



Engelbert Theuermann

Chair of European Council Working Party on Human Rights (COHOM)

EU Member State Representatives on the Working Party on Human Rights

Brussels, 9 June 2011

Our ref: B1088

Dear Mr Theuermann,
Dear COHOM-representatives,

Review of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment

In view of the decision to conduct a review of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment ("EU Guidelines"), we wish to share a number of proposals with the aim of further improving implementation of the Guidelines. This instrument continues to be a key tool in the EU's efforts to prevent and combat torture and other ill-treatment.

We believe the current review of the EU Guidelines would have benefitted from a thorough assessment of their actual use and the impact they have had on the ground. We encourage that such an independent assessment be commissioned, in order to inform further action under the Guidelines.

The following general remarks are complemented by further explanatory comments in the attached document.

Increasing awareness of the existence and scope of the EU Guidelines

The degree of effective implementation of the EU Guidelines is highly dependent on how familiar the EU delegations and EU member states representations are with the content of the instrument and relevant international and regional human rights standards. As highlighted in the study commissioned by the European Parliament on implementation of the EU Guidelines between 2007 and 2009,¹ despite an overall increase in the level of awareness, there remains room for improvement.

Awareness of the EU Guidelines and their scope of application would benefit from a more detailed explanation and description of the concept of torture and other ill-treatment. In some cases, the EU Guidelines may be the only document that staff in EU Delegations and EU member state embassies will have read on the issue. This is why we suggest that a short additional paragraph explaining the nature and scope of the concepts should be included in the text. Based on the findings and common understanding developed by international and regional human rights mechanisms, the paragraph would explain some aspects of the elements of torture and other ill-treatment that may not be immediately evident from existing indirect references to the treaty texts. The inclusion of specific examples of acts covered by the prohibition of torture and other ill-treatment will make the EU Guidelines more user-friendly. This, as a consequence, would contribute to increased use and implementation of the EU Guidelines on the ground.

To ensure a broad and comprehensive approach to the issue, we propose that the term "torture and *other* ill-treatment" should be used throughout the document. This would better reflect the multiple and diverse forms of ill-treatment as recognised by various regional and international human rights bodies. It would also underline that all such forms of cruel, inhuman or degrading treatment or punishment are absolutely prohibited, just as torture is. In particular, the EU should pay greater attention to gender-specific expressions of torture and other ill-treatment, such as rape, forced sterilisation and female genital mutilation.

Mandatory in-depth training should be given to all staff, particularly as part of pre-deployment preparations, on human rights law and specifically on the prevention and eradication of torture and other ill-treatment. To encourage greater implementation and guide specific activities on the ground, we recommend the development of a user-friendly manual. Such a manual should include detailed examples of situations which fall under the scope of the EU Guidelines, case studies and practical examples, outlines of proposed actions in terms of prevention and response, and best practices.

Increasing coherence between internal and external EU policy

Leading by example is possibly the most convincing and effective means of influencing third countries. Internal and external human rights policies are closely interlinked, as recognised for instance in the Stockholm Programme, which sets out EU priorities in the area of justice, freedom and security for the period 2010-14.

Effective implementation of the EU Guidelines in third countries is highly dependent on how the EU and member states address issues internally regarding prevention, investigation, and ensuring that states and individuals are held responsible for all acts of torture and other ill-treatment. Hence, ensuring accountability in the EU for violations of international and regional human rights law, particularly in the context of counter-terrorism and law enforcement measures as well as migration and asylum policies, is crucial to strengthening the EU's credibility with third countries in its efforts to eradicate torture and other ill-treatment. Moreover EU member states which have not yet done so should accede without further delay to all relevant regional and international instruments, in particular the Optional Protocol to the Convention against Torture (OPCAT) and the International Convention for the Protection of All Persons from Enforced Disappearance.

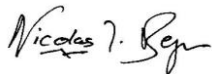
EU cooperation on implementation of the EU Guidelines

Implementation of the EU Guidelines on the ground remains a shared responsibility between EU Delegations and member state representations in third countries. The EU Guidelines must be transmitted to all relevant EU officials and member state diplomats, accompanied by specific instructions for implementation, stressing their importance as a key component of EU policy. The Implementation Measures of 2008 provide a good basis in this regard.

The development of country strategies for third countries offers an important opportunity to ensure that torture and other ill-treatment is given adequate prioritisation on the ground. This would be in line with the EU's commitment under its Guidelines to work towards the prevention and eradication of all forms of torture and other ill-treatment within the EU and world-wide as a matter of priority.

We look forward to having the opportunity to present our proposals for the review of the EU Guidelines, and remain at your disposal for any further information you may require.

Yours sincerely,



Dr. Nicolas J. Beger
Director

¹ European Parliament, Directorate-General for External Policies of the Union, *An update on the implementation of the EU guidelines on torture and other ill-treatment*, September 2009, available [here](#)