understanding how different aspects of globalisation each have a different effect on CSOs, and are conceptualised differently by CSOs, in different contexts; and what effects such differences have for viable and sustainable transnational and transcultural cooperation in terms of coordination and exchanging information. See, Mark Herkenrath, 'Civil Society: Local and Regional Responses to Global Challenges: An Introduction' in Mark Herkenrath (ed), *Civil Society: Local and Regional Responses to Global Challenges* (Lit Verlag 2007) 1, 2.

[875] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 3 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[876] *Ibid*, 2.

[877] Poul Nielson, European Commissioner for Development Co-operation and Humanitarian Aid, 'Participation of Civil Society in the Implementation of the Cotonou Agreement' (ACP-EU Conference, Brussels, 6-7 July 2001).

[878] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 5 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

In this regard it is positive that the contextual understanding of the civil society is, reportedly, gaining some ground within the donor community.[879] In a similar vein, it is vital to acknowledge the dynamism of the civil society: needs and priorities of the organisations may change with time and along the lines of the fluctuations in societies.[880] The newly introduced and annually updated roadmaps may be a step in the right direction as they aim to 'create momentum to cooperate on country level on CSO matters' based on an analysis of the country context and trying to identify priorities for action in a coordinated manner.[881]

Equally, it is important to understand how the different CSOs work.[882] Our survey indicates that, overall, requests for advice by the EU fail, many times, to take into account the internal processes of CSOs, mainly the fact that, unlike consultancy firms, CSOs are based on, often large, memberships that may need to be consulted before views are reported back to the EU.[883] In light of the CSOs perceived role as legitimising agents for EU governance, the EU should respect, and not try to circumvent, such representative processes.[884] In the interest of the legitimacy, quality and representativeness of the consultation, sufficient time should hence forth be allocated to such processes in order for the CSOs to be able to meaningfully negotiate and form their views.[885]

It should not be seen as a weakness either, that due to the character of CSOs as membership organisations, it may not always be possible for the CSOs, or groupings of CSOs, to arrive at a consensus opinion on a certain matter. Such a result of a consultation should, however, not be seen to lack value as it may offer important information on the views of the 'people'.[886] On the contrary, such diversity, and the plurality of the CSO sector as such, could be seen as a value of the civil society sector.[887] Putting too much emphasis on finding consensus in terms of outcomes for consultations was, in fact, referred by one interviewee to as potentially harmful as such conclusions were not seen as likely to truly represent the views of all stakeholders.[888]

[879] Janice Giffen, 'Evaluation of Danish Support to Civil Society: Annex M: Study on other donor civil society policies' (Intract, Tana, Indevelop 2013) 18 <http://um.dk/en/~/media/UM/Danish-site/Documents/Danida/Resultater/Eval/201301AnnexM.pdf> accessed 16 January 2015

[880] Hildegard Hagemann, 'Conclusions of the VENRO-Workshop' in Anke Kurat (ed), *Reality or Wishful Thinking - Does the Cotonou Process Strengthen Civil Society?* (2003) VENRO Working Paper No. 13, 46 <http://www.venro.org/fileadmin/Publikationen/english/Cotonou.pdf> accessed 18 January 2015.

[881] Interview A8 (EU representative).

[882] Interview A10 (CSO representative).

[883] *Ibid*.

[884] Interview A9 (CSO representative).

[885] Interview A10 (CSO representative); and Hildegard Hagemann, 'Conclusions of the VENRO-Workshop' (2003) VENRO Working Paper No. 13, 46 <http://www.venro.org/fileadmin/Publikationen/english/Cotonou.pdf> accessed 18 January 2015.

[886] Interview A10 (CSO representative).

[887] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 2 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[888] Interview N3 (CSO representative).

(2) Genuineness and effectiveness

Examples of challenges in effective and meaningful civil society participation may be related to, for example, timing, representation and inclusion, meaningfulness of the participation and advance preparation of engagement.[889] The preparation, agenda and organisation of consultations have important roles to play in enhancing the impact of EU-CSO policies. In terms of preparing such processes, a recent survey indicates that the effectiveness of consultations may be significantly hampered where delegates are not sufficiently prepared.[890] In the spirit of a deliberative process, sufficient information should hence be given to the participants well ahead of the consultations or meetings to allow them to engage in the discussions in a constructive and meaningful manner, and the debate to 'have more chances to gain depth and ultimately [to improve] the quality of the conclusions and recommendations'.[891]

The timing of the consultations, and planning them ahead, as well as respect for and understanding of representative processes, is considered as an important factor also for the genuineness of the EU-CSO interaction.[892] Only when CSOs are given sufficient time to prepare, negotiate and form their positions on EU policies is it possible to speak of meaningful participation. If, on the contrary, the CSOs receive the information at the final stages of policy-planning or document-drafting, with their input solicited with a few days or weeks' notice, as reportedly occasionally tends to be the case,[893] it is questionable whether the dialogue meets the criteria for genuine, or effective, consultation.[894] Often CSOs are invited to take part in the discussion late, at the stage where no genuine possibility to affect the decisions exists.[895] In

[889] Janice Giffen, 'Creating Space for Civil Society in Policy Dialogue' in Wil Hou (ed), *EU Development Policy and Poverty Reduction: Enhancing Effectiveness* (Ashgate 2007) 149, 162.

[890] Hrant Kostanyan, 'The Civil Society Forum of the Eastern Partnership Four Years on: Progress, Challenges and Prospects' (2014) CEPS Special Reports, 4 <http://www.ceps.eu/system/files/HK%20EaP%20Civil%20Society%20Forum_0.pdf> accessed 27 February 2015.

[891] Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 55 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015.

[892] Interview A10 (CSO representative).

[893] *Ibid*.

[894] See, e.g., Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 16 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015.

[895] Susan Ariel Aaronson and Jamie M. Zimmerman, *Trade Imbalance: The Struggle to Weigh Human Rights Concerns in Trade Policymaking* (Cambridge 2008) 136-137. This is the message also in a Volont Europe report on effective consultations with citizens in the EU: 'CSOs should have the opportunity to affect decision- making processes; they should not be asked to participate in consultation processes where decisions have already been taken.' See, Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 16 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015. See, similarly, Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 5 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

concert with Aaronson and Zimmerman, Arts affirms this to have been the case with a majority of the interim Economic Partnership Agreements in the 2000s.[896]

Where there exists an understanding of the different working modalities of CSOs, thinking of the consultations as a systemic part of the policy-making process could remedy such situations in terms of attaching attention to planning the timespan and methodologies for consultations.[897] Given a longer time perspective for the consultations, the CSOs will often be better equipped to plan their internal processes effectively and to report back to the EU with more covering information.[898] This is also considered to contribute to participation by a wider and more diversified range of organisations.[899] To that end, information on upcoming consultations processes or opportunities should, as well, be disseminated well in advance and as clearly and accessibly as possible, including the timely translation of the information into local languages.[900]

As regards releasing documents early on in the drafting process to allow more time for the CSOs to negotiate and to form their positions, it was suggested in the interviews that more trust could be shown by the EU towards civil society organisations and the high levels of professionalism they often demonstrate.[901] A recent survey of the effectiveness of DG Trade's civil society dialogue indicates, for example, certain discontent among CSOs in the information provided in the meetings with DG Trade,

[896] Karin Arts, 'A Human Rights-Based Approach to the ACP-EU EPAs: Issues and implications' in Gerrit Faber and Jan Orbie (eds), *Beyond Market Access for Economic Development: EU-Africa Relations in Transition* (Routledge 2009) 279, 294. Lack of meaningful participation and consultation in interim EPA negotiations are reported also by Dearden. See, Stephen J.H. Dearden, 'The Interim Pacific Economic Partnership Agreement' in Paul Hoebink (ed), *European Development Cooperation: In Between the Local and the Global* (Amsterdam University Press 2010) 47, 64.

[897] Interview A10 (CSO representative).

[898] *Ibid*. Another issue is that time and human resources do not allow the CSOs to raise all the issues they like to with the EU. Interview A6 (EU representative); interview A7 (CSO representative); and interview A9 (CSO representative). See, also, Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 38 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

[899] Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 2 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015.

[900] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 4 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[901] Interview A9 (CSO representative); and interview A10 (CSO representative). The issue of releasing more detailed information through dialogues, for example negotiated texts, was raised also in an evaluation on the DG Trade's civil society dialogue. See, Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015. The issue of trust between CSOs and governments is recognised to have a 'major impact on the effectiveness' of CSO consultations. See, Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 2 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015.

which is considered to be of general character and often possible to find elsewhere.[902] Some of our interviewees also regretted the fact that the EU is not using the 'full potential' of the dialogue processes; they felt, for example, that EU officials could make more use of the capacity of the CSOs to collect relatively representative samples of views or information on matters within their areas of interest and expertise.[903] Civil society in third countries, in particular, is seen to have 'unparalleled access to information on the ground'.[904]

In planning consultations, attention should also be paid to the format of the engagement to ensure genuine dialogue between the EU and CSOs. Electronic consultation forms, for example, sometimes prevent CSOs from freely communicating with the Union, as the questions may be put in a way that takes for granted certain positions that the CSOs would like to more fundamentally challenge,[905] or leave little or no room for elaborating the answers in a qualitative way making it difficult for CSOs to present the views of their members in a representative fashion.[906]

As concerns the effectiveness of deliberative processes, three further issues are considered to be of special importance. First, an evaluation of Plan D indicates that where a meeting takes more the form of an information-providing event rather than a discussion event, the contribution to supporting participation tends to remain modest.[907] Second, in order to attract interest and to enhance the quality of the deliberations, the agenda should be well-defined and a sufficiently central and controversial topic should be included on the agenda.[908] Trying to discuss too many disconnected issues may lead to 'trivial conclusions and recommendations'.[909] Third, lack of focus on the output of the process may reduce its

[902] Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) 13 <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015.

[903] Interview A10 (CSO representative); interview N1 (CSO representative); interview A4 (CSO representative); and interview A1 (CSO representative).

[904] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 2 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[905] Interview A12 (CSO representative).

[906] Interview N3 (CSO representative).

[907] Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 48 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015. A similar concern is expressed in an evaluation of DG Trade's civil society dialogue: 'The CSD is an information relay. Discussion is limited and there is no real debate. The CSD does not currently generate clear outputs to inform policy, consequently there is a mixed picture of satisfaction among CSOs. Currently, the CSD provides a forum to allow the DG to hear CSO views, it is less able to address concerns and improve policy and there are question marks over transparency.' See, Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) 8 <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015.

[908] Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 48 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015.

[909] *Ibid*, 54.

usefulness:[910] being clear about the aims of the consultations and dialogue at large and of each specific meeting is seen as vital for the effectiveness of the CSO engagement.[911] As stated by the Human Rights and Democracy Network, '[a] mutual and realistic understanding of the opportunities for and potential of engagement will assist the quality of the outcome'.[912] Such objectives should, according to an evaluation of DG Trade's civil society engagement, be 'specific, measurable, accurate, realistic and time-bound (SMART)'.[913] Objectives are also recommended to be tied to the organisational goals of the consulting body to enable assessment of CSO impact.[914]

In preparing a meeting, care should also be taken to secure the involvement of policy-makers at an early stage: too superficial or poor a preparation by policy-makers may prevent 'genuine two-track communication'.[915] In inviting delegates, it may be useful to include not only allies to the cause of CSOs, or the interests CSOs represent in any given context, but also EU officials with a more critical approach.[916] In terms of physical accessibility of the consultation processes, due attention should be paid to the accessibility of meeting venues to enable participation of persons with disability.[917]

[910] *Ibid*, 48.

[911] Interview N8 (CSO representative); and Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 7-8 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015. See, also, Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 16 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015; Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 6 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[912] Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 3 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[913] Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) 8 <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015.

[914] *Ibid*.

[915] Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 55 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015.

[916] Interview A9 (CSO representative).

[917] Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 39 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

(3) Responsiveness and accountability

The responses to the questions of impact in our interviews indicate that the views regarding the responsiveness of the EU to the input provided by CSOs vary a lot.[918] Some respondents, with the usual disclaimer that tracking impact beyond the document level is extremely difficult, feel that the input by CSOs to the EU decision-making is reflected, at least to some degree, in policy-changes and decision-making by the EU,[919] and that sufficient feedback is provided.[920] Others indicate a considerably less optimistic view on the impact and follow-up to their input given in consultations.[921] For this reason it is regretted that seemingly little attention within the EU is attached to the follow-up to CSO interaction.[922] An evaluation of DG Trade's civil society engagement indicates, for example, that no internal mechanism is put in place to channel civil society dialogue input into policy-making.[923] It could be useful to clearly define the channels and procedures for how the civil society input feeds into policy-making.[924]

Constructive and timely feedback, analysis, evaluation, as well as dissemination of results to the CSOs should, however, be seen as essential elements in guaranteeing the sustainability, effectiveness and meaningfulness of CSO involvement.[925] The experience that their input is 'worthwhile', that it is taken into

[918] An evaluation of DG Trade's civil society dialogue reveals a similar finding. See Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) 14 <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015.

[919] Interview A9 (CSO representative); interview A6 (EU representative); interview A10 (CSO representative); interview G4 (CSO representative); and interview N3 (CSO representative).

[920] Interview G3 (CSO representative).

[921] Interview A9 (CSO representative); interview N8 (CSO representative); interview A11 (CSO representative); interview A7 (CSO representative); interview A8 (EU representative); and interview G5 (CSO representative). The 'perceived lack of influence' of CSO input is reported as one of the shortcomings also in an evaluation of DG Trade's civil society dialogue. See, Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) 13-14 <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015. See, Human Rights and Democracy Network, 'Meeting in the Middle: How to improve the Partnership between Civil Society Organisations and the European External Action Service' (HRDN December 2012) 5 <http://www.servicevolontaire.org/userfiles/www.hrdn.eu/files//Public/HRDN_Statement_How_to_improve_the_partnership_between_CSOs_and_the_EEAS.pdf> accessed 8 February 2015.

[922] Thorsten Hüller and Beate Kohler-Koch, 'Assessing the democratic value of civil society engagement in the European Union' in Beate Kohler-Koch, Dirk De Bièvre and William Maloney (eds), *Opening EU-Governance to Civil Society: Gains and Challenges*, CONNEX Report Series Vol. 5 (University of Mannheim 2008).

[923] Coffey International Development and Deloitte, *Evaluation of DG TRADE's Civil Society Dialogue: Final Report* (European Union 2014) 14 <http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152927.pdf> accessed 8 February 2015.

[924] *Ibid*, 10.

[925] Euréval, Matrix and Rambøll-Management, 'Evaluation of the Plan D / Debate Europe citizen consultation projects' (DG Communication, 1 September 2009) 53 <http://ec.europa.eu/dgs/communication/about/evaluation/documents/2009-debate-europe_en.pdf> accessed 11 February 2015; and International NGO Training and Research Centre, 'Support to Civil Society: Emerging Evaluation Lessons' (2013) 8 Evaluation Insights 11 <http://www.oecd.org/dac/evaluation/Evaluation%20Insight%20Civil%20Society%20FINAL%20for%20print%20and%20WEB%2020131004.pdf> accessed 20 January 2015.

account by policy-makers, may also be a condition for continued commitment by CSOs.[926] A recent survey proposes that all CSO partnerships should be based on 'appropriate monitoring and reporting systems' to more effectively demonstrate and communicate the results of CSO engagement.[927] It is noted that providing feedback is seen as a 'simple but extremely important way for policy-makers to demonstrate responsiveness'.[928] Such feedback on consultation processes can take the form of, for example, publicising the results of the consultations, following up on the impact through the social media, or organising a follow-up meeting.[929] Another, more structural, remedy suggested is the increased decentralisation of decision-making with more decisions to be made at the country levels,[930] to enable better follow-up to processes.

It is also notable that the CSOs lack access to the institutionalised accountability structures within the EU, with the only possible channels for seeking remedy being the political channels, and in 'serious, well-documented cases' the CJEU, which CSOs have not used in practice as effective accountability mechanisms to seek remedy for wrongful EU conduct.[931]

Similarly, it is important in terms of the impact, sustainability and effectiveness of CSO engagement that policies support a true partnership between CSOs and other local, national and international actors working on reform processes. Capacity building is important in this regard to empower CSOs to interact with national and local key institutions, including political bodies.[932] This relates to the call for an attitude shift in EU policies from an instrumental approach, toward a societal transformation perspective on CSO

[926] Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 2 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015.

[927] International NGO Training and Research Centre, 'Support to Civil Society: Emerging Evaluation Lessons' (2013) 8 Evaluation Insights 11 <http://www.oecd.org/dac/evaluation/Evaluation%20Insight%20Civil%20Society%20FINAL%20for%20print%20and%20WEB%2020131004.pdf> accessed 20 January 2015.

[928] Volont Europe, 'Effective consultation with citizens in the EU' (2010) VOLONT Europe Reports On No.2, 11 <http://www.volonteurope.eu/wp-content/uploads/2013/04/EffectiveConsultationwithCitizensintheEU.pdf> accessed 8 February 2015. A similar recommendation is voiced by Concord. See, Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 38 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

[929] Concord, 'Mutual Engagement between EU Delegations and Civil Society Organisations: Lessons from the Field' (2015) 38 <http://www.concordeurope.org/publications/item/406-the-eu-delegations-watch-report-2015> accessed 8 February 2015.

[930] Interview G4 (CSO representative).

[931] Karin Arts, 'A Human Rights-Based Approach to the ACP-EU EPAs: Issues and implications' in Gerrit Faber and Jan Orbie (eds), *Beyond Market Access for Economic Development: EU-Africa Relations in Transition* (Routledge 2009) 279, 295. For an account of the concept of accountability related to the CSOs, see, Alnoor Ebrahim, 'Accountability' in Helmut K. Anheier and Stefan Toepler (eds), *International Encyclopedia of Civil Society* (Springer 2010) 3, 3-8.

[932] Jean Bossuyt, 'Mainstreaming Civil Society in ACP-EU Development Cooperation' in Marjorie Lister and Maurizio Carbone (eds), *New Pathways in International Development: Gender and Civil Society in EU Policy* (Ashgate 2006) 123, 133.

engagement, recognising the importance of empowering CSOs to take ownership of their projects, and to act as true agents of change within societies.[933]

[933] *Ibid*, 134.

VI. Human Rights Defenders

A. General context

Ever since the General Assembly of the United Nations has acknowledged '[...] the valuable work of individuals, groups and associations in contributing to [...] the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals [...]',[934] the term 'Human Rights Defenders' (HRDs) has been established to describe the individuals and groups conducting such work.

While the previous FRAME report 7.1 already included a short synopsis regarding the EUs engagement with HRDs, this chapter will explore the various means, which are used by the EU to engage with HRDs more in-depth, focusing on analysing the instruments and mechanisms, which contribute to the aforementioned engagement. Special attention will be given to the effectiveness of the EU's engagement with HRDs and the question of whether the institutionalisation of the EU's engagement with HRDs has already reached a sufficient level or still needs to be strengthened. The analysis conducted in this chapter encompasses *inter alia* the EU's implementation instruments to engage with HRDs, the European Parliament's action, bilateral mechanisms between the EU and its Member States and cooperation mechanisms between the EU and relevant International Organisations. In order to get a complete picture of the EU's engagement with HRDs, this chapter will also encompass direct engagement of the EU with HRDs, such as EU liaison officers, as well as means of indirect engagement, such as diplomatic action in support of HRDs. Besides the question of how the EU engages with HRDs in practice, the question of the coherence and consistency of this engagement is a cross-cutting issue of the analysis. However, first the question of definition and typology of HRDs will be discussed and the EU's policy towards HRDs outlined.

1. Definition and Typology of HRDs

As previously mentioned in FRAME report 7.1 on the positive and negative human rights impacts of non-state actors (NSAs), the term 'human rights defender' has neither been exactly defined in the realm of international law, nor in the academic discourse.[935] While the notion 'human rights defender' itself has not been used in 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 in 1998,[936] it has been increasingly used since then and is nowadays an established term to describe persons or groups of persons who contribute to the promotion and the protection of universally recognised human rights.

[934] UNGA Res 53/144 (3 March 1998) UN Doc A/RES/53/144.
[935] Alice Nah, Karen Bennett, Danna Ingleton and James Savage, 'A Research Agenda for the Protection of Human Rights Defenders' (2013) 5(3) Journal of Human Rights Practice 401, 403pp.
[936] UNGA Res 53/144 (3 March 1998) UN Doc A/RES/53/144.

In its 'European Union Guidelines on Human Rights Defenders' (EU Guidelines), the EU has established its own definition of HRDs. This definition, which draws upon 'operative paragraph 1'[937] of the UN Declaration on Human Rights Defenders, defines HRDs as 'those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms'.[938] In addition, the EU Guidelines' HRD definition states that HRDs 'seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights' and that HRDs 'also promote and protect the rights of members of groups such as indigenous communities'.[939] However, the definition also encompasses a negative element, explicitly excluding all 'those individuals or groups who commit or propagate violence' from the EU Guidelines' HRD definition.[940] For the purposes of this chapter, the definition of the term 'HRD' from the abovementioned EU Guidelines' definition of HRDs will be used.

2. The EU's policy towards HRDs

The EU's policy towards HRDs has to be viewed in close connection with the EU's overall human rights policy. Since the entry into force of the Lisbon Treaty, the worldwide promotion of human rights is one of the main roles, which the EU has committed itself to according to its primary law.[941]

In order to analyse the EU's policy towards HRDs as a whole, however, one must look at the policies and statements of the most important EU institutions. The Council of the EU, for example, views HRDs as 'courageous individuals fighting for human rights worldwide' who 'frequently find themselves the target of oppression and coercion' and furthermore stated that the 'the EU will intensify its political and financial support for human rights defenders and step up its efforts against all forms of reprisals'.[942] The Commission 'supported almost 200 specific projects aimed at defending human rights and their defenders where they are most at risk'[943] under the EIDHR Regulation 2007-2013 and has even strengthened its commitment to protect and support HRDs within the framework of the subsequent EIDHR Regulation 2014-2020.[944] In its main HRD policy instrument, the EU Guidelines on Human Rights Defenders, the EU stresses, that the 'support for human rights defenders is already a long established element of the European Union's human rights external relations policy'.[945]

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[937] EU Council, 'EU Guidelines on Human Rights Defenders' (General Affairs Council 8 December 2008) para 2 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.
[938] *Ibid*, para. 3.
[939] *Ibid*.
[940] *Ibid*.
[941] See TEU, art 21(1).
[942] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (Luxembourg 2012) 3.
[943] Commission, 'Implementing Decision on the adoption of a special measure for the financing of the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR)' Annex 1, 2 <http://www.eidhr.eu/files/dmfile/AAP2014-AD1-11.pdf> accessed 27 February 2015.
[944] For the European Parliament's policy towards HRDs, see section VI C.
[945] EU Council, 'EU Guidelines on Human Rights Defenders' (General Affairs Council 8 December 2008) para 1 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.

This leads to the conclusion that the EU sees the protection and fostering of HRDs as an integral part of its human rights policy, which itself constitutes an important part of the EU's political agenda.

B. EU formulation and implementation instruments to engage with HRDs

The EU uses a broad range of instruments to engage with HRDs, with the EU Guidelines on HRDs as the central document for providing guidance to all relevant EU institutions regarding their engagement with HRDs. In this chapter, the most important formulation and implementation instruments of the EU's 'Human Rights and Democracy Policy Framework'[946] are analysed in the light of their contribution to the EU's engagement with HRDs. Besides the EU Guidelines on HRDs, the EU Strategic Framework and Action Plan on Human Rights and Democracy will be reviewed as well as the European Instrument on Democracy and Human Rights and other relevant instruments, institutions and mechanisms, which are part of the EU's engagement with HRDs.

1. The European Union Guidelines on HRDs

The EU Guidelines on HRDs, which were originally adopted in 2004 and revised and updated in 2008, are considered by the EU 'to be a central reference point in contacts with partner countries at all levels, most notably during human rights dialogues, as well as in multilateral human rights forums'.[947] The EU Guidelines' purpose is 'to provide practical suggestions for enhancing EU action in relation to [support for HRDs]'.[948] The Guidelines are 'providing operational guidance and making practical suggestions'[949] with regard to the EU's engagement with HRDs. Two main cornerstones of the EU Guidelines will be reviewed in this subchapter, namely the promotion of HRDs' rights in bilateral and multilateral fora and the role of Council Working Parties, with a focus on their contribution to the EU's engagement with HRDs. As this report aims to analyse the EU's engagement with HRDs through institutions and mechanisms, the consideration of other components of the EU Guidelines will be incorporated in the analysis of the institutions, mechanisms and instruments related to them, where appropriate.

a) Promotion of HRDs rights in bilateral and multilateral fora

In accordance with the provisions of the EU Guidelines, the EU also works 'towards better international protection of Human Rights Defenders in fora such as the UN Human Rights Council and General

[946] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 4.
[947] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 66.
[948] EU Council, 'EU Guidelines on Human Rights Defenders' (General Affairs Council 8 December 2008) para 1 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.
[949] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) 23. For more information on the EU Guidelines' development and history, see *ibid*, 22.

Assembly, and through processes like the Universal Periodic Review'.[950] Indeed, the 'promotion of respect for human rights defenders in relations with third countries and in multilateral fora' is one of the EU Guidelines' six main 'ways and means to effectively work towards the promotion and protection of human rights defenders in third countries' encompassed in the 'operational part' of the EU Guidelines.[951] The EU Action Plan on Human Rights and Democracy of 2012 aims to 'promote improved access by the human rights defenders to the UN regional human rights protection mechanism' and also deal with the issue of reprisals against defenders using such mechanisms.[952] The EU Annual Report on Human Rights and Democracy in the World in 2013 mentions only a close cooperation with International Organisations and UN mandate-holders on the issue of HRDs.[953] However, there were several initiatives like a task force of EU and like-minded states to support NGOs participating in the UN Human Rights Council, also with regards to reprisals. The EU advocates and promotes participation rights of HRDs in UN conferences and events and offers practical assistance with this, including financial support for the participation of CSOs/NGOs in UN processes. With regard to reprisals, the EU raises intimidation, harassment and violence facing civil society representatives cooperating or seeking to cooperate with the UN in bilateral relations and in the aftermath of special procedure visits to countries. In addition, the EU delegation to the UN in Geneva, together with the UN Office of the High Commissioner for Human Rights, has started a campaign in support of HRDs under the name #idefend.[954]

b) Role of Council Working Parties

The Council Working Parties, first and foremost COHOM, have an important role under the operational part of the EU Guidelines. COHOM, 'in close co-ordination and co-operation with other relevant Council Working Parties', is meant to 'keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders'.[955] COHOM's 'successive evaluations have led to the revision of the Guidelines

[950] European External Action Service, 'What does it take to stand up for human rights? A tribute to Human Rights Defenders, Permanent Delegation of the European Union to the UN Office and other international organisations in Geneva' (Geneva, 2 December 2014) <http://eeas.europa.eu/delegations/un_geneva/press_corner/all_news/news/2014/20141202_hrds_en.htm> accessed 21 December 2014.

[951] EU Council, 'Ensuring Protection – European Union Guidelines on Human Rights Defenders' (General Affairs Council, 8 December 2008) 3, para. 7 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.

[952] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012) Annex II, para. 18 (b).

[953] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 66.

[954] European Union, '#idefend – Making sure civil society has its voice' <http://idefend-campaign.net> accessed 30 March 2015.

[955] *Ibid*, para. 14.

in 2008'.[956] A 'task force on human rights defenders' exists as a subdivision of COHOM.[957] The topic of HRDs is regularly on the agenda. In 2014, members of COHOM had the opportunity to meet HRDs 'in the margin of the meeting' at least five times.[958]

2. EU Strategic Framework and Action Plan on Human Rights and Democracy

The EU Strategic Framework on Human Rights and Democracy (Strategic Framework), which was adopted on 25 June 2012[959] 'sets out the principles, objectives and priorities of EU policy in this field'.[960] In order to properly implement the Strategic Framework, an Action Plan on Human Rights and Democracy (Action Plan) has been adopted along with the Strategic Framework, which was originally set to run until the end of 2014. The Action Plan 'constitutes the main instrument in the implementation of the EU's human rights and democracy policy',[961] as it translates the policies outlined in the Strategic Framework into a concrete set of actions.

The Action Plan adopted in 2012 came to the end of its term in 2014 and the EU is working on a new Action Plan at the time of the writing of this report. In a letter, the Chair of the European Parliament Subcommittee on Human Rights (DROI), stresses the need for a 'new, ambitious and strategically designed Action Plan'.[962]

a) Benchmark actions to take on behalf of HRDs

The Action Plan contains 36 outcomes aimed at the implementation of the Strategic Framework, each of them to be reached by one or several defined actions. This subsection analyses the benchmark actions derived from the Strategic Framework and Action Plan, which are the most relevant for the EU's engagement with HRDs, namely human rights focal points and EU liaison officers on HRDs. However, the

[956] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 125.

[957] Government of the Netherlands, 'Action Plan for Human Rights Defenders' AVT12/BZ105247B (15 June 2012) <http://www.government.nl/files/documents-and-publications/reports/2012/06/15/action-plan-for-human-rights-defenders/action-plan-for-human-rights-defenders.pdf> accessed 29 December 2014, 1.

[958] EU Council, 'Notice of Meeting and Provisional Agenda' CM 1300/14 <http://data.consilium.europa.eu/doc/document/CM-1300-2014-INIT/en/pdf> accessed 30 March 2015.

[959] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012) Annex II.

[960] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 5.

[961] *Ibid*, 28.

[962] European Parliament, 'A new, ambitious EU Action Plan on human rights is needed-letter sent to Federica Mogherini' (Brussels, 16 December 2014) <http://www.europarl.europa.eu/document/activities/cont/201412/20141216ATT95330/20141216ATT95330EN.pdf> accessed 29 December 2014.

Action Plan also contains the development and implementation of the so-called 'shelter initiative', for HRDs at risk, which is dealt with under section 3.b. Furthermore, there is a commitment to promote improved access by HRDs to the United Nations and regional human rights protection mechanisms and also to address reprisals against defenders engaging with those mechanisms.[963] In view of the increasing number of incidents of harassment of HRDs by authoritarian governments, this action has become increasingly important, but cannot be elaborated on in the limited space available.

(1) HR focal points in EU Delegations

The completion of 'a network of focal points on human rights and democracy in EU Delegations and CSDP missions and operations' is one of the actions within the framework of the Action Plan.[964] These focal points are 'responsible for dealing with Democracy and Human Rights issues in their countries',[965] such as interacting with HRDs, for example, with regard to requests for small grants by the latter. All EU delegations and CSDP missions and operations had nominated human rights focal points by the end of 2013.[966] The publication of the contact details of the human rights focal points of all EU missions is required by the EU Action Plan on Human Rights and Democracy in order to achieve an 'effective support to Human Rights Defenders'.[967] Contact details for the focal points are published on the EIDHR homepage subdivided into regional groups. 22 focal points exist in the 'Asia, Central Asia and Pacific Islands' region, 14 in the 'Eastern European partners and Russia' region, 20 in 'Latin America, Central America and Caribbean', 12 in 'Middle East and Northern Africa' and 34 in Sub-Saharan Africa, accounting for a global total of 102 focal points.[968] While all of those 102 focal points have a published 'operational contact', 82 focal points have in addition named a 'political contact'.[969] A country study, assessing the implementation of the EU Guidelines in Kyrgyzstan, Thailand and Tunisia, indicates that the appointment of the human rights focal points has been a success.[970] The establishment of the human rights focal points has significantly strengthened the EU's institutional capacities to engage with HRDs.

(2) EU Liaison Officers on HRDs

[963] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012) action 18.
[964] *Ibid*.
[965] Commission, 'Democracy and Human Rights, Focal Points' < http://www.eidhr.eu/focal-points> accessed 22 December 2014.
[966] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 37.
[967] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (Luxembourg 2012) 15.
[968] Commission, 'Democracy and Human Rights, Focal Points' <http://www.eidhr.eu/focal-points> accessed 22 December 2014.
[969] *Ibid*.
[970] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) 9.

The establishment of 'dedicated liaison officers'[971] in EU diplomatic missions, which act as 'first point of contact' for local HRDs, can be considered the EU's most specialised and ambitious undertaking with regard to the EU's direct engagement with HRDs. The appointment of the liaison officers is one of the suggested measures in the 'operational guidelines' part of the EU Guidelines.[972] A study concerned with the implementation of the EU Guidelines indicates that the appointment of EU liaison officers has been a success, however it is still unclear how time to liaise with HRDs is allotted or what the job description entails.[973] This means that diplomats appointed as liaison officers on HRDs must be aware of their responsibilities with regard to the engagement with HRDs and dedicate an appropriate share of their overall work time to HRDs. The Executive Director of Front Line Defenders, an NGO 'with the specific aim of protecting human rights defenders at risk',[974] stated that the EU liaison officers on HRDs 'have in many cases demonstrated a commendable sense of responsibility and ownership'.[975] This view is underpinned by numbers, as Front Line Defenders received replies for more than 70% of the cases which they raised with the EU, with positive replies in close to 50% of the cases, which means 'that the EU took concrete action to support the human rights defender in question'.[976] A recent example of such concrete action is the EU's appeal to release human rights defender Pierre Claver Mbonimpa in Burundi.[977]

Publishing the liaison officers' contact details on the websites of the EEAS and the EU Delegations is one of the actions set out in the Action Plan on Human Rights and Democracy that is designed to provide effective support to HRDs.[978] By the end of 2013 'in most delegations, specific liaison officers on human rights defenders have been nominated, and contact details have been published on their websites'.[979] However, as of January 2015, not all EU Delegations have published the contact details of a liaison officer on HRDs at their delegation's pages on the eeas.europa.eu web presence. Indeed, HRD organisations are reporting, in interviews we conducted, that the focal points are not always sufficiently known, as are the Guidelines on HRDs. Criticism was also expressed that the responsible persons are frequently changing, leaving gaps until a new person is appointed and are not always sufficiently responsive to the needs expressed by HRDs.[980]

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[971] European External Action Service, 'The EU's policy on Human Rights Defenders' <http://eeas.europa.eu/human_rights/defenders/index_en.htm> accessed 22 December 2014.

[972] EU Council, 'Ensuring Protection – European Union Guidelines on Human Rights Defenders' (General Affairs Council, 8 December 2008) 5, para. 10 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.

[973] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) 9.

[974] Front Line Defenders, 'About Front Line Defenders' <http://www.frontlinedefenders.org/about-front-line> accessed 29 December 2014.

[975] Mary Lawlor, Executive Director of Front Line Defenders, '10th Anniversary of the EU Guidelines on Human Rights Defenders: Lessons to Date and Looking to the Future' (Seminar Celebrating 10th Anniversary of EU HRD Guidelines, Brussels, 17 June 2014) <https://www.frontlinedefenders.org/files/remarks_mary_lawlor.pdf> accessed 29 December 2014, 1.

[976] *Ibid*.

[977] Front Line Defenders, '2015 Annual Report - Human Rights Defenders in the Balance' 2 <http://www.frontlinedefenders.org/files/annual_report_2014_final_revised.pdf> accessed 27 March 2015.

[978] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012) 15.

[979] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 37.

[980] Interviews G8, G6 and G7.

In some countries the tasks are shared with missions of Member States, which take certain responsibilities, for example for a region of the country at stake.[981] In such cases, it appears crucial that the EU and Member States involved do 'speak with one voice', i.e. act in a coherent way.[982] Also, while supporting individual HRDs, structural problems of human rights should not be neglected.[983]

In practice, it is not always easy to get the full commitment for HRDs from mission staff, who are only there for a few years and also have to carry out various other tasks.[984] The liaison officers may have to work with marginalised groups in the third country, such as religious minorities, immigrants, LGBTI, and face opposition from the local government to such engagement. Here the role of the head of delegation can be crucial. One other problem is to keep the track record, the institutional memory, when there is a change of staff, for which purpose a 'logbook' can be useful.

In general, the access of HRD organisations to the competent staff at the headquarters of the EU in Brussels, where regular briefings and consultations take place, is considered to be quite good, while it varies on the ground.[985] HRD NGOs feel less informed when it comes to issues involving other sectors like trade and human rights.[986] However, some interlocutors from HRD organisations also regret that decision-making is centred in Brussels too much and would prefer more decisions on cooperation or support to be taken on the ground, where a closer relationship exists with the organisations or individuals in need of support.[987]

b) Human Rights Country Strategies

In the Strategic Framework, the EU states that it will 'place human rights at the centre of its relations with all third countries, including its strategic partners'.[988] In order to implement this commitment, the Action Plan contains a section on 'Impact on the ground through tailor-made approaches', in which human rights country strategies (HRCS) play a central role.[989] The Action Plan emphasises that development of local HRCS should be continued and any lessons learned should be assessed and taken into account in human rights and political dialogues at all levels. Furthermore, the Action Plan calls on the EEAS, the Commission and the Member States to ensure that 'human rights country strategies are effectively mainstreamed'.[990]

[981] Interview G1.
[982] Interview G7.
[983] *Ibid*.
[984] Interviews G3 and G4-G7.
[985] Interviews G1-7.
[986] Interviews G6 and G7.
[987] Interviews G5 and G7.
[988] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (Luxembourg 2012) 3.
[989] *Ibid*, 22.
[990] *Ibid*.

In 2013, almost 150 HRCS were adopted.[991] To be more precise, 146 strategies were drafted, and 123 were given final endorsement by the Council of the EU's Political and Security Committee.[992]

The main idea of the HRCS is to create an EU human rights policy tool, which is tailored to the specific human rights situation in the respective country, while at the same time integrating the various Guidelines (including the EU Guidelines on HRDs) in one single strategy.[993] Before HRCS had been introduced, some EU Missions already had adopted 'Local Strategies on HRDs', which were often developed in consultation with HRDs. Most of the EU Local Strategies on HRDs have already been integrated into the HRCS in the meantime. When it comes to the implementation of the HRCS, the human rights focal points play a 'crucial role'.[994] This underlines once more the strong interrelationship between different EU institutions, instruments and policies, when it comes to the EU's engagement with HRDs. Because HRCS as well as EU Local Strategies on HRDs are 'EU restricted documents' and therefore available for EU internal use only, it is not possible to conduct a more detailed analysis of the tool with regard to HRDs. However, the EU claims that the local civil society is informed about the main elements of the HRCS.[995] The main tools used are regular discussions on the situation of HRDs in (joint) meetings of the EU missions, regular, at least annual meetings with HRDs, invitations to consultations or pertinent events like fact-finding missions, trial monitoring, prison visits and follow up with authorities, for example by démarches on perceived human rights violations, as well as reporting on the situation to EU headquarters. As the HRCS is now the core document for each of the EU missions' human rights related work, it will be crucial for the EU's engagement with HRDs to appropriately reflect the EU's commitment to HRDs within its framework.

c) EU Special Representative for Human Rights

With the appointment of Mr Stavros Lambrinidis as EU Special Representative (EUSR) for Human Rights in July 2012,[996] the EU appointed its first thematic EUSR, 'which reflects the EU's strong commitment to advocate for human rights worldwide'.[997] The appointment of the EUSR was initially limited until 30 June 2014,[998] but has since been extended until 28 February 2017.[999]

[991] EU Council, '2013 sees strengthened EU human rights policy' (Luxembourg 23 June 2014) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/143317.pdf> accessed 22 December 2014.
[992] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 15.
[993] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) 29.
[994] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union, 2014) 15.
[995] Interview G1.
[996] Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L 200/21.
[997] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 37.
[998] *Ibid*, art 1.
[999] Council Decision 2015/260/CFSP of 17 February 2015 extending the mandate of the European Union Special Representative for Human Rights [2015] OJ L 43/29.

With regard to the Action Plan, the EUSR for Human Rights 'shall contribute to implementation of the action plan, in accordance with his/her mandate'.[1000] In conjunction with the fact that the EUSR for Human Rights' mandate encompasses *inter alia* an obligation to 'contribute to the implementation of the Union's human rights policy, in particular the EU Strategic Framework on Human Rights and Democracy and the EU Action Plan on Human Rights and Democracy [...]'[1001] and to 'contribute to the implementation of Union guidelines, toolkits and action plans on human rights [...]'.[1002] The EUSR for Human Rights is obliged to support the implementation of all direct or indirect measures of the EU's engagement with HRDs, in particular if encompassed in either the Strategic Framework and Action Plan, or in the EU Guidelines.

Indeed the EUSR for Human Rights since his appointment has actively worked towards the implementation of the HRD-related goals of the abovementioned instruments. He has also 'engaged extensively with local and international NGOs and human rights defenders in Brussels and around the world'.[1003] In 2013, the EUSR for Human Rights continued to thematically focus on 'protecting NGOs and human rights defenders and expanding the space in which they operate'.[1004] He also engaged with 'hundreds of representatives of international and local NGOs and human rights defenders both in Brussels and during his trips'.[1005] Unfortunately, there is no publicly available report on the activities of the EUSR, and hardly any information that would allow us to assess the impact of his work.

3. European Instrument for Democracy and Human Rights

As the successor to the European Initiative for Democracy and Human Rights (2000-2006), the European Instrument for Democracy and Human Rights (EIDHR)[1006] is a thematic financial instrument established in 2006, it aims 'to provide support for the promotion of democracy and human rights in non-EU countries'[1007] and with an initial budget of 1.10 billion Euro for its 2007-2013 period[1008] and a subsequent budget of 1.33 billion Euro for the 2014-2020 period.[1009] In the EIDHR 2007-2013 period, 134.2 million Euro has been allocated to fund projects aimed at 'defending human rights and their defenders where

[1000] EU Council, *EU Strategic Framework and Action Plan on Human Rights and Democracy* (European Union 2012) 5.
[1001] Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights (2012) OJ L 200/21, art 3 (a).
[1002] *Ibid*, art 3 (b).
[1003] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012* (European Union 2013) 11.
[1004] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 14.
[1005] *Ibid*, 32.
[1006] For a more detailed analysis of the EIDHR's implementation, see: Veronique Arnault, 'Implementation of the European Instrument for Democracy and Human Rights (EIDHR)' in Wolfgang Benedek, Wolfram Karl, Anja Mihr, Manfred Nowak (eds), *European Yearbook on Human Rights 2009* (Cambridge 2009) 99-107.
[1007] Commission, 'Democracy and Human Rights, Small Grants' <http://www.eidhr.eu/whatis-eidhr> accessed 22 December 2014.
[1008] European Parliament and Council Regulation (EU) 1889/2006 of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide [2006] OJ L 386/1, art 19.
[1009] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85, art 10.

they are most at risk'.[1010] In its first 'special measure' under the revised EIDHR regulation 2014-2020, the EIDHR allocated 20.5 million Euro to the action 'Supporting Human Rights and their Defenders where they are the most at risk' for 2014.[1011] The EIDHR also seeks complementarity in its relationships with other donors, such as the UN Office of the High Commissioner for Human Rights.[1012]

The importance of the EIDHR with regard to the EU's engagement with HRDs cannot be underestimated. 'The personal and professional security of HRDs' is the 'the first and foremost priority of the EIDHR' with regard to the EU's engagement with HRDs via the EIDHR.[1013] Four main means of engagement with HRDs within the scope of the EIDHR will be examined more closely: the small grants programme; the temporary relocation system; the EU-HRD mechanism; and the EU-NGO forum on human rights. In addition, there are also EIDHR focal points in EU delegations, which are partly merged with the focal points for HRDs. There is an annual meeting of the focal points to exchange experiences and discuss new challenges.[1014]

a) Small grants programme to HRDs in need of urgent support

The small grant system under the EIDHR allows the Commission to give direct small grants of up to 10,000 Euro to HRDs who are in need of urgent support, for reasons such as medical expenses, purchase of security materials, costs of legal representation and similar expenses which are connected with the individuals' or organisations' work as HRDs.[1015] Requests by HRDs in need of these emergency funds are dealt with in confidence and are to be directed at either the local EU delegation (focal point, see B.2.a.i) or the EIDHR directly, via an email address provided at the EIDHR's homepage.[1016] The funds allocated for emergency individual grants rose steadily and significantly during the last years, from less than 50,000

[1010] Commission, 'Delivering on Human Rights Defenders', 6 <http://www.eidhr.eu/files/dmfile/EIDHR_DeliveringonHumanRightsDefenders_Report.pdf> accessed 22 December 2014.

[1011] EIDHR, 'Special Measure concerning the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR) to be financed under budget line 21 04 01 of the general budget of the European Union', 6 <http://www.eidhr.eu/files/dmfile/SpecialMeasureconcerningtheWorkProgramme2014fortheEuropeanInstrumentforDemocracyandHumanRights.pdf> accessed 24 December 2014.

[1012] EIDHR, 'Annex 1 of the Commission Implementing Decision on the adoption of a special measure for the financing of the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR), Action Document for Support to Human Rights and Human Rights Defenders in situations where they are most at risk', 3 <http://www.eidhr.eu/files/dmfile/AAP2014-AD1-11.pdf> accessed 24 December 2014.

[1013] Commission, 'Delivering on Human Rights Defenders', 9 <http://www.eidhr.eu/files/dmfile/EIDHR_DeliveringonHumanRightsDefenders_Report.pdf> accessed 22 December 2014.

[1014] Interview G1.

[1015] Commission, 'Democracy and Human Rights, Small Grants' <http://www.eidhr.eu/side-panels/human-rights-defenders/small-grants > accessed 22 December 2014.

[1016] *Ibid*.

Euro in 2010 to over 300,000 Euro in 2012.[1017] Since the small grant's introduction in 2010, more than 300 'HRDs and organisations' have received such grants, which in sum exceeded 1.1 million Euro.[1018]

b) *Temporary relocation system*

In 2009 an initiative to provide temporary shelter to HRDs was introduced by the Czech EU Presidency.[1019] The temporary shelter initiative also became part of the EU Action Plan and was to be completed in 2013. However, it is now part of the planned EU-HRD Mechanism to be discussed in section c. The EU's temporary relocation initiative for HRDs started to gain momentum in 2012,[1020] when the Commission published a study, which aimed to 'provide an overview of the existing shelter programmes with a focus on shelter initiatives in the EU and to identify their strengths, weaknesses, gaps and constraints'.[1021] One million Euro was earmarked for the pilot phase in the EIDHR Annual Action Programme (2012-2013).[1022] Once the EU-HRDs mechanism is established, temporary relocation of HRDs will be part of it, including the management of a temporary relocation platform. One difficult issue in this context is the problem of obtaining visas for the HRDs to be relocated.[1023]

c) *EU HRDs Mechanism*

While the EU itself clearly has its own definition of what should constitute an EU HRDs mechanism,[1024] other actors, like the UN Special Rapporteur on the situation of HRDs, also consider documents, like the EU Guidelines on HRDs, as human rights mechanisms, which can and should be utilised by HRDs.[1025] Therefore it must be clarified that the term 'EU HRDs Mechanism', referred to in this sub-chapter, refers

[1017] Commission, 'Delivering on Human Rights Defenders', 9 <http://www.eidhr.eu/files/dmfile/EIDHR_DeliveringonHumanRightsDefenders_Report.pdf> accessed 22 December 2014.

[1018] EIDHR, 'Annex 1 of the Commission Implementing Decision on the adoption of a special measure for the financing of the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR), Action Document for Support to Human Rights and Human Rights Defenders in situations where they are most at risk', 3 <http://www.eidhr.eu/files/dmfile/AAP2014-AD1-11.pdf> accessed 24 December 2014.

[1019] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 128.

[1020] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012* (European Union 2013) 78.

[1021] GHK Consulting Ltd/ HTSPE, 'Mapping of temporary shelter initiatives for Human Rights Defenders in danger in and outside the EU', Final Report (February 2012) 1 <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/504_mapping_/504_mapping_en.pdf > accessed 22 December 2014.

[1022] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 78.

[1023] Interview G1.

[1024] See: EIDHR, 'Annex 1 of the Commission Implementing Decision on the adoption of a special measure for the financing of the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR)' <http://www.eidhr.eu/files/dmfile/AAP2014-AD1-11.pdf> accessed 2 March 2015.

[1025] UNHRC, 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (2013) UN Doc A/HRC/25/55, 16.

exclusively to the EIDHR 'Human Rights Defenders Mechanism' which will be established in accordance with Regulation (EU) No 235/2014 (EIDHR 2014-2020 period). This regulation foresees the establishment of an EU HRDs mechanism 'including longer-term assistance and access to shelter'.[1026] Complementarity with existing initiatives should be achieved and duplication of existing initiatives should be avoided by 'setting up coordination mechanisms to enhance synergies'.[1027]

In December 2014, the Commission published an open call for proposals 'Establishing a European Union Human Rights Defenders Mechanism' under the EIDHR.[1028] The global objective of the call is 'the establishment of a EU [sic] comprehensive human rights defenders mechanism addressing the most difficult situations faced by human rights defenders in the world and providing support to the local actors who strive to promote and defend them'.[1029] The call also has specific objectives, namely: '(i) to ensure a stable and comprehensive EU support to HRDs; (ii) to manage the EU temporary relocation initiative; and (iii) to strengthen the coordination between HRDs' initiatives and actors supported by EIDHR'.[1030]

As a comprehensive EU HRDs mechanism, action will include a broad range of measures, such as a permanent 24/7 helpline for HRDs, physical/digital protection, urgent relocation, medical support and rehabilitation, legal support, support to families, urgent monitoring and reporting, urgent advocacy, follow-up of individual cases, training on risk prevention and security, temporary relocation and advocacy for pro-HRDs legislative frameworks.[1031] It should avoid 'duplication with on-going programmes/projects' and therefore be complementary to them.[1032] One grant will be awarded under the call, which will fall between 14 and 15 million Euro[1033] and the initial phase will be 36 months.[1034] In addition, there are EIDHR funds available for HRDs on a country-by-country basis. One major problem in this context is still the complexity of the application process in spite of efforts to make it easier.

Once established, the EU HRDs mechanism has the potential to be a comprehensive and effective tool for the EU to increase support and protection for HRDs worldwide, however it will be crucial for the success of the EU HRDs mechanism to disseminate the information about the mechanism to the HRDs who are in the most difficult situations worldwide.

[1026] European Parliament and Council Regulation (EU) 235/2014 of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide [2014] OJ L 77/85, art 2.1 (b) (iii).
[1027] Commission, 'Establishing a European Union Human Rights Defenders Mechanism, Open Call for Proposals 2014, Guidelines for grant applicants' (DG DEVCO, 3 December 2014) 6 <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?ADSSChck=1425290260269&do=publi.getDoc&documentId=145307&pubID=136316> accessed 2 March 2015.
[1028] *Ibid*, 4.
[1029] *Ibid*.
[1030] *Ibid*, 5.
[1031] *Ibid*.
[1032] *Ibid*, 6.
[1033] *Ibid*, 14.
[1034] *Ibid*, 18.

d) EU-NGO Forum on Human Rights

The EU-NGO Forum on Human Rights is an annual conference, which is organised by the EEAS and the Commission and financed by the EIDHR. It 'provides a venue for direct interaction and in depth discussion between representatives of global civil society and the EU institutions, EU Member States and international organizations on various topics related to the promotion and protection of human rights'.[1035] Therefore, HRDs constitute a part of the thematic area covered by the EU-NGO Forum on Human Rights. Indeed, the 15th annual EU-NGO Forum, held in December 2013, 'focused on the issue of accountability in the fight against impunity and the role of human rights defenders in defending economic, social and cultural rights'.[1036] The 16th EU-NGO Forum also had a focus on HRDs as a cross-cutting issue, while one of its nine panels specifically dealt with the topic of 'freedom of expression, people at risk and human right defenders'.[1037] HRDs from around the world, along with NGOs supporting HRDs within EU Member States, participated in the Forum and exchanged their 'experiences on the ground'.[1038] This Forum also facilitated direct contact with EU staff, who were actively involved in all panels.

The EU-NGO Forum on Human Rights can therefore be seen as contributing to both the EU's direct and the EU's indirect engagement with HRDs. While the participation of HRDs and their direct interaction with representatives of various EU instruments and institutions is part of the EU's direct engagement with HRDs, the contribution of the Forum to the development of new policies and the potential for coordination and cooperation between different international mechanisms, organisations and institutions which are thematically dealing with HRDs, is part of the EU's indirect engagement with HRDs.

4. Instrument contributing to Stability and Peace

The Instrument contributing to Stability and Peace (IcSP), which has since March 2014 succeeded the Instrument for Stability (IfS),[1039] can be mobilised by the EU for 'urgent short-term actions in response to situations of crisis or emerging crisis' as well as for 'longer-term capacity building of organisations engaged in crisis response and peace-building'.[1040] The budgetary allocation for the IcSP's implementation between

[1035] European External Action Service 'EU – NGO Forum on Human Rights' <http://www.16th-ngo-forum-human-rights.eu> accessed 25 December 2014.
[1036] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 32.
[1037] European External Action Service, 'EU – NGO Forum on Human Rights' <http://www.16th-ngo-forum-human-rights.eu/downloads/DRAFT%20AGENDA%20NGO%20FORUM%202014%20-%2025%20NOVEMBER.pdf> accessed 13 January 2015.
[1038] European External Action Servie, 'The fight against impunity and economic, social and cultural rights: 15th EU-NGO Human Rights Forum' (Brussels, 6 December 2013) 1 <http://eeas.europa.eu/statements/docs/2013/131206_02_en.pdf> accessed 26 December 2014.
[1039] Commission, 'Service for Foreign Policy Instruments, What we do, Instrument contributing to Stability and Peace, preventing conflict around the world' <http://ec.europa.eu/dgs/fpi/what-we-do/instrument_contributing_to_stability_and_peace_en.htm> accessed 2 January 2015.
[1040] *Ibid*.

2014 and 2020 is 2.34 billion Euro.[1041] Although engagement with HRDs through the IcSP is not explicitly an element of the IcSP's objectives, human rights are seen as a cross-cutting issue, which shall be 'included, where possible'[1042] and 'support for measures to promote and defend respect for human rights and fundamental freedoms [...]'[1043] is mentioned as one of the activities which can be supported by technical and financial assistance via the IcSP. Therefore, in circumstances in which the IcSP is activated by the EU, it is possible that the EU engages with HRDs via the IcSP and that the EU supports them within the possibilities of the IcSP's overall legal framework.

5. European Neighbourhood Instrument

The European Neighbourhood Instrument (ENI), which in 2014 replaced its predecessor, the European Neighbourhood and Partnership Instrument, supports the EU's European Neighbourhood Policy and is worth over 15 billion Euro from 2014-2020.[1044] Although engagement with HRDs is not an explicit objective within the ENI regulatory framework, 'promoting human rights and fundamental freedoms' is one of the particular targets of Union support via the ENI.[1045] Therefore, programmes funded through ENI can encompass engagement with HRDs, within the possibilities of the ENI's overall legal framework.

C. The European Parliament's action

The European Parliament (EP), which is regarded by the EU Council as an 'outspoken supporter of human rights defenders',[1046] engages with HRDs via both direct and indirect means. This sub-chapter encompasses the most important means of the EU's engagement with HRDs through the EP.[1047]

1. Subcommittee on Human Rights

The EP's Subcommittee on Human Rights (DROI) is very actively engaged with HRDs. For example it regularly invites human rights defenders to its sessions.[1048] In November 2013, Mandira Sharma, a leading human rights activist from Nepal, was a guest speaker at a DROI meeting on the topic of 'Exchange of

[1041] European Parliament and Council Regulation (EU) 230/2014 of 11 March 2014 establishing an instrument contributing to stability and peace [2014] OJ L 77/1, art 13.
[1042] *Ibid*, art 2 4. (b).
[1043] *Ibid*, art 3 2. (m).
[1044] EU Neighbourhood Info Centre, 'The European Neighbourhood Instrument (ENI)' <http://www.enpi-info.eu/ENI> accessed 2 January 2015.
[1045] European Parliament and Council Regulation (EU) 232/2014 of 11 March 2014 establishing a European Neighbourhood Instrument[2014] OJ L 77/27, art 2 2. (a).
[1046] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 67.
[1047] See also Wolfgang Benedek, 'EU Action on Human and Fundamental Rights in 2012' in Wolfgang Benedek, Wolfram Karl, Manfred Nowak, Florence Benoît-Rohmer, Matthias Kettemann (eds) *European Yearbook on Human Rights 2013* (Cambridge 2013) 63.
[1048] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 67.

views on the Human rights situation in Nepal before the November elections'[1049] and in December 2013, Chen Guangfu, a Chinese human rights activist, was invited to participate in the DROI meeting on an 'Exchange of views on human rights in China',[1050] to mention just two examples out of the many HRDs who have participated in DROI meetings over the past number of years. DROI also successfully called on the EEAS 'to set up human rights focal points' and to 'identify human rights defender liaison officers in all third countries'.[1051] DROI also organised hearings on the issue of HRDs (see below section 3. Hearings.) The EP's Subcommittee on Human Rights was also responsible for the creation of the DROI report on 'EU policies in favour of human rights defenders (HRDs)', which was adopted by the EP in June 2010.[1052] DROI views the annual Sakharov Prize for Freedom of Thought as a 'highlight' of its work.[1053]

2. Resolutions

The EP regularly adopts resolutions addressing the issue of HRDs. One recent example is the EP's resolution of 18 September 2014 on the persecution of HRDs in Azerbaijan. The EP criticised *inter alia* 'a major escalation of government repression, pressure and intimidation directed at [...] human rights defenders' in Azerbaijan, as well as the fact that 'the government has targeted some of the country's most prominent human rights defenders' and called on 'the authorities in Azerbaijan to guarantee the physical and psychological integrity of Leyla Yunus, Arif Yunusov and all human rights defenders in Azerbaijan', furthermore stating 'that its consent to the signature of a partnership agreement with Azerbaijan will be conditional on the satisfactory reflection of the above-mentioned requirements, [*inter alia*] the release of human rights defenders'.[1054] Another example is the EP resolution of 16 January 2014 on the situation of HRDs and opposition activists in Cambodia and Laos.[1055]

While resolutions explicitly concentrating on HRDs, such as the two mentioned above, have been rather rare during the last decade, with the two resolutions explicitly aimed at HRDs during 2014 being the exception to the rule, there were 142 EP resolutions on various topics in the EP's 2009-2014 term addressing the issue of HRDs alongside their main topic. Examples include the EP resolution of 16 January 2014 on recent moves to criminalise lesbian, gay, bisexual, transgender and intersex (LGBTI) people, in which the EP calls on 'the Commission, the EEAS and the Member States to lend all possible assistance to

[1049] European Parliament, *Subcommittee on Human Rights, Activity Report - 7th parliamentary term 2009-2014* (European Union 2014) 114.
[1050] *Ibid*, 116.
[1051] European Parliament, *Subcommittee on Human Rights, Activity Report - 7th parliamentary term 2009-2014* (European Union 2014) 8.
[1052] *Ibid*, 11.
[1053] European Parliament, 'DROI, Welcome' <http://www.europarl.europa.eu/committees/en/droi/home.html> accessed 2 January 2015.
[1054] European Parliament Resolution of 18 September 2014 on the persecution of human rights defenders in Azerbaijan 2014/2832(RSP).
[1055] European Parliament Resolution of 16 January 2014 on the situation of rights defenders and opposition activists in Cambodia and Laos 2014/2515(RSP).

NGOs and human rights defenders'[1056] and the EP resolution of 10 October 2013 on caste-based discrimination, in which the EP stresses 'the need to promote an enabling environment for civil society and human rights defenders working with people affected by caste discrimination'.[1057]

3. Hearings

Public hearings are one of the direct forms of the EP's engagement with HRDs. For example, in June 2011, the EP's Subcommittee on Human Rights held a hearing on LGBTI rights in the world, in which MEPs, EP staff, Commission staff, ambassadors and members of the public heard from HRDs and other experts, about the human rights of LGBTI people worldwide.[1058] In 2013, 'DROI hearings, often arranged jointly or in association with other relevant committees or inter-parliamentary delegations, welcomed several UN Special Rapporteurs on human rights, and other representatives of UN human rights bodies as well as prominent human rights defenders'.[1059] A public hearing on 'EU Support to Human Rights Defenders' took place in January 2010 and a 'Hearing on China, in particular the situation of Human Rights Defenders' took place in July 2011.[1060]

4. Correspondence

When it comes to raising individual cases to authorities involved, correspondence often is the means of choice, e.g. 'by the President of the Parliament or the Chair of a parliamentary delegation or the Chair of the Subcommittee on Human Rights'.[1061] The EP sends numerous démarches to governments expressing concern on the situation of HRDs.

5. Reports

During the EP's 2009-2014 term, there was one EP report explicitly aimed at the issue of HRDs[1062] and 43 EP reports dealing with HRDs as part of their main topic, e.g. the report on the situation of human rights in the Sahel region.[1063] Since the beginning of the current 2014-2019 term, there has been one EP report

[1056] European Parliament Resolution of 16 January 2014 on recent moves to criminalise lesbian, gay, bisexual, transgender and intersex (LGBTI) people 2014/2517(RSP).
[1057] European Parliament Resolution of 10 October 2013 on caste-based discrimination 2013/2676(RSP).
[1058] European Parliament's Intergroup on LGBT Rights, 'Summary: LGBTI Rights in the World' (EU Parliament, 7 July 2011) 20 <http://www.lgbt-ep.eu/intergroup-documents/summary-lgbti-rights-in-the-world> accessed 30 December 2014.
[1059] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 120.
[1060] European Parliament, *Subcommittee on Human Rights, Activity Report, 7th parliamentary term, 2009-2014* (European Union 2014) 35.
[1061] European Parliament, 'Report on EU policies in favour of human rights defenders' (2010) 2009/2199(INI).
[1062] *Ibid*.
[1063] European Parliament, 'Report on the situation of human rights in the Sahel region' (2013) 2013/2020(INI).

containing a reference to HRDs.[1064] In addition, the EP regularly reports on its activities on behalf of HRDs as part of the EU Annual Report on Human Rights and Democracy.[1065]

6. Delegations to third countries

Visits by European Parliamentarians to HRDs in field missions are 'widely appreciated by HRDs, and provide a platform for HRD voices (especially in remote areas) to be heard'.[1066] In 2013, the EP's delegation for relations with Belarus made two unsuccessful attempts to travel to Belarus in order to meet with HRDs and representatives of the opposition and civil society.[1067]

7. Sakharov Prize for Freedom of Thought

The annual Sakharov Prize for Freedom of Thought, which is endowed with 50,000 Euro, was established in 1988 to honour HRDs, individuals or organisations.[1068] In October 2013, the prize was awarded to later Nobel Prize winner and Pakistani campaigner for girls' education Malala Yousafzai. In 2014, Congolese gynaecologist Denis Mukwege was honoured for helping victims of sexual violence. The Sakharov Prize does not only honour the winner for his or her work with regard to the defence of human rights and freedom of expression, but also raises public awareness for the work of HRDs. Furthermore, the prize winners remain actively connected through a common network.

8. Scientific Studies

In 2013, the EP's DROI requested a study on 'Assessing the implementation of the EU guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia', which was conducted by Karen Bennett from the Human Rights and Social Justice Research Institute of London Metropolitan University.[1069] In several other scientific studies requested by DROI, the topic of HRDs was touched upon.

[1064] European Parliament, 'Report on the EU and the global development framework after 2015' (2014) 2014/2143(INI).
[1065] See, for example, EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 37, 120-143.
[1066] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) 12.
[1067] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 141.
[1068] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 128.
[1069] European Parliament, *Subcommittee on Human Rights, Activity Report, 7th parliamentary term, 2009-2014* (European Union 2014) 46.

D. The European External Action Services' and EU Missions action

Since 'the formation of the European External Action Service, human rights defenders have received renewed attention in EU external relations'.[1070] The EU's external engagement with HRDs through the EEAS and EU Missions[1071] became a cornerstone of the EU's engagement with HRDs in general and the most important channel of direct engagement of the EU with HRDs. Indeed, in addition to the other forms of direct engagement between the EEAS and the EU Missions, 'annual meetings between human rights defenders and EU diplomats have become an established practice'.[1072] However, as most of the direct means of the EU's engagement with HRDs through EEAS and EU Missions are covered in sub-chapter B (EU formulation and implementation instruments to engage with HRDs), this sub-chapter will focus on the most important indirect means of the EEAS's and EU Missions' engagement with HRDs, namely EEAS statements and Human Rights Dialogues.

The EEAS has undertaken other measures as well, which have a direct or indirect influence on the EU's engagement with HRDs, for example, when the EEAS introduced its new policy initiative of mandatory HRCSs, this can be viewed as strengthening 'the potential for improving implementation of the Guidelines'.[1073] Undoubtedly, the EU Missions play an extremely important role in the EU's engagement with HRDs, as they are the main institutional interface between the EU and local HRDs. When it comes to the implementation of the EU Guidelines and the overall EU policies with regard to HRDs, the main workload rests upon the EU missions, as they are the EU's main institutional point of contact for HRDs, be it via the HR focal points or be it via the EU liaison officers on HRDs. In addition, it falls under the responsibility of the EU missions to monitor the situation of HRDs and to report about it, in accordance with the EU Guidelines. However, given the limited capacity of EU delegations, activities regarding HRDs are often undertaken in cooperation with Member States as explained above.

1. EEAS Statements, Declarations and Démarches

In accordance with the EU's policy to support and protect HRDs, the EEAS uses several channels to communicate the EU's opinion on situations in which HRDs are threatened, imprisoned or otherwise hindered in their work for human rights and to call on third countries to end such conduct. For example, in March 2014 Catherine Ashton issued a statement regarding the death of Chinese HRD Ms Cao Shunli, reaffirming the EU's call on China to *inter alia* 'implement [...] the pledges before the Human Rights Council, by releasing all those imprisoned or detained for the peaceful expression of their views'.[1074] In

[1070] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) Abstract, 1.
[1071] The term 'EU Missions' covers both the EU Delegation and EU Member States' Embassies with regard to this subsection of WP 7.2. This terminology is also in line with the terminology of the EU Guidelines.
[1072] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 66.
[1073] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) 29.
[1074] Catherine Ashton, 'Statement regarding the death of Chinese Human Rights defender, Ms Cao Shunli' (Brussels, 21 March 2014) <http://eeas.europa.eu/statements/docs/2014/140315_02_en.pdf> accessed 2 March 2015.

June 2014, a statement 'on the release of Belarusian human rights defender Ales Bialiatski' welcomed the HRD's release, but also called on the Belarusian authorities for the 'release of all the remaining political prisoners'.[1075] Another example is the EEAS statement on the arrest of Rasul Jafarov in Azerbaijan from August 2014, in which the EU calls 'on the authorities in Azerbaijan to stand by the Council of Europe standards to which they are party'.[1076] Indeed, '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'.[1077]

With regard to the effectiveness of declarations and démarches, participants of a study dedicated to the assessment of the implementation of the EU Guidelines on HRDs from 2013, criticised the EU's use of public declarations as 'reactive rather than pre-emptive',[1078] meaning that, for example, diplomats often respond *after* HRDs have been sentenced and not *prior* to that. A few participants of the study were concerned about 'weak' statements.[1079] Another suggestion for improvement by study participants was that 'EU public declarations should articulate concerns about violations with more detailed reference to the law or specific human rights framework [sic]'.[1080] Accordingly, there is room for improvement in order to make EU action more effective.

2. Human Rights Dialogues and Consultations

The inclusion of the topic of HRDs in Human Rights Dialogues is based on the EU Guidelines, which state that 'the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary'.[1081] This part of the EU Guidelines already has been translated into practice, as for example in 2012 'cases involving individual human rights defenders were raised during 25 human rights dialogues'.[1082] This is also in line with the 'EU guidelines on human rights dialogues with third countries', which encompass 'protection of human rights defenders' as one of the issues to be discussed in the EU's human

[1075] European External Action Service, 'Statement by the Spokesperson on the release of Belarusian human rights defender Ales Bialiatski' (Brussels, 21 June 2014) <http://eeas.europa.eu/statements/docs/2014/140621_01_en.pdf> accessed 2 March 2015.
[1076] European External Action Service, 'Statement by Spokespersons on the arrest of Rasul Jafarov in Azerbaijan' (Brussels 6 August 2014) <http://eu-un.europa.eu/articles/en/article_15351_en.htm> accessed 2 March 2015.
[1077] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 126.
[1078] Karen Bennet, *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders - The cases of Kyrgyzstan, Thailand and Tunisia* (European Union 2013) 69.
[1079] *Ibid*.
[1080] *Ibid*, 70.
[1081] EU Council, 'Ensuring Protection – European Union Guidelines on Human Rights Defenders' (General Affairs Council, 8 December 2008) 6, para 11 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.
[1082] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 77.

rights dialogues.[1083] The importance of the inclusion of the issue of HRDs within the framework of human rights dialogues is also stressed by the EP, which stated in its December 2013 resolution on the Annual Report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter that 'human rights dialogues and consultations should be strengthening and supporting [*inter alia*] human rights defenders [...]'.[1084]

E. EU Member States bilateral mechanisms

Bilateral cooperation with EU Member States exists with regard to the financial aspect of the support for HRDs. For example, several EU Member States are amongst the donors of the 'Lifeline Embattled CSO Assistance Fund', which supports HRDs. The EU seeks complementarity with such other donors with regard to its EIDHR actions.[1085] The European Endowment for Democracy (EED), which was launched in 2012, constitutes another means of bilateral cooperation between certain EU Member States as well as between the EU and those EU Member States. The EED, which is a private foundation, is funded by voluntary contributions of EU Member States and acts as a complementary tool in relation to the EU's instruments.[1086] The EED wants to 'ensure synergy, complementarity and added-value to EU instruments and Member States bilateral activities',[1087] a commitment which also extends to the EED's, the EU's and the EU Member States' engagement with HRDs. Although the EED does not explicitly aim at engaging with HRDs, it automatically does while fulfilling its objectives, which are *inter alia* to foster 'pro-democratic movements and other pro-democratic actors'.[1088] The Freedom Online Coalition is another example of EU MSs taking an active role, which includes supporting digital HRDs through a Digital Defenders Partnership.[1089]

[1083] European External Action Service, 'EU guidelines on human rights dialogues with third countries – Update' para. 5 <http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf> accessed 02 January 2015.
[1084] European Parliament Resolution of 11 December 2013 on the Annual Report on Human Rights and Democracy in the World 2012 and the European Union's policy on the matter 2013/2152(INI).
[1085] EIDHR, 'Annex 1 of the Commission Implementing Decision on the adoption of a special measure for the financing of the Work Programme 2014 for the European Instrument for Democracy and Human Rights (EIDHR), Action Document for Support to Human Rights and Human Rights Defenders in situations where they are most at risk' 3 <http://www.eidhr.eu/files/dmfile/AAP2014-AD1-11.pdf> accessed 24 December 2014.
[1086] Cristina Churruca Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas, Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support' (FRAME D12.1 2014) 44.
[1087] European Endowment for Democracy, 'Complementarity and added value' <https://www.democracyendowment.eu/about-eed/> accessed 25 December 2014.
[1088] EU Council, 'Statutes: European Endowment for Democracy' art 2 <https://www.democracyendowment.eu/handlers/download.php?id=414&object_id=14> accessed 26 February 2015.
[1089] See on the Digital Defenders Partnership, Freedom Online Coalition, 'Digital Defenders Partnership' <https://www.freedomonlinecoalition.com/how-we-work/digital-defenders-partnership/> accessed 23 January 2015.

F. Cooperation Mechanisms with the Council of Europe, the OSCE and other relevant International Organisations

The EU cooperates with a large number of International Organisations (IOs) with regard to its engagement with HRDs and utilises a number of its institutions and mechanisms to do so. The EU cooperates closely with 'international organisations and UN mandate-holders working on the issue of human rights defenders'.[1090] In 2008, the NGO 'Observatory for the Protection of Human Rights Defenders' brought together for the first time all HRD mechanisms within inter-governmental organisations in existence.[1091] The UN Office of the High Commissioner for Human Rights, the African Commission Special Rapporteur, the Inter-American Commission on Human Rights, the Council of Europe, the Organisation for Security and Cooperation in Europe, the *Organisation Internationale de la Francophonie* and the EU are all international organisations and institutions that attended this gathering. Since then the institutions have been coordinating their efforts with support from the EIDHR, which also takes part in these so called 'inter-mechanism meetings',[1092] and which have been held regularly since the initial meeting in 2008.[1093] While hardly any information exists on the impact of these initiatives, it can be expected that the strengthened coordination has increased their results.

1. Cooperation Mechanisms with the Council of Europe

The EU already took part in coordination meetings with regard to HRDs with the Council of Europe (CoE).[1094] The CoE also took part in the inter-mechanism meetings, represented by its Commissioner for Human Rights.[1095] The most recent inter-mechanisms meeting, which took place in Geneva in November 2014, examined ways to enhance cooperation between the different bodies on subjects like public statements about HRDs and recommendations from country visits. The delegates also had an in-depth discussion on how to tackle arbitrary detention, impunity and the subject of how NGOs are funded.[1096]

[1090] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 66.
[1091] Commission, 'Delivering on Human Rights Defenders' 11 <http://www.eidhr.eu/files/dmfile/EIDHR_DeliveringonHumanRightsDefenders_Report.pdf> accessed 22 December 2014.
[1092] *Ibid*.
[1093] Human Rights Defenders Mechanisms, 'What is "inter-mechanisms"?' <http://www.humanrights-defenders.org/about/> accessed 1 January 2015.
[1094] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2012* (European Union 2013) 78.
[1095] Human Rights Defenders Mechanisms, 'What is "inter-mechanisms"?' <http://www.humanrights-defenders.org/about/> accessed 1 January 2015.
[1096] Observatory for the Protection of Human Rights Defenders, '"Inter-mechanisms 5.1": enhanced cooperation will lead to better protection of human rights defenders' (Geneva, 14 November 2014) <http://www.omct.org/files/2014/11/22890/im_5.1_pr_en.pdf> accessed 11 March 2015.

2. Cooperation Mechanisms with the OSCE

The EU and the OSCE are both taking part in the abovementioned inter-mechanism meetings. Another example of cooperation between the EU and the OSCE with regard to HRDs is the EU's contribution to the preparation of the 'Recommendations on the Protection of Human Rights Defenders in the OSCE Region', which have been elaborated by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR).[1097]

3. Cooperation Mechanisms with the United Nations

Support for 'Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders' is one of the 'ways and means to effectively work towards the promotion and protection of human rights defenders in third countries' under the 'operational guidelines' which are part of the EU Guidelines.[1098] This EU support for UN Special Procedures encompasses support for UN Special Rapporteurs, UN Special Representatives, UN Independent Experts and UN Working Groups and includes 'encouraging states to accept as a matter of principle requests for country visits by UN Special Procedures', 'promoting via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders [...]' and supporting '[...] the allocation of sufficient funds from the general budget to the Office of the High Commissioner for Human Rights'.[1099] In March 2014, an exchange of views with Margaret Sekaggya, UN Special Rapporteur on the situation of HRDs, organised by the EP's DROI, took place in Brussels.[1100] The participation of a staff member of the UN Special Rapporteur on the situation of HRDs at the 15th annual EU-NGO Human Rights Forum was also part of the UN Special Rapporteur's cooperation with the EU. One of the three actions aimed at effective support for HRDs in the Action Plan is to 'promote improved access by human rights defenders to the UN' and to 'address the issue of reprisals against defenders engaging with those mechanisms'.[1101]

G. Preliminary findings

There is already a high degree of awareness of the EU's engagement with HRDs in the relevant EU institutions. This is shown *inter alia* by the EP's extensive engagement with HRD's, especially via DROI, the adoption and revision of the EU Guidelines on HRDs by the Council and the EUSR on Human Rights' thematic focus on HRDs. Furthermore, the EU's engagement with HRDs has already reached a high level of institutionalisation, resulting in the establishment of structures responsible for indirect engagement

[1097] EU Council, *EU Annual Report on Human Rights and Democracy in the World in 2013* (European Union 2014) 66.
[1098] EU Council, 'Ensuring Protection – European Union Guidelines on Human Rights Defenders' (General Affairs Council, 8 December 2008) 7, para. 12 <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> accessed 21 December 2014.
[1099] *Ibid*.
[1100] European Parliament, *Subcommittee on Human Rights, Activity Report, (7th parliamentary term, 2009-2014)* (European Union 2014) 120.
[1101] EU Council, *Action Plan and Strategic Framework for Human Rights and Democracy*, (Luxembourg 2012) 15.

with HRDs, such as the COHOM subdivision 'task force on human rights defenders', as well as the creation of structures dedicated to direct engagement with HRDs, like the HRD liaison officers at EU Delegations. The issue of the EU's engagement with HRDs has been increasingly integrated in the EU's 'Human Rights and Democracy Policy Framework' since the entry into force of the Lisbon Treaty. This encompasses strategic instruments like the EU's Human Rights Guidelines, HRCSs and the EU Strategic Framework on Human Rights and Democracy, and implementation instruments, such as the EU Action Plan on Human Rights and Democracy, the EIDHR or the forthcoming EU mechanism for HRDs. Accordingly, HRDs have gained in importance in the activities of the relevant EU institutions, which also saw increasing coherence in their work for the better protection of HRDs. The EP has been the driving force, but other institutions, like the Commission, EEAS and the Council, by way of COHOM and the EUSR, have developed specific approaches and instruments, which appear to be largely well coordinated.

However, an analysis of the institutional structures and mechanisms of the EU's engagement with HRDs is like shooting at a moving target, as the EU is clearly in the process of further expanding, strengthening and institutionalising those structures and mechanisms. The EU HRDs mechanism has the potential to constitute a new milestone with regard to the EU's engagement with HRDs. While important progress has already been made, especially with a view to the appointment of EU HRD liaison officers and the current establishment of a comprehensive EU HRDs mechanism, some gaps still exist and there appears to be a lack of consistency regarding the relations with HRDs on the ground. The EU's engagement with HRDs in remote areas of third countries outside the major cities should be strengthened and the awareness amongst HRDs about the possibilities to engage with the EU should be raised. This could happen via various channels, such as local media, or by actively seeking contact with local HRDs and by the establishment of direct communication, but also by improving the accessibility of information and contacts on the local level. Furthermore, EU Delegations should make sure to engage with HRDs, regardless of the 'legal status' of the HRD in question. It has recently been reported that on one occasion, an EU mission official would not meet with a particular organisation, as it was 'not registered in the country'.[1102] Considering the fact that governments often deliberately set up legal and administrative hurdles such as 'registrations' for organisations in order to prevent or hinder their work, the willingness of the EU to engage with HRDs should never solely depend on the 'legal status' of HRDs within the jurisdiction of their work environment. In another case, an official claimed that s/he declined an invitation to a workshop by HRDs with the argument that s/he did not want to favour particular HRDs. It has also been held that EU institutions are not giving enough feedback to their NGO project partners on ongoing EU activities which might be of relevance to them like forthcoming consultations or the results thereof.[1103]

An analysis of the EU HRD liaison officers' work, e.g. by conducting case studies, followed by working out 'best practices' and subsequently disseminating the results to the HRD liaison officers could provide them with guidance on how to improve their engagement with HRDs. The further improvement of the scope

[1102] Mary Lawlor, Executive Director of Front Line Defenders, '10th Anniversary of the EU Guidelines on Human Rights Defenders: Lessons to Date and Looking to the Future' (Seminar Celebrating 10th Anniversary of EU HRD Guidelines, Brussels, 17 June 2014) 2 <https://www.frontlinedefenders.org/files/remarks_mary_lawlor.pdf> accessed 29 December 2014.
[1103] Interview G8.

and quality of the EU HRD liaison officers' work will be crucial for the future of the EU's engagement with HRDs. Furthermore, the guidelines on HRDs would benefit from an overhaul. They originally date from 2004 and, after more than ten years, no longer reflect the changed situation as well as the standards set by other guidelines. Furthermore, there is a scarcity of printed information, starting from the Guidelines, but also on existing support schemes, which is explained by budgetary reasons.[1104] The same is reported for the presence of EEAS staff in pertinent international conferences. Finally, not all websites on human rights and HRD issues of the EU and its delegations abroad are up-to-date. This has the effect of damaging the visibility of EU action in this field, as well as the accessibility of this information for HRDs.

[1104] Interview G2.

VII. Conclusions

The purpose of this report has been to examine the EU's engagement with and monitoring of the activities of Non-State Actors (NSAs). The report has paid particular attention to the policy frameworks underpinning engagement with the NSAs and the various points of contact between the NSAs and the EU institutions. The combination of desk research and in-depth targeted interviews with a wide range of actors has led us to a series of conclusions.

As we noted in the previous report, FRAME 7.1, the activities of NSAs have a huge capacity to influence human rights enjoyment both positively and negatively. As such, the EU's engagement with NSAs can result in accentuating positive outcomes or preventing violations or, at least, help to ameliorate the worst effects of human rights abuses. At its best, this engagement with NSAs has the capacity to add a great deal of value to the EU's activities in the field of human rights.

Engaging with NSAs can enrich the EU's policies by drawing on the expertise and experience provided by NSAs. By inviting NSAs, such as businesses and the social partners, to contribute to public consultations on policy or expert groups within particular policy areas, the EU can harness the expertise of the NSAs, while simultaneously increasing the democratic legitimacy and overall transparency of its policy making process. Working with NSAs can also generate greater political and financial leverage than the EU would be able to generate on its own. As we have seen, iterative processes of deep engagement, such as CSR, may lead to a 'smart mix' of both mandatory and voluntary measures targeted at human rights protection. The effectiveness of these CSR processes will be tracked in a further report, FRAME 7.4.

On the financial front, partnering with IFIs and CSOs to implement projects through the EIDHR and other financial instruments can reduce the financial risks of lending and make more efficient use of limited financial resources. Such mechanisms can also be used to support the work of HRDs working in insecure situations where, for example, they are in the vanguard of human rights protection in the absence of a CSO or EU diplomatic presence. There can be political benefits too, as NSAs can help the EU to achieve its political aims within the EU and in third countries with a softer touch. This may be more effective than parallel engagement with States or regional organisations. By redirecting aid from a failing State to a CSO in a developing country, for example, the EU may be able to achieve its political aims more effectively than it otherwise could. NSAs can also offer the EU an impartial means of monitoring agreements, we can see this for example in the context of the EU's trade and development agreements with third States, where the EU engages NSAs to monitor the implementation of the sustainability chapters of these agreements.

Overall the EU's engagement with NSAs is healthy and the EU as a whole does a great deal to try to engage, co-ordinate and where possible co-operate with NSAs both within and outside the EU. Even though our overall impression of engagement is positive, there is nonetheless room for improvement of the effectiveness and coherence of this engagement in many areas. This conclusion examines some cross-cutting issues before addressing individual areas of engagement.

A. Cross cutting issues

Firstly, the EU's manifold public consultations are a key source of engagement between the EU and the NSAs. While the process of public consultation generates a significant administrative burden for the EU, it is seen as crucial in facilitating engagement with NSAs. However, in order to gain the full benefit of this process, it needs to be more than a formulaic and bureaucratic tick-box exercise. Our research revealed frustration among our interviewees at the rigidity of process, with limited word counts, pro forma rating questionnaires with 1-10 scales, etc. It was felt that this rigidity presented a barrier to the meaningful communication of ideas between the EU and NSAs. The process in many instances lends itself to creating a great volume of information, but not necessarily good quality information or insights. In our next report, FRAME 7.3, which seeks to identify further steps that can be taken to streamline and strengthen engagement with NSAs, we will examine the process of public consultation in greater detail and put forward a series of recommendations aimed at improving it.

Secondly, transparency remains a significant cross-cutting problem. As we noted in FRAME 7.1, NSAs can play a significant role in ensuring transparency within the EU institutions, but at the same time they can generate problems of their own with transparency. Thus in this report we noted that the European Parliament has singled out the EIB for not acting with sufficient transparency in its work, while CSOs and others have criticised the EU itself for refusing to disclose the contents of some documents, such as the human rights country strategies. While there have been positive moves in this regard within the EU, such as the introduction of a transparency register, the publication of draft documents for the TTIP negotiations (after intense CSO pressure) and the Regulation on access to documents,[1105] a number of problems remain. The issue of improving transparency will therefore be a significant point to examine and discuss in FRAME 7.3.

Thirdly, our research revealed a very mixed picture on the assessment of human rights impacts by means of engagement. In some areas, the EU has been proactive, for example, by adding sustainability chapters to newer trade agreements. In other areas, the EU can be much more reactive. Thus, in the IFI sphere, for example, the project promoters are primarily responsible for assessing the human rights impacts of their projects, albeit with some supervision from DEVCO and the EIB. Equally, the EU has distinct human rights obligations and, while they are often parallel and commensurate to the ILO standards and other human rights provisions, there can be differences, which the EU needs to be more conscious of and have the capacity to self-assess. The subsequent report, FRAME 7.3, on strengthening engagement will explore approaches to human rights capacity-building within the EU and how the EU can be more proactive with its human rights agenda.

[1105] European Union, 'Transparency and the EU' <http://ec.europa.eu/transparencyregister/public/homePage.do> accessed 18 February 2015 and European Parliament and Council Regulation (EC) 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L 145/43.

B. Business

Our research revealed that the EU's engagement with business on human rights issues occurs predominantly through the lens of CSR, although there are other points of engagement, for example, in the context of trade relations and international fora. CSR is a cross-cutting issue, which engages multiple policy areas and issues. The diffuse nature of the subject creates a risk that the CSR agenda lacks coherent direction. While the subject is ostensibly led by DG GROW, the recent changes in the configurations of the DGs coupled with the involvement of different DGS in discrete areas of CSR generates a significant risk of incoherence. This could have further repercussions for engagement with businesses, who may not know what part of the EU to contact about specific issues.

A number of themes emerged from the recent Multistakeholder Forum on CSR indicating areas where engagement could be improved. These include continuing to improve engagement with SMEs on the subject of CSR, greater engagement with businesses on creating remedial structures for human rights violations and engaging with businesses to successfully operationalise the non-financial reporting directive. Finally, the analysis of the recent public consultation on CSR was unclear in many respects particularly on the extent to which the different position papers issued by various parties were taken into account in the final analysis, which relied heavily on statistics. We will pick up on many of these issues in the forthcoming FRAME reports on tracking CSR responses and strengthening engagement.

C. IFIs

Our research on IFIs revealed that, with the exception of the EIB, which is a special case as an EU Bank, the EU's engagement with IFIs on the subject of human rights at both project level and policy level was limited. Generally, there was also a limited appreciation of the human rights impacts of their work and policies. While the EIB itself has made significant, if somewhat belated, steps to incorporate human rights standards in its work practice, the same could not be said for the other main IFIs addressed in this study, the WB and the IMF. We think that the EIB should play a more active role in sharing its experience of internalising human rights standards in its project work and its evaluation frameworks and will examine ways that the EIB can do this in the next FRAME report 7.3. We feel there may be some scope for the EIB to do this through mechanisms such as the Independent Accountability Mechanisms forum and the EU Platform for blending in external cooperation.

Our research also identified that the WB holds the EU in very high esteem, regarding it as a partner of choice for many of its projects. We feel that the EU has an influential position with the WB and that there is a unique opportunity, as the WB is currently revising its safeguards, to utilise this position to encourage the WB to incorporate human rights standards into its safeguards policy. The same applies to the IMF where the Member States could do more to exert their influence. Finally, we noted that there were issues of transparency surrounding the engagement processes between the EU, EIB, IMF and WB. There is significant scope for improvement in this field and we will examine how greater transparency could be achieved in FRAME 7.3.

D. CSOs

Our research on CSOs revealed a great deal about how the EU interacts with the broad spectrum of CSOs. Overall the EU has a tendency to view CSOs as a homogenous group and there needs to be a greater appreciation of the variety of CSOs within and outside the EU and their working modalities. In a similar vein, the EU's engagement centres upon a relatively narrow spectrum of CSOs favouring large, professional and institutionalised CSOs or CSO platforms. A number of representatives of smaller CSOs interviewed reported feeling marginalised in the process of engagement. We feel that greater inclusion of a diversified range of CSOs is vital for the legitimacy and effectiveness of the EU overall and we will explore ways to broaden the spectrum of CSOs that the EU engages with in the forthcoming report, FRAME 7.3.

Our research also identified that communication with CSOs was a significant problem. Our view is that the EU is not communicating its actions and policies to HRDs and CSOs working on the ground well enough. Many CSOs and HRDs we spoke to felt that they were not sufficiently informed of the EU's activities in their field of work, such as public consultations. As CSOs can provide very useful, up-to-date information and work as 'eyes and ears' on the ground for the EU, it was felt that these breakdowns in communication led the EU to miss valuable opportunities to harness the expertise and experience of CSOs. The same applies to HRDs. Equally, many CSOs reported that the EU institutions were not very good at following up with CSOs after events where they had sought their input. We think that the EU needs to work harder to identify points of contact in different policy fields so that it does not lose out on valuable input from outside and that it needs to improve its processes of following up and offering feedback on engagement with CSOs. The next report in the series, FRAME 7.3, will address ways of improving communication between the EU, CSOs and HRDs.

E. HRDs

Our research revealed a high level of institutionalised engagement with HRDs across the EU institutions. The interviewees we spoke to were particularly pleased with the EU-NGO Forum, which is seen by the participants attending it as being very beneficial. In the subsequent report, which looks at means of strengthening engagement with NSAs, we will examine the benefits and disadvantages of establishing similar local or regional events. While engagement overall is considered to be positive in this area, we have nonetheless identified a number of ways in which the EU's engagement with HRDs could potentially be improved and these will be discussed in the next phase of our project. Firstly, a number of interviewees remarked that access to the EU's delegations in third countries was problematic and inconsistent. While the EU ostensibly had a point of contact in each foreign delegation for HRDs, they were not always accessible to the HRDs within the country. There was also a high degree of variability between different countries in the levels of access HRDs had to the delegations, with some delegations being very open and others very inaccessible. We will explore ways to improve access and consistency in this regard in the FRAME 7.3 report.

Equally, while the EU has done a great deal to improve the accessibility of its funding mechanisms over the past number of years, interviewees we spoke to reported that accessing funding was still prohibitively difficult. The administrative burden required to apply for and manage EU funding was dissuasive for a number of individual HRDs and the limited scope of some funding opportunities effectively precluded individual HRDs from applying. The EU needs to strike a balance between carrying out its due diligence to ensure its funds go to legitimate causes and ensuring that its funds are accessible and do not impose a disproportionate administrative burden on the applicants for funding. In order to strengthen engagement, funding procedures will need to be more straight forward and the application process should impose a smaller administrative burden and be more flexible overall.

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