



## Landmark revision of the EU's human rights and democracy policy 2012

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### 1. Background

Over a decade ago, the European Commission adopted the Communication "The European Union's role in promoting human rights and democratisation in third countries", which constituted the first policy document guiding the EU's external relations in the field of human rights and democracy promotion<sup>1</sup>. Since then, the European Union put in place a wide range of policy instruments to implement the commitments enshrined in the Communication. It adopted guidelines and toolkits on specific thematic issues; established human rights dialogues and consultations with nearly 40 countries worldwide; issued countless statements, declarations, and demarches in defence of human rights; built close cooperation with civil society organisations; became an active player at multilateral fora, in particular the Third Committee of the United Nations General Assembly and the Human Rights Council; created an EU funding instrument, the European Instrument for Democracy and Human Rights, devoted solely to the promotion and protection of human rights and democracy worldwide through support

to NGOs, and conducted tens of election observation missions around the globe<sup>2</sup>.

At the same time, a number of new challenges arose that confronted the effectiveness of the EU's human rights and democracy policy vis-à-vis external partners. The universality of human rights has been questioned, in particular with reference to cultural relativism; the implementation of states' human rights obligations at the national level has witnessed many weaknesses; the enjoyment of fundamental freedoms, especially the political and civil rights, has been limited in some parts of the world in the name of economic and social development; new technologies have been used for censorship and surveillance; more attention has been given to human rights abuses in relation to performance of business; and finally, the uprisings across the Arab world have proven the overall global change in the pursuit of human rights and democracy.

Furthermore, the Lisbon Treaty enhanced the profile of human rights and democracy in the EU's foreign policy. Article 21 of the Treaty on European Union stated that the "Union's action on the international scene

<sup>1</sup> Communication from the Commission to the Council and the European Parliament, The European Union's role in promoting human rights and democratisation in third countries, COM (2001) 252 final, Brussels, 8 May 2001.

<sup>2</sup> EEAS, EU and Human Rights, [http://eeas.europa.eu/human\\_rights/index\\_en.htm](http://eeas.europa.eu/human_rights/index_en.htm); and European Commission, European Instrument for Democracy and Human Rights, [http://ec.europa.eu/europeaid/how/finance/eidhr\\_en.htm](http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm), 02 July 2012

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>3</sup>.

As a result of these developments, the EU opened a discussion on a possible revision of the EU's human rights and democracy policy to make it more coherent, visible, pragmatic, and results-oriented. In March 2010, the informal meeting of Ministers for Foreign Affairs (Gymnich) kicked off the debate on the future of the EU's human rights and democracy policy<sup>4</sup>, followed by deliberations at the working level at an informal meeting of the Council Working Party on Human Rights (COHOM) in Bruges in October<sup>5</sup>. Officially, the idea to launch a new EU human rights and democracy strategy was announced by the High Representative (HR) for the Common Foreign and Security Policy Catherine Ashton in the European Parliament in December that year<sup>6</sup>. To advance the reflection on the review of the EU's human rights and democracy policy, the European

External Action Service (EEAS) and the European Commission, both of whom were consulted during the above-mentioned discussions, presented in December 2011 the Joint Communication "Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach". The document proposed ideas in four areas – delivery mechanisms, integrating policies, building partnerships, and speaking with one voice. Its aim was to offer general orientation to steer the dialogue with other European institutions and not to provide ready-made solutions.<sup>7</sup>

After several months of discussions among the EU Member States and institutions as well as informal consultations with NGOs and Members of the European Parliament (MEPs), on 25 June 2012, the Council of the European Union adopted a package of the revised EU human rights and democracy policy consisting of 1) the EU Strategic Framework providing a vision and basics guiding EU actions in this field; 2) an Action Plan listing specific activities to be undertaken by different EU actors within the given timeframes in order to put the Strategic Framework into practice in the first implementation phase; and 3) a decision on the appointment of a first ever<sup>8</sup> thematic EU Special Representative on Human Rights (EUSR HR) to enhance the visibility and importance of human rights and democracy in EU external relations. In addition, the EU published statutes of the

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<sup>3</sup> Official Journal of the European Union, Consolidated Version of the Treaty on European Union, OJ C 83/13, 30 March 2010.

<sup>4</sup> European Commission, Informal meeting of Foreign Affairs Ministers, <http://ec.europa.eu/avservices/services/showShotList.do?out=PDF&lg=En&filmRef=68828>, 02 July 2012.

<sup>5</sup> See for example: FIDH, Contribution to the Informal COHOM dedicated to the strategic review of the EU human rights policy, October 2010, <http://www.fidh.org/FIDH-Contribution-to-the-Informal>; and Amnesty International, A place for Human Rights in the EU's new External Action Service, <http://www.amnesty.eu/content/assets/Doc2010/EEAS.pdf>; 02 July 2012.

<sup>6</sup> Catherine Ashton EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission Annual Human Rights Report European Parliament Strasbourg, 15 December 2010, Ref. SPEECH/10/757, 15 December 2010.

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<sup>7</sup> Joint Communication from the European External Action Service and the European Commission to the European Parliament and the Council, Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach, Brussels, COM (2011) 886 final, 12.12.2011.

<sup>8</sup> Before the entry into force of the Lisbon Treaty, the EU High Representative for the Common Foreign Policy appointed since 2004 a Personal Representative on Human Rights with a mandate covering a broad spectrum of activities on a broad range of topics, mainstreaming human rights into CFSP and ESDP, participating in human rights dialogues and consultations with third countries and generally contributing to the implementation of EU Human Rights Guidelines as well as EU actions in the UN, the Council of Europe and the OSCE.

future European Endowment for Democracy (EED)<sup>9</sup>.

The package is designed to serve manifold purposes: 1) it aims to provide a comprehensive and unified policy framework by systematising and further developing the EU's human rights and democracy policy instruments; 2) it offers a strategic response to the new challenges in order to make the EU's human rights and democracy policy more relevant and fit to current conditions; 3) it fulfils the obligations enshrined in the Lisbon Treaty by pledging a consideration for human rights perspectives in all EU external action. Most importantly, with this package, the EU aims to increase the effectiveness and coherency of its human rights and democracy actions in third countries and at multilateral fora by creating a more tangible and results-focused policy with concrete deliverables to be achieved as well as by clearly confirming a joint responsibility of both the EU Member States and institutions its implementation.

## **2. EU Strategic Framework on Human Rights and Democracy**

The Strategic Framework is a concise document providing a clear vision to guide EU actions on human rights and democracy in the next decade<sup>10</sup>. It builds on European values and EU achievements in the field of human rights and democracy promotion accomplished throughout the years.

Firstly, the Strategic Framework underlines that human rights are a basis of EU foreign relations by recognising them as one of the core EU values underpinning its internal

and external policies, and consequently by acknowledging the EU's responsibility to promote and protect human rights in its actions. A specific reference has been made to emphasize the EU's firm role as an advocate for the universality of human rights through support to the worldwide application of the Universal Declaration on Human Rights as well as ratification and implementation of key international human rights conventions.

Secondly, human rights and democracy are treated as a silver thread, a concept established by the HR Catherine Ashton to emphasise they must run across all areas of EU foreign policy<sup>11</sup>. The document calls on pursuing coherent objectives based on article 21 of the Lisbon Treaty, the Fundamental Rights Charter, and the forthcoming EU's accession to the European Convention on Human Rights, all of which confirm the commitment and responsibility of both the EU and its Member States to promote human rights, democracy and the rule of law across all aspects of external relations, including through strengthened cooperation with partner countries, international organisations and civil society. In this respect, the Strategic Framework introduces an obligation to address human rights in all external actions with no exception, in particular as regard trade, investment, technology, telecommunication, internet, energy, environment, corporate social responsibility, development, Common Security and Defence Policy, as well as external dimensions of internal policies, namely employment and social policy, freedom, security and justice.

Thirdly, the document arranges various human rights topics that the EU has dealt with over the years under a single heading. It covers both more traditional topics addressed in the EU Human Rights Guidelines (on the death penalty; torture and other cruel, inhuman or degrading treatment or punishment; human Rights

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<sup>9</sup> Council of the European Union, Council Conclusions on Human Rights and Democracy, 3179<sup>th</sup> Foreign Affairs Council Meeting, Luxembourg 25 June 2012; and Council of the European Union, EU Adopts Strategic Framework on Human Rights and Democracy, PRESSE 285, 11737/12, Luxembourg, 25 June 2012.

<sup>10</sup> Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy, 11855/12, Luxembourg, 25 June 2012.

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<sup>11</sup> EEAS, Human Rights: the "Silver Thread" in Europe's Foreign Policy - 06/01/2012, [http://eeas.europa.eu/top\\_stories/2012/060112\\_hr\\_silverthread\\_en.htm](http://eeas.europa.eu/top_stories/2012/060112_hr_silverthread_en.htm), 02 July 2012.

dialogues with third countries; children and armed conflict; human rights defenders; the rights of the child; violence against women and girls and combating all forms of discrimination against them; and the International Humanitarian Law) as well as new themes, where the EU became active only recently, for example on the rights of persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities, and business and human rights.

Fourthly, the Strategic Framework lists the implementation tools to be used when putting the EU's human rights and democracy policy in practice, such as: cooperation with civil society, bilateral partners third countries (through positive measures, but also negative ones if the situation warrants them), and actions in multilateral institutions, in particular support to the Third Committee of the United Nations General Assembly, the Human Rights Council (including the Universal Periodic Review), the International Labour Organisation, the Office of the High Commissioner for Human Rights, UN Special procedures, as well as cooperation with regional organisations.

Finally, the document also covers the issue of internal coordination between the European Parliament, the Council of the European Union, the European Commission, and the European External Action Service calling for increased coherence and complementarity of their respective actions.

### **3. EU Action Plan on Human Rights and Democracy**

The Strategic Framework is accompanied by an Action Plan that lists 97 actions under 36 headings, to be completed by the end of 2014 (end of HR Catherine Ashton mandate), with an aim of putting the Strategic Framework into practice in the

first phase of its implementation<sup>12</sup>. The actions were designed in a flexible manner to respond to any new challenges as they arise.

On the one hand, the Action Plan builds on the existing policy framework and instruments. It provides for continuation of, inter alia, the implementation of the EU Human Rights Guidelines; close cooperation with civil society; promotion of universal adherence to human rights treaties; development of EU human rights country strategies; discussions with third countries in the framework of human rights dialogues, support to multilateralism; assistance to regional human rights mechanisms; election observation monitoring; mainstreaming human rights internally (human rights training for EU staff, human rights focal points in EU delegations, human rights working groups of EU locally).

On the other hand, the Action Plan introduces a number of new ambitious ideas. It launches two important overarching initiatives. Firstly, in terms of institutional organisation, it proposes to establish a permanent Council Working Party on Human Rights. Currently COHOM is a capital-based working group, meaning that representatives from Member States Foreign Ministries come to Brussels from capitals once a month. The permanent COHOM will continue with this practice, however, in-between the monthly capital meetings that will deal with strategic issues, additional meetings (on a weekly, or even more frequent basis, depending on the needs) will be conveyed with presence of representatives from Member States' Permanent Representations in Brussels. The more frequent meetings of COHOM will allow to respond to the increased workload and demands, and will create a standing capability and expertise on human rights and democracy among the permanent representations in Brussels. Secondly, the Action Plan creates an obligation that human rights should be addressed in all

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<sup>12</sup> Council of the European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy, op cit.

impact assessment when carried out for legislative and non-legislative proposals, implementing measures and trade agreements or to define future policies. This is an innovation that should contribute to ensuring that human rights are part and parcel of all EU internal and external policies.

The Action Plan also proposes a number of new initiatives regarding specific human rights issues. It calls on developing three new sets of EU Human Rights Guidelines on 1) Lesbian, Gay, Bisexual and Transgender (LGBT) rights, 2) the freedom of religion or belief, and 3) the freedom of expression; the latter one including the protection of bloggers and journalists as well as tools to address indiscriminate censorship or mass surveillance when using information and communication technologies. It provides for further development of the EU democracy policy through, for example, development of EU joint comprehensive democracy support plans and programmes for third countries where the EU is actively engaged in democracy support. The Action Plan also includes increased engagement in topics that appeared on the EU agenda relatively recently, such as the administration of justice (worldwide campaign on the right to fair trial), accountability for human rights violations (policy on transitional justice), policies on the rights of persons belonging to minorities, indigenous issues, persons with disabilities (review/update of the existing basis). These proposals will allow the establishment of a clear policy guidance regarding these areas.

Apart from thematic issues, the Action Plan also includes activities to be undertaken vis-à-vis third countries. The EU's human rights and democracy policy will be implemented on the ground through development of human rights country strategies for all third countries and regular assessment of the progress in their implementation. This proposal is a core element of a tailored approach to human rights in partner countries. As each third country has different human rights situation and needs, each of them will have an individual human

rights country strategy with custom-made priorities and objectives to maximise the effectiveness and impact on the ground.

Another key development proposed by the Action Plan is a more rigorous mainstreaming of human rights in other external policies, with an aim to increase EU influence. Perhaps the most innovative solutions refer to the trade policy as this is the first time that an EU document provides for concrete actions to integrate human rights into this policy field by: providing human rights assistance in countries with launch or conclusion of trade and investment agreements; reinforced human rights (or political) dialogue with countries that have Free Trade Agreements (FTA) or are beneficiaries of the General System of Preferences Plus Scheme (GSP+); consideration of human rights in investment policy (particularly important since the Lisbon Treaty established Union competence in this area); attention to human rights in the planned reviews of the regulations on arms exports and on trade in goods that can be used for capital punishment or torture; and inclusion of human rights criteria in an international arms trade treaty.

The plan also envisages actions to enhance rights-based development cooperation, including a development of a toolbox on rights-based development cooperation, human rights impact assessment before deployment of aid, advocacy for human rights in global development agenda, in particular Millennium Development Goals (MDGs).

In the field of conflict prevention and crisis management, the mainstreaming of human rights is to be ensured by creating a mechanism for accountability in case of possible breaches of the Code of Conduct by operation or mission staff, an inclusion of human rights provisions in mandates of EU missions and operations, benchmarks, planning, and evaluation.

Human rights were also included in the policy on counter-terrorism through



development of operational guidance to ensure consideration of human rights in the planning and implementation of counter-terrorism projects and to include human rights in counter-terrorism dialogues.

Mainstreaming of human rights also covers external aspects of EU internal policies. In the field of freedom, justice and security, a number of priority countries on cooperation in anti-trafficking of human beings will be selected. In employment and social policies, the EU will advocate for ratification of core ILO conventions.

The responsibility for the implementation of actions was placed within the EU (the EEAS, the European Commission, and the European Council) and the Member States in their respective fields of competence and within the given deadlines. This solution is essential to track progress and identify any implementation gaps. Every year an assessment of the implementation will be carried out by the EEAS that will present EU performance to meet human rights objectives envisaged in the Action Plan. This evaluation will be included in the EU annual report on human rights and democracy in the world.

#### **4. EU Special Representative for Human Rights**

An idea to create a mandate of a EU Special Representative for Human Rights was on the EU agenda since 2010, mainly because of strong advocacy by the European Parliament supported by civil society organisations<sup>13</sup>. As part of the revised

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<sup>13</sup> See: European Parliament resolutions of 16 December 2010 on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter; the European Parliament resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy; and the European Parliament recommendation to the Council of 13 June 2012 on the EU Special Representative for Human Rights.

human rights and democracy policy, the Council adopted a decision to appoint a European Union Special Representative for Human Rights with a mandate to strengthen the effectiveness and the visibility of the EU's human rights policy and to contribute to the implementation of the Strategic Framework and the Action Plan. It should be noted that this is the first time that the EU established a thematic mandate for an EU Special Representative.

The EUSR HR will be selected in the coming days among human rights experts with international experience and strong understanding of the EU's human rights and democracy policy. The mandate will last 2 years, until mid-2014. The EUSR HR's tasks will include, inter alia, participating in political dialogue with third countries; meeting with civil society, international and regional organisations; taking actions in relevant multilateral fora; as well as conducting communication and public diplomacy activities.

In terms of working methods, s/he will act under the authority of the HR and in close cooperation with the EEAS, and will be assisted by a team of human rights experts coming either from EU institutions or EU Member States. One of the requirements will be close coordination of EUSR HR actions with EU institutions, Member States, EU Delegations, Heads/Commanders of CSDP missions and operations and other EUSRs. The EUSR HR will be obliged to regularly report to the Political and Security Committee (PSC) and relevant Council Working Groups, in particular COHOM<sup>14</sup>.

The main challenges of the appointee will include: building relations with EU Member States to align them with the EUSR's voice on human rights in order to increase EU international weight; establishing working relations with geographical EUSRs to avoid any potential clashes; ensuring that human rights will still be addressed at high- and

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<sup>14</sup> EU Special Representative for Human Rights, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86v/86v04.htm>, 02 July 2012.

working-level political dialogues in support and complementarity of EUSR work.

## 5. European Endowment for Democracy

The final element of the 2012 review of the EU's human rights and democracy policy is the establishment of the European Endowment for Democracy. Its creation was announced in the Communication "A Review of the European Neighbourhood Policy" of May 2012, published as a response to the Arab Spring<sup>15</sup>. The idea was subsequently significantly developed during the Polish Presidency in the second half of 2011<sup>16</sup>. The main aim of the EED is to support people during democratic transition in a rapid and flexible manner.

The statutes of the European Endowment for Democracy were adopted also on 25 June 2012. The EED will be autonomous from the EU and governed only by its statutes, decisions taken by its statutory organs, and Belgian law (as its seat will be in Brussels). The role of the Endowment will be to build and enhance sustainable democracy in countries undergoing political transition and in societies fighting for democracy. Initially, although not exclusively, the EED will focus on providing assistance to initiatives in the direct EU neighbourhood. The Endowment will grant direct support to a wide range of actors, including pro-democratic movements, civil society organisations, emerging leaders, independent media and journalists (including bloggers, social media activists), foundations and educational institutions, also in exile. The funds will be available for a wide scope of endowers, including administrative costs of institutions/organisations and own activities, such as seminars, publications,

networking. The main condition to receive support from the EED will be to share democratic values, respect for human rights and the principles of non-violence. It is important to note that the funds are to be provided in a flexible and effective manner while avoiding duplication with existing EU instruments, such as the European Instrument for Democracy and Human Rights.

The Endowment's organs will include a Board of Governors (consisting of representatives from each MS, the European Commission, the High Representative for the Common Foreign and Security Policy, European Parliament, and experts on democracy support and democratic transition) and the Executive Committee chaired by the Executive Director. The budget will consist of Endowment's own funds coming from voluntary contributions of MS, donations, grants and other financial support received (the Endowment will be allowed to apply for EU funds). The Endowment, however, will remain a non-profit organisation<sup>17</sup>.

The success of the European Endowment for Democracy will depend on many factors, such as operational procedures allowing for a quick and flexible release of funds; support from all EU Member States both in terms of the voluntary financial contributions and political backing; extent to which the Endowment will take risk in supporting entities such as emerging political parties, non-registered initiatives and organisations, small local groups<sup>18</sup>.

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<sup>17</sup> Council of the European Union, EU Strategic Framework on Human Rights and Democracy – Factsheet, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131169.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131169.pdf), 02 July 2012.

<sup>18</sup> For analysis on the potential role of the European Endowment for Democracy, see for example: Richard Youngs and King Brudzinska, The European Endowment for Democracy: Will It Fly, in: FRIDE Policy Brief, no. 128, May 2012; and Hrant Kostanyan and Magdalena Nasieniak, Moving the EU from a Laggard to a Leader in Democracy Assistance: The Potential Role of the European

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<sup>15</sup> Joint Communication of the European External Action Service and the European Commission, A new response to a changing Neighbourhood, COM (2011) 303, Brussels, 25 May 2011.

<sup>16</sup> Council of the European Union, Council Conclusions on the European Endowment for Democracy, 3130<sup>th</sup> Foreign Affairs Council Meeting, Brussels, 1 December 2011.

## 6. Conclusion

The human rights and democracy package adopted on 25 June 2012 is a first EU initiative providing a unified and strategic agenda that sets out principles, objectives and priorities aimed at improving the effectiveness and consistency of EU human rights and democracy policy. It is also the first document of such weight agreed collectively by the EU institutions and EU Member States demonstrating a joined-up responsibility in the implementation of the human rights and democracy commitments. The package offers clear and ambitious ideas that reinforce a firm approach to human rights in a transparent manner.

At the same time the revised framework realistically recognises current challenges that the EU's human rights and democracy policy faces as well as acknowledges that the EU's credibility on human rights depends very much on ensuring respect for the same rights internally within its borders.

The package creates high expectation on the part of the EU. It has been welcomed by civil society organisations<sup>19</sup> and the European Parliament<sup>20</sup> as a well-coordinated and significant effort to fully integrate human rights into EU external relations. The concrete actions with timelines and indications of responsibilities were equally

applauded as essential in providing clarity and accountability of efforts.

At the same time, it was acknowledged that the aspirations will be verified by effective implementation of the revised policy in practice. In particular, the realisation of the most ambitious ideas, such as placing human rights at the core of EU relations with third countries (vis-à-vis economic and political goals) and promoting human rights in all areas of EU external action without exception, will be a key test-case for the EU's commitment on human rights and democracy promotion.

Another criterion to assess the effectiveness of the package will be the extent to which the Strategic Framework and the Action Plan will be taken into consideration by EU Member states in the pursue of their national foreign policies to show a real coherence and commitment to EU human rights principles.

Nevertheless, the revised policy already created a momentum to enhance the effectiveness and credibility of EU's efforts in the field of human rights and democracy that future actions should built on.

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Endowment for Democracy, in CEPS Policy Brief, June 2012.

<sup>19</sup> See for example: Human Rights Watch, EU: Turn Rights Promises into Actions, <http://www.hrw.org/news/2012/06/25/eu-turn-rights-promises-actions>; FIDH, The New EU Human Rights Policy: A Determination to marry Human Rights Objectives with the EU's Economic Weight, <http://www.fidh.org/The-new-EU-human-rights-policy-A>, Open Society Foundations, Open Society Foundations Welcome New EU Human Rights Package, <http://www.soros.org/press-releases/european-union-s-new-human-rights-package>, 02 July 2012.

<sup>20</sup> European Parliament, EU Strategic Framework for Human Rights, [http://www.europarl.europa.eu/the-president/en/press/press\\_release\\_speeches/press\\_release/2012/2012-june/press\\_release-2012-june-12.html](http://www.europarl.europa.eu/the-president/en/press/press_release_speeches/press_release/2012/2012-june/press_release-2012-june-12.html), 02 July 2012.