

EU GUIDELINES on HUMAN RIGHTS DIALOGUES WITH THIRD COUNTRIES



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follow-up meeting on the Afghanistan-EU Human Rights Dialogue, Kabul, Afghanistan. ©EU

1. INTRODUCTION

In its conclusions of 25 June 2001 the Council welcomed the Commission communication of 8 May 2001 on the European Union's role in promoting human rights and democratisation in third countries, which represents an invaluable contribution towards strengthening the coherence and consistency of the EU's policy on human rights and democratisation. In its conclusions the Council reaffirmed its commitment to the principles of coherence and consistency, integration of human rights into all its actions, openness of its policies and identification of priority areas. As part of the process of implementing those Council conclusions, the Working Party on Human Rights (COHOM) undertook to establish guidelines on human rights dialogues in consultation with the geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms.

2. CURRENT SITUATION

The European Union is engaged in human rights dialogues with a number of countries. Those dialogues are in themselves an instrument of the Union's external policy. They are among a range of measures which the EU may use to implement its policy on human rights, and constitutes an essential part of the European Union's overall strategy aimed at promoting sustainable development, peace and stability, which, as emphasised by the World Summit declaration of 2005, approved by consensus and at the highest level by the UN General Assembly, are interdependent with respect for human rights and mutually reinforce one another. The decision to initiate such a dialogue is, in accordance with the guidelines on human rights dialogues with third countries adopted in 2001, to be made by the Council of the European Union. However, it should also be said that there is room for greater consistency in the EU's current approach towards dialogues. In fact, we are faced with an increasing number of such dialogues, and furthermore such dialogues take place at very different levels (e.g. at the level of experts from the capitals or heads of mission) and in very different fora. The decision to create new dialogues must therefore be taken with due regard for the anticipated added value and the resources available for their implementation. Thus, different types of dialogues exist, including:

2.1. Dialogues or discussions of a rather general nature based on regional or bilateral treaties, agreements or conventions or strategic partnerships dealing systematically with the issue of human rights. These include in particular:

- 2.1.1. relations with candidate countries;
- 2.1.2. the Cotonou Agreement with the ACP States;
- 2.1.3. relations between the EU and Latin America;
- 2.1.4. the Barcelona process (Mediterranean countries) and the neighbourhood policy (countries of the Caucasus in particular);
- 2.1.5. political dialogue with Asian countries in the context of ASEAN and ASEM;
- 2.1.6. relations with the Western Balkans;
- 2.1.7. bilateral relations in the framework of association and cooperation agreements.

2.2. Dialogues focusing exclusively on human rights. At present there are several regular, institutionalised dialogues devoted solely to human rights between the European Union and a third country or regional organisation (e.g. dialogue with China, consultations with Russia, dialogue with the five States of Central Asia and dialogue with the African Union). These are highly structured dialogues and consultations held at the level of human rights experts from the capitals. At one time the European Union also maintained a human rights dialogue with the Islamic Republic of Iran. Others are held at the level of heads of mission (e.g. India, Pakistan and Vietnam). The fact that such dialogue exists does not have to mean that the human rights issue is not also discussed at other levels of the political dialogue. In addition, in the context of various cooperation or association agreements with third countries, there are specific sub-committees or groups dealing with the human rights issue. This is the case in particular with various countries on the southern shores of the Mediterranean such as Morocco, Tunisia, Lebanon, Jordan, Egypt, Israel and the Palestinian Authority.

2.3. *Ad hoc* dialogues extending to CFSP-related topics such as that of human rights. The EU currently maintains such dialogues, for example with Sudan, at the level of heads of mission on the spot.

2.4. Dialogues in the context of special relations with certain third countries, on the basis of broadly converging views. With the United States, Canada, New Zealand, Japan and the associated countries, for example, these mostly take the form of six-monthly meetings of experts, with the Troika representing the EU, before the Human Rights Council and the annual United Nations General Assembly. Provision is also made for consultations with the African Union prior to the meetings of the Human Rights Council and the Third Committee of the UN General Assembly. The main objective of these dialogues is to discuss issues of common interest and the possibilities for cooperation within multilateral human rights bodies.

In addition to dialogues at EU level, a number of Member States also maintain dialogues with various third countries at national level.

The guidelines on human rights dialogues have several aims, namely to:

- identify the role played by this instrument in the global framework of the CFSP and the EU's policy on human rights;
- strengthen the coherence and consistency of the European Union's approach towards human rights dialogues by analysing on a case-by-case basis the added value of opening a dialogue on human rights and the resulting workload for the COHOM;
- facilitate use of that instrument by defining the conditions in which it is to be applied and made effective;
- notify the third parties (in particular, international organisations, non-governmental organisations, civil society, the media, the European Parliament, third countries) of this approach.

Political dialogues with the ACP countries under the Cotonou Agreement have their own detailed arrangements and procedures as laid down in Article 8 of the Agreement. However, for consistency's sake, exchanges of news and experience must be held on a regular basis in the COHOM Working Party framework.

3. BASIC PRINCIPLES

3.1. The European Union undertakes to intensify the process of integrating human rights and democratisation objectives (“mainstreaming”) into all aspects of its external policies. Accordingly, the EU will ensure that the issue of human rights, democracy and the rule of law will be included in all future meetings and discussions with third countries and at all levels, whether ministerial talks, joint committee meetings or formal dialogues led by the Presidency of the Council, the Troika, heads of mission or the Commission. It will further ensure that the issue of human rights, democracy and the rule of law is included in programming discussions and in country strategy papers.

3.2. However, in order to examine human rights issues in greater depth, the European Union may decide to initiate a human rights-specific dialogue with a particular third country. Decisions of that kind will be taken in accordance with certain criteria, while maintaining the degree of pragmatism and flexibility required for such a task. Either the EU itself will take the initiative of suggesting a dialogue with a third country, or it will respond to a request by a third country.

4. OBJECTIVES OF HUMAN RIGHTS DIALOGUES

The objectives of human rights dialogues will vary from one country to another and will be defined on a case-by-case basis. These objectives may include:

- (a) discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations;
- (b) registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavouring to improve the human rights situation in that country.

Moreover, human rights dialogues can identify at an early stage problems likely to lead to conflict in the future.

5. ISSUES COVERED IN HUMAN RIGHTS DIALOGUES

The issues to be discussed during human rights dialogues will be determined on a case-by-case basis. However, the European Union is committed to dealing with those priority issues which should be included on the agenda for every dialogue. These include the signing, ratification and implementation of international human rights instruments, cooperation with international human rights procedures and mechanisms, combating the death penalty, combating torture, combating all forms

of discrimination, children's rights, and in particular those of children in armed conflicts, women's rights, freedom of expression, the role of civil society and the protection of human rights defenders, international cooperation in the field of justice, in particular with the International Criminal Court, promotion of the processes of democratisation and good governance, the rule of law and the prevention of conflict. The dialogues aimed at enhancing human rights cooperation could also include – according to the circumstances – some of the priority issues referred to above, (in particular the implementation of the main international human rights instruments ratified by the other party), as well as preparing and following up the work of the Human Rights Council in Geneva, of the Third Committee of the UN General Assembly in New York and of international and/or regional conferences. They are held on a reciprocal basis, which enables the third country to raise the human rights situation in the European Union.

6. PROCEDURE FOR THE INITIATION OF HUMAN RIGHTS DIALOGUES

6.1. Any decision to initiate a human rights dialogue will first require an assessment of the human rights situation in the country concerned. The decision to embark on a preliminary assessment will be made by the Working Party on Human Rights (COHOM), involving as far as is necessary the geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms. The assessment itself will be made by COHOM in coordination with the other Working Parties. Amongst other things the assessment will look at developments in the human rights situation, the extent to which the government is willing to improve the situation, the degree of commitment shown by the government in respect of international human rights conventions, the government's readiness to cooperate with United Nations human rights procedures and mechanisms as well as the government's attitude towards civil society. The assessment will be based, inter alia, on the following sources: reports by heads of mission, reports by the UN and other international or regional organisations, reports by the European Parliament and by the various non-governmental organisations working in the field of human rights, and Commission strategy papers for the countries concerned.

6.2. Any decision to open a human rights dialogue will first require the defining of the practical aims which the Union seeks to achieve by entering into dialogue with the country concerned, as well as an assessment of the added value to be gained from such dialogue. The European Union will also in the medium-term, on a case-by-case basis, establish criteria for measuring the progress achieved in relation to the benchmarks and also criteria for a possible exit strategy but without that being the condition for the launching of a human rights dialogue.

6.3. Exploratory talks will be held before a human rights dialogue with the country concerned is launched. The aim of those talks will be twofold: first to define the objectives to be pursued by any country accepting or requesting a human rights dialogue with the EU and to determine possible ways of increasing that country's commitment towards international human rights instruments, international human rights procedures and mechanisms and the promotion and protection of human rights and democratisation in general; and subsequently to update the information in the reports following the preliminary assessment. The talks will also provide an opportunity to explain

to the country concerned the principles underlying the EU's action, as well as the Union's aims in proposing or accepting a human rights-specific dialogue. The exploratory talks will preferably be led by an EU Troika team of human rights experts representing the capitals, in close consultation with the Heads of Mission accredited in the country concerned. An assessment of the exploratory talks will then be carried out. The European Union will decide in the light of that assessment whether or not it wishes to continue on a more structured and institutionalised basis.

6.4. Any decision to initiate a human rights-specific dialogue will require discussion within the Working Party on Human Rights and its prior agreement. The final decision to initiate a human rights dialogue and to define the practical arrangements for such a dialogue, whether at the level of experts from the capitals or at local level by the heads of mission, lies with the Council of the European Union.

6.5. The geographical working parties and, if necessary, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms, should also be involved in this decision-making process.

6.6. Should the assessment be a negative one and/or the European Union decide not to initiate a human rights dialogue, the European Union will consider whether other approaches might be appropriate, such as emphasis on the human rights aspect of the political dialogue with the country concerned, inter alia by including specialist human rights knowledge in the political dialogue team.

6.7. The Working Party on Human Rights (COHOM) will be responsible for following up the dialogue and for setting the agenda in all the scenarios, where necessary together with the other bodies concerned, viz. the geographical working parties, the Heads of Mission, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms.

7. PRACTICAL ARRANGEMENTS FOR HUMAN RIGHTS DIALOGUES

Flexibility and pragmatism are the keywords in the context of the practical arrangements for human rights dialogues, which should thus be determined on a case-by-case basis, by joint agreement with the country concerned. The arrangements will cover aspects such as where and how often the dialogue is to be held and the level of representation required.

In principle, all the dialogues should last for at least one full day, with the exception of those held with States sharing views similar to those of the European Union, and, as far as possible, simultaneous interpretation should be provided in order to make maximum use of the time available for the discussions. Furthermore, when it instigates a dialogue, the European Union must make it clear to the third country that it reserves the right to refer to individual cases and to provide it, at each meeting, with a list of individual cases in respect of which it expects to receive a response. This list could be accompanied by a request for the release of the persons whose case has been raised, and, if necessary, those individual cases could be discussed at the level of the political dialogues.

Where appropriate, the European Union will publish a press release at the end of the dialogue, to be posted on the website of the General Secretariat of the Council and of the relevant Commission delegation. Consideration will also be given, on a case-by-case basis, to organising a joint press conference and interviews with the press after each session of a dialogue.

To ensure that the discussions are as fruitful as possible, the dialogues should, as far as feasible, be held at the level of government representatives responsible for human rights. For the sake of continuity, the European Union should be represented by the Troika, at the level either of representatives from the capitals or of Heads of Mission.

The European Union will ensure that dialogue meetings are regularly held in the country concerned. This approach has the advantage of giving the EU delegation a better opportunity to gauge for itself the situation on the spot and, subject to the agreement of the country's authorities, to contact the people and institutions in which it is interested. Traditionally, dialogues whose primary purpose is to discuss issues of mutual interest and to strengthen human rights cooperation are held in Brussels. That tradition should preferably be maintained.

As far as possible, the European Union will ask the authorities of countries involved in the human rights dialogue to include in their delegations representatives of the various institutions and Ministries responsible for human rights matters, such as the Justice and Interior Ministries, the police, prison administration etc. Likewise, civil society could become involved under the most suitable arrangement in the preliminary assessment of the human rights situation, in the conduct of the dialogue itself (particularly by organising, in certain cases, seminars with representatives of civil society of the third country and of the European Union in order to discuss specific thematic issues in greater depth in parallel with the formal dialogue), and in following up and assessing the dialogue. The European Union could thus signify its support for defenders of human rights in countries with which it maintains exchanges of this kind.

The EU will as far as possible give the human rights dialogues a degree of genuine transparency vis-à-vis civil society.

8. CONSISTENCY BETWEEN MEMBER STATES' BILATERAL DIALOGUES AND EU DIALOGUES

Information exchange is essential if maximum consistency between Member States' bilateral dialogues and EU dialogues is to be ensured. Exchanges of this kind, particularly on the issues discussed and the outcome of discussions, could be conducted by COREU or the Working Party on Human Rights (COHOM). The diplomatic post of the current Presidency in the country concerned could also gather relevant information on the spot. Where appropriate, informal *ad hoc* meetings between the members of the Working Party on Human Rights (COHOM), the relevant geographical working parties, and the European Parliament could be considered. It would also be possible to consider holding informal *ad hoc* meetings with other countries which maintain human rights dialogues with the country concerned (as in the case of the current dialogue with China).

Such meetings should involve the COHOM Working Party, and the geographical working parties or study groups. The assistance afforded by the European Union in the area of human rights and democratisation in the countries with which it maintains a dialogue should take into account developments in the dialogue and its outcome. To that end, the European Commission will regularly notify COHOM of the use of funds from the European Instrument for Democracy and Human Rights (EIDHR), so that an exchange of views can be held on the consistency of such assistance measures with the priorities defined by COHOM, with due regard also for any assistance provided by the Member States in that area.

9. CONSISTENCY BETWEEN HUMAN RIGHTS DIALOGUES AND EU RESOLUTIONS TO THE U.GA AND THE HRC

Human rights dialogues and Resolutions submitted by the European Union to the UNGA or the HRC on the human rights situations in certain countries are two entirely separate forms of action. Accordingly, the fact that there is a human rights dialogue between the EU and a third country will not prevent the EU either from submitting a Resolution on the human rights situation in that country or from providing support for an initiative by the third country. Nor will the fact that there is a human rights dialogue between the EU and a third country prevent the European Union from denouncing breaches of human rights in that country, inter alia in the appropriate international fora, or from raising the matter in meetings with the third countries concerned at every level.

10. ASSESSING HUMAN RIGHTS DIALOGUES

All human rights dialogues will be assessed on a regular basis by COHOM, in conjunction with the relevant geographical working party, preferably, and as far as possible, every other year.

The assessment may be made by the current Presidency, assisted by the Council Secretariat or, in individual cases, by calling on the services of an external consultant. It will be submitted for discussion and decision to the Working Party on Human Rights (COHOM) in cooperation with the geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedom. Civil society will be involved in this assessment exercise.

The task will involve assessing the situation in relation to the objectives which the Union set itself before the start of the dialogue, and will examine how much added value has been provided by the dialogue.

The examination will look particularly closely at the progress made on the priority areas of the dialogue. If progress has indeed been made, the assessment should, if possible, analyse how far the European Union's activities have contributed to that progress. If no progress has been made, the European Union should either adjust its aims, or consider whether or not to continue the human rights dialogue with the country concerned. Indeed, a dialogue assessment must allow for the possibility of a decision to terminate the exercise if the requirements given in these guidelines are no longer met, or the conditions under which the dialogue is conducted are unsatisfactory, or if the outcome is not up to the EU's expectations. Likewise, a decision may be taken to suspend a dialogue which has proved successful and has therefore become redundant. Such matters will be dealt with by the Working Party on Human Rights (COHOM) as a matter of priority.

As for dialogues aimed at strengthening human rights cooperation, particularly those held within international and regional bodies, the assessment will focus on those areas in which cooperation could be further improved.

11. MANAGING HUMAN RIGHTS DIALOGUES

Given the increasing numbers of dialogues, the Working Party on Human Rights (COHOM) must consider the problem of how these should be managed. Continuity is a very important factor, as is the strengthening of the structures supporting the current Council Presidency in the preparations for the dialogues and their follow-up. To prepare each dialogue properly will also require provision of the basic elements from the geographical working parties, but also if necessary from the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms. The Council Secretariat's support is essential in terms of centralising all the data, preparing both the content and the logistics, and following up the dialogues. The European Union could also consider, on a case-by-case basis, the possibility of associating a private foundation or organisation specialised in the field of human rights with one or more dialogues.

12. THE HUMAN RIGHTS POSITION IN POLITICAL DIALOGUES

As indicated in paragraph 3, the European Union will ensure that the issue of human rights, democracy and the rule of law is incorporated into all meetings and discussions it has with third countries, at every level, including political dialogue and, if necessary, at the highest level. The European Union undertakes to include human rights experts in the EU delegations. The decision on who will provide the expert knowledge will be taken on a case-by-case basis, but with an eye to continuity. Although this type of discussion does not afford the possibility of dealing with human rights issues in any great depth, the European Union will endeavour to raise the priority issues referred to in paragraph 5 with the country concerned.