



Frame

HOW TO BETTER FOSTER HUMAN RIGHTS AMONG EU POLICIES

FRAME FINAL RECOMMENDATIONS

Brussels, 26 April 2017

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INTRODUCTION

This document presents 40 final recommendations emerging from the four years of research (2013-2017) conducted by the 19 partners of the FRAME consortium (“FRAME”).

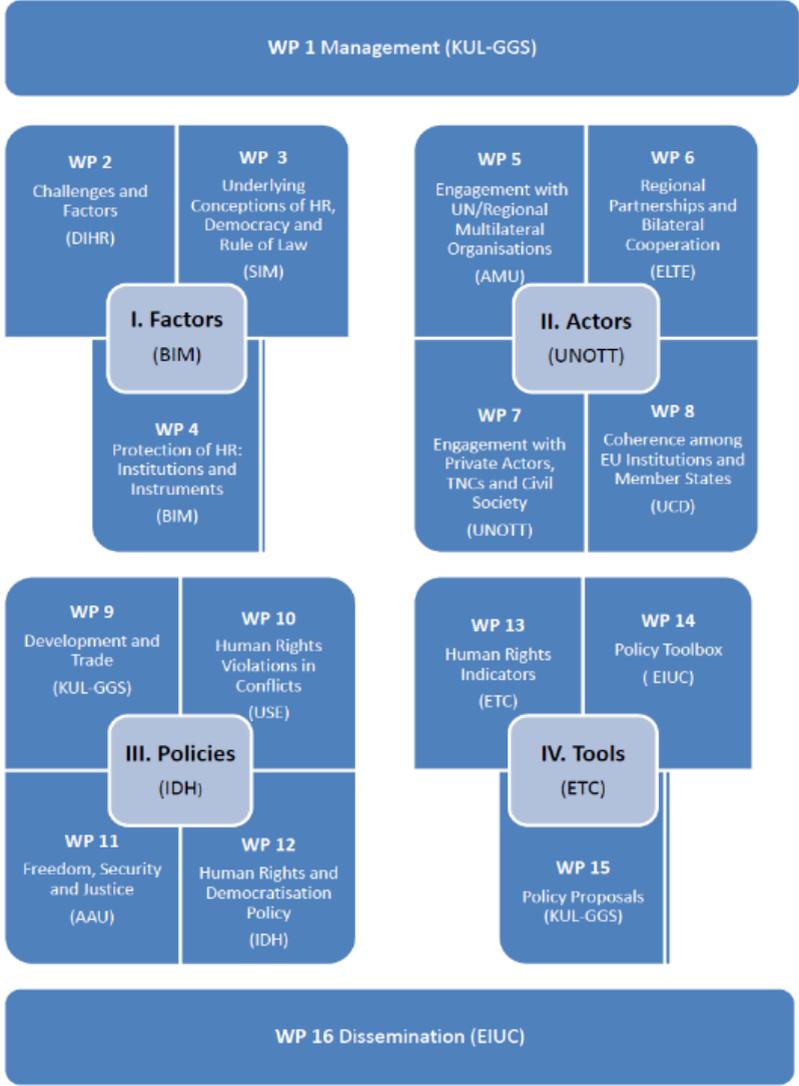
FRAME stands for ‘Fostering Human Rights Among EU (internal and external) Policies’, and is a large-scale, collaborative research project funded by the European Commission under its seventh Framework Programme for research (FP7).

FRAME was carried out between May 2013 and April 2017 by a consortium of **19 academic partners** from the EU and the world, under the coordination of the Leuven Centre for Global Governance Studies. FRAME’s main objective was to research the impacts of virtually all EU internal and external policies on human rights, and to provide recommendations to the European Union (‘EU’ or ‘Union’) institutions in this regard.



THE FRAME CONSORTIUM

The FRAME partners have collaborated intensively during these four years around themes grouped into four clusters. First, FRAME examined what **factors** enabled or hindered human rights protection by the EU. This included contextual factors, conceptual factors, and institutional factors.



Second, FRAME studied the *actors* with which the EU should engage in order to successfully implement its commitment to protect and promote human rights. This included the EU's own Member States other international and regional organizations, third countries, and non-state actors. Third, FRAME explored more in-depth how selected *policies* concretely affected human rights enjoyment in the Union and abroad. Policies studied included trade and development, the policies linked to the area of freedom, security and justice (with a focus on migration and counterterrorism), the common security and defense policy, and the EU's human rights and democratization policies. Finally, FRAME surveyed the practical *tools* which are at the disposal of the EU to protect and promote human rights and in this regard mapped and critically analysed the EU's human rights policy toolbox. One particular type of tool, human rights indicators, was analysed in greater detail.

The project has yielded a considerable amount of **output**, namely more than 50 comprehensive research reports, totaling more than 10,000 pages of knowledge, dozens of academic publications, five policy briefs, more than 20 research workshops around the world, a high-level lecture series, a massive open online course followed by 12.000 students, and finally, this Outcome Document.

For more information about FRAME, please visit www.fp7-frame.eu.



European Commission

THE CONTEXT

Since its inception, the EU has, over the years, developed a unique commitment to human rights, culminating with the Treaty of Lisbon, which gave the *Charter of Fundamental Rights of the EU* ('Charter') the same legal value as the EU Treaties and listed human rights among the Union's foundational values. This commitment means that human rights must consistently act as the Union's compass for action. FRAME's research programme was designed to investigate how this commitment is being implemented, and to provide recommendations to the relevant EU and Member State actors on how to take the commitment further in light of challenges and opportunities, and how to incorporate this in every EU action both consistently and sustainably.

It is fair to say that, since the entry into force of the *Treaty of Lisbon* on 1 December 2009, references to human rights in EU policy and legislative documents, as well as mechanisms to 'mainstream' human rights in the exercise of the EU's competences, have increased and gained in depth and quality.

Challenges do remain though, now more than ever, and this document intends to pinpoint these and offer recommendations on how to overcome them.

Within the EU, a number of governments are taking an authoritarian turn, cracking down on media and civil society, undermining the independence of the judiciary, or discriminating against minorities. The refugee crisis has too often been used as an excuse for legitimizing deeply biased and problematic narratives, and is being tackled largely at the expense of the human rights of refugees who, if they do not drown in the Mediterranean Sea trying to reach our coasts, suffer dire human rights conditions in transit, whilst applying for asylum or whilst being held on the territory of 'safe' third countries. Likewise, the austerity measures taken to address the recent economic crisis, despite having been driven and supported by the Union, largely preserved powerful financial interests at the expense of the economic and social rights of many citizens.

Outside the Union the situation is even more worrisome. Atrocious conflicts rage in Syria and other places, with war crimes and crimes against humanity proliferating, while the world watches. More generally, a downward trend in the enjoyment of human rights can be observed, leading Amnesty International to declare human rights 'in danger' in its latest annual report. Looking back at 2016, arguably only a handful of countries have seen their human rights situation

improve, including Colombia and Tunisia - both of which still have a very long road ahead of them. Authoritarian governments around the world are encouraged by the international community's failure to coherently and firmly respond to the human rights violations they inflict.

Where does this bleak picture leave the EU and its commitment to human rights? In these troubled times, it is more important than ever that human rights be reaffirmed as the very core of the Union, and that both the institutions and the Member States solemnly reaffirm their dedication to them. However, the EU's leverage to promote and enforce human rights has weakened overall since FRAME started in 2013.

At home, as indicated by Commission President Jean-Claude Juncker in the recent 'White Paper on the future of Europe: Avenues for unity for the EU at 27', the Union's aura has diminished as a result of a number of shocks of various natures: economic, migratory, and terrorist. The EU is increasingly perceived by its citizens as 'too distant or too interfering in their day-to-day lives. Others question its added-value and ask how Europe improves their standard of living. And for too many, the EU fell short of their expectations as it struggled with its worst financial, economic and social crisis in post-war history.'(p.6) This has led EU citizens to speak out against the Union in recent elections or referenda, and this recoil also concerns the EU's fundamental values, among them human rights, which are now openly challenged in political discourse.

Abroad, the comparative weight and leverage of the Union and its Member States as a bloc is slowly waning, as emerging powers such as China, India or Brazil continue to gain in economic weight, and as other powers such as Russia are re-gaining influence and promoting a starkly different kind of agenda. Likewise, the United States, a long-time ally of the EU, now has a President whose announced policies, if implemented, would violate human rights. Brexit, when completed, will affect the EU's clout in bilateral and multilateral external relations. All this lessens the Union's capacity to promote human rights worldwide, as its pro-human rights narrative and the associated economic, political and developmental instruments currently used to back this narrative up, are now forced to compete against other actors with different, if not adverse, objectives.

THE CHALLENGES

In this context, FRAME has identified three cross-cutting challenges facing the EU's commitment to human rights: the challenge of delivery, the challenge of coherence, and the challenge of effectiveness.

DELIVERY

The challenge of delivery describes the difficulties that the Union may have in going from the theory of its commitment to the practice arising from actual policy. On paper, the EU's commitment to human rights is bold and unconditional, making its implementation in practice a true challenge. The manifestations of such a challenge are manifold.

First of all, from a conceptual point of view, FRAME has evidenced that, while the EU may rely on solid normative references for human rights with the *Charter* and the *European Convention for the Protection of Human Rights and Fundamental Freedoms* ('Convention'), the concrete application of such standards often poses problems. In particular, a divide seems to exist in EU policy between civil and political rights, which are enforceable and a priority, and economic, social and cultural rights, often listed as 'principles' in the *Charter*, and with which the EU is visibly less comfortable, both in internal and in external policies.

Second, much of the delivery of the EU's commitment to human rights depends on the willingness of Member States to play along. Internally, some Member States are implementing reforms that are plainly averse to such commitment, and the Union currently struggles with putting effective instruments into place to tackle these developments. Likewise, externally, the EU's well-developed international agenda must, in many instances, rely on the coordination with, and resources of, Member States, which are difficult to garner. In particular, the Union has put in place an intricate coordination mechanism with regard to its priorities at the United Nations ('UN').

Third, regular exchanges between FRAME researchers and EU officials have shed light on a relatively low level of knowledge of the EU's commitment to human

rights, except when human rights are at the core of the official's tasks. Although EU officials are typically highly qualified and competent, EU institutional structures are rigidly organised in silos, and cross-cutting issues such as human rights struggle to be reflected in the work of such specialised administrations. *Ad hoc* initiatives to bring about human rights mainstreaming, such as interinstitutional groups or meetings, are not sufficient to ensure that all EU officials are aware of the EU's commitment and what it entails in their daily operations.

COHERENCE

The challenge of coherence describes the extent to which EU policies and outcomes are aligned with the Union's commitment to human rights. Coherence requires that all levels of power, from EU Member States to EU institutions and other EU bodies, act such that the commitment to human rights is implemented in practice, or at the very least does not offset this commitment through damaging policies. This requires aligning policies *vertically* between the Union and its Member States as well as *horizontally* among EU institutions and bodies, and even among the various services of single institutions such as the Commission Directorates-General, or Council Working Groups. Yet, FRAME has evidenced a number of misalignments, which play out at different junctures in EU policies, along the internal-external divide.

First of all, *internal-internal* incoherence arises when the EU's own internal policies contradict its commitment to human rights. An example of such incoherence was given by the 2014 Digital Rights Ireland Case, in which the European Court of Justice ruled that the 2006 Data Retention Directive, which *inter alia* was adopted for surveillance and security reasons, was at odds with the rights to privacy and data protection enshrined in the *Charter*.

Second, *internal-external* incoherence arises when the EU places demands on third countries while at the same time failing to protect human rights adequately itself. This argument is often invoked by third countries on the occasion of diplomatic exchanges, at which time, for instance, the EU's handling of migrants, or the treatment of minorities such as the Roma by EU Member States, or the

dwindling enjoyment of social rights as a result of EU-backed austerity measures, are pointed out.

Third, *external-external* incoherence is said to exist when the EU deals differently with human rights violations abroad contingent upon the interests it has in relation to the third country in question. FRAME research has shown the Union to be much more lenient with economically and politically strong States than with weak and isolated States. A prime example of this can be found in the EU-sponsored country-specific resolutions at the UN Human Rights Council.

FRAME has identified three causes that may explain why these manifestations of incoherence remain fairly prevalent. First, institutional structures and mandates in the EU are notoriously complicated and do not always allow for efficient coordination. Policy is often developed in silos, whereas human rights are cross-cutting. For instance, the Business and Human Rights agenda, to which the EU is nominally committed, suffers particularly from this type of incoherence, as it requires the coordination of economic, social, and environmental policies at the internal and external level.

Second, frames of reference in different policy fields are also different, and do not all align with the human rights agenda with the same intensity. For example, whereas EU development policy is on its way to implementing a ‘rights-based approach, encompassing all human rights’, trade policy, and in particular free trade agreements, take a rather piecemeal approach to human rights, notably as human rights conditionality is never activated to apply trade sanctions, and as the recent and softer ‘sustainable development chapters’ only deal with human rights through the partial lens of labour rights.

Finally, the Union’s many competences result in its obligation to cater to different interests, some of which may consider human rights to be a hindrance. Many FRAME case-studies, for instance in the field of energy supply, migration or counter-terrorism, have evidenced that ‘hard interests’ often took *de facto* precedence over human rights. Likewise, the EU’s economic and financial policies, for example its trade liberalization and austerity plans, are rightly perceived as benefitting extremely well-off actors like multinational corporations or financial institutions, whereas on the other end of the spectrum, many indicators point to increased risk of poverty, widening inequalities, and an erosion of social protection.

EFFECTIVENESS

Finally, the last challenge evidenced by FRAME is that of effectiveness, or whether the EU's commitment to human rights can be considered a success. FRAME has evidenced countless instances in which the said commitment made a positive difference on the ground. A topical example is the support lent by the European Instrument for Democracy and Human Rights ('EIDHR') to human rights defenders worldwide, in a context where the space for civil society is in many places shrinking. Nonetheless, indications that the delivery and coherence challenges outlined above are not allowing the Union's human rights commitment to reach its full potential also exist, and there is definitely room for improvement. FRAME's many interviews and contacts have shown that EU institutions and their personnel are well aware of this, and are acting on a daily basis to increase the effectiveness of the Union's commitment to human rights. The recommendations below attempt to give a sense of direction to the EU's efforts where needed.

This being said, the effectiveness challenge will only be addressed properly if the EU possesses the epistemic tools to allow it to make sound policy and to conduct accurate monitoring and evaluation. The role of knowledge in this regard is crucial, and FRAME has studied two instruments in particular which play a crucial role in achieving the required level of knowledge: indicators and impact assessments.

Indicators are pieces of information that indicate the level of protection or enjoyment of human rights, and can be used to assess a particular situation before designing policy, to benchmark a policy for monitoring purposes, or as a control variable when evaluating policy. FRAME research has shown that EU institutions are keen on using indicators, but often have issues with the selection of, access to, and use of, proper indicators.

Impact assessments are evaluations which facilitate the prediction of human rights impacts for a future measure, or to the evaluation of the actual impacts of an existing measure. Impact assessments have been a regular feature of EU policy-making (though more *ex ante*); however, FRAME has identified issues with regard to systematicity, methodology, and stakeholder consultation.

THE APPROACH

This document presents 40 final recommendations, divided into three categories, which, according to FRAME's findings, contribute to addressing the challenges above.

The first category concerns ensuring coherence of all policies with the Union's commitment to human rights.

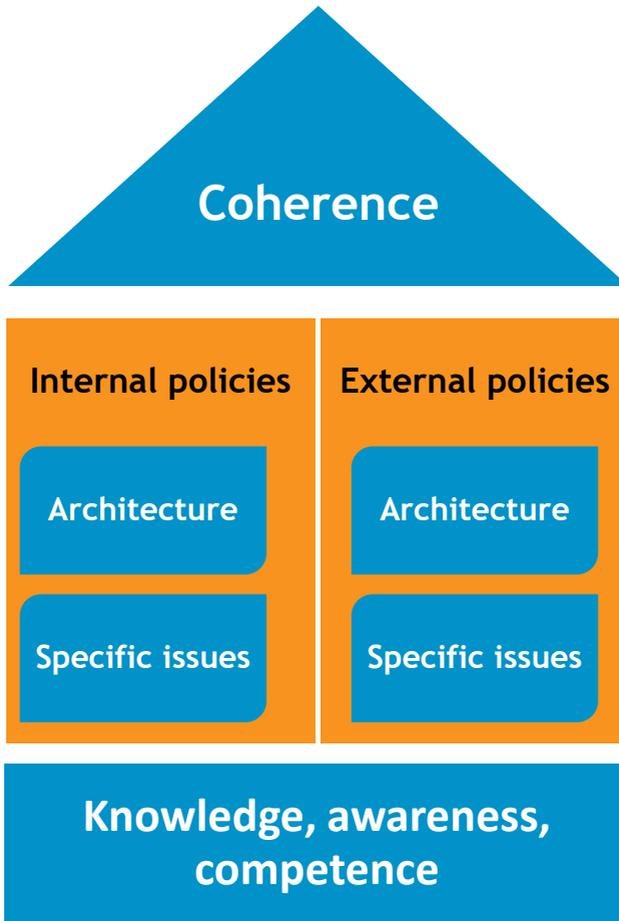
The second category concerns increasing the knowledge, awareness and competence of EU officials with respect to the Union's commitment to human rights.

The third category concerns improving the internal and external policies themselves, and addresses two elements: (i) the architecture of human rights protection and promotion by the Union, i.e. the normative and institutional context in which the EU's commitment must be implemented; and (ii) specific actions to be taken in order to improve respect for human rights in EU internal and external policies.

The articulation of the three categories can be visually represented as follows, with coherence seen as an overarching principle characterizing commitment. The Union's commitment is cross-cutting, and all EU actions must cohere with a view to its implementation. Likewise, the knowledge, awareness and competence of EU officials is the base on which the effectiveness of its commitment rests.

Concerning the two pillars, FRAME notes a deep schism between internal and external policies, which function under starkly different logics. Internal policies are based on 'fundamental rights' and are compliance and solutions-oriented, while external policies are based on international human rights and are promotion and dialogue-oriented. This as such is at odds with the EU's commitment to universal and indivisible human rights and does not help bring coherence into EU policies from the perspective of human rights.

Figure 1: Structure of FRAME Recommendations



Each recommendation lists the actors that are responsible for, or concerned by, its implementation. Likewise, for each recommendation, FRAME reports containing additional information are listed. FRAME reports are coded in the following way: D[Work Package No.].[Report No.]. All reports are available at <http://www.fp7-frame.eu/reports/>. The entire collection of reports (10,000 pages) is also searchable for content by entering keywords in the search field at the top of the page.

IMPROVING COHERENCE OF ALL POLICIES WITH THE EU'S COMMITMENT TO HUMAN RIGHTS

FRAME has identified coherence as one of the major obstacles to the realization of the EU's human rights commitment, as misalignments at several junctures (institutional structures, policy regimes, interests) and on various levels (EU-Member States; internal-external dimensions) hinder the proper consideration of human rights consistently across EU policies. In order to address this deficiency in a structural manner, FRAME makes the following recommendations.

ADOPT PRACTICAL GUIDANCE TO OVERCOME CAUSES OF INCOHERENCE

FRAME identified three main causes of incoherence: (i) misalignments in institutional arrangements, causing gaps in the implementation of the human rights commitment, (ii) competing policy regimes and normative conceptions, causing policies to unevenly reflect commitment, and (iii) conflicting interests, causing the human rights commitment to be overshadowed by other objectives. These cause EU policies to fall out of line with human rights as universal, indivisible, interdependent and interrelated.

FRAME recommends that practical guidance - for instance in the form of a joint declaration, a joint code of conduct or, if need be, an interinstitutional agreement - be developed to ensure that:

- The articulation of various competences and mandates among EU institutions and bodies is organised and interpreted in such a way as to facilitate and oblige them to effectively implement the commitment;
- Normative references embodying the EU's commitment to human rights, in particular the *Charter*, apply with the same force in all fields;
- The pursuance of interests in a manner contrary to human rights is traced and eliminated.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; Fundamental Rights Agency; European Parliament

MORE INFORMATION D8.1; D8.2; D8.3; D11.1

USE THE CHARTER AS A LYNCHPIN FOR COHERENCE IN INTERNAL AND EXTERNAL POLICIES

In adopting the Charter, the Union achieved a synthesis of the constitutional traditions of its Member States, the Convention and international human rights. This synthesis is underpinned by the principles of universality and indivisibility of human rights, and represents both the normative horizon and the legal limit to the EU's action.

FRAME considers that, as such, the *Charter* should act as the touchstone for the coherence of EU policies. While this is increasingly the case (for instance, compliance with the *Charter* is now part of standard impact assessments), the *Charter* does not yet play that role in full, in particular in EU external relations. Striking illustrations are that the *Charter* is only mentioned once in passing in the *Strategic Framework for Human Rights and Democracy*, and not at all in the *Action Plan 2015-2019* (a departure from the previous action plan). In the *2016 Global Strategy*, the *Charter* is also not mentioned. Likewise, FRAME's analysis of EU priorities at the UN, Council of Europe and OSCE, reveals widely divergent scopes, extents and visibility concerning human rights, which give the impression that the strength of the EU's commitment to human rights is variable and contingent on the forum in which it is discussed. A reference to the *Charter* - where useful, complemented by pertinent universal and/or regional human rights instruments - would help clarify the EU's commitment in these different fora.

FRAME recommends that the relation of each policy or legislative document with the *Charter* be analysed and made explicit in a dedicated section or paragraph.

THIS RECOMMENDATION IS ADDRESSED TO Council; European Commission; European Parliament; European External Action Service

MORE INFORMATION D4.1; D8.1; D8.2; D8.3; D5.1; D5.2; D9.3; D10.4 D12.3; D14.1



COUNCIL BUILDING IN BRUSSELS - PHOTO: ANTOINE MEISSONNIER

IMPROVING KNOWLEDGE, AWARENESS AND COMPETENCE

A. IMPROVING EU OFFICIALS' KNOWLEDGE OF THE EU'S HUMAN RIGHTS COMMITMENT AND OBLIGATIONS

PROVIDE ADEQUATE HUMAN RIGHTS INFORMATION AND TRAINING TO EU OFFICIALS

FRAME found that the EU's commitment to human rights is not sufficiently well-known or shared by all officials. The main EU political authorities should send a clear message and clear instructions to personnel in all institutions and bodies to make explicit and concrete that human rights must systematically be taken into account in all operations. Additionally, *FRAME found* that many EU officials do not have sufficient knowledge of human rights law or policy, both at the EU level and the international level. Consequently, officials are not always able to determine the best policy options from the point of view of respect for, and promotion of, human rights.

FRAME recommends that, in addition to the written guidance which is increasingly produced (such as the Guidance on Charter Compliance by Regional Funds) or inter-service groups on human rights, the Union provide adequate and periodic training to personnel in all institutions and bodies to underline the fundamental rights aspects of their work and help them identify optimal decisions with respect to human rights. Such training should be based on universal standards and should be concretely applied to the specific aspects of the officials' mandates, so as to ensure that the cross-cutting character of human rights reaches every policy silo. Examples of best practices in this respect are workshops on the Rights-Based Approach (RBA) to Development in DG DEVCO and the biannual week-long human rights workshops organised by the EEAS for Delegations, Headquarters and COHOM personnel. Where possible, a role should be given in this respect to the EU Agency for Fundamental Rights ('FRA'), and the resources of the European Inter-University Centre for Human Rights and Democratisation (EIUC), a DEVCO-funded training institution, should be used.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Parliament; European External Action Service

MORE INFORMATION D8.3; D9.1; D10.4; D14.3

RELY ON THE KNOWLEDGE AND EXPERTISE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, NGOS AND EQUALITY BODIES MORE SYSTEMATICALLY

FRAME found that external organisations such as National Human Rights Institutions ('NHRIs'), NGOs or equality bodies are useful resources for the Union to obtain information or expertise on local situations, or to help implement EU policies on the ground. Engagement with such organisations is already practised by different EU institutions and bodies, notably through some funding schemes, or as consultations on draft legislation. However, the following points should be underlined.

FRAME found that currently, except at the EU Fundamental Rights Agency ('FRA'), no structured consultative mechanism exists to ensure that NHRIs are involved in the development of Union policies or legislative acts. *FRAME recommends* establishing and facilitating a formalised, structured and systematic interaction process between EU institutions and bodies and the European Network of National Human Rights Institutions ('ENNHRI') as well as Member State NHRIs.

FRAME found that the Union regularly engages with NGOs, but tends to favour large NGOs. *FRAME recommends* actively reaching out to smaller human rights NGOs that do not have a permanent presence in Brussels in order to reflect the diversity of civil society. A good example is the recently renewed Fundamental Rights Platform of the FRA. Council Working Groups should also generalise the COHOM practice of reaching out systematically to NGOs so as to ensure civil society input on Council Decisions.

FRAME found that currently, the EU's comprehensive anti-discrimination legislation lacks clear standards for assessing whether national equality bodies actually have the mandate, power and resources to effectively combat discrimination and promote equal treatment at the national level. *FRAME recommends* that the Commission propose the adoption of EU-wide minimum standards for national equality bodies in Member States.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; Fundamental Rights Agency

MORE INFORMATION D4.3; D7.1; D7.2; D7.3

B. ENHANCING AND IMPROVING THE USE OF HUMAN RIGHTS INDICATORS

COOPERATE WITH THE UNITED NATIONS ON HUMAN RIGHTS INDICATORS

FRAME found that indicators were a useful tool to design, benchmark and evaluate policies, as well as to conduct impact assessments. EU institutions are keen on using human rights indicators and most of the time, do not develop their own indicators but prefer to use or support indicators developed elsewhere, such as the SDG indicators or the Indigenous Navigator. Use of indicators, however, is hindered by the variety of indicators available, and by the methodological flaws inherent to many of them.

FRAME recommends using the Office of the UN High Commissioner for Human Rights' ('OHCHR') 'structure-process-outcome' model for human rights measurement, which is already used by the FRA. *FRAME further recommends* that, when using or supporting indicators developed elsewhere, the EU use the OHCHR model for quality control. Support for the OHCHR's indicator development has been included in Action 33.f of the *2015 Action Plan on Human Rights and Democracy*, and *FRAME recommends* that this be continued.

FRAME found that the OHCHR's human rights indicator model can in principle be populated with data from existing databases. *FRAME recommends* that EU statistical services continue to seek synergies with UN counterparts to identify strategies and develop methods to access and make use of existing data when populating the OHCHR model.

THIS RECOMMENDATION IS ADDRESSED TO All EU institutions and bodies

MORE INFORMATION D13.1; 13.2; D9.2; D15.3



UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN GENEVA
- PHOTO: GENEVA TOURISM

ENHANCE THE HUMAN RIGHTS RELEVANCE OF SOCIAL INDICATORS

FRAME found that the human rights dimension of social indicators, which are developed by the Indicators Sub-Group set up in 2001 for the purpose of monitoring social conditions and trends in social policies in EU Member States, was largely underplayed despite obvious links.

FRAME recommends exposing these linkages and improving the human rights relevance of these indicators in order to enhance human rights mainstreaming in the policies that use these indicators.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Member States

MORE INFORMATION D13.2

BUILD A TRANSPARENT AND ACCESSIBLE HUMAN RIGHTS COMPLIANCE INFORMATION SYSTEM BASED ON RELIABLE INFORMATION

FRAME found that access to indicators presented difficulties for EU officials, and that a tool with which to access indicators was lacking. Such a tool should include, at a minimum, a list of links to existing indicators, the related data sets of which should be established using the OHCHR's model as a template, the basis of which is comprised of already existing data, such as qualitative information provided by treaty bodies, monitoring bodies or other reports, and quantitative information systems, largely based on statistical data.

FRAME recommends, in line with FRA's suggestion in its Opinion of 8 April 2016, developing a Human Rights Compliance Information System based on the Access Guide to Human Rights Information developed by FRAME and on the European Fundamental Rights Information System ('EFRIS'), which is currently in the making. *FRAME recommends that* the disparate human rights sources be integrated in an accessible and user-friendly manner, and that they be regularly maintained so as to remain up-to-date and factually correct.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Fundamental Rights Agency; Member States

MORE INFORMATION D13.2

**C. INCREASING THE USE AND IMPROVING THE
METHODOLOGY OF HUMAN RIGHTS IMPACT
ASSESSMENTS**

GENERALISE IMPACT ASSESSMENTS, ESPECIALLY IN EMERGENCY SITUATIONS

FRAME found that *ex ante* and *ex post* impact assessments (IAs) are crucial tools to ensure that (planned) policies and legislation do not have a negative impact on the human rights of EU citizens and third parties. The practice of impact assessments has been generalised for significant Commission proposals and includes a fundamental rights assessment.

FRAME recommends continued expansion of the practice of *ex ante* impact assessments (including for budgetary decisions) and more extensive *ex post* impact assessments, along with an expansion of capacity.

FRAME found that additional guidance was needed when urgent measures need to be taken in response to crises. The special legal status, and the associated urgency of such measures aimed at, e.g. tackling the Union's financial crisis, Greece's debt crisis, and the ongoing migration crisis, have often been invoked to bypass the requirement of conducting an impact assessment. Crisis-related measures, however, generally raise a variety of human rights concerns, warranting proper IA exposure.

FRAME recommends that the EU clarify under what conditions anti-crisis measures can temporarily bypass proper IAs, and develop guidelines and procedures to re-evaluate and, if necessary, revoke or adjust, harmful crisis measures based on IA procedures - including stakeholder consultations of vulnerable groups.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Stability Mechanism

MORE INFORMATION D8.3; D9.2; D14.3

IMPROVE THE METHODOLOGY OF HUMAN RIGHTS IMPACT ASSESSMENTS AND INCREASE PERSONNEL IN CHARGE OF IMPACT ASSESSMENTS

FRAME found methodological shortcomings in the way human rights impacts were assessed in impact assessments. This is particularly the case when human rights are assessed in relation to other types of impacts such as economic impacts, as this is to the detriment of the standard-by-standard analysis of policy impact and to the benefit of an overall approach which may overlook or condone trade-offs detrimental to human rights. In addition, *FRAME found* the use of economic modelling, for instance in trade sustainability impact assessments, unsuitable for assessment of human rights impacts, as it leads to extrapolations that place too much emphasis on social rights and positive impacts.

FRAME recommends remedying these methodological flaws. The fundamental rights checklist present in the Commission's Better Regulation package appears to respond to these concerns, but *FRAME recommends* that personnel resources be expanded in the relevant services in charge of impact assessments, as the current shortage does not always allow for an in-depth analysis of all measures.

THIS RECOMMENDATION IS ADDRESSED TO European Commission

MORE INFORMATION D9.2

HAVE THE COUNCIL AND THE EUROPEAN PARLIAMENT CONDUCT IMPACT ASSESSMENTS ON THEIR PROPOSED AMENDMENTS

When studying the implementation of the *2005 Inter-Institutional Common Approach to Impact Assessment*, *FRAME found* that, since its establishment in June 2012, the European Parliament's Ex Ante Impact Assessment Unit has produced 139 initial appraisals, five detailed appraisals, four complementary or substitute impact assessments, and impact assessments on six sets of European Parliament amendments, covering a total of 32 amendments. While appraisals are conducted by default whenever a relevant proposal is referred to one of the Parliament's committees, impact assessments of substantial amendments by the Parliament can only be initiated upon request by Members of Parliament. *FRAME found* that the Council has so far paid limited attention to impact assessments, and has so far not established an impact assessment unit, despite pressure from some Member States.

FRAME recommends that the European Parliament and the Council step up their efforts in this regard.

THIS RECOMMENDATION IS ADDRESSED TO Council; European Parliament

MORE INFORMATION D9.2

IMPROVE STAKEHOLDER CONSULTATION DURING IMPACT ASSESSMENTS

FRAME found, in spite of criticism from the Commission's Impact Assessment Board and its successor, the Regulatory Scrutiny Board, that inadequacies in the use and timing of stakeholder consultations, which must inform the impact assessment process by ensuring that impact assessments address all relevant concerns and offer a balanced and comprehensive assessment of feasible policy options, continue to linger. The Commission's Better Regulation package includes new guidelines on stakeholder consultations.

FRAME recommends revising the guidelines and improving the practice regarding (i) involvement, (ii) representativeness, and (iii) weight of consultations. On (i), the guidelines require the consultation strategy to identify the objectives for each individual consultation step, but should additionally demand stakeholder involvement at every stage of the process. On (ii), the guidelines must demand that the entire range of relevant stakeholders has a real chance of being involved in the process, as more vulnerable or marginalised groups often fail to participate in consultations because of a lack of resources or knowledge about consultation proceedings. On (iii), the results of stakeholder consultations must be given the same weight as other types of data such as economic modelling, and stakeholders must be informed as to how their feedback has impacted policy development.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; European Parliament; Council

MORE INFORMATION D7.2; D9.2

D. ADOPTING A MORE RIGOROUS APPROACH TO VULNERABLE GROUPS

SHIFT FROM VULNERABLE GROUP-ORIENTED APPROACHES TO FACTORS-ORIENTED APPROACHES

FRAME found that the use of the phrase ‘vulnerable group’ and of the vulnerability narrative comes across as stigmatising and disempowering if it designates groups as a whole and not the contextual factors which make them vulnerable.

FRAME recommends enhancing the integration of human rights and vulnerable groups’ concerns into all phases of the policy cycle, including the implementation phase, so as to ensure that the EU’s efforts in the field of human rights are directed primarily towards those whose rights are most at risk of violation. In so doing, *FRAME recommends* shifting the focus from the group(s) labelled vulnerable to the structures (social and institutional) that render individuals vulnerable and leave them unprotected, such as poverty, unemployment, and displacement. Vulnerability should be assessed in specific contexts and sectors of intervention in order to determine specific needs or special protection mechanisms so that generalisations and stereotypes are avoided.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; European External Action Service; Council

MORE INFORMATION D3.2; D8.2.; D11.3; D12.2

ENSURE THAT EU POLICIES DO NOT CONTRIBUTE TO VULNERABILITY

FRAME found that some EU policies can have perverse effects in some contexts and thereby create additional vulnerability. For instance, as asylum seekers and irregular migrants often live in a context likely to make them vulnerable, the adoption of measures and structures that mitigate vulnerability and build resilience is key. Yet, many of the migration management structures created by the EU and its Member States still accentuate or constitute in and of themselves sources of vulnerability. Likewise, austerity measures, including cuts in social security and other social programmes, heavily impact already impoverished populations such as the sick, the unemployed or the elderly. This issue is known to EU institutions, as the rights-based approach to development internalises this concern, and as the Better Regulation Toolbox pays ample attention to the situation of vulnerable groups in impact assessments. However, this does not systematically translate into policies.

FRAME recommends a more coherent approach to vulnerability and a full recognition of vulnerability as a factor that specifies human rights obligations. To this effect, *FRAME recommends* that the EU continue assessing and monitoring vulnerability, and ensure better responsiveness to vulnerability in its policies.

THIS RECOMMENDATION IS ADDRESSED TO All EU institutions; Member States

MORE INFORMATION D3.2; D8.2; D9.2; D9.3; D9.4; D10.4; D11.3; D12.2; D12.3

EFFECTIVELY IMPLEMENTING THE EU'S COMMITMENT TO HUMAN RIGHTS THROUGH EU INTERNAL POLICIES

A. ARCHITECTURE OF HUMAN RIGHTS PROTECTION WITHIN THE EU

This category of recommendations is concerned with the so-called 'architecture' of human rights protection in the EU, that is, the institutional and normative conditions in which the EU commitment to human rights unfolds at home.

14

EXPAND THE MANDATE OF THE EU FUNDAMENTAL RIGHTS AGENCY

FRAME found that the FRA, as a research and advisory body to the EU institutions, is instrumental in steering the EU towards a more effective implementation of its commitment to human rights; however, it needs to become more independent and better resourced, and be given a broader mandate to fill this role to the fullest extent. *FRAME regrets* that political will to this effect is absent, as evidenced by the lack of agreement in the Council regarding the extension of the Multi-Annual Framework ('MAF') to judicial and police cooperation in criminal matters, despite a 'strong recommendation' from the FRA's management board.

FRAME recommends that the EU launch a consultative process with the ultimate objective of bringing the FRA closer to the *Paris Principles on National Human Rights Institutions*. As a starting point, the Commission and Council Legal Services should find common ground with respect to the legal constraints on extending the MAF under the current FRA Regulation. In the long run, *FRAME recommends* guaranteeing FRA's independence by removing the need for a MAF from the Regulation. As regards the contents of the MAF, on top of judicial and police cooperation in criminal matters, *FRAME recommends* including economic, social and cultural rights and the human rights impact of external policies among the thematic areas of FRA's work.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Parliament

MORE INFORMATION D4.3; D8.1



THE FRA PREMISES IN VIENNA, AUSTRIA - PHOTO: FRA

FOSTER THE ADOPTION AND IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW IN MEMBER STATES

FRAME found that the application of human rights standards lacked coherence across the EU, due to an uneven adoption and implementation of international human rights instruments, in particular the optional protocols to the main UN human rights treaties.

FRAME recommends that the Council's Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons ('FREMP') and the Council's Working Party on Human Rights ('COHOM') continue to act as discussion fora on the respective achievements of Member States in this regard, and as sounding boards for harmonization efforts. The FRA may also have a role to play in creating emulation and peer-learning in Member States in this regard.

THIS RECOMMENDATION IS ADDRESSED TO Working Party on Human Rights (COHOM); Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP); Fundamental Rights Agency; Member States

MORE INFORMATION D4.2; D8.2

IMPLEMENT THE EU'S COMMITMENT TO HUMAN RIGHTS THROUGH INTERNATIONAL LAW

In order to implement the EU's commitment to *universal* human rights, which are expressed in numerous international treaties, and monitored by their treaty bodies, *FRAME recommends* that the EU consider becoming a contracting party to international human rights treaties wherever legally possible. *FRAME finds* the regional dimension of human rights protection and promotion to also be an important enabler for the EU's commitment to human rights, and therefore *FRAME recommends* that efforts be made to accede to the *Convention* as soon as possible despite the legal difficulties arising from Opinion 2/13 of the European Court of Justice.

In addition, *FRAME recommends* continuing with the implementation of the 'Warsaw Guidelines', by which the EU committed to ensure coherence between EU law and Council of Europe conventions. FREMP and COHOM should continue to review international human rights treaties, particularly those emanating from the Council of Europe, and suggest transposition of human rights standards where the EU has competence. FRA could likewise provide legal advice on considered action. *FRAME considers* the recent progress made towards EU accession to the *Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention')* to be a positive development in this regard.

THIS RECOMMENDATION IS ADDRESSED TO Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP); Working Party on Human Rights (COHOM); Fundamental Rights Agency; European Commission

MORE INFORMATION D2.1; D4.1; D4.2



EUROPEAN COURT OF JUSTICE IN LUXEMBOURG - PHOTO: DER SPIEGEL

B. SPECIFIC ISSUES OF RIGHTS PROTECTION WITHIN THE EU

Over the course of the project, FRAME has encountered many examples of progress made thanks to the EU's commitment to human rights. It also, unfortunately, shed light on issues that hinder the implementation of this commitment. Below we list the most significant of these and offer some recommendations.

DRAFT A COMPREHENSIVE EU POLICY ON ONLINE FREEDOM OF EXPRESSION

FRAME found that whereas privacy and data protection have received considerable attention in past years, the Union still lacks a comprehensive policy framework for online freedom of expression, in particular related to its internal policies, and this despite its status as a fundamental right. The protection of online freedom of expression is crucial, not least since EU policies continue to rely on self-regulation that poses a number of challenges with regard to guaranteeing freedom of expression.

FRAME acknowledges a number of initiatives that were recently taken in this area, such as the recognition by the 2015 Council Conclusions on Cyber Diplomacy of the need to protect the right to freedom of expression, access to information and right to privacy online; and the Commission's ongoing commitment to online freedom of expression, media freedom and pluralism online, including in the recent review process of the World Summit on the Information Society ('WSIS+10').

Given the increasing amount of pressure on online freedom of expression, *FRAME recommends* that the EU strengthen its efforts in this area. The Commission should commence analysis and consultations with a view to drafting a comprehensive EU policy on online freedom of expression - in particular relating to self-regulation and tackling of illegal content - and take into account both the internal and external dimension of EU policy in this regard. The ongoing work in relation to the Digital Single Market Strategy is a natural point of departure for this work, and the principles contained in the 2014 Guidelines on Freedom of Expression Online and Offline can also serve as inspiration in designing such a comprehensive internal policy.

THIS RECOMMENDATION IS ADDRESSED TO European Commission

MORE INFORMATION D2.1; D2.2; D2.3; D7.2

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ADOPT THE PROPOSAL FOR A DIRECTIVE ON IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION

FRAME found that EU anti-discrimination law is characterised by an uneven and limited scope of protection. The proposed Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation would provide for a more coherent and comprehensive scope of protection.

FRAME recommends that the Council, where the proposed directive has been blocked for several years, make stronger efforts towards its adoption.

THIS RECOMMENDATION IS ADDRESSED TO Council

MORE INFORMATION D2.2; D4.2; D14.2

ADDRESS THE GOVERNANCE GAP REGARDING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

FRAME found that EU Member States have experienced drawbacks in the implementation of economic, social and cultural rights in the wake of the economic crisis and as a result of EU-mandated austerity policies. Economic, social and cultural rights are one of EU citizens' main concerns and their increased protection is a good way to regain trust.

FRAME recommends pursuing several options. Genuine human rights impact assessments should be employed by the EU and Member States before further austerity measures are implemented. Article 53 of the *Charter* should be made operational, which would enable the Council of Europe human rights instruments, especially the *European Social Charter*, to be applicable in order to provide higher levels of protection. Additionally, the 'Pillar of Social Rights' for the Economic and Monetary Union recently proposed by Commission President Juncker should quickly become a reality. Moreover, efforts should be made to increase the enforceability of economic, social and cultural rights, in particular by encouraging Member States to ratify the collective complaints protocol to the *European Social Charter* and the optional protocol of the *International Covenant on Economic, Social and Cultural Rights*.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP); Member States

MORE INFORMATION D3.2; D4.2; D8.2

ENSURE THAT EFFORTS TO EFFECTIVELY MANAGE MIGRATION DO NOT OVERRIDE HUMAN RIGHTS PROTECTION

FRAME found that, as part of reactions to the recent refugee crisis, human rights were trumped by control of the flow of migration and security interests, both in terms of legal and illegal migration. *FRAME acknowledges* that the Union is facing administrative and managerial burdens as a result of the recent upsurge, as well as mounting anti-immigrant discourses. However, the EU and its Member States must not be allowed to abandon their principles. A Union that does not sufficiently take into account human rights in its own asylum and migration policies loses authority at home and credibility and legitimacy to act as a normative power abroad. The human rights language contained in the EU Agenda on Migration and the Asylum Package is too often overridden by the urge to limit the incoming flows of migrants. While it must indeed regulate migration flows effectively, fighting abuse of the asylum system to avoid diminishing support in particular, this must not be at the expense of (legal or illegal) migrant rights. *FRAME identified* a trend towards increasingly punitive and coercive measures to counteract irregular migration, and expresses concern for the human rights implications of this trend.

FRAME recommends that the EU and Member States remain committed to an explicit human rights-based approach to asylum and migration at the EU level and assume a more vigorous stance against those policies and practices of certain Member States that are in contradiction with human rights. To this end, a change in the rhetoric on asylum and migration needs to take place to fully recognise that asylum seekers and migrants are holders of human rights. Likewise, the EU must discard strategies which aim to limit migration flows at the expense of migrants' rights, such as the EU-Turkey Deal, which empower authoritarian regimes and are not financially sustainable in the long term.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Council; European Parliament; Member States

MORE INFORMATION D6.2; D11.3; D14.2

REVISE MIGRATION POLICY GOVERNANCE TO INCREASE LEGAL AVENUES FOR MIGRATION, SOLIDARITY AMONG MEMBER STATES, AND REDUCE FRAGMENTATION IN MIGRATION MANAGEMENT

FRAME found that in recent years, the EU and its Member States have regularly displayed an inability to ensure common governance of migration, despite the recent adoption of a number of key documents and reforms.

FRAME recommends that the EU engage in a major overhaul of the current European migration governance legislation, combined with a commitment to improved enforcement of its existing anti-discrimination legislation and to addressing the root causes of asylum abroad. The objectives of such a revision must be to:

- Combat smuggling and close dangerous routes causing migrants to take risks in their journey to Europe; expand avenues for legal migration, such as re-location, humanitarian visas, and family reunification.
- Create incentives so that Member States live up to the promise of solidarity, as enshrined in the Treaties. The adoption process of the 2016 Commission proposal for a revised Dublin Regulation must be conducted in this light.
- Prevent the fragmentation of asylum and migration policy among many actors, including EU agencies, from resulting in the dilution of human rights responsibilities in this field.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Parliament; Member States

MORE INFORMATION D11.1; D11.2; D11.3

V. CONFRONTING MEMBER STATES WHERE RULE OF LAW AND FUNDAMENTAL RIGHTS BACKSLIDING IS PRESENT

22

STRENGTHEN AND INTEGRATE INSTITUTIONS' TOOLS TO ADDRESS A LAPSE OR REGRESSION OF MEMBER STATES IN REGARD OF THE RULE OF LAW

FRAME found that developments in a number of Member States over the last decade demonstrate a necessity for the Union to monitor democracy, the rule of law and fundamental rights in Member States, because these are core EU values.

FRAME recommends that, as suggested by the European Parliament, the Commission table a proposal for an inter-institutional agreement on this issue. EU institutions should continue to strengthen existing frameworks and attempt to integrate them into a coherent mechanism that relies on objective assessment criteria of the state of democracy, the rule of law, and fundamental rights in the Member States. The European Parliament's proposal, which calls for the establishment of an independent panel of experts, should be given serious consideration. In addition, the Council should continue its work on improving and systematising its dialogue on the rule of law, and with a view to the future, consider the establishment of a periodical peer review mechanism.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Parliament; Member States

MORE INFORMATION D4.2; D8.2; D14.2

BRING INFRINGEMENT PROCEDURES AGAINST MEMBER STATES TO ADDRESS PATTERNS IN BREACH OF FUNDAMENTAL RIGHTS

FRAME found that to address patterns of regression or backsliding, a legal strategy for systematically enforcing human rights violations committed by Member States, should that option be available, would be effective, and would also help expose the agendas behind this type of regression.

FRAME recommends that the Commission examine how it could enforce fundamental rights, within the limits of the scope of application of the Treaties, the *Charter* and applicable EU legislation, by bringing infringement procedures against Member States engaged in the systematic weakening of fundamental rights, in the same manner as it now prepares to do with regard to the *Framework Decision on Racism and Xenophobia*.

THIS RECOMMENDATION IS ADDRESSED TO European Commission

MORE INFORMATION D8.3; D14.2

ENFORCE CONDITIONALITIES AND COMPLIANCE WITH THE *CHARTER* WHEN IT COMES TO EUROPEAN STRUCTURAL AND INVESTMENT FUNDS AND COMMON AGRICULTURAL POLICY FUNDS

FRAME found that use of European Structural and Investment funds and Common Agricultural Policy funds is subject to a number of fundamental rights conditionalities, such as those dealing with anti-discrimination or gender, for example. Likewise, the use of such funds by Member States may fall under Article 51 of the *Charter* and require compliance with it. The Commission has issued a Guidance Note to Member States on how to comply with such conditionalities, and more generally on how to comply with the *Charter* in the use of such funds, which *FRAME considers* to be a positive development.

FRAME recommends that the Commission also ensure *a posteriori* that these conditionalities are effective and that the *Charter* is complied with, through infringement actions if need be.

THIS RECOMMENDATION IS ADDRESSED TO European Commission

MORE INFORMATION D14.3

EFFECTIVELY IMPLEMENTING THE EU'S COMMITMENT TO HUMAN RIGHTS THROUGH EU EXTERNAL POLICIES

A. ARCHITECTURE OF HUMAN RIGHTS PROMOTION OUTSIDE OF THE EU

Just as the architecture of internal human rights promotion should be reformed to some extent, so too is reform needed in respect of the normative and institutional environment of external human rights policy.

25

PROVIDE INSTITUTIONAL SUPPORT
AND THE NECESSARY RESOURCES
TO HUMAN RIGHTS OFFICIALS IN THE EEAS

FRAME found that when strategic interests of EU Member States are at stake, the EU's room to manoeuvre tends to be considerably more limited, resulting in more erratic or less predictable action on the Union's part. This is a key obstacle to the effectiveness of EU policy in the field of human rights and democracy. The creation of EU Delegations, Human Rights Focal Points, Liaison Officers for Human Rights Defenders and the EU Special Representative for Human Rights are relevant steps forward, but they need more support to both harmonise and render them more effective. In particular, *FRAME found* that Head of Mission support for these instruments is variable. Actors' resources are often insufficient in view of their mandate.

FRAME recommends providing personnel to and logistical and training support for human rights in the EEAS as means of guaranteeing more effective integration of human rights in EU external relations and a more coherent approach across the board.

THIS RECOMMENDATION IS ADDRESSED TO Council; European Commission; European External Action Service; Member States

MORE INFORMATION D12.3



EUROPEAN EXTERNAL ACTION SERVICE HEADQUARTERS IN BRUSSELS
- PHOTO: EEAS

ENSURE TRANSPARENT AND MUTUALLY REINFORCING STRATEGIC PLANNING AT THE MULTILATERAL AND BILATERAL LEVEL

FRAME found that ensuring that the EU's positions in multilateral fora and in bilateral relations with third countries are consistent and mutually reinforcing can be a major challenge. Inconsistencies are often due to varying and often divergent political interests, but also stem from a lack of coordination among the different actors involved at EU and Member State levels.

FRAME recommends increasing exchanges and cooperation between all actors involved to ensure consistency in EU external action. For example, initiatives at the multilateral level should be communicated well in advance to allow for supporting actions in bilateral relations, and vice versa. Transparent strategic planning and the regular exchange of information are crucial to avoiding inconsistencies. *FRAME acknowledges* the EU Special Representative's role in ensuring coordination in this regard.

THIS RECOMMENDATION IS ADDRESSED TO Council; European External Action Service; Member States

MORE INFORMATION D5.1; D6.1

IDENTIFY AND AVOID DOUBLE STANDARDS

FRAME found that frequently the EU is perceived as applying double standards in its external policies. Firstly, because the EU's treatment of similar situations may differ, depending on political and economic interests, and secondly, because the EU's external human rights promotion may sometimes seem unwarranted in light of its own internal human rights records. Such 'double standards' weaken the EU's credibility, legitimacy, and ultimately, its effectiveness on the international scene.

To avoid this criticism, *FRAME recommends* that the EU address human rights violations wherever they occur by reference to international human rights standards, and ensure that human rights considerations are not superseded by other interests. While differences among the EU's international partners need to be acknowledged, they should not induce the EU to water down its promotion of globally accepted human rights standards. As to the criticism that the EU is ill-placed to make human rights demands on others, *FRAME recommends* open communications on EU internal efforts to tackle its own human rights challenges in order to avoid accusations of double standards. The EU Special Representative on Human Rights should be instrumental in regard of both these aspects.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; European External Action Service; Council; European Parliament

MORE INFORMATION D3.5; D5.1; D6.1; D6.2; D9.1; D12.4

ASSOCIATE THE FRA TO THE REVIEW OF EXTERNAL POLICIES FOR COMPLIANCE WITH THE CHARTER

FRAME found that the FRA's involvement is limited for issues regarding human rights in external relations, despite its potential to provide useful advice in this regard.

FRAME recommends that the role of the FRA in the definition and implementation of external policies be expanded beyond its occasional involvement in human rights dialogues. *FRAME recommends* that the FRA be asked to clarify the scope of application of the *Charter* in external relations and how it is meant to apply to particular policies. *FRAME encourages* the Council to include references to external relations policies in the FRA's MAF.

THIS RECOMMENDATION IS ADDRESSED TO Council; European Commission; European Parliament

MORE INFORMATION D8.1; D8.3

EXPLORE SMART ENFORCEMENT AND INCENTIVE MECHANISMS IN INTERNATIONAL COOPERATION, TAILORED TO BOTH THE CASE AT HAND AND THE EU'S LEVERAGE AND STRATEGIC INTERESTS

FRAME found that the use and effectiveness of negative conditionality is heavily context-specific, and depends on geostrategic incentives and power dynamics. Conditionality is most effective for countries eligible for EU Membership, but even then, *FRAME found* that interest in continued relationships and political stability sometimes militates against activating conditionality. Moreover, *FRAME found* that the very legitimacy of conditionality is contested in light of the principles of sovereignty and State ownership of priorities.

To address these challenges, *FRAME recommends* that conditionality strategies be based on assessments of the EU's leverage (and interests) in each relationship, considering the various external relations, trade and development instruments available, as well as those of EU Member States and other international partners. Second, *FRAME recommends* that to enhance their legitimacy and effectiveness, conditionality policies be tailored to the local context by jointly defining objectives and the monitoring methodology, taking local structural factors into account, and linking local, regional and continental human rights frameworks and international monitoring and enforcement instruments. Third, *FRAME recommends* that, in assessing whether conditions are fulfilled, priority be given to the 'depth' of compliance with human rights, as opposed to more formal benchmarks, even if the latter are easier to implement and measure.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Parliament

MORE INFORMATION D6.2; D6.3; D9.1; D12.4; D15.3

EXPLORE INNOVATIVE, YET REALISTIC WAYS FOR TRADE TO CONTRIBUTE TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS ABROAD

FRAME found that human rights clauses in trade agreements are rarely invoked. The EU is reluctant to use negative conditionality because trade sanctions arguably constitute ‘too blunt a tool to be effective’.

FRAME recommends that instead of focusing on hard conditionality, EU policy-makers continue developing tailored, country-specific approaches, based on political dialogue, and on exploiting linkages with the EU’s development programmes for the country concerned. Trade and Sustainable Development (‘T&SD’) chapters in FTAs, while partial and not enforceable, may help in addressing human rights concerns through their monitoring and dialogue mechanisms. The approach of GSP+, based on equal entry criteria but also specific monitoring based on scorecards, is also a positive development. FRAME recommends that the EU make these mechanisms more transparent (e.g., by making scorecards public) and genuinely inclusive, *inter alia* by providing the resources needed for civil society (e.g., the T&SD Domestic Advisory Groups) to participate in the dialogues.

THIS RECOMMENDATION IS ADDRESSED TO European Commission

MORE INFORMATION D8.3; D9.1; D9.2; D9.4

IMPLEMENT THE RIGHTS-BASED APPROACH TO DEVELOPMENT IN PLANNING AND IN SECTORAL DOCUMENTS

The EU is committed to a rights-based approach ('RBA') to development and has detailed how to translate this commitment into practice in its 'Tool Box for a Rights-Based Approach, Encompassing all Human Rights'. *FRAME found* that the current practice can be significantly improved. While key principles of a rights-based approach are explicitly mentioned or implicitly referred to in most country-level programming documents (National Indicative Programmes and Multiannual Indicative Programmes), they appear to be less consistently referred to 'downstream' at the sectoral level. At the level of Results-Based Management-planning documents, a strong bias towards governance sectors was identified, while RBA language is largely absent in socio-economic sectors.

FRAME recommends a cross-sector generalisation of the RBA, at the same time acknowledging that implementation of a rights-based approach across units implies a change of mentality. Applying a human rights lens to the various stages of EU development interventions will take time and significant persuasive effort. The workshops currently being organised for European Commission personnel from political and operational sections are a welcome and necessary first step in this regard.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Member States

MORE INFORMATION D2.2; D9.1; D9.2

**B. SPECIFIC ISSUES OF HUMAN RIGHTS PROMOTION
ABROAD**

STRENGTHEN ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN EU EXTERNAL ACTIONS

FRAME found that EU external policy is traditionally strong on the promotion and protection of civil and political rights as well as the rights of certain vulnerable groups, but that its action on economic, social and cultural ('ESC') rights is markedly uneven. Despite the activity of several EU Member States on these topics, and despite the welcome upgrade of ESC rights in the *2015 Action Plan on Human Rights and Democratisation*, concrete implementation by the EU of its commitment to ESC rights has yet to be observed.

To enhance the credibility of such a commitment, *FRAME recommends* taking a targeted, strong initiative in at least one of the fields of ESC rights in which the EU Member States share a similar stance and for which the Union can show existing achievements. Certain issues firmly supported by EU Member States might, for instance, lend themselves to a thematic initiative, e.g. education, child and maternal mortality and morbidity, water and sanitation and extreme poverty. *FRAME recommends* that such initiatives be carried out globally across all EU venues and external partnerships. In particular, the EU might consider tabling a joint resolution in the area of ESC rights in the UN Human Rights Council or the UN General Assembly, and it could launch specific ESC rights dialogues with third country partners and other regional organisations (e.g. ASEAN).

THIS RECOMMENDATION IS ADDRESSED TO European Commission; European External Action Service; Council; European Parliament

MORE INFORMATION D3.5; D5.1; D5.3; D5.4; D5.5; D5.6; D6.1

STREAMLINE FUNDING OPPORTUNITIES AND STEP UP DIPLOMATIC EFFORTS IN FAVOUR OF CIVIL SOCIETY ORGANISATIONS AND HUMAN RIGHTS DEFENDERS

FRAME found that a trend toward reduced space for civil society expression and action, notably on human rights, is on the rise in various parts of the world. The Union is one of the main actors worldwide providing support to civil society, notably through the provision of funding to civil society organisations ('CSOs') and human rights defenders ('HRDs') as well as through diplomatic action. However, *FRAME found* that while the EU has recently improved accessibility to its funding mechanisms, the administrative burden required to apply for and manage EU funding acts as a deterrent for a number of smaller CSOs and individual HRDs, as was confirmed by the draft mid-term evaluation of the EIDHR.

FRAME recommends that the EU strike a better balance between due diligence and accessibility. In order to strengthen its commitment, funding procedures and the application process should impose a smaller administrative burden and be more flexible overall, in particular for funding CSOs. Likewise, *FRAME recommends* that the EU do more to facilitate the ability of smaller CSOs to access funding, for example by engaging in capacity building or by making a provision for sub-grants. The recently established EU Human Rights Defenders Mechanism constitutes a positive development in the EU's engagement with HRDs, and could be complemented with more efforts from EIDHR contact points in EU Delegations to also support HRDs in obtaining EU funding. Apart from funding, *FRAME recommends* that the EU continue its diplomatic efforts with third countries in which the space for civil society is shrinking by prioritizing this issue in human rights and other political dialogues and through the activities of the EU Special Representative on Human Rights, and by holding fast to the principle of providing support independent of the consent of authorities.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; European External Action Service

MORE INFORMATION D7.2; D7.3

FIRMLY ROOT CSDP IN PRECISE INTERNATIONAL STANDARDS AND ENSURE ACCOUNTABILITY OF EU PERSONNEL

FRAME found that the mandates and operational documents of the Common Security and Defence Policy ('CSDP') missions and operations did not clearly indicate the applicable law and often used vague references to 'international standards' or 'best European practices and/or standards', which could lead to confusion as to the standards applicable to CSDP missions or its operations.

FRAME recommends that the EU legally characterize the crisis situations in which it intervenes, and ensure the application of the highest standards of protection to civilians under international humanitarian law and international human rights law. Additionally, *FRAME recommends* that the EU adopt self-regulatory acts applicable to Political Military Steering Committees in the CSDP context and formulate adequate provisions in the agreements concluded with host and third contributing States to guarantee accountability for violations of international humanitarian law and international human rights law by EU personnel and forces. In such cases, the EU and the host country must provide clear and appropriate information to the local population on the existing legal remedies. This entails that human rights, gender and legal experts should be able to respond to potential victims' queries in this regard, and that appropriate channels of information be put in place by communications and media units within CSDP missions and operations. *FRAME recommends* that the EU and the contributing States waive immunity regarding claims in relation to serious breaches of international humanitarian law and international human rights law committed by personnel acting under their respective mandates.

THIS RECOMMENDATION IS ADDRESSED TO Council; European External Action Service; Member States

MORE INFORMATION D10.2; D10.3; D10.4



COMMON SECURITY AND DEFENCE POLICY - PHOTO: EEAS

IMPROVE THE PROTECTION OF VULNERABLE GROUPS IN EU CRISIS MANAGEMENT

FRAME found that conflict situations render a number of groups particularly vulnerable to human rights violations, such as refugees, internally displaced persons and minorities. These have received little attention in EU policies and particularly in policies related to armed conflict.

FRAME recommends that the EU define criteria for identifying the most vulnerable population in situations of crisis or armed conflict in order to implement adequate measures to protect them, such as the *Checklist for the Integration the Protection of Children Affected by Armed Conflict into ESDP Operations*. Additional focus on establishing a pool of experts on a number of human rights-related themes (children and armed conflict, gender, migration, victims of human trafficking, etc.) to ensure that the persons most impacted by conflict are a clear priority for EU crisis management policies would be welcome.

THIS RECOMMENDATION IS ADDRESSED TO Council; European External Action Service; Member States

MORE INFORMATION D10.1

REVIEW THE POSITION OF THE EU IN HUMAN RIGHTS DIALOGUES

Human rights dialogues with third countries are a potentially powerful tool for raising awareness and generating progress on human rights. All too often, however, *FRAME found* that the effectiveness of this mechanism is hindered by the Union's perception as condescending due to its having adopted a posture of lecturing and preaching. Despite efforts having been made to remedy this, criticism continues to circulate, at times with the purpose of lessening the impact of the EU's input.

To pre-empt this criticism, *FRAME recommends* (i) ensuring that diplomats rely on quality background information that includes an analysis of domestic conceptions of human rights, democracy, and the rule of law, with attention to the different perspectives that might be held by the State and civil society, building on the resources of the EU Delegations, EEAS Headquarters and the EU Special Representative for Human Rights; (ii) tailoring dialogues to the reality of the other party, rather than focusing on general topics of discussion; (iii) relying on the knowledge, expertise and demands of local civil society and agents of change; (iv) building a strong agenda based on common interests and common problems, and seizing low-hanging fruits to ensure demonstrable results; and (v) acknowledging differences and recognising its own failures and the other partners' achievements. Although confidentiality of the proceedings is the only accepted manner for organising dialogue, *FRAME recommends* that an additional degree of transparency beyond the typical joint statements or press releases be sought.

THIS RECOMMENDATION IS ADDRESSED TO European External Action Service

MORE INFORMATION D3.5; D5.4; D6.3; D12.2; D14.2

SAFEGUARD BEST PRACTICES IN HUMAN RIGHTS PROTECTION IN POST-COTONOU PARTNERSHIP REGIMES

The Cotonou Partnership Agreement between the EU and the African, Caribbean and Pacific Group of States ('ACP') expires in 2020 and the potential new partnership terms that might replace it are already being contemplated. *FRAME found* that a fundamental revision of the EU's most longstanding regional partnership could allow for a less aid-dominated, more political and interest-driven framework of cooperation, that at the same time safeguards the positive elements of the *acquis*, including the Agreement's provisions for political dialogue and the promotion, protection and enforcement of essential elements.

In the revision process, *FRAME recommends* maintaining both the focus on democracy, good governance and human rights and the mechanisms to safeguard these values. At the same time, *FRAME recommends a* broader involvement of non-state actors, including civil society, economic and social partners and the private sector in shaping the format and substance of the political dialogues with ACP countries.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Member States

MORE INFORMATION D5.4; D6.3

ENSURING A SUSTAINED, STRONG EU PRESENCE IN THE HUMAN RIGHTS COUNCIL

The UN Human Rights Council ('HRC') remains a source of hope for better global human rights governance, serving as a forum for the discussion of problems common to all UN Member States. *FRAME found* that, in the eleven years since its creation, the HRC has accomplished much, in part owing to the active engagement of the EU and its Member States. However, the HRC continues to encounter major obstacles in its role and functioning. One of these challenges is its composition and the resulting political fault lines of the HRC, in particular the presence of several countries openly sceptical of human rights, the largely uncertain role of the new US government and the dynamics within the EU itself.

FRAME recommends that the EU remain a vital promoter and protector of human rights within the HRC framework and that it cooperate with other countries on furthering new initiatives and defending the existing achievements of the HRC. Such efforts should entail strengthening the EU Delegation in Geneva and aiding EU Member States present in the HRC to allow them to act as efficient voices not only in their own capitals, but also in the EU. *FRAME recommends* that the EU reach beyond its traditional circle of allies in the HRC and explore the potential for further cross-regional cooperation. In addition, *FRAME recommends* strengthening consultation with NGOs and like-minded partners.

THIS RECOMMENDATION IS ADDRESSED TO European External Action Service; Council; Member States

MORE INFORMATION D5.1



UN HUMAN RIGHTS COUNCIL - PHOTO: EEAS

PROVIDE CONCRETE SUPPORT FOR THE EU'S COMMITMENT TO BUSINESS AND HUMAN RIGHTS

FRAME found that although the EU has endorsed the main international instruments aimed at promoting corporate social responsibility, there remains a considerable gap in translating that endorsement into concrete support, and in increasing awareness and compliance with these instruments by the EU itself, by the Member States, in third countries, and by businesses operating within the EU and global markets.

FRAME recommends using trade agreements to enhance implementation of the business and human rights instruments. To that effect, the hortatory language used so far should be strengthened to include binding commitments by the parties to implement such instruments. Likewise, *FRAME recommends* making the investor protections granted by EU investment agreements conditional on responsible business practice. Additionally, *FRAME recommends* that the EU engage more constructively with the current UN open-ended intergovernmental working group discussing the possibility of a binding instrument on business and human rights.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; European External Action Service; Council; Member States

MORE INFORMATION D7.4; D9.1

ESTABLISH A LEGAL FRAMEWORK FOR THE EFFECTIVE REGULATION OF MILITARY AND SECURITY COMPANIES

FRAME found that private military and security companies are the perpetrators of some of the most egregious human rights violations. Their regulation is a specific gap in the EU's business and human rights policy.

FRAME recommends that the Union remain committed to improving the regulation of this sector and the solutions on offer, and that a comprehensive legal framework be developed, including remedial mechanisms for holding private security companies accountable for human rights abuses. The EU should continue to support and engage directly with the Montreux Document Forum, the UN Inter-Governmental Working Group on Private Military and Security Companies, the Accountability and Remedy Project of the Office of the UN High Commissioner for Human Rights and also work to strengthen the OECD's National Contact Points system.

THIS RECOMMENDATION IS ADDRESSED TO European Commission; Council; European Parliament

MORE INFORMATION D7.1; D7.2; D11.2

LIST OF RECOMMENDATIONS

1. Adopt practical guidance to overcome causes of incoherence
2. Use the Charter as a lynchpin for coherence in internal and external policies
3. Provide adequate human rights information and training to EU officials
4. Rely on the knowledge and expertise of National Human Rights Institutions, NGOs and equality bodies more systematically
5. Cooperate with the United Nations on human rights indicators
6. Enhance the human rights relevance of social indicators
7. Build a transparent and accessible Human Rights Compliance Information System based on reliable information
8. Generalise impact assessments, especially in emergency situations
9. Improve the methodology of human rights impact assessments and increase personnel in charge of impact assessments
10. Have the Council and the European Parliament conduct impact assessments on their proposed amendments
11. Improve stakeholder consultation during impact assessments
12. Shift from vulnerable group-oriented approaches to factors-oriented approaches
13. Ensure that EU policies do not contribute to vulnerability
14. Expand the mandate of the EU Fundamental Rights Agency
15. Foster the adoption and implementation of international human rights law in Member States
16. Implement the EU's commitment to human rights through international law
17. Draft a comprehensive EU policy on online freedom of expression
18. Adopt the Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation
19. Address the governance gap regarding economic, social and cultural rights
20. Ensure that efforts to effectively manage migration do not override human rights protection

21. Revise migration policy governance to increase legal avenues for migration, more solidarity among Member States, and less fragmentation in migration management
22. Strengthen and integrate institutions' tools to address a lapse or regression of Member States in regard of the rule of law
23. Bring infringement procedures against Member States to address patterns in breach of fundamental rights
24. Enforce conditionalities and compliance with the Charter when it comes to European Structural and Investment funds and Common Agricultural Policy funds
25. Provide institutional support and the necessary resources to human rights officials in the EEAS
26. Ensure transparent and mutually reinforcing strategic planning at the multilateral and bilateral level
27. Identify and avoid double standards
28. Associate the FRA to the review of external policies for compliance with the Charter
29. Explore smart enforcement and incentive mechanisms in international cooperation, tailored to both the case at hand and the EU's leverage and strategic interests
30. Explore innovative, yet realistic ways for trade to contribute to the promotion and protection of human rights abroad
31. Implement the rights-based approach to development in planning and in sectoral documents
32. Strengthen economic, social, and cultural rights in EU external actions
33. Streamline funding opportunities and step up diplomatic efforts in favour of civil society organisations and human rights defenders
34. Firmly root CSDP in precise international standards and ensure accountability of EU personnel
35. Improve the protection of vulnerable groups in EU crisis management
36. Review the position of the EU in human rights dialogues
37. Post-Cotonou partnership regimes should safeguard best practices in human rights protection
38. Ensuring a sustained, strong EU presence in the Human Rights Council
39. Provide concrete support for the EU's commitment to business and human rights
40. Establish a legal framework for the effective regulation of military and security companies



Suggested citation:

FRAME, 'How to Better Foster Human Rights Policies. FRAME Final Recommendations', (2017), available at www.fp7-frame.eu/download/outcome