

MAPPING STUDY

Economic and Social Rights in the European Union
and in Euro-Mediterranean Relations



EuroMed Rights
EuroMed Droits
الأورو-متوسطية للحقوق

EUROMED RIGHTS

August 2020

EuroMed Rights

Vestergade 16, 2nd floor DK-1456 Copenhagen K

Denmark

Tel: +45 32 64 17 00

information@euromedrights.net

www.euromedrights.org

—

Bibliographic information

Title: Economic and Social Rights in the European Union and in Euro-Mediterranean Relations

Author: Dr Knut Traisbach, commissioned by EuroMed Rights?

Date of initial publication:

Pages: 43

ISBN: 978-87-92990-87-7

Original Language: English

Study Economic and Social Rights in the EU and EuroMed Relations

Table of Contents

| | |
|---|-----------|
| List of Abbreviations | 4 |
| Introduction: Aim and Scope of the Study | 5 |
| 1. Aim and Scope of the Study | 5 |
| 2. Methodology | 6 |
| PART I: ESR Obligations of the EU and its Member States under International Law | 7 |
| 1. International Legal Sources of States' ESR Obligations..... | 7 |
| 1.1. Universal Declaration of Human Rights | 7 |
| 1.2. International Covenant on Economic, Social and Cultural Rights and the UN Committee on Economic, Social and Cultural Rights | 8 |
| 1.3. The UN Human Rights Council and Other UN Bodies | 11 |
| 1.4. Soft Law Initiatives | 12 |
| 1.5. Entry Points for Civil Society with regard to the EU and its Member States..... | 13 |
| 2. The Council of Europe | 14 |
| 2.1. The European Social Charter and the European Committee of Social Rights | 15 |
| 2.2. Entry Points for Civil Society with regard to the EU and its member states | 17 |
| Part II: Economic and Social Rights in the EU Legal Order | 19 |
| 1. Human Rights in the EU: The Law and Policy Framework in Brief | 20 |
| 2. European Pillar of Social Rights | 25 |
| 3. European Semester | 27 |
| 4. ESR in Association, Trade and Development Agreements | 29 |
| 4.1. Neighbourhood and Trade Policies in relation to South Mediterranean Countries . | 29 |
| 4.2. The new Neighbourhood, Development and International Cooperation Instrument (NDICI)..... | 32 |
| Part III: Identification of Strategic Entry Points | 34 |
| 1. Direct Advocacy in EU Institutions | 34 |
| 2. Development of ESR-focused Indicators and Methods for Measuring Policy Impacts.... | 35 |
| 3. Contributions to Assessments of EU Legislation and Instruments | 37 |
| 4. Assessment of Country Strategies and Guidelines..... | 37 |
| 5. Strengthening ESR in the EU Agency for Fundamental Rights | 38 |
| 6. Strategic Submissions to UN and regional Monitoring Bodies, Domestic Institutions and Courts..... | 39 |
| 7. Elaboration of Soft-Law Principles and Guidelines..... | 40 |

| | |
|--|-----------|
| 8. Assessments of Budgetary Measures, Public Spending and Taxation | 40 |
| 9. Institutional Reform Initiatives | 41 |
| 10. Domestic Opportunities: Transnational Corporations | 42 |
| Bibliography | 43 |

List of Acronyms

CESCR UN Committee on Economic, Social and Cultural Rights
CFR Charter of Fundamental Rights of the European Union
CJEU Court of Justice of the European Union
CoE Council of Europe
COHOM Council of the EU Working Party on Human Rights
DG Directorate General
EC European Commission
ECHR European Convention on Human Rights / Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR European Court of Human Rights
EEAS European External Action Service
EP European Parliament
ESC European Social Charter
EU European Union
ESR Economic and Social Rights
FRA Fundamental Rights Agency
HRC UN Human Rights Council
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
SDGs Sustainable Development Goals
TEU Treaty on the European Union
TFEU Treaty on the Functioning of the European Union
UDHR Universal Declaration of Human Rights
UPR Universal Periodic Review
UN United Nations

Introduction: Aim and Scope of the Study

Economic, social and cultural rights play unfortunately still a secondary role in human rights protection regimes on the international, regional and domestic level. This is also the case in the context of the European Union and the regional human rights system of the Council of Europe. Although major strides have been made to increase the acceptance and implementation of these rights, their progressive realisation, including the justiciability of these rights, lacks commitment and effectiveness.

Thus, although the EU and its member states are embedded in one of the most elaborate multi-level institutional human rights systems in the world, the protection and promotion of economic, social and cultural rights often yield to economic and political priorities. This is especially true for EU external policies where the trade-offs in effective human rights implementation are even greater than in internal policy areas. This is not only the result of pragmatic necessities but results from political choices of member states and EU institutions that contradict the fundamental principles of the indivisibility and interconnectedness of all human rights.

1. Aim and Scope of the Study

The present study is a mapping study and focuses on the role of economic and social rights (ESR) within the EU and in EU relations with South Mediterranean countries.¹ In particular, the study maps: the principal ESR obligations pertaining to the EU and its member states under international law (part I); EU law and policies regarding ESR with a special focus on the external relations with South Mediterranean countries (part II); and strategic entry points for EuroMed Rights and its member organisations to strengthen the ESR framework in the EU (part III and passim).

The study seeks to clarify where economic and social rights are already present in the EU, where these rights could play a more central and more constructive role in EU instruments and where and how an analytical angle based on ESR could contribute to effective advocacy work. Beyond the frequent calls for greater coherence, consistency and effectiveness of

¹ EuroMed Rights has published three prior reports that are of particular relevance for ESR, the EU and EU's relation to Southern neighbouring countries, see EuroMed Rights, *Analysing the economic and financial relations between the European Union and the South Mediterranean Countries* (2016), available at: <http://www.euomedrights.org/wp-content/uploads/2017/01/Ecosoc-2-Analysis-EN.pdf> (last visited 20 June 2020); EuroMed Rights, *Assessing civil society initiatives in the field of economic and social rights* (2016), available at: <https://www.euomedrights.org/wp-content/uploads/2017/01/Ecosoc-3-Assessing-civil-society-initiatives-in-the-field-of-economic-and-social-rights-EN.pdf> (last visited 20 June 2020); EuroMed Rights, *Discussing challenges for civil society and the promotion of economic and social rights* (2016), available at: <https://www.euomedrights.org/wp-content/uploads/2017/01/Ecosoc-1-Discussing-challenges-for-civil-society-and-the-promotion-of-economic-and-social-rights-EN.pdf> (last visited 20 June 2020).

human rights protection, the overall aim of the study is to highlight EU policies and forums that require a more robust engagement with ESR.

Cultural rights are not part of the scope of present study although they form undoubtedly an integral part of the core international human rights treaties. Neither does the present study scrutinise activities of international financial institutions.

2. Methodology

The study was developed during the COVID-19 crisis of 2020 with restricted access to printed sources. It relies on a descriptive and thematic analysis that is mainly based on desk research and assesses information published by EU institutions, the UN as well as civil society actors and scholarship. The study incorporates feedback from experts, members of EuroMed Rights and interviews with staff members of EU institutions. The interviews were conducted on the basis of confidentiality and aimed at identifying obstacles as well as good practices in EU domestic and external policies and at detecting constructive entry points for advocacy activities to strengthen ESR. EuroMed Rights and the principal author wish to express their gratitude to all who contributed to this study.

PART I: ESR Obligations of the EU and its Member States under International Law

The EU is an inter-governmental organisation made up of sovereign states that delegate competencies to the organisation. As such the EU and its sovereign member states are direct subjects of international law. This means that the EU has rights, responsibilities and duties under international law. The following sections describe the most important legal sources and relevant actors in the context of ESR at international and regional level outside the EU legal order itself.

1. International Legal Sources of States' ESR Obligations

The principal normative sources of ESR at the international level are the Universal Declaration of Human Rights (UDHR)² and the International Covenant on Economic, Social and Cultural Rights (ICESCR).³ Beyond these two instruments, ESR are entailed in numerous other international human rights treaties, resolutions of the UN General Assembly and the Security Council, and documents of other UN bodies and agencies. Also, the numerous ILO conventions and the entire body of international labour standards form an essential part of global ESR.⁴ The following sections focus on the principal international normative sources and the actors that monitor (also) ESR at the international level.

It is understood that the indivisibility and interconnectedness of all human rights implies that there are numerous cross-cutting concerns. Thus, issues of equality and social justice, non-discrimination, labour rights, the situation of human rights defenders and other groups, migration and corruption relate to both ESR as well as civil and political rights.

1.1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) contains economic and social rights notably in articles 22 to 27 relating to social security (broadly understood), work and non-discrimination, an adequate standard of living with reference to health, food, clothing, housing and medical care, as well as social assistance, education and cultural life. Since its passing by the UN General Assembly in 1948, the UDHR has acquired a strong normative and programmatic influence, especially in conjunction with the other core international human rights treaties.

² Adopted and proclaimed by GA Res 217-A (III), 10 December 1948.

³ 993 UNTS 3.

⁴ The current ratification status for specific ILO Conventions and International Labour Standards can be seen at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:11001> (last visited 20 June 2020).

From a strictly formal legal point of view, the EU and its member states are not legally bound by the UDHR since it has only a declaratory character. However, most of the rights mentioned in the UDHR are also contained in the two international human rights covenants which have been ratified by 170 and 173 states respectively. Arguably, therefore, the UDHR has largely acquired the status of customary international law which means that most of its provisions are binding on all states that have not persistently objected to them.

1.2. International Covenant on Economic, Social and Cultural Rights and the UN Committee on Economic, Social and Cultural Rights

The principal international treaty on ESR is the International Covenant on Economic, Social and Cultural Rights of 1966 which entered into force in 1976. The Covenant – in its current form – can only be ratified by sovereign states, and thus the EU as an international organisation cannot ratify or accede to the ICESCR or to most of the other international human rights treaties without amendment of these treaties. However, all EU member states are parties to the ICESCR.⁵ In the Euro-Mediterranean region, Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the State of Palestine, Syria, Tunisia and Turkey have ratified the ICESCR.

The situation is different, for example, for the UN Convention on the Rights of Persons with Disabilities, one of the most recent human rights treaties (adopted in 2006), which explicitly foresees the ratification and accession by regional international organisations. It is the only human rights treaty to which the EU has acceded. The Convention entails a number of very progressive ESR, such as the right to live independently and be included in the community (Art. 19) and the continuous improvement of living conditions (Art. 28). As a party, the EU must submit periodic reports to the UN Committee on the Rights of Persons with Disabilities in addition to all EU member states that have ratified the Convention. Since the EU has not acceded to the Optional Protocol to this Convention, however, individuals or groups of individuals cannot complain directly to the Committee about violations of treaty provisions that are attributable to the EU.

When assessing the scope of obligations undertaken by states parties to any treaty, it is important to consider that numerous countries take reservations or declarations upon ratification of human rights treaties, including the ICESCR. For example, upon ratification of the ICESCR, Belgium stated that the treaty provisions on non-discrimination do not imply that foreigners must have the same rights as nationals; Denmark indicated that, for the time being, it cannot comply with the provision on remuneration on public holidays; France declared that it does not affect its domestic provisions regarding access of non-nationals to employment or to certain social benefits; Algeria stated that it does not affect its right to freely organise its educational system or that the provisions on the rights and responsibilities of spouses do not

⁵ The EU has an obligation to refrain from interfering with the treaty obligations of its member States, see Article 351 TFEU.

impair the essential foundations of the Algerian legal system; Egypt emphasised that there is no conflict between the ICESCR and the provisions of Islamic Sharia. These reservations, read in conjunction with any interpretation of these reservations and declarations by the UN Committee on Economic, Social and Cultural Rights (CESCR), are important to realistically assess the scope of obligations and corresponding advocacy strategies.

Compliance with the ICESCR is monitored by the CESCR since 1986. The Committee consists of 18 independent experts who are elected for a renewable term of four years. All states parties to the ICESCR need to submit periodic reports to the Committee on progress achieved in implementing the rights stipulated in the treaty.⁶ States must submit their periodic reports every five years. As part of this review cycle, the Committee sends so-called 'List of Issues' to member states before the next country report is due.⁷ In these lists, the Committee indicates specific requests in relation to the obligations under the ICESCR. Increasingly, the Committee also requests disaggregated data on the situation of economic, social and cultural rights in a country, for example, in relation to particularly vulnerable groups. States parties are expected to reply to the 'lists of issues' in their report. The Committee concludes a review with 'concluding observations' which summarise its findings and recommendations.⁸ Since 1999, the Committee also engages in 'procedures for follow-up actions' through which it can ask a state party to provide more information, statistical data or respond to any pressing issue prior to the date of the next report.⁹ The Committee can highlight up to three recommendations of particular relevance that need to be acted upon within the next 24 months and asks states to report on the initiatives taken.

Central to the understanding of the ICESCR are also the 'General Comments' that the Committee issues.¹⁰ These are authoritative interpretations by the Committee of particular rights and general aspects related to member state obligations. The Committee also issues occasional 'Statements' expressing its views on particular issues or current challenges in light of economic, social and cultural rights.¹¹ Issues that the Committee has addressed include, for example, the right to form trade unions, sustainable development, climate change,

⁶ See http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=29 (last visited 20 June 2020).

⁷ See http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=22 (last visited 20 June 2020).

⁸ See http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5 (last visited 20 June 2020).

⁹ See http://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/FollowUp.aspx?Treaty=CESCR&Lang=en (last visited 20 June 2020).

¹⁰ See http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11 (last visited 20 June 2020).

¹¹ See http://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=68 (last visited 20 June 2020).

refugees and migrants, public debt and austerity measures, human rights defenders or, most recently, the coronavirus pandemic. Other core UN human rights treaties are monitored and interpreted in a similar manner by treaty monitoring bodies.

INFO BOX: The nature of States parties' obligations

General Comment No. 3 on 'The nature of States parties' obligations (ICESCR Art. 2, para. 1)' is of particular importance to understand the nature of obligations.¹² In this General Comment, the Committee clarifies the core obligation of states to 'progressively realise' the rights under the Covenant and to take 'necessary steps to the maximum of a state's available resources'. It establishes that 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party'.

Other General Comments deal, for example, with the right to adequate housing, education, food, health care, water, work, social security, the relationship between economic sanctions and respect for economic, social and cultural rights, and obligations under the Covenant in the context of business activities.

The Optional Protocol to the ICESCR, which entered into force in 2013, established an individual complaint and an inquiry mechanism similar to the other treaty bodies under the nine core international human rights treaties (with the exception of the Committee on Migrant Workers for whom the individual complaint mechanism has not yet entered into force). Out of the 170 member states of the ICESCR, only 24 have ratified the Optional Protocol to the ICESCR.¹³ Nevertheless, the Committee has already reviewed more than 40 individual complaints on which it has issued its views and recommendations to the state concerned. States are obliged to give due consideration to the views and submit a written response to the Committee including any actions taken in light of the views and recommendations. The Committee can also initiate an inquiry into serious or systematic violations of the ICESCR in a state if the state has ratified the Optional Protocol and has not opted out of the inquiry mechanism.

In this monitoring process, the role of civil society is crucial. Just like for other human rights monitoring bodies, the provision of specific, reliable and objective information by civil society organisations is essential for the work of the CESCR in order to be able to objectively assess the state reports and responses. Also, accurate information on local laws and their judicial interpretations are of crucial importance in this context. The Committee explicitly encourages

¹²

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fGC%2f4758&Lang=en (last visited 20 June 2020).

¹³ Within the EU, only Belgium, Finland, France, Italy, Luxembourg, Portugal, Slovakia and Spain have ratified the Optional Protocol. Ireland, the Netherlands and Slovenia have signed it. None of the Southern or Eastern Mediterranean countries have signed or ratified the protocol.

submissions prepared by coalitions, rather than individual organisations.¹⁴ Further information on the monitoring process and how civil society organisations can engage with it can be found on the website of the UN Committee on Economic, Social and Cultural Rights: <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/NGOs.aspx>.

1.3. The UN Human Rights Council and Other UN Bodies

The UN Human Rights Council (HRC) is the UN's principal state-based body for the protection and promotion of human rights. Its main functions are the Universal Periodic Review (UPR) and the so-called 'special procedures', including special rapporteurs and working groups.

During consecutive cycles of currently five years, the human rights performance of all 193 UN member states is reviewed by the HRC, whose 47 members are elected yearly by the General Assembly for overlapping three-year terms according to a regional distribution of seats. The review brings together information on progress in implementing all international human rights treaties that a state has ratified. In particular, the review is based on a country report; a summary of documents from UN Committees, special procedure reports and other relevant UN documentation; and a summary of documentation received from civil society actors, including NGOs and national human rights institutions.

Although the actual time allocated for each review is relatively short (approx. three and a half hours per review), the UPR brings together a large pool of information and obliges states to take stock of their human rights record and respond to questions and recommendations from potentially all UN member states. This peer review leads to a continuous and periodic review of human rights compliance. The contributions and continuous scrutiny of civil society actors is essential for the effectiveness and transparency of this procedure.

The HRC has further mechanisms at its disposal. Of particular relevance are the so-called 'special procedures' which allow the HRC to give special mandates to independent experts for particular thematic areas or particular countries. The work of these Special Rapporteurs, Independent Experts and Working Groups entails country visits, reports on these visits, thematic statements and annual reports to the HRC that are normally dedicated to specific challenges that fall within the scope of the mandate. The experts rely heavily on information provided by civil society actors and frequently make public calls for consultation. Their statements are a unique opportunity for civil society actors to communicate their concerns and insights directly to the HRC and other UN bodies.

Further important human rights bodies and forums include the Office of the UN High Commissioner for Human Rights (OHCHR) and of course the General Assembly and the Security Council. In all these forums, the EU, as a non-UN member, usually takes a

¹⁴ See <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/NGOs.aspx> (last visited 20 June 2020).

coordinating role of all its member states.¹⁵ In the HRC, for example, the EU consults and informs all of its members about issues that will be raised during the sessions and makes recommendations for homogenous reactions to reports from other countries.

INFO BOX: Inequality

A recent example for how institutional initiatives related to ESR involve different forums in the UN is the topic of inequality and poverty. Inequality is a central issue in the context of ESR that will dominate the institutional and advocacy work in Europe in the coming decades. Several economists, philosophers, legal and public health scholars, political scientists, UN experts and activists have addressed this increasing concern about inequality within societies and between nations.

The UN General Assembly has promoted this development first with the Millennium and now with the Sustainable Development Goals (SDGs) as a set of concrete aims that shall be achieved by 2030. Each goal of the SDGs is divided into more concrete targets and each target is connected to specific indicators that help to assess progress in realising the respective goal. Setting these concrete aims and making compliance better measurable through concrete indicators is one of the key advancements of the SDGs. The SDGs have been accompanied by various resolutions of the General Assembly and by numerous initiatives in civil society.

Equality and non-discrimination (including on socio-economic grounds) in the enjoyment of all human rights are enshrined in Arts. 2 and 3 of both the ICCPR and ICESCR. In addition, inequality has been addressed in several country reports in the HRC. Also various special rapporteurs, independent experts and working groups have referred to problems of inequality within their mandate. For example, the Special Rapporteur on the right to development, the Independent Expert on the effects of foreign debt and the Special Rapporteur on extreme poverty, besides others, have issued reports related to inequality. Also, the CESCR has dealt with issues of inequality in several of its general comments and statements.

1.4. Soft Law Initiatives

In addition to the SDGs, several other 'soft law' initiatives exist that relate to specific aspects of ESR and their implementation. In fact, ESR in particular have benefitted from the declaration of non-binding guiding principles and standards that gradually have gained acceptance. For example, the Limburg Principles defined the nature and scope of states' obligations to the ICESCR and have strongly influenced corresponding work in scholarship and

¹⁵ See the UN Office of the High Commissioner for Human Rights Regional Office Europe, The European Union and International Human Rights Law, available at: https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf (last visited 20 June 2020); Grazyna Baranowska et al, EU human rights engagement in UN bodies, FRAME Report Work Package No. 5 – Deliverable No. 5.1, available at: <http://www.fp7-frame.eu/wp-content/uploads/2016/08/13-Deliverable-5.1.pdf> (last visited 20 June 2020).

of the CESCR. Another pertinent example are the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.

Although these initiatives are formally not binding, they often exert a strong normative pull. In particular, they gain authoritative force when such principles become 'institutionalised' through, for example, the elaboration of a General Comment by a treaty monitoring body that reflects the principles or are endorsed by other UN bodies such as the Human Rights Council or the General Assembly. These initiatives can also lead to specific UN mandates to elaborate guiding principles such as the UN Guiding Principles on Business and Human Rights or the UN Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies which clarify the scope and application of human rights in specific contexts. These principles and guidelines thus provide very valuable interpretative orientation for implementation, monitoring and effective advocacy on ESR.

1.5. Entry Points for Civil Society with regard to the EU and its Member States

The UN human rights system provides one of the most diversified forums for ESR advocacy.¹⁶ Obligations stemming from treaties are binding on states parties and often have indirect effects on the EU through the EU member states. The EU is directly bound by customary international law and by treaties, such as the UN Convention on the Rights of Persons with Disabilities to which it has acceded. Documents issued and measures taken by the treaty monitoring bodies or the Human Rights Council provide an important reference to understand the meaning of the provisions, the monitoring requirements and pertinent interpretations with regard to ESR. They also provide a comprehensive and ongoing track record regarding specific human rights issues and countries.

Within the UN system, ESR-focused advocacy can include:

- Submission of evidence and analysis to state party reviews under the UPR (when consultations of civil society take place), to reviews by the CESCR and to special mandate holders. This can include information on both specific issues in countries or systemic concerns.
- Contributions and support for individual complaints under the Optional Protocol to the ICESCR by making a complaint on behalf of an individual or a group of individuals or by providing pertinent information, data and evidence to ongoing processes.

¹⁶ See UN Office of the High Commissioner for Human Rights, Working with the United Nations Human Rights Programme: A Handbook for Civil Society (2008), available in English: https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf (last visited 20 June 2020); French: https://www.ohchr.org/Documents/AboutUs/CivilSociety/OHCHR_Handbook_Fr.pdf (last visited 20 June 2020); Arabic: https://www.ohchr.org/Documents/Publications/ngohandbook_ar.pdf (last visited 20 June 2020).

- Local lobbying for ratification of the Optional Protocol to the ICESCR in all EU member states and Southern/Eastern Mediterranean countries.
- Monitoring the implementation and progressive realisation of ESR and of the recommendations of UN Committees and the HRC. This can include, for example, the collection of data and evidence on the local effects of EU policies, or the review of existing legislation. Advocacy can also track whether the implementation of recommendations of UN bodies or experts are actually hindered by an EU laws or policies.
- Providing targeted information to special mandate holders that encourages them to engage more with the EU, for example, by linking specific issues and situations in countries to EU norms and policies.
- Contributing to the elaboration and implementation of soft law related to ESR (see also below Part III).

2. The Council of Europe

The European Union and the Council of Europe (CoE) are distinct international organisations.¹⁷ The EU is not a formal member of the Council of Europe and has not acceded to the European Convention on Human Rights (ECHR) or the European Social Charter (ESC).¹⁸ Economic and social rights are enshrined principally in the ESC and its Additional Protocol but not in the ECHR and its Protocols, although a certain degree of overlap exists between these instruments.¹⁹ Accordingly, the European Court of Human Rights (ECtHR) has decided cases regarding the freedom of assembly of trade unions and workers, non-discrimination, as well as the protection of health and the environment.

Accession of the EU to the ECHR became a binding legal obligation for the EU with the entry into force of the Treaty of Lisbon in 2009.²⁰ However, the accession is conditioned on not affecting the competencies of the EU or the powers of its institutions. In 2014, the Court of

¹⁷ Confusion sometimes persists because of the similarity of names of two EU institutions: the European Council where the Heads of States and Governments of the EU member States come together, and the Council of the European Union (usually referred to simply as 'the Council', formerly the Council of Ministers) where ministers of the EU member states meet. Both of these EU institutions are entirely distinct from the Council of Europe.

¹⁸ In the area of human rights, the EU has acceded only to the Council of Europe Convention on preventing and combating violence against women and domestic violence. The EU has also ratified the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol.

¹⁹ See <https://www.coe.int/en/web/european-social-charter/-european-social-charter-and-european-convention-on-human-rights> (last visited 20 June 2020).

²⁰ Art 6(2) TEU states: "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms". The EU and the Council of Europe signed a Memorandum of Understanding (MoU) in 2007 in which they agreed on an 'enhanced partnership and complementarity' while acknowledging that the CoE 'will remain the benchmark for human rights, the rule of law and democracy in Europe'. The MoU contains a general affirmation to cooperate, exchange information and mutually consult each other and stipulates regular meetings.

Justice of the European Union (CJEU) delivered an advisory opinion in which the Court declared that an accession would stand in contrast to the autonomy of EU law and the exclusive competence of the CJEU for the interpretation of EU law.²¹ For the time being, the relation between the two organisations continues therefore within a framework of co-operation and dialogue.²²

All EU member states are members of the CoE and have ratified the ECHR. All Western EU member states ratified the original European Social Charter of 1961, and all current EU member states have signed the revised version of the European Social Charter of 1996, albeit not all of them have also ratified the latter version of the Charter and the Additional Protocol.²³ For the purposes of the present study, the following sections focus on the European Social Charter.

2.1. The European Social Charter and the European Committee of Social Rights

As indicated already, there are two versions of the European Social Charter: the original Charter of 1961²⁴ with the Additional Protocol of 1988²⁵ and the Revised European Social Charter of 1996.²⁶ The Revised Charter will replace the original Charter when all states parties of the original charter have also ratified the revised version. The 1961 version enshrines inter alia labour and worker's rights, including rights of migrant workers, the protection of health, and a right to social security and social welfare. The Additional Protocol added the protection against gender-based discrimination and further worker's rights. The revised version of the Charter improved the protection of several previous rights, but introduced also new guarantees, including protections against poverty and social exclusion, a right to adequate housing, protection during unemployment and guarantees of equal opportunity.

The ratification system of the ESC is uncommon because it allows that member states can choose to accept only parts of the rights and guarantees contained in the Charter. States seek to fulfil progressively the aims contained in the first part of the Charter and choose to be

²¹ See CJEU, Opinion, 18.12.2014 – C-2/13, ECLI:EU:C:2014:2454.

²² See the Memorandum of Understanding between the Council of Europe and the European Union, available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680597b32> (last visited 20 June 2020).

²³ See <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/signatures> and <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/128/signatures> (last visited 20 June 2020). Under international law, the signature of a State imposes an obligation on the State to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty, but a treaty only becomes formally binding through ratification, if the treaty does not stipulate otherwise, see Art. 18 Vienna Convention on the Law of Treaties 1969.

²⁴ ETS No. 35.

²⁵ ETS No. 128.

²⁶ ETS No.163.

bound by at least five of the seven core articles in the second part of the Charter or six out of nine articles under the revised version of the Charter.²⁷

Compliance with the ESCs is monitored by the European Committee of Social Rights which reviews periodic state reports and handles collective complaints against states that have ratified the Additional Protocol.²⁸ The collective complaints procedure enables non-governmental organisations and other civil society actors to directly apply to the European Committee of Social Rights for rulings on alleged non-implementation of the Charter in the countries concerned. States parties must respect the decisions and conclusions of the Committee in so far as they relate to binding legal provisions of the Charter for the state.

For the EU,²⁹ the CJEU has recognised a special significance of the ECHR and the jurisprudence of the ECtHR in the application and interpretation of parallel provisions of the EU Charter of Fundamental Rights. However, a corresponding recognition of the authoritative value of decisions and recommendations of the Committee of Social Rights for the interpretation of social rights is absent.³⁰ This is not to say that the CJEU does not refer to the ESCs when it interprets provisions of the EU Charter of Fundamental Rights that mirror those in the ESCs.³¹ Yet, reference is scarce and lacks behind the degree of recognition of the interpretation of convention rights by the ECtHR. On the other hand, the European Committee of Social Rights takes account of EU law when it interprets the Charter for EU member states, also facilitated by the Revised Charter which contains amendments that reflect developments in EU law.³²

Further information on the monitoring process and how civil society organisations can engage with it can be found on the website of the European Committee of Social Rights: <https://www.coe.int/en/web/european-social-charter/ingos-engagement-with-ecsr>.

²⁷ In addition, member states declare to be bound by a minimum of additional articles or numbered paragraphs of part II of the respective Charter version.

²⁸ A digest of the case law of the Committee that details also its interpretation of the different provisions of the Charter is available at: <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80> (last visited 20 June 2020).

²⁹ The protection of fundamental rights in the EU is dealt with in greater detail in Part II of this study.

³⁰ See the studies by Olivier de Schutter, *The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights* (European Parliament 2016) 19–21, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU\(2016\)536488_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/536488/IPOL_STU(2016)536488_EN.pdf) (last visited 20 June 2020); id., *The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order* (Council of Europe 2018) 3–4 and 14–17, available at: <https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132> (last visited 20 June 2020).

³¹ The CJEU refers to the European Social Charter when it applies the Charter of Fundamental Rights, in particular to highlight the correspondence of provisions, but the court refrains from referring to the interpretations by the Committee of Social Rights.

³² See European Committee of Social Rights, *The relationship between European Union law and the European Social Charter*, Working Document (15 July 2014), available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806544ec> (last visited 20 June 2020).

INFO BOX: Austerity Measures

The austerity measures implemented by the EU during and in the aftermath of the financial crisis 2007–08 have been criticised by various monitoring bodies and experts in the CoE and the UN as infringing ESR. Whereas the CJEU viewed these measures not as an implementation of EU law and thus as lying outside the scope of the EU Charter of Fundamental Rights, the European Committee of Social Rights found in some cases that states infringed Charter provisions, such as the right to social security, by implementing austerity measures imposed by European and international creditor institutions.³³ Also, the ECtHR received several applications in which alleged violations of ECHR rights were related to austerity measures, although the court declared most of these applications as inadmissible.³⁴

In addition, *inter alia*, the UN Human Rights Council, the Committees under the ICESCR, the Convention on the Rights of Child and the Convention on the Elimination of all Forms of Discrimination Against Women, as well as the UN Independent Expert on the effects of foreign debt and the UN Special Rapporteur on extreme poverty have criticised the austerity measures in light of ESR obligations.³⁵

2.2. Entry Points for Civil Society with regard to the EU and its member states

The protection regime of the European Social Charters provides several opportunities for civil society organisations to strengthen the role of ESR in CoE member states. Possible entry points for advocacy include:

- Strengthening the relevance of the ESC and of the Committee by explicitly relying on Charter provisions and their interpretation by the Committee in advocacy work in the EU, the UN and local forums.
- Preparation of shadow reports in the context of the reporting procedure of the European Committee of Social Rights which may include information, for example, on infringements

³³ See GSEE v. Greece, Complaint No. 111/2014, European Committee of Social Rights, 5 July 2017, para. 84–93; see also the study of the European Parliament, The impact of the crisis on fundamental rights across Member States of the EU: Comparative analysis (2015), available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU\(2015\)510021_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/510021/IPOL_STU(2015)510021_EN.pdf) (last visited 20 June 2020).

³⁴ See, e.g., ADEDY and Koufaki v. Greece, applications no. 57657/12 and 57665/12, 7 May 2013.

³⁵ See, e.g., CESCR, Concluding observations on the fifth periodic report of Italy (E/C.12/ITA/CO/5), adopted on 9 October 2015; CESCR, 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights', Statement by the Committee (E/C.12/2016/1); several annual reports of the UN Independent expert on the effects of foreign debt, available at: <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx> (last visited 20 June 2020); see also UN Office of the High Commissioner for Human Rights, 'Report on austerity measures and economic and social rights', available at: https://www.ohchr.org/Documents/Issues/Development/RightsCrisis/E-2013-82_en.pdf (last visited 20 June 2020); Council of Europe Parliamentary Assembly, "Austerity measures – a danger for democracy and social rights", Res. 1884(2012) 26 June 2012.

of Charter provisions with regard to migrant workers from South Mediterranean countries.

- Participation in collective complaints processes before the Committee.
- Analysis of how EU law and policies can oblige EU member states to infringe their obligations under the European Social Charter, as happened for example in the context of the implementation of austerity measures. This perspective could be widened to include also the external relations of EU member states.
- Lobbying for the accession of all EU member states (and eventually the EU) to the revised ESC and the Additional Protocol, including the progressive acceptance of all provisions of the Charter.

Part II: Economic and Social Rights in the EU Legal Order

The EU is embedded in a framework of fundamental rights that is distinct – but interrelated – to the international protection regime and the regional system of the Council of Europe. The Treaty on European Union (TEU) determines that the EU is bound by fundamental values in its internal and external relations, including the rule of law and respect for human rights. Since 2000, the EU Charter of Fundamental Rights codifies the EU's fundamental rights explicitly. Even before, the CJEU had recognised fundamental rights as general principles of EU law that are protected by the ECHR and correspond to the constitutional traditions of the EU member states. The institutional complexity of the EU implies collaborative and overlapping initiatives of several EU institutions and other bodies in the area of human rights.³⁶

However, despite this commitment, the actual promotion and implementation of ESR remains not on a par with civil and political rights. Although much progress has been made, for example, through the 'mainstreaming' of human rights throughout the EU that includes initiatives like the European Pillar of Social Rights and the promotion of a 'Social Economy', ESR often remain secondary to economic and political interests.³⁷ In addition, there exists a notable gap in the effective consideration of human rights in internal EU policies as compared to external matters.

ESR in particular relate to a large variety of policy areas of the EU. Thus, the EU is often active in areas that have a direct impact on ESR but ESR are not referred to explicitly. Initiatives on workplace security, health care, social security, non-discrimination or migration are pertinent examples for policy areas in which the EU is active but without basing its policies and actions explicitly on ESR.

This also means that civil society can and should link ESR advocacy to existing EU policy areas and initiatives independent of whether these are framed in ESR terms. For example, various priorities of the *von der Leyen* Commission such as the European Green Deal, the implementation of the Social Pillar, the promotion of equality and the fight against poverty provide ample entry points for ESR advocacy.

Section 1 below briefly outlines the relevant EU legal and policy framework with regard to human rights and ESR in particular. The subsequent sections take a closer look at three areas, namely (2.) the European Pillar of Social Rights, (3.) economic governance, including the European Semester, and (4.) relations with South Mediterranean countries, including the

³⁶ See, EuroMed Rights, Training Guide on EU Advocacy: Navigating the EU institutional maze and influencing its relations with the Southern Mediterranean countries (2016), available at: <https://euromedrights.org/wp-content/uploads/2018/06/REMDH-EU-TrainingGuide-EN-FINAL-WEB.pdf> (last visited 20 June 2020).

³⁷ The CJEU contributed to this impression through a series of judgments that gave priority to market freedoms over fundamental social rights, see, Andreas Bückler and Wiebke Warneck (eds), Viking – Laval – Ruffert: Consequences and policy perspectives (ETUI aisbl 2010).

Neighbourhood Policy and corresponding agreements. All sections also highlight entry points for civil society advocacy.

1. Human Rights in the EU: The Law and Policy Framework in Brief

The Treaty on European Union (TEU) confirms in Art. 2 as the founding values of the EU 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'. Art. 21 (1) TEU states that the Union's action on the international scene shall be guided by its foundational principles which include 'the universality and indivisibility of human rights and fundamental freedoms'. This reference to the indivisibility confirms that also economic, social and cultural rights lie at the basis of the EU legal order.³⁸

Since the adoption of the Treaty of Lisbon in 2009, Art. 6 TEU recognises the Charter of Fundamental Rights of the European Union as binding and affirms that the Charter has the same legal value as the TEU and the Treaty on the Functioning of the European Union (TFEU).³⁹ The Charter sets out those rights that both the EU and the member states must respect when they implement EU law (Art. 51 CFR). It contains several economic and social, and even cultural and environmental rights, notably Article 14 (right to education), Art. 15 (right to work), Art. 22 (respect for cultural, religious and linguistic diversity), Art. 31 (fair and just working conditions), Art. 34 (social security and assistance, including housing), Art. 35 (health care), Art. 37 (environmental protection). Art 20–26 address issues of discrimination and equality.

These guarantees and corresponding obligations complement other human rights obligations of the EU and its member states stemming from international and regional treaties and domestic legal orders (Art. 53 CFR). The EU and its member states are bound by these obligations in all their actions, whether within the EU or externally. This EU-wide protection of fundamental rights is a multi-level system where international, regional and domestic protection mechanisms and legal regimes interact. The relation between these overlapping spheres is not always unequivocal and results in calls for more co-ordination and coherence.⁴⁰

The EU implements the fundamental and human rights obligations through numerous policy instruments that include a strategic framework, action plans, guidelines and corresponding 'tools'. The principal political roadmap was established by the Council of the European Union

³⁸ Further references to human rights are included in Art. 21 (2) (b) and (3) and in Art. 23 TEU regarding the Common Foreign and Security Policy. Both Art. 3 (5) and Art. 21 (1) TEU also refer to the principles enshrined in the UN Charter which include human rights. These basic principles and objectives of the EU's external actions are confirmed by Art. 205 TFEU.

³⁹ Charter of Fundamental Rights of the European Union, OJ C 326/391, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (last visited 20 June 2020).

⁴⁰ Monika Mayrhofer (ed.), 'The global human rights protection governance system' (2015) FRAME Report Deliverable 4.2, available at: <http://www.fp7-frame.eu/wp-content/uploads/2017/03/Deliverable-4.2.pdf> (last visited 20 June 2020).

in 2012 with the adoption of the *Strategic Framework on Human Rights and Democracy* which sets out a plan to mainstream human rights throughout all EU policies, including all EU external policies.⁴¹ The EU pledged to intensify its efforts to promote ESR but otherwise referred to these rights only in the most general terms.

The Strategic Framework is accompanied by periodic action plans which have mentioned ESR also in the context of impact assessments of legislative and non-legislative proposals of the Commission, including trade agreements. The action plan for 2015–2019 confirmed in general terms that the EU 'will intensify its efforts to promote economic, social and cultural rights' and contained a detailed list of overall objectives that were broken further down into smaller objectives which in turn were linked to sets of planned actions with indications of timelines and responsible actors. ESR were mentioned, for example, in the context of gender equality and children's rights. Objective no. 17 detailed the fostering of a comprehensive agenda to promote ESCRs and indicated as corresponding actions:

- a. Increase the EU's focus on ESCR in its external policy, including in its programming of external assistance, while also underlining that human rights are indivisible and interlinked; emphasize the clear recognition of the human rights dimension in areas such as social policy, health, education, access to food and water, or standard of living; promote and support the development and increased coverage of national social protection floors and gradual implementation of higher standards of social guarantees.
- b. Strengthen capacity building and develop political and operational guidance on economic, social and cultural rights in order to ensure that all relevant EU and Member State staff are informed of the international treaties related to economic, social and cultural rights, in particular those related to fundamental principles and rights at work (ILO fundamental conventions); consider accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- c. Step up efforts to protect Human Rights Defenders including social partners, who are working to uphold economic, social and cultural rights, with a particular focus on human rights defenders working on labour rights, land-related human rights issues, and indigenous peoples, in the context of inter alia 'land grabbing' and climate change.

In addition to objective no. 17, the action plan foresaw a stronger partnership with civil society organisations and a more comprehensive assessment of trade and investment agreements. ESR were addressed predominantly in the context of mainstreaming human rights in internal and external actions on an 'ongoing' basis and mainly in the context of dialogues, consultations, reports and a toolbox for working towards a rights-based approach to development cooperation.

⁴¹ EU Strategic Framework and Action Plan on Human Rights and Democracy (2012), available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf (last visited 20 June 2020).

The proposed third action plan for the period of 2020–2024 is much shorter and less detailed than the previous one.⁴² It does not contain anymore a list of objectives and corresponding actions. ESR are referenced in section F which contains a general list of objectives, related to the environment, labour rights, health care and social security, for example. This list remains broad and is not further concretised into 'measurable' steps. Section III of the action plan details dialogues, co-operation and advocacy as principal means to promote a global system for human rights and democracy.

The action plans have been complemented by a variety of 'tools' that include guidelines on specific topics.⁴³ In EU external relations, guidelines often relate to the identification of specific thematic issues in the context of a country and to the implementation of specific measures, such as statements, démarches, dialogues, field visits, trainings or financial assistance.

Against this background, a crucial entry-point for advocacy would be to complement the EU action plan and implementing measures with critical analysis based on local experiences and evaluation of implementation efforts by the EU. This should also include examples of efforts that were successful and can function as models for future initiatives by the EU. The indicated objectives in the action plan should be linked to concrete and measurable aims that are assigned to specific institutions so that progress towards the realisation becomes measurable. In this context, the development of publicly available indicators for the assessment of the degree of implementation is essential. In addition, advocacy could also propose more specific guidelines dedicated specifically to ESR, including guidelines on specific rights.

INFO BOX Corporate Social Responsibility

The EU Strategy for Corporate Social Responsibility (2011–2014) is an apt example of how international and various regional initiatives can interact. The strategy was built on the UN Guiding Principles, the UN 2030 agenda for sustainable development, the International Labour Organization's work on social policy and the OECD's work on responsible business conduct. The 2015–2019 Action Plan on Human Rights and Democracy endorsed the UN Guiding Principles on Business and Human Rights. Also, the proposed 2020–2024 Action Plan indicates as a priority the implementation of the Guiding Principles and the development of corresponding standards.

The strategy led to the preparation and dissemination of good practices and the development of national action plans in many countries. An EU Directive from 2014 obliges corporations

⁴² See <https://ec.europa.eu/transparency/regdoc/rep/10101/2020/EN/JOIN-2020-5-F1-EN-ANNEX-1-PART-1.PDF> (last visited 20 June 2020).

⁴³ Of particular relevance are the following guidelines on: methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies; dialogues on human rights; protecting human rights defenders; better regulations (on the analysis of human rights impacts in impact assessments for trade-related policy initiatives); and non-discrimination in external action.

with more than 500 employees to inform the EU about environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.⁴⁴

A Working Document of the European Commission from 2019 confirms that in line with the structure of obligations that the UN Guiding Principles introduced, the creation of effective *remedies* for corporate abuses at both EU and national level is a priority.⁴⁵ This is an important entry point for civil society. Advocacy work should include the promotion of remedies for human rights violations of EU-registered corporations caused by themselves or their subsidiaries even *outside* the EU.

Internally, the Charter of Fundamental Rights is supposed to play a central role in assessments of legislative proposals and of existing legislation.⁴⁶ Externally, Art. 3 (5) TEU affirms the fundamental role of human rights and international law for the external relations of the EU. The CJEU has confirmed that EU institutions are under an obligation to respect fundamental rights stemming from the Charter and international treaties in the EU's external actions.⁴⁷ What this obligation actually entails in concrete terms, is, however, often

⁴⁴ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

⁴⁵ See Commission Staff Working Document on Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress, SWD(2019) 143, available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2019/EN/SWD-2019-143-F1-EN-MAIN-PART-1.PDF> (last visited 20 June 2020); see also the 'Shadow EU Action Plan on the Implementation of the UN Guiding Principles on Business and Human Rights within the EU' by the Responsible Business Conduct Working Group of the European Parliament, available at: <https://responsiblebusinessconduct.eu/wp/wp-content/uploads/2019/03/SHADOW-EU-Action-Plan-on-Business-and-Human-Rights.pdf> (last visited 20 June 2020).

⁴⁶ Public Consultations by the Commission usually follow this pattern:

New Proposals

4 weeks period for feedback on roadmaps and inception impact assessments

12 weeks period for participation in public consultations on the scope, priorities and added value of proposals through a tailored questionnaire

8 weeks on legislative proposals of the Commission

Execution of Laws

4 weeks on draft delegated and implementing acts

Existing Policies and Laws

4 weeks period for feedback on evaluations and 'fitness checks'

12 weeks period for participation in public consultations during evaluations through a tailored questionnaire

REFIT Platform

The REFIT Platform allows comments and suggestions on how existing laws and initiatives can be simplified and improved to be more effective and reduce regulatory burden.

EU Login

Most of these possibilities require a simple registration in order to create an EU Login account through which it is also possible to receive notifications when new initiatives are added in areas of interest.

⁴⁷ Judgment of 14 June 2016, *Parliament v Council*, C-263/14, EU:C:2016:435, para. 47; the court has also confirmed the obligation of EU institutions to respect customary international law, including in its external relations, see Judgment of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, para. 101; see also Communication of the Commission, *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union* (2010), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0573&from=EN> (last visited 20 June 2020).

a matter of interpretation.⁴⁸ While human rights obligations apply also to extraterritorial actions of the EU, difficulties of attribution of responsibility can still arise. In another case, the CJEU avoided to pronounce itself on whether EU institutions need to respect fundamental rights in the negotiation and conclusion of international agreements with non-EU states, although the General Court and the Advocate General had argued in favour of such obligations.⁴⁹

The aforementioned impact assessments for legislative proposals and existing legislation are also implemented for trade and investment agreements. These assessments before, during and after an initiative correspond to the Commission guidelines on 'Better Regulation' which stress the relevance of stakeholder consultation, including public consultations of civil society actors.⁵⁰ The Commission conducts these consultations, however, frequently on an invitation-only basis. In order to be invited, NGOs should seek direct contact with local EU Delegations and NGO networks that have trusted relations to the EU Commission in Brussels.

Impact assessments are another entry-point for civil society to prepare and contribute ESR-based assessments to these review and consultation processes.⁵¹ However, these consultations can be formulaic, and it is not clear to what degree they actually influence or shape the respective initiatives. The European Commission is not obliged to publicly react to these assessments. Therefore, the impact assessments by civil society should be accompanied by demands to react to the assessments.

⁴⁸ See Olivier de Schutter, *The Implementation of the Charter of Fundamental Rights in the EU Institutional Framework*, Study EP DG Internal Policies (2016), 58–66, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU\(2016\)571397_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU(2016)571397_EN.pdf) (last visited 20 June 2020); id., 'The CFREU and its Specific Role to Protect Fundamental and Social Rights' in Filip Dorssemont, Klaus Lörcher, Stefan Clauwaert and Mélanie Schmitt (eds), *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Hart Publishing 2019) 9–38.

⁴⁹ Judgment of 21 December 2016, *Council v Front Polisario*, C-104/16 P, EU:C:2016:973.

⁵⁰ See, on the 'Better Regulation Guidelines and Toolbox': https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en (last visited 20 June 2020); see also European Commission DG Trade, *Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives*, available at: https://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf (last visited 20 June 2020).

⁵¹ Examples of these processes include:

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives?&topic=NEIGHBOUR>;
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives?&topic=FOREIGN>;
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives?&topic=INTDEV>;
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives?&topic=JUST>;
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives?&topic=ASYL>;
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12122-EU-Action-Plan-on-Human-Rights-and-Democracy-2020-2024>;
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12240-EU-Action-Plan-of-Gender-equality-and-women-s-empowerment-in-external-relations-for-2021-2025->;
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/7566555-2020-EU-Justice-Scoreboard> (last visited 20 June 2020).

2. European Pillar of Social Rights

The European Pillar of Social Rights was formally proclaimed by the European Parliament, the Council and the Commission in 2017 after the *Juncker* Commission had promoted it as a policy priority.⁵² The initiative focuses on three main areas: equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion. Each of these areas is connected to a set of principles that read similar to an international human rights declaration. In fact, the pillar, albeit being a soft-law initiative, is regarded as a 'first set of social rights proclaimed by EU institutions since the Charter of Fundamental Rights in the year 2000'.⁵³ However, it does not explicitly rely on international ESR.

The *Juncker* Commission established a monitoring mechanism for the Pillar, called the Social Scoreboard, that has a structure similar to the SDGs. The Scoreboard identifies 12 issue areas and connects each area to a set of indicators.⁵⁴ The data provided by the Social Scoreboard also informs the Country Reports during the European Semester (see below II.3.). These initiatives have been complemented by the European Parliament and the European Economic and Social Committee⁵⁵ with analysis on socially oriented private-enterprises (the so-called Social Economy) and on 'Social Sustainability'.⁵⁶

The *von der Leyen* Commission has committed itself to put forward an action plan to fully implement the European Pillar of Social Rights.⁵⁷ These implementation measures include initiatives on minimum wage, a European unemployment benefit insurance scheme, a support scheme for children and youth (European Child Guarantee and Youth Guarantee) and investments through the European Social Fund+.

⁵² Other legislative proposals by the Juncker Commission include initiatives regarding a European Labour Authority, an initiative on work-life balance for parents and carers, a new Directive on transparent and predictable working conditions, and the reform of the rules on social security coordination, see <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=9240&furtherNews=yes> (last visited 20 June 2020).

⁵³ See <https://ec.europa.eu/social/main.jsp?catId=1226> (last visited 20 June 2020).

⁵⁴ See <https://ec.europa.eu/eurostat/web/european-pillar-of-social-rights/indicators/social-scoreboard-indicators> (last visited 20 June 2020); a parallel initiative exists in the context of the EU Justice Scoreboard with the aim to 'achieve more effective justice' in order 'to pave the way for a more investment, business and citizen-friendly environment', see https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en (last visited 20 June 2020).

⁵⁵ See the study of the European Parliament authored by Quentin Liger et al, *Social Economy* (2016), available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578969/IPOL_STU\(2016\)578969_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578969/IPOL_STU(2016)578969_EN.pdf) (last visited 20 June 2020) and the study by the European Economic and Social Committee authored by José Luis Monzón Campos and Rafael Chaves Ávila, *The Social Economy in the European Union* (2012), available at: <https://www.eesc.europa.eu/resources/docs/qe-30-12-790-en-c.pdf> (last visited 20 June 2020).

⁵⁶ See the study by the European Parliament authored by Jennifer McGuinn et al, *Social Sustainability: Concepts and Benchmarks* (2020), available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648782/IPOL_STU\(2020\)648782_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648782/IPOL_STU(2020)648782_EN.pdf) (last visited 20 June 2020).

⁵⁷ See the Political Guidelines for the next European Commission 2019–2024, *A Union that strives for more: My agenda for Europe*, available at: https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf (last visited 20 June 2020).

In the context of the European Social Pillar and the Social Economy, the following entry points for ESR advocacy seem particularly relevant. Civil society can:

- develop a shadow 'Social Deal'⁵⁸ that complements the Green Deal of the European Commission;
- participate in the assessment and consultations on the action plan to implement the European Social Pillar; the Commission invites all stakeholders to present their views in a first step on an initiative on minimum wages by November 2020;⁵⁹
- advocate to strengthen ESR in the Social Scoreboard by refining its indicators and linking them to the SDGs, the Human Development Index of the UN Development Programme and OECD data;
- develop an ESR Scoreboard for the EU and Mediterranean neighbouring countries that develops specific indicators and builds a public database on EU external policies in light of ESR;
- link advocacy to focal areas of the European Social Pillar, in particular minimum wage, social security protection floors⁶⁰ and the protection of vulnerable groups;
- advocate for a stronger link between the European Pillar of Social Rights, the EU Charter of Fundamental Rights and the European Social Charter.

INFO BOX The European Green Deal

The proposed Action Plan on Human Rights and Democracy 2020–2024 confirms protection of the environment as one of the political priorities of the *von der Leyen* Commission. The European Green Deal sets out a roadmap of actions⁶¹ towards making the EU's economy

⁵⁸ See also the European Anti Poverty Network's proposal: <https://www.eapn.eu/working-for-a-green-and-social-deal-that-ends-poverty-eapn-response-to-the-annual-sustainable-growth-strategy-2020/>.

⁵⁹ See https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_20 (last visited 20 June 2020); the address of the dedicated website to submit feedback is: <https://ec.europa.eu/eusurvey/runner/8257efae-81ed-bee9-ccab-e143deae5ea2> (last visited 20 June 2020); the proposed time line for the implementation of the Pillar is as follows: 1st Quarter 2020 – First Stage Consultation to Social Partners on Minimum Wages, Sustainable Europe Investment Plan – European Green Deal Investment Plan, Just Transition Fund, European Gender Equality Strategy, followed by binding pay transparency measures, Updated Skills Agenda For Europe Industrial Strategy, SMEs Strategy, Demography Report; 2nd Quarter 2020 – Reinforced Youth Guarantee, Updated Digital Education Action Plan; 3rd Quarter 2020 – Platform Work Summit, European Education Area; 4th Quarter 2020 – Digital Services Act, Green Paper On Ageing, Europe's Beating Cancer Plan, Initiative on Roma Equality and Inclusion, European Unemployment Re-insurance Scheme; 2021 – Action Plan to Implement the European Pillar of Social Rights, Child Guarantee, Action Plan for the Social Economy, Strategy for Disability, Long term vision for Rural Areas.

⁶⁰ See also Report of the Special Rapporteur on extreme poverty and human rights (Philip Alston), 'Implementation of the right to social protection through the adoption by all States of social protection floors' (GA A/69/297), 11 August 2014.

⁶¹ See the Communication from the Commission on the European Green Deal, available at: https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf (last visited 20 June 2020); for an overview of key actions, see https://ec.europa.eu/info/sites/info/files/european-green-deal-communication-annex-roadmap_en.pdf (last visited 20 June 2020).

sustainable. The actions combine planning initiatives (action plans and strategies), investments (at least 1 trillion Euros), legal regulations and coalition building.

The initiative provides several entry points for ESR advocacy. Civil society can:

- develop a shadow action plan outlining concrete actions and linking these to specific indicators for the implementation of the Green Deal in light of ESR; this should include establishing links between environmental objectives and international human rights instruments, the European Social Charter, the European Pillar of Social Rights and the EU Charter of Fundamental Rights;⁶²
- advocate for a very close connection between the European Green Deal, the SDGs and the UN Guiding Principles on Business and Human Rights, emphasising that the Green Deal is integrally linked to the second political priority of the Commission: 'an economy that works for people' which includes the reduction of inequality and poverty;
- monitor the funding schemes of the Green Deal, including the proposed Just Transition Fund, by applying the methodology of an ESR-based review of public budgets and public spending (see below part III);
- contribute assessments during the legislative process of the proposal for a regulation establishing the framework for achieving climate neutrality and amending Regulation (European Climate Law);
- participate actively and critically in consultations in the European Economic and Social Committee and in the European Climate Pact;
- monitor closely national initiatives and budgetary decisions for implementation of the Green Deal, in order to combine the 'greening' of budgets with a 'socialising', in particular regarding privatisation of services, social protection floors and the protection of vulnerable groups.

3. European Semester

As described above, the European Social Pillar has sought to make the European Semester 'more social' through its Social Scoreboard. The European Semester was established as a response to the financial and economic crisis and aims at achieving a more integrated fiscal and economic coordination between member states. In other words, the fiscal and economic policies of each member state are now submitted to a stricter control within the EU institutional architecture for economic and social governance.

The European Semester consists of a periodic cycle lasting from November until July during which member states discuss their individual budget plans and economic reforms before adopting them. This process is monitored by EU institutions which issue country-specific

⁶² The study for the European Parliament authored by Elisa Morgera, Biodiversity as a Human Right and its implications for the EU's External Action (2020) shows how the obligation to protect biodiversity is related to several human rights and various issue areas, including external and trade relations of the EU; available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/603491/EXPO_STU\(2020\)603491_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/603491/EXPO_STU(2020)603491_EN.pdf) (last visited 20 June 2020).

recommendations. The reporting obligations of states relate to fiscal policies, macroeconomic policies and broad economic and employment policies. Several reports and reviews lead up to country-specific recommendations in May each year. The European Semester is followed by a 'National Semester' during the months after July, when the member states debate and adopt their budgets and policies internally.⁶³

The process of the European Semester involves primarily the Commission, the Council, the European Council and the member states. In addition, the European Parliament participates mainly through invitations for dialogue, and an advisory board of four independent experts, the European Fiscal Board, will function until 2022. Since fiscal and budgetary policies fall within the core competencies of each member state, it is not surprising that civil society can exert influence at EU level only indirectly, if at all. In fact, the process of the European Semester has been criticised for marginalising the European Parliament and national parliaments as well as civil society.⁶⁴

As indicated above, the *von der Leyen* Commission plans to link the European Semester more closely to environmental concerns and the SDGs. In addition, the Commission will be asked to report to the European Parliament before each key stage of the cycle.⁶⁵

The European Semester has started to review also issues connected to fundamental rights which could then also be included in the country-specific recommendations. As mentioned above, the Social and Justice Scoreboards provide important information for the European Semester in this regard, although the overall consideration of fundamental rights and especially social rights remain rather weak.⁶⁶

Civil Society could engage with the European Semester in the following ways:

- by reviewing country-specific recommendations and making targeted submissions to the European Parliament, which engages in an 'Economic Dialogue' with the Commission on the country-specific recommendations and will gain a slightly strengthened role during the cycles; advocacy should also aim directly at the Commission and at national authorities;

⁶³ For an introduction, see this study by the European Parliament authored by Angelos Delivorias and Christian Scheinert, Introduction to the European Semester: Coordinating and monitoring economic and fiscal policies in the EU (2019), available at: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/644214/EPRS_IDA\(2019\)644214_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/644214/EPRS_IDA(2019)644214_EN.pdf) (last visited 20 June 2020).

⁶⁴ Ibid, 20–25.

⁶⁵ Ibid, 25–26; see also the study by the European Parliament authored by Nora Milotay, Social governance in the European Union: Managing complex systems (2020), 10–15, available at: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/651909/EPRS_IDA\(2020\)651909_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/651909/EPRS_IDA(2020)651909_EN.pdf) (last visited 20 June 2020).

⁶⁶ See the report by the European Anti Poverty Network, Putting Social Rights and Poverty Reduction at the heart of EU's COVID-19 response (2020), available at: <https://www.eapn.eu/wp-content/uploads/2020/05/EAPN-EAPN-Assessment-of-2020-Country-Reports-with-alternative-CSRs-4405.pdf> (last visited 20 June 2020). See also <https://www.eapn.eu/is-the-2019-european-semester-more-social-eapn-assessment-of-the-european-semester-2019/>

- by making strategic petitions to the European Parliament (Arts. 20, 24 and 227 TFEU, Art. 44 CFR) related to rights violations arising from fiscal and economic policy decisions of member states;
- by preparing country-specific information that synthesises recommendations from the Universal Periodic Review of the UN Human Rights Council and other international and regional monitoring bodies (UN and Council of Europe) and linking recommendations more closely to the EU Charter of Fundamental Rights and other regional and international human rights obligations;
- by advocating for the refinement and strengthening of the Scoreboards and a corresponding stronger consideration of fundamental rights concerns during all stages of the review and recommendation process;⁶⁷
- by advocating for a stronger social sustainability⁶⁸ and a direct participation of civil society organisations during the different stages of the European Semester;
- by making strategic complaints to the European Ombudsman.

4. ESR in Association, Trade and Development Agreements

Arts. 3 (5), 8 and 21 TEU enshrine the importance of human rights in the Union's external actions. The proposed Action Plan on Human Rights and Democracy 2020–2024 confirms that human rights 'will be promoted consistently and coherently in all areas of EU external action (e.g. trade, environment, development)'. This study highlights entry points in three policy areas, namely neighbourhood, trade and development.

4.1. Neighbourhood and Trade Policies in relation to South Mediterranean Countries

Human rights shall form an integral part of the EU's Neighbourhood Policy. The Barcelona Process and the subsequent European Neighbourhood Policy (ENP) provide the framework for further institutionalisation of trade relations between South Mediterranean countries and the EU.⁶⁹ The ENP builds on Partnership and Cooperation Agreements or Association

⁶⁷ For an early analysis, see the study of the European Parliament authored by Olivier de Schutter, *The Implementation of the Charter of Fundamental Rights in the EU Institutional Framework* (2016), 26–41, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU\(2016\)571397_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/571397/IPOL_STU(2016)571397_EN.pdf) (last visited 20 June 2020).

⁶⁸ Study by the European Parliament authored by Jennifer McGuinn et al, *Social Sustainability: Concepts and Benchmarks* (2020), 54–68, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648782/IPOL_STU\(2020\)648782_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648782/IPOL_STU(2020)648782_EN.pdf) (last visited 20 June 2020).

⁶⁹ For a detailed analysis, see the report by EuroMed Rights, *Advancing economic and social rights in the EuroMed region: Analysing the economic and financial relations between the European Union and the South Mediterranean Countries* (2016), available at: <https://www.euromedrights.org/wp-content/uploads/2017/01/Ecosoc-2-Analysis-EN.pdf> (last visited 20 June 2020).

Agreements in the framework of the Euro-Mediterranean Partnership. The EU has established a network of Association Agreements, which include reciprocal Free Trade Agreements, with all countries of the region except Libya and Syria. These agreements form the basis for country-specific Partnership Priorities and ongoing dialogues on regulatory reforms which include human rights and rule of law reform. Within the ENP framework, the Commission is currently preparing Deep and Comprehensive Free Trade Agreements (DCFTAs) with Jordan, Morocco and Tunisia.

In its Action Plan on Human Rights and Democracy 2020–2024, the European Commission states that it plans to '[e]ffectively integrate economic, social, cultural and labour rights in EU human rights dialogues with partner countries, while ensuring synergies with other consultations and GSP+/EBA monitoring missions'.⁷⁰ Yet, evidence has shown that existing free trade agreements can negatively affect ESR in neighbouring countries.⁷¹ The liberalisation of markets and trade incentives can, for example, render access to the labour market increasingly difficult for rural or marginalised groups and lead to weaker labour protections.

The continued critical analysis of trade policies and neighbourhood instruments by civil society organisations remains an essential focal area of advocacy. Civil society can:

- demand greater transparency and more meaningful involvement of civil society organisations in negotiation processes of FTAs and DCFTAs, in the development of country strategies and in ongoing dialogues;
- lobby for more diligent human rights assessments, including an ongoing human rights monitoring of existing FTAs through a genuine and continuous participation of civil society organisations;
- foster a closer link between human rights clauses in Association Agreements and Partnership Priorities, the EU Action Plan on Human Rights and Democracy as well as the political priorities of the Commission; the Trade Sustainability Impact Assessments of the DCFTAs with Tunisia and Morocco contain, for example, an 'additional

⁷⁰ The Action Plan further states: 'Ensure linkages and synergies between the EU's bilateral relations (including political, human rights and sectoral policy dialogues, the monitoring of human and labour rights under the GSP, and work on labour rights under FTAs) and its multilateral relations. Maintain focus on follow-up. / Identify and follow up on concrete action points for each round of human rights dialogue and consultations with partner countries, taking particular account of GSP+/EBA monitoring objectives in dialogues with GSP beneficiary countries. / Strengthen the implementation of human rights provisions in EU trade policy, including through the GSP and by promoting labour rights in the context of FTAs. Use the full potential of monitoring mechanisms and further promote transparency, awareness and engagement with stakeholders. / Make full use of synergies between political and sectoral policy dialogues, including on budget support, to promote human rights, democracy and the rule of law in partner countries. / Systematically incorporate human rights principles and standards in EU bilateral and regional cooperation, by strengthening and updating the methodology in the toolbox: a rights-based approach, encompassing all human rights for EU development cooperation'.

⁷¹ EuroMed Rights, *Advancing economic and social rights in the EuroMed region: Analysing the economic and financial relations between the European Union and the South Mediterranean Countries* (2016), 19–28.

environmental analysis' that could be linked to the environmental priority of the current Commission;⁷²

- collect evidence on the ground and publish shadow reports on the impacts of EU trade policies in order to provide an alternative to the EU Annual Report on Human Rights and Democracy;⁷³ these shadow reports can collect reliable evidence on how the EU may fail to live up to fundamental human rights standards in its external relations and analyse reasons and contexts;
- draft shadow Guidelines on Human Rights Considerations in EU External Relations, building, for example, on the existing EU Guidelines on Human Rights Dialogues with Third Countries of the EEAS;
- build a ESR Scoreboard for EU external relations that provides assessments on a selection of specific areas that are connected to a set of indicators which can provide important benchmarks for human rights measurements in external relations;⁷⁴ a starting point could be, for example, to identify areas in the Commission's 'Trade for All' Strategy and connect these to corresponding indicators; this information could then also inform and guide Trade Sustainability Impact Assessments by third parties;
- submit the country-specific Partnership Priorities of the European Commission and EEAS to a rigorous human rights assessment;
- collect evidence on negative impacts of EU external trade policies and submit this evidence to relevant UN human rights monitoring bodies; related advocacy should build on the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights and the UN Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies;
- encourage preparatory bodies of the Council of the European Union to take relevant recommendations from the UN Human Rights Council and UN committees into consideration in order to examine how the EU can assist in fulfilling international human rights obligations; this advocacy should aim at the Mashreq/Maghreb Working Party (MaMa), the Trade Policy Committee, the Working Party of Foreign Relations Counsellors (RELEX), the Working Party on Development Cooperation and the Working Party on Human Rights (COHOM).

⁷² See the Trade Sustainability Impact Assessment conducted by ECORYS for the European Commission in support of the negotiations of a DCFTA between the EU and Morocco, available at: https://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151799.pdf (last visited 20 June 2020).

⁷³ This report should be made available in particular to the Human Rights Subcommittee of the EP, which prepares the resolution of the EP on the EU Annual Report.

⁷⁴ See for an important practical guideline on how this could be done, Report of the Special Rapporteur on the right to food (Olivier De Schutter), Guiding principles on human rights impact assessments of trade and investment agreements (A/HRC/19/59/Add.5), 19 December 2011.

4.2. The new Neighbourhood, Development and International Cooperation Instrument (NDICI)

Under the Multiannual Financial Framework 2014-2020, numerous financing instruments of the EU are going to expire by the end of 2020. They include, for example, the European Instrument for Democracy and Human Rights (EIDHR), the Development Cooperation Instrument (DCI), the Instrument contributing to Stability and Peace (IcSP), the European Neighbourhood Instrument (ENI) and the European Development Fund (EDF).⁷⁵ The *Juncker* Commission initiated a legislative proposal for a Neighbourhood, Development and International Cooperation Instrument (NDICI) that would streamline over ten financing instruments into one broad instrument. Assessments of the diverse financing instruments had shown a need for better co-ordination and simplification also in order to enable quicker and more flexible funding decisions by the EU.⁷⁶

One of the problems identified is that upper middle-income countries are no longer eligible for EU bilateral co-operation under the existing DCI although these countries require further support. The call for a more flexible funding instrument partly reflects concerns about the shrinking space for civil society organisations in many of these countries, but it is also motivated by the migration/refugee crisis and a corresponding interest of the EU to ensure co-operation of countries at the EU borders.

The legislative process for the NDICI under the Multiannual Financial Framework 2021-2027 is currently ongoing. The Commission's proposal mentions ESR in the context of the general principles that are applicable to financing instruments as part of the general rights-based approach. It confirms ESR as an integral part of areas of intervention for thematic programmes without providing further detail. The Economic and Social Committee emphasised in its opinion on the legislative proposal the importance of ESR and also stressed the need for social dialogue and protection of civil society organisations.⁷⁷ During the first reading of the proposal in the European Parliament (EP), the parliament suggested several amendments to the proposal. The EP proposed, for example, an increase in funding for human rights, democracy and civil society to at least EUR 2 billion and called for a stronger human rights conditionality of funding decisions. It also emphasised ESR repeatedly and, importantly, made reference to relevant international and regional ESR instruments.⁷⁸

⁷⁵ For a complete list, see Proposal for a Regulation of the European Parliament and the Council establishing the Neighbourhood, Development and International Cooperation Instrument (COM/2018/460 final), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:460:FIN> (last visited 20 June 2020).

⁷⁶ Ibid.

⁷⁷ See Opinion of the European Economic and Social Committee on 'Neighbourhood, Development and International Cooperation Instrument and Nuclear Safety Cooperation Instrument' (EESC 2018/04060), para. 1.1.10, see also 2.1.15–2.1.16.

⁷⁸ See European Parliament legislative resolution (P8_TA-PROV(2019)0298), available at: [https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2019/03-27/0298/P8_TA-PROV\(2019\)0298_EN.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2019/03-27/0298/P8_TA-PROV(2019)0298_EN.pdf).

Given the importance and sheer economic size of this streamlined financing instrument, civil society organisations should closely follow the legislative process and actively participate in consultations and assessments of the proposal and its amendments. Key entry points for providing commentary on the legislative process lie within the Economic and Social Committee and on committee level in the European Parliament. Advocacy should focus on:

- firmly including ESR considerations in the financing schemes, including requirements for human rights-based assessments before, during and after grant executions;
- developing guidelines with practical examples for a more stringent and effective human rights assessment;
- establishing coherent links of ESR requirements between the EU Charter of Fundamental Rights, the European Social Charter and international instruments, including human rights treaties and SDGs;
- establishing explicit links between ESR considerations in the NDICI and other objectives such as social protection, reduction of inequality, environmental protection and corporate social responsibility;
- advocating for a continuous monitoring process of financing initiatives that include the European Parliament as well as local and transnational civil society organisations.

Part III: Identification of Strategic Entry Points

The analysis of 'strategic entry points' for ESR advocacy requires the identification of appropriate forums, strategies and thematic focal areas. In the multilevel institutional network of the EU these choices are complex and require a higher degree of strategic differentiation.⁷⁹ For example, market policies are not directly related to social policies in the EU, competencies are shared between the EU and its member states depending on which regulatory aim is pursued, and the EU's internal policies and applicable laws differ from its external policies and regulatory regimes. In addition, in many instances, several EU institutions are active in any given policy area and their activities are complemented by those of other domestic, regional and international actors.

However, all these actors and institutional forums have one aspect in common: the effects of all actions and regulatory instruments can only be assessed locally. One of the central recommendations of the present study is, therefore, to focus on the training, application and development of human rights measurements, in particular on the development and use of human rights indicators and impact assessments in the area of ESR.⁸⁰ Monitoring institutions at the local, regional and international level rely not only on advocacy reports about human rights violations but increasingly focus on systemic aspects.

Political decision-making bodies in the EU and at national level require information on the impacts of their policies. For this, it is indispensable that civil society develops tools and competences to scrutinise these policies regarding their human rights impacts and to verify the data that is used and provided by governments and the EU. The 'translation' of local experiences into human rights measurements is essential for effective advocacy in national, regional or international forums. In fact, it is very likely that the relevance of critical analysis based on human rights indicators will increase further in regional and international contexts.

1. Direct Advocacy in EU Institutions

Direct advocacy in EU institutions is an integral but not sole part of any advocacy roadmap. The entry points mentioned throughout this study call for a careful selection of the competent

⁷⁹ See EuroMed Rights, Training Guide on EU Advocacy: Navigating the EU institutional maze and influencing its relations with the Southern Mediterranean countries (2016), available at: <https://euromedrights.org/wp-content/uploads/2018/06/REMDH-EU-TrainingGuide-EN-FINAL-WEB.pdf> (last visited 20 June 2020); for the corresponding interactive guide on EU advocacy, see: <https://euromedrights.org/training-path-program/> (last visited 20 June 2020).

⁸⁰ UN Office of the High Commissioner for Human Rights, Human Rights Indicators: A Guide to Measurement and Implementation (OHCHR 2012), available at: https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf (last visited 20 June 2020); for further discussion, see Todd Landman, 'Measuring Human Rights: Principle, Practice and Policy' (2004) 26 Human Rights Quarterly 906–931; Sally Engle Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance' (2011) 52 Current Anthropology (Supplement 3), available at: <http://www.journals.uchicago.edu/doi/pdfplus/10.1086/657241b> (last visited 20 June 2020).

institutional bodies within the EU in light of a specific advocacy issue. At the same time, the contribution of different EU institutions and agencies to a single issue or policy area requires a pluralist approach.

As emphasised above, advocacy directly aimed at EU institutions is more likely to succeed when it proceeds at a lower institutional level:⁸¹ in the European Parliament this includes members of the pertinent committees and parliamentary intergroups who deal with the issue in question or members of the Parliament Delegation for the Mediterranean and Middle East; in the European Commission, advocacy should address staff members of DGs who are responsible for a specific policy area; the same applies for members of the EEAS, the Group for External Coordination (EXCO), the Office of the EU Special Representative for Human Rights or members of EU Delegations, in particular if they have a Human Rights Focal Point and Liaison Officer for Human Rights Defenders. In the Council, advocacy can aim at members of working parties that prepare the work on a specific issue that can then translate into the Council. Besides the main EU institutions, advocacy can also seek to use existing platforms for civil society participation in the EU such as in the European Economic and Social Committee (EESC), in particular its Policy Assessment Unit.⁸² Lastly, advocacy can also aim at making direct petitions to the European Parliament or at logging a complain to the Office of the European Ombudsperson.

2. Development of ESR-focused Indicators and Methods for Measuring Policy Impacts

As highlighted above, the development and application of human rights indicators is becoming increasingly important. Indicator-based human rights work, often also described as human rights measurements and benchmarks, can take different forms.⁸³ It can involve the collection and analysis of statistical data, but it can also take the form of questions that break down complex issues into more concrete sets of relevant issues. Thus, indicators can help, for example, to identify actions taken by states towards the fulfilment of rights, to scrutinise the quality and effectiveness of the adopted measures and to evaluate the actual outcomes achieved. Indicators help to make complex issues more accessible and assessable. They facilitate to shine a spotlight on issues that are marginalised or completely ignored, they provide important evidence during policy making or monitoring processes at local, regional and international level, and they can help to develop country- and issue-specific approaches for policymakers.

⁸¹ Each EU institution and body publishes updated organisation charts on their websites which allows to identify relevant desks and responsible staff members; in addition, the EU facilitates an updated directory of all its staff members: <https://op.europa.eu/en/web/who-is-who>.

⁸² For entry points related to the EU Fundamental Rights Agency, see below III.5.

⁸³ Maria Green, 'What we talk about when we talk about Indicators: Current Approaches to Human Rights Measurement' (2001) 23 Human Rights Quarterly 1062; Todd Landman and Edzia Carvalho, *Measuring Human Rights* (Routledge 2009).

Indicators are used by EU institutions and governments,⁸⁴ but this institutional and governmental use requires a parallel supplementation and control from civil society, because indicators can have blind spots and may reflect prior policy choices.

ESR advocacy gains quality and effectiveness if it counters and complements official analysis from EU institutions with their own indicator-based analysis. The UN Office of the High Commissioner for Human Rights has developed informational tools for civil society on human rights indicators.⁸⁵ The EU Fundamental Rights Agency has also worked with indicators in their analysis of fundamental rights in the EU.⁸⁶ These works usually distinguish between three types of indicators: *Structure indicators* assess the context of human rights protection by, for example, measuring the availability of formal commitments to international human rights standards, the adoption of human rights related legislation or the establishment of monitoring and complaint mechanisms and related training of officials. These indicators assess the preparedness and capacity for human rights protection. *Process indicators* assess the possibility to receive protection and to interact with authorities, for example, by measuring available remedies and the responses from stakeholders. These indicators focus on reactions to human rights violations, including the possibility to seek help, the timeline for response or the safety of the affected. *Outcome indicators* assess the quality of the response and remedy received, for example, by measuring the appropriateness of the remedies and the actual impact they have. These indicators measure the actual effects of human rights protection locally and concretely.

A pertinent example is the development of indicators for a Human Rights Compliance Assessment developed by the Danish Institute for Human Rights facilitating companies to detect potential human rights violations caused by their operations.⁸⁷ The Institute developed a database of 200 questions and 1000 corresponding indicators which is refined on an annual basis. This assessment database has been further condensed to a quick check, it can be adapted to specific situations, and it is relied upon now by corporations in the UN Global

⁸⁴ The EU Action Plan on Human Rights and Democracy for 2015–2019 made reference to indicators for the assessment of Human Rights Dialogues and called for supporting the work of the UN OHCHR on indicators; the Action Plan for 2020–2024 does not make an explicit reference to indicators anymore; see also FRAME report by Klaus Starl et al, Human Rights Indicators in the Context of the European Union (2014), available at: <http://www.fp7-frame.eu/wp-content/uploads/2016/08/12-Deliverable-13.1.pdf> (last visited 20 June 2020) who conclude, inter alia, that 'there is no systematic approach followed by the EU bodies to measure the state of, or progress made in respecting, protecting and fulfilling human rights', p 101.

⁸⁵ See for English: https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf (last visited 20 June 2020); French: https://www.ohchr.org/Documents/Issues/HRIndicators/Human_rights_indicators_fr.pdf (last visited 20 June 2020); Arabic: https://www.ohchr.org/Documents/Publications/Human_rights_indicators_ar.pdf (last visited 20 June 2020). Further information is available at: <https://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx> (last visited 20 June 2020).

⁸⁶ See EU Agency for Fundamental Rights, Using indicators to measure fundamental rights in the EU: challenges and solutions (2011), available at: https://fra.europa.eu/sites/default/files/fra_uploads/1697-FRAsymp2011-outcome-report.pdf (last visited 20 June 2020).

⁸⁷ Available online at: <https://www.humanrights.dk/tools/human-rights-indicators-business> and <https://www.business-humanrights.org/en/platform-for-human-rights-indicators-for-business-hrib> (last visited 20 June 2020).

Compact. A similar platform could be developed by EuroMed Rights together with its members for the assessment of ESR in internal and external policies of the EU. A related contribution from civil society would be the development of guidelines on good practices for indicator-based analysis that emphasise ESR and local experiences.⁸⁸

Another example is the 'OPERA framework' developed by the Center for Economic and Social Rights, a four-step tool to analyse states' obligations to fulfil economic and social rights.⁸⁹ The framework has been further operationalised in Egypt.⁹⁰

3. Contributions to Assessments of EU Legislation and Instruments

Part II of the study highlighted *inter alia* the multiple entry points for participation in public consultation processes at EU level. These include the participation in initial assessments at the proposal stage of a legislative process but also during the assessment of existing legislation.⁹¹ Public consultations on the European Neighbourhood Policy, for example, took place in 2015 and 2017. Other consultations related to International Cooperation and Development took place at least twice a year between 2015 and 2018.

As detailed above, numerous EU instruments of relevance for EU relations with South-Mediterranean partners will be revised and therefore assessed during the next cycle.⁹² These assessments specifically require the inclusion of civil society contributions and explicitly take human rights into consideration. This does not only entail the EU Charter of Fundamental Rights but also other international and regional commitments. Although the actual effectiveness of these assessments is debatable, civil society can seek to provide an indicator-based ESR assessment of the effects of EU policies on local economies and social systems in neighbouring countries.

4. Assessment of Country Strategies and Guidelines

A further entry point are the Human Rights Country Strategies and thematic guidelines of the EU that were featured prominently in the EU Action Plan on Human Rights and Democracy

⁸⁸ See examples contained in EuroMed Rights, *Analysing the economic and financial relations between the European Union and the South Mediterranean Countries* (2016), available in English: <https://www.euomedrights.org/wp-content/uploads/2017/01/Ecosoc-2-Analysis-EN.pdf> (last visited 20 June 2020); French: https://www.euomedrights.org/wp-content/uploads/2017/02/2017_REMDH-Ecosoc-2-FR.pdf (last visited 20 June 2020); Arabic: https://www.euomedrights.org/wp-content/uploads/2017/02/eco_soc_rights_02_ar.pdf (last visited 20 June 2020); see also Report of the Special Rapporteur on the right to food (Olivier De Schutter), *Guiding principles on human rights impact assessments of trade and investment agreements* (A/HRC/19/59/Add.5), 19 December 2011.

⁸⁹ <https://www.cesr.org/opera-framework> (last visited 20 June 2020).

⁹⁰ <https://www.cesr.org/opera-practice-case-studies-applying-cesrs-monitoring-framework> (last visited 20 June 2020).

⁹¹ See https://ec.europa.eu/info/consultations_en (last visited 20 June 2020).

⁹² See above part II.

2015–2019 and are also mentioned in the new Action Plan for 2020–2024. The negotiation of these country strategies and their implementation ideally include civil society and other human rights actors, but the drafting and adoption process is often not transparent.

Advocacy should thus aim directly at the respective EU Delegations, as well as the donor and development organisations that cooperate with the EU and national authorities. In this context, also the European Parliament and in particular its Subcommittee on Human Rights (DROI) are essential entry points as the EP issues resolutions on countries that can function as a public control mechanism based on multilateral and bilateral commitments of the EU and its member states.

Most countries also develop national human rights and development strategies and guidelines. These national strategies often adapt to EU interests in light of the increased focus of the EU on Joint Programming Initiatives that aim at avoiding fragmentation of funding initiatives. Beyond the EU level, further advocacy entry points are thus the national authorities and national development organisations that develop and implement these national strategies on human rights and development co-operation in EU member states.

Finally, the contributions of EU member states during the Universal Periodic Review process of EU-neighbouring countries in the UN Human Rights Council, in which the EU intends to coordinate its position with its member states, can be a valuable source for identifying actual priorities in country strategies and provide entry points for advocacy on EU member state level.⁹³

5. Strengthening ESR in the EU Agency for Fundamental Rights

For human rights advocacy within the EU, the EU Agency for Fundamental Rights (FRA) facilitates an institutionalised platform for participation of civil society organisations through its Fundamental Rights Platform for issue-specific consultations and surveys. This platform is supposed to be an institutionalised 'mechanism of exchange and pooling of knowledge' with civil society.⁹⁴ The FRA advises EU institutions and national governments on fundamental rights within the EU in order to inform law-making and implementation processes in the EU.⁹⁵ The agency does not have an independent monitoring mandate.

The FRA assists EU institutions in collecting information from civil society partners and thus provides a potential channel to communicate evidence and analysis to EU institutions. It simply requires a subscription by civil society organisations to the platform in order to receive

⁹³ Also the OECD issues valuable assessments of strategies and initiatives for individual countries that can be used in advocacy work in the EU and EU member states.

⁹⁴ See for the terms of reference: https://fra.europa.eu/sites/default/files/fra_uploads/frp-terms-of-reference-oct-17_en.pdf (last visited 20 June 2020).

⁹⁵ See the FRA Strategy 2018–2022, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-fra-strategy-2018-2022_en.pdf (last visited 20 June 2020).

information and to participate in consultations, thematic meetings or contribute to country visits.

As mentioned above, the relationship between the Council of Europe's ESR instruments (i.e. the European Social Charter, which is overseen by the European Committee of Social Rights) and the EU's ESR framework (notably the Charter of Fundamental Rights) remains improvable.⁹⁶ The need for strengthening this link is also visible in the work of the FRA which has largely focused on issues related to civil and political rights.⁹⁷ A clearer mapping of ESR provisions of the EU Charter of Fundamental Rights, while establishing links to the ICESCR, the European Social Charter and the 'jurisprudence' of the European Committee of Social Rights and the CESCR may be a useful starting point to facilitate a strengthening of ESR in the FRA's mandate. These connections could then be further linked with information from local stakeholders to promote ESR related issues at the FRA. EuroMed Rights and its members could also increase strategic contributions on the external consequences of EU policies and link these to existing areas of work of the FRA on, e.g., inequality, migrants, rights of the child and business and human rights.

6. Strategic Submissions to UN and regional Monitoring Bodies, Domestic Institutions and Courts

As mentioned in part I of this study, the Universal Periodic Review of the UN Human Rights Council is one of the most important processes for direct participation by civil society organisations and for highlighting ESR-based analyses of EU policies both in reviews of EU member states and of neighbouring countries. Further opportunities arise through the work of special procedures mandate holders who can receive communications on individual cases or on general patterns of human rights violations.

In addition, the periodic country reviews by the UN treaty monitoring bodies rely on the collection of local and independent evidence and analysis by civil society.

Advocacy can also aim at assisting individual cases and complaints before national and regional courts or before UN monitoring bodies by providing evidence and expert statements through *amicus curiae* briefs.

Any engagement with UN bodies should not only focus on the UN Committee on Economic, Social and Cultural Rights or the Human Rights Council but also on other treaty bodies and special procedures which have increasingly included ESR considerations in their work.

⁹⁶ See Olivier de Schutter, *The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order* (Council of Europe 2018) 14–17, available at: <https://rm.coe.int/study-on-the-european-pillar-of-social-rights-and-the-role-of-the-esc-/1680903132> (last visited 20 June 2020).

⁹⁷ See the Work Programme of the FRA 2020–2022, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-programming-document-2020-2022_en.pdf (last visited 20 June 2020).

7. Elaboration of Soft-Law Principles and Guidelines

Section I.4 addresses various soft-law initiatives by civil society and UN expert groups that resulted in declarations of non-binding principles and guidelines. In the context of ESR, this approach has proven very constructive, especially when it leads to subsequent use and endorsement of the principles and guidelines by authoritative institutions. A classic example is the threefold typology of state duties to 'respect, protect and fulfil', which is overwhelmingly accepted and used today. It goes back to the initiative of experts who drafted the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1986) and the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (1997). It was crucial that some members of these expert groups had or later obtained an institutional role in expert bodies of the UN and thus enabled further institutionalisation by reference to the content of the principles and guidelines in institutional documents.⁹⁸

Similar initiatives could be facilitated by convening meetings that include experts from UN, EU and CoE institutions with the aim to develop, for example, principles or guidelines on ESR obligations in internal and/or external EU actions. This could result, for example, in the *Barcelona Principles on Economic and Social Rights in EU External Relations in the Mediterranean*. Whatever the title, these principles (or guidelines) could then be referenced in advocacy work and eventually be relied upon in resolutions of the European Parliament, in preparatory work of Council working groups, in EU human rights guidelines, in UN bodies, by Special Rapporteurs or even judicial bodies and thus gradually gain normative authority.

8. Assessments of Budgetary Measures, Public Spending and Taxation

The critical assessment of public spending, budgetary measures and taxation has become an increasing focus of ESR advocacy and analysis.⁹⁹ The role of civil society in this context entails

⁹⁸ A further example can be found in 'Leading by Example: A Human Rights Agenda for the European Union for the Year 2000' which was adopted by a committee of four experts, the text of the agenda is included in Philip Alston, Mara Bustelo and James Heenan (eds), *The EU and Human Rights* (Oxford University Press 1999) 921–927; for a regional example see African Commission on Human and People's Rights, *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People's Rights*.

⁹⁹ Fundar et al., *Dignity Counts: A guide to using budget analysis to advance human rights* (2004), available at: <https://www.internationalbudget.org/wp-content/uploads/Dignity-Counts-A-Guide-to-Using-Budget-Analysis-to-Advance-Human-Rights-English.pdf> (last visited 20 June 2020); see, generally, Aoife Nolan, Rory O'Connell, Colin Harvey (eds), *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights* (Hart Publishing 2013); Rory O'Connell, Aoife Nolan, Colin Harvey, Mira Dutschke, Eoin Rooney, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (Routledge 2014); Olivier de Schutter, 'Public Budget Analysis for the Realization of Economic, Social and Cultural Rights: Conceptual Framework And Practical Implementation', in Katharine G. Young (ed), *The Future of Economic and Social Rights* (Cambridge University Press 2019), 527–623; Philip Alston and Nikki Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press 2019).

external oversight as it can provide important input to audit institutions, national human rights institutions, courts and policy-makers.

The Office of the UN High Commissioner for Human Rights has emphasised that civil society organisations can play a crucial part in this assessment, for example, by conducting local social audits or by providing shadow reports to international monitoring bodies.¹⁰⁰ Also several UN committees pay close attention to budgeting decisions.¹⁰¹

Oversight of budgets and spending, both at EU and national level, can be an important way to detect trade-offs between economic and social objectives that lead to regression of ESR protection.

9. Institutional Reform Initiatives

Initiatives for institutional reforms are always slow in effecting change. Reform proposals are discussed for all institutional settings, including national human rights institutes, the European Court of Human Rights and the European Committee of Social Rights, UN committees and of course also EU institutions and agencies. The critique and insights from civil society play a crucial role in such reform processes, but actors need to be aware of the long-term and multi-level engagement that these processes require. More likely to succeed are campaigns that focus on procedural changes rather than changes in the institutional setup. Changes in the internal procedure are quicker to achieve, not least because they often do not require treaty revisions.

In the context of the present study, advocacy for procedural reform could focus, for example, on making the EU's elaboration of human rights country strategies and implementation processes more transparent and participatory. This can include a stronger involvement of civil society organisations but can also focus on due consideration of country-specific information gathered during the Universal Periodic Review and by treaty monitoring bodies.

Reforms are also discussed for the FRA. These initiatives aim to give the agency more participatory powers during the law-making process in the EU, in particular during the assessment process, and to transform the agency into a real EU human rights monitoring body.¹⁰²

¹⁰⁰ See OHCHR, *Realizing Human Rights through Government Budgets* (2017), 134–143, available at: <https://www.ohchr.org/Documents/Publications/RealizingHRThroughGovernmentBudgets.pdf> (last visited 20 June 2020).

¹⁰¹ *Ibid*; and see, for example, on social security, CESCR, *Toolkit on the Right to Social Security*, available at: <https://www.ohchr.org/EN/Issues/RightSocialSecurity/Pages/SocialSecurity.aspx> (last visited 20 June 2020); Report of the Special Rapporteur on extreme poverty and human rights (Philip Alston), 'Implementation of the right to social protection through the adoption by all States of social protection floors' GA A/69/297 (11 August 2014).

¹⁰² See Olivier de Schutter, *The EU Fundamental Rights Agency: Its Past and Possible Future* (CRIDHO Working Paper 2018/3), available at: <https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO-WP-2018-3-EU-FRA-Future-ODS.pdf> (last visited 20 June 2020); he also suggests a reform that avoids institutional reform and takes inspiration from the review of country reports by international monitoring bodies: the European

Finally, at the local level in Southern Mediterranean countries but also in EU member states, advocacy initiatives can aim at introducing ESR explicitly in national constitutions. Such reforms are, of course, more likely to succeed in countries where constitutional reforms are ongoing or easier to execute. Even short of constitutional reform, advocacy can aim at a stronger consideration of ESR by local courts, including apex courts through training of judges.

10. Domestic Opportunities: Transnational Corporations

ESR-based advocacy regarding EU policies and their effects on the enjoyment of ESR in South–Mediterranean countries also requires local advocacy in EU member states and in EU neighbouring countries. A possible entry point could be advocacy for a stronger corporate social responsibility. The human rights responsibilities of transnational corporations have been a focal area of numerous international¹⁰³ and European initiatives.¹⁰⁴ ESR advocacy should critically accompany these international initiatives by engaging with corporations to develop human rights and due diligence policies. Advocacy should also aim at translating these supranational standards into binding national laws. For example, advocacy work can aim at national governments to promote the implementation of the UN Guiding Principles on Business and Human Rights through national action plans and new trade policies. A pertinent example is the French Corporate Duty of Vigilance Law of 2017¹⁰⁵ which obliges parent companies to prevent human rights violations and environmental damages throughout their supply chain, including by their subcontractors in third countries.

Parliament could request the FRA to present a 'regular report on the situation of fundamental rights in the EU, allowing the institutions to assess whether in certain Member States, the threats to rights contributing to democracy and the rule of law are such that there is a risk that the values of the Union shall be breached – but leaving it to those institutions to make the final assessment' as already foreseen in the EU treaties, see 30–36.

¹⁰³ See the UN Global Compact initiative or the UN Guiding Principles Principles for Business and Human Rights; see generally <https://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx> and <https://www.ohchr.org/EN/Issues/Business/Pages/SRSGTransCorplIndex.aspx> (last visited 20 June 2020); further initiatives exist from the ILO and the OECD.

¹⁰⁴ See https://ec.europa.eu/info/business-economy-euro/doing-business-eu/corporate-social-responsibility-csr_en (last visited 20 June 2020).

¹⁰⁵ See <https://www.business-humanrights.org/en/frances-law-on-the-corporate-duty-of-vigilance-a-practical-and-multidimensional-analysis-in-english> (last visited 20 June 2020).

Bibliography

Alston, Philip, and Nikki Reisch (eds), *Tax, Inequality, and Human Rights* (Oxford University Press 2019).

Baranowska, Grazyna, Anna-Luise Chané, David D'Hollander, Agata Hauser, Jakub Jaraczewski, Zdzislaw Kedzia, Mariusz Lewicki and Anna Potczynska, [EU human rights engagement in UN bodies](#), FRAME Report Work Package No. 5 – Deliverable No. 5.1.

Bücker, Andreas, and Wiebke Warneck (eds), *Viking – Laval – Ruffert: Consequences and policy perspectives* (ETUI aisbl 2010).

de Schutter, Olivier, 'The CFREU and its Specific Role to Protect Fundamental and Social Rights' in Filip Dorssemont, Klaus Lörcher, Stefan Clauwaert and Mélanie Schmitt (eds), *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Hart Publishing 2019) 9–38.

de Schutter, Olivier, 'Public Budget Analysis for the Realization of Economic, Social and Cultural Rights: Conceptual Framework And Practical Implementation', in Katharine G. Young (ed), *The Future of Economic and Social Rights* (Cambridge University Press 2019) 527–623.

de Schutter, Olivier, [The EU Fundamental Rights Agency: Its Past and Possible Future](#), CRIDHO Working Paper (2018/3).

de Schutter, Olivier, [The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order](#), Study for the Council of Europe (2018).

de Schutter, Olivier, [The Implementation of the Charter of Fundamental Rights in the EU Institutional Framework](#), Study EP DG Internal Policies (2016).

de Schutter, Olivier, [The European Social Charter in the context of implementation of the EU Charter of Fundamental Rights](#), Study for the European Parliament (2016).

Delivorias, Angelos, and Christian Scheinert, [Introduction to the European Semester: Coordinating and monitoring economic and fiscal policies in the EU](#), Study for the European Parliament (2019).

EU Agency for Fundamental Rights, [Using indicators to measure fundamental rights in the EU: challenges and solutions](#) (2011).

EuroMed Rights, [Advancing economic and social rights in the EuroMed region: Analysing the economic and financial relations between the European Union and the South Mediterranean Countries](#) (2016).

EuroMed Rights, [Analysing the economic and financial relations between the European Union and the South Mediterranean Countries](#) (2016).

EuroMed Rights, [Assessing civil society initiatives in the field of economic and social rights](#) (2016).

EuroMed Rights, [Discussing challenges for civil society and the promotion of economic and social rights](#) (2016).

EuroMed Rights, [Training Guide on EU Advocacy: Navigating the EU institutional maze and influencing its relations with the Southern Mediterranean countries](#) (2016).

European Anti Poverty Network, [Putting Social Rights and Poverty Reduction at the heart of EU's COVID-19 response](#) (2020).

European Commission, [Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union](#) (2010).

European Committee of Social Rights, [The relationship between European Union law and the European Social Charter](#), Working Document (15 July 2014).

Fundar Centro de Análisis e Investigación, International Budget Project, International Human Rights Internship Program, [Dignity Counts: A guide to using budget analysis to advance human rights](#) (2004).

Green, Maria, 'What we talk about when we talk about Indicators: Current Approaches to Human Rights Measurement' (2001) 23 Human Rights Quarterly 1062.

Helena de Felipe Lehtonen, [Economic, social and cultural rights in the Euro-Mediterranean region](#), Study for the European Economic and Social Committee (2017).

Ivanković Tamamović, Aleksandra, [The impact of the crisis on fundamental rights across Member States of the EU: Comparative analysis](#), Study for the European Parliament (2015).

Landman, Todd, 'Measuring Human Rights: Principle, Practice and Policy' (2004) 26 Human Rights Quarterly 906–931.

Landman, Todd, and Edzia Carvalho, *Measuring Human Rights* (Routledge 2009).

Liger, Quentin, Marco Stefan, and Jess Britton, [Social Economy](#), Study for the European Parliament (2016).

Mayrhofer, Monika (ed), [The global human rights protection governance system](#) (2015) FRAME Report Deliverable 4.2.

McGuinn, Jennifer et al, [Social Sustainability: Concepts and Benchmarks](#), Study for the European Parliament (2020).

Merry, Sally Engle, '[Measuring the World: Indicators, Human Rights, and Global Governance](#)' (2011) 52 Current Anthropology (Supplement 3).

Milotay, Nora, [Social governance in the European Union: Managing complex systems](#), Study for the European Parliament (2020).

Monzón Campos, José Luis, and Rafael Chaves Ávila, [The Social Economy in the European Union](#), Study for the European Economic and Social Committee (2012).

Morgera, Elisa, [Biodiversity as a Human Right and its implications for the EU's External Action](#), Study for the European Parliament (2020).

Nolan, Aoife, Rory O'Connell, and Colin Harvey (eds), *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights* (Hart Publishing 2013).

O'Connell, Rory, Aoife Nolan, Colin Harvey, Mira Dutschke, and Eoin Rooney, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (Routledge 2014).

Starl, Klaus, et al, [Human Rights Indicators in the Context of the European Union](#), Work FRAME Report Package No. 13, Deliverable No. 1 (2014).

UN Office of the High Commissioner for Human Rights, [Realizing Human Rights through Government Budgets](#) (2017).

UN Office of the High Commissioner for Human Rights, [Report on austerity measures and economic and social rights](#) (2013).

UN Office of the High Commissioner for Human Rights, [Human Rights Indicators: A Guide to Measurement](#) (2012).

UN Office of the High Commissioner for Human Rights, [Working with the United Nations Human Rights Programme: A Handbook for Civil Society](#) (2008).

UN Office of the High Commissioner for Human Rights, Regional Office Europe, [The European Union and International Human Rights Law](#) (no year given).

Further Resources: Reports of the FRAME project

FRAME (<http://www.fp7-frame.eu/>) was a large-scale, collaborative research project (2013–2017) on the contribution of the EU's internal and external policies to the promotion of human rights worldwide. It was funded under the EU's Seventh Framework Programme (FP7) and was coordinated by the Leuven Centre for Global Governance Studies. Studies were conducted by 19 research institutes from around the world.

Below is a selection of reports of relevance in the ambit of the present study. A full list of reports is available at: <http://www.fp7-frame.eu/reports/>.

The EU and Human Rights – General Aspects

[International Human Rights Protection: Institutions and Instruments \(2014\)](#)

[EU human rights engagement in UN bodies \(2014\)](#)

[Coherence of human rights policymaking in EU institutions and other EU agencies and bodies \(2014\)](#)

[Mapping legal and policy instruments of the EU for human rights and democracy support \(2014\)](#)

[EU and Member State competences in human rights \(2015\)](#)

[Improving EU Engagement with Non-State Actors \(2015\)](#)

[Human rights priorities in the European Union's external and internal policies: an assessment of consistency with a special focus on vulnerable groups \(2015\)](#)

[Human rights, democracy and rule of law: Different organisations, different conceptions? \(2016\)](#)

[EU engagement with other European regional organisations \(2016\)](#)

[Engagement with regional multilateral organisations. Case study: OIC and League of Arab States \(2016\)](#)

[Structures and mechanisms to strengthen engagement with non-state actors in the protection and promotion of human rights \(2016\)](#)

[Policymakers' Experiences Regarding Coherence in the European Union Human Rights Context \(2016\)](#)

EU External Policies and its Relation to the Southern Mediterranean

[Fundamental rights in the institutions and instruments of the Area of Freedom, Security and Justice \(2014\)](#)

[Human rights concepts in EU Human Rights Dialogues \(2016\)](#)

[The EU's engagement with regional multilateral organisations. Case study: African perspective \(2015\)](#)

[Mapping, analysing and implementing foreign policy instruments \(2015\)](#)

[The role of human rights in the EU's external action in the Eastern Partnership, the Southern Neighbourhood and in Sub-Saharan Africa \(2016\)](#)

[Case study: Common Security and Defence Policy \(CSDP\) \(2016\)](#)

[Coherence and efficiency of the EU external policy related to conflict and crisis \(2016\)](#)

[Critically assessing human rights integration in Area of freedom, security and justice \(AFSJ\) policies \(2015\)](#)

[The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration \(2016\)](#)

[Challenges to the Effectiveness of EU Human Rights and Democratisation Policies \(2016\)](#)

[EU Promotion of Deep Democracy in the Southern Mediterranean: A Missed Opportunity? \(2016\)](#)

Trade and Development

[The integration of human rights in EU development and trade policies \(2014\)](#)

[The EU's engagement with the main Business and Human Rights instruments \(2015\)](#)

[The impact of EU trade and development policies on human rights \(2015\)](#)

[The impact of international global governance and regulatory frameworks in trade \(2016\)](#)

[The integration of EU development, trade and human rights policies \(2016\)](#)

Benchmarking and Indicators

[Access Guide to Human Rights Information \(2015\)](#)

[Human Rights Indicators in the Context of the European Union \(2014\)](#)

[Report on the results of policy benchmarking \(2017\)](#)

FRAME Toolbox

[Assessing the strategic use of the EU fundamental and human rights toolbox \(2016\)](#)

[The FRAME Toolbox for the EU Fundamental and Human Rights Policies \(2017\)](#)