



European
Commission



2011 Report
on the Application of the
EU Charter
of Fundamental Rights

Justice

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* Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2011 Report on the Application of the EU Charter of Fundamental Rights, COM(2012) 169 final

** Commission Staff Working Document on the Application of the EU Charter of Fundamental Rights in 2011 - Accompanying document to the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2011 Report on the Application of the EU Charter of Fundamental Rights, SWD(2012) 84 final

*** Commission Staff Working Document on Progress on equality between women and men in 2011 - Accompanying document to the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2011 Report on the Application of the EU Charter of Fundamental Rights, SWD(2012) 85 final

2011 Report on the

Application

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1. Introduction

Two years after the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union¹ (the ‘Charter’) has become a point of reference commonly used in the development of EU policies.

This momentum has been triggered by the Lisbon Treaty. After its entry into force, the Commission adopted a Strategy on the effective implementation of the Charter (‘Charter Strategy’)² setting an objective that the EU sets a good example as regards the respect of fundamental rights when the Union legislates. The Commission further committed to preparing annual reports to better informing citizens on the application of the Charter and to measuring progress in its implementation. Both the Charter Strategy and the first Annual report on the application of the Charter have triggered discussions in the European Parliament, in the Council as well as in the Committee of Regions and in the European Economic and Social Committee.

The Charter is of great interest not only to EU institutions but also to the general public: according to a recent *Eurobarometer survey*³ two-thirds of respondents across the EU are interested in learning more about their rights as enshrined by the Charter (66%), where to go if they feel that these rights have been violated (65%) and when the Charter applies and when it does not (60%).

This report aims to address this wish to be better informed about the Charter. It reviews progress in ensuring the effective implementation of the Charter and highlights important developments in 2011. The annexed document (I) provides detailed information on the application of the Charter by all EU institutions and Member States and illustrates concrete problems faced by individuals. Progress in the implementation of the Strategy for equality between women and men (2010-2015) is presented in a separate annex (II).

2. Promoting the effective implementation of the Charter

Building on the findings of the 2010 Report, the Commission has taken a number of concrete steps to promote the effective implementation of the Charter.

¹ Charter of Fundamental Rights of the European Union, OJ C 83, 30.3.2010, p. 389–403.

² Commission Communication: Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, available at: http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf

³ Flash Eurobarometer 340 *The Charter of fundamental rights of the European Union* available at: http://ec.europa.eu/public_opinion/archives/flash_arch_344_330_en.htm#340

2.1. Fostering the fundamental rights culture in the EU

The Charter Strategy and the 2010 Report generated debates in all EU institutions on how to make the Charter effective for citizens and on how to ensure its respect throughout the legislative process. This momentum initiated by the Commission has already delivered first concrete results.

The **Commission** has reinforced the assessment of the impact on fundamental rights when it prepares legislative proposals. Prior to adopting proposals for new legislation, the Commission carries out impact assessments. *The new Guidance on Fundamental Rights in Impact Assessment*⁴ clarifies through concrete examples how fundamental rights aspects should be taken into account by Commission services. The Commission established an interservice group on the implementation of the Charter to share knowledge and experience among all its departments.

The approach taken by the Commission in drawing up legislation on the use of *security scanners*⁵ for detecting unsafe objects carried by passenger at EU airports is a concrete example of the positive effect of this policy. The preparatory phases leading to the adoption of this legislation took into account the impact of different policy options on fundamental rights so as to ensure that this legislation complies with the Charter. Member States and airports wishing to deploy security scanners must comply with minimum conditions set by the EU's new rules to safeguard fundamental rights. Most importantly, passengers will be 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. In addition, detailed conditions are laid down to ensure that the right to the protection of personal data and private life is respected, for instance, the obligation that security scanners shall not store, retain, copy, print or retrieve images. As far as health considerations are concerned, only scanners that do not use ionising radiation are allowed as a method for screening persons.

The Commission evaluation report⁶ on the *EU rules on Data Retention*⁷ is another example of its reinforced assessment of the impact on fundamental rights. The Commission outlined the impact of these rules on economic operators and consumers as well as its implications on the protection of fundamental rights and freedoms in particular the protection of personal data. The report concluded that, on the one hand, data retention is a valuable tool for law

4 Operational Guidance on taking account of fundamental rights in Commission Impact Assessments, SEC(2011) 567 final, 6.5.2011, available at: http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance_en.pdf

5 Commission Regulation 1141/2011 supplementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L293, 11.11.2011, p. 22-23. Commission Implementing Regulation N° 1147/2011 implementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L294, 12.11.2011, p. 7-11.

6 Report from the Commission: Evaluation report on the Data Retention Directive (Directive 2006/24/EC), COM(2011) 225 final, available at: http://ec.europa.eu/commission_2010-2014/malmstrom/archive/20110418_data_retention_evaluation_en.pdf

7 Data Retention Directive (2006/24/EC) requires Member States to oblige providers of publically available electronic communications services or of public communications networks to retain traffic and location data for a period of six months to two years for the purpose of the investigation, detection and prosecution of serious crime.

enforcement purposes. On the other hand, the report identified areas that need to be improved following the uneven transposition of the Directive on data retention by Member States. In particular, the Commission should ensure more harmonisation in specific areas, such as: the measures ensuring the respect for fundamental rights and freedoms, including the data retention periods, the purpose limitations, as well as the necessary safeguards to access retained data and protect personal data.

As explained in the Charter Strategy, the Commission not only guarantees that its proposals are compatible with the Charter, it also ensures that the Charter is respected when Member States implement EU law. According to Article 51 of the Charter, its provisions apply to Member States only when they are implementing EU law. It does not apply in situations where EU law is not involved.

Following the Commission's intervention on the Hungarian media law, using the full extent of its legal powers to enforce the *acquis*, the Hungarian government agreed to amend its national media law so that it complies with substantive EU law. A number of concerns have been expressed relating to other provisions of the media law which are not covered by EU legislation. In such situations, fundamental rights continue to be guaranteed at national level according to the national constitutional systems. It should be noted in that respect that this was illustrated by the Hungarian Constitutional Court ruling on 19 December that declared that certain provisions of the Hungarian media law unconstitutionally limited freedom of the written press⁸.

The Commission also paid particular attention, in 2011, to the developments related to the new *Hungarian Constitution and its implementation*, to the extent that it raises EU law issues. In the June plenary session of the European Parliament, the Commission underlined that the Constitution of every Member State should reflect and comply with the European values of freedom, democracy, equality, the rule of law, human dignity and the respect of human rights, including the rights of persons belonging to minorities, without discrimination, as laid down in Article 2 of the Treaty. In December, the Commission expressed its concerns regarding potential violations of EU law by certain provisions of the draft legislation⁹. The Hungarian authorities adopted the legislation in question without taking into account the Commission's legal concerns. As a result, the Commission, as guardian of the Treaties, decided to take action against a number of new provisions in Hungarian legislation, namely on the independence of the data protection authority and on the discriminatory impact of the mandatory retirement age for judges, prosecutors and notaries. The Commission also sent an administrative letter requesting further information on certain aspects of the new legislation which could affect the independence of the judiciary¹⁰.

8 Vice-President Kroes has expressed her concerns both in letters to the Hungarian authorities and in a bilateral meeting with the responsible Minister of Justice. Ruling of the Hungarian Constitutional Court, 19 December 2011, 1746/B/2010, available at: www.mkab.hu/admin/data/file/1146_1746_10.pdf

9 Vice-President Reding sent a letter to the Hungarian Minister of Justice on 12 December. Vice-President Kroes and Vice-President Rehn also sent letters on media pluralism and on the independence of the Hungarian Central Bank respectively.

10 Press release of 17 January 2012 (IP 12/24), available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/24&format=HTML&aged=0&language=EN&guiLanguage=fr>

The **European Parliament** played a key role in promoting the rights and freedoms enshrined in the Charter. The European Parliament paid particular attention to the situation in Hungary in respect of media freedom and pluralism¹¹ as well as in relation to the new Hungarian Constitution and its implementation¹². On 16 February 2012, it adopted a resolution¹³ calling on the Hungarian government to comply with the recommendations, objections and demands of the European Commission, the Council of Europe and the Venice Commission and calling on the European Commission, the guardian of the Treaties, to monitor closely the possible amendments and the implementation of the said laws and their compliance with the letter and spirit of the European treaties.

When acting as co-legislator, it stressed the fundamental rights dimension of new proposals for EU law. For example, the European Parliament approved the Commission's proposal to amend the *Qualification Directive* which will enhance the rights granted to refugees and beneficiaries of subsidiary protection in the EU (Articles 18 and 19 of the Charter) and ensured the extension of social rights for migrant workers in the recently adopted Single Permit Directive¹⁴.

The **Council** made significant efforts to follow-up the Charter Strategy, in particular in respect of its role as co-legislator. The Council recognised that it had a key role in ensuring the effective implementation of the Charter and committed to ensuring that Member States proposing amendments to Commission legislative initiatives, or tabling own legislative initiatives, assess their impact on fundamental rights¹⁵. The Council reiterated that it is the responsibility of each institution to assess the impact of its proposals and amendments. In this respect, it committed, in line with the Inter-institutional agreement on better lawmaking¹⁶, to assess the impact of its substantive amendments on fundamental rights. This commitment is an encouraging change in Council practices which until now did not foresee any particular proceeding to ensure compliance with the Charter. To this end, following the example of the Commission, the Council established *Guidelines*¹⁷ to identify and deal with fundamental rights issues arising in the discussion on proposals before the Council's preparatory bodies. Finally, the Council outlined its actions for the application of the Charter¹⁸.

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- 11 European Parliament resolution of 10 March 2011 on media law in Hungary, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+VO//EN>
 - 12 Resolution of 5 July 2011 on the Revised Hungarian Constitution, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0315+0+DOC+XML+VO//EN>
 - 13 Resolution of 16 February 2012 on the recent political developments in Hungary, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0053%2b0%2bDOC%2bXML%2bVO%2f%2fEN&language=EN>
 - 14 Directive 2011/98/EU on a single application procedure for a single permit for third country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p. 1 – 9.
 - 15 Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union, 25.2.2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/119464.pdf
 - 16 Inter-institutional Agreement on Better Lawmaking, OJ C 321, 31.12.2003, p. 1 – 5.
 - 17 Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies, 19.5.2001, available at: <http://register.consilium.europa.eu/pdf/en/11/st10/st10140.en11.pdf>
 - 18 Council conclusions on the Council's actions and initiatives for the implementation of the Charter of fundamental rights of the European Union, 23.5.2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/122181.pdf

The impact of the Charter on the judiciary, both at national and at EU level, is already visible. The **Court of Justice of the European Union** has increasingly referred to the Charter in its decisions: the number of decisions quoting the Charter in its reasoning rose by more than 50% as compared to 2010, from 27 to 42. National courts when addressing questions to the Court of Justice (preliminary rulings) have also increasingly referred to the Charter: in 2011, such references rose by 50% as compared to 2010, from 18 to 27. Interesting questions have been referred to the Court of Justice by national courts, for instance on the impact of the right to an effective remedy and to a fair trial in expulsion proceedings against EU citizens that rely on security sensitive information that the public authorities do not want to reveal in a public hearing.¹⁹ Another question touches on the important issue of the relationship between national fundamental rights and EU fundamental rights in a case concerning the application of the European Arrest Warrant²⁰.

The Court of Justice issued a number of landmark rulings that include a reference to the Charter. For example, in the *Test-Achats* case, the Court invalidated a derogation in EU gender equality legislation that enables insurers to differentiate between men and women in individuals' premiums and benefits²¹. The derogation was found incompatible with the objective of unisex pricing contained in that legislation, and therefore with the Charter. Following the Court ruling, the Commission issued guidelines on the application of EU law on gender equality to insurance²².

At the end of 2011, the Court issued a landmark ruling on the implementation of the *Dublin Regulation* on determining the Member State responsible for the assessment of asylum application in the EU²³. The Court stressed that Member States are under the obligation to respect the Charter when they establish the responsibility for examining an asylum application. Member States must not transfer an asylum seeker to another Member State if it is such that they cannot be unaware of systemic deficiencies in the asylum procedure and reception conditions amounting to substantial grounds for believing that person would face a real risk of being subjected to inhuman or degrading treatment. Annex I to this report presents a number of other important rulings such as the judgments clarifying the relationship – in an online environment – between the protection of intellectual property rights and other fundamental rights, such as the freedom to conduct business and the protection of personal data²⁴, or referring to human dignity as regards the issue of the patentability of human embryos created through therapeutic cloning²⁵, or analysing the principle of non-discrimination on grounds of age in light of the right to negotiate and conclude collective agreements²⁶.

19 ECJ, Case C-300/11, *ZZ v Secretary of State for the Home Department*, 17.06.2011.

20 ECJ, Case C-399/11, *Stefano Melloni*, 1.10.2011.

21 ECJ, Case C-236/09, *Test-Achats*, 30.4.2011.

22 Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (*Test-Achats*), OJ C 11, 13.1.2012, p. 1 – 11.

23 ECJ, joined cases C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department and M.E. e.a. v Refugee Applications Commissioner*, 21.12.2011.

24 ECJ, Case, C-70/10, *Scarlet v SABAM*, 24.11.2011.

25 ECJ, C-34/10, *Brüstle v Greenpeace*, 18.10.2011.

26 Joined Cases, C-297/10 and C-298/10, *Hennings and Land Berlin*.

2.2. Promoting equality between women and men in the EU

Following the Commission's Strategy for equality between women and men (2010-2015)²⁷, the **Council** adopted a *European Pact for gender equality*²⁸. Establishing a firm link to the Europe 2020 process, the Pact reaffirms the EU's commitments to closing gender gaps in employment, education and social protection, ensuring equal pay for equal work, promoting the equal participation of women in decision-making and combating all forms of violence against women. It repeats the importance of integrating a gender perspective into all policies including external actions of the EU. It also underlines *reconciliation of work and family life* as a precondition for equal participation in the labour market: developing childcare services and fathers' take-up of parental leave have a positive bearing on the labour supply for main carers, who usually are women²⁹.

In line with the commitments taken in its Strategy for equality between women and men to promote equality in decision making and in order to redress the gender imbalance in positions of leadership in private companies, the **Commission** called on all EU publicly listed companies to sign the '*Women on the Board Pledge for Europe*' and to develop their own means to get more women into top jobs³⁰. The goal is to reach the target of 30% female board members in the major European publicly listed companies by 2015 and 40% by 2020.

The Commission adopted the legislative proposals for the next *EU Multiannual Financial Framework (2014-2020)*³¹. The Rights and Citizenship programme³² will promote and protect the rights of persons including the principles of non-discrimination and equality between women and men. In addition, the new EU Programme for Social Change and Innovation³³, established to support employment and social policies across the EU, will specifically target gender issues.

In the framework of the Europe 2020 Strategy, the Commission has issued *recommendations to Member States on the gender pay gap, on childcare and on fiscal disincentives for second earners* to strengthen women's position in the labour market and to meet the objectives of raising the employment rate of women and men aged 20-64 to 75% by 2020. Member States where fiscal treatment is more advantageous either for couples with very different earnings or for single income couples are not efficient from an economic point of view. They reinforce the household model where

27 Communication from the Commission: Strategy for equality between women and men, 2010, COM(2010) 491 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0491:FIN:EN:PDF>

28 Council conclusions on the European Pact for gender equality for the period 2011 – 2020, 7.3.2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/119628.pdf

29 Council conclusions on the Reconciliation of work and family life in the context of demographic. Change, 17.6.2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/122875.pdf

30 Women on the Board Pledge for Europe, available at: http://ec.europa.eu/commission_2010-2014/redoing/pdf/p_en.pdf

31 Information on the EU financial framework for 2014-2020, available at: http://ec.europa.eu/budget/biblio/documents/fin_fw1420_fin_fw1420_en.cfm

32 Proposal for a Regulation establishing for the period 2014 to 2020 the Rights and Citizenship Programme, COM (2011) 758 final, available at: http://ec.europa.eu/justice/newsroom/files/1_en_act_part1_v5_frc_en.pdf

33 Proposal for a Regulation of the European Parliament and of the Council on a European Union Programme for Social Change and Innovation, COM(2011) 609 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0609:EN:NOT>

one person works full-time (traditionally the man) and the other part-time (traditionally the woman), leading to an underutilisation of human capital investments, in particular of women. Removing financial disincentives in tax and benefit systems and developing childcare and care for the elderly would increase the labour participation of women throughout their life-cycle and guarantees their economic independence.

2.3. Helping citizens exercise their rights

The Commission is convinced that informing citizens about when the Charter applies and where to go to when their rights are violated requires further effort. A recent Eurobarometer survey³⁴ revealed that although general awareness of the Charter is on the rise (64% in 2012 as compared to 48% in 2007), few citizens knew what the Charter actually was (11%) and when it applied (14%). **The greatest confusion lay around whether the Charter applied to all actions of Member States, including matters of national competence.** The Charter does not apply in all of these matters, but more than half of the respondents – 55% – thought that it applied. In addition, almost one quarter (24%) of respondents said that it was false that the Charter applied to Member States only when they implement EU law, further highlighting this confusion.

The survey also reveals that national courts are the first place respondents would turn to if their Charter rights were violated (21%) closely followed by Ombudsmen/independent bodies (20%), EU institutions (19%) and the local police (19%). This shows that EU institutions are perceived by many citizens **as having the same redress function as a national court or a national human rights body.**

Data collected by the Commission sheds further light on the frequent misunderstanding of citizens as regard the role of EU institutions in the area of fundamental rights. In 2011, citizens' letters to the Commission on fundamental rights in 55% of the cases concerned issues outside the remit of EU competences. The Charter does not give a general power to the EU to intervene in all cases of violations of fundamental rights by national authorities. The Charter applies to Member States only when they implement EU law. Member States have extensive national rules on fundamental rights, the respect of which is guaranteed by national courts³⁵.

The Commission recalls that EU institutions and bodies (in particular the European Ombudsman) and Member States' national, regional and local authorities have a shared responsibility to better inform citizens on the Charter and on where to turn to obtain redress when they consider their rights violated. The Commission, in cooperation with Member States, published new Fundamental Rights pages on the **European e-Justice Portal**³⁶. The portal provides information on where to complain when citizens consider that they have been subject to a violation of their fundamental rights. It provides information on national courts, and on bodies

³⁴ Flash Eurobarometer 340 *The Charter of fundamental rights of the European Union* available at: http://ec.europa.eu/public_opinion/archives/flash_arch_344_330_en.htm#340

³⁵ In this respect, even the US Bill of Rights originally only applied to the Federal level.

³⁶ European e-Justice portal available at: <https://e-justice.europa.eu/home.do?action=home>

handling complaints on fundamental rights, such as the national Ombudspersons, National Human Rights Institutions and Equality bodies.

The Commission is determined to help citizens exercise their rights through a **multilevel cooperation with all actors involved at EU and at national level**. A closer dialogue is necessary among the many different institutions in Member States which, in addition to the key role of the judiciary in defending fundamental rights, are called upon to address complaints from citizens who consider that their fundamental rights have been violated. On 6 October 2011 the Commission, for the first time, brought together equality bodies, ombudsman institutions, children's ombudsman institutions, European and national human rights institutions in a seminar organised jointly with the European Parliament Committee on Petitions. The seminar focussed on how such authorities handle complaints on fundamental rights in practice. This multilevel dialogue will continue with a view to sharing experience in implementing the Charter and on common challenges faced by these authorities in relation to their competence, independence and effectiveness. It will in particular examine how to encourage each body to establish citizen-friendly "**admissibility check lists**" enabling the complainant to determine whether their case can likely to be dealt with by the body concerned. Such systems have already proved to be very beneficial in the case of the **European Ombudsman** which set up an interactive guide on its website in all the 23 official EU languages to help citizens quickly identify the most appropriate body to turn to when they have complaint about maladministration. 80% of 22 000 enquiries received in 2011 could be responded to through this interactive guide. Cooperation with the EU Agency for Fundamental Rights (FRA) in establishing citizen-friendly "admissibility check lists" is important as the FRA has planned to set up user-friendly tools guiding citizens when they want to submit a complaint concerning a violation of their fundamental rights.

3. Most important developments in 2011

The Commission has pursued a vigorous policy of ensuring the effective implementation of the Charter in a wide variety of areas covered by EU law. The annex to this Report presents many examples of the application of the Charter involving the rights covered by the six titles of the Charter (Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice), including important steps to prepare the proposal for new EU rules on data protection to be presented in 2012.

Beyond the scope of this report, the promotion of human rights in third countries is also a priority of the EU. This was reaffirmed by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy in a joint Communication on "Human rights and democracy at the heart of the EU external action", adopted on 12 December 2011³⁷ as well

37 Joint Communication of European Commission and EU High Representative for Foreign Affairs and Security Policy: Human rights and democracy at the heart of EU external action – towards a more effective approach", 12.12.2011, COM(2011) 886 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>

as in two Communications on the EU's development policy³⁸. The protection of human rights is also one of the key priorities for the EU enlargement process, and will be further strengthened during the accession negotiations.

EU Member States are bound by the Charter when they implement EU law. However, there is not yet enough information on the efforts made to ensure the effective implementation of the Charter. The Commission will seek in its forthcoming annual reports on the application of the Charter to document progress in that respect.

3.1. A new momentum in the enforcement of citizens' right to free movement

Intra-EU mobility of persons is a key factor for economic growth in a Europe with a declining population and a significant imbalance between supply and demand on the labour market in different parts of the EU. At the same time, the free movement of students, tourists, workers and their families between Member States is a key European achievement, and a practical expression of mutual respect, openness and tolerance as core European Union values. For these reasons, the Commission pursued a **rigorous enforcement policy** with a view to achieving the full and correct transposition and application of EU free movement rules³⁹ across the European Union. As a result of this policy, the majority of Member States amended their legislation or announced their intention to do so. The Commission continued to work with the remaining countries to tackle outstanding issues including by launching infringement proceedings where needed.

At the same time, the Commission took a firm stance to ensure that the principle of **non-discrimination** and other safeguards anchored in EU rules on free movement for the benefit of all EU citizens are fully respected by Member States. In this respect, the Commission expressed its concerns regarding the plans on labour migration announced by the Dutch government and pursues its dialogue with relevant Member State authorities with a view to ensuring full compliance with EU law of any measure that may be put in place.

In March 2011, the French Constitutional Council took a decision concerning the issue of the evictions of unlawful group settlements⁴⁰. This issue was not addressed by the Commission intervention in the summer 2010⁴¹ as such evictions do not concern the expulsion of EU citizens from a Member State and therefore do not concern the right to free movement. The Court declared unconstitutional certain legal provisions enabling authorities to enforce evictions on an urgent

38 Communication from the Commission: Increasing the impact of EU development policy: an agenda for change, COM(2011) 637 final; Communication from the Commission: The future approach to EU budget support to third countries, COM(2011) 638 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0637:FIN:EN:PDF>; http://ec.europa.eu/europeaid/how/delivering-aid/budget-support/documents/future_eu_budget_support_en.pdf

39 Directive 2004/38/EC 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.

40 French Constitutional Council, Decision n°. 2011-625 DC of 10 March 2011, available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2011625DCen2010625dc.pdf>

41 See Commission 2010 Report on the application of the Charter, page 10, available at: http://ec.europa.eu/justice/fundamental-rights/files/annual_report_2010_en.pdf

basis at any time of the year, without taking into account the personal or family circumstances of the individuals. This decision confirms that where EU law does not come into play, fundamental rights continued to be enforced at national level, in particular, through the courts.

In May 2011, the Commission engaged in an intensive dialogue with the Danish government on its plans to introduce strengthened **intra-EU border control measures**. In October 2011, the Danish government announced that it would not go ahead with the plans and that customs controls would be implemented in line with EU rules on free movement and the Schengen acquis.

The Commission also contacted the Danish authorities regarding amendments to the Danish Aliens' Act that entered into force in July 2011. These aim at introducing stricter rules on the **expulsion of aliens**, including EU citizens, and raise serious concerns about their compatibility with the Free Movement Directive. The Commission will not hesitate to make use of the powers conferred to it by the Treaty should the Danish reply be deemed unsatisfactory.

3.2. Promoting the rights of the child

The Commission adopted the **EU Agenda for the Rights of the Child** in February 2011⁴². The EU Agenda aims to put in practice the rights of the child enshrined in the Charter and the UN Convention on the Rights of the Child through a comprehensive programme of actions for the period from 2011-2014. The EU Agenda identified 11 concrete actions which will contribute to the effective implementation and protection of the rights of the child. In the context of this comprehensive approach to children's rights, the Commission has prioritized efforts to ensure that the justice system is better adapted to children and more child-friendly. The Commission also fixed priorities for the protection of children when they are vulnerable and to safeguard the rights of the child in the EU's external action. The Commission further launched a single online entry point for children called the Kid's Corner⁴³ containing child-friendly texts, games and quizzes informing children about their rights, as part of this programme of actions.

The EU adopted new rules on **combating the sexual abuse and sexual exploitation of children and child pornography**⁴⁴ to make it easier to fight crimes against children by acting on different fronts. The new rules criminalise a wide range of situations of sexual abuse and exploitation, covering new phenomena helped by the Internet, such as child grooming, webcam abuse and web viewing of child abuse material.

The Commission continued to provide support for the establishment and operation of the tools designed to help missing or abducted children, namely the **116 000 hotlines** for missing

42 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>

43 Available at: http://europa.eu/kids-corner/index_en.htm

44 Directive on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, available at: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00051.en11.pdf>

children and child alert systems. Concerted efforts by some Member States⁴⁵ are necessary to have the hotline operational and widely known throughout the EU. The Commission will pursue its efforts to make this a reality.

The entry into force in Russia of the **Hague Convention on the Civil Aspects of International Child Abduction**⁴⁶ and the steps taken by Japan in view of its accession to the Convention are significant developments contributing to the protection of children in the EU in cases of abduction. The Commission submitted proposals to ensure consistency in the application of the Convention between the EU and the third States which have acceded to it in recent years⁴⁷.

3.3. Reinforcing victims' rights and procedural rights

The Commission proposed a new set of instruments to guarantee that **victims are treated with respect and dignity**, receive protection and support for their physical integrity and their property, and have access to justice and compensation. The proposed new rules⁴⁸ pay due attention to victims with special needs, such as children. In addition, the Commission worked to protect victims of violence (such as domestic violence) from further harm inflicted on them by the offender when they travel within the EU⁴⁹. The new rules also ensure that the right of defence is not harmed. The Directive on preventing and combating trafficking in human beings provides for a comprehensive range of rights for victims in criminal proceedings, including as regards victims' assistance and support as well as for child victims of trafficking⁵⁰.

Major progress has been achieved towards the adoption of the Commission proposals to **strengthen suspects' procedural rights**. The European Parliament and the Council adopted a new set of rules ensuring that the suspects of a criminal offence are informed about their rights in a language that they understand⁵¹. Anyone arrested will have to be informed about their rights by a document called a Letter of Rights. The Commission also submitted a proposal for new rules securing amongst others access to a lawyer from the first stage of police questioning and throughout criminal proceedings⁵². The Commission launched a public

45 Austria, Bulgaria, Cyprus, Czech Republic, Finland, Ireland, Latvia, Lithuania, Luxembourg, and Sweden have yet to make the hotline operational.

46 Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, available at: http://www.hcch.net/index_en.php?act=conventions.text&cid=24

47 Albania, Andorra, Armenia, Gabon, Morocco, Russia, Seychelles and Singapore.

48 Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011) 275, available at: http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf
Communication from the Commission: Strengthening victims' rights in the EU, COM(2011) 274 final, available at: http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_274_en.pdf

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

50 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.04.2011, p. 1-11.

51 Directive on the right to information in criminal proceedings, OJ C/2011/121/19 available at: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=199549

52 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, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0326:FIN:EN:PDF>

consultation on detention issues in the EU, to explore the possibility of establishing similar standards of protection across the EU⁵³.

3.4. Fight against xenophobic and racist hate speech

The European Parliament expressed its concern about the occurrence of xenophobic and racist hate speech and crimes in EU Member States on a number of occasions. According to the 2011 Annual Report of the EU Agency for Fundamental Rights, “10 of the 12 Member States, which publish sufficient criminal justice data on racist crime to be able to undertake an analysis of trends, experienced an upward trend in recorded racist crime”⁵⁴ during the period 2000-2009.

In reply to European Parliament concerns, the **Commission reiterated its firm rejection of all forms and manifestations of xenophobia and racism**. It recalled that public authorities must unequivocally condemn and actively fight against such behaviour. Any statement linking criminality with a certain nationality stigmatises that nationality and fuels xenophobia, and is therefore incompatible with the principles of human dignity, equality and respect for fundamental rights on which the EU is founded.

The Commission is determined to ensure the conformity of national laws with **EU law prohibiting racist and xenophobic hate speech and crime**⁵⁵. By the end of the year, 22 Member States had communicated to the Commission their national laws intended to penalise racist and xenophobic hate speech. The Commission did not receive any notifications of implementing measures from Belgium, Estonia, Greece, Spain and Poland. The Commission will assess notifications in 2012 in order to verify the compliance of national laws with EU law. It will work towards complementing this with a regular dialogue among Member States on monitoring organised propagation of racism and hate speech, for instance through racist websites, in order to strengthen the basis for joint analysis and reporting on such phenomena, in particular when they include a cross-border dimension.

Discrimination based on racial or ethnic origin is prohibited in EU law and the Commission is committed to ensuring that Member States comply with it. Proceedings against four Member States for non-compliance with these legal requirements were closed, as they brought their national laws into conformity. The Commission will pursue its efforts with three Member States for which proceedings are pending⁵⁶.

53 Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327, available at: http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_327_en.pdf

54 EU Agency for Fundamental Rights, 'Fundamental Rights: Challenges and achievements in 2010', June 2011, p. 127. Available at: http://fra.europa.eu/fraWebsite/attachments/annual-report-2011_EN.pdf

55 Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p. 55 – 58.

56 Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22 – 26.

The Commission reaffirmed the need for a positive attitude towards diversity and for equal treatment in the “European Agenda for the Integration of Third-Country Nationals”⁵⁷. Efforts to fight against discrimination and to give migrants instruments to become acquainted with the fundamental values of the EU and its Member States should be strengthened.

The EU made a major step forward in **promoting the social and economic integration of Roma** with the Commission’s communication on the “EU framework for national Roma integration strategies up to 2020”⁵⁸. This EU Framework calls upon Member States to prepare or revise their national Roma integration strategies in the light of the EU goals defined in the framework, and to present them to the Commission by end of December 2011. The EU Framework was also endorsed by the European Council⁵⁹ and welcomed by the European Parliament.

The **EU gave financial support to civil society actions and national policies** to combat discrimination, promote equality and improve redress as regards racist speech and crime⁶⁰. The Commission also supports the work of the **EU Agency for Fundamental Rights** in collecting data on the situation of fundamental rights, racism and discrimination in the Member States. The Agency published several studies and handbooks addressing for instance the role of Holocaust memorial sites in human rights education, the situation of Anti-semitism in the EU, European non-discrimination law, multiple- discrimination and the protection of minorities in the EU.

3.5. Contributing to EU competitiveness

The Charter served as a compass when shaping EU initiatives to promote growth. A number of EU measures have been assessed in the light of the **right to an effective remedy before a tribunal** (Article 47 of the Charter). This right is important for all citizens but also for the enforcement of EU economic law that contributes to growth. It ensures that enterprises can effectively uphold the rights granted in EU legislation and it provides a safeguard against the risk of unlawful action, and arbitrariness of authorities having supervisory powers. The Commission assessed a number of EU measures in the light of the right to an effective remedy before a tribunal. These measures included the proposed legislation related to markets in financial instruments, market abuse, transparency in financial markets, statutory audits, professional qualifications and consumer alternative dispute resolution.

In 2011, the right to an effective remedy was **the most quoted right in the decisions of the Court of Justice of the EU** referring to the Charter and it was mentioned in a third of all

57 Communication from the Commission: European Agenda for the Integration of Third-Country Nationals, COM(2011) 455 final, available at: http://ec.europa.eu/home-affairs/news/intro/docs/110720/1_EN_ACT_part1_v10.pdf

58 Communication from the Commission: An EU Framework for National Roma Integration Strategies up to 2020, COM(2011) 173 final, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf

59 European Council Conclusions, 24 June 2011, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/123075.pdf.

60 For instance, in 2011, over twenty projects addressing racism and xenophobia or promoting diversity and tolerance were supported through the Fundamental Rights and Citizenship Programme amounting to financial support of more than €9.5 million. Further information on this programme is available at: http://ec.europa.eu/justice/grants/programmes/fundamental-citizenship/index_en.htm

these decisions. The right to an effective remedy requires an independent, impartial and fully functioning judiciary.

The **freedom to conduct a business** (Article 16 of the Charter) is of particular relevance for EU competitiveness and the Commission duly took account of it in the preparation of new legislation on the market for financial instruments, insurance mediation, credit ratings agencies and on recording equipment for road transport (tachographs). Freedom to conduct a business was also a key consideration in the preparation of the Common European Sales Law proposal aimed at removing obstacles resulting from divergences between national contract laws⁶¹. The Court of Justice recognized the importance of the freedom to conduct a business in its landmark rulings in the *Scarlet*⁶² and *Sabam* cases⁶³. The Court declared that obliging an internet service or hosting provider to install a filtering system in order to prevent an infringement of intellectual property rights would infringe the freedom of the provider to conduct its business, as well as its customers' rights to the protection of their personal data and to receive or impart information. These rulings underline the importance of taking into account all the fundamental rights involved by a given measure and to ensure its compliance with all these rights.

In several initiatives, the Commission paid particular attention to the right to property (Article 17 of the Charter) which provides that **intellectual property shall be protected**. The Commission presented a Communication on 'A Single Market for Intellectual Property Rights'⁶⁴, where it announced a number of initiatives, including a possible review of EU legislation on the enforcement of intellectual property rights in particular in the light of piracy over the internet. The Commission announced that such a review will require conducting an impact assessment, not only on the right to property, but also on the rights to private life, the protection of personal data, freedom of expression and information and the right to an effective remedy. As explained in the Charter Strategy, highlighting potential fundamental rights aspects upstream of the preparation of proposals encourage contributions that will feed into the impact assessment of the review.

3.6. Key steps for the EU accession to the European Convention on Human Rights

The Commission took concrete steps to comply with the requirement enshrined in the Lisbon Treaty that the EU accedes to the European Convention on Human Rights. The Commission conducted technical negotiations on accession with experts from Member States of the Council of Europe as the current parties to the Convention. A draft accession agreement, elaborated in June 2011, is currently under scrutiny within the Council.

61 Proposal for a Regulation of the European Parliament and the Council on a common European sales law, COM (2011) 635 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>

62 ECJ, Case C-70/10, *Scarlet v SABAM*, 24.11.2011.

63 ECJ, Case C-360/10, *SABAM v. Netlog*, 16.2.2012.

64 Communication from the Commission: A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, COM(2011) 287 final, available at: http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf

4. Conclusions

In 2011, the EU took further concrete steps for the effective implementation of the Charter. These efforts served to help citizens enjoy their fundamental rights when EU law comes into play.

In particular, in times of economic crisis, a legally stable environment based on the rule of law and the respect of fundamental rights is the best guarantee for citizens' trust and the confidence of partners and investors. The Commission is convinced that all EU institutions, Member States and stakeholders must continue to work together to put the Charter into practice.

Staff Working Document
on the
Application
of the EU Charter
of Fundamental
Rights
in 2011

Introduction

After the entry into force of the **EU Charter of Fundamental Rights**¹, the Commission adopted a **Strategy on the effective implementation of the Charter**² setting as an objective that the EU is exemplary as regard the respect of fundamental rights, in particular when it legislates. The Commission further committed to preparing annual reports to better inform citizens on the application of the Charter and to measure progress in its implementation. This Report covers the year 2011 and informs the public on 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 reports aim 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 as well as on the analysis of letters from the general public and questions and petitions from the European Parliament. The Member States are bound by the Charter when they implement EU law. However, there is not yet enough information on the efforts made to ensure the effective implementation of the Charter. The Commission will seek in its forthcoming Annual Reports on the Application of the Charter to document progress in that respect.

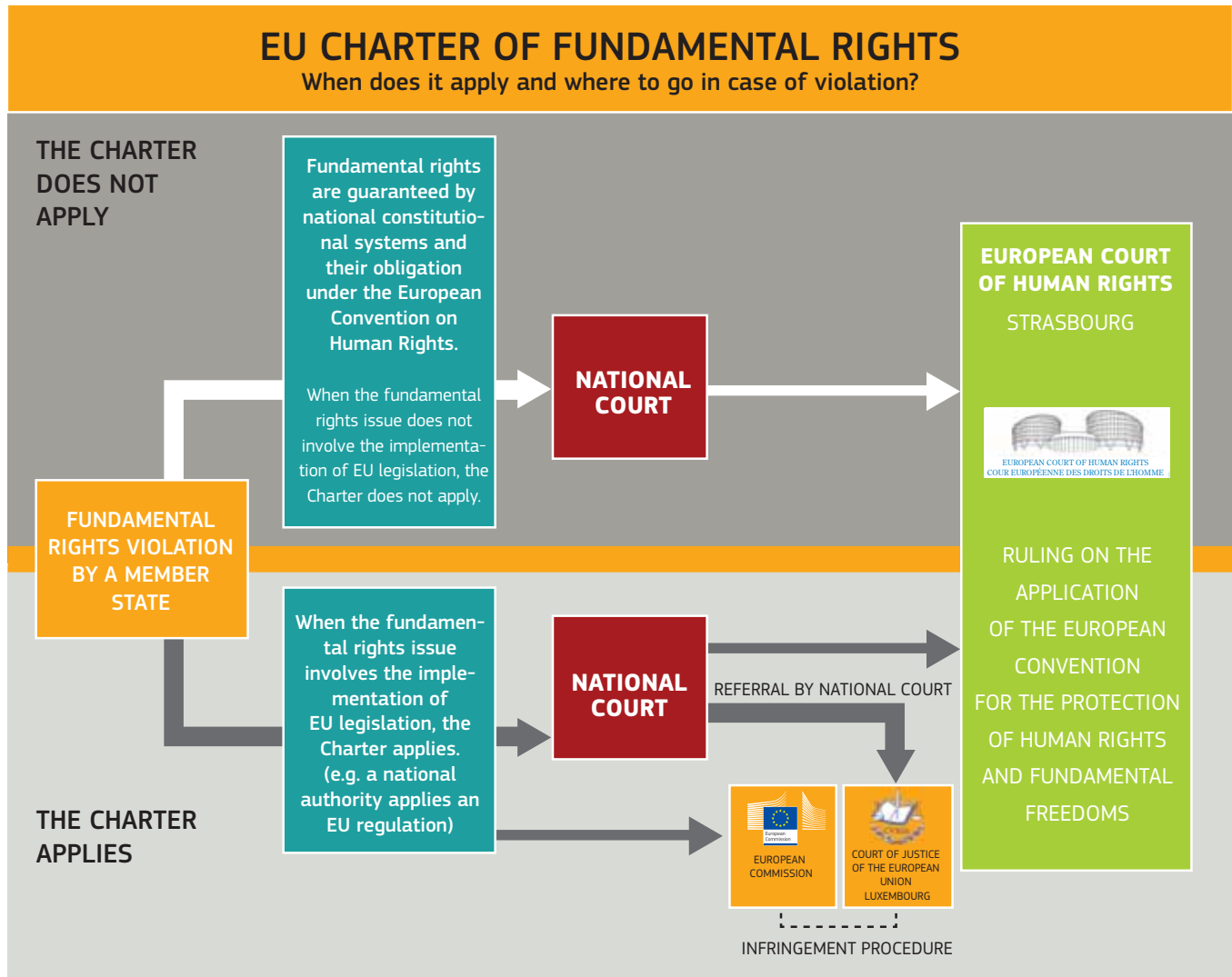
1 Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

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

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 **Court of Justice of the European Union**. 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 Court of Justice. 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 Court of Justice of the European Union, which, subject to certain conditions, has the power to annul such 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, which are guaranteed by national judges and constitutional courts. Accordingly, complaints need to be directed to the national level in the first instance.

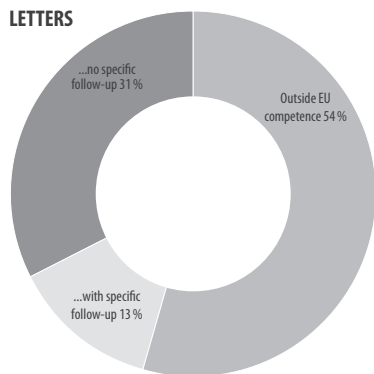
In addition, all EU countries have made commitments under **the European Convention on Human Rights** (ECHR), independently of their obligations under EU law. Therefore, as a last resort and after having exhausted all legal remedies available at national level, individuals may bring an action before 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 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.

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

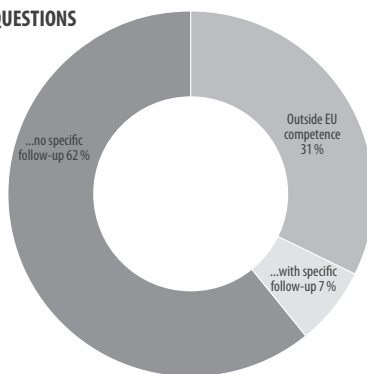
Overview of the letters and questions to the Commission on fundamental rights

Among the **letters from the general public** on fundamental rights issues received by the Commission in 2011, 45% 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 European Court of Human Rights in Strasbourg. Where possible, complainants were redirected to other bodies for more information (such as national data protection authorities).

LETTERS

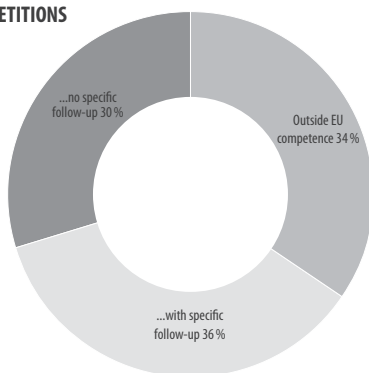


QUESTIONS



Among the **questions and petitions from the European Parliament** approximately 70% 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 ongoing initiatives.

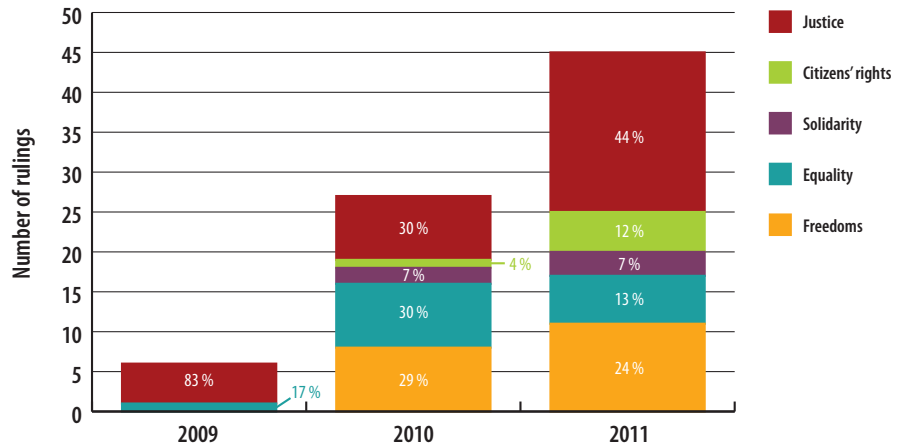
PETITIONS



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

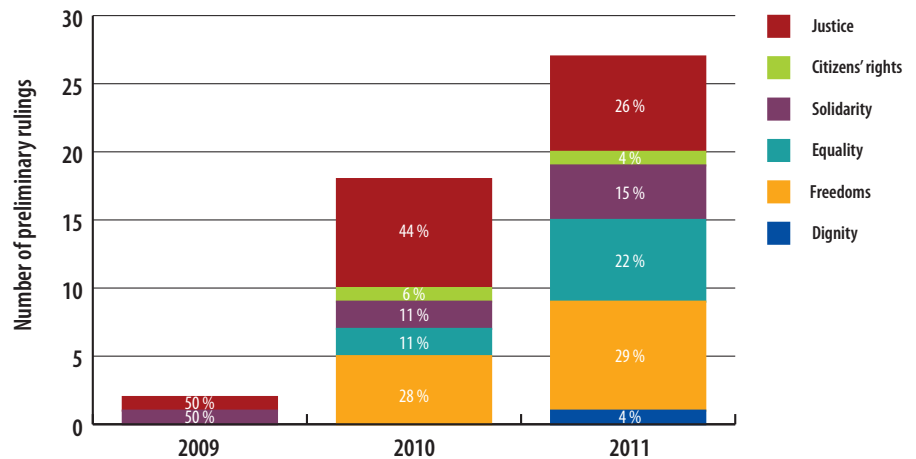
The **Court of Justice of the European Union** has increasingly referred to the Charter in its decisions (see Annex I for an overview of all relevant rulings): the number of decisions quoting the Charter in its reasoning rose by more than 50% as compared to 2010, from 27 to 42.

Overview of ECJ case-law with quotes the Charter of mentions it in its reasoning



National courts when addressing questions to the Court of Justice (preliminary rulings) have also increasingly referred to the Charter: in 2011, such references rose by 50% as compared to 2010, from 18 to 27.

Requests for preliminary rulings by the ECJ with mention the Charter



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. For the last 6 months of 2011, the EDCC replied to 3107 enquiries from citizens on topics such as free movement of persons and judicial cooperation.

**Enquiries received by the Europe Direct Contact Centres
on justice, fundamental rights and citizenship July – December 2011**



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 contains 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 2011;
- Questions and petitions from the European Parliament, and letters from the general public received in 2011 focusing on fundamental rights issues;
- Relevant case-law of the Court of Justice of the European Union;
- Data gathered by the EU Agency for Fundamental Rights throughout 2011.

Human dignity

Right to life

Right to the integrity of the person

Prohibition of torture and inhuman or degrading treatment or punishment

Prohibition of slavery and forced labour

1/

DIGNITY

Dignity

Member States wishing to deploy **security scanners** must comply with minimum conditions set by the new EU rules to safeguard fundamental rights. 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.

The Commission proposed to strengthen the protection of fundamental rights in the **EU rules on border control**, which provide common standards and procedures on controls and surveillance at the external borders of the Schengen area.

The EU adopted new rules on **preventing and combating trafficking in human beings and protecting its victims**. These rules seek to achieve more effective prosecution by national authorities of human traffickers across borders.

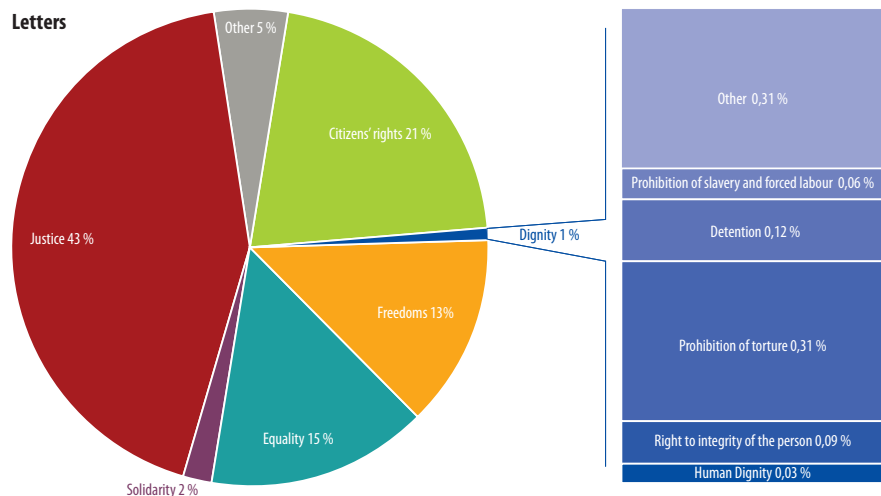
The Court of Justice of the European Union issued a ruling on the **application of EU rules on patents in the area of biomedicine**. The Court considered that researchers cannot declare patents on inventions which imply the destruction of any human cell having the potential of developing into human being, including in the case when human cells are created via therapeutic cloning.

The Court of Justice of the European Union clarified the **conditions for the transfer of asylum seekers in the application of the EU Dublin Regulation**. The Court forbid the transfer of asylum seekers to Member States where there are systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers which would amount to a real risk of the asylum seeker being subject to inhuman or degrading treatment as enshrined in Article 4 of the Charter.

Human dignity

Human dignity is the basis of all fundamental rights. It guarantees the protection of human persons from being treated as a mere object 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.

The European Union strongly opposes the death penalty and has consistently backed its universal abolition, and continues to work towards this goal. In 2011, **the Commission amended⁴ existing EU rules on trade in certain goods which could be used for capital punishment or torture** by imposing export control on certain chemicals which could be used for capital punishment (e.g. sodium thiopental, and other short and intermediate acting barbiturates), by broadening the ban on trade in electric-shock devices (such as electric shock sleeves and cuffs) which have the same impact as electric-shock belts and by imposing an export ban on spiked batons. The Commission has also provided guidance⁵ on the application of EU rules regarding the control of exports to all third countries of chemicals of listed barbiturates (or medicinal products).



4 Commission implementing regulation (EU) No 1352/2011 of 20 December 2011 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, OJ L 338, 21.12.2011, p. 31-34.

5 Commission Staff Working Document, Guidance for application of articles 5 and 6 of Regulation (EC) No 1236/2005 as regards exports of certain medicinal products, SEC(2011)1624 final, 20.12.2011.

The entitlement of passengers to opt out from a security scanner procedure

Member States and airports wishing to deploy security scanners must comply with minimum conditions set by the EU's new rules to safeguard fundamental rights. 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.

Guaranteeing the security of travellers in the field of aviation security includes the use of new technologies that can detect unsafe objects at airports, such as security scanners. Some technologies of security scanners can reveal a detailed display of the human body, including possible medical conditions, and could violate the right to the respect of human dignity which requires that people are treated as subjects and not as objects. The **EU adopted new rules on the use of security scanners⁶ providing an optional use at EU airports of security scanners** that do not use X-ray radiation for screening passengers. The different preparation phases in the adoption of the legislation took into account the impact of different policy options on fundamental rights, in particular on human dignity, private and family life, data protection, the rights of the child, freedom of religion and the prohibition of discrimination. Adopted EU rules reflect this preparatory work and contain safeguards that ensure the legislation is in compliance with the Charter. For example, passengers are entitled to opt out from a security scanner procedure and to be checked by alternative screening methods. In addition, detailed conditions are laid down to ensure that the right to the protection of personal data and private life is respected, for instance, the obligation that security scanners shall not store, retain, copy, print or retrieve images. As far as health considerations are concerned, only scanners that do not use ionising radiation are allowed as a method for screening persons.

The Court of Justice of the European Union referred to human dignity in a **case concerning the patentability of human embryos** created through therapeutic cloning⁷. The Court has pointed out that relevant EU rules emphasise that patent law must be applied so as to respect the fundamental principles safeguarding the dignity and integrity of the person and established EU legislation intended to exclude any possibility of patentability where respect for human dignity could thereby be affected. The Court considered that researchers cannot declare patents on inventions which imply the destruction of any human cell having the potential of developing into human being, including in the case when human cells are created via therapeutic cloning. The Court further specified that researchers cannot declare patents on the use of human embryos for research purposes. This means the researcher cannot ask for a patent on a research method which requires the use of embryos.

The Commission proposed a legal framework for the **research funding programme Horizon 2020**. When preparing its proposal, the Commission paid particular attention to the aspects relating to biomedical research with the use of embryonic stem cells in order to ensure the compliance of the funding programme with the Charter. The Commission submitted its legislative proposal only after making sure that it did not raise concerns from the perspective of the principle of the respect of human dignity (Article 1 of the Charter) and the right to integrity of the person (Article 3 of the Charter). The proposed programme will not finance any research intended to create embryos for the purpose of embryonic stem cell procurement. The proposed

⁶ Commission Regulation 1141/2011 supplementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L 293, 11.11.2011, p. 22-23; and Commission Implementing Regulation N 1147/2011 implementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L 294, 12.11.2011, p. 7-11.

⁷ ECJ, C-34/10, *Brüstle v. Greenpeace*, 18.10.2011.

programme allows the financing of embryonic stem cells research on the condition of an ethical review and checks and only in Member states, where such research is allowed by law and where the legislation establishes appropriate mechanisms of evaluation, control and licensing.

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.

This provision is particularly relevant in the context of implementing **EU rules on border control**, which provide common standards and procedures for controls and surveillance at the external borders of the Schengen area⁸. These rules guarantee respect for the fundamental rights of all travellers. In particular, the **Schengen Borders Code**⁹, which lays down Member States' obligations concerning external border management, provides that border guards must fully respect human dignity, should act in a proportionate manner and should not discriminate against travellers on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Schengen Border Code also specifies that border guards should be properly trained professionals. In 2011, the Commission proposed amendments¹⁰ that further strengthen the protection of fundamental rights by requiring training on the protection of unaccompanied minors and victims of trafficking. The proposal provides third country nationals with full access to international protection in accordance with EU law at joint border crossing points between Member States and neighbouring third countries, operated through bilateral agreements.

The EU borders agency (FRONTEX) plays a key role in coordinating the actions of Member States. In 2011, the EU **amended the rules governing FRONTEX**. The amendments require that all persons participating in border control activities undertake training in fundamental rights, that any incidents during operations, including in relation to fundamental rights, must be reported to the national authorities and followed up, and that FRONTEX develop detailed guidelines on how to treat third-country nationals who are being returned to their home country (building on the best practice guidelines already in place). The tasks of FRONTEX have also been revised, and now include possible assistance to Member States in situations that may involve humanitarian emergencies and rescue at sea. The office of a Fundamental Rights Officer will be created in the Agency to assist in matters having implications for fundamental rights. A code of conduct will set out the fundamental rights standards to be respected during FRONTEX

8 The Schengen area is an area within the EU without border controls. It includes the territories of the Member States that have decided to abolish border controls between them. External borders are borders between the Member States that have joined the Schengen area and non-Schengen Member States or third countries.

9 Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006.

10 Proposal for a Regulation amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Convention implementing the Schengen Agreement, 10.03.2011, COM 2011(118) final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0118:FIN:en:PDF>

operations, and a Consultative Forum on Fundamental Rights will be created involving relevant international organisations and non-governmental organisations. The amendments provide that the Member State hosting a FRONTEX-coordinated operation must provide for appropriate disciplinary or other measures in a case of fundamental rights violations during the course of a joint operation. FRONTEX operations must be suspended or terminated if such violations are of a serious nature or are likely to persist.

The Commission proposed setting up a **European border surveillance system** (EUROSUR)¹¹. The aim of EUROSUR is to reinforce control of Schengen external borders, particularly at the southern maritime and eastern land borders, in order to bring down the number of irregular migrants entering the EU undetected, reduce the loss of lives of migrants at sea and prevent cross-border crime. It aims to do so by allowing national authorities in charge of border surveillance (border guards, coast guards, police, customs and navies) to share and exchange operational information and cooperate with each other, with Frontex and with neighbouring third countries. The proposal guarantees that whenever data sharing includes personal data, the data protection rules apply and must be fully respected. The proposal also explicitly prohibits any exchange of data with a third country who could use this information to identify persons or groups of persons who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of their fundamental rights.

The **Court of Justice of the European Union clarified the conditions for the transfer of asylum seekers in application of the EU Dublin Regulation**. In the ruling **N.S. and others**¹² the Court of Justice considered that Member States, including the national courts, must not transfer an asylum seeker to the Member State indicated as responsible where it is such that they cannot be unaware of systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers amounting to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment. When a transfer to the Member State responsible is impossible, the Member State where the applicant is present must examine whether another Member State can be identified as responsible for the examination of the asylum application or if necessary, examine the application itself.

This case clarifies certain issues within the framework of EU legislation that were raised by the **European Court of Human Rights** in the case **M.S.S. v Greece and Belgium**¹³. The applicant, an Afghan national, entered the European Union through Greece. The application for asylum lodged by the applicant in Belgium was not examined and the applicant was transferred to Greece pursuant to the Dublin Regulation. The Court found violations of Article 3 of the ECHR (prohibition of inhuman and degrading treatments) and Article 13 of the ECHR (effective remedy) both by Belgium and Greece, due to the structural failures of the asylum

11 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>

12 ECJ joined cases C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department and M.E. e.o. v Refugee Applications Commissioner*, 21.12.2011.

13 ECtHR, *MSS v Belgium and Greece*, application no. 30696/09, 21.01.2011.

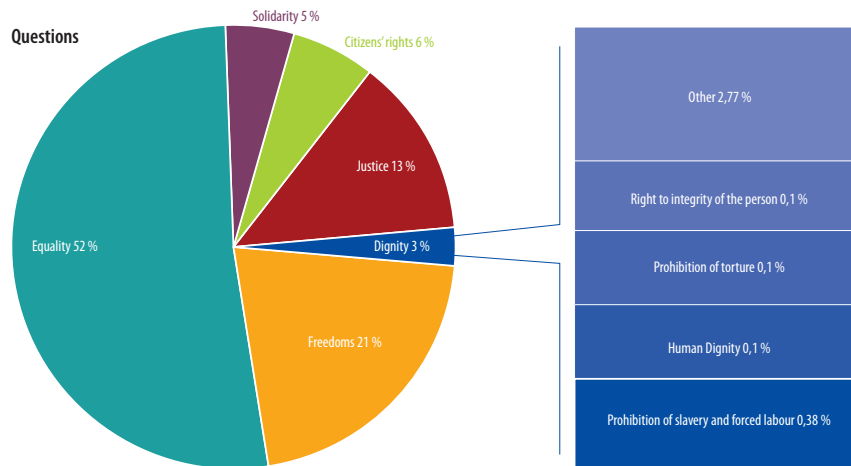
system in Greece (reception conditions, detention conditions, access to the asylum procedure) and the lack of access to effective remedy.

The findings of the Agency confirmed the **serious concerns expressed by the Commission on conditions in which irregular migrants and asylum seekers are being detained in Greece**, in particular in the Evros region, and the humanitarian situation in these places of detention. The Commission reiterated that third-country nationals held in detention for whatever reason should always be treated in a humane and dignified manner and in full respect of fundamental rights. The Commission already took a number of actions in that respect and intervened, by launching an infringement procedure against Greece in 2010, on the inappropriate reception conditions for asylum seekers detained in the Evros region.

The Commission is engaged in substantial efforts towards assisting Greece, together with the Member States, FRONTEX, EASO, UNHCR and other partners. This support combines significant financial and practical assistance for the reform of the national asylum system, border and return management, a more efficient use of the relevant EU funds for migration management and better cooperation with neighbouring countries, in particular Turkey.

Fundamental rights situation of persons irregularly entering the EU's external border between Greece and Turkey

The EU Agency for Fundamental Rights reported on the fundamental rights situation of persons irregularly entering the EU's external border between Greece and Turkey, based on findings of a field study carried out January 2011¹⁴. The Agency's report stressed that conditions in detention centres raise serious concerns for the enjoyment of fundamental rights, including basic problems of over-crowding, and inadequate heating and sanitation facilities. The Agency further identified factors contributing to the current crisis, in particular, the practice of systematically detaining all those found crossing the border irregularly (including children), a lack of coordination in the Evros region, and the inadequate response to the humanitarian crisis, which would warrant the declaration of the state of emergency.



14 EU Agency for Fundamental Rights Report, "Detention of third-country nationals in return procedures", November 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_detention_en.htm

Prohibition of trafficking in human beings

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

The EU Directive on **prevention and combating trafficking in human beings and protecting its victims entered into force in 2011**¹⁵. The Directive takes a human rights and gender-specific approach. It seeks to achieve more effective prosecution by national authorities of human traffickers across borders. It establishes uniform definitions and common standards on sanctions, liability and jurisdiction. The definition of trafficking for the first time explicitly includes forms of exploitation like begging, criminal activities or removal of organs. The Member States must put in place mechanisms for the early identification of victims, as well as for the early provision of support to victims. Victims would also receive free legal counselling and legal representation. Special protection measures are envisaged for child victims, e.g. to protect them from the negative effects of court procedures by defining how to conduct interviews with child victims, or by setting out the rules for extended support to unaccompanied children (see also the section on Rights of the child and the section on newly proposed rules on victims rights). When adopting laws on this issue, Member States must take into account the rights of defence of those accused in criminal procedures.

To further streamline EU actions in the field of trafficking in human beings, the Commission appointed an **EU Anti-trafficking Coordinator**. The Commission also launched a new **EU anti-trafficking website**¹⁶, which includes information on EU and national policy and legislation, Commission funded projects and publications.

15 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.04.2011, p. 1-11.

16 Available at: <http://ec.europa.eu/anti-trafficking>

Right to liberty and security

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

Freedom of expression and information

Freedom of assembly and of association

Freedom of the arts and sciences

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

21

FREEDOMS

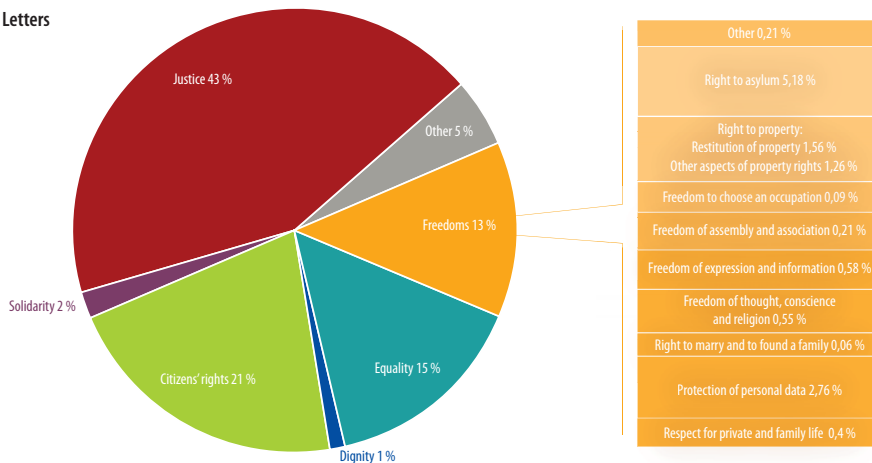
Freedom

The Commission prepared a reform of the EU legal framework on **data protection**. Individuals continue to be concerned about keeping control of their personal data, not only in social networks but in many different areas of their daily life. Negotiations started with the United States on an agreement to protect personal data exchanged in the context of fighting crime and terrorism. The Commission applied the requirement to protect personal data across a range of policies in the preparation of new legislative proposals.

The **Common European Sales Law** proposed by the Commission would facilitate the exercise of the freedom to conduct a business by removing obstacles resulting from divergences between national contract laws.

Citizens and Members of the European Parliament voiced concern over the **respect of freedom of expression and media freedom and pluralism**. The High Level Group on Media Freedom and Pluralism created by the Commission will draw recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe.

Letters



Respect for private and family life

The Charter guarantees the right of everyone to the respect of their private and family life. EU free movement rules recognise the right to family life for all EU citizens who move and reside in another Member State as well as for third-country nationals who are member of the family of an EU citizen.

The Commission launched a **public debate on the right to family reunification of third-country nationals living in the EU**¹⁷. The outcome of this consultation will shape whether any concrete policy follow up is necessary (e.g. modification of the rules, interpretative guidelines or status quo).

The Commission proposed **new regulations on matrimonial property regimes and on property regimes for registered partnerships**¹⁸. 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.

Data protection

The **Charter guarantees the protection of personal information**. Everyone has the right to the protection of their personal data. Such data must be processed fairly for specified purposes and on a legitimate basis laid down by law. In the European Union, compliance with these rules is subject to control by independent authorities in Member States.

The Commission took concrete steps to update **EU rules on data protection** in 2012, based on the numerous replies it received during the consultation process carried out in 2011.

The **Court of Justice of the European Union** declared in its landmark **Scarlet ruling**¹⁹ that obliging an internet service provider to install a filtering system such as the one at stake in order to prevent an infringement of intellectual property rights would infringe the freedom of the provider to conduct its business, as well as its customers' rights to the protection of their personal data and to receive or impart information. The contested filtering system would not respect the requirement that a fair balance be struck between the right to intellectual property, on the one hand, and the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information, on the other. In particular, concerning the

German Youth Welfare Office (Jugendamt)

In November 2011, the European Parliament's Petitions Committee carried out its second fact-finding visit to Germany to enquire about the functioning of the German Youth Welfare Office (*Jugendamt*). According to the complainants and petitioners the Welfare Office's decisions and interventions allegedly discriminate against non-German parents, for example, by obliging non-German parents to communicate with their children only in German during visits supervised by the Welfare Office. The findings of the fact-finding mission have not yet been made public.

17 Public consultation by the Commission on the right to family reunification, available at: http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm

18 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

19 ECJ, Case C-70/10, *Scarlet v SABAM*, 24.11.2011.

protection of personal data such filtering system may infringe that right as it would involve a systematic analysis of all content and the collection and identification of users' IP addresses from which unlawful content on the network is sent; those addresses are protected personal data because they allow those users to be precisely identified. This ruling underlines the importance of taking into account all the fundamental rights involved by a given measure and to ensure its compliance with all these rights.

The **Court of Justice of the European Union** provided **guidance on the interpretation of the provision in EU law on the processing of data**²⁰. The Court confirmed that the provision on the criteria which make data processing legitimate has direct effect before national courts. The Court further ruled that this provision provides an exhaustive list of legitimate legal basis for a processing activity upon which Member States cannot impose additional requirements.

Several data protection supervisory authorities in Member States concluded the investigations launched in 2010 into **social networking sites**. Many investigations had been triggered by complaints launched after the change of the privacy policies by social network providers. With these changes the social networking sites took the liberty of making broader use of the personal data it had collected under more restrictive policies. The social networking sites had not given users full information about the change, and had not obtained their consent. Furthermore, new features introduced in the meantime on one particular site caused new complaints and further investigations. This concerns a new function allowing the automatic identification of persons in photos uploaded to the site (facial recognition) and the use of cookies and web scripts to collect data about user behaviour, e.g. with the help of the so-called 'Like-Button', without the user's knowledge and control.

The Irish Data Protection Commissioner, who is the competent supervisory authority to monitor the application of EU data protection rules, **received a complaint against a social network from an Austrian non-governmental organisation which had prepared 22 elaborate charges on privacy violations**. The investigation also included on-site audits at the premises of the social network site in Ireland, the headquarters of the company managing the site. The Irish Data Protection Commissioner published its audit report on 22 December 2011. The report contains a number of observations and corresponding recommendations for improvements of the privacy policies and functions of the social network site in question. They concern for instance issues such as privacy related information which is not complete, not clear and difficult to understand, excessive retention of data and the lack of effective possibilities for the users to delete their data from the site. The social networking site agreed to implement some of the recommendations. The Irish Data Protection Commissioner will review progress in July 2012.

Geo-location service providers were also subject to investigations. A notable example is the agreement reached by the Dutch data protection authority with a provider, by which a technical

²⁰ ECJ, Joined Cases C-468/10 and 469/10, *Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) et Federación de Comercio Electrónico y Marketing Directo (FECEMD) v. Administración del Estado*, 24.11.2011.

solution was established which allows citizens and organisations that operate wireless LAN access points to ensure that these access points will not be used for location service. The solution is expected to be scrutinized by other service providers and privacy authorities' world wide.

The **Commission continues to monitor the situation in the Member States**, where doubts exist about the compliance of national rules with EU rules on data protection. In 2011, the Commission dealt with thirteen infringement cases for alleged violation of EU laws on data protection. Four infringement cases concerned Finland and were closed after Finland notified the Commission that it had repealed the offending legislative provision which had been restricting the scope of its national data protection legislation. One infringement case was closed against the United Kingdom, further to the clarifications made on the compliance of its national legislation with EU rules on data protection.

The European Commission evaluated the implementation and application of **EU rules on Data Retention** and outlined its impact on economic operators and consumers as well as its implications on the protection of fundamental rights and freedoms vis-à-vis the protection of personal data. The report concluded that, on the one hand, data retention is a valuable tool for law enforcement purposes. On the other hand, the report identified areas that need to be improved following the uneven transposition of the rules by Member States. In particular, the Commission should ensure more harmonisation in specific areas, such as: the measures ensuring the respect for fundamental rights and freedoms, including the data retention periods, the purpose limitations, as well as the necessary safeguards to access retained data and protect personal data.

The European Commission opened **negotiations with the United States on an agreement to protect personal data exchanged in the context of fighting crime and terrorism**, on 28 March 2011. The European Commission aims to ensure a high level of protection of personal data exchanged between the EU and the US. The Council gave its green light for the conclusion of the new EU-Australia Passenger Name Record agreement which will replace the agreement in place since July 2008. The Council also gave its green light for the signature of the new EU-US Passenger Name Record agreement which will replace the existing one – provisionally applied since 2007 – improving data protection whilst providing an efficient tool to fight serious transnational crime and terrorism. The European Parliament has been asked to give its consent to the US agreement, which is necessary before the Council can adopt its decision on the conclusion of the agreement.

The **European Commission presented a proposal for an EU Passenger Name Record Directive**²¹ to fight serious crime and terrorism, in February. The proposal obliges air carriers to provide EU Member States with data on passengers entering or departing from the EU.

21 Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, COM(2011) 32 final, 2.2.2011. Available at: http://ec.europa.eu/home-affairs/news/intro/docs/com_2011_32_en.pdf

In this proposal, the Commission lays down common rules for EU Member States to set up national PNR systems. The proposal aims to create a coherent EU wide system which ensures close cooperation between law enforcement authorities within the EU. It contains rules on the protection of personal data involving a number of safeguards for the protection of personal data. Upon request of the European Parliament, which is discussing the Commission's proposal and preparing a report on it, the **EU Agency for Fundamental Rights** presented an expert opinion on the proposal²².

The Commission adopted a **Communication on a European terrorist finance tracking system**²³ ("**European TFTS**") presenting the different options on the possible introduction of such a system as a follow-up to the agreement signed between the EU and the US on the processing and transfer of financial messaging data for the purpose of the Terrorist Financing Tracking Programme on 28 June 2010. The Commission specified in its analysis that the European TFTS should have two main objectives. First, the system should contribute to limiting the amount of personal data transferred to the US. Second, it should contribute significantly to efforts to cut off terrorists' access to funding and materials and follow their transactions. The Commission further indicated that the key issues which need to be decided upon before such a system can be established. This includes the need to fully respect the fundamental rights of individuals, in particular data protection (Article 8 of the EU Charter) and judicial redress (Article 47 of the Charter), data security issues, the operational scope of the system, as well as costs. To that end, the Commission has indicated that it will follow the guidance provided in the strategy for the effective implementation of the Charter of Fundamental rights for the evaluation of the different options considered.

The Commission applied the requirement to protect personal data across a range of policies. In this regard, the Commission proposal for a regulation on insider dealing and market manipulation (market abuse)²⁴ makes it clear that any processing of personal data carried out by financial supervisory authorities will have to comply with EU rules on data protection. Similar provisions are also included in the proposals for a regulation on statutory audit of public-interest entities, and markets in financial instruments.

In the area of **recognition of professional qualifications in medical and health professions**²⁵, the Commission proposed to introduce an alert mechanism on professionals who have been prohibited by national authorities or courts from pursuing their profession, even

22 Opinion of the EU Agency for Fundamental Rights on the Proposal for a Directive on the use of Passenger Name Record (PNR) data Available at: http://fra.europa.eu/fraWebsite/research/opinions/op-passenger-name-record_en.htm.

23 Communication from the Commission on a European terrorist finance tracking system, COM(2011) 429 final.

24 Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) criminal sanctions for insider dealing and market abuse, COM (2011) 654 final, available at: http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf

25 Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System, COM(2011) 883 final, available at: http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/COM2011_883_en.pdf

temporarily, on the territory of that Member State. The proposal requires specific conditions to be fulfilled for issuing alerts, including the obligation to inform the individual concerned at the time of issuing the alert so as to enable him to make an appeal to national courts against the decision or apply for rectification of such decisions and to have access to remedies in respect of any damage caused by false alerts to other Member States.

The Commission adopted a **communication on smart grids** which sets policy directions to drive forward the deployment of future European electricity networks²⁶. Smart meters, which are an inherent part of a smart grid, and which record the consumption of electric energy and communicate that information to the consumer, to the grid operator and energy supplier will be installed in each household following a positive cost benefit analysis in all EU Member States. The communication recognizes that consumer privacy and the protection of personal data need to be addressed to gain the consumer's trust and make the rolling out of smart grids a success for all stakeholders.

In the area of **consumer protection enforcement cooperation**, the Commission adopted guidelines²⁷ for the implementation of data protection rules in the Consumer Protection Cooperation System (CPCS)²⁸ in order to ensure that these rules are respected when personal data is processed through the CPCS.

The **Visa Information System (VIS) started operations in Schengen States' consulates in North Africa** on 11 October 2011. With this system, Schengen State's visa authorities will be able to register data on short-stay visa applicants, including their digital photograph and fingerprints, and on the decisions taken on the applications or subsequently. The duly authorised staff of the border, asylum, and immigration authorities will also have access to the VIS for the performance of their task. At a later stage, Europol and Schengen States' authorities responsible for the prevention, detection and investigation of terrorist or other serious criminal offences will be able to request access to data registered in the VIS under restrictive conditions. Data processing in the VIS is subject to specific data protection rules. Any person has the right to receive the data related to him/her registered in the system, to request the correction of inaccurate data, and to request the deletion of data recorded unlawfully as well as to lodge a complaint with the national data protection authorities in order to ensure the respect of his/ her rights. The European Data Protection Supervisor and Member States data protection authorities are competent to supervise the compliance with data protection rules applicable.

26 Commission Communication: Smart Grids: from innovation to deployment, COM (2011) 202 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0202:EN:HTML:NOT>

27 Commission Recommendation 2011/136/EU on guidelines for the implementation of data protection rules in the Consumer Protection Cooperation System (CPCS), OJ L 57, 2.3.2011, p.44 – 53.

28 The aim of the CPCS is to enable public enforcement authorities – which are part of the EU-wide network established by Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) – to exchange information on possible breaches of consumer protection laws within a safe and secure environment.

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.

Revision of the Hungarian Media Law

Following the Commission's intervention, using the full extent of its legal powers, the Hungarian government agreed to amend its national media law so that it complies with the concerns raised by the Commission on four points that concern EU law, namely: i) the obligation of balanced coverage, ii) country of origin principle, iii) registration requirements and iv) offensive content. In taking this action the Commission acted in line with the Treaty by focusing its intervention on areas subject to EU law. National courts and, if necessary, the European Court of Human Rights, could review issues of national competence.

A further examination of the Law by the Hungarian Constitutional Court introduced further amendments as regards the provisions which unconstitutionally limited freedom of expression of the written press. This concerned inter alia limitations to the protection of sources, restrictions on content for the written press and the provisions on the Media Ombudsman. The Commission urged the Hungarian authorities to respect this court ruling, and to implement it with the same speed and efficiency they applied to the Commission's assessment on the EU law aspects of this media law²⁹.

Members of the European Parliament addressed the issue of **media freedom, pluralism and independent governance** in several questions to the Commission. The Commission replied that media pluralism is an essential condition for preserving the right to information and freedom of expression that underpins the democratic process. In this respect, the Commission created a **High Level Group on Media Freedom and Pluralism**. The objective of this independent group, chaired by the former President of Latvia (Professor Vaira Vīķe-Freiberga), is to draw up a public report with recommendations for the respect, protection, support and promotion of pluralism and freedom of the media in Europe. The Commission has also initiated a Centre for Media Pluralism and Media Freedom within the Robert Schuman School of the European University Institute to reflect and advise on the underlying issues.

The Commission received parliamentary questions and letters from citizens in relation to an Italian draft law on the use of wiretapping, which allegedly contained sanctions in the event of publication in the media of information obtained through taps. There is no EU legislation harmonising the use of wiretapping in the framework of investigations and criminal proceedings. The data protection directive provides for a derogation for the processing of personal data carried out solely for journalistic purposes only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression³⁰. The compatibility of the draft law with these provisions would have to be ensured, if the draft law would come before the Italian parliament for adoption.

In its landmark **Scarlet**³¹ ruling (see section on data protection), the **Court of Justice of the European Union** found that obliging an internet service provider (ISP) to install the contested filtering system could potentially undermine freedom of information since that system might not distinguish adequately between unlawful content and lawful content, with the result that its introduction could lead to the blocking of lawful communications. The reply to the question whether a transmission is lawful also depends on the application of statutory exceptions to copyright which vary from one Member State to another. Moreover, in some Member States certain works fall within the public domain or can be posted online free of charge by the authors concerned.

29 Vice-President Kroes has expressed her concerns both in letters to the Hungarian authorities and in a bilateral meeting with the responsible Minister of Justice. Ruling of the Hungarian Constitutional Court, 19 December 2011, 1746/B/2010, available at: www.mkab.hu/admin/data/file/1146_1746_10.pdf

30 Article 9 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1996 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

31 ECJ, Case C-70/10, *Scarlet v SABAM*, 24.11.2011.

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 freedom to conduct a business was taken into account in different areas of EU policy, including: new legislation on market in financial instruments, insurance mediation, credit ratings Agency³² and on recording equipment for road transport (tachographs)³³.

The freedom to conduct a business was also a key consideration in the preparation of the **Common European Sales Law**³⁴ proposal aimed at removing obstacles resulting from divergences between national contract laws. This Commission proposal offers a single set of contract law rules which businesses can choose to apply to any of their cross-border transactions throughout the EU. For example, the Common European Sales Law could be used when companies feel that differences in contract laws, such as remedies for faulty products, create considerable costs and are an important barrier to their sales to another country.

The negotiations in the European Parliament and in the Council on the proposed amendments to EU rules **on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters continue**³⁵. If these amendments are adopted judgements issued in another Member State in civil and commercial matters will be treated like domestic judgements. This would in effect make cross-border litigation much less cumbersome, time-consuming and costly than it is today. 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.

Negotiations in the European Parliament and in the Council on the **amendments to EU rules for protecting information systems against attacks continue**. The Council adopted a general approach on the proposal in 2011 and the European Parliament is expected to vote on it in early 2012. The amendments propose making the use of tools for committing offences and the illegal interception of information systems a crime and improving European criminal

32 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) n°1060/2009 on credit rating agencies, COM(2011) 747 final, available at: http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_747_en.pdf
Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings, COM(2011) 746 final, available at: http://ec.europa.eu/internal_market/securities/docs/agencies/COM_2011_746_en.pdf

33 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) n° 561/2006 of the European Parliament and the Council, 2011/0196 (COD), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0451:FIN:EN:PDF>

34 Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law, COM(2011) 635 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>

35 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

justice and police cooperation. They also contain measures on the storage of data and the exchange of data between law enforcement agencies, which are in compliance with EU data protection rules. The strengthening of the penalisation of the production, sale, procurement for use, import, distribution or otherwise making tools for cyber attacks available was worded carefully in order not to criminalise lawful behaviour, such as the use of these tools by ICT security companies to test the effectiveness of their products or by organisations and competent authorities to test and ensure the security of networks and information systems under their responsibility. Criminalisation of such acts would violate the freedom to conduct a business, enshrined in the Charter.

In its landmark **Scarlet ruling** (see section on data protection), the **Court of Justice of the European Union** found that obliging an internet service provider (ISP) to install a filtering system such as the one at stake would result in a serious infringement of the freedom of the ISP concerned to conduct its business since it would require that ISP to install a complicated, costly, permanent computer system at its own expense. The Court noted in particular the characteristics of the contested filtering system involved monitoring all the electronic communications made through the network of the ISP concerned in the interests of those right holders, it had no limitation in time, was directed at all future infringements and was intended to protect not only existing works, but also future works that had not yet been created at the time when the system was introduced.

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 Commission adopted a comprehensive strategy to review the legal framework in which **Intellectual Property Rights** operate³⁷. The Commission announced that such review will require assessing the impact, not only on the right to property, but also on the rights to private life, protection of personal data, freedom of expression and information and to an effective remedy and it underlined that it will ensure that its proposal complies with all the fundamental rights involved.

In its landmark **Scarlet ruling** (see section on data protection) relating to the injunction for an internet service provider to install a filtering system, the **Court of Justice of the European Union** declared that the protection of the right to intellectual property is enshrined in Article 17(2)

Cross-border debt recovery in civil and commercial matters

The Commission proposed legislation to facilitate **cross-border debt recovery in civil and commercial matters**³⁶. The proposal will establish a new uniform European procedure which will enable a creditor to prevent the withdrawal or transfer of monies standing to the credit of his debtor in any bank account located in the EU. The order will be of a protective nature i.e. it will only block the debtor's account. The procedure ensures both the right of a creditor to secure effective enforcement of

36 Proposal for a Regulation of the European Parliament and of the Council Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters, COM(2011) 445 final, available at: http://ec.europa.eu/justice/civil/files/comm-2011-445_en.pdf

37 Communication from the Commission: A single market for intellectual property rights boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, COM(2011) 287 final, available at: http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf

of the Charter but there is, however, nothing in the wording of that provision or in the Court's case-law to suggest that that right is inviolable and must for that reason be absolutely protected. The Court added that in the context of measures adopted to protect copyright holders, national authorities and courts must strike a fair balance between the protection of copyright and the protection of the fundamental rights of individuals who are affected by such measures.

its claim and the protection of the defendant's rights, particularly the right to redress, privacy and to data protection.

The European Commission presented a proposal for a **unitary patent protection**. This proposal, which was introduced through the special voluntary procedure (so-called "enhanced cooperation") would ensure that holders of European patents can apply for one single patent protection at the European Patent Office (EPO) for the entire territory of the 25 participating Member States.

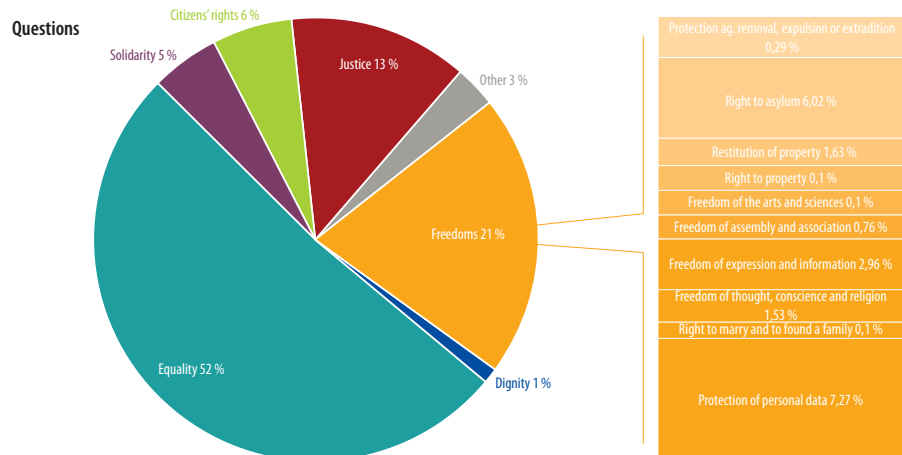
The Commission has been in contact with the Spanish authorities in view of the number of complaints received from non-Spanish citizens on the **Spanish coastal law**. This legislation aims to protect the coast from abusive constructions. It applies to private projects which run the risk of being demolished as they are located in areas regulated by the coastal law. It resulted from the Commission's assessment that the enforcement of the Spanish coastal law affects both Spanish nationals and nationals from other Member States.

The European Parliament continued to pay attention to the application of the Spanish coastal law. In particular the Petition's Committee dealt with a number of petitions filed by affected proprietors. In addition, a seminar on property rights in the EU was organized in the European Parliament³⁸.

The Spanish coastal law does not provide for a *financial compensation* for the property loss resulting 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 Commission has no power to address the adequacy of this compensation mechanism as a sufficient connection with EU law has not been identified. The question of whether this special form of compensation is in line with the case law of the European Court of Human Rights should be examined by national courts and, after having exhausted domestic legal remedies, by the Strasbourg Court itself.

³⁸ "EU Property Rights and Wrongs", Seminar organized by ALDE MEPs Diana Wallis and Ramón Tremosa I Bacells, 14 June 2011.

The *provision of appropriate information* to all interested parties throughout the chain of parties involved (cadastre, notaries, real estate services, etc.) is crucial, in particular for EU citizens having exercised the right to free movement across the EU and having transferred funds to acquire property potentially affected by the coastal law. The interconnection of land registers across the EU, such as through the European Land Information Service (EULIS), can contribute to improving the situation in that respect. The Commission will intensify its efforts in the Council working party on e-Law (e-Justice) so that the European e-Justice portal provides access to land information stored in land registers of the different Member States of the EU.



Right to asylum

The right to asylum is guaranteed by the Charter.

New rules were adopted on standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted. The new provisions of the Qualification directive need to be transposed into national law within two years³⁹. The amendments set standards for the identification of people in need of international protection in the EU either as refugees or as beneficiaries of subsidiary protection. The text also ensures a minimum level of benefits and rights for both categories of beneficiaries of international protection throughout the EU. Member states that wish to do so can provide for more favourable rules for beneficiaries of international protection.

³⁹ Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, PE-CONS 50/11, available at: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00050.en11.pdf>

Negotiations continued in the European Parliament and the Council to amend some of the existing rules of the **Common European Asylum System**, with the aim of ensuring higher standards of protection and a more uniform treatment of asylum seekers in Member States. The Commission presented modified proposals on reception conditions for asylum seekers⁴⁰ as well as on asylum procedures⁴¹. The proposals aim to reduce room for administrative error in asylum procedures, thus ensuring a better respect for the principle of *non-refoulement*. If adopted, the new rules will contribute to enhancing gender equality and promoting the best interests of the child principle in the asylum procedures and, in addition, to reinforcing the principle of non-discrimination. The right to liberty will also be enhanced in particular by underlining that a person shall not be detained for the sole reason that he/she has registered an application for international protection; similarly, it is foreseen that detention should only be allowed in exceptional cases and only if it is in line with the principles of necessity and proportionality with regard both to the manner and to the purpose of such detention. Access to an effective remedy is also ensured.

The **European Asylum Support Office** (EASO) became fully operational. Its legal basis foresees that the EASO must respect fundamental rights and observe the principles recognised by the EU Charter. In particular, EASO's missions must be carried out in accordance with the right to asylum. The first EASO asylum support teams were deployed in Greece in May 2011. The support teams will provide expertise relating to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases. The aim is to support the establishment of a functioning asylum system in Greece and to ensure full compliance with fundamental rights in the implementation of EU asylum legislation.

Protection in the event of removal, expulsion or extradition

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

The Commission published a **large scale evaluation of the negotiation and conclusion of readmission agreements by the Union**⁴². These are treaties which establish obligations, criteria and procedures for third countries to readmit their own nationals, found to reside irregularly in a Member State, as well as stateless persons and nationals of other third countries,

40 Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast), COM(2011) 520 final, available at: <http://eurlex.europa.eu/Notice.do?val=574273:cs&lang=en&list=577916:cs,574273:cs,&pos=2&page=1&nb1=2&pgs=10&hwds=&checktexte=checkbox&visu=#texte>

41 Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast), COM(2011) 319 final, available at: <http://eurlex.europa.eu/Notice.do?val=574274:cs&lang=en&list=574274:cs,&pos=1&page=1&nb1=1&pgs=10&hwds=&checktexte=checkbox&visu=#texte>

42 Communication from the Commission: Evaluation of EU Readmission Agreements, COM(2011) 76 final, available at: http://ec.europa.eu/home-affairs/news/intro/docs/COMM_PDF_COM_2011_0076_F_EN_COMMUNICATION.pdf

who have transited through their territory on the way to the European Union. A considerable number of recommendations came out of the Commission's evaluation, including with regard to the further strengthening of fundamental rights protection and the international protection of refugees during readmission procedures. Amongst other measures, the Commission argued the necessity of introducing provisions that commit to respecting fundamental rights, especially in consideration of third countries which are not party to the relevant international conventions. In case of persistent human rights violations in a third country in general, the Commission would be in favour of a possibility of suspending the agreement. Also, the Commission announced its intention of launching a pilot project, aimed at monitoring the wellbeing of persons after they have been readmitted to a third country, with a view to establishing a so called "post-return monitoring mechanism".

The Court of Justice of the European Union delivered two rulings on the **compatibility of criminalising irregular stays under national law with the EU rules on return of irregular migrants**⁴³. The Court 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.

The **EU Agency for Fundamental Rights** issued a report on the **detention of third-country nationals in return procedures**⁴⁴. This report examined law and practice on the deprivation of liberty of irregular migrants pending their removal against the applicable international human rights law framework in all EU Member States.

43 ECJ, Case C-61/11, *El Dridi*, 28.4.2011 & Case C-329/11, *Achughbadian*, 6.12.2011.

44 EU Agency for Fundamental Rights Report, "Detention of third-country nationals in return procedures", November 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_detention_en.htm

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

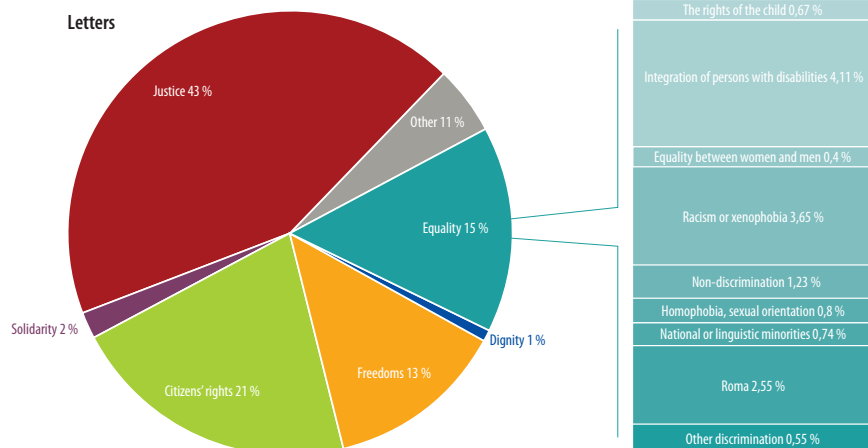
Equality

Major progress has been achieved on the development of a common EU approach in tackling the exclusion of **Roma**. Member States supported the Commission's proposal for an EU Framework for national Roma integration strategies up to 2020. Four priority fields of integration have been identified: education, employment, health and housing.

The Commission adopted an **EU Agenda on the Rights of the Child**, which sets out priorities and key actions to make these rights effective in practice. New EU rules on combating the sexual abuse and sexual exploitation of children and child abuse material have been adopted that will make it easier to fight crimes against children.

The EU is bound by the **UN Convention on the Rights of Persons with Disabilities** 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 in its policy-making, to the extent of its competence.

Citizens, members of the European Parliament and civil society representatives expressed concern about various forms and manifestations of **xenophobia**. Racism, xenophobia and related intolerance are contrary to EU principles of human dignity, equality and respect for fundamental rights, including the rights of persons belonging to minorities.



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 have continued on the **Commission's proposal for new rules on Equal Treatment**⁴⁵. The discussions in the Council focussed on provisions on the duty to provide reasonable accommodation for people with disabilities⁴⁶ and the issue of age. In accordance with the EU Treaty, unanimity is required in the Council to adopt the new rules on Equal Treatment. While many Member States generally support the draft Directive, a few other Member States continue to voice more fundamental objections.

The **EU Agency for Fundamental Rights reported on the exclusion and discrimination of migrants, minorities in employment**⁵⁰. The Agency reported that the total number of complaints of discrimination has increased as a direct consequence of the implementation of the Equality Directives in the EU Member States. However, according to the Agency's findings there are still barriers for victims that need to be overcome.

In another report, the **EU Agency for Fundamental Rights examined the legal protection of persons with mental health problems under non-discrimination law**⁵¹. According to the report's findings almost all EU Member States provide for the protection of persons with mental health problems in non-discrimination legislation. In most cases persons with mental health problems also benefit from reasonable accommodation measures, or other protection measures, in the employment context. The report concludes by presenting examples where legislation extends the duty to provide reasonable accommodation to other areas.

The **Court of Justice of the European Union** declared invalid as from 21 December 2012 a derogation contained in EU gender equality legislation⁴⁷ that enables insurers under certain conditions to differentiate between men and women in individuals' premiums and benefits⁴⁸. The derogation was found incompatible with the objective of that piece of legislation in the insurance field which concerns unisex pricing, and therefore with Articles 21 and 23 of the Charter. On 22 December 2011, the Commission issued guidelines⁴⁹ aimed at facilitating the implementation of the ruling at national level.

45 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>

46 Reasonable accommodation means ad-hoc measures to accommodate a disabled person's individual needs (as opposed to accessibility which needs to be provided in an anticipatory manner).

47 Article 5(2) of Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 of 21.12.2004.

48 ECJ, Case C-236/09, *Test-Achats*, 30.4.2011

49 Communication from the Commission: Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (*Test-Achats*), COM(2011) 9497 final, available at: http://ec.europa.eu/justice/gender-equality/files/com_2011_9497_en.pdf

50 EU Agency for Fundamental Rights Report – "Migrants, minorities and employment Exclusion and discrimination in the 27 Member States of the European Union (Update 2003 2008)", July 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_migrants-minorities-employment_en.htm

51 EU Agency for Fundamental Rights Report – "The legal protection of persons with mental health problems under non-discrimination law", October 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-legal-protection-persons-mental-health-problems_en.htm

European Agenda for the Integration of Third-Country Nationals

Strong guarantees for the **fundamental rights of migrants** as well as the need for a positive attitude to diversity and equal treatment are promoted in the “European Agenda for the Integration of Third-Country Nationals”, which the Commission presented on 20 July 2011.⁵² Efforts to fight against discrimination and to give migrants instruments to become acquainted with the fundamental values of the EU and its Member States need to be strengthened.

Common EU framework for tackling the exclusion of Roma

The EU made a major step forward in **promoting the social and economic integration of Roma** with the Commission’s communication on the “EU framework for national Roma integration strategies up to 2020”⁵³. This EU Framework calls upon Member States to prepare or revise their national Roma integration strategies in the light of the EU goals defined in the framework, and to present them to the Commission by the end of December 2011. The EU Framework was also endorsed by the European Council⁵⁴ and welcomed by the European Parliament.

Commitment to apply the prohibition of discrimination on the ground of sexual orientation in practice

Homophobia is an unacceptable violation of human dignity that is incompatible with the founding values of the EU⁵⁵. The Commission is using all the powers at its disposal to fight against such phenomena. In particular, the Commission followed-up petitions and parliamentary questions on discriminatory practices on grounds of sexual orientation, when they concerned matters falling within EU competence. One case concerned the refusal of Polish authorities to issue certificates on civil status to citizens who wish to marry or conclude a registered partnership with a person of the same sex in a Member State where this is possible.

The Commission intervened with the Polish authorities on the basis that this practice is incompatible with the respect of private and family life (Art. 7 of the Charter), the prohibition of non-discrimination on the basis of sexual orientation (Art. 21 of the Charter) and EU rules guaranteeing free movement and residence. Further to the Commission’s intervention, the Polish authorities informed that steps would be undertaken to abolish the practice of asking the sex of the future spouse or partner.

Medical test to assess asylum applications based on allegations of persecution on grounds of sexual orientation

A report from the EU Agency for Fundamental Rights revealed the use by the Czech authorities of a specific medical test in order to assess asylum applications based on allegations of persecution on grounds of sexual orientation in the country of origin⁵⁶.

The Commission intervened against the practice of “phallometric testing”⁵⁷ on the basis of its incompatibility with EU instruments regarding the grant of international protection and notably the Charter, in particular Articles 4 and 7,

52 Communication from the Commission: European Agenda for the Integration of Third-Country Nationals, COM(2011) 455 final, available at: http://ec.europa.eu/home-affairs/news/intro/docs/110720/1_EN_ACT_part1_v10.pdf

53 Communication from the Commission: An EU Framework for National Roma Integration Strategies up to 2020, COM(2011) 173 final, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf

54 European Council Conclusions, 24 June 2011, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/123075.pdf

55 Statement of Vice-President Viviane Reding on the International Day Against Homophobia and Transphobia (IDAHO), available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/303&format=HTML&aged=0&language=EN&guiLanguage=en>

56 EU Agency for Fundamental Rights Report, “Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity 2010 Update”, November 2010, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub-lgbt-2010-update_en.htm

57 The practice of ‘phallometric testing’ consists of verifying the physical reaction to heterosexual pornographic material of gay men who have filed a claim for asylum on the basis of homosexual orientation.

New EU rules on asylum qualification (see Protection in the event of removal, expulsion or extradition) strengthen the reasons of protection when granting the refugee status to Lesbian, Gay, Bi-sexual and Transgender (LGBT) persons and introduce an explicit reference to gender identity as a protected ground for the first time.

The **Court of Justice of the European Union** confirmed in a ruling on equal treatment for married couples and registered partners that a registered partner in a same sex German life partnership was entitled to receive a supplementary retirement pension under an occupational pension scheme in the same way a married partner is. The Court stated that this applied if the life partner is in a situation that is legally and factually comparable to that of a married person as regards pensions⁵⁸.

The **Commission asked the EU Agency for Fundamental Rights to conduct a specific survey on hate crimes and discrimination against LGBT persons** in all Member States and Croatia. The survey will complement existing studies published by the Agency⁵⁹ and ask in particular LGBT persons a series of questions about whether they have experienced discrimination, violence, verbal abuse or hate speech on the grounds of their sexual orientation or gender identity. It will also ask participants to identify the context in which such incidents took place, and their nature.

In addition, the Strategy on equality between women and men 2010-2015 foresees a study on specific issues pertaining to **sex discrimination in relation to gender identity**. The work for launching this study has been completed. When the results of this study are available, the Commission will look at the appropriate follow-up.

How are the rights of persons belonging to minorities safeguarded in the EU?

The **respect for the rights of persons belonging to minorities** is one of the founding values of the European Union, and is explicitly mentioned following the entry into force of the Lisbon Treaty. The Charter explicitly prohibits discrimination on the basis of membership of a national minority. However, Member States maintain general powers to take decisions about minorities and the use of languages on their respective territories.

In 2011, the Commission received several parliamentary questions and letters concerning the amendments to the **Lithuanian Law on Education**, alleging that they considerably reduce the scope of teaching in national minority languages in primary and secondary schools in Lithuania. The Polish pupils should be the most affected by these legislative changes. The Commission explained that there is no Union law on the regime governing the use of regional

concerning the prohibition of torture and inhuman or degrading treatment and respect for private and family life. The test constitutes a strong interference with the person's private sphere and dignity, in particular for asylum seekers who have been persecuted due to their sexual orientation.

Further to the Commission's intervention, the Czech authorities confirmed that the contested practice would no longer be used in the assessment of asylum applications.

⁵⁸ ECJ, Case C-147/08, *Jürgen Römer v. City of Hamburg*, 10.5.2011.

⁵⁹ EU Agency for Fundamental Rights Report, "Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States", November 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub-lgbt-2010-update_en.htm

or minority languages or the rules on languages of instruction in schools and these matters remain the sole responsibility of the Member States which must ensure the protection of rights of minorities living in their territory.

A number of EU legislation and programmes **contributed to improving the situation of persons belonging to minorities**. These instruments address certain difficulties which are likely to affect them. In particular, in application of the powers that it has under the Treaties, the EU has put in place a legal framework to fight discrimination and hate speech against the persons belonging to minorities.

In 2011, a report of the **EU Agency for Fundamental Rights** examined in a report⁶⁰ what the Treaty of Lisbon means for the protection of minorities and the policies the EU has recently adopted in this field. The report further provides evidence of the persistent phenomenon of discrimination found in many areas of life, including employment, housing, healthcare and education.

What does the EU do to fight against racism, xenophobia and related forms of intolerance?

The Commission pursued its efforts to ensure the conformity of national laws with **EU legislation against racism and xenophobia**. These rules have to be introduced by Member States into their penal legislation in order to allow citizens to benefit from them, and courts to apply them. By the end of the year, twenty-two Member States had communicated to the Commission the national laws intended to penalise racist and xenophobic hate speech and to provide for an aggravating circumstance for crimes having a racist or xenophobic motivation.

The Commission received an **important number of letters and parliamentary questions concerning various forms and manifestations of racism and xenophobia**, targeted against different groups or individuals belonging to these groups, in particular against Roma. Racist and xenophobic attitudes expressed by opinion leaders were of particular concern as they contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of racist conduct, such as racist violence. Reluctance to react to any incidents of racism or xenophobia contributes to understating the seriousness of these phenomena.

The Fifth Annual Seminar between the European Commission and the State of Israel on the **Fight against Racism, Xenophobia and anti-Semitism** enabled effective sharing of experiences, practices and methodologies relating to racist data and trends; access to justice and effective redress against racist discrimination; fight against racist hate speech; and the prevention of racism through education, training and remembrance activities.

60 EU Agency for Fundamental Rights Report, "Respect for and protection of persons belonging to minorities 2008-2010", September 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-respect-protection-minorities_en.htm

Data collected by the **EU Agency for Fundamental Rights**⁶¹ shows that few Member States have official data and statistics on anti-Semitic incidents. Even where data exist, they are not comparable, since they are collected using different definitions and methodologies. Furthermore, in many EU Member States Jewish organisations or other civil society organisations do not collect data on anti-Semitic incidents in a systematic way, as there is no complaints mechanism in place to receive and investigate allegations. Where such data exists, usually as lists of cases, they are collected ad hoc by civil society organisations or are based on media reports with varying degrees of validity and reliability.

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 children'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**⁶² adopted by the Commission aims to put in practice the rights of the child enshrined in the Charter and the UN Convention on the Rights of the Child through a comprehensive programme of actions for the years 2011-2014. The EU Agenda identified 11 concrete actions which will contribute to the effectiveness of the rights of the child. This aim is an integral part of the Charter Strategy and, for this reason the impact of EU legislative initiatives on these rights is thoroughly assessed.

The public consultation on the right of family reunification, launched by the Commission in November 2011 tries to explore how the best interests of the child can be facilitated and ensured in practice⁶³.

61 EU Agency for Fundamental Rights Report, "Antisemitism – Overview of the situation in the European Union 2001-2010", June 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-antisemitism-update-2011_en.htm

62 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>

63 Commission Green paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC), COM(2011) 735 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0735:FIN:EN:PDF>

To raise awareness among children about their rights and facilitate their participation in matters that concern them, a **new website for children** and teenagers specifically dedicated to children's rights was launched in all EU languages. It contains child-friendly texts, games and quizzes informing children about their rights⁶⁴. The Commission is also preparing a strategy for a Better Internet for Children, to empower and protect them, so that they can fully enjoy the Internet and benefit from it.

New rules on combating the sexual abuse and sexual exploitation of children and child abuse material⁶⁵ adopted by the EU will make it easier to fight crimes against children by acting on different fronts. A wide range of situations of sexual abuse and exploitation will be criminalised, covering new phenomena helped by the Internet, such as child grooming, webcam abuse or web viewing of child abuse material. More detailed provisions on levels of penalties will ensure greater consistency with the severity of the offence and among Member State laws. It will also be possible to prosecute offences after child victims have reached the age of majority; confidentiality rules will not prevent professionals working with children from reporting offences; and special police units to identify child victims (especially of child abuse material) will be set up and provided with effective investigative tools. The new legal framework includes also measures to combat "child sex tourism" and child abuse material on the Internet. Member States will be obliged to ensure prompt removal of child abuse material pages and take action to have them removed if hosted outside the European Union. In addition, Member States may block access to such web pages following transparent procedures and providing safeguards. The new rules reinforce the protection of child victims, provide for preventive measures with regard to convicted offenders and facilitate background checks prior to employment involving contact with children.

In the area of justice, newly proposed rules on **victim rights**⁶⁶ guarantee that children's special needs for protection and support are met throughout the proceedings to ensure their active participation and avoid of additional trauma. Children should be presumed to be vulnerable victims and authorities would have to determine which special measures should be provided to them. These measures could encompass adaptation of the interview rooms to children's needs, use of communication technologies and video to avoid contact between the child and the offender. Children will also be entitled to receive information in a way they can understand. As regards **procedural rights**, a new set of rules foresees that in case a child is arrested, the child's legal representative or another adult, depending on the interest of the child, is informed about it. As regards the rights of juvenile prisoners, the Commission carried out a public consultation to find more information on detention issues, including on the situation of children in pre-trial detention.

64 Available at: <http://ec.europa.eu/O-18>

65 Directive on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, available at: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00051.en11.pdf>

66 Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011) 275 final, available at: http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf

The Commission has also continued to promote cross-border cooperation between Member States in cases of **criminal abductions of children** through child alert systems. They are designed to provide a quick response in cases of a criminal abduction of a child by disseminating relevant information to the public within hours of the disappearance of a child. The Commission's objective is that such a system be put in place in all EU Member States. At the end of 2011, such systems were operational in 10 EU Member States. There are some differences in the functioning of the systems, but in most cases they are run through NGO co-operation with public authorities and law enforcement.⁷⁰

The Commission also continued discussions with Member States to ensure that the **116 000 hotline for missing children** becomes operational in all Member States. This hotline, which offers help, support and a potential lifeline for missing children and their parents, is currently operational in only 17 Member States.

The **Hague Convention on the Civil Aspects of International Child Abduction** entered into force in Russia on 1st October. In addition, Japan took steps in view of its accession to the same Convention. These developments contribute to the protection of children in the EU in case of abductions. The Commission submitted proposals to ensure consistency in the application of the Convention between the EU and the third States which have acceded to it in recent years⁷¹.

The Commission prepared a report to better assess what has already been done to **protect children in the digital world** and identify what further steps might be necessary⁷². The report found that Member States and industry are increasingly making efforts to respond to these challenges, but that the measures taken are not sufficient and not applied in a consistent way throughout the EU.

The **EU Youth Strategy**⁷³ points out how the prospects of young people are determined by the opportunities which they were – or were not – offered in their childhood. The Council expressed

Case law on custody rights and the return of abducted children

The **Court of Justice of the European Union** confirmed that a child should have an opportunity to be heard in custody proceedings in a case concerning the custody rights and the return of an abducted child⁶⁷. This is however not an absolute obligation for the court, as the court must first determine whether it is in line with the best interests of the child in each individual case. The Court of Justice further confirmed that it is up to the national courts of the Member State where the child used to live to assess whether the child had an opportunity to be heard. Courts of other Member States must respect the results of this assessment when deciding on the return of the child.

The **European Court of Human Rights** clarified that when issuing an order to return an abducted child, the courts must duly assess whether the return of the child would not cause psychological trauma to the child⁶⁸. Finally, the courts must consider whether there are any alternative solutions to ensure contact between the child and the parent requesting the return. The European Court of Human Rights confirmed the obligation of the state authorities to facilitate the reunion of the parent with the child in one other case⁶⁹.

67 ECJ, Case C-491/10, *Aguirre Zarraga*, 22.12.2010.

68 ECtHR, *Sneersone and Kampanella v. Italy*, Application no. 14737/09).

69 ECtHR, *Shaw v. Hungary*, Application no. 6457/09.

70 These Member States are: Belgium, the Czech Republic, France, Greece, Ireland, Italy, the Netherlands, Portugal, Romania, and the United Kingdom. In addition, there is a type of child alert system in place in Germany, but it is operated solely by an NGO.

71 The Commission submitted a Proposal on the accession of the Russian Federation. See: COM(2011) 911 final, available at: http://eur-lex.europa.eu/Result.do?T1=V5&T2=2011&T3=911&RechType=RECH_naturel&Submit=Search. In addition, the Commission also prepared proposal on the accession of other countries which joined the Hague Convention in recent years, see: COM(2011)916 (Morocco); COM(2011) 912 final (Albania); COM(2011) 915 final (Singapore); COM(2011) 917 final (Armenia) COM(2011) 909 final (Seychelles); COM(2011) 908 final (Andorra); COM(2011) 904 final (Gabon).

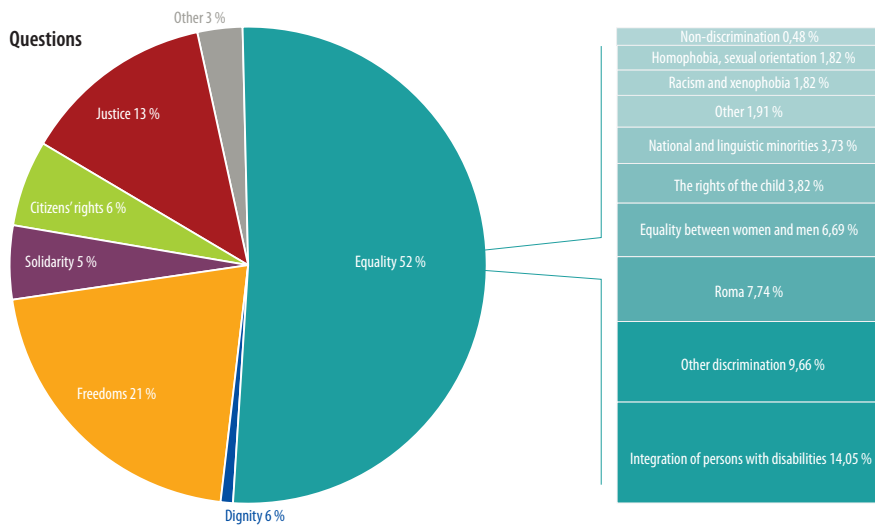
72 Report from the Commission: Application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity and of the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and online information services industry – protecting children in the digital world, COM(2011) 556 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0556:EN:NOT>

73 Communication from the Commission: An EU Strategy for Youth – Investing and Empowering: A renewed open method of coordination to address youth challenges and opportunities, COM(2011) 200 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0200:FIN:EN:PDF>

its support for encouraging new and effective forms of participation of all young people in democratic life in Europe⁷⁴.

The Commission took a number of measures to promote a high quality of social protection provided to children in **child care institutions**. This included amongst other things the promotion of mutual knowledge between the Member States on this issue as well as funding several initiatives to promote the de-institutionalisation process. This does not, however, replace the responsibility of Member States, which have sole responsibility for the administration of child-care institutions.

74 Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on encouraging new and effective forms of participation of all young people in democratic life in Europe, 2011/C 169/01, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:169:0001:0005:EN:PDF>



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** since 22 January 2011. This is the first time that the EU has become party to an international human rights treaty. 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.

The Commission continued the preparation of the setting up of the EU framework for promoting, protecting and monitoring the rights in the Convention by consulting relevant stakeholders and organised a Work Forum on the implementation of the UN Convention in the EU, providing for exchanges of good practices between the Member States.

Access City Award

The Austrian city of Salzburg won the European prize for making cities more accessible to people with disabilities. The annual honour recognises efforts to improve accessibility in the urban environment and to foster equal participation of people with disabilities. The European Commission commended Salzburg's long-standing commitment, coherent approach and excellent results in improving accessibility, achieved with the direct participation of people with disabilities.

The European Parliament⁷⁵ and the Council⁷⁶ endorsed the **European Disability Strategy**⁷⁷, which empowers women and men with disabilities so they can enjoy their full rights and benefit fully from their participation in society. The Strategy sets out the framework of action for the Commission in the field of disability and also represents the framework to implement the UNCPRD at EU level.

Progress was made in ensuring that **disability rights are reflected in legislative acts**. 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 and bus & coach transport. Moreover, disability issues are also present in some of the most important legislative proposals of the Multi Annual Financial Framework for 2014-2020 such as the new Rights and Citizenship Program⁷⁸ and the new Programme for future Structural Funds⁷⁹.

75 European Parliament Report: Mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0263&language=EN>

76 Council conclusions: Support of the implementation of the European Disability Strategy 2010-2020, 17.6.2011, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/122819.pdf

77 Communication from the Commission: European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>

78 Proposal for a Regulation establishing for the period 2014 to 2020 the Rights and Citizenship Programme, COM (2011) 758 final, available at: http://ec.europa.eu/justice/newsroom/files/1_en_act_part1_v5_frc_en.pdf

79 Information on the EU Cohesion Policy 2014-2020 is available at: http://ec.europa.eu/regional_policy/what/future/proposals_2014_2020_en.cfm

Workers' right to information and consultation within the undertaking

Right of collective bargaining and action

Right of access to placement services

Protection in the event of unjustified dismissal

Fair and just working conditions

Prohibition of child labour and protection of young people at work

Family and professional life

Social security and social assistance

Health care

Access to services of general economic interest

Environmental protection

Consumer protection

4/

SOLIDARITY

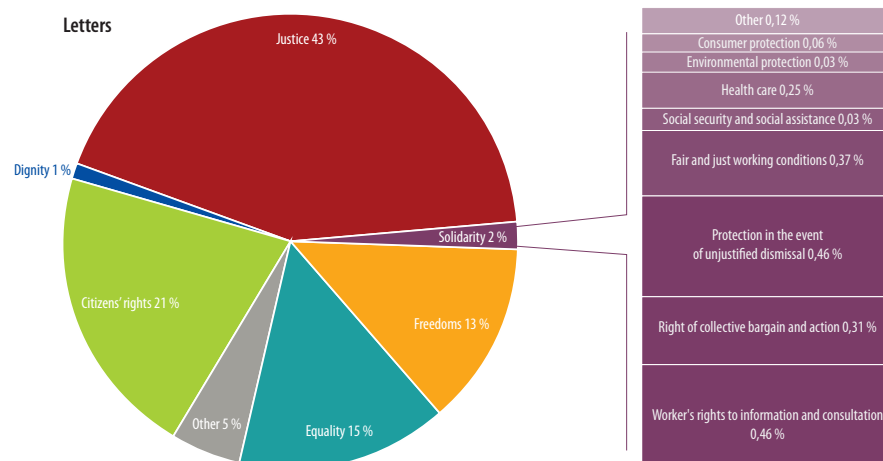
Solidarity

New rules on European Works Councils increased the effectiveness of employees' transnational information and consultation rights.

New legislation was adopted on the application of patients' rights in cross-border healthcare. This clarifies the rights of the patients to reimbursement of healthcare received in another Member State.

Citizens, Members of the European Parliament and representatives of trade unions expressed concern over the relocation or restructuring of companies. Such decisions fall primarily within the managerial prerogative, which should fully respect the requirements provided for by EU law to inform and consult employees' representatives in good time and in any case before the employer takes a decision to close the undertaking or to effect collective dismissals.

The protection of consumers was strengthened through the adoption of new rules on online purchases. The Commission pursues a rigorous enforcement policy to make sure that the protection granted by different EU rules on consumer protection is effectively guaranteed in national laws.



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 new legal framework for **European Works Councils** entered into force for Member States⁸⁰. The changes aim to ensure increased effectiveness of employees' transnational information and consultation rights. After having assisted Member States in the implementation process, the Commission opened infringement proceedings against the Member States which did not adopt the required transposing measures within the determined deadline. The Commission also issued information material to promote awareness about the rights and opportunities created by the new framework.

The Commission set up an ad-hoc working group which brings together representatives of governments and social partners and commissioned a study to assess, in both quantitative and qualitative way, the social and economic benefits and costs related to **EU rules on employees' information and consultation at national company level**.

Seagoing workers are excluded or may be excluded, if Member States so decide, from the EU provisions that grant workers the right to information and consultation. Following the consultation of the European social partners on this matter, the Commission is now assessing the economic and social impacts of different policy options, including the suppression of the exclusions.

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 level⁸¹. Member States remain, of course, bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

The Commission is currently preparing the revision of the legislative framework on the **posting of workers** in the context of the provision of services. In line with the Single Market Act⁸², the

Relocation or restructuring of a company

The Commission received several parliamentary questions and inquiries from MEPs, citizens and trade unions on the relocation or restructuring of a company. The decision to relocate or restructure a company falls primarily within the managerial prerogative. However, employers have to respect the requirements provided for by EU law that provides in particular for employees' representatives to be informed and consulted in good time and in any case before the employer takes a decision to close the undertaking or to effect collective dismissals. It is for the competent national authorities and in particular the courts to ensure the correct and effective application of these provisions and to guarantee that employers fulfil their duties in each particular case.

Competences of the Commission as regards strike actions

The Commission received several complaints alleging that the measures taken by the Spanish government with regard to air traffic controllers flagrantly violated their right to collective bargaining and action. In particular, following unsuccessful negotiations between the competent social partners in view of the renewal of a collec-

80 Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 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.

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

82 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

tive agreement, Spain adopted a law regulating the working conditions of the Spanish air traffic controllers. Confronted with a strike, it declared a state of emergency to break it.

The Commission replied that there is no EU law which prohibits Member States from introducing, through national laws, changes to practices previously applied under collective agreements. Nor is there any specific EU law regulating the right of association or the right to strike. In these circumstances, there did not seem to be any link with any EU legislation in that case. It is therefore for the competent authorities, including the courts, to assess the legality of the eventual restrictions on the exercise of these rights, and to enforce the relevant national legislation with due respect to the applicable international obligations of the Member States.

Case law on working time

The **European Court of Justice** explicitly referred to the EU Charter, which states that every worker is entitled to an annual period of paid leave, in deciding that airline pilots are entitled to be paid at their normal rate of remuneration during the 4 weeks' minimum paid annual leave required by EU rules⁸⁷. The

Commission will present two legislative proposals: a Directive aimed at improving and reinforcing the transposition, implementation and enforcement in practice of the Posting of Workers Directive, which will include measures to prevent and sanction any abuse and circumvention of the applicable rules, together with a Regulation aimed at clarifying the exercise of freedom of establishment and the freedom to provide services alongside fundamental social rights.

The Commission launched a searchable database on **transnational company agreements** and worked with Member States and social partners to secure a more frequent use of such types of agreements. These agreements are the fruit of transnational negotiations at corporate level and cover situations located in the different countries where the European/multinational companies operate or which are affected by corporate decisions. So far, the Commission's services have recorded some 215 transnational company agreements and joint texts in 138 companies employing together over 10 million employees.

Fair and just working conditions

The Charter guarantees that every worker has the right to working conditions which respect his or her 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 work**⁸³. This framework was further enhanced with the Commission's proposal for new EU rules on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)⁸⁴.

The Commission published a Report on the implementation of the **Working time Directive**⁸⁵ and reviewed in a separate document implementing legislation taking into account the social partners rules and rulings of the Court of Justice regarding organisation of Working Time⁸⁶. On 15 November 2011, the social partners at European level decided to negotiate amongst

83 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.

84 Proposal for a Directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields), COM(2011) 0348 final, available at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=EN&type_doc=COMfinal&an_doc=2011&nu_doc=0348

85 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>

86 Commission Staff Working Paper: Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time ('The Working Time Directive'), SEC(2010) 1611 final, available at <http://www.ec.europa.eu/social/BlobServlet?docId=6426&langId=en>

87 ECJ, Case C-155/10, *Williams v British Airways*, 15.9.2011.

themselves with the aim of reviewing the aforementioned Directive, in accordance with Article 155 of the Treaty on the Functioning of the European Union⁸⁸.

The EU Agency for Fundamental Rights examined the legal and practical challenges facing EU Member States as they strive to guarantee migrants' fundamental rights and proposes ways to incorporate those rights into the policies, laws and administrative practices that affect migrants in irregular situations⁸⁹. The Agency reported that an estimated 1.9 to 3.8 million irregular migrants were staying in the EU in 2008, according to the European Commission-funded *Clandestino* project. Because of their irregular migration status they are vulnerable to exploitation and abuse in the workplace. They also often face legal and practical barriers in getting access to basic services, such as healthcare, education and access to justice.

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 alike with the national workers and that the application of the different national legislations does not adversely affect them.

The **Commission continued to monitor the application of EU rules on social security coordination** to ensure that people moving across borders within the EU do not lose their entitlements to benefits. For instance when dealing with a claim for unemployment benefits, institutions must take into account periods of insurance completed in other Member States if this is necessary for the entitlement to the benefit. For people working and residing in different Member States, EU law determines where they have to pay their social security contributions and which country is responsible to provide them healthcare or pay family benefits.

Further discussion in the context of the negotiations on the proposals for Directives on **third-country seasonal workers** and **intra-corporate transferees** took place in the Council and in the European Parliament. The Commission continues to defend the right of third-national

case focused on whether airplane pilots are entitled, during their annual leave, only to the maintenance of their basic salary or also to other components, such as the supplementary payment for the time spent away from base.

Citizen enquiries on maximum working time

Citizens submitted complaints to the Commission alleging that national laws or practices excluded certain workers from the protection of the limits to maximum working time, minimum daily and weekly rests, or minimum periods of paid annual leave. In some cases, the Commission asked Member States to explain how their laws or practices complied with EU law. Several Member States informed the Commission that they were changing their national law so as to comply with EU law; in other cases the Commission warned that it would refer a case to the Court of Justice if the Member State did not do so.

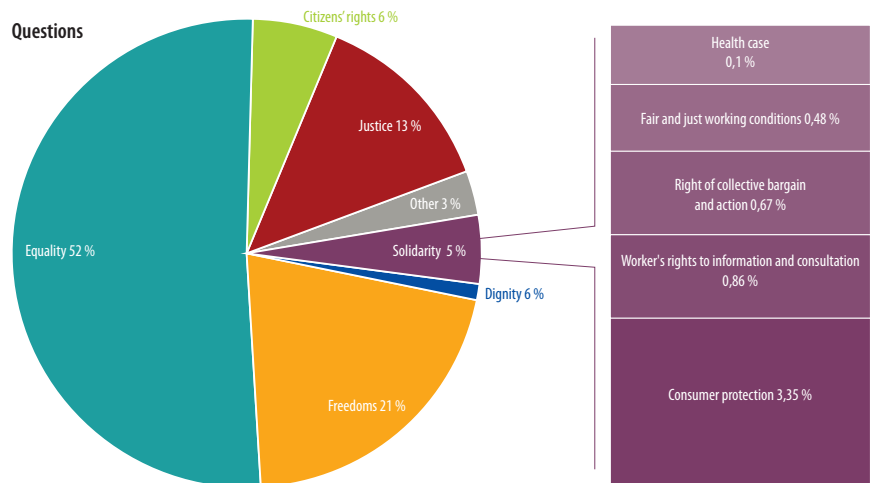
⁸⁸ They enjoy autonomy in these negotiations, for which 9 months is allowed by the Treaty, and will inform the Commission of the results achieved by early September 2012.

⁸⁹ EU Agency for Fundamental Rights Report – "Fundamental rights of migrants in an irregular situation in the European Union", November 2011, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-migrants-in-an-irregular-situation_en.htm

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. In particular, the Commission made the point that Member States cannot restrict third country nationals' right to receive social security benefits that are based on contributions made as this would be contrary to the right to property.

A new Directive was adopted on migrant workers granting equal treatment to legally residing third-country workers in a number of fields in particular working conditions, social security, recognition of diplomas, tax benefits, education but also freedom of association⁹⁰.

The **European Court of Human Rights** delivered its ruling in a case that concerned the refusal of Austria to grant an old-age pension from the pension fund for lawyers⁹¹. The Court stated that, even though the right to a pension is not, as such, guaranteed by the Convention, the right to a pension which is based on employment can in certain circumstances be assimilated to a property right. The Court held that entitlement to a social benefit is linked to the payment of contributions, and, when such contributions have been made, an award cannot be denied to the person concerned.



⁹⁰ Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF>

⁹¹ ECJ, *Austria vs. Klein*, application n° 57028/00, 3.3.2011.

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.

New legislation was adopted on the application of **patients' rights in cross-border healthcare**. The new rules clarify the rights of patients to reimbursement of healthcare received in another Member State⁹².

The EU Agency for Fundamental Rights Report documented the legal, economic and practical obstacles that migrants in an irregular situation face in accessing healthcare in 10 EU Member States and proposes a number of ways to improve this access⁹³. The Agency found in particular that the risk of detection and deportation prevents migrants in an irregular situation from seeking healthcare, even in those countries where it is legally available, and suggests disconnecting healthcare from immigration control policies.

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 protection of consumers was strengthened through the adoption of **new EU rules on online purchases**⁹⁴, which require that consumers must be given essential information before they order goods or services in particular during a visit of a sales representative at their home or place of work or by a means of distance communication, such as online purchases. In addition, consumers have the right to withdraw from such contracts within 14 days. The new EU rules on consumer rights furthermore ban pre-ticked boxes, internet cost traps and charges of which the consumer are not informed in advance.

The **Common European Sales Law**, proposed by the Commission in October 2011, sets out an optional sales law regime based on a high level of consumer protection when purchasing goods, digital content and related services across borders on the basis of this optional law regime. For example, the Commission proposal would afford consumers a free choice of remedies in case they buy a defective product – even several months after a purchase. Thus, consumers would

92 Directive 2011/24/EU on the application of patients' rights in cross-border healthcare, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0045:0065:EN:PDF>

93 EU Agency for Fundamental Rights Report, "Migrants in an irregular situation: access to healthcare in 10 European Union Member States", October 2010, available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_irregular-migrants-healthcare_en.htm

94 Directive 2011/83/EU on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

Specific complaints in the area of consumer protection

The Commission received numerous **letters from the general public** regarding for example faulty products, timeshare, package travel, insurance, online marketing of products and services as well as unfair commercial practices in a number of sectors. As the Commission cannot intervene in disputes between consumers and operators, it informed citizens on the applicable EU rules and referred them to the relevant national authorities, European Consumer Centres or consumer protection organizations. Where there were doubts about the compliance of national law with EU legislation on consumer protection or the adequacy of its enforcement, the Commission contacted the relevant Member States.

be able to request the repair or replacement of the product, to withhold payment, to reduce the price, to terminate the contract and/or to claim damages.

The Commission pursued a rigorous **enforcement policy** to make sure that the protection granted by different consumer protection directives is effectively guaranteed in national laws. Several Member States improved their rules on the sale of consumer goods following intervention by the Commission. The Commission opened infringement proceedings against Member States which were late in transposing EU legislation on timeshares. Further to this, the large majority of Member States adopted the necessary implementing measures.

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/

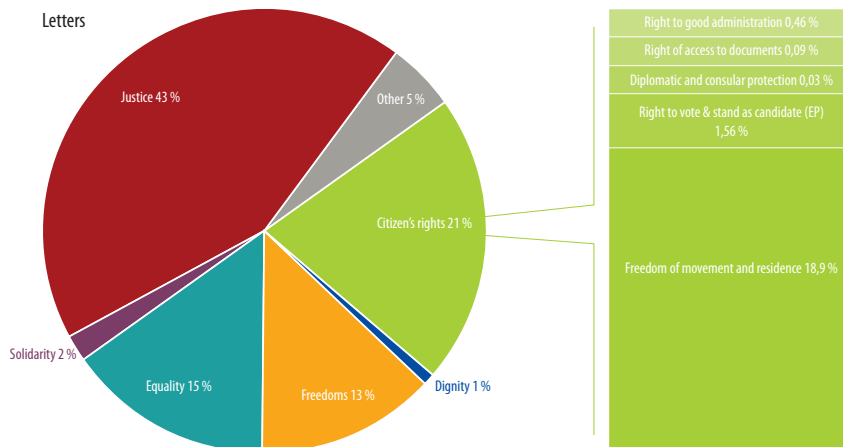
CITIZENS'
RIGHTS

Citizens' rights

The Commission initiated action such that **EU citizens can become members of or found a political party in whichever Member State they reside**. This is an important dimension for the effective application of the **right to stand as a candidate in elections** for the European Parliament and at municipal level.

The **rigorous enforcement policy pursued by the Commission** to achieve the full and correct transposition and application of the EU free movement rules across the European Union produced substantial results. The majority of Member States amended their legislation or announced amendments aimed at ensuring full compliance with these rules. The Commission continued working with the remaining countries to tackle outstanding issues, launching infringement proceedings where needed.

Concrete steps were made to ensure that EU citizens can benefit from diplomatic and **consular protection** when they travel abroad. The Commission proposed new EU rules and launched a dedicated website on consular protection.



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.

Negotiations were resumed at the request of the Commission with a view to amending **EU legislation on the participation of EU citizens in European elections**. The objective is to make it less burdensome for EU citizens to stand as candidates in the next European Parliament elections.

The Commission initiated action with a view to ensuring that **EU citizens can become members of or found a political party in whichever Member State they reside**. An EU citizen who is limited as regards the possibility to get fully involved in activities of political parties suffers a disadvantage when standing in elections, compared to national citizens who enjoy that right.

Right to good administration

Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time 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 ("Complaint Handling"), an IT tool for registering and managing this specific kind of correspondence.

25 Member States are now using the operational **EU Pilot application**, which was put in place by the Commission in 2008 to provide quicker and better answers to questions raised by citizens or businesses and solutions to those problems arising in the application of EU law.

The right to good administration is relevant in different areas of EU law. One of them is **competition**, where the Commission is entrusted with making sure markets function properly. The European

Reform of the Finnish electoral legislation

The Commission engaged a dialogue with the Finnish authorities concerning the implementation of the right of EU citizens to vote and stand in municipal and in European elections in whichever Member State they reside, under the same conditions as nationals of that State.

Further to this dialogue, the Finnish authorities announced that they would annul the legal requirement to collect the signed support from at least 5 000 Finnish nationals to found a political party.

Commission adopted a package of measures aimed at increasing interaction with parties in antitrust proceedings and strengthening the mechanisms for safeguarding parties' procedural rights⁹⁵. They give parties a clear picture of what to expect at different stages of an antitrust investigation and increase their ability to interact with the Commission services. If parties have a dispute about their procedural rights they can refer the matter to the competition Hearing Officer, who will have an enhanced role throughout the entirety of antitrust proceedings. Parties will also be able to call upon the Hearing Officer in the investigative phase of antitrust investigations if they feel that they should not be compelled to reply to questions that might force them to admit to an infringement.

Right of access to documents

Article 42 of 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. This right is also guaranteed in the Treaty on the functioning of the European Union and has been implemented through Regulation 1049/2001, which defines the principles and limits governing the right of access to documents.

In 2011, the Commission received almost **6 500 requests for access to documents**, compared to about 6 000 in 2010. As in the past, 4 out of 5 requests were granted at the initial stage. In 2011, the Commission received 162 confirmatory applications, leading to a new assessment and a final decision of the Commission. 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 2011, the European Ombudsman closed 17 complaints concerning the right of access to Commission documents, making a critical or a further remark in eight cases.

In the past year, the Court of Justice of the European Union delivered an important judgment on access to internal documents, including legal opinions. The ruling concerned a non-legislative matter, where the relevant procedure had already been closed⁹⁶.

The General Court handed down six judgments, three of which are worth mentioning: the *Batchelor*⁹⁷ and *IFAW*⁹⁸ cases concerning access to documents originating from Member States and the *LPN*⁹⁹ regarding access to documents in ongoing infringement proceedings.

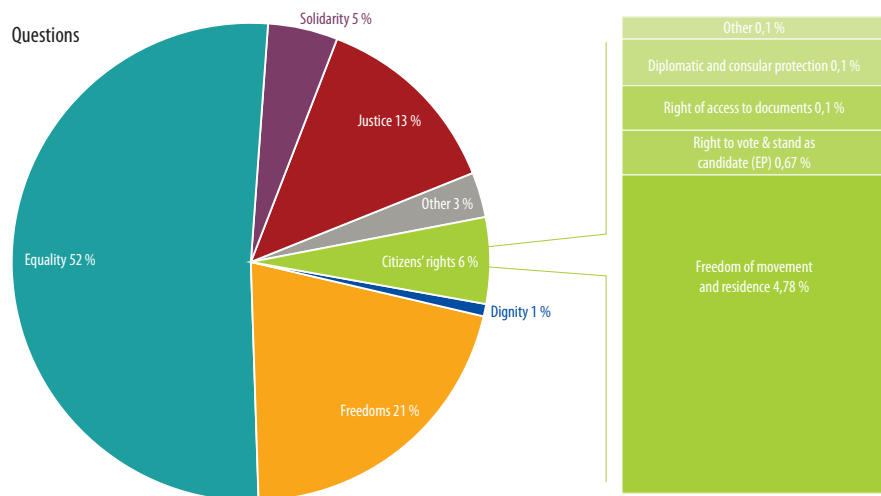
95 Commission Notice on Best Practices in proceedings concerning articles 101 and 102 TFEU, OJ C 308, 20.10.2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:308:0006:0032:EN:PDF>; Terms of Reference of the Hearing Officer, OJ L 275, 21.10.2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:275:0029:0037:EN:PDF>; Best Practices on submission of economic evidence; published on the Website of the European Commission, available at: http://ec.europa.eu/dgs/competition/economist/neven_deconinck_best_practices.pdf

96 ECJ, Case C-506/08, *Kingdom of Sweden v European Commission and MyTravel Group*, 21.07.2011.

97 GC, Case T-250/08, *Batchelor v. Commission*, 24.5.2011.

98 GC, Case T-362/08, *IFAW v. Commission*, 13.1.2011.

99 GC, Case T-29/08, *LPN v. Commission*; 9.9.2011.



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 cases of 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.

Over 22 000 individuals were helped directly by the European Ombudsman in 2011. More than 80% of the enquiries could be handled through an interactive guide available on the website of the European Ombudsman. As regards the other enquiries, some were handled by a member of the European Network of Ombudsmen¹⁰⁰ (about 1 300 cases) or by the European Ombudsman (about 700 cases), when the complaints concerned maladministration in the institutions and bodies of the European Union.

Freedom of movement and residence

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

¹⁰⁰ The European Network of Ombudsmen consists of over 90 offices in 32 European countries. The Network includes the national and regional ombudsmen and similar bodies of the Member States of the European Union, the candidate countries for EU membership, and certain other European countries, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. The national ombudsmen and similar bodies in the Network have each appointed a liaison officer to act as a point of contact for other members of the Network.

The **rigorous enforcement policy pursued by the Commission** with a view to achieving the full and correct transposition and application of the EU free movement rules across the European Union produced substantial results. The majority of Member States amended their legislation or announced amendments aimed at ensuring full compliance with these rules. The Commission continued working with the remaining countries to tackle outstanding issues, launching infringement proceedings where needed to ensure that all European citizens and their family members can make full use of their right to free movement in all 27 Member States.

The main issues raised in those **12 infringement proceedings** included the incorrect or incomplete transposition and implementation of provisions in 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.

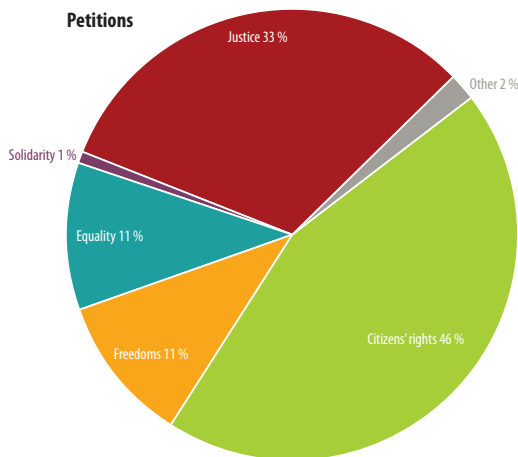
The **Commission further pursued an intensive dialogue with the Dutch authorities** regarding the plans announced by the latter in April 2011 on labour migration. In a letter of 18 May 2011 to the Dutch authorities, the Commission raised a number of concerns as to the compatibility of some of the planned measures with EU law on the free movement of EU citizens and workers in combination with the non-discrimination principle. Several bilateral exchanges and the reply of the Dutch authorities of 14 November 2011 allowed for the clarification of a significant number of issues. The Commission is pursuing its dialogue with the Dutch authorities on the outstanding issues with a view to ensuring that any planned measures will be fully compatible with EU law.

The **Commission engaged in a dialogue with the Danish authorities** regarding their plans to strengthen customs controls at the Danish borders with a view to fighting cross-border crime. The intention of the Danish government was to set up permanent customs presence at the borders, build new facilities and use comprehensive video surveillance and police assistance. The Commission made it clear that Member States may not carry out systematic controls of goods and persons at their internal borders. The Commission was particularly concerned that these strengthened border controls may result in obstacles to the free movement of EU citizens within the European Union. These plans were eventually withdrawn by the new government that took office in Denmark in October 2011.

The Commission also contacted the Danish authorities regarding amendments to the Danish Aliens' Act that entered into force in July 2011. These aim to introduce stricter rules on the expulsion of aliens, including EU citizens, and raise serious concerns of compatibility with the Free Movement Directive. The Commission will not hesitate to make use of the powers conferred to it by the Treaty should the Danish reply be deemed unsatisfactory.

The Commission launched a discussion to identify political options which would prevent **EU citizens from losing their political rights as a consequence of exercising their right to free movement**¹⁰¹. According to the legislation of several Member States, their nationals are disenfranchised if they live in another Member State for a certain period of time, with the consequence that they are not able to participate in any national elections, neither in the Member State of origin nor in the Member State of residence, and are not represented in national parliaments or in the Council of the European Union. This puts citizens who have exercised their right to free movement in a less favourable position than those staying in their home countries.

In June 2011, the Commission wrote letters to the Member States concerned and invited them to contribute to a common reflection. On the basis of the replies received, the Commission intends to promote a broad debate on how to strengthen the rights to democratic participation of EU citizens exercising their right to free movement within the EU.



Conditions of entry and residence of third-country national family members of EU citizens having exercised their right to free movement

The Commission received several complaints on this issue. In some cases, which appeared to be isolated instances of incorrect application of the EU rules, the Commission suggested that the individuals address themselves to the SOLVIT network, which is designed to provide quick and efficient assistance in such cases. Other cases were solved following the Commission's bilateral contacts with Member States on the transposition of the EU rules on free movement, whilst a number of them were raised in the context of the global infringement procedures launched by the Commission in the course of the year.

Principle of non-discrimination

The Commission dealt with a number of complaints from EU citizens residing in Malta who alleged that they could not benefit from reduced water and electricity tariffs available to Maltese citizens, in violation of the non-discrimination principle on grounds of nationality. The Commission has contacted the Maltese authorities with a view to resolving this issue.

101 Disenfranchisement was identified as an obstacle encountered by EU citizens as political actors in the EU Citizenship report 2010 "Dismantling obstacles to EU citizens' rights" of 27 October 2010 (COM/2010/603)- action 20.

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 Commission proposed new EU rules on consular protection¹⁰² for citizens of the Union abroad, further to previous analysis of the state of play in this area¹⁰³. The Commission proposal includes measures to give concrete meaning to this right by clarifying its scope of application, easing cooperation between consular authorities, including on financial matters, and also providing for cost-effectiveness by exploiting synergies with existing EU tools and resources. The proposal enhances the fundamental right to consular protection under the same conditions as for nationals, by clarifying the content of this right, by facilitating the necessary cooperation and coordination procedures and by ensuring effective implementation and compliance. The inclusion of non-EU family members in its scope of application strengthens the right to family life as well as the rights of the child. Clearer responsibilities and improved burden-sharing in crisis situations would ensure non-discrimination also in times of crisis when fundamental rights are at stake. Furthermore, the principles of non-discrimination, life and integrity of the person and the right of defence and to a fair trial are being reinforced.

One of the ways of making the right to consular protection effective is through providing information. The Commission launched a **dedicated website on consular protection¹⁰⁴** – the one-stop shop, in the 23 official EU languages, on the basic information for the citizens of the Union on consular protection in third countries. The website provides the addresses of the consular or diplomatic missions in non-EU countries to which citizens may turn to for protection, access to the travel advice services of the EU Member States and to EU legal background information on the matter.

102 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>

103 Communication from the Commission: Consular protection for EU citizens in third countries: State of play and way forward, COM(2011) 149 final, available at: http://ec.europa.eu/justice/citizen/files/com_2011_149_en.pdf

104 Available at: <http://ec.europa.eu/consularprotection>

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.

The **Commission proposed to designate 2013 as the European Year of Citizens**¹⁰⁵. The objective of the year will be to raise Union citizens' awareness about the rights granted to them by the treaty, including their right to participate in the democratic life of the Union. In addition, it will raise Union citizens' awareness on how they can benefit from EU rights and policies, including by stimulating their participation in civic fora on Union policies and issues. The European Year will also seek to launch a debate about the impact and potential of the right to free movement, as an inalienable aspect of Union citizenship, in particular in terms of strengthening societal cohesion and mutual understanding between Union citizens and the bond between citizens and the Union.

The Court of Justice of the EU ruled that Member States are not allowed to take measures depriving Union citizens of the genuine enjoyment of the substance of their rights as Union citizens. The Court held that an irregular migrant in a Member State whose minor dependent children are nationals of that country must be allowed to reside and work there¹⁰⁶. In its reasoning the Court explained that a refusal to do so would deprive children of the genuine enjoyment of the substance of their rights as Union citizens, because it would force them to leave the territory of the European Union. The Court further explained that this even applies when the children have never exercised their right to free movement within the territory of the Member States.

In another case¹⁰⁷, the Court highlighted the specific and exceptional nature of the situations in which this rule can apply. The Court clarified that it applies only where the EU citizen is forced to leave the territory of the Union as a whole (and not only the territory of the Member State of which he/she is a national). Moreover, merely the fact that the EU citizen wishes to reside together with a third-country national family member is not sufficient to accept that he/she will be forced to leave the Union territory if the family member is not granted a residence right. The national authorities or courts should assess in every case whether a refusal to grant a residence right would undermine the right to protection of family life – in light of Article 7 of the Charter of Fundamental rights, in situations covered by Union law, and in light of Article 8 of the European Convention on Human Rights, where Union law is not applicable.

¹⁰⁵ The proposal stems from the 2010 EU Citizenship Report (action 23) which underlined the importance to strengthen citizens' awareness of their EU citizenship status, their rights and their meaning in their daily lives. Proposal for a Decision of the European Parliament and of the Council on the European Year of Citizens (2013), COM(2011) 489 final, available at: http://ec.europa.eu/citizenship/pdf/1_en_act_part1_v5.11.08.11.pdf

¹⁰⁶ ECJ, Case C-34/09, *Ruiz Zambrano*, 8.3.2011.

¹⁰⁷ ECJ, Case C-256/11, *Dereci and others*, 15.11.2011.

Right to an effective remedy and to a fair trial

Presumption of innocence and right of defence

Principles of legality and proportionality of criminal offences and penalties

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

6/

JUSTICE

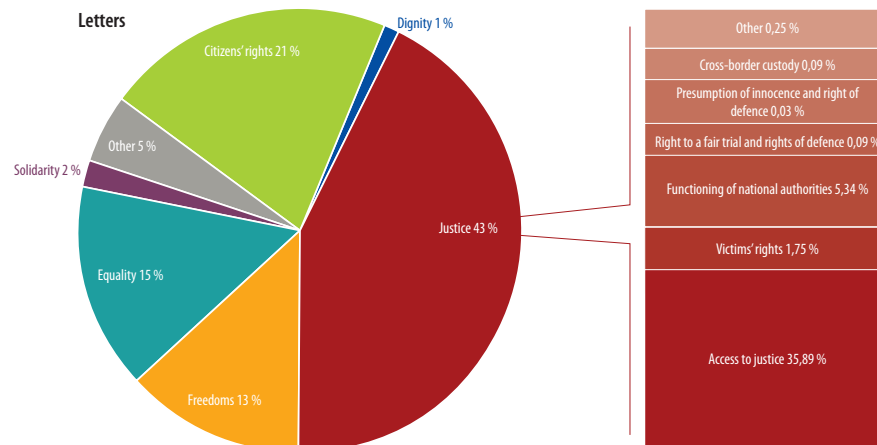
Justice

The Commission proposed new laws establishing minimum standards on the rights, support and **protection of victims of crime**. This proposal would guarantee that victims are treated with respect, for example during the investigation phase and that police, prosecutors and judges are trained in how to properly deal with them.

The Commission set clear and ambitious targets for expanding **training for legal practitioners** in Europe on how to apply European law, including fundamental rights. An independent, well-trained and efficient judiciary is essential for a functioning justice area and single market in Europe.

The procedural rights of suspects have been strengthened. New EU rules ensure that suspects of a criminal offence are informed about their rights in a language that they understand. The Commission also proposed to strengthen the procedural safeguard on access to lawyer, as of the first stage of police questioning and throughout criminal proceedings.

The Commission started work to put in place a coherent and consistent **EU Criminal Policy** by setting out how the EU should use criminal law to ensure the effective implementation of EU policies.



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 a wrong way. The right to effective remedy guarantees judicial protection against violations of any EU rule which grants rights to people. It plays therefore a key role for ensuring the effectiveness of all EU law, ranging from social policy, to asylum legislation, competition, agriculture, etc.

The right to an effective remedy was the most quoted rights in the decisions of the **Court of Justice** referring to the Charter. It has been mentioned in a third of these decisions and different fields of EU law, such as: competition, freedom of establishment, agriculture and fisheries, asylum.

The **Commission** paid particular attention to the developments related to the new *Hungarian Constitution and its implementation*. In the June plenary session of the European Parliament, the Commission underlined that the constitution of every Member State should reflect and comply with the European values of freedom, democracy, equality, rule of law, human dignity and respect of human rights, including the rights of persons belonging to minorities, without discrimination, as laid down in Article 2 of the Treaty.

On 12 December, the Commission¹⁰⁸ expressed its concerns to the Hungarian Minister of Justice regarding certain provisions of the draft legislation implementing the new Constitution which could affect the independence of the judiciary. The letter also explained that the principle of judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the EU guarantees the right to an effective remedy before a 'court' or a 'tribunal' as defined in Union law. The Court of Justice stressed in this context that independence and impartiality are amongst key criteria which must be satisfied by the body concerned in order to be considered as 'tribunal'.

The Hungarian authorities adopted the legislation on the judiciary without taking into account the Commission's legal concerns. The Commission decided, as guardian of the Treaties, to take action against a number of new provisions in Hungarian legislation, namely on the independence of the data protection authority and on the discriminatory impact of the mandatory retirement age for judges, prosecutors and notaries. The Commission also sent an administrative letter requesting further information on certain aspects of the new legislation which could affect the independence of the judiciary¹⁰⁹.

¹⁰⁸ Vice-President Reding sent a letter to the Hungarian Minister of Justice.

¹⁰⁹ Press release of 17 January 2012 (IP 12/24). Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/24&format=HTML&aged=0&language=EN&guiLanguage=fr>

Detention conditions

The Commission received a number of letters from the general public on poor detention conditions due to prison overcrowding in national prisons or the placement of pre-trial detainees together with convicted prisoners.

While national governments are solely responsible for detention issues and prison management, it is the Commission's role to make sure judicial cooperation in the EU works and fundamental rights are respected when EU mutual recognition instruments – such as the European Arrest Warrant – are implemented.

With regard to detention, Europeans must have confidence that they will be treated to similar standards of protection no matter where they are in the European Union. For this reason, the Commission presented a Green Paper asking 10 questions on how to strengthen mutual trust in the field of detention¹¹³. Detention conditions and periods vary widely between EU countries.

The Commission proposed new laws establishing minimum standards on the rights, support and **protection of victims of crime**¹¹⁰. This proposal would guarantee that victims are treated with respect, for example during the investigation phase and that police, prosecutors and judges are trained in how to properly deal with them. Victims would be entitled to get information on their rights and their case in a way that they understand and Member States would have an obligation to set-up victim support services. The proposal pays special attention to vulnerable victims, such as children or victims of rape. To help protect victims of violence from any further harm by their attacker, the Commission is also proposing rules to ensure that victim who is guaranteed protection from the attacker can rely on this protection if he or she travels or moves to another EU country.

Member States that take part in the **Rome III Regulation on cross-border divorces** adopted in 2010 have pursued their preparations in view of its entry into force on 21 June 2012. The new legislation will give a choice as to which country's rules apply in case of divorce for couples with different nationalities, those living apart in different countries or those living together in a country other than their home country. Although this regulation does not directly concern access to justice, it can contribute to facilitating access to justice by improving legal certainty through defining which rules apply in such cases.

The Commission set clear and ambitious targets for expanding **training for legal practitioners** in Europe on how to apply European law, including fundamental rights¹¹¹. An independent, well-trained and efficient judiciary is essential for a functioning justice area and single market in Europe. It caters for good and prompt judicial decisions strengthening predictability and legal certainty. As European law is part of everyday life, citizens and businesses want to know that they can count on a knowledgeable and well-trained judiciary across the Union enabling them to exercise their rights and get justice in a coherent manner, ensuring respect of their fundamental rights across the Union. Judges, lawyers and other legal practitioners need to know the rules to be able to apply EU law effectively.

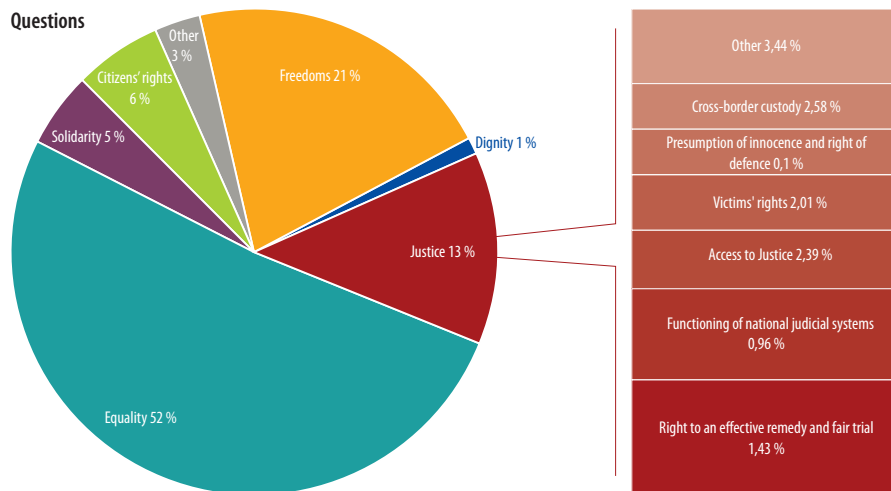
The obligation laid down in the Visa Code¹¹² to **motivate the refusal of a visa by a Member State and the right of appeal** directly relate to the right to an effective remedy and to a fair trial. The Commission closely monitors the correct implementation by Member States of these provisions, which became applicable as from 5 April 2011, in particular by collecting and analysing information on the Member States' procedures put in place for appeal of decisions on refusal/revocation/annulment of a visa.

110 Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011) 275 final, available at: http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf

111 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

112 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009.

113 Commission Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327, available at: http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_327_en.pdf



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 rights of the defence of anyone who has been charged shall be guaranteed.

Procedural rights of suspects have been strengthened, in particular as regards the right to an effective remedy and to a fair trial and the rights of defence. More particularly, the European Parliament and the Council adopted a new set of rules ensuring that the suspects of a criminal offence are informed about their rights in a language that they understand¹¹⁴. Anyone arrested will have to be informed about their rights by a document called a Letter of Rights.

The Commission submitted a proposal securing **access to a lawyer** from the first stage of police questioning and throughout criminal proceedings. The proposal also grants the accused or suspected the right to contact their embassy or consulate as well as their family or employer¹¹⁵. While the responsibility for conducting the investigation and any questioning will of course remain with the police, the lawyer ought to be able to attend any questioning by the police or other authorities and to ask questions or request clarification whenever needed. Authorities would have to guarantee the confidentiality of meetings between the lawyer and the suspect.

¹¹⁴ Directive on the right to information in criminal proceedings, OJ C/2011/121/19 available at: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DossierId=199549

¹¹⁵ 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>

Upon request of the European Parliament, **the EU Agency for Fundamental Rights** addressed the issue of fundamental rights standards for an instrument involving mutual recognition of investigation orders¹¹⁶. It provides an overview of existing European standards, with particular emphasis on elements of fair trial, based on the Court of Justice of the European Union and the European Court of Human Rights case law.

Principles of legality and proportionality of criminal offences and penalties

Criminal law measures are fundamental rights-sensitive. They unavoidably interfere with individual rights, be it those of the suspect, of the victim or of witnesses. Ultimately, they can result in deprivation of liberty and therefore require particular attention by the legislator. This is why the Charter of Fundamental Rights provides important limits for EU action in this field.

The Commission set out the legal framework under the Lisbon Treaty for the adoption of EU criminal law measures¹¹⁷. This is a first step in the efforts to put in place a coherent and consistent EU Criminal Policy by setting out how the EU should use criminal law to ensure the effective implementation of EU policies. In this respect, the Commission issued a first proposal on EU rules on criminal sanctions for insider dealing and market abuse¹¹⁸. Furthermore, preparations in view of new EU legislation on EU financial interests by criminal law are ongoing.

The Commission pursued a rigorous enforcement policy in respect of the transposition by Member States of EU rules on **criminal sanctions for environmental offences** and the legislation on **criminal sanctions for pollution from ships**. Infringement procedures were initiated against Member States who had not transposed this legislation on time. Failure by Member States to implement these EU wide rules into their national law makes it impossible to have common minimum criminal law rules for serious breaches of EU legislation on the protection of the environment and against ship-source pollution. Such EUwide rules are essential to prevent loopholes which could otherwise be exploited by perpetrators of environmental crimes.

116 EU Agency for Fundamental Rights, "Opinion on the draft Directive regarding the European Investigation Order (EIO)", available at: http://fra.europa.eu/fraWebsite/research/opinions/op-eio_en.htm

117 Commission Communication: Towards an EU Criminal Policy – ensuring the effective implementation of EU policies through criminal law, COM(2011) 573 final, available at: http://ec.europa.eu/justice/newsroom/files/com_2011_573_en.pdf ,

118 Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) , COM (2011) 654 final, available at: http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf

APPENDIX

Overview of 2011 ECJ 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	Grand Chamber?
Skareby v Commission	F-95/09	08/02/2011	Employment – EU Civil Service Tribunal	Justice	Right to an effective remedy and fair trial	N
Association belge des Consommateurs Test-Achats and Others	C-236/09	01/03/2011	Discrimination – services	Equality	Equality between men and women	Y
Areva and Others v Commission	T-117/07	03/03/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Peñarroja Fa	C-372/09	17/03/2011	Freedom of establishment	Justice	Right to an effective remedy and fair trial	N
AJD Tuna	C-221/09	17/03/2011	Agriculture and fisheries	Justice	Right to an effective remedy and fair trial	N
ThyssenKrupp Nirosta v Commission	C-352/09 P	29/03/2011	Competition	Justice	Principles of legality and proportionality of criminal offences and penalties	Y
Italy v EESC	T-117/08	31/03/2011	Discrimination – employment	Equality	Cultural, religious and linguistic diversity	N
Visa Europe and Visa International Service v Commission	T-461/07	14/04/2011	Competition	Citizens' rights	Right to good administration	N
Deutsche Telekom	C-543/09	05/05/2011	Communications	Freedoms	Protection of personal data	N
McCarthy	C-434/09	05/05/2011	Freedom of movement	Citizens' rights	Freedom of movement and of residence	N
Runevič-Vardyn and Wardyn	C-391/09	12/05/2011	Freedom of movement	Equality	Non-discrimination	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right	Grand Chamber?
Arkema France v Commission	T-343/08	17/05/2011	Competition	Justice	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	N
Elf Aquitaine v Commission	T-299/08	17/05/2011	Competition	Justice	Presumption of innocence and right of defence	N
Fuji Electric v Commission	T-132/07	12/07/2011	Competition	Justice	Right to an effective remedy and fair trial	N
General Technic-Otis v Commission	T-141/07	13/07/2011	Competition	Justice	Presumption of innocence and right of defence	N
Fuchs	C-159/10	21/07/2011	Discrimination – employment	Freedoms	Freedom to choose an occupation and right to engage in work	N
Beneo-Orafti	C-150/10	21/07/2011	Agriculture and fisheries	Justice	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	N
Kelly	C-104/10	21/07/2011	Discrimination – employment	Freedoms	Protection of personal data	N
Nagy	C-21/10	21/07/2011	Agriculture and fisheries	Equality	Equality before the law	N
Kingdom of Sweden v European Commission and MyTravel Group	C-506/08	21/07/2011	Competition	Citizens' rights	Right of access to documents	N
Samba Diouf	C-69/10	28/07/2011	Social policy – asylum	Justice	Right to an effective remedy and fair trial	N
Patriciello	C-163/10	06/09/2011	Criminal law – EU immunity	Freedoms	Freedom of expression and information	Y

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right	Grand Chamber?
Hennings	C-297/10	08/09/2011	Discrimination – employment	Equality	Non-discrimination	N
Prigge and Others	C-447/09	13/09/2011	Discrimination – employment	Equality	Non-discrimination	Y
Williams and Others	C-155/10	15/09/2011	Employment	Solidarity	Fair and just working conditions	N
Gueye	C-483/09	15/09/2011	Criminal law – victims	Freedoms	Respect for private and family life	N
Evropaïki Dynamiki v EIB	T-461/08	20/09/2011	Communications	Justice	Right to an effective remedy and fair trial	N
De Nicola v EIB	F-55/08 DEP	27/09/2011	Employment – EU Civil Service Tribunal	Justice	Right to an effective remedy and fair trial	N
Association belge des consommateurs test-achats Commission	T-224/10	12/10/2011	Competition	Solidarity	Consumer protection	N
Solvay v Commission	C-109/10 P	25/10/2011	Competition	Citizens' rights	Right of access to documents	Y
Aragonesas Industrias y Energía v Commission	T-348/08	25/10/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Garenfeld	C-405/10	10/11/2011	Environment	Justice	Principles of legality and proportionality of criminal offences and penalties	N
Dereci and Others	C-256/11	15/11/2011	Freedom of movement	Freedoms	Respect for private and family life	Y
Lindner	C-327/10	17/11/2011	Civil law	Justice	Right to an effective remedy and fair trial	N
KHS	C-214/10	22/11/2011	Employment	Solidarity	Fair and just working conditions	Y

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right	Grand Chamber?
Sison v Council	T-341/07	23/11/2011	Common foreign and security policy – terrorism	Justice	Right to an effective remedy and fair trial	N
Asociación Nacional de Establecimientos Financieros de Crédito	C-468/10	24/11/2011	Data protection	Freedoms	Protection of personal data	N
Scarlet Extended	C-70/10	24/11/2011	Communications	Freedoms	Right to property	N
Painer	C-145/10	01/12/2011	Civil law	Freedoms	Freedom of expression and information	N
KME Germany and Others v Commission	C-389/10 P	08/12/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Chalkor v Commission	C-386/10 P	08/12/2011	Competition	Justice	Right to an effective remedy and fair trial	N
KME and Others v Commission	C-272/09 P	08/12/2011	Competition	Justice	Right to an effective remedy and fair trial	N
Nycomed Danmark v EMA	T-52/09	14/12/2011	Regulatory powers	Freedoms	Freedom to conduct a business	N
Cicolav Regione Siciliana	C-482/10	21/12/2011	National administrative law	Citizens' rights	Right to good administration	N
X	C-507/10	21/12/2011	Criminal justice	Justice	Right to an effective remedy	N
N.S. and others	C-411/10 & C-493/10	21/12/2011	Asylum	Dignity	Prohibition of torture	Y
European Commission v. Austria	C-28/09	21/12/2011	Environment	Freedoms	Respect for private and family life	Y

Staff Working Document
on Progress on

Equality

between

Women

and Men

2011

Progress on equality between women and men in 2011

1. Introduction

In 2011, hit by a financial, economic and social crisis, the everyday lives of many European citizens, men and women, have been profoundly changed and the European Union is still facing one of its greatest challenges. The crisis and the responses to the crisis have had different impacts on women and men. As there is high pressure to fight the economic downturn, progress towards gender equality risks being considered as an objective that can be postponed. However, the equal treatment of women and men should be understood as contributing to economic success.

The present Report on progress on equality between women and men is a part of the Strategy for equality between women and men (2010-2015)¹¹⁹. For the first time, this year it is annexed to the Communication on the Application of the EU Charter of Fundamental Rights. It provides an overview of the performance and activities organised at EU level in 2011 in the five areas of the Strategy namely: equal economic independence; equal pay for equal work and work of equal value; equality in decision-making; dignity, integrity and ending gender-based violence, and gender equality in external action policy. The following dimensions are emphasised:

- the economic and business case for gender equality,
- the efforts made to promote gender equality in the follow-up to the Europe 2020 strategy,
- the consequences of the crisis and recovery measures for women and gender equality,
- the advantage of tackling the gender pay gap at EU level, both for economic growth and meeting poverty targets,
- the economic case for promoting a balanced representation of women and men in economical decision-making,
- the human and economic costs of violence,
- the EU's clear commitment to gender equality when dealing with third countries and international organisations.

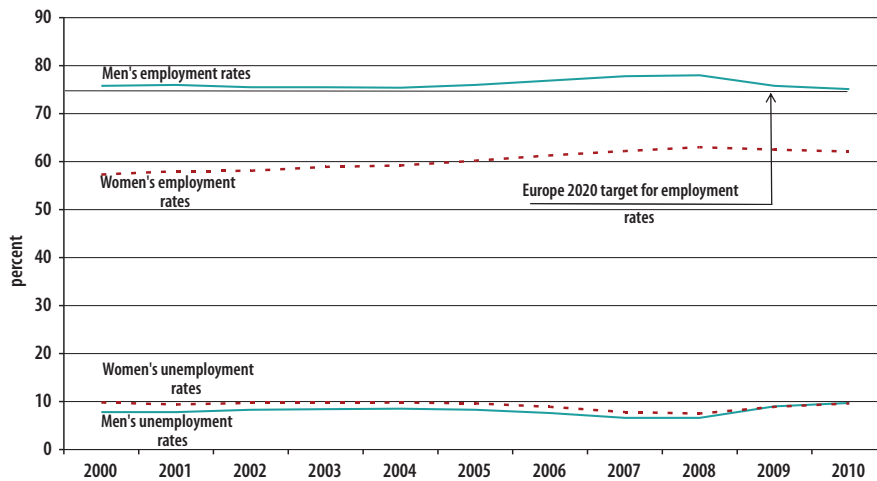
In what follows, these aspects are illustrated by examples of actions carried out at EU level and by Member States individually. The report also provides the most recent EU comparable statistics enabling an overview of the situation for women and men, the changes occurring over time, and remaining gender gaps in the European Union.

¹¹⁹ COM(2010) 491 final.

2. Equal economic independence

With an employment rate reaching 75.1% for men and 62.1% for women¹²⁰ (Figure 1), it is broadly agreed that the EU can only reach the Europe 2020 headline target (75% of the population aged 20-64 should be employed by 2020) if there is a clear commitment to gender equality. Twelve EU Member States¹²¹ have already reached the target which has been set for male employment; however, when it comes to women, the vast majority of Member States have still not reached the 75% target.

Figure 1 – employment and unemployment rates (women and men aged 20-64) in EU Member States – 2000-2010



Source: Eurostat, Labour Force Survey (LFS), annual averages.

Moreover, if employment is measured in full-time equivalent¹²², figures show that, in several countries, less than half of the female workforce is employed. The availability of childcare services seems to play an important role (Figure 2) in determining these figures.

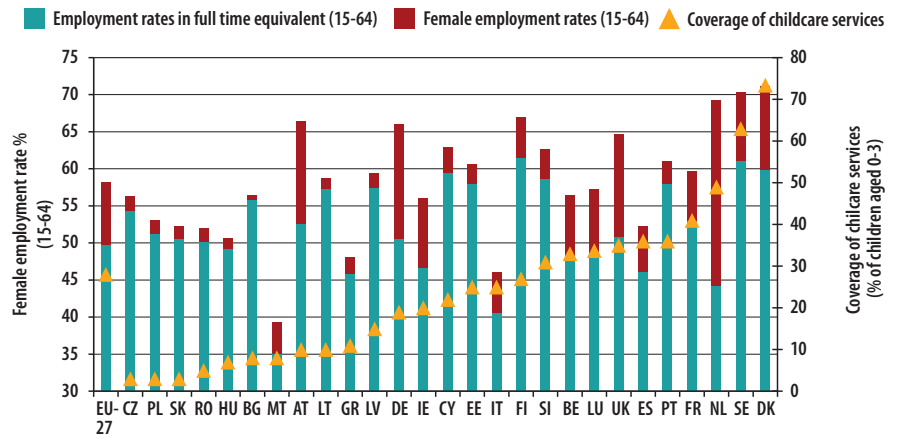
Employment rates of migrant women are not only substantially lower than the average employment rate, but are also lower than the employment rates of migrant men. The latter is what motivated the Commission, in its European Agenda for the Integration of Third-Country

¹²⁰ Eurostat 2010.

¹²¹ Sweden, Denmark, Netherlands, Germany, Czech Republic, Cyprus, Luxembourg, Malta, Austria, Portugal, UK, Greece.

¹²² Eurostat defines Full Time Equivalent (FTE) as a unit to measure employed persons in a way that makes them comparable although they may work a different number of hours per week. The unit is obtained by comparing an employee's average number of hours worked to the average number of hours of a full-time worker. A full-time person is therefore counted as one FTE, while a part-time worker gets a score in proportion to the hours he or she works. For example, a part-time worker employed for 20 hours a week where full-time work consists of 40 hours, is counted as 0.5 FTE.

Figure 2 – Female employment and coverage of childcare services



Source: EU-silc 2009, LFS 2010

Nationals, to call on Member States to address the specific needs of migrant women, promote their participation in the labour market and strengthen their economic independence¹²³.

2.1. Second earners

In 2011, the EU launched the **first European Semester** and adopted its first Annual Growth Survey¹²⁴, anchored in the Europe 2020 Strategy. It highlighted the worryingly low labour market participation rate of **second earners** (the spouse who earns less in two-earner couples). Indeed, in many Member States, financial disincentives such as tax and benefit systems combined with excessive childcare costs make it more attractive for the spouse with relatively lower earnings (who tend in general to be women, as can be seen in Figure 3) to choose between either inactivity or limited activity. The labour supply of spouses is interconnected and married women's decision to enter the labour market is often influenced by the total income of the household. As a result, women may enter or leave the workforce depending on family income needs. They are consequently more sensitive to policies affecting their participation in the labour market than policies addressing hours of work.

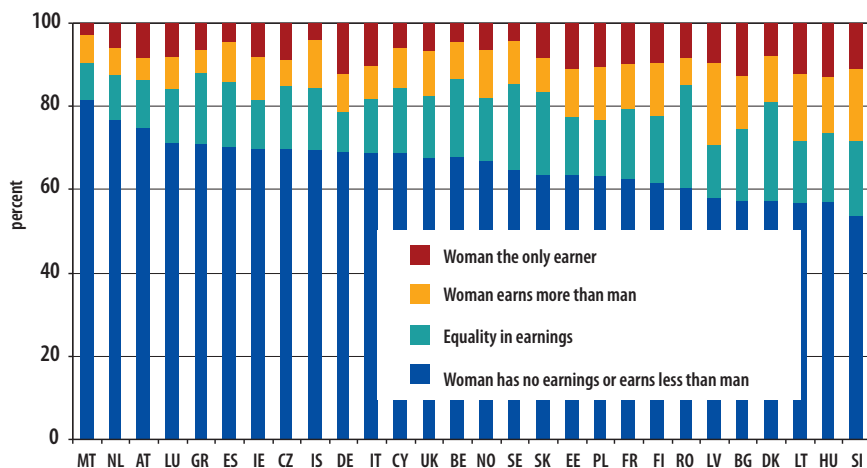
On 7 June 2011, in the context of the Europe 2020 Strategy, the Commission made country-specific suggestions for Council recommendations¹²⁵. The Commission, when addressing Member States, placed the emphasis on taking the necessary measures in order to:

123 COM(2011) 455 final: European Agenda for the Integration of Third-Country Nationals.

124 COM(2011)11 final.

125 In accordance with Article 121 and 148 of the TFEU.

Figure 3 – Secondary and primary earners in Europe.
Percentage distribution of couples by share of female earnings, 2009*



* Woman earns less/more than man if her income is below 45% / above 55% of the joint income in the couple. Only couples with at least one working partner are considered. Couples in which at least one partner is self-employed or retired are excluded. Source: Bettio and Verashchagina, University of Siena, using EU-SILC 2009, income data for 2008.

- promote a reconciliation of work and private life by providing available and affordable childcare services,
- enable access to more flexible working arrangements,
- establish adequate tax and benefit systems in order to enhance female participation rates.

The Commission took stock of the progress made when implementing country specific recommendations, first at EU level in the Annual Growth Survey 2012 adopted in November 2011¹²⁶, and then for each Member State in the set of guidelines for next year.

2.2. Pensions

According to a German study¹²⁷ the gender pension gap in Germany is 59.6%, meaning that women receive on average 59.6% less individual pensions than men (i.e. excluding derived entitlements like survivor's pension). For the EU-15 the same study reveals a gap ranging between 16.8% and 46.4% (including derived entitlements).

When pension systems were initially developed, men spent a lifetime in the labour market and women mostly stayed home. The resulting income inequality in pensions was addressed by allowing wives to draw on their husbands' contributions. Over recent decades, women have entered the labour market in great numbers. However, inequalities remain and those have an impact on the adequacy of their pensions. Women are more likely than men to be outside the labour market at any age, to work part-time or under atypical contracts. Career breaks often lead to a reduction in lifetime earnings¹²⁸ and on average women earn less than men. For all these reasons, women pensioners typically have lower pension benefits than male pensioners.

Demographic changes in Europe (an ageing population and a shrinking working population) and the financial and economic crises have created a major challenge for the future of pension systems. An important trend in recent pension reforms in Member States is to try and improve the financial sustainability of pensions systems by tightening the link between contributions and benefits in earnings-related pension schemes. This is done mainly through the lengthening of contribution periods required to qualify for a full pension and by changing the reference for the calculation of benefits from "best years" to lifetime earnings. As a consequence, pension benefits will increasingly depend upon the workers' entire career.

In parallel, the gender pay gap leads to negative consequences on the reference salary generally used when the statutory pension is calculated. This impedes women from contributing to complementary retirement savings.

2.3. Reconciliation between work and private life

Reconciling work, family and private life is still a great challenge for many European women. The labour market participation of mothers is 12.1 percentage points lower than that of women without children, while the rate for fathers is 8.7 percentage points higher than that for men without children. There was limited progress in the negotiations following the proposal for a Directive amending Directive 92/85/EEC (**Pregnant Workers Directive**). The European Parliament, in its first reading report adopted in 2010, proposed – among other things – to raise the length of maternity leave up to 20 fully paid weeks and to introduce a two weeks fully paid paternity leave. This has brought many Member States to oppose the proposal. The Council has not yet adopted its first reading position.

¹²⁷ Gender Pension Gap. Developing an indicator measuring fair income opportunities for women and men. German Federal Ministry for Families, Elderly, Women and Youth, January 2012.

¹²⁸ Projections carried out by DG ECFIN estimated that the effect of a three-year long career break for childcare on pension benefits is much larger than the effect of a three-year long unemployment spell in a few Member States.

Reconciliation between work and care obligations not only concerns parents of small children. Challenges are noticeable through the life-cycle. In some Member States, elderly workers retire earlier so as to help their adult children in raising their families. Women with grand-children and elderly relatives therefore require special attention.

The Council conclusions on the “reconciliation of work and family life as a precondition for equal participation in the labour market”¹²⁹ were adopted under the Polish Presidency, in the framework of the Review of the Implementation of the Beijing Platform for Action. In this context, a report¹³⁰ prepared by the European Institute for Gender Equality (EIGE) underlines that increases in childcare services and fathers’ take-up of parental leave have a positive bearing on the labour supply for main carers, who are usually women. Both measures promote a better share of gender-equal unpaid care work. However, changes in the labour-market (from industry to services) and short-term macroeconomic developments may increase the share of female primary earners.

3. Equal pay for equal work and work of equal value

The pay gap between women and men is slowly narrowing but remains high. Figure 4 shows that on average, women earn 16.4%¹³¹ less than men for every hour worked with considerable variations among Member States. The gender pay gap (GPG) is caused by multiple factors¹³², such as labour market segregation and differences in work patterns. Differences in educational choices and biased evaluation and pay systems also play a role.

The EU-wide information campaign on the GPG launched in March 2009 was continued throughout 2011. Building on previous achievements, results and the experience gained during the two previous years of implementation, the current phase of the campaign further develops awareness-raising activities. The first European Equal Pay Day took place on 5 March 2011. The date marked the 64 days women had to work more in 2010 to earn a man’s average annual pay. The European Equal Pay Day will be held each year and the date will change according to the latest GPG figure. In 2012, Equal Pay Day fell on 2 March. The European Commission is planning a two-year communication campaign aimed at attracting and retaining more women in scientific careers, at showing them that they can have a successful career and that science can benefit from a higher participation of women.

In 2011, Bulgaria passed a law amending the Labour Code. The law foresees equal rights and opportunities for distance workers and gives a legal definition of distance work.

The Netherlands introduced a quality mark to reward companies which are ahead in the implementation of flexible work arrangements.

In Austria, since 1 March 2011 companies are obliged to present an income report. Since 1 January 2011 there is an obligation to indicate the minimum wage and, where appropriate, the possibility of overpayment in job announcements. A consequence of contravening these regulations is a first warning fine of up to 360 €. A Salary Calculator¹³³ was made available to the public on the website of the minister of women and civil service to compare the salary for women and men on average.

129 Annexed to Council conclusions (7166/11).

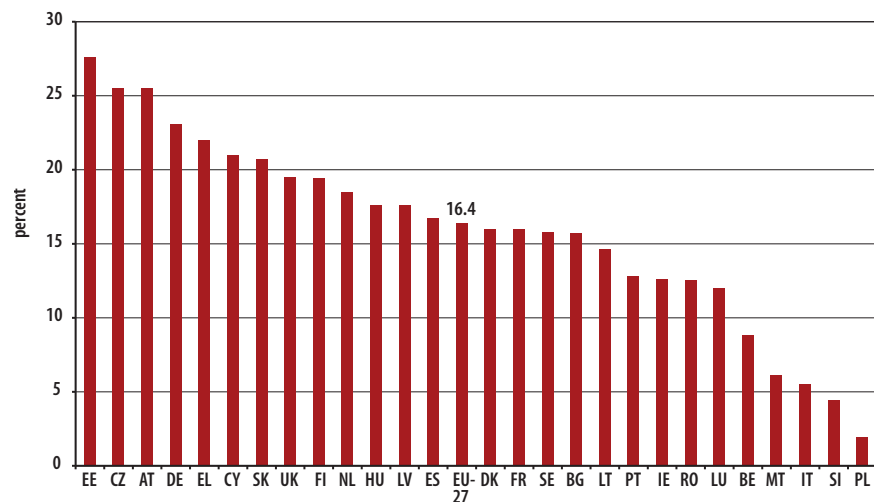
130 EIGE 2011: Review of the Implementation of the Beijing Platform for Action: Women and the Economy.

131 Eurostat 2010.

132 Information on the causes of the gender pay gap is available in the Communication “Tackling the pay gap between women and men” (COM(2007) 424 final) or on the European Commission website: <http://ec.europa.eu/justice/gender-equality/gender-pay-gap>.

133 www.gehaltsrechnerg.vt

Figure 4 – Pay gap between women and men in unadjusted form in EU Member States – 2010



Source: Eurostat. The unadjusted Gender Pay Gap (GPG) represents the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. EE and EL: data from 2008. EU27, BE, IE, ES, FR, IT, CY, AT: provisional data.

4. Equality in decision-making

The equal participation of women and men in decision-making processes and positions is a prerequisite for the advancement of women and the achievement of substantive gender equality. It is recognised as a necessary basis for effective democracy and good governance in all fields. Even though progress has been made, the underrepresentation of women continues to be an area of concern in many EU Member States. The situation varies between them and is very often worse in the corporate world.

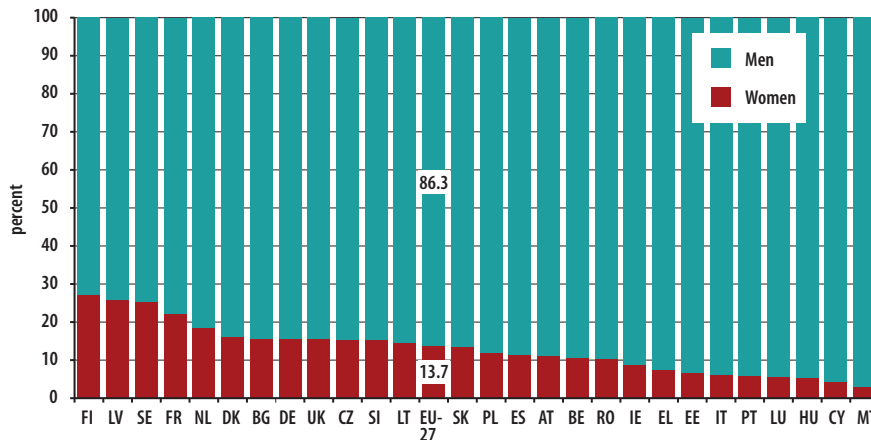
4.1. More women on corporate boards as an economic and business imperative

In January 2012, only 13.7% of board seats of EU Member States' largest publicly listed companies¹³⁴ were filled by women (Figure 5). The pace of progress has been slow, though there has been an improvement of 1.9 percentage points compared to the EU average in 2010. The underrepresentation of women in leadership positions constitutes an untapped potential source of highly qualified human resources as evidenced by the discrepancy between the high number of female graduates and their absence from top-level positions. The Europe 2020 Strategy for smart, sustainable and inclusive growth leans on knowledge, competences and innovations, i.e. human capital. One of the ways of improving Europe's competitiveness is the equal

¹³⁴ Source: European Commission database on women and men in decision-making. The data on companies cover the largest (by market capitalization) nationally registered constituents of the blue-chip index maintained by the stock exchange in each country. In countries with unitary (one-tier) systems, the board of directors is counted (including non-executive and executive members). In countries with two-tier systems, only the supervisory board is counted.

representation of women and men in economic decision-making positions, which contributes to a more productive and innovative working environment and helps improve performance. In addition, there is an increasing body of research showing that gender diversity pays off and that there is a positive correlation between women in leadership and business performance¹³⁵.

Figure 5 – Share of women and men members of the highest decision-making body of the largest publicly listed companies – 2012



Source: European Commission, database on women and men in decision-making. Data were collected in January 2012. The list of the largest publicly quoted companies is based for each country on current membership of blue-chip index. In countries for which the blue-chip index includes a small number of companies (for instance LU, SK), at least the 10 largest companies were covered.

Moreover, a large majority of European citizens (88%) believe that, given that women are equally competent, they should be equally represented in positions of leadership and 75% are in favour of legislation that would ensure a more balanced representation between women and men (under the condition that qualification is taken into account without automatically favoring one of either gender)¹³⁶.

2011 was an important year for gender equality in corporate boardrooms. **Vice-President Reding**, Commissioner for Justice, Fundamental Rights and Citizenship challenged business leaders to increase women’s presence on corporate boards by self-regulation. The goal is 30% women on the boards of the major European companies in 2015 and 40% by 2020. All EU publicly listed companies were asked to sign the “Women on the Board Pledge for Europe”¹³⁷ and to develop their own ways of getting more women into top jobs. A number of **ministers** and organisations supported this call for action, encouraging national listed companies to make more efforts to increase women’s representation on their boards by signing the Pledge. The

135 Catalyst, McKinsey & Company, Lord Davies report, etc.

136 Special Eurobarometer 376 – Women in decision-making positions, September 2011.

137 Available at: http://ec.europa.eu/commission_2010-2014/reding/womenpledge.

European Parliament supported the Commission's approach through a resolution adopted in July 2011¹³⁸. In addition, four EU Member States (France, the Netherlands, Italy and Belgium) have adopted binding measures to improve the situation. Other Member States have encouraged self-regulatory measures.

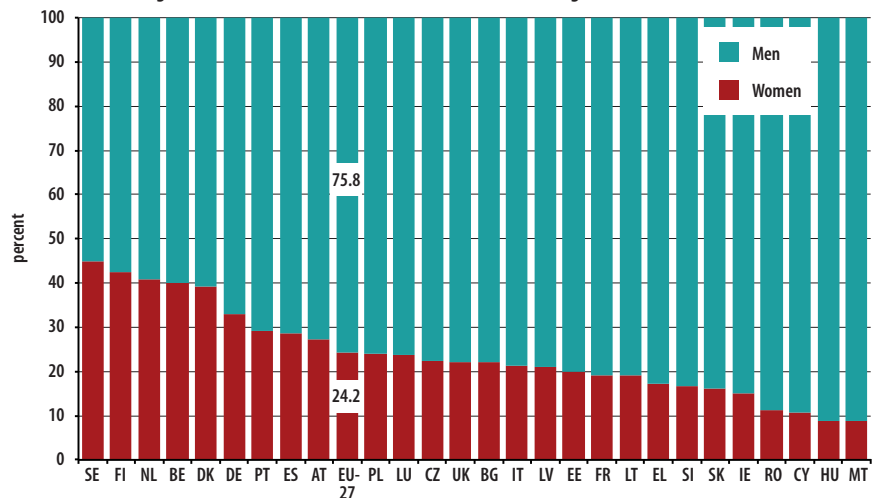
In March 2012, the Commission published a report¹³⁹ showing that, one year after the call to action, limited progress had been made towards increasing the number of women on company boards. To identify appropriate measures for addressing the persistent lack of gender diversity in boardrooms of listed companies in Europe, the Commission launched a public consultation¹⁴⁰ which will serve to gather views on possible action at EU level, including legislative measures, to redress the gender imbalance on company boards. The public consultation will run until 28 May 2012. Following this input, the Commission will take a decision on further action later in 2012.

4.2. Gender balance in political decision-making: more progress is needed

Data shows that there has been progress made towards better gender balance in **parliaments** at European and national levels. The **European Parliament** has a better gender composition (35% women and 65% men) than national and regional parliaments (24% and 32% women respectively).

From 2005 to 2011, the proportion of women members in the **Lower/Single houses of national parliaments** around the EU has risen steadily, albeit slowly, from 22% to just under 25%. Only **Belgium, the Netherlands, Finland** and **Sweden** have more than 40% of women in their parliaments and 19 Member States still have less than the critical mass of 30%

Figure 6 – Women and men in national Parliaments (single/lower houses) – 2011



Source: European Commission, database on women and men in decision-making. Data were collected in the last quarter 2011.

138 European Parliament resolution of 6 July 2011 on women and business leadership (2010/2115(INI)).

139 http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf

140 http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528_en.htm

of women in their parliaments (Figure 6). Positive developments in 2011 include the great progress made in **Slovenia**, where women's representation doubled from around 16% to 32% and in **Poland** where women now account for around 24% of parliamentarians (+ 4 percentage points). Part of the progress can be pointed to quota legislation adopted in both countries and strong campaigning from women's organisations.

There has been an improvement in the gender composition of EU Member States **governments** over time, but the pace of change remains slow in many countries. On average, the share of women senior ministers¹⁴¹ is only around 24%¹⁴².

Inside the EU, only **Sweden** achieved parity in government. **Austria** and **Finland** have more than 40% women senior ministers. By contrast, the figure is under 10% in the governments of **Estonia, Slovenia, Czech Republic** and **Greece**. In **Hungary**, there are no female senior ministers in the government.

5. Dignity, integrity and ending gender-based violence

5.1. Ending gender-based violence

Gender-based violence is a major violation of fundamental rights and entails a high cost for society. The fact that there is no comparable data on violence against women in the different Member States increases the difficulty of addressing this phenomenon. Voices have been raised to warn against the potential threat the financial crisis represents as it may sweep away much of the progress achieved in terms of public expenditure for supporting victims of violence.

An important step towards the objective of ending gender-based violence was the adoption on 18 May 2011 of a package of measures aimed at strengthening the rights of victims of crime. The package consists of a proposal for a horizontal Directive establishing minimum standards on the rights, support and protection of victims of crime¹⁴³, a proposal for a Regulation on the mutual recognition of civil law protection measures¹⁴⁴ (complementing the Directive on the European Protection Order) and a Communication setting out the Commission's position on actions in relation to victims of crime.

This is a general and comprehensive reform package which applies to all victims; including women. It provides a range of measures that should be put in place to ensure that victims receive proper treatment from the moment they report a crime to the final outcome of criminal

The most recent quota law for gender balance in politics is from Poland. It was passed in January 2011 and stipulates that women candidates should make up at least 35% of all electoral lists. The sanction for not complying with this requirement is a refusal from the list. The women's movement played a crucial role in getting the law passed.

Member States are taking action against violence against women (VAW). In **France**, the third action plan against VAW for the first time condemns gender-based workplace violence, rape and sexual assault and the use of prostitution. Many countries have also initiated campaigns: in **Cyprus**, 365 posters depicting all forms of VAW were showed; **Denmark**, inspired by **Spain**, introduced a film with well-known Danish football players spreading the message of eliminating VAW; the **Greek** campaign focused on a telephone line for victims; the slogan of the **Spanish** campaign was "Don't skip the signals. Choose life".

141 Members of the government who have a seat in the Cabinet or Council of Ministers.

142 See figures from p. 104.

143 COM(2011) 275 final.

144 COM(2011) 276 final.

proceedings. A number of measures and provisions will have a positive impact, especially on women suffering from different forms of violent and sexual crime.

For example, the proposal for a Directive puts in place a mechanism based on an individual need assessment to determine whether a victim is in a situation of specific vulnerability and needs special protection. Typically, women who are victims of domestic and sexual violence will be considered vulnerable because of the nature of the crime they have suffered or their relationship to / dependence on the offender. In those cases special protection measures will be available during their participation in criminal proceedings to ease their difficulties during interviews, hearings and trial. Negotiations between the co-legislators are ongoing.

Another measure that will benefit many women is the mutual recognition of protection measures, for example measures which aim to protect a person from harassment, stalking and other forms of indirect coercion. It is important that protection measures issued in one Member State can be easily and speedily be recognised in another Member State. In this way, women do not lose their protection from a violent partner if they move or travel and they don't have to go through heavy formalities. To this end, the proposal for a Regulation relating to the mutual recognition of civil law protection measures will complete the proposal for a Directive on the mutual recognition of criminal law protection measures. Negotiations on the proposal for a Regulation have started under the Polish Presidency and will continue under the Danish Presidency.

A Convention on preventing and combating violence against women and domestic violence¹⁴⁵ was adopted on 7 April 2011 in the framework of the Council of Europe. The Convention:

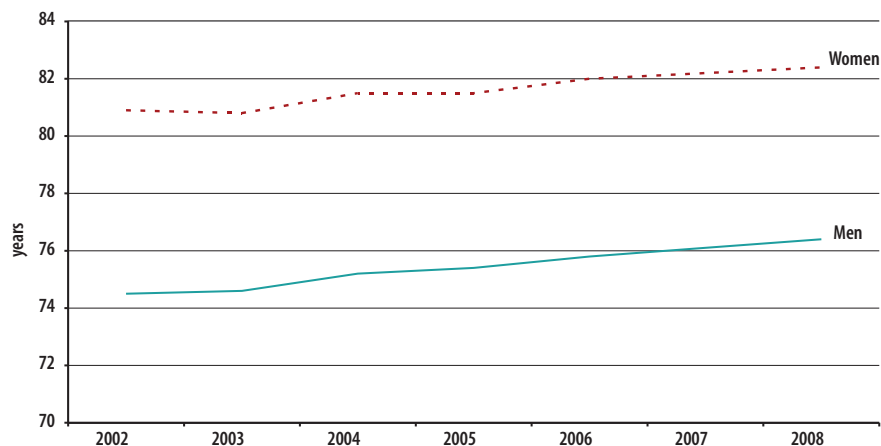
- introduces a comprehensive legal framework to prevent and criminalise all forms of violence against women, to protect victims and to punish perpetrators;
- promotes an integrated approach to violence prevention and victims' protection based on targeted measures according to the type of violence and specific needs along with the involvement and cooperation of all the relevant actors to create a safety net around the victim provided by specifically trained professionals;
- urges the justice system to be more responsive.

¹⁴⁵ Available at: <http://conventions.coe.int/Treaty/EN/Treaties/HTML/DomesticViolence.htm>

5.2. Health

Following the 2010 Women's Health report¹⁴⁶, the Commission presented a Men's Health report in 2011¹⁴⁷ showing that both men and women's perspectives should be taken into account in developing health policy. Although men's overall life expectancy in Europe as a whole is increasing (Figure 7), some Member States have seen a reversal of this trend in the past decade. Life expectancy is lower for men than for women across the EU, a difference that ranges from 11.2 years for Lithuania to 4.1 years in Sweden. A key message of the report is that there are high levels of premature morbidity and mortality in men, due to lifestyle choices and risk-taking behaviours. In all Member States, men who live in poor material and social conditions are likely to eat less healthily, exercise less, be overweight or obese, drink more alcoholic beverages and be more likely to smoke, engage in substance abuse (or drug abuse) and have more high-risk sexual behaviour than women. The report also concludes that a man's poorer knowledge and awareness of health issues underlines the need for targeted health information aimed at men.

Figure 7 – Life expectancy at birth in EU Member States – 2009



Source: Eurostat

146 European Commission 2010, "Data and information on women's health in the EU".

147 "The State of Men's Health in Europe", European Union, 2011.

6. Gender equality in external actions

The Gender Inequality Index was designed by the United Nations Development Programme (UNDP) to show the loss in human development due to inequality between women and men. It measures women's disadvantages in three dimensions: reproductive health, empowerment and the labour market¹⁴⁸. It shows that Norway, Australia and New Zealand have achieved the highest degree of gender equality and that **Ireland, The Netherlands, Sweden and Germany** are among the ten countries that score highest in the world. Indeed, the EU has been at the forefront of gender equality policy and has also contributed to promoting gender equality beyond its borders.

In January 2011, the **Human Rights and Democracy Department** of the European External Action Service (EEAS) was established. The Department strives for consistency between internal and external policies. This is of particular relevance in the field of human rights and as regards the promotion of gender equality and the empowerment of women. It shows how EU achievements related to gender equality and women's empowerment have a global dimension. Specific gender focus points have been selected in more than seventy EU-delegations around the world and a growing number of delegations in partner countries are engaging in dialogue with a strong gender equality component. For instance, in India, 40% of the Multiannual Indicative Programme is allocated to education with a strong gender equality component. The EU continues to actively promote women's human rights through human rights dialogues and consultations with partner countries, such as the **African Union, the EU candidate countries, Canada, China, Indonesia, Japan, the Republic of Moldova, New Zealand, South Africa, Turkmenistan and Uzbekistan**.

Implementing the *EU Guidelines on Violence against Women and Girls and Combating All Forms of Discrimination against them*¹⁴⁹ is an important part EU Delegations' mission. By the end of 2010, more than 130 delegations had reported on the guidelines, a vast majority having identified concrete actions to be implemented in their countries of residence. The EEAS continues to contribute to their implementation through the thematic European Instrument for Democracy and Human Rights (EIDHR) programme. From October 2011 until January 2012, the EEAS will launch regional campaigns about women's participation in politics (North Africa and Middle East) and forced/early marriages (Asia).

Gender Equality is essential for growth and poverty reduction and is key to reaching the Millennium Development Goals. This is why the EU development policy contains a strong commitment to accelerating progress in this important area. For the period 2007-2013, the EU external co-operation in the field of gender equality and women empowerment is financed not only – as cross cutting issues – through geographical instruments (European Development

¹⁴⁸ The index excludes aspects of decision-making in politics, information on employment, additional burdens (care and housekeeping), asset ownership and VAW.

¹⁴⁹ General Affairs Council of 8 December 2008.

Fund, Development Cooperation Instrument and European Neighbourhood and Partnership Instrument) at national and regional level but also by thematic instruments, such as the “Investing in People” programme and the “Instrument for Democracy and Human Rights”. The focus is on gender equality and women empowerment, and the aim is to achieve equal rights (political, economic, employment, social and cultural right) for all; equal access to and control over resources for women and men; equal opportunities to achieve political and economic influence for women and men. The first report on the implementation of the Action Plan on Gender Equality and Women’s Empowerment¹⁵⁰ was published in 2011. It gives a clear idea of what is being done in partner countries by the EU Delegations and the Member States to promote gender equality and women’s empowerment.

The priority theme of the 55th session (2011) chosen by the **United Nations Commission on the Status of Women** (CSW) was “*Access and participation of women and girls to education, training, science and technology, including for the promotion of women’s equal access to full employment and decent work*” and conclusions¹⁵¹ were agreed that reflect the EU gender equality *acquis*.

7. Horizontal issues

The Strategy for Equality between women and men commits the Commission to implementing gender mainstreaming as an integral part its policy making. It stipulates that the next EU Multiannual Financial Framework (MFF) will provide the support necessary to implement the actions foreseen in the Strategy after 2013. In May 2011, the Advisory Committee on equal opportunities between women and men adopted an opinion on key recommendations for the future funding programmes covering the period of 2014–2020.

The Commission has adopted legislative proposals for the future budget programs. Gender equality is included in the Rights and Citizenship programme¹⁵². The objective of this program is to promote and protect the rights of persons and in particular the principles of non-discrimination and equality between women and men. The proposal will be discussed with the Council and with the European Parliament in 2012.

150 <http://capacity4dev.ec.europa.eu/topic/gender>

151 Available at: http://www.un.org/womenwatch/daw/csw/csw55/agreed_conclusions/AC_CS55_E.pdf

152 COM(2011)758.

Graphs and tables

This part gives an overview of the situation of women and men, its evolution over time, and remaining gender gaps in the European Union.

Given the importance of a broad approach to gender equality, indicators have been chosen according to two main criteria: their relevance in covering aspects of the lives of women and men, and the availability of comparable and reliable data. Some indicators have been developed in the framework of the annual review of the Beijing Platform for Action and others by the Commission for monitoring progress in different policy areas, such as employment, social inclusion, education and research. The Europe 2020 indicators are also proposed where sex disaggregated statistics are available. If nothing else is mentioned, the source of the data is Eurostat.

1. Graphs

1.1. Europe 2020 indicators

Figure 8 – Employment rates (women and men aged 20-64) in EU Member States – 2010



Figure 9 – Early leavers from education and training in EU Member States – 2010 (Percentage of the population aged 18-24 with at most lower secondary education and not in further education or training)

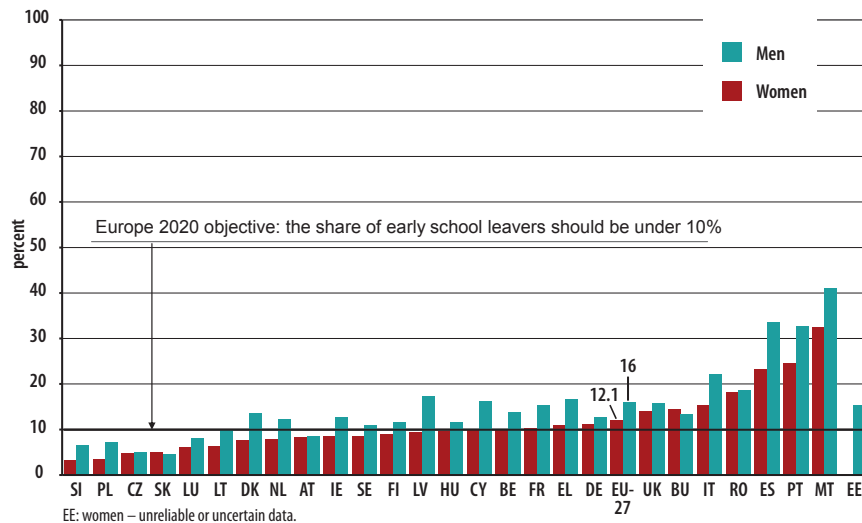
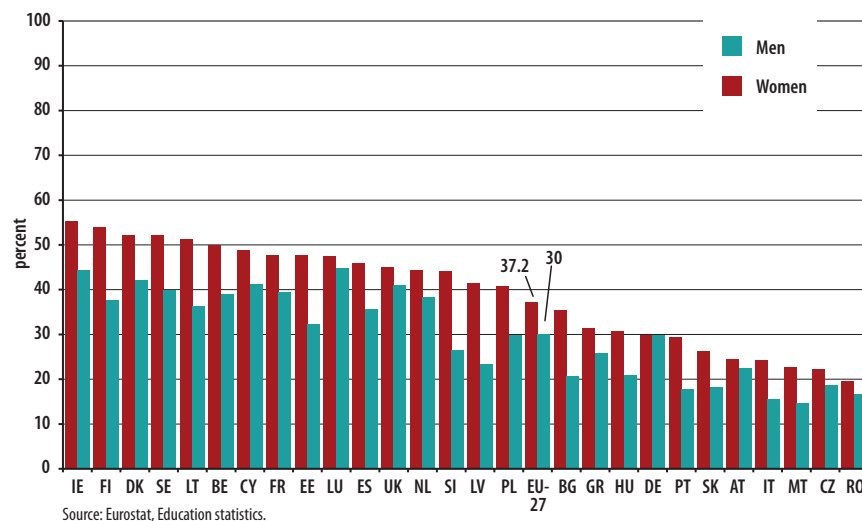
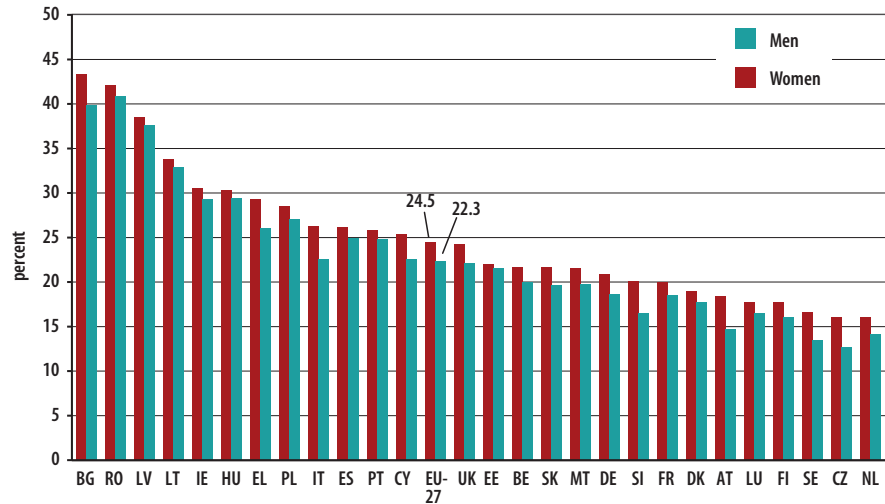


Figure 10 – Tertiary educational attainment by sex (age group 30-34) – 2010



Source: Eurostat, Education statistics.

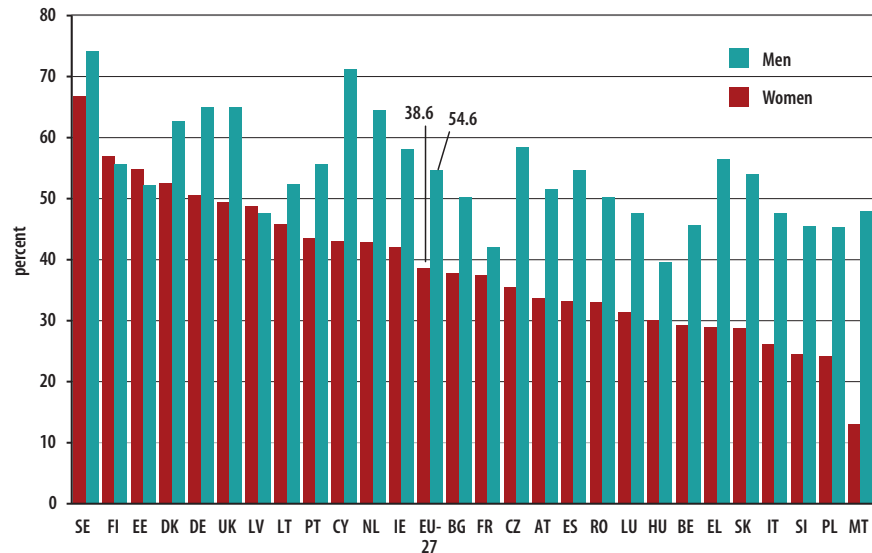
Figure 11 – People at-risk-of-poverty or social exclusion – 2010



Source: EU-27: The indicator on people at-risk of social exclusion is defined as the share of the population in at least one of the following three conditions: 1) at risk of poverty, meaning below the poverty threshold, 2) in a situation of severe material deprivation, 3) living in a household with very low work intensivity.

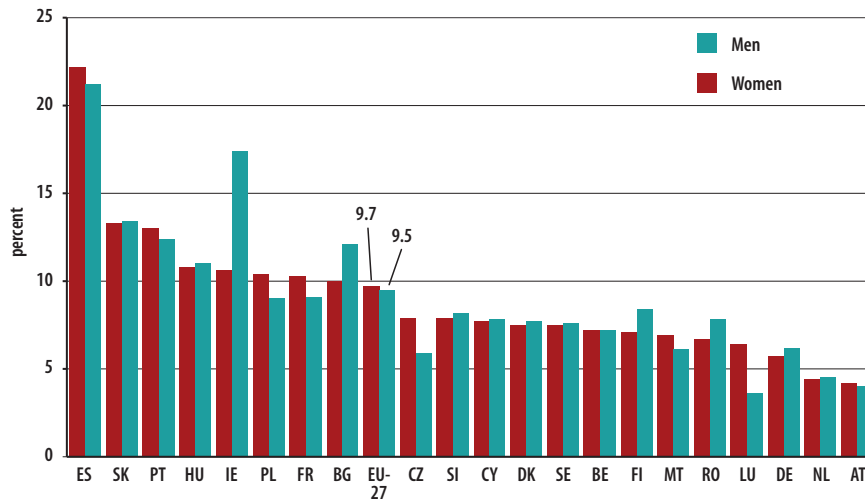
1.2. Employment

Figure 12 – Employment rates of older workers (women and men aged 55-64) in EU Member States – 2010



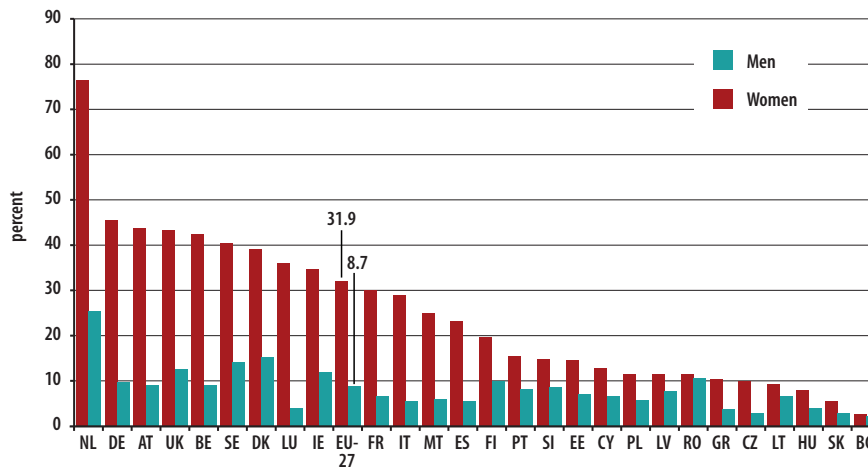
Source: Eurostat, Labour Force Survey (LFS), annual averages.

Figure 13 – Unemployment rates (women and men aged 15 years and over) in EU Member States – 2011



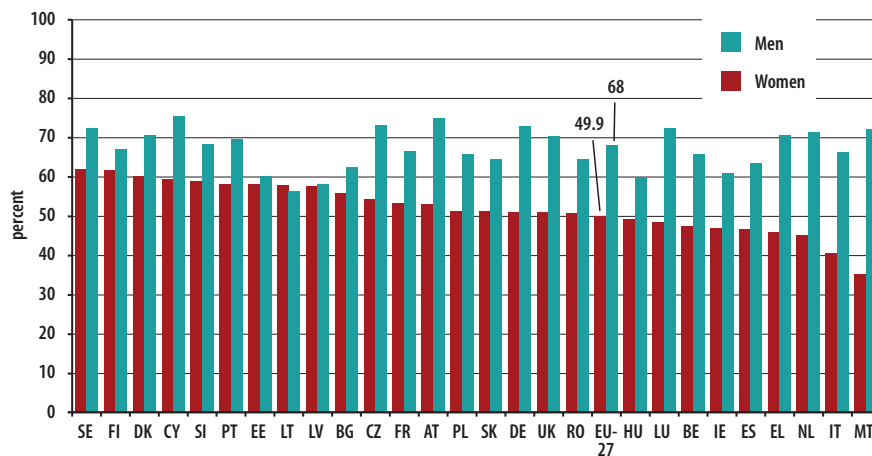
Source: Eurostat, Labour Force Survey (LFS), annual averages. UK, LT, LV, IT, EL, EE: not available.

Figure 14 – Share of part-time workers in total employment (persons aged 15 and over) in EU Member States – 2010



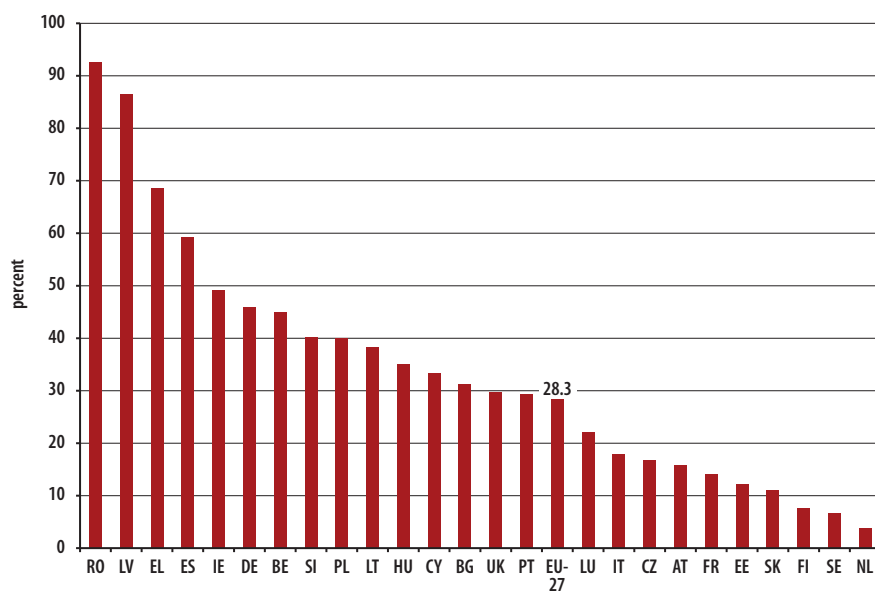
Source: Eurostat, Labour Force Survey (LFS), annual averages.

Figure 15 – Employment rates of men and women aged 15-64, measured in full time equivalent in EU Member States – 2010



Source: Eurostat, Labour Force Survey (LFS), annual averages.

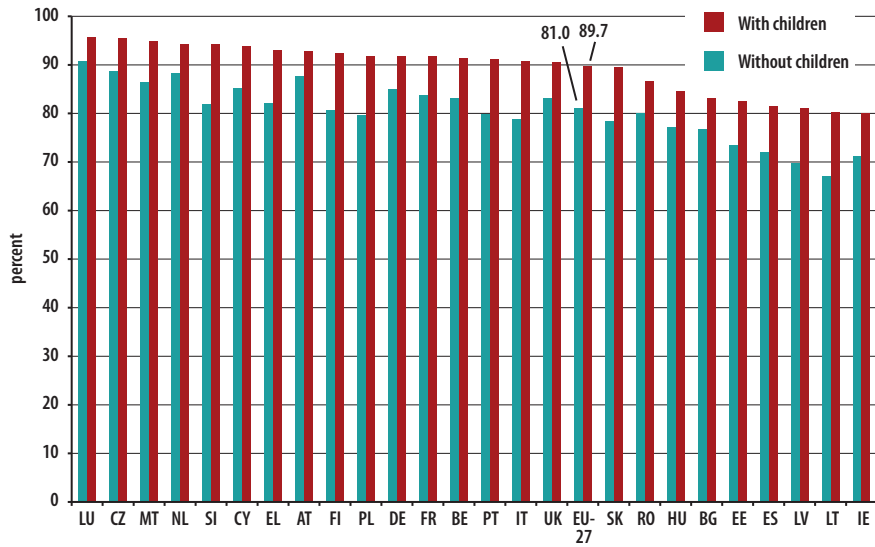
Figure 16 – Inactivity and part-time work among women due to the lack of care services for children and other dependent persons (% of total female population having care responsibilities) – 2010



Source: Eurostat – Labour Force Survey.

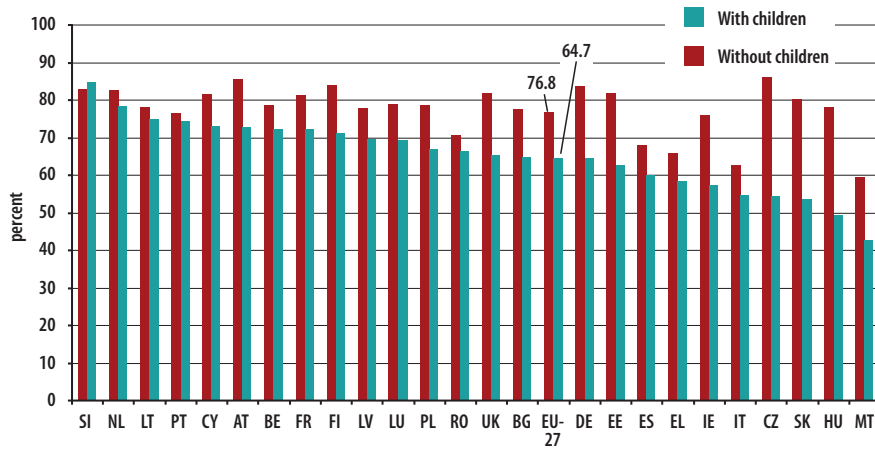
Notes: No data available for DK and MT.

Figure 17 – Employment rates of men aged 25-49, depending on whether they have children (under 12) – 2010



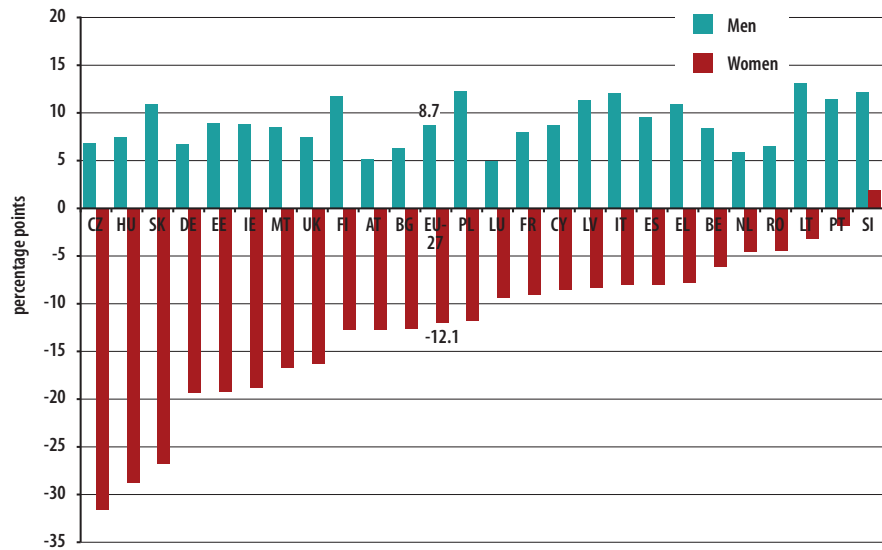
Source: Eurostat, European Labour Force Survey, annual averages.
Notes: No data available for DK and SE.

Figure 18 – Employment rates of women aged 25-49, depending on whether they have children (under 12) – 2010



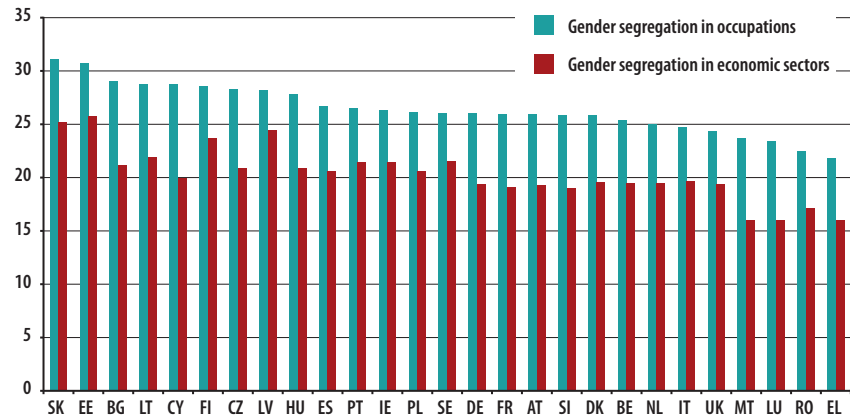
Source: Eurostat, European Labour Force Survey, annual averages.
Notes: No data available for DK and SE.

Figure 19 – Employment impact of parenthood for women and men (aged 25-49) – 2010
(Difference in percentage points in employment rates with presence of a child under 12 and without the presence of any children)



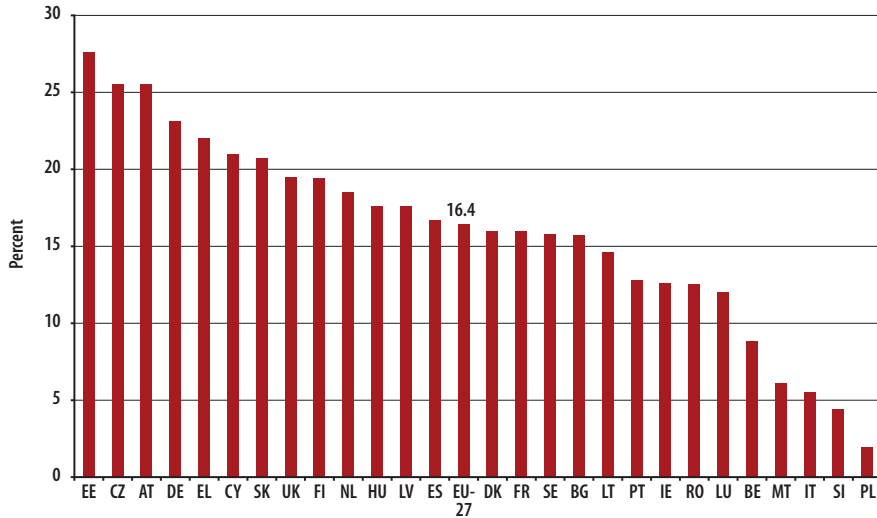
Source: Eurostat, Labour Force Survey (LFS), annual average.
Notes: No data available for DK and SE.

Figure 20 – Gender segregation in occupations and in economic sectors in EU Member States – 2010



Source: Eurostat, EU LFS. Gender segregation in sectors is calculated as the average national share of employment for women and men applied to each sector; differences are added up to produce the total amount of gender imbalance expressed as a proportion of total employment (ISCO classification).

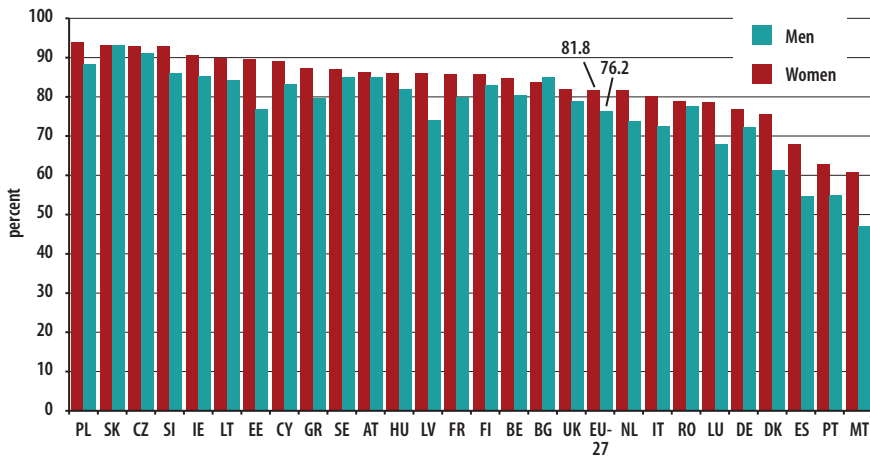
Figure 21 – Pay gap between women and men in unadjusted form in EU Member States – 2010



Source: Eurostat. The unadjusted Gender Pay Gap (GPG) represents the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. EE and EL: data from 2008. EU27, BE, IE, ES, FR, IT, CY, AT: provisional data.

1.3. Education

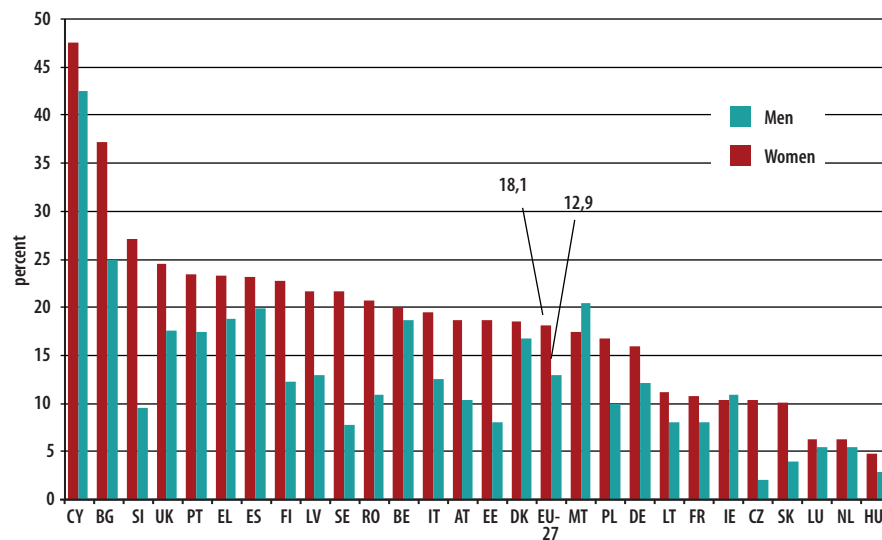
Figure 22 – Educational attainment (at least upper secondary level) of women and men aged 20-24, in EU Member States – 2010



Source: Eurostat, Education statistics. LU, MT and NL: provisional.

1.4. Poverty

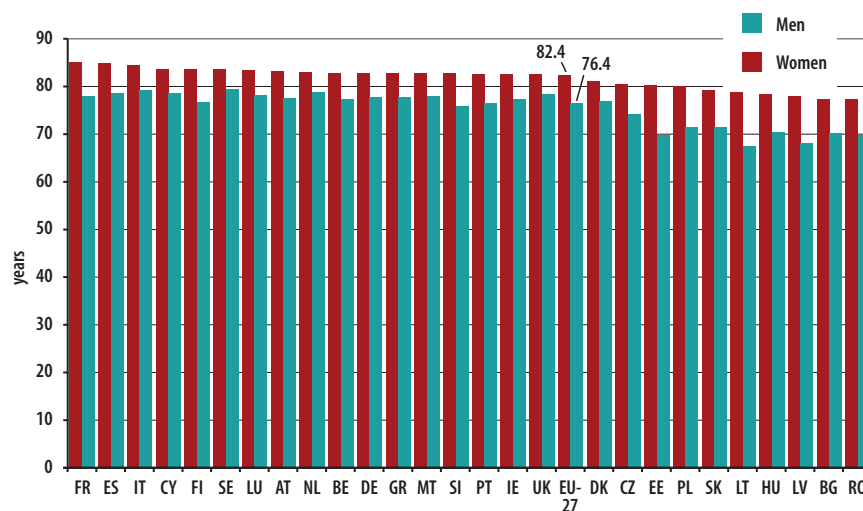
Figure 23 – At-risk-of-poverty rate after social transfers for older people (women and men aged 65 years and over) in EU Member States – 2010



Source: EU-27: SILC 2010.

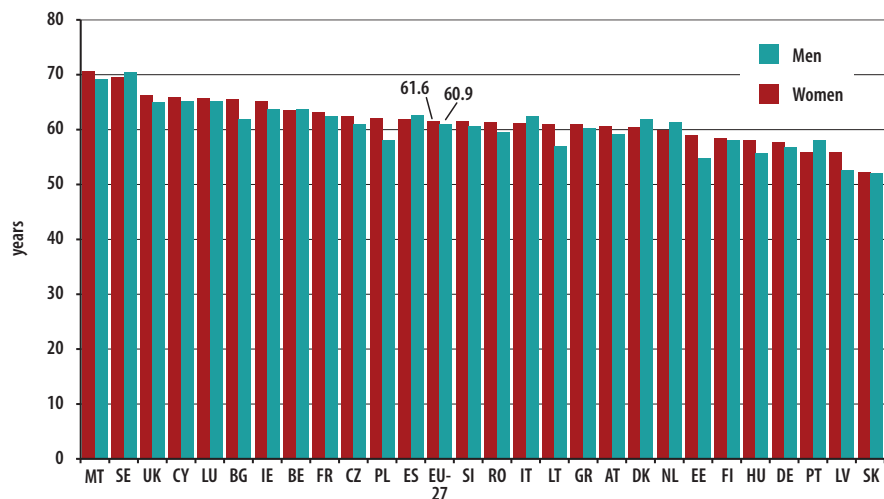
1.5. Health and demography

Figure 24 – Life expectancy at birth in EU Member States – 2009



Source: Eurostat. IT and EU 27: 2008 data.

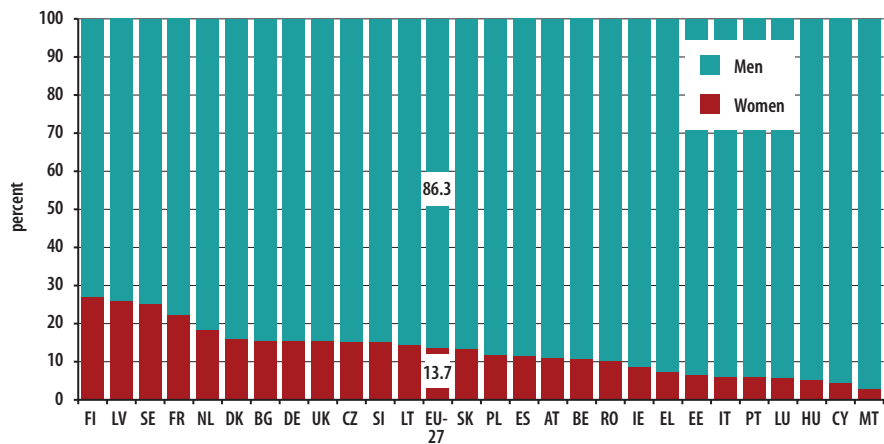
Figure 25 – Healthy life years in EU Member States – 2009



Source: Eurostat. EU 27: provisional data. UK and IT: 2008 data.

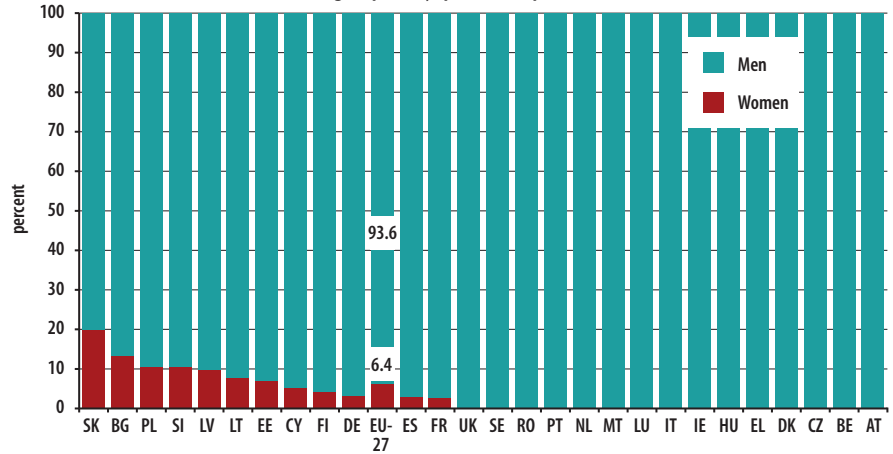
1.6. Decision making

Figure 26 – Members of boards of largest publicly quoted companies – 2012



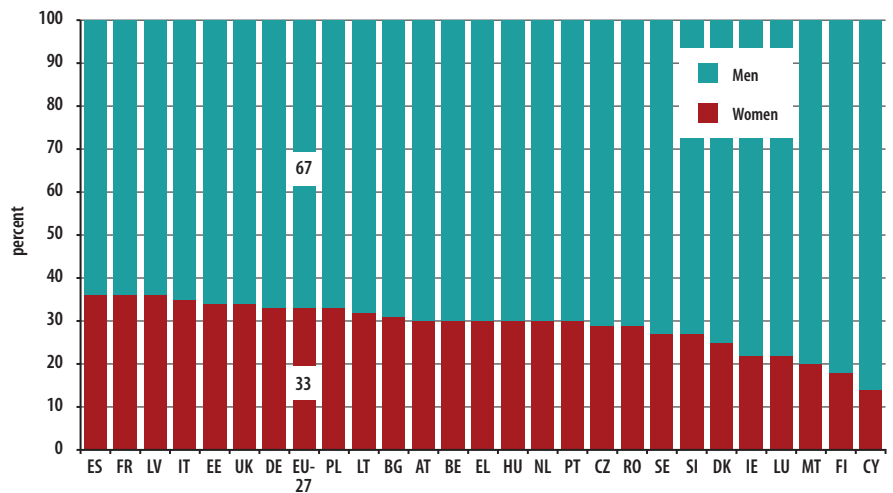
Source: European Commission, database on women and men in decision-making. Data were collected in January 2012. The list of the largest publicly quoted companies is based for each country on current membership of blue-chip index. In countries for which the blue-chip index includes a small number of companies (for instance LU, SK), at least the 10 largest companies were covered.

Figure 27 – Presidents of the highest decision-making body of the largest publicly quoted companies – 2012



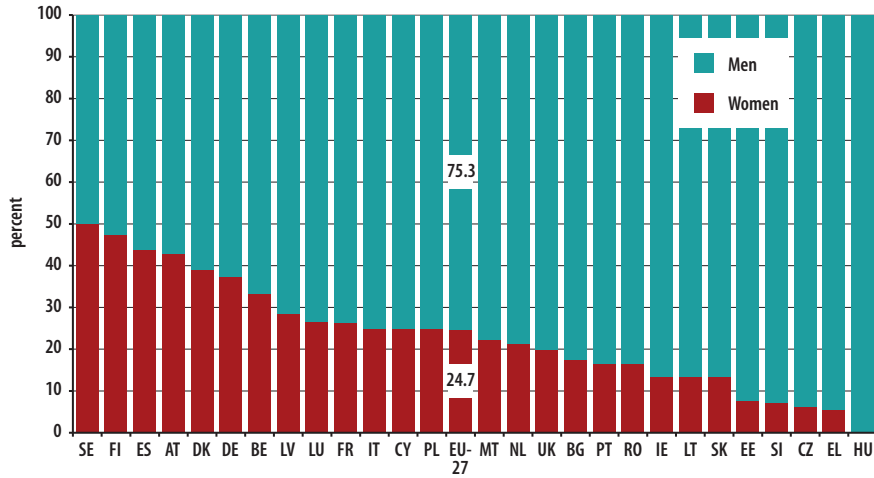
Source: European Commission, Database on women and men in decision-making. Data were collected in January 2012. The list of the largest publicly quoted companies is based for each country on current membership of blue-chip index. In countries for which the blue-chip index includes a small number of companies (for instance LU, SK), at least the 10 largest companies were covered.

Figure 28 – Leaders of businesses – 2010



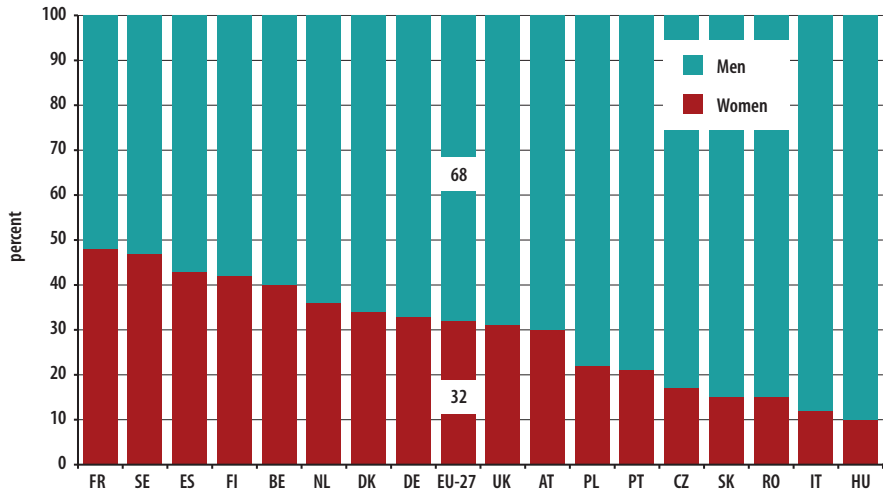
Source: Eurostat, EU LFS. NB: leaders of businesses covers ISCO (International Standard Classification of Occupations) categories 121 (Directors and chief executives) and 13 (Managers of small enterprises). SK: not available.

Figure 29 – Senior ministers in national governments – 2011



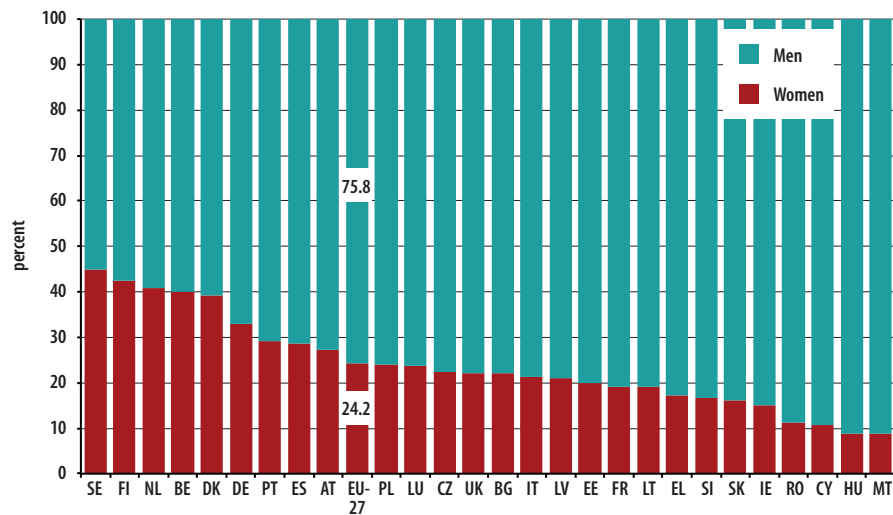
Source: European Commission, Database on women and men in decision-making. Data were collected in October 2011. The indicator has been developed as part of the follow-up of the Beijing Platform for Action in the EU Council of Ministers. A senior minister is a minister in the national government who has a seat in the cabinet.

Figure 30 – Members of regional assemblies – 2011



Source: European Commission, Database on women and men in decision-making. Data collected between 02/09/2011-12/12/2011 except EL 04/02/2011-21/02/2011. BG, CY, EE, EI, IE, LT, LU, LV, MT, SI: not available or not applicable.

Figure 31 – Members of single / lower houses in national parliaments – 2011



Source: European Commission, database on women and men in decision-making. Data were collected in October 2011.

2. Tables

2.1. Europe 2020 indicators

Table 1 – Employment rates (women and men aged 20-64) in EU Member States – 2005 and 2010

	Women		Men		Gap	
	2005	2010	2005	2010	2005	2010
EU-27	60	62.1	76	75.1	-16	-13
Belgium	58.6	61.6	74.3	73.5	-15.7	-11.9
Bulgaria	57.1	61.7	66.8	69.1	-9.7	-7.4
Czech Republic	61.3	60.9	80.1	79.6	-18.8	-18.7
Denmark	73.7	73.1	82.3	79	-8.6	-5.9
Germany	63.1	69.6	75.6	80.1	-12.5	-10.5
Estonia	69	65.7	75.4	67.7	-6.4	-2
Ireland	62.4	60.4	82.8	69.4	-20.4	-9
Greece	49.6	51.7	79.8	76.2	-30.2	-24.5
Spain	54.4	55.8	79.9	69.1	-25.5	-13.3
France	63.7	64.7	75.3	73.7	-11.6	-9
Italy	48.4	49.5	74.8	72.8	-26.4	-23.3
Cyprus	63.8	68.5	85.5	82.5	-21.7	-14
Latvia	65.7	64.9	75.4	65.1	-9.7	-0.2
Lithuania	66.6	65.1	74.9	63.6	-8.3	1.5
Luxembourg	58.4	62	79.4	79.2	-21	-17.2
Hungary	55.6	55	69.2	66	-13.6	-11
Malta	35.1	41.6	80.6	77.8	-45.5	-36.2
Netherlands	67.6	70.8	82.4	82.8	-14.8	-12
Austria	64.9	69.6	78.5	80.2	-13.6	-10.6
Poland	51.7	57.7	65.1	71.6	-13.4	-13.9
Portugal	66	65.6	78.7	75.4	-12.7	-9.8
Romania	56.9	55.9	70.4	70.8	-13.5	-14.9
Slovenia	66.2	66.5	75.8	74	-9.6	-7.5
Slovakia	56.7	57.4	72.5	71.9	-15.8	-14.5
Finland	70.8	71.5	75.1	74.5	-4.3	-3
Sweden	75.5	75.7	80.7	81.7	-5.2	-6
United Kingdom	68.5	67.9	82	79.3	-13.5	-11.4

Source: Eurostat, Labour Force Survey (LFS), annual averages.

Table 2 – Early leavers from education and training in EU Member States – 2010

	Women	Men
EU-27	12.1	16
Belgium	10	13.8
Bulgaria	14.5	13.2
Czech Republic	4.8	4.9
Denmark	7.5	13.6
Germany	11	12.7
Estonia	:	15.2
Ireland	8.4	12.6
Greece	10.8	16.5
Spain	23.1	33.5
France	10.3	15.4
Italy	15.4	22
Cyprus	9.8	16.2
Latvia	9.4	17.2
Lithuania	6.2	9.9
Luxembourg	6	8
Hungary	9.5	11.5
Malta	32.4	41
Netherlands	7.9	12.2
Austria	8.2	8.4
Poland	3.5	7.2
Portugal	24.6	32.7
Romania	18.2	18.6
Slovenia	3.3	6.4
Slovakia	4.9	4.6
Finland	9	11.6
Sweden	8.5	10.9
United Kingdom	14	15.8

Source: Eurostat, Education statistics. EE: women - unreliable or uncertain data.

Table 3 – Tertiary educational attainment by sex, age group 30-34 – 2010

	Women	Men
EU-27	37.2	30.0
Belgium	50.0	39.0
Bulgaria	35.5	20.7
Czech Republic	22.3	18.6
Denmark	52.1	42.2
Germany	29.7	29.9
Estonia	47.7	32.2
Ireland	55.3	44.4
Greece	31.4	25.7
Spain	45.9	35.7
France	47.7	39.3
Italy	24.2	15.5
Cyprus	48.9	41.3
Latvia	41.4	23.4
Lithuania	51.2	36.3
Luxembourg	47.4	44.8
Hungary	30.7	21.0
Malta	22.7	14.6
Netherlands	44.4	38.4
Austria	24.5	22.5
Poland	40.8	29.8
Portugal	29.4	17.7
Romania	19.6	16.7
Slovenia	44.0	26.4
Slovakia	26.2	18.2
Finland	54.0	37.7
Sweden	52.1	39.8
United Kingdom	45.1	40.9

Source: Eurostat, Education statistics.

Table 4 – People at-risk-of-poverty or social exclusion – 2010

	Women	Men
EU-27	24.5	22.3
Belgium	21.7	20.0
Bulgaria	43.3	39.8
Czech Republic	16.0	12.7
Denmark	19.0	17.7
Germany	20.9	18.6
Estonia	22.0	21.5
Ireland	30.5	29.3
Greece	29.3	26.0
Spain	26.1	24.9
France	20.0	18.5
Italy	26.3	22.6
Cyprus	25.4	22.6
Latvia	38.5	37.6
Lithuania	33.8	32.9
Luxembourg	17.7	16.5
Hungary	30.3	29.4
Malta	21.5	19.7
Netherlands	16.0	14.1
Austria	18.4	14.7
Poland	28.5	27.0
Portugal	25.8	24.8
Romania	42.1	40.8
Slovenia	20.1	16.5
Slovakia	21.6	19.6
Finland	17.7	16.0
Sweden	16.6	13.4
United Kingdom	24.2	22.1

The indicator on people at-risk of social exclusion is defined as the share of the population in at least one of the following three conditions: 1) at risk of poverty, meaning below the poverty threshold, 2) in a situation of severe material deprivation, 3) living in a household with very low work intensity.

2.2. Employment

Table 5 – Employment rates of older workers (women and men aged 55-64) in EU Member States – 2005-2010

	Women		Men		Gender gap	
	2005	2010	2005	2010	2005	2010
EU 27	33.6	38.6	51.6	54.6	-18.0	-16.0
Belgium	22.1	29.2	41.7	45.6	-19.6	-16.4
Bulgaria	25.5	37.7	45.5	50.3	-20.0	-12.6
Czech Republic	30.9	35.5	59.3	58.4	-28.4	-22.9
Denmark	53.5	52.5	65.6	62.7	-12.1	-10.2
Germany	37.6	50.5	53.6	65.0	-16.0	-14.5
Estonia	53.7	54.9	59.3	52.2	-5.6	2.7
Ireland	37.3	42.0	65.7	58.1	-28.4	-16.1
Greece	25.8	28.9	58.8	56.5	-33.0	-27.6
Spain	27.4	33.2	59.7	54.7	-32.3	-21.5
France	35.7	37.4	41.5	42.1	-5.8	-4.7
Italy	20.8	26.2	42.7	47.6	-21.9	-21.4
Cyprus	31.5	43.0	70.8	71.2	-39.3	-28.2
Latvia	45.2	48.7	55.2	47.6	-10.0	1.1
Lithuania	41.7	45.8	59.1	52.3	-17.4	-6.5
Luxembourg	24.9	31.3	38.3	47.7	-13.4	-16.4
Hungary	26.7	30.1	40.6	39.6	-13.9	-9.5
Malta	12.4	13.0	50.8	47.9	-38.4	-34.9
Netherlands	35.2	42.8	56.9	64.5	-21.7	-21.7
Austria	22.9	33.7	41.3	51.6	-18.4	-17.9
Poland	19.7	24.2	35.9	45.3	-16.2	-21.1
Portugal	43.7	43.5	58.1	55.7	-14.4	-12.2
Romania	33.1	33.0	46.7	50.3	-13.6	-17.3
Slovenia	18.5	24.5	43.1	45.5	-24.6	-21.0
Slovakia	15.6	28.7	47.8	54.0	-32.2	-25.3
Finland	52.7	56.9	52.8	55.6	-0.1	1.3
Sweden	66.7	66.7	72.0	74.2	-5.3	-7.5
United Kingdom	48.0	49.5	65.9	65.0	-17.9	-15.5

Source: Eurostat, Labour Force Survey (LFS), annual averages.

Table 6 – Unemployment rates (women and men aged 15 years and over) in EU Member States – 2006 and 2011

	Women		Men	
	2006	2011	2006	2011
EU-27	9.0	9.7	7.6	9.5
Belgium	9.3	7.2	7.4	7.2
Bulgaria	9.3	10.0	8.7	12.1
Czech Republic	8.9	7.9	5.8	5.9
Denmark	4.5	7.5	3.3	7.7
Germany	10.2	5.7	10.3	6.2
Estonia	5.6	:	6.2	:
Ireland	4.2	10.6	4.6	17.4
Greece	13.6	:	5.6	:
Spain	11.6	22.2	6.3	21.2
France	10.1	10.3	8.5	9.1
Italy	8.8	:	5.4	:
Cyprus	5.4	7.7	3.9	7.8
Latvia	6.2	:	7.4	:
Lithuania	5.4	:	5.8	:
Luxembourg	6.0	6.4	3.6	3.6
Hungary	7.8	10.8	7.2	11.0
Malta	8.6	6.9	6.1	6.1
Netherlands	5.0	4.4	3.9	4.5
Austria	5.2	4.2	4.3	4
Poland	14.9	10.4	13.0	9
Portugal	9.3	13.0	7.9	12.4
Romania	6.1	6.7	8.2	7.8
Slovenia	7.2	7.9	4.9	8.2
Slovakia	14.7	13.3	12.3	13.4
Finland	8.1	7.1	7.4	8.4
Sweden	7.2	7.5	6.9	7.6
United Kingdom	4.9	:	5.8	:

Source: Eurostat, Labour Force Survey (LFS), annual averages. UK, LT, LV, IT, EL, EE: not available.

Table 7 – Share of part-time workers in total employment (persons aged 15 and over) in EU Member States – 2005 and 2010

	Women		Men	
	2005	2010	2005	2010
EU-27	30.9	31.9	7.4	8.7
Belgium	40.5	42.3	7.6	9.0
Bulgaria	2.5	2.6	1.7	2.2
Czech Republic	8.6	9.9	2.1	2.9
Denmark	33.0	39.0	12.7	15.2
Germany	43.8	45.5	7.8	9.7
Estonia	10.6	14.5	4.9	7.1
Ireland	31.8	34.7	6.4	11.8
Greece	9.3	10.4	2.3	3.7
Spain	24.2	23.2	4.5	5.4
France	30.3	30.1	5.8	6.7
Italy	25.6	29.0	4.6	5.5
Cyprus	14.0	12.7	5.0	6.5
Latvia	10.4	11.4	6.3	7.8
Lithuania	9.1	9.3	5.1	6.7
Luxembourg	38.2	36.0	2.5	4.0
Hungary	5.8	8.0	2.7	3.9
Malta	21.1	25.0	4.5	6.0
Netherlands	75.1	76.5	22.6	25.4
Austria	39.3	43.8	6.1	9.0
Poland	14.3	11.5	8.0	5.7
Portugal	16.2	15.5	7.0	8.2
Romania	10.5	11.4	10.0	10.6
Slovenia	11.1	14.7	7.2	8.6
Slovakia	4.1	5.4	1.3	2.8
Finland	18.6	19.6	9.2	10.0
Sweden	39.6	40.4	11.5	14.0
United Kingdom	42.6	43.3	10.4	12.6

Source: Eurostat, Labour Force Survey (LFS), annual averages.

Table 8 – Employment rates (women and men aged 15-64) measured in full-time equivalent rates, in EU Member States – 2010

	Women	Men	Gender gap
EU-27	49.9	68.0	-18.1
Belgium	47.4	65.8	-18.4
Bulgaria	55.9	62.5	-6.6
Czech Republic	54.3	73.2	-18.9
Denmark	60.3	70.5	-10.2
Germany	50.9	72.8	-21.9
Estonia	58.1	60.3	-2.2
Ireland	47.0	60.9	-13.9
Greece	46.0	70.7	-24.7
Spain	46.6	63.4	-16.8
France	53.3	66.6	-13.3
Italy	40.7	66.4	-25.7
Cyprus	59.5	75.5	-16.0
Latvia	57.7	58.1	-0.4
Lithuania	57.8	56.3	1.5
Luxembourg	48.5	72.4	-23.9
Hungary	49.3	59.9	-10.6
Malta	35.3	72.1	-36.8
Netherlands	45.1	71.4	-26.3
Austria	53.1	74.8	-21.7
Poland	51.3	65.7	-14.4
Portugal	58.2	69.6	-11.4
Romania	50.7	64.6	-13.9
Slovenia	59.0	68.2	-9.2
Slovakia	51.3	64.6	-13.3
Finland	61.8	67.0	-5.2
Sweden	61.9	72.3	-10.4
United Kingdom	50.9	70.4	-19.5

Source: Eurostat, Labour Force Survey, annual average.

Table 9 – Inactivity and part-time work among women due to the lack of care services for children and other dependent persons (% of total female population having care responsibilities) – 2010

EU-27	28.3
Belgium	44.9
Bulgaria	31.3
Czech Republic	16.7
Germany	45.9
Estonia	12.2
Ireland	49.1
Greece	68.6
Spain	59.2
France	14.0
Italy	18.0
Cyprus	33.4
Latvia	86.5
Lithuania	38.3
Luxembourg	22.1
Hungary	35.1
Netherlands	3.7
Austria	15.7
Poland	40.1
Portugal	29.4
Romania	92.5
Slovenia	40.2
Slovakia	11.0
Finland	7.5
Sweden	6.5
United Kingdom	29.6

Source: Eurostat – Labour Force Survey.
No data available for DK and MT.

Table 10 – Employment rates of men and women aged 25-49, depending on whether they have children (under 12) – 2010

	Women			Men		
	Without children	With children	Gap	Without children	With children	Gap
EU-27	76.8	64.7	-12.1	81.0	89.7	8.7
Belgium	78.5	72.4	-6.1	83.0	91.4	8.4
Bulgaria	77.5	64.8	-12.6	76.7	83.0	6.3
Czech Republic	86.0	54.4	-31.6	88.6	95.5	6.9
Germany	83.8	64.5	-19.3	85.0	91.7	6.7
Estonia	81.9	62.6	-19.2	73.5	82.4	8.9
Ireland	76.0	57.2	-18.8	71.2	80.0	8.8
Greece	66.1	58.2	-7.8	82.1	93.0	11.0
Spain	68.1	60.1	-8.0	71.9	81.5	9.5
France	81.3	72.3	-9.0	83.7	91.7	8.0
Italy	62.7	54.7	-8.0	78.7	90.8	12.1
Cyprus	81.7	73.1	-8.6	85.2	93.9	8.7
Latvia	77.9	69.6	-8.4	69.6	81.0	11.3
Lithuania	78.2	74.9	-3.2	67.1	80.2	13.1
Luxembourg	78.8	69.4	-9.4	90.6	95.6	5.0
Hungary	78.2	49.3	-28.8	77.1	84.5	7.5
Malta	59.4	42.6	-16.7	86.4	94.9	8.5
Netherlands	82.8	78.2	-4.6	88.2	94.1	5.9
Austria	85.5	72.8	-12.7	87.6	92.7	5.1
Poland	78.6	66.8	-11.8	79.5	91.8	12.3
Portugal	76.5	74.6	-1.9	79.8	91.2	11.5
Romania	70.8	66.3	-4.5	80.0	86.5	6.5
Slovenia	83.0	84.9	1.9	81.9	94.1	12.2
Slovakia	80.4	53.7	-26.7	78.4	89.4	11.0
Finland	84.1	71.4	-12.7	80.6	92.4	11.8
United Kingdom	81.9	65.6	-16.3	83.0	90.5	7.5

Source: Eurostat, European Labour Force Survey, annual averages.
No data available for DE and SE.

Table 11 – Gender segregation in occupations and in economic sectors in EU Member States – 2010

	Gender segregation in occupations	Gender segregation in economic sectors
Belgium	25.4	19.5
Bulgaria	29.0	21.2
Czech Republic	28.3	20.9
Denmark	25.8	19.6
Germany	26.0	19.3
Estonia	30.7	25.7
Ireland	26.3	21.4
Greece	21.8	16.0
Spain	26.7	20.6
France	26.0	19.1
Italy	24.7	19.7
Cyprus	28.8	19.9
Latvia	28.2	24.5
Lithuania	28.8	21.9
Luxembourg	23.4	16.0
Hungary	27.8	20.9
Malta	23.7	16.0
Netherlands	25.0	19.4
Austria	25.9	19.3
Poland	26.1	20.6
Portugal	26.5	21.4
Romania	22.5	17.1
Slovenia	25.8	19.0
Slovakia	31.1	25.2
Finland	28.6	23.7
Sweden	26.1	21.6
United Kingdom	24.3	19.4

Source: Eurostat, EU LFS. Gender segregation in occupations is calculated as the average national share of employment for women and men applied to each occupation; differences are added up to produce the total amount of gender imbalance expressed as a proportion of total employment (ISCO classification).

Table 12 – Pay gap between women and men in unadjusted form in EU Member States – 2010

EU-27	16.4
Belgium	8.8
Bulgaria	15.7
Czech Republic	25.5
Denmark	16
Germany	23.1
Estonia	27.6
Ireland	12.6
Greece	22
Spain	16.7
France	16
Italy	5.5
Cyprus	21
Latvia	17.6
Lithuania	14.6
Luxembourg	12
Hungary	17.6
Malta	6.1
Netherlands	18.5
Austria	25.5
Poland	1.9
Portugal	12.8
Romania	12.5
Slovenia	4.4
Slovakia	20.7
Finland	19.4
Sweden	15.8
United Kingdom	19.5

Source: Eurostat, The unadjusted Gender Pay Gap (GPG) represents the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees.

EE and EL: data from 2008, EU-27, BE, IE, ES, FR, IT, CY and AT: provisional data.

2.3. Education

Table 13 – Educational attainment (at least upper secondary level) of women and men aged 20-24 in EU Member States – 2010

	Women	Men
EU-27	81.8	76.2
Belgium	84.7	80.3
Bulgaria	83.6	85.0
Czech Republic	92.8	91.1
Denmark	75.6	61.4
Germany	76.7	72.2
Estonia	89.5	76.9
Ireland	90.6	85.3
Greece	87.2	79.5
Spain	67.9	54.7
France	85.8	79.8
Italy	80.2	72.6
Cyprus	89.0	83.2
Latvia	85.9	74.1
Lithuania	89.7	84.2
Luxembourg	78.7	67.9
Hungary	85.9	82.0
Malta	60.8	47.0
Netherlands	81.6	73.7
Austria	86.2	84.9
Poland	93.8	88.4
Portugal	62.7	54.8
Romania	78.8	77.7
Slovenia	92.8	86.1
Slovakia	93.1	93.2
Finland	85.6	82.8
Sweden	86.9	84.9
United Kingdom	82.0	78.9

Source: Eurostat, Education statistics.
LU, MT and NL: provisional data.

2.4. Poverty

Table 14 – At-risk-of-poverty rate after social transfers for older people (women and men aged 65 years and over) in EU Member States – 2010

	Women	Men
EU-27	18.1	12.9
Belgium	20	18.7
Bulgaria	37.2	24.9
Czech Republic	10.3	2.1
Denmark	18.5	16.8
Germany	15.9	12.1
Estonia	18.6	8
Ireland	10.3	10.9
Greece	23.3	18.8
Spain	23.1	19.9
France	10.8	8
Italy	19.5	12.6
Cyprus	47.5	42.5
Latvia	21.6	12.9
Lithuania	11.2	8.1
Luxembourg	6.3	5.5
Hungary	4.8	2.8
Malta	17.5	20.4
Netherlands	6.3	5.5
Austria	18.7	10.4
Poland	16.8	9.9
Portugal	23.5	17.5
Romania	20.7	10.9
Slovenia	27.1	9.5
Slovakia	10.1	3.9
Finland	22.7	12.2
Sweden	21.6	7.8
United Kingdom	24.5	17.6

Source: Eurostat, SILC.

2.5. Health and demography

Table 15 – Life expectancy at birth in EU Member States – 2009

	Women	Men	Gender gap
EU-27	82.4	76.4	6
Belgium	82.8	77.3	5.5
Bulgaria	77.4	70.1	7.3
Czech Republic	80.5	74.2	6.3
Denmark	81.1	76.9	4.2
Germany	82.8	77.8	5
Estonia	80.2	69.8	10.4
Ireland	82.5	77.4	5.1
Greece	82.7	77.8	4.9
Spain	84.9	78.6	6.3
France	85	78	7
Italy	84.5	79.1	5.4
Cyprus	83.6	78.6	5
Latvia	78	68.1	9.9
Lithuania	78.7	67.5	11.2
Luxembourg	83.3	78.1	5.2
Hungary	78.4	70.3	8.1
Malta	82.7	77.9	4.8
Netherlands	82.9	78.7	4.2
Austria	83.2	77.6	5.6
Poland	80.1	71.5	8.6
Portugal	82.6	76.5	6.1
Romania	77.4	69.8	7.6
Slovenia	82.7	75.9	6.8
Slovakia	79.1	71.4	7.7
Finland	83.5	76.6	6.9
Sweden	83.5	79.4	4.1
United Kingdom	82.5	78.3	4.2

Source: Eurostat.
EU 27 and IT: data from 2008.

Table 16 – Healthy life years in EU Member States – 2009

	Women	Men
EU-27	61.6	60.9
Belgium	63.5	63.7
Bulgaria	65.6	61.9
Czech Republic	62.5	60.9
Denmark	60.4	61.8
Germany	57.7	56.7
Estonia	59	54.8
Ireland	65.2	63.7
Greece	60.9	60.2
Spain	61.9	62.6
France	63.2	62.5
Italy	61.2	62.4
Cyprus	65.8	65.1
Latvia	55.8	52.6
Lithuania	60.9	57
Luxembourg	65.7	65.1
Hungary	58	55.7
Malta	70.6	69.1
Netherlands	59.8	61.4
Austria	60.6	59.2
Poland	62.1	58.1
Portugal	55.9	58
Romania	61.4	59.5
Slovenia	61.5	60.6
Slovakia	52.3	52.1
Finland	58.4	58.1
Sweden	69.5	70.5
United Kingdom	66.3	65

Source: Eurostat.
EU 27: provisional data, IT: data from 2008.

2.6. Decision-making

Table 17 – Members of boards of largest publicly quoted companies (% total board members) – 2003-2012

	Women		Men	
	2003	2012	2003	2012
EU-27	9.0	13.7	91.0	86.3
Belgium	6.8	10.7	93.2	89.3
Bulgaria	18.3	15.6	81.7	84.4
Czech Republic	10.6	15.4	89.4	84.6
Denmark	11.3	16.1	88.7	83.9
Germany	11.7	15.6	88.3	84.4
Estonia	15.5	6.7	84.5	93.3
Ireland	5.6	8.7	94.4	91.3
Greece	7.3	7.4	92.7	92.6
Spain	4.2	11.5	95.8	88.5
France	5.9	22.3	94.1	77.7
Italy	2.5	6.1	97.5	93.9
Cyprus	6.6	4.4	93.4	95.6
Latvia	9.9	25.9	90.1	74.1
Lithuania	11.3	14.5	88.7	85.5
Luxembourg	4.3	5.7	95.7	94.3
Hungary	8.9	5.3	91.1	94.7
Malta	2.3	3.0	97.7	97.0
Netherlands	4.9	18.5	95.1	81.5
Austria	6.0	11.2	94.0	88.8
Poland	9.1	11.8	90.9	88.2
Portugal	4.1	6.0	95.9	94.0
Romania	17.2	10.3	82.8	89.7
Slovenia	19.0	15.3	81.0	84.7
Slovakia	8.4	13.5	91.6	86.5
Finland	16.3	27.1	83.7	72.9
Sweden	21.3	25.2	78.7	74.8
United Kingdom	13.2	15.6	86.8	84.4

Source: European Commission, Database on women and men in decision-making. Data were collected in January 2012. The list of the largest publicly quoted companies is based for each country on current membership of blue-chip index. In countries for which the blue-chip index includes a small number of companies (for instance LU, SK), at least the 10 largest companies were covered.

Table 18 – Sex distribution of the presidents of the highest decision-making body – largest publicly quoted companies – 2004-2011

	Women		Men	
	2004	2012	2004	2012
EU-27	2.6	3.2	97.4	96.8
Belgium	0	0	100	100
Bulgaria	2.6	13.3	97.4	86.7
Czech Republic	6.3	0	93.7	100
Denmark	0	0	100	100
Germany	0	3.3	100	96.7
Estonia	0	7.1	100	92.9
Ireland	2.1	0	97.9	100
Greece	3.9	0	96.1	100
Spain	1.9	2.9	98.1	97.1
France	4.1	2.7	95.9	97.3
Italy	2.0	0	98	100
Cyprus	0	5.3	100	94.7
Latvia	6.7	9.7	93.3	90.3
Lithuania	0	7.7	100	92.3
Luxembourg	0	0	100	100
Hungary	2.1	0	97.9	100
Malta	8.3	0	91.7	100
Netherlands	0	0	100	100
Austria	2.1	0	97.9	100
Poland	10.2	10.5	89.8	89.5
Portugal	4.2	0	95.8	100
Romania	0	0	100	100
Slovenia	8.1	10.5	91.9	89.5
Slovakia	8.7	20	91.3	80
Finland	2.0	4.2	98	95.8
Sweden	0	0	100	100
United Kingdom	0	0	100	100

Source: European Commission, Database on women and men in decision-making. Data were collected in January 2012. The list of the largest publicly quoted companies is based for each country on current membership of blue-chip index. In countries for which the blue-chip index includes a small number of companies (for instance LU, SK), at least the 10 largest companies were covered.

Table 19 – Sex distribution of leaders of businesses – 2010

	Women	Men
EU-27	33	67
Belgium	30	70
Bulgaria	31	69
Czech Republic	29	71
Denmark	25	75
Germany	33	67
Estonia	34	66
Ireland	22	78
Greece	30	70
Spain	36	64
France	36	64
Italy	35	65
Cyprus	14	86
Latvia	36	64
Lithuania	32	68
Luxembourg	22	78
Hungary	30	70
Malta	20	80
The Netherlands	30	70
Austria	30	70
Poland	33	67
Portugal	30	70
Romania	29	71
Slovenia	27	73
Slovakia	:	:
Finland	18	82
Sweden	27	73
United Kingdom	34	66

Source: European Commission, Database on women and men in decision-making. Data were collected in November 2010.

Table 20 – Senior ministers in national governments – 2011

	Women	Men
EU-27	24.7	75.3
Belgium	33.3	66.7
Bulgaria	17.6	82.4
Czech Republic	6.3	93.8
Denmark	39.1	60.9
Germany	37.5	62.5
Estonia	7.7	92.3
Ireland	13.3	86.7
Greece	5.6	94.4
Spain	43.8	56.3
France	26.5	73.5
Italy	25.0	75.0
Cyprus	25.0	75.0
Latvia	28.6	71.4
Lithuania	13.3	86.7
Luxembourg	26.7	73.3
Hungary	0	100
Malta	22.2	77.8
Netherlands	21.4	78.6
Austria	42.9	57.1
Poland	25.0	75.0
Portugal	16.7	83.3
Romania	16.7	83.3
Slovenia	7.1	92.9
Slovakia	13.3	86.7
Finland	47.4	52.6
Sweden	50	50
United Kingdom	20	80

Source: European Commission, Database on women and men in decision-making. Data were collected in October 2011.

Table 21 – Sex distribution of members of regional assemblies – 2011

	President		Members	
	Women	Men	Women	Men
EU-27	14	86	32	68
Belgium	40	60	40	60
Bulgaria	-	-	-	-
Czech Republic	14	86	17	83
Denmark	40	60	34	66
Germany	19	81	33	67
Estonia	-	-	-	-
Ireland	-	-	-	-
Greece	8	92	17	83
Spain	35	65	43	57
France	8	92	48	52
Italy	9	91	12	88
Cyprus	-	-	-	-
Latvia	40	60	21	79
Lithuania	-	-	-	-
Luxembourg	-	-	-	-
Hungary	10	90	10	90
Malta	-	-	-	-
The Netherlands	8	92	36	64
Austria	11	89	30	70
Poland	6	94	22	78
Portugal	0	100	21	79
Romania	2	98	15	85
Slovenia	-	-	-	-
Slovakia	0	100	15	85
Finland	25	75	42	58
Sweden	25	75	47	53
United Kingdom	50	50	31	69

- = not applicable; = not available. Data collected between 02/09/2011-12/12/2011 except EL 04/02/2011-21/02/2011.

Table 22 – Sex distribution of members of single/lower houses in national parliaments – 2011

	Women	Men
EU-27	24.2	75.8
Belgium	40	60
Bulgaria	22.1	77.9
Czech Republic	22.4	77.6
Denmark	39.1	60.9
Germany	32.9	67.1
Estonia	19.8	80.2
Ireland	15.1	84.9
Greece	17.3	82.7
Spain	28.7	71.3
France	19.2	80.8
Italy	21.4	78.6
Cyprus	10.7	89.3
Latvia	21.0	79.0
Lithuania	19.1	80.9
Luxembourg	23.7	76.3
Hungary	8.8	91.2
Malta	8.7	91.3
Netherlands	40.7	59.3
Austria	27.3	72.7
Poland	23.9	76.1
Portugal	29.1	70.9
Romania	11.2	88.8
Slovenia	16.7	83.3
Slovakia	16.0	84.0
Finland	42.5	57.5
Sweden	45.0	55.0
United Kingdom	22.2	77.8

Source: European Commission, Database on women and men in decision-making. Data were collected in October 2011.

Charter
of
Fundamental
Rights
of the
European Union

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

Title I

Dignity

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Title II

Freedoms

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. right of everyone to form and to join trade unions for the protection of his or her interests.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11 *Freedom of expression and information*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12 *Freedom of assembly and of association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13 *Freedom of the arts and sciences*

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14 *Right to education*

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15 *Freedom to choose an occupation and right to engage in work*

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16 *Freedom to conduct a business*

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article 17 *Right to property*

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18 *Right to asylum*

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Article 19 *Protection in the event of removal, expulsion or extradition*

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Title III

Equality

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground 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 shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. 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.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary

consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

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.

Title IV

Solidarity

Article 27

Workers' right to information and consultation within the undertaking

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 Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union 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.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. 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.
3. In order to combat social exclusion and poverty, 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, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

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

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

Title V

Citizens' rights

Article 39

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

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

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, 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 institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union 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 cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Title VI

Justice

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

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

No one shall be 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 within the Union in accordance with the law.

Title VII

General provisions governing the interpretation and application of the Charter

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits

defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

Article 53 *Level of protection*

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54 *Prohibition of abuse of rights*

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

European Commission

2011 Report on the Application of the EU Charter of Fundamental Rights

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The 2011 Report on the Application of the EU Charter of Fundamental Rights informs the public on the situations in which they can rely on the EU Charter, and on the role of the European Union in the field of fundamental rights. It highlights how the fundamental rights enshrined in the EU Charter are relevant across a range of policies for which the Union is responsible. These rights must always be taken into careful consideration when designing and implementing EU actions: from justice via transport policy to border management. In covering the full range of EU Charter provisions on a yearly basis, the annual report's aim is to track where progress is being made, and where new concerns are arising. The report also charts the progress being made in the field of gender equality.



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