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Amnesty International – Outline for an EU internal human rights strategy

Extract from AI's contribution on the future of EU justice and home affairs (January 2014)

The need for a comprehensive human rights framework strategy and action plan

“To swing the pendulum to the Human Rights direction. I am profoundly aware of how hard this will be. But, as the Strategic Framework emphasises, EU Foreign Policy and Human Rights need not be competing goals. Our aim is to make them complementary (...)”

(EU Special Representative for Human Rights, Brussels, 3 September 2012)

“The adoption of the EU Strategic Framework on Human Rights and Democracy represents a watershed in EU policymaking.”

(Council of the EU, *EU adopts Strategic Framework on Human Rights and Democracy*, Luxemburg, 25 June 2012)

Despite occasional breakthroughs, the debate on the EU’s performance on human rights within its own region is consistently obstructed by the – real or perceived – lack of EU competency to act on behalf of or in place of member states, to preserve and promote the EU’s founding principles, which include respect for human rights.

Amnesty International believes that a framework strategy enshrining human rights at the core of the EU’s internal legal and political machinery (including normative and enforcement powers, as well as political dynamics) would help to overcome this perceived dichotomy between the EU’s aspiration to promote human rights, and the reality of human rights violations in member states. By setting common guiding principles for devising and assessing EU action on human rights, which take into account the specificities of the EU’s legal framework, this strategy would bring together existing instruments and policies, and provide direction. A strategy geared towards human rights action would not provide immediate or magic solutions, but it would help the EU institutions to confront the reality of human rights violations in member states together, on a common human rights basis. This includes the development of effective actions to resolve problems, and a measurement tool for building accountability for what EU tools deliver.

In a joint statement as part of the Human Rights and Democracy Network (HRDN) on strengthening the EU’s response to human rights abuses inside its own borders, Amnesty International highlighted the need for a human rights framework strategy.¹

Amnesty International’s call is inspired by the ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, which was adopted by the Foreign Affairs Council in June 2012.² This is a powerful pledge by all member states, the European External Action Service (EEAS), the European Parliament (EP) and the European Commission (the Commission) to advance the protection and promotion of human rights together, and to put human rights at

¹ Human Rights and Democracy Network, *Strengthening the European Union’s response to human rights abuses inside its own borders*, August 2013, available at:

http://www.amnesty.eu/content/assets/Doc2013/HRDN_Statement_EU_response_to_human_rights_abuses_inside_its_own_borders.pdf

² Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, 25 February 2012.

the centre of EU foreign policy. The action plan lays out specific actions, allocating specific responsibilities to each actor, and including reference to genuine partnership with civil society. The key principles are endorsement by all actors, and empowerment to act together.

The forthcoming EU accession to the ECHR represents a key opportunity for the EU to embark on this task. In the spirit of accession, the EU must comply with the obligations set by the ECHR, as interpreted by the European Court of Human Rights (ECtHR). More generally, the EU must promote the work of the various human rights bodies of the Council of Europe, including through enhanced cooperation with them.

The upcoming Commission Communication on possible new mechanisms to safeguard the rule of law in the EU is another opportunity to reinforce the EU's capacity to abide by articles 2 and 3 TEU and pay specific attention to safeguarding respect for human rights.

Amnesty International suggests that this comprehensive internal human rights strategy (the strategic framework and the action plan) be built around the four main objectives outlined below. These objectives should guide and prompt EU action towards the obligation to respect, protect and fulfill human rights as defined by international human rights law.³ To be legitimate and operational, the strategic framework would have to be endorsed by all three institutions and all member states, committing them to a shared and indivisible responsibility for implementing the objectives set out in the strategy, alongside their commitment in the field of EU external relations.

1. Develop a strong and comprehensive EU human rights based approach

a) Putting human rights at the heart of all EU policies

The strategic framework and action plan on external relations contains two decisive overall guiding principles: (1) it assigns clear responsibilities to all relevant EU actors; and (2) it contains a joint agreement that the EU will promote human rights in all areas of its external action without exception.

Both aspects are key to ensuring respect and protection of human rights throughout the EU. Parallel to the comprehensive policy list in the external framework strategy, the internal one should state a clear political commitment by all EU institutions and member states to protect and promote human rights in all areas of the EU's internal competence without exception.

One way to put this commitment into practice is to ensure that human rights impact assessments are carried out before drafting EU proposals, and that, once the proposals are drafted, an examination of their compliance with human rights is carried out accurately and equally across all the Commission's services.

³ "International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights"(website of the Office of the UN High Commissioner for Human Rights, *International Human Rights Law*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>).

Following the Commission's Strategy on the effective implementation of the Charter of Fundamental Rights of the European Union (the Charter) in 2010,⁴ operational guidance on how to carry out human rights impact assessments in practice was issued in 2011.⁵ This guidance detailed procedures and content for such impact assessments.

The mandate of the Impact Assessment Board (the Board) to control the quality of all the Commission's impact assessments includes systematic checks on the human rights aspects of the assessments submitted to its review. However, the Board is not currently bound to systematically issue an opinion in this respect. In order to ensure the effectiveness of this procedure, it would be important to issue such opinions systematically and make them public. These opinions should address not only the substantive human rights issues raised by the impact assessment draft, but also review the initial evaluation done by the Impact Assessment Steering Group on whether the proposal impacts on human rights issues, and when this is the case, how the procedure outlined in the guidelines was carried out (including the consultation with Directorate-General (DG) Justice, the inclusion of relevant human rights aspects when drafting consultation documents, and the engagement with other stakeholders, including the European Union Agency for Fundamental Rights (FRA) and human rights NGOs).⁶ In addition, the annual report issued by the Board should include a dedicated section on human rights impact assessment.

The Commission's Strategy on the implementation of the Charter does not foresee any consultation on human rights aspects during the drafting phase of EU proposals. In order to ensure that human rights issues raised in the impact assessment stage are duly addressed in the draft, the Commission should seek advice from external experts, including the FRA, Council of Europe and civil society experts before adopting its proposal.

Once the Commission proposal is published, all the institutions have a commitment to ensure that the text remains 'Charter compliant' throughout the legislative process. This important commitment set by the Commission in its Strategy on the effective implementation of the Charter was further endorsed by the Council⁷ and the EP. However, greater transparency is needed to ensure EU institutions are held accountable to respect their commitment. This implies some level of public access to the various drafts throughout the negotiations and to the legal opinions issued by EU legal services, as well as more information on referrals for advice made to the Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) working party.⁸ This would enable open expert debates in cases of conflicting interpretations on human rights issues involved. As with impact assessments, the FRA's opinion and advice from the Council of Europe should be sought as a matter of principle.

b) Enhancing EU institutions' capacity to properly address human rights issues

⁴ Communication from the Commission, *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union*, COM(2010) 573 final.

⁵ European Commission, Staff Working Paper, *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*, 6 May 2011, SEC(2011) 567 final.

⁶ European Commission, *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*, cited above, p. 11 to 13.

⁷ Council of the European Union, *Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies*, 18 May 2011 and *Conclusions on the Council's actions and initiatives for the implementation of the Charter of Fundamental rights of the European Union*, 23 May 2011.

⁸ In its *Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies*, cited above, the Council recommends that "If [a] working party is unable to resolve the issues arising on the compatibility of a particular proposal with the fundamental rights, on a limited case by case basis, it should seek the advice of the FREMP Working Party (...)" (p. 7).

Reinforcing the EU's institutional capacity to properly address human rights issues is necessary to ensure effective processes as described above and further below.

Council of the European Union

Transforming the Council's *ad hoc* working group on human rights (originally designed to negotiate the regulation establishing the FRA) into a permanent FREMP working party was an important development that followed the adoption of the Stockholm programme and the entry into force of the Lisbon Treaty.

The challenge is now to enable and empower FREMP to become a strong human rights actor that can properly lead the Council's action in the direction of human rights. As outlined in the joint NGO statement from HRDN on strengthening the EU's response to human rights abuses inside its own borders (mentioned above), this implies that FREMP embraces an ambitious mandate on human rights and broadens the scope of its work in this area, including by: systematically considering and responding to all reports prepared by the FRA and the EP's Committee on Civil Liberties, Justice and Home Affairs (LIBE); opening itself up to relevant third party actors (such as NGOs, the Council of Europe Commissioner for Human Rights, UN special mechanisms and treaty bodies) for briefings and exchanges; and initiating a regular form of engagement with LIBE as its counterpart in the EP with a mandate pertaining to fundamental rights.⁹

In addition, the Council should engage in a reporting exercise on internal human rights issues. The necessary *inward looking* dimension of such a report in the field of internal EU policies would require member states accepting some level of peer review in order to enable specific country examples to find their way in the report, whilst avoiding a "finger pointing" exercise, largely dependent on the member states' agenda. The review should take into account international human rights standards and make use of the various existing UN documents, such as the Universal Periodic Review (UPR) documents, as a basis for discussion. To avoid "finger pointing" the reviews should take place on a regular basis and be based on a set rotation of member states, in addition to situations where international and European human rights bodies identify a particular crisis or structural problem in one or several member states.

European Commission

The appointment of a new EU Commissioner for Justice, Fundamental Rights and Citizenship was an important development, which signaled a change of direction towards justice and human rights, concomitant with the adoption of the Stockholm programme and the entry into force of the Lisbon Treaty.

Experience over the last five years has shown that more needs to be done to ensure that this position fully embraces all human rights related issues and serves as a human rights 'catalyst' within the College of Commissioners by:

⁹ The network noted that these are already well established practices embraced by the Council Working Party on Human Rights in foreign relations (COHOM). With particular regards to cooperation with civil society, the Council's annual report on Human Rights in the World 2012 specifically stressed the importance that "civil society representatives regularly engage with the Council Working Party on Human Rights [...] and are debriefed on its conclusions" (Council of the European Union, *EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports)*, 13 May 2013, p. 33).

- leading the overall debate on human rights policy, including by critically assessing the EU's action on human rights on the internal front, and ensuring coordination and coherence with EU action on the external front
- equally delivering in all the areas assigned to the position (or at least giving due account of how priorities are decided), and ensuring coordination with the thematic areas assigned to other Commissioners.

In addition, adequate human rights expertise and resources should be allocated at all levels throughout all the Commission departments. This should be a priority when assigning posts and deciding staff rotation.

European Parliament

The EP and its LIBE Committee gained decisive legislative power with the Lisbon Treaty. The EP has, for example, played a key role in co-deciding with the Council the new standards for protection of suspects and victims of crime that it had long called for. It defended a progressive line in that area, whilst also continuing to push proposals like the new horizontal anti-discrimination directive,¹⁰ for which unanimity in the Council remains the rule. Moreover, LIBE took up important human rights issues neglected by the Council and the Commission (which usually argued lack of competence). These were: the follow-up of its 2007 inquiry into the complicity of EU member states in the illegal US-led rendition and detention programmes – including growing allegations of secret detention in EU countries;¹¹ and the human rights situation in Hungary – far beyond the scope of the Commission's intervention.¹²

All these achievements must be built on to ensure that the EP grows as an influential human rights actor and fully plays its role in holding EU institutions and member states accountable for respecting and protecting human rights. This implies the need for more in-house expertise and resources on justice and human rights issues, as well as greater and more systematic coordination and dialogue with other EU institutions and bodies, and with external actors, such as the Council of Europe and NGOs.

c) Strengthening dialogue with civil society

Enhancing the EU's capacity to properly identify, process and address its internal human rights challenges requires more transparent and meaningful dialogue with civil society at all stages. Currently, engagement with civil society does not comply with any uniform standards.¹³

¹⁰ European Commission, *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, COM/2008/0426 final.

¹¹ European Parliament, *Resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report, 2012/2033(INI)* and European Parliament, *Resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA, 2013/2702(RSP)*.

¹² European Parliament, *Resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012), 2012/2130(INI)*.

¹³ A commitment to engage further with and provide more support to civil society organisations has been expressed by the European Commission in the field of external relations (European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations*, COM(2012) 492 final), and welcomed by the Council (Council of the European Union, *Conclusions on "The roots of Democracy and sustainable development: Europe's engagement with Civil Society in external relations"*, 15 October 2012). However, there is still no explicit corresponding engagement in the field of EU internal policies.

Civil society's expertise should actively be sought by all three institutions and its input factored in all human rights monitoring and law and policy making processes. EU actors should further ensure that they are accountable for the way they deliver on protecting human rights and reflect on this in its public reporting and evaluation on their human rights work.

As stressed throughout the developments above and below, this notably implies that civil society should be briefed and debriefed on the EU's ongoing work, and invited to give expert input on human rights aspects, upstream and downstream of EU initiatives in the various policy areas. This includes ensuring active civil society participation in all relevant public events, such as hearings and seminars. It will also be vital that dialogue with civil society actors is planned well in advance and genuinely informs policy and legislative decisions.

2. Setting standards to strengthen the EU's legislative framework on human rights and remedying existing gaps in protection

"In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (...) constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings (...) At the same time, there is room for further action by the EU to ensure full implementation and respect of the Convention standards and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards. (...) Any new EU legislative acts in this field should be consistent with the minimum standards set out by the Convention, as interpreted by the European Court of Human Rights".

(Council of the European Union, *Resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*, 30 November 2009)

An approach to law-making building on the existing human rights obligations of all member states, such as the one followed in the field of procedural rights of suspected and accused persons in criminal proceedings (a similar approach has been later adopted with regards to victims),¹⁴ should guide the EU's legislative work. It serves to ensure that new legislative proposals are put forward whenever the approximation of laws can bring added value to the protection of people's human rights, and that EU standards never undermine member states obligations under international and European human rights law.

Regarding the opportunity of setting new standards at EU level, the EU should rely on existing work from the FRA, the Council of Europe, UN mechanisms and civil society which highlights gaps in human rights protection at EU and national level. Failure of the EU to follow-up on authoritative calls for action should be justified on the basis of objective reasons and open to challenge.

When a proposal is put forward, it is crucial that the standards set are developed in accordance with relevant international and European human rights law from the outset and throughout the negotiation process – in line with the commitments following on from the Commission's Strategy on the effective implementation of the Charter (see above).

¹⁴ Council of the European Union, *Resolution on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings*, 9 and 10 June 2011.

After the adoption of new standards, the Commission should make more use of the possibility of issuing guidelines and roadmaps to help member states comply with relevant human rights standards when transposing EU legislation at national level.

3. Monitoring human rights in the implementation of EU law

The compliance with human rights of member states' implementation of EU law remains an area of concern that needs urgently to be addressed. This crucial aspect is neglected in the Commission's Strategy on the effective implementation of the Charter and needs to be elaborated on further.

It is essential that the Commission takes into due consideration all relevant human rights issues when reporting on the implementation of EU measures. Reference to international and European human rights standards as well as data 'from the field' including research from the FRA and 'shadow reports' from civil society must underpin the Commission's assessments. The Commission should also engage in a transparent dialogue with civil society to identify problems and challenges on the ground, and discuss together possible EU action to remedy existing protection gaps.

The Commission's reports tend to focus on the formal transposition of EU standards into national law, failing to consider existing gaps and overlooking the human rights implications which relate to the measures in question. A broader approach is key to properly assessing and remedying problems on the ground, but also to identifying possible new action that may be necessary at EU level (see above on strengthening EU standards).¹⁵

The Commission's Annual Report on the effective implementation of the Charter should be reviewed in order to become an accountability tool to feed into the above process, as opposed to being a formal activity report on EU action.¹⁶ The report could, for instance, bring together and analyse the main findings of the Commission's implementation reports, combined with findings from relevant reports from other EU institutions, the FRA and external actors, including Council of Europe bodies; thus providing a critical assessment of EU action on human rights and identifying possible areas for future work.

4. Preventing and reacting to human rights violations by member states

As guardian of the Treaties, the Commission has a leading role to play in making sure that the EU remains true to its founding 'values' and properly anticipates and responds to actual violations of human rights by member states, in line with articles 2, 3 and 6 TEU. This is another crucial aspect which is overlooked in the Commission's current strategy on the implementation of the Charter.

¹⁵ For instance, Amnesty International has expressed concerns that the upcoming report on the implementation of the Framework Decision on Racism and Xenophobia will not question the limited scope of the instrument, failing to take into consideration data and recommendations highlighting substantial shortcomings of the existing instrument as an effective tool to combat hate crime in Europe (Amnesty International, *Submission to the European Commission and the Council of the European Union on the Framework Decision on racism and xenophobia (Council Framework Decision 2008/913/JHA)*, October 2013, available at: http://www.amnesty.eu/content/assets/Doc2013/AI_submission_EU_FD_racism_and_xenophobia_final_approved.pdf).

¹⁶ Amnesty International, *Comments on European Commission 2010 Report on the Application of the EU Charter of Fundamental Rights, COM (2011) 160 final*, 30 March 2011, available at http://www.amnesty.eu/content/assets/Doc2011/AI_comments_on_the_Commission_2010_Report_on_the_FR_Charter_May_2011_FINAL.pdf

- Preventing human rights violations

In order to adequately prevent human rights violations by member states, the Commission should make more effective use of available mechanisms. This includes, for instance, a more proactive use of EU pilots. This procedure was introduced in 2008 “to produce quicker and better answers to questions and solutions to problems” relating to the enforcement of EU law.¹⁷ The idea was to use this method of working to correct infringements of EU law at an early stage wherever possible without recourse to infringement proceedings.¹⁸ This is, in fact, an opportunity for dialogue and negotiation with member states which should be used to urge member states to revise their laws and/or practices in cases where the Commission has spotted signs of systemic human rights violations in the application of EU law. The steps undertaken on both sides, together with the positive or negative outcome of EU pilots in terms of human rights violations, should be recorded and publicised.

The Commission should also consider recourse to *interim* measures, which could be an effective way to assert the authority of the Commission’s warnings and suspend the controversial measure in order to avoid any negative impact on the protection of human rights. In that regard, the two last EP Fundamental Rights Reports recommended establishing a new ‘freezing procedure’ to ensure “that Member States, at the request of the EU institutions, suspend the adoption of laws suspected of disregarding fundamental rights or breaching the EU legal order”.¹⁹

In addition to this infringement related procedure, which can be activated only where there is risk of a human rights violation occurring in an area of EU competence, the EU must follow up on the EP and civil society recommendations, and stop ignoring article 7 TEU. As stated by the Commission, article 7 TEU allows the EU to “act not only in the event of a breach of common values in this limited field [EU law] but also in the event of a breach in an area where the member states act autonomously”.²⁰ Whilst the threshold for determining the existence of a serious and persistent breach of one of the values listed in article 2 TEU and for triggering sanctions (the ‘penalty mechanism’) is, indeed, unconvincingly high, this should not stop EU institutions from at least activating the ‘preventive mechanism’, which allows the EU to confront member states where there is a “clear risk” of such breach (article 7(1) TEU). This preventive mechanism could be further operationalised: for example, the EU could establish formalised partnerships with the FRA and the Council of Europe when examining the existence of a “threat or a risk of serious breach” by a member state of article 2 TEU principles;²¹ and consider following up on the idea of issuing a ‘formal notice’ to the member

¹⁷ European Commission, Report from the Commission, *EU Pilot evaluation report*, COM(2010) 70 final, p. 2.

¹⁸ The procedure was developed on the basis of the communication from the Commission, *A Europe of results – Applying Community law*, COM(2007) 502 final. In March 2010 the Commission adopted the first EU Pilot Evaluation Report (Report from the Commission, *EU Pilot evaluation report*, cited above).

¹⁹ European Parliament, Directorate General for internal policies, *The triangular relationship between fundamental rights, democracy and rule of law in the EU - Towards an EU Copenhagen Mechanism*, p. 46.

²⁰ European Commission, *Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union. Respect for and promotion of the values on which the Union is based*, COM(2003) 606 final, p. 5.

²¹ European Parliament, *The triangular relationship between fundamental rights, democracy and rule of law in the EU - Towards an EU Copenhagen Mechanism*, cited above, p. 51.

states(s), a proposal that was put forward by the Commission²² and also endorsed by the EP in the draft report on the situation of fundamental rights in the EU 2012.²³

- Reacting and putting an end to human rights violations

Infringements proceedings and article 7 TEU could be further used to address ongoing human rights violations by member states.

In line with its strategy on the implementation of the Charter, the Commission should proactively and thoroughly uphold its commitment to carry out infringement proceedings to address human rights violations committed by member states when acting within the scope of EU law. When activated, the infringement proceedings should aim to secure effective protection of human rights, “rather than aiming for negotiating settlements with member states”, as highlighted by the EP.²⁴

Such a commitment should be clearly articulated as part of the Commission’s general policy on infringement proceedings, for example in the context of a revision of its 2007 Communication.²⁵

This would require that:

- a compliance check of national law with human rights is mentioned as a strategic objective of infringement proceedings
- specific guidelines are formulated to make sure that infringement proceedings are effectively geared towards human rights protection, in all policy areas
- infringements concerning violation of human rights are included among the categories to be prioritised, meaning that they will be dealt with by the Commission “more immediately and more intensively than others”.²⁶ This shall imply a clear commitment to:
 - set tight benchmarks to accelerate the closure of the pre-litigation procedure
 - take the matter before the Court of Justice without undue delay whenever a satisfactory solution is not reached within a reasonable time
 - exclude the closure of proceedings ‘for political reasons’ and clearly and publicly state the grounds of any settlement with member states
 - revise the rules on access to documents and on confidentiality in order to ensure greater transparency of the procedures, especially with respect to the individuals concerned by the alleged violations, and to persons or organisations that have engaged with the Commission on the issue

As recalled above, article 7 TEU offers the EU, in addition to a ‘preventive mechanism’, the power to intervene where a serious breach of one of the common values listed in article 2 TEU has occurred in any of the member states (the ‘penalty mechanism’). However, due to the very high thresholds that are needed in the Council to trigger such a procedure,²⁷ this has been presented as a ‘nuclear option’ which is very unlikely ever to be used.

²² See the speech given by Vice-President of the European Commission, EU Justice Commissioner Viviane Reding at the Centre for European Policy Studies, Brussels, on 4 September 2013, *The EU and the Rule of Law – What next?*, available at http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm

²³ European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE), *Draft report on the situation of fundamental rights in the European Union (2012)*, 2013/2078(INI).

²⁴ European Parliament, *Fundamental rights in the European Union (2010-2011)*, 2011/2069(INI), p. 28.

²⁵ Communication from the Commission, *A Europe of results – Applying Community law*, cited above.

²⁶ Communication from the Commission, *A Europe of results – Applying Community law*, cited above, p 10.

²⁷ These are unanimity for determining the existence of a serious and persistent breach (article 7(2) TEU) and qualified majority for imposing sanctions (article 7(3) and (4) TEU).

This approach must be challenged. The EU institutions and member states should assert their full political commitment to make use of the article 7 TEU ‘penalty mechanism’ whenever necessary to properly address severe and systemic human rights abuses violating article 2 TEU whatever the field in which the breach occurs. To that end, ongoing discussions on how to revise and/or better operationalise article 7 TEU must pursue the objective of ensuring that such a penalty mechanism gains practical relevance as a mechanism that can and should be used to adequately address serious breaches of any of the common values listed in article 2 TEU, including respect for human rights. Such discussions must build on the 2003 Commission Communication on article 7 TEU²⁸ and reflect the calls from the EP,²⁹ the FRA,³⁰ and civil society.³¹

²⁸ European Commission, *Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union. Respect for and promotion of the values on which the Union is based*, cited above.

²⁹ See, recently, European Parliament, *Resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)*, and *idem*, *Draft report on the situation of fundamental rights in the European Union (2012)*, both cited above.

³⁰ Fundamental Rights Agency, FRA Symposium Report, *Promoting the rule of law in the European Union*, 7 June 2013, available at <http://fra.europa.eu/sites/default/files/fra-2013-4th-annual-symposium-report.pdf>

³¹ Amnesty International, *Response to the European Commission Communication on Article 7 of the Treaty on European Union*, December 2004, available at

http://www.amnesty.eu/static/documents/AI_response_to_EC_Comm_on_Article_7_of_Treaty_on_EU.doc; Amnesty International, *Comments on European Commission 2010 Report on the Application of the EU Charter of Fundamental Rights, COM (2011) 160 final*, cited above; Amnesty International, *Speech at the European Parliament LIBE Committee Public Hearing on “The Situation of Fundamental Rights in the European Union: how to strengthen fundamental rights, democracy and the rule of law in the EU”*, 5 November 2013, available at http://www.amnesty.eu/content/assets/Doc2013/AI_LIBE_Speech_051113_Written_version_FINAL.pdf