

The EU's Framework for the Promotion of Human Rights and Democracy Support* , **

*El marco de la Unión Europea
para la promoción de los Derechos Humanos
y el apoyo a la democracia*

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Abstract: In the last years the EU has developed a policy framework for human rights promotion and democracy support. The key document in which the EU declares its policy principles, objectives and priorities in this field is the Strategic Framework on Human Rights and Democracy, adopted by the Council on 25 June 2012. Starting with an analysis of the framework the aim of this article is to

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map and analyse the objectives and priorities that guide the EU policy and the specific instruments created to contribute to the promotion of human right and democracy worldwide, like the European Instrument for Democracy and Human Rights. It looks in particular at the EU priorities in terms of themes and vulnerable groups. The article draws attention to some inconsistencies between the Strategic Framework and its implementation instrument, the Action Plan.

Keywords: EU's human rights and democracy policy, Strategic Framework on Human Rights and Democracy, human rights and democracy implementation instruments

***Resumen:** La UE ha desarrollado en los últimos años un marco de política para la promoción de los derechos humanos y de apoyo a la democracia. El documento clave donde la UE declara los principios, objetivos y prioridades de su política en este campo es el Marco Estratégico de Derechos Humanos y la Democracia, adoptado por el Consejo el 25 de junio de 2012. A partir de un análisis de este marco el objetivo de este artículo es señalar y analizar los objetivos y prioridades que orientan la política de la UE y los instrumentos específicos creados para contribuir a la promoción de los derechos humanos y la democracia en todo el mundo como el Instrumento Europeo para la Democracia y los Derechos Humanos. Se observan, en particular, las prioridades de la UE en términos de temas y grupos vulnerables. El artículo llama la atención sobre algunas inconsistencias entre el Marco Estratégico y su instrumento aplicación del Plan de Acción.*

***Palabras clave:** política europea de derechos humanos y democracia, Marco Estratégico de Derechos Humanos y Democracia, instrumentos de implementación de la política europea de derechos humanos y democracia.*

I. Introduction

Human rights, democracy and the rule of law are core values of the EU embedded in its founding treaty. The promotion of human rights and democracy are considered to be the cornerstone of the European identity since the beginning of the integration process. They lie at the centre of its enlargement policy, which is governed by the Copenhagen criteria (after the European Council in Copenhagen in 1993 which defined them).¹ The first of these criteria is a political condition: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The EU has also been at the forefront in building

¹ These criteria are the essential conditions all candidate countries must satisfy to become a member state.

strong standards and mechanisms for the promotion and protection of human rights at the United Nations, the Council of Europe and the OSCE. With this aim the Union works with other organisations and stakeholders to ensure that the UN addresses serious human rights violations in specific countries, and to take up key human rights concerns.

The EU has gradually expanded its human rights actions over the course of the past decades. Although the EU had developed in its external action a broad range of policy instruments and guidelines to put its commitment to human rights and democracy into practice, the EU had not always been as effective or as joined-up as it might have been. Serious problems and new challenges had emerged, both externally and internally. In particular, EU policies have been criticised for being largely sectorial; funded projects lack programmatic consistency; the EU's knowledge base appeared limited; and turf battles had continue to rage between institutions, bodies and Member States in Brussels and abroad at the United Nations (UN) and other fora, where EU positions increasingly faced objections. Moreover, human rights are far from being uncontested and are subject to changing dynamics such as globalisation, new forms of violence and war and new actors that question human rights and democracy norms. Even where international standards are generally accepted, implementation at the national level often remained slow.

The entry into force of the Treaty of Lisbon, with its commitment to put human rights, democracy and the rule of law at the centre of the EU's external action and to ensure consistency between the different areas of its external action and internal policies, brought renewed impetus for the EU to confront these problems. Art 21.1 of the Treaty on European Union (TEU) establishes that "the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms [...]". These principles were reinforced when the EU adopted the Charter of Fundamental Rights in 2000, and strengthened still further when the Charter became legally binding with the entry into force of the Lisbon Treaty in 2009. It is on this basis that the EU adopted on 25 June 2012 the Strategic Framework for Human Rights and Democracy and the Action Plan to guide this fundamental policy area in order to improve the effectiveness and consistency of EU policy as a whole in the following ten years. The latter represent the first attempt to set out in a comprehensive way the principles, objectives and priorities of EU policy in this field which before where scattered in different documents.

The aim of this article is to map and analyse the objectives and priorities that guide the EU human rights and democratization policy

and the instruments developed by the EU to implement them. It looks in particular to the EU priorities in terms of themes and vulnerable groups. We would like to assess to which extent there is coherence between the policy formulation and the instruments chosen to implement it. Coherence, or rather the lack of it, constitutes one of the most frequently bemoaned aspects of the EU's performance. Although coherence is a concern in any governance system, the multi-level nature of the EU and its complex institutional system places the issue of coherence at the centre of any assessment of EU's policy. When the Strategic Framework is compared with its implementation instrument, that is, the Action Plan, or with certain policy formulation documents, such as the Guidelines on human rights some inconsistencies arise. We contend that the finding of eventual incoherencies in the policy documents will partly explain the inconsistency in the implementation of the EU human rights and democratization policy.

There are other reasons as well that explain the necessity of this analysis. First of all most of the literature on the EU human rights and democratization policy evaluate the impact of the EU policy in this field without taking into consideration what and how does the EU aim to promote human rights and democratization. Second, scholars and commentators often focus either on the human rights or in the democratization policy. There is no acknowledgement of the fact that they are considered, as we will show in the analysis of the Strategic framework as a single policy encompassing both dimensions. However, this is another reason for our analysis, the EU does not have a consistent and coherent approach to the promotions of human rights and democracy. Both concepts come together in some policy documents and instruments but not in all. Moreover human rights and democracy are sometimes used interchangeably as if there were the same. Upon adoption of the framework and the Action Plan, Catherine Ashton, High Representative for Foreign Affairs and Security Policy and Vicepresident of the European Commission (HR/VP), said:

“Human rights are one of my top priorities and a silver thread that runs through everything that we do in external relations. With this comprehensive package we want to enhance the effectiveness and visibility of EU human rights policy. In order to help put the Framework and the Action Plan into practice.”²

² Council of the European Union, “EU adopts Strategic Framework on Human Rights and Democracy”, 25 June 2012, 11737/12, PRESSE 285.

In fact as this article will evidence the emphasis of the EU policy is on human rights, not on democracy.

Starting with a conceptual clarification of what we mean by human rights and democracy policy, the article undertakes the analysis of the main documents where the EU *formulates* the guidelines of its human rights and democracy policy. We refer to the Strategic Framework as well as other relevant documents that also contribute to set out this policy, including the general policy papers on which the Strategic Framework builds on. These are the human rights guidelines adopted in a certain priority theme or towards a vulnerable group and the human rights strategies for countries which specify the EU human rights policy towards a particular third country. Then it addresses the specific instruments developed by the EU that have been especially created in order to contribute to the promotion of human right and democracy worldwide like the European Instrument for Democracy and Human Rights .The EU also uses other traditional instruments of its CFSP to promote human rights and democracy in its relations with third countries such as the EU's action in multilateral fora, bilateral political dialogues, démarches and declarations, CFSP decisions or restrictive measures. These instruments, which respond to the EU's objective of mainstreaming human rights and democracy in all its policies and actions toward third countries, are not analysed in this article which addresses only the specific ones. The article closes with an evaluation of the different inconsistencies found. While this research was ongoing, the European Commission and the HP/VP issued a Joint Communication to contribute to the elaboration of a new Plan on Human Rights and Democracy for the period 2015-2019 (the "new Action Plan"). This Communication is entitled "Keeping human rights at the heart of EU agenda". The new Action Plan highlights that the Strategic Framework, "with its priorities and guiding principles" is still the framework for the EU's action in this area, but it clearly departs from its structure therefore we will make a short assesemnt of it in the light of our findings.

II. Conceptual clarifications: the meaning of human rights and democracy policy and its instruments

Before entering into the analysis of the EU's human rights and democracy framework some previous clarifications should be made. The first issue is precisely what the "human rights and democracy policy" is. There is not a single shared understanding or response among the scholars. According to one view, there is no unified EU "human rights and democracy policy" as

such, but a patchwork of instruments which together represent such policy. Other views contend that there is a human rights and democracy policy. From a policy analysis perspective a “policy” is understood as a deliberate course of (in)-action, selected from possible alternatives, in order to achieve certain outcomes. The policy cycle refers to the process of formulating, implementing and monitoring and evaluating a policy.³ Either if we refer to the policy field or to one stage or all of the policy cycle, a policy is never to be found in one single document. There is no example of such a single document at the EU level nor at the State level.⁴ The approach we have adopted has been to avoid the classification of instruments based on the hierarchy of norms (legal and soft law) or on the different types of competences that give rise to the instruments (CFSP, external policies, internal policies). Instead, our focus is on the “policy cycle or stages approach” which allow us to show the range of instruments developed by the EU in each separate step of the policy cycle and consequently to identify eventual inconsistencies between the EU’s vision in the formulation of the policy and its choice of instruments to implement it.

There is also some confusion about the conceptualisation of the EU’s instruments. In general, policy instruments are understood as “the actual means or devices governments have at their disposal for implementing policies, and among which they must select in formulating policy”.⁵ The choice of a particular policy instrument can be as significant as the choice to issue policy in a certain field. The potential range of policy instruments is vast at all levels of government and the EU is no exception.⁶ But in the EU, the actors involved in the policy process do not have complete freedom to select any type of instruments they please. Treaty provisions guide this selection process and determine in many cases what instruments are available to choose from, between legal acts and a wide range of voluntary and coordinative instruments (soft law) of a various range, including for example Commission papers and Council Conclusions. Council conclusions are a main tool to advance the promotion of human rights and democracy. By means of these conclusions, the Council welcomes the developments in

³ It is important to understand that “policy” is not a single outcome or event and is usually seen as a cycle, which moves from agenda setting and policy formulation to implementation, monitoring and evaluation.

⁴ Other question is that for some foreign policy analysts “human rights and democracy including the rule of law is not a policy as such but a key issue among others of the foreign policy of the EU”. KEUKELEIRE, S. and DELREUX, T., *The Foreign Policy of the European Union*, 2nd ed, Palgrave Macmillan, 2014, pp. 135-155.

⁵ HOWLETT, M., RAMESH, M., and PERL, A., *Studying Public Policy: Policy Cycles and Policy Subsystems*, Oxford University Press, 2003, p. 87.

⁶ See VERSLUIS, E., VAN KEULEN, M., and STEPHENSON, P., *Analyzing the European Union Policy Process*, Palgrave MacMillan, 2011, pp. 55-78.

the implementation of the different policies and instruments, underlines the EU's current and future commitments regarding the promotion of human rights and democracy, points out the fields for improvement and proposes actions in order to fill the gaps in the implementation of the policies and instruments.

Some authors distinguish four sets of instruments (toolboxes) for promoting human rights and democracy in the EU's foreign policy:⁷

- I. The European Instrument for Democracy and Human Rights which is more focused and flexible allowing the EU to work directly with NGOs and international organisations rather than with governmental actors.
- II. Political Framework Agreements with third countries such as Association Agreements and Partnership and Cooperation Agreements which include human rights clauses as regular political dialogues, and the related geographical financial instruments (the European Neighbourhood Instrument, the Instrument for Development Cooperation and the European Development Fund).
- III. CFSP instruments: here, they include CFSP declarations and diplomatic activities (both formal and informal *démarches*), specific human rights dialogues, CFSP decisions (positions that lead to sanctions, civilian crisis management operations, electoral support) to third states and also in a global scale through actions in support of specific issues such as the strengthening of the International Criminal Court. Among the more targeted EU human rights diplomacy the Council has adopted specific "EU human rights guidelines" for a limited number of priority areas. More recently, since the adoption of the Strategic Framework, it should be mentioned the human rights country strategies, the EU Special Representative on Human Rights and human rights specialists appointed in EU delegations.
- IV. Certain internal policies with an external dimension like the fight against the eradication of trafficking of human beings.

Chart 1 provides an overview of the main instruments used by the EU to develop a human rights and democracy policy framework Taking into consideration the scope of this article we will only focus in the most important ones.

⁷ KEUKELEIRE, S. AND DELREUX, T., op. cit., note 4, pp. 135-155. See also CARDWELL, P.J., "Mapping Out Democracy Promotion in the EU's External Relations" in *European Foreign Affairs Review*, no. 16, 2011, p. 21.

Chart 1**Human Rights and Democracy Policy Framework**

FORMULATION			
Human rights and democracy policy			
Strategic Framework on Human Rights and Democracy	Human rights guidelines	Human rights country strategies	Mainstreaming HR and democracy into other policies



IMPLEMENTATION	
Specific human rights and democracy instruments	Other instruments contributing to the promotion of human rights and democracy
<ol style="list-style-type: none"> 1. Financial instrument: European Instrument for Democracy and Human Rights. 2. Human rights clauses. 3. Human rights and democracy focal points. 4. EU Special Representative for human rights. 5. Human rights dialogues and consultations. 6. Election support. 7. European endowment for democracy. 	<ol style="list-style-type: none"> 1. Action in multilateral fora. 2. Bilateral political dialogue. 3. Démarches and declarations. 4. CFSP joint actions, common positions and strategies and CSDP decisions. 5. Restrictive measures. 6. Thematic financial instruments. 7. Geographic financial instruments.

Source: Own elaboration.

III. The EU's human rights and democracy Strategic Framework

1. *The Strategic Framework: foundation and background*

The Strategic Framework on Human Rights and Democracy adopted by the Council on 25 June 2012 (Strategic Framework) sets, as its name suggests, the framework to guide this fundamental policy area of the EU.⁸

⁸ Council of the European Union, "Human Rights and Democracy: EU Strategic Framework and EU Action Plan", 25 June 2012, 11855/12, Annex II.

Although the Strategic Framework is a short six-page document designed to be as readable as possible, so as to be accessible to all citizens, it sets out the principles, objectives and priorities of the EU policy in this field. The Framework reinforces this Union's foundation on a "shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law",⁹ declaring that "these principles underpin all aspects of the internal and external policies of the European Union". It builds on the Joint Communication entitled "Human rights and democracy at the heart of EU external action – Towards a more effective approach" (Joint Communication).¹⁰ The Joint Communication adopted by the European Commission on 12 December 2011 following a proposal by Catherine Ashton was a fundamental step in the development of an EU human rights strategy for its external action as it established the link between human rights and democracy in a very straightforward way:

"Human rights and democracy go hand in hand with the empowering freedoms — freedom of expression, association and assembly— which underpin democracy".¹¹

It also suggested key elements for a strategic framework: (i) a vision on how the EU's external policy on human rights and democracy could be more active, more coherent and more effective, and (ii) necessary actions in four areas (delivery mechanisms, integrating policies, building partnerships, and speaking with one voice).

The 2009 Council Conclusions on Democracy Support in the EU's External Relations – Towards Increased Coherence and Effectiveness, where the Council adopted an EU Agenda for action on Democracy Support in EU external relations,¹² is also a fundamental document in particular with regard to the EU's stance on democracy. The Conclusions set forth the common values, norms and central principles that constitute the basis of the EU's action on democracy support. It is a relevant document because they are not included in the Strategic Framework. Among these values, norms

⁹ *Ibid.*, p. 2.

¹⁰ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, "Joint communication to the European Parliament and the Council. Human Rights and Democracy at the heart of EU external Action – Towards a more effective approach" COM (2011) 886 final.

¹¹ *Ibid.*, p. 8.

¹² Council of the European Union, "Council Conclusions on Democracy Support in the EU's External Relations – Towards increased Coherence and Effectiveness", 16081/09, 2009, p. 11. (EU Agenda for action on Democracy Support in EU external relations).

and principles, the following should be highlighted:¹³ the inextricable connection between human rights and democracy: only in a democracy can individuals fully realise their human rights and only when human rights are respected can democracy flourish; the need to progress in the protection of human rights, good governance and democratisation in order to meet the goals of poverty reduction and sustainable development; the principle of non-discrimination in the enjoyment of all human rights regardless the race, sex, language, religion, political or other opinion, national or social origin, birth or other status; the interdependence of all human rights, civil and political as well as economic, social and cultural; and, finally, the vital role of non-state actors as “promoters of democracy, social justice and human rights”. The Council also invited the EU institutions, in cooperation with Member States, to implement this Agenda and report back on the progress achieved and to include in their progress report a list of pilot countries for more specific follow-up. A first generation of pilot countries¹⁴ were identified by the 2010 Council conclusions on Democracy Support in the EU's external relations¹⁵ and a second generation of pilot countries has to be identified according to action 6 b) of the Action Plan.

2. *The Strategic Framework: premises, objectives and priorities*

The Strategic Framework establishes the premises which underpin the EU policy on human rights and democracy: (i) “Human rights are universally applicable legal norms”; (ii) “Democracy is a universal aspiration” and (iii) “Sustainable peace, development and prosperity are possible only when grounded upon respect for human rights, democracy and the rule of law”. On these premises the Strategic Framework lays out general and specific objectives of the EU policy. The latter are framed in terms of areas of further action which identify specific objectives and priority themes and groups.

Although the Strategic Framework is on human rights and democracy, the emphasis throughout the document is on human rights, not on democracy. While there is a clear position on the EU's understanding

¹³ Ibid., pp. 6-9.

¹⁴ The following list of pilot countries was proposed: Republic of Moldova (for Eastern Neighbourhood); Kyrgyzstan (for Central Asia); Lebanon (for Southern Neighbourhood); Ghana, Benin, Solomon Islands and Central African Republic (for ACP); Bolivia (for Latin America); and Mongolia, Philippines, Indonesia and Maldives (in Asia).

¹⁵ Council of the European Union, “Council conclusions on Democracy Support in the EU's External Relations-2010 Progress Report and list of proposed pilot countries. 3058th Foreign Affairs Council meeting”, 2010.

of human rights, democracy is an “aspiration” that is not defined. The delimitation and interactions between such significant concepts are blurred in the document. Democracy can be considered a universal aspiration but this does not mean that democracy can be integrated automatically within the protection and promotion of human rights without any consideration and that human rights and democracy can be used interchangeably as is done in the document. There is little literature on the substance that the EU furthers with its democracy promotion instruments. Scholars often focus on the variety of EU's instruments or their impact on the countries concerned but rarely address the issue of what kind of democracy the EU wants to export, that is, the “substance of democracy promotion.”¹⁶

Two general objectives, each with a different scope, can be identified in the Strategic Framework: the EU's and its Member States' commitment to promote the universality of human rights and the EU's determination to promote human rights and democracy in its external action. As mentioned, there is a difference in the scope of these general objectives. The commitment to the promotion of human rights encompasses all spheres.¹⁷ Thus, within their own frontiers, the EU and its Member States are committed to be exemplary in ensuring respect for human rights, whilst outside those frontiers, the EU seeks to prevent violations of human rights throughout the world and, where violations occur, to ensure that victims have access to justice and redress. However, the promotion of “human rights and democracy” is limited to the EU external policies.

With the aim of promoting these general policy objectives, the universality of human rights and human rights and democracy in its external policy, the Strategic Framework highlights some areas of action which identify specific objectives and priorities:

1. Pursuing coherent objectives in the internal and external areas of the EU's action.
2. Promoting human rights in all EU external policies.
3. Implementing EU priorities on human rights.
4. Working with bilateral partners.
5. Working through multilateral institutions.
6. Working together within the EU, in particular, the European Parliament, the Council, the Member States, the European Commission and the European External Action Service (EEAS)

¹⁶ WETZEL, A. and ORBIE, J., “Promoting Embedded Democracy? Researching the Substance of EU Democracy Promotion” in *European Foreign Affairs Review*, no. 16, 2011, pp. 566-567.

¹⁷ Vid. Council of the European Union, op. cit., note 8, p. 4.

Under the area entitled “Implementing EU priorities on human rights” the Strategic Framework mentions themes and groups which are a priority for the EU. These can be used as a check-list to assess to which extent the EU human rights policy prioritises what should be prioritised according to human rights standards. The question is to what extent these priorities are addressed in the accompanying Action Plan that was adopted to put into action the Strategic Framework an Action Plan on Human Rights and Democracy until 31 December 2014¹⁸.

From the Action Plan the majority of actions and instruments that the EU uses to implement its human rights and democracy policy with third countries can be inferred: démarches and declarations, human rights dialogues and consultations with third countries, financing through instruments such as the EIDHR, campaigning at multilateral fora, bilateral and multilateral cooperation, supporting public education and awareness-raising campaigns, supporting the work of NGOs, human rights reporting by EU Head of Missions, encouraging States to ratify and comply with international legal instruments protecting human rights, promoting law and practices that protect human rights, training and technical exchanges, capacity building, use of restrictive measures, or political dialogue.

The comparison between the priorities adopted in the Strategic Framework and the ones selected in the Action Plan in Chart 2 below already highlights some inconsistencies. In this regard, the Action Plan refers only to freedom of expression online and offline while the Strategic Framework includes freedom of expression, opinion, assembly and association. The plan also limits the fight against discrimination to the protection of rights of the LGBT persons. Concerning vulnerable groups it does not establish actions regarding the protection of refugees and migrants. With regard to the priority themes of the Strategic Framework some are not identified in the plan (promotion of ESC rights, non-discriminatory access to basic services and engagement with civil society), even these themes are addressed under other areas of the Strategic Framework. Other consideration is to what extent those themes and groups that are not turned into actions under the Action Plan are real priorities for the EU's human rights and democracy policy and what factors explain this different treatment. This would require further research.

¹⁸ The EU Action Plan on Human Rights and Democracy brings together 97 actions under 36 headings, prepared on the basis of consultations by the European External Action Service, involving the European Commission and EU member states, which are jointly responsible for implementation. Informal consultations were held with MEPs and NGOs. Currently a new Action Plan is on-going, although it has not been approved at the time of this work. See, Council of the European Union, *op. cit.*, note 8, Annex III, p. 10.

Chart 2

Comparison of priority themes and groups selected

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

v) Campaign against death penalty and torture.	w) <i>Outcome 16</i> : Abolition of the death penalty. Actions 16 a), b), c). x) <i>Outcome 17</i> : Eradication of torture and other cruel inhuman or degrading treatment or punishment. Actions 17 a), b), c).
y) Promote the right to a fair and impartial administration of justice is essential to safeguard human rights.	z) <i>Outcome 26</i> : Administration of justice. Actions 26 a), b).
aa) Promote observance of international humanitarian law (IHL).	bb) <i>Outcome 21</i> : Compliance with IHL. Actions 21 a), b), c), d).
cc) Fight against impunity for serious crimes of concern to the international community, including sexual violence committed in connection with armed conflict, and through its commitment to the ICC.	dd) <i>Outcome 27</i> : Responding to violations: ensuring accountability. Actions 27 a), b), c).
ee) Support for human rights defenders and step up its efforts against all forms of reprisals.	ff) <i>Outcome 18</i> : Effective support to human rights defenders. Actions 18 a), b), c).
gg) Effective engagement with civil society	

Source: Own elaboration.

IV. Human rights guidelines and human rights strategies for countries

The EU guidelines on human rights and the human rights country strategies play a central role in the formulation of EU policy on human rights and democracy in its external action. The policy guidelines adopted since 1998 by the Council cover human rights issues of particular importance to the Union. The guidelines address a specific theme and have to be followed in all the external relations of the EU. They are transversal, that is the guidelines have a general geographic scope. On the contrary the country human rights strategies refer to the key human rights priorities the EU has in one specific country for which different guidelines can provide the framework for action.

The EU guidelines are not legally binding but constitute a strong political expression of EU priorities on human rights and are practical tools to support EU representations in the field “better advance” human rights policy.¹⁹ They

¹⁹ Council of the European Union, “Guidelines. Human Rights and International Humanitarian Law”, European Communities, 2009, p. 3.

constitute a very pragmatic instrument, which provides the different EU actors with elements and operational tools to carry out actions in certain human rights key areas of concern.²⁰ They also provide officials and staff with practical guidance on how to contribute to preventing violations of human rights and how to analyse concrete cases and to react effectively when violations occur.²¹

There are guidelines adopted towards most of the priority areas identified in the Strategic Framework:²² freedom of expression online and offline; freedom of religion or belief; rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons; death penalty; torture and other cruel, inhuman or degrading treatment or punishment; rights of the children including in context of armed conflict; protection of women and girls against violence and discrimination; protection of human rights defenders; compliance with International Humanitarian Law (IHL). However, the EU has not adopted human rights guidelines for all the priority themes and groups set forth by the Strategic Framework and the Action Plan. In this regard, there are not guidelines for the implementation of the UN Guiding Principles on Business and Human Rights, the right to a fair and impartial administration of justice or the fight against impunity.

According to the Strategic Framework, the EU has to place human rights at the centre of its relations with all third countries, including its strategic partners, and has to carefully design its policy on human rights, in particular, through the development of country human rights strategies.²³ These human rights strategies constitute, thus, a fundamental framework for the EU's political action and financial assistance to third countries in the field of human rights. They also contribute to the overall objective of ensuring that human rights are placed at the heart of EU external action in a practical and targeted manner.²⁴

The Joint Communication, explains the change in the approach of the EU's human rights strategy that led to the adoption of these strategies: although the human rights principles and objectives remain universal, "the immediate priorities, and therefore the route and timetables, can and must vary from country to country". Thus, a tailor-made approach that seeks to match objectives in a country with the realities on the ground can maximise

²⁰ Council of the European Union, "EU Annual Report on Human Rights 2008", 14146/2/08, 2008, p. 6.

²¹ Council of the European Union, "EU Human Rights Guidelines on Freedom of Expression Online and Offline", 2014, po. 2.

²² The updated version of the Human Rights Guidelines is available at http://eeas.europa.eu/human_rights/guidelines/index_en.htm.

²³ Vid. Council of the European Union, op. cit., note 8, p. 7.

²⁴ Ibid., p. 12.

the effects of the EU's policy towards the country concerned. This country-specific approach in the EU's democracy support action was also noted in the EU Agenda for action on Democracy Support in EU external relations. This stated that as democracy building processes take place in different contexts, including countries emerging from or threatened by conflict or in a situation of fragility, the EU's type and level of engagement and the instruments to be used have to be determined by the referred context, so that EU action should be based on a deep understanding of the local context.²⁵

The strategies were first launched in 2011 with the aim of obtaining a better and more comprehensive understanding of the key human rights challenges in partner countries; focusing EU action on key priorities in those countries in policy and financial assistance terms; facilitating the activities carried out by Member States and EU diplomatic missions in the field and contributing in a more comprehensive manner to the country and regional strategies.²⁶ They include an analysis of the human rights situations in the countries concerned and identify the country-specific priorities and objectives for the EU's action. These priorities and objectives can be integrated in all relevant EU external policies and so fit into the EU's overall political and economic relations with any given country.

The EU plans to adopt these strategies for all countries.²⁷ In this regard, in 2011 the EU launched strategies for 160 countries worldwide.²⁸ By the end of 2013, 123 human rights country strategies were endorsed by the EU.²⁹

V. EU instruments for human rights and democracy policy

The EU has developed specific instruments for the implementation of the human rights and democracy policy. But there are as well other instruments that are not specific to this policy although contribute to its implementation. These instruments are listed in Chart 3 which presents an overview of this wide set of instruments developed by the EU. As our focus is on the examination of the specific instruments they are not analysed here. Yet it is important to acknowledge that the promotion of human rights and

²⁵ Vid. European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *op. cit.*, note 10, pp. 7-8.

²⁶ Council of the European Union, "Human Rights and Democracy in the world: report on EU action in 2011" 9238/12 [2012], 130. (Annual Report 2011).

²⁷ Vid. European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *op. cit.*, note 10, p. 8.

²⁸ *Ibid.*, p. 13.

²⁹ Council of the EU, "EU Annual Report on Human Rights and Democracy in the World in 2013", 23 June 2014, (OR. en), 11107/14, p. 103.

democracy is not limited to some instruments and that it is also pursued by other means at the EU disposal. In this regard a broad understanding of the term “instrument” is used including instruments of traditional diplomacy and foreign policy (e.g. démarches and declarations, human rights dialogues and consultations, restrictive measures), political conditionality (e.g. human rights clauses in agreements with third countries), financial instruments and even actors (EU Special Representative for human rights, human rights and democracy focal points).

Along with this specific instrument, two thematic instruments and four geographic instruments also contribute to support activities in the field of human rights and democracy, although they were established to respond to other specific objectives. These instruments are:

- The Instrument contributing to Stability and Peace, designed to assist the EU in addressing global security and development challenges.³⁰
- The Instrument for Development Cooperation grounded on the European Consensus on Development which declares that the primary objective of EU development cooperation is the eradication of poverty in the context of sustainable development, including good governance, human rights and political, economic, social and environmental aspects.³¹
- The Instrument for pre-accession assistance (IPA II) that aims to support the enlargement policy of the EU and its basis are Art 49 of the TEU and the Copenhagen criteria, both of them requiring the candidate States to endorse, among others, the values of respect for human rights, democracy and the rule of law.³²
- The European Neighbourhood Instrument which is the financial instrument for direct support of the European Neighbourhood Policy (ENP) which aims to “offer European Neighbourhood countries a privileged relationship, building upon a mutual commitment to, and promotion of the values of democracy and human rights, the rule of law, good governance and the principles of a market economy and sustainable and inclusive development.”³³

³⁰ Regulation (EU) No 230/2014 of the European Parliament and of the Council establishing an Instrument contributing to stability and peace, OJ L77/1.

³¹ Regulation (EU) 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020, OJ L378/41.

³² Regulation (EU) 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), OJ L77/11.

³³ Regulation (EU) 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, OJ L77/27.

- The European Development Fund which is the main instrument to provide development assistance to the African, Caribbean and Pacific (ACP) countries and the overseas countries and territories (OCTs) and it is founded on the principles of democracy, good governance and the rule of law.³⁴

Chart 3

Human rights and democracy instruments

Specific human rights and democracy instruments	Other instruments contributing to the promotion of human rights and democracy
<ol style="list-style-type: none"> 1. Financial instrument: European Instrument for Democracy and Human Rights. 2. Human rights clauses. 3. Election support. 4. Human rights and democracy focal points. 5. EU Special Representative for human rights. 6. Human rights dialogues and consultations. 7. European endowment for democracy. 	<ol style="list-style-type: none"> 1. Action in multilateral fora. 2. Bilateral political dialogue. 3. Démarches and declarations. 4. CFSP decisions. 5. Restrictive measures. 6. Thematic financial instruments: <ol style="list-style-type: none"> a) Instrument contributing to stability and peace b) Instrument for development cooperation - Thematic programme 'Civil Society organisations and local authorities in development'. 7. Geographic financial instruments: <ol style="list-style-type: none"> a) Instrument for Pre-accession assistance (IPA II). b) European Neighbourhood Instrument (ENI). c) European Development Fund (EDF). d) Development Cooperation Instrument (DCI) Geographic programmes (Common Areas of Cooperation) and Pan-African programme.

Source: Own elaboration.

³⁴ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005, revised in Ouagadougou on 22 June 2010, OJ L317, OJ L297, OJ L209, OJ L287, OJ L247, OJ L287.

VI. The European Instrument for Democracy and Human Rights (EIDHR)

The EIDHR is the main financial instrument created by the EU to support democracy and human rights worldwide. This instrument replaces and builds upon the European Initiative for Democracy and Human Rights, which was in force since 2000 to 2006.³⁵ In 2007 the initiative was granted the category of “instrument” which was the expression of a “significant change of emphasis” on this instrument.³⁶

The EIDHR pursues five specific objectives and priorities established by Regulation 235/2014:³⁷

1. Support to human rights defenders in situations where they are most at risk and where fundamental freedoms are most endangered. Thus human rights defenders deserve a special treatment above other priorities which are mentioned under the second objective.
2. Support to other priorities of the Union in the field of human rights where the EU has an added value or specific thematic commitment. Although Regulation 235/2014 was adopted after the Strategic Framework, it merely mentions under this objective some of the thematic priorities and vulnerable groups included in that document (i.e. fight against the death penalty, fight against torture, economic, social and cultural rights, fight against impunity, fight against discrimination, women's rights). In addition, Regulation 235/2014 gives here special attention to “emerging issues in the field of human rights” but does not define this concept nor gives any example of these issues.
3. Support to democracy, with a view to enhancing participatory and representative democracy, transparency and accountability.
4. Funding of election observations missions (EOMs) which are deemed as “flagship projects of the EU's external action”. In accordance with this view, up to 25% of the budget over the period

³⁵ Council Regulation (EC) 975/1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidation democracy and the rule of law and to that or respecting human rights and fundamental freedoms OJ L120/1, 1999, Art 2. (Regulation 975/1999).

³⁶ SIMMONS, P., “The State of the Art in the EU Democracy Promotion Literature” in *Journal of Contemporary European Research* no. 7, 2011, p. 130.

³⁷ Regulation of the European Parliament and the Council 235/2014 establishing a financing instrument for democracy and human rights worldwide, OJ L77/85, 2014. (Regulation 235/2014), Annex.

2014-2020 should be devoted to the funding of EU EOMs.³⁸ Thus the EIDHR constitutes the main source of funding for these missions.

5. Support to targeted key actors and processes, including international and regional human rights instruments and mechanisms such as human rights dialogues the International Criminal Court.

This instrument is currently governed by Regulation 235/2014 of the European Parliament and the Council which covers the period 2014-2020³⁹ with a total financial envelope of EUR 1,332,752,000.⁴⁰ Under this new Regulation, which replaces Regulation 1889/2006 (2007-2013), the EIDHR's budget has been increased with the aim to provide more support to civil society and increase the EU's capacity to react promptly to human rights emergencies.⁴¹ However, the EIDHR's financial envelope is really small in comparison with the budget allocated to other instruments such as the European Neighbourhood Instrument (ENI) (€15,432 mill) which funds projects in the EU's close neighbouring countries.⁴²

The new Regulation also includes certain amendments such as a stronger wording of the role of civil society, a major emphasis on each vulnerable group (national, ethnic, religious and linguistic minorities, women, lesbian, gay, bisexual, transgender and inter-sex persons (LGBTI), and indigenous peoples) and on the importance of economic and social rights. In addition, it includes ad hoc grants in order to respond in a more flexible manner to the most difficult countries and emergency situations where human rights are in greater danger.⁴³ In fact, one of the operating principles of the EIDHR is that it is "flexible, reactive and tailor-made", with the view to operate in the most difficult environments and situations, supporting human rights defenders at risk and non-registered NGOs.⁴⁴

One of the main features of the EIDHR is its strong focus on civil society organisations (CSOs) and local activities. Partnerships with civil

³⁸ Ibid. See also Commission, "Communication from the Commission on EU Election Assistance and Observation" COM(2000) 191 final, 4. (Communication on EU Election Assistance and Observation).

³⁹ Vid. Regulation of the European Parliament and the Council, op. cit., note 37.

⁴⁰ Vid. Regulation of the European Parliament and the Council, op. cit., note 37, arts. 10 and 12.

⁴¹ European Commission, "The Multiannual Financial Framework: The External Action Financing Instruments", MEMO/13/1134, p. 8.

⁴² SIMMONS, P., op. cit., note 36.

⁴³ Concept Note for Multiannual Indicative Programme EIDHR 2014-2020": <<http://www.eidhr.eu/files/dmfile/2013-12-02EIDHRdraftConceptNoteMIP.pdf>> (last accessed 20 June 2015)

⁴⁴ Ibid.

society actors, which are deemed “all types of social actions by individuals or groups that are independent from the state and whose activities help to promote human rights and democracy, including human rights defenders”,⁴⁵ are critical to this instrument. Thus, the assistance under this instrument is independent from the consent of third country governments and other public authorities. This makes possible the cooperation with civil society on sensitive human rights and democracy issues, including migrants’ enjoyment of human rights and the rights of asylum seekers and internally displaced persons, providing great flexibility and capacity to respond to changing circumstances, needs of beneficiaries or periods of crisis.⁴⁶ In connection with this, another operating principle of this instrument is its ability to “act in a confidential manner”, which is crucial for the protection of the activists involved in the projects.⁴⁷

This “grass-root” approach has been considered one of the most valuable attributes of the EIDHR due to its potential to strengthen the indigenous basis for democracy and human rights in third countries. However, the fact that this instrument funds hundreds of NGO’s small-scale projects has also been subject to critics. In this regard, one major critic is that the limited scope and political relevance of most projects makes the EU’s policy more symbolic than substantive and has not lead to broader human rights and democracy reforms.⁴⁸ Another critic regarding the eligibility criteria is that although the NGOs should have a central position in the delivery of this instrument, some authors consider that they have not always been able to play this role in the design of the thematic components of the EIDHR due to institutional resistance.⁴⁹ Finally, other principles regarding eligibility are the prohibition of direct funding of political parties⁵⁰ as well as the NGOs or opposition groups that directly confront third country’s governments. This explains why this instrument could not be used to promote democracy during the recent Arab Spring revolts.⁵¹

⁴⁵ Vid. Regulation of the European Parliament and the Council, op. cit., note 37, Preamble para 15.

⁴⁶ Vid. Regulation of the European Parliament and the Council, op. cit., note 37, Preamble para 16.

⁴⁷ Vid. Concept Note for Multiannual Indicative Programme, op. cit. note 43.

⁴⁸ KEUKELEIRE, S. and DELREUX, T., op. cit., note 4, p.137.

⁴⁹ KÁRNÍKOVÁ, A., “Do They Actually Matter? The Impact of NGOs on the European Instrument for Democracy and Human Rights (EIDHR)” in *Perspectives*, no. 20, 2012, p. 83.

⁵⁰ Vid. Concept Note for Multiannual Indicative Programme, op. cit. note 43.

⁵¹ KEUKELEIRE, S. and DELREUX, T., op. cit., note 4, p. 137. See also KOTZIAN, P., KNODT, M., and URDZE, S., “Instruments of the EU’s External Democracy Promotion” in *JCMS*, no. 49, 2011, p. 995.

In connection with its territorial scope, one of the key features of the implementation of the EIDHR is that it has worldwide coverage and can operate everywhere outside the EU.⁵² Thus the measures financed must be implemented in the territory of third countries or should be directly related to situations arising in third countries or to global or regional actions.⁵³ Priority is given to countries and urgent situations where human rights and fundamental freedoms are most at risk, such as where disrespect for those rights and freedoms is particularly pronounced and systematic, or where human rights organisations and defenders operate under the most difficult conditions.⁵⁴ However, another critic to this instrument is that the EU does not always follow clear criteria in the allocation of funds across countries so some countries do not receive funds while others receive substantial amounts; in particular, “focus countries”.⁵⁵ Another inconsistency highlighted in the literature is the gap between the institutional discourse and the practice which is more modest and shows a trend towards funding “politically less controversial human rights” in “comparatively easier countries”.⁵⁶

VII. Other specific human rights and democracy instruments

Besides the financial instruments, among the different EU instruments for the promotion of human rights and democracy there are three new instruments which should be distinguished: the human rights clauses in EU agreements, the EU Special Representative for Human Rights, the human rights dialogues and consultations and the election support.

1. Human rights clauses in EU agreements

These clauses were to be included from 1995 onwards in all of the EU's political framework agreements with third countries, including Association Agreements and Partnership and Cooperation Agreements⁵⁷ and are

⁵² Vid. Concept Note for Multiannual Indicative Programme, op. cit. note 43.

⁵³ Vid. Regulation of the European Parliament and the Council, op. cit., note 37, art. 2(3).

⁵⁴ Vid. Regulation of the European Parliament and the Council, op. cit., note 37, Preamble para 18 and art. 2(4).

⁵⁵ KOTZIAN, P., KNODT, M., and URDZE, S., op. cit., note 51, p. 995.

⁵⁶ BICCHI, F., “Democracy Assistance in the Mediterranean: An Overview” in *Mediterranean Politics*, no. 14, 2009, p. 61.

⁵⁷ Council of the European Union, “Human Rights and Democracy in the world: report on EU action in 2011” 9238/12, June 2012, pp. 20-21 (Annual Report 2011). Initially, human rights were not mentioned in the contractual relations with third countries or were only men-

considered the “basis for cooperation on human rights and for promotion of human rights in relation to the areas covered by these agreements”.⁵⁸ The Strategic Framework itself highlights that the EU has to make best use of the human rights clause in political framework agreements with third countries⁵⁹ and the expired Action Plan encouraged the EU to “develop criteria” for application of these clauses.⁶⁰

The clauses function also as the legal basis for taking measures in order to respond to violations of human rights by third countries. In this regard, these clauses state that human rights constitute an “essential element” of the agreement concerned. This provision is usually linked to an additional clause that provides for an immediate response if breaches of the agreement occur. The additional clause could take one of two forms. First, the non-execution clause (“Bulgarian clause”), which provides that either party of the agreement could take “appropriate measures” if one party considers the other party has failed to fulfil an obligation under the agreement, including the violation of the essential elements of that agreement.⁶¹ The “appropriate measures” could include the suspension of high level contacts or changes to cooperation programmes such as the postponement of new projects or the use of different channels of delivery,⁶² although priority should be given to those measures that least disturb the functioning of the agreement. Second, the suspension clause (“Baltic clause”), which authorises the parties to suspend the application of the whole or a part of the agreement in cases of serious breaches of essential provisions.⁶³

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

tioned in the preamble of some agreements. The first reference in the body of a contractual document was in Art 5 of the fourth Lomé Convention with ACP countries signed in 1989. During the following years, this provision gradually began to appear in these agreements.

⁵⁸ Vid. European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *op. cit.*, note 10, p. 11.

⁵⁹ Vid. Council of the European Union, *op. cit.*, note 8, p. 7.

⁶⁰ Vid. Council of the European Union, *op. cit.*, note 8, Annex III, action 33(b).

⁶¹ The inventory of agreements containing the human rights clause and of the agreements containing a suspension-human rights clause are available at: <<http://ec.europa.eu/world/agreements/viewCollection.do>> (last accessed 20 June 2015).

⁶² Commission, “The European Union's role in promoting human rights and democratisation in third countries” (Communication from the Commission to the Council and the European Parliament) COM(2001) 252, p. 9.

⁶³ *Ibid.*, p. 3.

prevention of crises through the establishment of long-term relationships.⁶⁴ The literature also refers to them as a positive instrument due to its cooperative nature, that is, the EU is granting favours in several forms such as capacity building, development assistance or trade-related advantages. However, these “carrots” are conditional on the third country’s behaviour so the third country has to abide by the EU’s standards on human rights, democratic procedures, good governance and the rule of law and in case of misbehaviour the advantages can be suspended.⁶⁵

The Communication of the Commission on the “inclusion of respect for democratic principles and human rights in agreements between the Community and third countries” includes the standard wording for these clauses and a summary of measures that may be taken in response to serious human rights violations or serious interruptions of the democratic process.⁶⁶

Regarding Free Trade Agreements, these are linked through “passerelle” clauses to political framework agreements which include the human rights clause. However, if no Association or Framework Agreement exists, a separate human rights clause can be inserted in these agreements as has been the case with the FTAs signed with Colombia and Peru in 2012.⁶⁷

The use of these clauses by the EU has been considered a “way of backing the EU’s words with actions”.⁶⁸ However, its effectiveness has been contested and the interesting point to be analysed is whether the EU can impose them and the consequences of its infringement, on all States in the same manner.⁶⁹

2. *Human rights and democracy focal points across EU delegations worldwide*

The establishment of human rights focal points in all EU Delegations worldwide is one of the instruments contributing to the objective of promoting the universality of human rights set forth by the Strategic Framework. This document claims not only to intensify the promotion of

⁶⁴ Ibid., p. 9.

⁶⁵ KOTZIAN, P., KNODT, M., and URDZE, S., op. cit., note 51.

⁶⁶ Vid. Commission, op. cit., note 62, Annex 1 and 2.

⁶⁷ Council of the European Union, “EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)”, 9431/13, 13 May 2013, p.42. (Annual Report 2012), p. 59.

⁶⁸ SIMMONS, P., op. cit., note 36, p. 129.

⁶⁹ KOTZIAN, P., KNODT, M., and URDZE, S., op. cit., note 51. See also ZWAGEMAKERS, F., “The EU’s Conditionality Policy: A new Strategy to Achieve Compliance” in *IAI Working Papers*, no. 12(3), 2012.

the ratification and implementation of international human rights treaties, but also the building of a culture of human rights and democracy in the EU's external action. To this end, one of the actions foreseen by the extinct Action Plan is to complete a network of focal points on human rights and democracy in all EU Delegations and CSDP missions and operations.⁷⁰

At present, there are 139 EU delegations and offices around the world⁷¹ which represent the EU in the host countries and are under the authority of the High Representative of the Union for Foreign Affairs and Security Policy.⁷² All of these EU delegations and offices have one or two focal points for democracy and human rights dealing with these matters.⁷³ These focal points play an important role in the coordination of the local implementation of human rights country strategies. Moreover, they provide headquarters with expertise on local developments, address individual cases, deliver démarches and conduct outreach on EU priorities at the UNGA and the Human Rights Council.⁷⁴ They are also involved in the launching of calls and selection of proposals for funding under the EIDHR. Finally, it is worth noting the role of the focal points in order to support the work of the human rights defenders worldwide. In this regard, by the end of 2013 liaison officers for human rights defenders were nominated in most delegations.⁷⁵

3. *EU Special Representative for Human Rights*

The European Union Special Representative (EUSR) for Human Rights, Mr Stavros Lambrinidis, was appointed in July 2012 by Council Decision 2012/400/CFSP⁷⁶. He is the first ever thematic EUSR, which reflects the EU's strong commitment to advocate for human rights worldwide. The appointment of a EUSR for Human Rights was foreseen by the Council

⁷⁰ Vid. Council of the European Union, op. cit., note 8, Annex III, action 5(b).

⁷¹ The updated information on the existing delegations is available at <http://www.eeas.europa.eu/delegations/index_en.htm> (last accessed 20 June 2015).

⁷² Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ C 326/49, art. 221. (TFUE).

⁷³ Information available at <<http://www.eidhr.eu/focal-points#>> (last accessed 20 June 2015).

⁷⁴ Vid. Council of the European Union, op. cit., note 67.

⁷⁵ Council of the European Union, "EU Annual Report on Human Rights and Democracy in the World in 2013" (Annual Report 2013), 11107/14, 23 June 2014, p. 37.

⁷⁶ Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights, OJ L200/21, 2012, (Council decision 2012/440/CFSP).

Conclusions on Human Rights and Democracy adopted with the Strategic Framework and the Action Plan, with the purpose of enhancing the effectiveness and visibility of the EU's human rights policy.⁷⁷

The mandate of the EUSR for Human Rights is based on the policy objectives set out in the TEU, the Charter of Fundamental Rights, the Strategic Framework and the Action Plan, that is: enhancing the EU's effectiveness, presence and visibility in protecting and promoting human rights; enhancing the EU's contribution to the strengthening of democracy and institution building, the rule of law, good governance, respect for human rights and fundamental freedoms worldwide; and improving the coherence of EU action on human rights and the integration of human rights in all areas of the EU's external action.⁷⁸

One year after his appointment, the Council remarked on his important role in improving the coherence of the EU's action on human rights and expressed its full political support for his work.⁷⁹ In addition, in February 2015 the Council confirmed the appointment of Mr. Stavros Lambrinidis as EUSR for Human Rights and extended his mandate until the end of February 2017.⁸⁰

4. *Human rights dialogues and consultations*

Human rights dialogues are also used by the EU in order to implement its human rights policy towards third countries. In its Communication on the EU's role in promoting human rights and democratisation in third countries, the Commission defined this instrument as the "most effective approach to achieve changes in the promotion of human rights".⁸¹ However, in view of the increasing use of this instrument during the recent years, the discussion now is, precisely, how to make them more effective.⁸² In this regard, the Strategic Framework on Human Rights and Democracy states that the EU will continue to deepen its human rights dialogues and consultations with partner countries and "will aim to ensure that these dialogues lead to

⁷⁷ Vid. Council of the European Union, *op. cit.*, note 8, para 2.

⁷⁸ Vid. Council Decision, *op. cit.*, note 76, art. 2.

⁷⁹ Council of the European Union, "Conclusions on the first anniversary of the EU Strategic Framework and Action Plan on Human Rights and Democracy and the appointment of the EUSR for Human Rights", 12559/13, 2013, para 4.

⁸⁰ Council Decision (CFSP) 2015/260, of 17 February 2015, extending the mandate of the European Union Special Representative for Human Rights, L 43/29.

⁸¹ Vid. Commission, *op. cit.*, note 62, p. 8.

⁸² *Ibid.*, 22.

results”.⁸³ In the same line, the Joint Communication remarks that these dialogues should be firmly embedded in the “wider fabric of the EU’s relations with a given country”. Thus, the EU should ensure a closer link of this instrument with other policy instruments and establish its priorities, objectives and benchmarks in order to allow their review in conjunction with the human rights country strategies.⁸⁴

The principles and objectives of the human rights dialogues are governed by the Guidelines on human rights dialogues with third countries⁸⁵. According to these guidelines, there are four different types of dialogues:⁸⁶

- Dialogues or discussions of a general nature, based on regional or bilateral treaties, agreements or conventions or strategic partnerships dealing systematically with the issue of human rights.⁸⁷
- Dialogues focusing exclusively on human rights that are usually structured dialogues held at the level of human rights experts, although they could also be held at the level of Head of Missions.
- Ad hoc dialogues extending to CFSP-related topics such as that of human rights.
- Dialogues in the context of special relations with third countries, on the basis of converging views, with the aim of discussing issues of common interest and cooperate in the framework of multilateral human rights bodies.

The objectives of human rights dialogues are defined on a case-by-case basis depending on the country concerned, among them, discussing issues of mutual interest and enhancing cooperation in multilateral fora; registering the concern of the EU at the human rights situation in the country; information gathering; or supporting the improvement of the human rights situation in that country.⁸⁸

⁸³ Vid. Council of the European Union, *op. cit.*, note 8, p. 7.

⁸⁴ Vid. Council of the European Union, *op. cit.*, note 10, p. 16.

⁸⁵ Council of the European Union, “EU guidelines on human rights dialogues with third countries – Update”, 2009, <http://www.eeas.europa.eu/human_rights/guidelines/index_en.htm>: (last retrieval 10 June 2014). These guidelines were initially adopted in 2001 and updated in 2009. (EU guidelines on human rights dialogues with third countries).

⁸⁶ *Ibid.*, pp. 2-5.

⁸⁷ Among this type of dialogue, the Guidelines include: relations with candidate countries, the Cotonou Agreement with the ACP States, relations between the EU and Latin America, the Barcelona process, the neighbourhood policy, political dialogue with Asian countries in the context of ASEAN and ASEM and relations with the Western Balkans, and bilateral relations in the framework of association and cooperation agreements.

⁸⁸ Vid. Council of the European Union, *op. cit.*, note 85, pp. 5-6.

The issues covered in human rights dialogues are also specified on a case-by-case basis. However, the EU should pay special attention to its own priorities on human rights. The dialogues established to promote human rights cooperation with third countries could also aim at preparing the work of the Human Rights Council or the Third Committee of the UN General Assembly. The dialogues are reciprocal which means that the third country could also raise questions of the human rights situation in the EU, which is usually the case.⁸⁹

5. *Election support*

The EU is one of the leading global actors in supporting elections worldwide through EU Election Observation Missions (EOMs), Electoral Expert Missions (EEMs), electoral assistance, and support for domestic non-partisan observers. As stated by the Joint Communication, elections play a vital role for a wide range of human rights, such as freedom of expression, assembly and association.⁹⁰ The EU's commitment towards election support was subsequently reaffirmed in the Strategic Framework, which expressly stated that “the EU will strengthen its work with partners worldwide to support democracy, notably the development of genuine and credible electoral processes and representative and transparent democratic institutions at the service of the citizen”.⁹¹

The 2000 Commission Communication on Election Assistance and Observation establishes the key principles that guide the EU's action in this field. It expressly acknowledges that although elections do not equate to democracy, they are an “essential step in the democratisation process and an important element in the full enjoyment of a wide range of human rights”. This Communication qualifies elections as human rights events, because they give voice to the political will of the people and because, to be free and fair, they must be conducted in an atmosphere that respects human rights.⁹² The adoption of this Communication followed the entry into force of Regulations 975/99⁹³ and 976/99⁹⁴, which constituted a major

⁸⁹ *Ibid.*, p. 6.

⁹⁰ *Vid.* European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, *op. cit.*, note 10, p. 10.

⁹¹ *Vid.* Council of the European Union, *op. cit.*, note 8, p. 5.

⁹² *Vid.* Commission, *op. cit.*, note 40.

⁹³ *Ibid.*, p. 27.

⁹⁴ Council Regulation (EC) No 976/1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objec-

step in the EU's change of approach towards electoral support. This change of approach implied that the initial enthusiastic EU support for specific electoral processes turned, by the end of the 90s, to a more reasoned and restrained approach based on a deeper analysis of the impacts of the EU's electoral support in many post-conflict countries and emerging and transitional democracies.⁹⁵

This Communication, distinguishes the two components of the EU's electoral support, assistance and observation, and establishes their complementarity in the electoral process. Election assistance is defined as the "technical or material support given to the electoral process". It could consist of professional help to establish a legal framework for the elections, providing voting material and equipment, helping in the registration of political parties and registration of voters, supporting NGOs and civil society, or the training of local observers or supporting the media. The EU is a leading actor in this area and one of the international key donors in many partner countries. EC Methodological Guide on Election Assistance provides the overview of the role of the EU in this field⁹⁶ and envisages the new approach to electoral assistance. This new approach places the emphasis on the operational complexities and the periodicity of the electoral processes. According to this, the support activities should ensure the strengthening of capacity and the transfer of appropriate skills and technology to the local institutions and organisations. Thus, the interventions are programmed some years in advance of the electoral date and should also provide support after the elections.

On the other hand, election observation is defined as "the purposeful gathering of information regarding an electoral process, and the making of informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not inherently authorised to intervene in the process". Thus, election observation is the political complement to election assistance and is also part of it.⁹⁷ The EU observed the first multi-party parliamentary election in Russia in 1993⁹⁸ and since then, has deployed more than 110 observation missions in partner countries in Africa, Latin America, Asia and the Middle East. EU EOMs are only

tive of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, OJ L120/8, 1999. (Regulation 976/1999).

⁹⁵ European Commission, "EC Methodological Guide on Electoral Assistance" (European Communities, 2006): <http://eeas.europa.eu/eueom/key_publications_en.htm>; (last revised 23 July 2014), p. 15 (EC Methodological Guide on Electoral Assistance).

⁹⁶ Ibid.

⁹⁷ Vid. Commission, *op. cit.*, note 38, p. 4.

⁹⁸ Ibid., 25.

deployed to countries where certain legal and political preconditions for observation are met,⁹⁹ in particular, the precondition that franchise is genuinely universal; political parties and individual candidates are able to enjoy their legitimate right to take part in the election; there is freedom of expression allowing possible criticism of the incumbent government and the right to free movement and assembly; and all contesting parties and candidates have reasonable access to the media. An invitation to observe, received from the state and/or electoral authorities, is also required.¹⁰⁰

Notwithstanding the EU's efforts for devising an approach that takes into account the full electoral process instead of focusing on merely ad hoc electoral support on the election day,¹⁰¹ some authors criticise the EU's belief that elections are a "quick fix" because they involve a quite rapid and not very expensive procedure that is quantified easily while other wider reforms affecting the legislative and executive powers are ignored.¹⁰²

VIII. Conclusions

The EU has developed in the last years an impressive framework for human rights and democracy support which sets out clear principles, objectives and priorities which should guide the EU's action in this field. The EU Strategic Framework for human rights and democracy and its Action Plan, adopted in June 2012, outlined the determination of the European Union to better integrate human rights in all areas of its external policies. This new tool lead to the adoption of various instruments and strategies to give this important policy substance.

The EU Strategic Framework and Action Plan has been a valuable instrument. It established a framework and commitments in concrete actions which offered mean to measure the EU's ambitions. However there are inconsistencies that should be underlined. The boundaries and interactions between the concepts of human rights and democracy are not so clear. The EU establishes a functional and necessary link between these

⁹⁹ Vid. Commission, op. cit., note 38, Annex III: Council Decision 9262/98-PESC 157-COHOM 6, Guidelines – EU policy on electoral observation, p. 35.

¹⁰⁰ European Commission, *Handbook for EU Election Observation*, (2nd ed, European Commission, 2008).

¹⁰¹ Council of the EU, "Council Conclusions on Democracy Support in the EU's External Relations – Towards Increased Coherence and Effectiveness" 16081/09 [2009], Annex: EU Agenda for Action on Democracy Support in EU External Relations, p. 7.

¹⁰² WETZEL, A. and ORBIE, J., op. cit., note 12, pp. 570-571.

concepts.¹⁰³ These notions are frequently used interchangeably across the documents, including the Strategic Framework, but democracy cannot be integrated automatically within the protection and promotion of human rights without any consideration. Although in this article we have not dealt with the theoretical and conceptual discussion underpinning this policy, it is important to notice that these concepts have a complex relation to each other, both historically and theoretically, which is not addressed by the EU.¹⁰⁴ There is as a result a measured indeterminacy of expressions such as human rights, democracy and the rule of law. These affect coherence in the ways that the relation between these concepts is established in setting the agenda and through prioritisation (of themes or groups). One example is the case of economic, social and cultural rights.

The EU consistently emphasises the need to promote the indivisibility of human rights and the need to protect and promote both civil and political rights and economic, social and cultural rights (ESCRs). In this regard, the Strategic Framework declares that “the EU reaffirms its commitment to the promotion and protection of all human rights, whether civil and political, or economic, social and cultural”. However, civil and political rights have been prioritised over ESCRs. The formulation of the EU’s objectives and actions in this field display a high degree of generality that could hamper its implementation: the Strategic Framework refers to “Intensify its efforts to promote ESCRs” and “Strengthen its efforts to ensure universal and non-discriminatory access to basic services with a particular focus on poor and vulnerable groups”; and the Action Plan to “Contribute to shaping the agenda on ESCRs with specific focus on the UN Human Rights Council and in close cooperation with UN Special Rapporteurs” (action 9.a) and “Address specific questions related to ESCRs in dialogues with third countries” (action 9.b). These are general statements that do not concretise any specific measures or actions.

In addition, the identification of certain themes as human rights priorities has been usually accompanied by the approval of guidelines providing legal and operational guidance to facilitate the implementation

¹⁰³ The scholarship has talked of a “triangular relationship”, CARRERA, S., GUILD, E. and HERNANZ, N., “The triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU – Towards an EU Copenhagen Mechanism,” *Study for the European Parliament*, PE 493.031, 2013, <[www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493031/IPOL-LIBE_ET\(2013\)493031_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493031/IPOL-LIBE_ET(2013)493031_EN.pdf)>

¹⁰⁴ Historical and theoretical complexities in this triple relationship have been the subject of much literature. See, for example HABERMAS, J., “On the internal relation between the rule of law and democracy”, *European Journal of Philosophy*, n.º 3/1, 1995, pp. 12-20; DAVENPORT, C., “Human Rights and the democratic proposition”, *The Journal of conflict resolution*, n.º 43/1, 1999, pp. 92-116; Tony Evans, “If democracy, then human rights?”, *Third World Quarterly*, n.º 22/4, 2001, pp. 623-642.

of the priorities in the EU's relations with third countries. However, this has not been the case regarding some priority themes which do not have guidelines: ECSRs, Implementation of the UN Guiding Principles on business and human rights, freedom of assembly and association, administration of justice. This fact shows the differences in the EU policy developments between the different thematic priorities.

The current EU Strategic Framework and Action Plan on Human Rights and Democracy does not sufficiently reflect the very comprehensive and useful considerations of the 2009 Council Conclusions on Democracy Support in the EU's External Relations and in particular does not give sufficient space to outcomes related to democracy. Instead, the Framework clearly puts the focus on human rights (in the legal sense rather than a practice that ensures democratic participation), which can be seen in the number of stated planned outcomes. Issues such as Freedom of Association and Assembly, Freedom of Expression, the rights of minorities or women's rights and their participation in the political process are essential areas linked to democratic governance which should be underlined. However freedom of assembly and association, although it has been a long-established objective of the EU's human rights policies is one of the priorities that it is "forgotten" in the action plan.

The absence of specific mention of gender equality in the action plan and a reference to EU policy in this field is difficult to understand when equality between women and men is one of the EU's founding values and a fundamental principle and an objective of EU law. This might be reflected at policy level in two distinct ways. On the one hand, gender is an intersectional factor that interacts with other issues (ethnic origin, immigrant status, etc.) in shaping "vulnerable groups". On the other hand, gender should be mainstreamed in all public policies of the EU (this is a general policy tool, not related to vulnerable groups). The Action Plan even considerably reduces the scope of gender equality if it were to be understood as meaning that women are a "vulnerable group".

Another inexplicable absence from a human rights perspective, is the protection of refugees and migrants. They are not a priority, neither the subject of specific guidelines.

However the forced migration crisis worldwide makes it a priority of action. The trend in the number of migrants coming to Europe continues to increase and reaches far beyond refugees and asylum seeker numbers. In particular the case of migrants lost at sea in the Mediterranean and the EU treatment of this case considered by human rights organisations as inhumane creates a need for human rights protection. As a paramount principle, the safety, protection needs, and human rights of all migrants and refugees should be at the forefront of the EU response.

Finally, there is much confusion regarding what the EU would like to export with its human rights and democracy policy. In particular, the “substance” of the democracy promotion that underpin the EU’s activities in this field is unclear and seems to be dominated by electoral support measures while not considering wider reforms that would have greater impact on the human rights situation in the countries concerned.

While this article was going to be submitted, the European Commission and the HP/VP issued a Joint Communication to contribute to the elaboration of a new Plan on Human Rights and Democracy for the period 2015-2019 (the “new Action Plan”). This Communication is entitled “Keeping human rights at the heart of EU agenda”. The proposed Action Plan aims at addressing key areas of human rights policy and focuses on priorities where enhanced commitment is required, capitalising on the achievements of the previous Action Plan (2012-2014). It reinforces the Strategic Framework, with its priorities and guiding principles as the overall framework for the Union’s action. If a new or revised Strategic framework is not foreseen, it should be envisaged that the Human Rights and Democracy are systematically mentioned together in the EU country strategy reports, the statements by the EU Special Representative, dialogues with third countries etc.

The new proposed plan identifies five strategic areas of action with the idea of not pretending to cover all aspects but rather to focus on priorities that need “additional political momentum and enhanced commitment.”¹⁰⁵ As an example current priorities mentioned are: democracy support, Economic, Social and Cultural rights, addressing violation of human rights and international humanitarian law in crises and conflicts; fighting discrimination, particularly against women, children, persons with disabilities and LGBTI but also against members of religious minorities; fighting torture and ill-treatment and for increasing the coherence of EU policies from a Human Rights point of view. The latter shows the intention to address some of the shortcomings of the 2012-2014 Action Plan. This new approach can give the opportunity to pay particular attention to specific goals, commitments and tools that are mentioned in the Strategic Framework but have not been pursued consistently.

¹⁰⁵ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, “Joint Communication to the European Parliament and the Council. Action Plan on Human Rights and Democracy (2015-2019). Keeping human rights at the heart of the EU agenda.”, JOIN (2015) 16 final, p. 5.