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**The EU and its policy of external promotion of Human rights: The search  
for Consistency.**

***Conceptual addition to the current debates for EEAS evaluation of the  
Action Plan on Human Rights and Democracy.***

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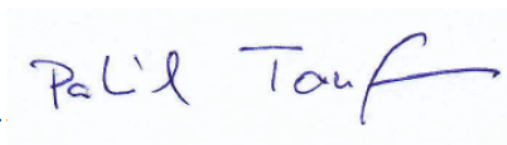
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**Abstract:**

*The following paper introduces the EU as external human rights promoter in presenting the basic policy documents and most important instruments allocated to this purpose. During the paper is shown, that the EU operates with some basic self-reflection, elaborating on the challenges that faces in its efforts. Thesis is mainly focused on challenges of incoherence and inconsistency. These are in nowadays discourse mixed, so I am pleading for conceptual distinguishing between them in order to have a chance to find appropriate solutions. Further on, based on the interview conducted with the EEAS officials, I am able to identify contemporary limit of EU's self-reflexive efforts in hesitation to review the provisions of the Strategic framework on Human rights and Democracy. Last parts of this paper contains an attempt to overcome this hesitation and pursuing the incoherency up to the single concrete formulation in the Strategic framework.*

**Acknowledgement:**

*Here I wish to thank Dr. Graham Finlay from the Spire UCD, for warm welcoming at his department. I am also grateful for all his remarks and inspiring thoughts, but all the misconceptions and confusions included in this work are just my own. I thank also to Ms. Heidi Riley for all her care of us, E.MA students in Dublin. Last but not least, I thank to the officials from the EEAS for allowing me to conduct an interview.*

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## **1.0 Introduction**

There is a good tradition to start academic papers with suitable quotations. For this purpose I have chosen the juxtaposition of two excerpts. This helps to shed a light on the intellectual perspective which will be backed during this paper. It will help the reader to understand my perspective as a researcher within the tradition of political theory incarnated into the contemporary political theory of human rights. My intention is to better understand the problems of the current core constitutional concept of human rights, in interplay with the recently born European external action. This also has its own normative dimension enriched by the policy of human rights promotion – which is not, in all its aspects, completely uncontentious.

The first excerpt is very philosophical and general, dealing with a criticism of Europe's recent behaviour in the world and also with the vision as to how Europe should behave in its external action. This means defining the basic contours of an attitude, which should frame our foreign policy. In his speech "*Europe in the World*" in front of Italian senators, Václav Havel addressed political Europe by saying the following.

*"...Europe embraced a notion of universalism, consisting of the idea that what is best in our eyes must be best for the whole world, and that we are duty-bound to disseminate it whenever we have an opportunity to do so.*

...

*...and that we are called upon by Providence to promote it wherever we can. Thus, helping the world - in whatever way – appears to be some kind of a permanent European tic."*

And he also proposes Europe to follow one of its most promising intellectual traditions, the tradition of self-reflexive, non-dogmatic humanism.

*"Obviously, the question I am asking reads as follows: hasn't the time grown ripe for political Europe to give truly serious thought to the state of this civilization as a whole and to attempt to extricate itself from its blind momentum? And wouldn't such an attitude – perhaps most unpopular, but most promising – actually mean a return to one of the most interesting European intellectual traditions, to the tradition of query and doubt as it was once established by Socrates. Sceptics, critics, shy minds grappling with doubts about all things in this world -- first of all about themselves -- and capable of brilliantly articulating their doubts, are also part of European history!... (is not) the embodiment of precisely that tradition of European wondering and European humility that we may now need to develop before all else?"<sup>1</sup>*

It is this standard of self-reflection which I would like to contrast with the constitutional paragraph establishing the EU's external action, where article 21 par. 1. of the Treaty on European Union very clearly and naturally, without any doubts, or query, straightforwardly states the following

*"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."<sup>2</sup>*

The juxtaposition of the two previous texts is presented without the intention to downplay the EU's efforts, or naively criticise overall EU conception of its external human rights promotion. My aim is the opposite: to prove that the reality is not black

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<sup>1</sup> Havel, 2002, pp. 1-4.

<sup>2</sup> The Treaty on European Union, 2008, p.28.

or white, and that currently inside the EU a vivid discussion is undergoing which deals with the assessment of the external human rights promotion. And that happens on the background of the constitutional setting of the article 21 TEU as a very straight, confident, universal, ambitious and indisputable provision. Critics would say, with resemblance to the old traditions of colonialism and imperialism, the European Union, despite these criticisms, is in my opinion trying to follow Václav Havel's path, or at least the European Union is actually trying<sup>3</sup> to identify this kind of path, because it is becoming more aware of the challenges to its external human rights promotion efforts, and in this light there is a more humble way out of these problems – absolutely inevitable.

### **1.1 Hypothesis, research questions, structure**

I stated, that the EU is in my opinion, ready to find, or is actually searching for, a more reflexive way regarding its external human rights promotion. I will be working with this assumption as a working hypothesis serving as a spinal support for the first half of this thesis.

Throughout this paper, I will try to explain what it means on a practical level. How it can come to be that the EU starts to be reflexive in this field, despite its strong and authoritative normative conviction arising from constitutional article 21 of the TEU.

The set of particular questions which I will address directly or indirectly throughout the thesis will be following. Primary what does it mean when we describe the EU as an external human rights promoter? What kind of criticism does the EU face on an every day basis in connection with this role? Where and how can we identify the practical conceptualisation of the self-reflexivity of the European Union? In other words, where can we sublimate these tendencies to be more self-reflexive? Which

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<sup>3</sup> When I mention the EU, I am not referring to it as some unified living corpus from the the spere of bodypolitical, images resembling Leviathan from the original cover of Thomas Hobbes book, but for the purposes of simplification, I mention the EU as a collection of actors, and processes which can have some general tendency. From this comes the expression, that "Euis trying"; "EU is identifying", "EU is able" etc.



institutional actors are in charge of it? Which actors are promoting this reflexive turnover, and which challenges have they identified? What are the intra-institutional discussion about these already conceptualised topics? And finally, when exercising self-reflexivity, where are today's limits which are encountered by the EU or by the scholars dealing with European studies? And are there some perspective solutions? And if yes, on which levels?

My primary focus will be directed to the most important policy documents for external human rights promotion, the Strategic framework and Action Plan on Human Rights and Democratisation. Bearing in mind this narrowing of the scope, what are the current activities of the respective institutions tackling the problems connected to external human rights promotion? What are the areas which are still self-reflexively inadmissible? And how to overcome these limits? Adopting the perspective of the contemporary political theory of human rights, what are the ways forward? After the reflexive encountering of the current limits and obstacles of the external human rights promotion, after proper identification of the nature of the problems, I will also be able to move forward onto some recommendations, based on today's influential and suitable theories of human rights.

The questions above are to be explored in detail. General questions are then following: Exercising rediscovered self-reflection, which challenges for external human rights promotion has the EU identified? What is the perception of the challenges within the institutions which are in charge of combating them? How shall these institutions combat the challenges? And what are further steps available with respect to the offers provided by the contemporary political theory of human rights?

For a thorough overview, now I would like to outline the general schedule regarding how this paper will be structured. In the first part, I will introduce the EU as an actor promoting human rights externally, which means even beyond its borders. In the next step, I will be exploring the reasons which stand behind the assumption that the EU's self-reflexivity is already present. I will mention some basic reasons, some criticisms of the EU and member states' behaviour, which established the self-reflexive momentum. Later in this first part, I will present the conceptualisation of the challenges that the EU's external human rights promotion is exposed to. This conceptualisation is actually part of the EU's internal debates. The majority of the

space will be dedicated to the challenge of inconsistency and incoherency. And then, the European External Action Service (EEAS) will be, from deeply institutionalist reasons, identified as an actor, responsible for tackling this challenge.

In the second part, I will focus on the intra-institutional observations, and I will ask directly the EEAS officials about their perception of the current (2015) undergoing process of evaluation of the Action plan on Human Rights and Democratisation and drafting of highly important new plan. In the third part of the text, I will try to present additional alternative criticisms of the current conception of the human rights promotion - which produces the impression of policy inconsistency.

And finally, the last part, will bring solutions for critically perceived observations from the previous part. At the end of the paper, I will be searching for even loosely connected ideas and derived solutions from the range of the contemporary political theory of human rights in the name of searching for a more viable and coherent conception of human rights promotion. This can later also serve as a possible alternative idea for potential policy makers and their strategic considerations.

## **1.2 Justification of the selected topic**

Before I start elaborating on the more specific topics like the role of the EU as an external human rights promoter; the criticism, that EU faces on a daily basis, start of the concept of consistency, the process of evaluation of the of Action plan on Human rights and Democracy, or some alternative conceptions of human rights promotion arising from the contemporary theories of human rights, let me justify the selection of this topic first.

Why to be stuck with the overarching idea that the European Union moves towards self-reflexivity? One answer is purely normative, because self-reflexivity serves as an ideal and when we pay the attention to it, we are helping to create a self-fulfilling prophecy. Prophecy which is, normatively taken, desirable.

The second justification is more oriented on the techné of this topic. It is good to learn in detail what fills the content of the self-reflection. Because exactly when

deconstructing the notion of the self-reflexive path, we can learn about the concepts of consistency, coherency and about the attempts of the EU to have accountable, credible, strong and effective politics and policies for human rights promotion.

Searching for what is coded as a self-reflexivity in recent discussions about the development of the EU's human rights promotion efforts, we will create, in fact, the whole argumentation line of this paper. The EU starts to be reflexive to its own policies and through the different means and thanks to the different motives is able to conceptualise the challenges that it faces in its external promotion. Namely to be reflexive, in the case of the EU, means to be aware of the challenges, or in other words we are dealing with weaknesses of the EU's own human rights promotional strategies. Specifically, the EU is now able to accept that it is in some respects incoherent, inconsistent and is creating double standards, instead of coherent policies and holding them consistently. The importance of this topic lays in the consequences. These kinds of challenges are undermining the credibility of the EU as an global actor capable of sticking with one set of standards and objectives. Attractivity of the credibility imperative lays in a simplicist rationale of the ultimate credibility: you are not credible by promising a lot and fulfilling just a small percentage, but you are more credible when you promise much less and are able to fulfil it.

This provocative nature of the credibility, of which fulfilment does not depend on the ultimate end, but on the close relatedness of aims and outcomes, we can conclude that the EU, establishing its external action on the utmost provisions of Art. 21 TEU is not going to accommodate itself simply to the nature of the credibility imperative. The EU is in its human rights promotional policies very ambitious. At the same time the EU is starting to become aware of the challenges and actual limits to its own ambitiousness. Because of this, there is an imminent need to elaborate on different ways on how to be ambitious in its own aims, as well as coherent and consistent, to secure credibility which is ultimately indispensable for reasons of legitimacy. Legitimacy of the political regime is in democracies very much dependent on a credible government and credible way of governance. Credible governments with full and solid legitimacy have then a stronger support by their democratic people, as well as a better position at the international stage, in bargaining and access to different agreements, resources, services and goods.

In conclusion, for justification of this paper, as well as for the proof of relevance of this topic, I am presenting the following logical succession: assumption about the newly discovered self-reflexivity of the EU has its confirmation in articulation of the challenges to human rights promotional activities of the EU and by the EU; these challenges of (in)coherency and (in)consistency are, when not tackled, a serious obstacles to credibility<sup>4</sup> for the EU. Having incoherent policies which are promoted inconsistently is wrong per se, taken reversely, having coherent policies which are promoted consistently is a real political virtue – belonging to the notion of a credible actor/institution. For consequentialists, utilitarians and game theorists playing games with repetition, there is also more substantive interpretation which says that having the virtue of coherency and consistency brings as a result the credibility which has as a consequence material as well as non-material benefits on a long-term basis.

Better understanding of the above outlined logic as well as a further search for real fulfilment of above statements was justified, because the positive intentions behind this are obviously perceived morally as well as materialistically.

Speaking from a wider perspective, demonstrating the relevance of the chosen topic is possible by referring to unprecedented inclusion and fusion of ethically driven policy of human rights during history, predominantly realistic and value-free foreign policy. With this process we can pursue life and to the greatest extent and a mostly elaborated manner in the case of EU's external action. Because this fusion is internally contentious and of very actual nature, the justification of the paper's topic is obvious. It's of vital interest of all of us as individuals as well as our institutions to speak up about the actual clashes of idealistic intentions included into the pragmatic politics to better learn their roots, nature and have the ability to find appropriate solutions.

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<sup>4</sup> In the summary of the theory of coherentism, we can find a very cautious final statement: *"Some results support a weak foundationalist theory according to which coherence can boost credibility that is already there, without creating it from scratch."* Weak foundationalist theories are everytime bound with the real world, or its perception. Olsson, 2012. In my opinion this is also a valid point for the discussions about the EU's human rights policy.

## **2.0 The EU as external human rights promoter – geopolitical view**

In geopolitical terminology, the European union started to be described with the use of many different adjectives added to the noun "power". Influential authors define the EU as 'civilian', 'post-modern', 'ethical', 'structuring', 'transformative' power. And finally, Ian Manners also used the term, which came very soon into wider awareness. He presented the EU as a "normative power"<sup>5</sup>. All these notions refer to the distinctiveness of the EU in the world arena. While the EU is not linked with the image of a strong military power, nor economical unit just pursuing its interests and gains, but in theory the EU does add another level of considerations into the follow up of the geopolitical affairs – spreading norms.

Ian Manners mentions one paradox pointed out by Rosecrance: *"It is perhaps a paradox to note, that the continent which once ruled the world through the physical impositions of imperialism is now coming to set world standards in normative terms."*<sup>6</sup>

This observation is for sure a simplification of its kind, and can produce some inappropriate shortcuts regarding the EU's intentions and practices. The EU, as will be shown further, is ready for setting world standards, or at least, based on the article 21 TEU, obliged itself to their promotion. But these standards are nothing else than standards already agreed as international law standards. To be honest, and to go beyond the legal, formalistic analysis, even the unbiased, impartial, simply universal nature of these norm can be strongly contested. As Sonia Harris-Short points out, these norms, like human rights, which were on the UN Vienna Conference agenda on Human Rights confirmed as universal is of suspicious nature. This diplomatic conference provided human rights with universal - diplomatic coverage. But diplomatically expressed universality is contestable. As Harris – Short remembers An-Na'im's remarks the problem of universality, it is not only connected with political calculation of non-western leaders who formally agreed to universality of human rights with the intention of receiving material gains from their western principals, and further are unwilling to fulfil any obligations. Harris-Short discovers another reasoning: "An-

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<sup>5</sup> Gerrits, 2009, p. 2.

<sup>6</sup> Manners, 2002, p. 238.

*Na'im, among others, suggests that rather than state elites cynically agreeing to human rights norms out of political expediency and thereafter manipulating culture for their own ends, the influence of Western thinking on state elites has resulted in a genuine commitment among these delegates to the universality of "Western" human rights norms: "Western hegemony (in the economic, technological, intellectual and other fields) profoundly influences ruling elites, as well as scholars and activists in the South or the Third World. . . . In view of what might be called a "human rights dependency," it is misleading to assume genuine representation of popular perceptions and attitudes toward human rights in our countries from the formal participation of "our delegates" to international fora. From the point of view of the universal cultural legitimacy of international human rights standards we should not assume from the fact that government delegates "participated" in their formulation and adoption that there is necessarily sufficiently broad popular acceptance of these standards, and commitment to their implementation, in our respective countries."*<sup>7</sup>

Irrespectively of the motives leading to agreement on universality of human rights, the normative power – the EU is inventing its own international identity based on *"power over opinion."*<sup>8</sup> The EU as an "ideological power" and new, post-Westphalian form of polity invests into the promotion of its ideas worldwide. Manners links normative power with the "ability to shape conceptions of normal"<sup>9</sup>, which can be understood as a reshaping of the social reality. Concretely and practically: *"Alston and Weiler have argued 'strong commitment to human rights is one of the principal characteristics of the European Union'."*<sup>10</sup>

Firstly, this is true internally for the so-called fundamental rights. When the EU committed itself to accession to the European Convention on Human Rights and Fundamental Freedoms<sup>11</sup> and to the incorporation of respect for Fundamental Rights into the Treaty on the European Union - fundamental rights evolved into one of the constitutional principles of the union. Nowadays discourse about the protection of fundamental rights internally, is dealing with the new phenomenon of pro-active institutions of the EU who are, under the current treaty provision, obliged to defend

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<sup>7</sup> Harris-Short, 2003, p. 133.

<sup>8</sup> Manners, 2002, p. 239.

<sup>9</sup> Ibidem, p. 240.

<sup>10</sup> Ibidem, p. 241.

<sup>11</sup> Ibidem.

fundamental values of the EU. As Elise Muir points out to the change of discursive environment: *"The European Union is thus at a turning point. EU institutions are progressively moving from an era in which the protection of fundamental rights in the European Union was primarily "passive", to a new stage marked by a strong "pro-active" role of EU institutions in this field."*<sup>12</sup> At the same time, she observes the factual obstacles of the fulfilment of this institutional defence of fundamental rights, and unwillingness to go into a direct clash with member states breaching the fundamental values of the EU.<sup>13</sup> In short, these complaints are just confirming that the provisions of so-called "reverse solange"<sup>14</sup> when the EU will be fully empowered as a guardian of fundamental rights, and if violations of these provisions occur, then they will fall into the general competence of the EU, respectively will be judged before the Court of Justice of the European Union, are still waiting on doctrinal elaborations of concepts like for example *"European citizenship"*<sup>15</sup>, which will be serving then as a legal platform for fundamental rights complaints.

Secondly, a strong commitment, namely to the human rights, is present in the EU's external action. Normative power of the EU, a notion which has recently proliferated<sup>16</sup> into the various contexts regarding the EU's foreign policy, found its prominent articulation exactly in this concept, accompanied by democracy and the rule of law, creating the constitutional trinity of Human rights, Democracy and the Rule of law. As Manners points comprehensively out: *"The EU has gone further towards making its external relations informed by, and conditional on, a catalogue of norms which come closer to those of the European convention on human rights and fundamental freedoms (ECHR) and the universal declaration of human rights (UDHR) than most other actors in world politics. The EU is founded on and has as its foreign and development policy objectives the consolidation of democracy, rule of law, and respect for human rights and fundamental freedoms... Furthermore it is committed to pursuing these norms in accordance with the ECHR and 'the principles of the United Nations Charter.'" <sup>17</sup>*

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<sup>12</sup> Muir, 2014, p. 26.

<sup>13</sup> Ibidem.

<sup>14</sup> Von Bogdandy et al., 2012.

<sup>15</sup> Ibidem, p. 501 and further.

<sup>16</sup> Manners, 2015, pp. 313-314.

<sup>17</sup> Manners, 2002, p. 241.

In conclusion, geopolitically said: "...we cannot overlook the extent to which the EU is normatively different to other polities with its commitment to individual rights and principles in accordance with the ECHR and the UN."<sup>18</sup> On the other hand, Manners also warns the others scholars before simplifications which are false and hinders gaining better knowledge about EU foreign policy. He pleads especially for the avoidance of dichotomisation between normative and normal power<sup>19</sup>, in this sense and despite being a leading theorist of normative power, Manners stands for blurred boundaries between normative and normal power. Normative power shapes the standards of normality, which does not imply that it does not have its own interests. So in this view, I understand his conception as realistic one, taking into account also EU's other foreign policy objectives, like trade and dependent jobs creation<sup>20</sup>, security and environmental protection.<sup>21</sup>

## **2.1 The EU as external human rights promoter – instrumental view**

Geopolitically, the EU established itself as a distinctive (relative to the other world powers) normative power. Until now I have referred to the level of primary law, up to the level of treaty, where this normative identity is enshrined. Concretely I mentioned the obligations of the EU underpinning establishment of the EU's external action - the goals in promotion of human rights, democracy and the rule of law. These goals have a practical incarnation in the strategic policy documents, particular human rights policies, guidelines, instruments and different tools. In the following part I will try to summarize them briefly and outline how the practical or instrumental dimension of the normative power the European Union is.

The EU is an external human rights promoter with elaborated strategies and plans how to conduct this intention. The often times mentioned article 21 TEU is further elaborated into the whole EU Strategic framework on Human rights and

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<sup>18</sup> Ibidem

<sup>19</sup> Manners, 2015, pp. 304-305.

<sup>20</sup> European Commission DG Trade, 2015, (consulted on 11 June 2015)

<sup>21</sup> EEAS, 2015, (consulted on 11 June 2015)



Democracy, which was issued in the year 2012 by the Council of the European Union as a completely new document, outlining the comprehensive, unified strategy of the EU's external human rights promotion.

Strategic framework contains further elaboration of concepts which were present on the treaty level. It is here where the EU states clearly that the trinity of human rights, democracy and the rule of law principles "*underpin all aspects of internal and external policies of the European union.*"<sup>22</sup> The EU also shows here its high ambitiousness in attempting to gain credibility when consistently fulfilling the same standards for its conduct on its own field, as well as outside, where it is facing a different environment with different rules and habits which can easily lead to misunderstandings between various conceptions holders – the EU and its foreign partners. The EU's ambitiousness stretches further, when we take into account that the EU did not want just to be in line with these concepts internally as well as externally in the sense of steering its own way of conduct. But the Strategic framework contains an even higher threshold in intention to proactively steer the development of a world for which the EU supposedly has limited leverage. The Strategic framework begins with this ambitious statement of intention: "*The European union is founded on a shared determination to promote peace and stability and to build a world founded on respect to human rights, democracy and the rule of law.*"<sup>23</sup> A more personally shaped promise that the EU gives and obliges its own external behaviour to high moral threshold, is then following: "*The EU is aware of these challenges (contestation of justifications of human rights universality and democratic rule) and determined to strengthen its efforts to ensure, that human rights are realised for all. The EU will continue to throw its all weight behind the advocates of liberty, democracy and human rights throughout the world.*"<sup>24</sup>

The above mentioned statement regarding the intentions of the EU in external action is followed by the specification of content. The EU has committed itself to the defence of the universality of human rights and in this way copies the conclusions of the UN Vienna conference on Human rights from 1993: "*The EU reaffirms its commitment to the promotion and protection of all human rights, whether civil and*

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<sup>22</sup> The Council of European union, 2012, p.1.

<sup>23</sup> Ibidem.

<sup>24</sup> Ibidem.

*political, or economic, social and cultural."* And EU obliges itself to active defence of human rights even very concretely: *"The EU will speak out against any attempt to undermine respect for universality of human rights."*<sup>25</sup>

After answering questions dealing with the intentions of external action (pursuing idealistic objectives conceptualised in the aforementioned trinity), as well as answering the general question of what the content is of the hereby shaped external action (securing respect to *all* of human rights), the Strategic framework also finally answers the question: How will it be done?

The strategy of the fulfilment of the highly set goals lays in main-streaming of human rights in all of the EU's foreign policies. As the first High representative of the Union for Foreign Affairs and Security policy Catherine Ashton originally and more poetically stated: *"the EU works to have human rights running as a silver thread through a truly integrated range of external policies."*<sup>26</sup> To the question, how will it strategically promote the respect to human rights, policy document serves the answer: by *"pursuing coherent objectives...(and by) determination to promote human rights and democracy through all its external actions."*<sup>27</sup> Concretely, the promotion of human rights will be integrated into: *"trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility and development policy as well as Common Security and Defence Policy and the external dimensions of employment and social policy and the area of Freedom, security and justice, including counter-terrorism policy."*<sup>28</sup> And the Strategic framework further adds: *"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>29</sup>

The Strategic framework also mentions the specific thematic priorities of the EU. At the forefront stands negative freedoms - liberties as a prerequisites to a functioning democracy. An important priority lays then also in an anti-discrimination agenda with special attention paid to women's rights and connected areas combating gender-based violence. Less space is dedicated to vaguely expressed support regarding

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<sup>25</sup> Ibidem pp. 1-2.

<sup>26</sup> EEAS, 2012.

<sup>27</sup> The Council of the European union, 2012, p. 2.

<sup>28</sup> Ibidem.

<sup>29</sup> Ibidem.

the intensification of support for social and cultural rights. Traditionally, second generation rights occupy, in western policy documents, smaller and secondary space and it is visible even there. On the other side, the Strategic framework bears also the intentions to "empower" specific individuals or groups, this can also be perceived as the process of strengthening positive rights and freedoms. For instance, the Strategic framework speaks about empowerment of women, minorities, marginalised and vulnerable groups of people.<sup>30</sup> Also, the EU wants to keep its leading position between the direct donors supporting human rights defenders. This aim will be reached through the continuation of the system of grants coming from the "jewel in the crown"<sup>31</sup> between other European democracies and human rights promotional tools - European Instrument for Democracy and Human Rights (EIDHR)<sup>32</sup>, which supports efforts to build democracy and foster human rights in the third countries – "from below", fostering so called locally owned promotions<sup>33</sup>.

Well known priorities of the EU's external human rights promotional efforts are also part of the Strategic framework: campaign against death penalty, support of the human rights defenders and also, the EU is among the major geopolitical powers a great supporter of universal prosecution of criminal acts – which in the international environment covers individual responsibility for violation of humanitarian law – as one of the priorities is then the EU's support of universal jurisdiction and functioning of the International Criminal Court.<sup>34</sup>

The Strategic framework is very clearly structured. Especially in concrete terms as to how human rights will be promoted. Three ways are as follows: bilateral, multilateral and unilateral-coordinative.

Bilaterally, the EU obliges itself strongly when it says: *"The EU will place human rights at the centre of its relations with all the third countries, including its strategic partners."*<sup>35</sup> The centrality of human rights matches to the value based foreign policy objectives of the EU, as is outlined in the art. 21 TEU, guidance of foreign policy by the principles – indivisible and universal human rights included. More practically, for

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<sup>30</sup> Ibidem.

<sup>31</sup> Kurki, 2011, p.349.

<sup>32</sup> The Council of the European union, 2012, p.3.

<sup>33</sup> Kurki, 2011, p.349.

<sup>34</sup> The Council of the European union, 2012, p.3.

<sup>35</sup> Ibidem.

bilateral promotion, tailor-made country human rights strategies will be/are elaborated. Further in the scope of bilateral activities, the EU will be conducting human rights dialogues and consultations, even on the highest diplomatic level of political dialogues, the EU promised to raise the human rights considerations. Deepening of these dialogues is part of the strategy. All these efforts are planned as a substantial, not just formal commitments. And ideally they will lead to outcomes<sup>36</sup>, improvements of country human rights records. Bilaterally the EU is ready to use its human rights instruments of economic nature, like Human rights clauses (properly using all their potential) and even a general sanction system as an instrument of last resort. Bilateral diplomacy also counts with instruments of specific regional policy – namely the European Neighbourhood Policy, which can in particular cases of human rights promotional efforts serve as a vehicle promoting human rights through the mechanism of conditionality, nowadays called as the "more for more" principle<sup>37</sup>, which can be practically translated as: for more compliance with human rights standards, a European neighbour will be rewarded with a tighter connection to the EU's internal market via Association Agreements or Deep and Comprehensive Free Trade Areas (Aas/DCFTAs) regimes<sup>38</sup>, or will be included into the visa liberalisation process<sup>39</sup>.

Multilateral action of the EU, serving the promotion of human rights, is shaped around contemporary universal institutions of global governance, which has the EU's full support: *"The EU remains committed to a strong multilateral human rights system which can monitor impartially implementation of human rights norms and call all States to account."*<sup>40</sup> Multilaterally, the EU wants to speak out against any attempts of relativisation of universal applicability of human rights in all the relevant foras like

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<sup>36</sup> Ibidem.

<sup>37</sup> Ibidem.

<sup>38</sup> European Commission, 2015, p. 5.

<sup>39</sup> It is good to point out that some scholars elaborating on European Neighbourhood Policy and human rights promotion would rather trust the bottom up processes in the efforts to foster a step by step rule of law (see Tocci, 2006, pp. 14-15) than to the random empowerment of opposition forces. Top down enforced compliance with the international human rights treaties is also criticisable – based on tricky, improper identification with values adopted under pressure of the vision of material gains. Respectively as Sikkink and Risse famously remarked, between Principled ideas/international norms and their true internalization is a wide gap including steps like: *"Adaptation and strategic bargaining; Moral consciousness-raising, argumentation, persuasion; Institutionalization and habitualization"* (Risse, Sikkink, 1999, p.12.). This more structured view can perceive insensitive use of conditionality as simple Institutionalisation without fulfilment of precedented important steps, naively awaiting internalization.

<sup>40</sup> The Council of the European union, 2012, p.3.

United Nations General Assembly, Human Rights Council, International Labour Organisation. The EU further expresses its full support to universal instruments monitoring compliance and enforcing human rights through the Universal Periodical Review (UPR), the UN Special procedures and Treaty monitoring bodies. The EU promises that it *"will pay close attention to the degree of implementation by third country of UPR commitments which they have accepted and will endeavour to provide support for their implementation."*<sup>41</sup> Finally, multilateral engagement in favour of human rights will continue thanks to cooperation with already established regional organisations with strong human rights agendas as well as records like the Council of Europe or OSCE. The EU would like to engage also with the other regional organisations in order to "encourage" them into consolidations of regional human rights mechanisms.<sup>42</sup>

Thirdly, unilateral-coordinative way outlined in the Strategic framework entails the effective interplay of all the institutions of the EU – the European parliament, the Council, the Commission, the EEAS and the Member states which support their common goal: *"improving respect for human rights."*<sup>43</sup>

How concretely has the EU fulfilled its intentions outlined in the Strategic framework? Finer elaboration and actualisation of human rights strategy and practical plans for implementation is contained in a document called Action plan on Human rights and Democracy, which was issued, in its first edition, as a second, supplemental part of the Strategic framework back in the year 2012. The first Action plan expired after two years, as was planned - at the end of 2014<sup>44</sup>. Evaluation of the first Action plan, which was conducted during the last months of the year 2014 and first half of 2015 will be discussed later, when I will be describing practical ways to tackle the challenges EU's external human rights promotion faces with.

For the purpose of an overview, I would like to point out that the Action plan contains actions leading to an outcome with a specified deadline for implementation and fulfilment. Other kinds of actions are those of longer term ongoing character. Tasks of each action vary a lot – from establishing a specific institutional body, or connection

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<sup>41</sup> Ibidem, p.4.

<sup>42</sup> Ibidem.

<sup>43</sup> Ibidem.

<sup>44</sup> The Council of the European union, 2012, p.5.

between the institutions towards the more complex actions, based on diplomatic/political, economical or direct instruments, which entails concrete tools.

Political tools range from the political and human rights dialogues and consultations with civil society<sup>45</sup>, to the use of open political statements and condemnations, or on the opposite side the silent diplomacy, also further into the inclusion of human rights parameters into the impact assessment of the EU's external action<sup>46</sup>. Between political instruments, we can also match country human rights strategies.<sup>47</sup> If we understand the term "political instrument" figuratively and even wider, in connotation with diplomatic strategies, then engagement with regional organisations and active appearance at the different forums of the UN is de facto another instrument enforcing higher respect to human rights. Applying the same logic, EU delegations are supposed to be the vehicles delivering the culture of human rights and democracy in EU external action, which will be made by their activities in the host countries<sup>48</sup>

The Action plan mentions and specifies the actual preferred use of the economic instruments. Among these belongs especially human rights clauses inserted into all the bilateral agreements between the EU and other countries (FTA-Foreign Trade Agreements). These clauses can ultimately have a suspensive function for the agreement, when the third country starts to violate human rights. These violations contain slavery and forced labour, systematic violation of freedom of association, and collective bargaining, export of goods from prison labour.<sup>49</sup> Specific economic instruments - regimes eliminating to some extent the trade tariffs with the least developed countries – EBA (Everything but Arms, ), GSP (General System of Preference) and GSP+<sup>50</sup>, provide very strong conditionality effect, positive motivation towards improvements of human rights records in order to get into these regimes.

The Action plan also works also other independent and comprehensive instruments – guidelines covering e.g. the situation of children in armed conflict; freedom of religion or belief; freedom of expression online and offline and one tool-

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<sup>45</sup> Ibidem, p.6.

<sup>46</sup> Ibidem, p.6.

<sup>47</sup> Ibidem, p.22.

<sup>48</sup> Ibidem, p.7.

<sup>49</sup> Horng, 2003, p.693.

<sup>50</sup> The Council of the European union, 2012,p.11.

kit, which is supposed to be elaborated further into the EU guidelines, which serves the purposes of promoting LGBTI rights.<sup>51</sup>

## **2.2 The EU as an external human rights promoter – key points**

In the previous two parts, I showed an overview of the extent of the EU's role as a promoter of the human rights standards. From a geopolitical point of view, the EU is a distinctive kind of power. In geopolitical considerations, there was a dominant use of terms like power and military. With the EU it is different. Following the international relations scholars who deal with geopolitics, the EU also belongs to powers. The EU has no military, but at the same time interferes into world politics. This intervention is based on the improvement of respect to the values which were agreed as norms of international law. In this work I am putting aside the relevant argument with far-reaching consequences, that the whole construct of the international law can be a prolongation of the imperialistic politics<sup>52</sup>, and I am focusing just on the bare fact that the EU is constructing its external action around self-commitment to the promotion of respect regarding international norms and the promotion of (respect to) some values which also stand at the base of its own constitution. Generally we are speaking about the trinity of human rights, democracy and the rule of law. As I explained, and referencing Ian Manners, the EU seems to be the normative power. This kind of power has the intention of transforming what is perceived as a normal. Namely this normative power tries to establish the respect of human rights into a normal, common thing. For this purpose, focusing on the level of primary law and then also on the level of strategic documents – the Strategic framework on Human rights and democracy, the EU established external action which shall be shaped around the central value of human rights. The EU's conception of human rights overlaps with the conception held universally

The centrality and universality of human rights in the EU's external action is supported by the strategy of including human rights promotion into all the external

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<sup>51</sup> Ibidem, pp.16-19.

<sup>52</sup> Anghie, 2008, p.241.

policies. Terminologically it is human rights main-streaming. This knowledge leads us to the practical instruments available to human rights promotion. Firstly, to the strategical document, the often times mentioned Strategic framework and also the concrete Action plan with an outline of desirable outcomes and actions is supposed to be fulfilled in the specified time horizons. The Action plan operates with specific human rights instruments, where it is possible to distinguish between political/diplomatic, economic instruments, plus one direct instrument (EIDHR). Furthermore, the Action plan also counts with free-standing tools like thematic guidelines and LGBTI tool-kit

Making a link back to the introductory words, the character of the EU as an external human rights promoter seems to be completely antipodean to the tradition of query and doubt and, according to Havel, highly priced. The EU as an actor promoting human rights has no doubts at all. Upon first sight it does not look like there is room for self-reflexivity in the external human rights policies. The EU is very sure about the conception to be put into force. In short, the EU knows what to do, and how to do it. Nowadays the EU has also elaborated a wide range of instruments for action. But naturally, it would be wrong to expect signs of doubt in the primary law and in the strategic documents. However, the precise questions regarding: what to do, and how to do it, in connection with external human rights promotion, should be continuously contested and reviewed. The reason for that can be normatively-methodological, just copying Havel's preferred attitude towards the truth and the relationship with the rest of the world. In this interpretation, Europe owes others respectful and responsible treatment. This is simply from the fact that what is in question is external, not the internal action of the EU. Policy must be still reviewed and questioned, because it deals with lives of other people, not ours. Respectful and responsible treatment demands the involvement of an actor who is able to be of self reflexive considerations and strategical, and policy making activities arising from this attitude.

Secondly, the EU should take care of these issues also for different reasons than normative one. Adoption of a self reflexive position towards human rights promotion, which is a highly demanding task, can be practically helpful if readjustments in strategies will be freely flowing and contesting all the pronounced commitments, intentions, strategies and instruments, in order to deliver better outcomes.

In conclusion, I would like to highlight just the most important terms and their



connotations from the section dedicated to the EU as the actor promoting human rights externally. Of characteristic importance are the following: the EU is seen as a distinctive, normative power, who made a self-commitment to the promotion of principles and values, which stand also at the bases of the European integration itself – the EU mentions the trinity of human rights, democracy and the rule of law; these values and principles have a central position inside of the EU's external action, because the whole action shall be shaped exactly around these principles and values; when focused on human rights, the EU makes a commitment to the promotion of universal human rights, which means all the rights in the way as they are enshrined into the authoritative texts, covenants and conventions of the international human rights law; furthermore, the EU also has a strategy on how to promote these rights, in its Strategic framework, the EU calls this strategy human rights main-streaming, inclusion of these intentions into all external policies; a more practical document, the Action plan on Human rights and democracy names the desired outcomes and actions preceding these outcomes when operating with political/diplomatic, economic and direct human rights instruments.

In the previous part, I dealt with the EU as a sovereign promoter without any doubts. And from now onwards, I will be dealing exclusively with the EU's self reflexive abilities, which, I presuppose, are already present.

### **3.0 The EU's formal self-reflexivity in human rights promotion**

The hypothesis and working premise of this paper is a statement about the EU's ability and strive for self reflexivity. Despite the EU's belief in the correctness of its own role as a human rights promoter and despite, or more precisely because of the promotion of universal, very ambitious conception of human rights, the EU asks for being controlled in fulfilment of this conception. The plan for promotion of human rights presents a central intention shaping the whole European external action, and the EU calls for supervision and control over its own conduct. The EU is self reflexive in the sense that it is looking for its own controllers. This means nothing else than a

commitment to the principle of transparency. Additionally, this is also a commitment to an outcome oriented approach, which is not just rhetorical, nominal, formal, but which is truly essential. As Gordon Crawford points out, the European commissions communication from the year 2001: *"The European Commission, in a communication on The European Union's Role in Promoting Human Rights and Democratisation in Third Countries, stated that it 'wants to be judged on its performance in meeting the EU's policy goals [in this area]."*<sup>53</sup>

The EU asks for control and assessment of its external action focused on human rights and democracy. In the above mentioned statement, in fact the EU asks for outsourcing of reflexivity. This is the maximum somebody can expect from a political body. Political bodies are normally expected to deliver clear and firm strategies, not any doubts. Inviting civil society, researchers and observers for supervision and questioning their own conduct is confirmation that the EU materialized a political regime which is open for contestation of its own actions. This is true in the cases of reviewing the implementation of policies, but I am hopeful, and I am proposing as well the same openness even in reconsiderations of the ultimate normative, conceptual and strategical level. There is no reason why we should eliminate the reflexivity outsourcing just to follow up the policy implementation. If the political body is not sacred anymore and is interested in, and open to the opinions of the public, then the reflexivity outsourcing substituting self-reflexivity per se can apply on the follow up of the overall conceptual and strategic level of the EU's external human rights promotion as well.

Moreover, as the confirmation of EU's, at least formal self reflexivity, for example I am proposing to steer our attention towards the currently running *"large-scale, collaborative research project funded under the EU's Seventh Framework Programme (FP7)"*<sup>54</sup>. Where the *"main objective of FRAME is to provide the necessary building blocks for the development of a comprehensive and coherent EU human rights policy."*<sup>55</sup> The EU orders analysis and recommendations from the leading European (and not only European) universities and research institutes, in order to get better knowledge and practical insights for human rights policy-making. This means, that the

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<sup>53</sup> Crawford, 2005, p. 572.

<sup>54</sup> FP7, 2015.

<sup>55</sup> FP7, 2015(b).

EU is keen to receive a transparent, openly public, exercise of policy review. At least formally, this kind of policy review becomes now to be a part of the EU's policy making methods. Secondly, and with greater imagination I can deduce, that the EU starts an attempt to create an environment of reflexive nature. It is possible to demonstrate it on activities boosting accountability which has to be fulfilled through the means of the internal evaluation of its human rights policies. Just to illustrate this, I can point out the previously mentioned evaluation of the original Action plan on Human rights and democracy from the year 2012, which underwent evaluation at the end of the year 2014 and in the first half of 2015. Another sign of the rising need for accountability of the EU's conduct is observed in the plan for inserting human rights considerations into the universal impact assessments<sup>56</sup> on all the EU's actions. The EU logs in for accountability in its policies. At the end, outsourcing of the reflexivity and employing academics holding unlimited<sup>57</sup> academic freedoms means complete openness. The EU expects from the academia strict scrutiny of its conduct and in this sense it is reasonable that free academia will deliver provocative and fresh points of view. The EU is in fact self reflexive by proxy given to academics. And it is reasonable to expect that there could evolve even criticism pointing out problems at the very ultimate conceptual and strategic level. Request for a review of EU human rights policies and delivering recommendations is particularly promising when reading these single objectives of FP7 Frame research project which contain: *"a critical examination and appraisal of the EU's real and potential contribution to global human rights governance through its engagement with multiple actors and partners and through its multiple policies and instruments; (iii) a thorough scrutiny of the effectiveness of human rights promotion in the maze of EU institutions, competences and policies."*<sup>58</sup>

The EU is expressing demand for criticism and objective assessment of its policies in order to use them in future policy planning. The commitment to reflexivity means in the case of political corpus, commitment to proper political accountability. This commitment is proved to be right and actually underpinned by funding research projects focused on the respective field of human rights policy making and providing the the EU with independent and, most importantly, critical analysis and

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<sup>56</sup> The Council of the European union, 2012, p.6.

<sup>57</sup> For sure taking into an account ethical standards.

<sup>58</sup> FP7, 2015(b).

recommendations.

### **3.1 Academic and non-academic supervision and criticism of the EU's conduct**

A huge corpus of international human rights law, with the enforcing apparatus of diverse institutions and particular instruments, was constantly undergoing strict scrutiny conducted by scholars adopting various methodologies, research objectives and standpoints. The utmost general, but at the same time relevant objection goes to the logic on which the whole international human rights regime rests. For purposes of this paper it is needed to point out that the EU obliges itself for respecting exactly this universal human rights regime. Expressed eloquently in the Art. 21 of TEU, European external action is based on "*respect for the principles of the United Nations Charter and international law.*"<sup>59</sup>

For example, Linda Camp Keith focused her empirical research on the effectiveness of legal human rights regime. She conducted comparisons between human rights records of selected, more problematic and generally undemocratic, countries before and after the ratification of the human rights document. In her case she was speaking about the adoption of the International Covenant on Civil and Political Rights (ICCPR). An optimistic hypothesis that the human rights situation is generally improving after adoption of such a document was proved as invalid. Linda Camp Keith also provides us with one possible explanation as to why this is. In her opinion, which reproduces quite a common objection towards a legal human rights regime as such, implementation mechanisms of the treaties are so weak and rely on the good faith of the contracting state party, that it can easily happen that the contracting state bears this in mind already beforehand. These kinds of states enter a human rights regime without the intention to implement its provisions, because they are prepared to continue in exercising their sovereignty fully, without fear of negative consequences<sup>60</sup> Other political analysts like Eric Neumayer, Emilie Hafner Burton and

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<sup>59</sup> The Treaty on European Union, 2008, p.28.

<sup>60</sup> Ibidem, p. 112.

Kiyoteru Tsutsui propose more differentiated results. Neumayer outlines the complexity of the situation and he is sceptical towards a clear answer as to whether ratifications of human rights catalogues can bring an improvement to human rights records per se.<sup>61</sup> Social environment and parameters like strong civil society, high rate of political participation and participation in the functioning of NGO's are decisive parameters<sup>62</sup> for the success of a ratified human rights treaty, which is also the success of the the human rights regime strongly supported by the EU. A very important factor is the openness of the particular political system and its basic democratic nature. Neumayer points out a crucial factor in the ability to create a local pressure group which will enforce the provisions of the adopted treaty on its government.<sup>63</sup>

Unfortunately, sometimes the human rights situation worsens after the adoption of human rights treaties. Political scientists Hafner-Burton and Tsutsui even warn that in some autocratic regimes the level of violence and suppression will be on the rise when a specific human rights document (most notably ICCPR) comes into force.<sup>64</sup> Readings based on quantitative methodology are ultimately able to deduce a lesson, that the crucial factor of success is the existence of a strong local, or even better the existence of strong global civil society.<sup>65</sup> The starting point of the current criticism of the universal human rights regime is the knowledge that the bare legalistic effort to push other states into signing and ratifying international law documents will be unsuccessful without broader empowerment of civil society and a multi-stakeholder approach. The EU as an actor promoting respect for human rights in its external action is fully aware of this lesson, and offers an appropriately complex set of solutions and tools supplementing the initial push for accession to different covenants and treaties. But holding a critical point of view, we must still bear in mind that even today, it can sometimes happen that fostering respect to human rights can be understood in a reduced meaning, as just a pushing for accession and awaiting improved records. For that purpose it must be clearly stated that this understanding is simply wrong. On the contrary, it is also important to highlight that complementary to the partly ineffective persuasion for compliance is an element of coercion of human

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<sup>61</sup> Neumayer, 2005, p. 950.

<sup>62</sup> Ibidem.

<sup>63</sup> Ibidem.

<sup>64</sup> Hafner Burton, Tsutsui, 2005, p. 1398.

<sup>65</sup> Ibidem, p. 1399.

rights commitments. Hufner-Burton stressed the positive influence of economic conditionality enshrined in economic instruments - strong Preferential trade agreements (PTA's including the EU's packages of Cotonou Agreements , followed by agreements from Lomé).<sup>66</sup> These *"PTAs provides member governments with "harder" institutional channel to manage and enforce their policy commitments...PTAs do so by placing the language of human rights in an enforceable incentive structure designed to provide members with economic and political benefits of various forms of market access. These benefits are supplied under condition of compliance with the protection of human rights principles or laws identified in the agreement."*<sup>67</sup> Hufner-Burton throughout her research paper confirms the logic of conditionality as a helpful instrument for the enforcement of compliance. However, she is not expressing the inherent critical remarks directly: so firstly, conditionality of PTAs function ate as a principle and function ate even in practice, but every time there must be political will and persistence to use this instrument, which is not guaranteed; and secondly, from definition, it is applicable just on weaker economical partners – this is possible to connect with Hufner-Burton's suggestions regarding bringing principles of human rights obligations from PTAs to the universal system of World Trade Organisation<sup>68</sup>.

The above mentioned critics were dedicated generally to the human rights regime. But it is also true that the EU is the greatest proponent of the regime. Now I will focus on the debate directly critical to some aspects of the EU's external action.

A very common objection is directed to the selectiveness of the EU's crisis interventionism in the name of human rights. Guiarro-Usobiaga recalls a group of scholars criticizing the EU for the putative behaviour, *"when confronted with human rights abuses in third countries, the EU exercises Realpolitik by punishing only those states to which it can exert leverage, while it remains indulgent towards those where the EU's strategic interests are at stake."*<sup>69</sup> A concrete objection, which can even be tested, quantitatively as well qualitatively, is the objection of the inconsistent use of sanctions. *"Klaus Brummer, for instance, has argued that the EU sanctions policy presents three inconsistencies: first, the selection of target countries appears to be*

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<sup>66</sup> Hafner-Burton, 2005, p. 606.

<sup>67</sup> Ibidem.

<sup>68</sup> Ibidem, p.624.

<sup>69</sup> Guiarro-Usobiaga, 2013, p. 86.

*discriminating; second, the factors triggering EU sanctions are unclear; and third, virtually all sanctions include exemptions. Having said this, the author concludes that neo-realist assumptions hold firm in that the EU seems to sanction weak and isolated states and only when the interests of other great powers are not affected."* <sup>70</sup>

This kind of criticism is based on uncertainty and disagreement between some scholars on the logic which drives the EU's behaviour and action, especially in sanctioning the violators of human rights. Classical cleavage lays between the idealists/constructivists on one side and realists on the other. The former believes that the EU's conduct is driven by value and norms consideration. If there is a violation of human rights, the EU chooses an appropriate response in order to punish or push the violator to redress. This is done irrespectively of the material consequences Devotion to the virtue and clearly stated norms and values trump all the other considerations. On the other hand, for political realists, the dominant criterion for a decision about intervention, or non-intervention, is the economic and strategical calculation. If a violation occurs, then the costs are considered and if the EU learns that these are too high, then it is preferable not to intervene and not to impose sanctions or any milder measures in order not to jeopardize, and rather keep, our interests and provisions.<sup>71</sup>

Recently, some scholars realised the imminent urgency to prove which of these two logics really drives the EU's behaviour. This should also be a very important question regarding the intentions of this paper thematising the normative nature of the EU as an actor of external human rights promotion, with TEU and Strategic framework on Human rights and Democracy bearing heavy burdens of ambitiousness and moral obligations. Straightforward proof that the EU is nothing else than a cold calculative realist who is not stuck with its own values and commitments, this revelation will have huge impact on the EU's credibility and ultimately also serious consequences for the identity of the EU itself. In summary, it will be impossible to build the EU as a credible partner and normative world power, in alignment with the EU's own intentions enshrined into legal and strategic documents if it is proved the sharp contrast between promised commitments and real conduct based on the EU's calculations of costs and harm for the EU, arising from human rights promotion.

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<sup>70</sup> Ibidem, p. 96.

<sup>71</sup> Del Biondo, 2015, pp. 239-242. Guiarro-Usobiaga, 2013, pp. 104-110.

Succinctly expressed: *"The rationalization of the use of negative measures is not only necessary to justify their employment, but also for the EU to achieve greater coherence and credibility as an international actor. However, it remains unclear whether the EU effectively follows these guidelines literally. Accusations of double standards in the EU's use of coercive instruments are common, and different voices have blamed the Union for giving identical violations a different treatment. These accusations notwithstanding, the lack of empirical evidence makes it difficult to come to these conclusions so easily, and eternal discussions always arrive at the same point at the end of the day. Whether the EU acts consistently with the values it preaches or whether it is guided by material interests remains, nonetheless, an unanswered question."*<sup>72</sup>

Scholars, aware of the need to prove or refute these worries, started to conduct two methodologically distinctive kinds of research. Firstly, some of them follow the qualitative path of the case studies. In the scope of the case studies it is possible to focus qualitatively on one single country. But a possible objection to this approach can be that the researcher is focused on the case of failed promises, on the worst possible scenario. "Cherry picking" of the bad example, like for example the article of Gordon Crawford on democracy and human rights promotion in Central Asia, where he stresses the impersistent adherence with the proclaimed values of democracy and human rights promotion while he follows deep engagement of the EU with authoritarian rulers in order to obtain energy security for Europe.<sup>73</sup> Other "cherry picking" qualitative studies can also be of comparative nature. A very straightforward way as to how to depict the EU's inconsistent way of human rights promotion prioritizing realism over idealism, is putting side by side symmetrically serious violations of human rights like, for example, is in China and Myanmar, with an asymmetrical response to these (much stricter towards Myanmar) from the side of the human rights actor – the EU.<sup>74</sup>

A different approach towards qualitative inquiry investigating the true nature of principles driving the EU's external action, is the small 'n' comparative study. This is the example of Karen del Biondo's paper, where she defines a realistic hypothesis

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<sup>72</sup> Guiarro-Usobiaga, 2013, pp. 86-87.

<sup>73</sup> Crawford, 2008, pp. 186-187.

<sup>74</sup> Borreschmidt, 2014.



about the reluctance to use sanctions against strategic and economic partners on one hand,<sup>75</sup> and idealistic hypothesis that are presupposing interventions in cases of sudden deteriorations of human rights situations, or more likely interventions in unstable countries with lower economic performance, and also in countries where the intervention is supported by regional organisation.<sup>76</sup> These hypotheses are tested on the small group of countries that underwent some kind of "treatment", one can imagine some negative measures from the EU's side. These measures vary from the most serious economic and political sanction under CFSP, over formal and informal suspensions of aid, towards no sanctions.<sup>77</sup> Del Biondo asks, whether the variation in applied instruments of different strength, in different countries, can be explained by realist, or an idealist hypothesis. The conclusion is contrary to the previous case studies. Del Biondo confirms that the EU instead sticks with its ideas, and presents mixed, and mainly pro-idealistic outcomes as a valid.<sup>78</sup> The realist hypothesis seems to be, in majority of cases, rejected.

Indecisive results of the qualitative research could be overcome by the quantitative research design. Intuitively, there is an expectation, that the large 'N' analysis will enable a more precise overlook of the landscape of the EU's sanction strategy. And there is also a reasonable expectation that this representative research design can provide us with the answer as to whether the EU is consistent with its values, or rather prefers the realist considerations. Recently, Borja Guiarro-Usobiaga tested consistency of the EU's standpoints on 422 observed cases<sup>79</sup> human rights violations. And he discovered quite clearly that the EU is consistent with its values and intentions outlined in the article 21 of TEU. In fact, the EU is able to impose negative measures like condemnations, suspensions of aid as well as sanctions on other countries irrespectively of the relationship it has with them. As he says: *"the EU's employment of negative measures is primarily guided by ideas and values, whereas material interests have only a limited impact on the EU's decision to employ tough foreign policy instruments. Institutions, on the other hand, are important when determining whether to respond or not to abuses of human rights, yet they do not*

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<sup>75</sup> Del Biondo, 2015, pp. 239-240.

<sup>76</sup> Ibidem, p. 241.

<sup>77</sup> Ibidem, pp. 242-244.

<sup>78</sup> Ibidem, p. 248.

<sup>79</sup> Guiarro-Usobiaga, 2013, p. 26.

*influence the EU's choice between soft and tough instruments... there is some empirical evidence that might allow speaking of a "normative" power Europe. EU action seems to be highly consistent with the norms and ideas described in Article 21 of the Treaty of the EU. Thus, in the cases where the EU decides to go beyond the symbolic act of shaming, it seems to make a consistent and responsible use of negative measures."*<sup>80</sup> It is worth pointing out that this conclusion is not a single one, and other recent studies of other authors can confirm similar conclusions.<sup>81</sup>

Until this point, I have presented normative power EU with ambitious strategies and robust and far reaching instruments as almost unproblematic. Quantitative research trying to confirm or reject criticisms saying that the EU is inconsistent, or uses double standards concluded rather on consistency of the EU with its ambitious intentions. But there is one huge question mark. The EU is consistent with its values and persistent in the use of its instruments, just when it decides to act. As Guiarro-Usobiaga points out at the end of his paper, the predominant majority of all the violations of human rights – 75% are left unnoticed by the EU.<sup>82</sup> Exactly here I am positioning the material core of all the disputes and criticisms based on the idea of inconsistency. For some reason, the solid majority of the violations does not receive any reaction from the side of the EU – external human rights promoter. In my reading, bearing in mind all the ambitious intentions and promises, how the EU speaks up against violations of all the the rights (universality of rights), and at the same time mainstreams respect to these values and principles into all the external policies, after all these clear statements of commitment, there seems to be a silence in 75% of cases of violation as a justified concern, that there is some kind of inconsistency between the EU's standpoints (intentions) and practical (in)action.

Ultimately, inconsistency expressed by silence over the violations, is remembered on a daily basis by the various human rights NGOs. These organisations are then sharply critical towards the EU's lax attitudes in cases of oppression or disappearances of human rights defenders. The popularisation of inconsistency is made mainly through the statements pointing out the EU's commitments to speak up in favour of

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<sup>80</sup> Ibidem, pp. 36-37.

<sup>81</sup> f. e. Kreutz, 2015 p. 214.

<sup>82</sup> Guiarro-Usobiaga, 2013, p. 31.

the oppressed<sup>83</sup> in contrast with the EU's inactivity in a particular country, where negative phenomena evidently occur<sup>84</sup>. Other more direct ways the NGOs are exercising, are open letters<sup>85</sup> directed to high EU officials (especially to the High representatives for Foreign Affairs and Security Policy), in order to call for the EU's consistency with principles and values that the EU's external action is based on. This activism is supposed to result in the improvement of the EU's conduct. In conclusion, current activities of the various NGOs supervising the situation of human rights defenders and EU's diplomatic activity in support of defenders, is proof that the (in)consistency is a very serious and "up to date" issue of today's EU external action.

### **3.2 Conceptualization of the challenges to the EU's human rights promotion**

Now I would like to come back to the motive of reflexivity. In 75% of cases, there is a silence on the side of the EU, when human rights are violated. But this kind of research is not well known publicly. The ad hoc criticism raised by the NGOs is more well known. From time to time this kind of criticism proliferates into the wider public debate and into political debates dealing with the partition of the responsibilities for policy of human rights promotion between the level of European common foreign policy on one side, and particular national diplomacies on the other<sup>86</sup>. In all the cases the EU can easily opt out from the criticism by pointing out all the effort already made, and justify through that means, the putative inactivity by the secrecy of some of the EU's activities fostering respect to human rights, like for example demarches, or the

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<sup>83</sup> Human Rights Watch, 2015 (consulted on 25 June 2015).

<sup>84</sup> Human Rights Watch, 2015b (consulted on 25 June 2015).

<sup>85</sup> Human Rights Watch, 2014 (consulted on 26 June 2015); FIDH, 2013 (consulted on 26 June 2015).

<sup>86</sup> This topic was raised by the Irish Taoiseach, prime minister Enda Kenny, when the Irish delegation was criticised for strengthening trade relationships with Qatar, Saudi Arabia, or United Arab Emirates without pushing forward the agenda of respect for human rights. As justification of this conduct of Irish diplomacy and political representatives, the prime minister answered with putting emphasis on partitioning of the roles, where national representatives are supposed to focus on economic issues, and human rights belong to the EU, or universal forums of the UN (The Irish Times, 2014, p.15.) Expressed shortly and in the simplified way of some national representatives: at the national level, diplomacy must serve the national interest – ergo its character is shaped into the so called economic diplomacy, whereas European diplomacy is the appropriate voice for the promotion of values.

specific content of political dialogues, which are secret. But at this place it is necessary to point out the approach the EU has chosen. This approach is characteristic by some kind of reflexive focus on naming and conceptualizing the challenges the EU faces in the external human rights promotional efforts.

The European Union shows its reflexivity in the fact that internally, for its own purposes of discussion leading to policy-making, it discovers the conceptualization of the following specific contemporary challenges to human rights, or challenges to human rights promotion by the EU.

Friederike Tschampa from the European External Action Service mentions the challenges of today's urgent importance. She speaks about the bare fact of *"Human rights as a "spoiler" of relations"*, about the dilemma of whether or not to use *"shaming versus engagement"* strategies and she has not forgotten the *"Alleged EU "double standards" objections from a variety of different commentators and actors.* She sees the strategy of human rights promotion *"mainstreaming through our various external policies"* as a challenge, and further *"internal/external coherence"* of human rights policies is also seen as problematic. Friederike Tschampa raises the challenge to EU's *"credibility as global normative actor ("moral clout")"*, which is demonstrable on clashes between: *"Economic, Social and Cultural Rights/Right To Development; and Human Rights/Counter terrorism, migration, racism (and other) external effects of EU policies."*<sup>87</sup>

As a challenge to the contemporary efforts of human rights promotion it is generally seen as a battle between Universalism on one side and the New Relativism on the other<sup>88</sup>. These labels in fact present competing narratives of universal validity of human rights claims in the West and in the countries that internalised universal human rights regime with all its material provisions of diverse human rights conventions, versus the narrative of the rest of the world, respectively of the mighty countries, where considerations of their cultural, religious or ideological specifics take precedence over non-universal human rights regime for them.

Another serious challenge of general nature, Friederike Tschampa mentions, is the problem of *"Shrinking space for NGOs (traditional partners for EU)"* with all the

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<sup>87</sup> Tschampa, 2014, p.35.

<sup>88</sup> Ibidem.

accompanying events like pushback against the *"Freedom of Association and Assembly"*<sup>89</sup>, or the fact of a problematic relation between Freedom of Expression and new inventions in technology; as persistent problems are identified as violence based on religious or ethnic ground.<sup>90</sup>

At the beginning of this paper I asked: *"Where and how can we identify the practical conceptualisation of the self-reflexivity of the European Union? In other words, where can we sublimate these tendencies to be more self-reflexive?"* My answer is that it is exactly here – in the internal, institutional acceptance of, and continuing discussions that are stressing the challenges of human rights promotion, which serves as a confirmation of self-reflexive momentum on the side of the EU. This is in combination with the above mentioned trend of outsourced (indirect) reflexivity. This outsourcing goes into the hands of academics who are financed for criticism of EU human rights policies, development of analytical tools as conceptualisation of discussed challenges and finally, also for the outline of the future solutions.

As concrete proof of self-reflexivity, I can highlight the challenges particularly pertaining to EU promotional efforts. Those EU specific challenges are the allegations of double standards, which can be translated also as inconsistency of EU human rights policy. Another typical challenge the EU faces is the conceptualised problem of internal/external coherence of the EU's human rights policies. As a double check, Marangoni and Raube generally confirmed the connection between challenging to strive for coherence with the self-reflexive character of the EU: *"The portray of coherence as a 'virtue' for the EU in international relations is also evident in the self-reflection of the EU: 'Greater coherence, effectiveness and visibility' has become a mantra."*<sup>91</sup>

Internally a strategy of human rights mainstreaming as a potential challenge is also identified. Some of the mentioned challenges are simultaneously observable even in the EEAS discussions dedicated to democracy promotion. Ingrid Wetterquist spoke once more namely about the challenge of internal – external coherence<sup>92</sup>, but she linked this type of challenge with another criticism of "double standards"<sup>93</sup>. In fact, in

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<sup>89</sup> Ibidem.

<sup>90</sup> Ibidem.

<sup>91</sup> Marangoni, Raube, 2014, p.474.

<sup>92</sup> Wetterquist, 2013, p. 26.

<sup>93</sup> Ibidem, p. 28.

mixing these challenges together, we gain a confusing, but somehow interlinked duo of problems – the challenge of internal/external coherence and the challenge of consistency. These two, in context of external human rights policy, must be further investigated – also for the purposes of learning how these challenges are actually tackled by the appropriate EU's institutions, and also how they should be tackled.

### **3.3 Challenge of (in)Coherence and (in)Consistency**

Thanks to the basic self-reflexive effort of the EU, we can speak about the challenges of EU human rights promotion. Coherence and consistency are very often and loudly repeated as the current challenges of human rights promotional efforts of the EU. A call for achieving coherence is heard from the motto of the FRAME research programme, as was said, it is a mantra of the EU's institutions. But how to describe these concepts? Especially bearing in mind the complexity of the views and contexts they are revealed within? How to point out the aspects really important for the purposes of this paper? This paper is dedicated particularly to the EU as a human rights actor gaining self-reflexive momentum, learning about challenges and hopefully also keen to find appropriate responses to these challenges.

As a solution, I decided not to start with concept definitions, but I will dedicate the beginning to an experimental approach. At the beginning I will try to cumulate all the associations with the concepts of coherence and consistency I gained by reading texts, attending the FP7 Policy roundtable and conducting interviews with human rights desk officers at the EEAS. Through this approach I will prepare the grounds for a more detailed elaboration, and in a nutshell, I will introduce the two concepts in the most symptomatic and comprehensive way. What is associated with the coherence and consistency? What are their characteristics?

Coherence and consistency are the EU's aims and challenges at the same time. They have a character of policy making virtues, but when not achieved, they are at the same time perceived as a threats. They are seen as assumptions and also instruments for achieving credibility. Coherence and consistency are interrelated. They are close to

each other, but still distinctive. Etymology proves their difference, but institutions and practitioners create confusion when using them interchangeably and impermissibly. The concept of coherence is sophisticated and authors identify different dimensions of coherence. Consistency is much simpler and not such a broadly elaborated concept. Simply said, consistency is characterized as a binary quantity – you are consistent, or you are inconsistent with some value, standpoint or notion. For highly complex challenges of coherence it is valid that its ideal and complete fulfilment is almost impossible. But the same excuse is unacceptable in the case of inconsistency. Inconsistency must be tackled properly and completely, which is the ultimate claim. If it is not and someone is arguing by impossibility of achievement, then a serious problem can be observed at the level of general strategies that means at the level of Strategic framework.

Now I will describe these concepts step by step in a more detailed way starting with a definition from dictionary. Coherence is *"the situation in which all the parts of something fit together well"*.<sup>94</sup> Adopting an internal perspective, coherence is also: *"The quality of being logical and consistent"* and from the holistic perspective it is: *"The quality of forming a unified whole."*<sup>95</sup> Consistency means something different. Consistency precedes coherence. Consistency must be met in order to achieve coherence, because one of the definitions takes into an account dispositions to be consistent and logical. Correctly, the EU should ask FRAME researchers primarily to elaborate on consistency to achieve coherence. Not just ask them for solutions on how to foster coherence. Especially in the case of the EU, which sets a high threshold of external human rights promotion like: strategy of mainstreaming respect to the universal conception of human rights; centrality of human rights for the whole external action and commitment to speak up when whatever human rights are violated. It is precisely appropriate to ask for elaboration on the EU's consistency, which is in general defined as *"the quality of always behaving in the same way or of having the same opinions, standard, etc.; the quality of being consistent"*<sup>96</sup>, because of the fact of the EU

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<sup>94</sup> Oxford Dictionaries, 2015a, available at: <http://www.oxforddictionaries.com/definition/learner/coherence>, (consulted on 2 July 2015).

<sup>95</sup> Oxford Dictionaries, 2015b, available at: <http://www.oxforddictionaries.com/definition/english/coherence>, (consulted on 2 July 2015).

<sup>96</sup> Oxford Dictionaries, 2015c, available at: <http://www.oxforddictionaries.com/definition/learner/consistency>, (consulted on 2 July 2015).

's silence in 75% of cases of violation of human rights standards. Translated into the language of consistency, the EU is in its action inconsistent (behaves differently) in respect to its promises. Because of these bare facts in contrast with high thresholds, coherency and consistency must be at the centre of all the attention of institutions, researchers as well as political theorists.

A serious problem of these two concepts lays in terminological commutation and consequent confusion. Witte Wijsmuller points out the fact that the wording of the English version of the Treaty on the European Union does not recognize the concept of coherence of human rights policies, instead of it operates with the term consistency.<sup>97</sup> On the contrary, other language versions of the treaty use the equivalents of English coherence. The treaty obliges the Union to secure consistency between foreign policies and also consistency between foreign policy and other EU policy.<sup>98</sup> Wijsmuller highlights arguments showing a difference between the both. He quotes Hillions argument about impossibility of the interchangeable use of these concepts. Justification of this opinion rests in the ECJ ruling, where the court operates with both concepts at the same time which resist the commutation<sup>99</sup> and instead speaks for internal connection and proximity of these concepts. Remembering the works of Cremona and Gebhard, Wijsmuller notes the static and very simple nature of consistency: *"refers to the absence of pure contradiction in a literal, and often legal, sense."*<sup>100</sup> In comparison, *"coherence is a broader and more flexible concept. It is a matter of degree, instead of a static principle. Coherence represents the process, whereas consistency is focused on the outcome."*<sup>101</sup>

And finally, the complex concept of coherence includes and subsumes consistency as well, and what is the most important, brings also an important added value: *"Coherence does comprise consistency, but it is much more than that. It does not only mean the avoidance of contradictions, but also encapsulates synergy and added value in the different components of EU policy. Moreover, coherence embodies a process of unification, leading up to a "united whole"*<sup>102</sup> Wijsmuller closes the debate

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<sup>97</sup> Wijsmuller, 2013, p. 11.

<sup>98</sup> Ibidem.

<sup>99</sup> Ibidem, p.12.

<sup>100</sup> Ibidem.

<sup>101</sup> Ibidem.

<sup>102</sup> Ibidem.



about coherence and consistency with the distinction of the simple legalistic nature of consistency, which tries to refute contradictory practice. Coherence, on contrary, is a political statement asking for rapprochement of single actors and various policies.<sup>103</sup> Christophe Hillion speaks directly about coherence as a concept with synergistic parameters bringing added value.<sup>104</sup>

For depicting the current state of mixing the coherence with consistency it is needed to say that the coherence, thanks to its ambitiousness and demand to create synergies between different policy fields<sup>105</sup>, is mentioned predominantly as a political goal. This can be confirmed by the frequent and preferential use of the term coherence by institutions and academics. The domination of the concept of coherence is possible to confirm and deduce from the interest of researchers in the broad elaboration of the concept of coherence, and relative disinterest in the consistency. It seems, that coherence is politically and theoretically of interest and promising. Actually we are witnesses of two processes. Firstly, we are following the overshadowing of the consistency with the much broader and comprehensive concept of coherence, and secondly, there is observable confusion over the terminology when practitioners replace one term with the other, but the meaning generally stays the same – coherency, ergo quality of human rights policies to stick together. The quality to stick human rights policy together is expected from different actors, on different polity and policy levels.

Where to find the quest for coherence? And how many variants of coherence do we have? The quest for coherence is omnipresent when observing the communications of almost all of the EU's institutions. As the FRAME paper - "Report on coherence of human rights policy-making in EU Institutions and other EU agencies and bodies" points out, the coherence as a cross-sectional political aim for all the institutions: The European Council sets coherence as the political goal, and as the priority of programming in the areas like justice, security and freedom embedding coherence firmly in the Stockholm Programme<sup>106</sup>; The Council then refers to the coherence in its Strategic Framework and Action Plan on Human Rights and

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<sup>103</sup> Ibidem.

<sup>104</sup> Hillion, 2008, p. 17.

<sup>105</sup> Marangoni, 2015, p. 5.

<sup>106</sup> Lewis et. al, 2014, p. 13.

Democracy, otherwise The Council tries to avoid the topic of coherence, because it was recently criticised for *"not fulfilling its duty to ensure consistency through all EU policies"*<sup>107</sup> which just demonstrates the interlink between the topics; further, there is the European commission which, among other things, has the responsibility for *"day to day implementation of the EU Strategic Framework and Action Plan on Human Rights and Democracy in which it endeavours to pursue coherent objectives in both the internal and external spheres"*,<sup>108</sup> and finally the European parliament, the political body empowered to speak more freely highlights the policies of the EU which has problems with the coherence. As the Frame paper points comprehensively out: *"The Parliament also identified some areas where the Union is incoherent regarding its policies in the area of human rights, including in: (1) The protection of human rights defenders, as a key priority within EU human rights policy; and (2) Security, humanitarian aspects, trade, energy, environment, migration as area where there is a 'lack of progress in the consistency of the Union's external action.'*"<sup>109</sup> The European Parliament perceives one of the problems of coherence in the inconsistent behaviour of the EU in its external policies disregarding the high-level threshold of human rights – the EU's commitment. It is not a surprise that this inconsistency is found exactly in the fields of security, trade, energy and migration, exactly in the areas where the EU's important interests are at stake. As a conceptual and institutional problem, I can point out the fact that the EP as well as academics treat the challenge of (in)consistency just like one parameter worsening the overall coherence of EU policies. The interlink of these two concepts prevents them from seeing the problem of inconsistency as a serious and absolutely fundamental problem per se. Especially when inconsistency can be seen as an obstacle endangering the EU's credibility as a global actor.

Generally, coherence can be observed from various perspectives. There is conceptualised vertical/horizontal coherence as one of the relevant views, and internal/external coherence as another research perspective. The claim to be coherent in all EU Human rights policy dimensions contains: a vertical parameter which has the quality of coherence (ability to stick together) between human rights policies of the EU

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<sup>107</sup> Ibidem, p. 8.

<sup>108</sup> Ibidem, pp. 12-13.

<sup>109</sup> Ibidem, p. 4.

institutions and Member states<sup>110</sup>; horizontal parameter which can be explained as a quality of coherence of human rights policies and policy-making of two or more different EU institutions, subsumes also coherence across different policy fields and across EU member states<sup>111</sup>; internal / external dimension brings the demand of coherence between internal policies of the community of the EU and 28 countries (based on the values of the Charter of Fundamental Rights and single constitutions) and the EU's external policy of human rights promotion in third countries.<sup>112</sup>

The Frame paper was supposed to deliver a definition of the specific human rights policy coherence and that puts emphasis on the *"policy-making that seeks to achieve common, identifiable goals that are devised and implemented in an environment of collaboration, coordination and cooperative planning among and within the EU Institutions, among the EU Institutions and Member States, as well as among EU Member States. This policy-making considers the internal (within EU borders) and external (with third countries or other partners) aspects of human rights policies, together with the vertical (policies handed to Member States by the EU) and horizontal relationships (policies among EU Institutions or among Member States). Additionally, human rights policy-making ensures the respect for the universality and indivisibility of human rights in each policy dimension."*<sup>113</sup>

### **3.4 Critique of domination of focus on coherence over the consistency**

The definition of coherence is, in my opinion, clear and uncontentious. The same can not be said about the definition of incoherence. I think that the exact definition of incoherence shows the weakness of the substitution of consistency by the new ambitious political goal enshrined in the concept of coherence.

What is contentious about the definition of incoherence? Behind incoherence stands the following sets of reasons formatted around structures, frameworks and

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<sup>110</sup> Ibidem, p. 18.

<sup>111</sup> Ibidem.

<sup>112</sup> Ibidem.

<sup>113</sup> Ibidem.

interests. The Frame paper puts it in the following way: *"Incoherence is introduced into policy-making when (1) structures are ill-designed leading to a lack of coordination in policy design or policy implementation; (2) frameworks have competing visions or overlapping responsibilities; and (3) interests diverge or conflict regarding policy goals."*<sup>114</sup> The outlined perception of incoherence and in fact the perception of the threats the EU's human rights promotion faces is very much under the influence of constructivist explanative theories. I think that the approach explaining the inconsistent human rights policy-making can be close to the thin constructivist conception of Colin Hay. As David Marsh points out its characteristic features: *"thin constructivism prioritises material factors and causal logics."*<sup>115</sup> Human rights policy-making coherence is negatively influenced especially by the causal logic. From the definition of incoherence is clear, that the problems arises from the internal institutional settings of the EU institutions, policies and policy frameworks. The definition of incoherence is built up around the negative causality originating from the shape, interplay and generally imperfect functioning of EU institutions and respective human rights policies. Unfortunately in the definition of incoherence is just a smaller part of attention paid to the "material factors" – the interests.

I would like to argue, a little bit in a realistic notion, in favour of raising attention towards the material factors – the interests standing behind the incoherence. If we look at the three factors creating incoherence: ill-designed structures, unfocused frameworks/policies and finally the competing interests; the first two fall into the category of failures in quality of being coherent – to have the ability to coordinate institutions and competence to conduct the strategic outlining of policies with a single objective goal. These two qualities are completely internal affairs of the EU, they are fully in the EU's own competence. The third, material factor, the interests diverging with policy goals (human rights promotion), in my opinion represents the challenge of (in)consistency. As we know, part of the definition of coherence is interrelated with the simple concept of consistency. Being coherent also demands basic consistency – behaving every time in the same way, and holding the position over time. But because of the introduction of the promising, but also very complex and complicated concept

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<sup>114</sup> Ibidem, p. 19.

<sup>115</sup> Marsh, 2009, p. 684.

of coherence, we can follow how the consistency played down. Inside the platform of incoherence is the material factor – the imperative of interests inducing inconsistency of the EU’s external human rights policy, just in the third place. Alongside this material, and in my opinion also a general systemic and objective factor including the bare fact of different interests that trump policy goals in human rights are another two problems of internal nature. Alongside the third factor of interests stands the problems of structures in the form of insufficient institutional coordination<sup>116</sup> and also badly coordinated, unclear and overlapping human rights policy frameworks. These two, thanks to the concreteness in depicting the problems of coherency – at the same time outlines the future steps. Thanks to them the discussion around incoherence is much easier, because it is pre-structured through the definition of incoherence itself. Is there a problem of institutional coordination? Let us introduce new communication canals for improving the encumbering debate between institutions! Is there a problem of overlapping policies and instruments? Work on the reform of the system and its streamlining! Are there collisions of policy goals and i.e. economic interests? Then try to eliminate this kind of basic inconsistency! But how? This is not the question of periodical institutional reform. Inconsistency is a bare fact. Inconsistency is, or is not. But this simplicity does not mean that there is a simple solution. Inconsistency is in this respect qualitatively different from incoherence. For sure the solution is not embedded as an embryo in the definition of consistency or inconsistency. Solutions for tackling inconsistency will be born from the future philosophical, strategical, institutional and policy-oriented debates dedicated to the EU’s external human rights strategies and the role of the EU’s interests. The discussed Frame research paper bears one symptomatic problem of the debate about inconsistency. The aspect of divergent interests incorporated into the definition of incoherence is different than the other two aspects. Problems of structures and frameworks are the problems owned by the EU. The fact of divergent interests is framed as something what is imposed on the EU from the outside. This problem is presented in the Frame paper as foreign to the EU, created by the “*coincidence*” that the EU is one of the major players on the international market. As well, one could say unfortunately, the EU has become subject to external influence

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<sup>116</sup> Lewis et al., 2014, 20.

and pressure groups.<sup>117</sup> For purposes of showing how the contemporary framing of the problem of divergent interest looks, let me quote the whole paragraph: *"Finally, as a powerful actor in global markets and international fora, the EU is subject to external influence and interest pressure groups. Within its ranks, there are also diverging interests and schools of political and economic thought that seek to influence and shape policy making. When opposing interests are identified in policy making, it can also introduce additional incoherence."*<sup>118</sup> In the second part, the authors also mention the internal roots of inconsistency of human rights policy originated from the fact of divergent interests. But what must be criticised is the way of framing. Even in the case of internal roots, there is evident avoidance to speak openly about divergent interests, which are the interests of the very same EU as a normal political and self interested body.

Insertion of inconsistency into the wide and quite complicated concept of coherence was done, in my opinion, with an intention to eliminate and to forget the bare fact that the EU is also an political body seeking material benefits. The reason was also to eliminate a problem which raises really important questions contesting the contemporary strategy of human rights promotion and at the end also the current image of the EU as the normative power. And if I come back to the initial motive of self-reflection, I can only conclude that shutting the problem of inconsistency in the cold, or hiding it inside the corpus of coherence is not a promising step of the EU in order to continue achieving a substantive account of self-reflexivity.

### **3.5 Proposal of more robust conceptual distinction between incoherence and inconsistency - analytical tool**

This paper is supposed to plead for the rehabilitation of the simple concept of consistency. As I tried to show above, the challenge of (in)consistency is different from the challenge of (in)coherence. Current literature<sup>119</sup> and institutional debates are

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<sup>117</sup> Ibidem, p. 19.

<sup>118</sup> Ibidem.

<sup>119</sup> f. e. Wijsmuller 2013, pp. 12-14; Portela, Orbie 2014; Marangoni, Raube 2014; Carbone 2009;

dominantly oriented on the broader concept of coherence. This has its positive aspects in the use of synergies provided by the coherent whole. The political goal of achieving coherence is connected with effectivity in order to achieve identity and credibility.<sup>120</sup>

But dominance of the concept of coherence also has negative aspects. As mentioned, especially on the conceptual level, it overshadows the basic concept of consistency. Coherence contains consistency, but inside the definition consistency is just one of the parameters needed for fulfilling coherence. Generally coherence is understood especially as the quality to stick together. The definition of incoherence includes the parameter representing inconsistency as seriously deformed. The clash of human rights policy with divergent interests, which may lead to inconsistent behaviour of the EU, is framed as something which touches the EU only partially and indirectly. Current framing of the inconsistency is dangerously depicted as something that is in fact very far away from the nature of the EU. The first serious problem is that there is a rejection of the ownership of this particular topic by the EU. Instead, inconsistency is perceived as an outcome of foreign influences on the EU, such as: thoughts of some economic schools (probably neoliberal), consequence of involvement in the international market, or pressure from some interest groups. By softening and relativising the challenge of the inconsistency it creates an environment where the need for searching for the solution is also faded away, or it is seen as a problem which did not need to be raised at the level of the EU. But all these points are simply wrong. And precisely this challenge of inconsistency must be reconsidered, especially in the situation when the EU faces allegation of massive inconsistency with its external human rights promotional commitments in the form of unresponsiveness to 75% of all human rights violations.

The second serious conceptual problem is confusion, commutation and synthesis of coherence with the consistency. Unfortunately, even in academic literature it can happen that these concepts are used ambiguously. This can also be found in the text of Marangoni and Raube, when discussing a high threshold to be reached, when the EU wants to be seen as highly credible global actor, particularly when the EU wants to be seen as Normative Power Europe (NPE). Marangoni and Raube discovered that

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Dennison et. al 2013, p.6.

<sup>120</sup> Wijsmuller, 2013, p. 14.

for this achievement the EU needs a coherence of the arguments persuading other countries to "adopt EU norms and principles."<sup>121</sup> It is correct that the ambitious project like Normative power Europe asks for coherency that can provide credibility for the EU, which can be understood as a quality of all the arguments to stick together – shortly to cohere. Confusion starts with mixing this quality with consistency. The authors refer to points made by Schwelldnus and Lerch: "...the logic of NPE and the application of norms and principles are not only based on the need that they are to be 'applied equally to everyone' but also everywhere."<sup>122</sup> And I would like to also add "every time" and generally in all the occasions. But this quality is according to the authors still linked with the concept of coherence, despite the evidence that it suits the quality of consistency – behaving every time in the same way; consistently stands for, in its behaviour, the same values, principles and goals stated on paper, using the same instruments and tools in comparable situations. But the authors position the above quoted statement inside the frame debating coherence. These higher mentioned rules of conduct represent, in their opinion, the coherence. In my opinion it is, if not a failure, then for certain inaccuracy. The direct failure is when the same authors demonstrate a debated issue on the example of a classic problem of the so called "double standard" and strategic (not mechanic) use of human rights instruments: "NPE looks differently towards a strategic partner like China than, for example, in the context of Myanmar. The EU also does not always have the same instruments at hand to implement NPE — for example, action in EU accession policies tend to be more forceful than in its European Neighbourhood Policy, where instead of membership the EU offers 'a more for more approach' in return for transformative societal changes."<sup>123</sup> Looking at this concrete example, the debate is definitely about inconsistent behaviour towards the comparable human rights violators. In other words, the debated issue deals with the accusation that the EU is not in all cases and every time consistent in promotion of its ambitious goals. In conclusion, the problem of double standards represents a different angle on how to look at the challenge of inconsistency.

And finally, the problem with conceptual clarity is also observable in practice, inside the institutions. Practitioners at the EEAS are commuting both concepts without

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<sup>121</sup> Marangoni, Raube, 2014, p. 480.

<sup>122</sup> Ibidem.

<sup>123</sup> Ibidem, pp. 480-481.



persistent usage of the first concept for a description of the first phenomenon, and the second concept for the second phenomenon. During an interview I conducted with the EEAS human rights desk officials, they originally responded in a way of denying distinctiveness between coherence and consistency. They stated that in fact we are dealing with tautology.<sup>124</sup> But later we arrived at the conclusion that there is a difference. Coherence is a never-ending strive on how to shape all the complex, and still newly-arriving policies in order to handle mainstreamed human rights promotional parameters. On the other hand, consistency is simply the accusation of the EU creating a double-standard way of action.<sup>125</sup> But generally, the outcome from the debate about the different challenges of coherence and consistency was clear: inside the institution there is a distinction between this concept and issue, however, it is not important at all.

I wish to contest this latest conviction. Creating more a robust conceptual distinction between these two is not just right from the perspective of descriptive truth supported by definitional distinctions, but also by the very same fact of different nature of the problems as I will outline. And finally, different problems will have also partly different (suitable) solutions. Elaborating on these two concepts as distinctive is not just factually right, but also helpful in the most important aspect, in finding the ways out of the identified difficulties in the framework of the EU external human rights promotion activities. A more robust distinction prevents us from oversimplifications and primarily before targeted and convenient avoidance of painful reflection.

My proposal is based on making a distinction between challenging the facts of incoherence and inconsistency. The incoherence is technical – an unintentional consequence of very complex range of the EU's external policies which, all of them together, must be coordinated with one aim, to secure the insertion of the human rights aspect. Incoherence is the failure of coordination and the nature of this failure is basically technical. On the other hand the challenge of inconsistency is a matter of strategy. To be truthful, we are not speaking about failure at all. Being inconsistent when holding a position promoting human rights is impossible. You can not simply hold the value based position once, and later forget about it and behave unconsciously

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<sup>124</sup> See Annex Question nr. 5.

<sup>125</sup> Annex Q5.

in a different way. Inconsistency is conscious and it is a result of political will and choice.

At first glance, it seems to be shocking to present (in)coherence and (in)consistency in a strict contrast. But besides their interrelatedness and some similar points, it is important to highlight also their distinctiveness. Because thanks to these aspects it is possible to make further steps forward in searching for a cure to the challenges of EU human rights promotional efforts.

EEAS officials mentioned that the achievement of coherence is a never-ending process and there is no final condition of coherence<sup>126</sup>. It is a "*continuous challenge*."<sup>127</sup> Every single new external policy must undergo readjustment and will further be followed up in order to cohere with other policies. The same is true for the specific instruments, even their application and further functions must be synchronised and coordinated in order to build a coherent corpus of policies with their instruments.

In contrast the consistency, because of its simplicity and clarity, can be identified as one of the basic political virtues. Consistency must be fulfilled in order to achieve desired credibility. Behaving consistently is a must for all political actors and institutions. In this logic consistency can not be postponed with excuse that it is a complex issue. Achieving consistency is not technically difficult. Rather it is difficult strategically. The costs of achieving consistency are not predominately of organisational and coordinative nature like in the case of coherence. The costs of being consistent and keeping the promise of human rights promotion are especially of economic nature. The consistently espoused value position of human rights promoter can i.e. prevent him from entering some economic partnerships and concrete deals.

If coherence is a political goal, which will never be fully achieved, then consistency is a prerequisite of basic political legitimacy. Coherence is always a political goal and predetermines the direction of future activity. Consistency must be met every time and there is no margin for tolerance of the inconsistency. But it is very important to point out that even the concept of consistency is not completely rigid and inflexible. As I said, it is a binary concept and we can interpret it in the way that something is consistent, or something is inconsistent with its previous records, behaviour, e.g. in

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<sup>126</sup> Annex Q6.

<sup>127</sup> See Annex Q6. From context is clear, that EEAS official means the quality of being coherent – ability to stick together, but the paragraph contains both terms.

human rights promotion generally. It is based on the fact that you can not completely forget your values and practices and interrupt or quit your human rights promotion if it is your high level commitment and one of the pillars shaping the external action, as is stated in the Art. 21 TEU. But I would like to highlight that there can be space for presumed inconsistency in the use of human rights instruments – justified by the strategic way of reasoning. Behaving inconsistently can be partly a matter of political strategy. We can demonstrate this in the case of human rights clause as one of the EU´s instruments. In general, the ultimate purpose of the human rights clauses in different kinds of agreements is to secure that the signatory will be bound to respect its commitments if he did not want to lose the agreement which may be abstained. Ultimately he did not want to lose the benefits arising from the agreement, not the agreement per se. Hypothetically, when a violation of human rights of the same kind and seriousness occurs in two countries, it can happen that against one country the human rights clause will be applied and not against the other. Descriptively we have here a great example of inconsistency, but substantive political reality is more complex and we can easily learn that the bare descriptive assesment is insufficient. The Frame research paper dedicated to the human rights instruments in the case of clauses, points out that they are especially positive measures (not negative punishment). Their purpose is to keep the dialogue running.<sup>128</sup> In context of this example it is needed to say that what looks from a macro perspective as certain inconsistency, can easily be understood as a strategy on how to be consistent with the true essence of the policy – make the most of the situation in favour of human rights. Looking only at the use of the human rights instruments will be a serious failure. The context of the strategy chosen to human rights promotion in the specific country (Human rights country strategies) is much more important, and exactly from the concrete situation and ad hoc action we can judge the state of consistency or inconsistency. In conclusion of this, descriptive, instrumental inconsistency seen from the macro perspective without knowing circumstances of the specific dialogue it can be just a political strategy on how to be consistent in outcomes as a successful human rights promoter. Strategic inconsistent use of instruments may lead towards consistent commitment to the human rights. But the EU must in these cases provide the global public with a

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<sup>128</sup> Churruca Muguruza et al., 2014, pp. 35-36.

justification of the chosen strategy to prove that the inconsistency is just a formal optical illusion.

Describing the nature and distinctiveness of these two conceptualised challenges of (in)coherence and (in)consistency, is a first and imminent step forward. It is a step which offers us to see the contemporary challenges from a new perspective. And furthermore, we can also find the appropriate level where the problems are at root, and where they must be also tackled. Thanks to this, we can try to invent suitable solutions. Searching for a clear conceptual distinction between challenging terms, is in my opinion the most important and potentially helpful approach – focusing both on the core of the problems, not on its consequences. In the case of coherence the core is complex along with the amount of the policies which must be coordinated. In the case of consistence it is a difficulty to hold a value based position on the international scene, where the "real politic" imperatives still reign.

#### **4.0 The EEAS as an actor in charge of coherence and consistency**

Council decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service outlines the following task for the EEAS : *"The EEAS will support the High Representative, who is also a Vice-President of the Commission and the President of the Foreign Affairs Council, in fulfilling his/her mandate to conduct the Common Foreign and Security Policy ('CFSP') of the Union and to ensure the consistency of the Union's external action as outlined, notably, in Articles 18 and 27 TEU."*<sup>129</sup> As we know from the previous sections, there are problems with the definitions resulting in a blurred distinction between coherence and consistency. But in this case I want to offer a very wide interpretation that the treaty gives intended, that the EEAS will have both tasks: securing coherence between different external policies, which is unthinkable without basic consistent implementation of these policies. This means that there will be a single voice of High representative for

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<sup>129</sup> The Council of the European union, 2010, p. 30.

CFSP (representing parameter of coherence) supported by the work of the EEAS. But from a logical presupposition, I am deducing that this single voice must also be raised consistently in order to avoid the failed promise of policy coherence. Coherence as well as consistency are valid and urgent tasks for the High representative and her service.

Concretely, the role of the EEAS is already linked with terms like the slightly pejorative: "mantra of coherence"<sup>130</sup>, but also neutral statements, that the EEAS has coherence mandate. The EEAS has supportive tasks towards the High representative, and her tasks are then framed around ideal of coherent foreign policy.<sup>131</sup> Facilitation of cooperation is also a task of the EEAS, and this is not by a chance related with securing coherence/consistency: *"cooperation is instrumental to the coherence mandate of the HR/VP supported by the EEAS, given the essential function that such cooperation plays in ensuring coherence. Indeed, as a 'Service' rather than a fully-fledged political institution, located between the Commission and the Council, the EEAS is primarily conceived to work for and with other actors, and thus needs the latter's cooperation to effectively fulfil its tasks."*<sup>132</sup>

Academic literature stresses very often that the EEAS has still unsettled factual extent of competence as a service established by the secondary law, which is positioned and must operate between the institutions formed by the primary law.<sup>133</sup> As a consequence, the EEAS can be still perceived as an agent of more principals which may have a negative effect on the consistency of the positions and coherence of the policies held and implemented by the EEAS. As Thomas Henökl points out: *"..four years after its creation, the EEAS remains in a situation of complex and overlapping competence areas as well as interlocking layers of political and administrative governance, where the service has to interact with and to answer to different national (member state) and intergovernmental (European Council, Foreign Affairs Council – FAC) political masters as well as supranational actors/agents, mainly the Commission and the freshly constituted European Parliament (EP)."*<sup>134</sup> But anyway, based on the TEU and decision of The Council of the European Union, I´am stucked with the

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<sup>130</sup> Sánchez-Tabernero, 2014, p. 12.

<sup>131</sup> Hillion, Blockmans, 2013, p. 20.

<sup>132</sup> Ibidem, p. 23.

<sup>133</sup> Henökl, 2014, p. 457.

<sup>134</sup> Henökl, 2015, p. 680.

interpretation, that the EEAS bears the coherence mandate, and for this purpose is the focus on the EEAS as an actor in charge of coherence and consistency fully justified.

Great occasion for examining how is this coherence mandate exercised in practice, and mainly how is the general task to maintain EU's coherence (hence consistency) in external policy of human rights promotion, continuously fulfilled is, when the EEAS and consequently also other human rights stakeholders, inside the EU institutional framework, are evaluating and drafting new highly important policy document new Action plan on Human rights and Democracy 2015-2019. For this purpose, I conducted in June 2015 an interview with two responsible officials from the EEAS Human rights and Democracy directorate. Both of them were taking part on the processes of evaluation of the previous Action plan from the year 2012. And they were also active in coordination works of drafting of the new Action plan, which was conducted under the mandate of the EEAS. Throughout the interview, which is in its full length available as an annex of this paper. I tried to find out, how is the EEAS tackling exactly those challenges, which are falling to the assigned basket of this service. I posed questions dedicated to the identification, perception and solutions of the challenges of coherence and consistency in the frame of external human rights policies.

#### **4.1 The EEAS work on Action plan – observations based on the interview**

Work on the evaluation of the Action plan 2012 and coordination of the drafting of the new Action plan 2015-2019 is the occasion, when all the relevant challenges must be taken into the consideration, and consequentially, there must be also the efforts for tackling these challenges. The most relevant single actor who deals with this difficult task is the EEAS. Mandate of the EEAS is at the same time described as a coherence mandate. How the EEAS deal with the challenges of particular interest of this paper, with the (in)coherence and (in)consistency? What are the general remarks and observations to be highlighted?

First thing which must be pointed out in connection with identified, important challenges of (in)coherence and (in)consistency is the bare fact, that practitioners are on daily basis inconsistent in the use of these terms. As I was saying already higher, they use coherence and consistency interchangeably.<sup>135</sup>

Secondly, practitioners are aware of the differences on the conceptual level and they are giving almost the dictionary entry for consistency: *"Consistency addresses the criticism that we receive, that we apply double standards. So we are not in the area of coherency, we are in the area of external relations, so for instance we were very criticized, that we are outspoken with human rights in Pakistan for instance, when we are not in Egypt, that is the question of consistency. How you implement your set of policy in all parts of the world. The coherency is touching the problem how holds your internal policy, or the other areas of your external policy."*<sup>136</sup> But despite their awareness of precise distinction between coherence and consistency, standardly, during our interview, when focusing on challenge of coherence/consistency, they referred to the content of concept of coherence of internal and external policies.

Thirdly, I wish to support second observation by the fact of willingness of EEAS officials to admit that some policies like *"trade, migration, impact assesment, rights based approach, counter terrorism"* have an constant deficite of coherence<sup>137</sup>. And they frame this discussion in the way, that the source of this obstacle is of completely technical character. As there arise new policies, new phenomenons, things are more complex. Some policies start to be incoherent wih the human rights provisions. This challenge arises mechanically or accidentally, but EEAS and the EU institutions have an response: continual readjustment of the new external policies in accordance with the claim of human rights mainstreaming. The EEAS knows, that they, respectively EU's policy-makers, have the capacity for coping with this issue. Technical solutions based on better coordination (interplay) of EU institutions and other relevant stakeholders, and further specification of the procedural conduct will solve technical problem of incoherent human rights external policy. Acknowledgement of this challenge by the institution just confirms that, in the case of coherence, we are dealing with the criticism which was fully internalised and framed suitably for the EEAS and EU

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<sup>135</sup> See Annex Q5.

<sup>136</sup> Annex Q5.

<sup>137</sup> Annex Q6.

competencies. In fact it is an objection and challenge from inside of the regime.

Fourthly, there is a an evident contrast in perception of the challenge of (in)coherence and the perception of the challenge of (in)consistency. I wish to point out, that the EEAS officials did not admitted openly that the EU external policies suffers also by the inconsistency – by the lack of quality to behave everytime in the same way, supporting human rights promotion everytime and everywhere. In their terms it is a matter of "external relations."<sup>138</sup> And what more, they speak just about alleged inconsistency. EU is allegedly inconsistent, based on the observations of NGO's critical voices. EEAS officials confirm, that the EU is everytime consistent in applying the same rules in negotiating respective kind of trade agreements<sup>139</sup>. But they confirmed also, that what is considered is the relative power of the partner. Where logically, conditionality is, or is not applied in dependence on the power relations. In case of economically strong partners are applied different, finer strategies of human rights promotion, like political dialogues. During the interview officials priced and pleaded for more continuity of exactly these political dialogues.<sup>140</sup> And we must bear in mind, that because there is almost the same number of human rights country strategies, as there is number of states, so EU behaves de facto inconsistently very often – everytime when pursues unique national path. But it is that kind of justified inconsistency I explained in section 3.5. Justification goes in these cases towards the ultimate aim of achieving progress on human rights by the appropriate means. But on the other hand there is a huge problem of unjustifiable inconsistency, I can just remember 75% of human rights violations without EU's response.

My interpretation of the reasons for silencing and overlooking the "consistency dicourse" is that EU must be officially seen as consistent in its external human rights promotion. For the inconsistency there is in fact no available cure on the side of the EEAS or other relevant intra-institutional stakeholder concerned with human rights issues. But the EEAS and EU have available cure for the problem of incoherence. This is the reason, why the (in)coherence is by the EEAS (EU) openly confirmed challenge - ready to be tackled and continuously solved by the institutions, EEAS service included. As was discussed in section 3.5, question of inconsistency is not a technical, or

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<sup>138</sup> Annex Q5.

<sup>139</sup> Annex Q7.

<sup>140</sup> Annex Q3.



procedural, but a political one. For solving political problems is inevitable a political mandate to push human rights consistently forward, even over other interests that political body can have. For solving political problems there is a need for political leverage, which is missing by the EEAS as a service. And what more, you need to identify the appropriate level, where the political questions can be solved.

Fifthly, the EEAS officials present the Strategic framework as a political document, document of political engagement<sup>141</sup>. Exactly on the political level of Strategic framework we can learn, how deeply is EU politically engaged in human rights promotion. And political engagement in human rights promotion externally is very high. I am mentioning just two formulations which, in my opinion underpins this claim: primarily from the Art. 21 TEU we already know about the crucial principle of universality and indivisibility of human rights which shall guide the international actions of the EU<sup>142</sup>; and the confirmation of political engagement is enshrined also directly in the Strategic framework, where is politically putted, that: *"The EU will place human rights at the centre of its relations with all third countries, including its strategic partners."*<sup>143</sup> Punch line is, that the EEAS officials does not perceive the need to review Strategic framework. In their opinion just the Action plan needed renewal. At the same time this fact must be putted in the context of the facts I repete regularly: EU is highly ambitious in its plans and strategies of external human rights promotion; at the same time, there is a idea of centrality, when EU shapes its whole external action around the principles of human rights; then there are good reason to believe EU has issues with inconsistency exactly in this external human rights policy; and finally, EU institutions does not seem to be substantially self-reflexive, when they cover problem of inconsistency by the more technical problem of incoherence.

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<sup>141</sup> Annex Q9.

<sup>142</sup> The Treaty on European Union, 2008, p.28.

<sup>143</sup> The Council of the European union, 2012, p.3.

## **4.2 Drafted Action plan 2015 – Combating inconsistency?**

From the drafting effort coordinated by the EEAS<sup>144</sup> arises the new preliminary Action plan for the new planning period 2014/2015. This document in its foreword lists the most serious and also the most actual challenges to human rights promotion. On the other hand, it is supposed to outline also the appropriate solutions to these challenges. That all happens during the globally impaired situation, when *"human rights and democratic values are often questioned and in many places ignored."*<sup>145</sup>

New Action plan has to *"keep human rights at the heart of external action."*<sup>146</sup> This means the renewal and confirmation of the centrality of the human rights in the context of all the EU's external actions. Newly, the action plan has to be more strategic oriented<sup>147</sup>, and it also states clearly what are the challenges and It tries to outline the solutions and openly present EU priorities.

Between the strategic areas of action is also the intention for *fostering better coherence and consistency*<sup>148</sup> of EU's external human rights policies. Brief annotation confirms that even new action plan understands the coherence and consistency as more or less the same challenge and the cure for better coherence and tacitly consistency is "just" continuation of mainstreaming of human rights respect into other external policies.<sup>149</sup> When I say 'just' I mean that the only strategy, how to tackle the identified challenges is simply the continuation and fostering of current practice (mainstreaming) without explicit employment of some new, radically different strategies, or innovative cure.

Particular actions which are under the banner of "fostering better coherence and consistency", are following the path of more persistent implementation of the respect to human rights. This banner includes the following: "Migration/trafficking in human beings/smuggling of migrants/asylum policies"; "Trade/investment policy" ; "Counter-terrorism"; "Pursuing a Rights Based Approach to Development";

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<sup>144</sup> Annex Q1.

<sup>145</sup> European Commission, 2015, p.2.

<sup>146</sup> Ibidem.

<sup>147</sup> Ibidem, p.5.

<sup>148</sup> Ibidem, p.6.

<sup>149</sup> Ibidem.

"Strengthening the contribution of impact assessments to the respect of Human Rights."<sup>150</sup>

All of these actions have potential to ensure EU's better coherence. This is so, because they provide concrete elaborations of mainstreaming entailing involvement of the EU in the new dialogues or introduction of new capacity building projects. Further also, new action plan bears the promise of inclusion of the above mentioned topics into respective political, human rights and other dialogues.<sup>151</sup> Generally I can conclude that when distinguishing between coherence and consistency, these measures are directed to tackle the challenge of coherence. They try to persistently include - mainstream the human rights particles into the various policies and single mechanisms and instruments (especially dialogues). Inconsistency is in this plan tackled just as a by-product of the strive for coherence. This is once more the trick of synergical effect of coherentist efforts. Consistency as a by-product is imaginable, when there are policies unloaded by competing interests and at the same time we can follow really persistent mainstreaming of human rights. But I am afraid, this can not be the case by the most striking and important policies like f. e. trade and investment policies. On the other hand, promising provision tackling the real inconsistency in the sense "*behaving everytime in the same way*" is also part of the new action plan. All the efforts to include human rights parameters into the impact assessments<sup>152</sup> are efforts to analyze the situation, better understand what is in support and what hinders the human rights promotion. By highly developed and universally applicable impact assessments entailing parameter of human rights (even ex-post) will help to uncover the bare fact of inconsistent behavior.

Another provision which could be ascribed to the efforts tackling namely the inconsistency is "*the strive to include in the Bilateral Investment Treaties (BITs) that they (Member states) are negotiating with third countries provisions related to the respect and fulfilment of human rights, including provisions on Corporate Social Responsibility, in line with those inserted in the agreements negotiated at EU level.*"<sup>153</sup>

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<sup>150</sup> Ibidem, pp. 16-19.

<sup>151</sup> Ibidem.

<sup>152</sup> Especially it is present here in action 24/b: Continue to develop a robust and methodologically sound approach to the analysis of HR impacts of trade and investment agreements, including in ex-post evaluations; explore ways to extend the existing quantitative analysis in assessing the impact of trade and investment initiatives on human rights. European commission, 2015, p. 18.

<sup>153</sup> Ibidem.

Two recent actions are promising. Unfortunately the general narrative is clear: coherence and consistency are not just interrelated concepts. Action plan, in fact, speaks about single problem of coherence and consistency. Explanation of this problem overlaps with the definition of coherence, and the focus of solutions is logically steered towards fostering of mainstreaming of human rights. This materialises the human rights coherence of all the external policies. But, de facto, this does not inevitably solve the problem of inconsistency, which is of qualitatively different nature.

#### **5.0 How to be substantively self-reflexive? Pursuing challenge of inconsistency to the level of Strategic framework**

How to be substantively self-reflexive? How to overstep formal reflexivity of assessment of policies and instruments? Based on interview there is need to go beyond questions asking "how?". Question which must be posed, because from various reasons is actually programmatically overlooked, is the question "what?". Asking what we are really promoting? What are our strategies for promotion? With these questions we are finally moving to the level of Strategic framework. EEAS officials were saying that the level of Strategic framework actually does not need the review. But I tried to show, that there is a challenge of inconsistency which is insufficiently stressed, in comparison to coherence, the question interrelated, but still qualitatively of different nature. In part 4.1 I deduced that the challenge of consistency is political question. It is question of political will and engagement. EEAS officials admitted, that the Strategic framework is a document of political engagement. Putting these two informations together in the light of the symbolical 75% of all the cases of human rights violation, when EU is silent, I believe that there are justified reasons to touch even the level of Strategic framework in order to seriously pursue the inconsistency.

## 5.1 Source of inconsistency – ‘mainstreaming’ does not cover the ‘centrality’ of human rights in external action

Sharply said: source of the inconsistency is observable already in the Strategic framework. Inconsistency starts by a formulation in the Strategic framework. Political engagement entails not just highly ambitious universality and indivisibility of human rights, but also this strong provision: "*The EU will place human rights at the centre of its relations with all third countries, including its strategic partners.*"<sup>154</sup> Article 21 TEU is just confirming this in the context of policies, when says, that the external action shall be guided by the principles of universal human rights.

But the EU practitioners behaves persistently inconsistent in respect to this provisions. Their behavior is de facto everytime inconsistent, because never follows this prescription. Why? It is important to stress, that the human rights mainstreaming, does not mean the centrality or guidance of external policies by the human rights. Promptly said by representative of DG Trade, Mr. Vanheukelen at the Frame External policy roundtable on 1<sup>st</sup> of June 2015 in Brussels. When considering the shape of trade agreements, human rights clauses and impact assesments must be on the checklist, but purpose of trade policies is facilitation of exchange. My reading is: we are mainstreaming respect to human rights into the trade policies, but these external policies has their appropriate core or centre – in this case it is the trade, nothing else.

In the same manner the EEAS officials, despite the ‘centrality of human rights for all the realations with all the partners’, they openly distinguished between human rights policies and other, by interest driven policies.<sup>155</sup>

If you read Strategic framework, everyone must expect that the external policies will be shaped around the efforts of human rights promotion. But reality is different and practitioners are not ready to do that. They are providing mainstreaming of human rights, but inclusion of respect to human rights is on much lower level of political engagement that a statement about centrality of human rights.

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<sup>154</sup> The Council of the European union, 2012, p. 3.

<sup>155</sup> Annex Q14.

Simply it is strategical and conceptual failure to speak about centrality, if this cannot be implemented into the reality. The notion of inconsistency is starting already here. For example trade policies will be everytime incoherent with this provision and generally, they are following different – material logic. So actors will behave inconsistently in order to achieve greatest benefits. Examples like these should serve to break the hesitation to touch the Strategic framework when evaluating value policies. Some conceptual problems can be rediscovered exactly when we start to be truly reflexive to What we are saying, planning and really doing.

### **5.3 Three ways out from the inconsistency**

Before I will outline three different scenarios, how to cope with the inconsistency, I would like to mention basic recommendations arising from the considerations undertaken during facilitation of this paper.

First recommendation goes to the clarity of the concepts. It is helpful to distinguish between the challenge of coherence and consistency in order to be fully reflexive and being able to find the rootcauses of the problems. Second recommendation is connected with the first: it is needed to distinguish between the concepts of coherence and consistency because it is a failure to believe, that thanks to the synergy gained from coherence, you will gain also consistently behaving promoter of human rights. Better coherence does not solve qualitatively different problem of unwillingness to prefer human rights over other interests. Ergo, it does not solve the problem of consistency. It is imminent to remember, that coherence is question of coordination and consistency is dependent on political will. Third recommendation goes to the recommendation of popularisation of the way, how the EU's external promotion of human rights really functions. It is inevitable to try to justify putative inconsistencies in human rights promotion – it is important to clarify, that the strategies of promotion may vary in order to achieve the most of the situation. At the same time, based on my conceptual distinction, it is needed to terminate the EU's habit to overlook its own inconsistency in human rights promotion, and instead

admitting just the technical incoherence. Definitely helpful will be to end the hesitation to touch the strategies, principles and values up on the level of Strategic framework. Namely I mean the centrality of human rights in interplay with highly ambitious conception of universal human rights which shall guide Union's external action towards all the bilateral partners.

Basically, I wish to outline three rough conceptual solutions, scenarios of the ways out from the inconsistency: one realistic, one idealistic and finally one transformative.

Realistic scenario advises to continue following the practice of mainstreaming of human rights. This scenario claims levelling down the expectations enshrined in the Strategic framework (respectively levelling down some provisions of the Art. 21 TEU). Realistic scenario will be pleading for accommodation of Strategic framework to the possibilities of the practice of diplomacy and especially to the practice of economic diplomacy. This scenario will propose to follow what the actors are able to achieve and will be against too ambitious plans. Practically, proponents of realistic scenario will be asking for deletion of formulations dedicated to centrality of human rights for the EU relations with all the bilateral partners. They would argue, that the inconsistency arises exactly here, on the level of Strategic framework, because for them is clear, that the central purpose of f. e. trade policies is doing trade, not promote human rights. That all despite the fact, that they will support the strategy of mainstreaming of human rights. Their problem with the Art. 21 TEU will be the same, too ambitious formulation stating that the EU's external action shall be guided by (between others) the universality and indivisibility of human rights. They will oppose by saying that each particular external policy shall be guided by its own purpose with respect to the provisions of international law.

Second scenario of idealistic nature, introducing the way out from the inconsistency, will speak out about EU's inconsistent behavior. But idealists will be satisfied with the ambitious provisions of the Strategic framework. Finally they will even point out the centrality of human rights as a tool for progressive change of political practice. They will simply pleade for implementation of these ambitious provisions. Probably they will try to propose some more specific passages into the new Action plan. This specifications will be direced towards reduction of wide political

room for maneuver. Idealists will be persistently using strategy of mainstreaming, but the same persistence will be applied also for other particles stated in the Strategic framework. In order to avoid inconsistency they will be highlighting the seriousness of the commitment which is contained in the Strategic framework and arguing for fulfilling of these commitments. As a safeguard of this fulfillment, EU must enrich its instrumentarium with clearly defined rules of engagement. Already in advance must be outlined, how to react on which particular situation. All these rules must be well known in order to enable scrutiny made by public. At the same time, whole society must undergo an educational, cultural and mental revolution by which will be internalised new value system which will whole-heartedly ask the EU officials for centrality of human rights shaping whole external action, irrespectively of material costs of this decision.

And third scenario I prefer mostly, is based on transformation of the discourse as it starts to be the reality in some flows of the political theory of human rights. There is one evolving conception based on ideas of Hannah Arendt. This alternative and also promising conception calls "right to have a rights". Adopting and internalising the perspective of the "right to have rights" means to follow Seyla Benhabib's non-state-centered approach where is the whole attention paid to *"the claim of each human person to be recognized and to be protected as a legal personality by the world community"*<sup>156</sup>. This provision is minimalist in its form, especially in comparison to wide elaboration of all the human rights treaties and covenants. This "right to have rights" is also (definitionally) minimalist in comparison to the conception of universality of human rights held on the level of Strategic framework. But implementing right to have rights into the strategic document will have far-reaching, transformative effect. By this implementation, and prioritisation of right to have rights in policy planning - EU will take responsibility for promotion of human rights of those most vulnerable. Implementing and fulfilling of the intention to promote "right to have rights" you start to be directly involved in the situation of those who are already not under protection of any relevant state. I am speaking about growing population of undocumented migrants, internally displaced people, peoples living somewhere on the border line, in the areas of broken states etc. Holding the conception of "right to have rights" you are

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<sup>156</sup> Benhabib, 2012, p. 195.



escaping the danger, that you are intervening into the sovereignty of other states as well, you are escaping the danger of being inconsistent in promotion of this right, because externally, you did not want to go into a clash with anyone's interests, neither yours. The only relevant thing is, that if you are committed to foster exactly this right, if you are convinced about this internally, then externally all the debates about centrality, universality, mainstreaming and competition of interests becomes to be irrelevant. If you are internally convinced to promote this right, then in external action nothing prevents you to fulfil this by direct fostering of these rights (by humanitarian aid, solving this topic at multilateral forums, providing these "*human persons*" with asylum and full support). At the end, when doing so, you just prove your credibility and in some way also the persistent exercise of consistent standpoints on values. Interesting is, that the EU included particular actions dedicated to migration into the new Action plan under the chapter called "Fostering better coherence and consistency"<sup>157</sup>. Problem is that it was made just ex post as a response to the current global turmoils and consequent migration waves. In context of this new trends introduced by Action plan 2015, for deeper intentions to steer policies by the conception of "right to have rights", it will be necessary to include this onto the level of the Strategic framework.

## **6.0 Conclusion**

In the proposed paper, I started the discovery with a value of self-reflection. I said, that the EU is on the good way to be self-reflexive to its own conduct on external human rights promotion. But on the way to be self-reflexive, EU is struggling some of the most striking challenges to its own conceptions of human rights promotion.

I identified a problem in currently discussed challenges of (in)coherence and (in)consistency. I showed, that it is worth to be persistent in distinguishing between these two, as well I tried to indicate, that the EU is not doing so. I introduced this conceptual distinction in order to start thinking about two different problems with two

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<sup>157</sup> European Commission, 2015, p.6.

different solutions. Finally, despite the fact, that the consistency is very simplistic concept in comparison to coherence, I pursued the problem of inconsistency to the highest level of Strategic framework. I perceive the lack of self-reflexivity of the EU exactly in the fact that the politically given mantras and conceptions are not reviewed, despite the evidence, that some of the problems is possible to pursue exactly up to the highly praised, authoritative documents.

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## Annex

### *Transcript of the Interview with the EEAS officers; 3<sup>rd</sup> of June 2015; EEAS, Rue de la Loi, 1000 Ville de Bruxelles, Belgium.*

#### **Q1 Mandate of the EEAS; What was the role of the EEAS in the process of evaluation of the original Action plan 2012? Can it be understood as a coordinative role?**

**Desk officer 1:** I personally had a task to follow up the evaluation of the old action plan and later also the creation of the new one. Overall we can say the EEAS is a coordinating body behind the whole process, but there is also lot of other work which must be coordinated from the other institutions, starting with Commission and different DG's, but there is no one single DG which should be seen as our counterpart. Generally, behind this process is a lot of work, because it needs a follow up of the internal human rights policies coming from DG Justice, DG Home, so there is need of coordination with the Commission as the whole institution, but with different people and with the different DG's. This concerns both putting together and preparing action plans and also following up on the results and achievements. Then there are the member states, they have technically a very important role, many actions are also for them, a few just for them. In any case they have an important role in implementation, therefore we have the role in coordination and following up, what was done in the member states.

The whole process of following up the outcome or the achievements is to collect the information and try putting it together, and at the end to evaluate them, which we do together with the Commission mostly.

**Desk officer 2:** In order to understand the mandate of the EEAS, you have to read the treaties. After the Lisbon Treaty, article 18 of TEU, the application and the implementation of the external policy which belongs to the Council and the mandate for the implementation of the EU external policy is with the High representative, who is also the Vice president of the Commission. The famous art. 18 which describes the exact mandate of the High representative, which is the so called double headed quality of the high representative. As a cascade, the EEAS was created to assist the High representative. The role of the EEAS, which is not an institution, is a sui generis formation, so it is not to be compared to the Commission - EEAS is in a fact a service that implements the mandate of the High representative. Therefore in drafting, evaluating, putting together and translating the instruction into action is in fact a service This is how to understand the role of the EEAS in the process. Had we not had Art. 18 of the treaty of Lisbon, the mandate to draft such an action plan would have been incumbent on the rotating presidency. Where the rotating presidency had been we have the EEAS now. And that replaces everything.



**Q2 If I go to the methodology of assessment, in the AP there were actions about establishing different bodies, or new interactions between the institutions, and then there were the ongoing actions which were mentioned to be fulfilled in the longer term, exactly how were these evaluated?**

**DO2:** First of all, because you mentioned indicators, I personally believe, that we don't need the indicators, even though stakeholders ask for the indicators. I found out that they are not sure what indicators we mean, what is definitely not in our interest, is not to develop our own indicators, this would create a confusion of how we evaluate human rights within the EU and outside the EU. I think, secondly, possibly during this second action planning, we would start to use the UN indicators, the universal indicators. As far as the ongoing actions are concerned, we have to take into a consideration, that are some actions very specific in time, very easy to measure, but I don't think that our current assessment has shown that it is impossible also to value the ongoing activities. The ongoing activities can be approved with a series of measures, actions that spread throughout the life of the action plan. I think we have many of cases, where we had actually fulfilled those ongoing actions.

**DO1:** Let's say, there are different kinds of actions, this was one of the criticism that we collected very often during the process, in the discussions with the NGO's, the civil society, but in general. When you read it through, there are number of actions in the previous action plan which are really one off, a typical example is taking a part in the conference. We can ask, how strategic was this, but generally yes, we did it and this is not so much a qualitative analysis. But there was quite a debate, internally, how to evaluate ongoing actions.

**DO2:** There is a lot of ongoing actions in the current and new action plan.

**DO1:** Longterm actions such as mainstreaming, human rights policy in different policies like e.g. trade policies. This is an overarching, longterm project, which included a number of specific activities and tasks under the previous action plan, which were less specific than the new one is. Again in some cases we can say this was done, in other cases the question remains a little bit open – we made progress in order to achieve that objective.

**DO2:** It's very difficult to put a date in actions that ask for continuous engagement by the services, because you give an impression that what you do is to make an action and then forget about it altogether.

**Q3 As one problem mentioned at Monday's Frame conference, was the evaluation of the human rights clause and the effectiveness of the human rights dialogues.**

**DO2:** The effectiveness of the human rights dialogues is the challenge that we accepted and that we are addressing in the new action plan. One action we want to do is to design and implement human rights dialogues with more deliverables and secondly do constructive work between the dialogues. Because sometimes, we have

the tendency to hold the dialogue, and then to forget about it, and six months or year later, wake up – and we have the next session. We are trying actually to stitch together the time between two dialogues, use the evaluations of one session and bring it to the agenda of the next. And also come up with the recommendations and regular in between meetings with the civil society. That will keep the whole process, whole cycle free and flowing. This is a huge improvement.

**DO1:** And at the same time, to be realistic, when you engage in dialogue with China, and you realize that there are no major improvements, no major changes in the behaviour of the Chinese authorities, I am mentioning China as the country where there are the human rights issues and serious problems, and then you can come to the conclusion that the dialogue didn't work. I think this is a very hasty conclusion. In a number of cases it is politically important to have a dialogue and it is important to engage, even if the dialogue may not be productive in terms of results in the short term. This is something to be taken into account, and not to expect major results, although we can improve the process for sure.

**Q4 In Strategic framework, it was stated that all rights will be promoted, irrespectively of the generation they belong to, we are speaking about the concept of universality of rights. How do you justify the selection of concrete actions in the action plan if the EU at the beginning obliged itself to promote all the human rights?**

**DO2:** Let's start with the rights perspective, the action plan is not that ambitious, to be an all inclusive document. It is a document that contains specific actions that need to be taken in a period of time, because the challenges are diverse and because there are a few specific actions that need political momentum. We have stressed that whichever action is not included in the action plan, it does not mean that it does not exist. When you are faced with the problem that you said, we have two options. Either to give a general political engagement that you promote all rights, so you don't have basically any actions whatsoever, or you can have horizontal actions that describe all the rights, or you try to be selective, based on the challenges that you are faced with and I think, that we have done so on the basis of what we are confronted with lately, events such as a ISIL for instance or Charlie Hebdo, so we constraint on the questions on freedom of expression, freedom of religion, then you cannot ignore discrimination, because it's an area where combating discrimination in the EU has been excelling, women's rights are mainstreamed throughout the EU policies, so actually the selection is easy. I don't think we are leaving too many things outside the scope of the second action plan. Practically, we are tackling everything again. We have more focused actions on economic and social rights, business and human rights, the whole discrimination area, women's rights, children's rights, freedom of expression, freedom of religion, children in armed conflict, human rights consideration in conflict prevention. As well as death penalty and torture are back in, so all our flagship policies are in there.

**Q5 A lot of debates were dedicated to actual challenges to human rights challenges, or challenges to human rights promotion by the EU. These challenges were already conceptualised by the EU, especially we are hearing about the challenge of**

**coherency and consistency. Can you please a little bit explain the difference?**

**DO2:** I actually didn't perceive any difference. Personally I'm against jargon, and I think it is a tautology. I think we mean the same thing. External-internal and external-external...

**DO1:..** horizontal-vertical coherency or consistency, you can say both. We are not always consistent in this particular terminology, we should admit that.

**DO2:** Consistency addresses the criticism that we receive, that we apply double standards. So we are not in the area of coherency, we are in the area of external relations, so for instance we were very criticized that we are outspoken with human rights in Pakistan, for instance, when we are not in Egypt, that is a question of consistency. How you implement your set of policies in all parts of the world. The coherency is touching the problem how your internal policy is held, or the other areas of your external policy.

**Consistency of the standpoint and coherency of the policy?**

**DO2:** Yes. I wouldn't make a case about it.

**Q6 Looking at the last Action plan, which part was identified as a possible source of inconsistency or incoherency? If we are able to follow this inconsistency or incoherency up to the level of action plan, at the beginning of the planning of the policy? Which particular action in the action plan and connected human rights tool were identified as the challenge or the problem?**

**DO2:** I have no detailed answer to give you, I think the perfect example is the action on the human rights clauses, which is one of the important areas identified in the action plan one, not fulfilled and roll over to the action plan two.

**DO1:** What was not accomplished, in terms of consistency. The first action plan itself was a reaction to the awareness we already have, it was year 2012, so it was not a century ago, so we already knew that our overall action was not particularly consistent, or did have a number of areas and number of approaches to a number of countries which was not completely consistent. So already in the first action plan we tried to insert, e.g. a measure to tackle inconsistency. The answer we had, and it was very technocratic, but we were having meetings between groups in the Council which deals with human rights externally, and the group in the Council, which deals with fundamental rights, rights internally. This was an attempt, and I think we didn't completely accomplish to put two groups together, the people who deal with these two things should be related There were efforts to address this situation.

**DO2:** I think it's possible to see, in the new action plan the areas such as trade, migration, impact assessment, rights based approach, counter terrorism these are areas which always have an inherent deficit of coherence. I do not say there is an end to this. It is a continuous exercise The more we elaborate elements of our migration

policy, the more we have to make them more consistent with our human rights policy. It is a continuous challenge. You cannot say that there is an end to inconsistency, or that there is a perfect level of coherence.

**Q7 Now I would like to stress one more concrete problem. Originally, it was action number eleven – promotion of human rights through the means of trade. Are there any signs of the incoherency with the other EU actions in the previous action plan (external-external matrix)? Now I'm mentioning the specific regimes of EBA, GSP and GSP+ which are dedicated to promotion of human rights in least developed countries. But what about human rights promotion through the means of trade in bilateral and multilateral relations with the developed countries, strategic partners?**

**DO2:** Trade actions are not only limited to GSP, GSP+, the rest of the trade actions concerns everybody. There are the same requirements even for the strategic partners. We had absolutely the same requirements when we did a trade agreement with Vietnam, as much as we did with Canada and Australia. I don't think there are the different procedures. GSP really targets specific list of countries, but the rest of the actions concerns everything.

**DO1:** GSP+ is actually the most stringent in the sense, that it impose certain conditions.

**DO2:** Yes, the mechanism is the most stringent.

**DO1:** Exactly, and its true, that you cannot do that obviously with the economically powerful countries.

**Political realism still counts...**

Yes

**Q8 There was action 33, which mentioned "effective use and interplay of the EU's external instruments". And mentioned also, for only one time, restrictive measures that there must be developed some kind of guideline for using restrictive measures, in external, probably trade, policies. How successful was this action?**

**DO1:** My recollection was that we actually don't need to develop restrictive measures, but we need to focus on already existing restrictive instruments. It is an instrument which does exist, which is applied with certain countries together with other instrument of a similar kind, or not. The idea was that we should have interplay, or better interplay and better coordination, it's again about consistency of all the instruments we have.

**DO2:** It is not about to create them, but about where they exist.

**DO1:** Whatever we do in the country, we should coordinate with other instruments. This action was not fulfilled, so it is going to be rolled over into a new action plan.

**Q9 A thing of my particular interest is the relation of the Strategic framework and the Action plan...**

**DO2:** It's easy. Strategic framework is the political text, text of political engagement and remains a text of reference. This is the bible. The action plan is the one that has the deadlines and changes through the years. The Strategic framework will remain the same.

**Q10 So there are no internal discussions regarding possible changes of the Strategic framework?**

**DO1:** No, there were at some point, we talked for a while, for a month considering some issues, but after all, when you read it, it looks completely fine.

**Q11 It is not seen as a possible source of the problems?**

**DO2:** No, it is a document really prized by the civil society. Even by the most difficult clients.

**DO1:** We all like it here. At the end of the day it was not a big debate, what was really needed, to be updated, was the action plan.

**Q 12 Is there, in the EEAS and in the institutions a follow up of the theory of the human rights? Is there someone who is following this kind of literature and recommendations coming from this field?**

**DO1:** We are a very pragmatic department...

.....

**DO2:** The silver thread, you mentioned here, I think is really the question of mainstreaming. When Catherine Ashton said that mainstreaming is what she meant. Whatever we do in our external policy, we have to keep in the back of our minds, that this policy is consistent with the human rights. For instance, when we have a strong counter terrorism policy, we have to keep in mind the elements of international human rights law and international humanitarian law, that is what she meant.

**Q13 Now I would like to address the general framing of the debate about coherency, consistency and the evaluation of action plans. In the academia, but I think even in the institutions, the core of the debate is seen in a problem of coordination, but is it really truth? I have a feeling that the competing mandates of the EEAS and different DG's are just overshadowing the true reason of inconsistency, which is maybe still, as was a few times mentioned – the source lays in the clash with the economic and strategic interests of the EU as well as of the member states. Some academics, who were conducting proper research on the ground, were concluding that the internal market considerations take precedents over the human rights. Is it really just a problem of coordination?**

**DO2:** I don't think it is a problem of coordination at all. There are actions that are really not a problem of coordination. All the actions which go for human rights impact

assessment on trade agreements – here you are not addressing the problem of coordination, here you are actually giving a DG Trade an extra task. And they are addressing the challenge of coherence to the core of it. On the other hand the policies of the European commission are multiple and they are diverse, and sometimes they are conflicting. The global financial crisis and the European financial crisis put considerable burden on our trade policies, which are money making policies and this is also testing our repercussions of an aggressive trade policy into other areas. I don't think it is an question of coordination, I think what he said, and I understand that sometimes there is an fight between the noble areas of the external policy and the financial economic considerations. I would say that this is the core of the problem.

**Q14 When I was reading the first parts of the text which precedes the new Action plan, it was for me like a buzz word-the coordination of institutions, as well as of instruments.**

**DO2:** Don't forget that the European commission is organising DGs and there are also micro-ambitions in each DG, it is very much different when you implement climate change policy, or trade policy. This is why I feel that the role of the EEAS is pivotal. Because the EEAS is an honest broker in this area. We have no budget, we have no instrument, we are using no money. We are proposing policies and we have no interest whatsoever in promoting our policies in operational parts. This is one service which is rightfully put in the role of coordinator.

**DO1:** At the same time, related to what you said before, sometimes policies are conflicting and there are quite a lot of conflicting interests, of course. The high values we try to promote throughout the world, very much in a good faith in most cases, also conflicting with the other interests. There is the energy interest, trade interest, economic interest. And our member states do have a number of these kinds of interests in a number of countries. So obviously, when you want to promote human rights, which is an interest for all of us, while at the same time trying to promote other things, our trade, our energy interest, you have to come up with compromises. It is not always human rights that wins, let's say, but it is important that those considerations are there anyway. And there is always a little bit a conflict, also internally, it is a true, that EEAS is a broker with a respect to the other institutions. Even within the EEAS are sometimes different points of view.

**DO2:** Don't forget that the actions on the action plan are continuous engagement for the commission services, they have been consulted, they have signed them off, so it is a sort of engagement that fully continue in their policies to consider in human rights.

**DO1:** It's a common engagement, the action plan will go through the Council, to be their decision, so everybody will be committed to implement certain policies.

**Q15 That was my question, which goes to the satisfaction with the Strategic**

**framework, whether this one isn't too ambitious and authoritative. And then all these provisions are used by NGOs as a stick on the EU for non-ideal fulfilment.**

**DO2:** I think it is good that we put this on the paper, because everyone should be reminded of the standards. And generally it is good that all the standards are put together, also because the Commission is using the Charter of fundamental rights, because it binds member states in the EU, and the EEAS is using article 21. This is how to converge internal and external policies.

**Is it a good idea to bind them together?**

**DO2:** Yes, because they are both pillars.

**Q16 On the other hand are we able to promote such high standards of human rights, how is it possible maybe internally?**

**DO2:** I think that in most areas, we are half higher standards on our ground than what we promote externally. But there are exceptions, for instance, LGBTI rights – no. I think our external policy is far more ambitious than we actually apply among the 28.

**DO1:** And it's a question of ambitions, you can promote a certain policy which is extremely ambitious for the third country, and then expect they will implement it, again the proper implementation doesn't depend on us exclusively. In promoting a certain policy, promoting high standards I cannot see any contradictions.

**Q17 But maybe the concept of credibility of the EU is at stake? Whether we are ready, especially in the trade/economic policies, to really push human rights forward in order to stay credible?**

**DO1:** The problem might be in the policies which are conflicting. I think it is important to have a policy, as we do. And to state the policy very clearly, which is what we do, basically.

**Q18 I was thinking about possible a threat to our constitutional value of human rights. Because we are using fundamental rights newly as a constitutional value of the EU, and then, when we put them into the international arena and we are not persistently sticking with these values, it should be seen as a problem.**

**DO2:** But don't forget the following trick, when we discuss between ourselves, we called them fundamental rights, but what we do with our partners is not a promoting EU standards, but international standards. We are not promoting European convention, we are promoting ICCPR. Otherwise, we are going to be criticised for pursuing western agenda.

**Q19 It reminds me, the EU is willing to defend general international law and humanitarian law, when they are contested, as we saw recently on the case of sanctions against Russia. Do you think it will be feasible even in the case of international human rights law?**

**DO2:** We have done, we have human rights sanctions, we have them in Iran. We have identified 73 asset freezes and travel ban to 87 persons and entities responsible for human rights violations, including judges, ministries of justice. So they are feasible, we are applying.

**Q20** Last question goes to the new action plan. There, in the forefront stands newly human rights defenders. Is it right from strategical point of view? Especially in the light of recent criticism which the EU faces from the side of NGOs for their silence regarding human rights defenders in some countries. Recently e.g. NGOs focused on the Gulf region.

**DO2:** We would have receive far more criticism if we would have not mentioned anything about human rights defenders in the action plan. We would receive far more criticism just in chapter two, where we fragment human rights areas. We strategically put human rights defenders in the first chapter of the new action plan, because we are not treating them as a vulnerable or marginalised groups. We put them exactly in the chapter where we feel that they are one of the important actors to be empowered. The way we have tackled the chapter one is that we have different interlocutors. All of them need to be empowered by the EU, whether they are public institutions, judiciary, civil society, political parties, national parliaments, enforcement law and detention facilities, national human rights institutions. All of them are important elements and the EU is proposing to empower them equally, while of course knowing that the one who receive less space in the partner countries are the civil society organisations. That is the reason why we propose the actions on how to empower them further. What we also propose is for the EU to be not a broker and mediate. What we promote is actually not a dialogue between EU and public institutions, EU and CSOs, but what we call for is a multi-stakeholder dialogue, where we will see everybody around the table.





