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FREMP 35
JAI 109
COHOM 18

NOTE

From:	Presidency
To:	Delegations
Subject:	Coherence and consistency between internal and external EU human rights policy - Presidency discussion paper

I. INTRODUCTION

- The respect for human rights, democracy and the rule of law are shared values of the European Union (EU) which, in accordance with Articles 2, 3, 6 and 21 of the Treaty of the European Union (TEU), underpin internal and external policies of the EU. The EU's human rights and democracy policy encompasses civil, political, economic, social and cultural rights.
- The EU and its Member States ensure high standards of human rights protection internally. The cumulative effect of the EU Treaties, the Charter of Fundamental Rights of the EU (Charter) and the ECHR ensure a comprehensive and far-reaching system of protection. Extensive information about the application of the Charter by the EU and its Member States can be found in the Commission's annual reports on the application of the Charter, the annual reports of the EU Agency for Fundamental Rights, CJEU case law and many other relevant documents.¹.

¹ e.g. Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies, 5377/15.

- The Council's Strategic Framework and the Action Plan on Human Rights and Democracy² represent the European Union's explicit commitment to promote and protect human rights in external action. The Action Plan outlines plans for collaboration between the EU and local institutions in partner countries, and for targeted support and capacity building on the ground. It reinforces the commitment to the mainstreaming of human rights into all EU activities and policies, including development co-operation, migration/asylum, counterterrorism and trade/investment and to ensuring internal and external coherence and efficiency, as well as to promoting gender equality and women's empowerment.
- Agreements between the EU and third countries include human rights clauses, which create obligations both for third countries and for the EU and its Member States. The EU Action Plan on Human Rights and Democracy 2015-2019 recalls that human rights are reviewed by way of impact assessments carried out before initiating free trade agreements and stand-alone investment agreements.
- Coherence and consistency are of great importance due to the intrinsic value of fundamental rights and the international obligations of the EU and its Member States. The Council Conclusions of May 2014 recognise "the importance of consistency between internal and external aspects of human rights' protection and promotion in the Union framework in terms of enhancing the Union's credibility in its external relations and leading by example in the area of human rights." Against this backdrop, FREMP and COHOM have held regular exchanges since 2013³ on the coherence of the EU's internal and external human rights policies in general and on specific thematic topics.

² 10897/15.

³ Before this regular exchange, FREMP held a discussion on cooperation between COHOM and FREMP and on coherence in EU human rights on 3 October 2011, see non-paper prepared by the Polish Presidency, 14806/11.

- The discussion in FREMP and COHOM has focused on increased cooperation between both groups, the importance of increasing coherence and consistency and specific areas where the external strategy and the "internal reality" are not coherent. It has been concluded several times that the work to increase consistency and coherence deserves further attention. To follow-up on these discussions, it would be useful to explore more in depth the shared understanding of the issues at play and discuss whether there is a common and shared understanding of what is required to be able to consider the internal and external aspects to be 'coherent' and 'consistent'. The importance of having a clear view on this, is that it enables identification of examples of incoherence and inconsistency and thereby the finding of effective solutions and approaches which take into account the interests of both internal and external realities.
- By way of deepening our discussion, the Presidency considers it useful to look at the previous exchanges between FREMP and COHOM to date (see Annex) and to reflect on the following:
 - (a) concrete examples of perceived incoherence and inconsistency between EU internal and external human rights policies, both from the internal and the external perspective,
 - (b) the understanding of coherence and consistency underlying this perception, and the defining elements of optimal 'coherence' and 'consistency' in each of these cases,
 - (c) the possible need for ways forward in both COHOM and FREMP to ensure that attention is paid to ensuring coherence and consistency with regard to each of their agendas.

II. POINTS FOR DISCUSSION

Ad a - examples)

- In your practice as FREMP and COHOM-delegates, what have been examples of topics which were considered ‘inconsistent’ or ‘incoherent’?
- Does this discussion also play a role in your national setting, and what is done about ensuring coherence and consistency there?

Ad b - understanding)

- Academic work has been done on coherence and consistency in the area of the EU’s fundamental rights actions. In September 2014, the EU-funded FP7 FRAME (Fostering Human Rights Among European Policies) project published the Report on coherence of human rights policymaking in EU institutions and other EU agencies and bodies.⁴
- The FRAME-research proposes that coherence should be understood to mean policymaking that seeks to achieve common, identifiable goals that are devised and implemented in an environment of collaboration, coordination and cooperative planning among and within the EU Institutions, among the EU Institutions and Member States, as well as among EU Member States. This policymaking considers the internal (within EU borders) and external (with third countries or other partners) aspects of human rights policies, together with the vertical (policies handed to Member States by the EU) and horizontal relationships (policies among EU Institutions or among Member States). Additionally, human rights policymaking ensures the respect for the universality and indivisibility of human rights in each policy dimension. Consistency is seen in this study as an element of coherence, in the sense that it shows a coordinated effort in policy-making, coherence is a broader terms that encompasses both practical policymaking concerns as well as the structures and interests influencing and shaping policies.⁵

⁴ FRAME, ‘Report on coherence of human rights policymaking in EU Institutions and other EU agencies and bodies’ (September 2014). <http://www.fp7-frame.eu/wp-content/materiale/reports/06-Deliverable-8.1.pdf>

⁵ See 2.1.7 (p. 18) and 2.1.1.2.5 (p.5, Fn 24).

- This description should not be regarded as an exhaustive definition of internal-external coherence, but a starting point for discussion.
- Do delegations agree with the way consistency and coherence are defined in the FRAME-research?

Ad b – criteria)

- Does consistency/coherence imply full parallelism, or is inconsistency and incoherence to some extent inevitable or even desirable?
- For example: Should all Member States have ratified a treaty when third countries are recommended to do so? Or do we consider it to be incoherent when just one EU Member State has not ratified it? The same question applies to other practices the EU recommends in the external dimension/to third countries.
- Internally, the EU can act with regard to fundamental rights only to the extent that there is a clear legal basis for it to act in a certain policy area (principle of conferral). The Charter states explicitly that fundamental rights cannot themselves be used to expand on these internal competences (article 51(2) Charter). The EU's human rights competence externally is of a general nature, and therefore does not have such a limitation as concerns policy fields. To what extent does this contrast limit the possibility of full coherence and consistency? Does the inherent legal limitation on when the EU can act on fundamental rights internally ever lead to questions from external partners? If so, can the principle of conferral be sufficiently explained in that case?

Ad c – ways forward)

- If there is a feeling that consistency and coherence can be improved, how can this be operationalised further and integrated in working methods?
- Is the current FREMP-COHOM dialogue sufficient, or could strengthening of this cooperation be envisaged?
- Should COHOM-developed 'lines to take' with regard to explaining the EU-internal situation externally be discussed in FREMP?

- How can policy statements about external action with regard to specific topics, such as for example freedom of speech or LGBTI, include reflection of the current state of affairs in the Member States?
- Should FREMP discuss questions related to non-ratification of UN treaties by EU Member States?
- Should COHOM be able to signal to the FREMP delegates when the non-ratification of international treaties by individual member states raises difficulties for EU external policy?
- In addition to improving interaction between the groups and contribute to concrete operational outcomes of the increased cooperation, how can COHOM and FREMP internal working methods be adapted to better reflect the concern of (in)coherence?
- Finally, a forward looking strategy to avoid future discrepancies and/or suggest possible solutions to overcome an existing inconsistency between the internal and external human rights policy could be discussed in FREMP and COHOM and become a part of the annual conclusions on the Commission's yearly report on the application of the Charter and involve an annual assessment of previous year's actions and setting priorities for the next year.

OUTCOME OF THE FREMP-COHOM COOPERATION

PRES	DATE and AGENDA POINT	OUTCOME
IE	<u>19 June 2013 (COHOM)</u> ⁶ Internal/External Coherence Update on FREMP activities	During the Irish Presidency FREMP and COHOM established exchanges and co-operation. ⁷ FREMP Chair had been invited to COHOM on 19 June 2013 in order to give an update on FREMP activities and address issues of coherence and consistency between the EU's internal and external human rights policies. ⁸
LT	<u>21 November 2013 (FREMP)</u> ⁹ Coherence between the internal and external dimension of human rights policy Interventions by: - representative of the Council of Europe - representative of the EU Agency for Fundamental Rights - Chair of COHOM	The invitees and delegations exchanged views on the basis of the Presidency discussion paper ¹⁰ and highlighted the importance of ensuring coherence between internal and external dimensions of EU human rights policy. In that context most speakers welcomed the possible drafting of an internal human rights strategy in order to increase the credibility of the Union in terms of fundamental rights protection in the world. Attention of delegations was drawn to the need to ensure consistency with other documents and guidelines that exist for planning purposes and that cover also fundamental rights. FREMP took note of the good practices established by COHOM in terms of implementing the strategic framework and human rights action plan and considered ways to learn from that experience, also as

⁶ CM 3277/13

⁷ SN 1955/14

⁸ 11684/13

⁹ CM 5209/13

¹⁰ 15964/13

	- EU Special Representative for Human Rights	<p>regards cooperation with civil society with a view to benefiting from the expertise of civil society organisations.</p> <p>The idea of holding annual joint meetings between FREMP and COHOM on specific thematic areas was proposed and generally welcomed with the caveat that the discussion should provide real added value with a clear objective and a focused approach. The possibility for FREMP to assist in certain cases bodies responsible for EU external human rights policy actions was mentioned.¹¹</p>
EL	<p><u>15 January 2014 (FREMP)</u>¹²</p> <p>Exchange of views with Mr. Lambrinidis, EU Special Representative for Human Rights</p>	<p>EU Special Representative for Human Rights, Mr. Stavros Lambrinidis, made a presentation about the challenges that the EU is facing in its human rights policy both internal and external. He highlighted the EU role in the world as the promoter and supporter of fundamental rights and described the recent progress made, even if challenges to consistency remain and need to be tackled.</p> <p>The debate that ensued was in follow-up to the meeting of FREMP in December 2013 with the participation of FRA, CoE and COHOM Chair (see document 15964/13).</p> <p>Most delegations recognise that the credibility of the Union in its external relations depends on its internal human rights policy and monitoring mechanisms. Many delegations emphasised the need for synergies with the work of the Council of Europe and with the EU Agency for Fundamental Rights.</p> <p>The Presidency announced a follow-up to this discussion during this semester still, possibly linking this to the post-Stockholm programme and the expected discussion paper on rule of law.</p>

¹¹ 17049/13

¹² CM 5790/13

	<p><u>14 March 2014 (COHOM)</u> The Chair of FREMP participated in the informal meeting of COHOM in Athens</p> <hr/> <p><u>9 April 2014 (FREMP)¹³</u> Coherence between the internal and external dimension of human rights policy - Presentation of the Presidency discussion paper and exchange of views</p>	<p>At the informal meeting of COHOM in Athens on 14 March 2014 the importance of internal-external consistency was reiterated and ways to enhance FREMP-COHOM cooperation were explored. Most delegations have recognised that the credibility of the Union in its external relations depends on its internal human rights standards and their effective implementation. For this reason consistency is a topic that deserves further attention.</p> <hr/> <p>Delegations in general welcomed the discussion based on the Presidency paper¹⁵ and acknowledged that the issue of how to present the high standards of fundamental rights' protection in the EU towards its external partners was a crucial one. Some delegations considered it was also not only a question of perception but also a question of enhancing the monitoring mechanisms internally.</p> <p>The idea of more practical cooperation between FREMP and COHOM was welcomed. Most delegations supported also annual debates on fundamental rights, focusing on different topics.</p> <p>As regards the policy cycle and strategy, delegations were divided. More in-depth reflections would be needed. Delegations were equally divided on the question of thematic guidelines. There was agreement, however, that if something was presented to third countries as an EU standard then FREMP should be consulted.</p> <p>Several delegations pointed out that the post-Stockholm programme would contain elements for the fundamental rights strategy. It was also agreed that the role of FREMP needs to be examined further</p>
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¹³ CM 2286/14

¹⁵ 8318/14

		<p>within its current framework of competences and in order to enhance coordination and coherence in the field of fundamental rights.</p> <p>The Chair concluded that elements of this discussion would be taken up in the context of preparing the Council conclusions on the basis of the Commission's annual report on the Charter of Fundamental Rights.¹⁶</p>
	<p><u>5 /6 June 2014 (JHA Council)</u></p> <p>Adoption of the Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union¹⁴</p>	<p>CCs recalled i.e. a duty to ensure consistency between the different areas of its external action and between these and its other policies and recognised the importance of consistency in terms of enhancing the Union's credibility in its external relations and leading by example in the area of human rights. Ministers agreed that it was important to strengthen cooperation between various Council working groups, notably between FREMP and COHOM, in particular through regular exchange of information and joint thematic meetings, as appropriate, on specific issues.</p> <p>Since there was no agreement on the Union internal strategy on fundamental rights, CCs only mention that the Council "notes with interest the idea of an annual assessment by the Council on the basis of the Commission's annual report on the application of the Charter of Union action regarding the provisions of the Charter and of pointing out areas for future action. This could gradually lead to a Union internal strategy on fundamental rights, possibly through an action plan on a mid-term basis, regarding the respect and promotion of the Charter."</p>

¹⁴ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/143099.pdf

¹⁶ 10025/14

IT	<p><u>7 October 2014 (COHOM)¹⁷</u> Joint COHOM - FREMP meeting on internal-external coherence</p>	<p>COHOM and FREMP chairs stressed the need to mirror the external strategy in internal EU policies. The FRA Director pointed out 3 fields where the external strategy and the 'internal reality' are not coherent: violence against women, LGBTI and the migration policy.</p> <p>The representative of the the UN Human Rights Office reiterated that international organisations identified remarkable deficits in the EU MSs' compliance with their own external policy standards (in particular encouraging third countries to ratify conventions which has not been ratified by the EU-MSs or to create independent national human rights institutions while only a few EU-MS have established corresponding institutions).</p> <p>The Commission stressed the role of the fundamental rights impact assessment done also for the external actions instruments. It was agreed that this discussion would be continued in FREMP.</p>
	<p><u>5 December 2014 (JHA Council)</u> Adoption of the Council conclusions on the promotion and protection of the rights of the child</p>	<p>These Council Conclusions have been prepared in close cooperation with COHOM and tackled internal and external aspects of children rights. In particular Member States were invited to sign, ratify and implement the Istanbul Convention, Lanzarote Convention and (since there was no consensus) "to consider" signing and ratifying the three Optional Protocols to the UN Convention on the Rights of the Child: on the involvement of children in armed conflict; on the sale of children, child prostitution and child pornography and on a communications procedure.</p>

¹⁷ CM 4339?14

LV	<p><u>8 June 2015 (FREMP)</u>¹⁸</p> <p>Joint COHOM - FREMP meeting on internal-external coherence concerning children's rights¹⁹ and the fight against racism and xenophobia²⁰</p>	<p>FREMP and COHOM Chairs highlighted the importance of regular exchanges between FREMP and COHOM on specific topics with a view to improving coherence between the internal and external dimensions of EU fundamental rights policy as agreed in the Council conclusions from June 2014.</p> <p>The Lisbon Treaty contains the first explicit commitment to protect and promote the rights of the child in EU internal and external actions (Article 3 (3)). Promotion of child wellbeing is a clear objective under the European Instrument for Democracy and Human Rights and the Global Public Goods and Challenges (GPGC) funding instruments for the period 2014-2020. The new draft EU Action Plan on Human Rights and Democracy also proposes to support partner countries to promote, protect and fulfil children's rights. The work carried out inside the EU on child protection systems will strengthen the impact of future EU external action in this area.</p> <p>The Presidency, Commission and FRA presented recent Council activities in the field of combating racism and xenophobia. A representative of the EEAS stressed that the main challenge externally for the moment includes, inter alia, addressing the accusations of double standards by developing countries at UN level and also by civil society, the request by a number of countries to develop complementary legal standards to the International Convention on the Elimination of Racial Discrimination (ICERD) and the increased polarisation in multilateral fora.</p>
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¹⁸ CM 2832/15

¹⁹ 9511/15

²⁰ 9512/15, 9499/15.

		<p>The Union should also enhance visibility of its efforts and initiatives to combat all forms of racial discrimination at the legislative, policy and programming level. In the framework of the International Decade for People of African Descent, the Union and EU Member States should work on the elements of the work programme which it can support and which build upon the EU's activities.</p> <p>The COHOM Chair informed the delegates that accession to UNCRPD was negotiated by COHOM in a special composition but Presidency could consider whether FREMP should take the lead on accession to the Protocol.²¹</p>
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²¹ 10435/15