



European  
Commission



# 2012 Report on the **Application** of the **EU Charter** of **Fundamental** **Rights**

*Justice*

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The European Commission is committed to keeping fundamental rights protection in the EU under close review. This annual report takes stock of how the EU Charter of Fundamental Rights is being applied in the areas where the European Union has the powers to act. The report is also a basis for dialogue between the EU institutions and Member States on effective implementation of the Charter.



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Commissioner for Justice, Fundamental Rights and Citizenship



# TABLE OF CONTENT

Report from the Commission – 2012 Report on the Application of the EU Charter of Fundamental Rights*	5
Commission Staff Working Document on the Application of the EU Charter of Fundamental Rights in 2012**	17
Introduction	18
Dignity	25
Freedoms	31
Equality	51
Solidarity	65
Citizens' rights	77
Justice	87
Commission Staff Working Document on Progress on equality between women and men in 2012***	107
Charter of Fundamental Rights of the European Union	161

\* Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2012 Report on the Application of the EU Charter of Fundamental Rights, COM(2013) 271 final.

\*\* Commission Staff Working Document on the Application of the EU Charter of Fundamental Rights in 2012 – 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 – 2012 Report on the Application of the EU Charter of Fundamental Rights, SWD(2013) 172 final.

\*\*\* Commission Staff Working Document on Progress on equality between women and men in 2012 – 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 – 2012 Report on the Application of the EU Charter of Fundamental Rights, SWD(2013) 171 final.



2012 Report on the  
**Application**  
of the EU Charter of  
**Fundamental Rights**

# 1. Introduction

In its Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union ('the Charter'), the Commission announced that it will report each year on the concrete steps undertaken for the effective implementation of the Charter<sup>1</sup>. Through these reports, the Commission meets the longstanding and legitimate expectations of placing fundamental rights at the heart of EU policies, which have been voiced in particular by the European Parliament<sup>2</sup>. A systematic implementation of the Charter calls not only for rigorous legal scrutiny, but equally for political scrutiny to ascertain the impact of all EU initiatives on fundamental rights.

This annual report is the basis for the necessary dialogue between all the EU institutions and Member States on the implementation of the Charter. It therefore forms part of the process of political dialogue and scrutiny to ensure that the Charter remains a reference point to integrate fundamental rights into all EU legal acts and when Member States apply EU law. It also presents how a fundamental rights culture is being developed in the EU by setting new legislation, where the EU has competence to act, and through the jurisprudence of the Court of Justice of the European Union ('the Court'). Given the key role to be played by Member States' courts in scrutinising the respect of the Charter when Member States apply EU law, this report also provides an overview for the first time of the case law of national courts on the Charter.

The staff working document annexed to this report provides detailed information on the application of the Charter and illustrates concrete problems faced by individuals (see Annex I). Progress in the implementation of the Strategy for Equality between Women and Men (2010-2015) is presented in a second separate staff working document (see Annex II).

## 2. EU actions to promote the effective implementation of the Charter

The Charter is addressed, first and foremost, to the EU institutions. It is therefore the primary responsibility of the EU institutions to ensure respect for fundamental rights as a legal requirement based on the binding Charter.

The Commission's strategy is aimed at giving practical effect to the legally binding Charter<sup>3</sup>. The concrete steps to implement the Charter have fostered a fundamental rights reflex when the Commission prepares new legislative and policy proposals. This approach is essential throughout the EU decision making process, including when the European Parliament and Council make

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1 Communication adopted by the Commission on 19.10.2010 – Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union – COM (2010) 573 final.

2 Voggenhuber Report of the European Parliament – Document ref: A6-0034/2007.

3 See footnote 1.



amendments to proposals prepared by the Commission. All EU acts are also subject to the scrutiny of the Court. This is the ultimate guarantee for the respect of fundamental rights in the EU's legislative work and all other acts of the EU.

Fundamental rights are promoted through all EU policies. The Commission's policy of giving substance to the status of Union citizenship is complementary to the promotion of fundamental rights within the EU. Most fundamental rights enshrined in the Charter do not only apply to EU Citizens, but are of great importance for the protection of all people living in the EU, whether they are Union Citizens or not.

## 2.1. Strengthening the protection of fundamental rights through EU legislation

A true fundamental rights culture consists not only of ensuring compliance of legislation with the Charter. Where the EU has competence to act, the Commission can also propose EU legislation that gives concrete effect to the rights and principles of the Charter. This is a crucial step for citizens to exercise their rights under the Charter.

In order to give full effect to the Charter in the digital age, the Commission has proposed a **major reform of the EU's rules on the protection of personal data**<sup>4</sup>. Europe's historical experience has led to a common understanding in Europe that privacy is an integral part of human dignity and personal freedom. This is why the Charter recognises both the right to private life (Article 7) and the right to the protection of personal data (Article 8). The Treaty (Article 16, TFEU) gives the EU complementary legislative competence to establish harmonised EU data protection laws.

The Commission's proposals update and modernise the principles enshrined in the 1995 Directive to guarantee the right of personal data protection in the future<sup>5</sup>. This reform provides for increased responsibility and accountability for those processing personal data and strengthens independent national data protection authorities. It introduces the 'right to be forgotten', which will help people better manage data protection risks online. The reform extends general data protection principles and rules to national police and criminal justice authorities. The new rules have been drafted to ensure a careful balance with all fundamental rights they may affect, such

4 a) Communication on Safeguarding Privacy in a Connected World – A European Data Protection Framework for the 21st Century, COM (2012) 09 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0009:en:NOT>; b) Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, COM (2012) 11 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0011:FIN:EN:DOC>; c) Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM (2012) 10 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0010:FIN:EN:DOC>

5 Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31-50.

as freedom of expression. A meaningful example of this is that specific safeguards have been introduced in the proposal for data that is processed solely for journalistic purposes.

In 2012, the **Commission took a pro-active approach to accelerate progress towards a better gender balance on the corporate boards of European companies listed on stock exchanges**<sup>6</sup>. The Commission's legislative proposal is a milestone in EU legislation on gender equality. It reconciles, on the one hand, the requirement of equality of treatment, and on the other hand, the possibility to take positive action – by promoting the under-represented sex – in order to bring about de facto equality.

The proposal sets an objective of 40 % for the minimum share of the under-represented sex among non-executive board members of such companies by 2020 (by 2018 for listed companies which are public undertakings). In order to meet the 40 % objective it obliges listed companies with a lower percentage of the under-represented sex among non-executive directors to make appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate. This will be achieved by applying pre-established, clear, neutrally formulated and unambiguous criteria; and in case of equal qualifications by giving preference to the candidate of the under-represented sex.

**Safeguarding procedural rights remains a priority for the EU.** The Directive on the right to information in criminal proceedings, adopted on 22 May 2012, requires that anyone arrested is informed about their rights in a language that they understand<sup>7</sup>. In addition, the new Directive establishing minimum standards on the rights, support and protection of victims of crime, adopted on 25 October 2012, ensures that victims are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country of residence<sup>8</sup>. It guarantees that victims are recognised and treated with respect when they come into contact with the police, prosecutors and the judiciary. It also gives them the procedural rights to be informed, supported and protected and ensures that they can actively participate in criminal proceedings. The Directive focuses on the support and protection of victims who are vulnerable to secondary or repeat victimisation or intimidation during criminal proceedings. These vulnerable groups include children and victims of gender-based violence, violence in a close-relationship, sexual violence or exploitation, hate crime and victims with disabilities.

EU policies and EU legislation need to be based on **objective, reliable and comparable data** on the respect of fundamental rights in the EU. The **EU Agency for Fundamental Rights ('the Agency')** has been established to provide such data. Following the entry in to force of the Lisbon Treaty, it should be able to perform its tasks in all areas of EU competences where fundamental

6 Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM (2012) 614 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF>

7 Directive 2012/13/EU on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1-10.

8 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57-74.

rights are at stake. To achieve this, the Commission proposed that the Agency could work in the areas of police cooperation and judicial cooperation in criminal matters<sup>9</sup>. The Council did not endorse this approach and decided to exclude these two major fields of competence of the Union from the Agency's Multiannual framework, which determines the thematic areas on which it can work during the period 2013-2017. The good functioning of the Agency was further put at risk due to the delay in the adoption of the new Multiannual framework. As a consequence, the Agency was not in a position to carry out its tasks under normal conditions and had recourse, for carrying out its tasks, to an ad hoc request, adopted by the Council at the end of 2012. The Council proceeded with the adoption of the new Multiannual framework on 11 March 2013, after the United Kingdom lifted its parliamentary reservation<sup>10</sup>.

## 2.2. The fundamental rights dimension of the EU external actions

The Charter applies to all actions of the European Union, including in the field of external relations.

Building on a joint Commission/EEAS Communication, the Council adopted a **Strategic Framework on Human Rights and Democracy and an Action Plan** designed to improve the effectiveness and consistency of EU human rights policy as a whole in the next years<sup>11</sup>. As one of the first actions under the new EU Strategic Framework and Action Plan, the Council appointed Mr Stavros Lambrinidis as EU Special Representative (EUSR) for Human Rights<sup>12</sup>.

In a case concerning the **freezing of assets** of a company and its majority shareholder, decided by the Council **in the framework of common foreign and security policy**, the Court annulled the measures taken on the grounds that the Council produced no information or evidence. In doing so, the Court upheld that the principle of effective judicial protection (Article 47 of the Charter), means that the ground for a restrictive measure must be communicated to the entity and person concerned<sup>13</sup>. This is necessary both to enable the addressees to defend their rights and also to put the Court in a position to review the lawfulness of the measure in question. This judicial review extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based.

9 Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017, COM (2011) 880 final. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0880:FIN:EN:HTML>

10 Council Decision establishing a Multiannual Framework for 2013-2017 for the European Union Agency for Fundamental Rights, adopted on 11 March. Available at: <http://register.consilium.europa.eu/pdf/en/12/st10/st10449.en12.pdf>

11 Joint Communication on Human rights and democracy at the heart of EU external action – towards a more effective approach, COM (2011) 886 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>. Strategic Framework and Action plan on Human Rights and Democracy Council Document n°11417/12 EXT 1 of 28.6.2012. Available at: <http://register.consilium.europa.eu/pdf/en/12/st11/st11417-ex01.en12.pdf>

12 Council Decision 2012/440/CFSP of 25.7.2012 appointing the European Union Special Representative for Human Rights, OJ L 200, p. 21-23.

13 CJEU, Case T-439/10 and T-440/10, *Fulmen and F. Mahludian v Council*, 21.3.2012.

On 4th July 2012, the **European Parliament rejected the draft Anti-Counterfeiting Trade Agreement (ACTA)** which aimed at improving global standards for the enforcement of intellectual property rights to more effectively combat trade in counterfeit and pirated goods. In doing so the European Parliament used the Charter when exercising its new prerogatives on international trade agreements<sup>14</sup>. The EP referred in particular to the need for an appropriate balance in the draft trade agreement between freedom of expression and information and the right to property. The Commission was also attentive to these concerns and had already asked the Court to assess whether the ACTA agreement was compatible with the Charter. The Commission withdrew its request for an opinion of the Court, after the European Parliament made clear it could not accept the draft agreement.

### 2.3. The Court's control of EU acts for compliance with the Charter

The rulings delivered by the Court in 2012 that concerned the compliance of EU acts with the Charter, gave guidance on how to take into account fundamental rights in the EU's legislative work and all other acts of the EU, which have legal effects.

The Court made clear that the Charter must be taken into account when the legislator decides to **delegate powers** to the Council or to the Commission. It annulled a Council implementing decision on surveillance of the external sea borders of the EU on the basis that the adoption of rules conferring enforcement powers on border guards entails political choices falling within the responsibilities of the European Union legislature and that these rules were likely to affect personal freedom and fundamental rights to such an extent that the involvement of the European Union legislature is required<sup>15</sup>.

The Court also examined whether the EU institutions actually respect the **principle of non-discrimination** in their recruitment policy. The Court annulled the notices of several open competitions to become a civil servant of EU institutions which have been published in full only in three official languages<sup>16</sup>. The Court found that a potential candidate whose mother tongue was not one of the languages of full publication of the contested competition notices was at a disadvantage compared to a candidate whose mother tongue was one of those three languages. That disadvantage was the consequence of a disproportionate difference in treatment on the ground of language, prohibited by Article 21 of the Charter.

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14 Recommendation of the European Parliament, document ref: A7-0204/2012 of 22.6.2012.

15 CJEU, Case C-355/10, *European Parliament v. Council of EU*, 5.9.2012.

16 CJEU, Grand Chamber, Case C-566/10 P, *Italian Republic v Commission*, 27.11.2012.

The Court also controlled the application of the **principle of good administration** by the EU institutions (Article 41 of the Charter). It annulled the decision of the Commission to reject an offer in the context of an invitation to tender for public service procurement, because the Commission did not provide sufficient justification for its decision<sup>17</sup>. The Court established a link between Article 41 (good administration) and Article 47 (access to justice) of the Charter, insofar as the reasons given by the administration are necessary for the person concerned to decide whether to challenge the decision before the relevant courts.

**Several rulings given by the Court in the past years triggered adaptations to EU legislation.** In this respect, the European Parliament, the Council and the Commission incorporated the Court's case law when negotiating on the new 'Dublin Regulation' on the conditions for the transfer of asylum seekers in the EU<sup>18</sup>. As a result, under the newly agreed rules, asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights. Instead, the responsibility to give quick access to an asylum procedure should be exercised by another Member State.

The Commission also incorporated the Court's case law when preparing its modified proposal on the publication of the beneficiaries of European agricultural funds<sup>19</sup>. The new proposed rules are based on a revised detailed justification, centred on the need for public control of the use of European agricultural funds in order to protect the Union's financial interests. They require more detailed information to be given on the nature and description of the measures for which the funds are disbursed. However, below a minimum threshold the name of the beneficiary will not be published. This provision follows proportionality considerations, namely between the objective of the public control of the use of public funds, on the one hand, and the beneficiaries' right to respect for their private life in general and to protection of their personal data on the other hand.

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17 CJEU, Case T-183/10, *Sviluppo Globale GEIE v Commission*, 10.10.2012.

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

19 CJEU, joined Cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR & Hartmut Eifert v. Land Hessen & Bundesanstalt für Landwirtschaft und Ernährung*, 10.11.2010. Amendment to the Commission proposal COM (2011) 628 final/2 for a Regulation on the financing, management and monitoring of the common agricultural policy, COM (2012) 551 final. Available at: [http://ec.europa.eu/agriculture/funding/regulation/amendment-com-2012-551\\_en.pdf](http://ec.europa.eu/agriculture/funding/regulation/amendment-com-2012-551_en.pdf)

### 3. Implementation of the Charter in the Member States

Within the EU, the protection of fundamental rights is ensured by a two-layered system: the national system based on Member States' constitutions and international legal obligations, such as the European Convention on Human Rights (ECHR); and the EU system based on the Charter, which comes into operation only in relation to actions by EU institutions, or when Member States implement EU law. The Charter complements existing systems for the protection of fundamental rights, it does not replace them.

The **limits of the scope of application of the Charter have been underlined by the Court**. It declared inadmissible a preliminary reference from a Bulgarian Administrative Court concerning the right to a judicial remedy in respect of decisions imposing criminal sanctions for certain breaches of road traffic regulations, referring to settled case law, which is that the requirements flowing from the protection of fundamental rights are binding on Member States whenever they implement EU law<sup>20</sup>.

The provisions of the Charter are addressed to the Member States only when they are implementing EU law and neither the Charter nor the Treaty creates any new competence for the EU in the field of fundamental rights. Where the national legislation at stake does not constitute a measure implementing EU law or is not connected in any other way with EU law, the jurisdiction of the Court is not established<sup>21</sup>.

The important **implications of the Charter are to be seen in the increasing number of requests for a preliminary ruling of national jurisdictions received by the Court**. For example, in the field of asylum the Court upheld that whenever an application for asylum is lodged at the border or in the territory of a Member State, that Member State is obliged to grant the minimum conditions for reception of asylum seekers laid down in EU law regardless of whether a Member State is responsible for examining the application for asylum under EU law<sup>22</sup>. In particular, the need to uphold fundamental principles of human dignity (Article 1) and the right to asylum (Article 18) means that, the obligation under EU law<sup>23</sup> to provide an asylum seeker with housing, food, clothes and a daily expenses allowance, and the subsequent financial onus, are to be borne by the requesting Member State until the asylum seeker is transferred to the Member State responsible for examining their application.

20 CJEU, Case C-27/11, *Vinkov*, 7.6.2012.

21 See also CJEU, Case C 370/12, *Pringle v Ireland*, 27.11.2012.

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

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

### 3.1. Actions taken by the Commission to ensure the respect of the Charter by the Member States

The Commission also makes sure that the Charter is respected in its role as guardian of the Treaties and is determined to intervene to this effect where necessary when it has the power to do so. For the first time, in 2012, the Commission was called upon to take infringement cases to the Court of Justice, which concerned the non-compliance of a Member State with key provisions of the Charter.

Over the past years, **Hungary adopted several laws** – some of them so-called cardinal laws adopted directly under its new constitution – **which raised important fundamental rights concerns** and also came under the scrutiny of the Council of Europe. The Commission carried out its legal analysis on those points where there was a link with EU law, in accordance with the scope of application of the Charter (Article 51) and the Commission's role as guardian of the Treaties. Following first warning letters in the end of 2011, the Commission decided on 7th June 2012 to bring infringement procedures before the Court. The Commission firstly challenged interferences with the independence of the Hungarian data protection authority, on the ground that the 'complete independence' of national data protection authorities is a requirement under the 1995 Data Protection Directive and is recognised explicitly in Article 16 TFEU as well as in Article 8 of the Charter. In a second infringement proceeding, the Commission contested the early retirement of around 274 judges and public prosecutors in Hungary caused by a sudden reduction of the mandatory retirement age for this profession from 70 to 62. The basis for the Commission's action was Directive 2000/78/EC on equal treatment in employment which prohibits discrimination at the workplace on grounds of age. This also covers the dismissal for age related reasons without an objective justification. This case thus helps to implement the general prohibition of discrimination, including on grounds of age, as guaranteed by Article 21 of the Charter. The Court's ruling of 6 November 2012 upheld the Commission's assessment according to which the mandatory retirement age for judges, prosecutors and notaries within a very short transitional period is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law<sup>24</sup>.

Media freedom and pluralism also formed the basis of the discussions between the Commission and the Hungarian authorities on the new media legislation as regards the obligation of balanced coverage and the rules on offensive content. Some modifications were also agreed between the Commission and the Hungarian authorities on other provisions which could otherwise constitute an infringement of the Audio-visual Media Services Directive and/or the rules on free circulation of services and establishment.

As regards the issue of judicial independence in Hungary more generally, the Commission expressed its concerns in a number of letters in 2012, in particular the powers of the Hungarian President of the National Judicial Office to reallocate cases from one court to another and to transfer a judge against his or her will. The Commission pointed out that these measures could affect the effective application of Union law in Hungary and the fundamental rights of citizens

<sup>24</sup> CJEU, Case C 286/12, *European Commission v. Hungary*, 6.11.2012.

and businesses to an effective remedy by an independent court in cases based on Union law, as guaranteed by Article 47 of the Charter. Discussions have also taken place between the Council of Europe (in particular the Venice Commission) and the Hungarian authorities. The Commission keeps the matter under close review, in particular to verify compliance with the right to an effective remedy.

Likewise, immediately upon having been made aware, in August 2012, about **developments in France** on the dismantling of Roma settlements and about returns of Roma to their home country, the Commission wrote to the French authorities and discussions took place enabling to clarify the facts and the legal framework. The situation has changed considerably in the last few years. Further to the Commission's action in 2010 to guarantee the application of free movement directive by all Member States, and to put in place a European Framework for National Roma Integration Strategies, France modified its law to guarantee full compliance with the free movement directive, notably as concerns procedural safeguards related to expulsions of EU citizens, and adopted its national Roma Integration Strategy. On the basis of this new Strategy, close cooperation and enhanced efforts on Roma inclusion is taking place with the active participation of France.

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

### 3.2. Development of national case law on the application of the Charter by the Member States

The community of law, on which the Union is based, relies on national courts. Only if national judges fully exercise their powers, can the rights that Union law grants to citizens be effectively guaranteed. The national constitutional and supreme courts have a special responsibility for cooperating with the Court to ensure effective application of the Charter.

Data gathered by **the Association of Councils of States and of Supreme Administrative Courts** (ACA) show that the Charter has by now been referred to in numerous judgements by administrative courts in EU Member States<sup>25</sup>. The provisions of the Charter most frequently mentioned in the reports are respect for private and family life (Article 7), freedom of expression and information (Article 11), right to property (Article 17), right to asylum (Article 18), prohibition of collective expulsion and *non-refoulement* (Article 19), rights of the child (Article 24), right to good administration (Article 41) and right to an effective remedy and to a fair trial (Article 47).

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<sup>25</sup> See for details the reports to ACA Europa. Available at: [http://www.aca-europe.eu/en/colloquiums/colloq\\_en\\_23.html](http://www.aca-europe.eu/en/colloquiums/colloq_en_23.html)



The branch of law in which the Charter has been referred to most to date is immigration and asylum<sup>26</sup>. The analysis provided by the EU Agency for Fundamental Rights on information provided by some Member States on case law on the Charter also shows that the implications of the Charter go well beyond this area, and concern very diverse areas such as regulations on financial markets, labour law, consumer protection, environment law and children's custody<sup>27</sup>.

The analysis of court rulings referring to the Charter further suggests that national judges use the Charter to support their reasoning, including when there is not necessarily a link with EU law. There is also some evidence of an **incorporation of the Charter in the national systems of fundamental rights protection**. The Austrian Constitutional Court handed down a landmark decision regarding the application of the Charter in the frame of domestic judicial review of constitutionality<sup>28</sup>. It recognised the very special role of the Charter within the EU legal system, and its different nature compared to the body of rights and principles which the Court of Justice of the EU has been developing throughout the years. It took the view that the Charter is enforceable in the proceedings brought before it for the judicial review of national legislation, and therefore individuals can rely upon the rights and the principles recognised in the Charter when challenging the lawfulness of domestic legislation. The Austrian Constitutional Court identified strong similarities between the role played by the Charter in the EU legal system and that played by the ECHR under the Austrian Constitution, according to which the ECHR has force of constitutional law.

## 4. Accession of the EU to the European Convention on Human Rights

The Treaty of Lisbon has imposed **a clear obligation on the EU to accede to the ECHR**. All Member States agreed to this when they ratified the Treaty of Lisbon.

Negotiations on the accession agreement were stalled in the first half of the year, as certain Member States had expressed doubts and raised questions on the draft agreement, drawn up at technical level in June 2011. Eventually agreement was reached in the Council in April 2012 so negotiations could resume in June 2012 in a 47 + 1 format (47 Members of Council of Europe and the Commission on behalf of the EU).

In parallel, work has been undertaken on the core elements of the internal rules intended to govern the participation of the EU and Member States in proceedings before the Court of Strasbourg in situations where Union law is called into question.

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26 Apart from Spain, Hungary and Austria, the Charter has been referred to in this branch of law in every country.

27 See in particular: *The Protection of Fundamental Rights Post Lisbon: the Interaction between the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and National Constitutions Vol I*, ed. Laffranque, Julia, Reports of the FIDE Congress Tallinn 2012, University of Tartu.

28 Austrian Constitutional Court, Cases U 466/11 and U 1836/11, 14.3.2012.

Against this background, the unanimity required for the conclusion of the accession agreement to the ECHR and its accompanying measures should not serve as an excuse to delay the process, which is a clear and mandatory objective enshrined in the Treaty.

## 5. Conclusion

After just three years in force as primary law, the take up of the Charter by national courts when EU law is involved can be seen as a positive sign. The increasing reference to the Charter gives a first indication of an effective, decentralised application of the Charter within the national constitutional orders. This is an important step on the road to a more coherent system for the protection of fundamental rights which guarantees equal levels of rights and protection in all Member States whenever EU law is being implemented.

The 2012 State of the Union address of President Barroso underlined that the foundations on which our Union is built – the respect of fundamental rights, the rule of law and democracy – must continuously be protected and strengthened<sup>29</sup>. That is why the Commission is committed to lead by example in ensuring that all EU acts comply with the Charter. The Commission remains determined to take decisive steps to give concrete effect to the Charter when it has the competence to do so. Likewise, the Commission is committed to intervene where necessary when Member States implement EU law in order to ensure the effective implementation of the Charter, as in the action it brought before the Court contesting the early retirement of judges and public prosecutors in Hungary.

The Commission will keep the development of fundamental rights protection in the EU, including the evolving case-law on the application of the Charter both at Union and at national level<sup>30</sup>, under close review and calls upon the European Parliament and the Council of Ministers to discuss the present report in detail.

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29 Available at: [http://europa.eu/rapid/press-release\\_SPEECH-12-596\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm)

30 Speech of Vice-President Viviane Reding at the XXV Congress of FIDE (Fédération Internationale pour le Droit Européen) Tallinn, 31 May 2012. Available at: [http://europa.eu/rapid/press-release\\_SPEECH-12-403\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-12-403_en.htm?locale=en)

Staff Working Document  
on the **Application**  
of the **EU Charter** of  
**Fundamental Rights**  
in 2012

# Introduction

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

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

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

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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](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.

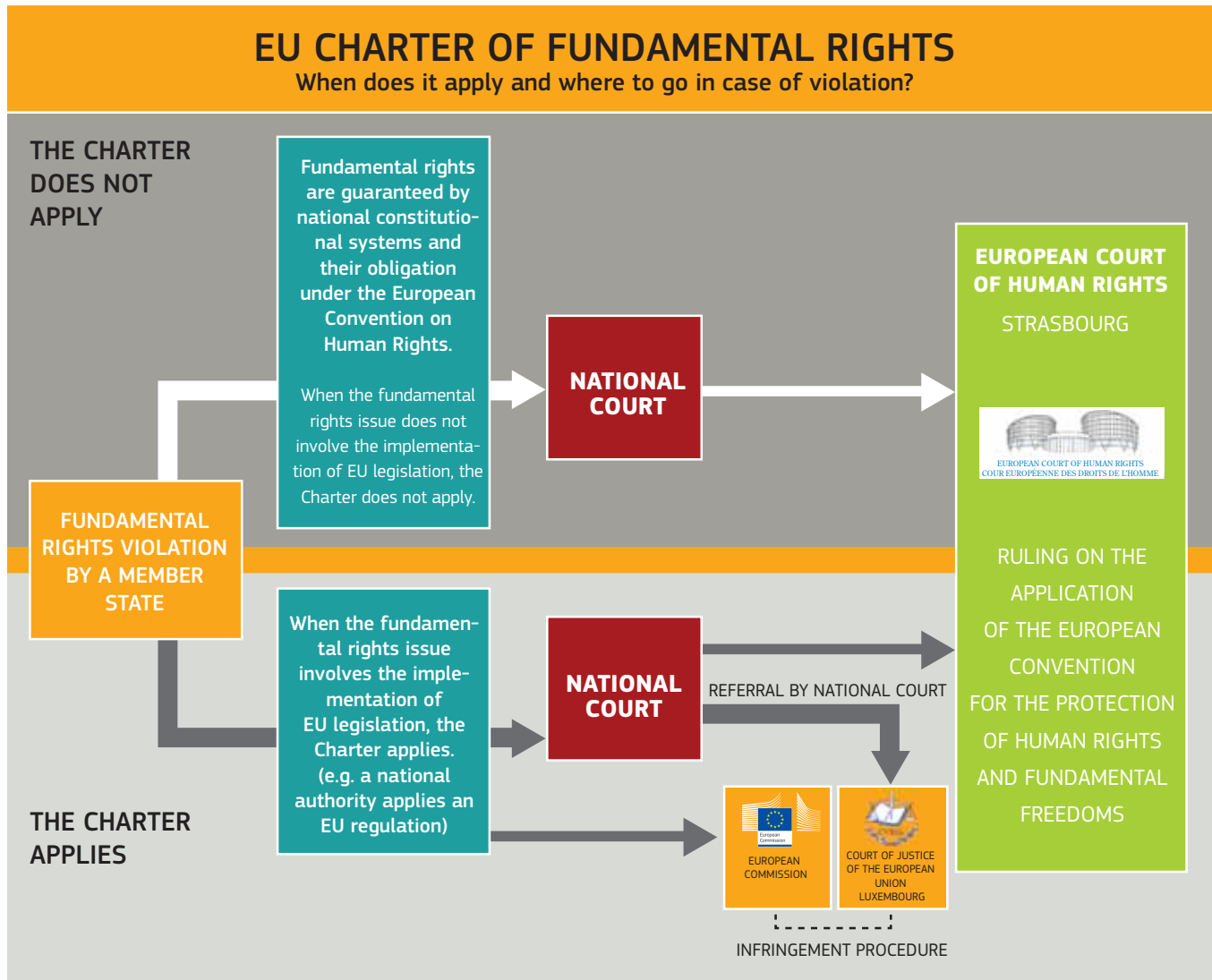
If a national authority (administration or court) violates fundamental rights set out in the Charter when implementing EU law, the Commission can take the matter to the **CJEU**. The Commission is not a judicial body or a court of appeal against the decisions of national or international courts. Nor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

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

**The Commission cannot examine complaints which concern matters outside the scope of EU Law.** This does not necessarily mean that there has not been a violation of fundamental rights. If a situation does not relate to EU law, it is for the Member States alone to ensure that their obligations regarding fundamental rights are respected. Member States have extensive national rules on fundamental rights, which are guaranteed by national judges and constitutional courts. Accordingly, complaints need to be directed to the national level in the first instance.

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

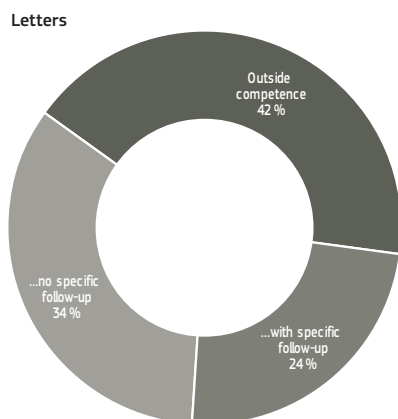
State of a right guaranteed by the ECHR. The European Court of Human Rights (ECtHR) has designed an admissibility checklist in order to help potential applicants work out for themselves whether there may be obstacles to their complaints being examined by the Court<sup>3</sup>.



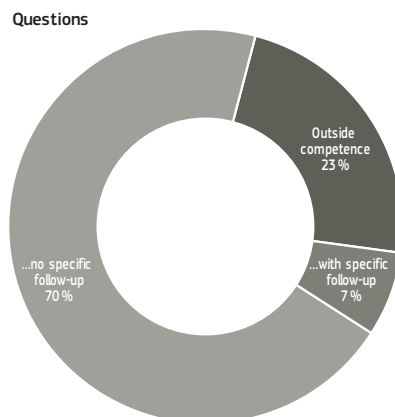
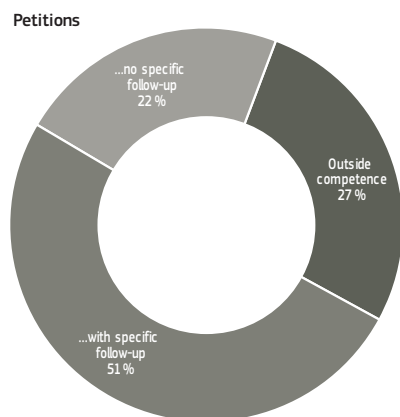
<sup>3</sup> Available at: <http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/>

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



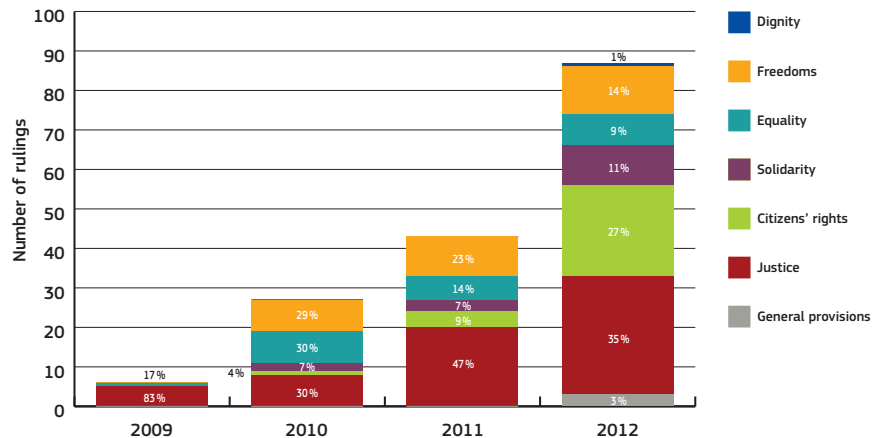
Among the **questions and petitions from the European Parliament** approximately 75 % concerned issues within EU competence. In a number of cases, the Commission contacted the Member States to obtain clarifications on alleged violations. The replies given by the Commission explained or clarified the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



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

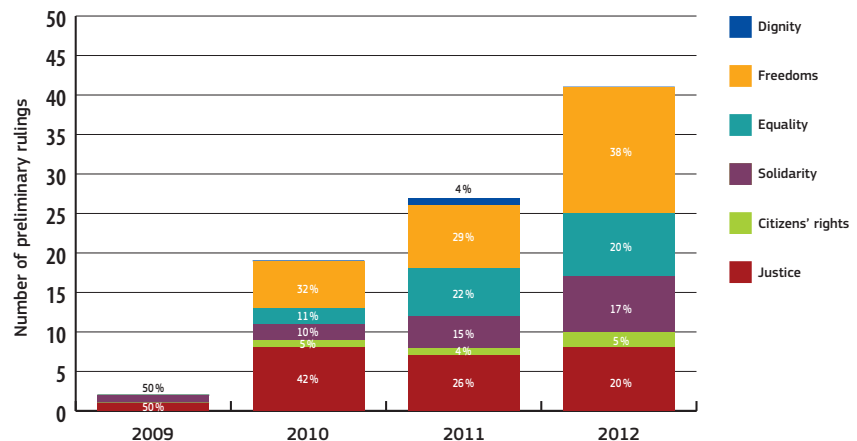
The **CJEU** has increasingly referred to the Charter in its decisions (see Annex I for an overview of all relevant rulings): the number of decisions quoting the Charter in its reasoning almost doubled from 43 in 2011 to 87 in 2012.

Overview of ECJ case-law which quotes the Charter or 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 2012, such references rose by 65 % as compared to 2011, from 27 to 41.

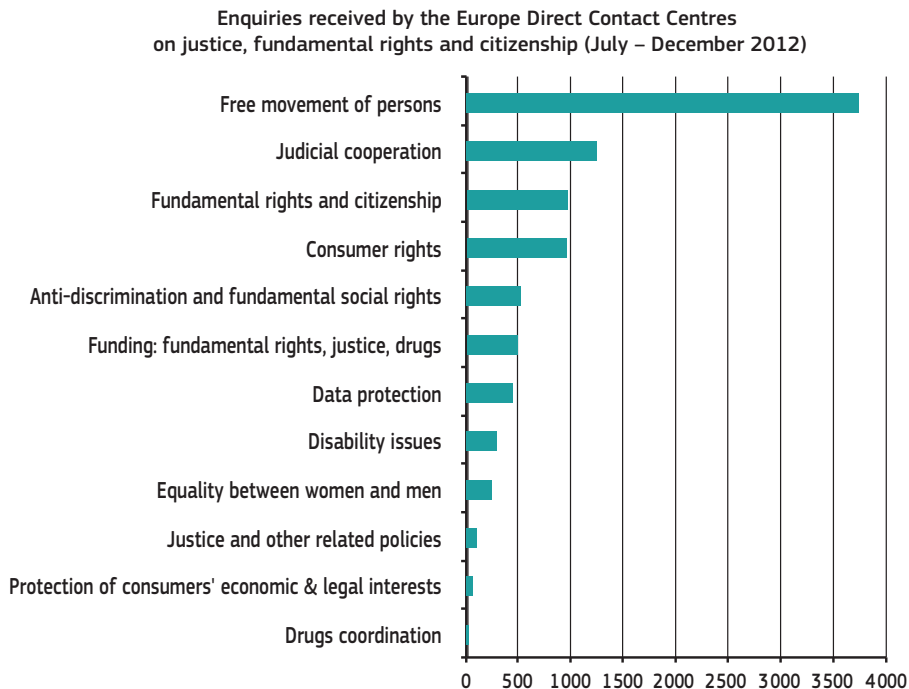
Requests for preliminary rulings which mention the Charter





# 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. In 2012, the EDCC replied to 9 171 enquiries from citizens on topics such as free movement of persons (41 % of the total number of enquiries) and judicial cooperation (13 %).



# The structure of the Report

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

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

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

The EU reached an important agreement on the conditions for the transfer of asylum seekers in the EU (Dublin Regulation). In accordance with case law of the CJEU, asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights under the newly agreed rules.

New rules on the surveillance of the external EU sea borders prohibit disembarkation or handing over of a person to the authorities of a country in contravention of the principle of *non-refoulement*, or when there is a risk of expulsion or return to another country in contravention of that principle.

The CJEU specified that the minimum conditions for the reception of asylum seekers laid down in EU law (Directive 2003/9) should be applied in all circumstances, regardless of whether a Member State is responsible for examining the application for asylum under the Dublin Regulation.

The new Horizon 2020 proposal reinforces the legal status of fundamental rights in the design and implementation of EU research and innovation activities.

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 proposes 40 concrete and time-bound actions.

# Human dignity

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

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

The CJEU clarified<sup>4</sup> that whenever an application for asylum is lodged at the border or in the territory of a Member State, such **Member State is obliged to grant the minimum conditions for reception of asylum seekers** laid down in EU Law<sup>5</sup> regardless of whether a Member State is responsible for examining the application for asylum under EU Law. The Charter played a crucial role in the reasoning of the Court, since recital 5 of Directive 2003/9 makes specific reference to it, and in particular to the fundamental principles of **human dignity** (Article 1) and the **right to asylum** (Article 18) as the essential purpose of this piece of EU legislation. Accordingly, the obligation to provide an asylum seeker with housing, food, clothes and a daily expenses allowance, and the subsequent financial onus, are to be borne by the requesting Member State until they are transferred to the Member State responsible for examining their application.

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

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

## Ethics Review and the Charter

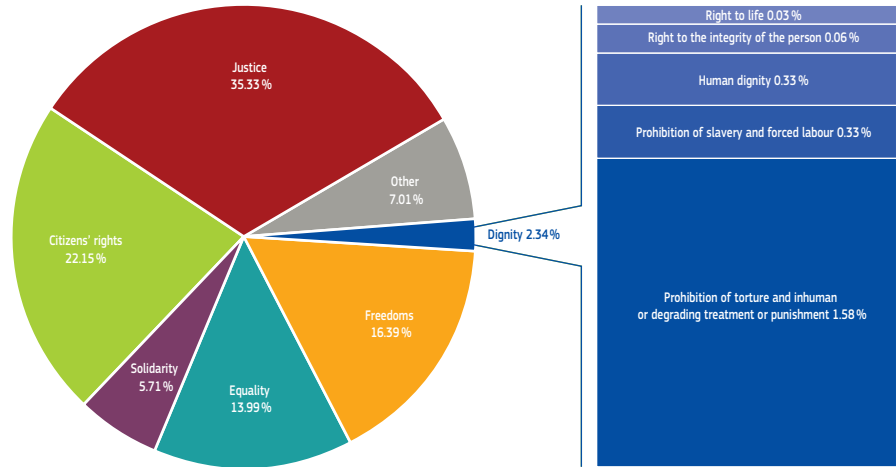
All research activities carried out under the EU Framework Programme are reviewed for their respect of fundamental ethical principles. During the evaluation of research proposals the principles and rights of the Charter are taken into account. One of the most frequent ethical concerns emerges in the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

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

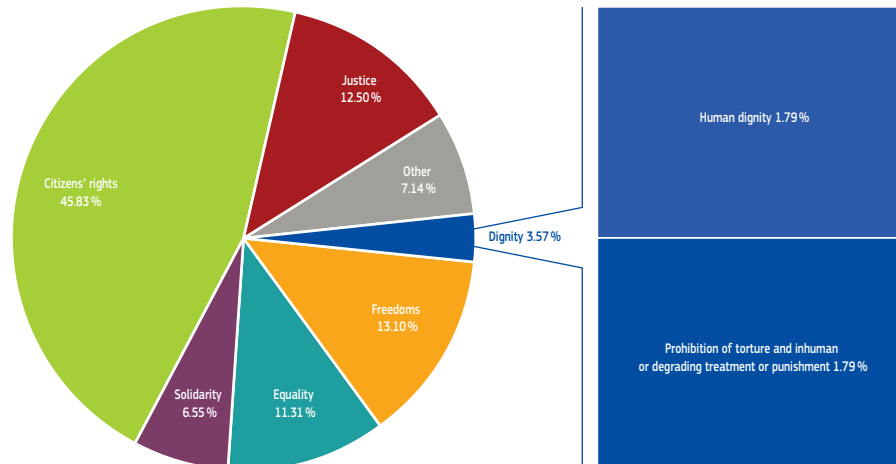
Another crucial concern is data protection and privacy, which is recognised by the Charter. It is applied not only to personal information, but to human tissue and biological sampling as well. As for privacy issues, the possible tracking of the location and observation of the research participants is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

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

### Letters



### Petitions



## Prohibition of inhuman or degrading treatment

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

The three institutions (EP, Council and Commission) took an important step towards safeguarding fundamental rights as part of the **new Dublin Regulation on the conditions for the transfer of asylum seekers in the EU**<sup>6</sup>. The agreement among the three institutions provides for the incorporation of the judgment of the CJEU in the joint cases of *N.S. and M.E. v UK*<sup>7</sup>, according to which asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights. In such cases, another Member State has to assume responsibility on the basis of the criteria established by the Dublin Regulation, within the shortest delay, in order not to jeopardize their quick access to an asylum procedure (*see right to asylum*).

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

## Prohibition of trafficking in human beings

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

The Commission set out an **'EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016'**<sup>9</sup>, which complements Directive 2011/36 on preventing and combatting

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

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

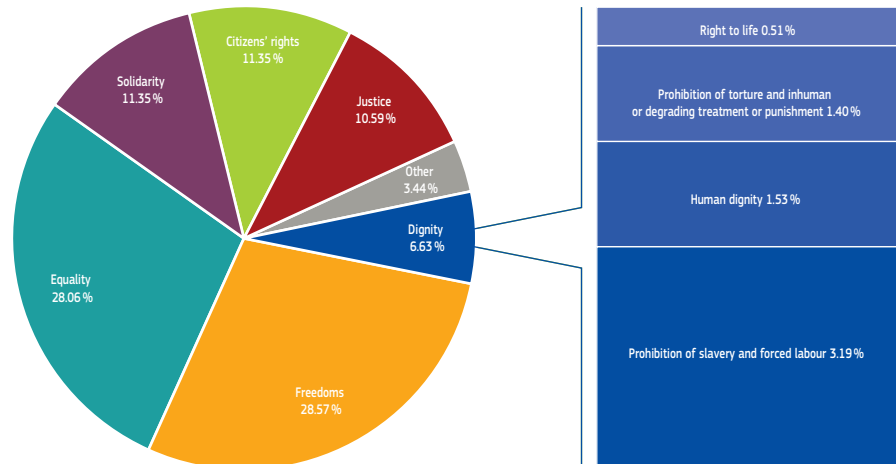
8 Proposal for a Regulation establishing the European Border Surveillance System (EUROSUR), 12.12.2011, COM(2011) 873 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0873:FIN:EN:PDF>

9 Communication on a EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, 19.6.2012, COM(2012) 286 final. Available at: [http://ec.europa.eu/home-affairs/doc\\_centre/crime/docs/trafficking\\_in\\_human\\_beings\\_eradication-2012\\_2016\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf)

trafficking in human beings and protecting its victims (to be transposed by 6 April 2013). The strategy adopts a strong gender and fundamental rights perspective, as well as a victims centred approach. It proposes a series of 40 concrete and time-bound actions grouped under the following key priorities: 1) identifying, protecting and assisting victims of trafficking, 2) stepping up the prevention of trafficking in human beings, 3) Increased prosecution of traffickers, 4) enhanced coordination and cooperation among key actors and policy coherence, 5) increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. The strategy emphasizes that mainstreaming of fundamental rights in the legislative and policy framework for addressing trafficking in human beings is necessary for ensuring coherence of action.

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

### Questions





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

# Freedoms

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

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

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

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

## Respect for private and family life

The EU Charter of Fundamental Rights guarantees the right of everyone to the respect of their private and family life. This is reflected in EU free movement rules, which recognise the right to family life for all EU citizens who move and reside in another Member State. The right of everyone to respect for their private and family life right is also granted under EU free movement rules to third-country nationals who are family members of an EU citizen. The Family Reunification Directive<sup>10</sup> further obliges Member States to pay due regard to the best interests of children when examining an application for family reunification (Article 5 (5)). This provision mirrors the obligation of the Charter (Article 24 (2)) and in the UN Convention on the Rights of the Child (Article 3 (1)) that the child's best interest must be a primary consideration in all actions relating to children as well as the need, expressed in the Charter (Article 24 (3)) for a child to maintain on a regular basis a personal relationship with both parents.

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

The Commission proposed **new rules on the publication of information on all beneficiaries of European agricultural funds**<sup>12</sup>. The new rules incorporate the CJEU jurisprudence<sup>13</sup>, which declared EU provisions on the publication of beneficiaries (natural persons) of EU agricultural subsidies invalid. The CJEU recognised that in a democratic society, taxpayers have a right to be kept informed of the use made of public funds, but decided that the publication naming the beneficiaries who are natural persons, and indicating the precise amounts received by them, violates their right to respect for their private life and in particular to the protection of their personal data, as laid down in Articles 7 and 8 of the Charter.

The new rules proposed by the Commission are based on a revised detailed justification, centred on the need for public control of the use of European agricultural funds in order to protect the Union's financial interests. Moreover, they require more detailed information to be given on the nature and description of the measures for which the funds are disbursed. Furthermore, they

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

11 The Commission received 121 replies to the public debate on the right to family reunification. Available at: [http://ec.europa.eu/home-affairs/news/consulting\\_public/consulting\\_0023\\_en.htm](http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm)

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

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

include a minimum threshold below which the name of the beneficiary will not be published. This provision follows proportionality considerations, namely between the objective of the public control of the use of public funds, on the one hand, and the beneficiaries' right to respect for their private life in general and to protection of their personal data on the other hand.

The case law of the CJEU was also an important reference point when the Commission prepared its **proposal on European political parties**<sup>14</sup>. Through this initiative the Commission seeks to strengthen the ability of European political parties to form a truly European public sphere and express the will of EU citizens. This legislative proposal includes a comprehensive set of rules, including strict reporting and control requirements of party funding. European political parties would have to publish the names of donors contributing more than EUR 1000/year, while the annual limit on individual donations would rise from EUR 12000 to EUR 25000. A robust set of provisions on transparency and data protection ensures that the publication obligation, which is a substantial public interest, is in compliance with the principle of proportionality and in line with the CJEU's jurisprudence<sup>15</sup>. Under the proposed rules, the obligation to publish the identity of natural persons should not apply to those members of a European political party who have not given their express consent for publication or to donations equal to or below EUR 1000 per year and per donor. Also in compliance with the principle of proportionality, information on donations should be published annually, except during election campaigns to the European Parliament or for donations exceeding EUR 12000 where publication should take place expeditiously.

Negotiations continued on the Commission-proposals on matrimonial property regimes<sup>16</sup> and on property regimes for registered partnerships<sup>17</sup>. The regulations take into account the right to respect for private and family life and the right to marry and to found a family according to national laws. There is no differentiation introduced in the legislation on the basis of sexual orientation. At the request of the European Parliament, FRA delivered an opinion on the proposal on the property consequences of registered partnerships on 31 May 2012<sup>18</sup>. In its opinion, FRA finds that *'in order to restrict the choice of applicable law in the case of registered partnerships appropriate justifications would be required which cannot be derived from the reasons given in the draft legislation under consideration. Accordingly, the exclusion of any choice of law does not appear to be in line with the principle of equality (Article 20 of the Charter of Fundamental*

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14 Proposal for a Regulation on the statute and funding of European political parties and European political Foundations, COM(2012) 499 final. Available at: [http://ec.europa.eu/commission\\_2010-2014/sefcovic/documents/com\\_2012\\_499\\_en.pdf](http://ec.europa.eu/commission_2010-2014/sefcovic/documents/com_2012_499_en.pdf)

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

16 Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, COM/2011/0126 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0126:en:NOT>

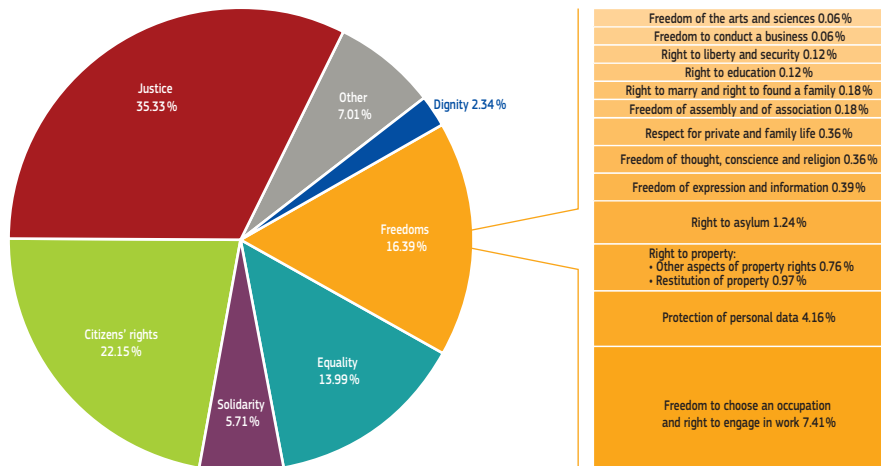
17 Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, COM(2011) 127/2. Available at: [http://ec.europa.eu/justice/policies/civil/docs/com\\_2011\\_127\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/com_2011_127_en.pdf)

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

Rights) and generates potentially problematic effects with regard to the prohibition of discrimination (Article 21 of the Charter of Fundamental Rights).’

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

## Letters



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

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

21 Austrian Supreme Administrative Court (Verwaltungsgerichtshof), case 2008/22/0223, decision of 13.12.2011.

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

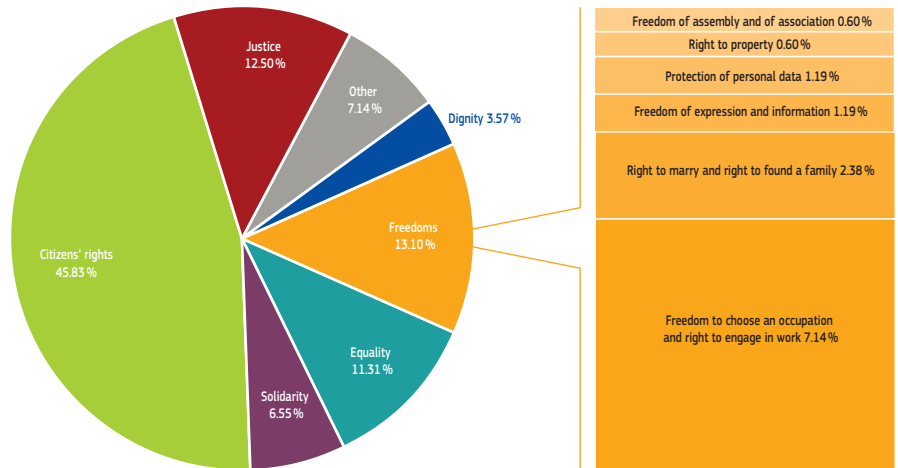
## Ruling of the Constitutional Court of Slovenia<sup>19</sup>

The Constitutional Court annulled the decision of the Supreme Court to uphold the expulsion decision of a Lithuanian national from the Slovenian territory on grounds of public policy or public security; which is allowed upon respect of several conditions laid down under Directive 2004/38/EC<sup>20</sup> on the rights of EU citizens and their family members to free movement and residence. The applicant lodged a plea for extraordinary mitigation before the Supreme Court of Slovenia on the basis of the fact that his new-born child lived in Slovenia with his mother. The Supreme Court did not take into account this circumstance as a new fact of personal nature capable of modifying the decision to deport him to Lithuania. The Constitutional Court ascertained that the expulsion measure constituted interference in the applicant's right to respect for private and family life recognised by Article 7 of the Charter and Article 8 of the ECHR and that such measure did not comply with the principle of proportionality inasmuch the Supreme Court failed to take into account the circumstance that the applicant had strong family ties in Slovenia.

## Ruling of the Austrian Supreme Administrative Court<sup>21</sup>

The Austrian Supreme Administrative Court considered that the decision rejecting residence permission for the purposes of family reunion of a third country national with his Austrian husband had to be repealed because no due consideration of the personal interest, i.e. the continuation of family life in Austria, had been taken into account. Referring to the jurisprudence of the CJEU<sup>22</sup>, the Court reminded that decisions had to be taken on a case by case basis and take into consideration the right to private and family life as protected by Article 7 of the Charter.

## Petitions



## Data protection

The fundamental right of everyone to the protection of personal data is now explicitly recognised by Article 8 of the Charter. It is also explicitly stated in Article 16 of the Treaty on the Functioning of the European Union. This gives the EU new responsibilities to protect personal data in all areas of EU law, including police and judicial cooperation. Technological progress and globalisation have profoundly changed the way personal data is collected, accessed and used. In addition, the 27 EU Member States have implemented the 1995 EU Data Protection Directive<sup>23</sup> differently, resulting in divergences in enforcement.

### *Reform of EU data protection rules*

The Commission proposed a **major reform of the EU's rules on the protection of personal data**. The Commission's proposals update and modernise the principles enshrined in the 1995 EU Data Protection Directive to guarantee the right of personal data protection in the future. They include a policy Communication setting out the Commission's objectives<sup>24</sup> and two legislative

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

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

proposals: a Regulation setting out a general EU framework for personal data protection<sup>25</sup> and a Directive<sup>26</sup> on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities<sup>27</sup>. The Commission's proposals have been passed on to the European Parliament and EU Member States (meeting in the Council of Ministers) for discussion. Upon request of the European Parliament, the EU Agency for Fundamental Rights presented an expert opinion on the proposal<sup>28</sup>.

Key changes in the reform proposed by the Commission include:

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

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25 Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM (2012) 11 final. Available at: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=52012PC0011](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=52012PC0011)

26 Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data', COM (2012) 10 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012PC0010:en:NOT>

27 The Commission's package also includes the following other documents: Report from the Commission based on Article 29 (2) of the Council Framework Decision of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (including annex), COM (2012) 12 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0012:FIN:EN:PDF>  
Impact assessment (including annexes) accompanying the proposed Regulation and the proposed Directive, SEC (2012) 72 final, Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0011:FIN:FR:PDF>  
Executive summary of the impact assessment, SEC (2012) 73 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2012:0073:FIN:FR:PDF>

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

## Google's new privacy policy

Google announced on March 1st a new privacy policy, which raised doubts throughout the EU and beyond about its compliance with EU data protection rules. The European Data Protection Authorities undertook a thorough investigation – under the auspices of the French Data Protection Supervisory Authority – and concluded that Google provides insufficient information to its users on its personal data processing operations and is not transparent about retention periods of personal data. The data protection authorities recommended clearer information for the users, asked Google to offer improved control of data across its numerous services, and requested some modification to the tools Google set in place to avoid an excessive collection of data. These recommendations were addressed to Google in a letter of 16.10.2012 which was made public<sup>29</sup>.

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

## *EU cloud computing strategy*

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

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

<sup>29</sup> Available at: [http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/index\\_en.htm](http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/index_en.htm)



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

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

The **CJEU** upheld its case law<sup>30</sup> confirming that the mere risk of an external influence is sufficient to conclude that the data protection authority cannot act with complete independence in its ruling on the case brought by the Commission against Austria<sup>31</sup>. The Court clarified, in particular, that the mere functional independence of the data protection supervisory authority does not suffice in order to ensure the ‘complete independence’ required by the EU Data Protection Directive (Article 28 (1)). The Court found that the Austrian regulatory framework violated the EU requirements on three grounds. Firstly, that the managing member of the Data protection authority (*Datenschutzkommission*) is a federal official subject to supervision. Secondly, that the office of the data protection authority is integrated with the departments of the Federal Chancellery. Thirdly, that the Federal Chancellor has an unconditional right to information covering all aspects of the work of the data protection authority. By contrast, the Court rejected a submission made by the European Data Protection Supervisor (EDPS) to the effect that the Supervisory Authority should dispose of its own budget line.

The Commission submitted an application to the CJEU against **Hungary** for violating the independence of the data protection supervisory authority<sup>32</sup>. With the creation of the National Agency for Data Protection, Hungary had at the same time prematurely ended the six-year term of the former Hungarian Data Protection Commissioner, who was appointed in September 2008 and whose term of office would have ended in September 2014 only. The personal independence of a national data protection supervisor, which includes protection against removal from office during the term of office, is a key requirement of EU law. The re-organisation of a national data protection authority is not a reason for deviating from this requirement.

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

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

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

33 ECJ, C-132/12, *Google Spain vs. Agencia Espanola de Proteccion de Datos*, date of acceptance 19.04.2012.

## Scope of application of EU data protection rules

The *Audiencia Nacional* of Spain submitted a request for preliminary ruling on the interpretation of the Data Protection Directive<sup>33</sup>. The questions to the CJEU included the interpretation of the criteria laid down in that Directive to define the territorial scope of the national implementing legislation. The Spanish Court asked whether the fundamental right of everyone to the protection of personal data enshrined in Article 8 of the Charter requires the taking into account of the Member State where the centre of gravity of the conflict is located and more effective protection of the rights of European Union citizens is possible, regardless of the criteria set out in the Data Protection Directive. The remaining questions are related on one hand, to the obligations of search engines like Google, and on the other to the powers of the national supervisory authorities as regards the extent of the data subjects’ right to control the information disseminated on them through the internet.

## Legal challenges against EU rules on Data retention

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

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

## *International agreements*

**The Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)** was the first legally binding international instrument in the field of data protection. In order to respond to the rapid technological developments and globalisation trends that have brought new challenges for the protection of personal data, the Council of Europe has begun discussions on the modernisation of Convention 108. The modernisation of the Council of Europe's rules coincides with the comprehensive reform of the European Union's laws on data protection. The negotiation is an opportunity to export the EU's standards of data protection beyond the borders of the Member States.

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

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

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

## *Mainstreaming of data protection requirements in EU policies and legislation*

The Commission routinely checks its legislative proposals and the acts it adopts to ensure that they are compatible with the Charter. The roll out of new innovative **smart metering systems**

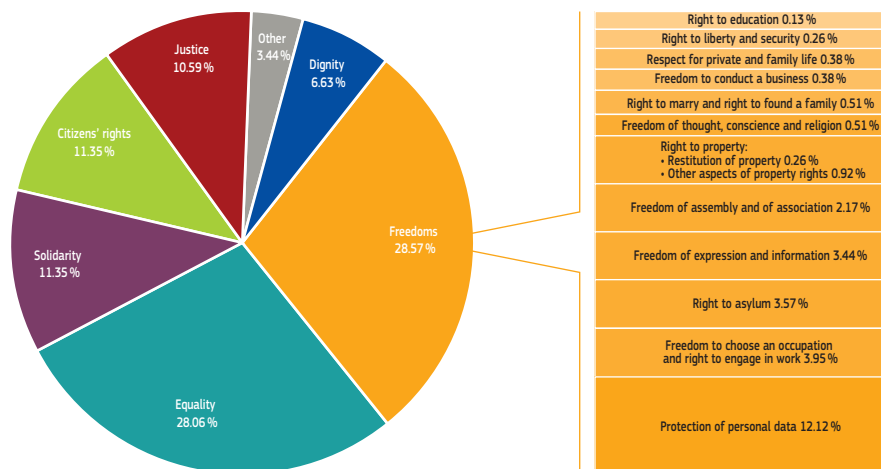
34 Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service OJ L 186, 14.7.2012.

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

technology illustrates very well the requirement that particular attention is paid to fundamental rights in the development of policies related to new technologies. Smart meters record the consumption of electric energy and communicate this information to the consumer, to the grid operator and to the energy supplier. This technology raises issues of security and protection of the personal data processed by smart metering systems. This is why the Commission recommended that data protection and information security features should be built into smart metering systems before they are rolled out and used extensively<sup>36</sup>.

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

## Questions



## Ruling of the Administrative Law Chamber of the Supreme Court of Estonia<sup>38</sup>

This case concerned an appeal brought before the Supreme Court by a public company (EMT) against the order issued by the national data protection authority for transmitting to third parties information concerning payments overdue for the purpose of assessing data subjects' solvency under the so-called 'legitimate interests' clause. When interpreting the relevant provisions of the Estonian Data Protection Act, which implements Directive 95/46/EC<sup>39</sup> the Court referred to the case-law of the CJEU and to the rights recognised by Articles 7 and 8 of the Charter to maintain that such order was lawful insofar as it aimed at protect the data subjects' fundamental rights, which were therefore deemed to prevail over the controller's and third parties' legitimate interests.

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

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

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

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

## Commission actions to promote media freedom, pluralism and independent governance

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

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

## Freedom of expression

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

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

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

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

## Freedom to conduct a business

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

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

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

The EU adopted **new rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (also known as the 'Brussels I reform')**<sup>41</sup>, which will make it easier for business and consumers to resolve cross-border legal disputes. Following this reform, judgements issued in another Member State in civil and commercial matters will be treated as domestic judgements. Under the current EU rules, a judgment given in one Member State does not automatically take effect in another Member State. In order to be enforced in another country, a court in that country first has to validate the decision and declare it enforceable. This is done in a special procedure ('exequatur') that takes place after the judgment has been obtained and before concrete measures of enforcement can be taken. The new rules will apply from 10 January 2015.

The Commission outlined a series of **actions to tackle marketing scams affecting businesses**, such as those of misleading directory companies. The aim is to better protect businesses, professionals and NGOs across Europe from rogue traders who do not play by the rules and use

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41 Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM/2010/748.  
Available at: [http://ec.europa.eu/justice/policies/civil/docs/com\\_2010\\_748\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/com_2010_748_en.pdf)

## Polish State owned agricultural estate management

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

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

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

misleading marketing practices, such as sending out forms asking businesses to update details in their directories, seemingly for free, and then charging them annual fees. Small and new companies are particularly vulnerable to fraudsters when doing business in other EU countries. The Commission therefore announced that it plans to revise the existing legislation (the Misleading and Comparative Advertising Directive 2006/114/EC) to explicitly ban practices such as concealing the commercial intent of a communication, while at the same time stepping up enforcement of the rules in cross-border cases.

## Right to property

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

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

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

A few months after its ruling in the *Scarlet v. SABAM* case<sup>43</sup>, the **CJEU** had the occasion to refer to the **relationship, in an on-line environment, between the protection of intellectual property rights and other fundamental rights, such as the freedom to conduct a business and the protection of personal data**. In the *SABAM v. Netlog* case<sup>44</sup> the Court ruled on the incompatibility with the rights recognised in the Charter, of an injunction sought by SABAM (an association of authors, composers and publishers) against Netlog (an on-line social networking platform) requiring the instalment of a general and open-ended filtering system aimed at identifying copyrighted material. In particular, the CJEU found that the injunction requested against Netlog would not be compatible with the requirement that a fair balance be struck between the right to intellectual property, on the one hand, and the freedom to conduct a business, the right to protection of personal data and the freedom to receive or impart information, on the other.

The **CJEU** specified the **conditions under which personal data may be disclosed for the purposes of protecting intellectual property rights in the context of civil proceedings**<sup>45</sup>. In the main proceedings before the Swedish courts, publishing companies, holding the copyrights of certain audio books, applied to the court for an order against an internet service provider for the disclosure of the identity of a natural person using an IP (internet protocol) address allegedly involved into illegal file-sharing. The Court confirmed its previous jurisprudence<sup>46</sup> that the Intellectual Property Rights Enforcement Directive<sup>47</sup> and the e-privacy Directive<sup>48</sup> do not preclude Member States from imposing an obligation to disclose to private persons personal data in order to enable them to bring civil proceedings for copyright infringements, but nor do they require those Member States to lay down such an obligation. The Court re-emphasized that the Member States must ensure that they rely on an interpretation of those directives which allows a fair balance to be struck between the various fundamental rights protected by the European Union legal order (i.e., in particular, the protection of personal data and the protection of property rights, including IPRs) and that they also respect general principles of EU law, such as the principle of proportionality.

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

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

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

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

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

48 Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L201, 31.7.2012, p. 37-47.

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

## Spanish Coastal Law

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

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

In October 2012, the Spanish government approved draft amendments to the Coastal law<sup>49</sup>. The most relevant measures were the (i) extension of the concessions from 30 years to 75 years and (ii) increasing the opportunity to transmit and sell the property (subject to prior authorisation). The law aims also at improving transparency and legal certainty, by introducing an obligation for the administration to register the demarcation line in the property register.

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

## Right to asylum

The right to asylum is guaranteed by the Charter.

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

The new rules also provide effective guarantees to applicants as regards appeals against transfer decisions, thus ensuring full effect of the right to remain on the territory and reducing the risk of 'chain *refoulement*'. Substantial provisions on detention have been agreed in the text, limiting it to cases of established risk of absconding, restricting it to a maximum of three months, and providing that the detention conditions and guarantees applicable to asylum seekers under this procedure are the ones foreseen by the Reception Conditions Directive<sup>52</sup> (thus ensuring the same level of rights as for any other asylum applicant). Additionally, the agreement provides for enlarged rules of reunification for unaccompanied minors, guarantees the right to a guardian, the right of all applicants to detailed information on the functioning of the Dublin system including, for the minors, in a manner adequate for their understanding.

The Commission proposed an improvement to the overall efficiency of the **EURODAC** system for collecting asylum seekers' fingerprints. The Commission's proposal provides clearer deadlines for transmission of data and ensures full compatibility with the latest asylum legislation. The proposal provides for more effective and less intrusive measures for competent law enforcement authorities to determine if another Member State holds data on an asylum seeker. The Commission's proposal also foresees the possibility of national law enforcement authorities to consulting the EURODAC database under strictly defined circumstances for the purpose of prevention, detection and investigation of terrorist offences and other serious criminal offences, as requested by Member States. The use of EURODAC data for law enforcement purposes implies a change of purpose of the data processed and constitutes an 'interference' with the right to data protection<sup>53</sup>.

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

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

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

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



In its proposal the Commission assessed whether this interference complies with Charter obligation (Article 52(1)) stating that any limitation of rights respects the essence of the right, is necessary to achieve an objective of general interest recognised by the Union or to protect the rights and freedoms of others, and is proportionate, i.e. appropriate for attaining the objective pursued and not going beyond what is necessary to achieve it.

The co-legislators have agreed to amend the current **Reception Conditions Directive**, aiming to address problems identified in its implementation by Member States, notably divergent practices which sometimes led to an inadequate level of material reception conditions for asylum seekers. In this respect, the revised Directive will ensure better as well as more harmonised standards of reception conditions throughout the Union.

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

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

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

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

## Finnish Supreme Administrative Court

In two cases concerning the situation of asylum seekers<sup>57</sup>, the Finnish Supreme Administrative Court made references to the Charter to interpret provision of EU secondary law. In a case concerning the permit application of an asylum seeker, the Court relied on Article 47 of the Charter (right to an effective remedy) to interpret Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status 2005/85/EC<sup>58</sup> and relevant implementing national laws (Administrative Judicial Procedure Act 586/1996 and Alien Act 301/2004).

In the second case, the Court suspended the deportation of an asylum seeker by relying on the right to life, right to asylum and the protection in the event of removal, expulsion or extradition (Articles 2, 18 and 19 of the Charter) to interpret the relevant provisions of Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection<sup>59</sup>.

## Austrian Asylum Court

In a number of cases the Austrian Asylum Court<sup>60</sup> considered that the limitation of the right to a public hearing in asylum cases is allowed as established by law and respecting the essential content of the right to an effective remedy and to a fair trial (Article 47 (2) of the Charter). The Court explained that fairly quick decisions on asylum applications are a goal of the Union and that the omission of oral hearings can help in reaching this goal. However, the Court specified that this can only be applied in those cases where the actual situation can be established and the omission of the oral hearing does not diminish the quality of the decision.

The CJEU analysed the **rules on minimum EU standards for the qualification as refugees<sup>55</sup> in the light of the right to freedom of religion in the Charter** (Article 10(1)) in its ruling on a preliminary reference introduced by two German Courts<sup>56</sup>. The applicants, two Pakistani nationals, claimed that their membership to a religious community had forced them to leave their country of origin, but were not granted asylum by the German administration. The CJEU clarified that the authorities responsible for granting refugee status, cannot expect the applicant to abstain from those religious practices which would expose them, upon their return to their country of origin, to a real risk of persecution, especially when the public practice of the applicant's faith plays a central role in his religious identity.

## Protection in the event of removal, expulsion or extradition

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

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

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

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

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

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

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

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

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

**National laws criminalising irregular stays in Italy and France were amended** further to the ruling of the CJEU declaring these laws incompatible with EU rules on return of irregular migrants<sup>62</sup>. The Commission is currently examining the correct legal transposition of these rules in all Member States and has sought clarifications with regard to each Member State, including France and Italy.

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

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



Equality before the law

Non-discrimination

Cultural, religious and linguistic diversity

Equality between women and men

The rights of the child

The rights of the elderly

Integration of persons with disabilities

3/

EQUALITY

# Equality

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

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

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

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

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

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

## Non-discrimination

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

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

### *Manifestations of intolerance to pluralism in the EU*

The year 2012 witnessed a number of serious incidents of **racism and xenophobia in the EU**, including racist and xenophobic hate speech and violence against Roma and immigrants. Data collected by the FRA indicates that on average, minorities are victims of assault or threat more often than the majority population. FRA's survey finds that *'Nearly every fifth Roma and every fifth Sub-Saharan African interviewed considered that they had been a victim of racially motivated in-person crime of assault or threat and serious harassment at least once in the last 12 months'*<sup>64</sup>. Still, victims of crime are often unable or unwilling to seek redress against perpetrators. For this reason many crimes remain unreported and unprosecuted. This illustrates the need to build confidence among victims and witnesses of hate crime in the criminal justice system and law enforcement<sup>65</sup>. FRA further points out that only four Member States (Finland, the Netherlands, Sweden and UK) collect comprehensive data on hate crime, including a range of bias motivations, types of crimes and characteristics of incidents, whereas in 14 Member States the data collection is limited and the data are not usually made publicly available.<sup>66</sup>

63 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, 2.7.2008.  
Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:EN:NOT>

64 FRA, EU-MIDIS Data in Focus Report 06 – Minorities as Victims of Crime, November 2012.  
Available at: [http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6_0.pdf)

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

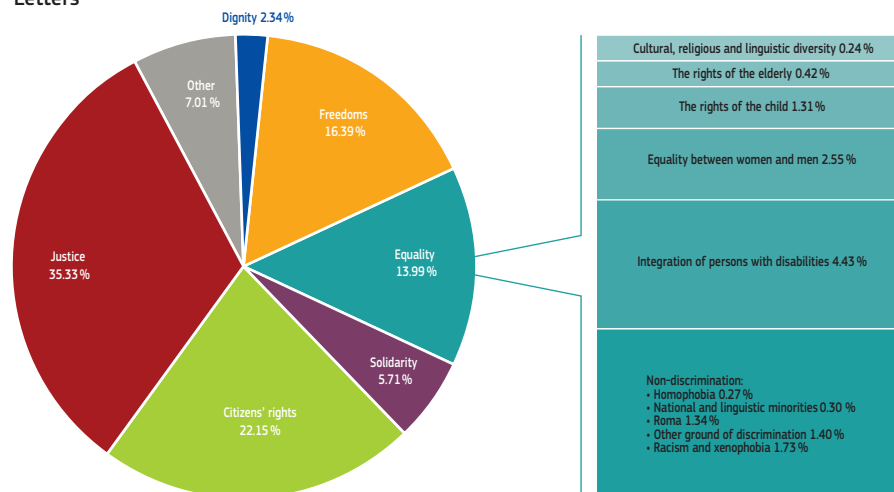
66 Making hate crimes visible in the European Union: acknowledging victims' rights, November 2012; EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime, November 2012.

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

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

In response to these concerns, the Commission reaffirmed its commitment to fight against racism and xenophobia by all means available under the Treaties and recalled the responsibility of the Member States' authorities to effectively implement the EU legislation prohibiting racist or xenophobic hate speech and hate crime based on a racist or xenophobic motivation. This legislation obliges Member States to penalise racist or xenophobic hate speech and to ensure that racist or xenophobic motivation behind other offences is taken into account in the determination of applicable sentences. By the end of the year, all but two Member States had communicated to the Commission their national laws transposing this Framework Decision. The Commission will assess the compliance of those national laws in a report to be presented by the end of 2013.

### Letters



<sup>67</sup> Available at: [http://ec.europa.eu/public\\_opinion/archives/eb\\_special\\_399\\_380\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm)



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

### *EU Framework for National Roma Integration Strategies*

Action to support **Roma** lies first and foremost in the hands of Member States that have the primary responsibility and the competences to change the situation of a marginalised population. The Commission's assessment of the National Roma Integration Strategies submitted by the Member States<sup>68</sup> evaluated, in particular, the Member States' approaches to the four key areas of education, employment, healthcare and housing, and on how structural requirements (cooperation with civil society, with regional and local authorities, monitoring, antidiscrimination and establishment of a national contact point) as well as funding are addressed. The Commission concluded that Member States need stronger efforts to live up to their responsibilities, by adopting more concrete measures, explicit targets for measurable deliverables, clearly earmarked funding at national level and a sound national monitoring and evaluation system. In addition, attention should be devoted to anti-discrimination and segregation measures and to a close dialogue with (Roma) civil society (alongside regional and local authorities) in the implementation and monitoring of national strategies.

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

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

### Websites targeted against citizens from Central and Eastern European Member States

Xenophobic and intolerant attitudes can target all citizens. In the Netherlands, the PVV Party created a website directed against citizens from certain Central and Eastern European Member States. In Belgium the Vlaams Belang party took a similar initiative. In reaction to these developments, the Commission stressed that it is unacceptable that EU citizens exercising their right to move should become victims of hate speech<sup>69</sup>. The EP warned against destroying the very basis of the Union, namely pluralism, non-discrimination, tolerance, justice, solidarity and freedom of movement<sup>70</sup>.

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

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

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

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

## Lithuania: amendment of the Law on the protection of minors

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

## *Fight against homophobia*

The **European Parliament** raised concerns on discrimination on the basis of sexual orientation in the internal market and called for the adoption of a Roadmap for equality without discrimination on grounds of sexual orientation or gender identity, in its resolution on the fight against homophobia adopted in May 2012<sup>71</sup>.

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

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

## *Rights of persons belonging to minorities*

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

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

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

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

### *Discrimination on the ground of age*

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

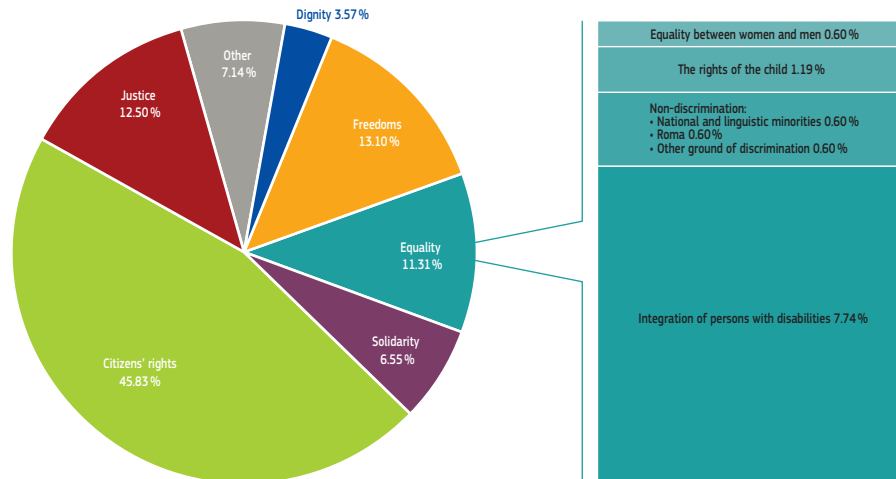
<sup>72</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 , 02.12.2000, p. 16-22.

<sup>73</sup> CJEU, Case C-141/11, *Hörmfeldt v. Posten Meddelande AB*, 05.07.2012.

Another interesting case<sup>74</sup> involved a clause of the collective agreement applicable to cabin crew members of Tyrolean Airways, according to which the professional experience with another airline belonging to the same group of companies (Austrian Airlines) was not taken into account in determining pay grades. The compatibility of this provision with Directive 2000/78 and Article 21 of the Charter was challenged in so far as in the applicants' allegations, it constituted (indirect) discrimination on grounds of age. The Court, observing that the provision in question was based on a criterion which was neither inextricably nor indirectly linked to the age of employees, rejected a similar reasoning and concluded there was no discrimination on grounds of age.

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

### Petitions



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

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

# Rights of the child

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

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

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

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

## 7th European Forum on the Rights of the Child

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

The discussion covered a wide range of Member States, and the discussion focused on the organisation of the supervision of custody rights. Participants noted that child welfare authorities have different powers depending on the Member State and all Member States strive to give primary consideration to the child's best interests whilst fostering, insofar as possible, arrival at amicable solutions to parental conflict. Participants discussed the structure and roles and responsibilities, capacity of the child welfare authority, and cooperation including cross-border cooperation. It emerged that Member States have very different systems in this area. Most of the interventions stressed that it is crucial to better inform children and parents coming from different Member States and to ensure appropriate training of social workers involved in cross-border situations. Participants also looked at how to foster better cooperation between local and central child welfare authorities, as well as cross-border cooperation.

<sup>76</sup> 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>

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

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

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

**The Commission took steps towards the implementation in Member States of the 116 000 hotline**<sup>79</sup> ([www.hotline116000.eu](http://www.hotline116000.eu)), which offers help and support for missing children and their families<sup>80</sup>. EU law requires that Member States make every effort<sup>81</sup> to have the hotline operational and this is mandatory since 25 May 2011. To improve the quality of existing hotlines and encourage the setting up of new ones, the Commission made funding available (EUR 3 Mio), through the DAPHNE III Programme. As the implementation process of the 116 000 hotline was lagging, the Commission reminded the Member States of their obligations in a joint letter sent on the occasion of the International Missing Children's Day. At the end of the year, the hotline was available in 22 Member States. To boost awareness and promote the use of the 116 000 hotline and helpline numbers a dedicated website<sup>82</sup> was launched by the Commission providing information and links to the number operators in all Member States.

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

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

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

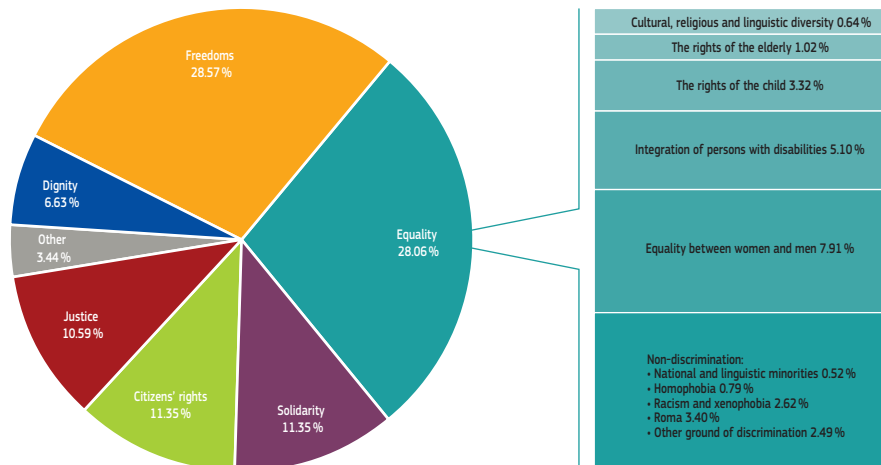
81 Article 27a of the Universal Service Directive (Directive 2009/136/EC amending Directive 2002/22/EC).

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

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

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

## Questions



# Integration of persons with disabilities

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

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

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

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

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

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



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

With the support of the Commission, the **Academic Network of European Disability Experts**, launched a comprehensive online database (DOTCOM<sup>83</sup>) about laws, policies, strategies and initiatives put in place at EU-level and in the Member States to implement the UN Convention.

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

## Constitutional Court of Romania<sup>84</sup>

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

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

<sup>84</sup> Constitutional Court of Romania (Curtea Constituțională a României), S.C. 'Elbama Star' S.R.L., decision no. 615 of 12.05.2011.



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

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

In line with the Single Market Act, the Commission presented two legislative proposals, one the enforcement of the **Posting of Workers Directive** and one on the **exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services** (the so-called Monti II proposal). Twelve national Parliaments adopted reasoned opinions expressing concerns related, among others, to the added value of the draft Monti II Regulation, the choice of its legal basis and EU competence to regulate this matter. Although the Commission was of the opinion that the principle of subsidiarity has not been breached, it recognised that its proposals were unlikely to gather the necessary political support within the European Parliament and Council to enable its adoption. Consequently, it withdrew this proposal on 26 September 2012 hoping that this would facilitate a rapid negotiation of the other part of the package, namely the proposal for an Enforcement Directive.

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

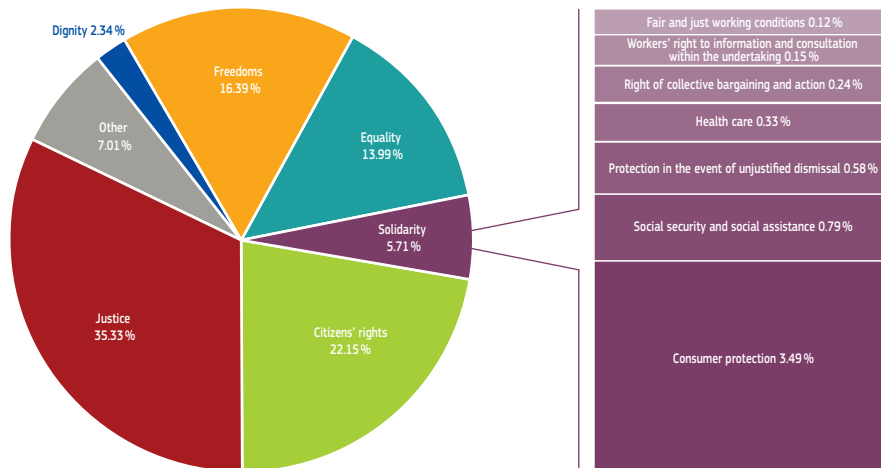
# Workers' right to information and consultation

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

The Commission is finalising a legislative proposal to lift the **exclusion of seafaring workers from the personal scope of application of a number of EU labour law directives** following consultation of the European social partners. The Commission's proposal would extend the scope of application of the Insolvency Directive<sup>85</sup>, the Works Council Directive<sup>86</sup>, the Information and Consultation Directive<sup>87</sup> and the Transfer of undertakings Directive<sup>88</sup> to seafaring workers.

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

## Letters



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

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

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

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

## 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 level<sup>89</sup>. Member States remain, of course, bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

In line with the Single Market Act<sup>90</sup>, the Commission presented on 21 March 2012 two legislative proposals; one on the enforcement of the **Posting of Workers Directive**<sup>91</sup>, and one on the exercise of the **right to take collective action**<sup>92</sup> within the context of the freedom of establishment and the freedom to provide services (the so-called Monti II proposal). Both proposals were transmitted to the other EU institutions as well as to the national Parliaments of the Member States. The Council started discussions on them and the European Parliament organised a hearing on 18 September 2012. However, twelve national Parliaments adopted reasoned opinions<sup>93</sup> expressing concerns related, among others, to the added value of the draft Monti II Regulation, the choice of its legal basis and the EU competence to regulate this matter.

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

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

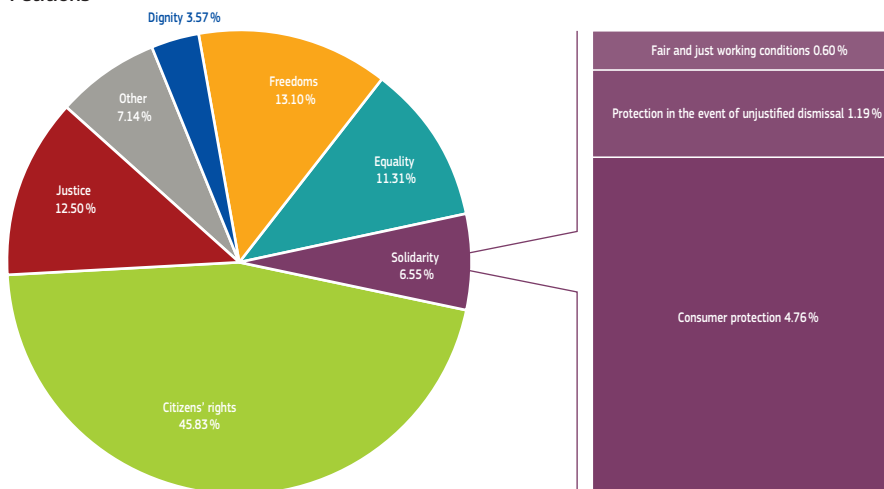
90 Communication from the Commission: Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth, COM(2011) 206 final.  
Available at: [http://ec.europa.eu/internal\\_market/smact/docs/20110413-communication\\_en.pdf](http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf)

91 Proposal for a Directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, COM(2012) 131 final.  
Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0131:FIN:EN:PDF>

92 Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, COM(2012) 130 final.  
Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0130:FIN:EN:PDF>

93 On the basis of Protocol No 2 to the EU Treaties on the application of the principles of subsidiarity and proportionality.

## Petitions



## Fair and just working conditions

The Charter guarantees that every worker has the right to working conditions which respect their health, safety and dignity. Every worker has the right to a limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. There is a substantial body of EU law in this area concerning, in particular, health and safety at work<sup>94</sup>.

The social partners at European level pursued their negotiations on the Working time Directive<sup>95</sup>, with the aim of conducting a review<sup>96</sup>. On 16 August 2012, the Commission agreed to extend time for their negotiations until 31 December 2012, following a joint request of the social partners indicating that their negotiations were making progress. The Commission has stated that, respectful of the social partners' autonomy, it will not put forward a legislative proposal of its own during the period foreseen under the Treaty for their negotiations. In December, the social partners informed the Commission about the failure of the negotiations.

<sup>94</sup> 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.

<sup>95</sup> 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>

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

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

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

MEPs have raised concerns on the practice of some employers to blacklist workers who are active in raising awareness on health and safety risks. This practice is contrary to EU law, which provides that workers or workers' representatives with special responsibility for health and safety may not be placed at a disadvantage because they consult or raise issues with the employer regarding measures to mitigate hazards or to remove sources of danger<sup>97</sup>. It is, in first instance, for Member States to ensure that this provision is fully effective and to ensure that violations are followed-up as appropriate by the competent authorities. The Commission may intervene, in its role as Guardian of the Treaty, when there is a breach in the transposition or in the implementation of EU Law by Member States.

## Social security and social assistance

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

The **EU Directive on the status of third-country nationals** guarantees that long-term residents shall enjoy equal treatment with citizens of the Member State as regards social security, social assistance and social protection as defined by national law. Under Article 11 (4) of that Directive, 'Member states may limit equal treatment in respect of social assistance and social protection to core benefits'. In a case that concerned housing benefits for a third-country national who was a long-term resident<sup>98</sup>, the **CJEU** observed that according to Article 34 of the Charter, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. The Court concluded that in so far as the housing benefit for low income tenants at issue fulfils the purpose set out in that provision of the Charter, it has to be considered as a 'core benefit' within the meaning of Article 11(4) of the Directive and therefore it has to be granted also to third-country nationals who are long-term residents in a Member State. In carrying out such assessment, national courts should take into account the objective of that benefit, its amount, the conditions subject to which it is awarded and its place in the national system of social assistance.

**The Commission defended the right of third-country national seasonal workers to equal treatment with nationals of the admitting Member State in respect of social security rights, as well as, fair treatment of intra-corporate transferees and their family members** during negotiations on the reform of applicable EU rules. The Commission made the point that Member States cannot restrict third country nationals' entitlements to receiving social security benefits that are based on their own financial contributions as this would constitute a disproportionate limitation to the right to property, contrary to the Charter and the case-law of the European Court of Human rights<sup>99</sup>. Further to this the amendments to the Commission proposals have been withdrawn.

<sup>98</sup> CJEU, Case C-571/10, *Kamberaj*, 24.04.2012.

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



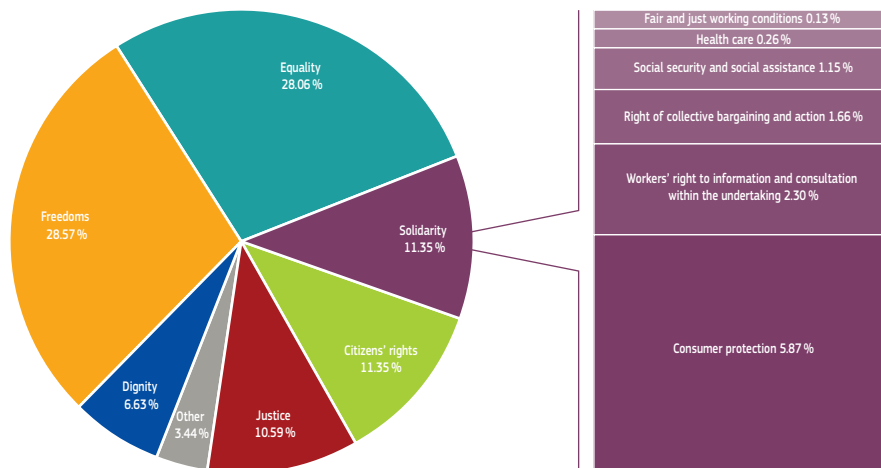
The Commission published a policy paper that triggered a discussion on measures to prevent poverty and social exclusion in the old age, taking into account the need for gender sensitive solutions<sup>100</sup>. In this context, the Commission also stressed the need to make occupational pensions transferable as not to punish those who are moving countries for professional reasons.

## Health care

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

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

### Questions



<sup>100</sup> White paper: an agenda for adequate, safe and sustainable pensions, COM(2012) 55 final. Available at: <http://ec.europa.eu/social/BlobServlet?docId=7341&langId=en>

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

## Environmental protection

The Charter provides for a high level of environmental protection. In line with this requirement the Commission in 2012 adopted a proposal for a new General EU Environmental Action Programme to 2020, ‘Living well, within the limits of our planet’<sup>102</sup>. The proposed programme builds on the significant achievements of 40 years of EU environment policy, and draws on a number of recent strategic initiatives in the field of environment, including the Resource Efficiency Roadmap, the 2020 Biodiversity Strategy and the Low Carbon Economy Roadmap. It should secure the commitment of EU institutions, Member States, regional and local administrations and other stakeholders to a common agenda for environment policy action up to 2020.

While many EU Member States are struggling to cope with the economic crisis, the attendant need for structural reforms offers new opportunities for the EU to move rapidly onto a more sustainable path, while involving citizens more directly in environmental policy-making. The overall aim of the proposal is to ensure a high level of protection for the environment, notably by protecting and enhancing natural capital, encouraging more resource efficiency and accelerating the transition to the low-carbon economy, and safeguarding EU citizens from environmental causes of disease – all of which have a direct link to the way citizens interact with the environment in their everyday life. The aims of the Programme can be achieved by better implementation of existing environment legislation through efforts to ensure better provision of information on environment, improved inspections and access to justice. Full integration of environment into other policies in line with the objective of the Charter should also be achieved.

## Consumer protection

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

The **Commission’s ‘European Consumer Agenda – Boosting confidence and growth’**<sup>103</sup>, adopted on 22 May 2012 contains both principles for consumer policy in the years to come and a list of specific initiatives which aim at empowering consumers, boosting their trust and putting consumers at the heart of all EU policies in line with Article 38 of the Charter. The Consumer Agenda has four key objectives with an overall objective of creating a borderless Single Market for consumers and businesses:

- reinforcing consumer safety for goods, services and food, strengthening the regulatory framework and making market surveillance more efficient;

<sup>102</sup> COM(2012) 710 final.

<sup>103</sup> Communication on a European Consumer Agenda – Boosting confidence and growth, COM(2012) 225 final. Available at: [http://ec.europa.eu/consumers/strategy/docs/consumer\\_agenda\\_2012\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/consumer_agenda_2012_en.pdf)

- enhancing knowledge through targeted consumer information and education as well as effective support to consumer organisations;
- improving enforcement and securing redress, by strengthening the role of consumer enforcement networks; and
- aligning rights and key policies to economic and societal change, inter alia by adapting consumer law to the digital age.

Following the adoption of Directive 2011/83/EU on consumer rights on 25 October 2011<sup>104</sup> which Member States have to transpose by 13 December 2013 and apply from 13 June 2014, the Commission, in 2012, started an active dialogue with Member States to help them in the transposition process. This new Directive will, in particular, strengthen consumers' rights when buying on the Internet. Consumers will have to be provided with essential information before they order goods or services online, including about the functionality and interoperability of digital content. The new Directive furthermore bans pre-ticked boxes when offering additional services, internet cost traps and charges of which the consumer was not informed in advance.

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

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

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

<sup>104</sup> Proposal for a Decision on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', COM(2012) 710 final. Available at: <http://ec.europa.eu/environment/newprg/pdf/proposal.pdf>

In relation to the Directive on timeshare<sup>105</sup>, which was to be transposed by 23 February 2011, the Commission closed the last open infringement proceedings after all Member States notified full transposition. This new Directive, which replaced the previous Directive 94/47/EC, has considerably enhanced consumer protection in this area, particularly through more stringent rules related to the information the trader has to provide to the consumer both in the pre-contractual stages and in the contract and regarding the consumer's right of withdrawal.

In addition to two open infringement cases, a pre-infringement dialogue via EU Pilot was initiated with 24 Member States regarding the correctness of the transposition of Directive 2005/29/EC on unfair commercial practices. This Directive provides a high level of consumer protection and allows to curb a broad range of unfair business practices, such as providing untruthful information to consumers or using aggressive techniques to influence their choices. In March 2013, the European Commission published a Communication<sup>106</sup> and a Report on the application of the Directive<sup>107</sup>, which outlined a series of actions to tackle misleading and aggressive commercial practices across the EU, such as fake 'free' offers, 'bait' advertising for products which cannot be supplied, and direct targeting of children.

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

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

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

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

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

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

## Supreme Administrative Court of Czech Republic<sup>108</sup>

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

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<sup>108</sup> Supreme Administrative Court of the Czech Republic (Nejvyšší správní soud České republiky), case 6 As 26/2010 – 66, FTV Prima v. Czech Council for Radio and TV Broadcasting, 17.03.2011.



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

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

Right to good administration

Right of access to documents

European Ombudsman

Right to petition

Freedom of movement and of residence

Diplomatic and consular protection

5/

CITIZENS'  
RIGHTS

# Citizens' rights

The **Commission conducted a wide reaching public consultation** to gain a broader insight into the main obstacles citizens encounter when they move within the EU. More than 11 500 citizens contributed to this consultation. These results will feed into the debates during the European Year of Citizens and inform the 2013 European Citizenship Report.

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

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

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



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

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

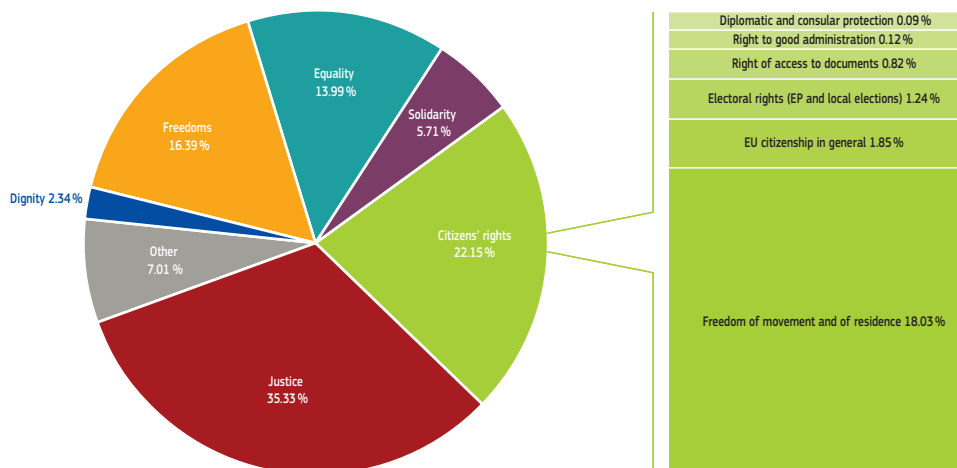
On 20 December 2012, the EU adopted new rules **to make it easier for EU citizens to stand as candidates in the 2014 European Parliament elections**<sup>109</sup>. EU citizens who wish to stand as candidates in the Member State where they reside without having the nationality of that Member State will only need to produce an identity document and a declaration stating that they fulfil the eligibility conditions. They will no longer need to travel back to their country of origin to obtain additional documents from their national administration.

In the **2012 Report on municipal elections**<sup>110</sup> the Commission assessed how EU citizens' electoral rights are implemented at local level and suggested that the Member States adopt targeted measures to stimulate citizens' participation and increase overall turnout. The Commission also used this opportunity to support non-national EU citizens' involvement in the political life of the municipality in which they reside. The new rule introduced in the Hungarian electoral system which gives non-national EU citizens the possibility to become mayor, and not only a local councillor, is a good example of how non-national EU citizens can become fully integrated in their new community and play an active part in its future.

### Reform of the Lithuanian electoral legislation

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

### Letters



109 Proposal for a Directive amending Directive 93/109/EC of 6 December 1993 on the right to participate in European elections for citizens of the Union residing in a Member State of which they are not nationals.

Available at: <http://register.consilium.europa.eu/pdf/en/12/st17/st17198.en12.pdf>

110 Report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, COM(2012) 99 final.

Available at: [http://ec.europa.eu/justice/citizen/files/com\\_2012\\_99\\_municipal\\_elections\\_en.pdf](http://ec.europa.eu/justice/citizen/files/com_2012_99_municipal_elections_en.pdf)

## Right to good administration

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

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

All Member States are now using **EU Pilot**. EU Pilot is a Commission initiative aimed at responding to questions and identifying solutions to problems related to the application of EU law. It is supported by an on-line data base and communication tool. EU Pilot provides the opportunity for Member States to resolve problems before the Commission enters into formal infringement procedures. Cases should, in principle, be dealt with within 20 weeks; thus EU Pilot dialogue facilitates speedy resolution of problems.<sup>111</sup>

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

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<sup>111</sup> More detailed information on EU Pilot is available in the Commission's most recent Annual Report on monitoring the application of EU law (point 2.1.3 in the Report, and the sections 'Early resolution of infringements' in Annexes I and II). The Annual Report can be downloaded from the following link: [http://ec.europa.eu/eu\\_law/docs/docs\\_infringements/annual\\_report\\_29/sg\\_annual\\_report\\_monitoring\\_eu\\_law\\_121130.pdf](http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_29/sg_annual_report_monitoring_eu_law_121130.pdf)

## Right of access to documents

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

In 2012, the Commission registered 6011 **requests for access to documents**, which is slightly less than in 2011. As in the past, 4 out of 5 requests were granted at the initial stage. In 2012, the Commission received 227 confirmatory applications, a significant increase compared to 2011. Such applications are reassessed by case handlers acting independently from the ones that handled the initial application. This review has led to wider access being granted in around half the cases. In 2012, the European Ombudsman closed 20 inquiries into complaints for a refusal to grant access to documents. The Court of Justice handed down five judgments on appeals and the General Court adjudicated in 15 cases concerning the fundamental right of access to documents.

The General Court delivered an important judgment<sup>112</sup> on access to EU internal documents, including legal opinions. The Court pointed out that that disclosure of a document under EU rules on the public access to EU institutions documents would undermine individuals' privacy and integrity. Particular attention should be paid to Article 8 of Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies, which requires the recipient of a transfer of personal data to demonstrate the need for its disclosure and to its Article 18, giving the person concerned the possibility of objecting at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data affecting him or her.

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

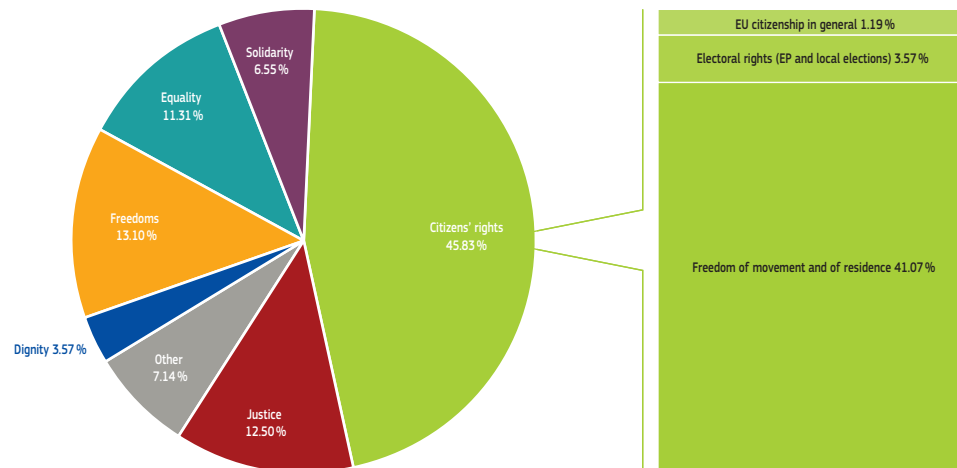
## Right to refer to the European Ombudsman

The Charter provides that any EU citizen and any natural or legal person residing or having its registered office in a Member State, has the right to refer to the European Ombudsman on cases of maladministration in the activities of the EU institutions, bodies, offices and agencies, with the exception of the Court of Justice acting in its judicial role.

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

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

### Petitions



## Freedom of movement and residence

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

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

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

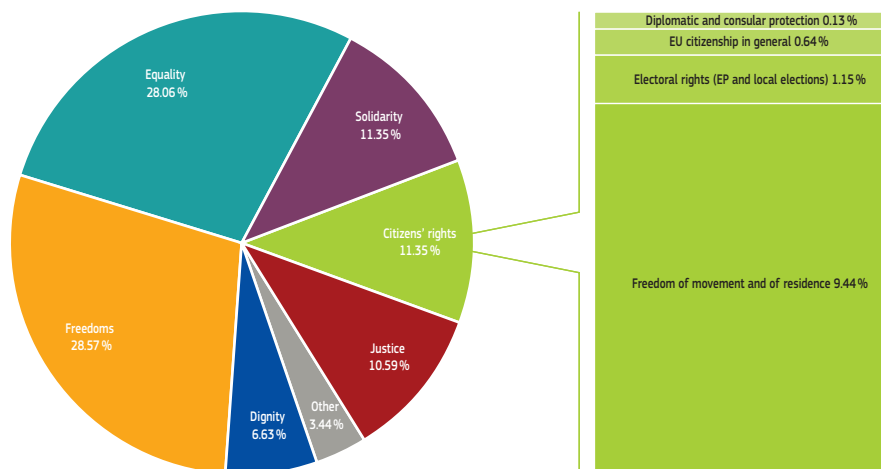
**The Commission pursued its dialogue with the Dutch authorities regarding their plans announced in 2011 on labour migration.** The Commission had raised a number of concerns as to the compatibility of some of these planned measures with EU law on free movement of EU citizens and workers. Several exchanges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

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

### Civil registration in Sweden and Belgium

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

## Questions



## Diplomatic and consular protection

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

The **right of unrepresented Union citizens to enjoy the protection of the diplomatic or consular authorities of any Member State under the same conditions as for the nationals of that Member State** is enshrined in the Treaty on the Functioning of the EU (Article 20 (2) c and 23) and in the EU Charter (Article 46). The Commission proposed on 14 December 2011<sup>113</sup> clear and legally binding set of rules on cooperation and coordination between the Member States' consular authorities, with a view to ensuring that Union citizens enjoy effective consular protection, regardless of their nationality.

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

<sup>113</sup> Proposal for a Council Directive on consular protection for citizens of the Union abroad, COM(2011) 881 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0881:FIN:EN:PDF>

## Union citizenship

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

EU citizens have a number of rights under EU law but they often do not know about them. Following a proposal made by the Commission in 2011, the European Parliament and Council decided on 21st December 2011<sup>114</sup>, that **2013 would be the European Year of Citizens**. This would be an occasion to raise citizens' awareness about their EU rights and engage with them in a debate on the development of EU citizenship.

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

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<sup>114</sup> Decision No 1093/2012/EU of the European Parliament and of the Council of 21 November 2012 on the European Year of Citizens (2013), OJ L 325, p. 1.





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

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

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

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

## Right to an effective remedy and right to a fair trial

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

The EU legal framework on the rights of victims of crime was significantly reinforced by the adoption, of the **Directive establishing minimum standards on the rights, support and protection of victims of crime**<sup>115</sup>.

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

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

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

In line with established case law of the CJEU, the Commission considered that the **Hungarian rules regarding the retirement age of judges, prosecutors and notaries** were in violation of the EU rules on equal treatment in employment, which prohibit discrimination at the workplace on grounds of age. These rules also cover changes to the mandatory retirement age for

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<sup>115</sup> Directive establishing minimum standards on the rights, support and protection of victims of crime OJ 315, 14.11.2012, p. 57-73.

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

The EU Visa Code<sup>118</sup> requires Member States to communicate to the applicant for a short stay visa the reasons on which a decision of refusal is based and to grant the right of appeal against a visa refusal, annulment, or revocation. This relates directly to the right to an effective remedy and to a fair trial. In late 2012, the Commission has already contacted several Member States' authorities where it had concerns regarding the right to appeal against a visa refusal, with a view to make use of the powers conferred to it by the Treaty, should it be confirmed that the right of appeal is not adequately ensured in some of those Member States.

one profession without an objective justification. In view of the urgency of the matter and the imminent retirement of 236 judges, the Commission referred the matter to the Court to deal with this question in an expedited procedure. The Court reacted promptly and delivered its ruling on 6 November 2012. The Court confirmed the Commission's assessment according to which the mandatory retirement age for judges, prosecutors and notaries, in view of the very short transitional period for its implementation, is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law<sup>116</sup>.

The Commission expressed its **concerns about the independence of the judiciary in Hungary** more generally and, in particular, on two essential aspects: the powers attributed to the President of the National Judicial Office to designate a court in a given case, and the possibility of a transfer of judges without their consent. The Commission was concerned that these measures could affect the effective application of Union law in Hungary and the fundamental rights of citizens and businesses to an effective remedy by an independent court in Union law cases, as guaranteed by Article 47 of the EU Charter of Fundamental Rights.

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

The Commission has advanced in **negotiations on the proposal for a regulation on the mutual recognition of protection measures in civil matters presented in May 2011**<sup>117</sup>. This instrument will ensure that victims, or potential victims, who benefit from a protection measure in their Member State of residence, do not lose this protection when crossing borders. In addition, the Commission is currently preparing further action on compensation to crime victims with the aim to address problems at national and/or cross-border level and to propose improvements to ensure victims have proper access to fair and appropriate compensation.

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

117 Proposal for a Regulation on mutual recognition of protection measures in civil matters, COM(2011) 276 final. Available at: [http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_276\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_276_en.pdf)

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

The **CJEU delivered important rulings that concern EU competition policy.** The Court rejected the claims introduced by three companies<sup>119</sup>, who had been fined for participating in a cartel on the market for copper plumbing tubes (used for water, gas and oil installations), that their right to an effective remedy and to a fair trial under Charter (Article 47) had been violated. In three separate proceedings, the companies claimed that the General Court infringed their right to an effective judicial remedy by failing to carry out an adequate review of the Commission's decision and deferring, to an excessive and unreasonable extent, to the Commission's discretion. One company also specifically, maintained that competition proceedings before the Commission are criminal proceedings within the meaning of the ECHR, and that, since the Commission is not an independent and impartial tribunal within the meaning of the ECHR, the General Court is required to carry out a review as regards both matters of fact and law.

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

In another case that concerns competition policy<sup>120</sup>, the CJEU held that the **Commission may legitimately represent the EU before a national court in a civil action for the compensation of damages in respect of a loss it sustained as a result of the existence of cartel practices.** This case originated from the Commission Decision of 21 February 2007 ascertaining the existence of a cartel on the market for the sale, installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands. In June 2008, for the first time ever, the European Commission decided to bring proceedings before a Belgian Trade Court seeking compensation to the financial loss the Union suffered for the above-market rates charged by these companies, as the Union itself had contracted out to them the installation, maintenance and renovation of lifts and escalators in different EU buildings in Belgium and Luxembourg.

## Supreme Court of Estonia (Full Court)<sup>121</sup>

The Supreme Court of Estonia made reference to CJEU case law on Article 47 of the Charter as regards the restrictions on access to tribunals flowing from the requirements under which national legislation grants legal aid to legal persons. The applicant, a company whose action for compensation against the Ministry for Environment had been dismissed, and refused to pay the required court fee on grounds of its unconstitutionality; secondarily, it filed a request for legal aid, at the same time challenging the constitutionality of the law limiting the access to it as far as legal persons are concerned. In declaring that the exclusion of legal persons from legal assistance in civil proceedings contravenes the Estonian Constitution, the Supreme Court recalled the CJEU jurisprudence<sup>122</sup> according to which *'the principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.'*

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

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

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

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

## Dutch Appeal Court<sup>124</sup>

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

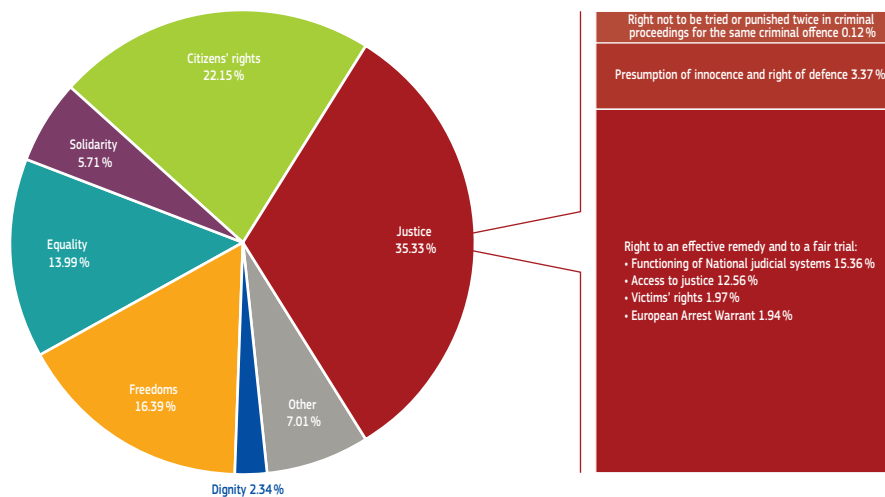
## Austrian Administrative Supreme Court

In a case before the Austrian Administrative Supreme Court<sup>125</sup>, the assessment by the competent Ministry of the environmental impact of a decision allowing the double-tracking of a certain section of a railroad was contested. The law in question transposed a Directive and the decision of the Ministry on granting or refusing the authorisation falls within the scope of Union law. Referring to Art 47 of the Charter in order to emphasise the relevance of the principle of effective judicial control, the Court rejected the appeal as inadmissible arguing that where Union law provides for a special right to judicial protection, an instance of judicial control furnished with unlimited jurisdiction has to decide before a case can be brought before the Supreme Administrative Court which has to control the impugned decision on the base of facts of the case as assumed by the authority and which is limited in oral hearings to questions of law. However, the Constitutional Court lifted that decision considering that there was no manifest contradiction between Union law and national law.

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

Another case<sup>123</sup>, concerned the recognition and enforcement in Latvia, under Regulation No 44/2001, of a judgment in default delivered by the High Court of Justice of England and Wales, Queen's Bench Division (United Kingdom). The CJEU stipulated that this Regulation must be interpreted as meaning that the courts of the Member State in which enforcement is sought may refuse, only if it appears to the court, that that judgment is a manifest and disproportionate breach of the defendant's right to a fair trial referred to in the Charter of Fundamental Rights (Article 47), on account of the impossibility of bringing an appropriate and effective appeal against it.

### Letters



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

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

125 Austrian Administrative Supreme Court (Verwaltungsgerichtshof), Case 2010/03/0051, decision of 30.9.2010.

## Presumption of innocence and right of defence

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

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

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

By making progress on these different initiatives, the Commission is keeping-up with the EU commitment to fundamental rights for all citizens and to enhance mutual trust. The implementation of the **2009 Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings**<sup>126</sup> is now well advanced. The first Directive adopted already in 2011 is the Directive on the right to interpretation and translation in criminal proceedings<sup>127</sup>. It was followed by the Directive on the right to information in criminal proceedings of 22 May 2012<sup>128</sup>. The next step will be the adoption of the Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest<sup>129</sup>. Measures such as these, facilitated by the new context for criminal justice after the entry into force of the Lisbon Treaty, will ensure the balanced development of criminal justice within the EU area of justice, freedom and security.

The Commission proposed a new **Directive on the confiscation and recovery of criminal assets in the European Union**<sup>130</sup>. This Directive will make it easier for Member States to confiscate the profits that criminals make from organised crime. The Directive aims at attacking the financial incentive which drives most serious and organised crime, at protecting the EU economy against infiltration by criminal groups, and at returning criminal assets to governments and citizens. The Directive draws on international Conventions and best practice recommendations. It will simplify existing rules and fill gaps which have benefited persons convicted and suspected of crime until now.

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

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

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

129 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>

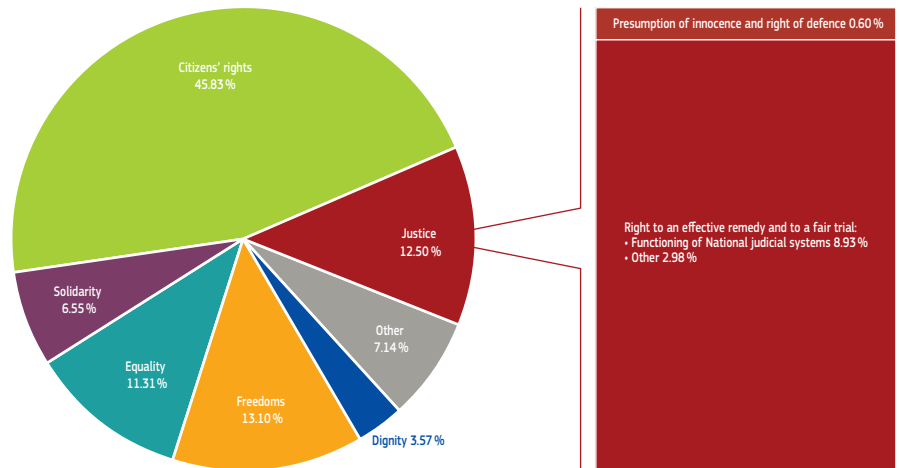
130 COM(2012) 85 final.

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

The European Parliament requested an opinion from the FRA on the extent to which confiscation of proceeds of crime could go without breaching fundamental rights. The FRA examined the substantive provisions of the proposal, by focusing on the introduction of non-conviction based confiscations, extended powers of confiscation and confiscation from a third party<sup>131</sup>.

The **Commission increased its financial support for the training of legal practitioners on fundamental rights**, following the ambitious targets set in 2011 for expanding training for legal practitioners in Europe on how to apply European law<sup>132</sup>. During 2012, the Commission funded 32 legal training courses on fundamental rights, covering topics such as gender equality, anti-discrimination, data protection and trafficking in human beings. Furthermore, the Commission has funded 12 judicial training courses mainly on the question of victims' rights. This aid in building an independent, well-trained and efficient judiciary that is essential for a functioning justice area and single market in Europe.

### Petitions



<sup>131</sup> Available at: <http://fra.europa.eu/en/opinion/2012/fra-opinion-confiscation-proceeds-crime>

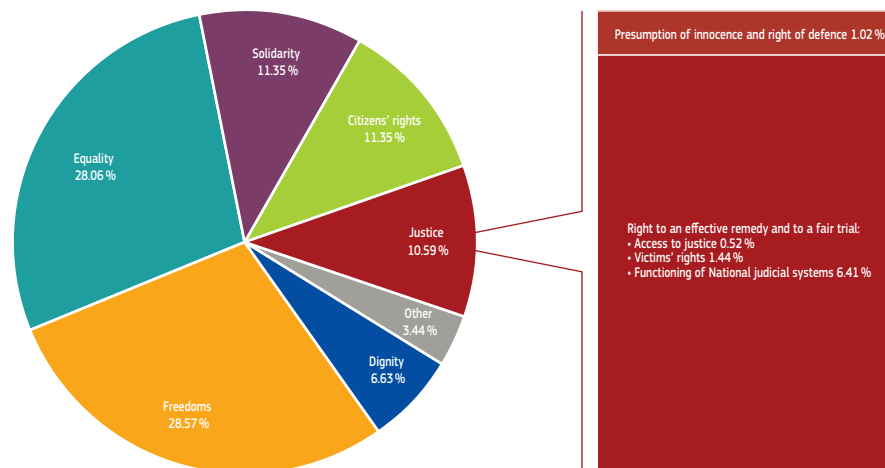
<sup>132</sup> Commission Communication: Building trust in EU-wide justice, a new dimension to European judicial training, COM(2011) 551 final. Available at: [http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training\\_en.pdf](http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training_en.pdf)



# Principles of legality and proportionality of criminal offences and penalties

Some fundamental rights are guaranteed in absolute terms and cannot be subject to any restrictions. Interferences with other rights may be justified if, subject to the principle of proportionality, they are necessary and genuinely serve to meet objectives of general interest recognised by the Union. Such justification is provided for in the proposals of the Commission on the *protection of the Union's financial interests by means of criminal law*<sup>133</sup>. In particular the right to liberty (Article 6 in the Charter), the freedom to choose an occupation (Article 15), the right to conduct a business (Article 16), the right to property (Article 17), principles of legality and proportionality of criminal offences (Article 49), the right not to be tried and punished twice (Article 50) were assessed by the Commission in relation to the proposed criminal law measures. It was concluded that the proposed measures would affect these fundamental rights, but that these interferences with fundamental rights are justified because they serve to meet objectives of general interest recognised by the Union; in this case to provide effective and deterring measures for the protection of Union's financial interests.

## Questions



<sup>133</sup> Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law, COM(2012) 363 final. Available at: <http://eur-lex.europa.eu/lexUriServ/LexUriServ.do?uri=COM:2012:0363:FIN:EN:PDF>

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

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

The **CJEU clarified the scope of application of the *ne bis in idem* in a preliminary ruling that** concerned a Polish farmer who had been excluded from benefiting from agricultural aid on the ground of a false declaration of the area of his farm<sup>134</sup>. The farmer contested that the imposition of a criminal penalty for the same act. The Court examined the case-law of the ECtHR on the concept of 'criminal proceedings' and noted that three criteria are relevant for defining that concept. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur. As regards the first criterion, the Court observed that the measures which exclude a farmer from benefiting from aid are not regarded as criminal in nature by EU law. As regards the second criterion, the Court considered that those measures can apply only to economic operators who have recourse to the aid scheme in question, and that the purpose of those measures is not punitive, but is essentially to protect the management of EU funds. As regards the third criterion, the Court found that the sole effect of the penalties provided for by EU law is to deprive the farmer in question of the prospect of obtaining aid. On these grounds the Court found that the measures which excluded the farmer from benefitting from legal laid could not be classified as criminal. Consequently, there was no violation of the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

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<sup>134</sup> CJEU, Case C-489/10, *Łukasz Marcin Bonda*, 5.7.2012.

# Appendix I

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

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
<b>Luksan</b>	C-277/10	09/02/2012	Intellectual property	Freedoms	Right to property	N
<b>Toshiba Corporation and Others</b>	C-17/10	14/02/2012	Competition	Justice	Principle of legality of criminal offences and penalties	Y
<b>Germany v Commission</b>	T-59/09	14/02/2012	Access to documents	Citizens' rights	Right of access to documents	N
<b>Grasso v Commission</b>	T-319/08	14/02/2012	Fisheries	Justice	Right to an effective remedy	N
<b>SABAM</b>	C-360/10	16/02/2012	Communications	Freedoms	Right to intellectual property / Freedom to conduct a business / Protection of personal data / Freedom of expression and information	N
<b>Marcuccio v Commission</b>	F-3/11	29/02/2012	EU Civil Service Tribunal	Citizens' rights	Right to good administration / Right to an effective remedy	N
<b>Netherlands v Commission</b>	T-29/10	02/03/2012	Competition – State aid	Citizens' rights	Right to good administration	N
<b>B.I. v Cedefop</b>	F-31/11	07/03/2012	EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
<b>G</b>	C-292/10	15/03/2012	Civil law	Justice	Right to an effective remedy and to a fair trial	N
<b>Fulmen v Council</b>	T-439/10	21/03/2012	Common foreign and security policy – nuclear proliferation	Justice	Right to an effective remedy and to a fair trial	N
<b>Slovak Telekom v Commission</b>	T-458/09	22/03/2012	Competition	Citizens' rights	Right to good administration	N
<b>Egan and Hackett v Parliament</b>	T-190/10	28/03/2012	Access to documents – data protection	Justice	Right to an effective remedy	N
<b>Rapone v Commission</b>	F 36/10	28/03/2012	EU Civil Service – EPSO concours	Citizens' rights	Right to good administration	N
<b>Interseroh Scrap and Metals Trading</b>	C-1/11	29/03/2012	Environment	Freedoms	Freedom to conduct a business / Right to property	N
<b>Belvedere Costruzioni</b>	C-500/10	29/03/2012	Taxation	Justice	Right to a fair trial	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
<b>Telefónica and Telefónica de España v Commission</b>	T-336/07	29/03/2012	Competition	Justice	Presumption of innocence and right of defence	N
<b>Buxton v Parliament</b>	F 50/11	18/04/2012	Employment – EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
<b>Kamberaj</b>	C-571/10	24/04/2012	Social security – discrimination against third-country nationals	Solidarity	Non-discrimination / Social security and social assistance	Y
<b>S.C. and A.C.</b>	C-92/12 PPU	26/04/2012	Civil law – Rights of the child	Equality	Rights of the child	N
<b>DR and TV2 Denmark</b>	C-510/10	26/04/2012	Intellectual property	Freedoms	Freedom to conduct a business	N
<b>Neidel</b>	C-337/10	03/05/2012	Employment	Solidarity	Fair and just working conditions	N
<b>In 't Veld v Council</b>	T-529/09	04/05/2012	Access to documents	Freedoms	Protection of personal data	N
<b>Nijs v Court of Auditors</b>	T 184/11 P	15/05/2012	Employment – EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
<b>Skareby v Commission</b>	F-42/10	16/05/2012	Employment – EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
<b>P.I.</b>	C-348/09	22/05/2012	Freedom of movement – Criminal law	Equality	Rights of the child	Y
<b>Aitic Penteo v OHIM – Atos Worldline (PENTEO)</b>	T-585/10	22/05/2012	Intellectual property	Citizens' rights	Right to good administration	N
<b>Imperial Chemical Industries v Commission</b>	T-214/06	05/06/2012	Competition	Citizens' rights	Right to good administration / Right to an effective remedy and to a fair trial	N
<b>Tyrolean Airways Tiroler Luftfahrt Gesellschaft</b>	C-132/11	07/06/2012	Discrimination – employment	Equality	Non-discrimination	N
<b>GREP</b>	C-156/12	13/06/2012	Legal aid	Justice	Right to an effective remedy	N
<b>XXXLutz Marken v OHIM – Meyer Manufacturing (CIRCON)</b>	T 542/10	13/06/2012	Intellectual property	Citizens' rights	Right to good administration	N
<b>Otis Luxembourg (formerly General Technic-Otis) v Commission</b>	C-494/11 P	15/06/2012	Competition	Equality	Non-discrimination	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
<b>Arango Jaramillo and Others v EIB</b>	T 234/11 P	19/06/2012	Employment – EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
<b>Susisalo and Others</b>	C-84/11	21/06/2012	Freedom of establishment – public health	Solidarity	Health care	N
<b>ANGED</b>	C-78/11	21/06/2012	Employment	Solidarity	Fair and just working conditions	N
<b>Bolloré v Commission</b>	T 372/10	27/06/2012	Competition	Justice	Right to good administration / Right to an effective remedy and to a fair trial / Principles of legality and proportionality of criminal offences and penalties	N
<b>Erny</b>	C-172/11	28/06/2012	Discrimination – employment	Solidarity	Right of collective bargaining and action	N
<b>Caronna</b>	C-7/11	28/06/2012	Wholesale distribution of medicines	Justice	Principles of legality and proportionality of criminal offences and penalties	N
<b>Hörnfeldt</b>	C-141/11	05/07/2012	Discrimination – employment	Freedoms	Freedom to choose an occupation and right to engage in work	N
<b>AI v Court of Justice</b>	F 85/10	11/07/2012	Employment – EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
<b>Mugraby v Council and Commission</b>	C-581/11	12/07/2012	Fundamental rights	Justice	Right to an effective remedy	N
<b>Arango Jaramillo and Others v EIB</b>	C-334/12 RX	12/07/2012	Employment – EU Civil Service (decision to review)	Justice	Right to an effective remedy	N
<b>Commission v Nanopoulos</b>	T 308/10 P	12/07/2012	Employment – EU Civil Service (appeal)	Justice	Presumption of innocence and right of defence	N
<b>BG v Ombudsman</b>	F 54/11	17/07/2012	Employment – EU Civil Service Tribunal	Equality	Equality between women and men / Right to an effective remedy and to a fair trial	N
<b>Dülger</b>	C-451/11	19/07/2012	Legal migration	Freedoms	Respect for private and family life	N
<b>Parliament v Council</b>	C-130/10	19/07/2012	Common foreign and security policy – terrorism	VII – General provisions	Field of application	Y

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
<b>Akhras v Council</b>	C-110/12 P (R)	19/07/2012	Common foreign and security policy – restrictive measures against individuals	Justice	Right to an effective remedy	N
<b>Y and Z</b>	C-71/11	05/09/2012	Refugees – freedom of religion	Freedoms	Freedom of thought, conscience and religion	Y
<b>Trade Agency</b>	C-619/10	06/09/2012	Judicial cooperation in civil matters	Justice	Right to a fair trial	N
<b>Deutsches Weintor</b>	C-544/10	06/09/2012	Consumer protection – public health	Solidarity	Health care	N
<b>Cuallado Martorell v Commission</b>	F-96/09	18/09/2012	EU Civil Service – EPSO concours	Citizens' rights	Right to good administration / Right of access to documents / Right to an effective remedy and to a fair trial	N
<b>Fraas v OHIM</b>	T-326/10, T-327/10, T-328/10, T-329/11, T-26/11, T-31/11, T-50/11, T-231/11	19/09/2012	Intellectual property	Citizens' rights	Right to good administration	N
<b>Poland v Commission</b>	T 333/09	20/09/2012	Agriculture	Equality	Non-discrimination	N
<b>Bermejo Garde v EESC</b>	F 41/10	25/09/2012	Employment – EU Civil Service Tribunal	Solidarity	Fair and just working conditions / Right to good administration	N
<b>Cimade and GISTI</b>	C-179/11	27/09/2012	Asylum	Dignity	Human dignity	N
<b>Shell Petroleum and Others v Commission</b>	T-343/06	27/09/2012	Competition	Citizens' rights	Right to good administration / Right to an effective remedy and to a fair trial	N
<b>Koninklijke Wegenbouw Stevin v Commission</b>	T-357/06	27/09/2012	Competition	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence	N
<b>Heijmans v Commission</b>	T 360/06	27/09/2012	Competition	Justice	Presumption of innocence and right of defence	N
<b>Applied Microengineering v Commission</b>	T-387/09	27/09/2012	Relations between EU Institutions and third party contractors	Citizens' rights	Right to good administration	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
<b>Technimed v OHMI – Ecobrand (ZAPPER-CLICK)</b>	T-360710	03/10/2012	Intellectual property	Justice	Right to an effective remedy	N
<b>Sviluppo Globale v Commission</b>	T-183/10	10/10/2012	Public service procurement – competitive tenders	Citizens’ rights	Right to good administration / Right to an effective remedy and to a fair trial	N
<b>Shanghai Biaowu High-Tensile Fastener and Shanghai Prime Machinery v Council</b>	T-170/09	10/10/2012	Dumping	Citizens’ rights	Right to good administration	N
<b>Commission v Austria</b>	C-614/10	16/10/2012	Data protection	Freedoms	Protection of personal data	Y
<b>Fondation IDIAP v Commission</b>	T 286/10	17/10/2012	Relations between EU Institutions and third party contractors	Justice	Right to a fair trial	N
<b>Strack v Commission</b>	F-44/05 RENV	23/10/2012	Employment – EU Civil Service Tribunal	Justice	Freedom of expression and information / Right to an effective remedy and to a fair trial	N
<b>Otis and Others</b>	C-199/11	06/11/2012	Competition	Justice	Right to an effective remedy	Y
<b>Iida</b>	C-40/11	08/11/2012	Citizenship of the Union – Fundamental rights	VII – General provisions	Field of application	N
<b>Heimann</b>	C-229/11	08/11/2012	Employment	Solidarity	Fair and just working conditions	N
<b>Commission v Strack</b>	T-268/11 P	08/11/2012	Employment – EU Civil Service (appeal)	Solidarity	Fair and just working conditions	N
<b>Nexans v Commission</b>	T 135/09	14/11/2012	Competition	Freedoms	Respect for private and family life	N
<b>Bericap</b>	C 180/11	15/11/2012	Intellectual property	Freedoms	Right to property	N
<b>Corpul Național al Polițiștilor</b>	C 369/12	15/11/2012	Employment	VII – General provisions	Field of application	N
<b>M.M.</b>	C 277/11	22/11/2012	Asylum	Justice	Right of defence	N
<b>E.ON Energie</b>	C 89/11 P	22/11/2012	Competition	Justice	Presumption of innocence	N
<b>Pringle v Ireland</b>	C-370/12	27/11/2012	Economic and monetary policy	Justice	Right to an effective remedy	Full Court
<b>Italy v Commission</b>	C 566/10 P	27/11/2012	EU Civil Service – EPSO concours	Equality	Non-discrimination	Y

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
<b>Sipos v OHIM</b>	F-59/11	27/11/2012	Employment – EU Civil Service Tribunal	Solidarity	Protection in the event of unjustified dismissal	N
<b>Thesing and Bloomberg Finance v ECB</b>	T-590/10	29/11/2012	Access to documents	Citizens' rights	Right of access to documents / Freedom of expression and information / Scope and interpretation of rights and principles	N
<b>O and S</b>	C 356/11 and C 357/11	06/12/2012	Citizenship of the Union – Fundamental rights	Equality	Respect for private and family life / Rights of the child	N
<b>Trentea v FRA</b>	F 112/10	11/12/2012	Employment – EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
<b>Almamet v Commission</b>	T 410/09	12/12/2012	Competition	Justice	Presumption of innocence and right of defence / Respect for private and family life	N
<b>Cerafogli v ECB</b>	F 43/10	12/12/2012	Employment – EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
<b>Commission v Strack</b>	T-197/11 P and T-198/11 P	13/12/2012	Employment – EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
<b>Strack v Commission</b>	T-199/11 P	13/12/2012	Employment – EU Civil Service (appeal)	Justice	Right to an effective remedy and to a fair trial	N
<b>Greece v Commission</b>	T-588/10	13/12/2012	Agriculture	Citizens' rights	Right to good administration	N
<b>AX v ECB</b>	F-7/11	13/12/2012	Employment – EU Civil Service Tribunal	Citizens' rights	Right to good administration	N
<b>Alder and Alder</b>	C-325/11	19/12/2012	Judicial cooperation in civil matters	Justice	Right to an effective remedy and to a fair trial	N
<b>Abed El Karem El Kott and Others</b>	C-364/11	19/12/2012	Asylum	Freedoms	Right to asylum	Y



# Appendix II

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

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

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

Case	Date	Name of the parties	Charter subject and articles referred to in the application	Relevant title of the Charter	Nationality of the referring court
C-451/12	08/10/2012	Esteban García	Consumer protection (Art. 38)	Solidarity	ES
C-448/12	08/10/2012	Roest	Protection of personal data / Respect for private and family life (Art. 7, 8)	Freedoms	NL
C-449/12	08/10/2012	van Luijk	Protection of personal data / Respect for private and family life (Art. 7, 8)	Freedoms	NL
C-476/12	24/10/2012	Österreichischer Gewerkschaftsbund	Right of collective bargaining and action / Non-discrimination (Art. 28)	Solidarity	AT
C-483/12	29/10/2012	Pelckmans Turnhout	Non-discrimination / Right to property / Freedom to conduct a business (Art. 20 and 21 combined with 15 and 16)	Freedoms	BE
C-497/12	07/11/2012	Gullotta and Farmacia di Gullotta Davide & C.	Right to property (Art. 15)	Freedoms	IT
C-498/12	07/11/2012	Pedone	Right to an effective remedy and to a fair trial – Legal aid (Art. 47.3)	Justice	IT
C-499/12	07/11/2012	Gentile	Right to an effective remedy and to a fair trial – Legal aid (Art. 47.3)	Justice	IT
C-523/12	19/11/2012	Dirextra Alta Formazione Srl	Freedom of expression and information / Right to education (Art. 11, 14)	Freedoms	IT
C-555/12	03/12/2012	Loreti and Others	Right to an effective remedy and to a fair trial (Art. 47, 52.3)	Justice	IT
C-562/12	05/12/2012	Liivimaa Lihaveis	Right to an effective remedy and to a fair trial (Art. 47)	Justice	EE



Staff Working Document  
on **Progress** on **Equality**  
between **Women** and **Men**  
in 2012

# Progress on Equality between Women and Men in 2012

## 1. Introduction

Equality between men and women is a fundamental right and a common principle of the European Union. It is also a key element of sustainable, smart and inclusive economic growth. Greater gender equality has accounted for a significant share of the employment and economic growth in the past 50 years and its potential impact is not yet fully exploited. New research shows that levelling gender gaps upwards could enhance potential economic growth: the projected gain from full convergence in participation rates by 2020 is an increase of 12.4% in GDP per capita by 2030<sup>1</sup>: this would represent an important contribution to the EU economic recovery and an important asset for the EU in a time of downturn.

Gender gaps decreased in several domains in the last five years. A closer insight shows that this decrease is not the consequence of an improvement of the situation of women but to a faster deterioration of the situation of men as compared to women, in particular in the first period of the crisis. Therefore, the EU has experienced a levelling down of gender gaps in employment, unemployment, wages and poverty in recent years. Significant challenges also remain in fields such as violence against women, reconciling work and family life and gender balance in decision-making.

This report assesses the **situation of women and men and the changes over time**, focusing on 2012 but also taking a long-term perspective and putting the current challenges in the context of the evolution of the last decade. It takes stock of **major policy developments during the last year**. 2012 was indeed rich in new initiatives on gender equality, at both European and national level. The report illustrates some of the many ways in which the European Union and its Member States have promoted gender equality.

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1 'Closing the Gender Gap: Act Now', OECD report, December 2012.

This report is structured around the **five priority areas defined in the Commission communication *Strategy for equality between women and men 2010-2015***<sup>2</sup>, namely:

1. Equal economic independence for women and men.
2. Equal pay for work of equal value.
3. Equality in decision making.
4. Dignity, integrity and ending of gender violence.
5. Promoting gender equality beyond the EU.

A comprehensive mid-term review of the *Strategy for equality between women and men* will be presented by the Commission in 2013.

While covering all five priorities of the Strategy, the report focuses on **specific aspects that gained importance in 2012** and on new initiatives that should be highlighted:

- the availability, quality and affordability of childcare facilities remain a key driver to enhance women's employment and contribution to economic growth. The extent to which the so-called Barcelona<sup>3</sup> targets in this field, adopted ten years ago, have been achieved, is scrutinised in a separate part of the report;
- whereas women constitute an increasing part of the workforce, they are not yet represented at the highest decision-making levels. The Commission proposal for gender balance on boards of publicly listed companies therefore constitutes a key milestone for gender equality<sup>4</sup>;
- gender-based violence remains a serious and unacceptable violation of human rights. Important steps have been taken at European level to combat it.

The report also presents an insight of current economic crisis with a focus on the specific challenges faced by young women and young men. On a longer-term perspective, new findings on the contribution of gender equality to growth are also presented.

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2 COM(2010)491.

3 'Member States should strive (...) to provide childcare by 2010 to at least 90 % of children between 3 years old and the mandatory school age and at least 33 % of children under 3 years of age'.

4 Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM(2012) 614 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF>

## 2. Equal economic independence during the crisis

Having a job is a necessary – but not always sufficient – condition for economic independence and decent living for working-age men and women. In 2012, the scarcity of jobs has affected the lives of many men and women – though in different ways (section 2.1) – and has particularly affected the youth labour market (section 2.2). More structural factors, such as the unavailability of childcare facilities (section 2.3), partly explain the remaining gender gap in employment, and require to be addressed under the Europe 2020 Strategy.

### 2.1. A levelling-down of the gender gap in employment

Before the crisis, **women were slowly catching up with men on the labour markets of all European countries**: their employment rate increased from 55 % in 1997 to 62.8 % in 2007, gaining 6.9 percentage points while the male employment rate increased from 75.3 % to 77.9 %, gaining 2.6 percentage points in the same period. **The crisis has halted these positive trends**. However, male employment dropped earlier and faster (as shown in Figure 1): the male employment rate went down to 74.6 % in 2012, its lowest level since 1997, while female employment decreased only slightly at 62.4 %. The fall in female employment was smaller at the beginning of the crisis, as women were underrepresented in sectors such as manufacturing, construction and finance, which were hit the most. However the on-going process of fiscal consolidation is increasingly involving staffing freezes or personnel cuts in the public sector which is female dominated. This diminishes the prospects of a swift recovery for female employment in several countries<sup>5</sup>.

Looking at changes in unemployment since the beginning of the crisis, the female unemployment rate was much higher than the male unemployment rate in the first quarter of 2008 and increased as the recession worsened, but not as much as male unemployment. As a consequence, both rates have converged (see Figure 2). In the fourth quarter of 2012, the male and female unemployment rates reached new highs of 10.6 % and 10.8 %, respectively, corresponding to almost 26 million Europeans in unemployment.

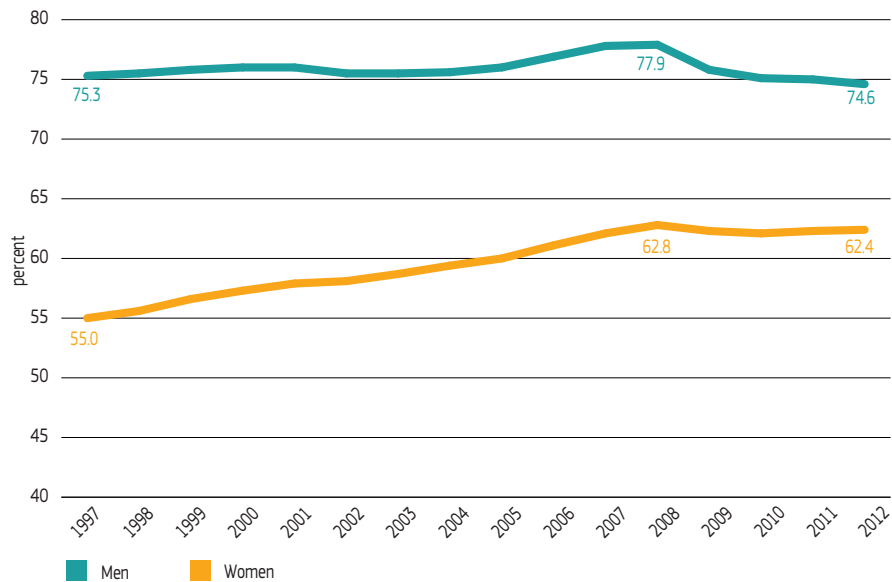
Despite the continuous increase in unemployment, inactivity and discouragement (characterised by abandonment of job search and the labour market) keep falling, in particular among women. Many more women than men were inactive in 2012 (30.5 % compared to 17 %), but the gender gap was lower than five years before (13.5 pp compared to 15.7 pp in 2007). **Women are no longer the ‘buffer’ of the labour market**, called in when demand is high, but sent back home when demand contracts<sup>6</sup>.

5 See ‘The impact of the economic crisis on the situation of women and men and on gender equality policies’, report of the European Network of Experts on Gender Equality, commissioned by the European Commission, December 2012. Available at: [http://ec.europa.eu/justice/gender-equality/files/documents/130410\\_crisis\\_report\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/documents/130410_crisis_report_en.pdf)

6 *Idem*.

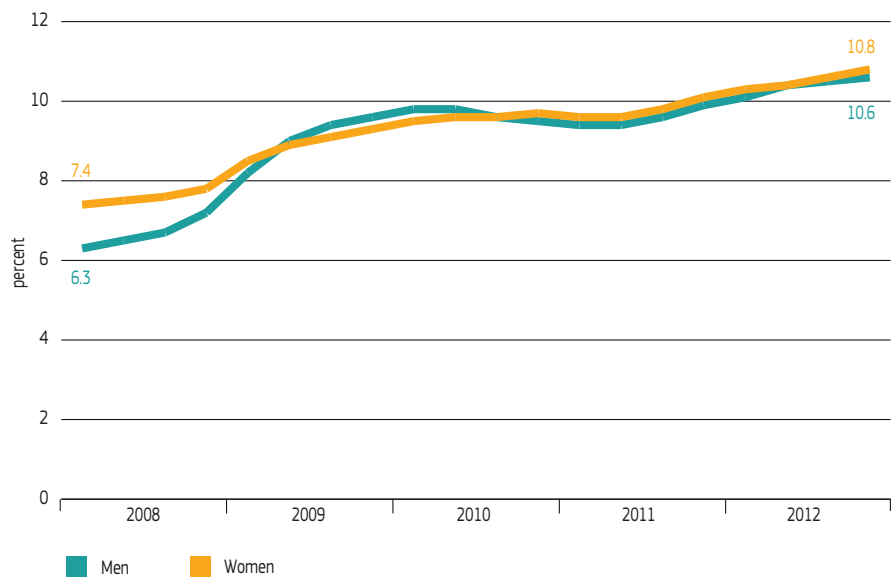


Figure 1: Employment rate of men and women (20-64 years old), EU-27, 1997-2012 (%)



Source: Eurostat, Labour Force Survey (LFS)

Figure 2: Unemployment rate of men and women (15-74 years old) seasonally adjusted, EU-27, from the beginning of the crisis in 2008 to 2012 (%)



Source: Eurostat, LFS

As an alternative to lay-offs, part-time work has risen during the crisis, in particular among men: 8.4% of employed men were part-timers in 2012 (compared to 7% in 2007). However, part-time working remains a much more common feature of female employment (32.1% in 2012 and 30.8% in 2007). Involuntary part-time work has also risen among both men and women: involuntary part-time employment represents 39% of total part-time male employment in 2012 (against 30% in 2007) and 24% of total part-time female employment in 2012 (against 20% in 2007).

**The situation of men and women varies from one Member State to another (see Figure 3).**

The female employment rate is lower than 60% in Malta, Greece, Italy, Hungary, Spain, Romania, Poland, Slovakia and Ireland, while is above 70% in Germany, the Netherlands, Finland, Denmark and Sweden. Some Member States with the highest female employment rates also display a high share of part-time employment among women (the Netherlands, Germany, Austria, Belgium, the United Kingdom, Sweden, Denmark and Luxembourg).

The differences in terms of number of hours worked can be summarised in one telling figure: if employment is measured in full-time equivalents, only 53.5% of the female workforce is employed in the EU as compared to 62.4% in terms of employment rate's usual measure.

Improving female labour market participation is needed to ensure a sustained and inclusive growth. Recent evidence from the OECD<sup>7</sup> shows that on average, **the projected gain from full convergence in participation rates is an increase of 12.4% in GDP per capita by 2030 in EU-21**<sup>8</sup>. The projected gains are substantially higher in those Member States where the gender gap in labour force participation is currently high. The same OECD report also demonstrates that while childcare facilities remain the key driver of female employment, a comprehensive policy-mix is also required to enable women and men to balance work with their family and private life and to address the difficulties encountered at different stages of life. The following sections present policies that have been implemented and their contribution to the enhancement of labour market participation of women, starting with youth policies.

7 'Closing the Gender Gap: Act Now', OECD publication, December 2012.

8 The EU-21 countries does not include Latvia, Lithuania, Cyprus, Malta, Bulgaria and Romania.

Figure 3: Employment rate and part-time employment rate of men and women in 2012



Source: Eurostat, LFS

## 2.2. Starting fragile: young men and young women's economic independence at stake

The current crisis has particularly hit young people, who are facing unemployment and discouragement. As a consequence, in 2011, the rate of people Not in Employment, Education or Training (NEET) reached 17.5% among young women (15-29 years old) and 13.4% among young men in the EU-27. The NEET rate among young women is higher than 20% in 8 Member States (see Figure 4). **Young women are more likely than young men to be not in employment, education or training, mainly because they are more likely to be out of the labour force (or inactive).**

Among the NEET group, 42.4% of young men are involved in active labour market measures, while only 32.6% of young women are. The share of young men is especially higher in training (59.5% of young beneficiaries) and start-up incentives (62.9%). Furthermore, women are underrepresented in apprenticeship schemes to facilitate school-to-work transition. All in all they seem to benefit less from public support in many Member States (training programmes, apprenticeships, etc.)<sup>9</sup>.

<sup>9</sup> 'Starting fragile: gender differences in the youth labour market', report prepared for the European Commission by the European Network of Experts on Gender Equality.

Figure 4: NEET rate by type and by sex for youth aged 15-29, 2011 (%)



\*Luxembourg: data not available for males

\*\*Malta: Total NEET rate

Source: ENEGE's calculation, based on yearly microdata ELFS

Young men more frequently experience a successful transition path (i.e. ending with a permanent contract). In contrast, young women are more likely to be part-time and temporary workers<sup>10</sup> and to start in the doubly fragile position of a temporary, part-time job.

Based on this evidence, the **Youth Employment Package** adopted in December 2012 by the European Commission<sup>11</sup> recognised the need for more gender-sensitive youth policies and proposed a Council Recommendation for a 'Youth Guarantee'<sup>12</sup>, paying attention to the gender and diversity of the young people targeted.

10 'Starting fragile: gender differences in the youth labour market', report prepared for the European Commission by the European Network of Experts on Gender Equality.

11 Communication 'Moving Youth into Employment', COM(2012)727.

12 Proposal for a Council Recommendation on Establishing a Youth Guarantee, COM(2012) 729 final, available at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1731>

### 2.3. Reconciling work and family life – a snapshot of the attainment of the Barcelona targets

The ability of Member States to significantly increase sustainable employment rates and decrease gender gaps depends, among other things, on the ability of women and men to reconcile their professional and private lives. The availability of childcare services is crucial in this regard. Recognising this crucial role, the European Council in Barcelona set what is known as the 'Barcelona target': '(...) Member States should strive (...) to provide childcare by 2010 to at least 90% of children between 3 years old and the mandatory school age and at least 33% of children under 3 years of age'<sup>13</sup>.

Although some progress has been made since 2002, and despite the commitment of Member States in two successive European pacts for equality between women and men<sup>14</sup>, the provision of childcare facilities in the EU was still short of these targets in 2010<sup>15</sup>.

While **10 EU Member States have reached the Barcelona targets for the first age group in 2011**, the majority of Member States have yet to make any substantial effort to meet the targets (see Figure 5). This is particularly the case in Poland, the Czech Republic and Slovakia, whose coverage rate is less than 5%.

The use of formal childcare increases with the age of children. In the category of children aged from 3 to mandatory school age<sup>16</sup>, **9 Member States reached the target of 90% coverage in 2011**. More worrying, the coverage rate has significantly decreased between 2010 and 2011 in several countries. It is also important to note that for some countries, even if the targets are met, the use of formal childcare is mainly part-time so does not cover a full week of work. The Netherlands, Ireland and the United Kingdom are examples where part-time childcare places may be for less than 20 hours.

**Formal childcare services can only help parents enter and stay in employment if they are affordable.** However, **the price of these services is considered an obstacle** for 53% of mothers who do not work or work part-time on account of childcare<sup>17</sup>. This is particularly the case in Ireland, the Netherlands, Romania and the UK where the price is an obstacle for more than 70% of mothers who do not work or work part-time on account of childcare. The net costs of childcare services may in fact represent more than 41% of net income in a household where both parents work<sup>18</sup> in the UK and Ireland<sup>19</sup>.

13 [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/71025.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/71025.pdf)

14 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:155:0010:0013:EN:PDF>

15 A Commission report giving a detailed analysis will be adopted in May 2013.

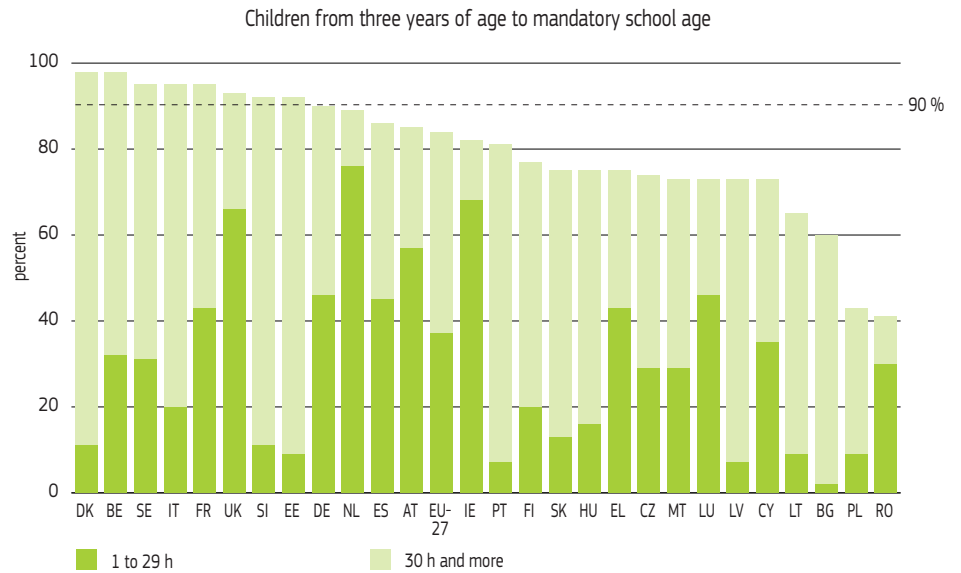
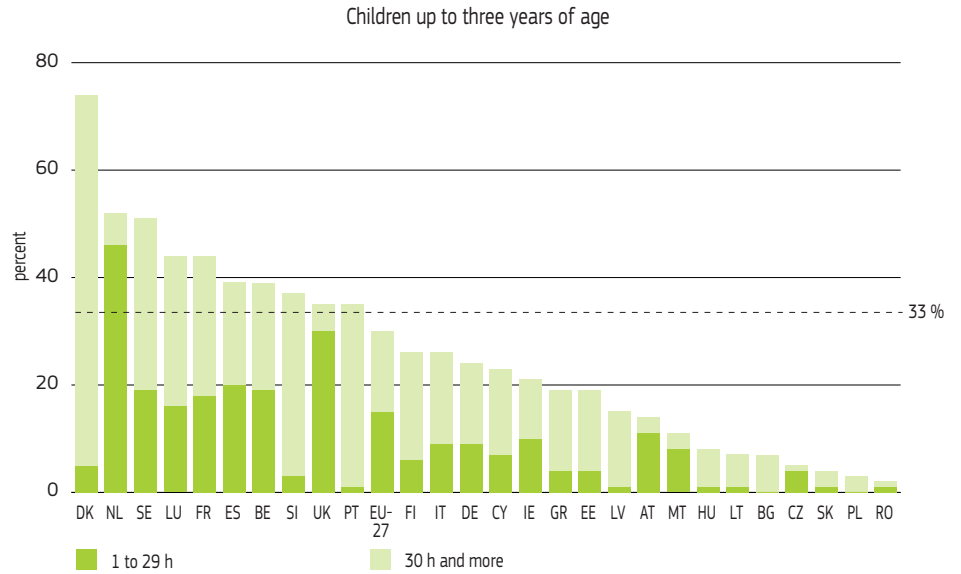
16 Mandatory school age differs from country to country: from 4 to 7 years.

17 Sources LFS ad-hoc module 2010. Twenty-three percent of women whose youngest child is under three and 18% of women whose youngest child is between 3 and mandatory school age work part-time or do not work for childcare reasons.

18 Where the partner earns the average wage and the female partner earns 50% of the average wage.

19 OECD Doing better for families 2011.

Figure 5: Percentage of children cared for under formal arrangements by weekly time spent in care, 2011



Sources: Eurostat, EU-SILC, 2011.

Note: A number of data points are computed based on small samples and are not considered statistically reliable. These include for first age category: AT, BG, CY, CZ, EL, HR, LT, MT, PL, RO, SK.

Breakdowns by weekly time spent in care are laid down on a indicative basis.

In addition, **the quality of services remains uneven and difficult to measure**<sup>20</sup>. Some indicators of the structural quality<sup>21</sup> of formal childcare services show a strong variation from one country to another. Regarding the competences of child carers, research and international policy documents recommend that early-childhood education and care professionals should be trained at bachelor level (ISCED 5) with at least 60% of the workforce trained at this level. However, formal competence requirements vary widely from one country to another. In addition, in most EU countries competence requirements for auxiliaries or assistants, who provide up to 40-50% of the workforce, are often overlooked. Assistants are likely to have little or no initial training and limited access to vocational training, while the 'educators' (who are already highly qualified in many cases) are able to benefit from such opportunities. Moreover working conditions in the area of childcare remain precarious in most countries.

The above comparative evidence, together with more country-specific analysis as part of the 'European Semester' round of economic coordination, provides the basis for **country-specific recommendations addressed to nine Member States** (Austria, the Czech Republic, Germany, Hungary, Italy, Malta, Poland, Slovakia and the United Kingdom) on female employment and on childcare availability/quality and/or full-day school places. Seven of these countries had already received a recommendation in 2011, while Malta and Slovakia received a recommendation for the first time in 2012.

The Commission will continue to support the development of affordable, accessible and quality childcare services throughout the **European Semester**, in line with the Annual Growth Survey 2013<sup>22</sup>.

The sole development of childcare facilities is not enough to enable women and men to exercise their choice in how to balance work with their family and private life and does not account for the difficulties encountered at different stages of life. A **reconciliation policy mix** comprising **flexible work arrangements**, a system of **family leave**, including strong incentives for fathers to take on more family responsibility and the provision of affordable and quality care (for preschool children but also for pre-teen children in school and outside school hours and for other dependants) should be promoted.

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20 See [http://ec.europa.eu/education/school-education/childhood\\_en.htm](http://ec.europa.eu/education/school-education/childhood_en.htm); Quality is also at the heart of the OECD series 'Start Strong III'.

21 Often, a distinction is made between structural and process quality. Process quality refers to the childcare environment in which children play, learn and experience teacher-child interaction. Comparative data are rarely available. In contrast, structural quality refers to structural features of childcare that can be regulated by (local) government. Throughout Europe, group sizes range on average from 10 to 14 children for 0-3 year-olds and from 20 to 25 children for 4-6 year-olds. Child-minders usually have a maximum of four to eight children. The staff-child ratio has been decreasing over the past years in some countries (ES, SK, LI), while in other Member States the opposite can be observed, e.g. in Sweden, where the average group size has been growing over the past years, or in Poland, where the maximum group size is not yet regulated.

22 Communication 'Annual Growth Survey 2013', COM(2012) 750: [http://ec.europa.eu/europe2020/pdf/ags2013\\_en.pdf](http://ec.europa.eu/europe2020/pdf/ags2013_en.pdf)

Directive 2010/18/EU on **Parental Leave** had to be transposed in the Member States by 8 March 2012. It gives each working parent the right to at least four months leave after the birth or adoption of a child (previously up to three months). At least one of the four months cannot be transferred to the other parent – meaning it will be lost if not taken – offering incentives to fathers to take the leave.

The research on 'The role of men'<sup>23</sup> shows men's increasing desire to contribute to family life and, actually, a growing participation in caring for own children in some countries. While some positive trends are documented, the persisting inequality in the take-up of unpaid care activities between women and men restricts the ability of women to engage fully in paid employment<sup>24</sup>.

The new Directive on Parental Leave also provides for better protection against discrimination and a smoother return to work. Member States could request an additional year to comply with the Directive. 6 Member States have requested an extension and have until 8 March 2013 to transpose the requirement of this Directive into their national law. After this extended transposition deadline has expired the Commission will start a comprehensive monitoring exercise on whether the implementing measures are in conformity with the Directive.

In 2012, discussions in the Council on the Commission proposal for a revised **maternity leave** Directive which the Commission proposed in 2008 continued. The proposal is aiming to amend the current provisions of Directive 92/85/EEC on maternity protection. The most important elements of the Commission proposal are to increase maternity leave from 14 to 18 weeks, to allow women to choose more freely if they want to take maternity leave already before the birth (thus no obligatory periods before birth), an obligatory leave of six weeks after birth, to improve protection against dismissal and to allow the women to ask for changes in their working conditions. Negotiations remain very difficult given the diametrically opposed positions of Council and the European Parliament but the Commission has tried and will continue to try to help broker a compromise that represents tangible progress for pregnant workers.

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23 Study on 'The role of men in gender equality', prepared for the European Commission, edited by Elli Scambor, Katarzyna Wojnicka, Nadja Bergmann, Consortium led by L&R Social Research, 2012.

24 'Closing the Gender Gap: Act Now', OECD publication, December 2012.



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

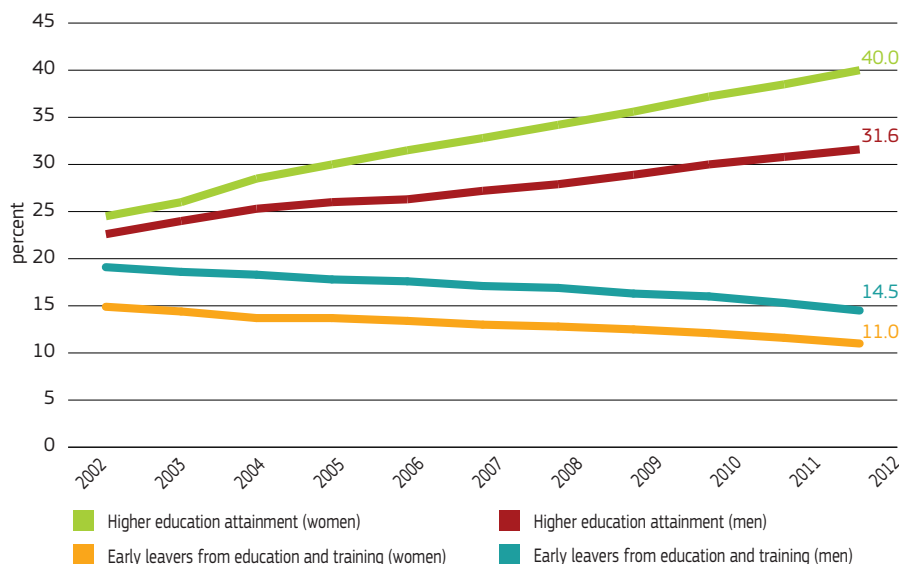
The root causes of the gender pay gap are well-known: in addition to direct discrimination, women face sector and occupation segregation, undervaluation of their work, and unequal sharing of caring responsibilities. These gender inequalities on the labour market mirror gender segregation and differences in the education and training system (3.1), but recent trends in education and equal pay policy have probably helped reduce the gender pay gap (3.2). However the gender employment and pay gaps still have major consequences for earnings and women's contribution to household income (3.3), pensions (3.4) and poverty (3.5). Special attention is paid to vulnerable groups: migrant and minorities (3.6).

#### 3.1. Gender gaps in education and research: the root of segregation and pay inequalities

##### 3.1.1 Gender imbalances in education

During the last decade, educational attainment has increased for both men and women in the EU (see Figure 6).

Figure 6: Early leavers from education and training (18-24 years old) and higher education attainment (30-34 years old) by sex, 2012



Source: Eurostat, LFS

The **Danish 2012 National gender equality plan** explicitly addresses gender segregation in education and training. There is also a specific focus on 'failing boys': in *January 2012*, the Minister for Gender Equality launched a fund (twenty million Danish kroner in total) to support projects and research on breaking down gender-segregated educational choices and enhancing knowledge on how to recruit and maintain boys within the educational system.

In **Spain**, the Ministry of Education has taken action to fight gender stereotypes in education and in future employment and career-specific programmes and measures to promote coeducation by: i) fostering the design and implementation of non-sexist orientation programmes through different awareness-raising campaigns at school; ii) re-formulating teaching materials to ensure that they meet equality and non-discriminatory criteria; iii) implementing coeducation at schools and training teachers in coeducation, gender violence prevention and gender equality; iv) ensuring gender mainstreaming in sports activities at schools; v) improving school services in order to accommodate student diversity (ethnic and gender) and ensure equality.

By 2012, the proportion of early school-leavers had decreased among both boys and girls to 14.5 % and 11 %, respectively. **At the same time, the share of young people with higher education massively increased, with the increase among women almost twice as high as that of men.** In 2012, 31.6 % of all men and 40 % of all women (EU-27) between 30 and 34 years of age had attained tertiary education. Nowadays women constitute 60 % of new graduates.

However, girls are less likely to choose scientific or technological fields of study. Figures are telling in this regard. Three quarters of the students in engineering, manufacturing and construction-related studies were male. Male graduates also outnumber female graduates in science, mathematics and computing. In contrast, female graduates largely outnumber male graduates in fields such as social sciences, business, law, welfare and health.

Already at the age of 16, girls outperform boys in reading – the difference is equivalent to one year of schooling – but lag behind in mathematics, albeit to a lesser extent than boys in reading<sup>25</sup>.

Policies, in particular education and training policies, can try to **tackle gender inequalities at an early stage** and so ensure that all boys and girls can realise their potential and choose the field they are good at, without being limited by prejudice. Many countries have tried to remove gender bias in curricula and decided to share their experience in a seminar that took place in October 2012<sup>26</sup>.

### 3.1.2 Gender equality in research

Despite noticeable progress, gender inequalities in science and in research still persist. According to the last edition of *She Figures*, **women's academic career remains markedly characterised by strong vertical segregation**: in 2010, the proportion of female students and graduates exceeded that of male students, but the proportion of female PhD students dropped back to 49 % and that of PhD degree holders to 46 %. Furthermore, the percentage of female researchers in Europe stands at 33 % while women represent only 20 % of the highest grade in academic staff. Gender balance in decision-making bodies and processes is thus far from being achieved. On average in the EU-27 there is only about one woman for every two men in scientific and management boards, and the proportion of women heads of universities or assimilated institutions is even lower, standing at 11 %<sup>27</sup>. In addition, research programmes often fail to take adequately into account the gender dimension.

25 As shown by the OECD's PISA survey.

26 [http://ec.europa.eu/justice/gender-equality/tools/good-practices/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/tools/good-practices/index_en.htm)

27 The European Commission publishes a new edition of the *She Figures* every three years since 2003.

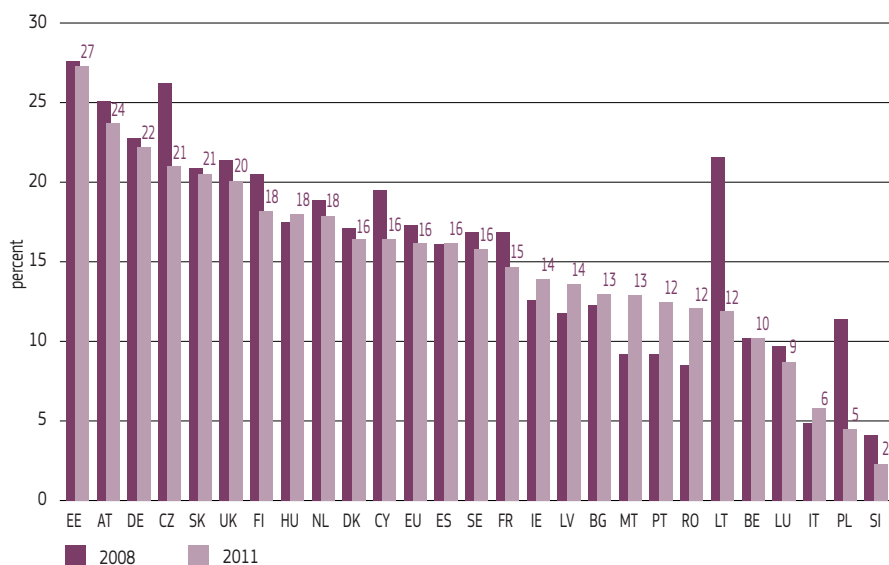
The *She Figures 2012* booklet and leaflet were uploaded on the European Commission website: [http://ec.europa.eu/research/science-society/document\\_library/pdf\\_06/she\\_figures\\_2012\\_en.pdf](http://ec.europa.eu/research/science-society/document_library/pdf_06/she_figures_2012_en.pdf)

Against this backdrop the Communication on the European Research Area adopted by the European Commission in 2012 includes **gender equality and gender mainstreaming in research institutions**, as one of its five priorities. The aim is (i) to remove legal and other barriers to the recruitment, retention and career progression of female researchers while fully complying with EU law on gender equality; (ii) to address gender imbalances in decision making processes and (iii) to strengthen the gender dimension in research programmes. In addition, the European Commission launched a communication campaign to get more girls interested in science and encourage more women to choose research as a career<sup>28</sup>.

### 3.2. Closing the Gender Pay Gap

The unadjusted gender pay gap (GPG)<sup>29</sup> stood at 16.2% in 2011 in the EU as a whole. It is higher than 20% in Estonia, Czech Republic, Austria, Germany and Greece (see Figure 7).

Figure 7: The gender pay gap in 2008 and in 2011



Source: Eurostat, Structure of Earnings Survey, 2010 data for Ireland

28 <http://science-girl-thing.eu/en/splash>

29 The unadjusted 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.

On 8 March 2012, the Belgian parliament adopted a law to reduce the gender pay gap. Under this law, differences in pay and labour costs between men and women should figure in companies' annual audits ('bilan social') and therefore will be publicly available. Moreover, the new law stipulates that firms with over 50 workers will be obliged to produce an action plan when the analysis shows that women earn less than men. Finally, if discrimination is suspected, women can turn to their firm's mediator, who will determine whether there is indeed a pay differential and, if so, will try to find a compromise with the employer. Besides legislative action, policies have been developed to tackle the key question of pay differentials: several training programmes, an implementation guide and check-list of gender neutrality to be used by private and public employers. Through inter-industry agreements, the social partners are encouraged to adopt a gender-neutral approach to job classification.

Equal Pay Day was celebrated on 19 April 2012 by some public activities in Estonia. In July 2012 the Government approved the action plan to reduce the gender pay gap. It includes five main types of actions: (1) improving the implementation of the existing Gender Equality Act (e.g. improving the collection of statistics, awareness raising, supporting the work of the Gender Equality and Equal Treatment Commissioner etc.); (2) improving the scope for reconciling family, work and private life (e.g. working with employers); (3) gender mainstreaming, especially in the field of education; (4) reducing gender segregation; and (5) analysing organisational practices and pay systems in the public sector, improving the situation where necessary.

However the GPG has narrowed since 2008 from 17.3% (1.1 percentage points in three years) in the EU as a whole. The decline is also documented in 17 out of 25 Member States for which data are available (see annex). The reasons for this recent slight decline in the GPG are still debated and four hypotheses have been suggested so far:

- the share of higher educated workers has increased among the female workforce more than among the male workforce. These trends in education might start to decrease the gender pay gap<sup>30</sup>;
- the change in the sectoral composition of the workforce during the crisis could have reduced the GPG. Indeed, the manufacturing sector, traditionally characterised by a high GPG, lost ground at the beginning of the crisis;
- a larger cut in additional components of men's pay packets (premiums for overtime) has contributed to reducing gender inequalities<sup>31</sup>;
- equal pay policies at national and European level have contributed to the decline. Cooperation with social partners and increasing awareness in companies of equal pay policies as a part of gender-aware human resources policies are another possible reason for the decrease of the GPG.

As information on pay equality is key to address the GPG, the European Commission held the second **European Equal Pay Day** on 2 March 2012. The European Commission will continue to raise awareness of the unequal pay conditions women face in the EU by marking the European Equal Pay Day and enhancing partnerships with Member States.

Companies and employers are key players in tackling the GPG. To support equal pay initiatives at the workplace, the Commission started the '**Equality Pays Off**'<sup>32</sup> project in 2012. The purpose of the project is to support companies in their efforts to tackle the GPG by providing training for companies and by organising **exchanges of good practices** between companies on actions to foster gender equality.

The **European Parliament resolution of 24 May 2012 on application of the principle of equal pay** for male and female workers for equal work or work of equal value<sup>33</sup> presents some action proposals addressed to the Commission, Member States, social partners and other stakeholders, including companies. Some of these requests are to review current legislation (Directive 2006/54, the recast directive) in relation to the gender pay gap issue and to continue with awareness-raising campaigns, including providing adequate information on the burden of proof. The resolution also encourages the

30 'EU Employment and Social Situation. Quarterly Review. December 2012', with special focus on the gender pay gap.

31 See 'The impact of the economic crisis on the situation of women and men and on gender equality policies', report of the European Network of Experts on Gender Equality, commissioned by the European Commission, December 2012. Available at: [http://ec.europa.eu/justice/gender-equality/files/documents/enege\\_crisis\\_report\\_dec\\_2012\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/documents/enege_crisis_report_dec_2012_final_en.pdf). The bonuses are not included in the Eurostat definition of the Gender Pay Gap.

32 See also the project website: <http://ec.europa.eu/justice/gender-equality/equality-pays-off/>

33 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BTA%2bP7-TA-2012-0225%2b0%2bDOC%2bXML%2bVO%2F%2FEN&language=EN>

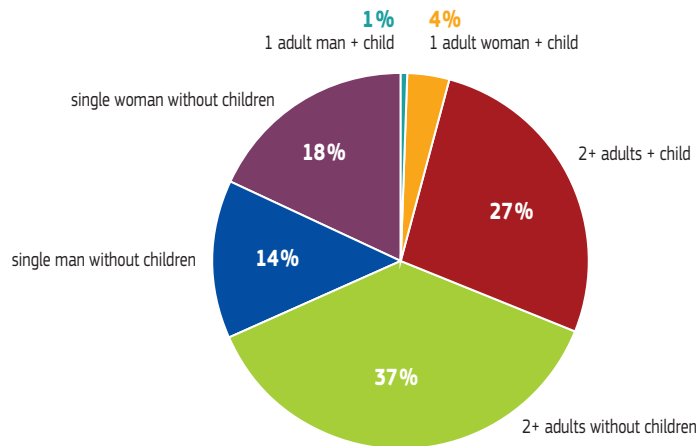
social partners and Member States to undertake job evaluation schemes free from gender bias, to implement job classification systems, and to foster the concept of work based on equal pay.

Despite some progress the GPG is still very high in some countries and it has increased in countries where it was relatively lower (Portugal, Bulgaria, and Ireland, for example). Fiscal consolidation, including wage freezes or wage cuts in the public sector, with a majority of female employees, might deepen the GPG in the future and reverse the current trends<sup>34</sup>.

### 3.3. Women's earnings are playing a more critical role in household income

Gender pay gaps are even wider in terms of annual earnings, because women receive lower hourly wages than men and also work fewer hours per year. Yet **the household relies more and more on women's earnings, which should no longer be seen as auxiliary income.** Women are increasingly the bread-winners in the household, not least because they live alone (18% of households) or live with children but no partner (4% of households) (see Figure 8).

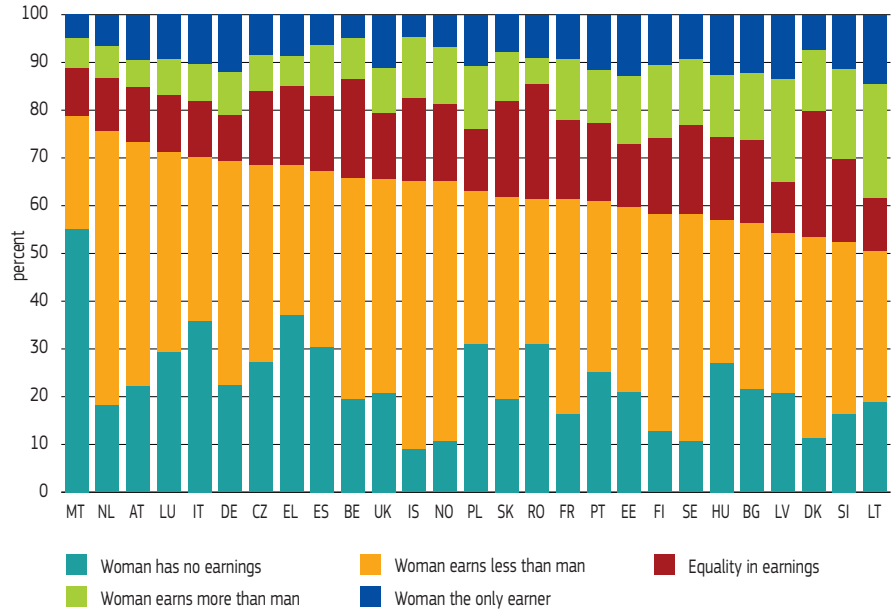
Figure 8: Type of household in the EU-27



Source: Eurostat, LFS. If more than two adults live in the households (for example if a grandparent live in the household), the household is included in the category '2+ adults'.

<sup>34</sup> However the current indicator used to measure pay inequalities cannot fully reflect the trend in public sector's wages and its potential consequence on the gender pay gap. Firstly the data does not cover public administration (though it covers education and health sector). Secondly, data available in 2012 cover pays in 2010 and cannot completely grasp the effect of fiscal consolidation policies that started in 2010 in most countries.

Figure 9: Couples by partner's earning role in 2009



Source: EU-SILC, 2010, ENEGE calculation

The proportion of female-breadwinner couples also increased significantly in 2008 and 2009. Moreover, dual-earner couples represent two thirds of all working-age couples with at least one member working according to data made available in 2012 (see Figure 9).

In many countries, however, women still constitute the second earner in the couple and the taxation system does not give sufficient incentives for them to work. In 2012, a country-specific recommendation on fiscal incentives for second earners was addressed to two countries, and **the 2013 Annual Growth Survey<sup>35</sup> recalled the importance of removing fiscal disincentives for second earners.**

### 3.4. Gender gaps in pensions

Gender inequality in old age has more to do with differences in labour market histories than with pension systems. Due to the higher prevalence of part-time working and career interruption among women, the gender earnings gaps are wide over careers. As most pension systems base their pension calculations on career earnings, the gaps can be very high.

<sup>35</sup> Communication 'Annual Growth Survey 2013', COM(2012) 750: [http://ec.europa.eu/europe2020/pdf/ags2013\\_en.pdf](http://ec.europa.eu/europe2020/pdf/ags2013_en.pdf)

However, the **design of a pension system matters because it can reproduce, exacerbate or mitigate gender disparities in employment**. It matters for example whether there is a minimum pension or an adequate survivor pension for those with incomplete careers who have not earned full pension entitlements, mostly women. Some mechanisms help to compensate women in retirement for their career interruptions to care for children. However, they cannot fully bridge the gap caused by career breaks.

Gender pension gaps are considerably wider than pay gaps. **The average pension gap is 39%, more than twice as large as the gender pay gap of 16%**<sup>36</sup>. Moreover, the analysis shows that in most Member States, a sizable gap cannot be easily explained by differences in the observable characteristics of women and men (education age, length of working career, marriage status and weight of pension income from third pillar). This highlights that better understanding the causes of the gap remains an important policy challenge. The report also finds that in some Member States, more than a third of women have no pension. In others, the number of women with no pension is closer to one in ten.

**Women's statutory pension ages are still below men's in several Member States**, although most have planned or already adopted legislation to gradually bring them into line with men's pension ages. In 2012, a country-specific recommendation to harmonise pensionable ages and rights was addressed to three Member States<sup>37</sup>.

Furthermore, policies need to support **the extension of working life**. The employment rate of women aged 55 to 64 was 40.2 % in 2011 compared to 55.2 % for men. This shows the magnitude of the challenge to extend working lives. There are gender-specific obstacles to, but also opportunities for, extending working lives.

The **White Paper on adequate, safe and sustainable pensions** adopted by the Commission on 16 February 2012<sup>38</sup> puts forward a range of initiatives, including encouraging Member States to promote longer working lives and closing the pensions gap between men and women. The Commission will also step up its support for policy coordination and joint work on enabling and encouraging older workers, women in particular, to stay longer on the labour market.

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36 'The Gender Gap in Pension in the EU', report prepared for the European Commission by the European Network of Experts on Gender Equality (ENEQE), 2013.

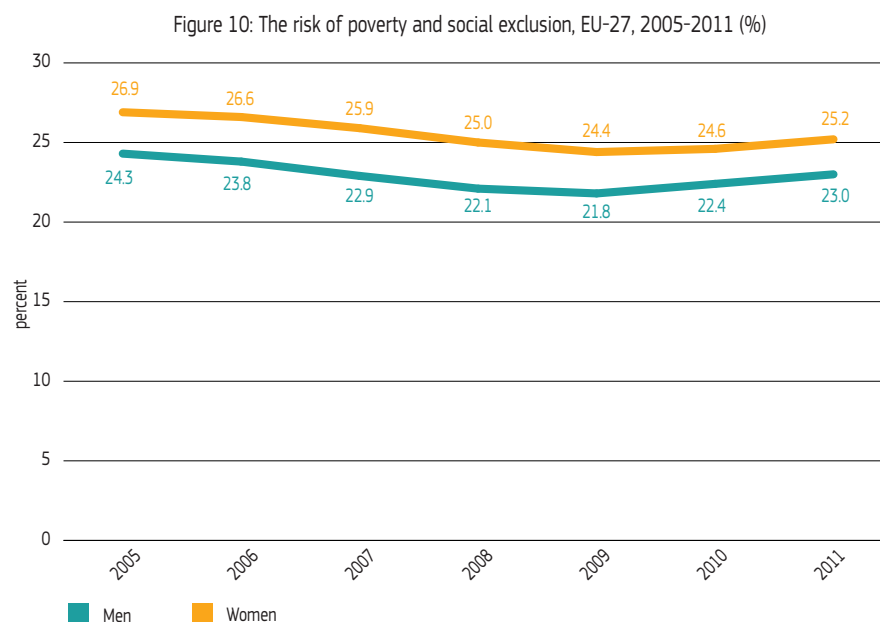
37 Bulgaria, Austria and Slovenia. On 4 December 2012, the Slovenian National Assembly passed a pension reform which will gradually lead to the equalisation of the retirement age for women and men.

38 White paper 'An Agenda for Adequate, Safe and Sustainable Pensions', COM(2012) 55:  
<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1194&furtherNews=yes>

### 3.5. Women still face a higher risk of poverty and exclusion

In almost all countries, **women face a higher risk of poverty and social exclusion, as measured by the indicators agreed within Europe 2020**<sup>39</sup>: 55.7 million (23 %) of men experienced poverty and exclusion whereas 63.8 million (25.2 %) of women were in this situation in the European Union in 2011.

A considerable increase in the risk of poverty is visible in the last two years for which data are available (2010 and 2011). Recent years are also characterised by a slight decrease in the gender gap to 2.2 pp in 2011, from 3 pp in 2007. The reason for this narrowing of the gap may be that the crisis has had a different impact on men and women, as described at the beginning of the report.



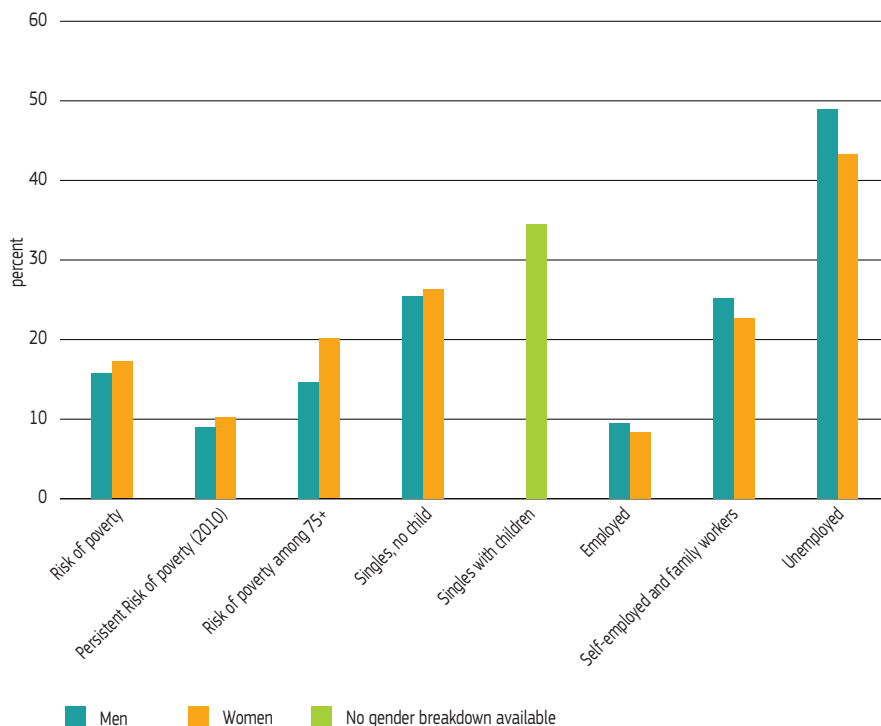
Source: Eurostat, EU-SILC

Note: The 'people at risk of poverty or social exclusion' rate is the headline indicator for the EU2020 Strategy poverty target. It reflects the share of the population which is either at risk of poverty or severely materially deprived or lives in a household with very low work intensity.

<sup>39</sup> The Conclusions of the June 2011 European Council set lifting at least 20 million Europeans out of poverty or social exclusion by 2020 as a headline target for the EU. The concept of 'poverty' or 'social exclusion' refers both to relative income poverty (i.e. a value relative to the median population income in order to better capture poverty as a social and historically contingent phenomenon) and to a multidimensional phenomenon encompassing other domains of social inclusion – namely labour market attachment and access to a number of goods or services. Thus, people are at risk of poverty or social exclusion if they are at risk of poverty (i.e. earn an equivalent disposable income lower than 60 % of median equivalent income), are severely materially deprived (i.e. cannot obtain certain items in a pre-defined list), and/or live in a household with no or very low work intensity.



Figure 11: The risk of poverty and social exclusion among different groups, EU-27 (%)



Source: Eurostat, EU SILC (EU 27 estimates for 2011). Note: The reference period for income and activity status for IE and UK differs from that for the other countries (where it refers to the previous year).

Note: The at-risk-of-poverty rate reflects the percentage of people with an equivalised disposable income below the 'at-risk-of-poverty threshold'. The at-risk-of-poverty threshold is set for each country at 60 % of the national median equivalised disposable income.

The Annual Growth Survey 2013<sup>40</sup> underlines that single-parent households (mainly women) represent a group particularly affected by poverty. The risk of poverty is also significantly higher among elderly women over 75 (20.1 % as against 16.9 % of the total population). Inactive and unemployed women and men of working age also face a high risk of poverty. This risk also affects self-employed and family workers (see Figure 11).

To improve the situation of women who are self-employed workers or the spouses of the self-employed workers, Member States had to transpose **Directive 2010/41/EU on the equal treatment of men and women who are engaged in or contribute to an activity in a self-employed capacity** by August 5, 2012. The Directive prohibits discrimination on grounds of sex in this area

40 Communication 'Annual Growth Survey 2013', COM(2012) 750: [http://ec.europa.eu/europe2020/pdf/ags2013\\_en.pdf](http://ec.europa.eu/europe2020/pdf/ags2013_en.pdf)

and aims to ensure that the spouses of self-employed workers have access to social security schemes. It also introduces maternity benefits enabling interruptions of the activities of women who are self-employed workers or the spouses of self-employed workers of at least 14 weeks.

Member States could request an additional year to comply with specific provisions of the Directive. 5 Member States have requested an extension for transposition. The Commission is checking compliance with the obligation to communicate the national transposition measures completely or (for the Member States that have requested an extension) partially. A comprehensive monitoring of the correctness of transposition in all Member States will be carried out after the expiration of the extended transposition deadlines.

### 3.6. Migrants and minorities: fragility and empowerment

At EU level the risk of poverty or social exclusion is much higher among female and male migrants from a non-EU country (respectively 36 % and 34 %). Non-EU-born female migrants are also less likely to be employed. If employed, they are very likely to be over-qualified for the work they do.

Table 1: Employment, over-qualification and poverty among migrants and total population, EU-27 (%) in 2010

	Total population	Foreign-born	Of which	
			EU born	Non-EU born
<b>Employment rate – Men (20-64 years old)</b>	75	73	77	71
<b>Employment rate – Women (20-64 years old)</b>	62	56	62	53
<b>Overqualification rate – Men</b>	21	30	23	34
<b>Overqualification rate – Women</b>	22	36	31	39
<b>At risk of poverty or social exclusion – Men</b>	22	28	18	34
<b>At risk of poverty or social exclusion – Women</b>	24	31	23	36

Note: The overqualification rate is defined as the proportion of the population with a high educational level (i.e. having completed tertiary education, ISCED 5 or 6), and having low- or medium-skilled jobs (ISCO occupation levels 4 to 9) among employed persons having attained a high educational level.

Data are scarce about minorities in Europe, and therefore about gender differences among minorities, including among the Roma, who constitute the largest minority in Europe. However the gender dimension of the problems faced by Roma communities is increasingly recognised.

In its **assessment of national Roma Integration Strategies presented in 2012**, the Commission noted that several strategies 'devote specific attention to the situation of Roma women, even

though additional efforts are needed to enable them to exercise their rights<sup>41</sup> Roma women often face **multiple forms of discrimination** including within their own communities. Poverty, lack of education, early marriage, domestic violence and exploitation typify their poor status in our societies. Many of them become victims of human trafficking, sexual abuse and enforced prostitution. Therefore, it is important to take appropriate **preventive** measures, including awareness-raising campaigns, where relevant in cooperation with NGOs, to provide Roma women victims with **specific assistance** and facilitate their access to victim protection services. Roma women deserve to be respected, but their empowerment is also crucial for improving the difficult situations of whole families. As primary caregivers, they have a direct impact on the lives of their children (e.g. the role of Roma mothers in promoting the education of children as well as raising awareness of family health).

## 4. Equality in decision-making

Comparable European data have been available on gender balance in economic decision-making (4.1) and in political decision-making (4.2) since 2003, showing slow progress until recently<sup>42</sup>. For the first time this year, additional data are available on gender balance in the environment and energy at the highest decision-making level.

### 4.1. Promoting gender balance on boards of companies listed on stock exchanges

As a matter of basic equality, women and men should have the same opportunities to reach leadership positions. This principle is set out in the European Commission Strategy for Equality between Women and Men (see 2010-2015)<sup>43</sup>. In addition, there is a well-established economic and business case for gender balance in business leadership<sup>44</sup>. Nevertheless, data collected by the European Commission in October 2012 (see Figure 12) show that **the average share of women on the top-level boards of the largest publicly listed companies around the EU stands at just 15.8%**<sup>45</sup>. Women are also barely visible among the top business leaders of these companies – 97 % company presidents (board) are men.

41 National Roma Integration Strategies: a first step in the implementation of the EU Framework, COM(2012) 226.

42 The data on women and men in decision-making are regularly updated the following website: [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm)

43 COM(2010) 491 final.

44 'Women in economic decision-making in the EU: Progress report': [http://ec.europa.eu/justice/newsroom/gender-equality/opinion/files/120528/women\\_on\\_board\\_progress\\_report\\_en.pdf](http://ec.europa.eu/justice/newsroom/gender-equality/opinion/files/120528/women_on_board_progress_report_en.pdf)

45 The data cover the largest publicly listed companies. The 'largest' companies are taken to be the members (max.50) of the primary blue-chip index, which is a stock-exchange index of the largest companies by market capitalisation and/or market trades. Only companies which are registered in the country concerned are counted. Board members covered: 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.

Compared to previous years, though, the percentage is higher and is improving at a faster rate: a rise of 4 percentage points was recorded from October 2010 (11.8%), see Figure 13.

This improvement can be linked to **an intensive public debate initiated by the Commission and supported by the European Parliament, and to concrete initiatives in a number of Member States**. At present, eleven Member States have adopted some form of legislative or administrative regulation to improve gender balance in private and/or state-owned companies (Austria, Belgium, Denmark, Finland, France, Greece, Italy, the Netherlands, Portugal, Slovenia and Spain).

It is clear that the rate of improvement in individual Member States has been uneven and self-regulatory initiatives have not made enough progress. Therefore, after a public consultation and following the request of the European Parliament, the Commission took a pro-active approach to accelerate progress towards gender balance on the boards of listed companies.

The proposal for a **Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges** and related measures<sup>46</sup> sets a minimum target of 40 % of the under-represented sex among non-executive directors on boards of large listed companies, to be achieved by 2020 (2018 for listed companies that are public undertakings). It obliges companies with a lower percentage (40 %) to make appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying pre-established, clear, neutrally formulated and unambiguous criteria, in order to meet the 40 % target. Member States have to implement effective and dissuasive sanctions. With regard to executive directors, listed companies are required to set their own commitments, to be met within the same timeframe as the target for non-executive directors.

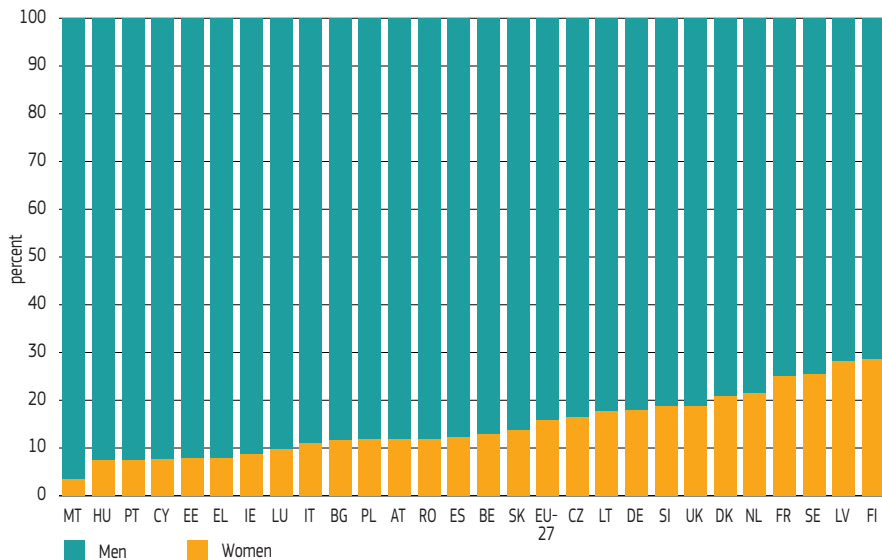
The reasons for the under-representation of women in senior positions are multiple and call for a comprehensive approach to tackle the problem. They stem, among other things, from traditional gender roles and stereotypes, the lack of support for women and men to balance care responsibilities with work and the lack of transparency in recruitment and promotion practices. Therefore, the Commission proposes to complement the proposed legislation **with policy measures to fight the roots of gender imbalance**. It will work in partnership with governments and relevant stakeholders<sup>47</sup>.

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46 COM(2012) 614 final of 14.11.2012.

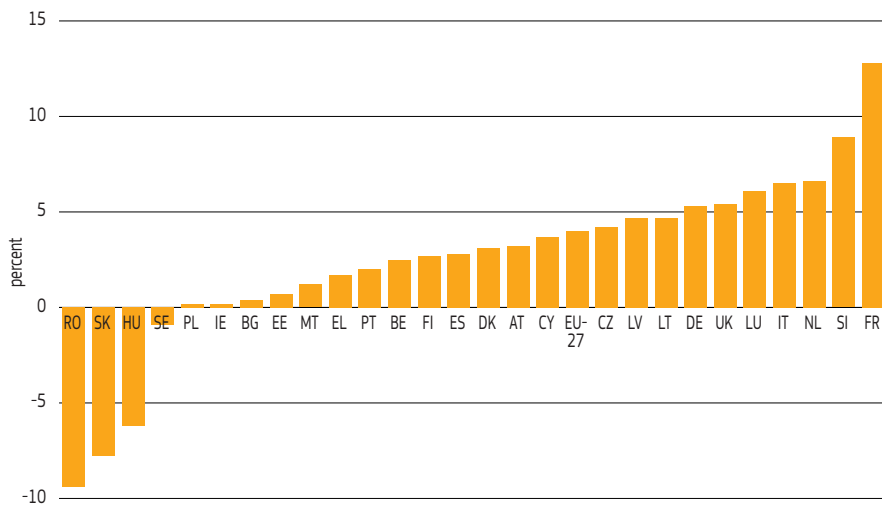
47 Communication on 'Gender balance in business leadership: a contribution to smart, sustainable and inclusive growth'. COM(2012) 615 final.

Figure 12: Gender balance on company boards, October 2012



Source: European Commission, Database on Women and Men in Decision-Making <sup>48</sup>

Figure 13: Percentage point change in the share of women on boards, Oct 2010 – Oct 2012



Source: European Commission, Database on Women and Men in Decision-Making

<sup>48</sup> [http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index\\_en.htm](http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm)

## 4.2. Gender balance in political decision-making: still a challenge for many Member States

### 4.2.1 Elected representatives: gender imbalance in many parliaments

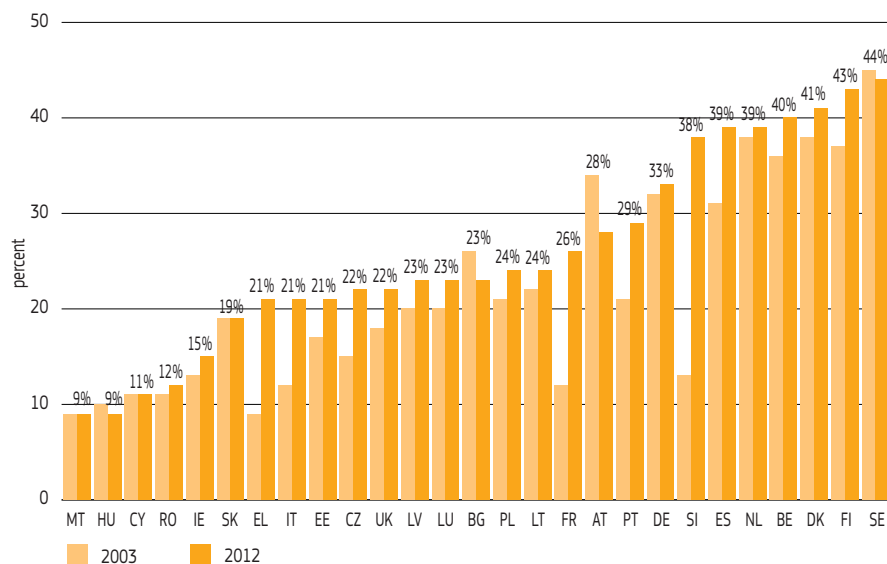
Gender-balanced representation in political governance is a cornerstone of an accountable democracy and a key condition for gender equality in society at large. Despite the fact that elected representatives should reflect the composition of the population they represent, progress towards this aim has been slow (see Figure 14). In 2012, **three out of four members of the single/lower houses of national parliaments across the EU were men.**

In the last quarter of 2012, only national parliaments in Sweden, Finland, Denmark and Belgium had a balanced representation with at least 40 % of each gender. The Netherlands, Slovenia, Spain and Germany are the only other countries where the proportion of women members has surpassed the critical mass of 30 %.

At EU level there has been little progress over the past decade, with the share of women rising just 4 percentage points from 22 % in 2003 to 26 % in 2012. However, **significant progress has been made in some countries**, notably Slovenia, followed by France, Greece, Italy, Portugal and Spain. Four of the six countries demonstrating progress have a mandatory electoral quota system: Slovenia, France, Spain and Portugal.

In Ireland the situation may change, since an important piece of legislation was introduced in 2012: political parties that do not include at least 30% of women on their lists for the next parliamentary election will lose half of their state funding for the entire duration of the legislature. The level will be raised to 40% in 2019.

Figure 14: Percentage of women in national parliaments (single/lower houses) in 2003 and 2012



Source: European Commission, Database on Women and Men in Decision-Making

Note: 2003 data for CZ, PL, MT, and LT refer to 2004 (data not collected in 2003)

Experience at regional and local level is considered an important stepping stone to political participation at national level. **At EU level, women account for 32 % of both regional and local assemblies**<sup>49</sup> compared to 26 % in national parliaments.

The level of female representation in regional assemblies is above 40 % in four Member States (France, Spain, Finland and Sweden) and over 30 % in six more (the UK, Austria, the Netherlands, Germany, Denmark, and Belgium). However, levels of 15 % or less persist in Hungary, Italy, and Romania. In many countries, the levels of female representation in local or regional assemblies are quite close to that in the national parliament.

At local level, balanced representation (at least 40 % of each gender) is found only in Sweden but women account for at least 30 % of local council members in the UK, Finland, Latvia, France, Spain, Denmark, and Belgium.

#### *4.2.2 Gender imbalance in most EU national governments*<sup>50</sup>

Across the EU, the gender balance among appointed members of national governments (73 % men, 27 % women) improved by just 3 percentage points between 2003 and 2012, though the situation varies between Member States (see Figure 15, page 134). **Five EU countries had governments with at least 40% of each gender in the fourth quarter of 2012:** France, Austria, Denmark, Finland and Sweden. Governments in the Netherlands, Belgium and Germany are not far behind with 38 % women.

#### *4.2.3 Women and men in decision-making positions on the environment*

In the context of the regular monitoring process of the UN Beijing Platform for Action<sup>51</sup>, and under the initiative of the Danish Presidency of the Council (first half of 2012), the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) adopted conclusions<sup>52</sup> highlighting the gender perspective in dealing with environmental challenges. The document stresses the urgent need to improve gender equality in decision-making bodies in the transport and energy sectors, in scientific and technological occupations and in relevant high-level scientific bodies.

Action to improve female representation at local level has been taken in Italy: in November 2012, a law was passed requiring municipal and provincial councils to have lists with no more than two thirds of one gender, and a double preference system (which allows for the possibility of expressing a preference for a male and a female candidate) is to be introduced. The impact of the law has yet to be tested in future elections.

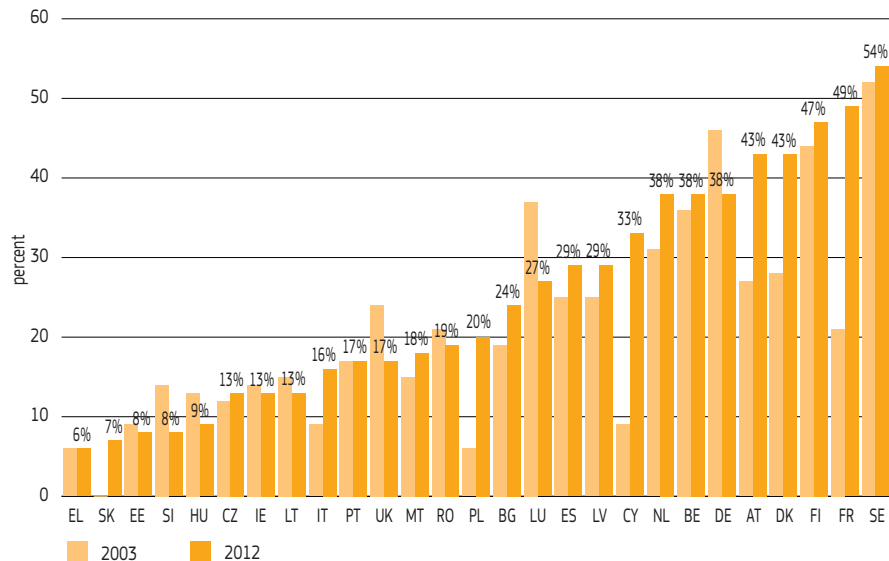
49 Data for regional assemblies are from the fourth quarter of 2012 while data for local assemblies were collected between March and September 2011.

50 Data refer to 'senior' ministers (members of the government who have a seat in the cabinet/council of ministers).

51 <http://www.un.org/womenwatch/daw/beijing/platform/>

52 [http://www.womenandtechnology.eu/digitalcity/servlet/PublishedFileServlet/AAABTYHK/Council\\_Conclusions\\_on\\_gender-equality\\_and\\_environment.pdf](http://www.womenandtechnology.eu/digitalcity/servlet/PublishedFileServlet/AAABTYHK/Council_Conclusions_on_gender-equality_and_environment.pdf)

Figure 15: Percentage of women in national governments (senior ministers) in 2003 and 2012



Source: European Commission, Database on Women and Men in Decision-Making

Note: 2003 data for CZ, PL, MT, and LT refer to 2004 (data not collected in 2003)

In the EU, **the share of female senior and junior ministers with environmental portfolios decreases when transport and energy are taken into account**: 29.5 % of ministers in charge of the environment were women in 2012 but this share drops to 19.6 % when transport and energy responsibilities are included. Mirroring the situation at ministerial level, women are more present at the top of the administrative hierarchy in ministries in charge of the environment and climate change than in transport and energy policy.

## 5. Dignity, integrity and ending gender-based violence: a growing attention to a persisting issue

In 2012, all EU institutions again committed to a strong policy response to combat all forms of violence against women and gender-based violence. All key EU players shared a common approach, recognising violence against women **as a violation of human rights and an obstacle to gender equality**. They contributed to major policy developments in the reinforcement of victims' right (5.1) and of a comprehensive set of policies and tools (including support to victims', reporting, data collection) under the Cypriot presidency (5.4) with a focus on female genital mutilation (5.2) and the human trafficking (5.3).



## 5.1. Reinforcing the rights of victims of crime

The **Directive on minimum standards for victims of crime** was adopted by the European Parliament and the Council in 2012<sup>53</sup>. It includes the right to respect and recognition, the right to provide and receive information and the right to protection. It also aims to ensure that the needs of victims are individually assessed and that the most vulnerable, including victims of all forms of gender-based violence, receive treatment appropriate to their requirements. This Directive must be implemented at national level by 16 November 2015 at the latest.

The proposal for a Regulation on mutual recognition of protection measures in civil matters is still under negotiation between the Council and the European Parliament. It aims to complement the European Protection Order (which applies in criminal matters) adopted in December 2011. These two instruments will ensure that protection measures issued in one Member State can be recognised in another, following a speedy and efficient procedure, to avoid victims losing their protection if they move or travel.

At UN level, the General Assembly adopted a resolution at the end of 2012 on 'Intensification of efforts to eliminate all forms of violence against women'<sup>54</sup>.

## 5.2. A strong stance against female genital mutilation (FGM)

On 13 June 2012, the European Commission and the European External Action Service (EEAS) made a **joint declaration on FGM** confirming their commitment before the European Parliament. The day after, an almost unanimous European Parliament adopted a resolution on ending female genital mutilation<sup>55</sup>, urging the Commission to make it a priority to end violence against women and girls and the Member States to take firm action to combat this illegal practice.

At UN level, the General Assembly adopted in November 2012 a much anticipated resolution aimed at 'Intensifying global efforts for the elimination of female genital mutilations'<sup>56</sup>.

On 8 March the President of **Romania** promulgated the changes made to law 217/2003 on preventing and combating domestic violence. The law now allows the victims of domestic violence to ask the courts for a restraining order (or protection) against the aggressor. The list of acts of domestic violence now includes stinging, biting and pulling the victim's hair. It includes not only physical acts but also acts of verbal, psychological, sexual, social and spiritual violence, the authorities now being forced to respond urgently to cases of domestic violence. The victim has the right to a private life, dignity and respect of personality, social protection, reintegration, free social assistance and medical assistance.

A bill outlawing female genital mutilation has been passed in **Ireland**. As well as prohibiting the practice, the law includes the principle of extra-territoriality, which makes it possible to prosecute the practice also when it is committed abroad.

53 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 on the rights of victims of crime establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

54 A/RES/67/144.

55 European Parliament Resolution of 14 June 2012 on ending female genital mutilation (2012/2684(RSP)), adopted by 564 votes in favour, 0 against and 2 abstentions.

56 A/C.3/67/L.21/Rev.1.

### 5.3. Towards the eradication of trafficking in human beings

According to preliminary data collected by Eurostat, women and girls accounted for 79% of the total victims of trafficking in human beings and are used for sexual exploitation. On 19 June 2012, the European Commission adopted the **'EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)'**<sup>57</sup> focusing on concrete actions to support and complement the implementation of the EU legislation on trafficking in human beings adopted in 2011, namely Directive 2011/36/EU (deadline for transposition 6 April 2013).

### 5.4. Violence against women as a key priority of the Cypriot presidency

The outcomes of the European Police College (CEPOL) Presidency Conference on 'Overcoming Attrition in Domestic Violence through Policing' fed into a European Union handbook of good police practices in overcoming attrition in domestic violence. The handbook calls on Member States to aim to encourage 'victims and witnesses to report (...) crimes to the authorities and to contribute to their effective investigation and prosecution'.

An EU gender equality conference on violence against women held in Cyprus in November 2012 reviewed progress at EU level and good practice in Member States. The European Institute for Gender Equality (EIGE)'s 'Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women, Victim Support' was commissioned by the Cyprus presidency; it is the first report to deliver a full set of comparable and reliable data on support services for women victims of violence in the 27 EU Member States and Croatia. The findings indicate that specialised services are insufficient and unequally distributed in and among the Member States. According to the report, only 12 out of the 27 EU Member States legally foresee state funding of specialised services for women victims of violence. Women shelters and helplines, possibly the most common support for victims of domestic violence, are not in place and available everywhere.

On the basis of these findings the **EPSCO Council adopted conclusions on Combating Violence Against Women and the Provision of Support Services for Victims of Domestic Violence** on 6 December 2012. These conclusions reaffirm that neither custom, tradition, culture, privacy, religion nor so-called honour can be invoked to justify violence against women, which is a violation of human rights and the most brutal manifestation of gender inequality. They stress that it is important to improve the protection of victims of violence, by providing adequate and sustainable support services and by implementing the newly adopted Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime as well as the European protection order in civil matters. They call for improving the registration and handling of complaints as well as the collection and dissemination of data by Member States in this under-reported field.

<sup>57</sup> COM(2012) 286: <http://ec.europa.eu/anti-trafficking/entity.action?id=714114c7-cd42-46cf-85eb-c09d042c7181>

They insist on the importance of collecting comparable EU data to enhance knowledge of the extent of the phenomenon and to build further appropriate and informed policies. As violence against women covers so many forms of abuse, the Council conclusions encourage further research on other forms of violence. They also call on Member States to sign and ratify the Council of Europe Convention on violence against women adopted in May 2011<sup>58</sup>.

All these initiatives were valuable contributions to a strong EU position at the 57th session of the UN Commission on the Status of Women that took place in March 2013 on the issue of violence against women. In addition, the European Commission has supported several focused activities on this topic in 2013, such as the launch of a campaign on violence against women on 6 March, and a public consultation on FGM.

## 6. Gender equality in external actions

The 56th session of the **Commission on the Status of Women (CSW)** took place in February 2012. The CSW is the UN's principal global policy-making body on gender equality and advancement of women. The priority theme in 2012 was the empowerment of rural women and their role in poverty and hunger eradication, sustainable development and current challenges. The session was characterised by difficult discussions and did not reach agreement on the main output, the CSW agreed conclusions.

In April 2012, the EU and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) signed a Memorandum of Understanding (MoU). The MoU forms the basis of a partnership aimed at making progress towards achieving the key international commitments in the area of gender equality and women's empowerment. The partnership also aims to contribute to the transformation towards a world where societies are free of gender-based discrimination, where women and men have equal opportunities, where the comprehensive economic and social development of women and girls is ensured, where gender equality and women's empowerment are achieved, and where women's rights are upheld in all efforts to further development, human rights, peace and security.

In May 2012, the European Commission adopted its **European Neighbourhood Policy package**<sup>59</sup>. The package takes stock of policy achievements with both eastern and southern partner countries. Its Strategy Paper highlights that building sustainable democracy also means ensuring gender equality and increasing the participation of women in political and economic life. In some countries, legislative provisions enacted with the aim of ensuring a more balanced composition of parliaments have encountered resistance in practice and therefore have not had the desired effect. The Strategy Paper also underlines that women have been key players in the Arab

58 <http://www.conventions.coe.int/Treaty/EN/Treaties/Word/210.doc>

59 Joint Communication, 'Delivering on a new European Neighbourhood Policy', JOIN(2012)14 final.

Spring, and that they should not lose out in the subsequent transformations. The EU will continue to step up its efforts to support women's rights across the region, ensure that gender equality is mainstreamed into all relevant cooperation activities and promote effective action against trafficking across the neighbourhood.

Human rights have proven to be the silver thread that runs through everything that EU does in the external relations. In June 2012, the European Union has adopted its **new Strategic Framework and Action Plan on Human rights and democracy**<sup>60</sup>. This is the first time that the EU has had a unified Strategic Framework for this vital policy area that also provided an agreed basis for a truly collective effort, involving EU Member States as well as the EU Institutions. The Action Plan covers priority areas, all designed to improve the effectiveness and consistency of EU policy as a whole and it also anchors a commitment to genuine partnership with civil society. Following the adoption of the Human Rights package the first-ever thematic EU Special Representative on Human Rights was appointed. The EUSR works on exploring ways to better engage and develop synergies with as many relevant players as possible as well as with civil society organisations, and contributes to the better coherence, effectiveness and visibility of EU policies and actions for the protection and promotion of all human rights.

In September 2012 in the margins of the UN General Assembly the **Equal Futures Partnership** was launched. The EU is founding member and committed concrete initiatives for women's political participation and economic empowerment.

The European Commission adopted its annual **Enlargement Package** in October 2012<sup>61</sup>. The Strategy Paper highlights, as a key challenge facing most enlargement countries, the need to strengthen the handling by law enforcement bodies of issues such as gender-based violence. The country-specific progress reports contain an assessment of progress in terms of alignment with the legal *acquis* in the field of gender equality and its implementation. They cover in particular issues related to female labour market participation, gender balance in economic and political decision-making, gender-based violence, and administrative capacity. Accession negotiations with Iceland on social policy and employment, including gender equality, were opened in June 2012.

In November 2012 human rights and gender issues were integrated in the agenda and the Joint Conclusions of the EU – UN Steering Committee on Crisis Management (for the first time since 2009).

**EU development policy continued to work for progress in gender equality and empowerment of women.** The EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-2015 contains commitments for the Commission, the European External Action Service and the Member States to support developing countries' efforts to improve the situation of women with regard to equal rights and empowerment. In November 2012, the

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60 See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

61 Communication, 'Enlargement Strategy and Main Challenges 2012-2013', COM(2012) 600 final.

second report on the implementation of the EU Plan of Action was published<sup>62</sup>. It concludes that further progress has been made but that some challenges remain.

## 7. Horizontal issues

### 7.1. Mainstreaming gender equality

Gender mainstreaming is the integration of the gender perspective within every stage of the policy process – design, implementation, monitoring and evaluation – with a view to promoting equality between women and men. The Commission organised three calls for proposals<sup>63</sup> on **improving gender mainstreaming in national policies and programmes** between 2007 and 2010. The last gender mainstreaming projects implemented by Member States<sup>64</sup> under the PROGRESS programme have just been closed. It is now time to take stock of the progress made in implementing and practicing gender mainstreaming

In total, 31 initiatives have been supported with the aim of:

- raising awareness of the importance of gender mainstreaming in national policies as an effective contributor to equality between women and men and to better governance;
- improving knowledge of the key concepts and issues of gender mainstreaming and ensuring a better understanding of gender mainstreaming in policies and programmes;
- developing the necessary methods and tools, including dissemination to the main stakeholders, thus ensuring a more long-term effect.

The vast majority of projects have addressed government officials while some training has targeted parliamentarians, parliamentary staff, officials at regional level and stakeholders. Some projects focused on supporting, strengthening and equipping a network of officials for the implementation of gender mainstreaming (for instance the establishment of ad hoc horizontal units on gender mainstreaming in 15 line ministries in Bulgaria, or the creation of a specialised ‘pool of contacts’ on gender budgeting at departmental level in Estonia).

For example, **Denmark** has developed a website<sup>65</sup> presenting both gender mainstreaming tools and concrete examples showing how public services have taken the gender dimension into account. One of the lessons learned is that, in addition to being available, tools need to be visible, functional and attractive in order to ensure their implementation. A clear message on the benefits of gender mainstreaming should also be conveyed to civil servants.

**Spain** has also developed tools for helping public policy planners to mainstream gender in the design, implementation and monitoring of employment and economic reactivation measures, such as a guide to measuring the impact of employment and economic recovery policies on women, a report with recommendations for strengthening gender mainstreaming in active employment and economic recovery policies and measures, and a virtual tool to simulate gender impacts.<sup>66</sup>

62 2012 Report on the implementation of “EU Plan of Action on Gender Equality and Women Empowerment in Development 2010-2015”, SWD(2012) 410 final.

63 VP2007/010, VP2008/12 and VP2010/009.

64 National authorities in charge of gender equality policy or designated equality bodies.

65 <http://www.ligestillingsvurdering.dk/>

66 Both the documents and the simulation tool are available on the programme's website <http://paralaigualdadeneempleo.mspsi.gob.es>

A large amount of material has been produced (gender impact assessment guides, gender budgeting guides, check lists, training modules, databases, e-learning tools), which may be transferable in some cases and contribute to enrichment of the knowledge and methods for gender mainstreaming at European level.

## 7.2. Investing in gender equality

On the basis of a proposal of the European Commission on the Multiannual Financial Framework, the European Parliament and the Council discussed in 2012 the future funding programmes covering the period 2014-2020. Gender equality will be explicitly included in the **Rights, Citizenships and Equality Programme**.

Moreover, **integrating a gender perspective in the preparations for the cohesion policy period 2014-2020** is important in order to meet the objectives of the Europe 2020 strategy in a way that supports development towards a more gender-equal society. Following the European Commission's adoption of a legislative package for future cohesion policy in October 2011, the draft regulations were discussed by the Council and the European Parliament in 2012. The proposals, scheduled to enter into force in 2014, are designed to ensure that EU investment is targeted at Europe's long-term goals for growth and jobs and priorities identified under the Europe 2020 strategy. The proposals also envisage the conclusion of Partnership Contracts between the Commission and the Member States in 2013. Preparatory work for these Partnership Contracts was carried out in 2012 both within the European Commission and at national and regional level. Gender equality considerations should play an important role in the Partnership Contracts, both in terms of specific actions enhancing gender equality and in terms of effective and correctly implemented gender mainstreaming. In 2012, the Advisory Committee on Equal Opportunities for Women and Men adopted an opinion on how cohesion policy can be used effectively to achieve the EU's commitments on gender equality over the 2014-2020 period<sup>67</sup>.

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<sup>67</sup> [http://ec.europa.eu/justice/gender-equality/files/opinions\\_advisory\\_committee/opinion\\_on\\_gender\\_equality\\_in\\_the\\_cohesion\\_policy\\_2014-2020\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/opinions_advisory_committee/opinion_on_gender_equality_in_the_cohesion_policy_2014-2020_en.pdf)

## 8. Summary of main findings

The economic challenges of recent years reveal the current role of women in the economy and their determination to play an increasing role on the labour market. Women are a growing share of the EU workforce. They are also increasingly the breadwinners for their families. **New research confirms the economic gain of an equal participation in the labour market for the society as a whole:** gender equality can significantly increase the growth potential of the EU economy.

**Focused policies can close gender gaps** and thereby promote growth and inclusion. A concrete example is the European Commission's proposal on gender balance in boards of publicly listed companies. Intense public debate and regulatory measures have contributed to improving gender balance in decision-making and the 2012 figures on women on boards represents **the highest year-on-year change yet recorded.**

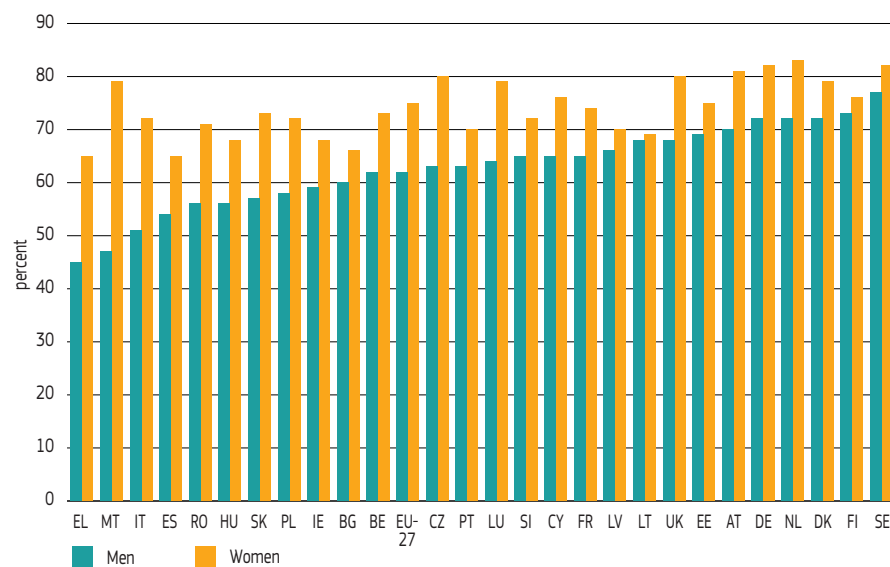
The policies that can enhance women's labour market participation and contribute to reach the target of 75 % of employment are also well-known: **increasing childcare facilities, removing fiscal disincentives for second earners and making work pay for women and men.** These policies have been highlighted throughout the second 'European Semester' and reflected in the 2012 and 2013 Annual Growth Survey. It is essential that Member States continue to work to ensure that both women and men can fully participate in the labour market and reconcile work and family life.

While this report shows that progress has been made in some areas, significant challenges remain in most fields. To meet the targets of the Strategy on equality between women and men, **further efforts will have to be made** taking action in the five priority areas.

# Statistical annex

## Employment

Employment rate of population aged 20-64 (as%) – men and women – in 2012



Source: Eurostat, LFS



## Employment rate of population aged 20-64 (as%) – men and women – in 2007 and in 2012

	Women		Men		Gender gap	
	2007	2012	2007	2012	2007	2012
<b>EU-27</b>	<b>62.1</b>	<b>62.4</b>	<b>77.8</b>	<b>74.6</b>	<b>15.7</b>	<b>12.2</b>
BE	60.3	61.7	75.0	72.7	14.7	11.0
BG	63.5	60.2	73.4	65.8	9.9	5.6
CZ	62.4	62.5	81.5	80.2	19.1	17.7
DK	74.7	72.2	83.2	78.6	8.5	6.4
DE	66.7	71.5	79.1	81.8	12.4	10.3
EE	72.5	69.3	81.4	75.2	8.9	5.9
IE	64.4	59.4	83.0	68.1	18.6	8.7
EL	51.6	45.2	80.4	65.3	28.8	20.1
ES	58.0	54.0	80.7	64.5	22.7	10.5
FR	64.8	65.0	75.0	73.8	10.2	8.8
IT	49.9	50.5	75.8	71.6	25.9	21.1
CY	67.7	64.8	86.4	76.1	18.7	11.3
LV	70.7	66.4	80.1	70.2	9.4	3.8
LT	69.5	67.9	76.5	69.4	7.0	1.5
LU	61.0	64.1	78.3	78.5	17.3	14.4
HU	55.5	56.4	70.2	68.1	14.7	11.7
MT	37.4	46.8	78.7	79.0	41.3	32.2
NL	70.7	71.9	84.8	82.5	14.1	10.6
AT	67.2	70.3	81.6	80.9	14.4	10.6
PL	55.5	57.5	70.2	72.0	14.7	14.5
PT	66.3	63.1	79.1	69.9	12.8	6.8
RO	57.9	56.3	71.0	71.4	13.1	15.1
SI	67.1	64.6	77.5	71.8	10.4	7.2
SK	58.7	57.3	76.0	72.8	17.3	15.5
FI	72.5	72.5	77.2	75.5	4.7	3.0
SE	77.1	76.8	83.1	81.9	6.0	5.1
UK	68.4	68.4	82.2	80.0	13.8	11.6

Source: Eurostat, LFS

Employment rate of population aged 55-64 (as%) – men and women – in 2007 and in 2012

	Women		Men		Gender gap	
	2007	2012	2007	2012	2007	2012
<b>EU-27</b>	<b>35.9</b>	<b>41.9</b>	<b>53.9</b>	<b>56.4</b>	<b>18</b>	<b>14.5</b>
BE	26	33.1	42.9	46	16.9	12.9
BG	34.5	41.3	51.8	50.8	17.3	9.5
CZ	33.5	39	59.6	60.3	26.1	21.3
DK	52.9	55.8	64.9	65.9	12	10.1
DE	43.4	54.8	59.4	68.5	16	13.7
EE	60.5	61.2	59.4	59.8	-1.1	-1.4
IE	39.6	42.7	67.8	55.8	28.2	13.1
EL	26.9	26	59.1	47.6	32.2	21.6
ES	30	36	60	52.4	30	16.4
FR	36	41.7	40.5	47.4	4.5	5.7
IT	23	30.9	45.1	50.4	22.1	19.5
CY	40.3	38.2	72.5	63.5	32.2	25.3
LV	52.4	52.5	64.6	53.1	12.2	0.6
LT	47.9	48.3	60.8	56.2	12.9	7.9
LU	28.6	34.3	35.6	47.4	7	13.1
HU	26.2	32.2	41.7	42.6	15.5	10.4
MT	11.6	15.8	45.9	51.7	34.3	35.9
NL	40.1	49.1	61.5	68.1	21.4	19
AT	28	34.1	49.8	52.5	21.8	18.4
PL	19.4	29.2	41.4	49.3	22	20.1
PT	44	42	58.6	51.5	14.6	9.5
RO	33.6	32.9	50.3	51.2	16.7	18.3
SI	22.2	25	45.3	40.7	23.1	15.7
SK	21.2	33.6	52.5	53.6	31.3	20
FI	55	59.7	55.1	56.6	0.1	-3.1
SE	67	69.6	72.9	76.3	5.9	6.7
UK	48.9	51	66.3	65.4	17.4	14.4

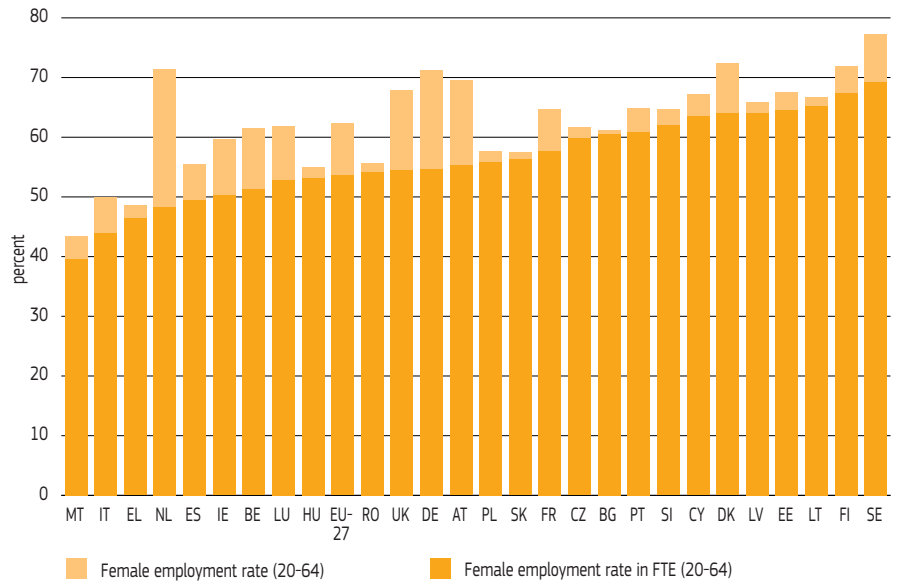
Source: Eurostat, LFS

Part-time employment as a percentage of the total employment, by sex, from 15 to 64 years old in 2002, 2007 and 2012

	Women			Men		
	2002	2007	2012	2002	2007	2012
<b>EU-27</b>	<b>33.1</b>	<b>30.8</b>	<b>32.1</b>	<b>6.0</b>	<b>7.0</b>	<b>8.4</b>
BE	37.7	40.5	43.5	5.6	7.1	9.0
BG	3.5	1.9	2.5	2.1	1.1	2.0
CZ	7.7	7.9	8.6	1.6	1.7	2.2
DK	31.1	35.1	35.8	10.1	12.4	14.8
DE	39.2	45.6	45.0	5.2	8.5	9.1
EE	8.4	10.6	13.2	3.7	3.8	5.1
IE	30.4	31.6	34.9	6.0	6.4	13.3
EL	7.8	9.9	11.8	2.1	2.5	4.7
ES	17.0	22.7	24.4	2.6	3.9	6.5
FR	29.6	30.4	30.0	4.9	5.5	6.4
IT	16.7	26.8	31.0	3.5	4.6	6.7
CY	10.8	10.4	13.1	2.7	3.0	6.4
LV	10.5	6.9	11.1	6.7	4.4	6.7
LT	10.7	9.7	10.6	8.4	6.5	6.9
LU	26.4	37.1	36.1	1.7	2.6	4.7
HU	4.9	5.5	9.3	2.1	2.5	4.3
MT	18.8	24.6	26.0	3.7	4.0	5.7
NL	72.7	74.8	76.9	20.6	22.5	24.9
AT	35.7	40.7	44.4	4.6	6.2	7.8
PL	12.2	11.7	10.6	7.3	5.8	4.5
PT	13.5	13.6	14.1	4.2	4.7	8.2
RO	10.7	8.9	9.7	8.9	8.3	8.6
SI	7.6	10.0	12.2	4.3	6.5	6.3
SK	2.7	4.3	5.5	1.1	1.0	2.8
FI	16.9	18.8	19.4	7.5	8.3	9.1
SE	32.3	39.5	38.6	9.7	10.5	12.5
UK	43.3	41.4	42.3	8.4	9.4	11.5

Source: Eurostat, LFS

### Female employment rate and female employment rate in full-time equivalent (FTE) (20-64 years old) in 2012



Source: Eurostat, LFS

Employment impact of parenthood: difference in percentage points between employment rates – age group 20-49 – with the presence of a child aged 0-6 and without the presence of any children in 2007 and in 2012

	Women		Men	
	2007	2012	2007	2012
EU-27	-13.6	-9.7	9.7	11.4
BE	-2.8	-0.3	10.1	12.3
BG	-19.4	-16.0	5.0	9.0
CZ	-43.1	-35.7	9.2	9.6
DK	-0.6	-2.0	7.0	10.7
DE	-24.4	-18.2	7.7	8.0
EE	-25.7	-24.4	11.6	14.4
IE	-17.2	-10.8	6.9	10.3
EL	-6.9	-1.0	14.9	17.1
ES	-8.0	-1.5	10.1	14.2
FR	-10.6	-6.3	10.2	11.8
IT	-5.8	-2.0	14.1	15.7
CY	-3.2	-3.7	9.9	13.0
LV	-17.3	-9.6	9.9	12.6
LT	-7.0	-0.7	10.8	15.4
LU	-3.5	-0.8	12.8	12.3
HU	-35.1	-32.6	9.0	9.8
MT	-13.9	-6.3	5.8	11.3
NL	-8.1	-2.5	5.7	10.0
AT	-17.1	-9.8	5.0	6.4
PL	-10.1	-9.8	14.9	15.2
PT	1.2	3.4	10.4	13.4
RO	-2.2	-3.1	10.5	8.2
SI	4.9	1.6	10.5	15.2
SK	-33.8	-31.8	8.3	12.2
FI	-18.4	-17.4	11.0	11.8
SE		0.8		13.9
UK	-21.9	-18.3	4.8	8.2

Source: Eurostat, LFS

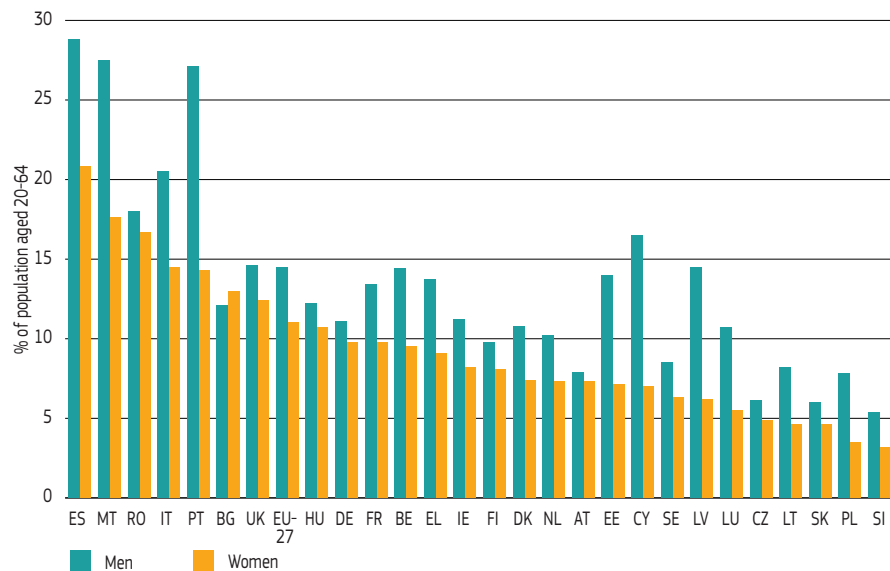
## Barcelona targets: Formal childcare by age group – % over the population of each age group

	Less than 3 years		From 3 years to minimum compulsory age	
	2007	2011	2007	2011
<b>EU-27</b>	<b>26.0</b>	<b>30.0</b>	<b>81.0</b>	<b>84.0</b>
<b>BE</b>	44.0	39.0	100.0	98.0
<b>BG</b>	8.0	7.0	59.0	60.0
<b>CZ</b>	2.0	5.0	69.0	74.0
<b>DK</b>	70.0	74.0	97.0	98.0
<b>DE</b>	17.0	24.0	86.0	90.0
<b>EE</b>	15.0	19.0	86.0	92.0
<b>IE</b>	24.0	21.0	86.0	82.0
<b>EL</b>	10.0	19.0	65.0	75.0
<b>ES</b>	40.0	39.0	92.0	86.0
<b>FR</b>	27.0	44.0	93.0	95.0
<b>IT</b>	25.0	26.0	90.0	95.0
<b>CY</b>	18.0	23.0	80.0	73.0
<b>LV</b>	16.0	15.0	52.0	73.0
<b>LT</b>	20.0	7.0	59.0	65.0
<b>LU</b>	25.0	44.0	66.0	73.0
<b>HU</b>	8.0	8.0	80.0	75.0
<b>MT</b>	13.0	11.0	65.0	73.0
<b>NL</b>	43.0	52.0	91.0	89.0
<b>AT</b>	8.0	14.0	70.0	85.0
<b>PL</b>	2.0	3.0	31.0	43.0
<b>PT</b>	27.0	35.0	75.0	81.0
<b>RO</b>	6.0	2.0	57.0	41.0
<b>SI</b>	30.0	37.0	84.0	92.0
<b>SK</b>	2.0	4.0	75.0	75.0
<b>FI</b>	26.0	26.0	76.0	77.0
<b>SE</b>	47.0	51.0	91.0	95.0
<b>UK</b>	38.0	35.0	84.0	93.0

Source: Eurostat, EU-SILC

## Education

Early leavers from education and training in 2012: proportion of persons aged 18 to 24 who have finished no more than a lower secondary education and are not involved in further education or training, as a percentage of the total population aged 18 to 24



Source: Eurostat, LFS

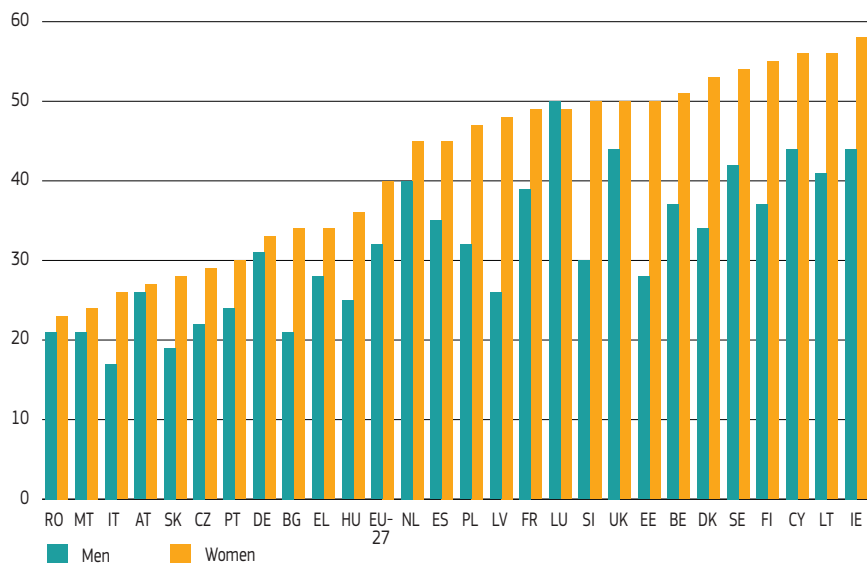
## Early school leavers from education and training in 2002, 2007 and 2012

	Women			Men		
	2002	2007	2012	2002	2007	2012
<b>EU-27</b>	<b>14.9</b>	<b>13.0</b>	<b>11.0</b>	<b>19.1</b>	<b>17.1</b>	<b>14.5</b>
BE	11.0	10.3	9.5	17.1	13.9	14.4
BG	19.4	14.7	13.0	22.0	15.2	12.1
CZ	5.9	4.7	4.9	5.4	5.7	6.1
DK	8.2	9.5	7.4	9.9	16.2	10.8
DE	12.5	11.9	9.8	12.5	13.1	11.1
EE	9.4		7.1	16.9	21.7	14.0
IE	11.2	8.4	8.2	18.0	14.6	11.2
EL	12.5	10.6	9.1	20.6	18.6	13.7
ES	24.2	25.2	20.8	36.8	36.6	28.8
FR	11.9	10.3	9.8	14.9	14.9	13.4
IT	20.5	16.4	14.5	27.8	22.9	20.5
CY	11.0	6.8	7.0	22.3	19.5	16.5
LV	11.0	10.1	6.2	22.7	20.0	14.5
LT	11.4	5.1	4.6	15.4	9.6	8.2
LU	19.6	8.4	5.5	14.4	16.6	10.7
HU	11.9	10.1	10.7	12.5	12.6	12.2
MT	49.7	34.9	17.6	56.5	41.3	27.5
NL	13.8	9.3	7.3	16.8	14.0	10.2
AT	10.2	10.1	7.3	8.7	11.4	7.9
PL	5.6	3.8	3.5	8.9	6.2	7.8
PT	37.2	30.4	14.3	52.6	43.1	27.1
RO	22.1	17.4	16.7	23.9	17.1	18.0
SI	3.2	2.2	3.2	6.8	5.8	5.4
SK	5.8	5.8	4.6	7.6	7.2	6.0
FI	7.6	7.2	8.1	11.8	11.2	9.8
SE	8.9	6.5	6.3	11.0	9.5	8.5
UK	17.1	15.6	12.4	18.1	17.6	14.6

Source: Eurostat, LFS



Tertiary educational attainment by sex in 2012: the share of the population aged 30-34 years who have successfully completed university or university-like (tertiary-level) education with an education level ISCED 1997 (International Standard Classification of Education) of 5-6



Source: Eurostat, LFS

### Tertiary educational attainment by sex (30-34 years old) in 2002, 2007 and 2012

	Women			Men		
	2002	2007	2012	2002	2007	2012
<b>EU-27</b>	<b>24.5</b>	<b>32.8</b>	<b>40.0</b>	<b>22.6</b>	<b>27.2</b>	<b>31.6</b>
<b>BE</b>	39.0	46.4	50.7	31.5	36.6	37.1
<b>BG</b>	28.8	33.2	33.6	17.7	18.7	20.5
<b>CZ</b>	11.4	13.7	29.1	13.7	13.0	22.4
<b>DK</b>	39.4	41.6	52.6	28.7	34.8	33.7
<b>DE</b>	21.4	25.7	32.9	26.8	27.3	31.0
<b>EE</b>	33.6	42.4	50.4	22.5	24.1	28.1
<b>IE</b>	33.0	48.8	57.9	30.9	37.9	44.0
<b>EL</b>	24.8	27.3	34.2	21.9	25.0	27.6
<b>ES</b>	35.8	44.6	45.3	31.0	34.8	35.0
<b>FR</b>	34.0	45.0	48.6	29.0	37.7	38.5
<b>IT</b>	14.2	22.3	26.3	12.0	15.0	17.2
<b>CY</b>	36.1	48.0	55.5	35.9	44.4	43.6
<b>LV</b>	22.1	31.5	48.1	12.4	19.8	26.0
<b>LT</b>	29.6	45.0	56.4	17.0	31.0	40.7
<b>LU</b>	21.5	38.1	48.9	25.6	32.4	50.4
<b>HU</b>	16.1	23.9	35.5	12.8	16.4	24.7
<b>MT</b>		23.7	24.0		19.5	20.7
<b>NL</b>	29.3	37.3	44.8	27.8	35.5	39.9
<b>AT</b>		20.5	26.6		21.8	26.0
<b>PL</b>	16.7	31.3	46.5	12.2	22.7	31.9
<b>PT</b>	16.9	24.7	30.1	9.1	15.0	24.3
<b>RO</b>	9.0	14.3	23.2	9.1	13.6	20.5
<b>SI</b>	29.1	41.1	49.6	12.9	21.7	29.5
<b>SK</b>	11.2	16.1	28.2	9.7	13.4	19.4
<b>FI</b>	49.3	55.4	55.4	33.4	39.3	36.7
<b>SE</b>	31.2	47.0	53.7	25.5	35.2	42.4
<b>UK</b>	30.7	40.1	50.2	32.4	36.9	44.0

Source: Eurostat, LFS

## The Gender Pay Gap

Gender pay gap – difference between men’s and women’s average gross hourly earnings as percentage of men’s average gross hourly earnings (for paid employees) from 2007 to 2011

	2007	2008	2009	2010	2011	Difference 2011-2008
<b>EU-27</b>		<b>17.3</b>	<b>16.6</b>	<b>16.1</b>	<b>16.2</b>	<b>1.1</b>
BE	10.1	10.2	10.1	10.2	10.2	0.0
BG	12.1	12.3	13.3	13.0	13.0	-0.7
CZ	23.6	26.2	25.9	21.6	21.0	5.2
DK	17.7	17.1	16.8	16.0	16.4	0.7
DE	22.8	22.8	22.6	22.3	22.2	0.6
EE	30.9	27.6	26.6	27.7	27.3	0.3
IE	17.3	12.6	12.6	13.9		
EL		22.0				
ES	18.1	16.1	16.7	16.2	16.2	-0.1
FR	17.3	16.9	15.2	15.6	14.7	2.2
IT	5.1	4.9	5.5	5.3	5.8	-0.9
CY	22.0	19.5	17.8	16.8	16.4	3.1
LV	13.6	11.8	13.1	15.5	13.6	-1.8
LT	22.6	21.6	15.3	14.6	11.9	9.7
LU	10.2	9.7	9.2	8.7	8.7	1.0
HU	16.3	17.5	17.1	17.6	18.0	-0.5
MT	7.8	9.2	13.8	13.4	12.9	-3.7
NL	19.3	18.9	18.5	17.8	17.9	1.0
AT	25.5	25.1	24.3	24.0	23.7	1.4
PL	14.9	11.4	8.0	4.5	4.5	6.9
PT	8.5	9.2	10.0	12.8	12.5	-3.3
RO	12.5	8.5	7.4	8.8	12.1	-3.6
SI	5.0	4.1	-0.9	0.9	2.3	1.8
SK	23.6	20.9	21.9	19.6	20.5	0.4
FI	20.2	20.5	20.8	20.3	18.2	2.3
SE	17.8	16.9	15.7	15.4	15.8	1.1
UK	20.8	21.4	20.6	19.5	20.1	1.3

Source: Eurostat, SES

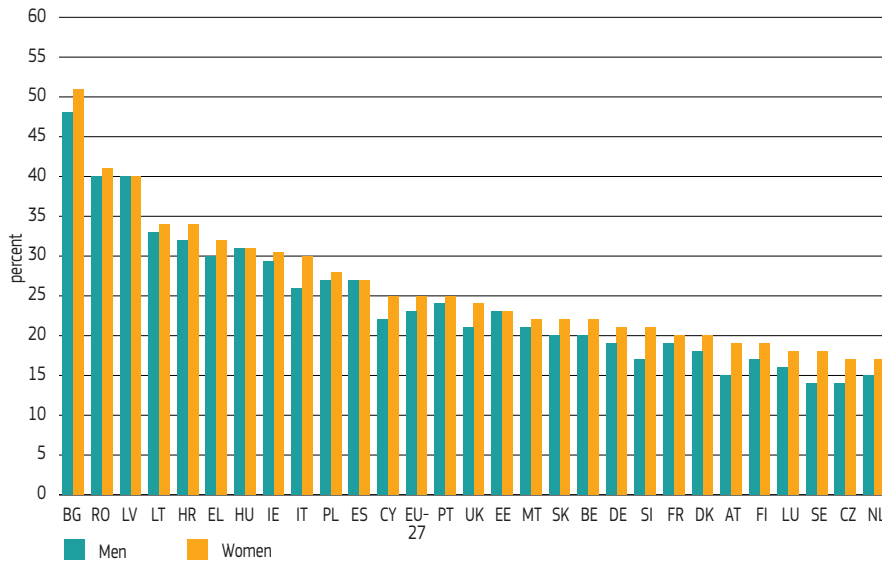
## Gender segregation in occupations and in economic sectors in 2007 and in 2012

	Gender segregation in occupations		Gender segregation in economic sectors	
	2007	2012	2007	2012
<b>EU-27</b>	<b>25.1</b>	<b>24.5</b>	<b>18.2</b>	<b>18.7</b>
AT	26.3	26.9	18.5	19.1
BE	25.2	26.0	18.1	19.7
BG	29.3	28.6	20.5	20.9
CY	29	28.7	20.1	19.4
CZ	28.5	28.4	19.4	21.0
DE	26.3	25.7	18.3	19.5
DK	25.4	24.9	18.1	19.5
EE	32.2	30.9	25.6	25.2
ES	27.3	25.7	20.8	19.4
FI	29.6	28.7	22.7	24.1
FR	26.3	25.9	18	18.9
GR	22.4	19.3	16	14.5
HU	28.7	28.2	19.8	20.6
IE	27.9	26.3	23	20.7
IT	23.6	24.7	17.7	19.7
LT	29.2	29.5	23.3	22.3
LU	27.2	23.8	18.9	17.1
LV	28.7	29.1	22.4	24.0
MT	23.1	24.3	15.8	16.3
NL	25.1	25.5	18.1	14.5
PL	25.8	26.7	19.4	21.1
PT	26.7	25.6	21.1	21.3
RO	22.8	22.8	16.3	17.4
SE	27	25.7	21.3	21.4
SI	26.4	25.8	17.5	19.9
SK	30.1	30.6	23	24.5
UK	25.1	24.1	18.4	19.0

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).

# Poverty

People at risk of poverty or social exclusion by sex in 2011: Proportion of persons who are at risk of poverty or severely materially deprived or living in households with very low work intensity<sup>68</sup>



Source: Eurostat, EU-SILC

68 Persons are only counted once even if they are present in several sub-indicators. At risk-of-poverty are persons with an equivalised disposable income below the risk-of-poverty threshold, which is set at 60% of the national median equivalised disposable income (after social transfers). Material deprivation covers indicators relating to economic strain and durables. Severely materially deprived persons have living conditions severely constrained by a lack of resources, they experience at least 4 out of 9 following deprivations items: cannot afford i) to pay rent or utility bills, ii) keep home adequately warm, iii) face unexpected expenses, iv) eat meat, fish or a protein equivalent every second day, v) a week holiday away from home, vi) a car, vii) a washing machine, viii) a colour TV, or ix) a telephone. People living in households with very low work intensity are those aged 0-59 living in households where the adults (aged 18-59) work less than 20% of their total work potential during the past year.

People at risk of poverty or social exclusion by sex in from 2007 to 2011

	Women					Men				
	2007	2008	2009	2010	2011	2007	2008	2009	2010	2011
<b>EU-27</b>	<b>25.9</b>	<b>25.0</b>	<b>24.4</b>	<b>24.6</b>	<b>25.2</b>	<b>22.9</b>	<b>22.1</b>	<b>21.8</b>	<b>22.4</b>	<b>23.0</b>
<b>BE</b>	23.1	22.4	21.8	21.7	21.5	19.9	19.1	18.5	20.0	20.4
<b>BG</b>	61.9	46.4	48.1	50.9	50.5	59.4	43.0	44.1	47.3	47.7
<b>CZ</b>	17.4	17.2	15.7	16.0	16.9	14.2	13.3	12.3	12.7	13.7
<b>DK</b>	17.7	17.0	18.2	19.0	19.5	15.9	15.7	17.0	17.7	18.2
<b>DE</b>	22.3	21.6	21.2	20.9	21.3	18.8	18.5	18.8	18.6	18.5
<b>EE</b>	24.2	24.3	25.5	22.0	22.9	19.4	18.9	21.1	21.5	23.2
<b>IE</b>	24.6	24.7	26.4	30.5		21.6	22.7	25.0	29.3	
<b>EL</b>	29.9	29.8	29.0	29.3	32.3	26.8	26.3	26.1	26.0	29.6
<b>ES</b>	24.6	24.2	24.4	26.1	27.3	21.7	21.6	22.3	24.9	26.6
<b>FR</b>	20.0	19.8	19.7	20.0	19.9	18.0	17.3	17.1	18.3	18.6
<b>IT</b>	28.1	27.2	26.4	26.3	29.9	23.8	23.2	22.8	22.6	26.4
<b>CY</b>	27.6	25.0	25.0	24.4	25.4	22.7	19.8	20.9	21.5	21.5
<b>LV</b>	37.7	36.2	38.7	38.5	40.4	34.1	31.0	35.9	37.6	39.8
<b>LT</b>	30.9	29.7	31.4	33.8	33.6	26.3	25.3	27.3	32.9	33.2
<b>LU</b>	16.9	16.7	19.6	17.7	18.0	15.0	14.2	16.0	16.5	15.6
<b>HU</b>	30.1	29.0	30.0	30.3	31.4	28.6	27.3	29.1	29.4	30.5
<b>MT</b>	20.6	21.0	21.4	21.2	22.2	18.3	18.2	19.0	19.4	20.6
<b>NL</b>	16.9	15.5	15.9	16.0	16.6	14.6	14.3	14.3	14.1	14.9
<b>AT</b>	18.9	20.3	18.9	18.4	18.5	14.5	16.8	15.0	14.7	15.2
<b>PL</b>	35.1	31.2	28.6	28.5	27.7	33.5	29.9	27.0	27.0	26.6
<b>PT</b>	26.0	26.8	25.8	25.8	25.1	24.0	25.0	24.0	24.8	23.8
<b>RO</b>	46.7	45.3	44.2	42.1	41.1	45.1	43.0	41.9	40.8	39.5
<b>SI</b>	19.2	20.3	19.1	20.1	21.1	15.0	16.6	15.1	16.5	17.4
<b>SK</b>	23.1	22.0	21.1	21.6	21.7	19.4	18.9	18.0	19.6	19.5
<b>FI</b>	19.0	18.9	17.9	17.7	18.5	15.8	15.9	15.8	16.0	17.3
<b>SE</b>	14.2	16.1	17.5	16.6	18.0	13.6	13.7	14.4	13.4	14.2
<b>UK</b>	24.1	24.7	22.8	24.2	24.1	21.1	21.7	21.1	22.1	21.4

Source: Eurostat, EU-SILC

## Decision-making

Change in the share of women on company boards (percentage points), 2010-2012

	2010	2012	Percentage point change in Women Board Members 2010-2012
RO	21.3	11.9	-9.4
SK	21.6	13.8	-7.8
HU	13.6	7.4	-6.2
SE	26.4	25.5	-0.9
PL	11.6	11.8	0.2
IE	8.4	8.7	0.2
BG	11.2	11.6	0.4
EE	7.0	7.8	0.7
MT	2.4	3.5	1.2
EL	6.2	7.9	1.7
PT	5.4	7.4	2.0
BE	10.5	12.9	2.5
FI	25.9	28.6	2.7
ES	9.5	12.3	2.8
DK	17.7	20.8	3.1
AT	8.7	11.9	3.2
CY	4.0	7.7	3.7
<b>EU-27</b>	<b>11.8</b>	<b>15.8</b>	<b>4.0</b>
CZ	12.2	16.4	4.2
LV	23.5	28.2	4.7
LT	13.1	17.8	4.7
DE	12.6	17.9	5.3
UK	13.3	18.8	5.4
LU	3.5	9.7	6.1
IT	4.5	11.0	6.5
NL	14.9	21.5	6.6
SI	9.8	18.7	8.9
FR	12.3	25.1	12.8

Source: European Commission, Database on Women and Men in Decision-Making

## Share of women in national governments (senior ministers), 2003, 2008, 2012

	2003	2008	2012
FR	21 %	34 %	49 %
CY	9 %	8 %	33 %
AT	27 %	36 %	43 %
DK	28 %	37 %	43 %
PL	6 %	25 %	20 %
SK	0 %	6 %	7 %
IT	9 %	18 %	16 %
NL	31 %	28 %	38 %
BG	19 %	26 %	24 %
ES	25 %	50 %	29 %
LV	25 %	21 %	29 %
MT	15 %	22 %	18 %
FI	44 %	60 %	47 %
BE	36 %	40 %	38 %
SE	52 %	45 %	54 %
CZ	12 %	11 %	13 %
EL	6 %	11 %	6 %
PT	17 %	12 %	17 %
EE	9 %	21 %	8 %
IE	14 %	20 %	13 %
LT	15 %	14 %	13 %
RO	21 %	0 %	19 %
HU	13 %	13 %	9 %
SI	14 %	17 %	8 %
UK	24 %	32 %	17 %
DE	46 %	38 %	38 %
LU	37 %	20 %	27 %

Source: European Commission, Database on Women and Men in Decision-Making



Percentage of women in national parliaments (single/lower houses), in regional assemblies and at local level politics in 2012

	National parliaments (women)	Regional assemblies (women)	Local level politics (women)
EU-27	26 %	32 %	32 %
BE	40 %	39 %	35 %
BG	23 %		25 %
CZ	22 %	19 %	26 %
DK	41 %	34 %	32 %
DE	33 %	32 %	26 %
EE	21 %		29 %
IE	15 %		17 %
EL	21 %	17 %	16 %
ES	39 %	42 %	35 %
FR	26 %	48 %	35 %
IT	21 %	13 %	25 %
CY	11 %		20 %
LV	23 %	23 %	36 %
LT	24 %		22 %
LU	23 %		21 %
HU	9 %	9 %	20 %
MT	9 %		22 %
NL	39 %	33 %	26 %
AT	28 %	33 %	
PL	24 %	25 %	24 %
PT	29 %	25 %	28 %
RO	12 %	15 %	
SI	38 %		22 %
SK	19 %	16 %	
FI	43 %	43 %	37 %
SE	44 %	47 %	43 %
UK	22 %	31 %	30 %

Source: European Commission, Database on Women and Men in Decision-Making



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.



## Country codes

Code	Name
BE	Belgium
BG	Bulgaria
CZ	Czech Republic
DK	Denmark
DE	Germany
EE	Estonia
IE	Ireland
EL	Greece
ES	Spain
FR	France
IT	Italy
CY	Cyprus
LV	Latvia
LT	Lithuania
LU	Luxembourg
HU	Hungary
MT	Malta
NL	Netherlands
AT	Austria
PL	Poland
PT	Portugal
RO	Romania
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden
UK	United Kingdom



**European Commission**

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The 2012 Report on the Application of the EU Charter of Fundamental Rights informs the public about 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.

The annual report is the basis for the necessary dialogue between all the EU institutions and Member States on the implementation of the Charter. It therefore forms part of the process of political dialogue and scrutiny to ensure that the Charter remains a reference point to integrate fundamental rights into all EU legal acts and when Member States apply EU law. It also presents how a fundamental rights culture is being developed in the EU by setting new legislation, where the EU has competence to act, and through the jurisprudence of the Court of Justice of the European Union. Given the key role to be played by Member States' courts in scrutinising respect for the Charter when Member States apply EU law, this report also provides an overview for the first time of the case law of national courts on the Charter.

In covering the full range of EU Charter provisions on a yearly basis, the annual report aims 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.

