



# **Human rights priorities in the European Union's external and internal policies: an assessment of consistency with a special focus on vulnerable groups**

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## Human rights priorities in the European Union's external and internal policies: an assessment of consistency with a special focus on vulnerable groups

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The findings and conclusions contained within this report remain those of the authors and should not be attributed to any other person or institution.

## Executive Summary

Deliverable D12.1 provided a mapping of legal and policy instruments of the EU for human rights and democracy support towards third countries, with focus on the identification by the EU of its human rights priorities for this policy. These human rights priorities were set out in the EU Strategic Framework on Human Rights and Democracy, which distinguished two types of human rights priorities: ‘vulnerable groups’ and ‘human rights themes.’ These human rights priorities and the instruments for their implementation having been analysed, the main goal of this report is to assess whether those human rights themes and vulnerable groups are effectively and consistently reflected across the range of EU policies with particular relevance for the protection and promotion of human rights: development cooperation, trade, the Common Security and Defence Policy (CSDP), the external dimension of the Area of Freedom, Security and Justice (AFSJ) and the European Neighbourhood Policy (ENP).

Two main tasks have been addressed: (i) the identification of inconsistencies in the understanding and usage of ‘vulnerable groups’ and ‘human rights themes’ by the relevant EU policy documents issued in each step of the policy cycle, from formulation to implementation and evaluation and (ii) the identification of possible gaps in the selection of priorities by the EU, i.e. groups that should deserve special protection but are not prioritised in the context of the policy documents concerned.

The report focuses on those external policies which have a significant human rights dimension and therefore where the EU should enhance its efforts to integrate these human rights priorities. These policies are development, trade, CSDP, the external dimension of AFSJ and ENP. Furthermore, the EU’s internal approach to vulnerability and human rights themes also forms part of the report. One of the most controversial issues in connection with the EU’s performance on human rights is precisely the appreciation of ‘double standards’ in the internal vs. external approaches to human rights. In order to address this critique the report will also cover the EU’s internal policy on social inclusion and fight against exclusion.

In order to achieve the expounded objectives, the researchers have analysed the main documents issued by the EU in each step of the policy cycle, including documents belonging to the policy formulation phase, as well as implementation documents and evaluation reports. The main documents studied in development cooperation, trade, CSDP and AFSJ have been listed in Annexes I to IV. Regarding ENP, the main documents are the bilateral Action Plans which are listed in the own text of chapter VII. The level of visibility of human rights priorities is not equal in each concrete policy field. In some of them, such as in development cooperation or AFSJ, the sensitivity of the EU towards human rights issues is more developed while there is still much work to do in other areas such as trade or ENP. Accordingly, in the first set of policies, the EU has been much more prolific in the production of documents and materials dealing with the integration of human rights concerns than in the second set of policies.

This report has shown that ‘vulnerability’ has multiple meanings and usages within the analysed EU’s external policies. The EU has not defined ‘vulnerability’ nor has developed a framework to identify who are vulnerable in the context of each policy. The meaning of vulnerability can be only determined within the specific context of each policy. Moreover, the EU’s approach in each of the policies analysed is not always straightforward.

Vulnerability appears also connected to other concepts such as discrimination, marginalization, victimization, exclusion or protection. The boundaries between these concepts are not always clear when the documents are analysed. In some cases it seems that the EU uses these terms interchangeably; in other cases, certain terms, such as discrimination and protection, appear as central notions to the EU's understanding of vulnerability and, finally, sometimes one term, such as 'victimization' in the context of the AFSJ, is treated almost in equal terms than vulnerability.

The lack of definition of vulnerable group in the internal sphere contrasts sharply with the specificity of the EU when it defines vulnerable groups in the internal fields of employment and social exclusion. Both the Platform against Poverty and Social Exclusion and the Agenda for New Skills and Jobs provide a definition of vulnerable groups. In addition, in the internal sphere the EU prioritizes also within the 'most vulnerable', and there is a clear understanding and specific indicators of who are 'at risk of poverty or social exclusion.'

In the external sphere, two main approaches to vulnerability have been identified in EU's documents: a 'vulnerable groups approach', where the document does not define vulnerability but simply lists the groups that are considered vulnerable in the specific context addressed by the document; and a 'factors approach' where the documents rather than listing groups explain the factors which render certain people vulnerable.

In addition, the report has identified certain tensions arising from the EU's conception and usages of vulnerability and vulnerable groups: (i) Universality of human rights vs. the need to prioritise the rights of certain groups; (ii) the internal vs. the external rhetoric regarding vulnerable groups; (iii) the risks of the using the concept of vulnerability vs. its potential and (iv) the diversity of agendas between different actors.

The visibility of human rights priorities is much more clearly stated in certain policies, such as CSDP, development and the AFSJ, whereas the human rights component is much less visible in others, such as the ENP and trade. In almost all the policies, the analysis has also identified a clear predominance of the references to vulnerable groups in comparison with the references to the human rights themes. In addition, there is also a clear predominance of some vulnerable groups, namely women and children, within the documents. On the contrary, the protection of other vulnerable groups whose rights could be directly influenced by the policies concerned is recognised to a far lesser extent. This is the case, for example, of minorities and forced migrants within the CSDP, or disabled people and forced migrants within the development policy, although these groups are equally exposed to vulnerability in those spheres. In addition, in some policies such as development and CSDP, a 'phenomenon of dilution' of the human rights components has been observed as the policy cycle moves from formulation to implementation. The clarity of the human rights discourse present in the formulation phase becomes blurred when the policies are implemented.

## List of abbreviations

ACP	African, Caribbean and Pacific countries
AFSJ	Area of freedom, security and justice
AfT	Aid for Trade
CBC	Cross-Border Cooperation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFS	FAO Committee on World Security
CFSP	Common Foreign and Security Policy
CMPD	Crisis Management Planning Directorate
CSDP	Common Security and Defence Policy
CSOs	Civil Society Organisations
DCI	Development Cooperation Instrument
EAPN	European Anti-Poverty Network Europe
EASO	European Asylum Support Office
EDF	European Development Fund
EEAS	European External Action Service
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
EP	European Parliament
EPIC	European Platform for Investing in Children
ERDF	European Regional Development Fund
ESC rights	Economic, social and cultural rights
ESF	European Social Fund
EU	European Union
EUROMED	Euro Mediterranean Partnership
FEAD	Fund for European Aid to the Most Deprived
FGM	Female genital mutilation
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
FRONTEX PoW	Frontex Programme of Work
GAMM	Global Approach to Migration and Mobility
GBS	General Budget Support
GSP	General System of Preferences
HFA	Hyogo Framework for Action
HRBA	Human rights-based approach
IAs	Impact assessments
IDP	Internally displaced person
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex persons
MDG	Millennium Development Goals
PCD	Policy Coherence on Development
RPP	Regional Protection Programmes
RBA	Rights Based Approach
SDGs	Sustainable Development Goals
SF	Strategic Framework
SIAs	Sustainability Impact Assessment
SP	Stockholm Programme
TFEU	Treaty on the Functioning of the European Union

TEU	Treaty on European Union
THB	Trafficking in Human Beings
OHCHR	Office of the United Nations High Commissioner for Human Rights
UN	United Nations

## Table of Contents

Acknowledgements.....	iii
Executive Summary.....	iv
List of abbreviations.....	vi
Table of Figures.....	xii
I. Introduction .....	1
II. Conceptual Framework.....	8
A. The relationship between the EU’s conception of human rights and democracy .....	8
1. Diverging understandings of human rights.....	9
2. Diverging agendas on human rights: the relationship with democracy and the rule of law.....	12
3. Realisation of human rights and democracy: priority themes and vulnerability .....	15
B. The EU’s approach to vulnerability and vulnerable groups .....	16
1. Introduction .....	16
2. The descriptive dimension: why people are vulnerable .....	17
3. Vulnerability and human rights subjectivity .....	19
4. Vulnerability as a heuristic device in law and policy.....	19
5. The prescriptive dimension: human rights and resilience.....	21
6. The vulnerability of institutions .....	22
7. Conclusion.....	23
C. Human rights prioritisation under the New Action Plan on Human Rights and Democracy.....	23
III. Development policy and EU human rights priorities .....	29
A. Introduction: poverty, inequality and human rights priorities .....	29
B. Integration of human rights priorities in EU development policies.....	32
1. Mainstreaming of human rights in the EU’s development policy .....	33
2. Human Rights Based Approaches to Development and the EU’s human rights priorities.....	40
3. Conditionality, the EU’s Budget support and human rights priorities.....	48
C. Policy Coherence for Development and human rights priorities .....	50
D. The post-2015 development agenda and the EU’s human rights priorities.....	52
E. The integration of human rights priorities in the implementation and evaluation of the EU’s development policy .....	55
F. Conclusions: assessment of consistency in the prioritisation of vulnerable groups and themes in the EU’s development policy .....	58



IV.	Trade policy and the EU's human rights priorities.....	61
A.	Introduction .....	61
B.	The General System of Preferences (GSP) and human rights priorities .....	62
C.	Human rights clauses .....	64
D.	Human rights impact assessments of trade agreements and human rights priorities.....	66
E.	Conclusions .....	71
V.	CSDP and EU human rights priorities.....	73
A.	Introduction .....	73
B.	Vulnerable groups and the EU's human rights priorities in CSDP.....	74
1.	EU Consistency for vulnerable groups in CSDP .....	76
2.	Integration of vulnerable groups in CSDP operations .....	78
C.	Conclusions .....	85
VI.	The external dimension of AFSJ and EU human rights priorities.....	87
A.	Introduction .....	87
1.	Scope of the assessment: overlapping dimensions .....	87
2.	Rationale for the selection of documents.....	88
3.	Methodological issues regarding vulnerability and thematic priorities .....	89
B.	AFSJ general documents .....	89
1.	The Stockholm Programme and its Implementing Action Plan .....	90
2.	Mid-term review of the Stockholm Programme.....	95
3.	New Strategic Guidelines .....	99
4.	Migration.....	102
5.	Trafficking in Human Beings .....	107
6.	Terrorism.....	110
C.	Conclusions .....	113
VII.	European Neighbourhood Policy (ENP) and human rights priorities .....	115
A.	General Overview .....	115
B.	Historical factors .....	116
C.	Contemporary factors.....	118
D.	Legal and policy formulation of ENP .....	120
1.	Multilateral agreements and action plans.....	121
2.	Competent institutions .....	123

E.	Implementation tools: European Neighbourhood Instrument (ENI).....	124
1.	Objectives and scope of the Instrument.....	125
2.	Eligibility.....	126
3.	Coordination, complementarity and coherence with other instruments .....	127
4.	Type of programmes funded .....	127
F.	Conclusion and future perspective .....	127
VIII.	Comparative analysis between the internal and external approaches to vulnerable groups and thematic priorities: internal policy on social inclusion and fight against exclusion .....	129
A.	Introduction .....	129
B.	Vulnerable groups and priority themes in the EU’s policy on social inclusion and fight against exclusion .....	131
1.	The Europe 2020 strategy.....	131
2.	Defining vulnerability in the EU’s internal policy on the fight against poverty and social exclusion .....	132
3.	Implementing the EU’s internal policy on the fight against poverty and social exclusion.....	140
C.	Conclusions: assessment of consistency in the prioritisation of vulnerable groups and themes	143
IX.	General conclusions: assessment of the coherence of the EU’s human rights prioritisation across EU policies.....	148
A.	The EU’s understanding of ‘vulnerability’ and ‘vulnerable groups’ .....	148
B.	The weight of human rights priorities in the different policies and along the different steps of the policy cycle.....	150
C.	Areas for future development .....	150
	Bibliography .....	152
A.	Legal and policy instruments .....	152
1.	International treaties and agreements.....	152
B.	European Union legislation and policy .....	152
1.	EU legislation.....	152
2.	European Council .....	153
3.	Council of the EU.....	153
4.	European Commission .....	156
5.	European Parliament .....	160
6.	European External Action Service .....	160
7.	Joint Communications.....	161

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C. United Nations .....	161
D. Council of Europe .....	162
E. Literature .....	162
1. Books .....	162
2. Book chapters .....	163
3. Journal articles and research and working papers .....	165
4. Policy and other reports .....	168
ANNEX I. Development policy and human rights priorities. Main documents analysed.....	171
ANNEX II. Trade policy and human rights priorities. Main documents analysed .....	201
ANNEX III. CSDP and human rights priorities. Main documents analysed. ....	210
ANNEX IV. The external dimension of AFSJ and human rights priorities. Main documents analysed. ....	213

## Table of Figures

Chart 1: Gaps in the prioritisation of vulnerable groups .....3

Chart 2: Gaps in the prioritisation of human rights themes .....4

Chart 4: **EU areas of action under the Strategic Framework and the new Action Plan** .....24

AREAS OF ACTION	
STRATEGIC FRAMEWORK AND ACTION PLAN 2012-2014	NEW ACTION PLAN (2015 – 2019)
I. Human rights and democracy throughout EU policy	I. Boosting the ownership of local actors
II. Promoting the universality of human rights	II. Addressing human rights challenges
III. Pursuing coherent policy objectives	III. Ensuring a comprehensive human rights approach to conflict and crises.
IV. Human rights in all EU external policies	IV. Fostering better coherence and consistency
V. Implementing EU priorities on human rights	V. A more effective EU human rights and democracy support policy
VI. Working with bilateral partners	
VII. Working through multilateral institutions	
VIII. The EU working together	

Chart 4: Human rights priorities in the new Action Plan.....25

**Error! Reference source not found.** .....93

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<b>Error! Reference source not found.</b>	<b>Error! Reference source not found.</b> .....	112
Chart 7:	ENP’s Bilateral Action Plans .....	122
Chart 8:	Definitions of vulnerable groups in the European 2020 strategy.....	134
Box V-1:	EUFOR DR Congo Military Crisis Management Operation .....	83
Box V-2:	EUMM Georgia Civilian Crisis Management Operation .....	85

## I. Introduction

Deliverable D12.1 provided a mapping of legal and policy instruments of the EU for human rights and democracy support towards third countries, with a focus on the identification by the EU of its human rights priorities for this policy. These human rights priorities were set out in the EU Strategic Framework on Human Rights and Democracy,<sup>1</sup> which, under the objective ‘implementing EU priorities on human rights’, distinguished two types of human rights priorities: ‘vulnerable groups’ and ‘human rights themes.’ This strategic document also laid down the commitment of the EU to the integration of the promotion of human rights into all its external policies.<sup>2</sup> These human rights priorities and the instruments for their implementation having been analysed, the second stage is now to assess whether those human rights themes and vulnerable groups are effectively and consistently reflected across the range of EU policies with particular relevance for the protection and promotion of human rights: development cooperation, trade, the Common Security and Defence Policy (CSDP), the external dimension of the Area of Freedom, Security and Justice (AFSJ) and the European Neighbourhood Policy (ENP). The research will analyse whether the EU reflects its human rights priorities, both in terms of human rights themes and vulnerable groups, effectively and consistently across these policies.

This objective involves two main tasks that will be addressed in this report:

- On the one hand, the identification of any inconsistencies in the understanding and usage of ‘vulnerable groups’ and ‘human rights themes’ by the relevant EU policy documents issued in each step of the policy cycle, from formulation to implementation and evaluation.
- On the other hand, the report will point out those gaps in the selection of priorities by the EU, i.e., groups that should deserve special protection but are not prioritised in the context of the policy documents concerned.

As mentioned before, this report builds on the ‘vulnerable groups’ and ‘human rights themes’ identified in Deliverable 12.1, i.e. those considered in the EU Strategic Framework on Human Rights and Democracy. For the purposes of this report, we have taken into account all the groups and themes mentioned in this document, including those that were ‘left aside’ in the first Action Plan,<sup>3</sup> which was the main instrument in the implementation of the EU’s human rights and democracy policy for the period 2012-2014. One of the main findings of Deliverable 12.1 was to identify those inconsistencies which come up when the Strategic Framework is compared with the Action Plan and other documents which play a central role in the formulation of EU policy on human rights and

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<sup>1</sup> Council of the European Union, ‘Human Rights and Democracy: EU Strategic Framework and EU Action Plan’, Annex II, 11855/12 [2012] (Strategic Framework or Strategic Framework on Human Rights and Democracy).

<sup>2</sup> Strategic Framework 5.

<sup>3</sup> Council of the European Union, ‘Human Rights and Democracy: EU Strategic Framework and EU Action Plan’, Annex III, 11855/12 [2012] (Action Plan or Action Plan on Human Rights and Democracy).

democracy such as the human rights guidelines. These guidelines are not legally binding but constitute a strong political expression of EU priorities on human rights. The EU has adopted guidelines towards most of the priority areas identified in the Strategic Framework, namely freedom of expression online and offline; freedom of religion or belief; enjoyment of rights by LGBTI persons; death penalty, torture and other cruel, inhuman or degrading treatment or punishment; children on armed conflict; promotion and protection of the rights of the child; violence and discrimination against women and girls; and compliance with International Humanitarian Law.<sup>4</sup> Charts 1 and 2 show those vulnerable groups and human rights themes which, although considered as 'priorities' in the Strategic Framework, were not turned into actions in the first Action Plan and the EU has not adopted human rights guidelines towards them.

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<sup>4</sup> Cristina Churruza Muguruza and others, 'Report mapping legal and policy instruments of the EU for human rights and democracy support', *FRAME Deliverable 12.1*, July 2014, 18-19 <<http://www.fp7-frame.eu/reports/>>. (FRAME Deliverable 12.1). See also Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline, Foreign Affairs Council meeting, Brussels, 12 May 2014; Council of the European Union, EU Guidelines on the promotion and protection of freedom of religion or belief, Foreign Affairs Council meeting, Luxembourg, 24 June 2013; Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, Foreign Affairs Council meeting, Luxembourg, 24 June 2013; Council of the European Union, Guidelines on Death Penalty, Common Guidelines, Brussels, 12 April 2013, 8416/13EU; Council of the European Union, Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment - An up-date of the Guidelines, Brussels, 20 March 2012, 6129/1/12 REV1; Council of the European Union, Update of the EU Guidelines on Children and Armed Conflict; Council of the European Union, EU Guidelines for the Promotion and Protection of the Rights of the Child, Council of the European Union, EU guidelines on violence against women and girls and combating all forms of discrimination against them; Council of the European Union, Ensuring protection – European Union Guidelines on Human Rights Defenders; and Council of the European Union, EU Guidelines on promoting compliance with International Humanitarian Law (IHL) - Technical update, Brussels, 1 December 2009, 16841/09.

**Chart 1: Gaps in the prioritisation of vulnerable groups (First Action Plan)**

STRATEGIC FRAMEWORK	FIRST ACTION PLAN	HR GUIDELINES	GAPS
Children	Children	Rights of the Child and Children in armed conflict	
Persons belonging to minorities	Persons belonging to minorities		
Indigenous peoples	Indigenous peoples		
Refugees			Refugees
Migrants			Migrants
Persons with disabilities	Persons with disabilities		
'Discrimination on grounds of race, ethnicity, age, gender or sexual orientation'	'Enjoyment of human rights by LGBT persons'	'Enjoyment of human rights by LGBT persons'  Violence and discrimination against women and girls	Discrimination on grounds of race, ethnicity or age
Women	Women	Women	
'Universal and non-discriminatory access to basic services with a particular focus on poor and vulnerable groups'			Poor



**Chart 2: Gaps in the prioritisation of human rights themes (First Action Plan)**

<b>STRATEGIC FRAMEWORK</b>	<b>FIRST ACTION PLAN</b>	<b>HR GUIDELINES</b>	<b>GAPS</b>
Promote freedom of expression, opinion, assembly and association, on-line and offline	Freedom of expression on-line and offline	Freedom of expression on-line and offline	Freedom of opinion, assembly and association, on-line and offline
Promote freedom of religion or belief	Freedom of religion or belief	Promotion and protection of freedom of religion or belief	
Promotion of economic, social and cultural rights			Promotion of ESC rights
Implementation of the UN Guiding Principles on Business and Human Rights	Implementation of the UN Guiding Principles on Business and Human Rights		
Campaign against death penalty	Abolition of the death penalty	Death penalty	
Campaign against torture	Eradication of torture and other cruel, inhuman or degrading treatment or punishment	EU policy towards third countries on torture and other CID treatment or punishment	
Promotion of the rights to a fair and impartial administration of justice	Administration of justice		
Promote observance of International humanitarian law	Compliance with IHL	Promoting compliance with IHL	
Fight against impunity for serious crimes of concern of the international community. Commitment to the ICC.	Responding to violations: ensuring accountability		
Support for human rights defenders	Effective support to human rights defenders	Human rights defenders	

According to these Charts, vulnerable groups and priority themes selected by the EU are those included in first columns (Strategic Framework). However, the difficulties in the identification of these priorities arise when the Strategic Framework is compared with its implementation instrument, i.e. the Action Plan, or with other policy formulation documents aiming at establishing also human rights priorities, i.e. the human rights guidelines. The first set of inconsistencies that have to be mentioned can be deduced from this comparative analysis:

- The Strategic Framework includes ‘refugees’ and ‘migrants’ in a first enumeration of groups of persons whose rights will be defended by the EU. However, these groups are not mentioned at all in Part V of the Action Plan (‘Implementing EU priorities on human rights’). In fact, in the whole Action Plan there is only one mention of the rights of migrants regarding the ‘external dimension of work in the area of FSJ.’<sup>5</sup>
- The Strategic Framework mentions the ‘fight against discrimination in all its forms’, including discrimination on grounds of race, ethnicity, age, gender or sexual orientation, as one of the EU’s priorities. However, the Action Plan ignores some grounds of discrimination, such as race, ethnicity and age.
- The Strategic Framework sets out that the access to basic services by ‘poor and vulnerable groups’ is also a priority for the EU. However, the poor are not mentioned anymore in the document.
- Finally, regarding the thematic priorities, one significant omission in Part V of the Action Plan is the promotion of Economic Social and Cultural (ESC) rights which. These rights are not treated as a priority in the Action Plan, which refers to them in a different part (Pursuing coherent policy objectives). In addition, freedoms of opinion, assembly and association do not appear in the Action Plan.

The analysis of the concrete policies targeted by this report will show that some of these ‘forgotten groups or themes’ are nevertheless considered in the specific context of the policies analysed; e.g. refugees and migrants are groups of concern for the AFSJ, and the main goal of the EU’s development policy is the eradication of poverty. However, this picture of prioritisation and possible inconsistencies has to be revisited in the light of the new Action Plan on Human Rights and Democracy. The new Action Plan was proposed by the Commission and the HR/VP in April<sup>6</sup> and finally adopted by the Council on 20 July 2015.<sup>7</sup> The new Action Plan has addressed some shortcomings which affected the previous Action Plan and brought some novelties to the

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<sup>5</sup> Action Plan, action 14(d).

<sup>6</sup> Commission and High Representative of the European Union for Foreign Affairs and Security Policy, ‘Action Plan on Human Rights and Democracy (2015-2019). “Keeping human rights at the heart of the EU agenda”’ JOIN(2015) 16 final (proposal of new Action Plan).

<sup>7</sup> Council of the European Union, ‘Council Conclusions on the Action Plan on Human Rights and Democracy 2015-2019’ 10897/15 [2015]. (new Action Plan).

examination of the EU's approach to vulnerable groups since this expression has been virtually removed and substituted by other notions such as 'fight against discrimination.' Due to the significance that this novelty has on our analysis, the new Action Plan will be analysed in section II.C. below.

In connection with the policies to be analysed, the report will focus on those external policies which have a significant human rights dimension and therefore where the EU should enhance its efforts to integrate these human rights priorities. These policies are development, trade, CSDP, the external dimension of AFSJ and ENP. Furthermore, as we announced in Deliverable 12.1, the EU's internal approach to vulnerability and human rights themes will also form part of this report. One of the most controversial issues in connection with the EU's performance on human rights is precisely the appreciation of 'double standards' in the internal vs. external approaches to human rights. In order to address this critique the report will also cover the EU's internal policy on social inclusion and fight against exclusion. This comparative analysis will allow us to find out if the EU fulfils one of the main objectives of the Strategic Framework: 'pursuing coherent objectives in the internal and external areas of EU's action'. This provision is based on the general duty of the EU to ensure consistency both between the different areas of its external action and between these and its other policies<sup>8</sup> and has been recently reaffirmed by the Council in its Conclusions on the Commission's 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights protection and promotion in the European Union.<sup>9</sup> In these Conclusions the Council highlights that the issue of consistency between internal and external aspects of human rights protection and promotion is crucial in order to enhance the EU's credibility in its external relations and to strengthen its 'leading by example' role in the area of human rights. Moreover, the Council recalls that the Charter of Fundamental Rights of the European Union is also applicable to the external action of the Union and underlines that the EU's and Member States' 'high standards of protection of human rights' can be applied to the EU's external activities and be presented in a consistent manner to relations with third partners.<sup>10</sup> In addition, the perception of an EU double standard regarding the internal and external application of the EU's instruments for the protection of human rights has been denounced by human rights NGOs and authors in relation to sensitive human right issues such as homophobia, discrimination, 'dubious anti-terrorism practices' and minority protection.<sup>11</sup>

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<sup>8</sup> Consolidated Version of the Treaty of the European Union [2012] OJ C326/13, Art. 21(3) para 2, (TEU).

<sup>9</sup> Council of the European Union, 'Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union – Adoption' 10116/14 [2014] Annex.

<sup>10</sup> *Ibid* paras 13, 14, 19.

<sup>11</sup> Peter Simmons, 'The State of the Art in the EU Democracy Promotion Literature' (2011) 7 *Journal of Contemporary European Research* 129, 130-131. See also Andrew Williams, *EU Human Rights Policies. A Study in Irony* (Oxford Studies in European Law, 2005) and Balducci Giuseppe, 'The EU's promotion of Human Rights' in Knud Erik Jorgensen and Katie Verlin Laatikainen (eds) *Routledge Handbook on the European Union and International Institutions: performance, policy, power* (Routledge, 2013).

In order to achieve the expounded objectives, the researchers have analysed the main documents issued by the EU in each step of the policy cycle, including documents belonging to the policy formulation phase as well as implementation documents and evaluation reports. The main documents studied in development cooperation, trade, CSDP and AFSJ have been listed in Annexes I to IV. Regarding ENP, the main documents are the bilateral Action Plans which are listed in the own text of chapter VII. It must be said that the level of visibility of human rights priorities is not equal in each concrete policy field. In some of them, such as in development cooperation or AFSJ, the sensitivity of the EU towards human rights issues is more developed while there is still much work to do in other areas such as trade or ENP. Accordingly, in the first set of policies, the EU has been much more prolific in the production of documents and materials dealing with the integration of human rights concerns than in the second set of policies. Hence, it might be a certain imbalance in the extension of the different chapters of the report.

Finally, the structure of the report is as follows: Chapter II establishes the conceptual framework, which comprises three different sections. As the main objective of this report is to find out how the EU has integrated the human rights priorities lay down in its human rights and democracy policy into the policies above mentioned, a first section will deal with the EU's understanding of the concepts of 'human rights' and 'democracy' and how these terms relate to vulnerable groups and human rights themes (Section II.A). A second section will reflect on the EU's approach to vulnerability and vulnerable groups (Section II.B). Finally, the novelties to the state of the art that the new Action Plan has brought will be studied in Section II.C. Subsequently, Chapters III, IV, V, VI, VII and **Error! Reference source not found.** undertake an analysis of each policy field and chapter REF\_Ref425408633 \r \h IX provides some tentative conclusions.

## II. Conceptual Framework

### A. The relationship between the EU's conception of human rights and democracy

Human rights are, together with democracy and the rule of law, core values of the EU.

Article 2 of the Treaty on the European Union proclaims:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism non-discrimination tolerance, justice, solidarity and equality between women and men prevail.'

The external action of the EU should be guided by these values, and should seek to promote them in the wider world. Article 21 TEU declares that:

'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'

As has been discussed in earlier FRAME reports,<sup>12</sup> the EU establishes a harmonious link between all these concepts, particularly between human rights, democracy and the rule of law. Literature has referred to a 'triangular relationship'<sup>13</sup> and the Commission itself has indicated that these concepts are in a functional and necessary relation to each other:

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<sup>12</sup>Alexandra Timmer (with the collaboration of Jenny Goldschmidt, Antoine Buyse and Anja Mihr), 'Report state-of-the-art literature review human rights, democracy and the rule of law,' *FRAME Deliverable 3.1*, November 2013, <<http://www.fp7-frame.eu/reports/>>; Alexandra Timmer and others, 'Critical analysis of the EU's conceptualisation and operationalisation of the concepts of human rights, democracy and rule of law,' *FRAME Deliverable 3.2*, December 2014, <<http://www.fp7-frame.eu/reports/>>, and Cristina Churruza Muguruza and others, 'Report mapping legal and policy instruments of the EU for human rights and democracy support', *FRAME Deliverable 12.1*, July 2014, <<http://www.fp7-frame.eu/reports/>>.

<sup>13</sup> Sergio Carrera, Elspeth Guild and Nicholas Hernanz, 'The triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU – Towards an EU Copenhagen Mechanism', Study for the European Parliament, PE 493.031 (2013), <[www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493031/IPOL-LIBE\\_ET\(2013\)493031\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493031/IPOL-LIBE_ET(2013)493031_EN.pdf)>.

‘Respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights: there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa.’<sup>14</sup>

Yet the relation between these concepts is more complex than what appears from this harmonious representation.<sup>15</sup> At the theoretical level, the complexity of this relationship is conditioned by a number of elements that have also an important bearing on the question of coherence that we assess in this report. The first of these elements is certainly the indeterminacy of expressions such as human rights, democracy and the rule of law, as well as other notions that underpin those, such as dignity, equality, pluralism or solidarity, among the most cited. Theoretical complexities and coherence issues might also appear in the ways that the relation between these concepts is established in setting the agenda and through prioritisation (of themes or groups).

### 1. Diverging understandings of human rights

A first reason for incoherence in policy action regarding human rights might be found in the differentiated meanings that might be attributed to this expression. It is rather uncontroversial in scientific literature and policy analysis that ‘human rights’ is a vague expression, subjected to different understandings.

Already in 1964, the Italian philosopher Norberto Bobbio discussing the foundations of human rights explained that human rights definitions were generally vague and very often tautological.<sup>16</sup> In fact, human rights are normally defined as the rights human beings have for the mere fact of being humans. This kind of indeterminacy has accompanied human rights from the very inception of the Universal Declaration of Human Rights, as might be evinced from the anecdote told by Jacques Maritain: ‘we agree on these rights, providing we are not asked why.’<sup>17</sup>

Cass Sunstein has argued that this kind of indeterminacy, which he calls ‘incompletely theorized agreements’, is an important element of successful constitutionalism as it allows for ‘convergence despite disagreement, uncertainty, limits of time and capacity, and heterogeneity.’<sup>18</sup> This was certainly the case of the international law of human rights which, based on this pragmatic approach, showed an impressive development in the period that goes from the end of the Second

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<sup>14</sup> Commission, ‘Communication from the Commission to the European Parliament and the Council. A New EU Framework to strengthen the Rule of Law’ COM(2014) 158 final, 4.

<sup>15</sup> Historical and theoretical complexities in this triple relationship have been the subject of much literature. See, for example Jürgen Habermas, ‘On the internal relation between the rule of law and democracy’ (1995) 3(1) *European Journal of Philosophy* 12; Christian Davenport, ‘Human Rights and the democratic proposition’ (1999) 43(1) *The Journal of conflict resolution* 92; Tony Evans, ‘If democracy, then human rights?’ (2001) 22(4) *Third World Quarterly* 623.

<sup>16</sup> Norberto Bobbio, *The Age of Rights* (Polity, 1996).

<sup>17</sup> Jacques Maritain, *Man and the State* (University of Chicago Press, 1951) 77.

<sup>18</sup> Cass R. Sunstein, ‘Incompletely Theorized Agreements in Constitutional Law’ (2007) 147 *Chicago Public Law and Legal Theory Working Paper*, 2.

World War to the end of the Cold War. The development of the International Bill of Human Rights,<sup>19</sup> and subsequent development of an extensive array of human rights treaties and mechanisms aimed at developing different principles and ideas of the UDRH in relation to different thematic issues or to different groups, made the question of the ‘meaning’ of human rights less relevant or less urgent. In the same essay in which Bobbio stated that the definition of human rights is vague and almost always tautological, he seemed to dismiss this question as of little importance: the problem of human rights is not their foundation but their protection, and that, he adds, is not a philosophical question but a political problem.

The development of the International Bill of Human Rights endowed human rights with a form of universality that Jack Donnelly has called ‘international legal universality.’<sup>20</sup> The UDHR and the International Covenants have been adhered to by almost every country in the world. This understanding of the universality of human rights has sometimes been questioned as it does not take into account the historical developments that led to those instruments, the conditions under which adherence is obtained, the real and effective political will to implement therein acquired human rights obligations, or the social, political and legal cultures that should guaranteed the implementation of those rights.<sup>21</sup>

Moreover, since the end of the Cold War, the pragmatic approach to human rights has lost much of its moment. Human rights might no longer be understood as an ‘incompletely theorized agreement’ but rather as an ‘essentially contested concept’.<sup>22</sup> An essentially contested concept is an expression whose indeterminacy does not derive from the vagueness of the concept or from the ambiguity of the terms but rather from a deep disagreement on the reasons to choose or to attribute a meaning to a given linguistic expression.

Prevalent understanding on the contestation to human rights has put the accent on the tension between universalism and particularism or relativism. Deliverables 3.1 and 3.2 identified this tension as the ‘most clearly articulated in human rights scholarship.’ In this sense, contestation to human rights is understood as proceeding from other cultures and value systems. That tension and the contestation to human rights that it produces are mostly to be found in the works of critical human rights and non-Western scholars.<sup>23</sup> Though aware of conflicting dynamics between human rights or between human rights and cultural practices, officials from the Commission and the EEAS also warn that victims of human rights abuses, of whatever geographical context or cultural

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<sup>19</sup> The Universal Declaration of Human Rights together with the International Covenant on Civil and Political Rights with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights.

<sup>20</sup> Jack Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29 *Human Rights Quarterly* 281.

<sup>21</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005); Kate Schick, ‘Beyond Rules: A Critique of the Liberal Human Rights Regime’ (2006) 20(3) *International Relations* 321; Martti Koskenniemi, ‘Histories of International law: Dealing with Eurocentrism’ (2011) 19 *Rechtsgeschichte* 151; José-Manuel Barreto (ed), *Human Rights from a Third World Perspective. Critique, History and International Law* (Cambridge Scholars Publishing, 2013).

<sup>22</sup> Walter B. Gallie, ‘Essentially Contested Concepts’ (1956) 56 *Proceedings of the Aristotelian Society* 167.

<sup>23</sup> For a discussion, see Donnelly (n 20).

background, do not 'reason away what happened to them by appeals to relativism. Usually the ones who appeal to relativism are the perpetrators'<sup>24</sup> or, in general, those in power.

Besides this prevalent understanding of contestation to human rights and different understandings due to cultural differences, it must be noted that diverging conceptions and contestation to human rights might be found also within Europe (and within the European Union). This divergence is not comprehended in the "universalism vs. cultural relativism" debate with the result that diverging 'cultural/ideological' differences within European conceptions of human rights are rarely taken into account, whereas in other cultural contexts different conceptions of human rights are systematically attributed to cultural differences, neglecting power dynamics.<sup>25</sup>

However, different conceptions of human rights within Europe are also very important in assessing coherence in the EU's external action. Diverging European conceptions of human rights have the power to influence the human rights agendas and priorities of the European institutions in varying ways, causing different sets in prioritisation and in operationalisation. For example, there are conceptions of human rights in Europe for which economic, social and cultural (ESC) rights are not thought of in terms of rights but rather in terms of policies and policy guidelines;<sup>26</sup> or whereby LGBTB rights are not human rights but secondary rights derived from the 'right to privacy'.<sup>27</sup> These differentiated conceptions might influence human rights agendas in different institutions<sup>28</sup> and agencies no less than the different understandings in third countries can influence their implementation.

In order to unify interpretations on contested concepts and try to solve resulting conflicts, underpinning notions are often presented as a resource. In the field of human rights, this role is often attributed to the notion of human dignity: 'these rights derive from the inherent dignity of the human person'<sup>29</sup> and their function is to protect human dignity. In the European Treaties, the notion of human dignity has taken on a prominent role.<sup>30</sup> In the Charter of Fundamental Rights both the first chapter and article 1 are dedicated to dignity. Key policy instruments in the field of

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<sup>24</sup> Deliverable 3.2, 7.

<sup>25</sup> See, for example, Eva Brems, *Human Rights: Universality and Diversity* (Martinus Nijhoff, 2001).

<sup>26</sup> This should not be thought of as a mere nominal dispute: the United Kingdom has opted out the Charter of Fundamental Rights primarily on this account. Catherine Barnard 'The 'Opt-Out' for the UK and Poland from the Charter of Fundamental Rights: Triumph of Rhetoric over Reality?' in Griller and Ziller (eds), *The Lisbon Treaty: EU Constitutionalism without a Constitutional Treaty*, (Springer, 2008) 257-283.

<sup>27</sup> For example Carlo Cardia, *Genesi dei diritti umani* (Giappichelli, 2005) or Mary Ann Glendon, 'La visione dignitaria dei diritti sotto assalto', in Antonini (a cura di), *Il traffico dei diritti insaziabili* (Rubbettino, 2007) 59-80.

<sup>28</sup> This if, for example, the case of the Draft Equality Directive, which has been at a halt since 2008 due to the disagreement subsisting in Europe that has found a representation among the Member States, on how far the principle of non-discrimination can go. In the field of external action, we have the example of the difficulties of ESC rights to go beyond the Strategic Framework into the Action Plan.

<sup>29</sup> International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

<sup>30</sup> In 1999, former German President Herzog had highlighted the need for the recognition of human dignity, if the EU was to become a community centred on the person. Human dignity is enshrined in Art. 2 TEU.



human rights, such as the Strategic Framework on Human Rights and Democracy or the Stockholm Programme also, refer explicitly to this concept. Yet it is arguable that the notion of human dignity is any less contested than the concept of human rights<sup>31</sup> or that it might or does serve as a guide in solving conflicts among diverging conceptions of human rights.<sup>32</sup>

## 2. Diverging agendas on human rights: the relationship with democracy and the rule of law

In order to assess the coherence of the EU's external action in relation to human rights, another key element to be considered is how the diverging conceptions and agendas on human rights might delineate the relation of human rights with two other leading values of the EU's external action, i.e. democracy and the rule of law.

As we have said above, the EU presents this relationship as a virtuous and harmonic triangle, whereas traditionally legal and political scholarship has dwelled on their historical independence and theoretical distinctiveness. If the EU policy-making intends to create a harmonious and synergetic relation out of these three elements, it will need more than just declaring it and certainly more than introducing overlapping definitions. The nodes where the relations between the concepts can be mutually strengthened or strained must be identified and assessed.

In the case of the rule of law, the relationship with human rights could be established relatively clearly. As discussed in preceding reports, the European Commission has recently produced a Communication on the rule of law<sup>33</sup> based on a study report by the Venice Commission<sup>34</sup> and the jurisprudence of the ECJ. From the report of the Venice Commission it seems that there is a consensus among the core elements which are common both to the rule of law and to the *Rechtsstaat*. These include the principles of legality, legal certainty, prohibition of arbitrariness in the executive powers, independent judiciary, effective judicial review, and equality before the law. This understanding of the rule of law makes it a fairly distinct concept, intended for ensuring that – as the UN suggests<sup>35</sup> – ‘all persons, institutions and entities public and private, including the State

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<sup>31</sup> Different understandings of dignity might be found in European documents and in constitutional traditions. For example, the conception of human dignity in the Charter might be deemed as corresponding to the notion in liberal democracies; in fact, Chapter 1 of the Charter of Fundamental Rights recreates an idea of dignity associated with the indemnity of the body (right to life, to integrity and prohibition of torture) together with a negative conception of freedom (prohibition of slavery and forced labour). Yet in many constitutional traditions of the Member States, the idea of dignity carries with it previous discussions regarding the ‘undignified’ living or labour conditions of the working class, for example, or the respect due to certain social groups and institutions. See, Christopher McCrudden (ed) *Understanding Human Dignity* (Oxford University Press, 2013).

<sup>32</sup> Christopher McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’ (2008) 19(4) *European Journal of International Law* 655.

<sup>33</sup> Commission, ‘Communication to the European Parliament and the Council, A new EU Framework to strengthen the rule of law’, COM(2014) 158 final.

<sup>34</sup> Council of Europe, European Commission for Democracy through Law (Venice Commission), ‘Report on the Rule of Law’, Study No. 512/2009 (2011) CDL-AD(2011)003rev.

<sup>35</sup> United Nations, The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General, S/2004/616.

itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.’

There are some discrepancies in the scholarship and in the European documentation as to whether the EU’s definition of the rule of law is ‘thin’ or ‘thick.’ Von Bogdandy and Ioannidis<sup>36</sup> argue that it is ‘thin’ because it is distinct and differentiated from respect for human dignity, freedom, democracy and equality, whereas ‘thick’ understandings of the rule of law are supported by the presence of both formal and substantive elements. Rather than the alternatives thin/thick or formal/substantive, Deliverable 3.2 (p.38) found that the rule of law might be discussed, envisaged and put into practice with greater focus on the institutions or the enforcement bodies that support it rather than on the ideals it should aim at: ‘[w]hen the rule of law is defined in terms of its institutional structures, it is usually not conceived as an end in itself, but as a means towards another end – most commonly economic growth.’ The conceptualisation of the rule of law in the EU’s external action might be increasingly ‘thicker’<sup>37</sup> but its implementation in external action is rather limited. The conceptualisation is too broad and ill-defined and there is no clear set of internationally agreed standards serving as legal basis for State obligations. The result is that, notwithstanding the ambitious definitions in policy-driving documents, the concept becomes more diluted and less demanding the more it moves towards implementation, ending up with very limited programmes.<sup>38</sup>

Democracy is the third element in the triangular relation with human rights and the rule of law.

Since the turn of the century, there has been an intense debate on the EU’s conception of democracy,<sup>39</sup> and there is a widespread understanding in the literature that the EU’s conception of democracy is increasingly “thicker”. Democratic ideas have found a place in the Lisbon Treaty. Under Title II (‘Provisions on Democratic Principles’), the Treaty of Lisbon enshrines three main principles of democratic governance: (1) democratic equality; (2) representative democracy; and (3) participatory democracy.<sup>40</sup> To these, two other principles must be added: transparency and deliberation are also principles aiming at the democratic legitimating of the EU’s activity. However, the real scope and impact of these principles, and their provisions, remain subjected to criticism<sup>41</sup>

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<sup>36</sup> Armin von Bogdandy and Michael Ioannidis, ‘Systemic Deficiency in the Rule of Law: What it is, what has been done, what can be done’ (2014) 51(1) *Common Market Law Review* 59.

<sup>37</sup> FRAME Deliverable 3.2 in p. 36 listed all the elements that the Commission has included in the concept of the rule of law in relation to external action.

<sup>38</sup> Laurent Pech, ‘Rule of Law as a Guiding Principle of the European Union’s External Action (2012) *Cleer Working Papers* 2012/3.

<sup>39</sup> Particularly, on the relation between democracy, participation and representation there was a debate on the views expressed by the Commission (‘European Governance – A White Paper’ COM(2001) 428 final (2001/C 287/01). See also, Ludger Radermacher, ‘The European Commission’s White Paper on European Governance: The Uneasy Relationship Between Public Participation and Democracy’ (2002), 3 *German Law Journal*, and Deirdre Curtin, ‘Private Interest Representation or Civil Society Deliberation? A Contemporary Dilemma for European Union Governance’ (2003) 12 *Social Legal Studies* 55.

<sup>40</sup> For an explanation on each of these principles, see Deliverable 3.2, 39 ff.

<sup>41</sup> For an overview, see eg Amandine Crespy, ‘Deliberative Democracy and the Legitimacy of the European Union: A Reappraisal of Conflict’ (2014) 62 (S1) *Political Studies* 81.

and the long-standing debate on the “democratic deficit” of the EU has not found a final settlement.<sup>42</sup>

As in the case of the rule of law, the EU’s conception of democracy is “thicker” in the realm of external action. The EU has long conceptualised democracy in substantive terms, exceeding formal minimum interpretations of democracy as consisting in the existence of elections and Parliaments. Moreover, in 2011 High Representative Catherine Ashton introduced the notion of “deep democracy” following the events of the Arab Spring.<sup>43</sup> This notion has been growing in content, through the revision of the European Neighbourhood Policy, to include: free and fair elections, freedom of association, expression and assembly and a free press and media, the rule of law administered by an independent judiciary and right to a fair trial, fighting against corruption, security and law enforcement sector reform (including the police), democratic control over armed and security forces’, civil society, gender equality and anti-discrimination.

Yet, also as with the rule of law, the thicker characterisation of the notion is accompanied by a more diluted operationalisation. Starting with the Strategic Framework that considered democracy an “aspiration”, it appears that the EU remains intentionally vague as to what it is seeking to advance<sup>44</sup> and the effect of the notion on external policy seems limited. As concluded in a previous report<sup>45</sup>, the notion of ‘deep democracy’ has broadened rather than deepened the EU’s conception of democracy and looks more as a shorthand for general ‘good governance’, than a theorized model of democracy.

In short, to establish the relationship between human rights, democracy and the rule of law is difficult on various grounds. Firstly, because of the conceptual indeterminacy of the expressions themselves; and secondly, because the blurred relations between the concepts produce overlapping situations instead of promoting or leading to the identification of synergies. As we will see in the analysis of the different policy fields, this leads to difficulties in the ‘operationalisation’ of those concepts in a manner that they might reinforce each other.

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<sup>42</sup> Contrasting opinions might be found, for example, in Andrew Moravcsik, ‘Reassessing Legitimacy in the European Union’ (2002) 40 (4) *Journal of Common Market Studies* 603; Andreas Føllesdal and Simon Hix, ‘Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik’ (2006) 44 (3) *Journal of Common Market Studies* 533; Armin von Bogdandy, ‘The European Lesson for International Democracy: The Significance of Articles 9–12 EU Treaty for International Organizations’ (2012) 23 (2) *The European Journal of International Law* 315.

<sup>43</sup> Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A new response to a changing Neighbourhood*, JOIN(2011) 303 final.

<sup>44</sup> Milja Kurki, *How the EU can adopt a new type of democracy support – Working Paper No. 112*, FRIDE, Madrid (2012) 3.

<sup>45</sup> Deliverable 3.2, 46-47.

### 3. Realisation of human rights and democracy: priority themes and vulnerability

Lastly, the third issue to be considered is that the EU has supported the principle of 'indivisibility' of human rights as established in the World Conference on Human Rights in Vienna in 1993.<sup>46</sup>

The EU Charter of Fundamental Rights was celebrated for distancing itself from obsolete distinctions and categorisations of human rights (in generations) and adopting a 'holistic' stand on human rights.

The Strategic Framework also starts from this 'holistic' perspective on human rights stating that 'the EU reaffirms its commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural.' In practice, however, as has been shown in Deliverable 12.1 (p. 19), civil and political rights have been prioritised over economic, social and cultural rights.

Interviews conducted for the production of Deliverable 3.2 (p. 27) showed that members of the COHOM are well aware of the distance between the theory and the practice of the indivisibility of human rights and have indicated that they were thinking about ways in which this problem can be addressed. It is still too soon to assess whether the new Action Plan on Human Rights and Democracy will manage to put indivisibility into practice or at least close the gap between declarations and actions.

Difficulties addressing the indivisibility of human rights are also connected to the growing contestation of this idea at various levels (political and theoretical). Politically we have already noted that notwithstanding the EU's repeated positioning in favour of the indivisibility of human rights, not all ideologies co-existing in the European space and not all European legal and political traditions favour indivisibility. On the contrary, for some of them social and economic rights cannot even be conceptualised as 'rights' in the strictest sense of the word.

This position is not merely a political preference dictated by economic interest or conjuncture. It has been widely theorised in Europe since the 1980s. The theories on the so-called generations of rights (that argued that there were structural, and not only historical, differences between civil and political rights of the first generation and ESC rights of the second) had been put into question, among others, by theoretical positions arguing the interdependency of rights, by institutional declarations such as the Vienna Declaration or in the case law of the European Court of Human

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<sup>46</sup> Vienna Declaration and Programme of Action (adopted by the World Conference on Human Rights, Vienna, 25 June 1993) in point 5 reads: 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'

Rights.<sup>47</sup> Yet since the turn of the century a new argument has been warning about the perils associated with the idea of indivisibility and its impossible realisation. The so-called minimalist and anti-rhetorical theories of human rights argue that human rights are inflationed and that if we do not want them to ‘burst by the seams’ and disperse limited resources inefficiently on an unlimited front, selective measures must be taken.<sup>48</sup>

Vulnerability and the increasing use of ‘vulnerable groups’ are a second issue regarding the holistic approach to human rights, which is half-way between two of their characteristics: indivisibility and universality. Ever since critical perspectives denounced that the universal subject of human rights is, in reality, heavily characterised as male, white, heterosexual, able bodied, etc., efforts have been directed towards finding the conditions and conceptualizations capable of producing ‘inclusive universality.’<sup>49</sup>

In the documentation relating to the EU’s external action, we find this concern increasingly addressed through the resort to categories of ‘vulnerable groups.’ Vulnerable groups have also served as a mechanism for ensuring resource efficiency in some fields of external action. Competing meanings and ‘operationalisation’ of vulnerable groups are, thus, fraught with problems. Due to the distinct weight that the use of ‘vulnerable groups’ has acquired in the EU’s external action, we shall devote the next section to looking into this topic in greater detail.

## B. The EU’s approach to vulnerability and vulnerable groups

### 1. Introduction

FRAME Deliverable 12.1 showed that the EU uses the terms ‘vulnerability’ and ‘vulnerable groups’ extensively both in its internal and external action. The two standard-setting human rights documents for internal and external action – namely the Stockholm Programme and the Strategic Framework on Human Rights and Democracy<sup>50</sup> – are a case in point.

Just a few years ago, it appeared that ‘vulnerability’ and ‘vulnerable groups’ were used automatically, without much reflection, in human rights law, policies, and scholarly literature. Nowadays, however, there is significant debate about the use and meaning of these terms amongst both scholars and EU practitioners. FRAME Deliverable 3.2 has identified the positioning of vulnerable groups as one of the key challenges which the EU now faces in articulating its concepts

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<sup>47</sup> Ida Elisabeth Koch, *Human Rights as indivisible rights: the protection of socio-economic demands under the European Convention on Human Rights* (Martinus Nijhoff, 2009).

<sup>48</sup> Measures, of course, vary enormously among proponents. Some currents propose to deflate human rights, expelling all those claims that are not ‘true’ human rights (for example, Michael Ignatieff, *Human Rights as Policy and Idolatry*, Princeton University Press 2001). Others, more simply, propose to establish a hierarchy of priorities of human rights that should be attended first (for example, Antonio Cassese, *I dirittiumani*, Laterza 2005).

<sup>49</sup> Brems (n 25).

<sup>50</sup> European Council, ‘The Stockholm Programme– An Open and Secure Europe Serving and Protecting Citizens’ [2010] OJ C115/1, para 2(3)(3). (The Stockholm Programme); Strategic Framework, 2-3.

of human rights, democracy and rule of law.<sup>51</sup> During interviews conducted for FRAME Deliverable 3.2, officials from the European External Action Service (EEAS) indicated that they had debated the term ‘vulnerable groups’.<sup>52</sup> Deliverable 3.2 noted:

Some officials strongly hold the view that the term should not be used at all, because it undermines the agency of people. Vulnerability rings of powerlessness, passivity, victimhood and hopelessness. But EEAS officials also indicated that they have a hard time finding an alternative. The alternative would be to simply list certain groups (like women, children and LGBTI people), but such a list can grow endless and is not very helpful in daily practice of EU officials (in Brussels or around the world). These officials from the EEAS indicated that there might be a need for an alternative overarching term, but that this has not been found yet.<sup>53</sup>

Indeed, the debate and criticisms on the concept of ‘vulnerable groups’ has caused the EEAS to drop the terms from the new Action Plan on Human Rights and Democracy (2015-2019).<sup>54</sup> The New Action plan includes actions on ‘Cultivating an environment of non-discrimination’, ‘Promoting gender equality, women’s rights, empowerment and participation of women and girls’ and ‘promoting, protecting and fulfilling children’s rights’.<sup>55</sup> Under these umbrella terms, the document does mention specific groups of rights holders: women and girls; LGBTI; indigenous peoples; persons with disabilities; and children. Different types of migrants are mentioned under other actions in the new Action Plan.

In some ways, this report continues where Deliverables 3.2 and 12.1 left off. It will provide a detailed empirical analysis of how vulnerability-terminology appears in the external dimension of the AFSJ. The report will thereby focus specifically on the areas of mobility and migration; trafficking in human beings; and terrorism. The present chapter provides the conceptual background for that analysis. Section 2 outlines why people are vulnerable. Section 3 discusses vulnerability and human rights subjectivity. Section 4 focuses on the different approaches to vulnerability as a heuristic device in law and policy. Section 5 discusses how to ameliorate vulnerability. Section 6 focuses on the vulnerability of institutions (as opposed to human beings). Section 7 finishes the chapter with a conclusion.

## **2. The descriptive dimension: why people are vulnerable**

Theoretically, vulnerability straddles both the realms of ‘is’ and ‘ought’: it can be used to provide a descriptive diagnosis of the human condition, or of a situation in which certain individuals find themselves, and as a prescriptive tool regarding the proper response to this condition. This part

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<sup>51</sup> FRAME Deliverable 3.2, 8-11.

<sup>52</sup> FRAME Deliverable 3.2, 11; Information provided by EEAS during interviews held in Brussels in September 2014.

<sup>53</sup> FRAME Deliverable 3.2, 11.

<sup>54</sup> New Action Plan, objectives 13, 15 and 16.

<sup>55</sup> Ibid, 11-12.

starts with the descriptive dimension of vulnerability, and thus asks: why are people vulnerable? People are vulnerable because they have bodies (in other words, they are *embodied*) and because they are social beings *embedded* in relationships.<sup>56</sup> These two themes will be further explored below. Of course, embodied and embedded vulnerability are interconnected, as ‘our relationship with the world is always through our embodiment.’<sup>57</sup>

Note that this applies to all human beings: we all have bodies, and we are all embedded in social and institutional relationships. As Martha Fineman, one of the foremost vulnerability theorists, emphasizes: vulnerability is *universal*.<sup>58</sup> Vulnerability is inescapably part of the human condition. At the same time, however, embodiment and embeddedness is what makes vulnerability always also *particular*. Everyone experiences their vulnerability individually and uniquely, due to their particular embodiment and position in a web of social and institutional relationships.

#### **a) Embodied vulnerability**

In the first place people are vulnerable because they are embodied. The close connection between vulnerability and embodiment is reflected in the etymology of the term: the word ‘vulnerable’ derives from the Latin *vulnus*, meaning ‘wound’.<sup>59</sup> In line with this, many dictionary-definitions conceive of vulnerability as the openness to attack or hurt.<sup>60</sup> In our bodies we can be hurt because of biological and developmental processes (such as infancy, pregnancy, illness or aging). Moreover, our bodies can also suffer through outside forces and material conditions such as natural disasters, accidents, or lack of nourishment and drink. Thus there is endless variation in the ways in which our bodies can be hurt.

#### **b) Embedded vulnerability**

At the same time, people are social beings and always situated in ‘webs’ of social, cultural, economic and institutional relationships.<sup>61</sup> People are embedded in families, in society and (often but not always) in state and regional systems. All these relationships shape people’s lives and fortunes. People are dependent on each other and on institutions. If something bad happens in these relationships (such as break-up of the family; loss of a job; racism in society etc.) people suffer. Again, there is endless variation in the ways in which we can be hurt through other people and institutions.

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<sup>56</sup> Martha Albertson Fineman, ‘Equality and Difference – The Restrained State, Emory University School of Law,’ Research Paper No. 15-348 (2015) 209, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2591689](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2591689).

<sup>57</sup> Bryan S. Turner, *Vulnerability and Human Rights* (Essays on Human Rights, The Pennsylvania State university 2006), 21.

<sup>58</sup> Martha Albertson Fineman, ‘The Vulnerable Subject and the Responsive State’ (2010) 60 EMORY L.J. 251.

<sup>59</sup> Turner (n 57) 28.

<sup>60</sup> See, e.g., Shorter oxford English Dictionary (6<sup>th</sup> edn 2007) 3557, which defines vulnerability as ‘able to be wounded; (of a person) able to be physically or emotionally hurt; liable to damage or harm, esp. from aggression or attack, assailable.’

<sup>61</sup> Fineman (n 58) 269.

### 3. Vulnerability and human rights subjectivity

Turning to human rights law, the question is whether human rights law is so construed as to protect the most vulnerable people.<sup>62</sup> Even more fundamental: does human rights law protect vulnerable people? Or, in other words, is the human of human rights vulnerable? It is tempting to either answer ‘yes of course, human rights law protects everybody’, or to narrate human rights as a progress-story in which human rights exist along a continuum that progressively includes vulnerable groups.<sup>63</sup> The authors of this report would caution against too easily adopting these sanguine views: the relationship between vulnerability and human rights is complex and contested.

Drawing on the work of Anna Grear and other critics, there is arguably an ambivalence at the core of human rights<sup>64</sup>. The history of human rights law yields two different stories: one story adopts a liberal quasi-disembodied autonomous subject and the other story adopts a human embodied vulnerable subject as the central figure of human rights. The liberal story is a very powerful one in human rights law (including in European human rights Convention law<sup>65</sup>) and as a result the human rights universal is often premised on a mythical *invulnerable* subject, who is male, white, rational, autonomous etc.<sup>66</sup> As a result, people who do not fit this archetype have often found great difficulty in obtaining protection through human rights law. On the other hand, human rights are undeniably – and perhaps par excellence – an emancipatory tool for diverse, embodied, and vulnerable people. To this day, human rights law struggles with paradoxical inheritances.<sup>67</sup>

### 4. Vulnerability as a heuristic device in law and policy

On the empirical level, section 2 discussed that people are vulnerable because they are embodied and because they are embedded in society. The question that now arises is how this concept is used/translated into law and policy.

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<sup>62</sup> See Lourdes Peroni and Alexandra Timmer, ‘Vulnerable Groups: the Promise of an Emerging Concept in European Human Rights Convention Law’ [2013] 11 *I\*CON* 1056.

<sup>63</sup> Michael Ashley Stein, ‘Disability Human Rights’ (2007) 95 *California Law Review* 75, 114, who states: ‘One way to view human rights is to consider them existing along a continuum that progressively extends towards marginalized groups.’

<sup>64</sup> Anna Grear, ‘Challenging Corporate “Humanity”’: Legal Disembodiment, Embodiment and Human Rights’ (2007) 7 *Human Rights Law Review* 511; and Anna Grear, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (Palgrave Macmillan, 2010).

<sup>65</sup> For an influential defence of the claim that the Convention should be interpreted in line with liberal values see George Letsas, *A Theory of Interpretation of the European Convention on Human Rights* (Oxford University Press 2007). For interpretations that contest the liberal account, see Marie-Bénédicte Dembour, *Who Believes in Human Rights? Reflections on the European Convention* (Cambridge University Press 2006).

<sup>66</sup> Feminist legal theorists have argued that formal equality thinking is so pervasive in human rights law because of the influence of liberal values on the development of human rights (or, to put it more strongly: because human rights are founded on liberalism). See e.g. Catharine MacKinnon, ‘Crimes of War, Crimes of Peace’ (1993-94) 4 *UCLA Women’s Law Journal* 59, 71-76.

<sup>67</sup> Anna Grear (n 64) 525-534. Human rights law has grown out of a society that was both colonial and patriarchal, and to this day struggles with these paradoxical inheritances.



### a) *Vulnerable groups approach and factors approach*

As mentioned above, the concept of vulnerability is often used in EU law and policy documents. There appear to be two main approaches to vulnerability in these EU materials.<sup>68</sup>

The first is a '*vulnerable groups approach*', where the document in question does not define vulnerability but simply lists the groups that are considered vulnerable.<sup>69</sup> This kind of approach to the issue of vulnerability is pervasive in EU documents. An example is found in the General Approach to Migration and Mobility, (GAMM 2011; further discussed infra XX), which states: 'Special attention should be paid to protecting and empowering vulnerable migrants, such as unaccompanied minors, asylum-seekers, stateless persons and victims of trafficking.'<sup>70</sup> In other words, a vulnerable groups approach labels specific groups (children, women, indigenous people etc.) as vulnerable.

The other approach can be labelled a '*factors approach*' to vulnerability. Rather than listing groups, these documents explain the factors which render certain people vulnerable. Factors which are often mentioned are age, gender and mental abilities. An example is found in the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 (further discussed infra XX): 'Vulnerability to trafficking and to different forms of exploitation is shaped by gender.'<sup>71</sup>

Many documents also contain a mixture of the two approaches, stating which groups are considered vulnerable and explaining some of the factors why. An example is the Commission Communication entitled A Special Place for Children in EU External Action (2008), which observes: 'Children must be placed at the centre of the EU's external relations, development and humanitarian aid policies because of their vulnerability. This is due to their youth, their relative inexperience and their dependence on adult care.'<sup>72</sup>

### b) *Risks*

As was also highlighted in Deliverable 12.1,<sup>73</sup> whenever law or policy documents use a vulnerable groups approach this easily creates a stigma. When the EU talks of some (but not all) groups as inherently vulnerable, this creates the impression that 'normal' people are *invulnerable*. In other

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<sup>68</sup> See Alexandra Timmer, 'The Chameleon Concept: 'Vulnerable' Persons in EU Law and Policy' (unpublished paper, on file with authors).

<sup>69</sup> See also UNHCR, 'Responses to Vulnerability in Asylum: Project Report' (2013), 33-34 <<http://www.unhcr-centraleurope.org/pdf/what-we-do/caring-for-vulnerable-groups/response/response-to-vulnerability-in-asylum-project-report.html>> last accessed on 11 June 2015. What is termed 'vulnerable groups approach' in this Deliverable, the UNHCR report calls a 'categories approach'.

<sup>70</sup> Commission, 'The Global Approach to Migration and Mobility' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2011) 743 final, 6.

<sup>71</sup> Commission, 'EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2012) 286 final, priority 2.5. at 2.

<sup>72</sup> Commission, 'A Special Place for Children in EU External Action' COM (2008) 55 final, 3.

<sup>73</sup> FRAME Deliverable 12.1, 131.

words, it constructs vulnerable groups as deviant, as ‘the Other’. As Martha Fineman has argued, labeling migrants, children, women etc. as vulnerable sustains the fiction that the normal subject of human rights law is an *invulnerable* subject. When the EU uses a ‘vulnerable groups’ approach to vulnerability, it risks reinforcing the kind of exclusion and marginalization that in theory it would like to address. To counteract these risks, Deliverable 12. 1 concluded that ‘EU policy should focus less on individual characteristics, and more on the societal arrangements that construct these vulnerabilities.’<sup>74</sup>

The factors approach to vulnerability is often to be desired, as at least it explains why certain people are rendered vulnerable. This lessens the risk of carrying a stigma with it. A factor approach is also to be desired because it entails less risk of essentializing people as vulnerable: a factors approach leaves more room for the idea that once a cause of particular vulnerability is removed, the people involved are less vulnerable.

However, the strength of the factors approach to vulnerability does depend of course on which vulnerability-factors the EU recognizes. If these are only individualistic factors (such as health or biological sex) and not socio-structural factors (such as discrimination), as outlined above, the EU’s conception of vulnerability remains narrow and limited.

### *c) Potential*

The potential of the concept of vulnerability resides in its ability to direct the attention of law and policy-makers to where it is most necessary – to the people whose human rights are most likely to be violated. At a conceptual level, one could say that what the concept of vulnerability can do is making the human rights universal more truly universal. For many, the term ‘vulnerability’ will evoke empathy and sympathy. If used well in policy, ‘vulnerability’ can thus provide an effective call to action. Vulnerability calls attention to the fact that EU policy impacts on real living embodied human beings – not abstract entities. The socially-embedded aspect of vulnerability (see *supra*) furthermore has the potential to make this a relational concept.<sup>75</sup> It can bring with it a sensitivity to the concrete social context in which people find themselves.

## **5. The prescriptive dimension: human rights and resilience**

Now the question arises how institutions – in this case the EU – should respond to human vulnerability. The question, in other words, is how to turn from the descriptive to the prescriptive dimension of vulnerability. It is not guaranteed that vulnerability elicits an ethical or just response: in real life embodied vulnerability can trigger violence and abuse as well as care as empathy. Therefore ethicists and philosophers struggle with this dilemma on a theoretical level.<sup>76</sup> For present purposes, it is important to note that this is where human rights law enters the story. Turner conceives of human rights law as a form of institution-building that attempts to ensure that human

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<sup>74</sup> FRAME Deliverable 12.1, 172.

<sup>75</sup> Peroni and Timmer (n 62).

<sup>76</sup> E.g., Judith Butler, *Prekarious Life: The Powers and Mourning of Violence* (Verso 2004) XII, 40 and 128-151; Ann V. Murphy, ‘“Reality Check”: Rethinking the Ethics of Vulnerability’, in Renée J. Heberle & Victoria Grace (eds) *Theorizing Sexual Violence* (Routledge 2009) 55.

vulnerability receives the right response.<sup>77</sup> In his reading, the universal human capacity for suffering is the basis for the recognition of universal human rights.

The counterpoint to vulnerability is not *invulnerability*, as that does not exist for the reasons mentioned above: people are universally and constantly vulnerable, as they are embodied and embedded in social relationships. The counterpoint to vulnerability is *resilience*.<sup>78</sup> Institutions cannot eliminate human vulnerability, but they can provide resources that render people more resilient in the face of vulnerability. Fineman describes resilience as follows: ‘resilience is what provides an individual with the means and ability to recover from harm, setbacks, and the misfortunes that affect her or his life. The degree of resilience an individual has is largely dependent on the quality and quantity of resources or assets that he or she has at their disposal or command.’<sup>79</sup>

Regarding the question how institutions should respond to vulnerability – meaning how they provide resilience – two main types of approaches can be distinguished in human rights law and policy: *protection*-approaches and *empowerment*-approaches. The protection approach tends to go hand in hand with the vulnerable groups approach discussed above. Thus policy-documents will list specific groups that require protection. An empowerment approach, on the other hand, is focused on removing subordinating structures such as discrimination. Problems arise when the EU solely associates vulnerability with a need for protection. This risks paternalizing the people in question. What is more, protection approaches leave the underlying problems that cause vulnerability untouched. In other words, protection approaches do not change the status quo.

## 6. The vulnerability of institutions

‘In order to protect themselves from the uncertainties of the everyday world,’ Turner writes, people ‘must build social institutions.’<sup>80</sup> This includes political, cultural and legal institutions. These are meant to provide us collectively with security and resilience.

Theorists emphasize, however, that institutions are vulnerable too.<sup>81</sup> In fact, institutions are precarious by nature. This also applies to the institutions which are meant to uphold human rights, such as the United Nations,<sup>82</sup> the European Court of Human Rights,<sup>83</sup> and the EU itself. These institutions are vulnerable, e.g., because they are dependent on changeable political good-will, and often inadequate financial support. Turner observes: ‘The dynamic and dialectical relationship between institutional precariousness and ontological vulnerability drives the evolution of human rights legislation and culture. Institutions need to be continuously repaired and redesigned, and

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<sup>77</sup> Turner (n 57) 39-43.

<sup>78</sup> Fineman (n 58).

<sup>79</sup> Fineman (2015) (n.56.) 113 (citations omitted). In earlier work, Fineman has suggested that there are five types of resources that institutions can provide: physical, human, social, ecological or environmental, and existential resources. See Fineman (2010) (n 58).

<sup>80</sup> Turner (n 57) 26.

<sup>81</sup> E.g. Fineman and Turner (n 57).

<sup>82</sup> Turner (n 57) 31.

<sup>83</sup> Timmer (2013) (n 57).

human rights need to be constantly reviewed in the light of their misapplication, misappropriation, and failures.<sup>84</sup> This means that human rights law is constantly evolving, based on the dynamic relationship between vulnerable institutions and vulnerable people.

Thus the realization that institutions - including the EU - are vulnerable, can provide a reality-check for human rights advocates. What ultimately and inescapably bounds the potential of the EU to further human rights, is the vulnerability of the EU itself. No third-State or partner-organization would listen if the EU would be pushing the rights of vulnerable people too far. The EU and other human rights organizations have to be realistic and idealistic at the same time.

## 7. Conclusion

This part has shown that all people are vulnerable because they are embodied and because they are embedded in social relationships. The problem with human rights law has been that the universal human rights subject is not necessarily conceived of as 'vulnerable'. Indeed, in many ways, the human rights universal has been excluding of vulnerable people. When focusing on vulnerability, EU policies have the potential to make the human rights universal more inclusive and direct the attention where it is most needed. On the other hand, the use of the concept of vulnerability also carries grave risks with it. It namely risks putting a stigma on people, and belittling them. Finally, this part has discussed that institutions- including the EU itself – are vulnerable too. The vulnerability of the EU itself inevitably limits its potential to make a difference for vulnerable people.

### C. Human rights prioritisation under the New Action Plan on Human Rights and Democracy

While this research was ongoing, the European Commission and the HP/VP issued a Joint Communication to contribute to the elaboration of a new Action Plan on Human Rights and Democracy for the period 2015-2019 (proposal for a new Action Plan).<sup>85</sup> This Communication is entitled 'Keeping human rights at the heart of EU agenda'. The Council finally adopted the new Action Plan on 20 July 2015, a few days before the submission of this report.<sup>86</sup> The Joint Communication highlights that the Strategic Framework, 'with its priorities and guiding principles' is still the framework for the EU's action in this area.<sup>87</sup> Equally, the subsequent Council Conclusions reaffirm that the Strategic Framework is the 'guiding' document of the EU's human rights and democracy agenda, while considering also the EU human rights guidelines, Council conclusions and strategy papers.<sup>88</sup> However, the new Action Plan's structure clearly departs from the Strategic Framework's structure. The Strategic Framework identified eight spheres of EU action, while the Joint Communication and the Council Conclusions refer to five strategic 'areas of action' or 'challenges:'

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<sup>84</sup> Turner (n 57) 32.

<sup>85</sup> Proposal for a new Action Plan (n 6).

<sup>86</sup> New Action Plan (n 7).

<sup>87</sup> Proposal for a new Action Plan 2.

<sup>88</sup> New Action Plan, para 4.

**Chart 3: EU areas of action under the Strategic Framework and the new Action Plan**

AREAS OF ACTION	
STRATEGIC FRAMEWORK AND ACTION PLAN 2012-2014	NEW ACTION PLAN (2015 – 2019)
I. Human rights and democracy throughout EU policy	I. Boosting the ownership of local actors
II. Promoting the universality of human rights	II. Addressing human rights challenges
III. Pursuing coherent policy objectives	III. Ensuring a comprehensive human rights approach to conflict and crises.
IV. Human rights in all EU external policies	IV. Fostering better coherence and consistency
V. Implementing EU priorities on human rights	V. A more effective EU human rights and democracy support policy
VI. Working with bilateral partners	
VII. Working through multilateral institutions	
VIII. The EU working together	

The main rationale for this change in the structure could be that, according to the Joint Communication, this new Action Plan, contrary to the first one, ‘should not endeavour to cover exhaustively all aspects of the Union’s Human Rights/Democracy support policies’ but ‘be strategic and focus on priorities where additional political momentum and enhanced commitment is needed.’<sup>89</sup>

In addition, the new Action Plan does not refer to human rights priorities. Instead it lays down ‘human rights challenges’, which have to be confronted ‘both internally and externally.’ The expressions ‘vulnerability’ or ‘vulnerable groups’ have been virtually removed from the new Action Plan which only includes one reference to ‘vulnerable migrants.’ It rather prefers to allude to ‘combatting discrimination’ or ‘inclusion of persons belonging to marginalised groups.’ References to human rights priorities are clustered now under the area II ‘Addressing human rights challenges’. These challenges were labelled as ‘key challenges’ in the Commission’s and HR/VP’s proposal whereas in the Council Conclusions they are merely referred to as ‘challenges’. The strategic word ‘key’ has been abandoned in the definitive text. Chart 4 below compares the content of both Action Plans in terms of human rights priorities:

<sup>89</sup> Proposal for a new Action Plan 5.

**Chart 4: Human rights priorities in the new Action Plan**

PRIORITY THEMES and GROUPS	
ACTION PLAN 2012-2014 V. Implementing EU priorities on HR	NEW ACTION PLAN 2015-19 II. Addressing human rights challenges
<u>Outcome 16</u> : Abolition of the death penalty. Actions 16 a), b), c).	<u>Objective 13</u> . Combatting torture, ill-treatment and the death penalty. Actions a) and b).
<u>Outcome 17</u> : Eradication of torture and other cruel, inhuman or degrading treatment or punishment. Actions 17 a), b), c).	<u>Objective 13</u> . Combatting torture, ill-treatment and the death penalty. Actions a) and b).
<u>Outcome 18</u> : Effective support to human rights defenders. Actions 18 a), b), c).	(Under Area I. Boosting ownership of local actors. Objective 9. Invigorating support to Human Rights Defenders, including in international and regional fora).  <u>Objective 17. Fostering a comprehensive agenda to promote Economic, Social and Cultural Rights (ESCR). Action c.</u>
<u>Outcome 19</u> : Promotion and protection of children's rights. Actions 19 a), b), c), d).	<u>Objective 15</u> . Promoting, protecting and fulfilling children's rights. Actions a), b) and c).
<u>Outcome 20</u> : Protection of the rights of women, and protection against gender-based violence. Actions 20 a), b), c), d), e).	<u>Objective 14</u> . Promoting gender equality, women's rights, empowerment and participation of women and girls. Actions a), b), and c)..
<u>Outcome 21</u> . Compliance with IHL. Actions 21 a), b), c), d).	(Under Area III. Ensuring a comprehensive human rights approach to conflicts and crises. Objective 21. Supporting compliance with International Humanitarian Law).
<u>Outcome 22</u> : Enjoyment of human rights by LGBT persons. Actions 22 a), b).	<u>Objective 16</u> . Cultivating an environment of non-discrimination. Action e).
<u>Outcome 23</u> : Freedom of religion or belief. Actions 23 a), b), c).	Objective 12. Promoting and Protecting Freedom of Religion or Belief. Actions a), b) and c).
<u>Outcome 24</u> : Freedom of expression online and offline. Actions 24 a), b), c), d).	<u>Objective 11</u> . Protecting and promoting freedom of expression online and offline. Actions a) and b). Action c) contemplates a new challenge concerning the issues of privacy and data protection.
<u>Outcome 25</u> : Implementation of the UN Guiding Principles on Business and Human Rights. Actions 25 a), b), c).	<u>Objective 18</u> . Advancing on Business and Human Rights. Actions a), b) and c).
<u>Outcome 26</u> : Administration of justice. Actions 26 a), b).	(Under Area I. Boosting ownership of local actors. Objective 4. Targeted support to justice systems)
<u>Outcome 27</u> : Responding to violations: ensuring accountability. Actions 27 a), b), c).	(Under Area III. Ensuring a comprehensive human rights approach to conflicts and crises. Objective 22. Ending impunity, strengthening accountability and promoting and supporting transitional justice).
<u>Outcome 28</u> : Promote the respect of the rights of persons belonging to minorities. Action 28.	<u>Objective 16</u> . Cultivating an environment of non-discrimination. Action c).

	<u>Objective 17. Fostering a comprehensive agenda to promote Economic, Social and Cultural Rights (ESCR). Action c.</u>
<u>Outcome 29: A strengthened policy on indigenous issues. Action 29.</u>	<u>Objective 16. Cultivating an environment of non-discrimination. Action d).</u>
<u>Outcome 30: Enjoyment of human rights by persons with disabilities. Action 30 a), b).</u>	<u>Objective 16. Cultivating an environment of non-discrimination. Action f).</u>
	<u>Objective 17. Fostering a comprehensive agenda to promote Economic, Social and Cultural Rights (ESCR). Actions a), b) and c)</u>

As this Chart shows, all the priorities identified in the first Action Plan have been translated into the final text of the new Action Plan. However, there were two significant omissions in the text proposed by the Commission and the HR/VP. Freedom of religion or belief and the rights of persons belonging to minorities) were not reflected in their proposal for a new Action Plan, but have been finally included in the Council's final text. This has significantly improved the outcome regarding these human rights priorities. In connection with the protection of the rights of minorities, these were merely mentioned in the expositive part of the proposal, which only referred to 'religious minorities,' ignoring other types of minorities. This has been addressed in the final text of the Action Plan, which contains a much more comprehensive provision regarding the 'rights of persons belonging to minorities' without any further distinction. The new Action Plan has addressed some of the shortcomings of the first Action Plan which were mentioned above (see above section I). In this regard, the Joint Communication stressed that:

[...] some areas identified in the 2012-2014 Action Plan require renewed political commitment and additional efforts and thus will feature more prominently in the new Action Plan. This is the case, inter alia, [...] for Economic, Social and Cultural rights; for addressing violation of human rights and international humanitarian law in crises and conflicts; for fighting discrimination, particularly against women, children, persons with disabilities and LGBTI but also against members of religious minorities: for fighting torture and ill-treatment and for increasing the coherence of EU policies from a Human Rights point of view..<sup>90</sup>

One of the most remarkable shortcomings which have been addressed is the promotion of ESC rights which have been incorporated into the new Action Plan under the umbrella of the 'human rights challenges.' The lack of consideration of these rights within the EU's agenda on human rights was one of the most prominent issues regarding the first Action Plan.<sup>91</sup> Thus, the proposed new Action Plan has to be praised for this. Three main actions, which can be divided into six sub-actions, have been included in the new Action Plan with the aim of 'Fostering a comprehensive agenda to promote Economic, Social and Cultural Rights (ESCR).' However, it can be said that these actions

<sup>90</sup> Proposal of new Action Plan 4.

<sup>91</sup> See Deliverable 12.1.

are drafted in rather general terms. Under this objective the Action Plan includes actions such as ‘increase the EU’s focus on ESCR in its external policy’, ‘emphasize the clear recognition of the human rights dimension in areas such as social policy, health, education, access to food and water, or standard of living’ or ‘step up efforts to protect human rights defenders [...], and indigenous peoples.’<sup>92</sup>

Likewise, the new Action Plan has enhanced the EU’s commitment to combat discrimination, including some grounds of discrimination that were previously ignored, such as ethnicity, race and age. In this regard, the new Action Plan has included new actions aimed at combating ‘racism, racial discrimination, xenophobia and related intolerance’ as well as ‘aged based discrimination.’<sup>93</sup> In connection with this latter ground of discrimination, particular emphasis is placed on the protection of older persons: ‘increase awareness of the human rights and specific needs of older persons.’<sup>94</sup>

In addition, protection of the rights of migrants feature much more prominently compared to the first Action Plan, which only mentioned them once, in connection with the external dimension of the AFSJ. Protection of migrants, however, is not considered as one of the ‘human rights challenges’ mentioned by the new Action Plan. Under this document, protection of their rights is included within area IV ‘Fostering better coherence and consistency.’ The objective to be pursued is entitled ‘migration/trafficking in human beings (THB)/smuggling of migrants/asylum policies’ which clusters eight actions,<sup>95</sup> including the promotion and protection of the rights of refugees and internally displaced persons (IDPs), detained migrants, irregular migrants, migrants and refugees in countries of transit, ‘diaspora groups’, and ‘vulnerable migrants’ such as unaccompanied minors. Finally, the most remarkable novelty at least from the perspective of the purpose of this report, is that the Commission, the HR/VP and the Council seem to have abandoned the concept of ‘vulnerable groups.’ The proposal of the Commission and the HR/VP did not include any reference to this concept, which is used just once in the Council’s final text of the Action Plan in reference to ‘vulnerable migrants.’ The new Action Plan seems to prefer the expression ‘fight against discrimination’ or ‘inclusion of persons belonging to marginalised groups.’ Arguably this reflects the internal debate and criticisms on the concept of ‘vulnerable groups’ within the EEAS (see above section II.B). The question to be considered is how the EU is going to mainstream the principle of non-discrimination across the different policies under research here. In the case of development policy it appears that the tool to be used by the EU will be the adoption of a human rights based approach to development but the question remains regarding the rest of the policies. Another issue to be clarified is the level of commitment of the EU towards this principle to the extent that the statements included in the expositive part of the Action Plan ‘combatting and fighting discrimination’ seem to dilute when it comes to establish concrete Actions. In this sense the table

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<sup>92</sup> New Action Plan, objective 17, actions a) and c).

<sup>93</sup> New Action Plan, actions 16 b) and g)

<sup>94</sup> Ibid, action 16 g).

<sup>95</sup> Ibid, objective 24.



of actions merely mentions as the objective to be pursued to 'cultivate an environment of non-discrimination.'<sup>96</sup>

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<sup>96</sup> New Action Plan, objective 16.

### III. Development policy and EU human rights priorities

#### A. Introduction: poverty, inequality and human rights priorities

In accordance with the objectives of the EU's external action declared in Art 21 of the TEU and Art 208 of the TFEU, the European Consensus on Development declares that the 'primary and overarching objective of EU development cooperation is the eradication of poverty.'<sup>97</sup> The role of human rights in pursuing this objective is generally accepted and it is firmly embedded in the EU's development policy strategic documents such as the Agenda for Change.<sup>98</sup> In this regard, human rights and poverty reduction 'are not two projects but two mutually reinforcing approaches to the same project.'<sup>99</sup> The 'capability approach to poverty' developed by Amartya Sen is the understanding of poverty which better shows this interconnection between poverty and human rights. Under this approach, poverty involves low levels or failure of basic capabilities<sup>100</sup> and is defined as 'the absence of inadequate realization of certain basic freedoms, such as the freedoms to avoid hunger, disease or illiteracy.' Human rights standards, for their part, provide inalienable rights to these freedoms, so poverty could also be defined as 'the non-fulfilment of rights to those freedoms.'<sup>101</sup> In addition, human rights strengthen the idea that development policies must have the primary goal of poverty reduction and require the inclusion of concrete guiding principles in the design of development policies, among them, 'identifying and prioritizing action to improve the situation of the poorest.'<sup>102</sup>

Many studies have shown the correlation between poverty and inequality. It is said that poverty is a 'result of disempowerment and exclusion' and that it is a multidimensional concept that is more than the lack of material goods and opportunities, and also includes the lack of physical and social goods.<sup>103</sup> Human rights also help to analyse power relations and to address root causes of discrimination.<sup>104</sup> The role of public policies, especially development policy, in dealing with these inequalities and reducing poverty has also been evidenced. Domestic as well as global action by

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<sup>97</sup> European Parliament, Council and Commission, 'The European Consensus' (Joint Statement by the Council and the representatives of the governments of the Member States meeting with the Council, the European Parliament and the Commission on European Union Development Policy) [2006] OJ C 46/1, para 5. (European Consensus on Development).

<sup>98</sup> See Commission, 'Increasing the impact of EU Development Policy: an Agenda for Change' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2011) 637 final (Commission, Agenda for Change) and Council of the European Union, 'Increasing the impact of EU Development Policy: an Agenda for Change' (Council Conclusions) 9369/12.

<sup>99</sup> OHCHR, *Human Rights and Poverty Reduction. A Conceptual Framework* (United Nations 2004) 3.

<sup>100</sup> Ibid 3.

<sup>101</sup> Ibid 6-10.

<sup>102</sup> OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (United Nations 2006) 9 <<http://www.ohchr.org/Documents/Publications/FAQen.pdf>> last accessed on 14 May 2005.

<sup>103</sup> Ibid 9. See also the World Bank's Reports *Voices of the Poor*, available at <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/0,,contentMDK:20613045~menuPK:336998~pagePK:148956~piPK:216618~theSitePK:336992,00.html>> last accessed on 1 July 2015.

<sup>104</sup> OHCHR (n 102) 9.

governments and international organisations and institutions is crucial to reducing inequalities. This implies not only that institutions themselves have to be equitable (a good political and institutional system will ensure access to services and public goods for all)<sup>105</sup> but also that they have to make the right choices. The distribution of assets and capabilities among the population ‘does not occur by accident’. Instead it is directly influenced by, among other factors, conscious policy choices’.<sup>106</sup> As such, the selection of certain human rights priorities over others is not superfluous and can have a direct impact on the well-being of the population. Due to resource and institutional constraints prioritisation is necessary, but it cannot be arbitrary and has to take into account the context as well as the capacities and comparative advantages of the institutions involved.<sup>107</sup> Prioritisation is necessary in every policy field but its impact is more evident in development due to the objectives pursued by this policy. Human rights can play a significant role to help policy-makers to make the right choices.

The purpose of this section is to investigate how the EU has integrated human rights priorities in its development policy documents in order to address its main objectives of eradicating poverty and reducing inequality. Deliverable 9.1 provided an overview of the strategies used by the EU for integrating human rights in development cooperation.<sup>108</sup> This section attempts to analyse how the EU integrates its human rights priorities, in terms of vulnerable groups and themes, across these strategies. To this end, this part of the report will look into the identification of human rights priorities within the EU’s development policy to see, on the one hand, to what extent these priorities are aligned with those selected in the Strategic Framework on Human Rights and Democracy and, on the other hand, whether they are consistently mainstreamed throughout the different steps of the development policy cycle, from formulation to implementation through financial instruments and evaluation of performance. The assessment will follow the human rights priorities, in terms of vulnerable groups and human rights themes, which were identified in the previous Deliverable 12.1. The main focus will be on vulnerable groups because they are much more visible in this policy. On the contrary, priority themes are not often mentioned, except for some references to specific ESC rights, business and human rights and promotion of judicial systems. To this end, a critical analysis of the main documents with relevance to human rights issued by the EU in this policy has been conducted. These documents are listed in Annex I which also includes literal references to the vulnerable groups and human rights themes referred in them. It should be noted that some strategic documents of this policy, such as the European Consensus on Development, are previous to the Strategic Framework, so they respond to the human rights

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<sup>105</sup> The World Bank, *World Development Report 2006. Equity and Development* (The World Bank and Oxford University Press 2005) 107-125, <<http://www.worldbank.org/en/publication/wdr/wdr-archiv>> last accessed on 14 May 2015.

<sup>106</sup> Mac Darrow and Amparo Tomas, ‘Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation’ (2005) 27 *Human Rights Quarterly* 471, 475.

<sup>107</sup> *Ibid* 503-504.

<sup>108</sup> Laura Beke and others, ‘Report on the integration of human rights in EU development and trade policies’, *FRAME Deliverable 9.1*, September 2014 <<http://www.fp7-frame.eu/reports/>>

priorities considered by the EU at that time. However, this section will focus mainly on documents which were issued after the Strategic Framework.

Section III.B analyses the incorporation of human rights priorities into the traditional strategies used by donors to integrate human rights concerns into development policies, with focus on the strategies developed by the EU, namely mainstreaming of human rights, human rights based approaches and conditionality. Sections III.C and III.D deal with two initiatives that play a significant role in the EU's vision of development. First, Policy Coherence for development, which seeks to take into account the objectives of development cooperation in all policies affecting developing countries, and, second, the EU's approach to the post-2015 development agenda. Finally, section III.E analyses the integration of human rights priorities in the Development Cooperation Instrument as well as the 'self-evaluation' stage of this policy and section III.F provides some tentative conclusions on the weight that the human rights priorities set out in the Strategic Framework on Human Rights and Democracy have in this policy.

Before entering into this analysis, it is worth mentioning one of the usages of the concept of vulnerability that can be very frequently found across the EU's development policy documents, namely 'vulnerability of the States or vulnerable States.' The study of this concept goes beyond the aims of this report but a brief mention should be made for clarifying purposes. This concept is used by the EU in the context of addressing state fragility and crisis management. Addressing state fragility is one of the common principles that are part of the EU's vision on development, as set out in the European Consensus on Development. There the EU recognised that some developing countries are 'particularly vulnerable to natural disasters, climatic change, environmental degradation and external economic shocks' and stressed the importance of supporting disaster prevention and preparedness in those countries with the objective of increasing their resilience to those challenges.<sup>109</sup> The Commission's Communication on the Agenda for Change laid down the need to develop a 'differentiated EU approach to aid allocation and partnerships' which would allocate more funds 'to the countries most in need, including fragile states.' This differentiated approach was considered key to 'achieving maximum impact and value for money.'<sup>110</sup> In the same vein, the 2012 Conclusions on the Agenda for Change stressed the importance of linking 'security, fragility and development' and highlighted that 'fostering developing countries' resilience to national and global shocks is key to their sustainable development.'<sup>111</sup>

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<sup>109</sup> European Consensus on Development para 20-22.

<sup>110</sup> Commission, Agenda for Change 9.

<sup>111</sup> Council Conclusions 9369/12 para 11-12.

## B. Integration of human rights priorities in EU development policies

Donors use many strategies to integrate human rights into their development policies:<sup>112</sup>

- Human Rights mainstreaming, which aims at ‘integrating human rights in all areas and dimensions of development cooperation policy.’<sup>113</sup> This strategy may include also ‘do no harm’ policies which aim to identify and mitigate potential adverse human rights impacts in all projects and programmes.<sup>114</sup>
- Human rights-based approaches (HRBAs), which constitute the most comprehensive strategy to incorporate human rights in development cooperation. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has defined a HRBA as ‘a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.’<sup>115</sup> Under these approaches, the fulfilment of human rights is at the centre of development cooperation, as its main objective. They seek to address inequality and redress discriminatory practices and power imbalances that impede development progress.<sup>116</sup>
- Conditionality and human rights dialogues: many donors apply political conditionality policies, which are defined by Uvin as ‘the threat of cutting off aid to countries with poor human rights records.’<sup>117</sup> However, many authors argue that this ‘punitive or negative’ approach has evolved into a more ‘positive and consensual’ conditionality.<sup>118</sup> ‘Consensual conditionality’ involves donor and recipient entering into a ‘constructive policy dialogue’ through which donors try to ‘persuade’ recipients to adopt certain policies and reforms.<sup>119</sup>
- Projects or programmes targeting specific human rights or groups, which are a traditional form of supporting human rights by donors. Projects and programmes may focus on the protection of specific rights or groups or the support to human rights organizations.<sup>120</sup>

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<sup>112</sup> This classification is developed in World Bank and OECD, *Integrating Human Rights into Development. Donor Approaches, Experiences and Challenges* (2nd edn, The World Bank and OECD 2013) 23. See also David D’Hollander, Axel Marx and Jan Wouters, ‘Integrating Human Rights in Development Policy: Mapping Donor Strategies and Practices’ (2013) Leuven Centre for Global Governance Studies Working Paper no. 108, <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2286204](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286204)> last accessed on 14 May 2015.

<sup>113</sup> D’Hollander, Marx and Wouters (n 112) 26.

<sup>114</sup> World Bank and OECD (n 112) 26.

<sup>115</sup> OHCHR (n 102) 15.

<sup>116</sup> Ibid.

<sup>117</sup> Peter Uvin, *Human Rights and Development* (Kumarian Press, Inc. 2004) 50.

<sup>118</sup> See the World Bank and OECD (n 112) 44-45 and D’Hollander, Marx and Wouters (n 112) 26.

<sup>119</sup> D’Hollander, Marx and Wouters (n 112) 17 and 23.

<sup>120</sup> The World Bank and OECD (n 112) 48.

- ‘Implicit’ human rights work, which relates to those cases in which donors may prefer to use other ‘descriptors’ closely linked to human rights such as good governance, empowerment or protection, instead of expressly referring to human rights.<sup>121</sup>

### 1. Mainstreaming of human rights in the EU’s development policy

Mainstreaming human rights in development policy involves integrating human rights in all its areas and dimensions. This approach was a reaction to previous practices, which considered human rights as an isolated or separate issue within development programmes. An approach which resulted in a so called ‘ghetto-isation of human rights within donor agencies.’<sup>122</sup> The EU has a longstanding commitment towards mainstreaming human rights in its development policy. In its 2001 Communication entitled ‘The European Union’s Role in Promoting Human Rights and Democratisation in Third Countries’ the Commission recognized that ‘respect for human rights and democracy should be an integral or ‘mainstream’ consideration in all EU external policies.’ In the same vein, the European Consensus on Development envisaged a strengthened approach to mainstreaming to be applied ‘in all activities.’<sup>123</sup> The reasoning behind this strengthened approach is that some issues, such as human rights, require a ‘multisectoral response’ as they involve general principles applicable to all initiatives. In this regard, the European Consensus on Development identified certain cross-cutting issues to be mainstreamed: the promotion of human rights, gender equality, democracy, good governance, children’s and indigenous peoples rights, environmental sustainability and combating HIV/AIDS.<sup>124</sup>

Following a consultation on EU development policy organised in 2010, the Commission issued a landmark Communication for the integration of human rights into development cooperation: ‘Increasing the impact of EU Development Policy: an Agenda for Change’.<sup>125</sup> In this document, the EU envisaged a more comprehensive and effective approach to development policy, taking into consideration new global challenges such as the increasing differences between developing countries, the emergence of new donors or the Arab Spring. The new Agenda for Change consisted in 12 points aiming at increasing the impact of EU aid, with human rights, democracy and good governance considered as decisive factors to select the instruments and modalities of aid to be used at country level.<sup>126</sup> Moreover, two overall priority areas where the EU should concentrate its development cooperation were identified: (i) human rights, democracy and other key elements of good governance and (ii) inclusive and sustainable growth for human development. The subsequent Council Conclusions reaffirmed this intrinsic link between development and human rights, stressing that the promotion of ‘human rights, democracy, the rule of law and good

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<sup>121</sup> Ibid 23-67.

<sup>122</sup> D’Hollander, Marx and Wouters (n 112) 26.

<sup>123</sup> European Consensus on Development para 100-102.

<sup>124</sup> European Consensus on Development para 100 and 101.

<sup>125</sup> Commission, Agenda for Change.

<sup>126</sup> Commission, Agenda for Change 4.

governance’ and of ‘inclusive and sustainable growth’ are two basic pillars mutually reinforcing the EU’s development policy and ‘should receive strengthened support.’<sup>127</sup>

Within the second overall priority area of ‘inclusive and sustainable growth for human development’ the Commission recognized three target sectors, namely social protection, business environment and sustainable agriculture and energy. Within the first sector, social protection, the Commission issued one of the documents where the concept of vulnerability and vulnerable groups has been more extensively developed. This document, the Commission’s communication entitled ‘Social Protection in European Development Cooperation’ will be subject to a detailed analysis in section III.B.1.e) below.<sup>128</sup>

The aim of this section is to find out which role vulnerable groups and thematic priorities identified in the Strategic Framework play in the EU’s strategy of mainstreaming human rights into its development policy. In particular, we will study the operationalisation of this strategy by means of targeted policies addressing specific groups or priorities in order to see if these targeted policies are aligned with the human rights prioritisation of the Strategic Framework on Human Rights and Democracy. This focus on particular groups is one of the main features of human rights mainstreaming policies.<sup>129</sup> The EU has developed mainstreaming development sub-policies regarding women, children, indigenous peoples, and, more recently, migrants. These sub-policies will be studied in the following sub-sections.

#### *a) Women*

Protection of women’s rights is the area where the mainstreaming efforts of the EU have been strongest and most evident to the extent that it has been deemed as the ‘most important transversal issue to be mainstreamed throughout all areas and aspects of cooperation.’<sup>130</sup> Almost all the documents analysed in this part of the report contain references to the need to protect human rights of women, among them the leading strategic documents such as the European Consensus on Development and the Agenda for Change. Gender equality was qualified as a cross-cutting issue in the European Consensus on Development<sup>131</sup> and the Agenda for Change enhances the role of women as ‘development actors and peace-builders’ and reaffirms the EU’s commitment towards the mainstreaming of gender equality and the empowerment of women in all EU development policies.<sup>132</sup>

The EU’s concerns about women’s rights have also been operationalised through instruments such as the ‘EU Plan of Action for Gender Equality and Women's Empowerment in development 2010-

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<sup>127</sup> Council Conclusions 9369/12, para 6.

<sup>128</sup> Commission, ‘Social Protection in European Development Cooperation’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2012) 446 final.

<sup>129</sup> D’Hollander, Marx and Wouters (n 112), 27.

<sup>130</sup> Laura Beke and others, ‘Report on the integration of human rights in EU development and trade policies’, *FRAME Deliverable 9.1*, September 2014, 130 <<http://www.fp7-frame.eu/reports/>>

<sup>131</sup> European Consensus on Development, para 101.

<sup>132</sup> Agenda for Change, 6.

15'<sup>133</sup> or the 'Toolkit on Mainstreaming Gender Equality in EC Development Cooperation.'<sup>134</sup> In the 2012 Action Plan on Human Rights and Democracy the EU committed itself to implementing the nine specific objectives of the referred EU Plan of Action for Gender Equality.<sup>135</sup> In addition, the new Action Plan adopted for the period 2015-2019 includes as one of the 'human rights challenges' to be addressed 'promoting gender equality, women's rights, empowerment and participation of women and girls.' This document foresees several actions in the development sphere, such as the development and implementation of a 'successor of the EU Action Plan on Gender Equality and Women's Empowerment in Development Cooperation 2010-2015 (GAP).'<sup>136</sup>

There are very few references to vulnerable groups or vulnerability in the documents targeting women in development policy. Moreover the link between 'vulnerability or vulnerable groups' and women is not always clear across these documents. Some documents include women within 'vulnerable groups.' For example, the Commission's Communication on 'Gender Equality and Women Empowerment in Development Cooperation' states that women, as a vulnerable group, are particularly affected by the negative consequences of trade liberalisation, and that specific targeted actions to empower women have to be used to 'address strategic issues that impact on the well-being and opportunities of particular vulnerable groups.'<sup>137</sup> Equally, the 2014 Council's conclusions on a Rights-based Approach to Development Cooperation stress that the integration of human rights principles in development cooperation helps to ensure the 'empowerment of the poorest and most vulnerable, in particular of women and girls, which in turn contributes to poverty reduction efforts.'<sup>138</sup> However, other documents seem to consider gender mainstreaming and women's rights as separate issues which deserve specific attention beyond the protection of vulnerable groups. In this regard, there are many references in the documents to 'women *and* people in vulnerable situations' (emphasis added) or separate sections which specifically deal with the protection of women's rights, the empowerment of women or gender equality.<sup>139</sup>

It appears then that sometimes women are included within the concept of vulnerable groups while other times the EU stresses the protection of their rights as a separate issue requiring special measures and attention. Arguably this is because gender mainstreaming was elaborated as a

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<sup>133</sup> Commission, 'EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015' (Commission Staff Working Document) SEC(2010) 265 final.

<sup>134</sup> Commission, *Toolkit on Mainstreaming Gender Equality in EC Development Cooperation* (European Communities 2004). (Toolkit on Mainstreaming Gender Equality in EC Development Cooperation)

<sup>135</sup> Strategic Framework Annex III, action 20(d).

<sup>136</sup> New Action Plan, action 14 b).

<sup>137</sup> Commission, 'Gender Equality and Women Empowerment in Development Cooperation' (Communication from the Commission to the European Parliament and the Council), COM(2007) 100 final c, 3 and 11.

<sup>138</sup> Council of the European Union, 'Council conclusions on a rights-based approach to development cooperation, encompassing all human rights' [2014] 2. ('Council conclusions on a Rights-based Approach to Development Cooperation.')

<sup>139</sup> E.g. the Development Cooperation Instrument considers the 'rights of vulnerable groups' and 'the empowerment of women' as two distinct cross-cutting issues (Art. 3(3) and Annex II (A)(III)(c)). See also Annex I to this Deliverable.



previous policy concept<sup>140</sup> and is to many donors a more familiar concept than the general mainstreaming of human rights or adopting Rights Based Approaches to address women's rights.<sup>141</sup> It could seem that adopting both gender mainstreaming and HRBAs would involve conflict or duplication since gender mainstreaming seeks to incorporate a gender perspective in development activities and HRBAs intend to integrate human rights standards, including women's rights and the prohibition of sex discrimination. However, they are said to be complementary, mutually reinforcing and to have much in common.<sup>142</sup>

### *b) Children*

The EU human rights mainstreaming has also focussed on the rights of the child. At the policy formulation stage, children's rights were considered a cross-cutting issue in the European Consensus on Development.<sup>143</sup> However, the Agenda for Change does not contain any mention to their rights. In 2006 the Commission launched a global EU Strategy on the Rights of the Child comprising both the internal and external areas of EU action.<sup>144</sup> The aim of this strategy was to 'effectively promote and safeguard the rights of the child in the EU's internal and external policies.'<sup>145</sup> One of the measures envisaged in this regard was to accomplish the objectives of the strategy by launching an 'Action Plan on Children in Development Cooperation to address children's priority needs in developing countries.'<sup>146</sup> The analysis of the EU's documents (see Annex I) shows that the EU has put the emphasis on certain contexts where there is a special need to protect children's rights such as poverty eradication, access to vital basic services, child trafficking, child labour, protection against violence and protection in situations of armed conflict and humanitarian emergencies.<sup>147</sup>

At the implementation stage, the 'EU's Action Plan on Children's Rights in External Action' established the guiding principles, the priorities for action and the framework for monitoring, coordination and accountability in the context of the EU's external relations and development cooperation. Those priority areas selected by the EU to mainstream children's rights include child labour, prevention and fight against child trafficking, children affected by armed conflict and violence against children, including sexual exploitation and harmful traditional practices.<sup>148</sup> The EU identified also the main sectors where children's rights should be mainstreamed: social sectors, governance and food security, health and sanitation.<sup>149</sup> In addition, in the Action Plan the EU also

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<sup>140</sup> FRAME Deliverable D9.1, 131.

<sup>141</sup> OHRCR (n 102) 19.

<sup>142</sup> OHCHR (n102) 18-19. See also Toolkit on Mainstreaming Gender Equality in EC Development Cooperation 7.

<sup>143</sup> European Consensus on Development, para 101.

<sup>144</sup> Commission, 'Towards an EU Strategy on the Rights of the Child' (Communication from the Commission), COM(2006) 367 final.

<sup>145</sup> COM(2006) 367 final, 2.

<sup>146</sup> COM(2006) 367 final, 7.

<sup>147</sup> See Annex I to this Deliverable.

<sup>148</sup> Commission, 'The European Union's Action Plan on Children's Rights in External Action' (Commission Staff Working Document) SEC(2008) 136, 7-9.

<sup>149</sup> SEC(2008) 136, 6-7.

identified specific profiles of vulnerable children such as girls and ‘children who experience particular difficulties in developing their potential.’ Among the latter, it mentioned: exploited or abused children, children with disabilities, children suffering dysfunctional family life and social exclusion, orphans and vulnerable children affected by HIV/AIDS.<sup>150</sup> Moreover, an overview of the main vulnerabilities affecting children is comprehensively developed in the EU-UNICEF Child Rights Toolkit. This instrument states that age and dependency are not the only causes of child vulnerability. Children also face overlapping forms of discrimination and disadvantages, among which the following are mentioned: poverty, gender inequality, disabilities, and belonging to minority or disadvantaged groups such as indigenous children.<sup>151</sup> Finally, children’s rights feature among the priorities established by both first and new Action Plans on Human Rights and Democracy, although they do not contemplate special actions within the development policy sphere.

To sum up, despite the existence of some gaps such as the lack of consideration of children’s rights in the Agenda for Change, it can be said that protection of their rights is, along with women’s rights, one of the human rights priorities that feature more prominently across the EU’s development policy formulation and implementation documents.

### *c) Indigenous peoples*

Indigenous peoples’ rights are also among the cross-cutting issues mentioned in the European Consensus on Development.<sup>152</sup> However, their rights have received much less attention within the EU’s development policy. In 1998 the Council adopted a Resolution on Indigenous peoples within the framework of development cooperation where it recognised the economic, social and political marginalisation as well as violations of human rights often experienced by indigenous peoples. There, the Council also emphasised their vulnerability as well as the risk that development programmes could disadvantage them.<sup>153</sup> This vulnerability of indigenous peoples in the development process was previously addressed by the Commission in its Working Document on support for indigenous peoples in development cooperation. In this document, the Commission identified some factors which generate vulnerability of indigenous peoples within the development process. This includes a lack of control over development policies and programmes or the difficulty they have in securing their economic, social and political rights, and in particular, protecting land rights. Particular attention was paid to indigenous women and their empowerment and participation in the development and decision-making processes.<sup>154</sup>

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<sup>150</sup> SEC(2008) 136, 6.

<sup>151</sup> Commission and UNICEF, ‘EU-UNICEF Child Rights Toolkit: Integrating Child Rights in Development Cooperation’ (United Nations Children’s Fund (UNICEF) 2014) 7.

<sup>152</sup> European Consensus on Development, para 101.

<sup>153</sup> Council of the EU, ‘Indigenous peoples within the framework of the development cooperation of the Community and the Member States’ (Council Resolution) 30 November 1998, paras 3 and 5.

<sup>154</sup> Commission, ‘Working Document on support for indigenous peoples in the development cooperation of the Community and the Member States.’

Apart from the European Consensus on Development, there are few references to indigenous peoples' rights in the EU's development policy documents. These references can be found in the documents dealing with the post-2015 development agenda as well as in the financing instruments, in particular the Development Cooperation Instrument. However, this instrument, contrary to the European Consensus on Development, does not consider indigenous peoples' rights as a cross-cutting issue. Instead, the protection of their rights is included among the priority areas of cooperation for Latin America, South Asia and North and South East Asia as well as the priority areas of cooperation under the Global Public Goods and Challenges' Programme.<sup>155</sup> Although it could be said that this lack of consideration of indigenous peoples' rights as a cross-cutting issue could be considered as an implementation gap, in our view this might be explained by the fact that indigenous rights are not an issue in every region or country. Arguably this is consistent with the 'differentiated EU approach to aid allocation' set out by the European Consensus on Development and the Agenda for Change. According to this approach, the implementation of development policies has to be 'country or region-specific' or 'tailor-made' to each country, taking into account, among other factors, 'the country's own needs, strategies, priorities and assets.'<sup>156</sup>

#### *d) Migrants*

The protection of migrants is not one of the cross-cutting issues mentioned in the European Consensus on Development. However, this document states that 'urgent attention' will be given to this issue.<sup>157</sup> It insists on the need to include migration and refugee issues in country and regional strategies and partnerships with third countries, and to 'make migration a positive force for development'<sup>158</sup> through the adoption of measures focused on reducing poverty, such as facilitating remittances and limiting the 'brain drain' of qualified people.<sup>159</sup>

The 2011 Agenda for Change recognised the role the EU should play regarding the development-migration nexus with the aim of maximising the development impact of the regional and global mobility of people.<sup>160</sup> This nexus was addressed in a more straightforward way in the 2013 Communication from the Commission 'Maximising the Development Impact of Migration' where the Commission declared that 'maximising the positive impact of migration on development' is one of the policy priorities of the EU.<sup>161</sup> This Communication also stresses that the protection of the human rights of migrants is a cross-cutting priority within the EU's external migration policy, which involves the need to strengthen integration policies and the protection of human rights of migrants and refugees in partner countries.<sup>162</sup> The particular vulnerability of certain sub-groups of migrants

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<sup>155</sup> See Annex I to this Deliverable.

<sup>156</sup> European Consensus on Development, para 57.

<sup>157</sup> Ibid para 110.

<sup>158</sup> Ibid paras 38 and 110.

<sup>159</sup> Ibid para 38.

<sup>160</sup> Commission, Agenda for Change, 12.

<sup>161</sup> Commission, 'Maximising the Development Impact of Migration. The EU contribution for the UN High-level Dialogue and next steps towards broadening the development-migration nexus' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2013) 292 final, 2.

<sup>162</sup> COM(2013) 292 final, 5.

such as women, children, unaccompanied minors, victims of trafficking and forced migrants is also emphasised by the EU.<sup>163</sup>

‘Migrants in an irregular situation’ also deserve special attention in this document, which highlights their great exposure to exploitation and abuse and recalls the responsibility of authorities to ensure that irregular migrants are ‘treated with dignity and are not criminalised.’<sup>164</sup> Likewise, the European Consensus on Development declared that ‘development is also the most effective long term response to forced and illegal migration and trafficking of human beings.’<sup>165</sup> However, these declarations towards the protection of irregular migrants contrast with the fact that the Member States have not adopted the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families due to ‘the insufficient distinction in the Convention between the economic and social rights of regular and irregular migrant workers.’<sup>166</sup>

Migration is also included among the five priority areas under the EU’s Policy Coherence for Development policy (see below section III.C). In addition to these references, the protection of migrants included in the policy formulation documents is analysed to a far lesser extent than other groups such as women and children (see Annex I). It should be noted that the consideration of migrant’s rights as a cross-cutting issue is not clear since the European Consensus on Development and the 2013 Communication from the Commission present contradictory statements in this regard. Finally, regarding the implementation sphere, the protection of the rights of migrants is included within the areas of cooperation under geographic and thematic programmes of the Development Cooperation Instrument.

#### *e) Social protection in EU development cooperation*

Following the Agenda for Change, in which the EU expressed its commitment to allocate 20% of EU aid to social inclusion and human development,<sup>167</sup> the Commission issued its Communication on ‘Social Protection in European Union Development Policy’ where the Commission recognised the significance of social protection to reduce poverty and vulnerability. This is the document where more references to vulnerable groups and vulnerability can be found within the EU’s development policy. In this Communication, the Commission highlights the close connection between poverty and exclusion. According to the Communication, poverty is ‘increasingly associated with exclusion and marginalisation’ due to factors such as geographical isolation, disability, gender or ethnicity.

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<sup>163</sup> COM(2013) 292 final, 3 and 7.

<sup>164</sup> COM(2013) 292 final, 6. This document does not provide a definition of ‘migrants in an irregular situation’ or ‘irregular migrants’ but refers to the ‘Employer Sanctions Directive’ (Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168/24) as a key EU instrument for preventing the exploitation of irregular migrants. This Directive defines ‘illegally staying third-country national’ as ‘third country national present on the territory of a Member State, who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State’ (Art. 2(b)).

<sup>165</sup> European Consensus on Development, para 40.

<sup>166</sup> COM(2013) 292 final, 6.

<sup>167</sup> Commission, Agenda for Change, 4.

However, social protection can help fight exclusion and poverty by means of increasing equity through social transfers and access to basic social services and to enhance protection against risk.<sup>168</sup>

The EU does not list which are the vulnerable groups considered under this Communication, but includes separate references to women, children, young people, the poor, elderly people, migrant workers and persons with disabilities. Neither does it define vulnerable groups or poverty. Two additional questions that should also be stressed regarding this Communication are that, on the one hand, social protection is defined by the Commission and, on the other hand, a comparison between the EU's internal and external approaches to social protection is included. The empowerment of 'poor and vulnerable groups' is a key issue in the EU's conception of social protection. Thus, the EU defines social protection as policies and actions that, on the one hand, 'enhance the capacity of all people, but notably poor and vulnerable groups, to escape from poverty, or avoid falling into poverty, and better manage risks and shocks,' and, on the other hand, 'aim at providing a higher level of social security through income security and access to essential services (in particular, health and education) throughout active and inactive periods and periods of need throughout the life-cycle.'

In connection with the internal vs. the external approach, the aspiration to provide 'universal access to social protection against the major lifecycle risks' of the internal sphere,<sup>169</sup> contrasts with the more vague goals identified in the external arena. In this regard, the EU refers to 'improve equity and efficiency in provision, while supporting social inclusion and cohesion.'<sup>170</sup> In spite of this different approach to the scope of social protection in the internal and external arena, this Communication can be considered a significant step towards the protection of vulnerable groups in the EU's development policy.

## **2. Human Rights Based Approaches to Development and the EU's human rights priorities**

### ***a) Introduction***

The adoption of a Human Rights Based Approach (HRBA) entails the strongest commitment towards the incorporation of human rights in development policies. The conceptual framework of these approaches involves placing human rights as a 'primary goal' for development cooperation.<sup>171</sup> As will be explained below, it seems that the EU has adopted a rights based approach as a working methodology for development cooperation. The main objective of this section is to explore how the EU has integrated vulnerable groups and human rights themes into the main documents which deal with this working methodology (section III.B.2.c). This approach was extensively studied in Deliverable 9.1 to which we refer in this regard. However, before entering into this analysis a brief

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<sup>168</sup> Commission, 'Social Protection in European Development Cooperation' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2012) 446 final, 2.

<sup>169</sup> COM(2012) 446 final, 4-5.

<sup>170</sup> COM(2012) 446 final, 7.

<sup>171</sup> The World Bank and OECD (n 112) 25.

reference is made to the added value that, in the view of some scholars, HRBAs can have for the protection of the rights of vulnerable groups as well as the main critiques to these approaches (section III.B.2.b).

***b) The added value of HRBAs to the protection of vulnerable groups and human rights themes***

In a HRBA development and human rights become ‘conceptually and operationally inseparable parts of the same processes of social change’ and development ‘comes to be redefined in terms that include human rights as a *constitutive part*’.<sup>172</sup> Uvin identifies two basic ways in which a HRBA differs from other forms of integrating human rights into development:

First, an RBA creates claims and not charity (the *end* of development aid differs, and consequently the whole process of thinking about it, of defining the nature of the problem, changes as well—a new vision emerges). Second, an RBA affects the way development actions are implemented (the *means*, the processes, are different, even if many of the goals remain the same).<sup>173</sup>

There are different understandings of HRBAs within donor agencies. In fact, as Deliverable 9.1 highlighted, it is more accurate to refer to human rights approaches in plural.<sup>174</sup> In order to simplify the analysis we will refer to ‘a HRBA’ in singular. The main distinction observed by Piron is the one between ‘empowerment’ and ‘legalistic’ approaches. This distinction is based on Philip Alston’s identification of the two strengths of the human rights discourse: first, to be a mobilising force in support of a particular agenda and second, to provide access to a legal norms and enforcement mechanisms. This distinction does not necessarily mean ‘opposition’ as it reflects two dimensions that are equally important to rights-based programming.<sup>175</sup> However, it has led to differences in the way of defining rights based approaches by different donors to the extent that some of them prefer the term ‘rights-based approach’ instead of ‘human rights-based approach.’ This different understanding will be addressed in more detail in section III.B.2.c) below.

In order to establish what a HRBA concretely entails, the UN Agencies agreed on a common understanding. In this UN Statement of Common Understanding we can find a good description of what a HRBA to development implies:

In a human rights-based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rights-holders and their entitlements and corresponding duty-bearers and their obligations, and works towards

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<sup>172</sup> Uvin (n 117) 122.

<sup>173</sup> Ibid 129.

<sup>174</sup> Deliverable 9.1, 94

<sup>175</sup> Lauren-Hélène Piron, ‘Rights-based Approaches and Bilateral Aid Agencies: More Than a Metaphor?’ (2005) 36(1) Institute of Development Studies Bulletin 19, 23.

strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.<sup>176</sup>

According to this description, the emphasis is placed on the identification and strengthening of right-holders and their rights as well as the corresponding duty-bearers and their obligations. In particular, a HRBA to development focus on the realization of those rights by excluded and marginalized populations.<sup>177</sup> Darrow and Tomas argue that rights add moral legitimacy and social justice to development objectives and contribute to 'shift the focus of analysis to the most deprived and excluded, especially as concerns deprivations caused by discrimination.'<sup>178</sup> Likewise, the UN Statement of Common Understanding requires as one of the HRBA's essential elements that 'programmes focus on marginalised, disadvantaged and excluded groups.'<sup>179</sup> This focus in marginalised groups is considered one of the main advantages of a HRBA. A HRBA entails a type of development which is based in the principles of participation, empowerment and support for vulnerable and marginal groups.<sup>180</sup> However, some scholars note that there is not enough research regarding how HRBAs contribute to bring improvements for these groups. Studies tend to focus on the participation and empowerment of these groups rather than on the measuring poverty through socio-economic indicators.<sup>181</sup>

Statement 2 of the Common Understanding requires the integration of the standards and principles of human rights law into the development cooperation and programming in all sectors and phases. Among those human rights principles, special attention should be given in this context to the principles of non-discrimination and equality which are expressly mentioned by the Common Understanding.<sup>182</sup> In this regard, the Office of the United Nations High Commissioner for Human Rights (OHCHR) highlights that a HRBA seeks to 'analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.'<sup>183</sup> According to this, a HRBA to development intends to overcome the negative effects of discrimination and inequality by incorporating measures to protect the rights of marginalized groups, promoting the empowerment of these groups and trying to be aware

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<sup>176</sup> United Nations, 'The Human Rights-Based Approach to Development Cooperation. Towards a Common Understanding Among UN Agencies' [2003], statement 2, <[https://undg.org/main/undg\\_document/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/](https://undg.org/main/undg_document/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/)> last accessed on 14 May 2005. (UN Statement of Common Understanding)

<sup>177</sup> OHCHR (n 102) 15.

<sup>178</sup> Darrow and Tomas (n 106) 486.

<sup>179</sup> UN Statement of Common Understanding 3.

<sup>180</sup> Jakob Kirkemann Boesen and Hans-Otto Sano, 'The Implications and Value Added of a Human Rights-Based Approach' in Bard A. Andreassen and Stephen P. Marks (eds) *Development as a Human Right. Legal, Political and Economic Dimensions* (2nd edn, Intersentia 2010) 51.

<sup>181</sup> Hans-Otto Sano, 'Does Human Rights-Based Development Make a Difference?' in Margot E. Salomon, Arne Tostensen and Wouter Vandenhole (eds) *Casting the Net Wider: Human Rights, Development and New Duty-Bearers* (Intersentia 2007) 79.

<sup>182</sup> UN Statement of Common Understanding, statement 2.

<sup>183</sup> *Ibid*, 16.

of any power imbalances.<sup>184</sup> The role of the HRBA in addressing the ‘asymmetries of power’ in development that hinder poverty reduction has been deemed as one of the most remarkable features of these approaches. In this sense, a HRBA uses objective norms in order to support specific rights and obligations of equal application to all human beings.<sup>185</sup> The HRBA is also said to fight against the phenomenon of ‘elite capture,’ which refers to the idea that inequalities contribute to create an environment where the benefits of development and growth are ‘captured’ by elites.<sup>186</sup> Therefore, programming should not exacerbate power imbalances by targeting ‘those that are easy to reach’ such as urban vs. rural populations or boys’ vs. girls’ education.<sup>187</sup> Through the use of a HRBA, objective limits and guarantees are established in favour of those who suffer the consequences of this phenomenon.<sup>188</sup>

In connection with these principles of equality and non-discrimination, the OHCHR also mentions some measures to address the causes of discrimination such as directing priority attention to those suffering from discrimination, especially the ‘poorest of the poor’ and those suffering ‘multiple discrimination’ such as rural women or ethnic minorities; ensuring that data are disaggregated on the grounds of race, colour, sex or geographic location; or promoting temporary measures aimed at rectifying structural discrimination, including affirmative action for women.<sup>189</sup>

The principles of participation and empowerment are also relevant to analyse the added value that a HRBA can provide to the protection of vulnerable groups in development programming. Human rights contribute to establish the conditions and the limitations of participation. From this perspective, participation is more than mere consultation or a technical requirement of project design. Instead, participation should seek ‘critical consciousness and decision-making as the basis for active citizenship’, i.e., it should foster the empowerment of citizens, in particular the most marginalised. This would require e.g. that policy and project information should be available in accessible formats and minority languages or that mechanisms should be established for participation of the poorest and most marginalised groups, which are respectful of their social and cultural contexts.<sup>190</sup> Thus, what a HRBA adds to this right to participate, which is ‘strongly grounded in the framework of international treaty law’, is to draw attention to the quality of the processes of participation, to ‘flesh out’ the checklists of participation including key human rights issues that should be considered,<sup>191</sup> to stress the significance of the principle of accountability to ensure that

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<sup>184</sup> Darrow and Tomas (n 106) 505-506.

<sup>185</sup> Ibid 489. See also Piron (n 175) 23.

<sup>186</sup> Ibid, (n 106) 474-477.

<sup>187</sup> OHCHR (n 102) 24.

<sup>188</sup> Darrow and Tomas (n 106) 489.

<sup>189</sup> OHCHR (n 102) 24

<sup>190</sup> Ibid (FAQ) 26-27.

<sup>191</sup> The donors’ checklists usually include groups such as women, minorities, children or indigenous peoples but there is not one universal checklist of vulnerable people in each context. See in this regard, Kirkemann Boesen and Sano (n 180) 63.



poor people are empowered to hold policy makers accountable, or to take into account ESC rights as prerequisites to make participation possible.<sup>192</sup>

In conclusion, the added value of a HRBA for the protection of the rights of vulnerable groups is that it presupposes a type of development focused on vulnerable or marginalized groups and their empowerment, based on a strong commitment towards the application of the principle of non-discrimination in their right to development. In this way, HRBAs become an ‘integral element’ of a human development approach where attention is placed on the support for vulnerable groups, their empowerment and their participation in the development process.<sup>193</sup> Finally, it should be noted that one of the strengths of this approach is that it contributes to identify not only right-holders and their entitlements but also duty-bearers and their obligations. The focus of a HRBA is also on the relationship between rights-holders and duty bearers. This means that along with the assessment of the rights of duty-bearers a HRBA has in addition to consider the role of the state in order to respond to the rights of individuals, including an assessment of ‘governance, legislation, public administration and delivery of public services.’<sup>194</sup>

### *c) Rights Based Approach to Development in the EU and human rights priorities*

The Agenda for Change proposed by the Commission in 2011 highlighted the central role of human rights in the development process. This document mentions as an objective of the new agenda to ‘enhance importance of human rights, democracy and good governance trends in determining the mix of instruments and aid modalities at country level.’<sup>195</sup> However, the Agenda did not propose the endorsement by the EU of an HRBA to development. A few months later, in the Joint Communication entitled ‘Human Rights and Democracy at the Heart of EU External Action – Towards a more Effective Approach’, the Commission and the HR expressly mentioned that a ‘Human Rights Based Approach should ensure that human rights and democracy are reflected across the entire development cooperation process, and ensure continuity between political and policy dialogue on human rights issues and development cooperation.’<sup>196</sup> This was the first reference to a HRBA in EU documents.<sup>197</sup> In 2012 the Council conclusions on the Agenda for Change emphasised that support to governance should be strengthened in all partnerships and that ‘this

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<sup>192</sup> Darrow and Tomas (n 106) 506-510. In connection with ESC rights these authors give some examples of how could influence participation. In their view, ‘it is doubtful that people struggling to satisfy the minimum daily requirements of existence will be particularly in attending workshops, meetings, focus group sessions [...]’ and they also cite other relevant considerations such as a minimal level of educational achievement or the existence of a climate of security or absence of threats to make possible participation.

<sup>193</sup> Kirkemann Boesen and Sano (n 180) 51.

<sup>194</sup> Ibid 66.

<sup>195</sup> COM(2011) 637 final, 4.

<sup>196</sup> Commission and High Representative of the EU for Foreign Affairs and Security Policy, ‘Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach’ (Joint Communication to the European Parliament and the Council) COM(2011) 886 final, 11. (‘Joint Communication Human Rights and Democracy at the Heart of EU External Action’).

<sup>197</sup> Commission, ‘Tool-box. A Rights Based Approach, Encompassing all Human Rights for EU Development Cooperation.’ (Commission Staff Working Document) SWD(2014) 152 final, 3. (HRBA tool-box).

calls for a rights based approach, promoting in particular the right to universal and non-discriminatory access to basic services (...), with focus on poor and vulnerable groups.<sup>198</sup>

Subsequently, in the Strategic Framework on Human Rights and Democracy, the emphasis was placed on the third countries' commitment to human rights: 'In the area of development cooperation, a human rights-based approach will be used to ensure that the EU strengthens its efforts to assist partner countries in implementing their international human rights obligations.'<sup>199</sup> Under the first Action Plan, one of the actions foreseen under Part IV 'Human rights in all EU external policies' was to develop a toolbox for working towards a rights based approach to development cooperation.<sup>200</sup> Following action 10(a), the Commission developed the toolbox 'A Rights Based Approach (RBA), Encompassing all Human Rights for EU development Cooperation' where it recognises the EU's commitment to 'move towards a Rights Based Approach for Development cooperation.'<sup>201</sup> This commitment is reinforced under the new Action Plan for 2015-2019 where one of the strategic areas of action is 'fostering better coherence and consistency'. Among the actions to be developed under this area is 'pursuing a Rights Based Approach to Development' which is split into three sub-actions: (i) 'to implement EU commitment to move towards a RBA to development cooperation, encompassing all human rights by pursuing its full concrete integration into all EU development instruments and activities [...]', (ii) full integration of a RBA into the Sector Reforms Contracts adopted under the EU's Budget Support policy, and (iii) 'to explore the possibility to further implement a RBA into non-development related external activities [...].'<sup>202</sup> Thus, it seems that the RBA has been adopted as a working methodology for development cooperation and, as Deliverable 9.1 stated, the notion of human rights mainstreaming to which the EU had been committed for a long time has been replaced by the concept of RBA.<sup>203</sup>

The EU refers to 'RBA' instead of 'HRBA.' According to the Tool-box, this is because the reference to RBA 'goes beyond the formally recognized Human Rights' and includes other rights such as intellectual property rights, basic economic and social delivery rights and sexual and reproductive health rights.<sup>204</sup> However, this explanation can be problematic and departs from the two above referred understandings of rights-based approaches (see above section III.B.2.b). Piron analyses extensively these understandings. On one hand, a 'human rights-based approach', also called by this author 'legalistic approach', is based on the international human rights legal system, including the human rights norms, standards and principles set out in international and regional conventions, declarations and other instruments. It builds on states' existing obligations and covers all human beings. One example of this approach is the UN Statement of Common Understanding. On the other hand, the term 'rights-based approach' sometimes involves a distance from the international

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<sup>198</sup> Council Conclusions 9369/12, para 7.

<sup>199</sup> Strategic Framework, 5.

<sup>200</sup> Strategic Framework, Annex III, action 10(a).

<sup>201</sup> HRBA Tool-box, 3.

<sup>202</sup> New Action Plan, actions 27 a), b) and c).

<sup>203</sup> FRAME Deliverable 9.1.

<sup>204</sup> HRBA tool-box.

human rights legal system, showing some donors' conception of human rights as 'having limited practical relevance for aid agencies or the lives of poor people' or 'representing Western values.' They opt for removing the term 'human' and focus on citizenship rights and empowerment instead of requiring the structural or institutional reforms that are postulated by the defenders of a 'human rights-based approach.' This understanding is called also 'empowerment approach.' One of its strengths is that it puts power relations at the centre of the analysis. However, the term 'rights' is too broad and can cover any kind of rights. In addition, non-citizens are excluded by this approach whereas 'human rights' cover all human beings. Both approaches have then strengths and weaknesses and they reflect 'different attitudes towards law, politics and society.'<sup>205</sup> As previously mentioned, the EU does not seem to follow this latter understanding of 'right-based approach' in the Tool-box. According to this document, the 'disappearance of the 'H' should not be understood as downgrade in terms of Human Rights and a weakening of the EU commitment towards upholding them.' On the contrary, the EUs approach includes a 'broader category of rights than those covered by an HRBA.'<sup>206</sup> However, this new meaning of the term used by the EU in the Tool-box can add more confusion to an already very controversial field.

The EU conceptualises an RBA as a method of integrating human rights in development that places human rights and standards 'both as a means and a goal of development cooperation', and that redefines the role of stakeholders 'into groups of individuals who have human rights or rights to claim (rights holders)' as well as of the duty bearers, i.e. 'those who have duties to respond to'.<sup>207</sup> The EU, as the UN Statement of Common Understanding, includes as 'working principles' the human rights principles of non-discrimination and equal access and participation.<sup>208</sup> In connection with the principle of non-discrimination the Tool-box requires that all development interventions ensure equal access to services and goods as well as the prioritisation of the *marginalised groups who are the most vulnerable to poverty and human rights violations*.<sup>209</sup> (emphasis added).

Hence, the EU's vision on a RBA to development puts emphasis on its role as a mechanism to ensure protection and enhance the empowerment of vulnerable groups or people facing vulnerabilities. This role is highlighted by the Council in its 2014 Conclusions on a rights-based approach to development cooperation. Here the Council notes that the application of human rights principles, such as universality and indivisibility of human rights, inclusion and participation, non-discrimination, equality and equity are central to development cooperation, 'ensuring the empowerment of the *poorest and most vulnerable*, in particular of women and girls, which in turn contributes to poverty reduction efforts. (emphasis added)'<sup>210</sup> In its Conclusions the Council also stresses the crucial role that civil society and human rights defenders play in the effective

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<sup>205</sup> Piron (n 175) 23-26.

<sup>206</sup> HRBA Tool-box 7.

<sup>207</sup> Ibid 5-6.

<sup>208</sup> Ibid 17-18.

<sup>209</sup> Ibid 18.

<sup>210</sup> Council of the European Union, 'Council conclusions on a rights-based approach to development cooperation, encompassing all human rights' 19 May 2014, para 4.

implementation of a RBA<sup>211</sup> as well as the role of the private sector in contributing to poverty reduction and the EU's commitment to the implementation of the UN Guiding Principles on Business and Human Rights.

Again there is no definition of vulnerable groups or vulnerabilities in these documents. Neither are the vulnerable groups listed, although the documents make preferred reference to children, women and the poor. In addition, the documents frequently refer to 'marginalised groups vulnerable to ...' instead of vulnerable groups. However the added value of RBAs must be praised in protecting vulnerable people through the implementation of the principle of non-discrimination, which is well rooted in human rights standards and instruments. The significance of the implementation of this principle in each stage of the development process is set out by the Tool-box which, while recognising that it is essential that all people have equal access to services and goods delivered by development interventions, stresses that 'it is even more important that these interventions give a priority precisely to the marginalised groups who are the most vulnerable to poverty and human rights violations.' The principle of non-discrimination requires taking into account 'all forms of discrimination' including 'race, colour, sex, sexual orientation, ethnicity, age, language, religion or other opinion, origin, disability, birth or other status to public services, opportunities, justice and security.'<sup>212</sup> Thus if this principle is fully integrated in the development process the reference to concrete or specific groups and the inherent risk of leaving some of them out of the 'list' could be avoided, as all persons are entitled to equal access to the delivered goods and services. In order to implement this, the Tool-box includes a checklist to guide the work of EU staff and stakeholders involved in the whole development process. Some of the questions/elements listed in the different stages of the process (context analysis, identification and formulation, implementation, monitoring and evaluation) are:

Do the objectives:

- Ensure that the rights of vulnerable groups are taken into account?
- Ensure that the targeted end-users enjoy or participate effectively in the benefits of the selected intervention strategy?
- Ensure that inequality and discrimination issues are taken into account?

Do implementation activities ensure non-discriminatory practices and safeguards, particularly with regard to selected vulnerable groups?

Are target groups and/or targeted vulnerable groups involved and consulted during the implementation of activities?

Does the implementation process take into account

- The relations between target groups and all stakeholders?
- The capacity gaps identified?

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<sup>211</sup> Ibid para 7.

<sup>212</sup> HRBA Tool-box 18.

### 3. Conditionality, the EU's Budget support and human rights priorities

Although human rights mainstreaming and the HRBA are considered the most comprehensive methods of integrating human rights concerns into development, conditionality is often the first idea that comes to peoples' minds when linking development and human rights. In a 'negative or punitive sense' conditionality involves that donors should reduce or cut off development assistance to those countries which violate human rights.<sup>213</sup> Indeed some argue that in a literal sense, all aid, to a greater or lesser extent, is conditional because it is subject to the recipients' commitment to meet certain policy reforms.<sup>214</sup> Keukeleire and Delreux define conditionality as the 'practice of making the conclusion and implementation of agreements, cooperation, and assistance by the EU dependent on certain conditions being met by third countries'.

Conditionality can be positive if it promises benefits for the fulfilment of certain conditions or negative when it implies the reduction or suspension of those benefits if the conditions are not met.<sup>215</sup> However, it is said that conditionality has evolved from a 'negative or punitive' approach into a 'positive and consensual conditionality' which emphasizes the constructive policy dialogue between donors and recipients.<sup>216</sup> In this sense, conditionality and political dialogue are closely connected and are increasingly subject to joint analysis by literature and in EU documents.<sup>217</sup> Indeed, the term 'conditionality' is often avoided by donors and replaced by 'dialogue', although dialogue could also be seen as a form of donor conditionality.<sup>218</sup> In addition, according to the EU's approach to budget support which, as will be explained, is another form of conditionality, 'budget support involves policy dialogue.'<sup>219</sup>

In development cooperation, conditionality is expressed in different ways or 'choices' to be made by the donors: a first choice involves deciding which countries will get the aid. Then, the amount of assistance should be decided, and a third stage then considers what type of aid should be given. Among these types of aid, two main models are usually considered: Project Aid and General Budget Support (GBS). This latter involves financial transfers to the national treasury account of the recipient States. In theory, the main difference between these models refers to the control over the aid: in Project Aid the donor maintains control over targets, implementation and expenditure

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<sup>213</sup> The World Bank and OECD, 'Donor Approaches to Development Programming' in *Integrating Human Rights into Development. Donor Approaches, Experiences and Challenges* (2nd edn, The World Bank and OECD 2013) 44-45.

<sup>214</sup> Oliver Morrissey, 'Alternatives to Conditionality in Policy-Based Lending' in Stefan Koeberle, Harold Bedoya, Peter Silarszky and Gero Verheyen (eds) *Conditionality Revisited. Concepts, Experiences and Lessons* (World Bank 2005) 237.

<sup>215</sup> Stephan Keukeleire and Tom Delreux, 'Trade, Development and other External Action' in *The Foreign Policy of the European Union* (2nd edn, Palgrave Macmillan 2014) 205-206.

<sup>216</sup> D'Hollander, Marx and Wouters (n 112) 17.

<sup>217</sup> Ibid and The World Bank and OECD (n 112).

<sup>218</sup> D'Hollander, Marx and Wouters (n 112) 17.

<sup>219</sup> Commission, 'The Future Approach to EU Budget Support to Third Countries' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2011) 638 final, 2.

while in the GBS the control is effected by the recipient who is the one deciding on the allocation and management of the aid. However, in practice 'conditional budget support' where the donor can also influence the decisions on the allocation of the aid is frequently used.<sup>220</sup> This section will focus on GBS which has been one of the main instruments traditionally used by the EU to allocate development aid. This type of aid is particularly interesting for the purpose of this report because in theory it requires assessing the existence of a similarity between the priorities of the donor and the recipient. To the extent that the control over the allocation is smaller (conditional budget support) or inexistent (unconditional budget support) compared to Project Aid, GBS is said to be attractive if there is an alignment in the spending preferences or priorities between the donor and the recipient.<sup>221</sup> Deliverable 9.1 reflected on the inclusion of a human rights dimension in these conditionality policies while the purpose of this section is to see to what extent the human rights priorities selected by the EU influence the way in which it uses GBS as an instrument to materialise its development aid.

GBS is the type of aid which better aligns with the ownership principle established under the Aid Effectiveness Agenda. The EU has been using GBS since the early 1990s. The EU's traditional policy-based conditionality raised many criticisms so the EU has been trying to reshape its approach to GBS since the end of 1999.<sup>222</sup> Recently, the EU has set out its new policy on budget support to third countries. The aim of this new approach is to make budget support more effective and coordinated. The EU's vision of budget support is also based on the ownership by partner countries of development policies and reforms and aims to deliver 'better aid' and 'achieving sustainable development objectives'.<sup>223</sup> Human rights and democracy play a crucial role in this new approach. In this regard, the Commission identifies in its Communication certain development challenges and objectives that should be addressed through the EU's budget support, the first of which is 'promoting human rights and democratic values.' According to this objective, budget support should be provided in order to improve governance and adherence to the EU's fundamental values. Thus budget support should be provided where 'there is trust and confidence that aid will be spent pursuing the values and objectives to which the EU subscribes.' According to this, the correlative Council conclusions on the EU's approach to budget support stressed that the commitment of partner countries towards democracy, human rights and the rule of law should be considered when deciding if budget support should be provided. Budget support is then only appropriate when it is spent in accordance with 'shared objectives and values, in particular human rights, democracy and

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<sup>220</sup> Paul Clist, Alessia Isopi and Oliver Morrissey, 'Selectivity on aid modality: Determinants of budget support from multilateral donors' [2012] 7 *Review of International Organizations* 267, 268-269.

<sup>221</sup> *Ibid* 270.

<sup>222</sup> Gilles Hervio, 'Toward Multiyear Outcome-Based Conditionality' in Stefan Koeberle, Harold Bedoya, Peter Silarszky and Gero Verheyen (eds) *Conditionality Revisited. Concepts, Experiences and Lessons* (World Bank 2005) 183, 183-184. This author refers to the high level of subjectivity in selecting the conditions and assessing their fulfilment, the lack of consideration of the reality in the country or the negative impact on the ownership of the reforms as main criticisms to the EU's initial approach to budget support.

<sup>223</sup> COM(2011) 638 final, 2.

the rule of law.<sup>224</sup> On the contrary, 'where governance has severely deteriorated' the EU should reconsider its budget support as well as its overall development cooperation towards the country concerned.<sup>225</sup> It is precisely in connection with these cases of deterioration where one of the few mentions to vulnerable groups can be found. In this regard the Commission clarifies that the response to deterioration should be progressive and proportionate and should limit its impact on *poor people*.<sup>226</sup>

Poor people, women and children are the only groups mentioned by these strategic documents. The documents emphasise the need to consider these groups as recipient states when delivering basic services to the population but do not define or list them.<sup>227</sup> Moreover, human rights priorities are not visible when the EU states its budget support eligibility criteria. General reference to 'poverty reduction', 'sound social fabric' or 'effective social protection' are made, with again a focus on 'the poor, gender issues and children'<sup>228</sup> but from the analysis of the documents it cannot be inferred that the specific protection of these groups plays a crucial role in deciding whether or not to adopt this type of aid.

Finally, it should be mentioned that one of the most controversial issues in connection with conditionality is whether it is effective in engaging the recipients' policy reforms. Studies have shown that all conditions are rarely fully implemented in the agreed period. This is closely related to the fact that there is a lack of agreement on what should be required in policy areas such as poverty reduction, while the parameters to be used in other areas, such as macroeconomic stabilization, are subject to a broader agreement. In addition, policy reforms involve a slow process, which requires more time than that usually preferred by donors. The critiques to the effectiveness of conditionality have resulted in alternative mechanisms being considered, such as policy dialogue. Morrissey, among other authors, contends that the best way to influence policy reforms is to promote and support 'policy learning through dialogue', that is, to encourage 'transfer of proven policies' in order to orientate the recipient countries' belief in which policies should be implemented.<sup>229</sup>

### C. Policy Coherence for Development and human rights priorities

Three principles guide the EU's development policies: 'Coherence' of EU policies also known as 'horizontal consistency'; 'Coordination' between the EU and Member States ('vertical consistency') and 'Complementary' between policies and programmes of the EU and Member States. However,

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<sup>224</sup> Council of the European Union, 'The Future Approach to EU Budget Support to Third Countries' (Council conclusions) [2012] 2.

<sup>225</sup> Ibid 2.

<sup>226</sup> COM(2011) 638 final, 4.

<sup>227</sup> COM(2011) 638 final, 4.

<sup>228</sup> COM(2011) 638 final, 7-8.

<sup>229</sup> Oliver Morrissey, 'Alternatives to Conditionality in Policy-Based Lending' in Stefan Koeberle, Harold Bedoya, Peter Silarszky and Gero Verheyen (eds) *Conditionality Revisited. Concepts, Experiences and Lessons* (World Bank 2005) 237.

the implementation of these principles in practice is quite a challenge. In connection with the first principle, horizontal inconsistencies could arise when there is a risk of competition among the goals of different EU policies, e.g., foreign policy goals, such as the promotion of democracy, and development policy goals, such as the fight against poverty. One question could be, for example, to what extent the EU should fight poverty in countries where there is not possibility of promoting democracy.<sup>230</sup>

In reaction to the critiques regarding the existence of these type of policy inconsistencies in the EU's action on development, in 2005 the Commission adopted the 'Policy Coherence on Development' (PCD) which was endorsed by the subsequent Council Conclusions. By means of this Policy, the EU seeks to take into account the objectives of development cooperation in all the policies it implements and which could affect developing countries, in particular in twelve priority areas: trade, environment, security, agriculture, fisheries, social dimension of globalisation, employment and decent work, migration, research and innovation, information society, transport and energy and climate change.<sup>231</sup> This policy intends to promote coherence at several levels: within the Commission, between and within the European Institutions, with the EU Member States, with NGOs and civil society and, finally, in the framework of international forums.<sup>232</sup> It might be thought that this approach should also consider coherence regarding the implementation of the human rights priorities selected by the EU. However, except for the identification of 'food security' and 'migration' among the five priority areas of this policy, human rights priorities have little visibility in the policy formulation documents of the Policy for Coherence Agenda.<sup>233</sup>

In connection with the PCD migration agenda, the focus is on certain thematic priorities, among them 'enhancing respect of migrants' rights and gender equality.' The framework for the implementation of this agenda is the Global Approach to Migration and Mobility (GAMM) which seeks to establish strategic priorities for dialogue and cooperation with third countries, including the strengthening of the protection of human rights of migrants transiting in Europe.<sup>234</sup> Regarding food security, this is one of the areas where the PCD is most advanced. The support of international initiatives in favour of global food and nutrition security governance is one of the areas where the implementation of PCD is most visible. In this regard, the EU and Member States have actively participated in Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries

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<sup>230</sup> Keukeleire and Delreux (n 215), 213.

<sup>231</sup> Council of the European Union, 'Millenium Development Goals. EU Contribution to the Review of MDGs at the UN 2005 High Level Event.' (Conclusions of the Council and the Representatives of the Governments of the Member States Meeting within the Council) 9266/05 [2005] paras 18-19.

<sup>232</sup> Commission, 'EU 2013 Report on Policy Coherence for Development' (Commission Staff Working Document) SWD(2013) 456 final, 19.

<sup>233</sup> See, for example, Commission, 'Policy Coherence for Development. Establishing the policy framework for a whole-of-the-Union approach' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2009) 458 final. ('Communication from the Commission - Policy Coherence for Development'); Council of the European Union, 'Council conclusions on Policy Coherence for Development (PCD)' [2009] and Council of the European Union, 'Council conclusions on Policy Coherence for Development (PCD)' [2013].

<sup>234</sup> SWD(2013) 456 final, 125-145.



and Forests in the Context of National Food Security, adopted in 2012 by the FAO Committee on World Security (CFS). These guidelines stress the need to ensure that public or private investments in agriculture respect tenure rights of local people and human rights.<sup>235</sup>

#### **D. The post-2015 development agenda and the EU's human rights priorities**

The great relevance of the Millennium Development Goals (MDGs) initiative for human rights has been expressed by prominent authors such as Philip Alston. International frameworks on human rights have a remarkable place in the Millennium Declaration, although not in the specific Goals, and there is widespread awareness regarding the importance of implementing MDGs in a human rights sensitive manner. Although Alston emphasises the great opportunity that MDGs could offer to assess the state of the debate over human rights and development, he is also very critical about the lack of convergence between the agendas of the international development and human rights communities to the extent that he compares these agendas to 'ships passing in the night', 'each with little awareness that the other is there.'<sup>236</sup>

Another recurrent critique towards the integration of human rights into the MDGs agenda has been the lack of attention for exclusion and non-discrimination. One of the 'values and principles' of the Millennium Declaration is the 'collective responsibility to uphold the principles of human dignity, equality and equity' before the entire world population, 'especially the most vulnerable and, in particular, the children of the world [...].'<sup>237</sup> The promotion of the 'capacity of the countries to implement the principles and practices of democracy and respect for human rights, including minority rights' is also a commitment of the States endorsing the Declaration.<sup>238</sup> Moreover, implementing the CEDAW and combating violence against women, as well as protecting human rights or migrants, migrant workers and their families are also within the aims of the Declaration.<sup>239</sup> Finally, 'protecting the vulnerable', in particular children and civilian populations, is mentioned as the main goal in the context of humanitarian emergencies.<sup>240</sup> As for the specific Goals, only three vulnerable groups, namely children and young people, women and slum dwellers, feature expressly in some of them, but nothing is said about minority rights or the rights of migrants, migrant workers and their families, so it seems again that those groups whose protection is a 'sensitive' issue are left aside when general policy statements have to be turned into specific measures. Notwithstanding all of these references, criticism is frequently expressed that the principle of non-

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<sup>235</sup> SWD(2013) 456 final, 101-109.

<sup>236</sup> Philip Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goal' (2005) 27 Human Rights Quarterly 755. See also Siobhán Mcinerney-Lankford, 'Human Rights and Development: a Comment on Challenges and Opportunities from a Legal Perspective' (2009) 1 Journal of Human Rights Practice 51.

<sup>237</sup> General Assembly, 'United Nations Millennium Declaration' (Resolution) A/res/55/2 [2000] para 2, ('Millennium Declaration').

<sup>238</sup> Millennium Declaration, para 25.

<sup>239</sup> Millennium Declaration, para 25.

<sup>240</sup> Millennium Declaration, para 26.

discrimination is not sufficiently embedded in the MDGs framework.<sup>241</sup> One of the key concerns relate to the exclusion of some groups and the lack of consideration of the 'poorest of the poor' and of the inequalities within the specific circumstances of each country. It is claimed that the adoption of an HRBA to the MDGs could help to overcome these critiques. This would require aligning the targets and indicators to incorporate marginalized groups by means of disaggregating targets and indicators and creating additional targets for particular groups.<sup>242</sup>

The insufficient consideration of the principle of non-discrimination was also one of the shortcomings identified in the framework of the public consultation 'Towards a Post-2015 Development Framework' that the Commission organised in order to elaborate the EU's vision on the post-2015 agenda.<sup>243</sup> The Commission has tried to overcome this shortcoming in its Communications dealing with this agenda. In February 2013 the Commission issued its Communication 'A Decent Life for All: Ending poverty and giving the world a sustainable future' where it stressed that the post-2015 framework should be 'universal in aspiration and coverage, with goals for all countries, applying to all of humanity (...).'<sup>244</sup> Equality is mentioned as a goal to be addressed by the new framework, as well as human rights, democracy and the rule of law. However, when it comes to concrete actions to contribute to the implementation of the agenda, once again some groups receive special attention (women, children, indigenous peoples and people with disabilities) while others are not mentioned at all.<sup>245</sup> The 2013 Council conclusions on 'The overarching Post 2015 Agenda' acknowledges the importance of ensuring an HRBA in the post-2015 agenda, with a special focus on the empowerment of women and girls. It also emphasises the need to hear the voices of the 'poorest and the most vulnerable' and to prioritise their needs.<sup>246</sup>

A much more detailed proposal focusing on priority areas and targets was issued by the Commission in June 2014.<sup>247</sup> In its Communication 'A decent Life for all. From vision to collective action' inequality features as one of the specific targets to be addressed by the post-2015 agenda. In addition, it constitutes one of the bases for identifying the actions to be taken in each of the other targets or priority areas that are mentioned along the whole document (poverty, health, education, gender equality, water and sanitation, sustainable energy, employment and decent work for all, among others). In the area entitled 'human rights, the rule of law, good governance and effective institutions' the importance of adopting a RBA in order to reduce inequalities and exclusion is highlighted. Equally, one of the 'target topics' mentioned is the 'adoption of the

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<sup>241</sup> D'Hollander, Marx and Wouters (n 112) 16.

<sup>242</sup> Office of the High Commissioner for Human Rights (OHCHR), *Claiming the Millennium Development Goals: A human rights approach* (United Nations, 2008) 4-10.

<sup>243</sup> FRAME Deliverable 9.1, 114

<sup>244</sup> Commission, 'A decent life for all: ending poverty and giving the world a sustainable future' approach' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2013) 92 final, 12.

<sup>245</sup> COM(2013) 92 final, Annex I.

<sup>246</sup> Council of the European Union, 'The Overarching Post 2015 Agenda – Council conclusions' [2013], 4.

<sup>247</sup> Commission, 'A decent Life for all. From vision to collective action.' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2014) 335 final.

appropriate legal framework to protect the human rights of the most vulnerable groups and individuals, including refugees and internally displaced persons.’ Moreover, the classification of the actions listed in this document into ‘sectors or priority areas’ allows a better consideration of those groups whose special needs should be protected in each sector or area and takes on board groups that are less frequently mentioned along the documents, such as older people, minorities or migrants and refugees.<sup>248</sup> Finally, the Council Conclusions of 16 December 2014 on a ‘transformative post-2015 agenda’ reaffirm the need to ensure that no one is excluded from the agenda:

The agenda should leave no one behind. In particular, it must address, without any discrimination, the needs of the *most disadvantaged and vulnerable*, including children, the elderly and persons with disabilities, as well as of marginalised groups and indigenous peoples; and it must respond to the aspirations of young people. We should ensure that no person – wherever they live and regardless of ethnicity, gender, age, disability, religion or belief, race, or other status is denied universal human rights and basic economic opportunities. We emphasise the critical importance of quality education, universal health coverage, and social protection for all, which are central for the achievement of sustainable development.<sup>249</sup> (Emphasis added)

However, few references to the post-development agenda are made in the new Action Plan (2015-2019). This document merely requires the EU to ‘assess the implications for human rights of the post-2015 development agenda.’<sup>250</sup> It seems then that the strong commitment towards the inclusion of the ‘most disadvantaged and vulnerable’ in the post-2015 agenda does not feature so prominently when the EU prioritises the actions to be undertaken to promote human rights and democracy worldwide. However, ‘equality’ and a ‘people-centred agenda’ feature prominently among the drivers of the proposed Sustainable Development Goals (SDGs) to be adopted in the ‘Special summit on sustainable development’ to be held in New York in September 2015.<sup>251</sup> The UN Secretary-General in its ‘Synthesis Report on the post-2015 sustainable development agenda’ emphasised that one of the ambitions of this agenda is ‘ensuring equality, non-discrimination, equity and inclusion at all levels:’

All voices have demanded that we leave no one behind, ensuring equality, non-discrimination, equity and inclusion at all levels. We must pay special attention to

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<sup>248</sup> For example, in the health sector, special attention is given to older people and persons with disabilities. In education the needs of ethnic minorities, migrants and refugees and disabled persons are mentioned. COM(2014) 335 final, Annex I.

<sup>249</sup> Council of the European Union, ‘Council conclusions on a transformative post-2015 agenda’ [2014], para 19.

<sup>250</sup> New Action Plan, actions 13 and 27 c).

<sup>251</sup> These goals will be adopted in the ‘Special summit on sustainable development’ to be held in New York in September 2015. Information on the process of adoption of the proposed SDGs is available in <<http://www.undp.org/content/undp/en/home/mdgoverview/post-2015-development-agenda/>> last accessed on 15 July 2015.

the people, groups and countries most in need. This is the century of women: we will not realize our full potential if half of humanity continues to be held back. We need to include the poor, children, adolescents, youth and the aged, as well as the unemployed, rural populations, slum dwellers, persons with disabilities, indigenous peoples, migrants, refugees and displaced persons, vulnerable groups and minorities. These also include those affected by climate change, those living in the least developed countries, landlocked countries, small island developing States, middle-income countries, conflict countries or in areas under occupation, in places struck by complex medical and humanitarian emergencies or in situations affected by terrorism. People have called for an end to all forms of gender inequality, gender-based discrimination and violence against women and against children and young boys and girls.<sup>252</sup>

The proposed SDGs include goals on inequalities, in particular Goal 10 (Reduce Inequality within and among countries) and among the essential elements for delivering on the SDGs the UN Secretary-General identified ‘Dignity: to end poverty and fight inequalities’ and ‘People: to ensure healthy lives, knowledge and the inclusion of women and children.’ The EU’s position regarding the UN Summit on Sustainable Development is expressed in the Commission’s Communication entitled ‘A Global Partnership for Poverty Eradication and Sustainable Development after 2015’ where the EU reaffirms its active engagement with this agenda and highlights that the new global partnership for poverty eradication and sustainable development which is required to implement this agenda has to be based on ‘human rights, good governance, rule of law, support for democratic institutions, non-discrimination and gender equality.’

## **E. The integration of human rights priorities in the implementation and evaluation of the EU’s development policy**

### ***a) Financial instrument: the Development Cooperation Instrument (DCI)***

The aim of this section is to assess the weight that vulnerable groups and priority themes have in the implementation of the development policies formulated by the EU. Many implementation documents and instruments such as tool-boxes, plans of action or guides have already been mentioned across this section, so this section will focus on the main financing instrument that the EU uses in order to implement its development policy, namely the Development Cooperation Instrument (DCI).

The EU and its Member States are collectively the world’s largest aid donors. In 2013 the EU adopted its Multiannual Financial Framework for 2014-2020 which translates the EU’s political priorities for this period into financial terms. The EU committed to working with its external

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<sup>252</sup> UN General Assembly, ‘The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet. Synthesis report of the Secretary-General on the post-2015 sustainable development agenda’ [2014] A/69/700, para 51.

partners on four policy priorities, one of which is development cooperation.<sup>253</sup> The total amount allocated to this external relations package is €51,419 million, from which €19,662 million have been allocated to the Development Cooperation Instrument (DCI), the EU's main instrument devoted to supporting development cooperation with developing countries (geographic programmes) as well as to promoting development related 'global public goods and challenges' through cooperation with civil society organisations and local authorities in partner countries (thematic programmes).<sup>254</sup> The other main financial instrument that has to be mentioned is the European Development Fund (EDF) which provides development assistance for the African, Caribbean and Pacific (ACP) countries under the ACP-EC Partnership Agreement. This instrument, however, is not part of the EU budget. It constitutes an inter-governmental agreement funded by the Member States, although its budgetisation has been required on several occasions.<sup>255</sup> The budget of this instrument for the same period amounts to €30.5 billion.<sup>256</sup>

In 2014 a new regulation on the Instrument for Development Cooperation was adopted in line with the principles contained in the Agenda for Change. This new regulation confirms the commitment towards the mainstreaming of the cross-cutting issues defined in the 2005 European Consensus on Development (see above section ....): promotion of human rights, gender equality, democracy, good governance, children's rights and indigenous peoples, environmental sustainability and combating HIV/AIDS. Thus, this instrument, although adopted after the Strategic Framework and first Action Plan, is not completely aligned with the priorities identified in it, as it is rooted on a document approved seven years before. Notwithstanding this, the DCI broadens the conception of these cross-cutting issues which should also encompass certain dimensions:

*'non-discrimination, the rights of persons belonging to minorities, the rights of persons with disabilities, the rights of persons with life-threatening diseases and of other vulnerable groups, core labour rights and social inclusion, the empowerment of women, the rule of law, capacity building for parliaments and civil society, and the promotion of dialogue, participation and reconciliation, as well as institution building, [...].'*<sup>257</sup> Art 3(3).

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<sup>253</sup> The other priorities are: enlargement, neighbourhood and cooperation with strategic partners. See Commission, 'The Multiannual Financial Framework: The External Action Financing Instruments' (MEMO MEMO/13/1134, 2.

<sup>254</sup> Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 [2014] OJ L77/44, Art 1(1). (Development Cooperation Instrument).

<sup>255</sup> See in this regard, FRAME Deliverable 12.1, 71.

<sup>256</sup> Commission, '2014 Annual Report on the European Union's development and external assistance policies and their implementation in 2013' (Report from the Commission to the European Parliament and the Council) SWD(2014) 258 final, 2.

<sup>257</sup> Development Cooperation Instrument, Art. 3(3).

In addition, this instrument confirms the EU's promotion of an HRBA to development, with particular focus on support to rights holders in claiming their rights, in particular, 'poor and vulnerable groups.'<sup>258</sup>

The visibility of the vulnerable groups and priority themes increases when the areas of cooperation are detailed. In this regard, under the geographic programmes all the vulnerable groups identified in the Strategic Framework are qualified as 'areas of cooperation', except for indigenous peoples, although they are deemed as a cross-cutting issue under the European Consensus so they should also be considered embedded within the DCI's framework. The same can be said regarding the thematic priorities contained in the Strategic Framework, with the exception of the promotion of the observance of International Humanitarian Law, fight against impunity for serious crimes and support to human rights defenders.<sup>259</sup> The areas of cooperation per region (Latin America, North and South East Asia, Central Asia, Middle East and other countries) are also established according to the 'tailor-made' approach to each partner or region based on their own 'needs, strategies, priorities and assets'.<sup>260</sup> In Latin America, for example, special attention is given to women, minorities, indigenous peoples and afro-descendants, as well as the promotion of core labour standards, social protection systems, or the universal access to basic social services, health and education. In South Asia the stress is put on the rights of minorities, migrants and indigenous people, social inclusion, or the fight against sexual, gender-based and child violence and human trafficking. In North and South East Asia reference is made to strengthening the protection of the rights of minorities and indigenous peoples, promoting respect for core labour standards, fighting against sexual, gender-based and child violence and addressing the issue of human trafficking or reducing vulnerability to disasters. In the Middle East meanwhile the DCI stresses the areas of gender equality, social inclusion and managing migration and helping displaced persons and refugees.<sup>261</sup>

As for the thematic programmes, these are split into two categories: (i) the 'global public goods and challenges' programme, which refers to all the vulnerable groups listed in the Strategic Framework and puts an special emphasis on ECS rights such as employment, social protection or culture;<sup>262</sup> and (ii) the 'civil society organisations and local authorities' programme which contains a more general statement regarding the funding of 'interventions which support vulnerable and marginalised groups by providing basic services.'<sup>263</sup>

In connection with the concrete disbursements of the budget committed to this instrument, it is difficult to assess the weight that the protection of vulnerable groups and human rights priorities have in connection with the whole DCI budget. This is because the focus of the information

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<sup>258</sup> Ibid), Art. 3(8)(b).

<sup>259</sup> Ibid, Annex I(A).

<sup>260</sup> European Consensus on Development, para 57. See also Development Cooperation Instrument, Art 3(2).

<sup>261</sup> Development Cooperation Instrument, Annex I(B).

<sup>262</sup> Ibid, Annex II(A).

<sup>263</sup> Ibid, Annex II(B).

available is on the sectors receiving funds or the recipient countries.<sup>264</sup> An analysis of the 2014 Annual Report on the European Union's development and external assistance policies and their implementation in 2013 shows that priority has been given during this year to projects, among others, targeting mothers and child nutrition; access to sustainable energy; support to technical and vocational education to enhance the access to employment; or education of children, including in conflict settings.<sup>265</sup> Again the protection of children features prominently among the EU's priorities. As was mentioned before, due to the way in which the information is organised, it is a difficult task to find out if the priorities of the EU in the Strategic Framework are effectively mainstreamed along the projects funded.

### ***b) Evaluation***

The EU 'self-evaluates' its development policy through the Commission's Annual Report on the European Union's development and external assistance policies.' This Report provides an overview of the actions undertaken by the EU during the year, including activities focused on the promotion of human rights, democracy and rule of law, but it is a much less comprehensive report than others such as the Annual Report on Human Rights and Democracy. This latter report also evaluates the EU's development policy. In fact, the focus of the 2013 Report regarding development policy was on the process towards the adoption of an RBA by the EU.

The Annual Report on the European Union's development and external assistance policies and their implementation in 2013 contains little information relevant to vulnerable groups or to human rights priorities. As was previously stated, this report merely refers to projects targeting mothers and children and some ESC rights such as access to education and employment. Thus, a more comprehensive report including an overview of the main projects funded by the EU would be advisable.

## **F. Conclusions: assessment of consistency in the prioritisation of vulnerable groups and themes in the EU's development policy**

The selection of certain human rights priorities over others is not a superfluous decision and can have a direct impact on the well-being of the population. This is true in every policy field but especially in development policy since its main objectives are reducing poverty and inequality. The purpose of this chapter has been to assess whether the human rights priorities, in terms of groups and themes, set out by the EU in the Strategic Framework on Human Rights and Democracy are effectively mainstreamed in the main documents of the EU's development policy. One of the first findings is that, except for certain references to ESC rights, business and human rights and the promotion of judicial systems, priority is given to the protection of vulnerable groups. A second

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<sup>264</sup> Information on donors' activity is available at <https://euaidexplorer.ec.europa.eu/MainHomePageAction.do> >.

<sup>265</sup> Commission, '2014 Annual Report on the European Union's development and external assistance policies and their implementation in 2013' (Report from the Commission to the European Parliament and the Council) COM(2014) 501 final.

finding is that the EU does not define 'vulnerability and vulnerable groups' in its development policy, which not always provides a list of who should be considered in each sphere of the development process and sectors. Usually the EU prefers to make separate references to certain groups, notably women and children, or to the factors that render certain individuals vulnerable.

The EU uses different strategies to integrate human rights in its development policy, notably mainstreaming of human rights, a RBA and conditionality. The move towards the adoption by the EU of a RBA to development is one of the most remarkable actions envisaged by the new Action Plan on Human Rights and Democracy in order to enhance the coherence and consistency of the EU's efforts to mainstream human rights into all its external policies, including development. These Rights or Human Rights Based Approaches have much to add for the protection of vulnerable groups in all phases of the development process. According to these approaches, human rights are the primary goal for development cooperation. The emphasis is placed on the identification and strengthening of right-holders and the correlative obligations of duty-bearers. Furthermore these approaches require the full integration of human rights principles, notably the principle of non-discrimination and equality which is crucial to ensure the equal access of all persons to the services and goods delivered by development interventions as well as to give priority to those groups who are the most 'vulnerable' to poverty and human rights violations.

The analysis has shown that the EU is in the process of replacing its traditional strategy of mainstreaming human rights in development policies by the adoption of an RBA to development. Arguably this will contribute to the protection of vulnerable groups across the whole development process. However it remains to be seen how the EU will coordinate both strategies and whether it will continue developing mainstreaming sub-policies targeting specific groups or sectors. Among these sub-policies attention has been given to those targeting women, children, indigenous peoples and migrants. Doubtless, protection of women and children are the most important transversal issues mainstreamed by the EU in its development policy. In regard to women, however, more clarity would be necessary regarding the relations between the different mainstreaming strategies adopted by the EU, namely general human rights mainstreaming, gender mainstreaming and RBAs. Although it is said that these approaches are complementary and mutually reinforcing, it could also be argued that their simultaneous application would involve tension and duplication. As for indigenous peoples and migrants they have deserved much less attention within the EU's development policy. Regarding indigenous peoples this could be consistent with the adoption by the EU of a 'differentiated approach to aid allocation' which requires taking into account the special needs and priorities of each country. Regarding migrants, their consideration in the EU's development policy shows some contradictions because the European Consensus on Development did not consider their protection as a 'cross-cutting issue' while subsequently the Commission followed this approach in its 2013 Communication on Maximizing the Development Impact of Migration.

Regarding the other strategy used by the EU to integrate human rights into development, General Budget Support, while it is clear that the commitment of partner countries towards democracy,



human rights and the rule of law is crucial in order to decide if budget support should be provided, human rights priorities are not visible in the EU's eligibility criteria.

In 2005, the Commission adopted the 'Policy Coherence on Development' (PCD) with the aim of taking into account the objectives of development cooperation in all the policies it implements and which could affect developing countries. It might be thought that this approach should also consider coherence regarding the implementation of the human rights priorities selected by the EU. However, except for the identification of 'food security' and 'migration' among the five priority areas of this policy, human rights priorities have little visibility in the policy formulation documents of the Policy for Coherence Agenda.

In connection with the EU's vision on the post-2015 MDGs agenda, frequent criticism maintain that the principle of non-discrimination is not sufficiently embedded in the MDG framework. Despite the EU's efforts to overcome this critique in its latest policy documents, notably the 2014 Commission's Communication 'A decent Life for all. From vision to collective action' and the 2014 Council conclusions on a transformative post-2015 agenda, the EU's commitment towards the post-2015 development agenda and the inclusion of the 'most vulnerable and disadvantaged' in it, is not so clear in the new Action Plan on Human Rights and Democracy for the period 2015-2019. However, the EU is a strong supporter of the proposed SDGs to be adopted in September 2015. The principles of equality and non-discrimination feature among the drivers of these goals and ensuring equality, non-discrimination, equity and inclusion is one of the most prominent ambitions of the SDGs agenda.

Finally, regarding the Development Cooperation Instrument (DCI), it can be said that the priority areas of cooperation identified in this instrument are quite consistent with the human rights priorities included in the Strategic Framework. However, due to the way in which the information on concrete budget disbursements is presented, it is very difficult to assess the weight that the protection of vulnerable groups and human rights themes have in relation to the whole DCI budget.

To conclude, it can be said that the EU's conception of vulnerable groups responds to the approaches referred in section II.B above. There is not definition of vulnerability or vulnerable groups in EU's development policy. Instead, the EU follows a 'vulnerable groups approach' where the documents list the groups that are considered vulnerable in the specific context of the documents analysed and/or a 'factors approach' where the documents refer to certain factors which render certain people vulnerable.

## IV. Trade policy and the EU's human rights priorities

### A. Introduction

According to the Strategic Framework, the EU is committed to promoting human rights in all areas of its external action 'without exception'. Trade is explicitly mentioned among these areas.<sup>266</sup> The trade-human rights nexus is more problematic than the development-human rights nexus,<sup>267</sup> but the human rights dimension of the EU's trade policy can be found in many of its instruments, notably in the context of the General System of Preferences (GSP) and in the incorporation of human rights clauses into the wide range of EU trade agreements.<sup>268</sup>

One of the objectives of the first EU Action Plan on Human Rights and Democracy was to 'make trade work in a way that helps human rights.' The integration of human rights concerns in the EU's trade policy and its instruments was thoroughly addressed in Deliverable 9.1. The aim of this part of the report is to assess whether human rights priorities, in term of groups and themes, have any influence on the trade instruments that the EU uses to promote human rights. The integration of human rights priorities in this policy area is much less visible and difficult to evaluate compared to other policies, such as development. One possible explanation is that no public strategy exists regarding how the EU will mainstream human rights into this policy, beyond its commitment towards labour rights.<sup>269</sup> This is particularly important because the development of adequate policy frameworks has been identified as one of the 'building blocks' of a human rights mainstreaming strategy, along with the existence of 'sensitivity to human rights' within the policy area concerned.<sup>270</sup>

As will be shown in this chapter, there are few references to EU human rights priorities in trade documents. One of the few references to them can be found in the 2012 Communication from the Commission Entitled 'Trade, growth and development. Tailoring trade and investment policy for those countries most in need' whose purpose was to 'propose concrete ways to enhance synergies between trade and development policy.'<sup>271</sup> This Communication stresses the critical role of trade policy in 'projecting EU values and interests in the world,'<sup>272</sup> including the respect and promotion of human rights. One of the 'tasks for the new decade' proposed by the Commission in this

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<sup>266</sup> Strategic Framework, 5.

<sup>267</sup> FRAME Deliverable 9.1, 13

<sup>268</sup> Piet Eeckhout, 'Human Rights Policy' in *External Relations of the European Union. Legal and Constitutional Foundations* (Oxford University Press 2004) 466.

<sup>269</sup> Federica Petrucci and others, *Thematic Evaluation of the European Commission Support to Respect of Human Rights and Fundamental Freedoms (including Solidarity with Victims of Repression)*, vol 1 (European Commission 2011) 16.

<sup>270</sup> *Ibid* 16-17.

<sup>271</sup> Commission, 'Trade, growth and development. Tailoring trade and investment policy for those countries most in need' (Communication from the Commission to the European Parliament, the Parliament and the European Economic and Social Committee) COM(2012) 22 final.

<sup>272</sup> COM(2012) 22 final, 2-3.

document is to enhance the effectiveness of Aid for Trade (AfT) with the objective of targeting most vulnerable countries and encouraging developing countries to include trade in their development strategies. It is in this context of enhancing the effectiveness of AfT that the Commission establishes the link between the protection of rights of vulnerable groups and trade reforms:

Policies in relation to skills and education, labour rights and social protection are particularly relevant for the poorest and most vulnerable segments of the population, including women and children, in particular in relation to trade reforms. This dimension must therefore be fully integrated in the EU's development cooperation, in line with its continuing support for decent work, human rights and social protection.<sup>273</sup>

In what follows, the two major strategies used by the EU to integrate human rights concerns in its trade policy will be studied, namely GSP (Section IV.B) and human rights clauses in trade agreements (Section IV.C), with a focus on the impact that human rights priorities have in their design and implementation. Both strategies are forms of human rights conditionality, so the study will attempt to find out to what extent human rights priorities are taken into consideration to grant GSP's benefits (positive conditionality) or to withdraw those benefits or activate the non-execution clauses contained in trade agreements (negative conditionality). Special attention will be given to the role of the European Parliament within this policy which has strongly advocated for the incorporation of human rights into trade.<sup>274</sup> In addition, Section IV.D will analyse the integration of human rights priorities in the EU's documents related to the undertaking of impact assessments for its negotiations and agreements. This methodology used by the EU aims at examining the potential impacts of trade agreements (negative or positive) on the human rights of individuals of the countries concerned. Thus they might be a crucial technique in order to enhance the protection of the rights of vulnerable groups.

## **B. The General System of Preferences (GSP) and human rights priorities**

The GSP consists in providing developing countries with preferential access to the Union market with the aim of helping them to 'reduce poverty and promote good governance and sustainable development.'<sup>275</sup> The GSP scheme comprises three types of arrangements: (i) general GSP, which is granted to developing countries not classified by the World Bank as high-income or upper-middle income country during three consecutive years, (ii) 'special arrangement for the least-developed countries' or 'Everything But Arms' (EVA) programme, aimed at providing duty-free access to the EU market for products from the least-developed countries, except for trade in arms, and (iii)

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<sup>273</sup> COM(2012) 22 final, 11.

<sup>274</sup> See Roberto Bendini, *In-Depth Analysis. The European Union's trade policy, five years after the Lisbon Treaty* (European Union 2014).

<sup>275</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303/1, preamble (7).

‘special incentive arrangement for sustainable development and good governance’ or ‘GSP+ programme.’<sup>276</sup> The link between trade and human rights is the essence of GSP+, which offers benefits to those countries that are parties to 27 Conventions, including UN Human Rights Conventions and core ILO Conventions. This programme involves positive as well as negative conditionality. It offers special incentives subject to the ratification of the Conventions listed but the incentives could be withdrawn in case of ‘serious and systematic violation of principles’ laid down in those Conventions.<sup>277</sup>

GSP beneficiary countries may benefit from the tariff preferences of GSP+ provided that they have ratified the Conventions listed in Regulation 978/2012 and the relevant monitoring bodies under those Conventions have not identified ‘serious failures’ in their implementation.<sup>278</sup> Thus positive conditionality is linked to the ratification of certain human rights Conventions and the countries’ performances according to the relevant monitoring bodies. Human rights priorities selected by the EU do not have an impact in granting GSP+ benefits beyond the fact that all the priorities refer to crucial human rights issues that are embedded in human rights Conventions. Negative conditionality instead raises two issues where the EU’s prioritisation of vulnerable groups could be visible. First, whether the lack of protection of these groups by the beneficiary States could amount to a ‘serious and systematic violation’ of the Conventions sufficient to trigger the initiation of the withdrawal procedure. Second, whether the EU takes into consideration the impact withdrawals could have on the populations of the population of the countries concerned, especially those who are most vulnerable.

With respect to the first issue, it appears that the EU tends to withdraw preferences in those cases where there is a ‘comprehensive political component’ beyond the specific violations of human rights. This is the case for Burma and Belarus where the respective governments were considered responsible for labour rights violations, but in both cases the political dimension was decisive in order to adopt the withdrawal.<sup>279</sup> It seems then that human rights violations without a broader political component do not activate the procedure. An example cited by Bartels in this regard is Pakistan where in 1995 several trade unions requested the EU to suspend GSP preferences because of labour rights violations but the EU did not investigate the case.<sup>280</sup>

The second question is one of the most controversial issues regarding the use of negative conditionality by the EU. Consideration of human rights of populations of countries affected by the withdrawal, especially of those priority groups selected by the EU, should be a crucial factor in order to initiate the procedure. The EU’s Regulation that lay out the conditions and procedure for

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<sup>276</sup> Regulation 978/2012, Art. 1.

<sup>277</sup> Regulation 978/2012, Art. 19(1)(a).

<sup>278</sup> Regulation 978/2012, Art. 9(1)(b).

<sup>279</sup> Lorand Bartels, *The application of Human Rights Conditionality in the EU’s Bilateral Trade Agreements and Other Trade Arrangements with Third Countries* (European Parliament 2008) 14.

<sup>280</sup> *Ibid* 14.

withdrawal do not contain references to any possible impacts on the population.<sup>281</sup> Moreover, the EU has not adopted a system for the evaluation or assessment of the impacts of the EU's sanction policies on the ground, something which has been strongly criticised by the European Parliament.<sup>282</sup> However, it must be said that the harm caused to the Iraqi population as a consequence of the UN sanctions adopted against this country led to the international abandonment of general or large-scale economic sanctions.<sup>283</sup> The EU has also adopted this policy, moving towards a system of 'targeted or smart sanctions' which intends targeting those whose behaviour the EU wants to influence and so minimise the adverse effects for the population of the countries concerned. In this regard, in 2003 the EU adopted the 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the CFSP'<sup>284</sup> which recognised that targeted measures are more effective to achieve changes in policies or activities of the country or entities targeted and minimise negative consequences for those not responsible for those policies or activities.<sup>285</sup> Moreover, in 2004 the Council adopted the 'Basic Principles on the use of restrictive measures (sanctions) which reaffirmed the EU's preference for this type of measures, with the aim of reducing 'any adverse humanitarian effects or unintended consequences for persons not targeted or neighbouring countries.'<sup>286</sup> However, there are not specific references to particular groups or rights beyond these general statements in the framework of the move towards the adoption of targeted sanctions.

### C. Human rights clauses

Since 1995 the EU has systematically included human rights clauses in all its international agreements with third countries. The origins, typology and wording of these clauses were thoroughly analysed in Deliverable 9.1. Based on the findings of that Deliverable, the main purpose of this section is to find out the weight that human rights priorities identified by the EU in the Strategic Framework on Human Rights and Democracy have in this type of conditionality used by the EU to mainstream human rights into its trade policy.

Annex II of Deliverable 9.1 presents an overview of the 'essential elements clauses' contained in the most important EU trade agreements. There are some variations in the formulation of these clauses as regards what constitutes 'essential elements'. The great majority of these clauses refer to 'democratic principles and human rights.' Some of them also include a reference to 'the

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<sup>281</sup> See Regulation 978/2012, and Commission Delegated Regulation (EU) No 1083/2013 of 28 August 2013 establishing rules related to the procedure for temporary withdrawal of tariff preferences and adoption of general safeguard measures under Regulation (EU) No 978/2012 of the European Parliament and the Council applying a scheme of generalised tariff preferences.

<sup>282</sup> European Parliament, 'Report on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights' (2008/2013(INI)), para 1.

<sup>283</sup> Bartels (n 279), 13-14.

<sup>284</sup> Council of the European Union, 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy' 17464/09. Updated version adopted on 15 December 2009.

<sup>285</sup> Ibid, para 4 and 14-16.

<sup>286</sup> Council of the European Union, 'Basic principles on the use of restrictive measures (sanctions)' 10198/1/04 REV 1, para 6.

principles of market economy.’ There are also references to certain OSCE documents and to the Universal Declaration of Human Rights. The remission to the Universal Declaration of Human Rights has been considered an increasing tendency in the formulation of these clauses by the EU which reflects the EU’s will to reinforce the legal status of the Declaration as ‘an expression of general international law binding for all States.’<sup>287</sup> Human rights priorities or specific human rights are not mentioned in the clauses. Arguably this is because the clauses are thought to be applicable during the whole life of the agreement so they should not be attached to priorities that can evolve over time. However, one remarkable exception to this contractual technique is the Cotonou Agreement signed with the ACP countries. In Art. 9(2) this agreement contains the most elaborate and comprehensive essential elements clause, including ‘respect for human rights, democratic principles and the rule of law,’ In connection with human rights as ‘essential element’ this clause states:

The Parties refer to their international obligations and commitments concerning respect for human rights. They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples. Human rights are universal, indivisible and inter related. The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women.

In addition, the agreement contains other provisions which aim to protect specific groups, particular rights and to integrate the principle of non-discrimination. In this regard, migration issues are comprehensively addressed in Article 13, access to social basic services such as education, health, water and sanitation are subject to a complete regulation in Section 2 of the agreement (Social and Human Development) which also refers to youth issues and the integration of the cultural dimension into development. Besides these provisions, Article 31 considers gender as a cross-cutting issue to be promoted in EU-ACP cooperation.

The essential elements clauses are in the majority of cases linked to suspension or sanction clauses which entitle the parties to ‘take appropriate measures’ in case of failure in the fulfilment of the obligations stemming from the element essential clauses. The implementation of this negative conditionality has been subject to various criticisms. One of the critiques most frequently raised is the lack of identification of ‘detailed procedures’ for intervention.<sup>288</sup> The Cotonou Agreement is again the exception because it lays down an elaborated consultation procedure, although it is more imprecise if the consultations do not lead to a ‘solution acceptable’ for both parties. In this case the agreement also refers to the adoption of ‘appropriate measures’ by the parties but, as in the

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<sup>287</sup> Eeckhout (n 268), 478.

<sup>288</sup> European Parliament, ‘The Human Rights and Democracy Clause in EU agreements. European Parliament resolution on the human rights and democracy clause in European Union agreements’ (2005/2057(INI)) P6\_TA(2006)0056, para 4.

rest of the agreements, it does not specify which measures could be taken.<sup>289</sup> In this regard, the instruments used by the EU have been the suspension of financial aid or other forms of cooperation and the withdrawal of trade preferences.<sup>290</sup> In connection with the first type of measures, the European Parliament has advocated for the implementation of these clauses in connection with human rights violations of minorities, women, LGBT persons, indigenous peoples, children, the right to freedom of speech or the infringement of core labour standards, among others. However, the Council has not given attention to these requirements.<sup>291</sup> This has led to critiques concerning the existence of ‘double standards’ and inconsistencies in the EU’s policy of activation of these clauses. As was mentioned in section B above, the EU’s tendency has been to activate them in cases of crises in the overall political situation of the countries, usually coup d’états or electoral failures, as well as grave human rights violations, but ‘mere human rights abuses’ not associated with a deterioration in the political situation of the countries concerned have not triggered these clauses. This could be explained by the alleged lack of effectiveness of EU sanctions in cases of human rights violations (e.g. cases of Russia, Belarus and Liberia) while actions in cases of political crisis (e.g. Central African Republic, Ivory Coast, Fiji, Haiti or Togo) have been considered more successful.<sup>292</sup>

Finally it should be mentioned that human rights clauses do not appear in trade agreements dealing with specific sectors such as fisheries, textile or steel, despite these being sectors traditionally affected by human rights abuses, in particular regarding labour rights. This omission has been strongly criticised by the European Parliament.<sup>293</sup>

#### **D. Human rights impact assessments of trade agreements and human rights priorities**

The first Action Plan on Human Rights and Democracy required the EU to ‘incorporate human rights in all impact assessment’, including in trade agreements, as well as to ‘develop methodology to aid consideration of the human rights situation in third countries in connection with the launch or conclusion of trade and/or investment agreements.’<sup>294</sup> The new Action Plan has reaffirmed this approach, calling the EU to ‘continue to develop a robust and methodologically sound approach to the analysis of HR impacts of trade and investment agreements, in ex-ante impact assessments, sustainability impact assessments and ex-post evaluations.’<sup>295</sup> One of the main objectives of human rights impact assessments (HRIAs) of trade agreements and policies is to examine their potential impacts (negative or positive) on the human rights of individuals of the countries concerned. The purpose of this section is to explore to what extent the EU’s human rights priorities are considered in the EU’s documents which set out its methodology to carry out impact assessments for its trade

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<sup>289</sup> Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States of the Other Part, signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005, revised in Ouagadougou on 22 June 2010, Art. 96(1)(a).

<sup>290</sup> Bartels (n 279), 10-11.

<sup>291</sup> Ibid 11.

<sup>292</sup> Ibid 12. See also Petrucci and others, (n 269).

<sup>293</sup> European Parliament (2006) (n 288), para 8.

<sup>294</sup> Strategic Framework, Anex III, action 1 and 11(a).

<sup>295</sup> New Action Plan action 25(b).

negotiations and agreements. In particular, this section will analyse, on the one hand, the documents related to general impact assessments (IAs) issued by the EU under the new Better Regulation Package, launched by the EU in May 2015.<sup>296</sup> IAs are carried out before the EC proposes a new policy initiative, such as the opening of a trade negotiation.<sup>297</sup> On the other hand, this section will study the specific documents issued by DG Trade to establish the methodology to carry out Sustainability Impact Assessment (SIAs), in particular, the new Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives and the SIA Handbook.

Before entering into the analysis of these documents, this section will briefly describe what a HRIA is and which is its added value regarding the protection of vulnerable groups. A Human Rights Impact Assessment (HRIA) of trade agreements has been defined as ‘an empirical study of the actual or potential human rights impacts of the trade agreement itself, based on the normative framework of human rights.’ The aim of HRIAs is to assess how the legal obligations of the trade agreement concerned will affect (negatively and positively) the human rights of people in the signatory states. One of the reasons argued by scholars in order to support the undertaking of HRIAs versus other types of economic or social impact assessments is that these latter assessments ‘under-explore or marginalise the impact of trade agreements on the most vulnerable and disadvantaged persons and particular groups who might suffer (or benefit) as a result (e.g. women, ethnic minorities).’<sup>298</sup> On the contrary, HRIAs include the notions of equality and participation in a more systematic and comprehensive manner<sup>299</sup> and shift the focus from aggregate values regarding the benefits of trade for the country as a whole to the impacts of trade for the most vulnerable HRIAs.<sup>300</sup>

In the EU there is no practice of conducting standalone human rights impact assessments of trade policies. The methodology used by the EU involves the undertaking of the above mentioned general ‘Impact Assessments’ (IAs), which are carried out before the EC proposes a new policy initiative, and of ‘Sustainability Impact Assessments’ (SIAs) which are conducted in parallel with trade negotiations.

In connection with IAs, the EU issued recently the Better Regulation package, which aims at improving the EU’s design of policies and laws in order to achieve their objectives in the most

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<sup>296</sup> See in this regard <<http://ec.europa.eu/smart-regulation/better-regulation/key-docs-en.htm>> last accessed 21 July 2015.

<sup>297</sup> Commission, Directorate-General for Trade, ‘Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives’ [2015] <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1344>> last accessed 15 July 2015.

<sup>298</sup> James Harrison, ‘Human Rights Impact Assessments of Free Trade Agreements: What is the State of the Art? Keynote presentation at the Austrian Scientific Foundation for International Developments on 4th and 5th November 2013, 2 <<http://www2.warwick.ac.uk/fac/soc/law/research/centres/chrp/projects/humanrightsimpactassessments/trade>> last accessed 15 July 2015.

<sup>299</sup> Nicolás Brando, Nicolás Hachez, Brecht Lein and Axel Marx, ‘Assessing the impact of EU trade and development policies on human rights’, FRAME Deliverable 9.2 (30 June 2015, forthcoming) 29.

<sup>300</sup> Harrison (n 298) 2.



effective manner. This new agenda is guided by the Commission's Communication entitled 'Better regulation for better results – An EU agenda',<sup>301</sup> which comprises a package of measures to provide a 'basis for timely and sound policy decisions' in order to 'to deliver better rules for better results.' The Better Regulation package comprises the new Guidelines on Better Regulation which include the new Guidelines on Impact Assessment.<sup>302</sup> These Guidelines do not refer directly to human rights. They refer to fundamental rights and state that 'it is important not to miss a significant impact [...]. The impact assessments should, in particular, examine the impact of the different options on fundamental rights.'<sup>303</sup> Their main focus is on aggregate impacts, although they also clarify that 'impacts should be assessed from the point of view of society as a whole although distributional effects and cumulative burdens on individual parties should also be proportionately assessed and considered.'<sup>304</sup> The Guidelines on Better Regulation are complemented by the Better Regulation Toolbox, which includes a specific Tool, no. 24 (Fundamental Rights & Human Rights), which gives an overview of the fundamental rights and human rights issues which should be considered in impact assessments. This Tool reaffirms the obligation to respect the Charter of Fundamental Rights of the EU in all Commission acts and initiatives and includes a 'Fundamental Rights Check-List' in order to testing compliance with the Charter which has to be followed by all Commission departments.<sup>305</sup> In addition, the Commission issued in 2011 the 'Operational Guidance on Taking account of Fundamental Rights in Commission IAs' which calls to undertake a 'careful scrutiny (...) of the possible impacts on fundamental rights of external agreements of the Union, e.g. in an impact assessment for a negotiating mandate concerning a trade and/or investment agreement.'<sup>306</sup>

Finally, it should be mentioned that general IAs have been carried out in relation to trade agreements since 2012 and will constitute a decisive basis for future SIAs due to they constitute a previous assessment of economic, social and environmental impacts which will serve as a guide for the selection of the issues on which the SIAs should focus.<sup>307</sup> However, a study developed by the FIDH in 2014 shows that these IAs on trade and investment agreements lack 'any serious human rights dimension.'<sup>308</sup>

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<sup>301</sup> Commission, 'Better regulation for better results – An EU Agenda' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2015) 215 final.

<sup>302</sup> Commission, Better Regulation Guidelines (Commission Staff Working Document) SWD(2015)111, Chapter III (Guidelines on Impact Assessment).

<sup>303</sup> Ibid 25.

<sup>304</sup> Ibid 28.

<sup>305</sup> Commission, 'Better Regulation Toolbox' [2015] 176 <[http://ec.europa.eu/smart-regulation/guidelines/toc\\_tool\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm)> last accessed 15 July 2015.

<sup>306</sup> Commission, 'Operational Guidance on Taking account of Fundamental Rights in Commission Impact Assessments' (Commission Staff Working Paper) SEC(2011) 567 final, 11 <[http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance_en.pdf)> last accessed 15 July 2015.

<sup>307</sup> Deliverable 9.2 (forthcoming) 82.

<sup>308</sup> FIDH, 'Building Trade's Consistency with Human Rights: 15 Recommendations to the EU on Impact Assessments' (FIDH 2014).

Regarding SIAs, the EU has completed these assessments in respect of all trade agreements since 1999.<sup>309</sup> These are comprehensive documents which deal with economic, social and environmental impacts. Along with these impacts, human rights impacts are analysed and presented in a single document. This responds to the ‘integrated approach of the assessment of impacts’ followed by the Commission which involves that ‘all relevant impacts are analysed in terms of benefits and costs, and presented together in a single document’.<sup>310</sup> The analysis of the EU methodology of conducting ‘Sustainability Impact Assessments’ (SIAs), as well as the main elements in connection with human rights found in all the SIA reports issued in relation to EU trade agreements were extensively addressed by FRAME Deliverable 9.2.<sup>311</sup> This section will focus on the consideration of human rights priorities in the latest EU documents dealing with these assessments, namely the new ‘Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives’ and the ‘SIA Handbook’<sup>312</sup>

The Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives were developed by DG Trade in response to the first Action Plan on Human Rights and Democracy. According to them, human rights impacts of trade-related initiatives set out how trade measures ‘are likely to impact on the human rights of individuals in the countries concerned’ as well as on the ‘ability of the EU and partner country/ies to fulfil or progressively realise their human rights obligations.’<sup>313</sup> As the document clarifies, checking compliance with the Charter of Fundamental Rights, as required by the Better Regulation package, is not enough when considering the impact of a trade-related initiative on human rights. The assessment has to consider also the impact of the initiatives on human rights obligations under international law. Regarding the scope of the assessment, the Guidelines require to look at the impacts on civil, political, economic, social, cultural and core labour rights. The assessment should be based on the normative framework that the Guidelines mention, including the core UN human rights conventions, the fundamental ILO conventions on core labour standards, the Charter, the European Convention on Human Rights and other regional human rights conventions, and customary international law.

Particular attention to the impacts on priority human rights, namely freedom of opinion and expression and ESC rights, as well as on vulnerable groups, including women, children, people with disabilities, indigenous peoples, ethnic minorities, low-income groups and ‘those living in a

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<sup>309</sup> Deliverable 9.2 (forthcoming) 82.

<sup>310</sup> Commission, Directorate-General for Trade, ‘Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives’, 1 and 4 <[http://trade.ec.europa.eu/consultations/index.cfm?consul\\_id=186](http://trade.ec.europa.eu/consultations/index.cfm?consul_id=186)> last accessed 15 July 2015. (Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives).

<sup>311</sup> Deliverable 9.2 (forthcoming) 74-125.

<sup>312</sup> Commission, ‘Handbook for Trade Sustainability Impact Assessment’ (Draft for public consultation) (2nd ed, 2015) <<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1344>> last accessed 15 July 2015. (Draft Handbook).

<sup>313</sup> Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives, 2.

particular territory', are found in several parts of the document.<sup>314</sup> In particular, the consideration of those rights and groups are stressed during the initial steps of 'screening', 'scoping' and 'detailed assessment'.<sup>315</sup> A Screening of the trade measures under consideration is the first stage in the assessment of human rights impacts. This stage aims at identifying which measures are likely to have an impact on human rights as well as 'which specific human rights would be likely to be affected (and with respect to which population groups) and whether the rights (...) are absolute rights, that cannot be limited or restricted under any circumstances.' The Guidelines also stress that in practice some rights, in particular economic, social and core labour rights, are likely to be positively or negatively affected by trade-related initiatives than other and that 'in this context, gender equality and non-discrimination should be considered as cross-cutting issues.'<sup>316</sup>

The second step set out by the Guidelines is 'scoping' which aims at clarifying the scope and content of the measures identified in the screening process. In order to consider if those measures could have a negative or positive impact, the Guidelines require to consider 'pre-existing conditions of insecurity, stress or vulnerability, including of women or of particular groups (e.g. low-income, children, people with disabilities, ethnic minorities, indigenous peoples, those living in a particular territory).'<sup>317</sup>

Finally, the third step consists in a detailed assessment which should provide 'evidence-based' information about how the measures may enhance or impair the enjoyment of rights of individuals and/or may affect the ability of the EU and the partner countries to fulfil their human rights obligations. This assessment has to combine both quantitative and qualitative approaches. The quantitative analysis should provide, using modelling techniques, aggregate information on the effects likely to be produced by the measures under study. However, the Guidelines also set out that to the extent feasible this analysis should also 'provide quantitative information on individuals or groups likely to be affected by particular identified impacts.'<sup>318</sup> This provision responds to one of the most frequently raised concerns regarding modelling techniques which tend to consider society as a whole without considering the situation of vulnerable groups.<sup>319</sup> In addition, a qualitative analysis on the 'potential impacts on human rights, including on women and on particular vulnerable groups likely to be affected' should complement the quantitative analysis. During this third step, a stakeholder consultation should be conducted. This consultation is a crucial element as stakeholders, especially civil society organisations, can provide valuable information on how the policy proposals might affect the groups they represent. In this regard, the Guidelines

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<sup>314</sup> Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives, 2, 5, 7, 8, 9, 10.

<sup>315</sup> Two more steps are identified: 'presenting the results' and 'evaluation and monitoring.'

<sup>316</sup> Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives, 6-8.

<sup>317</sup> Ibid 9.

<sup>318</sup> Ibid 10.

<sup>319</sup> Deliverable 9.2 (forthcoming) 77.

require giving particular attention to the ‘impact on gender quality and on vulnerable and disadvantaged persons and groups (including children and minorities).’

The Draft of the Handbook for Trade Sustainability Impact Assessment is currently under public consultation. It constitutes the second edition of the previous Handbook adopted in 2006 by DG Trade.<sup>320</sup> One crucial amendment of this draft, if finally is adopted with the currently available text, is that it adds human rights as a new dimension to be assessed along with the economic, social and environmental impact. The lack of a human rights dimension was one of the issues most criticised regarding the Handbook.<sup>321</sup> With regard to the EU’s human rights priorities, the Draft Handbook reproduces the references included in the Guidelines. In addition, it includes a non-exhaustive list of ‘themes of particular relevance’ organised under five categories: economic, social, human rights, environmental and institutional, although some of the themes might belong to more than one category. In the category human rights, the themes listed are: adequate standards of living, property, fair trial, freedom of expression and opinion, privacy and cultural life. In the category of social themes, the Handbook refers to decent work, equity (e.g. gender equality and discrimination), housing, education and health. Both categories include then human rights priorities mentioned in the Strategic Framework on Human Rights and Democracy.

## E. Conclusions

Although trade policy can be an important tool for the promotion of human rights, the integration of human rights in this significant sphere of the EU’s external action is much less evident. One reason for this could be that the EU has not developed any public strategy in order to mainstream human rights into this policy. Human rights priorities could influence some of the instruments used by the EU to promote human rights worldwide, notably in the cases in which the EU applies negative human rights conditionality to withdraw GSP benefits or activate human rights clauses. However, this chapter has shown that human rights priorities are scarcely considered in this policy area by the EU.

With the exception of the EU documents related to trade impact assessments, there are few references to EU’s human rights priorities in trade documents. In the framework of positive conditionality, human rights priorities do not influence the granting of GSP+ benefits and neither have they included in the human rights clauses of trade agreements, with the remarkable exception of the Cotonou Agreement. In connection with negative conditionality, one recurrent critique is that the EU has not adopted a system for the assessment of the impacts of sanctions on the ground, although the move towards the adoption of ‘targeted sanctions’ intends to minimise the adverse effects of sanctions on the population of the countries concerned. Moreover, it has also been criticized the existence of ‘double standards’ and inconsistencies in the EU’s policy of activation of

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<sup>320</sup> Commission, DG Trade, ‘Draft Information on the consultation process can be found at <[http://trade.ec.europa.eu/consultations/index.cfm?consul\\_id=186](http://trade.ec.europa.eu/consultations/index.cfm?consul_id=186)> last accessed on 15 July 2015.

<sup>321</sup> See in this regard, FIDH (n 308) and Draft Handbook (n 312) 3.

human rights clauses since it seems that the EU does not consider mere human rights violations without a broader political component.

On the contrary, the EU documents analysed in connection with human rights impact assessments of trade agreements give particular attention to human rights priorities, in particular to vulnerable groups such as women, children, people with disabilities, indigenous peoples, ethnic minorities or low-income groups. Certain human rights themes, in particular ESC rights, are also considered in these documents. It might be said that this methodology of assessment has contributed to enhance significantly the sensitivity of this policy field towards human rights in general and the protection of vulnerable groups, in particular. In this regard, the EU again applies the 'vulnerable groups approach', listing the groups which are considered vulnerable without including a definition of vulnerability or vulnerable group and without establishing a framework in order to identify who are vulnerable.

## V. CSDP and EU human rights priorities

The aim of this section is to provide an overview of human rights priorities and vulnerable groups in the CSDP and to assess (i) how does the EU deal with situations of vulnerability within the CSDP and to assess the consistency of its approach (ii) to identify the human rights priorities of the EU with regard to thematic issues, and the potential inconsistencies that might arise in its policy.

### A. Introduction

Elaborating on the conceptual analysis of vulnerability and vulnerable groups in EU policies based on Annexes I and II of this report, this chapter will examine the EU's performance through the formulation, implementation and evaluation of CSDP missions, and, how vulnerable groups and human rights thematic priorities are considered at each of these stages. The key question are, therefore: (i) which are the EU's uses of vulnerability for CSDP and which are, if any, the inconsistencies in the referred uses for this policy? (ii) which are the thematic priorities that deserve special attention in the field of CSDP and which are, if any, the eventual inconsistencies in the EU's treatment of the thematic priorities?

This report attempts to answer these questions starting with a brief description of CSDP missions and how the EU defines the aims of coherence and consistency (Annex II). In a second part on CSDP Operations, we will consider the EU's implementation of vulnerability and vulnerable groups in its reaction to crisis situations, through the study of the CSDP missions.

While CSDP operations are a fairly new instrument of EU foreign policy – the first mission was launched in 2003 – it is undeniable that they have progressively become an important tool of EU external action.<sup>322</sup> Notwithstanding the fact that capabilities and resources have been improved, there are still some operational difficulties that hamper its effectiveness. With regard to the formulation and implementation of this policy, special attention should be given to the fact that CSDP operations are based on a complex institutional framework and procedures, despite its rapid development in recent years.<sup>323</sup> Besides the main EU institutions, there are more than ten agencies and bodies that participate in the decision-making and implementation stage, resulting in a long, tedious and complex process. Bearing in mind that CSDP operations are intended to provide a quick response to any international crisis, the mechanism to deploy them should comply with this requirement.<sup>324</sup> An exhaustive evaluation of the implementation phase is particularly challenging as the operational framework for these CSDP operations is mostly defined in restricted documents.

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<sup>322</sup> Hadewych Hazelzet, 'The added value of CSDP operations', (2013) Brief EUISS, Vol. 31, <[http://www.iss.europa.eu/uploads/media/Brief\\_31.pdf](http://www.iss.europa.eu/uploads/media/Brief_31.pdf)> accessed 14 May 2015.

<sup>323</sup> Alexander Mattelaer, 'The CSDP Mission Planning Process of the European Union: Innovations and Shortfalls', (2010) in Sophie Vanhoonacker, Hylke Dijkstra and Heidi Maurer (eds). *Understanding the Role of Bureaucracy in the European Security and Defence Policy*, *European Integration online Papers* (EIoP), Special Issue 1, Vol. 14, <<http://eiop.or.at/eiop/texte/2010-009a.htm>> last accessed on 12 May 2015, 14.

<sup>324</sup> *Ibid* 11.

Regarding the general notion of vulnerable groups, the absence should be noted of an universally applicable definition, especially in conflict settings. This will depend on the context of the conflict, on its components, on its actors, its causes and consequences.<sup>325</sup> Notwithstanding these conceptual difficulties, it is known that there is a minimum list of social groups that are systematically more affected by conflict and crisis situations than other groups, and it is possible to identify them through international law and practice. While the EU's human rights and CSDP main documents have clearly identified some of these vulnerable groups -especially women and children- it seems like the EU follows the conceptualisation of vulnerability as a *characteristic of determined groups*, which designates concrete groups as 'vulnerable' according to their special attributes.<sup>326</sup>

As it is underlined by Grevi, Kelly and Keohane, 'documents on comprehensive planning stress that the [crisis management concept] is meant to ensure the full coherence between different EU actors and to point out the interdependencies between their tasks'.<sup>327</sup> The relationship between vulnerability and CSDP is commonly associated with the approaches in the EU policy documents on CSDP.

## **B. Vulnerable groups and the EU's human rights priorities in CSDP**

According to Article 21.1 of the TEU, the EU external action 'shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'. In this respect, the Strategic Framework and the Action Plans for human rights and democracy support this idea by stating that 'The EU will promote human rights in all areas of its external action without exception', and mentioning in particular that the EU will integrate the promotion of human rights in the CSDP. In fact, one of the five 'areas of action' identified in the new Action Plan is 'Ensuring a comprehensive human rights approach to conflicts and crisis' (Area III).

The main goal of EU CSDP policy remains 'a tangible contribution to international crisis resolution and management', as stated in the Council's 'Main Aspects and Basic Choices of the CFSP',<sup>328</sup> and

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<sup>325</sup> The United Nations Office for Risk Disaster Reduction, *Issues of Vulnerability with Specific Reference to Gender in the Asia-Pacific: Post - 2015 Framework for Disaster Risk Reduction* (UNISDR 2003), 3-4 <[http://www.preventionweb.net/files/34051\\_backgroundpaperonissuesofvulnerabil.pdf](http://www.preventionweb.net/files/34051_backgroundpaperonissuesofvulnerabil.pdf)> last accessed on 9 May 2015.

<sup>326</sup> Dolores Morondo, 'Concept paper: vulnerability and vulnerable groups in EU policies' (FRAME Cluster 3 working document, 2015).

<sup>327</sup> Giovanni Grevi, Damien Helly and Daniel Keohane (eds.), *European Security and Defence Policy: The First Ten Years (1999 – 2009)* (The EU Institute for Security Studies 2009) 57.

<sup>328</sup> Council of the European Union, 'Main aspects and basic choices of the CFSP (Part II, point E, paragraph 25 of the Interinstitutional Agreement of 2 December 2013) – 2013' (Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament) 12094/14 [2014].

in Article 43.1 in the Treaty on European Union (TEU).<sup>329</sup> The 2011 Joint Communication of the European Commission and on 'Human Rights and Democracy at the Heart of EU External Action' further reiterated this principal aim, but also put renewed emphasis on the importance of vulnerable groups for effective crisis management by stating that 'The EU will strengthen the human rights, child protection and gender elements of its conflict prevention, crisis management and peace-building efforts, taking into account international best practice and aiming at a democratic outcome, replacing violence with political conflict resolution mechanisms'.<sup>330</sup>

Furthermore, vulnerability and CSDP are intimately linked to the patterns of contemporary operations in a number of ways, which imposes the need to deal with vulnerable groups and CSDP operations by clarifying the respective roles of different EU institutions and Member States in CSDP policy-making.<sup>331</sup>

Regarding the CSDP relevant documents, already in 2003, the European Security Strategy<sup>332</sup> referred directly or indirectly to some vulnerable groups. It explicitly names women, minorities and migrants and implicitly makes reference to IDPs and refugees, when it states that 'over 18 million people world-wide have left their homes as a result of conflict'. In 2008, the report on the implementation of the ESS,<sup>333</sup> made an explicit reference to women and children in conflict and in ESDP missions, as well as mentioning the category of refugees. The European Strategy for Security and Development in the Sahel<sup>334</sup> also refers expressly to vulnerable local population, marginalised social groups and youth vulnerability. All these strategies identify poverty, economic failure, terrorism and organised crime as key threats to peace and security.<sup>335</sup>

The EU has gradually involved 'human rights policy in context of ESDP missions and operations where relevant, in particular as regards women and children, including by monitoring and reporting on human rights related issues'.<sup>336</sup> Notwithstanding this, it is exceptional that a CSDP operation

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<sup>329</sup> Specifically, the scope and range of CSDP in Article 43.1 of the TEU has been extended by the Petersberg tasks to enhance, 'joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.'

<sup>330</sup> COM(2011) 886 final, 13.

<sup>331</sup> Nicola Verola, 'The New EU Foreign Policy under the Treaty of Lisbon' in Federiga Bindi (ed.) *The Foreign Policy of the European Union: Assessing Europe's Role in the World* (The Brookings Institution 2010), 47.

<sup>332</sup> European Security Strategy, 'A secure Europe in a better world'. 2003. <<http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>>, accessed 18 May 2015.

<sup>333</sup> Report on the implementation of the European Security Strategy, Providing Security in a Changing World, 2008. <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/reports/104630.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/104630.pdf)>, last accessed on 18 May 2015.

<sup>334</sup> European Strategy for Security and Development in the Sahel, 2003. <[http://eeas.europa.eu/africa/docs/sahel\\_strategy\\_en.pdf](http://eeas.europa.eu/africa/docs/sahel_strategy_en.pdf)>, last accessed on 18 May 2015.

<sup>335</sup> They also identify mass destruction weapons, cyber security, state failure, global warming and energy security as key threats to security, but not specifically related to human rights.

<sup>336</sup> Council of the European Union, 'Mainstreaming human rights across CFSP and other EU policies' 10076/06 [2006] <[https://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/hr/news66.pdf](https://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news66.pdf)> last accessed on 19 May 2015.



mandate includes explicitly human rights as a part of the task or objectives of the mission<sup>337</sup> and even more exceptionally, explicitly include of the protection of vulnerable groups.

Although the majority of CSDP missions and operations mandate documents mention a human rights based-approach,<sup>338</sup> only a few of them identify some of the priority themes listed by the Strategic Framework, the Action Plans and the Human Rights Guidelines. For instance, both EUTM Mali<sup>339</sup> and EUSEC RD Congo<sup>340</sup> mandates contain explicit reference to the promotion of observance of international humanitarian law. Similarly, EULEX Kosovo<sup>341</sup> and EUAM Ukraine<sup>342</sup> specifically mention the issue of accountability, which is directly related with the fight against impunity for serious crimes of concern of the international community.

### 1. EU Consistency for vulnerable groups in CSDP

As an attempt to cultivate a common strategic interest and multilateralisation in practice, the EU Strategic Framework and Action Plan afforded an innovative drive for nurturing better consistency on human rights priority themes and vulnerable groups. These clearly identify priority themes and groups that deserve more attention.<sup>343</sup> In terms of CSDP operations, the Council emphasizes that the EU should ‘systemically include human rights, child protection, gender equality – and IHL where relevant – in the mandates of EU missions and operations and in their benchmarks, planning and evaluation’ as well as realise the implementation of UNSC resolutions 1325 and 1820 on Women, Peace and Security.<sup>344</sup> However, while women and children are very present in CSDP documents and operations<sup>345</sup>, there are other vulnerable groups that, although being mentioned in the Strategic Framework and the Action Plans, are not mentioned in CSDP documents, such as elderly, persons with disabilities or indigenous people.

While a few Member States consider vulnerable groups in their national defence policies, others have not done so. While no methodical comparative studies have been carried out so far,<sup>346</sup> the

<sup>337</sup> Only few of the operations include references to human rights in general, for instance: EUMM in Aceh, Indonesia (2005), EUSEC- DR Congo (2005) and EUPOL RD Congo (2007), and EUPOL Afghanistan (2007).

<sup>338</sup> Such as EUCAP Sahel Niger (Council Decision 2012/392/CFSP) or EUNAVSEC South-Sudan (Council Decision 2012/312/CFSP)

<sup>339</sup> Council Decision 2013/34/CFSP.

<sup>340</sup> Council Joint Action 2005/355/CFSP.

<sup>341</sup> Council Joint Action 2008/124/CFSP.

<sup>342</sup> Council Decision 2014/486/CFSP.

<sup>343</sup> See FRAME Deliverable 12.1, 20.

<sup>344</sup> Strategic Framework, Annex III, outcome 12, actions (a) and (b).

<sup>345</sup> Some operations, such as EUFOR RDC and EUFOR Tchad, produced pocket cards outlining inter alia the main human rights duties and the rules of engagement. With the AMM Aceh in 2005, the first human rights advisors were appointed to EU missions, followed by gender advisors as of 2006. See Hadewych Hazelet, ‘Common Security and Defence Policy: What nexus between human rights and security’, in Aurel Sari and Ramses A. Wessel (eds) *Human Rights in EU Crisis Management Operations: A Duty to Respect and to Protect?* (Clear Working Papers 2012/6) <<http://www.asser.nl/media/1635/clear-working-paper.pdf>> last accessed on 19 May 2015.

<sup>346</sup> See The Spanish Security Strategy, 2013. <[http://www.lamoncloa.gob.es/documents/estrategiaseguridad\\_baja\\_julio.pdf](http://www.lamoncloa.gob.es/documents/estrategiaseguridad_baja_julio.pdf)> accessed 19 May 2015.

Treaty of Lisbon emphasises that ‘national security remains the sole responsibility of each member state’.<sup>347</sup> Subsequently, the variations in national security policies appear most noticeably regarding the strategic culture necessary ‘to determine foreign policy and security goals, to develop and deploy instruments in function of these foreign policy goals, and to accept the related costs’.<sup>348</sup> Disparities among Member States in their ‘common’ strategic interest and lack of political will to strengthen the EU’s role in the protection of vulnerable groups, and in the elaboration of CSDP policies or operations are also evident.<sup>349</sup>

Curiously, concerning the question of the distribution of humanitarian assistance, the Member States do not have an overt responsibility to assess the human rights priority themes and the impact on vulnerable groups. Nonetheless, in endorsing the Parliament’s and the Council’s Regulation on establishing an instrument contributing to stability and peace, the Council has emphasised the need for ‘consistency and complementarity of Union assistance’ whereby Member States and the EU coordinate activities at both at the decision-making and ground levels, operate a system for exchanging information, and where possible ‘ensure coordination and cooperation with multilateral, regional and sub-regional organisations and other donors’.<sup>350</sup> As a result, when preparing and implementing thematic strategies and programmes for third countries in need of crisis response, the ‘Union and the Member States shall consult each other at an early stage of the programming process in order to promote consistency and complementarity among their cooperation activities’.<sup>351</sup> Integral for such a multilateral approach to assistance would be the classification of conditions for programming assistance that is consistent with the EU’s CSDP impact and efficiency approach to vulnerability. The Regulation establishing the Instrument for Stability and Peace includes priority themes and vulnerable groups by identifying cross-cutting issues to be included in assistance and programming (see Article 2.4, sections (b), (c), and (d)).<sup>352</sup> In the upcoming assistance and programming actions of the Instrument contributing to Stability and Peace it will become clear whether a unified EU CSDP policy in the areas of crisis response, conflict prevention, peace-building and crisis preparedness is taking effect and to what degree this will cover the priority themes and vulnerable groups.

The aforesaid progression suggests a glaring ambition for higher consistency within the EU on integrating vulnerable groups in CSDP. There are doubts as to what degree these recent innovations

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<sup>347</sup> Nicola Verola, ‘The New EU Foreign Policy under the Treaty of Lisbon’ in Federiga Bindi (ed.) *The Foreign Policy of the European Union: Assessing Europe’s Role in the World* (The Brookings Institution 2010) 47.

<sup>348</sup> Stephan Keukeleire and Jennifer MacNaughtan, *The Foreign Policy of the European Union* (Palgrave Macmillan 2008) 139.

<sup>349</sup> Nicola Verola, ‘The New EU Foreign Policy under the Treaty of Lisbon’ in Federiga Bindi (ed.) *The Foreign Policy of the European Union: Assessing Europe’s Role in the World* (The Brookings Institution 2010) 47.

<sup>350</sup> Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace’, OJ L 77/1, 15 March 2014 <[http://ec.europa.eu/dgs/fpi/documents/140311\\_icsp\\_reg\\_230\\_2014\\_en.pdf](http://ec.europa.eu/dgs/fpi/documents/140311_icsp_reg_230_2014_en.pdf)> last accessed on 18 May 2015, Art. 2(6).

<sup>351</sup> Ibid, Art. 8(2).

<sup>352</sup> European Parliament, ‘Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace’ OJ L 77/1 [2014].

has resulted in more tangible, harmonized action towards situations of crisis management. The following sections of this analysis will focus mainly on CSDP operations, however it should be noted that the relationship between the Member States and EU institutions is fundamental in appreciating how operations are implemented and evaluated.

## 2. Integration of vulnerable groups in CSDP operations

Military and civilian CSDP operations are a fairly new instrument in the EU's foreign policy inventory. The EU launched its first CSDP operation in 2003, after many years of great effort (both within the EU and among Member States) to address the end of the Cold War, the collapse of the Soviet Union and its own security deficit dependency on NATO.<sup>353</sup> As it became clear that NATO was losing its leadership in European security policy, formalised CSDP was deemed appropriate to develop security strategies consistent with the human rights thematic priorities standardised by the EU. To date, the EU and CSDP has successfully launched 35 operations<sup>354</sup>: seven military operations (*Concordia, Althea, Artemis, EUFOR DR Congo, EUFOR Tchad/RCA, Atalanta, EUFOR RCA, EUNAVFOR Med*), twelve assistance/supporting missions (*EUSEC DR Congo, EU support to AMIS Darfur, EUSR BST Georgia, EUPAT FYROM, EUPT Kosovo, EUSSR Guinea-Bissau, EUNAVCO, EUCAP Sahel Niger, EUCAP NESTOR Horn of Africa, EUAVSEC South Sudan*) including the two most recent (*EUCAP Sahel Mali and EUAM Ukraine*), six police operations (*EUPM, Proxima, EUPOL Kinshasa, EUPOL COPPS, EUPOL DRC, EUPOL Afghanistan*), three rule of law missions (*EUJUST THEMIS, EUJUST LEX, EULEX Kosovo*), three border assistance missions (*EUBAM Rafah, EUBAM Ukraine/Moldova, EUBAM Libya*), and two monitoring missions (*AMM and EUMM Georgia*).<sup>355</sup>

This section presents an outline of the EU's approach and its efforts to integrate vulnerable groups into the planning and formulation phase, as well as in the implementation and evaluation stages of the operations and missions.

### a) Planning, implementation and evaluation phase.

In the framework of the EU CSDP operations, attempts have been made to expand mainstreaming policies attending to particular vulnerable groups. The policy model for vulnerable groups, including women and children, is frequently understood as foregoing while also complementing the idea of 'mainstreaming human rights' generally, and can be debated as to what scope civilian and military crisis management operations are a factor in employing the mainstreaming guidelines. The EU's CSDP practice has predominantly advanced in mainstreaming policies regarding two main, identifiable vulnerable groups: women and children. While other vulnerable groups could naturally fall within the range of these two specific groups (i.e. persons with disabilities), there is still a significant lack of recognition throughout all stages of CSDP policy for several other groups facing

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<sup>353</sup> Sarwar A. Kashmeri, 'At the Crossroads of NATO and the European Union' in *NATO 2 NATO2.0* (Potomac Books, Inc. 2011) 102.

<sup>354</sup> On May 18 2015, the Council established EU naval operation to disrupt human smugglers in the Mediterranean. See <http://www.consilium.europa.eu/en/press/press-releases/2015/05/18-council-establishes-naval-operations-disrupt-human-smugglers-mediterranean/>, last accessed on 20 May 2015.

<sup>355</sup> See CSDP Mission Chart available at <http://www.csdpmap.eu/mission-chart>, last accessed on 20 July 2015.

vulnerability, including refugees and IDPs, which are often just as vulnerable as women and children in crisis situations.

Regarding gender issues, the Council emphasises that ‘they should be included as a factor for consideration in the planning (including fact finding missions), implementation, monitoring and lesson learned process’.<sup>356</sup> The EU has produced numerous policies and guidelines that Member States and the Secretary General of the Council are invited to implement, and rely heavily on the goals and standards set out in UNSCR 1325.<sup>357</sup> Another important tool is the Council Document on Mainstreaming Human Rights across CFSP and other EU policies,<sup>358</sup> which was adopted in June 2006 in line with Article 11 of the TEU.

In 2008, the Directorate General for External Policies of the Union drafted an explanatory note on ‘the European Parliament and Gender Mainstreaming as it relates to ESDP’. Reflecting later developments, the Directorate General proposed that, ‘there remains however a serious problem in systematic implementation of these ideas and recommendations in ESDP operations and Peacebuilding activities’.<sup>359</sup> Currently, in the Council’s ‘Annual report on human rights and democracy in the World in 2013’ adopted in June 2014, the Council stated: ‘Human rights and gender considerations are being integrated into the planning, implementation and evaluation of CSDP missions and operations. Recent crisis management procedures were adopted in June 2013, stipulating that a gender and human rights analysis should always be carried out during the planning cycle for new missions and operations, and integrated into key planning documents.’<sup>360</sup> In line with this commitment, it became necessary to take concrete measures to strengthen the human rights component and the vulnerability approach in CSDP operations, i.e. the appointment of human rights and/or gender advisors..<sup>361</sup> Still, analytical academic research remarks that the EU’s approach to gender units in CSDP operations in the interests of women in crisis situations has been

<sup>356</sup> Council of the European Union, ‘Implementation of UNSCR 1325 in the context of ESDP’, 11932/2/05, 29 September 2005, measure 4, <<http://eupolcopps.eu/sites/default/files/u2/Implementation%20of%20UNSCR%201325%20in%20the%20context%20of%20ESDP.pdf>> last accessed on 19 May 2015.

<sup>357</sup> Council of the European Union, ‘Draft guidelines on protection of civilians in EU-led crisis management operations’, 14805/03, 14 November 2013 <<http://www.unife.it/giurisprudenza/giurisprudenza/studiare/diritti-umani-conflitti-armati/materiale-da-archiviare/dipm-2013/seminario-a.-sanchez/civilian.en.pdf>> last accessed on 19 May 2015.

<sup>358</sup> Council of the European Union, 10076/06.

<sup>359</sup> Explanatory note on ‘European Parliament and Gender Mainstreaming as it relates to ESDP’ <[http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/dv/afet\\_21012009\\_esdp\\_gender\\_2008/afet\\_21012009\\_ESDP\\_Gender\\_2008\\_EN.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/afet_21012009_esdp_gender_2008/afet_21012009_ESDP_Gender_2008_EN.pdf)> last accessed on 19 May 2015.

<sup>360</sup> Council of the European Union, ‘EU Annual Report on Human Rights and Democracy in the World in 2013’, 11107/14, 23 June 2014, section IV.12.

<sup>361</sup> Ibid.

overlooked in the past and lacks substantiation by Member States in cases where the State has not adopted national action plans for the implementation of UNSCR 1325.<sup>362</sup>

In addition to women, the rights of children have also taken a front position in EU CSDP operations in similar communications, guidelines,<sup>363</sup> and the adoption of a 'Checklist for the Integration of the Protection of Children affected by Armed Conflict' in 2006. Guidelines in the past have ensured the protection of children in armed conflict when performing CSDP operations.<sup>364</sup> Practically, children's rights are to be considered in the planning process of operations and the training activities of missions. To provide more material guidance on the methodical implementation of the Guidelines on Children in Armed Conflict, the council adopted a 'Checklist for the Integration of the Protection of Children affected by Armed Conflict' in May 2006. According to the Checklist, the objectives and implementation in CSDP, 'refers to child protection concerns that are addressed by all mission staff, as child protection concerns can be core functions for some staff, they should be taken into account by all members and/or components of an operation.'<sup>365</sup> Furthermore, the EU should evaluate and perform 'lessons-learned' processes with respect to the rights of the child when considering future missions. It could be useful in such an evaluation process to determine the applicability to other vulnerable groups that require attention.

Besides the explicit reference to women and children, it is also worth mentioning that the human rights Guidelines on *human rights defenders and to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons*, state that information related to this issues will be included in relevant training for CSDP missions staff.<sup>366</sup> Other vulnerable groups, such as IDPs and refugees or minorities are referred in some specific planning documents<sup>367</sup>, but they are not mentioned as specific protection objectives through general CSDP documents.

Evaluation processes are essential to assess the impact and effectiveness of CSDP missions and operations as the degree of consistency with other policies within wider strategies. There are a

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<sup>362</sup> Jana Arloth and Frauke Seidensticker, 'ESDP Crisis Management Operations of the European Union and Human Rights' (Deutsches Institut für Menschenrechte, 2007) 55.

<sup>363</sup> The EU has developed an important number of human rights guidelines which are an important tool to implement human rights in EU policies. See <[http://eeas.europa.eu/human\\_rights/guidelines/index\\_en.htm](http://eeas.europa.eu/human_rights/guidelines/index_en.htm)> last accessed on 12 May 2015.

<sup>364</sup> Council of the European Union, 'EU Guidelines on Children and Armed Conflict' 15634/03 [2003] <[http://eeas.europa.eu/delegations/china/documents/eu\\_china/human\\_rights/caafguidelines.pdf](http://eeas.europa.eu/delegations/china/documents/eu_china/human_rights/caafguidelines.pdf)> last accessed on 19 May 2015.

<sup>365</sup> Council of the European Union, 'Draft General review of the Implementation of the Checklist for the Integration of the Protection of Children affected by Armed Conflict into ESDP Operations' 9822/08 [2008]. <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209822%202008%20INIT>> last accessed on 19 May 2015.

<sup>366</sup> Guidelines on human rights defenders and to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex(LGBTI) persons, <[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/137584.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf)>, last accessed on 15 May 2015.

<sup>367</sup> For instance in EUMM Georgia and EULEX Kosovo

number of existing evaluations of CSDP operations, but there is not a defined and clear general framework that could discipline the assessments.<sup>368</sup>

The Crisis Management Planning Directorate (CMPD) is the body responsible for strategic reviews<sup>369</sup> of CSDP missions and operations and common lessons-learned processes.<sup>370</sup> The lessons-learned process focuses on common civilian and military CSDP issues. The CMPD has recently started to elaborate annual reports on the key lessons identified during the previous year in the field of CSDP.<sup>371</sup> However, the recommendations contained in these reports are not implemented systematically.<sup>372</sup>

The lessons-learned mechanism is vital to improve capacities and the efficacy of CSDP interventions, however, these assessments lack visibility as they are almost entirely closed to the public and only disseminated amongst a few official within the Missions and operations. The method and tools used for evaluation have improved but they are still far from being an institutionalised review process for CSDP missions and operations.<sup>373</sup>

The assessment of CSDP missions and operations' approach towards vulnerable groups is already limited by the content of the mandates. The CSDP lesson-learning reports are restricted and only made available to a narrow group of officers, therefore it's difficult to assess whether they contain any reference to human rights or vulnerable groups.<sup>374</sup>

<sup>368</sup> Michael Merlingen, 'A Toolkit for Evaluating the Design and Implementation of European Union Security and Defence Policy Mandates', *Review of European Studies*; Vol. 5, No. 3; 2013. <<http://www.ccsenet.org/journal/index.php/res/article/viewFile/28774/17189>> last accessed on 10 July 2015.

<sup>369</sup> See *inter alia* Council of the European Union, 'Draft CivCom advice on the EULEX KOSOVO Six-Monthly Report 05/10', 5404/5/11, 25 February 2014. <[http://www.parlament.gv.at/PAKT/EU/XXV/EU/01/38/EU\\_13815/imfname\\_10442468.pdf](http://www.parlament.gv.at/PAKT/EU/XXV/EU/01/38/EU_13815/imfname_10442468.pdf)>, last accessed on 20 May 2015.; Council of the European Union, 'Strategic Review of EUBAM Libya', 7886/15, 13 April 2015. <<http://www.statewatch.org/news/2015/jun/eu-eeas-interim-report-UBAM-7886-15.pdf>>, last accessed on 20 May 2015.

<sup>370</sup> EEAS, 'Crisis Management and Planning Directorate (CMPD)'. <[http://eeas.europa.eu/csdp/structures-instruments-agencies/cmpd/index\\_en.htm](http://eeas.europa.eu/csdp/structures-instruments-agencies/cmpd/index_en.htm)>, last accessed on 18 May 2015.

<sup>371</sup> The 'First Common Civilian-Military Annual CSDP Lessons Learned and Best Practices Report for 2011' was preceded by separate reports for civilian and military CSDP actions, respectively. See Council of the European Union, Press Release 3230th Council meeting Foreign Affairs, 7255/13, [2013], 9. <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/136004.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/136004.pdf)>, last accessed 20 May 2015.

<sup>372</sup> European Parliament, 'CSDP Missions and Operations: Lessons Learned Processes', EXPO/B/SEDE/FWC/2009-01/Lot6/16 [2012], 14 and 32. <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457062/EXPO-SEDE\\_ET\(2012\)457062\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457062/EXPO-SEDE_ET(2012)457062_EN.pdf)>, last accessed on 18 May 2015.

<sup>373</sup> European Parliament, 'CSDP Missions and Operations: Lessons Learned Processes', EXPO/B/SEDE/FWC/2009-01/Lot6/16 [2012], 12. <[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457062/EXPO-SEDE\\_ET\(2012\)457062\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/457062/EXPO-SEDE_ET(2012)457062_EN.pdf)>, last accessed 18 May 2015.

<sup>374</sup> Only summaries of the reports have been made available. See EEAS, 'Annual 2013 CSDP lessons report – summary for publication' [2014].

The EU places more emphasis on the internal sphere of missions and operations, particularly at the planning and implementation stages. Most reporting in this matters concern human rights and gender mainstreaming strategies rather than the impact of Missions and operations in te implementation of their mandates.

The document ‘Mainstreaming human rights across CFSP and other EU policies’ provides guiding principles for the planning and implementation of CSDP missions and operations.<sup>375</sup> Additionally this document requires ‘human rights reporting in the operational duties of CSDP missions’.<sup>376</sup>

### **b) Crisis management operations and instruments**

The concept of vulnerability in CSDP operations has been adopted and elaborated by the Council in cooperation with Member States. As addressed above (see section 2.a) the EU’s CSDP policies and guidelines adopted an impact and efficiency approach setting out several measures which reflect a narrow understanding of the concept of vulnerability in CSDP operations. Under this section, a discussion on the more practical application of this approach as a concept informing the process of programming and planning the limited resources of CSDP programmes and projects. First, this section touches upon some of CSDP’s military crisis management instruments and operations, which have sought to address vulnerable groups in programming. Secondly, it provides a similar analysis of CSDP’s civilian crisis management instruments and operations. Included in this section are two summary evaluations of both a military and a civilian crisis management operation that have been deployed by the EU’s CSDP in recent years.

#### **(1) Military crisis management instruments and operations**

The objectives of CSDP military operations are not intended to serve as a defence mechanism for the territorial integrity of the European Union.<sup>377</sup> Another aspect to consider is that they still are not an attempt to create permanent European forces or a standing European army, but rather are intended to be voluntary and temporary contributions from Member States.<sup>378</sup> Therefore, pre-deployment training is of critical importance and has been identified by training requirements for the CSDP in Council documents on the EU training concept.<sup>379</sup> In the Council’s ‘Analysis of Training Requirements in the Field of ESDP’, it is stated that ‘knowledge of International Law including

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[http://eeas.europa.eu/csdp/documents/annual\\_2013\\_csdp\\_lessons\\_report\\_en.pdf](http://eeas.europa.eu/csdp/documents/annual_2013_csdp_lessons_report_en.pdf), last accessed on 18 May 2015; EEAS, ‘Annual 2014 CSDP lessons report – summary for publication’, 2015, [http://eeas.europa.eu/csdp/documents/pdf/2014\\_summary.pdf](http://eeas.europa.eu/csdp/documents/pdf/2014_summary.pdf), last accessed on 18 May 2015.

<sup>375</sup> Council of the European Union, ‘Mainstreaming human rights across CFSP and other EU policies’, 10076/06, 7 June 2006, 6. [https://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/hr/news66.pdf](https://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news66.pdf), last accessed on 18 May 2015.

<sup>376</sup> Ibid.

<sup>377</sup> Stephan Keukeleire, ‘European Security and Defense Policy: From Taboo to a Spearhead of EU Foreign Policy?’ in Federica Bindi (ed.) *The Foreign Policy of the European Union: Assessing Europe’s Role in the World* (The Brookings Institution 2010) 61.

<sup>378</sup> Ibid.

<sup>379</sup> Jana Arloth and Frauke Seidensticker ‘ESDP Crisis Management Operations of the European Union and Human Rights’ (Deutsches Institut für Menschenrechte, 2007)23

International Humanitarian Law and human rights issues, gender issues and child rights issues, including their application in the context of ESDP missions/operations<sup>380</sup> is considered at all levels and training audiences (Diplomats, Civilians, Military, Police, Civil-Military, Candidate Countries, Third States).<sup>381</sup> By their nature, military crisis management instruments and operations, 'have certainly been able to contribute to creating a more secure environment in crisis regions which is a pre-condition to human rights protection and to prevent further violations – be it through the deterring effect of an international presence, by effective measures to put an end to impunity for perpetrators of human rights violations, or by stabilisation of the security situation, training of security forces and protection of the civil population'.<sup>382</sup> For example, the EUFOR DR Congo military crisis management operations implemented policies that promoted mission tasks and programmes compatible with respect for human rights that were not explicitly outlined in the mandate.

#### **Box V-1: EUFOR DR Congo Military Crisis Management Operation**

Despite the fact that human rights and vulnerable groups were not mentioned in the mandate, EUFOR DR Congo was explicitly relevant for the protection of vulnerable groups in the Kinshasa region. Its projects included assisting the former Government of National Unity and Transition in the promotion and protection of women, children, and vulnerable persons, advising and assisting with regard to human rights legislation and monitoring human rights violations. A large part of the operation in DR Congo was the training of forces on the ground. Each individual was trained on the provisions and guidelines in CSDP policies, including the care and provisions for the protection of vulnerable groups (i.e. women, children).

One of the main lessons learned from the CSDP military crisis management mission in DR Congo was the need for coordination and consistency among all EU institutions, mechanisms, resources, and Member States. On the other hand, the expansion of the mission's mandate to include vulnerable groups posed a capacity problem on the ground. In order to address the needs of the expanding mandate, EUFOR DR Congo began trading relevant expertise with EUSET DRC, and as a result was able to achieve some level of consistency on human rights, children affected by armed conflicts and gender issues. However, it is still questionable as to what level the EUFOR staff was qualified and familiar with the developments and constraints on vulnerable groups in the country despite training provided through CSDP.

Source: Claudia Major 'EUFOR DR Congo' in Giovanni Grevi, Damien Helly and Daniel Keohane (eds.), *European Security and Defence Policy: The First Ten Years (1999 – 2009)* (The EU Institute for Security Studies 2009) 311 – 324.

<sup>380</sup> Council of the European Union, 'Analysis of Training Requirements in the field of ESDP - Draft Review 2006', 8624/3/06, 19 May 2006.

<sup>381</sup> Jana Arloth and Frauke Seidensticker 'ESDP Crisis Management Operations of the European Union and Human Rights' (Deutsches Institut für Menschenrechte, 2007) 23.

<sup>382</sup> Ibid 52.



## (2) Civilian crisis management instruments and operations

Some of the priority areas of civilian crisis management instruments and operations include the capacity for monitoring with possible missions including border monitoring, human rights monitoring, and observing the general political situation.<sup>383</sup> Generic support capabilities supporting the CSDP work of the civilian crisis management instruments and operations include multifaceted personnel, including experts in human rights.<sup>384</sup> Similar to military crisis management operations, civilian operations are required to provide training and materials on human rights,<sup>385</sup> with emphasis on children and other vulnerable groups, 'including the special needs of women and girls to be protected from sexual exploitation and abuse, as well as trafficking, gender mainstreaming and HIV/AIDS awareness'.<sup>386</sup> A large part of the contributions provided by civilian operations provide to vulnerable groups in CSDP is through capacity building. This provides an important and lasting contribution to the development of the most efficient resources to replace conflict through constructive human rights based means of conflict resolution. It is therefore, it is essential that human rights education and the protection of vulnerable groups be cross-cutting throughout all monitoring, capacity-building and rule of law activities performed by civilian CSDP operations. Through capacity building, 'minorities and vulnerable groups can be supported by training and empowerment programs'.<sup>387</sup> Regarding the mandates of the civilian operations, only a few of them (including EUJUST Lex, AMM, and EUPOL Afghanistan) explicitly acknowledge the expectation relating to include human rights in the mission.<sup>388</sup> However, both police missions and rule of law missions have shown to place great emphasis on human rights tasks and programmes. EUMM is an example of a CSDP civilian operation which, without a specific mandate, incorporated a substantial human rights component through gender and human rights monitors.

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<sup>383</sup> Stephan Keukeleire, 'European Security and Defense Policy: From Taboo to a Spearhead of EU Foreign Policy?' in Federiga Bindi (ed.) *The Foreign Policy of the European Union: Assessing Europe's Role in the World* (The Brookings Institution 2010) 64.

<sup>384</sup> Ibid.

<sup>385</sup> Council of the European Union (n 14805/03).

<sup>386</sup> Jana Arloth and Frauke Seidensticker 'ESDP Crisis Management Operations of the European Union and Human Rights' (Deutsches Institut für Menschenrechte 2007) 24.

<sup>387</sup> Ibid 32.

<sup>388</sup> Ibid 52.

### Box V-2: EUMM Georgia Civilian Crisis Management Operation

In practice, EUMM activities had four main tasks: stabilisation, normalisation, confidence building, and information. Within the activities of (general) stabilisation, the mission's role was to monitor, analyse and report on the situation pertaining to the stabilisation process, including violations of human rights and international humanitarian law. Purely by the nature of EU human rights standards and international humanitarian law, the situation of vulnerable groups was closely monitored under the implementation of stabilisation programmes. For example, monitors have worked closely with school administrators, local authorities, and university officials to establish a network on the normalisation of the human rights and humanitarian situation. In conjunction, the smooth return of internally displaced persons and the improvement of living conditions for the vulnerable groups that are living in situations of displacement have placed a spotlight on the capability of the EU's CSDP civilian crisis management operations ability to provide support for vulnerable groups, whether directly or indirectly.

Due to the urgency of the situation, the staff was not as qualified or specially trained in human rights and respect for vulnerable groups as had been evidenced in previous civilian CSDP operations. Furthermore, should be noted that the political environment in which the mission was deployed presented a challenge for the systematic recognition of vulnerable groups in all aspects of the operation. Still, the mission was able to deliver a substantial impact on the stabilisation programme's aim to monitor and analyse vulnerability on the ground. Despite technical challenges in implementation, the overall performance was a success for human rights stabilisation and vulnerable groups.

Source: Sabine Fischer 'EUMM Georgia' in Giovanni Grevi, Damien Helly and Daniel Keohane (eds) *European Security and Defence Policy: The First Ten Years (1999 – 2009)* (The EU Institute for Security Studies 2009) 379 – 390.

## C. Conclusions

In the planning and formulation phase, these documents include references to human rights and vulnerable groups but in the implementation phase the explicit inclusion of vulnerable groups is less visible. Additionally, because the majority of the operational documents are classified, it is extremely difficult to study and analyse the implementation phase of the operations.

It is clear that there is a measure of consistency to enhance respect for vulnerable groups at decision-making levels. It is during the implementation phase where the consistency is lacking amongst the Member States and the overall application by the EU institutions.

It seems that, in practice, these efforts within the sphere of CSDP instruments and operations are largely undermined by the lack of explicit reference to human rights, and, the more so, to vulnerable groups, in the official mission mandates. However, a lack of reference to vulnerable groups in the mandate does not necessarily imply that vulnerable groups are going unnoticed in

CSDP operations (see above Box V. 1 and Box V. 2). At the ground level, human rights and gender monitors and advisors are becoming a standard asset to CSDP missions.

An explicit and systematic approach to respect for vulnerable groups within the framework of CSDP operations still needs identification of implementation in practice. Vulnerable groups and human rights thematic priorities have not been ignored in any step of the policy cycle of CSDP, but have yet to produce a practical consistency on an operational level.

## VI. The external dimension of AFSJ and EU human rights priorities

### A. Introduction

The steady growth and development of the external action related to the European Union's area of freedom, security and justice adds another dimension to previously existing fields of EU external policies. Jörg Monar has discussed that 'although the European Union's 'area of freedom, security and justice' (AFSJ) is primarily an internal political project to provide citizens with an area without internal frontiers, in which the free movement of persons is ensured, external action is of vital importance to its realisation.'<sup>389</sup>

The aim of this section is to assess whether the EU reflects its human rights priorities, both in terms of themes and vulnerable groups, 'effectively and consistently' across the external dimension of the AFSJ. In order to answer this question, the assessment will follow the priorities identified in Deliverable 12.1<sup>390</sup> together with those issues regarding the relation of human rights with key concepts of the EU's conception of democracy, developed in Deliverables 3.1<sup>391</sup> and 3.2.<sup>392</sup> Those deliverables worked on human rights priorities as established by the Strategic Framework on Human Rights and Democracy, adopted in 2012, and subsequently elaborated in the Action Plan 2012-2014. Yet it must be noted that this Action Plan came to an end in 2014 (after the completion of those reports) and has been recently substituted by a new one adopted on 20 July 2015. In April 2015, the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy issued a Joint Communication to the European Parliament and the Council with the proposal for a new Action Plan on Human Rights and Democracy (2015-2019) entitled 'Keeping human rights at the heart of the EU agenda, which has been adopted by the Council with some modifications in its 'Conclusions on the Action Plan on Human Rights and Democracy 2015-2019.'<sup>393</sup>

#### 1. Scope of the assessment: overlapping dimensions

In some of the policy fields falling within the AFSJ there is an evident overlap of external and internal dimensions. In others the relations are more blurred. Although the objective of this policy area is to provide *citizens* with the fundamental public goods of 'freedom, security and justice' within the EU, the fulfilment of this goal requires to transcend the external borders on account of the transnational nature of the primary challenges in this area –asylum, migration and crime:

The AFSJ external dimension therefore appears as a necessary external instrument and complement to the internal efforts to construct an AFSJ without internal borders. This provides both a powerful political rationale for its development – as

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<sup>389</sup> Jörg Monar, 'The External Dimension of the EU's Area of Freedom, Security and Justice Progress, potential and limitations after the Treaty of Lisbon' (2012) 1 SIEPS Report, 7.

<sup>390</sup> FRAME Deliverable 12.1 (n 4).

<sup>391</sup> FRAME Deliverable 3.1. (n 12).

<sup>392</sup> FRAME Deliverable 3.2. (n 12).

<sup>393</sup> New Action Plan (n 7).

the external side of a major internal political project – and a political limitation – as it cannot be considered as an external policy in its own right, like the Common Commercial Policy or the CFSP, but only as an instrumental ancillary dimension of the essentially internal political project of the AFSJ.<sup>394</sup>

This overlap between the internal and external dimension of the AFSJ is also apparent within the documents themselves. For instance, and at the same time, in the Stockholm Programme, a separate section is dedicated to the ‘external dimension’ of the AFSJ, external measures are also provided for in the individual policy fields. The distinction between ‘internal’ and ‘external’ measures becomes at times blurred within the same document. This difficulty will be discussed in the sections below in relation to the specific documents.

## 2. Rationale for the selection of documents

The basic principle for the selection of documents was to choose them across the various steps of the policy cycle (formulation, implementation, evaluation).

According to Monar (2012), there are four categories of AFSJ strategy and programming documents, which, taken together, constitute this external dimension:

- Strategy documents for the development of the AFSJ as a whole (e.g. the 1999–2004 Tampere Programme, the 2004–2009 Hague Programme and the 2009–2014 Stockholm Programme)
- Documents focused on the implementation of the external AFSJ dimension itself. (e.g. ‘Strategy for the External Dimension of the Area of Freedom, Security and Justice’ of December 2005 )
- Strategy and programming documents related to individual AFSJ fields.
- Strategy and programming documents regarding specific third-countries or groups of third-countries.

Key general policy papers that set up the external dimension of AFSJ were selected for the analysis (first and second category of documents), in addition to specific documents from each policy domain (third and fourth category).

Regarding the selection of the policy domains, although there is wide diversity of the fields covered by the AFSJ – from asylum and immigration over civil and criminal justice to police cooperation – three main areas are expected to have a major international dimension, namely organised crime, terrorism and illegal immigration.<sup>395</sup> Given the multiple issues falling within ‘organised crime’, the analysis will concentrate on trafficking in human beings (THB), since this has become an area of major concern for EU policy-makers. In addition, while particular attention will be paid to ‘illegal

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<sup>394</sup> Monar (n 389) 13-14.

<sup>395</sup> Ibid.

migration’, the analysis will discuss ‘migration’ more broadly. A table with documents analysed in each of the policy fields is included in Annex IV.

### **3. Methodological issues regarding vulnerability and thematic priorities**

In order to answer the research question, it was necessary to identify the approaches to ‘vulnerability’ or ‘vulnerable groups’ in EU policy documents. In addition, gaps in the selection of priorities, that is, groups that should deserve special protection but are not prioritised by the EU (e.g. the elderly in certain contexts), need to be identified as well.

To this end, the legal and policy documents selected for the analysis were divided into four groups (‘General AFSJ’, ‘Migration and Mobility’, ‘Trafficking’ and ‘Terrorism’) and then coded in a two-step process. Firstly, by looking for selected keyword appearances. Each node in the categories ‘concepts’ and ‘factors’ was used in a text search across the documents. All references to these keywords were coded, and all additional keywords appearing in the same reference (‘grounds of discrimination’ and ‘vulnerable groups’) were coded as well. Emerging concepts, factors, grounds of discrimination and vulnerable groups not previously included, were created as new nodes. In addition, when documents were fully coded, all nodes not used were eliminated. Quotes were compared per node in each group of sources and observations were also made per cluster. Observations per cluster were later compared in order to bring an overall assessment of the considerations of vulnerability and vulnerable groups in the AFSJ.

A similar approach was attempted with the human rights issues prioritised by the Strategic Framework (SF). However, due to the paucity of positive results the decision was made to proceed with a manual codification of human rights and fundamental rights references, as well as those regarding the relationships established between human rights and democracy or the rule of law.

#### **B. AFSJ general documents**

As already mentioned, there are two basic types of documents establishing policy priorities for the AFSJ in its entirety that, although not focusing on the external dimension only, have external policy implications: strategy documents for the development of the AFSJ as a whole and documents focused on the implementation of the external AFSJ dimension itself. Regarding the first type, the Stockholm Programme<sup>396</sup> (SP) sets out AFSJ priorities for the period 2010-14, showing unprecedented attention to the external dimension. The SP was implemented by the Action Plan Implementing the Stockholm Programme (SP Action Plan), and was assessed by the Mid-term review in 2014 (SP Mid-term).

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<sup>396</sup> European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens (2010/C 115/01). (Stockholm Programme).

## 1. The Stockholm Programme and its Implementing Action Plan

The SP contains a section devoted to human rights under the title dedicated to the external dimension of the AFSJ<sup>397</sup>. There are some other references to human rights in earlier parts of the document, particularly when the Charter of Fundamental rights is invoked in the first part 'Promoting Citizen's Rights', and a few other occasions reminding to pay attention to human rights law and the protection of human rights in the field of counter-terrorism and in fighting TBH.

In relation to the external dimension of FSJ, we must be aware that the indications of the SP are prior to the SF. Notwithstanding this, some of the priorities highlighted in the SF might be found already in the SP and its Implementing Action Plan due to the fact that they were long-standing concerns for the EU, as for example, the death penalty, access to justice or the cooperation with Civil Society Organisations (CSOs).

In the SP Action Plan there are also references to the protection of rights in different areas of FSJ with a clear external dimension, as well as repeated reminders of the interconnectedness of internal and external dimensions in areas such as migration, counter-terrorism or fight against trafficking in human beings. Besides, the SP Action Plan stresses that, in the area of FSJ policies, human rights of all persons must be effectively respected:

The European area of freedom, security and justice must be an area where all people, including third country nationals, benefit from the effective respect of [their] fundamental rights.<sup>398</sup>

The SP Action Plan contains another section, number 6,<sup>399</sup> which makes several references to human rights and human dignity in relation to legal migration, irregular migration and the right to asylum, even if the context of the discourse is characterised by the topic of 'management' of migration against the background of economic performance and demographic challenges. It must be noticed that, two years later, when the SF on Human Rights and Democracy established the priorities on human rights, there were just one single reference to migrants (as one of the grounds for fighting against discrimination). Its Implementing Action Plan contained just one action in relation to the external dimension of work in the area of FSJ (Action 14) which makes a connection between migrants and human rights, calling the Commission and the EEAS to develop a joint framework for raising with third countries issues of statelessness and arbitrary detention of migrants (Action 14d). There is no mention to human rights referred to the EU's or the Member States' own action in the treatment of irregular migrants or in the operations of border control, notwithstanding the rising concern on this topic among human rights defenders and organisations both within and outside Europe.

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<sup>397</sup> Ibid, Title 7 'Europe in a Globalised World – The external dimension of Freedom, Security and Justice'.

<sup>398</sup> Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme, COM(2010) 171 final.

<sup>399</sup> The Stockholm Programme, Section 6: Putting solidarity and responsibility at the heart of our response.

In the SP, references to vulnerability and vulnerable groups are not present in the section dedicated to the external action but in the section on ‘Promoting Citizen’s rights’, subsection ‘Living in an area that respects diversity and protects the vulnerable’. In this context, the SP devotes a section to discuss the respect for ‘diversity’ and the protection of ‘the most vulnerable’. It highlights racism and xenophobia, making discrimination and protection the pivotal notions. It states:

Since diversity enriches the Union, the Union and its Member States must provide a safe environment where differences are respected and the most vulnerable protected. Measures to tackle discrimination, racism, anti-Semitism, xenophobia and homophobia must be vigorously pursued.<sup>400</sup>

The underlying idea seems to be to protect diversity by eliminating discrimination, while vulnerability calls for special protection.

‘Vulnerable groups’ are specifically addressed in the SP by a separate paragraph. The implicit grounds suggested by the SP in connection to ‘vulnerable groups’ seem to be ethnicity, gender and age, reducing the grounds suggested in the previous paragraph. The paragraph points out minorities and women victims of violence as vulnerable groups and explicitly includes ‘vulnerable adults’, without providing a definition. Regarding minorities, it explicitly mentions the Roma. It also refers to women suffering violence and victims of female genital mutilation (FGM) as ‘particularly exposed’, suggesting perhaps the intersection of gender and ethnicity as a source of increased vulnerability.<sup>401</sup>

Children and victims are also specifically mentioned, yet don’t exactly fall within the category of ‘vulnerable groups’, but still as groups that require particular measures. Particular attention is devoted to children victims of sexual exploitation and trafficking, and unaccompanied minors in the context of the Union’s migration policy. These references are again found in other sections. Regarding victims of crime, victims of gender based violence and terrorism are particularly mentioned. ‘Victims’ are also connected to the notion of ‘protection’.<sup>402</sup> These references suggest that the concept of vulnerable groups is just one of the tools chosen by the SP for providing special protection, separating the categories of ‘children’ and ‘victims’ from the one on ‘vulnerable groups’.

Has this first section dedicated to ‘citizen’s rights’ any bearing on the external dimension of the AFSJ? This seems to be indeed the case as far as the notions of vulnerability, vulnerable groups and special protection are considered a constitutive element of the human rights approach promoted by the EU. Section 2.1 reads:

‘The Union is based on common values and respect for fundamental rights. After the entry into force of the Lisbon Treaty, the rapid accession of the Union to the European

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<sup>400</sup> Stockholm Programme, para 2(3).

<sup>401</sup> Stockholm Programme, para 2(3)(3).

<sup>402</sup> Stockholm Programme, para 2(3)(4).



Convention for the Protection of Human Rights and Fundamental Freedoms is of key importance. This will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights and freedoms, are actively promoted.'

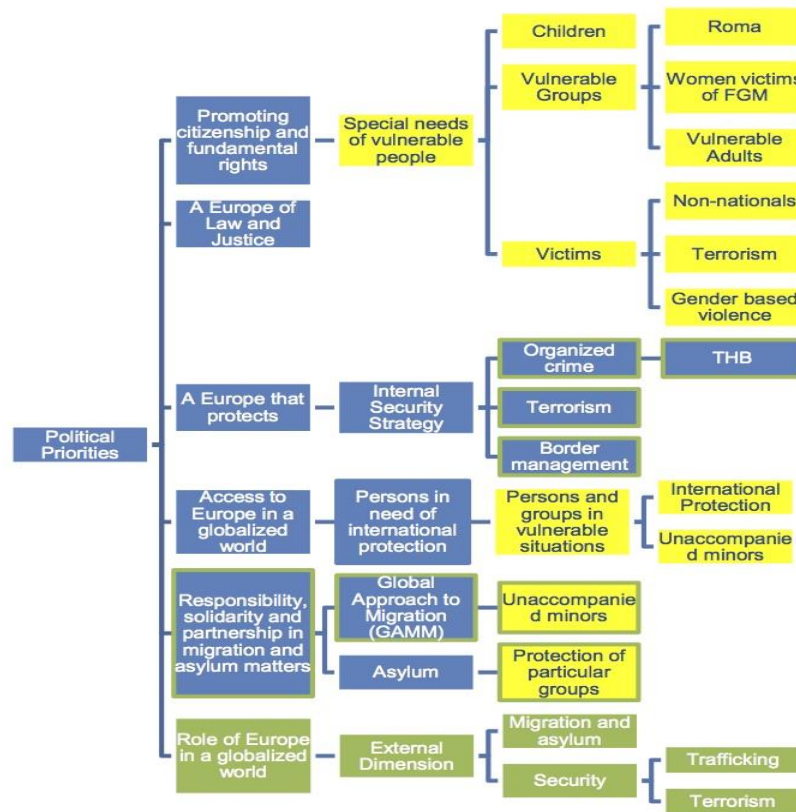
This view is supported by the SP Action Plan, which clearly states that the 'internal and external policies in the area of freedom, security and justice are inextricably linked. Continuity and consistency between internal and external policies are essential to produce results, as is coherence and complementarity between the Union and Member States' action'.<sup>403</sup>

The blurred distinction between internal and external dimension is also evident in connection to the specific fields addressed in the SP, incorporating an external dimension to internal measures. In Chart 4, the content of the SP is illustrated, showing the different policies fields. Internal measures appear in blue, while external policies show in green. Those internal measures which have an external implication according to the SP show a green outline. Regardless of the clear separation of topics shown in the diagram, these are in fact deeply interconnected. References to special vulnerabilities and vulnerable groups in these policy domains appear in yellow.

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<sup>403</sup>Action Plan Implementing the Stockholm Programme, 8.

Chart 5: Stockholm Programme: vulnerable groups



The section of the SP dedicated to the Internal Security Strategy covers two areas that have relevant external policy implications: Trafficking in Human Beings, connected to ‘Protection against Serious Organized Crime’, and Terrorism.

Regarding trafficking, the SP holds that tackling and combating THB calls for a ‘coordinated and coherent policy’ which exceeds the AFSJ and ‘includes external relations, development cooperation, social affairs and employment, education and health, gender equality and non-discrimination’ and where ‘cooperation and coordination with third countries is of crucial importance’. Although no concrete references to vulnerability are found in this section, there are references to gender equality and non-discrimination, two elements connected to the notion of ‘special protection’ of individuals and groups in the section on citizen’s rights, suggesting that women may be a special focus of attention.<sup>404</sup> The analysis of trafficking in particular, in the sections below, is expected to follow these parameters.

Regarding terrorism, the SP conveys ‘all the parties concerned should avoid stigmatising any particular group of people, and should develop intercultural dialogue in order to promote mutual awareness and understanding.’<sup>405</sup> This is the only reference to a ‘particular group of people’ and

<sup>404</sup> Stockholm Programme, 4(4)(2).

<sup>405</sup> Ibid, section 4(5).

the need to protect them from stigmatization. No other reference to vulnerability or vulnerable groups is found in this section. In fact, other uses of the notion of 'vulnerability' are found in connection to terrorism, such as 'the vulnerability of the financial system' and 'vulnerability to attacks'.<sup>406</sup> These references should guide the development of the specific policy field, analysed in the sections below.

References to 'people and groups that are in vulnerable situations' are found in the section on 'Management of External Borders', yet it is not specified who these are. Nevertheless, the subsection on 'vulnerable groups' discussed above may be of application here. Furthermore, the Union has to facilitate the access to protection systems in particular to 'those in need of international protection, asylum seekers, and unaccompanied minors.'

The general approach to migration is presented under the heading 'A Europe of Responsibility, Solidarity and Partnership in migration and asylum matters'. The SP emphasises the need to implement and revise the Global approach to migration adopted in 2005.<sup>407</sup> The notions discussed in this section should, therefore, be replicated in the analysis of the GAMM in the following sections.

Several basic connections between migration and specific areas are made in the SP. Migration and development is the connection that implicitly shows an external dimension, while the section on the rights of migrants is anchored in internal policies. No references to vulnerability, vulnerable groups, or even specific groups and special protection are found in the combined migration-development field.

'Illegal migration' is another of the concrete aspects addressed under this heading, dealing mostly with return policies. Unaccompanied minors emerge as a clear protected group in this respect. The section dedicated to them reads:

'Unaccompanied minors arriving in the Member States from third countries represent a particularly vulnerable group which requires special attention and dedicated responses, especially in the case of minors at risk.'<sup>408</sup>

An explicit external dimension is incorporated in the section on asylum, where, according to the document, the promotion of solidarity should not be circumscribed to relationships between MS but extended to third countries as well. In this external dimension section, protection programmes for 'particular groups' should be put in place in countries of transit rather than in the countries of destination. Given the presence of explicit references to 'vulnerable groups' in other sections, the

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<sup>406</sup> Ibid.

<sup>407</sup> Council of the European Union, Global approach to migration: Priority actions focusing on Africa and the Mediterranean, [2005] <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015744%202005%20INIT>> last accessed on 15 July 2015.

<sup>408</sup> Stockholm Programme, 6(1)(7).

notion of ‘particular groups’ cannot be equated to that, apparently leaving the determination of who would constitute such category entirely to the countries of transit.

An interesting finding is that no references to ‘vulnerability’, ‘vulnerable groups’, ‘special protection’, ‘specific groups’ or similar notions can be found in connection to the section dedicated to the External Dimension of AFSJ in the SP. Could we then conclude that the SP pays no attention to vulnerability in its external dimension? In light of the internal-external interplay discussed above, it seems that such a conclusion would hide the actual approach taken in AFSJ external policies.

Regarding vulnerable groups, replicating the approach taken by the SP, the Action Plan takes concrete actions in relation to the Roma minority, women victims of violence and FGM, and vulnerable adults. It also addresses victims of crime and unaccompanied minors. There is an occurrence of ‘vulnerability’ in connection to ‘terrorism’. It recommends having a specific Communication on a strategy for a holistic approach of radicalisation, on the basis of an evaluation of the effectiveness of national policies to counter radicalisation of vulnerable groups.<sup>409</sup>

## 2. Mid-term review of the Stockholm Programme

Although the SP established that the Commission should present a mid-term review of the Programme, this has not occurred.<sup>410</sup> In the European Parliament Report on the mid-term review of the SP,<sup>411</sup> the preoccupation for fundamental rights both on their own and in connection to democracy appears from the beginning. The Parliament comments in a detailed manner on issues which are among the priorities of the SF and that in the SP were placed in the first chapter, as for example, all the actions regarding discrimination and the fight against racism, xenophobia, anti-Semitism, religious intolerance, Islamophobia, anti-Gypsyism, homophobia and transphobia<sup>412</sup>. The document proceeds with a thorough revision by policy areas, which we shall consider later on, as our own report takes up the assessment of those same areas.

In relation to the external dimension of the AFSJ, the European Parliament’s review pointed out to serious concerns in relation to human rights and coherence. The European Parliament highlighted the place attributed by the TEU to human rights, democracy and the rule of law at the centre of both internal and external EU policies and from that derived the belief that ‘respect for, and the protection and promotion of, these values should be developed in a coherent manner’. On this basis, it called on the Commission to draw a Human Rights Action Plan for the external dimension

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<sup>409</sup> See Action Plan Implementing the Stockholm Programme, COM(2010) 171 final, concrete actions on terrorism.

<sup>410</sup> The Cyprus Presidency produced a progress assessment and Commissioners Malmström and Reding provided overviews of the activities of the Commission. This lack of a review in accordance to the tools provided for in the Stockholm Programme itself was noticed by the Parliament LIBE Committee, that produced a Working Document on the Mid-term Review of the Stockholm Programme, as well as by international human rights organisations, such as Amnesty International, that lamented this ‘formal review’ of the actions carried out instead of a critical revisiting of the EU’s action (or inaction).

<sup>411</sup> European Parliament, Report on the mid-term review of the Stockholm Programme (2013/2014 (INI)), A7-0153/2014.

<sup>412</sup> Ibid, para 17-21.

of the FSJ policies,<sup>413</sup> to ensure greater coherence between internal and external policies,<sup>414</sup> to adopt a human-rights-based approach to EU migration and border management and to be reminded that the European Convention on Human rights has an extraterritorial application in the implementation of EU migration policy.<sup>415</sup> It also called both the EU and its Member States not to sign agreements with third countries in the field of FSJ where there was a serious risk of human rights violations and where the rule of law was not upheld. Any agreement in this field should – in the view of the Parliament – contain a human rights impact assessment and include a suspension clause relating to human rights.

The Parliament Report contemplates vulnerability and vulnerable groups, explicitly and implicitly, in relation to different areas, though mostly in connection to the internal dimension of the AFSJ. Issues labelled as ‘citizens’ rights’ in the SP are referred to as ‘fundamental rights’ in the report, though their field of application is still the Union. In that section, the Report makes use of concepts suggesting that specific groups and situations are recognised. Similar to the SP, it refers to discrimination and equality, while expanding the list of grounds of discrimination to include race, ethnicity, religion, disability, sexual orientation and gender identity, yet substituting the notion of ‘protection’ by ‘paying attention’. Paragraph 8 reads:

Considers that greater attention must be given to responding to the particular situation of vulnerable groups and strengthening the fight against racism, xenophobia, anti-Semitism, religious intolerance, Islamophobia, anti-Gypsyism, homophobia and transphobia.

This change in language may have concrete implications. While it is commonly agreed that ‘protection’, one of the three main obligations of States in human rights law, requires State Parties to implement measures necessary to prevent other individuals or groups from violating these rights and take measures that prevent third parties from abusing rights,<sup>416</sup> ‘paying attention’ is a much softer and vague notion, leaving more room for States to decide measures at their own discretion.

In line with the SP, the mid-term report emphasises ‘anti-Gypsyism’ and follows-up on the integration of Roma. In addition, it introduces a new target ‘group’:

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<sup>413</sup> Ibid, para 99. The Opinion of the Committee on Foreign Affairs made clear that, although the EU Strategic Framework on Human Rights and Democracy and the related action plan were very welcome, they were no substitute for a Human Rights Action Plan in relation to the external dimension of FSJ.

<sup>414</sup> Ibid, para 100.

<sup>415</sup> Ibidem, para 102.

<sup>416</sup> See: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, par. 15; General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, par. 46. The tripartite typology was introduced by Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, 1996), 52, and then developed by A. Eide, UN Special Rapporteur for the Right to Food, *The Right to Adequate Food as a Human Right: Final Report* submitted by A. Eide, UN Doc E/CN.4/Sub.2/1987/23 (1987), also, *Good Governance and the Rights of Minorities and Indigenous People*, January 2000, 7.

The European Parliament (...) regrets the inadequacy of policies on integrating people with disabilities and of the extent to which their rights are taken into account.<sup>417</sup>

The Mid-term report also follows-up on victims, and following the advice of the Committee on Women's Rights and Gender Equality, it incorporates the notion of 'disadvantaged groups' requiring 'special protection' due to frequent victimisation, namely women and children.<sup>418</sup> While attention to victims of terrorism was highlighted in the SP and it is reinforced in the opinion of the Committee on Foreign Affairs<sup>419</sup>, the mid-term report excluded references to such group of victims. On the other hand, a new group of victims, victims of trafficking in human beings, is added to women victims of violence and FGM probably as a result of Directive 2011/36/EU.<sup>420</sup>

The input of the Committee on Women's Rights and Gender Equality is again perceived when the Mid-term Report emphasises gender inequality and recommends taking gender as crosscutting notion, mainstreaming other integration/inclusion policies:

The European Parliament (...) stresses the importance of taking the gender dimension into account in all strategies to integrate people with disabilities, immigrants, the Roma population and other minorities, and excluded people.<sup>421</sup>

'Excluded people' is the new incorporation to the list of groups previously mentioned in SP, yet there are no further references to exclusion or to who is 'potentially excluded.' In fact, the notion of 'social exclusion' is also borrowed from the Opinion of The Committee on Women's Rights and Gender Equality.

In relation to internal security, the Mid-Term report shows some differences compared to SP. It stresses THB, 'targeting women and minors in particular'. Moreover, it stresses that 'root causes' must be addressed in order to tackle trafficking, forced labour, irregular migration and smuggling. The latter reference may indicate a more social-structural view of some 'vulnerabilities', yet this attention to 'root causes' appears always limited to trafficking, forced labour, irregular migration and smuggling. No 'potential' root causes, for instance, poverty, inequality, etc., are explicitly mentioned in the document. In fact, 'disadvantage' appeared connected only to repeated victimisation, seen as an outcome rather than as a root cause of the victimisation, and the notion of 'exclusion' is merely 'borrowed' from the Women's Rights and Gender Equality Committee.

The departure from a more socio-structural approach to vulnerability, connected to discrimination, inequality or social exclusion, for instance, is confirmed by the lack of incorporation of the notion

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<sup>417</sup> European Parliament, Report on the mid-term review of the Stockholm Programme (2013/2024 (INI)), A7-0153/2014, para. 21.

<sup>418</sup> Ibid, para 22. Also, see Opinion of The Committee on Women's Rights And Gender Equality on mid-term review of the Stockholm Programme (2013/2024(INI)) para 6.

<sup>419</sup> European Parliament, Opinion of the Committee on Foreign Affairs on the mid-term review of the Stockholm programme, para 28.

<sup>420</sup> Ibid, para 22.

<sup>421</sup> Ibid, para 32. See also Opinion of The Committee on Women's Rights and Gender Equality on mid-term review of the Stockholm Programme (2013/2024(INI)), para 5.

of multiple discrimination put forward by the Committee, given that several other notions were indeed borrowed from the same Opinion. The Committee held:

The Committee on Women's Rights and Gender Equality... stresses the fact that women in particular are often the victims of multiple discrimination and that it is necessary to examine all the factors impacting on women's lives in order to strengthen all fundamental rights through the adoption of joint strategies for the protection of victims and the criminal prosecution of offenders, while promoting equality between men and women, paying special attention to vulnerable women and in particular to women with disabilities.<sup>422</sup>

The Committee makes reference to 'the economic and social causes that foster violence against women', indirectly suggesting a socio-structural basis for the vulnerability of one of the 'vulnerable groups' originally incorporated to the SP: women victims of violence. This view, however, is not upheld by the EP in the Mid-term review. Having said that, a curious incorporation to the Mid-term Report is the call to establish aid centres providing immediate psychological and physical assistance to 'victims' of prostitution. This call is not placed in connection to 'victims' protection, but introduced in the context of internal security policies, while only sexual exploitation of children and child pornography, in addition to THB, were previously considered as internal security issues by the SP.

Regarding crime, attention to terrorism is also paid in the Report, now focusing particularly on radicalisation. No references to special protection, vulnerability or vulnerable groups appear in this context nor is the call to prevent stigmatisation of specific groups, as it appeared in the SP, reiterated in this document. Similarly, the Report incorporates calls to tackle THB not only in the context of Internal Security, but in relation to Border Management as well. In this context, the rights of children and victims of trafficking are taken into account, particularly in relation to surveillance of sea borders and respect of the human rights of 'children and victims of trafficking' among migrants and asylum seekers.<sup>423</sup> This seems to be an expansion from the almost exclusive focus on unaccompanied minors of the SP. In addition, the gender perspective on asylum matters is reinforced:

In relation to migration, the Mid-term Report calls states to report the situation of specific minority groups in relation to labour integration and equality policies.<sup>424</sup> This is also a refocus from the original call for integration of migrants in the SP, which did not pay particular attention to minorities.

In relation to the external dimension of AFSJ, the Report calls on the States to adopt a human rights approach to migration and border management in which 'the rights of regular and irregular

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<sup>422</sup> Opinion of The Committee on Women's Rights and Gender Equality on mid-term review of the Stockholm Programme (2013/2024(INI)), para 1.

<sup>423</sup> European Parliament, 2013/2024 (INI) A7-0153/2014, para 74.

<sup>424</sup> Ibid, para 87.

migrants and other vulnerable groups are always the first consideration'.<sup>425</sup> This reference, stemming from the Opinion of the Committee on Foreign Affairs, introduces 'vulnerable groups' to the original external dimension scheme set out by the SP, and suggests that attention to vulnerable groups arrives hand in hand with the human rights approach to migration, asylum and trafficking. In doing so, migrants appear, in fact, as a vulnerable group, at least in connection to the external dimension of the EU.

In addition, the special attention to women victims of trafficking and sexual exploitation is also introduced into the external dimension by calling States to provide assistance to these victims, 'including the development of compensation schemes, safe return, reintegration aid in the host country in cases of voluntary return, assistance and aid during their stay in the EU, and cooperation with the authorities in the countries of origin in order to protect the families.'<sup>426</sup>

### 3. New Strategic Guidelines

As the SP headed towards its end, the Ministers of Justice and Home Affairs met at the beginning of June 2014 to debate the development of the Justice and Home Affairs Area and give input to the strategic guidelines for legislative and operational planning in the AFSJ. These guidelines were defined by European Council at the end of that month.<sup>427</sup>

Although focused on home affairs, discussions were held regarding two aspects relevant to the external dimension of the AFSJ. Firstly, regarding migration and border management, the Council discussed the implementation of operational actions in connection to the Task Force Mediterranean, set up to identify effective tools to avoid events like those that occurred in the coast of Lampedusa. The Council agreed that migration and asylum would be two of the topics to be addressed in the Strategic Guidelines that same year. Secondly, in connection with internal security, the issues of 'foreign fighters' and radicalisation were specifically addressed. In this latter context, the Council adopted the revised EU Strategy for Combating Radicalisation and Recruitment to terrorism.<sup>428</sup>

In clear contrast to what we have seen before in the main observations of the European Parliament in its mid-term review of the SP, the European Council does not put the accent on human rights in general, or in any particular priority, except for the initial ritual recital 'One of the key objectives of the Union is to build an area of freedom, security and justice without internal frontiers, and with full respect for fundamental rights'.

It must be noted that by the time the European Council defined these guidelines, criticism about the impact of human rights of EU's SFJ policies had been accumulating.<sup>429</sup> All suggestions for the

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<sup>425</sup> Ibid, para 102.

<sup>426</sup> Ibid, para 104.

<sup>427</sup> European Council, 26/27 June 2014, Conclusions, EUCO 79/14.

<sup>428</sup> See <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209956%202014%20INIT>> last accessed on 17 July 2015.

<sup>429</sup> This includes the FRA Report 'Fundamental rights in the future of the European Union's Justice and Home Affairs' (December 2013) or the speech by FRA Director Morten Kjaerum in the session 'Responding to key



new guidelines advanced by international and human rights organisations indicated the need to change the mind-set to a human rights based approach that would put the protection of the fundamental rights of all persons, particularly irregular migrants and asylum seekers, at the centre of the concern. The new Council guidelines did not follow that advice. The language of the 13 points that constitute the guidelines is overflowing with security, control, surveillance, management, risks and protection. There is not one single mention of human rights. The only mention to fundamental rights, besides the ritual first point mentioned earlier, balances the protection and promotion of fundamental rights with the addressing of security concerns. In this context, the only particular right mentioned refers to data protection.

In general, the language chosen for the second paragraph of the Conclusions should give rise to concern, particularly in relation to the link between human rights and democracy:

All the dimensions of a Europe that *protects its citizens and offers effective rights* to people inside and outside the Union are interlinked (emphasis added).

Europe protects its citizens and not their rights; rights are *offered*, which is a rather unusual expression in relation to rights (which are normally protected, guaranteed or even promoted). This language points to the securitarian mindset of the guidelines which is at odds with human rights and democracy. In the *Strategic Agenda for the Union in times of change*, the so much praised interconnectedness between the internal and external dimension of the EU's policies appears in rather harsh terms: 'The Union must be stronger outside, more caring inside'<sup>430</sup> and, when it comes to establish the priorities for foreign policy, democracy appears in the last position after stability and prosperity, as the means to become a stronger partner in the neighbourhood.<sup>431</sup>

Neither in the preceding discussions, nor later in the Guidelines, made the Council any references to vulnerability, vulnerable groups or similar concepts in connection to the areas of border management or internal security. References to vulnerability relate to 'civil protection', more specifically, disaster management and climate change in a post Hyogo Framework for Action (HFA) adoption phase. It connects vulnerability to conflict, fragility, technological risks, natural hazards and global shocks. This context of 'civil protection', thus, also reflects an external dimension, distantly related with development. In this newly emphasised area of concern, the Council calls to 'better target and empower the poorest and most vulnerable'.<sup>432</sup>

The AFSJ remains concerned with achieving a 'well-managed migration', maximizing opportunities for legal migration and addressing 'root causes' of irregular migration. In doing so, it sees necessary to 'intensifying cooperation with countries of origin and transit, including through assistance to

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security challenges in the coming 10 to 15 years' at the High Level Stakeholders Conference on the future of Home Affairs, Brussels, 30 January 2014. The European Policy Centre, the European Network of National Human Rights Institutions or Amnesty International, among others, had contributed to consultations on the future of the JHA policies.

<sup>430</sup> European Council, EUCO 70/14, Annex 1, para 2 ('A Union that empowers and protects all citizens') 17.

<sup>431</sup> Ibid, para 5 ('The Union as a strong global actor') 20.

<sup>432</sup> Ibid, para 12, 33.

strengthen their migration and border management capacity.<sup>433</sup> Similar to the SP and the Mid-term Review, the connection migration-development is emphasised, in addition to external policies.

Regarding the Internal Security Area, in addition to THB and smuggling, corruption is included as an issue relating to serious and organized crime. The Strategic Guidelines also stress the external aspect of the fight against terrorism. The protection of children and victims falls within the field of justice policy.

The only reference to vulnerability found in the guidelines relates to 'vulnerable states' in connection to the field of 'climate and energy'. This is confirmed in the 'Strategic Agenda for The Union in Times of Change', setting course towards 'an Energy Union with a forward-looking climate policy', and stating that 'Europe's current energy dependency is a vulnerability'. In addition to the challenge of the energy crisis, the Agenda considers that 'another challenge in the years ahead will be managing migration flows, which are on the rise due to instability and poverty in large parts of the world and demographic trends – a matter which requires solidarity and fair sharing of responsibility'.<sup>434</sup>

The section dedicated to the AFSJ in the Agenda sets three main priorities: better management of migration; prevention and combating of crime, including THB, smuggling, corruption and cybercrime, and terrorism, with special mention of radicalisation; and lastly, improving judicial cooperation. No mention to vulnerability, vulnerable groups or special protection of specific groups is found.

In sharp contrast to the guidelines set up by the Council, the Joint Communication entitled 'Keeping human rights at the heart of the EU Agenda,' where the Commission and the HR/VP proposed the new Action Plan on Human Rights and Democracy,<sup>435</sup> insists on the need for a coherent human rights approach to all EU policies. It acknowledges that the EU is 'under severe scrutiny for what are perceived as discrepancies in its approach to human rights issues' and that a renewed commitment is required. The new Action Plan adopted by the Council reaffirms this approach, stressing the need to 'further mainstream human rights in the external aspects of EU policies in order to ensure better policy coherence, in particular in the fields of migration [...] and counter terrorism.'<sup>436</sup> To this end, key strategic priorities are chosen among the most pressing problems. The identified five overarching challenges and action areas are: 1) boosting the ownership of local actors, 2) addressing human rights challenges, 3) ensuring a comprehensive human rights approach to conflicts and crises, 4) fostering better coherence and consistency, and 5) a more effective EU human rights and democracy support policy. Some of those most pressing challenges addressed under Action Area 4 (Fostering better coherence and consistency) concern the external dimension

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<sup>433</sup> EUCO 79/14 CO EUR 4 CO#CL 2, para 8.

<sup>434</sup> Ibid, 19.

<sup>435</sup> Proposal for a new Action Plan (n 6).

<sup>436</sup> New Action Plan, para 3.

of the AFSJ, namely, ensuring that human rights are upheld in migration and counter-terrorism policies.

#### 4. Migration

EU policies relating to the area of human mobility and migration, i.e., migration, border control, visa systems, return and readmission, asylum, are among the more visible in terms of their impact on human rights and, in the last years, have attracted growing criticism to the EU's normative narrative as a global actor.

The 'overarching framework of EU external migration policy' is established in the Global Approach to Migration and Mobility (GAMM)<sup>437</sup> which results from the perceived need to strengthen a comprehensive migration policy following the 'Arab Spring' events. The European Council, in June 2011, invited the Commission to evaluate the previous Global Approach to Migration (GAM) of 2005 and set a new more consistent, systematic and strategic policy framework for the EU's relations with all relevant non-EU countries.

The GAM was intended to 'reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration, including through maximising the benefits to all partners of legal migration, while fully respecting human rights and the individual's right to seek asylum'. It focused on Africa and the Mediterranean, with emphasis on Morocco, Algeria and Libya. No references to vulnerability or vulnerable groups are found, not even relating to children.

The strategic objective of the new GAMM remains the 'efficient management' of migratory flows. The policy framework contained in the GAMM, as we shall see also in the other thematic policy areas of the AFSJ under examination in this report, makes no reference to the human rights priorities of the SF on Human Rights and Democracy.<sup>438</sup> Nevertheless, it does contain some calls on human rights.

The human rights of migrants are considered in the GAMM 'a cross-cutting dimension, of relevance to all four pillars of the GAMM' (legal migration and mobility, irregular migration and trafficking in human beings, international protection and asylum policy, and development impact of migration). It is also established that the impact on fundamental rights of initiatives taken in the context of the GAMM must be thoroughly assessed and that dialogues with relevant organisation should include human rights issues in relation to migrants in the EU and in non-EU countries, both source and transit countries alike.

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<sup>437</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The Global Approach to Migration and Mobility', COM(2011) 743 final.

<sup>438</sup> It obviously does not make reference to the Strategic Framework itself, which was adopted in June 2012. But neither to the rights that would be considered priorities in the SF and that were, at least some of them, long standing concerns.

It must be noted that in the GAMM strategy, it is the Second Pillar (Preventing and reducing irregular migration and trafficking in human beings) that concentrates most of the references to human rights. It does so, however, under the premise that the 'legitimacy of any framework for migration and mobility depends on effectively addressing irregular migration' and that migration must be organised in an 'orderly fashion'. In this context, calls for human rights appear more as an unspecified minimum limit that cannot be trespassed rather than a set of explicit indications of how migration processes must be understood (a human rights based approach). Migrants' human rights are condensed then in 'prevent and prosecute criminal acts and human rights violations committed against migrants, (...) ensure decent living conditions for migrants in reception centres and to avoid arbitrary or indefinite detention'.

Moreover, although recommendations on the Second Pillar affect to return policy, FRONTEX activities, document control, visa policies and trafficking in human beings (THB), there is only one more reference to human rights, in relation to THB. THB should adopt a holistic approach focusing on prevention, prosecution of criminals and protection of victims, consistent with a human rights- and victim-centred approach, taking into account the gender perspective.

This is in stark contrast with mounting criticism to human rights issues in the management of the external borders of the EU. The report on the implementation of the GAMM<sup>439</sup> has no specific assessment of human rights impact of on the agreements concluded, the role played by human rights in the selection of priority countries or in the operational support and capacity-building, including in EU agencies, such as FRONTEX or EASO. That the focus of cooperation with selected priority countries is on irregular migration and how to stop flows into Europe is also hinted in the paragraph on "Lessons learned"; here the Commission acknowledges that 'much work needs to be done to make sure that the MPs [Mobility Partnerships] are being implemented in a balanced manner, i.e. better reflecting all four thematic priorities of the GAMM, including more actions with regard to legal migration, human rights and refugee protection'.<sup>440</sup> Accordingly, there is a part on the human rights of migrants in the final part of the Report, which contains recommendations on policies and implementation modalities in order to strengthen the effectiveness and performance of the GAMM.<sup>441</sup> However, this section limits itself to repeating that human rights of migrants are a cross-cutting issue.

This lack of a human rights based approach to migration and mobility, and the tendency to include human rights as an 'after-thought' can be seen later on, both in subsequent policy frameworks for cooperation and in implementation actions. For example, the Action Plan 2011-2013 of the Thematic Partnership on Migration, Mobility and Employment launched by the European Commission and the African Union Commission contains just two references to human rights in the Initiative on Human Trafficking. Most of the concern on human rights issues in EU's migration

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<sup>439</sup> European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Report on the implementation of the Global Approach to Migration and Mobility 2012-2013, COM(2014) 96 final.

<sup>440</sup> Ibid, 9.

<sup>441</sup> Ibid, 17 ff.

policy, though, refers to the modalities of border control. Since the European Summit of Tampere (1999), action in the AFSJ has been conditioned by the objective of countering irregular migration. This has imposed a strategy of surveillance and control of external borders for the management of migration in-flows. Since 2005, FRONTEX is the EU agency in charge of controlling the borders and stopping irregular migration into Europe. Initial concerns by human rights organisations about the fact that the Agency did differentiate between irregular migrants and refugees and persons in need of international protection, have been aggravated by the lack of transparency of the Agency's operations, its life-threatening modalities of intervention and its lack of accountability. In 2011, legislation on FRONTEX was revised to improve its human rights guarantees; however, both the UN Special Rapporteur on the Human Rights of Migrants and the EU Fundamental Rights Agency have considered these changes insufficient.<sup>442</sup> Other points of concern, that exceeds the question of this report but are closely related, include human rights concerns is the extra-territorialisation of border control<sup>443</sup> and return and deportation practices.

As discussed above, vulnerability was not among the concerns of the GAM. However, Directive 2008/115/EC establishing common standards and procedures for returning illegal migrants to third-countries introduced the issue. It defines minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence as 'vulnerable persons', calling for special safeguards pending return.<sup>444</sup>

GAMM 2011 strove to become 'more strategic and more efficient, with stronger links and alignment between relevant EU policy areas and between the external and internal dimensions of those policies.'<sup>445</sup> In this context, 'mobility' of third country nationals becomes a strategic concern. It established four pillars:

- organising and facilitating legal migration and mobility;
- preventing and reducing irregular migration and trafficking in human beings;
- promoting international protection and enhancing the external dimension of asylum policy;
- maximising the development impact of migration and mobility.

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<sup>442</sup> UN Special Rapporteur on the human rights of migrants, Regional Study: Management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC /23/46, 2013; FRA, Fundamental Rights at Europe's southern sea borders, 2013. The organisation Migreurop has initiated a campaign (Frontexit) to show the incompatibility of Frontex mandate with human rights and European law, both in terms of content and of the (lack of) accountability and transparency. Their evidence-based report is available at <http://www.migreurop.org/IMG/pdf/bilan-2014-frontexit-large-1.0-en.pdf>

<sup>443</sup> Besides the bilateral agreements concluded by countries such as Greece, Italy or Spain with Third Countries, FRONTEX alone has around 19 'technical' agreements. These agreements are out of the EP's power of control and include several countries with low standards in human rights protection and in the respect of the rights of migrants.

<sup>444</sup> Directive 2008/115/EC, Art. 14(1)(d).

<sup>445</sup> GAMM, 3.

Vulnerability is introduced in connection to the human rights of migrants, which are, in turn, a crosscutting dimension relevant to all four pillars in the GAMM. The GAMM should strengthen respect for fundamental rights and the human rights of migrants in source, transit and destination countries alike. It states:

Special attention should be paid to protecting and empowering vulnerable migrants, such as unaccompanied minors, asylum-seekers, stateless persons and victims of trafficking.<sup>446</sup>

While the external dimension of asylum is set in the GAMM as a new thematic priority, the majority of references toward vulnerability appear in connection to the third pillar of the GAMM, that is, the promotion of international protection and enhancing the external dimension of asylum policy. Regional Protection Programmes (RPP) are the key mechanisms of this pillar, aiming at strengthening the protection capacity and asylum systems of partner countries and regions, yet Development programmes for refugees and internally displaced persons (IDPs) and disaster risk reduction programmes in partner countries and regions are also encouraged and enhanced by complementary to RPPs, where necessary. Vulnerability must be taken into account in the decision of granting international protection and asylum, during the procedures, reception and resettlement, and also in return policies. Hence, in practice, except in relation to return policies, the attention to vulnerability in this field relate to the internal dimension of the GAMM.

Regulation 516/2014, creating the Asylum, Migration and Integration Fund, confirms the attention to vulnerability in relation to return policies. This Regulation established that actions to be funded must ensure that special attention is paid to 'the specific situation of vulnerable persons, in particular women, unaccompanied minors and other minors at risk.' The regulation clarifies that 'vulnerable person' means any third-country national who complies with the definition under Union law relevant to the policy area of action supported under the Fund, defined in relation to return of illegal migrants by Directive 2008/115/EC. Regarding measures accompanying return procedures and return measures the Fund will favour those that include specific assistance for vulnerable persons.<sup>447</sup> Furthermore, special lump sums will be granted per vulnerable person included in resettlement programmes. In this case the particular vulnerable persons are:

- (a) women and children at risk;
- (b) unaccompanied minors;
- (c) persons having medical needs that can be addressed only through resettlement;
- (d) persons in need of emergency resettlement or urgent resettlement for legal or physical protection needs, including victims of violence or torture.

There is one more external policy aspect appearing in the GAMM, connected to the fourth pillar on maximising the development impact of migration and mobility, where attention to vulnerability is

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<sup>446</sup> GAMM, 6.

<sup>447</sup> Regulation 516/2014, Art. 11(d) and Art. 12(g).

paid: the consequences of emigration flows in countries of origin. The GAMM expresses the need to mitigate adverse effects and the potentially negative social impact of remittances suffered by children and families left behind, and by the communities.

There are more references to vulnerability stressing the external dimension of EU migration policies that shift the attention to what takes place in home countries. For instance, the 2012-2013 Report on the implementation of the GAMM suggests addressing vulnerability *in the countries of origin*. Following a similar approach, the Action Plan 2011 – 2013 of the Thematic Partnership On Migration, Mobility And Employment, lists ‘vulnerability’ as ‘root cause’ for trafficking, together with poverty, an unbalanced distribution of wealth, unemployment, armed conflicts, poor law enforcement system, degraded environment, poor governance, societies under stress as well as non-inclusive societies, corruption, lack of education and human rights violations including discrimination, increased demand for sex trade and sex tourism. The Action Plan encourages initiatives in the field of human trafficking that address these root causes.

Furthermore, Regulation 233/2014, establishing a financing instrument for development cooperation for the period 2014-2020, pays particular attention to women, the girl child, children and young people in the field of human development, including decent work, social justice and culture. It aims at ‘empowering women’<sup>448</sup> and ‘protect children’.<sup>449</sup> Among victims of violence, women and children again appear entitled to special measures.<sup>450</sup> In the section on Food and Nutrition Security and Sustainable Agriculture, the notion of ‘vulnerable populations’ emerges, in need of assistance mechanisms.<sup>451</sup>

Finally, the protection of ‘vulnerable migrants’ is implemented with the operational support of EU agencies, such as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and the European Asylum Support Office (EASO). The Frontex Programme of Work (FrontexPoW) proposes the activities that should be carried out to achieve the objectives and long term goals as agreed in Frontex’ Strategy and Multi Annual Plan. In 2014, Frontex proposed activities around the ‘VEGA concept’, promoting effective protection measures for vulnerable persons/groups (children and victims of trafficking in human beings) at external air borders from a law enforcement point of view, in combination with international airlines representatives. Regarding the flow of irregular migrants, Frontex reports often refer to the special vulnerability of specific groups of migrants in specific country situations, yet it is not clear if treatment of these groups would be guided by the VEGA concept, if they are transferred to EASO for initiating the process of asylum, or how is this ‘vulnerability’ otherwise dealt with. FrontexPoW 2015 mentions Syrians and Iraqi Kurds and Christians crossing illegally the land border between Turkey and Greece as ‘the most vulnerable’ due to the expansion of ISIS, and

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<sup>448</sup> Regulation 233/2014, section III (c).

<sup>449</sup> Ibid, section III (d).

<sup>450</sup> Ibid, section III (a)(v).

<sup>451</sup> Ibid, section IV.

FronttextPoW 2014 referred to the situation of vulnerable migrants in Syria being exploited even by government representatives.

Vulnerability in relation to the internal dimension relates to the human rights of third-country nationals within the EU and the asylum process (identification, granting of asylum, reception and integration), while in the external dimension of migration it relates to return policies (detention and return) and to some extent, to the situation in the countries of origin. Regarding the latter, root cause of vulnerability are addressed more clearly in relation to trafficking and smuggling, while other factors leading to irregular migration are indirectly addressed as part of development policies, yet to a much more limited extent.

Finally, it should be noted that the only reference to 'vulnerability' included in the new Action Plan relates to the protection of 'vulnerable migrants.' In this regard, action 24 e) requires the EU to pay particular attention to 'vulnerable migrants, including unaccompanied minors.'<sup>452</sup>

### 5. Trafficking in Human Beings

The field of Trafficking in Human Beings (THB) is normally placed within the Area of Freedom Security and Justice (AFSJ) in connection to internal security policies, and at times mentioned in connection to border management.

THB is one of the topics where EU's AFSJ documents show concern about human rights. As it has appeared in the assessment of AFSJ general documents, this is due mainly to the consideration of trafficking as a violation of human rights in itself and, secondarily, because AFSJ documents consider that the EU should adopt a human rights- and victim- centred approach in policies against THB.

In this policy field, the notion of vulnerability acquires particular importance since it is deeply connected to the notion of abuse and exploitation, conceptual basis of THB. According to Directive 2011/36/EU THB entails:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

So in this context of exploitation, vulnerability is a 'position', and it is defined as follows:

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<sup>452</sup> New Action Plan, action 24 e).



A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.<sup>453</sup>

Vulnerability, thus, relates to oppression or coercion making individuals 'vulnerable to taking risks and potentially becoming victims of THB'.<sup>454</sup> There are some commonly mentioned 'root causes' for such vulnerability, some of them of socio-structural nature, such as gender and poverty, and some of them more individually based, such as age and state of health. In a way, it seems that these documents give concrete content to the notion of 'root causes' mentioned in relation to THB and migration in the general documents of AFSJ, by actually enumerating what such root causes are. The Action Oriented Paper states that:

In responding to the need to pursue a broader, coordinated and coherent response to THB going beyond the external dimension of JHA, the design and implementation of appropriate programming activities must continue and synergies must be enhanced across all external policy areas (external relations, development cooperation, social affairs, employment, gender equality, good governance) in order to address the root causes that make individuals vulnerable to taking risks and potentially becoming victims of THB; poverty, lack of opportunity, gender inequalities and civil conflict are good examples of such root causes. It is also important to address factors that increase a victim's vulnerability such as low standards of education, corruption, gender/based violence and HIV/AIDS.

This connection between vulnerability and structural root causes is again emphasized in the Action Oriented Paper, suggesting that they can be used almost as synonyms in the context of THB, since they actually 'are' the vulnerabilities in the field of trafficking:

Poverty, marginalisation, economic exclusion, social and gender inequality along with discriminatory practices against children and ethnic minorities as well as a desperate need to find a place that offers the hope of or prospects for a more prosperous future are the vulnerabilities that are commonly exploited by the traffickers when they set out to recruit or lure their victims.

References to gender dynamics in the policy documents analysed show that there is a basic idea underlying the notion of vulnerability in this policy area: there are clear gender-based patterns

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<sup>453</sup> Directive 2011/36/EU of the European Parliament And of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Art. 2(2).

<sup>454</sup> See the Action Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings (2009); Directive 2011/36/EU of the European Parliament And of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 and the Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings COM(2014) 635).

present in THB. This was already incorporated in Directive 2011/36/EU and confirmed by the EU Strategy 2012-2016, which states:

Vulnerability to trafficking and to different forms of exploitation is shaped by gender. While women and girls tend to be trafficked for exploitation in the sex industry, in domestic work or the care sector, men and boys tend to be victims of forced labour, in particular in agriculture, construction, mining, forestry sectors and on fishing fleets. In addition, the short and long term consequences on trafficked women and men might differ, depending on the form of trafficking and gender.<sup>455</sup>

The gender dimension of THB is again clearly emphasised in the Mid-term report 2014 on the implementation of the EU strategy towards the eradication of THB (Mid-term report). It states:

The EU Strategy identifies violence against women and gender inequalities as a root cause of trafficking and sets out a series of measures to address the gender dimension of THB, as vulnerability to trafficking for different forms of exploitation is shaped by gender.<sup>456</sup>

The attention to gender dynamics has become a special characteristic of this area, both in order to apprehend the notion of THB and to tackle gender inequality among the root causes.

Children are presented in this policy area as particularly vulnerable to exploitation, requiring special protection and rehabilitation measures,<sup>457</sup> and also calling for more severe penalties.<sup>458</sup> Directive 23/2011 states:

Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings.<sup>459</sup>

The Directive clarifies that following this line, the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 includes children among the 'vulnerable groups':

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<sup>455</sup> EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, priority 2(5) at 2.

<sup>456</sup> Mid-term report, section 5(3).

<sup>457</sup> Action Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings (2009); Directive 2011/36/EU of the European Parliament And of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, Eurojust Strategic project on action against trafficking in human beings, Final report (2012) and the Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings COM(2014) 635.

<sup>458</sup> Directive 2011/36/EU, para 12.

<sup>459</sup> Directive 2011/36/EU, para 8.

[Vulnerable groups] include children, especially early school leavers, children left behind, unaccompanied children, and children with disabilities, as well as people in the Roma community.<sup>460</sup>

These references show that the main documents in the field of THB follow the recommendations made by the general documents setting the agenda for the AFSJ as discussed in the sections above, particularly in relation to the special positioning of children and women in the context of trafficking.

In addition, the Action Oriented Paper 2009 identified specific groups facing additional challenges, such as individuals discriminated against on any ground, such as members of minorities and indigenous groups.<sup>461</sup> Additional factors that increase vulnerability are 'low standards of education, corruption, gender/based violence and HIV/AIDS'.<sup>462</sup>

However, the causal connection between vulnerability and THB, and particularly the socio-structural view of vulnerability as described above, is not apparent in the section dedicated to the prevention of THB, which is arguably the area where social-structural root causes mentioned in the documents could be most effectively addressed. Instead, prevention focuses on 'reducing the demand that fosters all forms of exploitation'.<sup>463</sup> Distance from vulnerability is again reinforced in the Mid-term report, emphasising other contributing factors:

Vulnerability puts people at greater risk of becoming victims of THB, but does not per se cause THB. THB takes place because there is a demand for services and goods provided through exploitation and because it is a highly profitable form of organised crime.<sup>464</sup>

What does the shift from vulnerability as root causes to highlighting demand and profit indicate? Is moving away from vulnerability perhaps an attempt to make room for discussing more positive concepts like resilience? Is it redirecting State actions on THB primarily towards policing demand and profit, to the expense of measures addressing 'root causes'? If vulnerability is indeed meant to lose its 'causal' meaning in relation to THB, what will its remaining role be? A further analysis of implementation reports is needed in order to answer these questions.

## 6. Terrorism

One of the earlier themes being addressed in the external dimension of the AFSJ was terrorism, following the attacks on 9/11. Monar argues that this policy field is one of the clearest examples of the expansion of the external dimension of AFSJ as a result of international pressure.<sup>465</sup>

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<sup>460</sup> EU Strategy 2012-2016, priority 2(5) at 2.

<sup>461</sup> Action Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings (2009).

<sup>462</sup> Ibid, section 3(2)(i).

<sup>463</sup> Directive 2011/36/EU, Art. 18(1).

<sup>464</sup> Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings (COM(2014) 635 final, section 5).

<sup>465</sup> Monar (n 389) 15.

Together with trafficking in human beings, counter-terrorism policies concentrate most of the concerns about possible violations of human rights.

Council Framework Decision 2002/475/JHA defined ‘terrorist offences’ and ‘terrorist groups’. In this early phase, the notion of vulnerability was connected to victimhood, similarly to the attention paid to victims of THB: “*Victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them.*”<sup>466</sup>

Framework Decision 2008/919/JHA amended Framework Decision 2002/475/JHA, introducing new offences connected to terrorism, such as recruiting and training for terrorism. No references to vulnerability or vulnerable groups were introduced in this decision.

The 2005 EU’s Counter-terrorism strategy established four overarching goals, illustrated in Chart 5. It emphasises that radicalisation and recruitment are an ‘international phenomenon’, calling for coordination with third countries and confirming the overlapping of the internal and external dimensions of the AFSJ.<sup>467</sup> It identifies propaganda at the core of terrorism, promoting a ‘supposed clash between the West and Islam’ and creating a worldview that brings individuals to justify extreme violence.<sup>468</sup>

The notion of vulnerability in the policy area of terrorism parts from the meaning of vulnerability attributed to in the fields of migration and trafficking in human beings. Vulnerability in this area is connected to the likeliness of being a target of and resisting potential terrorist attacks. In this respect, buildings and infrastructure, and even society itself, appear as ‘vulnerable’.<sup>469</sup> In this context, ‘vulnerability’ appears connected to the goal to ‘protect’.<sup>470</sup> No specific groups or individuals are identified as ‘vulnerable targets’ of terrorist attacks.

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<sup>466</sup> Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA), para 8.

<sup>467</sup> Ibid, para 11.

<sup>468</sup> Ibid, para 10.

<sup>469</sup> See for instance, The European Union Counter-Terrorism Strategy, 2005, para 14, 17 and 18.

<sup>470</sup> Ibid, para 14.

Chart 6: EU's 2005 counter-terrorism Strategy strategic commitment



Regardless of the absence of references to vulnerability in connection to groups or individuals, the 2005 Strategy makes reference to 'root causes', in connection to 'Prevention'. This reference, however, is linked to a very different notion: 'radicalisation'. It further states that there are 'conditions in society which may create an environment in which individuals can become more easily radicalised', and enumerates:

These conditions include poor or autocratic governance; rapid but unmanaged modernisation; lack of political or economic prospects and of educational opportunities. Within the Union these factors are not generally present but in individual segments of the population they may be. To counter this, outside the Union we must promote even more vigorously good governance, human rights, democracy as well as education and economic prosperity, and engage in conflict resolution. We must also target inequalities and discrimination where they exist and promote inter-cultural dialogue and long-term integration where appropriate.<sup>471</sup>

Arguably, considering this quote, the grounds that make 'individuals at risk of radicalisation' in relation to this policy field, are the same than those which also make individuals vulnerable to trafficking and call for special protection in relation to migration and asylum issues. One ground clearly common to the vulnerability discourse and the radicalisation approach is young age. Communication 941 on Preventing Radicalisation to Terrorism and Violent Extremism states:

People are at their most impressionable in adolescence and early adulthood, and many of the values and attitudes they develop at this stage stay with them for much of their lives. Not surprisingly, therefore, those most at risk from radical propaganda are adolescents and young adults. In the past, access to extreme material could be better controlled by parents, teachers, and

<sup>471</sup> Ibid, para 11.

community leaders. However, with new technologies and the spread of this material, this is no longer the case.<sup>472</sup>

Later, similar references explicitly connect the groups with the notion of vulnerability. Communication 941, for instance, refers to individuals as becoming 'vulnerable to radicalisation'.<sup>473</sup> This approach is again reinforced in the Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism of 2014. What this approach entails, is yet unclear. Are these groups meant to receive some special protection or special measures? And if so, how would this differ from the approach normally taken regarding vulnerable groups? There seems, however, to be an initial distinction between being vulnerable to becoming a victim of terrorism and becoming radicalised. References to becoming vulnerable to radicalisation do not take a 'victim-oriented' approach toward these groups of individuals like the one taken in relation to trafficking. Nevertheless, the documents also refer to the need to prevent 'exacerbating divisions'<sup>474</sup> or 'stigmatising particular groups'.<sup>475</sup>

The approach towards victims of terrorism as 'particularly vulnerable victims' in need of special support,<sup>476</sup> common to the documents in the area of FSJ, holds particular characteristics in relation to this policy field. Terrorism victims hold an empowering position in relation to prevention of radicalisation by using counter narratives:

Precisely because their suffering is so personal and direct, they are highly credible witnesses, and their impact is greater than any statutory organisation could hope to achieve. They can bring home the real consequences of terrorism and violent extremism and form a more effective counterweight to the one-sided propaganda of extremists.<sup>477</sup>

### C. Conclusions

The assessment of the documents selected in the AFSJ allows us to draw several conclusions:

- 1) There are different agendas AFSJ by different actors (Council, Commission and EP); each of these agendas shows different focus and priorities, with varying degrees of convergence or divergence in different issues.
- 2) Growing concern with human rights violations implied in EU policies and human rights violations at the root of human mobility have met no specific analysis or policy responses. References to human rights are often generic and mostly discontinued. It is still too soon to see whether the new

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<sup>472</sup> Ibid, section 2(8).

<sup>473</sup> Commission, COM(2013)941 final, on Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU's Response.

<sup>474</sup> European Union Counter-Terrorism Strategy, 2005, para 10.

<sup>475</sup> Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism (9956/14), para 11.

<sup>476</sup> See the report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism SEC(2007)1463.

<sup>477</sup> COM(2013)941 final, on Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU's Response, Section 2.7.

Action Plan on Human Rights and Democracy and EP's considerations will find a way into effective implementation.

3) The documents analysed above covering illegal migration, trafficking and terrorism, including Strategies, Action Plans and Guidelines, show a multiplicity of meanings and usages of the term 'vulnerability' and 'vulnerable'.

4) In relation to the general documents of the AFSJ, the need to protect the most vulnerable is established within the internal dimension and connected to citizens' rights. Although the language of vulnerability appears much more clearly in relation to the internal dimension of the AFSJ than the external one, given the overlap that exists between them, there is a sort of transposition of some of the notions to the external dimension. Under the general section of vulnerability, several basic notions are introduced. Diversity and anti-discrimination appear connected, while some specific 'vulnerable groups' are mentioned. In addition, special protection is also granted to victims and children, suggesting that the notion of vulnerability is not the only available tool for emphasising additional duties for states. Among these three different notions, it is difficult to establish which is the one with most influence on the external dimension, although diversity and non-discrimination seem to be more connected to the internal dimension of the AFSJ.

5) The meaning of vulnerability can be only determined within the specific domain, yet the approach toward vulnerability adopted within each of the policy domains here analysed is not always straight forward, and references to vulnerability relate at seemingly opposing notions. For instance, while language indicating a social-structural view of vulnerability, enumerating multiple 'root causes', is abundant in general AFSJ documents, these are not necessarily mainstreamed to the concrete policy fields. Also, what constitutes root causes is commonly left undetermined or not taken into account in prevention measures, particularly those that should be adopted as part of external policies.

6) Vulnerable groups, however, appear in the internal AFSJ and across other policy domains. Children, and unaccompanied minors in particular, are considered vulnerable or 'particularly vulnerable' in connection to irregular migration and return policies, to the granting of international protection and in the field of trafficking. In the field of terrorism, young people appear as particularly impressionable, and as such, vulnerable to radicalisation.

7) Victimisation is in some of the analysed policy fields presented in almost equal terms than vulnerability. Victims of specific crimes call for special protection and rehabilitation measures, such as gender-based violence, trafficking and terrorism, with children victims being of particular concern. Additional protection within the procedures, either those for granting asylum or return procedures in the field of border control or for the investigation and prosecution of trafficking, is needed for these subsets of victims. Nevertheless, while victimisation is seen in the light of vulnerability in the field of trafficking, victims of terrorism have been recognised a certain degree of agency, and the notion of vulnerability for radicalisation has emerged.

## VII. European Neighbourhood Policy (ENP) and human rights priorities

### A. General Overview

The ENP was initiated in 2004, when the EU enlarged to 25 member states. As a consequence of the enlargement, the EU acquired not just new members, but several new neighbours. Therefore, the aim of the ENP was to bring some order to the EU's new relations and, in organising such new relations, the EU would be surrounded by a 'ring of friends'.<sup>478</sup> Particularly, the ENP was set up with two geographical dimensions: the Eastern and Southern Partnerships. The Eastern Partnership came to include the six partner states of Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova (hereinafter referred to as 'Moldova'), and Ukraine,<sup>479</sup> while the Southern Partnership included the 10 partner states of Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the occupied Palestinian territory, Syria and Tunisia.<sup>480</sup>

The overall objective of the ENP is to establish security and protect Europe by promoting European norms and values in democratic governance, the rule of law, human rights, market economy, and trade around EU borders.<sup>481</sup> The declared aim of the ENP is 'to share the benefits of the EU's 2004 enlargement with neighbouring countries in strengthening stability, security, and well-being'.<sup>482</sup> This would avoid the emergence of new dividing lines between the enlarged EU and its neighbours and would strengthen the prosperity, stability and security of all.<sup>483</sup> In fact, a year before, in 2003, the European Security Strategy referred directly or indirectly to some of these vulnerable groups, specifically when it refers to the people died in wars, most of them being civilians; to the people who have left their homes a result of conflicts; and to the 45 million who die every year of hunger and malnutrition as a consequence of poverty.<sup>484</sup> To achieve this aim, the EU offers a privileged

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<sup>478</sup> Karen Smith, 'The outsiders: The European neighbourhood policy' (2005) *International Affairs* 81, 4, 757-773.

<sup>479</sup> According to the document 'Implementation of the ENP' of the European Commission and the High Representative of the EU for Foreign and Security Policy, 'the Eastern Partnership (EaP) is a joint initiative of the EU and six east-European partner countries (Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova (hereinafter referred to as 'Moldova') and Ukraine) that aims to bring these countries closer to the EU. It builds on existing bilateral relations between the EU and its partner countries and covers the eastern dimension of the European Neighbourhood Policy (ENP). It follows two parallel and mutually reinforcing tracks: bilateral and multilateral. The bilateral dimension aims to foster closer bilateral relations between the EU and each eastern partner country, while the multilateral dimension provides a forum for dialogue and exchange, through thematic platforms and flagship initiatives. The Eastern Partnership is broad-based and involves not only governments, but also civil society and other parties concerned. This report provides information on the progress made in 2014', SWD (2015) 76 final 25 March 2015.

<sup>480</sup> The ENP does not cover four neighbouring countries that share common borders with the EU, namely Belarus, Libya, Syria and Russia.

<sup>481</sup> Daniel Silander and Martin Nilsson 'Protecting and Promoting Europe: The ENP and the Security-Democracy Nexus in Partner States' (2014) 9 *Journal of Applied Security Research* 460-477.

<sup>482</sup> Commission, 'European neighbourhood policy strategy paper' COM(2004) 373 final.

<sup>483</sup> <[www.eeas.europa.eu/enp/about-us/](http://www.eeas.europa.eu/enp/about-us/)>

<sup>484</sup> European Council, 'European Security Strategy: A Secure Europe in a better word' [2003].



relationship in the form of cooperation and integration via market opening and participation in related programmes.

The EU insists on ‘shared values’ as the basis for developing relations with neighbours.<sup>485</sup> As stated in the first ENP strategy paper, ‘the privileged relationship with neighbours will build on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development’.<sup>486</sup> Therefore, it is more focused on prioritising themes than vulnerable groups, as will be demonstrated in these pages, although the vulnerable groups are mentioned in some Action Plans.

## B. Historical factors

Previous to the ENP, the European Neighbourhood and Partnership Instrument was the instrument for funding cooperation that ran from 2007 to 2013 and included Russia. It represented the strategic continuity with enlarged objectives of the former cooperation programmes TACIS (for the Eastern European countries) and MEDA (for the Mediterranean countries) and financed actions in sectors such as equitable development, regulatory trade and reforms, the liberalisation of certain sectors, environmental sustainability and research and innovation. However, it was criticised for its inability to foster human rights and democratisation in target countries<sup>487</sup>. This is the reason why these two main objectives were ungraded in the European Neighbourhood Instrument.

The ENP has its roots in the success story of the conditional cooperation used with post-communist Europe. It was based on the screening procedures and requirements set out in the enlargement processes and it was supposed to be developed as a copy of the successful enlargement strategy beginning in the 1990s, but explicitly designed as an alternative to enlargement. The EU had never before had such an impact on neighbouring states than when it used conditional cooperation attached to potential membership. However, the upcoming enlargements of an increased number of member states in Central and Eastern Europe raised concerns over future enlargements and the interest and capacity within the Union to further expand the number of member states.<sup>488</sup>

The rationale for the Southern and Eastern neighbours being drawn together within a wider policy became clear from the twofold objectives of the policy that the EU had set out: a) to work with the partners to reduce poverty and create an area of shared prosperity and values based on deeper economic integration, intensified political and cultural relations, enhanced crossborder

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<sup>485</sup> COM(2004)373 final; Commission, ‘On strengthening the European neighbourhood policy’ (Communication from the Commission to the Council and the European Parliament) COM(2006)726 and Commission and High Representative of the Union for Foreign Affairs and Security Policy, ‘A partnership for democracy and shared prosperity with the Southern Mediterranean’ (Joint communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2011)200 final.

<sup>486</sup> COM(2004) 373 final.

<sup>487</sup> Tanja A. Börzel and Vera van Hüllen, ‘One voice, one message, but conflicting goals: cohesiveness and consistency in the European Neighbourhood Policy’ (2014) *Journal of European Public Policy*, 1033-1049.

<sup>488</sup> Daniel Silander and Martin Nilsson, (n 481).

cooperation and shared responsibility for conflict prevention between the EU and its neighbours and b) to anchor the EU's offer of concrete benefits and preferential relations within a differentiated framework which responds to progress made by the partner countries in political and economic reform.<sup>489</sup>

In 2002, the General Affairs and External Relations Council launched the idea of a 'Wider Europe' initiative beyond enlargement.<sup>490</sup> As explained by Batt, the central question that had troubled the EU was the following: how to create a zone of stability and prosperity on the Union's borders without offering the prospect of full membership as incentive?<sup>491</sup> The debate within the Union moved from absorption incapacity and enlargement fatigue on the one side to the promotion of stability, security and prosperity on the other side.<sup>492</sup>

The ENP was adopted by the EU in 2004 as a response to the changed environment created by enlargement – the largest in European history, which brought the new proximity to unstable regions. In order to ensure stability on the EU's borders, the Commission suggested creating a ring of politically reliable countries around the Union. In fact, the ENP is an element of the EU's external action agenda. Its controversial conceptual approach underlies the policy of the EU's external action.

To understand at what point the ENP currently stands, its origins have to be understood as a period of two sequential, partially overlapping phases. During the early phase, between 2002 and 2006, the ENP was clearly a policy encapsulating the 'alternative to enlargement' more than anything else. During the following period, roughly between 2006 and 2010, the ENP began a transition towards the regional foreign and security policy and more clearly in 2011 in the context of the Arab Spring uprisings, a year that, in many ways, presents a major juncture for the ENP: never before did the EU produce as many strategy documents on the ENP in one year as it did in 2011<sup>493</sup> nor was the increase in the ENP budget ever as significant in relative and absolute terms, not to mention the fact that it comes at a time of profound economic crisis within the EU.<sup>494</sup>

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<sup>489</sup> Commission, 'Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours' COM(2003) 104 final.

<sup>490</sup> Ibid and Commission, 'Paving the way for a New Neighbourhood Instrument' (Communication from the Commission) COM(2003) 393 final.

<sup>491</sup> Batt, Judy 'The Enlarged EU's external borders. The regional dimension', in *Partners and neighbours: a CFSP for a wider Europe, Chaillot Papers*, 64 Institute for Security Studies (2003), 121.

<sup>492</sup> Dannreuther, Roland, 'Developing the Alternative to Enlargement: the European Neighbourhood Policy' (2006) 11 *European Foreign Affairs Review* 183-201.

<sup>493</sup> Council of the European Union, 'Council Conclusions on Developments in the Southern Neighbourhood' 3069th Foreign Affairs Council Meeting, 21 February 2011; COM(2011) 200 final; Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'A New Response to a Changing Neighbourhood. A review of European Neighbourhood Policy' (Joint communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2011) 303 and Commission, 'The EU's neighbouring economies: coping with new challenges', Occasional Papers 86, November 2011.

<sup>494</sup> Stefan Wolff, 'Re-thinking the European Neighbourhood Policy: From "Alternative to Enlargement" to Regional Foreign and Security Policy?' in < [www.stefanwolff.com](http://www.stefanwolff.com) > last accessed on 22 May 2015.

### C. Contemporary factors

According to Rieker, as the EU is a security building organization, building stability beyond EU borders is dependent on the neighbouring country's level of integration and the Union's perceived attractiveness.<sup>495</sup> In fact, three main threats of instability which the ENP has to face are migration, the conflicts generated by the Arab Spring and the conflict in Ukraine together with the consequences of current Russian foreign policy.

1. Migration: The number of refugees and migrants arriving in Italy, Greece, Spain and Malta via the Mediterranean has risen exponentially from 22,500 arrivals in 2012 to 60,000 in 2013 and 75,000 in just the first half of 2014 (UNHCR 2014). This upward trend has been accompanied by a rising number of lives lost at sea with 500 deaths in 2012, 600 in 2013 and some 800 in the first half of 2014 (UNHCR 2014). This migration influx has activated the member states' instinct to seek the cooperation of the new authorities in the Arab countries to help curb the flow. The Treaty of the EU, the Amsterdam Treaty, the Tampere, The Hague, and the Stockholm Programs have shown themselves to be inadequate.

Some of the European neighbour states are countries of origin of migration flows (Algeria, Egypt, Morocco, Ukraine and Moldova). The problems of underemployment and lack of economic opportunities they face have led the EU to propose the development of policies, financial instruments and programmes in order to help them improve their institutional and financial capacity as regards migration.

2. The conflicts generated by the Arab Spring: the EU interpreted the Arab nations' aspirations for pluralistic and accountable polities as a welcome confirmation of the attractiveness of its own democratic values and European soft power more generally, even though the Arab street had a different perception of what it fought for and why. Undoubtedly, identity considerations were a factor in launching various new programmes aiming at post-Arab Spring democracy support. Considering its failures in supporting democracy in the past, the EU was under pressure to put its democratic values at the core of a new framework of relations with its southern neighbours. On the other hand, the ENP was elaborated in the same period as the European Security Strategy. As such, it can be regarded as the operationalisation of this objective, translating the holistic approach to foreign countries.

Since 2005, the ENP has once again become a politically prominent issue in the EU's external-action agenda. This is mainly because of growing conflicts in neighbouring countries such as Libya and Ukraine and the EU's inability to contribute to sufficiently improving security in these states.<sup>496</sup> Also during the Arab Spring the poor performance on the ENP has been reflected in terms of guaranteeing security in countries neighbouring the EU. Mass demonstrations in Tunisia and Egypt managed to topple long standing authoritarian presidents. The EU was caught off-guard and its

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<sup>495</sup> Pernille Rieker, 'Importance of the ENP Policy. A role for Norway?' Policy Brief, 1/2014, Norwegian Institute of International Affairs, 7.

<sup>496</sup> Viljar Veebel, Liina Kulu, Annika Tartes, 'Conceptual Factors Behind the Poor Performance of the European Neighbourhood Policy' (2008) *European Journal of International Relations*, 14 (3) 85-102.

approach towards these countries in the framework of the ENP was under question. It was confronted with the formidable difficulty posed by their previous support for authoritarian leaders in the region.<sup>497</sup>

In addressing challenges in the EU's neighbourhood<sup>498</sup> the ENP has some short term practical benefits to offer –including financial assistance and the prospect of visa facilitations- but these are too modest to encourage the extensive, often painful and constant reforms desired by the EU. It would seem that for a policy based on conditionality to function effectively long-term substantial compensation is required – a benefit comparable to the offer of membership which was present in the case of the enlargement policy. Instead, the EU seems to have reversed the logic of conditionality.

The EU insisted on 'shared values' as the basis for developing relations with neighbours. As stated in an ENP strategy paper, 'the privileged relationship with neighbours will build on mutual commitment to common values principally within the fields of the rule of law, good governance, the respect for human rights, including minority rights, the promotion of good neighbourly relations, and the principles of market economy and sustainable development'.<sup>499</sup>

In 2010-2011, the EU reviewed the ENP and put strong focus on the promotion of deep and sustainable democracy, accompanied by inclusive economic development. Deep and sustainable democracy includes in particular free and fair elections, freedom of expression, of assembly and of association, judicial independence, fight against corruption and democratic control over the armed forces. The EU also stressed the role of civil society bringing about deep and sustainable democracy. The EU unveiled the 'more for more' principle, under which the EU will develop stronger partnerships with those neighbours that make more progress towards democratic reform.<sup>500</sup>

The assessment of the ENP should include all 16 partners in the east and south, the thematic areas launched by the ENP and the time period of 2004-2014. The EU's actorness has been tamed by the underlying differences among EU member states.

The thematic areas launched by the ENP illustrate the difficulties in identifying the main elements of the Policy: energy, health, small and medium enterprises, sanitary and phytosanitary, public finance management, public procurement, competition, customs, taxation, trade, agriculture, consumer protection, statistics, civil protection, environment, fish and maritime, intellectual property rights, space, education, youth and culture, employment and social issues, transport, information society, mobility, justice and home affairs, research.

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<sup>497</sup> Gergana Noutcheva, 'Institutional Governance of European Neighbourhood Policy in the Wake of the Arab Spring' (2015) 37 *Journal of European Integration*, 19-36.

<sup>498</sup> Whitman maintains that the EU's reaction in the wake of the Arab Spring 'remains in the realm of possibilities' Richard G. Whitman and Steffan Wolf, 'Much Ado About Nothing? The European Neighbourhood Policy in Context', in *The European Neighbourhood Policy in Perspective* (Palgrave MacMillan 2010), 12.

<sup>499</sup> COM(2004) 373 final.

<sup>500</sup> See <[www.eeas.europa.eu/enp/about-us/](http://www.eeas.europa.eu/enp/about-us/)> last accessed on 17 July 2015.

Finally, there are voices suggesting that there is still a lack of long-term, structured and elaborate policy at least with respect to the Eastern neighbourhood and the Middle East.<sup>501</sup> ‘The EU has neither asserted itself as a strategic actor nor as a normative power, but rather as a bystander, trapped in its internal institutional process and passively reacting to crisis events’.<sup>502</sup>

#### **D. Legal and policy formulation of ENP**

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

Article 21 of the Lisbon Treaty also stresses the democratic norms and values as an essential part of EU external relations: ‘The Union’s action on the international scene shall be guided by, and designated to advance in the wider world, the principles which have inspired its own creation, development and enlargement. [...] The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: (a) safeguard common values, fundamental interests, security, democracy, the rule of law, human rights and international law’.

According to the TFEU art. 209, (1) ‘The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach’ and article 212 (2) establishes that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for carrying out economic, financial and technical cooperation measures, including assistance, in particular, financial assistance, with third countries other than developing ones.

The EEAS plays a central role in managing the ENPI funds channelled to the Eastern and Southern neighbours. The distribution of the ENPI funds between the two neighbourhoods has followed a logical path. When the EU put forward the Eastern Partnership, the Eastern neighbours proportionally received more funding than the Southern partners. Following the Arab Spring, however, more funds have been allocated to the Southern neighbours. The ENI is set to replace the ENPI in the upcoming multiannual financial framework. Besides the change in the name, there is also a modification among the beneficiaries. As opposed to the ENPI, the ENI will not cover

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<sup>501</sup> Jan Wouters and Thomas Ramopoulos, ‘Revisiting the Lisbon Treaty’s Constitutional Design of EU External Relations’, Working Paper 119 (September 2013) 16.

<sup>502</sup> Gergana Noutcheva, (n 497).

Russia.<sup>503</sup>

### 1. Multilateral agreements and action plans

The ENP is chiefly a bilateral policy between the EU and each partner country. These are bilaterally agreed contractual working agendas concluded for a period of three years between each ENP partner country and the EU. They are further enriched and complemented by regional and multilateral co-operation initiatives: the Eastern Partnership (launched in Prague in May 2009), the Euro Mediterranean Partnership (EUROMED) (formerly known as the Barcelona Process, re-launched in Paris in July 2008), and the Black Sea Synergy (launched in Kiev in February 2008).<sup>504</sup>

The ENP centres on bilateral Action Plans between the EU and each of the 16 partner states. The Action Plans include reforms to be taken within three to five years. They are monitored by the EU, and annual Progress Reports are developed based on the implementation of the Action Plans. These Action Plans offer partners concrete opportunities through a broad range of issues stretching from employment and social policy, trade, industrial and competition policy, to agriculture and rural development, climate change and environment.

The creation of the EEAS and the recent developments in the EU's neighbourhoods brought a substantive change in the implementation of the ENP. Although the neighbourhood policy was always supposed to be conditional, the conditionality was not implemented consistently. In its short existence, the EEAS made an effort to translate the conditionality from rhetoric to reality and communicate it more clearly to the partner states.

Action Plans cover a variety of countries which altogether have little, if nothing, in common politically, economically or culturally, and is based on a partnership or 'joint ownership principle', referring to Ukraine.<sup>505</sup>

As mentioned before, central to the ENP are the bilateral Action Plans or Association Agendas between the EU and each ENP partner (12 of them are agreed) which set out an agenda of political and economic reforms with short and medium-term priorities of 3 to 5 years. They reflect each partner's needs and capacities, as well as their and the EU's interests. The ENP is not yet 'activated' for Algeria, Belarus, Libya and Syria.

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<sup>503</sup> Hrant Kostanyan, 'The EEAS and the European Neighbourhood Policy: A change in rhetoric or reality?' (2013) 9, *EU Foreign Policy, Centre for International and European Studies*, 1-8.

<sup>504</sup> See <[www.eeas.europa.eu/enp/about-us](http://www.eeas.europa.eu/enp/about-us)> last accessed on 17 July 2015.

<sup>505</sup> Anna Lytvynyuk, 'Is Bilateralism a Solution? The Case of Ukraine' in Marise Cremona and Gabriella Meloni (eds) *The European Neighbourhood Policy: A Framework for Modernisation?* (EUI Working Papers, Law 2007/21) 137-146.

Chart 7: ENP's Bilateral Action Plans

ACTION PLAN	CONTENT RELATED TO HUMAN RIGHTS PRIORITIES
EU/Algeria	No action plan activated.
EU/Armenia	<ul style="list-style-type: none"> <li>- Improve protection for and support to refugees and IDPs, in particular to enhance their self-sufficiency and integration (possibly targeting the most vulnerable persons residing in temporary shelters and rural areas; possible actions: promotion of self-employment and small businesses, improvement of residential conditions of people residing in temporary shelters).</li> <li>- Continue health sector reform, notably to: improve access and affordability for the entire population in particular for social vulnerable groups,</li> </ul>
EU/Azerbaijan	<ul style="list-style-type: none"> <li>- Take significant steps to reduce levels of poverty.</li> <li>- Reform the social protection system, particularly with a view to improving its efficiency and its focus on the most vulnerable groups of the population (large households, children in institutions, disabled people).</li> </ul>
EU/Belarus	No action plan activated.
EU/Egypt	No mention of vulnerable groups.
EU/Georgia	No mention of vulnerable groups.
EU/Israel	No mention of vulnerable groups.
EU/Jordan	- Cooperation in managing migration flows, including by developing the capacity of Jordan authorities to provide assistance to migrants belonging to vulnerable categories, in need of international protection, and to victims of trafficking in human beings.
EU/Lebanon	No mention of vulnerability
EU/ Libya	No action plan activated.
EU/ Moldova	- Improve the primary health care system and the prevention of diseases, such as the HIV/AIDS epidemic, notably in rural and deprived communities and within <i>vulnerable groups</i> .
EU/ Morocco	- Priority actions: cooperation on social policy with the aim of reducing poverty and vulnerability and creating jobs.
EU/ Palestine	<ul style="list-style-type: none"> <li>- Priority objectives: Step up efforts to significantly reduce poverty and social exclusion, in particular among the most vulnerable, and to enhance social cohesion throughout the Occupied Territories.</li> <li>- <i>Benchmarks</i>: adoption of appropriate social protection legislation, including for pensions, development of a national database on <i>poverty and vulnerability</i>, full implementation of the Cash Transfer Programme (CTP) in the West Bank and Gaza Strip ahead of its amalgamation into a fully-financed national scheme.</li> <li>- Equal opportunities, Employment, Social Policy, Public Health</li> <li>- Intensify efforts to promote the implementation of equal opportunities for men and women and other vulnerable groups such as the disabled within the</li> </ul>

	<p>administration and in the framework of the different national strategies (employment, education, health, etc.)</p> <ul style="list-style-type: none"> <li>- Social Inclusion and Social Protection: take concrete steps to significantly reduce poverty and social exclusion, in particular among the most vulnerable, and to enhance social cohesion throughout the occupied Palestinian territory.</li> <li>- Develop a national database for <i>poverty and vulnerability</i> and map out socio-economic intervention.</li> <li>- Education, Youth and Culture: Cooperate to develop and promote joint activities in the field of lifelong learning including higher education and vocational education and training within the framework of the Palestinian national strategy towards convergence with EU standards and practice, in particular for women, persons with special needs and <i>vulnerable groups</i>.</li> <li>- Climate change: Support efforts to adapt to the negative impacts of climate change including through the adoption of <i>vulnerability adaptation assessments</i>, to promote adaptation strategies</li> </ul>
EU/ Syria	No action plan activated.
EU/ Tunisia	<ul style="list-style-type: none"> <li>- Implement Articles 69 to 73 of the Association Agreement and align Tunisian legislation with EU standards and practices in the social and employment sectors.</li> <li>- Pursue the dialogue on employment and social policy so as to develop a joint analysis of the situation and identify challenges and possible measures to deal with them (social and civil dialogue, labour law, gender equality, health and safety at work, employment policy, social protection and inclusion), including support for Tunisian policies on reducing social inequalities (in education, health, social housing) and combating poverty and <i>vulnerability</i>.</li> <li>- initiate a dialogue with a view to exchanging information on existing programmes and initiatives to facilitate social inclusion, the integration of vulnerable groups in the labour market and combating discrimination, racism and xenophobia.</li> <li>- Develop methods to combat trafficking in human beings and to reintegrate victims of trafficking</li> <li>- Initiate a dialogue to agree a common approach on tackling trafficking targeting recruiters, transporters, exploiters, other intermediaries, clients and beneficiaries.</li> <li>- Improve support to the most vulnerable groups (women and children).</li> </ul>
EU/ Ukraine	<ul style="list-style-type: none"> <li>- Exchange best practices in improving the effectiveness of social protection, with a view to enhancing both its social adequacy and financial sustainability and to significantly reduce the number of poor and vulnerable people.</li> </ul>

## 2. Competent institutions

The institutional governance of the ENP is assigned to the EEAS and to the European Commission. In fact, as is known, the creation of the EEAS in 2010 was one of the principal foreign policy innovations of the Treaty of Lisbon, intended to bring greater coherence and impact to the EU's international relations. The EEAS aims to enhance the EU's foreign policy institutional architecture, therefore, has, among other things, implications for the ENP.



Prior to the Service's creation, a Deputy Director General of the Commission's Directorate General (DG) Relex (external relations) hosted three Directorates dealing with the neighbourhoods: 1) Directorate E was responsible for Eastern Europe, the Southern Caucasus and Central Asia which included the eastern dimension of the ENP; 2) Directorate F consisted of the units dealing with the Middle East and the Southern Mediterranean, which encompassed the Southern Neighbourhood; and 3) Directorate D included two ENP units working on the horizontal issues (process and sectorial aspects) covering both neighbourhoods.

In the post-Lisbon Treaty institutional structure, the Commission's DG Relex, including the Directorates dealing with the neighbourhood, became part of the newly established EEAS. The EEAS currently has two Managing Directors dealing with the neighbourhoods – 1) the Europe and Central Asia MD (III) that also focuses on the Eastern Neighbourhood, and 2) the North Africa, Middle East, Arabian Peninsula, Iran and Iraq MD (IV) that deals, inter alia, with the Southern Neighbourhood.<sup>506</sup>

## **E. Implementation tools: European Neighbourhood Instrument (ENI)**

This instrument is set out in Regulation 232/2014 establishing a European Neighbourhood Instrument (ENI) that replaces Regulation 1638/2006 which also covered the Partnership Instrument. It is the financial instrument for direct support of the ENP and covers the period from 2014 to 2020. This policy aims to 'offer European Neighbourhood countries a privileged relationship, building upon a mutual commitment to, and promotion of the values of democracy and human rights, the rule of law, good governance and the principles of a market economy and sustainable and inclusive development'. It also constitutes 'a framework for enhanced mobility and people-to-people contacts, particularly through visa facilitation and readmission agreements, and, on a case-by case basis, through visa liberalisation'.<sup>507</sup>

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

The *incentive-based approach* is the key aspect of the new Regulation. Thus, the EU will differentiate levels of support depending on partner countries' needs and progress. Other features of the new ENI are the reduction of the complexity of the programming process and the increase of its focus for ENP partners that have jointly agreed to the EU strategic priorities in Action Plans or equivalent documents; improving provisions on Cross-Border Cooperation (CBC) programmes in

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<sup>506</sup> Hrant Kostanyan, (n 503) 1-8.

<sup>507</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument OJ L 77/27.

order to facilitate effective and fast implementation; promoting closer links with EU internal instruments and policies with the aim of enabling partner countries and their citizens to participate in EU internal programmes in areas such as research and innovation, youth programmes, development of small and medium enterprises and industrial cooperation and finally, amending Russia's eligibility for ENI funding to reflect its specific status as neighbour (Russia will remain eligible under the ENI for multi-country programmes and CBC programmes) and strategic partner (through the new Partnership Instrument).

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

The ENI is supported by substantial EU financial assistance. Under the ENPI 2007-2013 nearly 12 billion € was provided in grants. The new ENI for 2014-2020 with a budget of 15.4 billion will provide the bulk of funding to the 16 partner countries covered by the ENP in line with the principles of differentiation and the incentive based approach (Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, the Republic of Moldova, Morocco, Palestine, Syria, Tunisia and Ukraine).

### **1. Objectives and scope of the Instrument**

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

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

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

- i. Promoting human rights and fundamental freedoms, the rule of law, principles of equality and the fight against discrimination in all its forms, establishing deep and sustainable democracy, promoting good governance, fighting corruption, strengthening institutional capacity at all levels and developing a thriving civil society including social partners;

- ii. Creating conditions for the better organisation of legal migration and the fostering of well-managed mobility of people;
- iii. Supporting smart, sustainable and inclusive development in all aspects; reducing poverty, and social exclusion; promoting capacity-building in science, education, technology, research and innovation; promoting internal economic, social and territorial cohesion; fostering rural development; promoting public health; and supporting environmental protection, climate action and disaster resilience; and
- iv. Promoting confidence-building, good neighbourly relations and other measures contributing to security in all its forms and the prevention and settlement of conflicts.

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

- a) Needs, using indicators such as population and level of development;
- b) Commitment to and progress in implementing mutually agreed political, economic and social reform objectives;
- c) Commitment to and progress in building deep and sustainable democracy;
- d) Partnership with the EU, including the level of ambition for that partnership;
- e) Absorption capacity and the potential impact of EU support.

The partner country's commitment towards democracy is one of the elements that is more decisive and should primarily be taken into account in the allocation of funds to the partner countries. However, this 'incentive-based approach should not be applied to support in favour of civil society and people-to-people contacts, support for the improvement of human rights or crisis-related measures'.

## **2. Eligibility**

The partner countries mentioned above in section (2) are eligible for financing. However, the Commission may decide on a case-by-case basis, to extend the eligibility of specific actions to other countries, territories and areas in duly justified circumstances and in order to ensure the coherence and effectiveness of EU financing or to foster regional or trans-regional cooperation.

### **3. Coordination, complementarity and coherence with other instruments**

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

It does not identify any group, but its aim is to ensure stability, security and peace and economic prosperity in the region. It embeds two geographical dimensions: the Eastern and Southern Partnerships. The Eastern Partnership comes to include the six partner states of Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine, while the Southern Partnership includes the 10 partner states of Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the occupied Palestinian territory, Syria, and Tunisia. It covers the sixteen countries of the EU's closest neighbours.

### **4. Type of programmes funded**

Under the ENI four types of programmes are supported:

- Bilateral programmes for the Neighbourhood countries. First, the ENP abandons the prevalence of the principle of regionalism that was inherent in the Barcelona Process, and replaces it with differentiated bilateralism.
- Regional programmes for the East and the South to complement national resources for EU initiatives in the East (including the Eastern Partnership, Black Sea Synergy, Baku Initiative and Northern Dimension) and South (the Euro-Mediterranean Partnership).
- An ENP-wide programme mainly funding modernisation of higher education, student mobility (Erasmus for All, the Neighbourhood Investment Facility and the Umbrella programmes).
- Cross-border Co-operation programmes between member states and neighbourhood countries.

## **F. Conclusion and future perspective**

The ENP is in a transition process with the aim of achieving substantive consistency in the promotion of effective and democratic governance. The High Representative and the Commission jointly issued the Paper called 'Towards a New Neighbourhood Policy' in March 2015. The Council answered the Paper by emphasising the need to work on a revision of the ENP in order to ensure

that it provides the adequate framework for long term relations with all ENP partners and that it becomes more political and responsive to the challenges in the neighbourhood. As far as the thematic issues are concerned, the Council affirmed the four priority areas that the current ENP review seeks to address: 'differentiation', 'focus' (including inter alia, security, economic development and trade, good governance, migration, energy and human rights), 'flexibility' and 'ownership and visibility'.<sup>508</sup> The thematic areas would coincide partly with the ones identified by the Strategic Framework on Human Rights and Democracy, however, vulnerability as such is not mentioned among them.

The vulnerable groups identified in the Action Plans are associated with different circumstances. However, the limitations respond to the fact they do not achieve recognition of the structural dimensions of the problem.

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<sup>508</sup> Council of the European Union, 'Conclusions on the Review of the ENP' [2015].

## VIII. Comparative analysis between the internal and external approaches to vulnerable groups and thematic priorities: internal policy on social inclusion and fight against exclusion

### A. Introduction

In its Conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights protection and promotion in the European Union,<sup>509</sup> the Council highlights that the issue of consistency between internal and external aspects of human rights protection and promotion is crucial in order to enhance the EU's credibility in its external relations and to strengthen its 'leading by example' role in the area of human rights.

A similar approach has long been recognised by the Council in the 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies.'<sup>510</sup> The Council highlights that it is necessary to think from a fundamental rights perspective and to take into account differing extents, in every kind of EU policy including the EU's external policy.<sup>511</sup> In general, there is the perception that the EU's statements on human rights and democracy are not always fully matched by its external or internal policies. In the context of the Arab Spring there has been a debate as to whether the EU had previously done enough to support civil society and to promote change rather than stability. At the same time, the EU's internal human rights record has come under increasing scrutiny.<sup>512</sup>

The present chapter aims to undertake a simple comparative analysis between the internal and external dimensions of the EU's performance in the promotion of human rights and democracy. This comparative analysis will be paramount in order to identify any incoherencies regarding the EU's internal and external approaches to human rights prioritisation in terms of vulnerable groups and themes. For that reason, the EU's internal policy on social inclusion and fight against exclusion will be taken into account to discuss some 'gaps' identified in the Strategic Framework's priorities that were not translated into actions in the first Action Plan, although these themes (in particular the one relating to 'poor and vulnerable groups') are addressed as a key area of the Strategic Framework.

The Strategic Framework on Human Rights and Democracy highlights some areas of action which identify specific objectives and priorities. One of these priorities is to strengthen efforts to ensure universal and non-discriminatory access to basic services with a particular focus on poor and

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<sup>509</sup> Council of the European Union, 'Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union – Adoption' 10116/14 [2014] Annex.

<sup>510</sup> Council of the European Union, 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies' 10140/11 [2011].

<sup>511</sup> *Ibid*, 4.

<sup>512</sup> COM(2011) 886 final, 6.

vulnerable groups.<sup>513</sup> In numerous policy documents the EU has made it clear that ‘vulnerable groups’ are a priority in EU (human rights) policy both externally and internally.<sup>514</sup> However, as reflected in the report D12.1, in the case of human rights and vulnerable groups in relation to the fight against poverty and social exclusion, this priority has not been accompanied by an Action Plan, nor have specific guidelines been adopted to enforce it.<sup>515</sup> This shortcoming has not been addressed by the new Action Plan, which does not contain explicit actions on the protection and promotion of the rights of the poor.

Moreover, the first part of this report D12.2. has identified the manner in which the vulnerable groups are reflected across the range of EU policies, in particular, Trade, Development, CSDP, AFSJ and ENP. The goal has been to determinate whether the vulnerable groups and thematic priorities are considered or ignored by the EU in each step of these policy-cycles, and, secondly, if there are any gaps in the selection of priorities for these groups that have deserved a special protection by the EU. The idea is that there is a mismatch between the EU’s internal and external dimension of human rights promotion.

Taking into account both aims, this section, based on the conclusions of the report D12.1, as well as on the conclusions of some EU external policies contained in this report D12.2, intends highlighting some inherent tensions in dealing with the subject of vulnerability in the Strategic Framework on Human Rights and Democratization by analysing the different emphases in the EU’s (human rights) external and internal policies.

The different approaches to ‘vulnerability’ or ‘vulnerable groups’ in the EU’s external and internal (human rights) policies on social inclusion and fight against exclusion, show that this issue is not just a conceptual discussion. On the one hand, they reinforce some of the above-mentioned ideas in relation to vulnerable groups and, on the other hand, open avenues of analysis that reveal tensions difficult to overcome.

A. *The tension between the universal character v. the particular character attributed to the vulnerability.*

This is a constant factor in the EU’s policies and one clearly highlighted in the analysis of its external or internal dimension. On the one hand, the universal character of both human rights and vulnerability is recognised: the human rights principles and objectives remain universal, and vulnerability is recognised as an inescapable part of the human condition. At the same time, however, it is said that ‘the immediate priorities, and therefore the route and timetables, can and must vary’. In the case of vulnerability, this must be addressed taking into account its contextual and institutional peculiarities. Depending on the particularities of geographical location, social resources and a host of other factors, vulnerability comes in a variety of guises.

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<sup>513</sup> Strategic Framework.

<sup>514</sup> For an analysis and a detailed discussion on the EU’s formulation of policies regarding a specific vulnerable groups see FRAME Deliverable 12.1, 129-166.

<sup>515</sup> FRAME Deliverable 12.1, 10 and 18-19.

*B. The tension between the danger of stigmatisation v. the danger of no significance.*

These policies are targeted at vulnerable groups. This easily creates a stigma. According to Report D12.1,<sup>516</sup> the professed purpose of the EU is to do good for vulnerable groups: the purpose is to protect their fundamental rights and empower them. The danger is however that the EU does exactly the opposite: by applying the term ‘vulnerable’ only to certain disfavoured groups in society, the EU risks reinforcing the very vulnerability that it seeks to address.

However, an analysis of the evolution of the EU policy on fighting poverty and exclusion clearly shows how this has been aggravated by the economic crisis, an increase of people experiencing or at risk of social exclusion in Europe which, far from leading it to adopt measures that address vulnerability from a collective vision, the EU instead placed greater emphasis on the processes of individuation of their policies in groups whose vulnerability has been particularly aggravated as a result of the crisis.

*C. The tension between the multidimensional nature of vulnerability and the difficulties to respond to all the factors that make it up.*

This has resulted in giving priority in action plans to aspects more related to material and circumstantial conditions of vulnerability to the detriment of others in the search for durable solutions and to focus more on the structural character of vulnerability. But it has also highlighted an issue that directly affects the consistency and coherence between the internal and external dimension of the EU human rights policies in relation to vulnerable groups.

Based on these considerations, the structure of this part of the report is as follows: first it will present the EU’s formulation of policy on social inclusion and fight against exclusion regarding the vulnerable groups and priority themes in it. Finally, it will provide an assessment of consistency regarding the EU’s internal and external approaches to human rights prioritisation in terms of vulnerable groups and themes.

## **B. Vulnerable groups and priority themes in the EU’s policy on social inclusion and fight against exclusion**

### **1. The Europe 2020 strategy<sup>517</sup>**

‘Poverty and social exclusion harm individual lives and limit the opportunities for people to achieve their full potential by affecting their health and wellbeing and lowering educational outcomes. This, in turn, reduces opportunities to lead a successful life and further increases the risk of poverty. Without effective educational, health, social, tax benefit and employment systems, the risk of poverty is passed from one generation to the next. This causes poverty to persist and hence

<sup>516</sup> FRAME Deliverable 12.1, 131.

<sup>517</sup> This part of the report does not intend to present comprehensive analysis of the whole European policy against poverty and exclusion, but only some basic references enabling is to make comparison with the conclusions regarding the EU’s approach to vulnerability and vulnerable groups in the external policies analysed in this report.



produces more inequality, which can lead to long-term loss of economic productivity on the part whole groups of society and hamper inclusive and sustainable economic growth'.<sup>518</sup> With more than 120 million people in the EU at risk of poverty or social exclusion, the fight against poverty and social exclusion is at the heart of the Europe 2020 strategy<sup>519</sup> for smart, sustainable and inclusive growth.

Millions of Europeans are still on the side-lines, both as regards the labour market and social inclusion and integration. Their numbers are increasing, as shown by the 2011 statistics: 24% of all the EU population (over 120 million people), are at risk of poverty or social exclusion – this includes 27% of all children in Europe, 20.5% of those over 65, and 9% of those with a job. Close to 9% of all Europeans live in severe material deprivation. 17% of Europeans live on less than 60% of their country's average household income. 10% of Europeans live in households where no one has a job. There is a wide gap in performance between the welfare systems in different EU countries - the best have reduced the risk of poverty by 35%, the least effective by less than 15% (EU average 35%). 12 million more women than men are living in poverty in the EU. Specific populations such as the Roma are especially challenged: two-thirds are unemployed; one in two children attends kindergarden and only 15% complete secondary school.<sup>520</sup>

## **2. Defining vulnerability in the EU's internal policy on the fight against poverty and social exclusion**

The Europe 2020 strategy is about delivering growth, i.e.: smart, through more effective investments in education, research and innovation; sustainable, thanks to a decisive move towards a low-carbon economy; and inclusive, with strong emphasis on job creation and poverty reduction. The strategy is focused on five ambitious goals in the areas of employment, innovation, education, poverty reduction and climate/energy to be reached by 2020. Each Member State has adopted its own national targets in each of these areas. Concrete actions at EU and national levels underpin the strategy.

For the UE, inclusive growth means i) raising Europe's employment rate: more and better jobs, especially for women, young people and older workers; ii) helping people of all ages to anticipate and manage change through investment in skills & training; iii) modernising labour markets and welfare systems; and iv) ensuring the benefits of growth reach all parts of the EU.

The Europe 2020 strategy for an inclusive growth sets targets i) to lift at least 20 million people out of poverty and social exclusion, ii) to get the early school-leaving rate below 10% and more young people in higher education or equivalent vocational education (at least 40%) and iii) to increase employment of the population aged 20-64 to 75%.<sup>521</sup>

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<sup>518</sup> Commission, 'Social trends and dynamics of poverty' (ESDE conference, Brussels, 2013).

<sup>519</sup> Commission, 'Europe 2020 A strategy for smart, sustainable and inclusive growth' COM(2010) 2020 final, 3.

<sup>520</sup> Ibid.

<sup>521</sup> To measure progress in meeting the Europe 2020 goals, 5 headline targets have been agreed for the whole EU (see <[http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index_en.htm)> last accessed

The flagship initiatives of the Europe 2020 strategy to reach these targets include the Platform against Poverty and Social Exclusion<sup>522</sup> and the Agenda for New Skills and Jobs<sup>523</sup>.

- Agenda for new skills and jobs
  - for individuals – helping people acquire new skills, adapt to a changing labour market and make successful career shifts.
  - collectively – modernising labour markets to raise employment levels, reduce unemployment, raise labour productivity and ensure the sustainability of our social models.
- European platform against poverty and social exclusion
  - Ensuring economic, social and territorial cohesion.
  - Guaranteeing respect for the fundamental rights of people experiencing poverty and social exclusion, and enabling them to live in dignity and take an active part in society.
  - Mobilising support to help people integrate in the communities where they live, get training and help find jobs and have access to social benefits.

Regarding vulnerable groups, there is no universal or common definition of vulnerability. Vulnerability may be associated with regional or social and economic factors, as well as with individual or social characteristics. However, vulnerable groups are typically categorised in social terms according to age, sex, ethnicity, disability or family status. Research on vulnerable groups consistently underlines the need to address a wide range of personal and social problems. It is the multiplicity of difficulties, rather than their nature, which different groups share.

In relation to employment and social exclusion, the concept of vulnerable groups denotes the risk of marginalisation and/or social disadvantages. Vulnerable groups are not an operational category as such, but some specific groups have been identified as a policy priority. Specifically, the definitions of vulnerable groups associated with each of the two initiatives of the Europe 2020 strategy are as follows:

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on 8 May 2015). This limited set of EU-level targets is translated into national targets in each EU country, reflecting different situations and circumstances (see <[http://ec.europa.eu/eurostat/documents/4411192/4411431/Europe\\_2020\\_Targets.pdf](http://ec.europa.eu/eurostat/documents/4411192/4411431/Europe_2020_Targets.pdf)> last accessed on 8 May 2015). All the Europe 2020 indicators are available at <<http://ec.europa.eu/eurostat/web/europe-2020-indicators>> last accessed on 8 May 2015.

<sup>522</sup> Commission, 'The European Platform against Poverty and Social Exclusion: A European framework for social and territorial cohesion' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM/2010/0758.

<sup>523</sup> Commission, 'An Agenda for new skills and jobs: A European contribution towards full employment' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2010)682 final.

**Chart 8: Definitions of vulnerable groups in the European 2020 strategy**

Initiatives of the Europe 2020 strategy	Definition of vulnerable groups
Agenda for new skills and jobs	<p>'People who are long-term unemployed, and also others who are inactive but not registered as unemployed. It should include workers who are in some form of employment but are at a high risk of losing their jobs. It is, therefore, a very heterogeneous group, whose members share perhaps only the involuntary character of their present status'<sup>524</sup></p> <p>The EU's Employment–Integra Programme was designed to find ways of integrating the 'most vulnerable' into employment: eligible groups included people who were long-term unemployed, lone parents, homeless people, migrants, refugees, ethnic minorities, itinerants and travellers, offenders and ex-offenders and recovering substance abusers – representing more than half the unemployed people in Europe. It can be seen, therefore, that the population of vulnerable groups is made up of a range of overlapping social categories.<sup>525</sup></p>
European platform against poverty and social exclusion	<p>'Groups that experience a higher risk of poverty and social exclusion than the general population. Ethnic minorities, migrants, disabled people, the homeless, those struggling with substance abuse, isolated elderly people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment.'<sup>526</sup></p> <p>The EU defines poverty in absolute or relative terms:</p> <ul style="list-style-type: none"> <li>- <b>Absolute poverty</b> refers to the deprivation of basic human necessities for survival, such as food, clean water, clothing, shelter, health care and education. This poverty line is considered the same for different countries, cultures and</li> </ul>

<sup>524</sup> DG Employment, Social Affairs and Inclusion, 'Social protection and Social inclusion Glossary' <<http://www.eurofound.europa.eu/pubdocs/2002/44/en/1/ef0244en.pdf>> last accessed in March 2015.

<sup>525</sup> European Foundation for the Improvement of living and working conditions, 'Access to employment for vulnerable groups' 2 Foundation Paper (2002) <<http://www.uni-mannheim.de/edz/pdf/ef/fp/ef0244en.pdf>> last accessed in March 2015.

<sup>526</sup> Commission, 'Access to employment for vulnerable groups. European Foundation for the improvement of living and working conditions, European Foundation for the improvement of living and working conditions' (Office for Official Publications of the European Communities 2002) <[http://ec.europa.eu/employment\\_social/spsi/vulnerable\\_groups\\_en.htm](http://ec.europa.eu/employment_social/spsi/vulnerable_groups_en.htm)> last accessed in March 2015.

	<p>technological levels and it is often based on a given basket of goods and services. For example, absolute poverty can be measured as the number of people eating less food than needed to sustain the human body.<sup>527</sup></p> <ul style="list-style-type: none"> <li>- <b>Relative poverty</b> occurs when someone's standard of living and income are much worse than the general standard in the country or region where they live. They may struggle to live a normal life and to participate in ordinary economic, social and cultural activities. Relative poverty depends on the standard of living enjoyed by most of the country. For example, it can be measured by the number of people living below a country-specific poverty threshold. Relative poverty measures are often linked to inequality.<sup>528</sup></li> </ul> <p><b>Social exclusion</b> is defined as 'a process whereby certain individuals are pushed to the edge of society and prevented from participating fully by virtue of their poverty, or lack of basic competencies and life-long learning opportunities, or as a result of discrimination. This distances them from job, income and education and training opportunities, as well as social and community networks and activities. They have little access to power and decision-making bodies and thus often feel powerless and unable to take control over the decisions affecting their day-to-day lives'.<sup>529</sup></p>
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The strategy's poverty target is monitored with the headline indicator 'people at risk of poverty or social exclusion' (AROPE). This indicator is based on a multidimensional approach incorporating three sub-indicators on monetary poverty ('People at risk of poverty after social transfers'), material deprivation ('Severely materially deprived people') and low work intensity ('People living in households with very low work intensity').<sup>530</sup>

- **Monetary poverty** is measured by the indicator 'People at risk of poverty after social transfers'. The indicator measures the share of people with an equivalent disposable income below the risk-of poverty threshold. This is set at 60% of the national median equivalent disposable income after monetary social transfers. Social transfers are benefits

<sup>527</sup> EAPN, 'European Anti-Poverty Network, Poverty and inequality in the EU' *EAPN Explainer* (2009), 5ff <<http://www.jrf.org.uk/sites/files/jrf/EAPN-explainer.pdf>> last accessed on 3 March 2015.

<sup>528</sup> Ibid.

<sup>529</sup> Commission, Directorate-General for Employment, Social Affairs and Inclusion, 'Employment and Social Developments in Europe 2011' (Publications Office of the European Union 2012) 144.

<sup>530</sup> Commission-Eurostat, 'Smarter, greener, more inclusive. Indicators to support the Europe 2020 strategy-2015 Edition', Luxembourg, 2015, 136 [Available at <<http://ec.europa.eu/eurostat/en/web/products-statistical-books/-/KS-EZ-14-001>> last accessed on 4 June 2015.

provided by national or local governments, including benefits relating to education, housing, pensions or unemployment.

- **Material deprivation** covers issues relating to economic strain, durables and housing and dwelling environment. Severely materially deprived people are living in conditions greatly constrained by a lack of resources and cannot afford at least four of the following: to pay their rent or utility bills or hire purchase instalments or other loan payments; to keep their home warm; to pay unexpected expenses; to eat meat, fish or other protein-rich nutrition every second day; a week-long holiday away from home; to own a car, a washing machine, a colour TV or a telephone.
- Very **low work intensity** describes the number of people aged 0 to 59 living in households where the adults worked less than 20% of their work potential during the past year. Because there are intersections between these three dimensions, they cannot simply be added together to give the total number of people at risk of poverty or social exclusion. Some people are affected by two, or even all three, types of poverty. Taking the sum of each would lead to cases being double-counted. This will become clearer when looking at the current numbers of people at risk of poverty or social exclusion.<sup>531</sup>

According to these indicators, The EU considers and prioritises a number of groups that, for different reasons, are considered the most vulnerable. In the field of employment, the most vulnerable groups are young workers, older workers, migrants and some groups of women. More actions have been outlined for this purpose that include EU funded study programmes, learning and training projects aimed at facilitating the employment of young people<sup>532</sup>, as well as reforms to improve flexibility and security in the labour market ('flexicurity'), to improve the quality of jobs and to ensure better conditions for workers and for job creation.<sup>533</sup>

The European Commission has a goal to reduce the number of people at risk of poverty or social exclusion by 20 million by 2020 compared to 2008. Nevertheless, almost every fourth person in the EU was still at risk of poverty or social exclusion in 2013. In 2010, the Commission stated that these were children, youth, women, single parents, the Roma and the disabled persons.<sup>534</sup> In 2013, in the field of poverty and exclusion risk, the most vulnerable are children, young people, single parents,

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<sup>531</sup> Ibid 145.

<sup>532</sup> For more information see 'Youth on the move, a comprehensive package of policy initiatives on education and employment for young people in Europe.' Launched in 2010, it is part of the Europe 2020 strategy for smart, sustainable and inclusive growth. Youth on the Move aims to improve young people's education and employability, to reduce high youth unemployment and to increase the youth-employment rate – in line with the wider EU target of achieving a 75% employment rate for the working-age population (20-64 years). Available at <[http://ec.europa.eu/youthonthemove/index\\_en.htm#theme\\_pos\\_3](http://ec.europa.eu/youthonthemove/index_en.htm#theme_pos_3)>, last accessed on 15 May 2015.

<sup>533</sup> For more information see <<http://ec.europa.eu/social/main.jsp?catId=1039&langId=en>>.

<sup>534</sup> COM/2010/0758 final.

households with three or more dependent children, people with low educational attainment and migrants. 'Monetary poverty is the most widespread form of poverty.'<sup>535</sup>

The number of people at risk of poverty after social transfers in 2013 was 83.5 million or 16.7% of the total EU-28 population. Next was material deprivation, covering 48.2 million people or 9.6% of all EU citizens. The third dimension is low work intensity, with 40.2 million people experiencing it in 2013. This equals 10.7% of the total population aged 0 to 59. The most vulnerable groups are children, young people, single parents, households with three or more dependent children, people with low educational attainment and migrants. More than 30% of young people aged 18 to 24 and 27.6% of children aged less than 18 were at risk of poverty or social exclusion in 2013. Poverty also seemed to be much more pronounced for the less educated and migrants. Almost 35% of adults with at most lower secondary educational attainment and 34.4% of adults with a migrant background were at high risk of poverty or social exclusion. Of all groups, single parents with one or more dependent children faced the greatest risk of poverty. They were the most affected by low work intensity (28.4%), monetary poverty (31.8%), in-work poverty (20.5%) and material deprivation (19.9%). Overall, about 49.7% of all single parents were at risk of poverty or social exclusion in 2013. The development of the risk of poverty or social exclusion indicators also shows that the gap between high-risk and low-risk groups has been growing since 2009. This suggests that the burden of the financial crisis has fallen more heavily on those who already belonged to the weakest groups.'<sup>536</sup>

- **Women** are more likely to live in poverty and social exclusion than men. In 2013, 25.4% of women were at risk of poverty or social exclusion across the EU compared to 23.6% of men. The disparities between women and men become more distinct when looking at age groups. Among men, the young aged 18 to 24 were most at risk (31%) in 2013 compared to older people aged 65 or over (15.3%). In contrast, women were more likely to be at risk of poverty or social exclusion in all age groups.<sup>537</sup>
- **Young people aged 18 to 24** are more at risk. For both men and women, young people aged 18 to 24 are the most likely to be at risk of poverty or social exclusion. More than 30% were at risk in 2013 (31.0% for men and 32.6% for women).<sup>538</sup> The Europe 2020 strategy puts forward a flagship initiative focusing on young people. 'Youth on the move' aims to enhance the performance of education systems and help young people find work. This is to be done by raising the quality of all levels of EU education and training, promoting student and trainee mobility and improving the employment situation of young people.<sup>539</sup>

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<sup>535</sup> Commission-Eurostat (n 530) 12.

<sup>536</sup> Commission (n 518) 157.

<sup>537</sup> Commission-Eurostat (n 530) 140.

<sup>538</sup> Ibid 141.

<sup>539</sup> Commission, 'Youth on the Move: An initiative to unleash the potential of young people to achieve smart, sustainable and inclusive growth in the European Union' (2010).

- **Single parents** face the highest risk of poverty or social exclusion. Almost 50% of single people with one or more dependent children were at risk of poverty or social exclusion in 2013. The group with the lowest poverty rate in 2013, and showing the most improvement since 2005, was households with two adults where at least one person was aged 65 years or over.<sup>540</sup>
- **Migrants** are worse off than people living in their home countries. People living in the EU but in a different country from where they were born had a 34.4% risk of poverty or social exclusion in 2013.<sup>541</sup> The overall trend might be explained by the fact that migrants have suffered the most from rising unemployment in the EU.<sup>542</sup>
- **People with low educational** attainment are three times more likely to be at risk. In 2013, 34.8% of people with at most lower secondary educational attainment were at risk of poverty or social exclusion. By comparison, only 11.8% with tertiary education were in the same situation. This indicates that the least educated people were about three times more likely to be at risk than those with the highest education level.<sup>543</sup>

In addition, children and the homeless are also considered vulnerable groups<sup>544</sup>:

- **Children that grow up in poverty** are more likely to suffer from social exclusion and health problems in the future, and are also less likely to develop to their full potential later in life. Breaking the cycle of disadvantage in early years and investing in children through a preventative approach allows reducing the risk of poverty and social exclusion. This implies not just providing children with adequate living standards: it also means helping them live up to their full potential through an integrated approach bringing them the best educational and health outcomes.

The economic crisis has caused increased rates of poverty in Europe. This has a particularly negative impact on children. In 2011, 27.1% of children were at risk of poverty or social exclusion, compared to 24.2% of the total population.<sup>545</sup> 27.6 % of children aged less than 18 were at risk of poverty or social exclusion in 2013 and one out of five children and young people aged 18 to 24 were subject to monetary poverty.<sup>546</sup>

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<sup>540</sup> Commission-Eurostat (n 530) 142.

<sup>541</sup> Ibid 144.

<sup>542</sup> Commission, 'Social Europe — Current challenges and the way forward. Annual Report of the Social Protection Committee 2012' (Publications Office of the European Union 2013) 17.

<sup>543</sup> Commission-Eurostat (n 530) 144.

<sup>544</sup> According to European Commission in <<http://ec.europa.eu/social/main.jsp?catId=1044&langId=en>> last accessed in March 2015.

<sup>545</sup> Ibid.

<sup>546</sup> Commission (n 542) 12.

- **Homelessness** levels have risen recently in most parts of Europe. The crisis has obviously aggravated the situation. The profile of the homeless population has been changing and now includes more young people and children, migrants, Roma and other disadvantaged minorities, women and families are increasingly at-risk of homelessness. Beyond sleeping rough, homelessness may include situations of living in temporary, insecure or poor-quality housing.

Typical causes of homelessness are: unemployment and poverty; migration; ageing; health problems; relationship breakdowns; lack of affordable housing for rent and for sale; inadequate support for people leaving care facilities, hospitals, prisons or other public institutions. Homeless people may face reduced life expectancy, health problems, discrimination, isolation and barriers to access basic public services and benefits.<sup>547</sup>

Homelessness is perceived and tackled differently according to the country. ETHOS was developed through a review of existing definitions of homelessness and the realities of homelessness which service providers are faced with on a daily basis:

- rooflessness (without a shelter of any kind, sleeping rough)
- houselessness (with a place to sleep but temporary in institutions or shelter)
- living in insecure housing (threatened with severe exclusion due to insecure tenancies, eviction, domestic violence)
- living in inadequate housing (in caravans on illegal campsites, in unfit housing, in extreme overcrowding).

The ETHOS approach<sup>548</sup> confirms that homelessness is a process (rather than a static phenomenon) that affects many vulnerable households at different points in their lives.

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<sup>547</sup> Further information in <<http://ec.europa.eu/social/main.jsp?catId=1044&langId=en>> last accessed in March 2015.

<sup>548</sup> European Typology of Homelessness and housing exclusion (ETHOS) as a means of improving understanding and measurement of homelessness in Europe, and to provide a common 'language' for transnational exchanges on homelessness. This typology was launched in 2005 and is used for different purposes - as a framework for debate, for data collection purposes, for policy purposes, monitoring purposes, and in the media. It is important to note that this typology is an open exercise which makes abstraction of existing legal definitions in the EU member states. Further information available at <<http://www.feantsa.org/spip.php?article120&lang=en>> last accessed on 4 April 2015.



### 3. Implementing the EU's internal policy on the fight against poverty and social exclusion

The European Platform against Poverty and Social Exclusion was launched in 2010 and will remain active until 2020. It is based on five action areas: i) **delivering actions across the whole policy spectrum** (labour market, minimum income support, healthcare, education, housing and access to basic banking accounts, etc.); ii) **better use of EU funds to support** social inclusion (20% of the European Social Fund to be earmarked for fighting poverty and social exclusion); iii) **promoting** evidence of what does and does not work in **social policy innovations**; iv) **working in partnership with civil society** to more effectively support the implementation of social policy reforms; and v) **enhanced policy coordination among EU countries** has been established through the use of the open method of coordination for social protection and social inclusion (Social OMC)<sup>549</sup> and the Social Protection Committee<sup>550</sup> in particular.<sup>551</sup>

The European Platform against Poverty and Social Exclusion provides the basis for a joint commitment among national governments; EU Institutions and key stakeholders to fight poverty and social exclusion, focusing on the policy objectives set out in the Social Investment Package as well as the EU funds, in particular the European Social Fund.<sup>552</sup> Through its Social Investment Package, the Commission provides guidance to Member States to modernise their welfare systems towards social investment throughout life. The package complements: i) the Employment Package<sup>553</sup>, which sets out the way forward for a job rich recovery; ii) the White Paper on Pensions<sup>554</sup>, presenting a strategy for adequate, sustainable and safe pensions, and iii) the Youth Employment Package<sup>555</sup>, which deals specifically with the situation of young people.

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<sup>549</sup> The social OMC is a voluntary process for political cooperation based on agreeing common objectives and measuring progress towards these goals using common indicators. The process also involves close co-operation with stakeholders, including Social Partners and civil society. European Commission, 'A renewed commitment to social Europe: Reinforcing the Open Method of Coordination for Social Protection and Social Inclusion' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM (2008) 418 final.

<sup>550</sup> Council of European Union, 'Council Decision establishing the Social Protection Committee and repealing Decision 2004/689/EC' 2015/773/EU.

<sup>551</sup> Further information in <<http://ec.europa.eu/social/main.jsp?catId=961&langId=en>> last accessed in January 2015.

<sup>552</sup> Commission, 'Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2013) 83 final.

<sup>553</sup> Employment Package is a set of policy documents looking into how EU employment policies intersect with a number of other policy areas in support of smart, sustainable and inclusive growth. It identifies the EU's biggest job potential areas and the most effective ways for EU countries to create more jobs.

<sup>554</sup> Commission, 'White Paper. An Agenda for Adequate, Safe and Sustainable Pensions' COM(2012) 55 final.

<sup>555</sup> Youth Employment Package 'includes a proposed Recommendation to Member States on introducing the Youth Guarantee to ensure that all young people up to age 25 receive a quality offer of a job, continued education, an apprenticeship or a traineeship within four months of leaving formal education or becoming unemployed. The proposed recommendation urges Member States to establish strong partnerships with stakeholders, ensure early intervention by employment services and other partners supporting young people, take supportive measures to enable labour integration, make full use of the European Social Fund

Regarding **children**, the Social Investment Package<sup>556</sup> and the Recommendation ‘Investing in children: breaking the cycle of disadvantage’<sup>557</sup> stress the importance of early intervention and preventative approaches. They call on EU countries to i) support parents' access to the labour market and make sure that work 'pays' for them; ii) improve access to affordable early childhood education and care services; iii) provide adequate income support such as child and family benefits, which should be redistributive across income groups but avoid inactivity traps and stigmatisation; iv) step up access to quality services that are essential to children's outcomes – improve access to early childhood education and care including for children under 3, eliminate school segregation, enhance access to health, housing, social services; and v) support children's participation in extra-curricular activities and in services and decisions affecting children such as social services, education, alternative care. The Commission will **monitor and support the implementation** of the Recommendation and in particular: i) advise EU countries how best to use EU funds to invest in children, for example the new Fund for European Aid to the Most Deprived (FEAD)<sup>558</sup> or the European Social Fund; ii) collect and disseminate innovative practices through the European Platform for Investing in Children (EPIC); iii) test the effectiveness of conditional cash transfers and their impact on children through research financed by the PROGRESS programme;<sup>559</sup> and iv) discuss with EU countries how to improve EU-wide indicators related to children.<sup>560</sup>

Regarding **homelessness**, EU Member States have primary responsibility and competence to address it. The EU's Social Investment Package encourages them to i) adopt long-term, housing-led, integrated homelessness strategies at national, regional and local level; and ii) Introduce efficient policies to prevent evictions. According to the EU, effective homelessness strategies may cover: i) Prevention and early intervention; ii) Quality homelessness service delivery; iii) Rapid re-housing; and iv) Systematic data collection, monitoring and using shared definitions (ETHOS typology). The EU can support action by Member States, including funding from the European Social Fund (ESF), the European Regional Development Fund (ERDF) and the Fund for European Aid to the Most Deprived (FEAD). A set of EU policies such as social inclusion, regional development, migration, financial regulation, health and human rights policies help address the complex causes of homelessness. The Commission provides guidance on confronting homelessness<sup>561</sup> within the

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and other structural funds to that end, assess and continuously improve the Youth Guarantee schemes and implement the schemes rapidly,’ in Commission, ‘Youth employment: Commission proposes package of measures’, Brussels, 5 December 2012. Available at <[http://europa.eu/rapid/press-release\\_IP-12-1311\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1311_en.htm)> last accessed on 15 May 2015.

<sup>556</sup> Further information in <<http://ec.europa.eu/social/main.jsp?langId=en&catId=1044>>

<sup>557</sup> Commission, ‘Investing in children: breaking the cycle of disadvantage’ (Commission Recommendation of 20 February 2013) 2013/112/EU.

<sup>558</sup> FEAD supports EU countries' actions to provide material assistance to the most deprived. This includes food, clothing and other essential items for personal use, e.g. shoes, soap and shampoo.

<sup>559</sup> The PROGRESS programme (2007-2013) is a financial instrument supporting the development and coordination of EU policy in the following five areas: i) Employment; ii) Social inclusion and social protection; iii) Working conditions; iv) Anti-discrimination; and v) Gender equality.

<sup>560</sup> Further information in <<http://ec.europa.eu/social/main.jsp?langId=en&catId=1044>>

<sup>561</sup> European Commission, ‘Confronting Homelessness in the European Union. *Accompanying the document* Communication from the Commission to the European Parliament, the Council, the European Economic and

Social Investment Package. It explores trends in homelessness, good practices by Member States and core elements of integrated homelessness strategies, highlighting the supporting role of the EU.<sup>562</sup>

Despite these advances and efforts, The European Anti-Poverty Network Europe (EAPN) in its 'Assessment and Proposals for Country-Specific Recommendations 2015,'<sup>563</sup> urges the European Commission to 'listen more' and 'do better'.<sup>564</sup> They call for more nuanced and concrete measures, which can make a discernable impact on poverty in the short and medium term:

- Balance economic and social CSRs and review social impact of austerity.
- Require an integrated anti-poverty strategy ensuring access to quality jobs, service and social protection and an effective poverty target.
- Invest in universal social protection and ensure adequacy of minimum income.
- Promote quality and sustainable jobs with decent wages.
- Tackle long-term unemployment by promoting inclusive labour markets as part of integrated Active Inclusion approaches.
- Invest in social standards to ensure universal access to social and health services.
- Guarantee an affordable home for all.
- Invest in inclusive, comprehensive education, particularly for Roma.
- Tackle youth poverty and social exclusion, as well as youth unemployment.
- Promote gender equality, work-life balance and invest in children.
- Reduce inequality by promoting tax justice.
- Promote meaningful civil society engagement and ensure legitimacy.<sup>565</sup>

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Social Committee and the Committee of the Regions Towards Social Investment for Growth and Cohesion - including implementing the European Social Fund 2014-2020' (Commission Staff Working Document) SWD/2013/042 final.

<sup>562</sup> Ibid.

<sup>563</sup> EAPN, 'EAPN Assessment and Proposals for Country-Specific Recommendations 2015. Making progress on Europe 2020: Investing in People for a Fairer EU' (2015) <[http://www.taoiseach.gov.ie/eng/Work\\_of\\_the\\_Department/Economic\\_International\\_Northern\\_Ireland/Economic/NRP/EAPN\\_Assessment\\_and\\_Proposals\\_for\\_Country-Specific\\_Recommendations\\_2015.pdf](http://www.taoiseach.gov.ie/eng/Work_of_the_Department/Economic_International_Northern_Ireland/Economic/NRP/EAPN_Assessment_and_Proposals_for_Country-Specific_Recommendations_2015.pdf)> last accessed in June 2015 and EAPN, 'EAPN Assessment of the 2015 Country-Specific Recommendations' *Position Paper* (2015) <<http://www.eapn.eu/images/stories/docs/EAPN-position-papers-and-reports/2015-EAPN-CSR-2015-Assessment.pdf>> last accessed on 26 June 2015.

<sup>564</sup> See more at: <<http://www.socialplatform.org/news/european-anti-poverty-network-delay-in-the-europe-2020-strategy-mid-term-review-shows-european-commissions-low-priority-on-the-fighting-poverty-commitment-eapns-letter-to-president-juncker/#sthash.gaNyUdls.dpuf>> last accessed on 26 June 2015.

<sup>565</sup> EAPN (n 563) 37-41.

### C. Conclusions: assessment of consistency in the prioritisation of vulnerable groups and themes

In the introduction to this section, reference has been made to a series of tensions that emerge in the analysis of internal and external policies of the EU against poverty and social exclusion. An evaluation of the selected documents confirms some of the conclusions that have already been mentioned in this D12.2 in relation to these tensions.

- ✓ First, the approaches to the concept of vulnerability define two specific lines of action aimed, on the one hand, at 'protecting' and, on the other, at 'preventing', with a very limited and generic human rights-based approach.

On the one hand, there is an approach to the conceptualisation of vulnerability based on the idea of risk of marginalisation and/or disadvantages. In these cases, there is a clear identification of both groups and themes in these conditions of risk, all of which have been increased exponentially by the economic crisis. The issues of child poverty, homeless people or elder women are recurring themes, as well as the strengthening of programs that have been questioned, such as the reactivation of the Food Distribution Scheme for the most deprived. An increasing number of people are in need of it. In this case, the proposed approach is based on the idea of 'protection and security', as well as of 'early intervention' through the activation of programs motivated by a sense of altruism and belief in the principle of fairness, providing a higher level of social security through income security and access to essential services (in particular, health and education) throughout active and inactive periods and periods of need throughout the life-cycle.' The most affected are women, children, young people, people living in single-parent households, lower educated people and migrants. EU policies aimed at reducing the number of people at risk therefore tend to focus on these groups. They call on Member States to define and implement measures to address their specific circumstances.<sup>566</sup>

On the other hand, another idea put forward for discussion is about the consequences that the impact of the crisis might have on all European citizens, generating potential vulnerability conditions related mainly to social inclusion and the labour market. It is recognised that the special economic situation causes structural conditions of vulnerability. At this point, it is important to refer to those people whose situation deteriorated, creating a 'new form of poverty'. If before the outbreak of the crisis poverty was limited to people with little or no work history and to lonely people without any social or emotional network. Now, the crisis has pushed poverty to parts of the middle class and also of settled workers.

Millions of Europeans are still on the side-lines, both off the labour market and off social inclusion and integration. Their numbers are increasing, as 2011 statistics go to show. We see that many people, who once were in areas of social integration, are gradually moving towards areas of social exclusion. Unemployment and job insecurity have pushed them toward insolvency, since they often cannot pay their debts and in many cases lose their homes. Now,

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<sup>566</sup> COM(2010)2020 final.

job insecurity, unemployment and mortgage debts are enough to incur a risk of social exclusion and marginalisation. Thus, poverty and social exclusion do not only affect those who are economically inactive or unemployed. Some groups among those in work also face higher risks of being poor. The developments of income-related aspects of poverty and lack of access to labour are also interrelated with in-work poverty. Factors affecting in-work poverty rates include household type, type of contract, working time and hourly wages, among others. The proposed approach to address these issues is based on the idea of 'prevention' by activating initiatives aimed at the development of competencies to escape from poverty, or avoid falling into poverty, and better manage risks of marginalisation.

This focus on the implementation of internal policies to combat poverty and exclusion reveal an approach that seeks: i) to coordinate different strategies in a more coordinated and effective manner; ii) to address the policies through a complex and multidimensional vision; iii) to adopt customised protection measures more targeted at specific groups. The EU recognises that the measures do not produce good results because they are too general; iv) focusing more on the prevention network, than on social protection, addressing the problems at the root and recognising the structural nature of exclusion; and v) taking into account a far more complex analysis of the economic dimension of poverty and social exclusion, that does not only take into consideration income, but also the basic aspects of other economic dimensions of exclusion; providing, therefore, a more complete and elaborate view on poverty and social exclusion.

This contrasts with the approach to the treatment of vulnerability that is used in its external policies, as revealed in this D12.2. The references to human rights, while just as generic, are more constant and highlight the role of the EU as an actor that ensures their protection and compliance in third countries, even if from an approach that does not connect it with the idea of human rights and citizenship rights, as in the case of internal policies. However, both in the conceptualisation and prioritisation of groups and themes it is much more ambiguous and imprecise; yet notable for having a more demanding regulatory framework: in the context of the EU's internal policies on poverty, exclusion and vulnerable groups, the scope of policies is limited to those areas of the EU's power or competence, but in its external sphere of action, the EU is given a much stronger role with regard to the promotion of human rights in third countries and it uses its commercial leverage to exert influence on third country conduct by imposing human rights conditionality.

- ✓ Secondly, the tension between the aspiration to a 'universal access to social protection against major lifecycle risks' present in these policies to combat poverty and exclusion are better harmonised with the specific operationalisation strategies in the internal policies than in the external ones.

The EU annually develops specific recommendations for each of the member states, ensuring that the prioritisation of policies is neither general nor arbitrary. Importance has started to be given to the differences between countries; the aim to reduce poverty is not equally challenging

for all the countries and within countries, the population in a situation of poverty or at risk of poverty and exclusion is not evenly distributed. The recommendations for each member state in 2015 stress the need to consider whether an even greater emphasis on this differentiation is possible.

The EU is based on the principle of subsidiarity, recognising that social policies fall primarily within the competence of the Member States, while the EU supports and complements the activities they undertake. The Social Investment Package aims at reorienting Member States' policies towards social investment where needed, with a view to ensuring the adequacy and sustainability of social systems while linking these efforts to the best use made of the EU funds, notably the ESF. The Commission calls on Member States to pursue the actions and directions set out in this Package along the following three main axes:

- i) Strengthening social investment, particularly on policies such as (child)care, education, training, active labour market policies, housing support, rehabilitation and health services, strengthening the involvement of relevant stakeholders at all levels, most notably social partners and civil society organisations, in the modernisation of social policy as part of the Europe 2020 Strategy;
  - ii) Making the best use of EU funds to support social investment, exploring innovative approaches to financing and financial engineering, drawing lessons from experiences such as those on Social Investment Bonds, microfinance and support to social enterprises.
  - iii) Streamlining governance and reporting, with a better connection to existing processes such as the open method of coordination and enhanced reporting on the performance of the social systems of Member States. The Commission will further strengthen guidance and monitoring instruments, taking into account the existing macroeconomic, fiscal and employment governance tools, with a view to limiting and addressing divergences related to social policies. Benchmarking and performance monitoring will be part of this exercise, building on the Social Protection Performance Monitor.<sup>567</sup>
- ✓ Thirdly, the internal policies related to poverty, and most notably social exclusion, are also about discrimination. On this, the Council should urgently adopt the directive on implementing the principle of the equal treatment of individuals and ask the Commission to close gaps in the existing anti-discrimination legislation. This is a very significant advance that is gradually appearing in the external EU policies related to human rights and vulnerability.
- ✓ Fourthly, there is a clear orientation towards themes related to vulnerability. Migrations are taking a more prominent role on the European agenda. The flagship initiative 'A European platform against poverty' focuses on migrant integration and incorporates policies to help integrate the most vulnerable groups of the population. It aims to provide innovative

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<sup>567</sup> Council Document 13723/12: 'The Social Protection Performance Monitor depicts statistically significant annual deviations ('social trends to watch') in key indicators agreed as part of a dashboard of social protection indicators and triggers thematic surveillance on social trends to watch.'

education, training and employment opportunities for deprived communities, fight discrimination and develop a new agenda to help migrants integrate and take full advantage of their potential. To underpin this, the initiative asks Member States to define and implement measures, addressing the specific circumstances of groups at particular risk, such as minorities and migrants.<sup>568</sup>

- ✓ Finally, it is also necessary to note some limitations that, as lessons learned, can be concluded from these five years of internal policies to combat poverty and exclusion that could at least be taken into account when making some recommendations on vulnerable groups.
- i) The focus of internal policies shifts from a comprehensive, inclusive and multidimensional approach to exclusion, to a more specific and exclusive approach, precisely because the recognition and significance of some groups, disregards other groups. Children, young people, primarily women (the majority group, compared to men, responsible for a single-parent families), dependent persons, the Roma population, people with disabilities, unemployed young people, are among vulnerable population groups specifically considered by the Commission to be particularly exposed to the risk of poverty, or to extreme forms of deprivation, vulnerability or undeserved inequalities.
  - ii) The suggested model for these groups does not propose processes but measures: it emphasises the priority to address gaps, limitations and weaknesses of these groups; to allocate resources to meet needs, because they lack the means to achieve them, etc. In this perspective, the danger exists of developing a model based on a clear outline of stigmatisation, a hierarchical model, in which the expert has the solution and the excluded person has the problem.
  - iii) It is a strategy strongly focused on active policies for access to employment, to the detriment of measures for the effective development of active inclusion policies: appropriate minimum incomes, access to services, adequate social protection, personalised support in access to employment, etc.
  - iv) After five years, there are no major advances other than those already made with regard to coordination and cooperation of policies of social inclusion and protection and there is some uncertainty about the reaction of the Member States to the objectives and recommendations that were presented to them for the development of the challenges listed in the Europe 2020 Strategy.
  - v) There are also other elements that reveal the structural weaknesses of Europe 2020 objectives. The real context of European society reflects the image of clear and

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<sup>568</sup> COM(2010)2020 final.

concrete dynamics that are very defensive at economic and social level, and very offensive in the area of individual rights. The measures proposed by the Commission, seen as a whole, point to the possible risk that the countries might focus their efforts on supporting people who have more possibilities, capabilities or resources to escape from their situation of poverty and exclusion, to the detriment of the weakest and most vulnerable groups.



## IX. General conclusions: assessment of the coherence of the EU's human rights prioritisation across EU policies

### A. The EU's understanding of 'vulnerability' and 'vulnerable groups'

This report has shown that 'vulnerability' has multiple meanings and usages within the analysed EU's external policies, i.e. development, trade, CSDP, the external dimension of AFSJ and ENP. The EU has not defined 'vulnerability' nor has developed a framework to identify who are vulnerable in the context of each policy. The meaning of vulnerability can be only determined within the specific context of each policy. Moreover, when the policy comprises different areas, such as the case of AFSJ, the meaning has to be searched in each of the different sub-policy domains (migration, THB and terrorism). One example of the need to contextualise the meaning of vulnerability is the Handbook for Trade Sustainability Impact Assessment which explicitly sets out that the 'concept of "vulnerability" will depend on the specific context in which the trade agreement would be implemented.' In addition, as will be explained, the EU's approach in each of the policies analysed is not always straightforward.

Vulnerability appears also connected to other concepts such as discrimination, marginalization, victimization, exclusion or protection. The boundaries between these concepts are not always clear when the documents are analysed. In some cases it seems that the EU uses these terms interchangeably. References to 'vulnerable groups', 'marginalised groups' or 'excluded groups' are frequently found across the documents within the same paragraph or context. In other cases, certain terms, such as discrimination and protection, appear as central notions to the EU's understanding of vulnerability. Finally, sometimes the term is treated almost in equal terms than vulnerability. This is the case of 'victimization' in the AFSJ.

As was mentioned before, the EU has not defined 'vulnerability or 'vulnerable group.' In some policies, such as the AFSJ and ENP, we can find definitions of notions related to vulnerability. In this regard, in the field of THB the EU defines 'position of vulnerability.' The lack of definition in the internal sphere contrasts sharply with the specificity of the EU when it defines vulnerable groups in the internal fields of employment and social exclusion. Both the Platform against Poverty and Social Exclusion and the Agenda for New Skills and Jobs provide a definition of vulnerable groups. In addition, in the internal sphere the EU prioritizes also within the 'most vulnerable', for example in the field of employment where it identifies who are the most vulnerable groups (young and older workers, migrants and some groups of women). Moreover, there is a clear understanding and specific indicators of who are 'at risk of poverty or social exclusion' (women, young people aged 18 to 24, single parents, migrants, people with low education).

In connection with the external sphere, the analysis shows that the EU's methodology consists in listing specific groups, factors or causes. In this regard, two main approaches to vulnerability have been identified in EU's documents: a 'vulnerable groups approach', where the document does not define vulnerability but simply lists the groups that are considered vulnerable in the specific context

addressed by the document; and a ‘factors approach’ where the documents rather than listing groups explain the factors which render certain people vulnerable. Many examples of these approaches can be found along the documents analysed. For example, ‘vulnerable migrants’ in the context of the GAMM are unaccompanied minors, asylum seekers, stateless persons and victims of trafficking; and the vulnerable groups listed by the EU for the purposes of assessing the human rights impact of trade measures are women, low-income groups, children, people with disabilities, ethnic minorities, indigenous peoples and those living in a particular territory. One example of the ‘factors approach’ can be found in the EU-UNICEF Child Rights Toolkit which lists the main vulnerabilities affecting children in the context of EU’s external relations and development cooperation, namely, age, dependency, overlapping forms of discrimination, including poverty, gender inequalities, disabilities and belonging to minority of disadvantaged groups.

In addition, the report has identified certain tensions arising from the EU’s conception and usages of vulnerability and vulnerable groups:

- Universality of human rights vs. the need to prioritise the rights of certain groups. On the one hand, the EU is a strong advocate of the universality and indivisibility of human rights. According to the Strategic Framework: the EU ‘is determined to strengthen its efforts to ensure that human rights are realised for all’ and ‘reaffirms its commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural.’ On the other hand, vulnerable groups have also served as a mechanism which serves the purpose of ensuring resource efficiency in some fields of external action. Competing meanings and ‘operationalisation’ of vulnerable groups are, thus, fraught with problems.
- Internal sphere vs. external: vulnerability language in the internal sphere is much more concrete, specific and centred on practical objectives. On the contrary, the rhetoric of ‘vulnerability’ turns into abstract and vague statements in the external sphere. This tension between the internal and external spheres is evident in some policy areas such as AFSJ and the internal policy on social inclusion and fight against exclusion.
- The tension between the risks of the use of the concept of vulnerability or vulnerable groups and its potentialities: there is a risk of stigmatization behind the usage by the EU of the term vulnerable. When the EU identifies some groups as inherently ‘vulnerable’, this creates the impression that the rest of the people are ‘invulnerable’. However, the term also has potentialities, because it contributes to direct the attention of law and policy-makers to where it is most necessary.
- The different agendas existent within different actors (Council, Commission and EP): each of these agendas shows different focus and priorities, with varying degrees of convergence or divergence in different issues.

## **B. The weight of human rights priorities in the different policies and along the different steps of the policy cycle**

Protection of vulnerable groups and human rights themes features as one of the main goals of certain external policies, such as CSDP and development. However, although the EU has to mainstream human rights into all its policies ‘without exception,’ there are other policies where the human rights component is much less visible, such as trade and ENP. In the case of trade, for example, the lack of a clear public strategy regarding how the EU will mainstream human rights into this policy, might difficult the consideration of the rights of vulnerable groups in trade-related initiatives. In ENP there is also a lack of common strategy or criteria for the identification and protection of vulnerable groups and human rights themes.

In almost all the policies the analysis has also identified a clear predominance of the references to vulnerable groups in comparison with the references to the human rights themes. One exception is the ENP, where the emphasis is placed on the themes. In addition, there is also a clear predominance of some vulnerable groups within the documents. In this regard, the predominance of the EU’s concern towards women and children, is evident in all the external policies. Indeed, in some policy areas, such as development, targeted policies on these groups have been developed. Regarding women, the link between ‘vulnerability or vulnerable groups’ and women is not always clear. Some documents include women within ‘vulnerable groups.’ However, other documents seem to consider gender mainstreaming and women’s rights as separate issues requiring special measures and attention. In this regard, there are many references in the documents to ‘women *and* people in vulnerable situations’ (emphasis added) or separate sections which specifically deal with the protection of women’s rights, the empowerment of women or gender equality.

On the contrary, the protection of other vulnerable groups whose rights could be directly influenced by the policies concerned is recognised to a far lesser extent. This is the case, for example, of minorities and forced migrants within the CSDP, or disabled people and forced migrants within the development policy, although these groups are equally exposed to vulnerability in those spheres.

In addition, in some policies such as development and CSDP, a ‘phenomenon of dilution’ of the human rights components has been observed as the policy cycle moves from formulation to implementation. The clarity of the human rights discourse present in the formulation phase becomes blurred when the policies are implemented. An example of this phenomenon can be found in the context of the EU’s development policy, where some of the cross-cutting issues mentioned by the strategic documents, such as the protection of the rights of migrants and indigenous peoples, do not deserve the same attention in some of the implementation instruments such as the Development Cooperation Instrument.

## **C. Areas for future development**

The debate and criticisms on the concept of ‘vulnerable groups’ has caused the Commission and the HR/VP to drop the term from the proposal for a new Action Plan on Human Rights and Democracy (2015-2019) which made no reference to ‘vulnerability’ or ‘vulnerable groups’. In the

final text of the new Action Plan, the only reference to vulnerability that can be found relates to the protection of 'vulnerable migrants' among which the new Action Plan includes 'unaccompanied minors.' Notwithstanding this reference, it seems that the new Action Plan prefers the expressions 'fight against discrimination' or inclusion of 'marginalised groups.' The question to be considered is how the EU is going to mainstream the principle of non-discrimination across the different policies under research here. In the case of the EU's development policy it appears that the tool likely to be used by the EU is a rights based approach to development but the question remains regarding the rest of the policies. Another issue to be clarified is the level of commitment of the EU towards this principle to the extent that the statements included in the expositive part of the Action Plan 'combatting and fighting discrimination' seem to become diluted when it comes to establishing concrete Actions. In this sense the table of actions mentions to merely 'cultivate an environment of non-discrimination' as the objective to be pursued. The new Action Plan also includes other terms such as 'Promoting gender equality, women's rights, empowerment and participation of women and girls' and 'upholding children's rights'. Under these umbrella terms, the document does mention specific groups of rights holders: women and girls; LGBTI; indigenous peoples; minorities, persons with disabilities; older persons, and children. Different types of migrants are also mentioned under other actions in the Action Plan.

Another issue where is room for improvement is the lack of consideration by the EU of the root causes of vulnerability. Human rights violations at the root of vulnerability have met with no specific analysis and responses. References to human rights are very often generic and mostly discontinued. It is still too soon to see whether the proposed new Action Plan and the EP considerations will find a way into effective implementation. In some cases, such as AFSJ and development cooperation, the documents enumerate 'root causes' but they are not necessarily mainstreamed to the concrete policy fields. In addition, what constitutes root causes is commonly left undetermined or not taken into account in prevention measures, particularly those that should be adopted as part of external policies.

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## ANNEX I. Development policy and human rights priorities. Main documents analysed

VULNERABLE GROUPS AND PRIORITY THEMES IN EU'S DEVELOPMENT POLICY	
LITERAL REFERENCES TO HUMAN RIGHTS PRIORITIES	<p><b>1. GENERAL POLICY FORMULATION DOCUMENTS</b></p> <p><b>European Consensus on Development<sup>569</sup> (24 February 2006)</b></p> <p>'The primary and overarching objective of EU development cooperation is the <i>eradication of poverty</i> in the context of sustainable development.' (para 5).</p> <p>'[...] sustainable development includes <i>good governance</i>, human rights and <i>political, economic, social and environmental aspects</i>.' (para 7).</p> <p>'Development aid will continue to support <i>poor people</i> in all developing countries, including both low-income and middle-income countries (MICs). (para 10).</p> <p>'Poverty includes all the areas in which people of either gender are deprived and perceived as incapacitated in different societies and local contexts. The core dimensions of poverty include <i>economic, human, political, socio-cultural and protective capabilities</i>. Poverty relates to human capabilities such as consumption and food security, <i>health, education, rights, the ability to be heard, human security especially for the poor, dignity and decent work</i>. Therefore combating poverty will only be successful if equal importance is given to investing in people (first and foremost in health and education and HIV/AIDS, the protection of natural resources [...] to secure rural livelihoods, and investing in wealth creation (with emphasis on issues such as [...] <i>job creation, access to credits, property rights</i> [...]). The <i>empowerment of women</i> is the key to all development and gender equality should be a core part of all policy strategies.' (para 11).</p> <p>'EU partnership and dialogue with third countries will promote common values of: respect for human rights, fundamental freedoms, peace, democracy, <i>good governance, gender equality, the rule of law, solidarity and justice</i>.' (para. 13).</p> <p>[...] the EU will include a strong <i>gender component</i> in all its policies and practices in its relations with developing countries. (para. 19).</p>

<sup>569</sup> Joint Statement by the Council and the representatives of the governments of the Member States meeting with the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' [2006] C46/01 ('European Consensus on Development').



	<p>‘Developing countries are particularly <i>vulnerable to</i> natural disasters, climatic change, environmental degradation and external economic shocks.’ (para. 22).</p> <p>‘Developing countries should decide and reform trade policy in line with their broader national development plans. We will provide additional assistance to help poor countries build the capacity to trade. Particular attention will be paid to the <i>least advanced and most vulnerable countries</i>.’ (para 36).</p> <p>‘The EU will contribute to strengthening the social dimension of globalisation, promoting <i>employment and decent work</i> for all. We will strive to make <i>migration</i> a positive factor for development, through the promotion of concrete measures aimed at reinforcing their contribution to poverty reduction, including facilitating remittances and limiting the 'brain drain' of qualified people. [...]’ (para 38)</p> <p>‘[...] Without peace and security development and <i>poverty eradication</i> are not possible, and without development and poverty eradication no sustainable peace will occur. Development is also the most effective long term response to forced and illegal <i>migration</i> and trafficking of human beings.’ (para 40)</p> <p>‘[...] ‘Many MICs (middle income countries) have an important role in political, security and trade issues, producing and protecting global public goods and acting as regional anchors. But they are also <i>vulnerable to</i> internal and external shocks, or are recovering, or suffering, from conflicts.’ (para 61).</p> <p>‘The Community will continue to work to improve food security at international, regional and national level. It will support strategic approaches in <i>countries affected by chronic vulnerability</i>.’ (para 84).</p> <p>‘The Community <i>human development policy framework for health, education, culture and gender equality</i> aims at improving peoples' lives [...]’ (para 93).</p> <p>‘In the context of poverty eradication, the Community aims to prevent social exclusion and to combat discrimination against all groups. It will promote social dialogue and protection, in particular to address <i>gender inequality</i>, the <i>rights of indigenous peoples and to protect children</i> from human trafficking, armed conflict, the worst forms of child labour and discrimination and the condition of <i>disabled people</i>.’ (para 97).</p> <p>‘[...] Priority actions will include support for <i>social security</i> and fiscal reforms, <i>corporate social responsibility</i>, <i>pro-poor</i> growth and <i>employment</i>.’ (para 98).</p> <p>‘In all activities, the Community will apply a strengthened approach to mainstreaming the following cross-cutting issues: the promotion of human rights, <i>gender equality</i>, <i>democracy</i>, <i>good governance</i>, <i>children's rights and indigenous peoples</i>, environmental sustainability and combating HIV/AIDS. [...]’ (para 101).</p>
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	<p>‘Democracy, Good Governance, Human rights and the rights of children will be promoted in partnership with all countries receiving Community development assistance. [...]. The key principle for safeguarding <i>indigenous peoples rights</i> in development cooperation is to ensure their full participation and the free and prior informed consent of the communities concerned.’ (para. 103).</p> <p>‘[...] urgent attention will be given to <i>commitments and actions on migration</i>. In this respect, the Commission will aim to include <i>migration and refugee issues</i> in country and regional strategies and partnerships with interested countries and to promote the synergies between migration and development, to make migration a positive force for development. It will support developing countries in their policies of management of migratory flows, as well as in their efforts to combat human trafficking, in order to make sure that the human <i>rights of the migrants</i> are respected. (para. 110).</p> <p>‘Debt reduction, which is comparable to indirect budget support, with low transaction costs and a tendency to promote coordination and harmonisation between donors, could where necessary and appropriate help countries to reduce their vulnerability to external shocks.’ (para. 117).</p> <p><b>Communication from the Commission - an Agenda for Change (13 October 2011)<sup>570</sup></b></p> <ol style="list-style-type: none"> <li>1. REDUCING POVERTY IN A RAPIDLY CHANGING WORLD. The EU has already done much to help reduce poverty and in particular to support the achievement of the MDGs. Yet severe poverty persists in many parts of the world. A series of global shocks has left many developing <i>countries vulnerable</i> (p. 3).</li> <li>2. HUMAN RIGHTS, DEMOCRACY AND OTHER KEY ELEMENTS OF GOOD GOVERNANCE. ‘<i>Good governance</i>, in its political, economic, social and environmental terms, is vital for inclusive and sustainable development.’ (p. 5)</li> <li>3. DIFFERENTIATED DEVELOPMENT PARTNERSHIPS: ‘[...] vulnerability and fragility indicators’ (p. 9)</li> </ol> <p><b>Council conclusions - An Agenda for Change (14 May 2012)<sup>571</sup></b></p> <p>‘The global landscape has dramatically changed over the last decade. Differences between developing countries have increased. Emerging countries’ growth has become an essential part of global growth. Several countries have become donors in their own right and key partners concerning global public goods. Further, some Least Developed Countries (LDCs) have recently seen high growth rates, while others are facing increasing fragility. While the 2015 target date for achieving the Millennium Development Goals (MDGs) is close, some of the MDGs remain off-track and <i>severe poverty</i></p>
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<sup>570</sup> Commission, ‘Increasing the impact of EU Development Policy: an Agenda for Change’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2011) 637 final. (‘Communication from the Commission - an Agenda for Change’)

<sup>571</sup> Council of the European Union, ‘Increasing the impact of EU Development Policy: an Agenda for Change – Council Conclusions’ 9369/12. (‘Council Conclusions – An Agenda for Change’)

	<p><i>and hunger</i> persist in some regions and countries, especially in Sub-Saharan Africa and the LDCs. Also, many countries remain highly <i>vulnerable to shocks and crises</i>.’ (para. 1)</p> <p>‘[...] European citizens must be shown, now more than ever, that EU development cooperation delivers clear results and impact on the ground and achieves greater effectiveness and better accountability for public spending; it also helps advance <i>human rights, democracy, the rule of law and good governance</i>.’ (para. 2)</p> <p>‘Support to partners will be adapted to their development situation and commitment and progress with regard to <i>human rights, democracy, the rule of law and good governance</i>.’ (para. 5)</p> <p>‘EU support to governance should feature more prominently in all partnerships. This calls for a rights-based approach, promoting in particular the <i>right to universal and non-discriminatory access to basic services, participation in democratic political processes, transparency and accountability, justice and the rule of law</i>, and with a focus on <i>poor and vulnerable groups</i>. The EU and its Member States will support and promote an enabling environment for an independent, pluralistic and active <i>civil society</i> in partner countries, building on the Structured Dialogue. [...]. Successful development cooperation also requires significant progress on <i>gender equality, empowerment and opportunities for women</i>, including through political and policy dialogue, gender mainstreaming in policies and programmes, and specific actions. Further, the rights of, and opportunities for, <i>young people and children</i> should be promoted as it is critical for societies to offer a future to the young.’ (para. 7)</p> <p>‘As for inclusive and sustainable growth, support for inclusiveness will be focused primarily on <i>social protection, health and education</i>. Support to <i>social inclusion and human development</i> will continue through at least 20% of EU aid. Furthermore, the EU will strengthen those sectors that have a strong multiplier effect in developing countries, notably sustainable agriculture and energy, including natural resources management. In this context, giving <i>poor people</i> better access to resources such as <i>land, forests, food, water and energy</i> without harming the environment will be given special emphasis. [...]’.(para 8)</p> <p>‘The private sector and trade development are important drivers for development. An enabling business environment and more effective ways of leveraging private sector participation and resources in partner countries as well as increased regional integration, aid for trade and research and innovation will be key to the development of a competitive private sector. This has to go along with <i>promoting labour rights, decent work and corporate social responsibility</i>’ (para. 9)</p> <p>‘In future, the scope of the partnership and the corresponding resource allocation will be determined on the basis of: i) country needs (including economic and social trends, as well as <i>vulnerability and fragility</i>), ii) capacity, iii) country commitments and performance and iv) potential impact. This will allow the EU to adapt its support (the mix and level of aid) to the country’s situation and progress in its commitment to and record on <i>human rights, democracy and the rule of law, ability to conduct reforms and to meet the demands and needs of its people</i>. This differentiation should lead to a</p>
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	<p>more effective policy mix, appropriate aid levels, as well as efficient aid arrangements and the use of new and existing financial tools.’ (para 18)</p> <p>‘The Council reaffirms its commitment to improve Policy Coherence for Development (PCD) at all levels. [...] In the immediate future, PCD work will focus on trade and finance, climate change, <i>food security, migration</i> and security. Supporting knowledge sharing, including on the development impacts of other policies, strengthening country-level dialogue, improving evidence-based PCD and engaging local <i>civil society</i>, stakeholders and governments will be key.’ (para. 22)</p> <p>‘Concerning the <i>development-migration nexus</i>, the EU should assist developing countries in strengthening their policies, capacities and activities in the area of migration, mobility and <i>employment</i>, with a view to maximising the development impact of the increased regional and global mobility of people.’ (para. 23)</p> <p><b>Strategic Framework on Human Rights And Democracy (25 June 2012)</b><sup>572</sup>: ‘The EU will intensify its efforts to promote economic, social and cultural rights; the EU will strengthen its efforts to ensure <i>universal and non-discriminatory access to basic services</i>, with a particular focus on <i>poor and vulnerable groups</i>.’</p> <p><b>Action Plan on Human Rights and Democracy (25 June 2012)</b><sup>573</sup>  <i>Enjoyment of human rights by persons with disabilities</i>: Promote the rights of persons with disabilities, <i>including in development programmes</i>, in the framework of the European Disability Strategy 2010-2020 and implementation of the UN Convention on the Rights of Persons with Disabilities. Action 30 a)</p> <p>Update the <i>Guidance Note on Disability and Development</i> to be in line with the UN Convention on the Rights of Person with Disabilities. Action 30 b).</p> <p><b>Communication from the Commission ‘The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations’ (12 September 2012)</b><sup>574</sup></p> <p>[...]. CSOs stand out thanks to their capacity to reach out to, empower, represent and defend <i>vulnerable and socially excluded groups</i>,[...] (p. 3-4)</p> <p>[...].CSOs can also help mobilise local resources and social capital, share information and bring <i>marginalised groups</i> into play, thus helping improve local governance and territorial cohesion. (p.7)</p>
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<sup>572</sup> Council of the European Union, ‘Human Rights and Democracy: EU Strategic Framework and EU Action Plan. Annex II.’ 11855/12.

<sup>573</sup> Council of the European Union, ‘Human Rights and Democracy: EU Strategic Framework and EU Action Plan. Annex III.’ 11855/12.

<sup>574</sup> Commission, ‘The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2012) 492 final.

	<p><i>Poor governance</i> constrains development. The ability to hold those who govern to account is crucial for better governance. In democratic systems it is the prime responsibility of parliaments to hold governments to account; CSOs can also play a role in boosting domestic accountability at local and national levels through a free, clear, accessible flow of information. They can contribute to nurturing respect for the <i>rule of law</i> by monitoring effective implementation of laws and policies and they can initiate and support <i>anti-corruption efforts</i>. (p. 8)</p> <p>Ensuring effective provision of <i>social services</i> - including health, education and social protection - is the responsibility of governments, [...]. CSOs play an important role in service delivery, complementing local and national government provision and piloting innovative projects. Their capacity to identify needs, address neglected issues and human rights concerns, and mainstream services to <i>populations that are socially excluded or out of reach</i> is particularly important. (p.8)</p> <p>The EU has long supported the ‘social economy’, which focuses on achieving social impact rather than profit only. Associations of cooperatives, foundations and NGOs are particularly active in promoting entrepreneurship and job creations by mobilising grassroots communities, delivering services and stimulating income generating activities for the <i>poor and marginalised</i>. (p. 9)</p> <p>Associations of cooperatives, foundations and NGOs are particularly active in promoting entrepreneurship and job creations by mobilizing grassroots communities, delivering services and stimulating income generating activities for <i>the poor and marginalised</i>. (p. 9)</p> <p>The EU will also support innovative schemes to extend access to financial services to those who are excluded from traditional banking systems, particularly <i>women</i>. (p. 9)</p> <p>Attention will also be given to CSOs work to promote and monitor <i>corporate social responsibility, ethical and sustainable business models</i> and the <i>decent work agenda</i>, public private partnerships, fair trade, and actions aimed at <i>equitable access to natural resources and land</i>. (p. 10)</p> <p><b>Council conclusions on a Rights-based Approach to Development Cooperation (19 May 2014)</b><sup>575</sup></p> <p>The Council reaffirms the EU’s commitment to promote all human rights, whether <i>civil and political, or economic, social and cultural</i>, in all areas of its external action without exception, in line with the EU Strategic Framework and Action Plan on Human Rights and Democracy and the Council Conclusions on Democracy Support in the EU’s External Relations. (p.1).</p> <p>The Council notes that the implementation of a rights-based approach to development cooperation should be based on the universality and indivisibility of human rights and the principles of inclusion and participation in decision-making</p>
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<sup>575</sup> Council of the European Union, ‘Council conclusions on a rights-based approach to development cooperation, encompassing all human rights’ [2014]. (‘Council conclusions on a Rights-based Approach to Development Cooperation.’).

	<p>processes; non-discrimination, equality and equity; transparency and accountability. The application of these principles should be central to EU development cooperation, thereby also ensuring the empowerment of the <i>poorest and most vulnerable</i>, in particular of <i>women and girls</i>, which in turn contributes to poverty reduction efforts. (p. 2)</p> <p>The Council notes that the implementation of a rights-based approach to development cooperation, supported by the aforementioned Toolbox, requires a context-specific assessment of the human rights situation [...]. This assessment should include a <i>gender analysis</i> and inform the entire project cycle. (p.2)</p> <p>The Council acknowledges the fundamental <i>role of civil society</i> in promoting human rights, notably through their contribution to the empowerment of rights-holders, awareness-raising and fostering accountability and transparency. The Council stresses the need for continued EU support for <i>human rights defenders</i>, capacity-building of local civil society organisations and promoting a safe and enabling environment in both law and practice that maximises their contribution to development. (P.2)</p> <p>[...] the Council underlines that investment and business activities in partner countries should respect human rights and adhere to the principles of corporate social and environmental responsibility and accountability. [...] In line with the aforementioned Strategic Framework, the EU will continue to encourage and contribute to the implementation of <i>the UN Guiding Principles on Business and Human Rights</i>. (p.3)</p> <p><b>1.1. Policy Coherence for Development (PCD)</b></p> <p><b>Communication from the Commission - Policy Coherence for Development (15 September 2009)<sup>576</sup></b></p> <p>The post-2012 negotiation under the United Nations Framework Convention on Climate Change, during 2009, is a critical milestone in combating Climate Change and the promotion of synergies with development cooperation, through instruments addressing <i>vulnerabilities</i> and adaptation to climate change, [...]. For example, through (iv) to develop a shared vision with the <i>most vulnerable developing countries</i>, highlighting necessary coherence of our actions in the field of climate change, energy and development. (p. 8-9)</p> <p><b>Council conclusions on Policy Coherence for Development (17 November 2009)<sup>577</sup></b></p> <p>Introduction. The Council recalls its May 2009 Conclusions on ‘Supporting developing countries coping with the global economic and financial crisis’, which underlined the importance of PCD and the need to ensure that the</p>
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<sup>576</sup> Commission, ‘Policy Coherence for Development. Establishing the policy framework for a whole-of-the-Union approach’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2009) 458 final. (‘Communication from the Commission - Policy Coherence for Development’).

<sup>577</sup> Council of the European Union, ‘Council conclusions on Policy Coherence for Development (PCD)’ [2009].

	<p>measures to tackle the crisis take full account of their impact on developing countries, especially <i>the poorest and most vulnerable</i>.</p> <p>II. Addressing climate change. Participation of developing countries, in particular Least Developed Countries (LDCs) and other <i>poor climate vulnerable countries</i>, in the carbon market.</p> <p><b>Council conclusions on Policy Coherence for Development (12 December 2013)</b><sup>578</sup> The Council reiterates its decision to focus in the immediate future on five PCD challenges: trade and finance, climate change, food security, <i>migration</i> and security. (para. 9)</p> <p><b>1.2. The EU and the MDG and post-2015 agenda</b> <b>UN Millennium Declaration (8 September 2000)</b><sup>579</sup> (According to Art 208.2 of the TFEU the EU shall comply with the commitments and take account of the objectives approved in the UN)</p> <p>One of the ‘values and principles’ enshrined in the Declaration (Part I) is the ‘collective responsibility to uphold the principles of human dignity, equality and equity’ before the entire world’s people, ‘especially the most vulnerable and, in particular, the children of the world [...]’</p> <p>Part V. Human rights, democracy and good governance: there is a commitment to ‘strengthen the capacity of the countries to implement the principles and practices of democracy and respect for human rights, including minority rights’. Also to combat violence against women and to implement the CEAFDW and to ensure human rights of migrants, migrant workers and their families.</p> <p>Part VI. Protecting the vulnerable. This mention is framed in the context of humanitarian emergencies (children and all civilian populations that suffer disproportionately the consequences of natural disasters, genocide, armed conflicts and other humanitarian emergencies).</p> <p><b>Communication from the Commission ‘A decent life for all: ending poverty and giving the world a sustainable future’ (27 February 2013)</b><sup>580</sup></p>
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<sup>578</sup> Council of the European Union, ‘Council conclusions on Policy Coherence for Development (PCD)’ [2013].

<sup>579</sup> General Assembly, ‘United Nations Millennium Declaration’ (Resolution) A/res/55/2 (‘UN Millennium Declaration’).

<sup>580</sup> Commission, ‘A decent life for all: ending poverty and giving the world a sustainable future’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2013) 92 final.

	<p>2. New Global Context, New Challenges, New Opportunities: (...) Violence (violent conflict) destroys lives and livelihoods and often affects women and people in vulnerable situations, such as children and people with disabilities. (...)</p> <p>These countries (poorer countries) are also often particularly dependent on natural resources, in particular for sectors such as agriculture, forestry, energy and tourism, which aggravates their vulnerability to degradation and depletion.</p> <p>4. Integrating sustainable development and poverty in a post 2015 overarching framework . 4.1.3. Sustainable management of natural resources: 70% of the world's poor live in rural areas and depend directly on biodiversity and eco-system services for their survival and well-being, making them more vulnerable to scarcity and climate risks.</p> <p>ANNEX I. Main current and forthcoming actions in the EU and internationally that contribute to the implementation of Rio+20</p> <p>AREA: Social protection, social inclusion and eradicating poverty/INTERNATIONAL: 2010-2020 Mainstreaming of the rights of the child and indigenous peoples' rights, social inclusion and the rights of persons with disabilities in EU development policies. / Implement the UN Convention on the Rights of Persons with Disabilities          AREA: GENDER EQUALITY AND women's empowerment (hay acciones para EU y para INTERNATIONAL)</p> <p><b>Council conclusions 'The overarching Post 2015 Agenda' (25 June 2013)<sup>581</sup></b>          The world has undergone enormous change in recent years, and is facing numerous interrelated global challenges; foremost are the eradication of poverty and achievement of sustainable development in all its three dimensions. [...] (para. 1)</p> <p>The post 2015 Agenda should be 'developed and implemented in close partnership with all stakeholders, including the private sector, in a way that ensures that the voices of the <i>poorest and the most vulnerable</i> are heard and that their needs are prioritised.' (para. 16(h)).</p> <p><b>Communication from the Commission 'A decent life for all: from vision to collective action (2 June 2014)<sup>582</sup></b></p>
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<sup>581</sup> Council of the European Union, 'The Overarching Post 2015 Agenda – Council conclusions' [2013].

<sup>582</sup> Commission, 'A decent Life for all. From vision to collective action.' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2014) 335 final.



	<p>(...) the EU stands ready to engage with its partners on the concrete implications and application of universality and differentiation for all countries for the full scope of the framework, keeping in mind the importance of not leaving behind least developed countries and other vulnerable countries.</p> <p>Potential targets and priority areas</p> <p><u>Poverty</u>: Potential target topics could be:</p> <ul style="list-style-type: none"> <li>• Reduce the proportion of people vulnerable to extreme poverty and living on less than \$2 a day</li> <li>• Reduce the proportion of people living below national poverty lines, including persons belonging to vulnerable groups</li> </ul> <p><u>Health</u>: Potential target topics could be: • Achieve effective and equitable universal coverage with quality health services for all including for vulnerable people, such as persons with disabilities or older people</p> <p><u>Gender equality and women's empowerment</u></p> <p><u>Human rights, the rule of law, good governance and effective institutions</u>: (...) Potential target topics could be:</p> <ul style="list-style-type: none"> <li>• Adoption of the appropriate legal framework to protect the human rights of the most vulnerable groups and individuals, including refugees and internally displaced persons.</li> </ul> <p><b>Council conclusions on a transformative post-2015 agenda (16 December 2014)<sup>583</sup></b></p> <p>The agenda should leave no one behind. In particular, it must address, without any discrimination, the needs of the most disadvantaged and vulnerable, including children, the elderly and persons with disabilities, as well as of marginalised groups and indigenous peoples; and it must respond to the aspirations of young people. We should ensure that no person – wherever they live and regardless of ethnicity, gender, age, disability, religion or belief, race, or other status is denied universal human rights and basic economic opportunities. We emphasise the critical importance of quality education, universal health coverage, and social protection for all, which are central for the achievement of sustainable development. We further reiterate the need to eliminate malnutrition in all its forms.</p> <p>We reiterate that the empowerment and human rights of women and girls, and ending both discrimination in all its forms and violence against women and girls, must be at the core of the post-2015 agenda. Goals, targets and indicators across the framework should address legal, social and economic barriers to gender equality. We recognise the importance of involving men and boys in advancing gender equality. We remain committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the</p>
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<sup>583</sup> Council of the European Union, 'Council conclusions on a transformative post-2015 agenda' [2014].

	<p>Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences and in this context sexual and reproductive health and rights.</p> <p><b>1.3. Budget support to third countries</b></p> <p><b>Communication from the Commission ‘The Future Approach to EU Budget Support to Third Countries’, (13 October 2011).<sup>584</sup></b></p> <p>The new approach should strengthen the contractual partnership on EU budget support between the EU and partner countries in order to build and consolidate democracies, pursue sustainable economic growth and <i>eradicate poverty</i>. This approach must be based on mutual accountability and shared commitment to fundamental values of <i>human rights, democracy and the rule of law</i>. (p.3)</p> <p>When providing EU general budget support, the Commission aims at fostering domestic accountability and strengthening national control mechanisms as a basis for <i>improving governance and adherence to fundamental values</i>. (p.4)</p> <p>In cases where the partner country's commitment to fundamental values shows a significant deteriorating trend an adequate and coordinated response strategy at EU and Member States level needs to be defined and implemented. [...] the response to deterioration should be progressive and proportionate. Where appropriate, measures to limit the impact on <i>poor people</i> should be designed [...] (p. 4).</p> <p>As part of its objective to improve core government systems, particularly procurement, budget support will contribute to the <i>fight against corruption</i> and crimes involving fraud. (p. 5)</p> <p>Emphasis will be on issues relating to frontline service delivery, particularly <i>pro-poor, gender and children's issues</i>, and the capacity to absorb and use sector research results, as well as creating conditions for inclusive and sustainable growth for human development (p. 5).</p> <p>The EU will also pay attention to SIDS (Small Island Developing States) and overseas countries and territories (OCTs). There, budget support can have an important impact, given the strong level of accountability and commitment to addressing their <i>structural vulnerability</i> and climate change issues, [...]. (p. 6).</p>
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<sup>584</sup> European Commission, ‘The Future Approach to EU Budget Support to Third Countries’ (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2011) 638 final.

	<p>The EU should assess whether pre-conditions exist to entrust Good Governance and Development Contracts to a partner country, i.e; whether <i>fundamental values of human rights, democracy and rule of law</i> or a clear path towards international standards exist and whether such a Contract could clearly act as a driver to accelerate this movement. (p. 7)</p> <p>Budget support eligibility criteria:</p> <p>National/sector policies and reforms. This should focus on sustainable growth and <i>poverty reduction</i> [...]. Moreover, a sound social fabric requires a high degree of justice and fairness in tax collection and expenditure allocation (<i>pro-poor, gender, and children issues</i>), effective <i>social protection</i> and progress in improving <i>employment and quality of jobs</i>. (p. 7-8)</p> <p>Public financial management. [...] The <i>fight against corruption</i> and fraud is a key dimension that should have greater prominence under this criterion. (p. 8)</p> <p><b>Council conclusions ‘The Future Approach to EU Budget Support to Third Countries’ (14 May 2012).</b><sup>585</sup> EU budget support must be designed and implemented to effectively support <i>poverty reduction</i> and sustainable development. [...] must be based on mutual accountability and a <i>commitment to human rights, democracy and the rule of law</i>. (para. 4)</p> <p>The commitment and record of partner countries to <i>democracy, human rights and the rule of law</i> is one of the key determinants of EU development cooperation, including general and sector budget support, and should be assessed to determine if using budget support is appropriate. (para. 7)</p> <p>In providing general budget support particularly, the EU recognises that the partner <i>country’s overall governance</i> is on track. Thus, general budget support - in the form of Good Governance and Development Contracts - shall only be provided when and where it is assessed that there is trust that it will contribute to effective development impact and will be spent in accordance with shared objectives and values, in particular <i>human rights, democracy and the rule of law</i>, [...]. (para. 8).</p> <p>The objectives of sector budget support should be clearly defined so as to address sector specific constraints, promoting sector reforms and improving <i>service delivery to populations</i>. Improving governance remains an important objective of such Sector Reform Contracts. However, assessment of governance in connection with EU sector budget support will need to be carefully balanced against the need to provide and protect the provision of <i>vital basic services</i>, in particular to the <i>poor, women and children</i>. (para. 10)</p> <p><b>2. IMPLEMENTATION DOCUMENTS</b></p>
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<sup>585</sup> Council of the European Union, ‘The Future Approach to Eu Budget Support to Third Countries’ (Council conclusions) [2012].

	<p><b>Development Cooperation Instrument (11 March 2014)<sup>586</sup></b></p> <p>Respect for <i>human rights, fundamental freedoms, the promotion of the rule of law, democratic principles, transparency, good governance, peace and stability and gender equality</i> are essential for the development of partner countries, and those issues should be mainstreamed in the Union's development policy, [...]. (Preamble, para. 7)</p> <p>The Union is strongly committed to <i>gender equality</i> as a human right, a question of social justice and a core value of the Union's development policy. (Preamble, para. 12)</p> <p>Union assistance should focus on where it has more impact, having regard to its capacity to [...] respond to global challenges such as <i>poverty eradication, sustainable and inclusive development and worldwide promotion of democracy, good governance, human rights and the rule of law, [...]</i>. To ensure such impact, the principle of differentiation should be applied, [...] to ensure that bilateral development cooperation targets partner countries most in need, including fragile States and <i>States with high vulnerability, [...]</i> (Preamble, para.15)</p> <p>The primary objective of cooperation under this Regulation shall be the reduction and, in the long term, the <i>eradication of poverty</i>; Art 2(1)(a)</p> <p>[...] cooperation under this Regulation shall contribute to: [...] consolidating and supporting <i>democracy, the rule of law, good governance, human rights</i> and the relevant <i>principles of international law</i>. Art 2(1)(b)(ii).</p> <p>The countries most in need, in particular the least developed countries, low income countries and countries in crisis, post-crisis, fragile and <i>vulnerable situations</i>, shall be given priority in the resource allocation process. Criteria such as the [...] Economic Vulnerability Index [...] shall be taken into account in order to underpin the analysis and identification of the countries most in need. Art 3(2)(d).</p> <p>The cross-cutting issues [...] shall be understood to encompass the following dimensions [...]: non-discrimination, the rights of <i>persons belonging to minorities, the rights of persons with disabilities, the rights of persons with life-threatening diseases</i> and of other vulnerable groups, <i>core labour rights and social inclusion</i>, the empowerment of <i>women</i>, the rule of law, capacity building for parliaments and civil society, and the promotion of dialogue, participation and reconciliation, as well as institution building, [...]. Art 3(3).</p>
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<sup>586</sup> Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 [2014] OJ L77/44. ('Development Cooperation Instrument')

	<p>The Union shall promote [...] a rights-based approach encompassing all human rights, whether civil and political or <i>economic, social and cultural</i>, in order to integrate human rights principles in the implementation of this Regulation, to assist partner countries in implementing their international human rights obligations and to support the right holders, with a focus on <i>poor and vulnerable groups</i>, in claiming their rights. Art 3(8)(b).</p> <p>Geographic programmes:</p> <p style="padding-left: 40px;">[...] Ending that type of cooperation (bilateral cooperation with a limited number of partner countries) shall, where appropriate, be accompanied by a policy dialogue with the countries concerned, focusing on the needs of the <i>poorest and most vulnerable groups</i>. Art 5(2)(b)(ii)</p> <p style="padding-left: 40px;">[...] geographic programmes shall be drawn from the following areas of cooperation:</p> <p style="padding-left: 40px;">(a) <i>human rights, democracy and good governance</i>: (i) human rights, democracy and the rule of law; (ii) gender equality, empowerment of and equal opportunities for <i>women</i>; [...] (v) fight against <i>corruption</i> [...]</p> <p style="padding-left: 40px;">(vi) the promotion and protection of the rights of <i>children</i>;</p> <p style="padding-left: 40px;">(b) inclusive and sustainable growth for human development: <i>health, education, social protection, employment and culture</i>; [...]</p> <p style="padding-left: 40px;">(c) other areas of significance for development: (i) <i>migration and asylum</i>; [...]</p> <p>The Commission shall adopt the multiannual indicative financial allocations within each geographic programme [...] taking into account, [...] the particular difficulties faced by countries or regions that are in crisis, are <i>vulnerable</i>, fragile, in conflict or are disaster prone. Art 11(5)</p> <p>When drawing up the programming documents for countries and regions in crisis, post-crisis or situations of fragility or prone to natural disasters, due account shall be taken of the <i>vulnerability</i>, special needs and circumstances of the countries or regions concerned. Art 12(1)</p> <p><u>Areas of cooperation under geographic programmes (inter alia)</u>: strengthening the rule of law and the independence of judicial and protection systems; ESC rights; civil and political rights; persons belonging to minorities; rights of women and girls, non-discriminatory access to basic services; rights of children; access to basic social services by the poor, fight against discrimination on any ground, inter alia, on the basis of racial or ethnic origin, caste, religion or belief, sex, gender identity or sexual orientation, social affiliation, disability, health status or age;; promotion of corporate social and environmental responsibility; displacement and migration induced by the effects of climate change and rebuilding climate refugees' livelihoods; human rights of migrants.</p> <p><u>Areas of cooperation per region</u>:</p>
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	<p>Latin America (inter alia): women, minorities, indigenous peoples and afro-descendants, core labour standards, fight against discrimination, social protection systems, universal access to basic social services, health and education, addressing economic vulnerability</p> <p>South Asia (inter alia): democratic governance; the protection of human rights, including the rights of minorities, migrants, indigenous people and vulnerable groups, the fight against discrimination, sexual, gender-based and child violence and human trafficking; social inclusion and human development in all its dimensions</p> <p>North and South East Asia (inter alia): democratic governance; strengthening the protection of human rights, including the rights of minorities and indigenous peoples, promoting respect for core labour standards, fighting against discrimination, fighting against sexual, gender-based and child violence, including children in armed conflict, and addressing the issue of human trafficking; social inclusion and human development in all its dimensions; reduce the vulnerability to disasters;</p> <p>Central Asia (inter alia): universal access to quality basic social services, in particular health and education</p> <p>Middle East (inter alia): democratisation and governance, rule of law, human rights and gender equality; social inclusion; managing migration and helping displaced persons and refugees.</p> <p>Other countries (inter alia): consolidation of a democratic society, good governance, respect for human rights, gender equality, rule of law; universal access to basic services, particularly in health and education; fight against poverty, inequality and exclusion; addressing economic vulnerability.</p> <p><u>Areas of cooperation under thematic programmes:</u></p> <p>A. Global public goods and challenges' programme (inter alia): health, education, protection of women, children and young people, non-discrimination, protection of human rights defenders; employment, skills social protection and social inclusion, culture, migration and asylum. Regarding social inclusion:</p> <p style="padding-left: 40px;">Strengthening social inclusion and gender equality with cooperation on equitable access to basic services, employment for all, empowerment and respect of <i>rights of specific groups</i>, in particular migrants, children and young people, persons with disabilities, women, indigenous peoples and persons belonging to minorities to ensure that those groups can and will participate in and benefit from wealth creation and cultural diversity.</p> <p>B. Civil society organisations and local authorities' programme (inter alia): interventions which support vulnerable and marginalised groups by providing basic services</p> <p><b>3. EVALUATION DOCUMENTS</b></p>
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	<p><b>Annual Report on the European Union’s Development and external assistance policies and their implementation in 2013 (13 August 2014)<sup>587</sup></b></p> <p>The European Union’s (EU) development policy has never been more important or effective. It is succeeding in spreading European values across our fast-changing world, gaining influence and respect for the EU. And, above all, it has been making a decisive contribution to our overriding aim of <i>eradicating extreme poverty</i> once and for all. (p. 1)</p> <p>Our proud record of help for developing countries, supported by over 80% of European citizens, has a <i>uniquely strong poverty focus</i>. (p. 1)</p> <p><i>Good governance</i>, including respect for <i>human rights, democracy and the rule of law</i> [...] are the two sets of allied policy priorities mutually reinforcing pillars upon which the Agenda for Change is built. (p. 3)</p> <p>The EU position underlines that <i>migration</i> should be recognised as a driver of inclusive economic, social and environmental development and that development strategies recognise migration and mobility as 'enabling factors' for development. (p. 4)</p> <p>In order to promote inclusive growth that enables the poorest to participate in income generation activities, EU assistance has benefited 8.8 million people [...]. (p. 4)</p> <p>On 23 September the Commission published new results showing the EU’s contribution to the global fight against poverty between 2004 and 2012. They make for impressive reading. The fact is that EU funding has helped <i>reduce global poverty</i> and support the MDGs, improving the lives of millions of people in the process. (p. 9)</p>
<p><b>LIST OF SPECIFIC HUMAN RIGHTS PRIORITIES MENTIONED</b></p>	<p><b>1. GENERAL POLICY FORMULATION DOCUMENTS</b></p> <p><b>European Consensus on Development (24 February 2006)</b>                  Developing countries                  Least advanced and most vulnerable countries.                  MICs (middle income countries)                  Countries affected by chronic vulnerability’                  Eradication of poverty, rights of poor people</p>

<sup>587</sup> Commission, ‘2014 Annual Report on the European Union’s development and external assistance policies and their implementation in 2013’ (Report from the Commission to the European Parliament and the Council) COM(2014) 501 final.

	<p>Human security especially for the poor  Rights to health and education  Good governance,  Gender equality  The rule of law  Human development policy framework for health, education, culture  Rights of disabled people  Social security  Corporate social responsibility  Employment and decent work  Migration and refugee issues</p> <p><b>Communication from the Commission - an Agenda for Change (13 October 2011)</b>  Developing countries  The poor  Protection of minorities  Rule of law and judicial system  Media freedom and access to internet  People's ability to participate in, and benefit from, <i>wealth and job creation</i>. The promotion of decent work covering job creation, guarantee of rights at work, social protection [...]  Corporate social responsibility; promote responsible business conduct  Social protection, health, education and jobs  Give poor people better access to land, food, water and energy</p> <p><b>Council conclusions - An Agenda for Change (14 May 2012)</b>  Vulnerable countries  Gender equality, empowerment and opportunities for women  Young people and children social protection  Poor people  Migration  Right to universal and non-discriminatory access to basic services  Health and education.  Social inclusion and human development  Access to resources such as land, forests, food, water and energy  Mobility and employment  Justice and the rule of law</p>
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	<p><b>Strategic Framework on Human Rights And Democracy (25 June 2012)</b></p> <p>Poor</p> <p><b>Communication from the Commission ‘The roots of democracy and sustainable development: Europe’s engagement with Civil Society in external relations’ (12 September 2012)</b></p> <p>Women</p> <p>Respect for the rule of law</p> <p>Effective provision of social services - including health, education and social protection</p> <p>Corporate social responsibility</p> <p>Ethical and sustainable business models</p> <p>Decent work agenda</p> <p>Equitable access to natural resources and land</p> <p>Poor governance</p> <p>Anti-corruption efforts</p> <p>Social economy</p> <p>Access to financial services</p> <p><b>Council conclusions on a Rights-based Approach to Development Cooperation (19 May 2014)</b></p> <p>The poorest and most vulnerable, in particular of women and girls.</p> <p>Civil society organisations and human rights defenders</p> <p>UN Guiding Principles on Business and Human Rights</p> <p><b>1.1. Policy Coherence for Development (PCD)</b></p> <p><b>Communication from the Commission - Policy Coherence for Development (15 September 2009)</b></p> <p>Among the five priority issues of the PCD: Making migration work for development (p. 8)</p> <p>Most vulnerable developing countries</p> <p>Indigenous communities (The EC continues to be at the forefront of the international debate on IPRs, such as at the WTO and within the World Intellectual Property Organization (WIPO). Examples include [...] supporting proposals that could help indigenous communities exploit and benefit from their traditional knowledge and genetic resources, or make use of geographical indications. P. 10)</p> <p><b>Council conclusions on Policy Coherence for Development (17 November 2009)</b></p> <p>Among the five priority issues of the PCD: Making migration work for development (p. 4)</p>
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	<p>Poor climate vulnerable countries Developing countries, especially the poorest and most vulnerable</p> <p><b>Council conclusions on Policy Coherence for Development (12 December 2013)</b></p> <p><b>1.2. The EU and the MDG and post-2015 agenda</b> <b>UN Millennium Declaration (8 September 2000)</b></p> <p>Children Children and all civilian populations that suffer disproportionately consequences of humanitarian emergencies</p> <p><b>Communication from the Commission ‘A decent life for all: ending poverty and giving the world a sustainable future’ (27 February 2013)</b> ‘Violence destroys lives and livelihoods and often affects women and people in vulnerable situations, such as children and people with disabilities.’ World's poor Poorer countries Rights of the child and indigenous peoples’ rights, social inclusion and the rights of persons with disabilities Gender equality and women’s empowerment</p> <p><b>Council conclusions ‘The overarching Post 2015 Agenda’ (25 June 2013)</b> Empowerment and rights of women and girls and gender equality Poorest and the most vulnerable</p> <p><b>Communication from the Commission ‘A decent life for all: from vision to collective action (2 June 2014)</b> Least developed countries and other vulnerable countries. People vulnerable to extreme poverty and living on less than \$2 a day (area: poverty) People living below national poverty lines (area: poverty) Persons with disabilities or older people (area: health) Child mortality, maternal mortality, and ensure universal sexual and reproductive health and rights (sector: health) Protect the human rights of the most vulnerable groups and individuals, including refugees and internally displaced persons (area: Human rights, the rule of law, good governance and effective institutions)</p>
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	<p><b>Council conclusions on a transformative post-2015 agenda (16 December 2014)</b>  Needs of the most disadvantaged and vulnerable, including children, the elderly and persons with disabilities, as well as of marginalised groups and indigenous peoples.  Aspirations of young people.  No person – wherever they live and regardless of ethnicity, gender, age, disability, religion or belief, race, or other status is denied universal human rights and basic economic opportunities  Empowerment and human rights of women and girls, and ending both discrimination in all its forms and violence against women and girls.</p> <p><b>1.3. Budget support to third countries</b></p> <p><b>Communication from the Commission ‘The Future Approach to EU Budget Support to Third Countries’, (13 October 2011).</b>  Eradicate poverty  Improving governance and adherence to fundamental values  Poor people  Frontline service delivery, particularly pro-poor, gender and children's issues  SIDS (Small Island Developing States) and overseas countries and territories (OCTs)  Effective social protection  Employment and quality of jobs</p> <p><b>Council conclusions ‘The Future Approach to EU Budget Support to Third Countries’ (14 May 2012).</b>  Poverty reduction  Commitment to human rights, democracy and the rule of law  Country’s overall governance  Provision of vital basic services  Poor  Women  Children</p> <p><b>2. IMPLEMENTATION DOCUMENTS</b>  <b>Development Cooperation Instrument (11 March 2014)</b></p> <p>States with high vulnerability  Countries or regions that are vulnerable  Countries in vulnerable situations</p>
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	<p>Cross-cutting issues: rights of persons belonging to minorities, the rights of persons with disabilities, the rights of persons with life-threatening diseases and of other vulnerable groups; core labour rights and social inclusion; empowerment of Women Economic, social and cultural rights</p> <p><u>Areas of cooperation under geographic programmes (inter alia):</u> strengthening the rule of law and the independence of judicial and protection systems; ESC rights; civil and political rights; persons belonging to minorities; rights of women and girls, non-discriminatory access to basic services; rights of children; access to basic social services by the poor, fight against discrimination on any ground, inter alia, on the basis of racial or ethnic origin, caste, religion or belief, sex, gender identity or sexual orientation, social affiliation, disability, health status or age;; promotion of corporate social and environmental responsibility; displacement and migration induced by the effects of climate change and rebuilding climate refugees' livelihoods; human rights of migrants.</p> <p><u>Areas of cooperation per region:</u></p> <p>Latin America (inter alia): women, minorities, indigenous peoples and afro-descendants, core labour standards, fight against discrimination, social protection systems, universal access to basic social services, health and education, addressing economic vulnerability.</p> <p>South Asia (inter alia): democratic governance; the protection of human rights, including the rights of minorities, migrants, indigenous people and vulnerable groups, the fight against discrimination, sexual, gender-based and child violence and human trafficking; social inclusion and human development in all its dimensions</p> <p>North and South East Asia (inter alia): democratic governance; strengthening the protection of human rights, including the rights of minorities and indigenous peoples, promoting respect for core labour standards, fighting against discrimination, fighting against sexual, gender-based and child violence, including children in armed conflict, and addressing the issue of human trafficking; social inclusion and human development in all its dimensions; reduce the vulnerability to disasters;</p> <p>Central Asia (inter alia): universal access to quality basic social services, in particular health and education Middle East (inter alia): democratisation and governance, rule of law, human rights and gender equality; social inclusion; managing migration and helping displaced persons and refugees.</p> <p>Other countries (inter alia): consolidation of a democratic society, good governance, respect for human rights, gender equality, rule of law; universal access to basic services, particularly in health and education; fight against poverty, inequality and exclusion; addressing economic vulnerability.</p> <p><u>Areas of cooperation under thematic programmes:</u></p>
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	<p>A. Global public goods and challenges’ programme (inter alia): health, education, protection of women, children and young people, non-discrimination, protection of human rights defenders, employment, skills social protection and social inclusion, culture, migration and asylum.</p> <p>B. Civil society organisations and local authorities’ programme (inter alia): interventions which support vulnerable and marginalised groups by providing basic services</p> <p><b>3. EVALUATION DOCUMENTS</b>  <b>Annual Report on the European Union’s Development and external assistance policies and their implementation in 2013 (13 August 2014)</b></p> <p>Fight against poverty</p> <p>Children</p> <p>Good governance, including respect for human rights, democracy and the rule of law</p>
<p><b>FACTORS OF VULNERABILITY ACCORDING TO THE EU</b></p>	<p><b>1. GENERAL POLICY FORMULATION DOCUMENTS</b></p> <p><b>European Consensus on development</b>          Developing countries vulnerable to natural disasters, climatic change, environmental degradation and external economic shocks. Middle-income countries are also vulnerable to internal and external shocks, or are recovering, or suffering, from conflicts and many are confronted with striking inequalities and weak governance. A large number of the world's poor live in these countries.</p> <p><b>Communication from the Commission - an Agenda for Change (13 October 2011)</b>          REDUCING POVERTY IN A RAPIDLY CHANGING WORLD. ‘<b>The Commission proposes an Agenda for Change that would lead to:</b> [...] A focus on helping reduce developing countries’ exposure to global shocks such as climate change, ecosystem and resource degradation, and volatile and escalating energy and agricultural prices, by concentrating investment in sustainable agriculture and energy.’ (p. 4)</p> <p>INCLUSIVE AND SUSTAINABLE GROWTH FOR HUMAN DEVELOPMENT. Development is not sustainable if it damages the <i>environment, biodiversity and natural resources</i> and increases the exposure/vulnerability to natural disasters.</p> <p>Sustainable agriculture and energy: [...] insulate developing countries from <i>shocks</i> (such as scarcity of resources and supply, price volatility)</p>

	<p><b>Council conclusions - An Agenda for Change (14 May 2012)</b> Countries highly vulnerable to shocks and crises</p> <p><b>1.1. Policy Coherence for Development (PCD)</b></p> <p><b>Council conclusions on Policy Coherence for Development (17 November 2009)</b> Countries vulnerable to climate</p> <p><b>1.2. The EU and the MDG and post-2015 agenda</b> <b>UN Millennium Declaration (8 September 2000)</b> Natural disasters, genocide, armed conflicts and other humanitarian emergencies.</p> <p><b>Communication from the Commission ‘A decent life for all: ending poverty and giving the world a sustainable future’ (27 February 2013)</b> Poor governance, including a lack of democracy, rule of law and respect for human rights is currently hampering efforts towards poverty eradication and sustainable development.</p> <p>People live in countries affected by violent conflict. Violence destroys lives and livelihoods and often affects women and people in vulnerable situations.</p> <p>Climate change, depletion of natural resources and ecosystem degradation are having a significant impact on livelihoods, for example through the increased number and intensity of natural disasters and the depletion of natural capital and infrastructure. Unsustainable patterns of current economic development are still largely determined by developed countries and increasingly by emerging economies, while poorer countries are disproportionately impacted and have the least resources to cope with negative effects.</p> <p>These countries (poorer countries) are also often particularly dependent on natural resources, in particular for sectors such as agriculture, forestry, energy and tourism, which aggravates their vulnerability to degradation and depletion.</p> <p>70% of the world's poor live in rural areas and depend directly on biodiversity and eco-system services for their survival and well-being, making them more vulnerable to scarcity and climate risks.</p> <p><b>Council conclusions ‘The overarching Post 2015 Agenda’ (25 June 2013)</b></p> <p><b>Communication from the Commission ‘A decent life for all: from vision to collective action (2 June 2014)</b></p>
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	<p><u>Health</u>, defined as well-being and not just the absence of disease, is a condition for, and outcome of, economic and social development</p> <p><b>Council conclusions on a transformative post-2015 agenda (16 December 2014)</b> We emphasise the critical importance of quality education, universal health coverage, and social protection for all, which are central for the achievement of sustainable development. We further reiterate the need to eliminate malnutrition in all its forms.</p> <p>We recognise the importance of involving men and boys in advancing gender equality.</p>
<p><b>CONSEQUENCES OF VULNERABILITY ACCORDING TO THE EU</b></p>	<p><b>1. GENERAL POLICY FORMULATION DOCUMENTS</b> <b>European Consensus on development:</b> ‘Many lower MICs are facing the same kind of difficulties as LICs. A large number of the world’s poor live in these countries and many are confronted with striking inequalities and weak governance, which threaten the sustainability of their own development process.’</p> <p><b>1.3. The EU and the MDG and post-2015 agenda</b> <b>Communication from the Commission ‘A decent life for all: ending poverty and giving the world a sustainable future’ (27 February 2013)</b> The gap between fragile, violence-affected countries and other developing countries is widening. In April 2011, no low-income fragile or conflict affected country had achieved a single MDG and few are expected to meet any of the targets by 2015.</p>
<p><b>RECOMMENDATIONS AND STRATEGIES</b></p>	<p><b>4. GENERAL POLICY FORMULATION DOCUMENTS</b> <b>European Consensus on Development (24 February 2006)</b> Part I (EU vision on development), 4 (Common principles), 4.5 (Addressing State fragility). The Member States and the Community will support disaster prevention and preparedness in these countries, with a view to increasing their resilience in the face of these challenges.</p> <p>Part I (EU vision on development) 6. Policy coherence for development (PCD). ‘Provide additional assistance to help poor countries build the capacity to trade.’ PART II (the EC development policy) 2. A differentiated approach depending on contexts and needs. Support to middle-income countries also remains important to attaining the MDGs.</p> <p>PART II 3.2. (Areas for community action) <b>Rural development, territorial planning, agriculture and food security.</b>The Community will continue to work to improve food security at international, regional and national level. It will support strategic approaches in countries affected by chronic vulnerability. Focus will be on prevention, safety nets, improving</p>

access to resources, the quality of nutrition and capacity development. Particular attention will be paid to transition situations and to the effectiveness of emergency aid.

PART II 4. (A range of modalities based on needs and performance). Debt reduction, which is comparable to indirect budget support, with low transaction costs and a tendency to promote coordination and harmonisation between donors, could where necessary and appropriate help countries to reduce their vulnerability to external shocks.

**Communication from the Commission - an Agenda for Change (13 October 2011)**

1. REDUCING POVERTY IN A RAPIDLY CHANGING WORLD. 'As the world's population continues to grow, more action is needed to tackle global challenges like conflict prevention, security, environmental protection, climate change, and to deliver global public goods such as food security, access to water and sanitation, energy security and migration.'
2. HUMAN RIGHTS, DEMOCRACY AND OTHER KEY ELEMENTS OF GOOD GOVERNANCE: 'EU support to governance should feature more prominently in all partnerships, notably through incentives for results-oriented reform and a focus on partners' commitments to human rights, democracy and the rule of law and to meeting their peoples' demands and needs.' 'EU general budget support should be linked to the *governance situation* and political dialogue with the partner country, in coordination with the Member States' '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. (p.5)

'The EU action should centre on (p. 5-6):

**'Democracy, human rights and the rule of law.** The EU should continue to support *democratisation, free and fair elections*, the functioning of institutions, *media freedom and access to internet, protection of minorities, the rule of law and judicial systems* in partner countries.'

**'Gender equality and the empowerment of women** as development actors and peace-builders will be mainstreamed in all EU development policies and programmes through its 2010 Gender Action Plan.'

**'Public-sector management** for better service delivery. [...]. Domestic reform and *pro-poor* fiscal policies are vital.'

**'Corruption.** The EU should help its partner countries tackle corruption through governance programmes that support advocacy, awareness-raising and reporting and increase the capacity of control and oversight bodies and the *judiciary*.'



	<p><b>‘Natural resources.</b> The EU should scale up its support for oversight processes and bodies and continue to back governance reforms that promote the sustainable and transparent management of natural resources, including raw materials and maritime resources, and ecosystem services, with particular attention to the <i>dependence of the poor on them</i>, especially smallholder farms.’</p> <p>3. INCLUSIVE AND SUSTAINABLE GROWTH FOR HUMAN DEVELOPMENT ‘Inclusive and sustainable economic growth is crucial to long-term poverty reduction and growth patterns are as important as growth rates. To this end, the EU should encourage more inclusive growth, characterised by <i>people’s ability to participate in, and benefit from, wealth and job creation</i>. The promotion of decent work covering job creation, guarantee of <i>rights at work, social protection</i> and social dialogue is vital.’ (p.7)</p> <p>‘EU development policy should promote a ‘green economy’ that can generate growth, create jobs and help reduce poverty by valuing and investing in natural capital, including through supporting market opportunities for cleaner technologies, energy and resource efficiency, low-carbon development while stimulating innovation, the use of ICT, and reducing unsustainable use of natural resources. It should also contribute to improving the resilience of developing countries to the consequences of climate change.’ (p. 7)</p> <p>‘Public actors should forge partnerships with private companies, local communities and civil society. Corporate social responsibility at international and national level can help avoid a ‘race to the bottom’ on human rights, international social and environmental standards and promote responsible business conduct consistent with internationally recognised instruments’. (p. 7)</p> <p>3.1. Social protection, health, education and jobs (p.7-8)</p> <p>The EU should take a <b>more comprehensive approach to human development</b>. This involves supporting a <i>healthy and educated population</i>, giving the workforce skills that respond to labour market needs, <i>developing social protection</i>, and <i>reducing inequality of opportunity</i>.</p> <p>The EU should support sector reforms that increase <i>access to quality health and education services</i> and strengthen local capacities to respond to global challenges. The EU should use its range of aid instruments, notably <b>‘sector reform contracts’</b> with intensified policy dialogue.</p> <p>The EU should take action to develop and strengthen <i>health systems</i>, reduce inequalities in access to health services, promote policy coherence and increase protection against global health threats so as to <b>improve health outcomes</b> for all.</p> <p>The EU should enhance its support for <b>quality education</b> to give young people the knowledge and skills to be active members of an evolving society. Through capacity-building and exchange of knowledge, the EU should support vocational training for <b>employability</b> and capacity to carry out and use the results of research.</p>
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The EU should support the **decent work agenda, social protection schemes and floors** and encourage policies to facilitate **regional labour mobility**. The EU will support targeted efforts to fully exploit the interrelationship between migration, mobility and employment.

### 3.3. Sustainable agriculture and energy

'The EU should use its support in agriculture and energy to help insulate developing countries from shocks (such as scarcity of resources and supply, price volatility) and thus help provide the foundations for sustainable growth. It should tackle inequalities, in particular to *give poor people better access to land, food, water and energy without harming the environment.*' (p. 8-9)

4. DIFFERENTIATED DEVELOPMENT PARTNERSHIPS. EU development assistance should be allocated according to: (p. 9-10)
- Country needs: assessed using several indicators, taking into account, inter alia, economic and social/human development trends and the growth path as well as *vulnerability and fragility indicators*.
  - Country commitments and performance: positive account should be taken of a country's investment in *education, health and social protection*, its progress on the *environment, democracy and good governance* [...]

#### **Strategic Framework on Human Rights And Democracy (25 June 2012)**

Promote economic, social and cultural rights, ensure universal and non-discriminatory access to basic services.

#### **Council conclusions on a Rights-based Approach to Development Cooperation (19 May 2014)**

[...] the Council calls on the Commission to step up implementation of its Strategy 2011-2014 for Corporate Social Responsibility and underlines the importance of continuing to carry out human rights impact assessments for trade and investment agreements. (P.3)

#### **4.1. The EU and the MDG and post-2015 agenda**

##### **Communication from the Commission 'A decent life for all: ending poverty and giving the world a sustainable future' (27 February 2013)**

ANNEX I. Main current and forthcoming actions in the EU and internationally that contribute to the implementation of Rio+20

AREA: Social protection, social inclusion and eradicating poverty:

EU: The European Platform against Poverty and Social Exclusion: A European framework for social and territorial cohesion. /The European Disability Strategy

INTERNATIONAL: 2010-2020 Mainstreaming of the rights of the child and indigenous peoples' rights, social inclusion and the rights of persons with disabilities in EU development policies. / Implement the UN Convention on the Rights of Persons with Disabilities

	<p>AREA: GENDER EQUALITY AND women's empowerment. Tb hay acciones para EU y para INTERNATIONAL</p> <p><b>Council conclusions 'The overarching Post 2015 Agenda' (25 June 2013)</b>  The overarching post-2015 framework should:  Ensure a rights-based approach encompassing all human rights. (...) address justice, equality and equity, good governance, democracy and the rule of law, with a strong focus on the empowerment and rights of women and girls and gender equality, and on preventing and combating violence against women as essential preconditions for equitable and inclusive sustainable development, as well as important values and objectives in themselves. We remain committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences and in this context sexual and reproductive health and rights.</p> <p>Be developed and implemented in close partnership with all stakeholders, including the private sector, in a way that ensures that the voices of the poorest and the most vulnerable are heard and that their needs are prioritised.</p> <p><b>Communication from the Commission 'A decent life for all: from vision to collective action (2 June 2014)</b>  The framework needs to reflect changing global realities. Since the MDGs were devised, global challenges have become more interlinked and countries have evolved in terms of their economies, societies and capabilities to contribute to the global agenda. The EU will continue to respect the Principles of the Rio Declaration of 1992. Given that the scope of the principle of common but differentiated responsibilities is limited to global environmental degradation, this concept is not useful to address the wider challenges of the post-2015 framework. At the same time, the EU stands ready to engage with its partners on the concrete implications and application of universality and differentiation for all countries for the full scope of the framework, keeping in mind the importance of not leaving behind least developed countries and other vulnerable countries.</p> <p><u>Poverty</u>: Eradicating poverty is a central resolution of the Millennium Declaration. The work begun through the MDGs needs to be completed and reinforced, through a multidimensional vision of poverty which tackles its manifold causes in all countries. Potential target topics could be:</p> <ul style="list-style-type: none"> <li>• Eradicate extreme poverty</li> <li>• Reduce the proportion of people vulnerable to extreme poverty and living on less than \$2 a day</li> <li>• Reduce the proportion of people living below national poverty lines, including persons belonging to vulnerable groups</li> </ul> <p><u>Health</u>: The achievement of equitable and universal coverage by quality health services, together with protection against personal financial risk due to excessive health expenditure, are essential in order to make</p>
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	<p>everybody’s right to the highest attainable standard of health a reality. Key challenges are achieving equitable and universal coverage of and access to quality health services, and protection from the financial risk of sudden health expenditure. (...) Potential target topics could be:</p> <ul style="list-style-type: none"> <li>• Reduce child mortality, maternal mortality, and ensure universal sexual and reproductive health and rights</li> <li>• Achieve effective and equitable universal coverage with quality health services for all including for vulnerable people, such as persons with disabilities or older people</li> </ul> <p><u>Human rights, the rule of law, good governance and effective institutions:</u> A rights based-approach, encompassing all human rights, will decisively contribute to the improvement of the quality of governance, to reducing inequality and exclusion and realizing the envisaged targets and actions of this agenda through participation, transparency and accountability. Key requirements are to strengthen participatory political systems that give people, especially marginalized and vulnerable groups, a say in policy choices and decision making that affect them and to ensure that those responsible can be held accountable. Such an approach becomes increasingly important in an interconnected world. This will enable people to build up their lives, capitalize on economic opportunities and, hence, participate productively and peacefully in political, economic and social life.</p> <p>Potential target topics could be:</p> <ul style="list-style-type: none"> <li>• Adoption of the appropriate legal framework to protect the human rights of the most vulnerable groups and individuals, including refugees and internally displaced persons.</li> </ul> <p><b>Council conclusions on a transformative post-2015 agenda (16 December 2014)</b></p> <p>The agenda should leave no one behind. In particular, it must address, without any discrimination, the needs of the most disadvantaged and vulnerable, including children, the elderly and persons with disabilities, as well as of marginalised groups and indigenous peoples; and it must respond to the aspirations of young people. We should ensure that no person – wherever they live and regardless of ethnicity, gender, age, disability, religion or belief, race, or other status is denied universal human rights and basic economic opportunities.</p> <p>(...) Goals, targets and indicators across the framework should address legal, social and economic barriers to gender equality.</p> <p>(...) We remain committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences and in this context sexual and reproductive health and rights.</p>
<p><b>LEGAL TOOLS (RULES, DIRECTIVES)</b></p>	<p>Article 21.2d TEU; Article 208 of TFEU; article 4 TFEU (shared competence); Art 210(1) TFEU (coordination)</p>

<b>FINANCIAL INSTRUMENTS</b>	Development Cooperation Instrument European Development Fund
<b>COMPETENT EUROPEAN INSTITUTIONS</b>	HR/VP EEAS DG DEVCO EUROPEAN PARLIAMENT
<b>EU'S ENGAGEMENT WITH CIVIL SOCIETY ACTORS</b>	See Commission, 'The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations' (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions) COM(2012) 492 final.

## ANNEX II. Trade policy and human rights priorities. Main documents analysed

<b>VULNERABLE GROUPS AND PRIORITY THEMES IN EU'S DEVELOPMENT POLICY</b>	
<b>LITERAL REFERENCES TO HUMAN RIGHTS PRIORITIES</b>	<p><b>Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States of the Other Part, signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005, revised in Ouagadougou on 22 June 2010.</b></p> <p>'AWARE of the serious global environmental challenge posed by climate change, and deeply concerned that the most vulnerable populations live in developing countries, in particular in Least Developed Countries and Small Island ACP States, where climate-related phenomena such as sea level rise, coastal erosion, flooding, droughts and desertification are threatening their livelihoods and sustainable development.' (Preamble)</p> <p>'Systematic account shall be taken of the situation of women and gender issues in all areas - political, economic and social.' (Art. 1)</p> <p>'Differentiation and regionalisation: cooperation arrangements and priorities shall vary according to a partner's level of development, its needs, its performance and its long term development strategy. (...) The vulnerability of landlocked and island countries shall be taken into account. Particular emphasis shall be put on regional integration, including at continental level.' (Art. 2)</p> <p>'The dialogue shall cover all the aims and objectives laid down in this Agreement as well as all questions of common, general or regional interest, including issues pertaining to regional and continental integration. (...) It shall encompass cooperation strategies, including the aid effectiveness agenda, as well as global and sectoral policies, including environment, climate change, gender, migration and questions related to the cultural heritage. (...)' (Art. 8(3))</p> <p>'The dialogue shall focus, inter alia, on specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement, such as (...) organised crime or child labour, or discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The dialogue shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance.' (Art. 8(4))</p> <p>'Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights. Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the</p>

	<p>rule of law and transparent and accountable governance are an integral part of sustainable development.’ (Art. 9(1))</p> <p>‘(...) Human rights are universal, indivisible and inter related. The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women.’ (Art. 9(1))</p> <p>‘The Parties consider the following elements as contributing to the maintenance and consolidation of a stable and democratic political environment: -sustainable and equitable development involving, inter alia, access to productive resources, essential services and justice;’ (Art. 10)</p> <p>‘Activities in the field of peace building, conflict prevention and resolution shall in particular include support for balancing political, economic, social and cultural opportunities among all segments of society, for strengthening the democratic legitimacy and effectiveness of governance, for establishing effective mechanisms for the peaceful conciliation of group interests, for active involvement of women, for bridging dividing lines among different segments of society as well as support for an active and organised civil society.’ (Art. 11)</p> <p>‘Relevant activities shall also include, inter alia, support for mediation, negotiation and reconciliation efforts, for effective regional management of shared, scarce natural resources, for demobilisation and reintegration of former combatants into the society, for addressing the problems of child soldiers and of violence against women and children. (...)’ (Art. 11(3))</p> <p>‘Relevant activities shall also include, inter alia, support for mediation, negotiation and reconciliation efforts, for effective regional management of shared, scarce natural resources, for demobilisation and reintegration of former combatants into the society, for addressing the problems of child soldiers and of violence against women and children.’ (Art. 11(3))</p> <p>‘In promoting the strengthening of peace and international justice, the Parties reaffirm their determination to: -share experience in the adoption of legal adjustments required to allow for the ratification and implementation of the Rome Statute of the International Criminal Court; and -fight against international crime in accordance with international law, giving due regard to the Rome Statute.’ (Art. 11(7))</p> <p>‘The issue of migration shall be the subject of in depth dialogue in the framework of the ACP-EU Partnership. The Parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion.’ (Art 13(1))</p> <p>‘Cooperation programmes and projects will support the efforts of ACP countries to establish and improve the countries legal and institutional framework and resources for the development and implementation of sustainable</p>
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	<p>tourism policies and programmes, as well as inter alia, improving the competitive position of the sector, especially small and medium sized enterprises (SMEs), investment support and promotion, product development including the development of indigenous cultures in ACP countries, (...).' (Art. 24)</p> <p>'Cooperation shall aim at: a) improving education and training at all levels, (...); b) improving health systems, in particular equitable access to comprehensive and quality health care services, and nutrition, eliminating hunger and malnutrition, ensuring adequate food supply and security, including through supporting safety nets; c) integrating population issues into development strategies in order to improve reproductive health, primary health care, family planning; and prevention of female genital mutilation; d) promoting the fight against: -HIV/AIDS, ensuring the protection of sexual and reproductive health and rights of women; - other poverty-related diseases, particularly malaria and tuberculosis; e) increasing the security of household water and improving access to safe water and adequate sanitation; f) improving the availability of affordable and adequate shelter for all through supporting low cost and low income housing programs and improving urban development; and g) encouraging the promotion of participatory methods of social dialogue as well as respect for basic social rights.' (Art. 25)</p> <p>'Cooperation shall support ACP States' efforts at developing general and sectoral policies and reforms which improve the coverage, quality of and access to basic social infrastructure and services and take account of local needs and specific demands of the most vulnerable and disadvantaged, thus reducing the inequalities of access to these services. (...).' (Art. 25(1))</p> <p>'Cooperation shall also support the establishment of a coherent and comprehensive policy for realising the potential of youth so that they are better integrated into society to achieve their full potential. In this context, cooperation shall support policies, measures and operations aimed at: a) protecting the rights of children and youth, especially those of girl children; (...)' (Art. 26)</p> <p>'Cooperation shall help strengthen policies and programmes that improve, ensure and broaden the equal participation of men and women in all spheres of political, economic, social and cultural life. Cooperation shall help improve the access of women to all resources required for the full exercise of their fundamental rights. More specifically, cooperation shall create the appropriate framework to: a) integrate a gender-sensitive approach and concerns at every level of development cooperation including macroeconomic policies, strategies and operations; and b) encourage the adoption of specific positive measures in favour of women such as: i) participation in national and local politics; ii) support for women's organisations; iii) access to basic social services, especially to education and training, health care and family planning; iv) access to productive resources, especially to land and credit and to labour market; and v) taking specific account of women in emergency aid and rehabilitation operations.' (Art. 31)</p> <p>'Addressing gender inequality, gender-based violence and abuse, as drivers of the HIV/AIDS pandemic and intensifying efforts to safeguard women's and girls' rights, develop effective gender sensitive HIV/AIDS programmes and services for women and girls, including those related to sexual and reproductive health and rights, and to support the full</p>
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	<p>involvement of women in planning and decision making related to HIV/AIDS strategies and programmes.’ (Art. 31(a)(d))</p> <p>‘Developing supportive legal and policy frameworks and removing punitive laws, policies, practices, stigma and discrimination that undermine human rights, increase vulnerability to HIV/AIDS and inhibit access to effective HIV/AIDS prevention, treatment, care and support, including medicines, commodities and services for people living with HIV/AIDS and for the populations most at risk.’ (Art. 31(a)(e))</p> <p>‘Scaling up access to evidence-based, comprehensive HIV/AIDS prevention, which address the local drivers of the epidemic and the specific needs of women, young people and the populations most at risk.’ and (Art. 31(a)(f))</p> <p>‘Cooperation shall also take account of: a) the vulnerability of small island ACP countries, especially to the threat posed by climate change;’ (Art. 32(2)(a))</p> <p>‘Recognise the vulnerability of ACP States and in particular of small islands and low-lying ACP States to climate-related phenomena such as coastal erosion, cyclones, flooding and environmentally induced displacements, and in particular of least developed and landlocked ACP States to increasing floods, drought, deforestation and desertification.’ (Art. 32(A))</p> <p>‘Cooperation shall pay systematic attention to institutional aspects and in this context, shall support the efforts of the ACP States to develop and strengthen structures, institutions and procedures that help to: a) promote and sustain democracy, human dignity, social justice and pluralism, with full respect for diversity within and among societies; b) promote and sustain universal and full respect for and observance and protection of all human rights and fundamental freedoms; c) develop and strengthen the rule of law; and improve access to justice, while guaranteeing the professionalism and independence of the judicial systems;’ (Art. 33(1))</p> <p>‘The ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade. In this context, particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations. Given the current level of development of the ACP countries, economic and trade cooperation shall be directed at enabling the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy. In this context, close attention should be paid to many ACP countries’ vulnerability resulting from their dependency on commodities or a few key products, including value-added agro-industry products, and the risk of preference erosion.’ (Art. 34)</p> <p>The Parties reaffirm their commitment to the internationally recognised core labour standards, as defined by the relevant International Labour Organisation (ILO) Conventions, and in particular the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of worst forms of child labour and non-</p>
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	<p>discrimination in respect to employment. (Art. 50(1))</p> <p>‘Scope of financing: humanitarian and emergency assistance including assistance to refugees and displaced persons, interventions linking short-term relief and rehabilitation with long-term development in crisis or post-crisis situations, and disaster preparedness.’ (Art. 60)</p> <p>‘The Humanitarian assistance shall be granted exclusively according to the needs and interests of victims of the crisis situation and in line with the principles of international humanitarian law and with respect to humanity, neutrality, impartiality and independence. In particular, there shall be no discrimination between victims on grounds of race, ethnic origin, religion, gender, age, nationality or political affiliation (...).’ (Art. 72(4))</p> <p>‘Humanitarian and emergency assistance shall aim to: (d) address the needs arising from the displacement of people (refugees, displaced persons and returnees) following natural or man-made disasters so as to meet, for as long as necessary, all the needs of refugees and displaced persons (wherever they may be) and facilitate action for their voluntary repatriation and re-integration in their country of origin;’ (Art. 72(A)(2))</p> <p>‘Assistance may be granted to ACP States or regions taking in refugees or returnees to meet acute needs not covered by emergency assistance.’ (Art. 72(A)(2))</p> <p>‘Specific actions shall be pursued to support island ACP States in their efforts to halt and reverse their increasing vulnerability caused by new and severe economic, social and ecological challenges. These actions shall seek to advance the implementation of the small island developing States’ priorities for sustainable development, while promoting a harmonised approach to their economic growth and human development.’ (Art. 89(1))</p> <p>‘The Council of Ministers may decide to accord special support to ACP States party to previous ACP-EC Conventions which, in the absence of normally established government institutions, have not been able to sign or ratify this Agreement. This support may concern institution building and economic and social development activities, taking particular account of the needs of the most vulnerable sections of the population. (...)’ (Art. 93(6))</p> <p>‘When an ACP State faces a crisis situation as the result of a war or other conflict, or exceptional circumstances with a comparable effect, preventing the National Authorising Officer from carrying out his duty, the Commission may itself manage the resources allocated to the State in question in accordance with Article 3 and use it for special support. Special support may concern peace building policies, conflict management and resolution, post-conflict support, including institution-building, economic and social development activities, taking particular account of the needs of the most vulnerable sections of the population. (...)’ (Annexe IV, Art. 4(5)).</p> <p><b>Commission, ‘Better Regulation Toolbox’ [2015].</b></p>
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	<p>‘Such an analysis is particularly important for LDCs and other developing countries very dependent on a few export commodities and therefore easily affected disproportionately by the proposal. Particular attention should be paid if vulnerable groups in the developing countries are affected negatively.’</p> <p>‘Personal characteristics: Some of the identified groups will be well defined (for instance by gender, age, income, disability, level of education) while others might be more elusive (for instance those affected by a possible action in a specific way or vulnerable). In practice, it is useful to start by examining whether there are any systematic impacts on well-defined groups. A gender perspective should in particular always be considered. The assessment of potential impacts on gender should take into account the existing differences between women and men in the given policy field.’</p> <p>‘Box 1. Questions to help identify whether there might be health-related impacts</p> <p style="padding-left: 40px;">Direct impact. Does the option affect the access of certain populations (including vulnerable ones) to medicinal products and information, health or long-term care services?</p> <p>‘Consumer issues are a horizontal concern owing to products and markets becoming increasingly complex, the needs of an ageing society and economically vulnerable populations, the consequences of the economic crisis, the need to encourage more sustainable consumption patterns, increasing information overload and new demands on consumers in making the best choices in liberalised markets. Assessing adequately the general and diffuse nature of consumer impacts is of key importance for identifying benefits and costs of EU citizens. Would the option impact vulnerable consumers?’</p> <p>‘It is important to identify how potentially vulnerable consumers may experience a change in order to ensure that the option protects their health, safety and economic interests and does not make it hard for them to buy (or to decide in an informed way on buying) essential goods and services. A Consumer vulnerability can mean belonging to a socio-economic group likely to be less empowered, or lacking full capacity to operate as consumer. Consumer vulnerability is a dynamic concept, and every consumer may become vulnerable in certain situations, e.g. due to changes in life situations or because of the complexity of goods, services or marketing practices that make it difficult to verify the validity of their choice.’</p> <p>‘Social impacts: What is the impact on poverty levels and inequality in developing countries?</p> <p style="padding-left: 40px;">What are the impacts on gender equality and on the most vulnerable groups of society?</p> <p style="padding-left: 40px;">What is the impact on human rights in the development countries?</p>
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	<p style="text-align: center;">What is the impact on migration in developing countries (rural-urban or international)?</p> <p><b>Commission, Directorate-General for Trade, ‘Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives’ [2015].</b></p> <p>‘Analysis of the possible human rights impact of a trade-related initiative should look at the potential impact of the proposed initiative on human rights in both the EU and the partner country/ies, and should include consideration of civil, political, economic, social, cultural and core labour rights.’ (p. 5)</p> <p>‘In practice, some rights (mostly economic, social and core labour rights) are more likely to be positively or negatively affected by trade-related initiatives (such as trade or investment agreements) than others. In this context, gender equality and non-discrimination should be considered as cross-cutting issues.’ (p. 7)</p> <p>‘For example, during the screening exercise of a proposed trade agreement, a desk officer may look into the following questions:</p> <ul style="list-style-type: none"> <li>· Will the agreement cover goods or services (e.g. books, films etc) that could have an impact on freedom of opinion or expression as enshrined in the CFR or the Universal Declaration of Human Rights? (...)</li> <li>· Will the agreement cover the regulation of plant varieties and patents related to traditional knowledge that could affect the cultural heritage and traditional knowledge of indigenous peoples and local communities as enshrined in the International Covenant on Economic, Social and Cultural Rights?</li> <li>· Will the agreement have impacts on human rights linked to social aspects? Will the agreement have impacts on the quantity of employment or on working conditions of men and women (e.g. health and safety at work)? Will this encompass distributional impacts (e.g. income inequalities)?’ (p. 8)</li> </ul> <p>‘Pre-existing conditions of insecurity, stress or vulnerability, including of women or of particular groups (e.g. low-income, children, people with disabilities, ethnic minorities, indigenous peoples, those living in a particular territory) should be highlighted.’ (p. 9)</p> <p>‘For example, during the scoping exercise a desk officer may consider the following questions:</p> <ul style="list-style-type: none"> <li>· Will trade measures on goods and services have a beneficial or negative impact on freedom of expression? (...). What are the particular elements or aspects that will give rise to potentially positive or negative impacts on freedom of expression? (...)</li> <li>· Could provisions on patents promote or limit the cultural heritage and traditional knowledge of indigenous people and local communities?’ (p. 9)</li> </ul> <p>‘The quantitative analysis should be complemented by a detailed qualitative analysis on the potential impacts on</p>
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	<p>human rights, including on women and on particular vulnerable groups likely to be affected.’ (p. 10)</p> <p>‘To the extent possible, particular attention should be given in SIAs to the impact on gender equality and on vulnerable and disadvantaged persons and groups (including children and minorities) which may have been previously identified in the IA.’ (p. 11)</p> <p><b>Commission, ‘Handbook for Trade Sustainability Impact Assessment’ (Draft for public consultation) (2nd ed, 2015).</b></p> <p>‘The assessment should, whenever possible, be based on quantitative research, which will be complemented by case studies, whenever relevant, and by a detailed qualitative analysis, including the impact on vulnerable groups (e.g. women, children, minorities, un-skilled workers).’ (p. 20)</p> <p>‘The concept of “vulnerability” will depend on the specific context in which the trade agreement would be implemented.’ (p. 20)</p> <p>‘In doing so, attention should be given to the pre-existing legal situation in the EU and country(ies) concerned (e.g. human rights treaties by which the parties have consented to be bound – taking into account any reservations expressed, existing regulatory framework); and pre-existing conditions of stress or vulnerability should be highlighted including in relation to particular vulnerable groups.’ (p. 21)</p> <p>‘Stakeholders’ consultations are a particularly important source of information and should ensure inclusive participation with a view to contributing to the identification of the potential impacts and affected individuals and/or groups of people or players as precisely as possible. Consultants are given a wide mandate to conduct far-reaching consultations including of disadvantaged persons and vulnerable groups (e.g. women, children, un-skilled workers) in the EU and the partner country(ies).’ (p. 22)</p> <p>‘The in-depth sectoral analyses should identify and highlight any specific sub-sectors, activities, products, vulnerable social groups and geographical areas that are most likely to be affected, either positively or negatively, by the outcome of the negotiations.’ (p. 23)</p> <p>‘In particular, the consultation plan should identify key stakeholders to be consulted in the EU and partner country(ies), map the nature of civil society, identify any risks (e.g. non-attendance by major stakeholders or constraints on freedom of association) and how these risks will be addressed to ensure constructive dialogue and useful inputs from stakeholders. Consultation means and activities foreseen should also be described in detail.’ (p. 25)</p> <p>‘ANNEX: MAIN LIST OF SIA THEMES</p>
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	<p>SOCIAL</p> <ul style="list-style-type: none"><li>· Decent work (full and productive employment, rights at work, social protection and social dialogue)</li><li>· Equity (e.g. gender equality, discrimination)</li><li>· Housing</li><li>· Education</li><li>· Health</li></ul> <p>HUMAN RIGHTS</p> <ul style="list-style-type: none"><li>· Adequate standards of living</li><li>· Property</li><li>· Fair trial</li><li>· Freedom of expression and opinion</li><li>· Privacy</li><li>· Cultural life' (p. 31)</li></ul>
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### ANNEX III. CSDP and human rights priorities. Main documents analysed.

<b>COMMON SECURITY AND DEFENSE POLICY (CSDP) AND HUMAN RIGHTS PRIORITIES</b>	
<b>LITERAL REFERENCES TO HUMAN RIGHTS PRIORITIES</b>	<p>‘Implement human rights policy in context of ESDP missions and operations where relevant, in particular s regards women and children, including by monitoring and reporting on human rights related issues...’ <b>Council of the EU, ‘Mainstreaming human rights across CFSP and other EU policies’, 10076/06 (2006)</b></p> <p>‘...Democratic and participatory governance and the free will of the people can best assure the right of men and women to live and raise their children in dignity, freedom from hunger and from the fear of violence, oppression or injustice’ <b>Council of the EU, ‘ Council Conclusions on Democracy support in the EU’s External Relations- Towards increased coherence and Effectiveness’ 16081/09 (2009)</b></p> <p>‘... Democracy and elections: participation of women, national minorities and persons with disabilities both as candidates and voters’ European Commission and High Representative of the EU for Foreign Affairs and Security Policy, ‘Human Rights and Democracy at the heart of EU external Action- Towards a more effective approach’ <b>(Joint communication to the European Parliament and the Council) COM (2011)886 final.</b></p> <p>‘Over 18 million people worl-wide have left their homes as a result of conflict...’, ‘ Regional conflicts in which they threaten minorities, fundamental freedoms and human rights...’ ‘Women are victims of the sex trade world wide’, <b>The European Security Strategy, 2003.</b></p> <p>‘Vulnerable local population and youth vulnerability’, ‘ To provide basic social services, economic and employment prespectives to the marginalised social groups, in particular the youth vulnerable to radicalisation...’ <b>European Estrategy for Security and Development in the Sahel, 2011.</b></p> <p>‘(...)the promotion of human rights, with special emphasis on gender and rights of the child and the rule of law, are also keys to sustainable conflict resolution and to lasting peace and security...’ <b>Council Joint Action 2005/190/CFSP on the EU Integrated Rule of Law Mission for Iraq, EUJUST LEX.</b></p> <p>‘ (...)training and advice on command and control, logistical chain and human resources, as well as training on International Humanitarian Law, protection of civilians and human rights’ <b>Council Decision 2013/34/CFSP, creating the EUTM Mali.</b></p>

<b>LIST OF SPECIFIC HUMAN RIGHTS PRIORITIES MENTIONED</b>	<p>Women and girls; Gender equality and women empowerment.  National minorities, persons with disabilities.  Child protection  Indigenous peoples and LGTB.  Human rights defenders.  Migrants, refugees, internally displaced persons, the elderly.  Prevention of torture and other CID treatment  Respect for due process  Consistency and complementarity with IHL  Poverty reduction and freedom from hunger  Participation of women, national minorities and persons with disabilities in democracy and elections</p>
<b>FACTORS (which generate vulnerability according to the EU or justify the EU's support of the priority themes)</b>	<p>Situations of urgency, crisis, or emerging crisis  Situations posing a threat to democracy, law and order, the protection of human rights and fundamental freedoms, or the security and safety of individuals, in particular those exposed to gender-based violence in situations of instability  Situations threatening to escalate into armed conflict or to severely destabilise the third country or countries concerned.  Trans-regional threats and emerging threats  Situations of poverty and economic failure  Post conflict- transitional situations.  Regional conflicts in which minorities are threaten. Situations of State Failure (ESS)  Threats to law and order, to the security and safety of individuals, to critical infrastructure and public health</p>
<b>CONSEQUENCES (of vulnerability according to the EU or of the lack of protection of the priority themes)</b>	<p>Sexual abuse, slavery and exploitation against women and girls.  Lack of opportunities for quality education.  Marginalisation</p>
<b>EU's RECOMMENDATIONS AND STRATEGIES</b>	<p>Protection of human rights should be systematically addressed in all phases of CSDP operations  Country-specific approach  International cooperation  More capable, more effective, more coherent training, partnerships, and strategies: Comprehensive approach  Cogency.</p>
<b>LEGAL TOOLS (RULES, DIRECTIVES)</b>	<p>Demarches and declarations on individual cases or developments of concern  Human rights clauses in bilateral agreements  Third countries agreements related to CSDP</p>



	Art. 21 TEU EU Guidelines on Human Rights
<b>FINANCIAL INSTRUMENTS</b>	Exceptional assistance measures and interim response programmes Thematic strategy papers and multiannual indicative programs Annual action programmes, individual measures, and special measures EIDHR and EIB's lending EDF and IfS (Sahel Strategy)
<b>NON-JUDICIAL MECHANISMS</b>	Review of the EULEX Kosovo panel
<b>COMPETENT EUROPEAN INSTITUTIONS</b>	Formulation: European Council Council of the European Union, COREPER High Representative of the EU European External Action Service The Political and Security Committee (PSC) Implementation: High Representative, EEAS CIVCOM European Commission (budget) Evaluation: COREPER PSC CIVCOM
<b>ACTORS OF THE CIVIL SOCIETY INVOLVED</b>	'Non-governmental organisations, organizations representing indigenous peoples, local citizens' groups and traders' associations, cooperatives, trade unions, organizations representing economic and social interests, local organizations (including networks) involved in decentralised regional cooperation and integration, consumer organisations, women's and youth organisations, teaching, cultural, research and scientific organisations, universities, churches and religious associations and communities, the media and any non-governmental associations and private and public foundations likely to contribute to the development or to the external dimension of internal policies' EPLO consortium

## ANNEX IV. The external dimension of AFSJ and human rights priorities. Main documents analysed.

THE EXTERNAL DIMENSION OF AFSJ AND HUMAN RIGHTS PRIORITIES					
	STRATEGIC DOCUMENTS	LEGAL DOCUMENTS	OPERATIONAL/FINANCIAL TOOLS	WORKPLANS	EVALUATION/IMPACT ASSESSMENT
<b>GENERAL AFSJ</b>	<p><a href="#">The EU Internal Security Strategy (ISS, 2005)</a></p> <p>Stockholm Programme 2010-2014</p> <p><a href="#">Strategic Guidelines in the European Council Conclusions (26/27 June 2014, EUCO 79/14)</a></p>		<a href="#">Internal Security Fund</a>	The Stockholm Plan of Action	<p>Report on ISS 2013</p> <p>Mid-term review of the Stockholm Programme</p> <p>JHA Council: Council Conclusions on the Commission 2013</p> <p>Report on the application of the EU Charter of Fundamental Rights, 5 and 6 June 2014</p>
<b>MIGRATION</b>	<p>GAM (2005)</p> <p>GAMM (2010)</p> <p><a href="#">Thematic Programme for cooperation with non-EU countries in the areas of migration and asylum – 2011-13 Strategy Paper</a></p>		<p>Asylum, Migration and Integration Fund (AMIF), <a href="#">Regulation (EU) No 516/2014</a> 573/2007/EC Regulation 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC. The MME partnership's <a href="#">Action Plan for 2011-2013</a></p>	<a href="#">Task Force Mediterranean</a>	<a href="#">Report on the implementation of the Global Approach to Migration and Mobility 2012-2013 (Annex)</a>

<b>BORDER CONTROL</b>	<p>Frontex Fundamental Rights Strategy 2011</p> <p>Common Standards and procedures for returning illegal immigrants</p>		Return Fund (2007 - 2013)	Frontex Work Plan 2014	Communication on return policy 2014 (COM(2014) 199 final)
<b>TRAFFICKING</b>	<p><a href="#">Action Oriented Paper on strengthening the EU external dimension on actions against trafficking in human beings (2009)</a></p> <p><a href="#">The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016</a> (particularly Priority C, action 4 and Priority D, Action 2)</p>	<p>Charter of Fundamental Rights of the European Union, art. 5</p> <p><a href="#">Directive 2011/36/EU</a></p>		(Not external, but the <a href="#">Frontex Work Plan 2014</a> focuses on trafficking, and the <a href="#">Eurojust's action against trafficking in human beings</a> is applicable internally)	<p><a href="#">Second report on the implementation of the Action Oriented Paper (2012)</a></p> <p><a href="#">Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings (2014)</a></p>
<b>COMBATING TERRORISM</b>	<p><a href="#">The EU Counter-Terrorism Strategy</a></p> <p><a href="#">Council conclusions on counter-terrorism (2015)</a></p>	<p><a href="#">Framework Decision 2002/475/JHA</a></p> <p><a href="#">Framework Decision 2008/919/JHA</a></p>		(Not external, but the <a href="#">Frontex Work Plan 2014</a> focuses on terrorism, and Eurojust has agreements with third countries as well)	<p><a href="#">Report on FD 2002/475/JHA (2007)</a></p> <p><a href="#">2011 Report on the EU Action Plan on combating terrorism</a></p>

<p><b>PREVENTING RADICALIZATION</b></p>	<p><a href="#">Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU's Response</a></p> <p><a href="#">Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism</a></p>		<p>Radicalisation Awareness Network</p> <p>RAN Declaration of Good Practices for Engagement with Foreign Fighters</p>	<p>Counter-terrorism strategy for Syria and Iraq</p>	
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