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THE ROAD TOWARDS THE EUROPEAN UNION GLOBAL HUMAN RIGHTS SANCTIONS REGIME

On 7 December 2020, the Council of the European Union adopted two legal instruments, the Council Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses and the Council Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses, which together make up the European Union Global Human Rights Sanctions Regime as a relatively new tool in its “human rights and foreign policy toolbox” that focusses on serious human rights violations. This article focuses on the Action Plan on Human Rights and Democracy 2020 – 2024 as part of the Joint Communication adopted in March 2020 by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission since the European Union Global Human Rights Sanctions Regime is a key deliverable proposed in the Action Plan. More specifically, the article examines whether the European Union Global Human Rights Sanctions Regime has provided greater flexibility to target those responsible for serious human rights violations and abuses worldwide, as well as whether the said regime could be seen as an European Union response to a transnational security threat.

Keywords: European Union, human rights, sanctions regime, foreign policy, transnational security threat.

1. INTRODUCTORY REMARKS

Today it is agreed that the promotion and protection of all human rights is a legitimate concern of the international community (Siatitsa, 2022, p. 7). As stated in the European Union (hereinafter: EU) Strategic Framework and Action Plan on Human Rights and Democracy, “human rights are universally applicable legal norms”.¹ In accordance with Article 2 of the Treaty on European Union (hereinafter: TEU), “Union is founded

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¹ EU Strategic Framework and Action Plan on Human Rights and Democracy (Council of the EU). No. 1185/12 of June 25, 2012, p1.

on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”² According to the 2021 Annual Report on Human Rights and Democracy in the World, “the European Union maintained its leadership in the universal promotion and protection of human rights, democracy and the rule of law in multilateral fora”.³

As we are all aware, serious human rights violations and abuses take place in many parts of the world - frequently without any consequences for the perpetrators. The EU is not prepared to stand by while serious violations and abuses of human rights are committed. The establishment of the EU Global Human Rights Sanctions Regime (hereinafter: EUGHRSR) is considered „a landmark initiative that underscores the EU’s determination to enhance its role in addressing serious human rights violations and abuses worldwide”⁴ Formally, the EUGHRSR has a global reach. It offers a legal framework to adopt sanctions against any particular person or group of persons for example, following any incident of grave human rights violation. As argued by Rettman, the EUGHRSR is “meant to end exemption even for the servants of powerful and strategically important states” (Rettman, 2020, p. 261). EU sanctions help to achieve key EU objectives such as preserving peace, strengthening international security, and consolidating and supporting democracy, international law and human rights. They are targeted at those whose actions endanger these values, and intend to reduce as much as possible any adverse consequences on the civilian population.⁵

On 7 December 2020, the Council of the EU adopted two legal instruments, the Council Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses (hereinafter: Council Decision (CFSP) 2020/1999) and the Council Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses (hereinafter: Council Regulation (EU) 2020/1998). Those two acts together make up the EUGHRSR as a relatively new tool in its “human rights and foreign policy toolbox” that focusses on serious human rights violations. The article argues that the EUGHRSR is a transnational response to a changing landscape when it comes to security challenges and ensuring the respect of human rights. The main goal of this article is to underline the importance that EU places with regard to promoting and protecting human rights globally. This article will endeavour to examine the activities of the EU institutions which are aimed at promoting and protecting human rights, especially with respect to the adoption of the important acts. Accordingly, the EU Action Plan on Human Rights

² Consolidated version of the Treaty on European Union (EU). O. J. C 326/01, of October 26, 2012.

³ 2021 Annual Report on Human Rights and Democracy in the World - Report of the EU High Representative for Foreign Affairs and Security Policy (EU) of April 19, 2022, p. 161. Available at: https://www.eeas.europa.eu/eeas/2021-annual-report-human-rights-and-democracy-world-report-eu-high-representative-foreign_en (02. 07. 2022).

⁴ European Union External Action. (The Diplomatic Service of the EU). Questions and Answers: EU Global Human Rights Sanctions Regime of December 7, 2020. See: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (02. 07. 2022).

⁵ The EU had about 40 different sanctions regimes in place in 2020. See: PRESS RELEASE - Sanctions and Human Rights: towards a European framework to address human rights violations and abuses worldwide, October 19, 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939 (03. 07. 2022).

and Democracy 2020 – 2024 (hereinafter: EU Action Plan) will be examined since the EUGHRSR is a key deliverable proposed in the EU Action Plan which reaffirms the EU's commitment to promoting and protecting these values worldwide.⁶

2. EUROPEAN UNION GLOBAL HUMAN RIGHTS SANCTIONS REGIME AS A RELATIVELY NEW TOOL IN ITS “HUMAN RIGHTS AND FOREIGN POLICY TOOLBOX”

The EU is a powerful and uniquely representative actor on the international scene (Alston, 1999, p. 7). Human rights and the rule of law are regarded as cornerstones of the EU, playing a key role in both the EU's internal order and the accession of new Member States to the EU (Wetzels, 2011). The main goal of the new EUGHRSR is to enable the EU to stand up in a more tangible and direct way for human rights, which constitute one of its fundamental values. Respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights underpin the EU's external action. Acts such as genocide, crimes against humanity, torture, slavery, sexual and gender-based violence, enforced disappearances, or human trafficking are unacceptable. Putting an end to these violations and abuses of human rights worldwide is considered a key priority for the EU.⁷ The EUGHRSR highlights the importance the EU places on promoting and protecting human rights globally.⁸

2.1. Background

Over the past decades, the EU has undergone a significant transformation – from a primarily economic integration project whose founding treaties were totally silent on human rights, to a political union of values that puts human rights front and centre (Wouters *et al.*, 2020, p. 1). The Treaty of Lisbon,⁹ which entered into force on 1 December 2009, had been widely regarded as the high point of the EU's journey in that direction (*Ibid.*). Not only did the Treaty of Lisbon recognise human rights as one of the EU's founding values, the guiding principles and objectives of all EU external action, but it also gave the Charter of Fundamental Rights of the EU¹⁰ the same legal value as the Treaties and obliged the EU to accede to the European Convention on Human Rights (Wouters *et al.*, 2020, p.1).

⁶ The EU Action Plan constitutes part of the Joint Communication which is adopted in March 2020 by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

⁷ See: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (02. 07. 2022).

⁸ Joint Brussels Office of the Law Societies. EU targets individuals, entities and bodies with new global human rights sanctions regime. Available at: <https://www.lawsocieties.eu/news/eu-targets-individuals-entities-and-bodies-with-new-global-human-rights-sanctions-regime/6001547.article> (3. 7. 2022).

⁹ *Treaty of Lisbon* amending the Treaty on European Union and the Treaty establishing the European Community (EU). O.J. C 306 of December 17, 2007.

¹⁰ The Charter of Fundamental Rights of the EU brings together the most important personal freedoms and rights enjoyed by citizens of the EU into one legally binding document. It was declared in 2000, and came into force in December 2009 along with the Treaty of Lisbon. See: Charter of Fundamental Rights of the European Union (EU). O.J. C 326 of October 26, 2012. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT> (03. 07. 2022).

The EU has been awarded the 2012 Nobel Peace Prize for helping to „transform most of Europe from a continent of war to a continent of peace”. Announcing its decision on 12 October, the Nobel Peace Prize committee stated: “The Union and its forerunners have for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe”.¹¹ More than an award for previous achievements, the prize constitutes a challenge for future EU action in the areas of peacebuilding, democratization, and in particular human rights (Thiel, 2017, p. 1).

On 19 October 2019, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented a Joint Proposal for a Council Regulation concerning implementation of restrictive measures or sanctions against serious human rights violations and abuses worldwide.¹² Namely, the Joint Proposal for a Council Regulation is one of the legal acts that was required by the Council in order to continue with the establishment of the new human rights sanctions regime. The said proposal complemented the Council Decision proposed by High Representative of the Union for Foreign Affairs and Security Policy Josep Borrell. After its adoption by the Council, the Joint Proposal has established the EUGHRSR.

These proposals strongly illustrate the EU’s commitment to support human rights, democracy, the rule of law and the principles of international law around the globe. They respond to the political agreement by EU Foreign Ministers at the Foreign Affairs Council in December 2019 to move forward with the establishment of such a regime.¹³

The EUGHRSR provides a legal ground for the EU to target individuals, companies and bodies - including those who are and those who are not associated with national governments i.e. state and non-state actors - that are responsible for, involved in or associated with serious human rights violations and abuses worldwide, no matter where they occurred.¹⁴ As the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President for a Stronger Europe in the World Josep Borrell¹⁵, said:

“Human rights are under attack around the world. The new EUGHRSR will be a powerful tool to hold accountable those responsible for serious human rights violations and abuses around the world. This is an opportunity for Europe not only to stand up for its values but to act”.¹⁶

¹¹ EU wins 2012 Nobel Peace Prize: “This prize is for all EU citizens”. See: <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20121012STO53551/eu-wins-2012-nobel-peace-prize-this-prize-is-for-all-eu-citizens> (4. 7. 2022).

¹² See: Sanctions and Human Rights: towards a European framework to address human rights violations and abuses worldwide, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939 (03. 07. 2022).

¹³ *Ibid.*

¹⁴ Summary of Council Decision (CFSP) 2020/1999 and Council Regulation (EU) 2020/1998, concerning restrictive measures against serious human rights violations and abuses. Document 32020R1998. See more at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=uriserv:OJ.LI.2020.410.01.0001.01.ENG> (5. 7. 2022).

¹⁵ Josep Borrell Fontelles is High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission for a Stronger Europe in the World since 2019. See: [https://stateoftheunion.eu.eu/2022/02/28/josep-borrell-fontelles/\(3. 7. 2022\)](https://stateoftheunion.eu.eu/2022/02/28/josep-borrell-fontelles/(3. 7. 2022)).

¹⁶ Remarks by the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President Josep Borrell. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939 (3. 7. 2022).

2.2. Adoption of legal instruments

In accordance with Article 288 of the Treaty on the Functioning of the European Union (TFEU), the institutions shall adopt regulations and decisions, along with other acts in order to exercise the EU's competences. As stated in the same Article, "a regulation shall have general application and it shall be binding in its entirety and directly applicable in all Member States", while "the decisions shall be binding in its entirety" and "if a decision specifies those to whom it is addressed it shall be binding only on them".¹⁷

On 7 December 2020, the Council of the EU adopted two legal instruments, the Council Decision (CFSP) 2020/1999¹⁸ and the Council Regulation (EU) 2020/1998¹⁹, which together make up the EUGHRSR. They entered into force on 8 December 2020. It is important to note that the Council Regulation (EU) 2020/1998 was applied automatically and uniformly to all of the EU Member States as soon as it came into force, without needing to be transposed into national law. It has been amended by the Implementing Regulations (EU) 2021/371 of 2 March 2021 and (EU) 2021/478 of 22 March 2021.²⁰ The Council Regulation is needed to detail the measures of the sanctions regime established by the Council Decision that can affect the functioning of the EU's internal market. It is directly binding on the national administrative authorities and on private operators, whereas the Council Decision is legally binding on EU Member States.²¹

2.2.1. Council Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses

The Council Decision (CFSP) 2020/1999 was adopted under the CFSP powers (Article 29 TEU).²² The importance of its Preamble is multifold. Firstly, it declares that, "the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights". Further, it states that „Union is committed to protect those values, which play a key role in ensuring peace and sustainable security, as cornerstones of its external action”.²³ In addition, it underlines that “states have primary responsibility to respect, protect and fulfil human rights, including

¹⁷ Article 288 of the Treaty on the Functioning of the European Union (EU). O.J. C 326/49 of October 26, 2012.

¹⁸ Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, pp. 13-19.

¹⁹ Council Regulation 2020/1998, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, pp. 1-12.

²⁰ See: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=uriserv:OJ.LI.2020.410.01.0001.01.ENG> (5. 7. 2022).

²¹ PRESS RELEASE - Sanctions and Human Rights: towards a European framework to address human rights violations and abuses worldwide, 19 October 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939 (3. 7. 2022).

²² Article 29 of the TEU (ex Article 15 TEU): "The Council shall adopt decisions which shall define the approach of the Union to a particular matter of geographical or thematic nature. Member States shall ensure that their national policies conform to the Union positions". See: Consolidated version of the Treaty on European Union (EU). O. J. C 326/01, of October 26, 2012.

²³ Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, p. 13.

ensuring compliance with international human rights law” since “human rights violations and abuses worldwide remain of great concern, including the significant involvement of non-State actors in human rights abuses globally as well as the severity of many such acts”.²⁴ The Preamble of the Council Decision (CFSP) 2020/1999 is further relevant as it reveals that “the Council emphasises the importance of international human rights law and of the interaction between international human rights law and international humanitarian law when considering the application of targeted restrictive measures under this Decision”. When it comes to the applicability of the Council Decision (CFSP) 2020/1999 the third countries, this Preamble specifies that “the Decision does not affect the application of other existing or future Council decisions under the common foreign and security policy establishing restrictive measures in view of the situation in certain third countries, and which address human rights violations or abuses”.²⁶ According to Article 10, “the Decision shall apply until 8 December 2023 and shall be kept under constant review”.²⁷

2.2.2. Council Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses

The Council Regulation (EU) 2020/1998 was adopted under Article 215 of the TFEU.²⁸ In accordance with Article 20 of the said Regulation, “the Regulation shall be binding in its entirety and directly applicable in all Member States”.²⁹ As stated in its Article 19, the Council Regulation (EU) 2020/1998 shall apply: (a) within the territory of the Union, including its airspace; (b) on board any aircraft or vessel under the jurisdiction of a Member State; (c) to any natural person inside or outside the territory of the Union who is a national of a Member State; (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU.³⁰

²⁴ Preamble of the Council Decision (CFSP) 2020/1999 of 7 December 2020, concerning restrictive measures against serious human rights violations and abuses, O. J. (L 410 I), p. 13.

²⁵ See: Consolidated version of the Treaty on European Union (EU). O. J. C 326/01, of October 26, 2012.

²⁶ Preamble of the Council Decision (CFSP) 2020/1999, concerning restrictive measures against serious human rights violations and abuses (CFSP). O. J. (L 410 I) of December 7, 2020, p. 13.

²⁷ Article 10 of the Council Decision (CFSP) 2020/1999, concerning restrictive measures against serious human rights violations and abuses (CFSP). O. J. (L 410 I) of December 7, 2020, p. 18.

²⁸ Article 215 paragraph 1 of the TFEU (ex Article 301 TEC): “Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof”. Article 215 paragraph 2 of the TFEU states “Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities”. See: Consolidated version of the Treaty on European Union (EU). O. J. C 326/01, of October 26, 2012.

²⁹ Article 20 of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, p. 9.

³⁰ Article 19 of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, p. 8.

2.3. Restrictive measures or sanctions as a key tool of the European Union's Common Foreign and Security Policy

Human rights and democracy, founding values of the EU, are a cornerstone of EU's external action.³¹ The EU has a set of tools available to address human rights violations and abuses. This includes political dialogue, multilateral partnerships, but also sanctions.³² Based on the previous analysis, it can be concluded that restrictive measures or sanctions are a key tool of the EU's CFSP.³³ The sanctions seek to bring about a change in the policy or conduct of those targeted, with a view to promoting the objectives of the CFSP.³⁴

When it comes to the EUGHRSR as a question may arise what the Regime means for EU citizens and economic operators. The answer should be that EUGHRSR „contributes to the respect for human rights, a fundamental value of the EU by attaching a cost to serious human rights violations and abuses in the form of banning perpetrators from the EU and freezing their assets in the EU”.³⁵ We should also bear in mind that the restrictions set out in the EUGHRSR also mean that EU operators are obliged to freeze the assets of the perpetrators listed³⁶ and must not make funds or economic resources available to them.³⁷

The next important question is whether sanctions imposed under the EUGHRSR can have unintended consequences for the civilian population. We should keep in mind that „all EU sanctions are targeted to minimise risks of unintended consequences on the general population” and that „the EUGHRSR only includes individual measures (a travel ban, an asset freeze and a prohibition to make funds and economic resources available), which only apply to the perpetrators listed”.³⁸ These sanctions, as all EU sanctions, should not impede the supply of humanitarian aid, including medical assistance. Specific exceptions for humanitarian purposes are foreseen. In particular, these individual measures include all usual standard exceptions, e.g. the satisfaction of basic needs of designated persons and their dependent

³¹ Thematic Programme on Human Rights and Democracy Multi-Annual Indicative Programming 2021-2027, December 2021, p. 4. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6695 (5. 7. 2022).

³² European Union External Action. The Diplomatic Service of the European Union. Questions and Answers: EU Global Human Rights Sanctions Regime. Brussels, 7 December 2020. Available at: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (5. 7. 2022).

³³ European Commission. Overview of sanctions and related tools. An essential tool through which the EU can intervene where necessary to prevent conflict or respond to emerging or current crises. Available at: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/overview-sanctions-and-related-tools_en (5. 7. 2022).

³⁴ See: How and when the EU adopts sanctions. Available at: <https://www.consilium.europa.eu/en/policies/sanctions/> (6. 7. 2022).

³⁵ European Union External Action. The Diplomatic Service of the European Union. Questions and Answers: EU Global Human Rights Sanctions Regime. Brussels, 7 December 2020. Available at: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (6. 7. 2022).

³⁶ Annex I, List of natural or legal persons, entities or bodies referred to in Article 3 of Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, p. 10.

³⁷ See: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (6. 7. 2022).

³⁸ *Ibid.*

family members, including payments for foodstuffs, medicines and medical treatment³⁹. In addition, the EUGHRSR includes a dedicated so-called humanitarian derogation. The derogation means that a restricted or prohibited action can be carried out after a Member States' national competent authority⁴⁰ has granted an authorisation.⁴¹ More concretely, the derogation allows Member States to grant an authorisation to humanitarian operators. As a result, certain frozen funds or economic resources can be released, or certain funds or economic resources can be made available, if this is needed for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations⁴².

The increasing engagement with community interests in international law marks the transformation of international law from a legal system primarily based upon bilateral legal relations among states to a system where respect for certain common fundamental values is brought to the forefront (Siatitsa, 2022, p. 1.). The notion of serious violations of international humanitarian law appears increasingly alongside serious violations of human rights in international practice (Siatitsa, 2022, p. 209). It follows from the above that all restrictive measures adopted by the EU are fully compliant with obligations under international law, including those pertaining to human rights and fundamental freedoms.⁴³ Under the authority of High Representative/Vice-President Josep Borrell, EU Special Representative for Human Rights, Eamon Gilmore,⁴⁴ continued the implementation of his mandate, which promotes EU foreign policy on human rights, as well as compliance with international humanitarian law and support to international criminal justice (2021 Annual Report on Human Rights and Democracy in the World). Through his high-level and targeted engagement, the EU Special Representative⁴⁵ contributed to the coherence,

³⁹ See Articles 2 and 3 of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, pp. 15-17. For more details see: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (6. 7. 2022).

⁴⁰ For specific details of national competent authorities, you can see Annex II of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, p. 11.

⁴¹ See: European Union External Action. The Diplomatic Service of the European Union. Questions and Answers: EU Global Human Rights Sanctions Regime. Brussels, 7 December 2020. Available at: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (6. 7. 2022).

⁴² Article 4 of Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, p. 17; Questions and Answers: EU Global Human Rights Sanctions Regime. Available at: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (6. 7. 2022).

⁴³ See: How and when the EU adopts sanctions. Available at: <https://www.consilium.europa.eu/en/policies/sanctions/> (6. 7. 2022). For more details about the restrictive measures (sanctions) you can see: Restrictive measures (Sanctions). 2022. The EU Best Practices for the effective implementation of restrictive measures. No. doc. 10572/22, Brussels: Council of the European Union, June 27, 2022, pp. 1-39.

⁴⁴ Eamon Gilmore is the EU Special Representative for Human Rights (since March 2019) and has also served as EU Special Envoy for the Columbian Peace Process since October 2015. See more information about the activities of Eamon Gilmore. Available at: <https://www.gilmore.ie/about/> (8. 7. 2022).

⁴⁵ The tasks of the EU Special Representative for Human Rights are to enhance the effectiveness and visibility of EU human rights policy. The Special Representative has a broad, flexible mandate, which provides the

visibility and effectiveness of the EU's human rights actions and actions in the field of international humanitarian law, ensuring a leading role in supporting human rights globally, and at the regional and multilateral level.⁴⁶

When it comes to the authority to propose sanctions under the EUGHRSR, as stated in Article 5 paragraph 1 of the Council Decision (CFSP) 2020/1999, it is important to know that the High Representative of the European Union for Foreign Affairs and Security Policy and EU Member States can put forward proposals for listings.⁴⁷ In line with Article 5 paragraph 2 of the Council Decision (CFSP) 2020/1999, the Council shall decide on those listings.⁴⁸ It follows from the above that the Council, acting by unanimity upon a proposal from a Member State or from the High Representative, identifies those targeted by sanctions. In other words, every name on the list is agreed unanimously by all the Member States.

Currently, Member States have very different definitions of what constitutes a violation of restrictive measures and what penalties should be applied in the event of such a violation. This could lead to different degrees of enforcement of sanctions and a risk of these measures being circumvented. This is why, on 30 June 2022, the Council requested the European Parliament's consent on a decision to add the violation of restrictive measures to the list of 'EU crimes' included in the TFEU.⁴⁹ A unanimous decision to add the violation of restrictive measures to the list of 'EU crimes' will allow, as a further step, the adoption of a directive containing minimum rules concerning the definition of criminal offences and penalties for the violation of EU restrictive measures. This will ensure a similar degree of sanctions enforcement throughout the EU and will dissuade attempts to circumvent or violate EU measures.⁵⁰ It is also important to know that the EU sanctions map is available for a visual

possibility of adapting to evolving geopolitical circumstances. The Special Representative works closely with the European External Action Service, which provides full support to his work. See more information. Available at: <https://www.gilmore.ie/eu-special-representative/> (8. 7. 2022).

⁴⁶ 2021 Annual Report on Human Rights and Democracy in the World - Report of the EU High Representative for Foreign Affairs and Security Policy of April 19, 2022, p. 13. Available at: https://www.eeas.europa.eu/eeas/2021-annual-report-human-rights-and-democracy-world-report-eu-high-representative-foreign_en (8. 7. 2022).

⁴⁷ Article 5 paragraph 1 of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020 states: "The Council, acting by unanimity upon a proposal from a Member State or from the High Representative, shall establish and amend the list set out in the Annex".

⁴⁸ Article 5 paragraph 2 of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, p. 17 states: "The Council shall communicate the decisions referred to in paragraph 1, including the grounds for listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing that natural or legal person, entity or body with an opportunity to present observations".

⁴⁹ See: *How and when the EU adopts sanctions*. Available at: <https://www.consilium.europa.eu/en/policies/sanctions/> (6. 7. 2022).

⁵⁰ Under Article 83 (1) of the TFEU, the Parliament and the Council may establish minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension. The areas of crime currently listed in the said Article are terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime, and organised crime. On May 25, 2022, the European Commission presented a proposal for a decision to extend the list of these areas of crime to

overview of sanctions adopted by the Council.⁵¹ Namely, the EU sanctions map provides comprehensive details of all EU sanctions regimes and their corresponding legal acts, including those regimes adopted by the UN Security Council and transposed at EU level.⁵²

In 2021, the EU adopted restrictive measures targeting persons and entities from China, the Democratic People's Republic of Korea (hereinafter: DPRK), Libya, South Sudan, Eritrea and Russia, involved in serious human rights violations and abuses.⁵³ According to the 2021 Annual Report on Human Rights and Democracy, the EU imposed sanctions in the case of Alexei Navalny's arbitrary arrest and detention, as well as sanctions against the Wagner group and its members. In December, the Council adopted a decision prolonging for one year the existing sanctions. Throughout the year, the EU took the lead in UN human rights fora on initiatives aimed at addressing human rights violations and abuses in Afghanistan, Belarus, Burundi, DPRK, Ethiopia, Eritrea and Myanmar. The first EU strategic dialogue with the Office of the UN High Commissioner for Human Rights in October 2021 was an opportunity to share updates on global human rights issues, to discuss priorities and to build a stronger partnership for more effective multilateralism and rules-based international cooperation. As a staunch advocate of multilateralism, the EU also remains vigilant in the defence and advancement of universal human rights and the integrity and functionality of the global human rights system.⁵⁴

2.4. The importance of the European Union Global Human Rights Sanctions Regime

The European human rights community celebrated the adoption of a new, dedicated tool to publicise abuses and perpetrators, further raising the EU's profile as a global advocate of human rights.⁵⁵ The EUGHRSR covers serious human rights violations and abuses, including: genocide; crimes against humanity; torture and other cruel, inhuman or degrading treatment or punishment; slavery; extrajudicial, summary or arbitrary executions and killings; the enforced disappearance of persons and arbitrary arrests or

include the violation of restrictive measures adopted by the EU. See: PRESS RELEASE – Sanctions: Council requests European Parliament consent to add the violation of restrictive measures to the list of EU crimes. Council of the European Union, June 30, 2022. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/sanctions-council-requests-european-parliament-consent-to-add-the-violation-of-sanctions-to-the-list-of-eu-crimes/> (3. 7. 2022).

⁵¹ The EU sanctions map is available at: <https://www.sanctionsmap.eu/#/main> (10. 7. 2022).

⁵² Overview of sanctions and related tools - An essential tool through which the EU can intervene where necessary to prevent conflict or respond to emerging or current crises, European Commission. Available at: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/overview-sanctions-and-related-tools_en (10. 7. 2022).

⁵³ See, available at: https://www.eeas.europa.eu/eeas/2021-annual-report-human-rights-and-democracy-world-report-eu-high-representative-foreign_en (10. 7. 2022).

⁵⁴ 2021 Annual Report on Human Rights and Democracy in the World - Report of the EU High Representative for Foreign Affairs and Security Policy, April 19, 2022, p. 10. Available at: https://www.eeas.europa.eu/eeas/2021-annual-report-human-rights-and-democracy-world-report-eu-high-representative-foreign_en (10. 7. 2022).

⁵⁵ Portela, C. 2021. *The EU's new human rights sanctions regime: one year on*. Available at: <https://theloop.ecpr.eu/the-eus-new-human-rights-sanctions-regime-one-year-on/> (10. 7. 2022).

detentions.⁵⁶ The sanctions regime also covers acts which are widespread, systematic or of serious concern in relation to the goals of the EU's Common Foreign and Security Policy (CFSP), as set out in Article 21 of the TEU. These include: trafficking in human beings; abuses of human rights by migrant smugglers; sexual violence and gender-based violence; violations or abuses of the freedoms: of peaceful assembly and of association, of opinion and expression, of religion or belief.⁵⁷

The new EUGHRSR allows the EU to target serious human rights violations and abuses worldwide, irrespective of where they occur, whereas existing sanctions regimes focus on specific countries. Sanctions, of course, are not an end in themselves. They are part of the EU's broader strategy on human rights. For example, the EUGHRSR is an important element in delivering on the EU Action Plan, which sets out the overall strategy in this field. The EU uses sanctions as a political tool aimed at policies or activities that the EU wants to influence, the means to conduct those policies or activities and those responsible for them.⁵⁸

The targets of the EUGHRSR are also distinguished in three categories: first, natural or legal persons, entities or bodies, who are *responsible* for violations or abuses; second, those who provide financial, technical, or material support for or are otherwise involved in violations and abuses, including by planning, directing, ordering, assisting, preparing, facilitating, or encouraging such acts; and third, those who are *associated* with those in the first two categories (Eckes, 2022, p. 257).

It has been argued that the EUGHRSR could be seen as an EU response to a transnational security threat, or as pointed out by Eckes (2022, p. 266), "above all EUGHRSR is a transnational response to a changing landscape of security challenges, which are themselves transnational". Certain threats are themselves more flexible and require a more flexible

⁵⁶ According to Article 2 of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, pp. 3-4, and Article 1 of the Council Decision 2020/1999, concerning restrictive measures against serious human rights violations and abuses (EU). O. J. (L 410 I) of December 7, 2020, pp. 13-14. See also: Summary of Council Decision (CFSP) 2020/1999 and Council Regulation (EU) 2020/1998. Restrictive measures against serious human rights violations and abuses. Document 32020R1998. Available at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=uriserv:OJ.LI.2020.410.01.0001.01.ENG> (10. 7. 2022).

⁵⁷ Summary of Council Decision (CFSP) 2020/1999 and Council Regulation (EU) 2020/1998. Restrictive measures against serious human rights violations and abuses. Document 32020R1998. See more at: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=uriserv:OJ.LI.2020.410.01.0001.01.ENG> (10. 7. 2022).

⁵⁸ See: European Union External Action. The Diplomatic Service of the European Union. Questions and Answers: EU Global Human Rights Sanctions Regime. Brussels, 7 December 2020. Available at: https://www.eeas.europa.eu/eeas/questions-and-answers-eu-global-human-rights-sanctions-regime_en (10. 7. 2022). As for the first sanctions under this new regime, on March 2, 2021, the EU added four Russian officials to the Consolidated List for serious human rights violations linked to their roles in the treatment of Russian opposition leader, Alexei Navalny, marking the first listings under the EU human rights sanctions regime. In addition, on March 22, 2021, the Council decided to impose restrictive measures on eleven individuals and four entities responsible for serious human rights violations and abuses, among others, in relation to the Uyghurs in Xinjiang in China. These sanctions also concern the repression in the Democratic People's Republic of Korea, extrajudicial killings and enforced disappearances in Libya, torture and repression against LGBTI persons and political opponents in Chechnya in Russia, and torture, extrajudicial, summary or arbitrary executions and killings in South Sudan and Eritrea. See: The EU adopts its first sanctions under its new global human rights sanctions regime. Available at: Norton Rose Fulbright, March 2021. Available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/81a274ea/the-eu-adopts-its-first-global-human-rights-sanctions-regime> (10. 7. 2022).

legal framework to deal with (Eckes, 2022, p. 266). According to Eckes (Eckes, 2022, p. 257), “the grave human rights violations targeted by the EUGHRSR are first of all a security threat in the places where they occur”, and “they are also usually interrelated with other criminal activity, such as corruption and breaches of international law” (Eckes, 2022, p. 257). In addition, “the targeted violations are also of such a scope and gravity that they threaten international security more broadly” (Eckes, 2022, p. 257). In case such violations can be committed without fear of any response, a powerlessness of the international system is exposed, which in turn solicits others to also disregard human rights, including those that are considered to form part of *ius cogens* (Eckes, 2022, p. 257).

The adoption by the EU of such an extraterritorial human rights sanctions regime is a significant and critical development, as the EU will now be able to target human rights violations without being limited to existing geographical sanctions regimes. This new regulation follows the aforementioned EU Action Plan, wherein the EU committed to developing a new horizontal EUGHRSR to tackle serious human rights violations and abuses worldwide.⁵⁹

3. THE EUROPEAN UNION ACTION PLAN ON HUMAN RIGHTS AND DEMOCRACY 2020–2024

The EU is founded on a strong commitment to promote and protect human rights, democracy and the rule of law. This is at the heart of its activities, both internally and in its relations with other countries and regions. As stated in the Joint Communication, “in line with the 2019–2024 strategic agenda adopted by the European Council and the 2019–2024 political guidelines for the European Commission, the EU has a strategic interest in advancing its global leadership on human rights and democracy with the aim of bringing tangible benefits to people around the world”⁶⁰

In 2012, the EU adopted the Strategic Framework on Human Rights and Democracy aimed at setting out principles, objectives and priorities, all designed to improve the effectiveness and consistency of EU policy in these areas.⁶¹ The adoption in 2012 of the Strategic Framework and Action Plan on Human Rights and Democracy, marked a new step in reinforcing EU and member states’ support of the work of Human Rights Defenders through the establishment of explicit objectives and targeted actions.⁶² The Declaration

⁵⁹ The EU adopts its first sanctions under its new global human rights sanctions regime. Norton Rose Fulbright, March 2021. Available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/81a274ea/the-eu-adopts-its-first-global-human-rights-sanctions-regime> (9. 7. 2022).

⁶⁰ Joint Communication to the European Parliament and the Council. EU Action Plan on Human Rights and Democracy 2020–2024. (The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission). No. doc: JOIN (2020) 5 final of March 25, 2020, p. 1.

⁶¹ See: PRESS RELEASE - Human Rights and Democracy: striving for dignity and equality around the world. European Commission, 25 March 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_492 (9. 7. 2022).

⁶² Intensifying the European Union’s support to human rights defenders: Civil society proposals for the new EU Action Plan on Human Rights and Democracy, December 17, 2014. Available at: <https://www.omct.org/en/resources/statements/intensifying-the-european-unions-support-to-human-rights-defenders-civil-society-proposals-for-the-new-eu-action-plan-on-human-rights-and-democracy> (9. 7. 2022).

on human rights defenders identifies human rights defenders as individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means.⁶³ The Declaration was adopted by consensus by the General Assembly of the United Nations in 1998, and therefore represents a very strong commitment by States to its implementation.⁶⁴ In accordance with Article 1 of the Declaration, everyone has the right, individually and in association with others to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.⁶⁵ According to the Strategic Framework, “the European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law”. It is further emphasized that “these principles underpin all aspects of the internal and external policies of the European Union”.⁶⁶ In order to implement the Strategic Framework on Human Rights and Democracy, the EU adopted two Action Plans, in 2012 and in 2015, respectively. When it comes to those Action Plans, it is important to emphasize that these documents „looked to increase the coherence and complementarity of all the tools that support human rights and democracy across the world”.⁶⁷

Since the adoption of the first two EU action plans on human rights and democracy (2012-2014 and 2015-2019), the appointment of the first EU Special Representative for Human Rights in 2012 and the 2019 Council Conclusions on Democracy, the EU has become more coordinated, active, visible and effective in its engagement in and with third countries and more prominently engaged at multilateral level.⁶⁸ As stated in the EU Action Plan on Human Rights and Democracy 2015-2019, “respect for human rights and democracy cannot be taken for granted” and that „the European Union is determined to strengthen its efforts to ensure that human rights are realised for all”.⁶⁹

⁶³ Declaration on human rights defenders. Special Rapporteur on human rights defenders, Geneva: The Office of the United Nations High Commissioner for Human Rights (OHCHR). Available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders> (9. 7. 2022).

⁶⁴ It was adopted on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, after 14 years of negotiations. The Declaration is not, in itself, a legally binding instrument, but it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding. See: Declaration on human rights defenders. Special Rapporteur on human rights defenders, Geneva: The Office of the United Nations High Commissioner for Human Rights (OHCHR). Available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders> (11. 7. 2022).

⁶⁵ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly of United Nations (UN). No. A/RES/53/144 of March 8, 1999, p. 3.

⁶⁶ EU Strategic Framework and Action Plan on Human Rights and Democracy (EU). No. doc: 1185/12 of June 25, 2012, p. 1.

⁶⁷ Muguruza, C. C. & Isa, F. G. 2020. The EU human rights and democratisation policy. In: Wouters, J. *et al.* (ed.) *The European Union and Human Rights: Law and Policy*. Oxford: Oxford University Press, p. 478.

⁶⁸ See: PRESS RELEASE - Human Rights and Democracy: striving for dignity and equality around the world. European Commission of March 25, 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_492 (9. 7. 2022).

⁶⁹ EU Action Plan on Human Rights and Democracy. 2005. Luxembourg: Publications Office of the European Union, 2015, p. 9.

The Council Conclusions on Democracy from 2019 stated that “we are living in a world where democracy is being challenged and put into question”, and “one of the aims of the EU’s external action is to advance democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms”.⁷⁰

The EUGHRSR is also a key deliverable proposed by the High Representative and the Commission in the EU Action Plan as part of the Joint Communication adopted in March 2020.⁷¹ On 25 March 2020, the European Commission and the High Representative set out the priorities and way ahead on Human Rights and Democracy, adopting a Joint Communication and the EU Action Plan. Further, they put forward a joint proposal to the Council to act by qualified majority voting on issues falling under the EU Action Plan, reflecting the strategic importance of the EU Action Plan. It aims at fostering faster and more efficient decision-making on human rights and democracy.⁷²

According to the text of the Joint Communication and the EU Action Plan, “the purpose of the Communication is to put forward a new action plan for Human Rights and Democracy”, and “to set out ambitions and priorities for the period of 5 years in this field of external relations”, in order to “contribute to achieving a stronger Europe in the world”.⁷³ It can be agreed with the statement that the EU Action Plan is “unique” because it is “the only instrument of its kind aimed at promoting a values-based agenda on the world stage”.⁷⁴

The Joint Communication proposes: a) enhancing EU leadership in promoting and protecting human rights and democracy worldwide; b) setting out EU ambitions, identifying priorities and focusing on implementation in view of changing geopolitics, the digital transition, environmental challenges and climate change; c) maximising the EU’s role on the global stage by expanding the human rights toolbox, its key instruments and policies; and d) fostering a united and joined-up EU by promoting more efficient and coherent action.⁷⁵

The EU Action Plan is the new compass for the EU’s external action in this field.⁷⁶ Building on the achievements of the previous Action Plans, the latest EU Action Plan

⁷⁰ Council Conclusions on Democracy (Council of the EU). No. doc: 12836/19 of October 14, 2019, p. 2.

⁷¹ PRESS RELEASE - Sanctions and Human Rights: towards a European framework to address human rights violations and abuses worldwide of October 19, 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939 (9. 7. 2022).

⁷² On that occasion, High Representative/Vice-President, Josep Borrell, said: “Crisis situations, as the one we are living with the Coronavirus’ pandemic, pose particular challenges to the effective exercise and protection of human rights, and put the functioning of our democracies to the test. This is an opportunity for Europe to stand up for its values and interests. We need the courage and ambition to tackle challenges together. Today, we propose an ambitious plan to defend human rights and democracy all over the world by using all our resources faster and more effectively”. See: PRESS RELEASE - Human Rights and Democracy: striving for dignity and equality around the world. European Commission of March 25, 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_492 (9. 7. 2022).

⁷³ Joint Communication to the European Parliament and the Council. EU Action Plan on Human Rights and Democracy 2020-2024. (The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission). No. doc: JOIN (2020) 5 final of March 25, 2020, p. 1.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, p. 1-2.

⁷⁶ Thematic Programme on Human Rights and Democracy Multi-Annual Indicative Programming 2021-2027. 2021, p. 1. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_6695 (9. 7. 2022).

sets out EU ambitions and identifies the priorities for action around five interlinked and mutually reinforcing lines of action: a) Protecting and empowering individuals; b) Building resilient, inclusive and democratic societies; c) Promoting a global system for Human Rights and Democracy; d) Harnessing opportunities and addressing challenges posed by the use of new technologies; and e) Delivering by working together.⁷⁷

4. CONCLUSION

The main goal of this paper was to point out the importance that the EU places when it comes to promoting and protecting human rights globally. The results of this research have shown that the EU has achieved impressive progress in the period of 2019-2022 with respect to the EU's activities in protecting and promoting human rights and democracy as fundamental values of the EU and a cornerstone of EU's external action. The most important EU's activities in that field were adoption of the Joint Communication and the EU Action Plan on 25 March 2020 and the establishment of the EUGHRSR as a key deliverable proposed in the EU Action Plan which reaffirms the EU's commitment to promoting and protecting these values worldwide.

It can be agreed that the EU Action Plan is uncommon because it is the only instrument of that kind aimed at promoting a values-based agenda globally. It appears from the previous analysis that the Council Decision (CFSP) 2020/1999 and Council Regulation (EU) 2020/1998 together constitute the EUGHRSR. Obviously, , the adoption of the EUGHRSR is a landmark achievement in the field of protecting and promoting human rights and democracy.

Next to the political dialogue and multilateral partnerships, EU sanctions are one of the EU tools that are available to address human rights violations and abuses and to help to achieve key EU objectives such as preserving peace, strengthening international security, as well as consolidating and supporting democracy, international law and human rights. Moreover, they are targeted at those whose actions endanger these values.

The EUGHRSR highlights the importance the EU places on promoting and protecting human rights globally by covering serious human rights violations and abuses and can be seen as an EU response to a transnational security threat. It can be concluded that the EUGHRSR shows a significant development in the field of the EU activities that are aimed on protecting human rights, because the EU is now able to target human rights violations without being limited to existing geographical sanctions regimes. In the end, it remains to be seen how the EU will continue to work on the protection and promotion of human rights and democracy in the coming period.

⁷⁷ Joint Communication to the European Parliament and the Council. EU Action Plan on Human Rights and Democracy 2020-2024. (The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission). No. doc: JOIN (2020) 5 final of March 25, 2020, p. 4.

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