



More resources for human rights: a ten-point program for the
Luxembourg Presidency of the European Union

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INDEX

<u>Overview</u>	3
<u>Human rights in Europe</u>	
The EU Fundamental Rights Agency	4
Access to Justice	5
Collective responsibility for human rights abuses within the EU	6
EU return policy	7
The external dimension of asylum	8
<u>Human rights in the world</u>	
Implementing the EU's human rights guidelines	9
A high level representative for human rights	10
Human rights in the enlargement process	11
Funding for human rights: the 2007-2013 Financial Perspective	12
Arms control	13

Overview

→ *The EU's ambition:* to be a Union of values, and to promote human rights worldwide and providing freedom, security and justice at home.
 → *The implementation gap:* the EU has a global action plan, many human rights tools, but putting them into practice remains difficult and inconsistent.
 → *The credibility gap:* the EU is often perceived as at best complacent, at worst neglectful, when it comes to ensuring actual observance of human rights within its own borders.
 → *The capability gap:* institutional weaknesses, inadequate structures and insufficient resources hamper the EU's performance on human rights.
 → *The challenge:* how to fill these gaps?

At the start of every EU Presidency, Amnesty International presents the EU with an overall assessment of the EU's human rights policies and recommends how they can be made more effective. As Luxembourg prepares to assume the EU Presidency, Amnesty International releases a ten-point program of concrete proposals which, if adopted, could contribute substantially to helping the EU to protect and promote human rights at home and abroad.

With these proposals, Amnesty International draws particular attention to the gulf which is opening up between the EU's stated ambitions and intentions in the area of human rights, and the resources available to fund them. Every relevant EU text now invariably carries appropriate references to the need to respect human rights, but too often it is little more than a box that is ticked, and which is empty when it comes to action with a price tag. The recommendations in this paper seek to address this problem by identifying issues where the question of adequate resources for human rights is relevant.

The EU has over the past years developed an array of policy instruments concerning human rights, especially in the area of the EU's Common Foreign and Security Policy. The challenge lies not in the creation of more policy tools, but in their implementation. While this is primarily a question of political will, Amnesty International believes it is also necessary for the EU to start paying more attention to the capacities and resources needed to actually use the tools that are available.

The EU's current preoccupations, going into the new institutional cycle, are the ratification of the constitution and the changes it will bring, the need to boost economic performance, and the drive against terrorism and "illegal immigration". One way or another, human rights will feature in most of these endeavours. Indeed, to be effective in promoting human rights worldwide and protecting them at home, they must be part of policies and programs ranging from trade and development to conflict prevention and crisis management, from fighting discrimination to judicial cooperation.

The reality is that the 'mainstreaming' of human rights in external relations remains an elusive goal, and that the incorporation of the Charter of Fundamental Rights into the EU Constitution gives no guarantee of its actual observance at home. The EU's lofty human rights ambitions are tempered by the demands of realpolitik and the pull of the lowest common denominator, but also by problems of consistency, continuity and inadequate resourcing.

Amnesty International presents its proposals to the Luxembourg Presidency in the belief that the EU stands to gain in authority, both at home and in the wider world, if it can show more consistently that human rights are not dispensable, not negotiable and not to be taken for granted. A stronger and more visible human rights profile will reflect positively on the EU's aspiration to be a Union of values. A critical review of the actual resources that are available to carry such a profile would be an important step at the start of this new cycle.

Human rights in Europe

The Hague Programme adopted by the European Council in November 2004 sets the policy framework for strengthening freedom, security and justice in the EU. Over the next five years, fundamental rights feature prominently. However, there is a need to enhance work on human rights through the instruments and structures needed to safeguard fundamental rights and a lack of resources to make it. The fact that it is not principally a human rights issue seems to be one of the reasons for this. The fact that it is not principally a human rights issue seems to be one of the reasons for this. The fact that it is not principally a human rights issue seems to be one of the reasons for this. The fact that it is not principally a human rights issue seems to be one of the reasons for this. Striking a proper balance in order to do so, as well as one that requires conscious political investment but it also raises serious resource questions.

1. The EU Fundamental Rights Agency

Amnesty International has long been advocating that the EU should take seriously its obligations in terms of the collective responsibility for the promotion and protection of human rights across the territory of the EU. The Charter of Fundamental Rights, while not (yet) binding, firmly places human rights in general at the heart of EU policy *in principle*. What is now required is to ensure that they are applied *in practice*. While the inclusion of the Charter in the constitution is a demonstration that the EU is beginning to take the issue of human rights within its own borders seriously, the EU is lacking an adequate mechanism for monitoring the application of those rights and for making an evaluation as to relevant policies and actions which can enhance their protection.

The decision of the European Council to establish a human rights agency provides an opportunity to bridge the gap. The Commission is to make a proposal in early 2005 on how to set up the Fundamental Rights Agency. In creating the agency, great care will be needed to ensure that the current standards of monitoring of rights within the EU, through mechanisms such as the Network of Independent Experts on Fundamental Rights and Freedoms, are not watered down but rather are built upon to form a single coherent and effective body for monitoring fundamental rights in the EU.

The European Council in December 2004 called for the agency to "play a major role in enhancing the coherence and consistency of the EU human rights policy". The effectiveness of the future agency must be anchored in the political will to establish accountability at EU level for the respect of fundamental rights within the EU. That in turn requires a combination of focus, efficiency and adequate resources. The EU must be prepared to commit such resources.

Amnesty International calls on the Luxembourg Presidency to help ensure that the future EU Fundamental Rights Agency is effective, and support the following recommendations:

- The geographical scope of the agency should be limited to the EU.
- The agency must have a broad mandate to cover all the rights contained in the EU Charter of Fundamental Rights, while selecting priorities for annual or multi-annual programs.
- The scope should not be restricted solely to the EU institutions and implementation of EU law or to acting as an early warning mechanism for Article 7 of the TEU but should aim to fill gaps identified in the monitoring of human rights in the EU.
- Tasks should include data collection, monitoring, analysis and policy recommendations, to be performed on the basis of a clear methodology.
- There must be complementarity with other international organizations such as the Council of Europe, the UN and the OSCE.
- The independence of the agency must be guaranteed both through its composition and through protecting its budget from undue political influence.
- It must report annually to the European Parliament and address recommendations on policy to the Commission and to the Council, the latter through a Council structure dedicated to issues of fundamental rights within the EU.
- The agency must have sufficient resources to carry out its mandate effectively.

2. Access to justice

The Commission proposal for a Framework Decision on certain procedural rights in criminal proceedings demonstrated a first step towards addressing the question of the rights of suspects and defendants within the area of freedom, security and justice. Amnesty International welcomed the proposal in principle but was concerned at the limited nature of rights contained in the proposal. For example, it provided no general right of access to a doctor, which has been identified by the Committee for the Prevention of Torture as a key safeguard to prevent torture.

Of particular concern now that the Council has started to consider the proposal is the prospect that serious and complex forms of crime, in particular terrorism, may be removed from the ambit of the Framework Decision. To do so would undermine the credibility of the EU in balancing the need for security in the fight against terrorism with the protection of procedural rights. What is more, to exclude terrorism from the ambit of the Framework Decision would undermine the principle that this legislation is needed to facilitate cooperation, as this is precisely where cooperation is hindered by perceived and actual failures to protect human rights in Member States' law and practice. Human rights are not a threat but a fundamental prerequisite to the establishment of genuine security, and counter-terrorism measures cannot be left outside the human rights framework.

Amnesty International has also raised concerns about the absence of any reference to funding for the proposals such as the right to free interpretation and translation and the right of access to a lawyer. To be implemented effectively, these will have significant financial implications. If the EU is to be perceived as improving the protection of individuals in the area of freedom, security and justice and having a genuine impact on ensuring access to justice, it will need to put financial and political resources behind its stated commitment that "the objective of the Hague Programme is to improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice...".

Amnesty International calls on the Luxembourg Presidency to ensure that ongoing negotiations in the Council on the proposal for a Framework Decision on procedural rights in criminal proceedings:

- do not weaken further the position set out in the Commission's proposal but guarantee the protection of rights also with regard to counter-terrorism measures;
- address the issue of resources needed to make procedural rights and safeguards a reality.

3. Collective responsibility for human rights abuses within the EU

The EU cannot afford to turn a blind eye to serious and persistent breaches of fundamental rights within its own borders. It must develop a mechanism for applying preventive and corrective measures in cases of a clear risk of such breaches occurring. In this context it is significant that the Commission Communication on the application of Article 7 of the TEU of October 2003 still remains unanswered by the Council.

Two examples will serve to highlight the lack of political will as well as capacity on the part of the Council to coherently address questions of fundamental rights within the EU:

Slovakia: forced sterilization of Roma women

Reports relating to the forced sterilization of Roma women have been raised over a number of years by NGOs as well as by the Council of Europe Commissioner for Human Rights and the UN Human Rights Committee. Forced sterilization is a serious breach of a number of rights recognized by the EU through, amongst others, the EU Charter of Fundamental Rights and the European Convention for the Protection of Human Rights (ECHR), including the right to human dignity, the right to the integrity of the person, the right to be free from torture and other cruel, inhuman and degrading treatment, respect for private and family life, the right to marry and found a family and the prohibition on discrimination. There has not been an adequate response from the Slovakian government to resolve this serious matter. While official policy may have changed, the practice reportedly still continues and there has not been proper reparation for victims. It is therefore for the EU to respond with appropriate remedial measures to ensure that such practices cannot be continued within the EU.

UK: derogation from international human rights obligations

The UK responded to the threat of terrorism through the Anti-Terrorism Crime and Security Act 2001 Part 4 which allows for the indefinite detention without trial of foreign nationals suspected of terrorism. In order to enact this legislation the UK has derogated from international obligations under the ECHR and the International Covenant of Civil and Political Rights. The UN Committee against Torture strongly criticized the possibility of indefinite detention under this legislation as well as the incomplete factual and legal grounds for derogation from the UK's international human rights obligations. It also denounced the recent Court of Appeal judgement interpreting this law so as to allow for the use of evidence extracted through torture as long as there is no complicity from UK officials.

Significantly, in December 2004 the UK Law Lords ruled this legislation unlawful. However, there had been no EU statements on these serious concerns. If the EU is to remain credible, particularly in its pledge to maintain a balance between the protection of individual rights and the need for security in the fight against terrorism, it must address the problem that one of its Member States has derogated from its international human rights obligations in this area for the past three years on questionable grounds.

Amnesty International calls on the Luxembourg Presidency:

- to ensure a Council response to the October 2003 Commission Communication on the application of Article 7 TEU as a matter of the urgency;
- to set up a Council Working Group for human rights in the EU to address questions of fundamental rights within the EU in a coherent and consistent manner.

4. EU return policy

Effective migration management is a major policy priority of the EU and the return of “illegal migrants” has long been identified as one of the areas in which cooperation between Member States is a must. The Hague Programme considers it “essential that the Council begin discussions in early 2005 on minimum standards for return procedures”, adding that returns should be effected “in a humane manner and with full respect for (their) human rights and dignity”.

Amnesty International welcomes these intentions but is concerned that the broad scope of the debate on migration control, and the political pressures associated with it, may blur distinctions between policies for the proper return of “illegal migrants”, and practices that amount to denial of basic protection and human rights safeguards. The fight against “illegal immigration” has been reflected in an emphasis on containment through preventing entry and on facilitating removals. Stepped-up border control, fast-track asylum procedures, detention of “illegal immigrants” and joint return flights, are prominent features of this approach. Practices in a number of Member States have shown patterns of irregularity and abuse, including denial of access to asylum procedures, unlawful detention of asylum seekers, irregular expulsions and excessive use of force during removal operations.

Against this background, discussions on a common return policy have largely focused on the operational aspects of removal rather than on protection issues, and have reflected a reluctance to develop ambitious standards at EU level. They are complemented by increasing engagement with countries of origin and transit through technical cooperation, financial assistance and readmission agreements.

From a protection point of view, it is important that there should be no delays in developing a comprehensive EU return policy. Such a policy should differentiate clearly between voluntary return, repatriation programs and situations of forced removal. It should formulate clear legal grounds and limitations for removal, set standards for detention in accordance with relevant UN and Council of Europe principles, and provide effective legal remedies against wrongful removal and abuse in removal practice. It should also allow for persons to challenge any decision to remove them to their country of origin or to a third country deemed to be safe, including suspensive appeal. Finally, it should provide for the necessary resources not only to effect returns and removals but also to allow for all relevant safeguards to be fully observed.

Amnesty International calls on the Luxembourg Presidency to initiate discussion and development of a proper EU return policy forthwith in early 2005, and to ensure that policy:

- sets minimum standards fully reflective of international standards of human rights and refugee law;
- takes into account the rights of migrants at all stages of the migration process; and
- provides for adequate resources for compliance with all relevant safeguards.

5. The external dimension of asylum

The Hague Programme emphasizes the importance of fully integrating migration into the EU's relations with third countries. More specifically it acknowledges the need to contribute to a more accessible, equitable and effective protection system in partnership with third countries, and to provide durable solutions. Amnesty International has welcomed proposals to enhance protection of refugees in their regions of origin, and to provide assistance for capacity building.

However, it is obvious that the growing importance of this external dimension is propelled in particular by the overarching drive to fight "illegal immigration". Where the Hague Programme marks a decisive shift in the EU's ambition to take that fight into the domain of external relations, it may impact negatively on the protection of human rights in general and refugee rights in particular. Amnesty International is concerned that readmission agreements and partnerships with third countries concluded at national or EU level may run counter to Member States' national and international obligations with regard to refugees, in particular the principle of non-refoulement.

As was evident from the recent fraught discussions over 'camps' or 'reception facilities' in neighbouring countries, it is crucial at all times to retain a clear focus on the need to fully respect protection obligations. Therefore, it is extremely important to prevent "solutions" in the sphere of reception in regions of origin and more generally migration management that may prejudice the right to seek asylum spontaneously in Europe and have the effect of undermining the international protection system.

The external dimension of asylum and immigration implies a consistent long term involvement and substantial commitment, including financial investment, from the EU if it wants to fulfil its ambitions to enhance international protection, control immigration, provide humanitarian assistance and support capacity building. The policies to be developed will need to ensure strict adherence to standards of international human rights and refugee law. They must not bypass the EU's responsibility towards asylum seekers and the need for fair responsibility sharing, notably by regulating safe access to Europe through protected entry procedures and EU resettlement schemes.

Given the ambitious objectives of the external dimension of the EU's asylum and migration policies, and the real concerns about their human rights impact, it would be entirely appropriate for even a fraction of the financial resources that are invested in this area to be made available to allow for a meaningful human rights check.

Amnesty International calls on the Luxembourg Presidency:

- to ensure that resources are allocated to develop effective and coherent policies in the area of regional protection, development cooperation and humanitarian assistance, with strict adherence to standards of international human rights and refugee law;
- to ensure that resources are allocated to provide for impact assessment based on relevant human rights standards of every measure taken to combat "illegal immigration" and their cumulative effect in order to help prevent negative effects on the EU's key human rights obligations.

Human rights in the world

The EU's ambition to be a globally active actor in the global civil society seeking stability and security through effective multilateralism includes a strong human rights component. In pursuing these goals in practice, human rights often take a back seat, especially in specific conflict situations. The Luxembourg Presidency faces the annual challenge of steering the EU through the political dialogue with the United Nations Commission on Human Rights at its 61st session. However, it is increasing visibility in the EU's efforts to advance human rights worldwide encounter limitations, not only on a political level, but also in the sphere of the capabilities and resources that are needed to conduct consistent and coherent policies. Ever since 11 September 2001, the EU has insisted on the need to balance security and human rights, but its investments have been made only on one side of that equation.

6. Implementing the EU's human rights guidelines

Since 1998 the EU has adopted five sets of policy guidelines to enhance its work to promote and protect human rights in third countries. Abolition of the death penalty (1998), prevention of torture (2001), children and armed conflict (2003) and protection of human rights defenders (2004) are all issues central to the EU's human rights policy. A fifth document sets the framework for human rights dialogues with other countries (2001).

The human rights guidelines have been developed as concrete policy tools to be used at EU level and through Member States, and in particular through missions in third countries. The Presidency has always been considered to play a major role in their implementation. Experience so far with the earlier guidelines, in particular those on torture, has shown however that effective implementation is not a simple matter, a concern that is very much shared by the EU and individual Member States. An internal review has been conducted by the Council but at the time of writing the results had not yet been made public.

Although there may be different reasons why the various sets of guidelines have been hard to implement effectively, there can be no doubt that the weak institutional structure and the lack of adequate resourcing play a significant role. It is in particular the discontinuity caused by the rotating Presidencies in combination with the total inadequacy of staffing resources at the General Secretariat of the Council that have proved fatal to meet the challenge of building up consistent practices. The Dutch Presidency has begun to address the problem of implementation by drawing up an action plan for the guidelines on children and armed conflict, and by devoting the 2004 EU Human Rights Forum to the question of how to make the latest guidelines on human rights defenders work.

Not everything has a price tag though. Concerns in relation to torture, the death penalty, the situation of human rights defenders or children and armed conflict should be a non-negotiable standing item of the agenda of the Presidency's meetings with third countries where these problems exist, including at the highest level. As a matter of principle, the Presidents of the European Council and the Council of Ministers should meet with human rights defenders, including activists working on these priority areas, during visits to third countries.

Amnesty International calls on the Luxembourg Presidency to continue to press for more active implementation of the EU human rights guidelines including the necessary resourcing, and to ensure that the EU's stated commitment to these priority themes will be visible and tangible during its leadership of the EU Troika.

7. A high level representative for human rights

Since the adoption of the European Union's security strategy, the EU has strengthened the capacities of the Council to deliver in the international fight against "terrorism" and to prevent the proliferation of weapons of mass destruction. But while the security strategy acknowledges the importance of human rights and the rule of law in the prevention of key security risks, and while the EU has consistently called for the need to balance security and human rights since 11 September 2001, the EU has yet to allocate concrete resources to make this commitment operational.

Amnesty International therefore welcomes the European Council's decision to establish the position of a Personal Representative for human rights who will support the High Representative for the CFSP. The decision is a positive first step to redress the chronic under-resourcing of the EU's human rights work at Council level. To make it work in practice, the Council Secretariat's human rights resources will have to be significantly upgraded.

Amnesty International calls on the Luxembourg Presidency to see to it that sufficient additional human rights staff capacity is provided in the General Secretariat of the Council to ensure adequate support for the Personal Representative in discharging his/her mandate.

8. Human rights in the enlargement process

The role of human rights in the EU enlargement system is ambivalent. On the one hand enormous weight is given to the Copenhagen political criteria on democracy, human rights and the rule of law. On the other hand it is understood that a decision to start negotiations based on a political assessment that these criteria are fulfilled effectively closes the human rights chapter. And yet it is evident that serious problems have persisted throughout the accession process in most if not all candidate countries – the ten that joined in 2004, and certainly the two scheduled to join in 2007.

The response to this growing realization, spurred in particular by the dilemma of Turkey's candidacy precisely in the area of human rights, has been to provide for a suspension clause in the accession process of future candidate countries, starting with Croatia and Turkey. Such additional safeguards are important in order to maintain pressure for reform in general. However, it would be necessary to back them up with a more specific mechanism for scrutiny of and assistance for human rights objectives, rather than to rely only on the Commission's annual progress reports. Amnesty International would consider it appropriate, and consistent with the significance attached to the EU's key values, to introduce an initial "Chapter Zero" on human rights and the rule of law, to be handled as any other chapter on the basis of concrete objectives and benchmarks, and with the resources to match.

The missing link in the official discourse on enlargement and human rights has been the lack of EU-level accountability for human rights observance within the EU's own borders. The enlargement dimension in fact puts in sharper and clearer perspective the need for the EU to take human rights compliance more seriously. Citizens in new Member States are entitled to expect that their rights will be better respected and protected by their own government, but also that their government's responsibility will be backed up by an EU that complements and if necessary enforces that commitment.

Amnesty International calls on the Luxembourg Presidency

- with regard to the decision to start accession negotiations with *Turkey*: to make maximum use of all existing and new channels of political dialogue with the Turkish government to press for further legal reforms and their implementation, including in relation to preventing and punishing torture, guaranteeing the full enjoyment of freedom of expression and association, and ending violence against women.
- with regard to the preparation of a framework for negotiations with *Croatia*: to ensure that the Council will engage Croatia to bring its laws and practice into full compliance with recommendations by the Council of Europe and the United Nations. In relation to the war crimes and crimes against humanity committed during the 1991-1995 armed conflict, the EU should continue to press Croatia to deliver on its pledge to fully cooperate with the International Criminal Tribunal for the former Yugoslavia. At the same time, the EU must engage and support the Croatian authorities to reform and resource its domestic judicial system to ensure that all perpetrators of war crimes and crimes against humanity are brought to justice, regardless of their ethnicity or that of the victims.
- with regard to the closure of negotiations with *Bulgaria*: to see to it that Bulgaria steps up its efforts to improve the situation in institutions for people with mental disabilities and redress the widespread inequality and de facto discrimination of the Roma in education, employment, access to health and to public services.
- with regard to the closure of negotiations with *Romania*: to impress on Romania to end as a matter of urgency the arbitrary detention of people with mental disabilities in mental hospitals and address the conditions and lack of appropriate care in these institutions, which have caused deaths of dozens of patients and residents.

9. Funding for human rights: the 2007-2013 Financial Perspective

The future of the EU's support for human rights and democracy activities in the next Financial Perspective 2007-2013 is a matter of concern. In proposals published by the Commission to rationalize external assistance budget lines in the next Financial Perspective, the promotion of human rights and democracy is spread over four new instruments: the Development Cooperation and Economic Cooperation Instrument, the European Neighbourhood and Partnership Instrument, the Stability Instrument and the Instrument for Pre-accession Assistance.

However, all four proposed instruments lack a common statement of commitment to the promotion of human rights and democracy, which raises concern about the future of the EU's support for human rights and democracy initiatives after 2006. With the European Initiative for Democracy and Human Rights (EIDHR) scheduled to finish, there is a real danger that such concrete support activities may become fragmented, undermining both the effectiveness and the visibility of the EU's important efforts in this domain.

While it is right that democracy and human rights objectives should be firmly incorporated in all the new instruments, it is also

important to consider how the EU human rights commitment can be given specific focus and visibility. A horizontal program cutting across the new instruments would be a way to guarantee a consistency of approach, while also allowing for essential elements of the EIDHR to be preserved and built upon. Perhaps the most crucial such element is that it can be used without host government consent, which is of particular importance as local civil society has a critical role to play in the advancement of human rights and democracy and must be given the necessary support to do so without governmental interference.

Amnesty International calls on the Luxembourg Presidency to insist on the inclusion of an explicit, consistent and concrete commitment to the promotion of human rights and democracy in each of the four external relations instruments, and to consider ways of giving the EU's commitment to human rights and democracy extra focus and visibility in its external assistance program.

10. Arms control

Since 1998 the EU has been committed to its Code of Conduct on Arms Exports which stipulates that arms should not be exported to countries where there is a clear risk that they may be used for internal repression or where serious violations of human rights have occurred. The code has been a significant advance in regional arms export control, but in the five years of its operation it has shown to have major weaknesses, ambiguities and loopholes. As a result, EU Member States continued to export arms or equipment that are misused for human rights violations. A revision of the code is expected to be agreed during the Luxembourg Presidency. Although it is likely to be improved in a number of important respects, there appears no prospect that a key demand from the part of Amnesty International and other NGOs, to make the code legally binding, will be accepted.

The need to curb the proliferation and misuse of arms and prevent the unregulated spread of arms production is urgent. It is obviously necessary to further strengthen the EU arms exports regime and extend effective arms export controls to a much greater number of countries across all world regions. A binding international arms trade treaty grounded in principles of international law, rather than a voluntary code would provide potential victims around the world with much greater protection. The UK Foreign Secretary in September 2004 joined political leaders of eight other countries in publicly pledging support for an international Arms Trade Treaty. As the world's second largest arms exporter and a permanent member of the UN Security Council, the UK's support for the treaty is a major step forward.

As part of its commitment to eradicate torture, the Commission has taken the positive step of proposing a regulation concerning trade in certain equipment and products which could be used for capital punishment, or torture or other cruel, inhuman or degrading treatment or punishment. The regulation is to ban the export of equipment that has no other use than torture, including electro-shock stun belts, thumbcuffs and leg cuffs, from Member States to outside the EU. It would also strictly control the export of equipment that may have a legitimate policing function but can lend itself to torture, such as tear gas. Since the end of 2002, a proposal for a Regulation has been discussed by the Council Working Party on Trade Questions, and several amended proposals have been presented by the Commission. It is now high time this process is concluded under the Luxembourg Presidency.

Amnesty International calls on the Luxembourg Presidency

- to complete the revision of the EU Code of Conduct on Arms Exports and take steps to ensure that all Member States abide strictly by its provisions, and provide the necessary resources for monitoring and enforcement;
- to further promote and work towards a global arms trade treaty;
- to ensure the speedy adoption of the torture trade regulation.

