



EUROPEAN
COMMISSION

Brussels, 8.5.2013
SWD(2013) 172 final

COMMISSION STAFF WORKING DOCUMENT

on the Application of the EU Charter of Fundamental Rights in 2012

Accompanying the document

**Report from the Commission to the European Parliament, the Council, the European
Economic and Social Committee and the Committee of the Regions**

2012 Report on the application of the EU Charter of Fundamental Rights

{COM(2013) 271 final}
{SWD(2013) 171 final}

INTRODUCTION

After the entry into force of the [EU Charter of Fundamental Rights](#)¹, in December 2009, the Commission adopted a [Strategy on the effective implementation of the Charter](#)² setting as an objective that the EU is beyond reproach as regards the respect of fundamental rights, in particular when it legislates. The Commission is further committed to preparing annual reports to better inform citizens on the application of the Charter and to measure progress in its implementation. This Annual Report meets the longstanding and legitimate expectation of placing fundamental rights at the heart of EU policies. It is intended to act as the basis of an informed dialogue between all EU institutions and Member States.

This Report covers the year 2012 and informs the public of the situations in which they can rely on the Charter and on the role of the European Union in the field of fundamental rights. In covering the full range of Charter provisions on an annual basis, the Annual Report aims to track where progress is being made, and where new concerns are arising.

The Annual Report is based on the actions taken by the EU institutions, on the analysis of letters and petitions from the general public and questions from the European Parliament. In addition, the report covers key developments as regards the jurisprudence of the Court of Justice of the European Union (CJEU), and for the first time information of the case law of national Courts on the Charter, based on the contributions received from Member States and further analysis done by the EU Agency for Fundamental Rights (FRA).

Protection of Fundamental Rights in the EU

In the European Union, the protection of fundamental rights is guaranteed both at national level by Member States' constitutional systems and at EU level by the Charter of Fundamental Rights of the European Union.

The Charter applies to all actions taken by the EU institutions. The role of the Commission is to ensure that all its acts respect the Charter. All EU institutions (including the European Parliament and the Council) must respect the Charter, in particular throughout the legislative process.

The Charter applies to Member States when they implement EU law. The factor connecting an alleged violation of the Charter with EU law will depend on the situation in question. For example, a connecting factor exists: when national legislation transposes an EU Directive in a way contrary to fundamental rights, when a public authority applies EU law in a manner contrary to fundamental rights, or when a final decision of a national court applies or interprets EU law in a way contrary to fundamental rights.

If a national authority (administration or court) violates fundamental rights set out in the Charter when implementing EU law, the Commission can take the matter to the **CJEU**. The Commission is not a judicial body or a court of appeal against the decisions of national or international courts. Nor does it, as a matter of principle, examine the merits of an individual case, except if this is relevant to carry out its task of ensuring that the Member States apply EU law correctly. In particular, if it detects a wider problem, the Commission can contact the national authorities to have it fixed, and ultimately it can take a Member State to the CJEU. The objective of these proceedings is to ensure that the national law in question - or a practice by national administrations or courts - is aligned with the requirements of EU law.

When individuals or businesses consider that an act of the EU institutions directly affecting them violates their fundamental rights enshrined in the Charter, they can bring their case before the CJEU, which, subject to certain conditions, has the power to annul such an act.

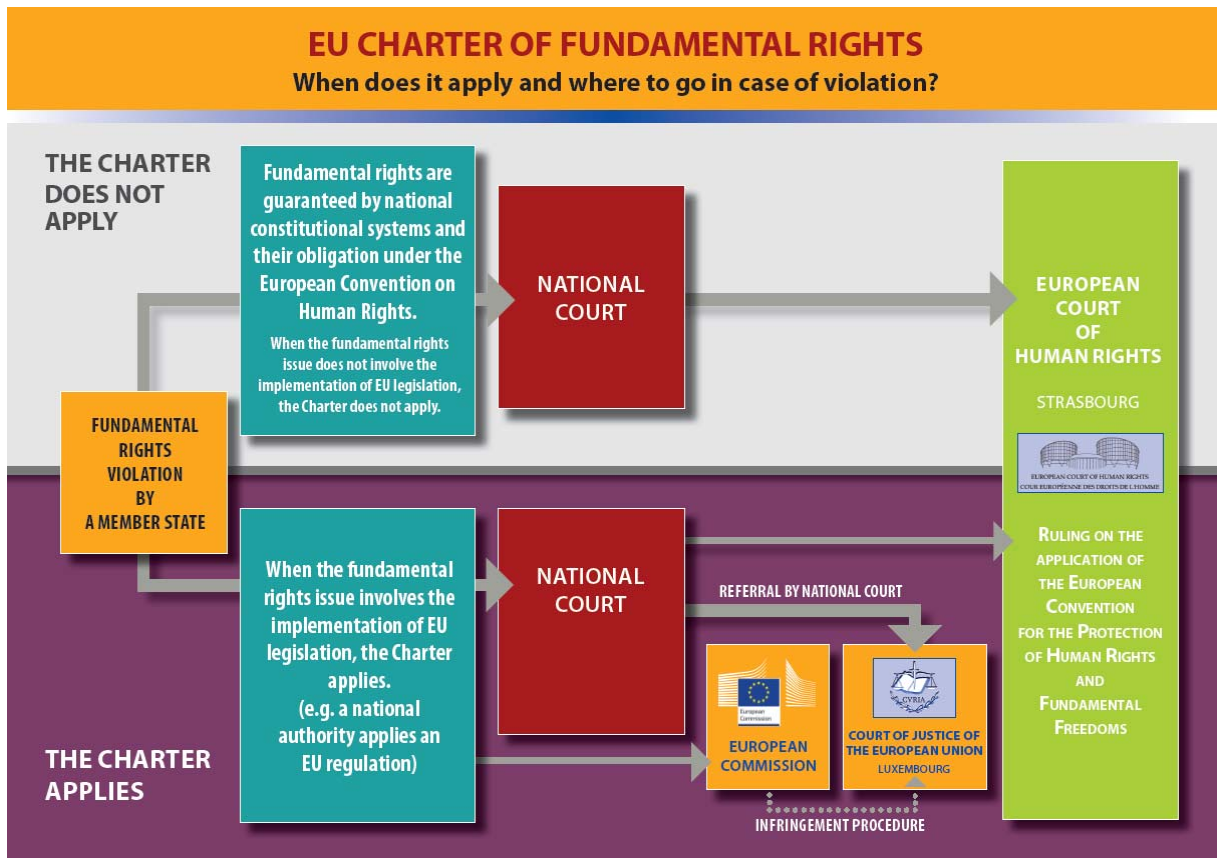
The Commission cannot examine complaints which concern matters outside the scope of EU Law. This does not necessarily mean that there has not been a violation of fundamental rights. If a situation does not relate to EU law, it is for the Member States alone to ensure that their obligations regarding fundamental rights are respected. Member States have extensive national rules on fundamental rights,

¹ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

² Available at: http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf

which are guaranteed by national judges and constitutional courts. Accordingly, complaints need to be directed to the national level in the first instance.

In addition, all EU countries have made commitments under **the European Convention on Human Rights** (ECHR), independent of their obligations under EU law. Therefore, as a last resort and after having exhausted all legal remedies available at national level, individuals may bring an action before the European Court of Human Rights in Strasbourg for a violation by a Member State of a right guaranteed by the ECHR. The European Court of Human Rights (ECtHR) has designed an admissibility checklist in order to help potential applicants work out for themselves whether there may be obstacles to their complaints being examined by the Court³.

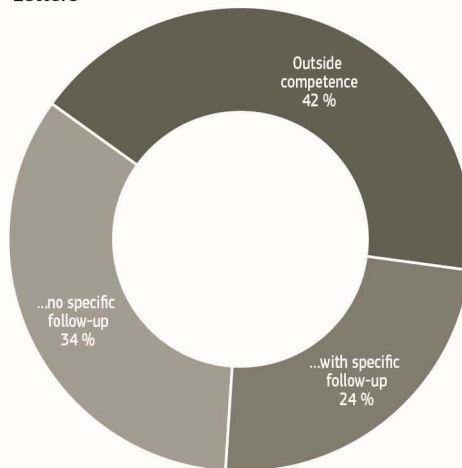


Overview of the letters and questions to the Commission on fundamental rights

Among the **letters from the general public** on fundamental rights issues received by the Commission in 2012, 58% concerned situations where the Charter could apply. In a number of cases, the Commission requested information from the Member States concerned or explained to the complainant the applicable EU rules. In other cases, the complaints should in fact have been addressed to the national authorities or to the ECtHR. Where possible, complainants were redirected to other bodies for more information (such as national data protection authorities).

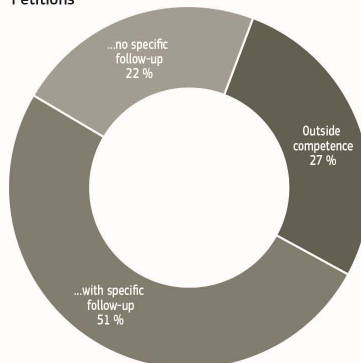
³ Available at: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/>

Letters

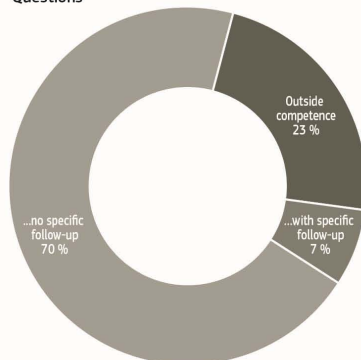


Among the **questions and petitions from the European Parliament** approximately 75% concerned issues within EU competence. In a number of cases, the Commission contacted the Member States to obtain clarifications on alleged violations. The replies given by the Commission explained or clarified the relevant policies and on-going initiatives.

Petitions

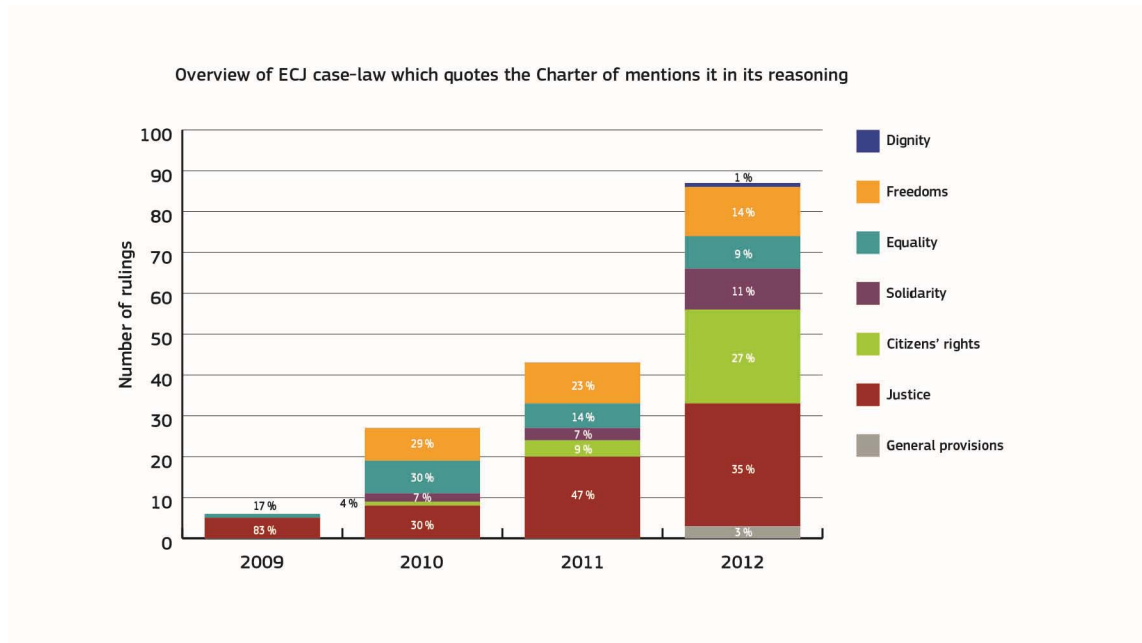


Questions

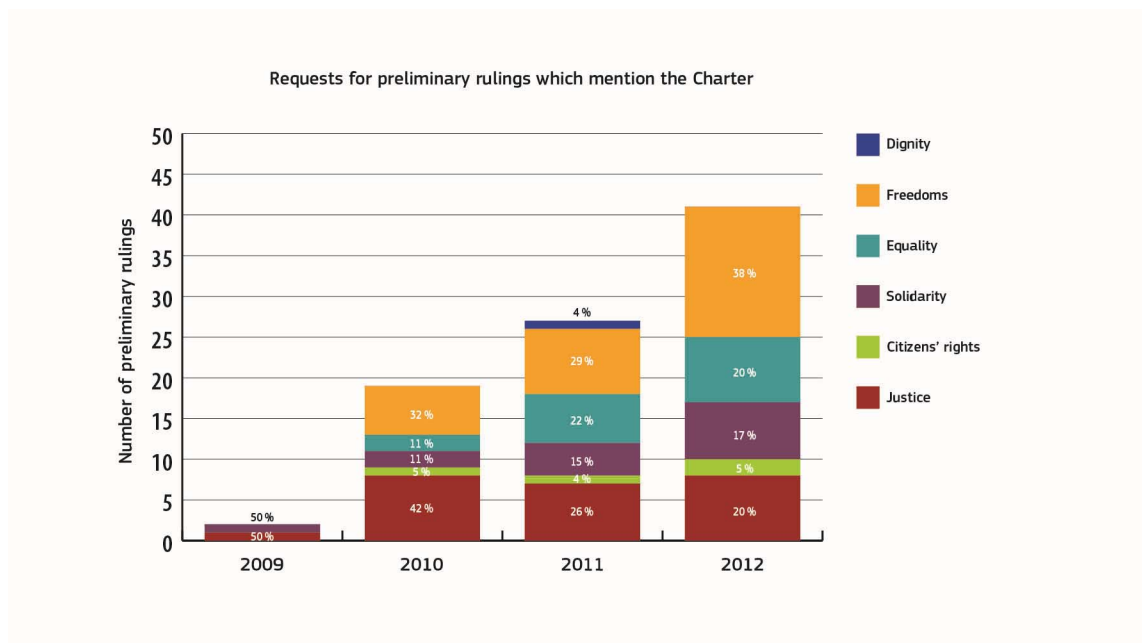


Overview of the decisions of the Court of Justice of the European Union referring to the Charter

The CJEU has increasingly referred to the Charter in its decisions (see Annex I for an overview of all relevant rulings): the number of decisions quoting the Charter in its reasoning almost doubled from 43 in 2011 to 87 in 2012.

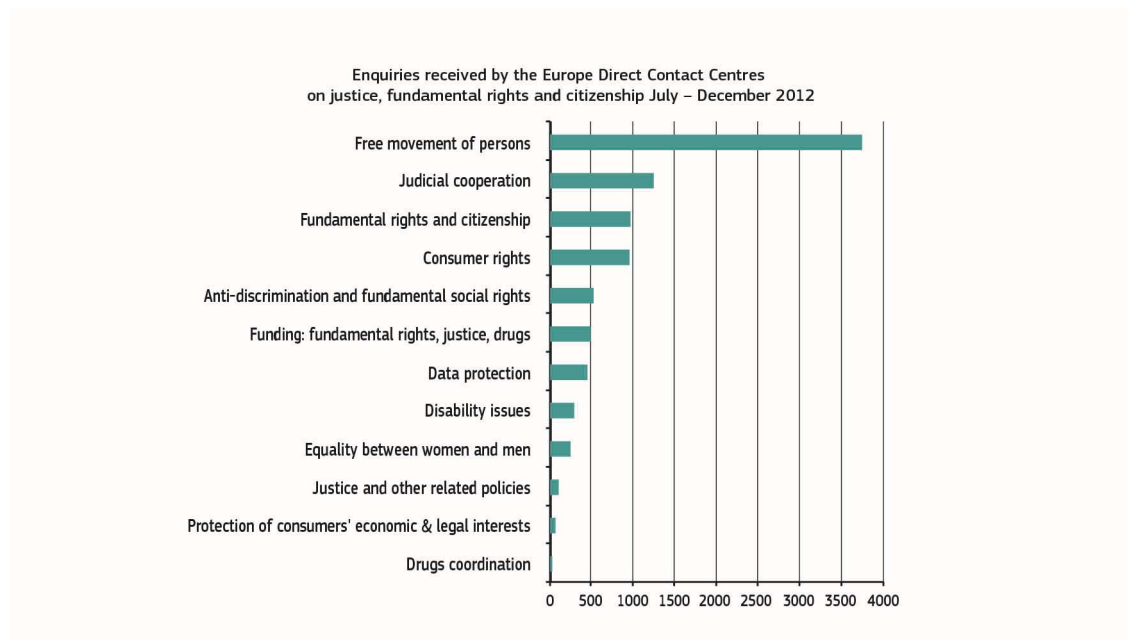


National courts when addressing questions to the Court of Justice (preliminary rulings) have also increasingly referred to the Charter: in 2012, such references rose by 65% as compared to 2011, from 27 to 41.



Overview of enquiries with the Europe Direct Contact Centres

The figures collected by the **Europe Direct Contact Centres** (EDCC) confirm that there is a high degree of interest among citizens on justice, citizenship and fundamental rights. In 2012, the EDCC replied to 9171 enquiries from citizens on topics such as free movement of persons (41% of the total number of enquiries) and judicial cooperation (13%).



The structure of the Report

The structure of the Report follows the six titles of the Charter itself: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice. Each of the six chapters of the Report contain the following information on the application of the Charter:

- Examples of how the EU institutions and, where relevant, the Member States have applied the Charter in 2012;
- Questions and petitions from the European Parliament, and letters from the general public received in 2012 focusing on fundamental rights issues;
- Relevant jurisprudence of the CJEU;
- Relevant case-law of national Courts on the Charter;
- Data gathered by the EU Agency for Fundamental Rights throughout 2012.

1. Dignity

<i>Human dignity</i>	The EU reached an important agreement on the conditions for the transfer of asylum seekers in the EU (Dublin Regulation). In accordance with case law of the CJEU, asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights under the newly agreed rules.
<i>Right to life</i>	
<i>Right to the integrity of the person</i>	
<i>Prohibition of torture and inhuman or degrading treatment or punishment</i>	New rules on the surveillance of the external EU sea borders prohibit disembarkation or handing over of a person to the authorities of a country in contravention of the principle of <i>non-refoulement</i> , or when there is a risk of expulsion or return to another country in contravention of that principle.
<i>Prohibition of slavery and forced labour</i>	The CJEU specified that the minimum conditions for the reception of asylum seekers laid down in EU law (Directive 2003/9) should be applied in all circumstances , regardless of whether a Member States is responsible for examining the application for asylum under the Dublin Regulation. The new Horizon 2020 proposal reinforces the legal status of fundamental rights in the design and implementation of EU research and innovation activities. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 proposes 40 concrete and time-bound actions.

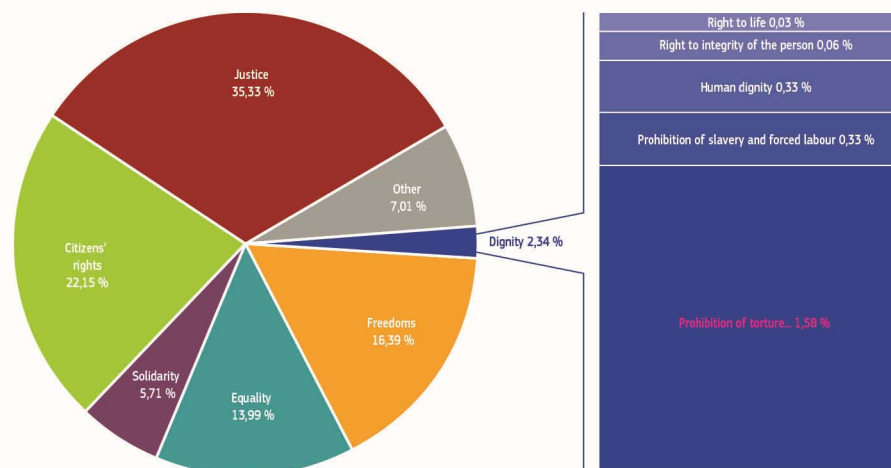
Human dignity

Human dignity is the basis of all fundamental rights. It guarantees the protection of human beings from being treated as a mere objects by the State or by his/her fellow citizens. The rights and freedoms under the title Dignity, such as the right to life, and the prohibition of torture and slavery, must be respected so we can exercise other rights and freedoms in the Charter, for example freedom of expression and freedom of association. None of the rights laid down in the Charter may be used to harm the dignity of another person.

Member States and airports wishing to deploy technology to detect unsafe objects must comply with minimum conditions set by EU rules. The Commission received a petition (0749/2012) on the extension of the security scanner trial at Manchester airport. The petitioner expressed his concerns on the health impact of the x-ray security scanners and lack of offering the right for passengers to opt-out from the screening at the British airports. In accordance with the requirements of EU law on security scanner screening, Member States and airports wishing to deploy technology to detect unsafe objects must comply with minimum conditions set by EU rules. Most importantly, passengers are entitled to opt out from the security scanner procedure and to be checked by alternative screening methods. Passengers must be informed of the possibility to opt out of the scanner technology used and of the conditions associated with its use. These rules contain the necessary safeguards specifically included to ensure the legislation is in compliance with the Charter, in particular the protection of human dignity.

The CJEU clarified⁴ that whenever an application for asylum is lodged at the border or in the territory of a Member State, such **Member State is obliged to grant the minimum conditions for reception of asylum seekers** laid down in EU Law⁵ regardless of whether a Member States is responsible for examining the application for asylum under EU Law. The Charter played a crucial role in the reasoning of the Court, since recital 5 of Directive 2003/9 makes specific reference to it, and in particular to the fundamental principles of **human dignity** (Article 1) and the **right to asylum** (Article 18) as the essential purpose of this piece of EU legislation. Accordingly, the obligation to provide an asylum seeker with housing, food, clothes and a daily expenses allowance, and the subsequent financial onus, are to be borne by the requesting Member State until they are transferred to the Member State responsible for examining their application.

Letters



Ethics Review and the Charter

⁴ CJEU, Case C-179/11 *Cimade and Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27.09.2012

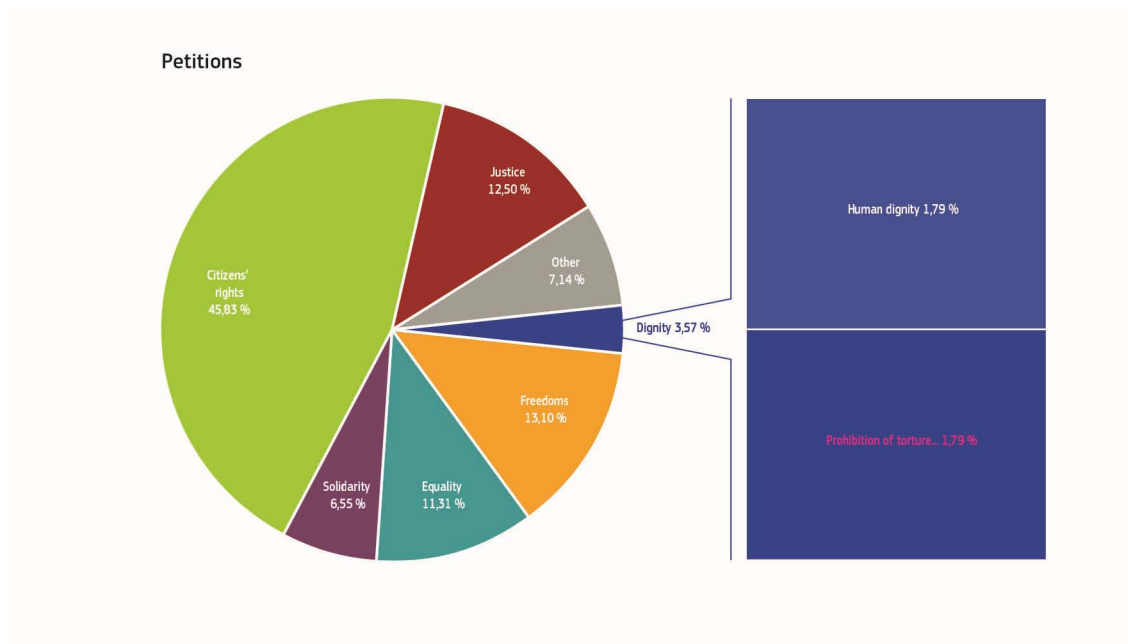
⁵ Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18 – 25.

All research activities carried out under the EU Framework Programme are reviewed for their respect of fundamental ethical principles. During the evaluation of research proposals the principles and rights of the Charter are taken into account. One of the most frequent ethical concerns emerges in the field of human interventions. The involvement of patients, vulnerable people and healthy volunteers is assessed with due regard to the articles of the Charter on human dignity, right to life, right to the integrity of the person and the principle of non-discrimination. These principles are also considered when the research is carried out in developing countries.

Concerning the involvement of children, the Charter states that "children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity." This principle is observed when assessing informed consent/assent procedures.

Another crucial concern is data protection and privacy, which is recognised by the Charter. It is applied not only to personal information, but to human tissue and biological sampling as well. As for privacy issues, the possible tracking of the location and observation of the research participants is assessed.

Dual use application of the research, enabling research in the civilian field to have potential military/terrorist applications, the right to liberty and security of person, freedom of thought, conscience and religion and the freedom of arts and sciences are also often referred to as part of the Ethics Review process.



Prohibition of inhuman or degrading treatment

The Charter provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The three institutions (EP, Council and Commission) took an important step towards safeguarding fundamental rights as part of the **new Dublin Regulation on the conditions for the transfer of asylum seekers in the EU**⁶. The agreement among the three institutions provides for the incorporation of the

⁶ Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, COM(2008) 820 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF>.

judgment of the CJEU in the joint cases of *N.S. and M.E. v UK*⁷, according to which asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights. In such cases, another Member State has to assume responsibility on the basis of the criteria established by the Dublin Regulation, within the shortest delay, in order not to jeopardize their quick access to an asylum procedure (*see right to asylum*).

The EU adopted new rules as regards the **surveillance of the external EU's sea borders** (EUROSUR)⁸, in the context of operational cooperation coordinated by FRONTEX, including on the high seas. The proposal specifies that no person should be disembarked in or handed over to the authority of a country in contravention of the principle of *non-refoulement*, or from which there is a risk of expulsion or return to another country in contravention of that principle. Persons intercepted or rescued at sea should be given an appropriate opportunity to express any reasons for believing that disembarkation in the proposed place would be in breach of the principle of *non-refoulement*.

Prohibition of trafficking in human beings

Trafficking in human beings is a contemporary form of slavery that violates human dignity. The Charter explicitly prohibits trafficking in human beings. Preventing and combating trafficking in human beings as well as protecting and assisting the victims is a priority for the Union and the Member States.

The Commission set out an "**EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016**"⁹, which complements Directive 2011/36 on preventing and combatting trafficking in human beings and protecting its victims (to be transposed by 6 April 2013). The strategy adopts a strong gender and fundamental rights perspective, as well as a victims centred approach. It proposes a series of 40 concrete and time-bound actions grouped under the following key priorities: 1) identifying, protecting and assisting victims of trafficking, 2) stepping up the prevention of trafficking in human beings, 3) Increased prosecution of traffickers, 4) enhanced coordination and cooperation among key actors and policy coherence, 5) increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. The strategy emphasizes that mainstreaming of fundamental rights in the legislative and policy framework for addressing trafficking in human beings is necessary for ensuring coherence of action.

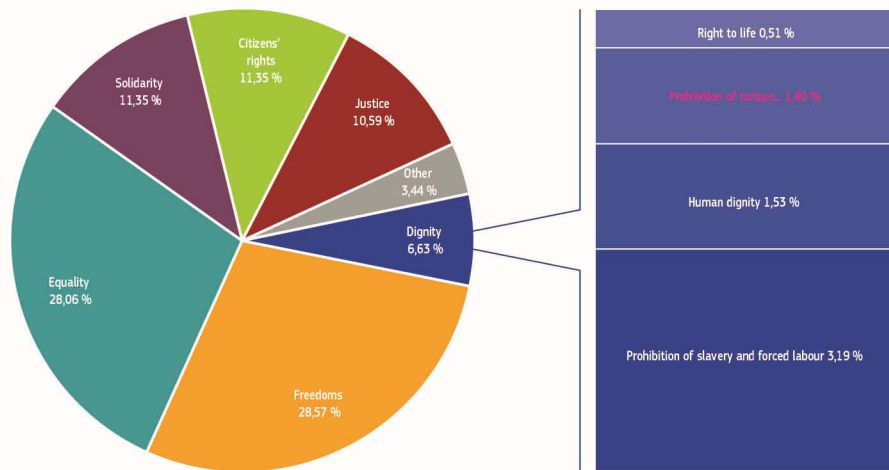
The **EU Anti-Trafficking Day** on 18 October, is marked every year with the aim to raise awareness on trafficking in human beings and to increase the exchange of information and networking between the different actors working in the field of trafficking in human beings. For 2012, the Cyprus Presidency and the European Commission organised a conference to mark the 6th EU Anti-Trafficking Day looking into future actions and advocating a strategic approach 'Working together towards the Eradication of Trafficking in Human Beings: The Way Forward'.

⁷ CJEU, Joined cases C-411/10 and C-493/10, *N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner*, 21.12.2011.

⁸ Proposal for a Regulation establishing the European Border Surveillance System (EUROSUR), 12.12.2011, COM(2011) 873 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0873:FIN:EN:PDF>

⁹ Communication on a EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, 19.6.2012, COM(2012) 286 final. Available at: http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf

Questions



2. Freedoms

Right to liberty and security

The Commission proposed a **major reform of the EU's rules on the protection of personal data**. This reform provides for increased responsibility and accountability for those processing personal data, and introduces the 'right to be forgotten', which will help people better manage data protection risks online and strengthens independent national data protection authorities. The Commission's proposal applies general data protection principles and rules for police authorities and criminal justice authorities in Member States. The new rules will apply to both domestic and cross-border transfers of personal data.

Respect for private and family life

Protection of personal data

Right to marry and right to found a family

Freedom of thought, conscience and religion

The **Commission proposed to modernise the current rules on cross border insolvency**. This is a first step towards an EU "rescue and recovery" culture to help companies and individuals in financial difficulties.

Freedom of expression and information

New rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (also known as the "Brussels I reform") will make it easier for business and consumers to resolve cross-border legal disputes.

Freedom of assembly and of association

Freedom of the arts and sciences

The new rules on international successions will enable heirs to exercise their property rights cross border more fully.

Right to education

Freedom to choose an occupation and right to engage in work

Freedom to conduct a business

Right to property

Right to asylum

Protection in the event of removal, expulsion or extradition

Respect for private and family life

The EU Charter of Fundamental Rights guarantees the right of everyone to the respect of their private and family life. This is reflected in EU free movement rules, which recognise the right to family life for all EU citizens who move and reside in another Member State. The right of everyone to respect for their private and family life right is also granted under EU free movement rules to third-country nationals who are family members of an EU citizen. The Family Reunification Directive¹⁰ further obliges Member States to pay due regard to the best interests of children when examining an application for family reunification (Article 5 (5)). This provision mirrors the obligation of the Charter (Article 24 (2)) and in the UN Convention on the Rights of the Child (Article 3 (1)) that the child's best interest must be a primary consideration in all actions relating to children as well as the need, expressed in the Charter (Article 24 (3)) for a child to maintain on a regular basis a personal relationship with both parents.

In line with the findings of the **public consultation on the right to family reunification of third-country nationals living in the EU**¹¹, the Commission decided, as a first follow-up step, to concentrate on a better implementation of existing EU legislation, including by taking cases to the CJEU. In this respect, the Commission will present in 2013 guidelines on the Directive, which should ensure a better and more harmonized implementation of EU legislation in this field. An expert group on family reunification has also been convened, whose aim is to discuss specific issues under the Directive.

The Commission proposed **new rules on the publication of information on all beneficiaries of European agricultural funds**¹². The new rules incorporate the CJEU jurisprudence¹³, which declared EU provisions on the publication of beneficiaries (natural persons) of EU agricultural subsidies invalid. The CJEU recognised that that in a democratic society, taxpayers have a right to be kept informed of the use made of public funds, but decided that the publication naming the beneficiaries who are natural persons, and indicating the precise amounts received by them, violates their right to respect for their private life and in particular to the protection of their personal data, as laid down in Articles 7 and 8 of the Charter.

The new rules proposed by the Commission are based on a revised detailed justification, centred on the need for public control of the use of European agricultural funds in order to protect the Union's financial interests. Moreover, they require more detailed information to be given on the nature and description of the measures for which the funds are disbursed. Furthermore, they include a minimum threshold below which the name of the beneficiary will not be published. This provision follows proportionality considerations, namely between the objective of the public control of the use of public funds, on the one hand, and the beneficiaries' right to respect for their private life in general and to protection of their personal data on the other hand.

The case law of the CJEU was also an important reference point when the Commission prepared its **proposal on European political parties**¹⁴. Through this initiative the Commission seeks to strengthen the ability of European political parties to form a truly European public sphere and express the will of EU citizens. This legislative proposal includes a comprehensive set of rules, including strict reporting and control requirements of party funding. European political parties would have to publish the names of donors contributing more than €1,000/year, while the annual limit on individual donations would rise from €12,000 to €25,000. A robust set of provisions on transparency and data protection ensures that the publication obligation, which is a substantial public interest, is in compliance with the principle of proportionality and in line with the CJEU's jurisprudence¹⁵. Under the proposed rules, the obligation

¹⁰ Council Directive 2003/86/EC on the right to family reunification, OJ L 251, 3.10.2003, p. 12 - 18

¹¹ The Commission received 121 replies to the public debate on the right to family reunification.

Available at: http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm

¹² Amendment to the Commission proposal COM(2011) 628 final/2 for a Regulation on the financing, management and monitoring of the common agricultural policy, COM(2012) 551 final, http://ec.europa.eu/agriculture/funding/regulation/amendment-com-2012-551_en.pdf.

¹³ CJEU, Joint cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR & Hartmut Eifert v. Land Hessen & Bundesanstalt für Landwirtschaft und Ernährung*, 10.11.2010

¹⁴ Proposal for a Regulation on the statute and funding of European political parties and European political Foundations, COM(2012) 499 final. Available at: http://ec.europa.eu/commission_2010-2014/sefcovic/documents/com_2012_499_en.pdf.

¹⁵ CJEU, Joint cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR & Hartmut Eifert v. Land Hessen & Bundesanstalt für Landwirtschaft und Ernährung*, 10.11.2010

to publish the identity of natural persons should not apply to those members of a European political party who have not given their express consent for publication or to donations equal to or below EUR 1 000 per year and per donor. Also in compliance with the principle of proportionality, information on donations should be published annually, except during election campaigns to the European Parliament or for donations exceeding EUR 12 000 where publication should take place expeditiously.

Negotiations continued on the Commission-proposals on matrimonial property regimes¹⁶ and on property regimes for registered partnerships¹⁷. The regulations take into account the right to respect for private and family life and the right to marry and to found a family according to national laws. There is no differentiation introduced in the legislation on the basis of sexual orientation. At the request of the European Parliament, FRA delivered an opinion on the proposal on the property consequences of registered partnerships on 31 May 2012¹⁸. In its opinion, FRA finds that "*in order to restrict the choice of applicable law in the case of registered partnerships appropriate justifications would be required which cannot be derived from the reasons given in the draft legislation under consideration. Accordingly, the exclusion of any choice of law does not appear to be in line with the principle of equality (Article 20 of the Charter of Fundamental Rights) and generates potentially problematic effects with regard to the prohibition of discrimination (Article 21 of the Charter of Fundamental Rights).*"

In response to the issues raised by FRA, the Commission reaffirmed that the difference made regarding the choice of law between the proposal on matrimonial property regimes on the one hand and the proposal for the property consequences of registered partnerships on the other hand is justified. Due to the absence of rules on property consequences attached to registered partnerships in many legal systems in the world, the determination of a choice of law based on general connecting factors as it is provided for in the proposal on matrimonial property regimes is not feasible for registered partnerships. The legal situation within the EU concerning the property consequences of registered partnerships varies too much, much more than the legal situation concerning matrimonial property regimes. The Commission proposal promotes free movement of persons by enhancing mutual recognition of applicable law as much as possible and ensuring that in cases where the partners do not live in the State of registration any more, the courts having jurisdiction may not disregard the law of the State of registration applicable to the property consequences of the registered partnership, on the mere ground that its law does not recognise the institution of registered partnership.

¹⁶ Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, COM/2011/0126 final. Available at:

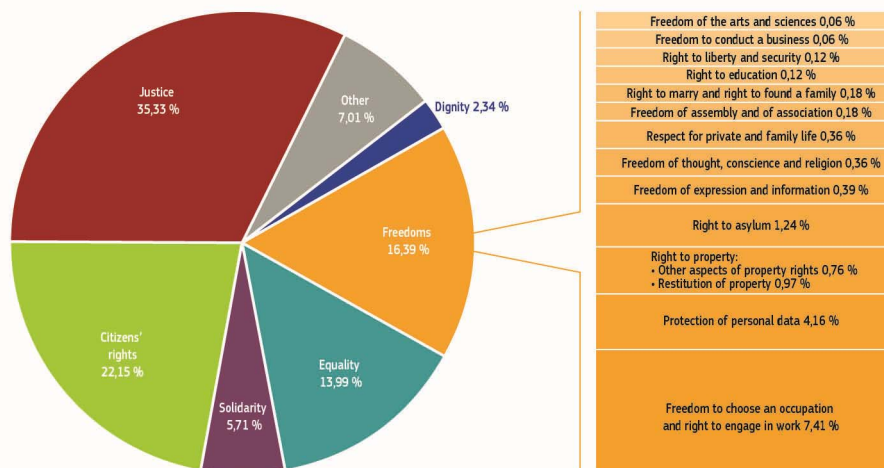
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0126:en:NOT>

¹⁷ Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, COM(2011) 127/2. Available at:

http://ec.europa.eu/justice/policies/civil/docs/com_2011_127_en.pdf

¹⁸ <http://fra.europa.eu/en/opinion/2012/fra-opinion-proposed-eu-regulation-property-consequences-registered-partnerships>

Letters



Ruling of the Constitutional Court of Slovenia¹⁹

The Constitutional Court annulled the decision of the Supreme Court to uphold the expulsion decision of a Lithuanian national from the Slovenian territory on grounds of public policy or public security; which is allowed upon respect of several conditions laid down under Directive 2004/38/EC²⁰ on the rights of EU citizens and their family members to free movement and residence. The applicant lodged a plea for extraordinary mitigation before the Supreme Court of Slovenia on the basis of the fact that his new-born child lived in Slovenia with his mother. The Supreme Court did not take into account this circumstance as a new fact of personal nature capable of modifying the decision to deport him to Lithuania. The Constitutional Court ascertained that the expulsion measure constituted interference in the applicant's right to respect for private and family life recognised by Article 7 of the Charter and Article 8 of the ECHR and that such measure did not comply with the principle of proportionality inasmuch the Supreme Court failed to take into account the circumstance that the applicant had strong family ties in Slovenia.

Ruling of the Austrian Supreme Administrative Court²¹ -

The Austrian Supreme Administrative Court considered that the decision rejecting residence permission for the purposes of family reunion of a third country national with his Austrian husband had to be repealed because no due consideration of the personal interest, i.e. the continuation of family life in Austria, had been taken into account. Referring to the jurisprudence of the CJEU²², the Court reminded that decisions had to be taken on a case by case basis and take into consideration the right to private and family life as protected by Article 7 of the Charter.

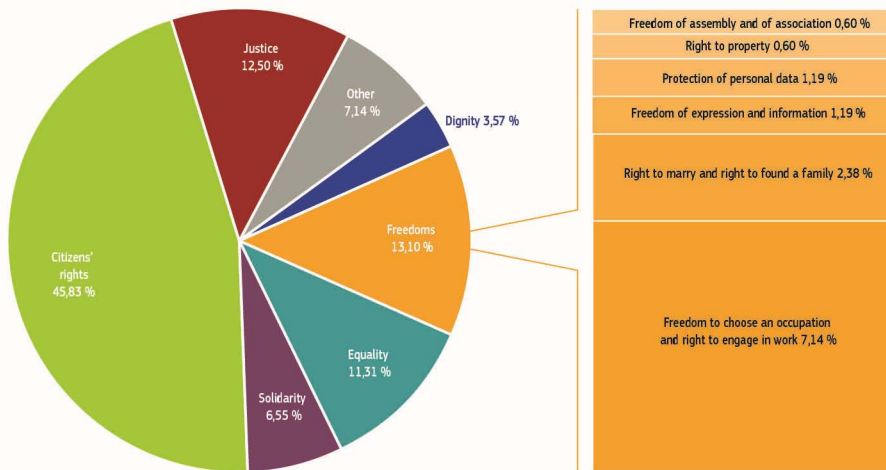
¹⁹ Constitutional Court of the Republic of Slovenia (Ustavno sodišče Republike Slovenije), case Up-690/10, D. Vizgirda v. Supreme Court of the Republic of Slovenia, 10.05.2012

²⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.04.2004, p. 77-123

²¹ Austrian Supreme Administrative Court (Verwaltungsgerichtshof), case 2008/22/0223, decision of 13.12. 2011

²² CJEU, Case C-256/11, Derici and others, 15.11.2011

Petitions



Data protection

The fundamental right of everyone to the protection of personal data is now explicitly recognised by Article 8 of the Charter. It is also explicitly stated in Article 16 of the Treaty on the Functioning of the European Union. This gives the EU new responsibilities to protect personal data in all areas of EU law, including police and judicial cooperation. Technological progress and globalisation have profoundly changed the way personal data is collected, accessed and used. In addition, the 27 EU Member States have implemented the 1995 EU Data Protection Directive²³ differently, resulting in divergences in enforcement.

Reform of EU data protection rules

The Commission proposed a **major reform of the EU's rules on the protection of personal data**. The Commission's proposals update and modernise the principles enshrined in the 1995 EU Data Protection Directive to guarantee the right of personal data protection in the future. They include a policy Communication setting out the Commission's objectives²⁴ and two legislative proposals: a Regulation setting out a general EU framework for personal data protection²⁵ and a Directive²⁶ on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities²⁷. The Commission's proposals have been passed on to the European Parliament and EU Member States (meeting in the Council of Ministers) for discussion. Upon request of the European Parliament, the EU Agency for Fundamental Rights presented an expert opinion on the proposal²⁸

Key changes in the reform proposed by the Commission include

- A single set of rules on data protection, valid across the EU. Unnecessary administrative requirements, such as notification requirements for companies, will be removed. This will save businesses around €2.3 billion a year.
- Instead of the current obligation of all companies to notify all data protection activities to data protection supervisors – a requirement that has led to unnecessary paperwork and costs businesses €130 million per year, the Regulation provides for increased responsibility and accountability for those processing personal data. For example, companies and organisations must notify the national supervisory authority of serious data breaches as soon as possible (if feasible within 24 hours).
- Organisations will only have to deal with a single national data protection authority in the EU country where they have their main establishment. Likewise, people can refer to the data protection authority in their country, even when their data is processed by a company based outside the EU.
- Wherever consent is required for data to be processed, it is clarified that it has to be given explicitly, rather than assumed.

²³ Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p.31.

²⁴ Communication on 'Safeguarding Privacy in a Connected World – A European Data Protection Framework for the 21st Century', COM (2012) 09 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0009:en:NOT>

²⁵ Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)', COM (2012) 11 final. Available at:

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=52012PC0011

²⁶ Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data', COM (2012) 10 final. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012PC0010:en:NOT>

²⁷ The Commission's package also includes the following other documents:

Report from the Commission based on Article 29 (2) of the Council Framework Decision of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (including annex), COM (2012) 12 final,

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0012:FIN:EN:PDF>

Impact assessment (including annexes) accompanying the proposed Regulation and the proposed Directive, SEC (2012) 72 final, Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0011:FIN:FR:PDF>

Executive summary of the impact assessment, SEC (2012) 73 final, Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2012:0073:FIN:FR:PDF>

²⁸ Available at: <http://fra.europa.eu/sites/default/files/fra-opinion-data-protection-oct-2012.pdf>

- People will have easier access to their own data and be able to transfer personal data from one service provider to another more easily (right to data portability). This will improve competition among services.
- A 'right to be forgotten' will help people better manage data protection risks online: people will be able to delete their data if there are no legitimate grounds for retaining it.
- EU rules must apply if personal data is handled abroad by companies that are active in the EU market and offer their services to EU citizens.
- Independent national data protection authorities will be strengthened so they can better enforce the EU rules at home. They will be empowered to fine companies that violate EU data protection rules. This can lead to penalties of up to €1 million or up to 2% of the global annual turnover of a company.

Google's new privacy policy

Google announced on March 1st a new privacy policy, which raised doubts throughout the EU and beyond about its compliance with EU data protection rules. The European Data Protection Authorities undertook a thorough investigation – under the auspices of the French Data Protection Supervisory Authority - and concluded that Google provides insufficient information to its users on its personal data processing operations and is not transparent about retention periods of personal data. The data protection authorities recommended clearer information for the users, asked Google to offer improved control of data across its numerous services, and requested some modification to the tools Google set in place to avoid an excessive collection of data. These recommendations were addressed to Google in a letter of 16.10.2012 which was made public²⁹.

EU cloud computing strategy

Many of citizens are using 'cloud computing' without even realising it. Web based email, social platforms and music streaming services all use the technology to store data such as pictures, videos and text files. The files are stored in massive data centres containing hundreds of servers and storage systems that are compatible with very nearly all computer software. When you wish to access your information, you simply connect to the 'cloud' from your PC, smartphone or tablet. The advantages are numerous – users don't have to buy or maintain expensive servers and data-storage systems – but many businesses and citizens are put off by uncertainties over data security or moving data between different cloud providers.

The **European Commission proposed a strategy to facilitate a faster adoption of cloud computing throughout all sectors of the economy.** The strategy takes into account the right of freedom of expression of the citizens and their right to information. It aims at enhancing trust in innovative computing solutions and boost a competitive digital single market where Europeans feel safe and where their fundamental rights are preserved. The Commission cloud strategy addresses some specific aspects of legal fragmentation in the field of data protection, contracts and consumer protection or criminal law and contains an action plan aimed at facilitating safe access to cloud computing for all European individuals.

Case law of the ECJ on the independence of data protection authorities

Under the EU Data Protection Directive each Member State has to establish a supervisory body which acts completely independently, to monitor the application of the Directive. The independence of data protection authorities is also explicitly required by the Treaty on the Functioning of the Union (Article 16) and by the Charter (Article 8).

The **CJEU** upheld its case law³⁰ confirming that the mere risk of an external influence is sufficient to conclude that the data protection authority cannot act with complete independence in its ruling on the

²⁹ Available at: http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/index_en.htm

³⁰ CJEU, Case C-518/07, *European Commission v. Federal Republic of Germany*, 9.10.2010

case brought by the Commission against Austria³¹. The Court clarified, in particular, that the mere functional independence of the data protection supervisory authority does not suffice in order to ensure the "complete independence" required by the EU Data Protection Directive (Article 28 (1)). The Court found that the Austrian regulatory framework violated the EU requirements on three grounds. Firstly, that the managing member of the Data protection authority (*Datenschutzkommission*) is a federal official subject to supervision. Secondly, that the office of the data protection authority is integrated with the departments of the Federal Chancellery. Thirdly, that the Federal Chancellor has an unconditional right to information covering all aspects of the work of the data protection authority. By contrast, the Court rejected a submission made by the European Data Protection Supervisor (EDPS) to the effect that the Supervisory Authority should dispose of its own budget line.

The Commission submitted an application to the CJEU against **Hungary** for violating the independence of the data protection supervisory authority³². With the creation of the National Agency for Data Protection, Hungary had at the same time prematurely ended the six-year term of the former Hungarian Data Protection Commissioner, who was appointed in September 2008 and whose term of office would have ended in September 2014 only. The personal independence of a national data protection supervisor, which includes protection against removal from office during the term of office, is a key requirement of EU law. The re-organisation of a national data protection authority is not a reason for deviating from this requirement.

Scope of application of EU data protection rules

The *Audiencia Nacional* of Spain submitted a request for preliminary ruling on the interpretation of the Data Protection Directive³³. The questions to the CJEU included the interpretation of the criteria laid down in that Directive to define the territorial scope of the national implementing legislation. The Spanish Court asked whether the fundamental right of everyone to the protection of personal data enshrined in Article 8 of the Charter requires the taking into account of the Member State where the centre of gravity of the conflict is located and more effective protection of the rights of European Union citizens is possible, regardless of the criteria set out in the Data Protection Directive. The remaining questions are related on one hand, to the obligations of search engines like Google, and on the other to the powers of the national supervisory authorities as regards the extent of the data subjects' right to control the information disseminated on them through the internet.

Legal challenges against EU rules on Data retention

A case brought by the group Digital Rights Ireland at the High Court of Ireland was referred to CJEU, in order to obtain a preliminary ruling on the compatibility of the Data Retention Directive with the rights to privacy, data protection, freedom of expression, free movement and good administration.

In Slovakia, a complaint has been filed by a group of 30 Members of Parliament against the national laws implementing the EU's Data Retention Directive. The complaint asks the Slovak Constitutional Court to examine whether the laws are compatible with constitutional provisions on proportionality; the rights to privacy and protection against unlawful data collection; the right to private correspondence; and the provision granting freedom of speech.

International agreements

The Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108) was the first legally binding international instrument in the field of data protection. In order to respond to the rapid technological developments and

³¹ CJEU, Case C-614/10 *European Commission v. Republic of Austria*, 16.10.2012.

³² CJEU, Case C-288/12, *European Commission v. Hungary*, action brought on 08.06.2012.

globalisation trends that have brought new challenges for the protection of personal data, the Council of Europe has begun discussions on the modernisation of Convention 108. The modernisation of the Council of Europe's rules coincides with the comprehensive reform of the European Union's laws on data protection. The negotiation is an opportunity to export the EU's standards of data protection beyond the borders of the Member States.

The Commission recommended starting negotiations on the modernisation of Convention 108, in order to provide for a high level of protection of fundamental rights and freedoms with respect to processing of personal data, which reflects the EU's internal rules. In the new digital era, data knows no national borders – these negotiations are an opportunity to enhance the data protection standards across the globe."

Two agreements on the exchange of **Passenger Name Record (PNR)** data were concluded following a renegotiation of existing ones. On 1 June 2012, the new agreement with **Australia**³⁴ entered into force, as did the new agreement with the **US**³⁵ on 1 July 2012. The agreements allow the Australian Customs and Border Protection Service and the US Department of Homeland Security respectively, to collect and analyse PNR data on flights to and from Australia and, in the case of the US, to prevent, detect, investigate and prosecute terrorism and other serious transnational crime. The use of PNR provides a tool for a proactive, rather than solely reactive approach to combatting terrorism and serious transnational crime effectively. These PNR data should assist the Australian and US authorities amongst others in detecting persons using air travel to traffic human beings into their countries. The use of this data also assists in better protecting the rights of the child since many of the victims of trafficking of human beings are children.

At the same time, account had to be taken of the impact of the collection, analysis and exchange of PNR data on the protection of private life, the protection of personal data and on avoiding any discrimination between air travellers. In order to duly protect these rights, the agreements contain a non-discrimination clause as well as other guarantees on the use of the data, such as passengers' rights to access their data, request rectification, erasure or blocking, as well as redress.

Mainstreaming of data protection requirements in EU policies and legislation

The Commission routinely checks its legislative proposals and the acts it adopts to ensure that they are compatible with the Charter. The roll out of new innovative **smart metering systems** technology illustrates very well the requirement that particular attention is paid to fundamental rights in the development of policies related to new technologies. Smart meters record the consumption of electric energy and communicate this information to the consumer, to the grid operator and to the energy supplier. This technology raises issues of security and protection of the personal data processed by smart metering systems. This is why the Commission recommended that data protection and information security features should be built into smart metering systems before they are rolled out and used extensively³⁶.

The Commission further sought to ensure that specific implementation measures duly take the Charter into account. In this vein, clear provisions have been introduced to stress the applicability of the data protection rules to the proposed **new rules on Clinical Trials**³⁷ that test new medicines and medical treatments on humans. In particular, the database that will be established to facilitate the application of the new rules will be publicly accessible unless confidentiality is justified for reasons of protection of personal data, commercially confidential information or ensuring effective supervision of the conduct of a clinical trial by Member States. It shall contain personal data only insofar as this is necessary for the purposes of the future Regulation. No personal data of subjects shall be publicly accessible.

³⁴ Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service OJ L 186, 14.7.2012

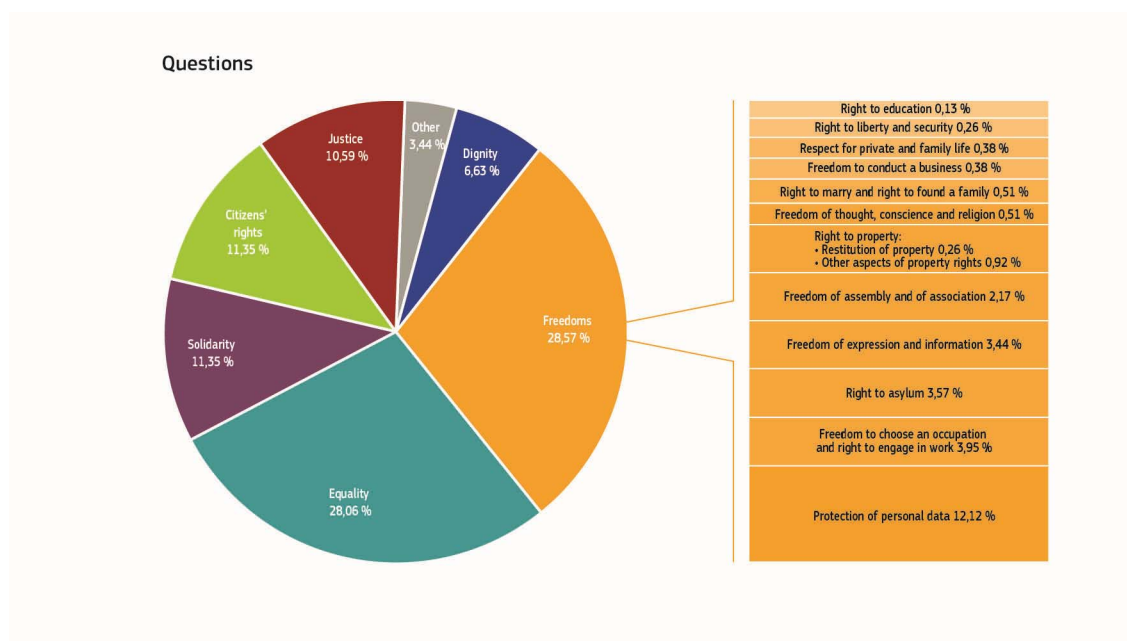
³⁵ Agreement between the United States of America and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security, OJ L 215, 11.8.2012

³⁶ Commission Recommendation on preparations for the roll-out of smart metering systems, OJ L 73, 13.3.2012, p. 9

³⁷ Proposal for a Regulation on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC, COM(2012) 369 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0369:FIN:EN:PDF>

Ruling of the Administrative Law Chamber of the Supreme Court of Estonia³⁸

This case concerned an appeal brought before the Supreme Court by a public company (EMT) against the order issued by the national data protection authority for transmitting to third parties information concerning payments overdue for the purpose of assessing data subjects' solvency under the so-called 'legitimate interests' clause. When interpreting the relevant provisions of the Estonian Data Protection Act, which implements Directive 95/46/EC³⁹ the Court referred to the case-law of the CJEU and to the rights recognised by Articles 7 and 8 of the Charter to maintain that such order was lawful insofar as it aimed at protect the data subjects' fundamental rights, which were therefore deemed to prevail over the controller's and third parties' legitimate interests.



Freedom of expression

The Charter guarantees the right to freedom of expression for everyone. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The **EU rules on Audiovisual Media Services**⁴⁰ are an expression of the right to freedom of expression. The country of origin principle, which is at the core of this Directive, ensures that audiovisual services are regulated in their Member State of establishment and can then freely circulate in the European Union without a second control by the receiving Member State. There are a number of limited restrictions, notably the possibility to apply stricter rules to the providers under their jurisdiction (Article 4(1)), which are subject to close scrutiny by the Commission in its examination of the transposition measures at Member States level. Some specific provisions of the Audiovisual Media Services rules are more specifically linked with fundamental rights such as the prohibition of incitement to hatred based on race, sex, religion or nationality or the prohibition of discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. Furthermore, the Commission has a right to closely scrutinise national measures restricting certain types of editorial content for justifications that would constitute an element of discrimination. Furthermore, the provisions on the right to information on events of major importance for society and shorts extracts from news report

³⁸ Administrative Law Chamber of the Supreme Court of Estonia (Riigikohtu Halduskollegium), case 3-3-1-70-11, EMT v. Data Protection Inspectorate, 12.12.2011

³⁹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31-50

⁴⁰ Directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L95, 15.4.2010, p.1 – 22.

implement the right to receive and impart information and ideas without interference by public authority and regardless of frontiers.

These considerations formed the basis for the action of the Commission as regards the **new Hungarian media legislation**, which contains the obligation to balance coverage and rules on offensive content. Some modifications were already agreed between the Commission and the Hungarian authorities in 2011, on other provisions which could constitute an infringement of the rules on free circulation of services and establishment provided by the Audiovisual Media Services Directive. In 2012, the Commission supported the recommendations issued by the Council of Europe that were calling for amendments to the Hungarian Media Law and monitored their implementation.

Commission actions to promote media freedom, pluralism and independent governance

Members of the European Parliament raised concerns on the issue of media freedom, pluralism and independent governance. The Commission considers that media pluralism is an essential condition for preserving the right to information and freedom of expression that underpins the democratic process. The Commission took several actions in 2012, but, Member States retain competence to confer, define and organise the remit of public service broadcasting and to provide the financing necessary for its execution.

To safeguard a free and independent media and its particular role in a democratic society, a solid economic basis for a sustainable media sector in the EU is essential. In 2011, Vice-President Kroes set up the EU Media Futures Forum - a group of personalities from across the media industry value-chain - to reflect on the impact of the digital revolution on European media industries. They presented in September 2012 their final report, which highlights key trends, opportunities and challenges of the sector, as well as possible solutions to overcome them in order for the European media industry to thrive in the digital world. The Commission is currently analysing this report.

Freedom to conduct a business

The Charter recognises the freedom to conduct a business in accordance with Union law and national laws and practices.

The **Commission proposed to modernise the current rules on cross border insolvency**, which date from 2000 and are liquidation oriented. The aim is to shift towards a rescue approach as a contribution to Justice for Growth. The new rules will help viable businesses overcome financial difficulties, whilst protecting creditors' rights to get their money back. On the latter, the reduction in abusive forum shopping combined with a right to judicial review for all creditors, will considerably improve the protection of the creditor's right to property and right to an effective remedy. Promoting pre-insolvency proceedings will facilitate the rescue of businesses at an early stage thereby significantly increasing the recovery rate for creditors in collective proceedings. The EU-wide recognition of personal insolvency schemes and ensuing debt discharge will impact positively on the freedom to conduct business and right to engage in work in the EU as it facilitates the possibility of a second chance for debt-discharged entrepreneurs and natural persons.

The revision of the EU Insolvency Regulation will also increase legal certainty, by providing clear rules to determine jurisdiction, and ensuring that when a debtor is faced with insolvency proceedings in several Member States, the courts handling the different proceedings work closely with one another. Information to creditors will be improved by obliging Member States to publish key decisions – about the opening of insolvency proceedings, for example, while strictly respecting the data protection rules. All in all, these changes will improve the efficiency and effectiveness of cross-border insolvency proceedings.

The EU adopted **new rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (also known as the "Brussels I reform")**⁴¹, which will make it easier for business and consumers to resolve cross-border legal disputes. Following this reform, judgements

⁴¹ Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM/2010/748.

Available at: http://ec.europa.eu/justice/policies/civil/docs/com_2010_748_en.pdf

issued in another Member State in civil and commercial matters will be treated as domestic judgements. Under the current EU rules, a judgment given in one Member State does not automatically take effect in another Member State. In order to be enforced in another country, a court in that country first has to validate the decision and declare it enforceable. This is done in a special procedure ("exequatur") that takes place after the judgment has been obtained and before concrete measures of enforcement can be taken. The new rules will apply from 10 January 2015.

The Commission outlined a series of **actions to tackle marketing scams affecting businesses**, such as those of misleading directory companies. The aim is to better protect businesses, professionals and NGOs across Europe from rogue traders who do not play by the rules and use misleading marketing practices, such as sending out forms asking businesses to update details in their directories, seemingly for free, and then charging them annual fees. Small and new companies are particularly vulnerable to fraudsters when doing business in other EU countries. The Commission therefore announced that it plans to revise the existing legislation (the Misleading and Comparative Advertising Directive 2006/114/EC) to explicitly ban practices such as concealing the commercial intent of a communication, while at the same time stepping up enforcement of the rules in cross-border cases.

Right to property

The Charter protects the right of everyone to property, which includes the right to own, use, and dispose of lawfully acquired possessions. The Charter also guarantees the protection of intellectual property.

The EU adopted **new rules to simplify the settlement of international successions**⁴². With this new instrument, the right to property referred to in Article 17 of the Charter is strengthened. The common rules and their predictability on the law applicable to the succession will enable heirs to exercise their property rights cross border more fully. Parallel proceedings and conflicts of jurisdictions among Member States will be avoided. Under the new EU rules there is a single criterion for determining both the jurisdiction of the authorities and the law applicable to a cross-border succession: the deceased's habitual place of residence. People living abroad will, however, be able to opt to have the law of their country of nationality apply to the entirety of their succession. Moreover, the European Certificate of Succession will allow people to prove that they are heirs or administrators of a succession without further formalities throughout the EU. This will represent a considerable improvement from the current situation in which people sometimes have great difficulty exercising their rights. The result will enable faster, cheaper procedures. To help citizens become better informed about these laws, the Council of Notaries of the EU has created a website (www.successions-europe.eu), with the support of the European Commission, in 22 EU languages plus Croatian.

A few months after its ruling in the *Scarlet v. SABAM* case⁴³, the CJEU had the occasion to refer to the **relationship, in an on-line environment, between the protection of intellectual property rights and other fundamental rights, such as the freedom to conduct a business and the protection of personal data**. In the *SABAM v. Netlog* case⁴⁴ the Court ruled on the incompatibility with the rights recognised in the Charter, of an injunction sought by SABAM (an association of authors, composers and publishers) against Netlog (an on-line social networking platform) requiring the instalment of a general and open-ended filtering system aimed at identifying copyrighted material. In particular, the CJEU found that the injunction requested against Netlog would not be compatible with the requirement that a fair balance be struck between the right to intellectual property, on the one hand, and the freedom to conduct a business, the right to protection of personal data and the freedom to receive or impart information, on the other.

The CJEU specified the **conditions under which personal data may be disclosed for the purposes of protecting intellectual property rights in the context of civil proceedings**⁴⁵. In the main proceedings before the Swedish courts, publishing companies, holding the copyrights of certain audio books,

⁴² Regulation N° 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L201, 27.07.2012, p.107-134.

⁴³ CJEU, Case C-70/10, *Scarlet v. SABAM*, 24.11.2011.

⁴⁴ CJEU, Case C-360/10, *SABAM v. Netlog*, 16.2.2012.

⁴⁵ CJEU, Case C-461/10, *Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget AB, Storyside AB v. Perfect Communication Sweden AB*, 19.4.2012

applied to the court for an order against an internet service provider for the disclosure of the identity of a natural person using an IP (internet protocol) address allegedly involved into illegal file-sharing. The Court confirmed its previous jurisprudence⁴⁶ that the Intellectual Property Rights Enforcement Directive⁴⁷ and the e-privacy Directive⁴⁸ do not preclude Member States from imposing an obligation to disclose to private persons personal data in order to enable them to bring civil proceedings for copyright infringements, but nor do they require those Member States to lay down such an obligation. The Court re-emphasized that the Member States must ensure that they rely on an interpretation of those directives which allows a fair balance to be struck between the various fundamental rights protected by the European Union legal order (i.e., in particular, the protection of personal data and the protection of property rights, including IPRs) and that they also respect general principles of EU law, such as the principle of proportionality.

Polish State owned agricultural estate management

In 2012 the Commission received 15 identical complaints against a new legislation in Poland on the state owned agricultural estate management, which introduced limitations on the size of agricultural land leased to farmers and an obligation for leaseholders to purchase farms within a certain timeframe. These complaints were based on the claim that the new legislation is contrary to the freedom to choose an occupation and the right to engage in work, the right to property and equality before the law as provided by the Charter.

After the examination of the complaints, the Commission services concluded that it was not possible, at this stage, to identify an infringement of the Charter in this case. According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law. On the basis of the information provided and in the light of the analysis performed by the Commission services, it did not appear that the matter to which the complaints referred was related to the implementation of European Union law. The Treaty on the Functioning of the European Union EU Treaties (Article 345) empowers the Member States to define the system of property ownership within their territories. This also applies to leaseholders' rights to lease or to purchase agricultural land. The Commission has, thus, no authority to act in this field.

Further to the examination of the complaints it was decided to close them and to publish a notice in the Official Journal of the European Union with these explanations.

Spanish Coastal Law

In view of the number of complaints received from non-Spanish EU citizens concerning the **Spanish** coastal law, the Commission has pursued its contacts with the Spanish authorities.

This Spanish coastal law aims to protect the coast from abusive constructions. It applies to private projects which run the risk of being demolished as they are located in areas regulated by the coastal law. The Spanish coastal law does not provide for a *financial compensation* for property losses that may result from the demarcation of the maritime-terrestrial public domain. It provides instead for a special form of compensation consisting of the granting of an administrative concession. The question of whether this special form of compensation is in line with the case law of the ECtHR should be examined by national courts and, after having exhausted domestic legal remedies, by the Strasbourg Court itself.

In October 2012, the Spanish government approved draft amendments to the coastal law.⁴⁹ . The most relevant measures were the (i) extension of the concessions from 30 years to 75 years and (ii) increasing the opportunity to transmit and sell the property (subject to prior

⁴⁶ See for example: CJEU, Case C-275/06, *Productores de Música de España (Promusicae) v. Telefónica de España SAU*, 29.1.2008.

⁴⁷ Directive 2004/48/EC on the enforcement of intellectual property rights, OJ L 195, 2.6.2004, p.16 – 25.

⁴⁸ Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L201, 31.7.2002, p. 37 – 47.

⁴⁹ "Proyecto de Ley de Protección y Uso Sostenible del Litoral y de modificación de la Ley de Costas", <http://www.magrama.gob.es/es/costas/temas/anteproyecto.aspx>

authorisation). The law aims also at improving transparency and legal certainty, by introducing an obligation for the administration to register the demarcation line in the property register.

In July, Vice-President Reding welcomed the announcement of the new draft law presented by the Spanish Government, and encouraged those concerned to comment underlining that protecting the environment is a legitimate concern of Spanish authorities, but that this should be done in a way that improves legal certainty and due process for citizens who own property on the Spanish coast or who are thinking of doing so.

Right to asylum

The right to asylum is guaranteed by the Charter.

The three institutions (EP, Council and Commission) took an important step in safeguarding fundamental rights as part of the **new Dublin Regulation on the conditions for the transfer of asylum seekers in the EU**⁵⁰. The agreement between the three institutions provides for the incorporation of the judgment of the CJEU in the joint cases of *N.S. and M.E. v UK*⁵¹, according to which asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights. In such cases, another Member State has to assume responsibility on the basis of the criteria established by the Dublin Regulation, within the shortest delay, in order not to jeopardize their quick access to an asylum procedure.

The new rules also provide effective guarantees to applicants as regards appeals against transfer decisions, thus ensuring full effect of the right to remain on the territory and reducing the risk of "chain *refoulement*". Substantial provisions on detention have been agreed in the text, limiting it to cases of established risk of absconding, restricting it to a maximum of three months, and providing that the detention conditions and guarantees applicable to asylum seekers under this procedure are the ones foreseen by the Reception Conditions Directive⁵² (thus ensuring the same level of rights as for any other asylum applicant). Additionally, the agreement provides for enlarged rules of reunification for unaccompanied minors, guarantees the right to a guardian, the right of all applicants to detailed information on the functioning of the Dublin system including, for the minors, in a manner adequate for their understanding.

The Commission proposed an improvement to the overall efficiency of the **EURODAC** system for collecting asylum seekers' fingerprints. The Commission's proposal provides clearer deadlines for transmission of data and ensures full compatibility with the latest asylum legislation. The proposal provides for more effective and less intrusive measures for competent law enforcement authorities to determine if another Member State holds data on an asylum seeker. The Commission's proposal also foresees the possibility of national law enforcement authorities to consulting the EURODAC database under strictly defined circumstances for the purpose of prevention, detection and investigation of terrorist offences and other serious criminal offences, as requested by Member States. The use of EURODAC data for law enforcement purposes implies a change of purpose of the data processed and constitutes an "interference" with the right to data protection⁵³. In its proposal the Commission assessed whether this interference complies with Charter obligation (Article 52(1)) stating that any limitation of rights respects the essence of the right, is necessary to achieve an objective of general interest recognised by the Union or to protect the rights and freedoms of others, and is proportionate, i.e. appropriate for attaining the objective pursued and not going beyond what is necessary to achieve it.

The co-legislators have agreed to amend the current **Reception Conditions Directive**, aiming to address problems identified in its implementation by Member States, notably divergent practices which sometimes led to an inadequate level of material reception conditions for asylum seekers. In

⁵⁰ Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, COM(2008) 820 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF>.

⁵¹ CJEU, Joined cases C-411/10 and C-493/10, *N.S. v. Secretary of State for the Home Department and M.E. and Others v. Refugee Applications Commissioner*, 21.12.2011.

⁵² Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18 – 25.

⁵³ See the reference to "interference" in Judgment of the CJEU of 20 May 2003, *Österreichischer Rundfunk and Others*. Joined cases C-465/2000, C-138/01 and C-139/01, ECR [2003], p. I-4989, paragraph 83

this respect, the revised Directive will ensure better as well as more harmonised standards of reception conditions throughout the Union.

The final text includes among others an exhaustive list of detention grounds that will help to avoid arbitrary detention practices and limits detention to as short a period of time as possible. Furthermore it restricts the detention of vulnerable persons in particular minors, includes important legal guarantees such as access to free legal assistance and information in writing when lodging an appeal against a detention order. Access to employment for an asylum seeker must be granted within a maximum period of 9 months. Furthermore Member States are obliged to ensure the identification of special reception needs of asylum applicants, especially victims of trafficking and persons with mental health problems.

The Commission proposal to revise the **Asylum Procedures Directive**⁵⁴ is aimed at ensuring that asylum decisions are made more efficiently and more fairly, and in line with the case-law of the European courts. Negotiations on this proposal are still on-going.

The **Qualification Directive** contributes to the respect of the right to asylum enshrined in the Charter by strengthening the criteria for qualification as a beneficiary of international protection, notably the notions of actors of protection and internal protection, as well as the provisions related to the best interests of the child and to gender. It further approximates the rights granted to refugees and to beneficiaries of subsidiary protection as regards access to employment, recognition of professional qualifications and health care.

The **CJEU** analysed the **rules on minimum EU standards for the qualification as refugees⁵⁵ in the light of the right to freedom of religion in the Charter** (Article 10(1)) in its ruling on a preliminary reference introduced by two German Courts⁵⁶. The applicants, two Pakistani nationals, claimed that their membership to a religious community had forced them to leave their country of origin, but were not granted asylum by the German administration. The CJEU clarified that the authorities responsible for granting refugee status, cannot expect the applicant to abstain from those religious practices which would expose them, upon their return to their country of origin, to a real risk of persecution, especially when the public practice of the applicant's faith plays a central role in his religious identity.

Finnish Supreme Administrative Court

In two cases concerning the situation of asylum seekers⁵⁷, the Finnish Supreme Administrative Court made references to the Charter to interpret provision of EU secondary law. In a case concerning the permit application of an asylum seeker, the Court relied on Article 47 of the Charter (right to an effective remedy) to interpret Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status 2005/85/EC⁵⁸ and relevant implementing national laws (Administrative Judicial Procedure Act 586/1996 and Alien Act 301/2004).

In the second case, the Court suspended the deportation of an asylum seeker by relying on the right to life, right to asylum and the protection in the event of removal, expulsion or extradition (Articles 2, 18 and 19 of the Charter) to interpret the relevant provisions of Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection⁵⁹.

Austrian Asylum Court

⁵⁴ COM(2011) 319 final ANNEX. Available at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2011:0319\(01\):FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2011:0319(01):FIN:EN:PDF)

⁵⁵ Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304 , 30.9.2004, p.12 - 23

⁵⁶ CJEU, Joined cases C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*, 05.9.2012.

⁵⁷ Claimant v the Supreme Administrative Court, case no. 2011:98, 7.12.2011; The Finnish Immigration Service, case KHO:2011:25, 18.3.2011

⁵⁸ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326 , 13.12.2005, p.13 - 34

⁵⁹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30.09.2004, p.12 - 23

In an number of cases the Austrian Asylum Court⁶⁰ considered that the limitation of the right to a public hearing in asylum cases is allowed as established by law and respecting the essential content of the right to an effective remedy and to a fair trial (Article 47 (2) of the Charter). The Court explained that fairly quick decisions on asylum applications are a goal of the Union and that the omission of oral hearings can help in reaching this goal. However, the Court specified that this can only be applied in those cases where the actual situation can be established and the omission of the oral hearing does not diminish the quality of the decision.

Protection in the event of removal, expulsion or extradition

The Charter prohibits removal, expulsion or extradition to a State where there is a serious risk that an individual would be subject to the death penalty, torture, or other inhuman or degrading treatment or punishment.

The **CJEU annulled Council Decision 2010/252/EU on the surveillance of the sea external borders** which had been adopted under the comitology procedure, following a challenge by the European Parliament. The Court found that some of the rules contained in the challenged legal act concerned essential elements related to external maritime border surveillance and, thus, entailed political choices which have to be made by the EU legislature following the ordinary legislative procedure. The Court noted in particular that those rules were likely to affect individuals' personal freedoms and fundamental rights to such an extent that the involvement of the EU legislature is required. The Court indicated that the decision shall remain in force until replaced within a reasonable time by new rules.

The **case *Hirsi Jamaa and Others v. Italy*, concerned the transfer to Libya of about 200 migrants intercepted on the high seas by Italian authorities**⁶¹. The Italian Coastguard returned the migrant under an agreement concluded between Italy and Libya, without recording their names or nationalities. The ECtHR considered that, when the applicants were removed, the Italian authorities knew or should have known that, as irregular migrants in Libya, they would run the risk of being exposed to treatment in breach of the ECHR and that they were not likely to be given protection in that country. The ECtHR also considered that the Italian authorities knew, or should have known, that there were insufficient guarantees protecting the applicants from the risk of being arbitrarily returned to their countries of origin, which were later found to include Somalia and Eritrea, having regard in particular to the lack of any asylum procedures and the impossibility of making the Libyan authorities recognise the refugee status granted by the UNHCR. The ECtHR affirmed that Italy was not exempt from complying with its obligations to prevent torture and ill-treatment (Article 3 ECHR) because the applicants failed to ask for asylum or to describe the risks they would face as a result of the lack of an asylum system in Libya. It noted that the Italian authorities should have ascertained how the Libyan authorities fulfilled their international obligations in relation to the protection of refugees, and that an assessment of each individual's situation should have been made. Consequently, the ECtHR found that Italy violated Article 3 of the Convention because it exposed the applicants to the risk of *refoulement*. It also found Italy to be in violation of Article 4 of Protocol No. 4 on the prohibition of collective expulsion for transferring the applicants to Libya without an examination of each individual situation and Article 13 of the Convention on the right to an effective remedy.

National laws criminalising irregular stays in Italy and France were amended further to the ruling of the CJEU declaring these laws incompatible with EU rules on return of irregular migrants⁶². The Commission is currently examining the correct legal transposition of these rules in all Member States and has sought clarifications with regard to each Member State, including France and Italy.

⁶⁰ See e.g. Austrian Asylum Court (Asylgerichtshof), case B3 259443-5/2008, decision of 23.10.2012

⁶¹ ECtHR, *Hirsi Jamaa and Others v. Italy* [GC] no. 27765/09, 23 February 2012.

⁶² CJEU, Case C-61/11, *El Dridi*, 28.4.2011 & Case C-329/11, *Achughbalian*, 6.12.2011. The Court had found that these rules preclude national law from imposing a prison term on an irregularly staying third-country national who does not comply with an order to leave the national territory. In a further case, the Court found that EU rules preclude national legislation imposing a prison sentence on an irregularly staying third-country national during the return procedure. However, the Court specified that such prison sentences could be applied to third-country nationals to whom the return procedure has been applied and staying irregularly with no justified grounds for non-return.

Equality before the law

Non-discrimination

Cultural, religious and linguistic diversity

Equality between women and men

The rights of the child

The rights of the elderly

Integration of persons with disabilities

3. Equality

The year 2012 witnessed a number of serious **incidents of racism and xenophobia** in the EU, including racist and xenophobic hate speech and violence against Roma and immigrants. Data collected by the EU Fundamental Rights Agency indicated that on average, minorities are victims of assault or threat more often than the majority population.

The Commission assessed Member States' **National Roma Integration Strategies** and evaluated, in particular, the key areas of education, employment, healthcare and housing, and how specific requirements (cooperation with civil society, with regional and local authorities, monitoring, antidiscrimination and establishment of a national contact point) as well as funding for Roma integration are addressed.

The Commission launched infringement proceedings against Malta on the grounds of its failure to correctly implement into its national law the EU free movement rules and, more particularly, the right of same-sex spouses or registered partners to join EU citizens in Malta.

The Commission took steps for the implementation in Member States of the **116 000 hotline** (www.hotline116000.eu) which offers help and support for missing children and their families. At the end of the year, the hotline was available in 22 Member States.

In the **European Strategy Better Internet for Children**, the Commission has set out a plan to give children the digital skills and tools they need to use the Internet to their advantage, safely and responsibly.

The Council adopted the **EU framework to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities**.

Non-discrimination

The Charter **prohibits any discrimination** based on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The Charter also prohibits discrimination on grounds of nationality, within the scope of application of the Treaties and without prejudice to any of their specific provisions. Discrimination based on racial or ethnic origin is a violation of the principle of equal treatment and is prohibited in the workplace and outside the workplace. In the area of employment and occupation, EU legislation prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation.

Discussions in the Council continued on the **Commission proposal for new rules on Equal Treatment**⁶³. During 2012, the Danish and Cypriot Presidency focused, inter alia, on the material scope of the Directive and the rules on age and financial services. The aim was to improve the text on a technical level, to clear the way for a future political compromise.

Manifestations of intolerance to pluralism in the EU

The year 2012 witnessed a number of serious incidents of **racism and xenophobia in the EU**, including racist and xenophobic hate speech and violence against Roma and immigrants. Data collected by the FRA indicates that on average, minorities are victims of assault or threat more often than the majority population. FRA's survey finds that "*Nearly every fifth Roma and every fifth Sub-Saharan African interviewed considered that they had been a victim of racially motivated in-person crime of assault or threat and serious harassment at least once in the last 12 months*"⁶⁴. Still, victims of crime are often unable or unwilling to seek redress against perpetrators. For this reason many crimes remain unreported and unprosecuted. This illustrates the need to build confidence among victims and witnesses of hate crime in the criminal justice system and law enforcement⁶⁵. FRA further points out that only four Member States (Finland, the Netherlands, Sweden and UK) collect comprehensive data on hate crime, including a range of bias motivations, types of crimes and characteristics of incidents, whereas in 14 Member States the data collection is limited and the data are not usually made publicly available.⁶⁶

The Special **Eurobarometer (393) on Discrimination in the EU in 2012**⁶⁷, undertaken at the request of the Commission, shows that discrimination on the grounds of ethnic origin continues to be regarded as the most widespread form of discrimination in the EU. It is notable that 56% of respondents reported it as 'widespread'. 39% reported that discrimination on the basis of religion or beliefs is widespread and 46% of respondents regard discrimination on grounds of sexual orientation to be widespread.

The Commission received many **letters and parliamentary questions on racism, xenophobia and antisemitism**, which underlined the need for the Member States to step up their efforts to tackle these problems. The issues brought to the attention of the Commission included, in particular, xenophobic violence against ethnic minorities and immigrants, racism and xenophobia against Roma and Jews, and citizens of certain Member States.

In response to these concerns, the Commission reaffirmed its commitment to fight against racism and xenophobia by all means available under the Treaties and recalled the responsibility of the Member States' authorities to effectively implement the EU legislation prohibiting racist or xenophobic hate speech and hate crime based on a racist or xenophobic motivation. This legislation obliges Member States to penalise racist or xenophobic hate speech and to ensure that racist or xenophobic motivation

⁶³ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, 2.7.2008.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:EN:NOT>

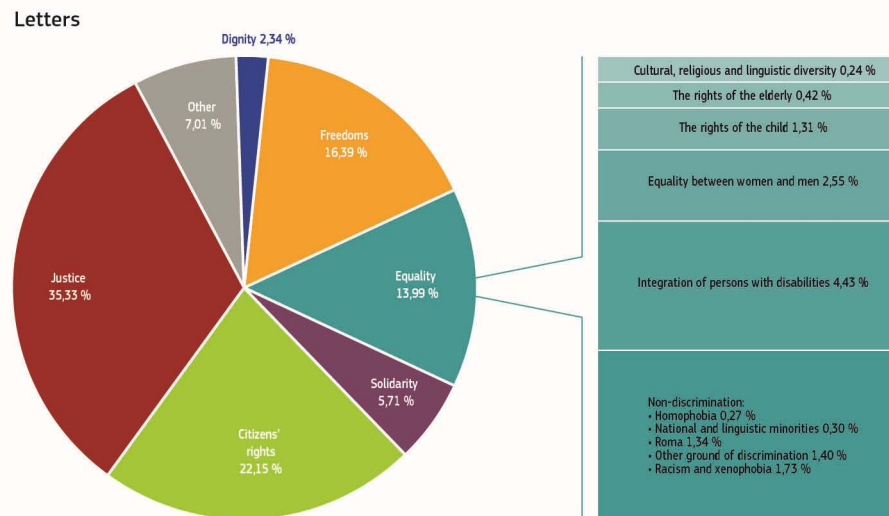
⁶⁴ FRA, EU-MIDIS Data in Focus Report 06 - Minorities as Victims of Crime, November 2012. Available at: http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6_0.pdf

⁶⁵ FRA, Making Hate Crimes Visible in the European Union: Acknowledging Victim's Rights, November 2012. Available at: <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>.

⁶⁶ Making hate crimes visible in the European Union: acknowledging victims' rights, November 2012; EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime, November 2012.

⁶⁷ Available at: http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm.

behind other offences is taken into account in the determination of applicable sentences. By the end of the year, all but two Member States had communicated to the Commission their national laws transposing this Framework Decision. The Commission will assess the compliance of those national laws in a report to be presented by the end of 2013.



The 6th seminar between the European Commission and the State of Israel on the Fight against Racism, Xenophobia and Antisemitism was held in June 2012 to exchange information and experiences on data and trends of racism and antisemitism in the EU, combating hate speech, access to justice as an effective redress against discrimination and hate crimes, as well as on the prevention of racism, xenophobia and antisemitism through education, training and Holocaust remembrance.

Websites targeted against citizens from Central and Eastern European Member States

Xenophobic and intolerant attitudes can target all citizens. In the Netherlands, the PVV Party created a website directed against citizens from certain Central and Eastern European Member States. In Belgium the Vlaams Belang party took a similar initiative. In reaction to these developments, the Commission stressed that it is unacceptable that EU citizens exercising their right to move should become victims of hate speech⁶⁸. The EP warned against destroying the very basis of the Union, namely pluralism, non-discrimination, tolerance, justice, solidarity and freedom of movement⁶⁹.

EU Framework for National Roma Integration Strategies

Action to support **Roma** lies first and foremost in the hands of Member States that have the primary responsibility and the competences to change the situation of a marginalised population. The Commission's assessment of the National Roma Integration Strategies submitted by the Member States⁷⁰ evaluated, in particular, the Member States' approaches to the four key areas of education, employment, healthcare and housing, and on how structural requirements (cooperation with civil society, with regional and local authorities, monitoring, antidiscrimination and establishment of a national contact point) as well as funding are addressed. The Commission concluded that Member States need stronger efforts to live up to their responsibilities, by adopting more concrete measures, explicit targets for measurable deliverables, clearly earmarked funding at national level and a sound national monitoring and evaluation system. In addition, attention should be devoted to anti-

⁶⁸ Vice President Reding's statement in the European Parliament on 13 March 2012, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20120313&secondRef=ITEM-012&language=EN>.

⁶⁹ Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0087+0+DOC+XML+V0//EN&language=EN>.

⁷⁰ Communication on National Roma Integration Strategies: a first step in the implementation of the EU framework, COM(2012) 226 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0226:FIN:EN:HTML>

discrimination and segregation measures and to a close dialogue with (Roma) civil society (alongside regional and local authorities) in the implementation and monitoring of national strategies.

Following the assessment of the National Roma Integration Strategies the Commission organised the first meeting of National Roma Contact Points on 2 -3 October 2012 in Brussels. This network is designed as a forum where Member States are enabled to exchange their good practices and adopt common approaches where appropriate. National Contact Points from all Member States and National Contact point from Croatia participated in the pilot session reflecting the importance of the topic.

Many Members of the European Parliament are also involved in the process. The European Commission received several written questions concerning Roma. The questions were mainly focused on policies of particular Member States pointing on possible discrepancies with the EU framework and some of them addressed particular aspects of Roma discrimination (e.g. dismantling of Roma camps in some member States).

In regard to the Roma and in the context of its multi-annual programming the FRA completed in 2011 and published in 2012 results of a major pilot household survey of Roma in 11 EU Member States working in parallel with a UNDP/World Bank survey commissioned by DG Regional Policy. In addition, the FRA conducted interviews with several local authorities in the Member States covered by the FRA's research. In 2012 the FRA expanded its research to cover the remaining EU Member States, as part of its multi-annual Roma Programme

Fight against homophobia

The **European Parliament** raised concerns on discrimination on the basis of sexual orientation in the internal market and called for the adoption of a Roadmap for equality without discrimination on grounds of sexual orientation or gender identity, in its resolution on the fight against homophobia adopted in May 2012⁷¹.

The **Commission launched, in 2012, infringement proceedings against Malta** on the grounds of its failure to correctly implement in its national law the EU free movement rules and more particularly the right of same-sex spouses or registered partners to join EU citizens in Malta and reside there with them. As a result of the Commission's action, the Maltese legislation was modified and is now compatible with EU rules on the rights of EU citizens to free movement and non-discrimination.

The Commission intervened in the context of the negotiations of a **Council of Europe recommendation on risk behaviours having an impact on blood donor management**. The Commission's intervention aimed at ensuring that the draft text would not discriminate donors based on sexual orientation. As a result, the Council of Europe committed to a project for further data collection which should allow for the eventual definition of donor deferral criteria that are based on objective recognised risks and their relevance to blood safety, irrespective of the sexual orientation of the potential donor.

Lithuania: amendment of the Law on the protection of minors

The new Lithuanian Law on the protection of minors is linked to the implementation of EU rules on Audiovisual Media Services and on E-commerce. The Commission explained in 2010 that some provisions included in the first draft of this law could violate the prohibition of discrimination and the freedom of expression enshrined in the Charter, because they restricted broadcasts on homosexuality. These provisions have been removed from the law that was adopted by the Parliament.

Rights of persons belonging to minorities

Safeguarding the rights of persons belonging to minorities is one of the founding values of the European Union. The respect of those rights is explicitly mentioned in article 2 of the Treaty on the European Union. In addition, any discrimination on the basis of membership of a national minority is explicitly prohibited in the Charter. However as the Commission has no general powers as regards minorities, in particular, over matters concerning the definition of what is a national minority, the recognition of the status of minorities, their self-determination and autonomy or the regime governing

⁷¹ European Parliament resolution of 24 May 2012 on the fight against homophobia in Europe. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0222&language=EN>

the use of regional or minority languages, it is up to the Member States to take decisions about minorities and the use of language on their respective territories.

A number of EU legislation and programmes **contribute to addressing certain difficulties which are likely to affect persons belonging to minorities**, such as discrimination and incitement to violence or hatred based on race or national or ethnic origin. The Commission also supports projects related to regional and minority languages through a variety of programmes, including in areas such as education and training, culture and youth support. In particular, the Lifelong Learning Programme finances projects to promote language learning and linguistic diversity, either through the different sub-programmes (Comenius, Erasmus, Leonardo da Vinci or Grundtvig) or through its transversal programme (key activity 2 'Languages'). The Youth in Action programme promotes mobility within and beyond the EU borders, non-formal learning and intercultural dialogue, and encourages the inclusion of all young people, regardless of their educational, social and cultural background. One of the permanent priorities of the programme is the inclusion of young people with fewer opportunities, notably migrants and Roma youth.

Discrimination on the ground of age

The CJEU ruled on a case where the compliance of a Swedish provision with the **age discrimination** rules contained in Directive 2000/78/EC establishing **equal treatment in employment**⁷² was called into question.⁷³ The provision allows employers to terminate employment contracts on the sole ground that the employee has reached the age of 67, without taking into account the amount of the retirement pension which the person concerned may ultimately receive. The Court stated that such a rule does not constitute discrimination on grounds of age if the use of a certain age as applicable criterion for the termination of contracts is objectively and reasonably justified by a legitimate aim, including objectives of employment and labour-market policies, and if the means of achieving that aim are appropriate and necessary. In this context, the Court pointed out that the prohibition of discrimination on grounds of age set out in the Directive must be read in the light of the right to engage in work recognised in Article 15 (1) of the Charter of Fundamental Rights of the European Union. The Court took the view that the Swedish provision fulfils the requirement of necessity, highlighting that the provision does not force the persons concerned to withdraw definitely from the labour market. After the termination of the employment contract due to the provision, the employer and former employee can freely agree on a fixed-term contract. Furthermore, persons who receive only a low earnings-related pension are entitled to a retirement pension in the form of basic coverage. Therefore the Court found that the Swedish provision does not constitute discrimination on grounds of age.

Another interesting case⁷⁴ involved a clause of the collective agreement applicable to cabin crew members of Tyrolean Airways, according to which the professional experience with another airline belonging to the same group of companies (Austrian Airlines) was not taken into account in determining pay grades. The compatibility of this provision with Directive 2000/78 and Article 21 of the Charter was challenged in so far as in the applicants' allegations, it constituted (indirect) discrimination on grounds of age. The Court, observing that the provision in question was based on a criterion which was neither inextricably nor indirectly linked to the age of employees, rejected a similar reasoning and concluded there was no discrimination on grounds of age.

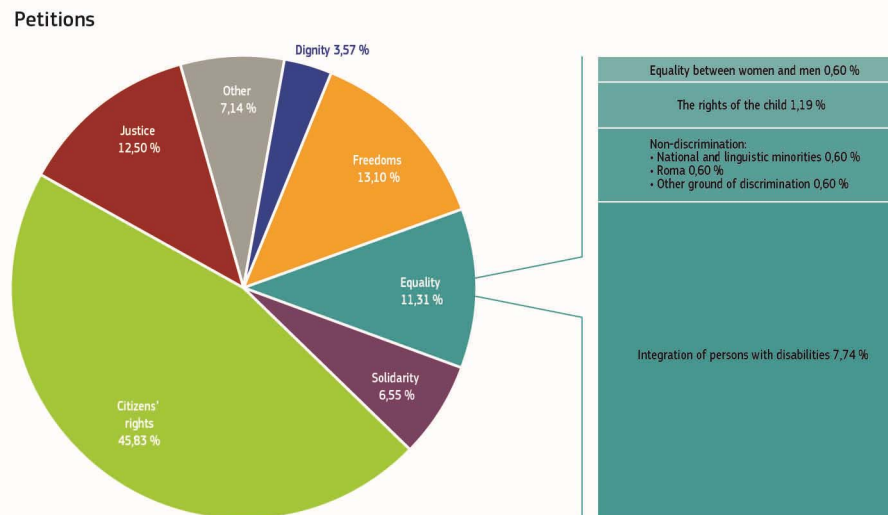
The Court confirmed the Commission's assessment that the lowering of the **mandatory retirement age for judges, prosecutors and notaries in Hungary**⁷⁵, introduced with a very short transitional period was incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law (see *Chapter 6. Justice*).

⁷² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 , 02.12.2000, p. 16 - 22

⁷³ CJEU, Case C-141/11, *Hörnfeldt v. Posten Meddelande AB*, 05.07.2012

⁷⁴ CJEU, Case C-132/11, *Tyrolean Airways*, 07.06.2012

⁷⁵ CJEU, Case C-286/12, *European Commission v. Hungary* 06.11.2012



Rights of the child

The Charter guarantees the right to such protection and care as is necessary for the well-being of children (Article 24 of the Charter). This Article is based on the United Nations Convention on the Rights of the Child, ratified by all 27 Member States. The Charter recognises children as bearers of autonomous rights, not just as subjects in need of protection. It recognises the need to protect children from abuse, neglect, violations of their rights and situations which endanger their well-being.

The Charter further provides that the **best interests of the child** must be a primary consideration in all actions relating to children. This principle applies to all actions concerning children. It includes the child's right to maintain contact with both parents in case of a divorce, the right to express their views freely and for their views to be taken into consideration on matters which concern them. An important principle of the Charter is that when decisions are being made on what is in the best interests of children, children should have the opportunity to express their views and these views should be taken into account.

The **EU Agenda for the Rights of the Child**⁷⁶, adopted in 2011, aims to put in practice the rights of the child enshrined in the Charter and in the United Nations Convention on the Rights of the Child through a comprehensive programme of actions for the years 2011-2014. The *7th Forum on the Rights of the Child* focused on supporting child protection systems through the implementation of the EU Agenda. National authorities responsible for protecting and promoting the rights of the child, NGO's active in the field, experts and professionals working with children and the EU exchanged best practices. The Forum highlighted the need to empower children and provide opportunities for their participation, to gather better data for informed policy-making, to foster better inter-agency co-operation and to increase efforts in training of professionals.

7th European Forum on the Rights of the Child

In the context of the 7th European Forum on the Rights of the Child held on 13-14 November 2012, the Commission organised a workshop on the involvement of child welfare authorities in cases relating to child custody with a cross-border dimension.

The discussion covered a wide range of Member States, and the discussion focused on the organisation of the supervision of custody rights. Participants noted that child welfare authorities have different powers depending on the Member State and all Member States strive to give primary consideration to the child's best interests whilst fostering, insofar as possible, arrival at amicable solutions to parental conflict. Participants discussed the structure

⁷⁶ Commission Communication: An EU Agenda for the Rights of the Child, COM(2011) 60 final.
Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:en:NOT>

and roles and responsibilities, capacity of the child welfare authority, and cooperation including cross-border cooperation. It emerged that Member States have very different systems in this area. Most of the interventions stressed that it is crucial to better inform children and parents coming from different Member States and to ensure appropriate training of social workers involved in cross-border situations. Participants also looked at how to foster better cooperation between local and central child welfare authorities, as well as cross-border cooperation.

The new **Directive establishing minimum standards on the rights, support and protection of victims of crime**⁷⁷ clearly states that the child's best interests should be a primary consideration in criminal proceedings. A child will benefit from this Directive whether he or she has directly suffered from a crime or suffered indirectly as the victim's child or sibling. The Directive requires all national actors to adopt a child-sensitive approach and to ensure that children can understand and be understood when they participate in police investigations and judicial proceedings. Special protection measures for children have been included in the Directive to protect children throughout criminal investigations and court proceedings. Child victims can suffer terrible psychological and physical harm. The Directive requires that child victims must have access to victim support, including specialised support targeted to their needs.

The Internet offers children new opportunities to be creative, to learn and to express themselves. In the **European Strategy Better Internet for Children**⁷⁸, the Commission set out a plan to give children the digital skills and tools they need to use the Internet to their advantage, safely and responsibly. Today, 75% of children use the Internet, and 4 out of every 10 children report having encountered risks online such as cyber-bullying, exposure to user-generated content promoting anorexia or self-harm or misuse of their personal data. The Commission outlined a range of measures, which will be implemented by different means including industry self-regulation. Cooperation through the Coalition to make the Internet a better place for kids, set up in December 2011, will be vital to this process. The measures aim to:

- Stimulate the production of creative and educational online content for children and develop platforms which give access to age-appropriate content
- Scale up awareness raising and teaching of online safety in all EU schools to develop children's digital and media literacy and self-responsibility online
- Create a safe environment for children where parents and children are given the tools necessary for ensuring their protection online – such as easy-to-use mechanisms to report harmful content and conduct online, transparent default age-appropriate privacy settings or user-friendly parental controls;
- Combat child sexual abuse material online by promoting innovative technical solutions by police investigations.

The Commission took steps towards the implementation in Member States of the 116 000 hotline⁷⁹ (www.hotline116000.eu), which offers help and support for missing children and their families⁸⁰. EU law requires that Member States make every effort⁸¹ to have the hotline operational and this is mandatory since 25 May 2011. To improve the quality of existing hotlines and encourage the setting up of new ones, the Commission made funding available (€3 Mio), through the DAPHNE III Programme. As the implementation process of the 116 000 hotline was lagging, the Commission reminded the Member States of their obligations in a joint letter sent on the occasion of the International Missing Children's Day. At the end of the year, the hotline was available in 22 Member States. To boost awareness and promote the use of the 116 000 hotline and helpline numbers a dedicated website⁸² was launched by the Commission providing information and links to the number operators in all Member States.

77 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012.

78 Communication on a European Strategy Better Internet for Children, COM(2012) 196 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0196:FIN:EN:PDF>

79 Commission Decision (2007/116/EC) on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value, OJ L 49, 17.2.2007, p. 30 – 33.

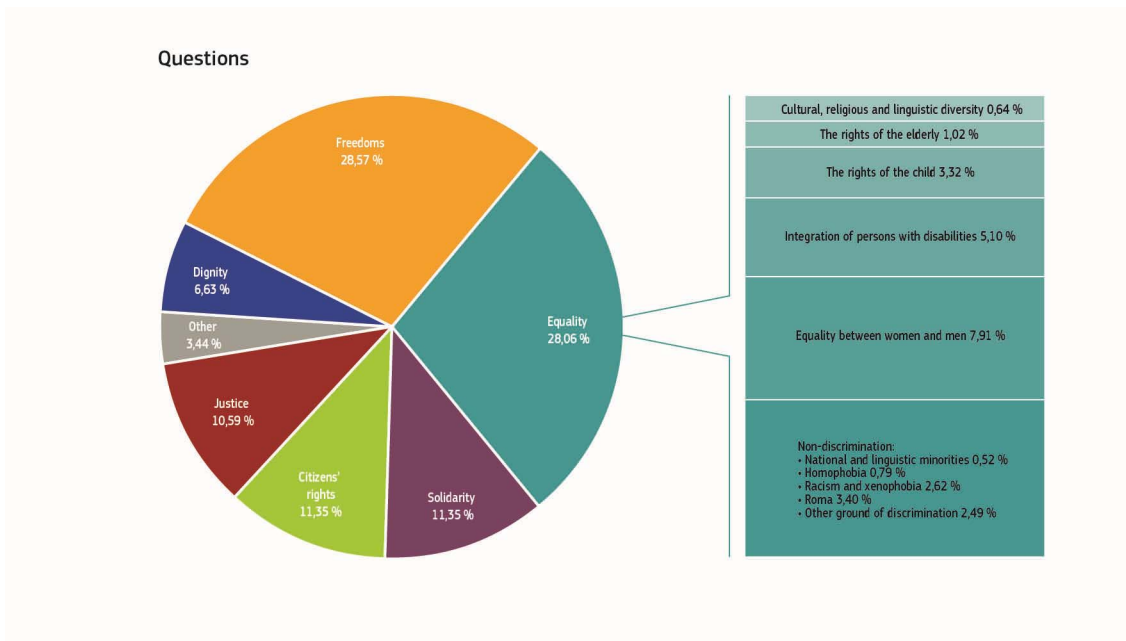
80 Commission Decision (2007/116/EC) on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value, OJ L 49, 17.2.2007, p. 30 – 33.

81 Article 27a of the Universal Service Directive (Directive 2009/136/EC amending Directive 2002/22/EC)

82 <http://www.hotline116000.eu/>

The standards of the United Nations Convention on the Rights of the Child (UNCRC) and of the EU Charter of Fundamental Rights are at the heart of all **EU action concerning unaccompanied migrant children**. The Commission actions are based on three main strands of action: preventing unsafe migration and trafficking of children, while increasing protection capacities in non-EU countries; applying reception measures and providing procedural guarantees until a durable solution is found. Furthermore, these actions aim to ensure durable solutions by individually assessing on a case by case basis the return of children to their country of origin, granting them international protection or resettling them in an EU country. The Commission’s assessment found that Member States still have to increase efforts as regards data gathering and funding or improving reception facilities.

Children are placed at the heart of the EU's efforts to address trafficking in human beings. The **Trafficking Strategy 2012-2016**, adopted in June 2012, puts a special emphasis on the support of child victims of trafficking to strengthen their identification, protection and assistance. The Strategy prioritises the prevention of crime, prosecution of traffickers, protection of the victims, cooperation and coordination and thus complements the Trafficking Directive (2011/36/EU). The Strategy stresses the importance of comprehensive and child-sensitive protection systems where the needs of diverse groups of children, including boys and girls who are victims of trafficking, can be met through interagency and multidisciplinary coordination. The Strategy calls on Member States to strengthen child protection systems for trafficking situations and ensure, where return is deemed to be the child’s best interest, the safe and sustainable return of children to the country of origin, in and outside the EU, and prevent them from being re-trafficked.



Integration of persons with disabilities

The Charter provides that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

The EU is bound by the **UN Convention on the Rights of Persons with Disabilities (UNCRPD)** since 22 January 2011. This implies that the rights enshrined therein need to be implemented and respected by the EU in its legislative actions as well as its policy-making, to the extent of its competences. In addition to the EU, all member states have signed the Convention and 24 among them have ratified it.

After extensive discussion, the **Council adopted the Commission's proposal for an EU framework to promote, protect and monitor the implementation of the Convention as foreseen in Article 33 (2)**. In preparing its proposal the Commission has taken into account the requirements in terms of tasks to be performed and the independence in executing those tasks as well as the possible role of all relevant Union institutions, bodies, offices or agencies. It also consulted with persons with disabilities and their representative organisations through the European Disability Forum.

As a result of this analysis, the Commission has identified the following EU institutions and bodies to form together "the EU framework":

- the European Parliament (represented by the Petitions Committee);
- the European Ombudsman;
- the European Commission;
- the EU Agency for Fundamental Rights (FRA);
- the European Disability Forum (EDF), the main EU-level umbrella organisation of people with disabilities.

The EU framework's mandate covers areas of EU competence, and it is a complement to the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UNCRPD in the Member States. It also addresses the implementation of the UNCRPD by the EU institutions acting as Public Administration, for example, in relation to staff matters and interaction with citizens.

The Commission also organised the **third Work Forum on the implementation of the UN Convention in the EU**. This Forum provided a platform for mutual learning and exchange of good practice between the governance mechanisms set up by the Member States under Article 33 of the UNCRPD.

With the support of the Commission, the **Academic Network of European Disability Experts**, launched a comprehensive online database (DOTCOM⁸³) about laws, policies, strategies and initiatives put in place at EU-level and in the Member States to implement the UN Convention.

Progress was made in disability mainstreaming to ensure that **disability rights are reflected in legislative acts**. For example, measures in favour of persons with disabilities and with reduced mobility are included in the new Regulations on passenger rights covering maritime and inland waterways transport entering into force on 18 December 2012) and bus & coach transport (applying from 1 March 2013). The Commission published guidelines clarifying the rights of disabled passengers and people with reduced mobility when they travel by air to ensure the correct implementation of Regulation 1107/2006.

Constitutional Court of Romania⁸⁴

The constitutionality of a Romanian law obliging both public and private sectors' employers to recruit a certain number of persons with disabilities, or pay a special tax instead was challenged by a company providing security services. Even though the national legislation at stake was not adopted to implement any specific EU legal instrument the Court pinpointed the reasons justifying such positive obligation on employers by referring to Article 26 of the Charter, in addition to the corresponding provision of the Romanian Constitution, therefore concluding for the constitutionality of such legislation.

⁸³ <http://www.disability-europe.net/dotcom>

⁸⁴ Constitutional Court of Romania (Curtea Constituțională a României), S.C. "Elbama Star" S.R.L., decision no. 615 of 12.05.2011

4. Solidarity

Workers' right to information and consultation within the undertaking

The Commission's **European Consumer Agenda - Boosting confidence and growth** set outs the principles for consumer policy in the years to come and identifies specific initiatives which aim at empowering consumers, boosting their trust and putting consumers at the heart of all EU policies.

Right of collective bargaining and action

In line with the Single Market Act, the Commission presented two legislative proposals, one the enforcement of the **Posting of Workers Directive** , and one on the **exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services** (the so-called Monti II proposal). Twelve national Parliaments adopted reasoned opinions

Right of access to placement services

expressing concerns related, among others, to the added value of the draft Monti II Regulation, the choice of its legal basis and EU competence to regulate this matter. Although the Commission was

Protection in the event of unjustified dismissal

of the opinion that the principle of subsidiarity has not been breached, it recognised that its proposals were unlikely to gather the necessary political support within the European Parliament and Council to enable its adoption. Consequently, it withdrew this proposal on 26 September 2012

Fair and just working conditions

hoping that this would facilitate a rapid negotiation of the other part of the package, namely the proposal for an Enforcement Directive.

Prohibition of child labour and protection of young people at work

Family and professional life

on the compatibility of **EU rules on nutrition and health claims made on foods** (Regulation (EC) No 1924/2006) with the freedom to choose an occupation and the freedom to conduct a business (Articles 15(1) and 16 of the Charter).

Social security and social assistance

Health care

Access to services of general economic interest

Environmental protection

Consumer protection

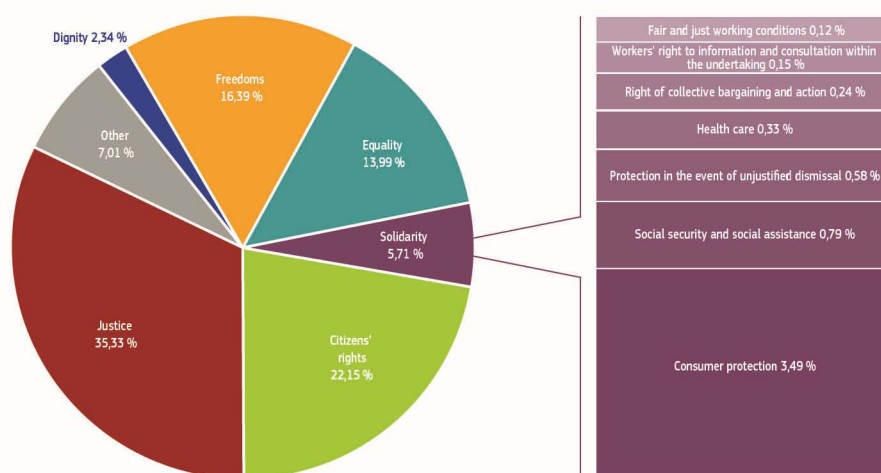
Workers' right to information and consultation

The Charter provides that workers or their representatives must, at the appropriate levels, be guaranteed information and consultation, in good time, in the cases and under the conditions provided for by EU law and national laws and practices.

The Commission is finalising a legislative proposal to lift the **exclusion of seafaring workers from the personal scope of application of a number of EU labour law directives** following consultation of the European social partners. The Commission's proposal would extend the scope of application of the Insolvency Directive⁸⁵, the Works Council Directive⁸⁶, the Information and Consultation Directive⁸⁷ and the Transfer of undertakings Directive⁸⁸ to seafaring workers.

The **Commission monitors the implementation of the legal framework on European Works Council** that helps to guarantee the effectiveness of employees' transnational information and consultation right and launched infringement procedures against Member States that did not adopt the required transposing measures within the determined deadline.

Letters



Right of collective bargaining and action

The Charter provides that workers and employers, or their respective organisations, have, in accordance with EU law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. There is no specific EU law regulating the conditions and consequences of the exercise of these rights at national level⁸⁹. Member States remain, of course, bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

In line with the Single Market Act⁹⁰, the Commission presented on 21 March 2012 two legislative proposals; one on the enforcement of the **Posting of Workers Directive**⁹¹, and one on the exercise of

⁸⁵ Directive 2008/94/EC, on the protection of employees in the event of the insolvency of their employer, OJ L 283, 28.10.2008, p. 36 – 42.

⁸⁶ Directive 2009/38/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 122, 16.5.2009, p. 28 – 44.

⁸⁷ Directive 2002/14/EC on the establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29 – 33.

⁸⁸ Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses of 12 March 2001, OJ L 82, 22.3.2001, p. 16 - 20

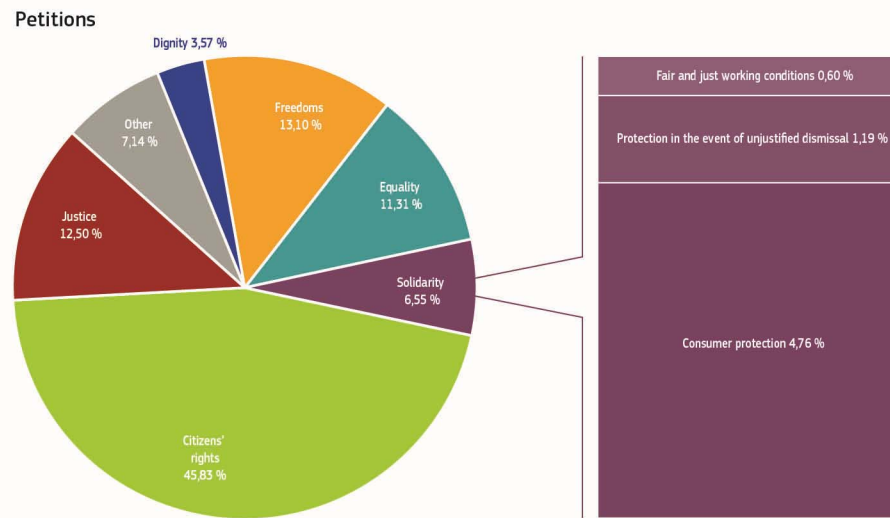
⁸⁹ Article 153(5) of the Treaty on the Functioning of the EU (TFEU) stipulates that it does not apply to the right to strike.

⁹⁰ Communication from the Commission: Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth", COM(2011) 206 final.

Available at: http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf

the **right to take collective action**⁹² within the context of the freedom of establishment and the freedom to provide services (the so-called Monti II proposal). Both proposals were transmitted to the other EU institutions as well as to the national Parliaments of the Member States. The Council started discussions on them and the European Parliament organised a hearing on 18 September 2012. However, twelve national Parliaments adopted reasoned opinions⁹³ expressing concerns related, among others, to the added value of the draft Monti II Regulation, the choice of its legal basis and the EU competence to regulate this matter.

Although the Commission was of the view that the principle of subsidiarity has not been breached, it nevertheless recognised that its proposal for the Regulation was unlikely to gather the necessary political support within the European Parliament and Council to enable its adoption. Consequently, it withdrew this proposal on 26 September 2012 hoping that this would facilitate a rapid negotiation of the other part of the package, namely the proposal for an Enforcement Directive.



Fair and just working conditions

The Charter guarantees that every worker has the right to working conditions which respect their health, safety and dignity. Every worker has the right to a limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. There is a substantial body of EU law in this area concerning, in particular, health and safety at work⁹⁴.

The social partners at European level pursued their negotiations on the Working time Directive⁹⁵, with the aim of conducting a review⁹⁶. On 16 August 2012, the Commission agreed to extend time for their negotiations until 31 December 2012, following a joint request of the social partners indicating that their negotiations were making progress. The Commission has stated that, respectful of the social

⁹¹ Proposal for a Directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, COM(2012) 131 final.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0131:FIN:EN:PDF>

⁹² Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, COM(2012) 130 final.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0130:FIN:EN:PDF>

⁹³ On the basis of Protocol N° 2 to the EU Treaties on the application of the principles of subsidiarity and proportionality.

⁹⁴ The central piece is the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1-8, which lays down general principles on the protection of workers' health and safety. Several specific directives cover a number of specific risks, e.g. exposure of workers to biological and chemical agents at work, noise, work at the construction sites, manual handling of loads, etc. Another important piece of legislation covers working time and regulates issues such as minimum daily and weekly rest periods, breaks, maximum weekly working time, night work and annual leave.

⁹⁵ Report of the Commission: on implementation by Member States of Directive 2003/88/EC ('The Working Time Directive'), COM(2010) 802 final

Available at: <http://www.ec.europa.eu/social/BlobServlet?docId=6420&langId=en>

⁹⁶ The social partners enjoy autonomy in these negotiations. The duration of this process shall not exceed 9 months, but in accordance with Article 154 (4) TFEU, the period for these negotiations has been recently extended by the Commission until the end of 2012.

partners' autonomy, it will not put forward a legislative proposal of its own during the period foreseen under the Treaty for their negotiations. In December, the social partners informed the Commission about the failure of the negotiations.

Blacklisting of workers who are active in raising awareness of the health and safety risk

MEPs have raised concerns on the practice of some employers to blacklist workers who are active in raising awareness on health and safety risks. This practice is contrary to EU law, which provides that workers or workers' representatives with special responsibility for health and safety may not be placed at a disadvantage because they consult or raise issues with the employer regarding measures to mitigate hazards or to remove sources of danger⁹⁷. It is, in first instance, for Member States to ensure that this provision is fully effective and to ensure that violations are followed-up as appropriate by the competent authorities. The Commission may intervene, in its role as Guardian of the Treaty, when there is a breach in the transposition or in the implementation of EU Law by Member States.

Social security and social assistance

The Charter recognises citizens' entitlement to social security benefits and social services providing protection in cases of maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices. Member States are free to determine the details of their social security systems, including which benefits shall be provided, the conditions of eligibility, how these benefits are calculated, as well as how much contribution should be paid. European rules ensure that the application of the different national legislations respects the basic principles of equality of treatment and non-discrimination. They guarantee that migrant EU workers are treated as are national workers and that the application of the different national legislations does not adversely affect them.

The **EU Directive on the status of third-country nationals** guarantees that long-term residents shall enjoy equal treatment with citizens of the Member State as regards social security, social assistance and social protection as defined by national law. Under Article 11 (4) of that Directive, "Member states may limit equal treatment in respect of social assistance and social protection to core benefits". In a case that concerned housing benefits for a third-country national who was a long-term resident⁹⁸, the **CJEU** observed that according to Article 34 of the Charter, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. The Court concluded that in so far as the housing benefit for low income tenants at issue fulfils the purpose set out in that provision of the Charter, it has to be considered as a "core benefit" within the meaning of Article 11(4) of the Directive and therefore it has to be granted also to third-country nationals who are long-term residents in a Member State. In carrying out such assessment, national courts should take into account the objective of that benefit, its amount, the conditions subject to which it is awarded and its place in the national system of social assistance.

The Commission defended the right of third-country national seasonal workers to equal treatment with nationals of the admitting Member State in respect of social security rights, as well as, fair treatment of intra-corporate transferees and their family members during negotiations on the reform of applicable EU rules. The Commission made the point that Member States cannot restrict third country nationals' entitlements to receiving social security benefits that are based on their own financial contributions as this would constitute a disproportionate limitation to the right to property, contrary to the Charter and the case-law of the European Court of Human rights⁹⁹. Further to this the amendments to the Commission proposals have been withdrawn.

The Commission published a policy paper that triggered a discussion on measures to prevent poverty and social exclusion in the old age, taking into account the need for gender sensitive solutions¹⁰⁰. In

⁹⁷ Council Directive 89/391/EEC 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1.

⁹⁸ CJEU, Case C-571/10, *Kamberaj*, 24.04.2012

⁹⁹ In its judgment of 16 September 1996 on the case 39/1995/545/631 (*Gaygusuz*), the European Court of Human Rights ruled that social security rights were property rights and that, accordingly, equality of treatment in social security is guaranteed by the European Convention for the Protection of Human Rights.

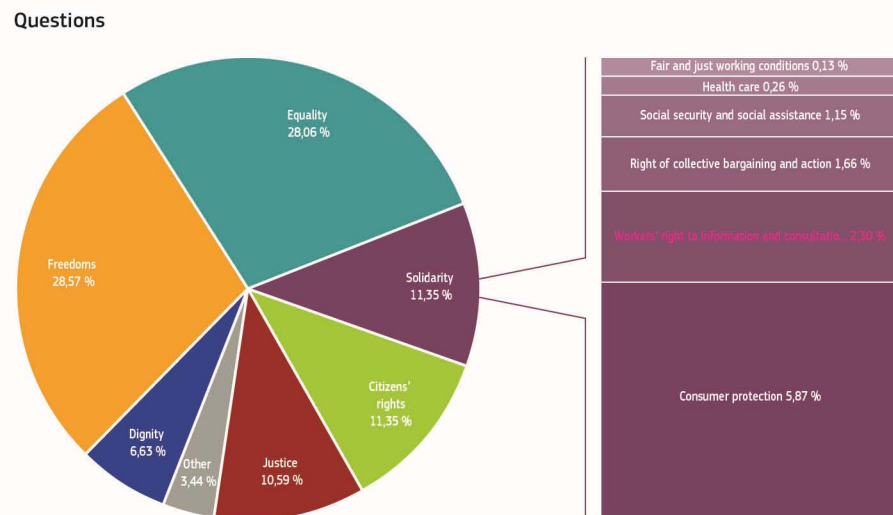
¹⁰⁰ White paper: an agenda for adequate, safe and sustainable pensions, COM(2012) 55 final.

this context, the Commission also stressed the need to make occupational pensions transferable as not to punish those who are moving countries for professional reasons.

Health care

The Charter recognises that everyone has the right to access preventive health care and the right to benefit from medical treatment under the conditions established by national law and practices. A high level of human health protection shall be ensured in the definition and implementation of the Union's policies and activities.

The CJEU ruled on the compatibility of **Regulation (EC) No 1924/2006 on nutrition and health claims made on foods with the freedom to choose an occupation and the freedom to conduct a business** (Articles 15(1) and 16 of the Charter of Fundamental Rights)¹⁰¹. The case concerned the ban placed by the German authorities on a wine that carried a health claim. The Court considered that the prohibition of such claims is warranted in the light of the requirement to ensure a high level of health protection in the definition and implementation of all the Union's policies and activities (Article 35 of the Charter). The CJEU considered that by highlighting only the easy digestion of the wine concerned, the claim at issue is likely to encourage its consumption and, ultimately, to increase the risks for consumers' health inherent in the immoderate consumption of any alcoholic beverage.



Environmental protection

The Charter provides for a high level of environmental protection. In line with this requirement the Commission in 2012 adopted a proposal for a new General EU Environmental Action Programme to 2020, "Living well, within the limits of our planet"^[1]. The proposed programme builds on the significant achievements of 40 years of EU environment policy, and draws on a number of recent strategic initiatives in the field of environment, including the Resource Efficiency Roadmap, the 2020 Biodiversity Strategy and the Low Carbon Economy Roadmap. It should secure the commitment of EU institutions, Member States, regional and local administrations and other stakeholders to a common agenda for environment policy action up to 2020.

While many EU Member States are struggling to cope with the economic crisis, the attendant need for structural reforms offers new opportunities for the EU to move rapidly onto a more sustainable path, while involving citizens more directly in environmental policy-making. The overall aim of the proposal is to ensure a high level of protection for the environment, notably by protecting and enhancing natural capital, encouraging more resource efficiency and accelerating the transition to the low-carbon economy, and

Available at: <http://ec.europa.eu/social/BlobServlet?docId=7341&langId=en>

¹⁰¹ CJEU, Case C-544/10, *Deutsches Weintor eG v Land Rheinland-Pfalz*, 6.9.2012.

^[1] COM(2012) 710 final

safeguarding EU citizens from environmental causes of disease –all of which have a direct link to the way citizens interact with the environment in their everyday life. The aims of the Programme can be achieved by better implementation of existing environment legislation through efforts to ensure better provision of information on environment, improved inspections and access to justice. Full integration of environment into other policies in line with the objective of the Charter should also be achieved.

Consumer protection

The Charter provides that Union policies shall ensure a high level of consumer protection, giving guidance to the EU institutions when drafting and applying EU legislation.

The **Commission's "European Consumer Agenda - Boosting confidence and growth"**¹⁰², adopted on 22 May 2012 contains both principles for consumer policy in the years to come and a list of specific initiatives which aim at empowering consumers, boosting their trust and putting consumers at the heart of all EU policies in line with Article 38 of the Charter. The Consumer Agenda has four key objectives with an overall objective of creating a borderless Single Market for consumers and businesses:

- reinforcing consumer safety for goods, services and food, strengthening the regulatory framework and making market surveillance more efficient,
- enhancing knowledge through targeted consumer information and education as well as effective support to consumer organisations,
- improving enforcement and securing redress, by strengthening the role of consumer enforcement networks, and
- aligning rights and key policies to economic and societal change, inter alia by adapting consumer law to the digital age.

Following the adoption of Directive 2011/83/EU on consumer rights on 25 October 2011¹⁰³ which Member States have to transpose by 13 December 2013 and apply from 13 June 2014, the Commission, in 2012, started an active dialogue with Member States to help them in the transposition process. This new Directive will, in particular, strengthen consumers' rights when buying on the Internet. Consumers will have to be provided with essential information before they order goods or services online, including about the functionality and interoperability of digital content. The new Directive furthermore bans pre-ticked boxes when offering additional services, internet cost traps and charges of which the consumer was not informed in advance.

In particular in view of the forthcoming entry into force of the Consumer Rights Directive, one of the concrete tasks foreseen by the Consumer Agenda is the provision of guidelines regarding the application of **consumer information requirements in the digital area**. The purpose of guidelines will be to make the information obligations, which traders have vis-à-vis consumers, work effectively in practice and easily enforceable. In addition, this activity aims at achieving a better presentation of the key information on digital products, thus facilitating comparability of different offers.

Indeed, as shown by the available studies, the lack of, or the complexity and unclear/hidden character of information is a major source of problems for consumers when buying digital products. The 2012 "sweep" of websites selling digital products (games, music, video and e-books), which the national enforcement authorities conducted in coordination with the Commission also showed significant problems in this area - 76% of the tested websites showed infringements of consumer legislation. These infringements will be followed up by enforcement activities through the existing channels, such as the Consumer Protection Co-operation (CPC) network of the national consumer enforcement authorities. The ways to improve enforcement, both in cross border cases and in cases affecting a number of Member States and therefore of strong EU relevance will be the subject of the next Consumer Summit organised by the Commission on 18-19 March 2013

¹⁰² Communication on a European Consumer Agenda - Boosting confidence and growth, COM(2012) 225 final. Available at: http://ec.europa.eu/consumers/strategy/docs/consumer_agenda_2012_en.pdf

¹⁰³ Directive 2011/83/EU on consumer rights, amending Council Directive 93/13/EEC, Directive 1999/44/EC 85/577/EEC and Directive 97/7/EC, OJ L 304, 22.11.2011, p.64 – 88.

In parallel, the **Commission worked actively to ensure the full and correct implementation of other existing consumer protection directives.**

In relation to the Directive on timeshare¹⁰⁴, which was to be transposed by 23 February 2011, the Commission closed the last open infringement proceedings after all Member States notified full transposition. This new Directive, which replaced the previous Directive 94/47/EC, has considerably enhanced consumer protection in this area, particularly through more stringent rules related to the information the trader has to provide to the consumer both in the pre-contractual stages and in the contract and regarding the consumer's right of withdrawal.

In addition to two open infringement cases, a pre-infringement dialogue via EU Pilot was initiated with 24 Member States regarding the correctness of the transposition of Directive 2005/29/EC on unfair commercial practices. This Directive provides a high level of consumer protection and allows to curb a broad range of unfair business practices, such as providing untruthful information to consumers or using aggressive techniques to influence their choices. In March 2013, the European Commission published a Communication¹⁰⁵ and a Report on the application of the Directive¹⁰⁶, which outlined a series of actions to tackle misleading and aggressive commercial practices across the EU, such as fake 'free' offers, 'bait' advertising for products which cannot be supplied, and direct targeting of children.

Problems with faulty goods remained one of important concerns for consumers in 2012. This was reflected in a number of questions posed to the Commission on consumer rights under the Directive on consumer sales and associated guarantees 1999/44/EC. EU law provides that the seller is liable to the consumer for any lack of conformity which exists at the time the goods were delivered to the consumer (known as a 'legal guarantee'). A consumer who has bought a faulty product has the right to have it repaired or replaced free of charge within two years from the time of delivery. Any lack of conformity which becomes apparent within six months of delivery of the goods is presumed to have existed at the time of delivery. In their correspondence, consumers in particular asked for clarifications about the burden of proof, guarantees for durable goods and after-sales services exceeding the duration of the legal guarantee.

An issue that received a particular attention in the context of the two above-mentioned Directives related to the practices of marketing by traders of paid-for warranties, which mislead the consumers as to their legal guarantee entitlement under the EU law. In light of a decision taken by a consumer enforcement authority in one Member State concerning the misleading practices of a major supplier of consumer electronics, the Commission urged the enforcers in other countries to also investigate the possible similar breaches on their territories. The Commission will continue to urge Member States to react strongly with regard to misleading practices in this area.

In 2012, several infringement proceedings were opened or continued by the Commission regarding the inadequate transposition and application of the directives on package travel, doorstep selling and unfair terms in consumer contracts. Directive 93/13/EEC on unfair terms in consumer contracts ensures that standard terms that cause a significant imbalance in terms of rights and obligations to the detriment of the consumer, are not binding on the latter. The Directive applies to all business-to-consumer contracts and was the subject of several preliminary rulings by the CJEU on the basis of requests from national courts. In particular, in a judgment of 15 March 2012 in Case C-453/10 the Court ruled that Directive 93/13/EEC on unfair terms in consumer contracts does not preclude a Member State from providing that a contract concluded with a consumer by a trader, which contains one or more unfair terms, is to be void as a whole where that will ensure better protection of the consumer. The Court also stated that indicating in a credit agreement an annual percentage rate of charge lower than the real rate must be regarded as 'misleading' within the meaning of Directive 2005/29/EC on Unfair Commercial Practices Directive in so far as it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. A number of other CJEU judgments dealt with the interpretation of Directive 97/7/EC on distance contracts, Directive 90/314/EEC on package travel and Directive 2005/29/EC on unfair commercial practices.

¹⁰⁴ Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange, OJ L 33, 3.2.2009, p. 10 - 21,

¹⁰⁵ Communication on the application of Directive 2005/29/EC on Unfair Commercial Practices, COM(2013)138 final. Available at: http://ec.europa.eu/justice/consumer-marketing/files/ucpd_communication_en.pdf

¹⁰⁶ Report on the application of Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, COM(2013) 139 final. Available at: http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf

Supreme Administrative Court of Czech Republic¹⁰⁷

The Czech Supreme Administrative Court made reference to Article 38 of the Charter when interpreting EU legislation on television broadcasting activities, including the 2010 Audiovisual Media Services Directive. The case concerned the violation, by a Czech television broadcaster of the prohibition to broadcast TV commercials which are not clearly separate and therefore recognisable from any other parts of the programme, in order to avoid any confusion on the part of the viewer, and the alleged failure of the competent supervisory authority to notify the broadcaster of such breaches. In applying EU rules on television broadcasting activities, the Czech Court considered it essential to refer to Article 38 of the Charter, therefore affirming that the obligation to make TV commercial clearly distinguishable from other parts of the programme aims at ensuring a high level of consumer protection.

¹⁰⁷ Supreme Administrative Court of the Czech Republic (Nejvyšší správní soud České republiky), case 6 As 26/2010 – 66, FTV Prima v. Czech Council for Radio and TV Broadcasting, 17.03.2011

Right to vote and to stand as a candidate at elections to the European Parliament

Right to vote and to stand as a candidate at municipal elections

Right to good administration

Right of access to documents

European Ombudsman

Right to petition

Freedom of movement and of residence

Diplomatic and consular protection

5. Citizens' rights

The **Commission conducted a wide reaching public consultation** to gain a broader insight into the main obstacles citizens encounter when they move within the EU. More than 11.500 citizens contributed to this consultation. These results will feed into the debates during the European Year of Citizens and inform the 2013 European Citizenship Report.

The EU adopted new rules **to make it easier for EU citizens to stand as candidates in the 2014 European Parliament elections.**

The Commission assessed how **EU citizens' electoral rights are implemented at local level** and suggested that the Member States adopt targeted measures to stimulate citizens' participation and increase overall turnout.

The Commission followed a rigorous enforcement policy with a view to achieving the **full and correct transposition and application of the EU free movement rules** across the EU. As a result of this policy, a number of Member States amended their legislation or committed to adopt, within a set deadline, amendments aimed at ensuring full compliance with these rules. The Commission has pursued the infringement proceedings with Member States that have not yet complied with the above rules.

Right to vote and stand as a candidate at elections

The Charter guarantees the right of every EU citizen to vote in the European elections in whatever Member State they reside. The Charter also provides for the right of EU citizens to vote and to stand as candidates at municipal elections in the Member State in which they reside.

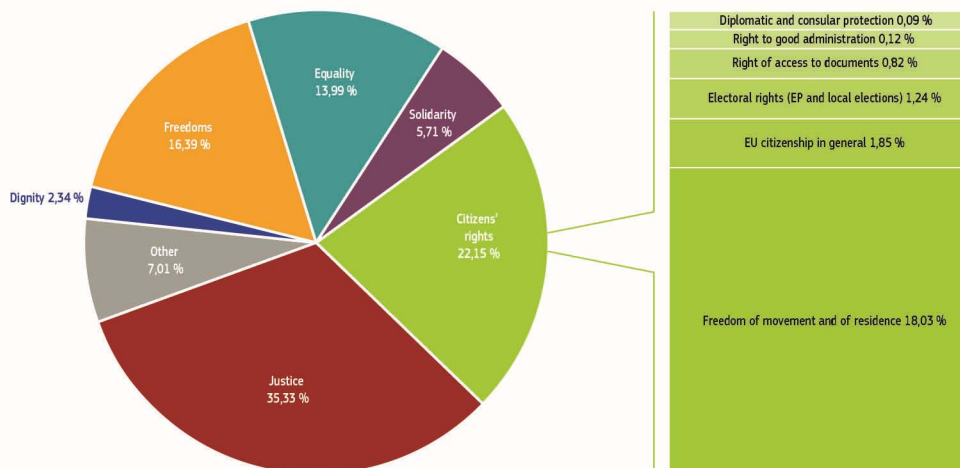
On 20 December 2012, the EU adopted new rules **to make it easier for EU citizens to stand as candidates in the 2014 European Parliament elections**¹⁰⁶. EU citizens who wish to stand as candidates in the Member State where they reside without having the nationality of that Member State will only need to produce an identity document and a declaration stating that they fulfil the eligibility conditions. They will no longer need to travel back to their country of origin to obtain additional documents from their national administration.

In the **2012 Report on municipal elections**¹⁰⁷ the Commission assessed how EU citizens' electoral rights are implemented at local level and suggested that the Member States adopt targeted measures to stimulate citizens' participation and increase overall turnout. The Commission also used this opportunity to support non-national EU citizens' involvement in the political life of the municipality in which they reside. The new rule introduced in the Hungarian electoral system which gives non-national EU citizens the possibility to become mayor, and not only a local councillor, is a good example of how non-national EU citizens can become fully integrated in their new community and play an active part in its future.

Reform of the Lithuanian electoral legislation

The Lithuanian electoral legislation in force since 2006 required non-national EU citizens to have resided for at least five years in Lithuania in order to be entitled to vote and to stand as candidates in local elections. The Commission engaged in dialogue with the Lithuanian authorities on this issue, pointing out that under EU rules, EU citizens residing in Lithuania should have the right to vote and to stand as candidates in local elections under the same conditions as nationals. Further to this dialogue, the Lithuanian authorities repealed this legal requirement.

Letters



¹⁰⁶ Proposal for a Directive amending Directive 93/109/EC of 6 December 1993 on the right to participate in European elections for citizens of the Union residing in a Member State of which they are not nationals. Available at: <http://register.consilium.europa.eu/pdf/en/12/st17/st17198.en12.pdf>

¹⁰⁷ Report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, COM(2012) 99 final. Available at: http://ec.europa.eu/justice/citizen/files/com_2012_99_municipal_elections_en.pdf

Right to good administration

Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable timeframe by the Institutions, bodies and agencies of the Union. It also includes the right to be heard and to receive a reply.

A huge number of **enquiries are addressed by citizens to the Commission**, whether by phone, e-mail or correspondence. The Commission commits itself to answering them in the most appropriate manner and as quickly as possible. The general rule applied in the Commission is that every letter is registered and, with the exception of those that are unreasonable, repetitive or abusive, should receive a reply within 15 working days from the date of receipt of the letter. The Commission also takes care that replies are sent in the language of the author of the correspondence, provided that it was written in one of the official language of the Union. For complaints and enquiries by citizens on the application of EU law, the Commission uses an IT tool (called CHAP; "Complaint Handling – Accueil des Plaignants"), for registering and managing correspondence raising potential problems on the way how Member States implement EU law.

All Member States are now using **EU Pilot**. EU Pilot is a Commission initiative aimed at responding to questions and identifying solutions to problems related to the application of EU law. It is supported by an on-line data base and communication tool. EU Pilot provides the opportunity for Member States to resolve problems before the Commission enters into formal infringement procedures. Cases should, in principle, be dealt with within 20 weeks; thus EU Pilot dialogue facilitates speedy resolution of problems.¹⁰⁸

The right to good administration is relevant in different areas of EU law. One of them is **competition**. **DG Competition's Manual of Procedures was made publicly available** and serves as an internal working tool intended to give practical guidance to staff on how to conduct investigations.

Right of access to documents

The Charter guarantees that any EU citizen and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the EU institutions, bodies, offices and agencies.

In 2012, the Commission registered 6,011 **requests for access to documents**, which is slightly less than in 2011. As in the past, 4 out of 5 requests were granted at the initial stage. In 2012, the Commission received 227 confirmatory applications, a significant increase compared to 2011. Such applications are reassessed by case handlers acting independently from the ones that handled the initial application. This review has led to wider access being granted in around half the cases. In 2012, the European Ombudsman closed 20 inquiries into complaints for a refusal to grant access to documents. The Court of Justice handed down five judgments on appeals and the General Court adjudicated in 15 cases concerning the fundamental right of access to documents.

The General Court delivered an important judgment¹⁰⁹ on access to EU internal documents, including legal opinions. The Court pointed out that that disclosure of a document under EU rules on the public access to EU institutions documents would undermine individuals' privacy and integrity. Particular attention should be paid to Article 8 of Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies, which requires the recipient of a transfer of personal data to demonstrate the need for its disclosure and to its Article 18, giving the person concerned the possibility of objecting at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data affecting him or her.

Right to refer to the European Ombudsman

The Charter provides that any EU citizen and any natural or legal person residing or having its registered office in a Member State, has the right to refer to the European Ombudsman on cases of

¹⁰⁸ More detailed information on EU Pilot is available in the Commission's most recent Annual Report on monitoring the application of EU law (point 2.1.3 in the Report, and the sections "Early resolution of infringements" in Annexes I and II). The Annual Report can be downloaded from the following link:

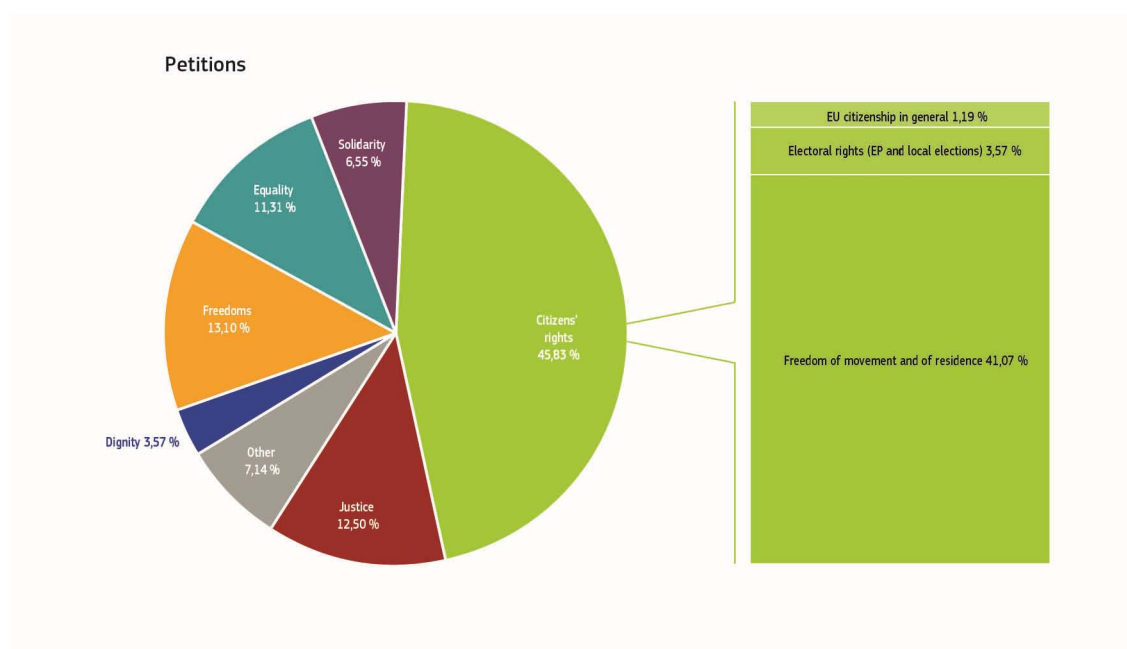
http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_29/sg_annual_report_monitoring_eu_law_121130.pdf

¹⁰⁹ GC, Case T-300/11, *Internationaler Hilfsfonds eV v. European Commission*, 22.05.2012

maladministration in the activities of the EU institutions, bodies, offices and agencies, with the exception of the Court of Justice acting in its judicial role.

As was the case in 2011, over 22 000 individuals were helped directly by the European Ombudsman in 2012. This includes individuals who complained directly to the European Ombudsman (2,442 complaints), those who received a reply to their request for information (1,211), and those who obtained advice through the interactive guide on the European Ombudsman's website (19,281).

Over 60% of the complaints (1 467) were within the competence of a member of the European Network of Ombudsmen, of which just over half (740 or 30% of the total) fell within the European Ombudsman's mandate.



Freedom of movement and residence

The Charter guarantees the right of every EU citizen to move and reside freely, whilst respecting certain conditions, within the territory of the Member States. This fundamental right is also included in the Treaty on the Functioning of the EU.

The Commission followed a rigorous enforcement policy with a view to achieving the **full and correct transposition and application of the EU free movement rules** across the European Union. As a result of this policy, and in particular of its infringement proceedings, an additional number of Member States, in contrast to 2011, amended their legislation or committed to adopt, within a set deadline, amendments aimed at ensuring full compliance with these rules. In 6 out of the 12 infringement proceedings that were launched in 2011, the Commission sent a reasoned opinion to the Member States concerned, the last step before bringing the matter before the Court of Justice of the EU.

The main outstanding issues raised in the abovementioned infringement proceedings included the **incorrect or incomplete transposition of provisions of EU law regarding the rights of entry and residence for family members of Union citizens**, including same-sex partners, the conditions for issuance of visas and residence cards for third-country national family members and the safeguards against expulsions. At the same time, the Commission pursued action with some Member States to ensure EU citizens' rights to non-discrimination and to dismantle obstacles to free movement, such as to allow for the registration of foreign double names or to ensure compatibility of Member States legislation on labour migration or expulsion with EU free movement law.

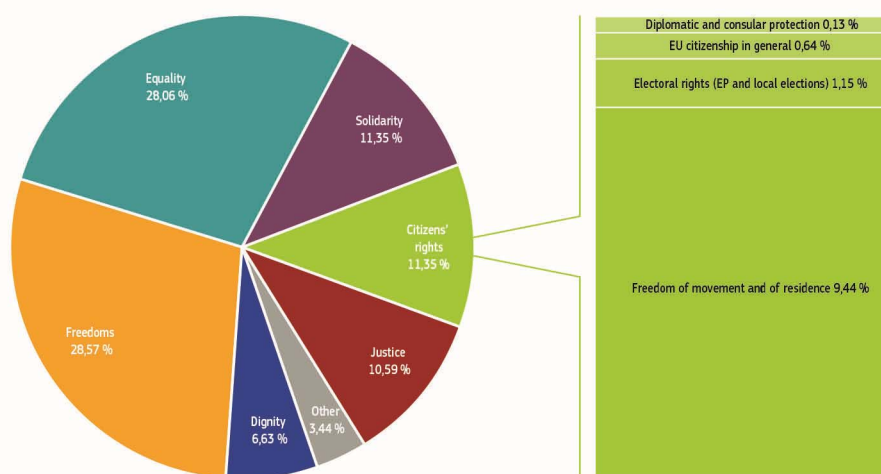
The Commission pursued its dialogue with the Dutch authorities regarding their plans announced in 2011 on labour migration. The Commission had raised a number of concerns as to the compatibility of some of these planned measures with EU law on free movement of EU citizens and workers. Several exchanges allowed solving a significant number of issues in 2012. The Commission will pursue this dialogue with a view to ensuring that any measure put in place is compatible with EU law.

The Commission pursued its dialogue with the Danish authorities on amendments to the Danish Aliens Act which had entered into force in July 2011 and which aimed at introducing stricter rules on the expulsion of aliens, including EU citizens. The Commission was particularly concerned about the compatibility of the Danish rules on expulsion with the material and procedural safeguards laid down in the Free Movement Directive. Further to this dialogue, the Danish authorities committed to initiate amendments ensuring compatibility with EU law. They delivered, in the course of 2012, on some of these commitments, by means of a Bill amending the Aliens Act published on 18 June 2012.

Civil registration in Sweden and Belgium

Sweden amended its legislation to allow for the registration of foreign double surnames for Swedish nationals. As a result, Swedish children of double nationality now enjoy the right to have their full surname (double surname) registered in Sweden without having to go through a lengthy legal procedure, or having to pay an additional fee. The Commission also pursued its infringement proceedings against Belgium to safeguard this same right for children born in Belgium who have one Belgian parent and one parent of another EU Member State.

Questions



Diplomatic and consular protection

The Charter guarantees the right of unrepresented EU citizens to seek diplomatic or consular protection from embassies or consulates of other Member States in third countries under the same conditions as nationals. EU citizens must be able to rely effectively on this right when travelling abroad.

The **right of unrepresented Union citizens to enjoy the protection of the diplomatic or consular authorities of any Member State under the same conditions as for the nationals of that Member State** is enshrined in the Treaty on the Functioning of the EU (Article 20 (2) c and 23) and in the EU Charter (Article 46). The Commission proposed on 14 December 2011¹¹⁰ clear and legally binding set of rules on cooperation and coordination between the Member States' consular authorities, with a view to ensuring that Union citizens enjoy effective consular protection, regardless of their nationality.

This proposal is currently being discussed in the Council, and on the 25th of October 2012, the European Parliament adopted its Opinion on the Proposal of the Commission for a Council directive on consular protection for citizens of the Union abroad (ref. A7/0288/2012). The European Parliament called for a common approach of the Union and an increased support from the Union delegations.

¹¹⁰ Proposal for a Council Directive on consular protection for citizens of the Union abroad, COM(2011) 881 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0881:FIN:EN:PDF>

Union citizenship

According to EU law, every person holding the nationality of a Member State is a citizen of the Union. Citizenship of the Union is additional to national citizenship and does not replace it. It is for the Member States to decide who their nationals are. They are solely competent to lay down the conditions for the acquisition and loss of their nationality.

EU citizens have a number of rights under EU law but they often do not know about them. Following a proposal made by the Commission in 2011, the European Parliament and Council decided on 21st December 2012¹¹¹, that **2013 would be the European Year of Citizens**. This would be an occasion to raise citizens' awareness about their EU rights and engage with them in a debate on the development of EU citizenship.

To have a better knowledge of the main obstacles citizens encounter when they move within the EU, the Commission launched a wide reaching public consultation (http://ec.europa.eu/justice/citizen/files/eu-citizen-brochure_en.pdf) to which over 11,500 citizens contributed. These results will feed the debates during the European Year of Citizens and inform the 2013 European Citizenship Report, which is to be adopted together with the Report on progress on implementation of Article 25 around 9 May 2013, which will detail the main developments on EU Citizenship rights since 2010.

¹¹¹ Decision No 1093/2012/EU of the European Parliament and of the Council of 21 November 2012 on the European Year of Citizens (2013), OJ L 325, p. 1

6. Justice

Right to an effective remedy and to a fair trial

The **EU adopted minimum standards on the rights, support and protection of victims of crime** which will ensure that victims are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country of residence.

Presumption of innocence and right of defence

The implementation of the **2009 EU Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings** is well advanced. The first Directive adopted in 2011 is the Directive on the right to interpretation and translation in criminal proceedings. It was followed by the Directive on the right to information in criminal proceedings adopted in 2012. The next step will be the adoption of the Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

Principles of legality and proportionality of criminal offences and penalties

Over the past years, **Hungary** has adopted several laws – some of them so-called cardinal laws adopted directly under its new constitution – which raised important fundamental rights concerns and also came under the scrutiny of the Council of Europe. The Commission carried out its legal analysis of those points where there was a link with EU law, in accordance with the scope of application of the Charter (Article 51) and the Commission's role as guardian of the Treaties. Following first warning letters at the end of 2011, the Commission acted fast and decided to bring infringement procedures before the CJEU regarding the independence of the data protection supervisory authority and the retirement age of judges, prosecutors and notaries. The CJEU confirmed the Commission's assessment, according to which the mandatory retirement age for judges, prosecutors and notaries within a very short transitional period is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law.

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

The CJEU ruled in a number of important cases which concerned **compliance with Article 47 of the Charter of Fundamental Rights** on the right to an effective remedy and to a fair trial.

Right to an effective remedy and right to a fair trial

The Charter provides that when EU rules give a right to a person, he or she can go before a court in case this right is violated. This protection is called a **right to an effective remedy**, because it provides to individuals a legal solution decided by a tribunal when an authority used EU law in an incorrect way. The right to effective remedy guarantees judicial protection against violations of any EU rule which grants rights to people. It therefore plays a key role in ensuring the effectiveness of all EU law, ranging from social policy, to asylum legislation, competition, agriculture, etc.

The EU legal framework on the rights of victims of crime was significantly reinforced by the adoption, of the **Directive establishing minimum standards on the rights, support and protection of victims of crime**¹¹².

This new Directive will ensure that victims are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country of residence. It will help to ensure that victims are recognised and treated with respect when they come into contact with the police, prosecutors and the judiciary. It also gives victims the procedural rights to be informed, supported and protected and it ensures that they can actively participate in criminal proceedings. Moreover, there is a requirement for practitioners to be trained on the needs of victims and for Member States to facilitate mutual cooperation to improve the access of victims to their rights both at EU and national level.

In the Directive there is a particular focus on the support and protection of victims who are vulnerable to secondary or repeat victimisation or intimidation during criminal proceedings. The Directive sets up a new mechanism of individual assessments that will be required for each victim to determine if they have specific protection needs and whether special measures should be put in place to protect them. These vulnerable groups include children and typically some categories of victims who often are at risk such as victims of terrorism, organised crime, human trafficking, gender-based violence, violence in close-relationship, sexual violence or exploitation, hate crime and victims with disabilities.

The Commission took action immediately after the entry into force of the **new Hungarian Constitution** and the cardinal laws which implemented it, and did not hesitate to refer Hungary very quickly to the CJEU regarding the independence of its data protection supervisory authority and regarding the retirement age of judges, prosecutors and notaries.

In line with established case law of the CJEU, the Commission considered that the **Hungarian rules regarding the retirement age of judges, prosecutors and notaries** were in violation of the EU rules on equal treatment in employment, which prohibit discrimination at the workplace on grounds of age. These rules also cover changes to the mandatory retirement age for one profession without an objective justification. In view of the urgency of the matter and the imminent retirement of 236 judges, the Commission referred the matter to the Court to deal with this question in an expedited procedure. The Court reacted promptly and delivered its ruling on 6 November 2012. The Court confirmed the Commission's assessment according to which the mandatory retirement age for judges, prosecutors and notaries, in view of the very short transitional period for its implementation, is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law¹¹³.

The Commission expressed its **concerns about the independence of the judiciary in Hungary** more generally and, in particular, on two essential aspects: the powers attributed to the President of the National Judicial Office to designate a court in a given case, and the possibility of a transfer of judges without their consent. The Commission was concerned that these measures could affect the effective application of Union law in Hungary and the fundamental rights of citizens and businesses to an

¹¹² Directive establishing minimum standards on the rights, support and protection of victims of crime OJ 315, 14.11.2012, p. 57-73

¹¹³ CJEU, Case C-286/12, *European Commission v. Hungary*, 06.11.2012

effective remedy by an independent court in Union law cases, as guaranteed by Article 47 of the EU Charter of Fundamental Rights.

The Commission noted that there are on-going discussions between the Hungarian authorities and the Council of Europe and its Venice Commission (which issued an opinion on the matter on 19 March 2012). The Commission will keep the matter under close review to verify compliance with the right to an effective remedy guaranteed by Article 47 of the EU Charter of Fundamental Rights in Union law cases, and will take into account whether the amendments will be implemented in line with the Venice Commission's opinions.

The Commission has advanced in **negotiations on the proposal for a regulation on the mutual recognition of protection measures in civil matters presented in May 2011**¹¹⁴. This instrument will ensure that victims, or potential victims, who benefit from a protection measure in their Member State of residence, do not lose this protection when crossing borders. In addition, the Commission is currently preparing further action on compensation to crime victims with the aim to address problems at national and/or cross-border level and to propose improvements to ensure victims have proper access to fair and appropriate compensation.

The **CJEU delivered important rulings that concern EU competition policy**. The Court rejected the claims introduced by three companies¹¹⁵, who had been fined for participating in a cartel on the market for copper plumbing tubes (used for water, gas and oil installations), that their right to an effective remedy and to a fair trial under Charter (Article 47) had been violated. In three separate proceedings, the companies claimed that the General Court infringed their right to an effective judicial remedy by failing to carry out an adequate review of the Commission's decision and deferring, to an excessive and unreasonable extent, to the Commission's discretion. One company also specifically, maintained that competition proceedings before the Commission are criminal proceedings within the meaning of the ECHR, and that, since the Commission is not an independent and impartial tribunal within the meaning of the ECHR, the General Court is required to carry out a review as regards both matters of fact and law.

Referring solely to the Charter, the CJEU observed that the judicial review of decisions imposing fines in matters of competition law entails a review of legality and, moreover, unlimited jurisdiction. As regards the unlimited jurisdiction in relation to the amount of fines, the Court stated that that jurisdiction empowers the CJEU in addition to carrying out a mere review of the lawfulness of the penalty, to substitute their own appraisal for the Commission's and, consequently, to cancel, reduce or increase the pecuniary penalty imposed. Finally, the Court held that the CJEU must carry out a review of both the law and the facts, that they have the power to assess the evidence, to annul the Commission's decision and to alter the amount of a fine. Therefore, the judicial review provided for by EU law is not contrary to the requirements of the principle of effective judicial protection set out in the Charter.

In another case that concerns competition policy¹¹⁶, the CJEU held that the **Commission may legitimately represent the EU before a national court in a civil action for the compensation of damages in respect of a loss it sustained as a result of the existence of cartel practices**. This case originated from the Commission Decision of 21 February 2007 ascertaining the existence of a cartel on the market for the sale, installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands. In June 2008, for the first time ever, the European Commission decided to bring proceedings before a Belgian Trade Court seeking compensation to the financial loss the Union suffered for the above-market rates charged by these companies, as the Union itself had contracted out to them the installation, maintenance and renovation of lifts and escalators in different EU buildings in Belgium and Luxembourg.

¹¹⁴ Proposal for a Regulation on mutual recognition of protection measures in civil matters, COM(2011) 276 final. Available at: http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_276_en.pdf

¹¹⁵ CJEU, Case C-272/09, *KME Germany and Others v Commission*, 20.1.2012; CJEU, Case C-386/10, *Chalkor v Commission*, 20.1.2012; CJEU, Case C-389/10, *KME Germany and others v Commission*, 20.1.2012

¹¹⁶ CJEU, Case Case C-199/11, *Europese Gemeenschap v Otis NV, General Technic-Otis Sàrl, Kone Belgium NV, Kone Luxembourg Sàrl, Schindler NV, Schindler Sàrl, ThyssenKrupp Liften Ascenseurs NV, ThyssenKrupp Ascenseurs Luxembourg Sàrl*, 6.11.2012

The CJEU held that these circumstances do not run counter to either the **judiciary's independence** or the principle of **equality of arms** between parties to civil proceedings in so far as EU law provides for a system of judicial review of Commission decisions in the field of competition policy which affords all the safeguards required by Article 47 of the Charter. The Court therefore ruled that the Charter does not preclude the Commission from bringing an action for compensation for losses sustained by the EU as a result of an agreement or practice contrary to EU law.

Another case¹¹⁷, concerned the recognition and enforcement in Latvia, under Regulation No 44/2001, of a judgment in default delivered by the High Court of Justice of England and Wales, Queen's Bench Division (United Kingdom). The CJEU stipulated that this Regulation must be interpreted as meaning that the courts of the Member State in which enforcement is sought may refuse, only if it appears to the court, that that judgment is a manifest and disproportionate breach of the defendant's right to a fair trial referred to in the Charter of Fundamental Rights (Article 47), on account of the impossibility of bringing an appropriate and effective appeal against it.

Enforcement of the Visa Border Code regarding the right of appeal against a visa refusal

The EU Visa Code¹¹⁸ requires Member States to communicate to the applicant for a short stay visa the reasons on which a decision of refusal is based and to grant the right of appeal against a visa refusal, annulment, or revocation. This relates directly to the right to an effective remedy and to a fair trial. In late 2012, the Commission has already contacted several Member States' authorities where it had concerns regarding the right to appeal against a visa refusal, with a view to make use of the powers conferred to it by the Treaty, should it be confirmed that the right of appeal is not adequately ensured in some of those Member States.

Supreme Court of Estonia (Full Court)¹¹⁹

The Supreme Court of Estonia made reference to CJEU case law on Article 47 of the Charter as regards the restrictions on access to tribunals flowing from the requirements under which national legislation grants legal aid to legal persons. The applicant, a company whose action for compensation against the Ministry for Environment had been dismissed, and refused to pay the required court fee on grounds of its unconstitutionality; secondarily, it filed a request for legal aid, at the same time challenging the constitutionality of the law limiting the access to it as far as legal persons are concerned. In declaring that the exclusion of legal persons from legal assistance in civil proceedings contravenes the Estonian Constitution, the Supreme Court recalled the CJEU jurisprudence¹²⁰ according to which "*the principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.*"

Dutch Appeal Court¹²¹

In a case concerning the application of the EU Directive on unfair terms in consumer contracts, an obligation contained in the general conditions obliging the consumer to have recourse to means of arbitration was considered contrary to the right of effective remedy as stipulated in Article 47 of the Charter in a judgment by a Dutch Appeal Court. The Court argued that with such clause the consumer loses his right to approach a regular court.

Austrian Administrative Supreme Court

¹¹⁷ CJEU, Case C-619/10, *Trade Agency Ltd v Seramico Investments Ltd*, 06.09.2012

¹¹⁸ Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009.

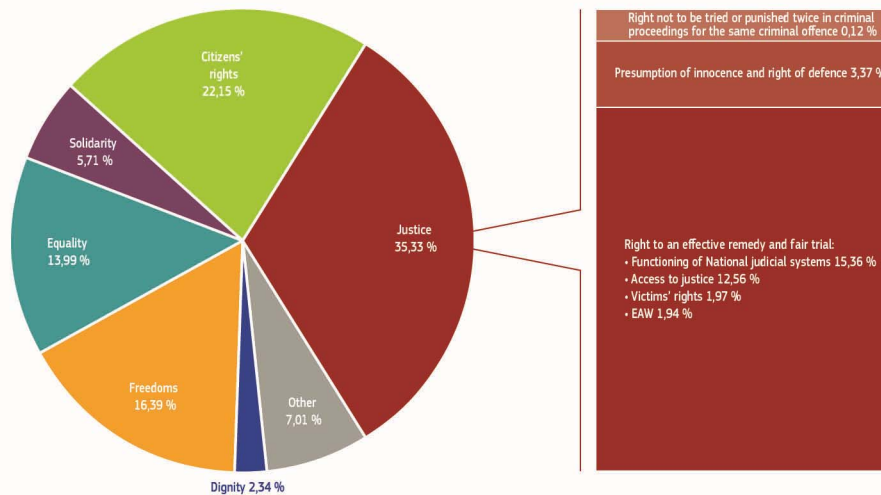
¹¹⁹ Supreme Court of Estonia en banc (Riigikohtu üldkogus), case 3-4-1-62-10, *AS WIPESTREX GRUPP v. Republic of Estonia*, 12.04.2011

¹²⁰ CJEU, Case C-279/09 *DEB Deutsche Energiehandels- und Beratungsgesellschaft v. Federal Republic of Germany*, 22.12.2010.

¹²¹ Appeal Court Leeuwarden (Gerechtshof Leeuwarden), Case 200.040.671/01; LJN: BR 2500, decision of 5.7.2011

In a case before the Austrian Administrative Supreme Court¹²², the assessment by the competent Ministry of the environmental impact of a decision allowing the double-tracking of a certain section of a railroad was contested. The law in question transposed a Directive and the decision of the Ministry on granting or refusing the authorisation falls within the scope of Union law. Referring to Art 47 of the Charter in order to emphasise the relevance of the principle of effective judicial control, the Court rejected the appeal as inadmissible arguing that where Union law provides for a special right to judicial protection, an instance of judicial control furnished with unlimited jurisdiction has to decide before a case can be brought before the Supreme Administrative Court which has to control the impugned decision on the base of facts of the case as assumed by the authority and which is limited in oral hearings to questions of law. However, the Constitutional Court lifted that decision considering that there was no manifest contradiction between Union law and national law.

Letters



Presumption of innocence and right of defence

The Charter provides that everyone who has been charged shall be presumed innocent until proven guilty according to the law. It further specifies that respect for the right to defence of anyone who has been charged shall be guaranteed.

Safeguarding **procedural rights of suspect and accused persons** remains a priority of the Commission. Both the Charter (especially Articles 47 and 48) and the ECHR (especially Articles 5 and 6) constitute the common basis for the protection of the rights of suspected or accused persons in criminal proceedings in the pre-trial and in trial stages.

Mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings. It presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. Mutual trust will be greatly enhanced if Member States are confident that their neighbours have a criminal justice system that guarantees fair trials.

By making progress on these different initiatives, the Commission is keeping-up with the EU commitment to fundamental rights for all citizens and to enhance mutual trust. The implementation of the **2009 Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings**¹²³ is now well advanced. The first Directive adopted already in 2011 is the Directive on the

¹²² Austrian Administrative Supreme Court (Verwaltungsgerichtshof), case 2010/03/0051, decision of 30.9.2010

¹²³ Resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, p. 1.

right to interpretation and translation in criminal proceedings¹²⁴. It was followed by the Directive on the right to information in criminal proceedings of 22 May 2012.¹²⁵ The next step will be the adoption of the Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest¹²⁶. Measures such as these, facilitated by the new context for criminal justice after the entry into force of the Lisbon Treaty, will ensure the balanced development of criminal justice within the EU area of justice, freedom and security.

The Commission proposed a new **Directive on the confiscation and recovery of criminal assets in the European Union**¹²⁷. This Directive will make it easier for Member States to confiscate the profits that criminals make from organised crime. The Directive aims at attacking the financial incentive which drives most serious and organised crime, at protecting the EU economy against infiltration by criminal groups, and at returning criminal assets to governments and citizens. The Directive draws on international Conventions and best practice recommendations. It will simplify existing rules and fill gaps which have benefited persons convicted and suspected of crime until now.

The Commission conducted a thorough impact assessment when preparing its proposal on the confiscation and recovery of criminal assets in the EU and held extensive internal consultations in order to ensure that all provisions fully respect fundamental rights. The latter include the right to property, the presumption of innocence and the right of defence, the right to a fair trial, the right to a fair and public hearing within a reasonable time, the right to an effective judicial remedy before a court and the right to be informed on how to exercise it, the right to respect for private and family life, the right to protection of personal data, the right not to be tried or punished twice in criminal proceedings for the same criminal offence and the principles of legality and proportionality of criminal offences.

The European Parliament requested an opinion from the FRA on the extent to which confiscation of proceeds of crime could go without breaching fundamental rights. The FRA examined the substantive provisions of the proposal, by focusing on the introduction of non-conviction based confiscations, extended powers of confiscation and confiscation from a third party¹²⁸.

The **Commission increased its financial support for the training of legal practitioners on fundamental rights**, following the ambitious targets set in 2011 for expanding training for legal practitioners in Europe on how to apply European law¹²⁹. During 2012, the Commission funded 32 legal training courses on fundamental rights, covering topics such as gender equality, anti-discrimination, data protection and trafficking in human beings. Furthermore, the Commission has funded 12 judicial training courses mainly on the question of victims' rights. This aid in building an independent, well-trained and efficient judiciary that is essential for a functioning justice area and single market in Europe.

¹²⁴ Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1.

¹²⁵ Directive 2012/13/EU on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1.

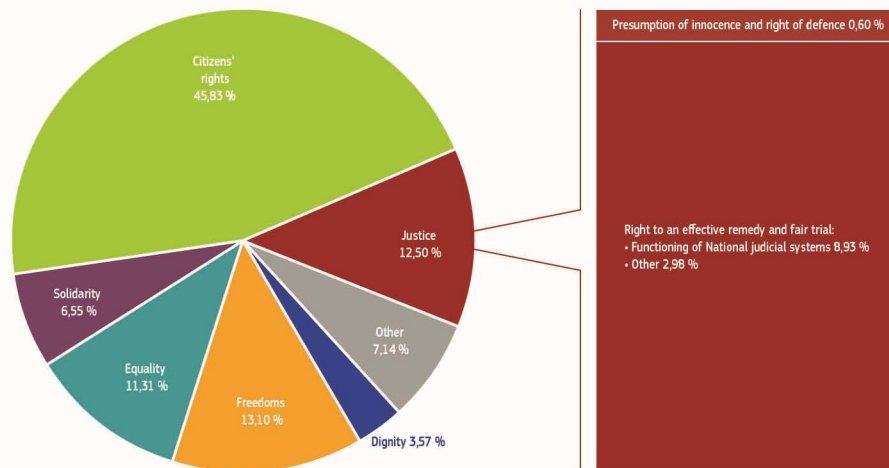
¹²⁶ Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM(2011) 326 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0326:FIN:EN:PDF>.

¹²⁷ COM(2012) 85 final

¹²⁸ Available at: <http://fra.europa.eu/en/opinion/2012/fra-opinion-confiscation-proceeds-crime>

¹²⁹ Commission Communication: Building trust in EU-wide justice, a new dimension to European judicial training, COM(2011) 551 final, Available at: http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training_en.pdf

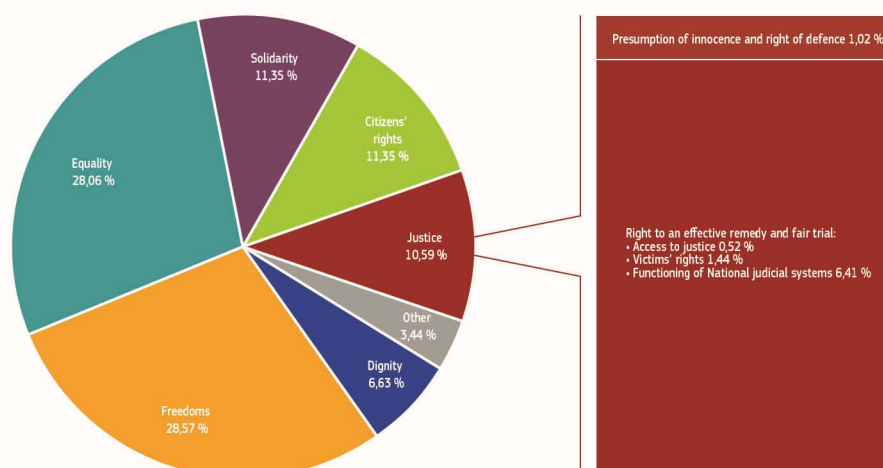
Petitions



Principles of legality and proportionality of criminal offences and penalties

Some fundamental rights are guaranteed in absolute terms and cannot be subject to any restrictions. Interferences with other rights may be justified if, subject to the principle of proportionality, they are necessary and genuinely serve to meet objectives of general interest recognised by the Union. Such justification is provided for in the proposals of the Commission on the *protection of the Union's financial interests by means of criminal law*¹³⁰. In particular the right to liberty (Article 6 in the Charter), the freedom to choose an occupation (Article 15), the right to conduct a business (Article 16), the right to property (Article 17), principles of legality and proportionality of criminal offences (Article 49), the right not to be tried and punished twice (Article 50) were assessed by the Commission in relation to the proposed criminal law measures. It was concluded that the proposed measures would affect these fundamental rights, but that these interferences with fundamental rights are justified because they serve to meet objectives of general interest recognised by the Union; in this case to provide effective and deterring measures for the protection of Union's financial interests.

Questions



¹³⁰ Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law, COM(2012) 363 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0363:FIN:EN:PDF>.

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

The *ne bis in idem* principle is one of the cornerstones of criminal law and is based on the principle that no one shall be held liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted. Article 50 provides that criminal laws should respect this.

The **CJEU clarified the scope of application of the *ne bis in idem* in a preliminary ruling that concerned a Polish farmer who had been excluded from benefiting from agricultural aid on the ground of a false declaration of the area of his farm¹³¹**. The farmer contested that the imposition of a criminal penalty for the same act. The Court examined the case-law of the ECtHR on the concept of ‘criminal proceedings’ and noted that three criteria are relevant for defining that concept. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur. As regards the first criterion, the Court observed that the measures which exclude a farmer from benefiting from aid are not regarded as criminal in nature by EU law. As regards the second criterion, the Court considered that those measures can apply only to economic operators who have recourse to the aid scheme in question, and that the purpose of those measures is not punitive, but is essentially to protect the management of EU funds. As regards the third criterion, the Court found that the sole effect of the penalties provided for by EU law is to deprive the farmer in question of the prospect of obtaining aid. On these grounds the Court found that the measures which excluded the farmer from benefiting from legal aid could not be classified as criminal. Consequently, there was no violation of the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

¹³¹ CJEU, Case C-489/10, *Łukasz Marcin Bonda*, 5.7.2012

Appendix I

Overview of the 2012 CJEU case law which directly quotes the Charter or mentions it in its reasoning:

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
1. Luksan	C-277/10	09/02/2012	Intellectual property	Freedoms	Right to property	N
2. Toshiba Corporation and Others	C-17/10	14/02/2012	Competition	Justice	Principle of legality of criminal offences and penalties	Y
3. Germany v Commission	T-59/09	14/02/2012	Access to documents	Citizens' rights	Right of access to documents	N
4. Grasso v Commission	T-319/08	14/02/2012	Fisheries	Justice	Right to an effective remedy	N
5. SABAM	C-360/10	16/02/2012	Communications	Freedoms	Right to intellectual property / Freedom to conduct a business / Protection of personal data / Freedom of expression and information	N
6. Marcuccio v Commission	F-3/11	29/02/2012	EU Civil Service Tribunal	Citizens' rights	Right to good administration / Right to an effective remedy	N
7. Netherlands v Commission	T-29/10	02/03/2012	Competition - State aid	Citizens' rights	Right to good administration	N
8. B.I. v	F-31/11	07/03/2012	EU Civil Service	Citizens'	Right to good	N

	Cedefop			Tribunal	rights	administration	
9.	G	C-292/10	15/03/2012	Civil law	Justice	Right to an effective remedy and to a fair trial	N
10.	Fulmen v Council	T-439/10	21/03/2012	Common foreign and security policy - nuclear proliferation	Justice	Right to an effective remedy and to a fair trial	N
11.	Slovak Telekom v Commission	T-458/09	22/03/2012	Competition	Citizens' rights	Right to good administration	N
12.	Egan and Hackett v Parliament	T-190/10	28/03/2012	Access to documents - data protection	Justice	Right to an effective remedy	N
13.	Rapone v Commission	F-36/10	28/03/2012	EU Civil Service - EPSO concours	Citizens' rights	Right to good administration	N
14.	Interseroh Scrap and Metals Trading	C-1/11	29/03/2012	Environment	Freedoms	Freedom to conduct a business / Right to property	N
15.	Belvedere Costruzioni	C-500/10	29/03/2012	Taxation	Justice	Right to a fair trial	N
16.	Telefónica and Telefónica de España v Commission	T-336/07	29/03/2012	Competition	Justice	Presumption of innocence and right of defence	N
17.	Buxton v Parliament	F-50/11	18/04/2012	Employment - EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
18.	Kamberaj	C-571/10	24/04/2012	Social security - discrimination against third-country nationals	Solidarity	Non-discrimination / Social security and social assistance	Y
19.	S.C. and	C-92/12	26/04/2012	Civil law -	Equality	Rights of the	N

A.C.	PPU		Rights of the child		child	
20. DR and TV2 Danmark	C-510/10	26/04/2012	Intellectual property	Freedoms	Freedom to conduct a business	N
21. Neidel	C-337/10	03/05/2012	Employment	Solidarity	Fair and just working conditions	N
22. In 't Veld v Council	T-529/09	04/05/2012	Access to documents	Freedoms	Protection of personal data	N
23. Nijs v Court of Auditors	T-184/11 P	15/05/2012	Employment - EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
24. Skareby v Commission	F-42/10	16/05/2012	Employment - EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
25. P.I.	C-348/09	22/05/2012	Freedom of movement - Criminal law	Equality	Rights of the child	Y
26. Aitic Penteo v OHIM - Atos Worldline (PENTEO)	T-585/10	22/05/2012	Intellectual property	Citizens' rights	Right to good administration	N
27. Imperial Chemical Industries v Commission	T-214/06	05/06/2012	Competition	Citizens' rights	Right to good administration / Right to an effective remedy and to a fair trial	N
28. Tyrolean Airways Tiroler Luftfahrt Gesellschaft	C-132/11	07/06/2012	Discrimination - employment	Equality	Non-discrimination	N
29. GREP	C-156/12	13/06/2012	Legal aid	Justice	Right to an effective remedy	N

30. XXXLutz Marken v OHIM - Meyer Manufacturing (CIRCON)	T-542/10	13/06/2012	Intellectual property	Citizens' rights	Right to good administration	N
31. Otis Luxembourg (formerly General Technic-Otis) v Commission	C-494/11 P	15/06/2012	Competition	Equality	Non-discrimination	N
32. Arango Jaramillo and Others v EIB	T-234/11 P	19/06/2012	Employment - EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
33. Susisalo and Others	C-84/11	21/06/2012	Freedom of establishment - public health	Solidarity	Health care	N
34. ANGED	C-78/11	21/06/2012	Employment	Solidarity	Fair and just working conditions	N
35. Bolloré v Commission	T-372/10	27/06/2012	Competition	Justice	Right to good administration / Right to an effective remedy and to a fair trial / Principles of legality and proportionality of criminal offences and penalties	N
36. Erny	C-172/11	28/06/2012	Discrimination - employment	Solidarity	Right of collective bargaining and action	N
37. Caronna	C-7/11	28/06/2012	Wholesale distribution of medicines	Justice	Principles of legality and proportionality of criminal offences and	N

					penalties	
38. Hörnfeldt	C-141/11	05/07/2012	Discrimination - employment	Freedoms	Freedom to choose an occupation and right to engage in work	N
39. Al v Court of Justice	F-85/10	11/07/2012	Employment - EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
40. Mugraby v Council and Commission	C-581/11	12/07/2012	Fundamental rights	Justice	Right to an effective remedy	N
41. Arango Jaramillo and Others v EIB	C-334/12 RX	12/07/2012	Employment - EU Civil Service (decision to review)	Justice	Right to an effective remedy	N
42. Commission v Nanopoulos	T-308/10 P	12/07/2012	Employment - EU Civil Service (appeal)	Justice	Presumption of innocence and right of defence	N
43. BG v Ombudsman	F-54/11	17/07/2012	Employment - EU Civil Service Tribunal	Equality	Equality between women and men / Right to an effective remedy and to a fair trial	N
44. Dülger	C-451/11	19/07/2012	Legal migration	Freedoms	Respect for private and family life	N
45. Parliament v Council	C-130/10	19/07/2012	Common foreign and security policy - terrorism	VII - General provisions	Field of application	Y
46. Akhras v Council	C-110/12 P (R)	19/07/2012	Common foreign and security policy - restrictive measures against	Justice	Right to an effective remedy	N

			individuals			
47. Y and Z	C-71/11	05/09/2012	Refugees - freedom of religion	Freedoms	Freedom of thought, conscience and religion	Y
48. Trade Agency	C-619/10	06/09/2012	Judicial cooperation in civil matters	Justice	Right to a fair trial	N
49. Deutsches Weintor	C-544/10	06/09/2012	Consumer protection - public health	Solidarity	Health care	N
50. Cuallado Martorell v Commission	F-96/09	18/09/2012	EU Civil Service - EPSO concours	Citizens' rights	Right to good administration / Right of access to documents / Right to an effective remedy and to a fair trial	N
51. Fraas v OHIM	T-326/10, T-327/10, T-328/10, T-329/11, T-26/11, T-31/11, T-50/11, T-231/11	19/09/2012	Intellectual property	Citizens' rights	Right to good administration	N
52. Poland v Commission	T-333/09	20/09/2012	Agriculture	Equality	Non-discrimination	N
53. Bermejo Garde v EESC	F-41/10	25/09/2012	Employment - EU Civil Service Tribunal	Solidarity	Fair and just working conditions / Right to good administration	N
54. Cimade and GISTI	C-179/11	27/09/2012	Asylum	Dignity	Human dignity	N

55. Shell Petroleum and Others v Commission	T-343/06	27/09/2012	Competition	Citizens' rights	Right to good administration / Right to an effective remedy and to a fair trial	N
56. Koninklijke Wegenbou w Stevin v Commission	T-357/06	27/09/2012	Competition	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence	N
57. Heijmans v Commission	T-360/06	27/09/2012	Competition	Justice	Presumption of innocence and right of defence	N
58. Applied Microengineering v Commission	T-387/09	27/09/2012	Relations between EU Institutions and third party contractors	Citizens' rights	Right to good administration	N
59. Technimed v OHMI - Ecobrand (ZAPPER-CLICK)	T-360710	03/10/2012	Intellectual property	Justice	Right to an effective remedy	N
60. Sviluppo Globale v Commission	T-183/10	10/10/2012	Public service procurement - competitive tenders	Citizens' rights	Right to good administration / Right to an effective remedy and to a fair trial	N
61. Shanghai Biaowu High-Tensile Fastener and Shanghai Prime Machinery v Council	T-170/09	10/10/2012	Dumping	Citizens' rights	Right to good administration	N
62. Commission v Austria	C-614/10	16/10/2012	Data protection	Freedoms	Protection of personal data	Y

63.	Fondation IDIAP v Commission	T-286/10	17/10/2012	Relations between EU Institutions and third party contractors	Justice	Right to a fair trial	N
64.	Strack v Commission	F-44/05 RENV	23/10/2012	Employment - EU Civil Service Tribunal	Justice	Freedom of expression and information / Right to an effective remedy and to a fair trial	N
65.	Otis and Others	C-199/11	06/11/2012	Competition	Justice	Right to an effective remedy	Y
66.	Iida	C-40/11	08/11/2012	Citizenship of the Union - Fundamental rights	VII - General provisions	Field of application	N
67.	Heimann	C-229/11	08/11/2012	Employment	Solidarity	Fair and just working conditions	N
68.	Commission v Strack	T-268/11 P	08/11/2012	Employment - EU Civil Service (appeal)	Solidarity	Fair and just working conditions	N
69.	Nexans v Commission	T-135/09	14/11/2012	Competition	Freedoms	Respect for private and family life	N
70.	Bericap	C-180/11	15/11/2012	Intellectual property	Freedoms	Right to property	N
71.	Corpul Național al Polițiștilor	C-369/12	15/11/2012	Employment	VII - General provisions	Field of application	N
72.	M.M.	C-277/11	22/11/2012	Asylum	Justice	Right of defence	N
73.	E.ON Energie	C-89/11 P	22/11/2012	Competition	Justice	Presumption of innocence	N
74.	Pringle v Ireland	C-370/12	27/11/2012	Economic and monetary policy	Justice	Right to an effective remedy	Full Court

75. Italy v Commission	C-566/10 P	27/11/2012	EU Civil Service - EPSO concours	Equality	Non-discrimination	Y
76. Sipos v OHIM	F-59/11	27/11/2012	Employment - EU Civil Service Tribunal	Solidarity	Protection in the event of unjustified dismissal	N
77. Thesing and Bloomberg Finance v ECB	T-590/10	29/11/2012	Access to documents	Citizens' rights	Right of access to documents / Freedom of expression and information / Scope and interpretation of rights and principles	N
78. O and S	C-356/11 and C-357/11	06/12/2012	Citizenship of the Union - Fundamental rights	Equality	Respect for private and family life / Rights of the child	N
79. Trentea v FRA	F-112/10	11/12/2012	Employment - EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
80. Almamet v Commission	T-410/09	12/12/2012	Competition	Justice	Presumption of innocence and right of defence / Respect for private and family life	N
81. Cerafogli v ECB	F-43/10	12/12/2012	Employment - EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
82. Commission v Strack	T-197/11 P and T-198/11 P	13/12/2012	Employment - EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
83. Strack v Commission	T-199/11 P	13/12/2012	Employment - EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
84. Greece v Commission	T-588/10	13/12/2012	Agriculture	Citizens' rights	Right to good administration	N

85.	AX v ECB	F-7/11	13/12/2012	Employment - EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
86.	Alder and Alder	C-325/11	19/12/2012	Judicial cooperation in civil matters	Justice	Right to an effective remedy and to a fair trial	N
87.	Abed El Karem El Kott and Others	C-364/11	19/12/2012	Asylum	Freedoms	Right to asylum	Y

Appendix II

Overview of the applications for preliminary rulings submitted in 2012 which refer to the Charter:

Case	Date	Name of the parties	Charter subject and articles referred to in the application	Relevant title of the Charter	Nationality of the referring court
C-23/12	17/01/2012	Zakaria	Right to an effective remedy and to a fair trial (Art. 47)	Justice	LV
C-30/12	23/01/2012	Marcinová	Consumer protection (Art. 38 combined with 17)	Solidarity	SK
C-45/12	30/01/2012	ONAFTS	Non-discrimination (Art. 20 and 21)	Equality	BE
C-87/12	20/02/2012	Ymeraga and Others	Non-discrimination / Rights of the child (Art. 20, 21, 24, 33, 34)	Equality	LU
C-86/12	20/02/2012	Alopka and Others	Non-discrimination / Rights of the child (Art. 20, 21, 24, 33, 34)	Equality	LU
C-93/12	21/02/2012	„Agrokonsulting”	Right to an effective remedy and to a fair trial (Art. 47)	Justice	BG
C-128/12	08/03/2012	Sindicato dos Bancários do Norte and Others	Fair and just working conditions (Art. 31.1)	Solidarity	PT
C-131/12	09/03/2012	Google Spain and Google	Protection of personal data (Art. 8)	Freedoms	ES
C-134/12	12/03/2012	Corpul Național al Polițiștilor	Right to property (Art. 17.1, 20, 21)	Freedoms	RO
C-141/12	20/03/2012	Y.S.	Right of access to data (Art. 8.2, 41.2.b)	Freedoms	NL
C-156/12	30/03/2012	GREP	Right to an effective remedy and to a fair trial (Art. 47, 51.1)	Justice	AT
C-176/12	16/04/2012	Association de médiation sociale	Workers' right to information and consultation within the undertaking (Art. 27)	Solidarity	FR
C-180/12	16/04/2012	Stoilov i Ko	Right to good administration (Art. 41.2.a, 47)	Citizens' rights	BG
C-195/12	26/04/2012	I.B.V & Cie	Non-discrimination (Art. 20, 21)	Equality	BE
C-234/12	14/05/2012	Sky Italia	Freedom of expression and information (Art. 11)	Freedoms	IT
C-233/12	14/05/2012	Gardella	Freedom to choose an occupation and right to engage in work (Art. 15)	Freedoms	IT
C-264/12	29/05/2012	Sindicato Nacional dos Profissionais de Seguros e Afins	Fair and just working conditions (Art. 31.1)	Solidarity	PT

C-293/12	11/06/2012	Digital Rights Ireland	Protection of personal data / Freedom of expression and information (Art. 7, 8, 11, 41)	Freedoms	IE
C-311/12	27/06/2012	Kassner	Fair and just working conditions (Art. 31)	Solidarity	DE
C-312/12	28/06/2012	Ajdini	Non-discrimination / Integration of persons with disabilities (Art.20, 21, 26)	Equality	BE
C-313/12	28/06/2012	Romeo	Right to good administration (Art. 41.2.c)	Citizens' rights	IT
C-356/12	27/07/2012	Glatzel	Non-discrimination (Art. 20, 21, 26)	Equality	DE
C-363/12	30/07/2012	Z	Non-discrimination / Integration of persons with disabilities / Family and professional life (Art. 21, 23, 33, 34; 21, 26, 34)	Equality	IE
C-361/12	31/07/2012	Carratù	Right to an effective remedy and to a fair trial (Art. 46, 47, 52.3)	Justice	IT
C-367/12	01/08/2012	Prinz-Stremitzer and Sokoll-Seebacher	Freedom to conduct a business (Art. 16, 47)	Freedoms	AT
C-369/12	02/08/2012	Corpul Național al Polițiștilor	Right to property / Non-discrimination (Art. 51.1 combined with 20; 51.1 combined with 21.1; 17.1)	Freedoms	RO
C-372/12	03/08/2012	M. and S.	Right of access to data (Art. 8.2, 41.2.b, 51.1)	Freedoms	NL
C-370/12	03/08/2012	Pringle	Right to an effective remedy and to a fair trial (Art. 47)	Justice	IE
C-373/12	03/08/2012	G.I.C. Cash	Right to an effective remedy and to a fair trial (Art. 47 combined with 38)	Justice	SK
C-390/12	20/08/2012	Pfleger and Others	Freedom to choose an occupation and right to engage in work / Right to property (Art. 15, 16, 17, 47, 50)	Freedoms	AT
C-413/12	11/09/2012	Asociación de Consumidores Independientes de Castilla y León	Consumer protection (Art. 38)	Solidarity	ES
C-429/12	21/09/2012	Pohl	Non-discrimination (Art. 20)	Equality	AT
C-446/12	03/10/2012	Willems	Protection of personal data / Respect for private and family life (Art. 7, 8)	Freedoms	NL
C-447/12	05/10/2012	Kooistra	Protection of personal data / Respect for private and family life (Art. 7, 8)	Freedoms	NL
C-451/12	08/10/2012	Esteban García	Consumer protection (Art. 38)	Solidarity	ES
C-448/12	08/10/2012	Roest	Protection of personal data / Respect for private and family life (Art. 7, 8)	Freedoms	NL

C-449/12	08/10/2012	van Luijk	Protection of personal data / Respect for private and family life (Art. 7, 8)	Freedoms	NL
C-476/12	24/10/2012	Österreichischer Gewerkschaftsbund	Right of collective bargaining and action / Non-discrimination (Art. 28)	Solidarity	AT
C-483/12	29/10/2012	Pelckmans Turnhout	Non-discrimination / Right to property / Freedom to conduct a business (Art. 20 and 21 combined with 15 and 16)	Freedoms	BE
C-497/12	07/11/2012	Gullotta and Farmacia di Gullotta Davide & C.	Right to property (Art. 15)	Freedoms	IT
C-498/12	07/11/2012	Pedone	Right to an effective remedy and to a fair trial - Legal aid (Art. 47.3)	Justice	IT
C-499/12	07/11/2012	Gentile	Right to an effective remedy and to a fair trial - Legal aid (Art. 47.3)	Justice	IT
C-523/12	19/11/2012	Dirextra Alta Formazione Srl	Freedom of expression and information / Right to education (Art. 11, 14)	Freedoms	IT
C-555/12	03/12/2012	Loreti and Others	Right to an effective remedy and to a fair trial (Art. 47, 52.3)	Justice	IT
C-562/12	05/12/2012	Liivimaa Lihaveis	Right to an effective remedy and to a fair trial (Art. 47)	Justice	EE