ISSN 1977-9305

European Commission

Justice and Consumers

2016 report on the application of the EU Charter of Fundamental Rights

Europe Direct is a service to help you find answers to your questions about the European Union.

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

European Commission — Directorate-General for Justice and Consumers

More information on the European Union is available on the Internet (*http://europa.eu*).

Luxembourg: Publications Office of the European Union, 2017

Cover: © 'Statue of justice' © sebra / Fotolia.com

Print ISBN 978-92-79-67951-3 doi:10.2838/05258 ISSN 1977-4133 DS-AL-17-001-EN-C

PDF ISBN 978-92-79-67948-3 doi:10.2838/275891 ISSN 1977-9305 DS-AL-17-001-EN-N

In 2016 fundamental rights and the values on which the European Union is founded were put to the test. The consequences of unprecedented numbers of refugees arriving at its external borders, one of the worst economic crises since its creation, and a series of terrorist attacks on its territory have led citizens to question the ability of institutions to address these challenges and protect them. In this climate, nationalism, populism and intolerance find a fertile ground to prosper and to advocate exclusion and isolationism. Developments in the Member States showed that respect for the values and rights enshrined in the EU Charter for Fundamental Rights should not be taken for granted. Our responsibility to uphold these common values and principles, including respect for fundamental rights, has never been more important than it is today.

The EU Charter of Fundamental Rights plays a pivotal role in this respect. It is the benchmark against which all of the Union's policies, and their implementation by the Member States, must be assessed. The European Commission pursues with determination its efforts to mainstream fundamental rights and ensure that the Charter is respected in all areas of Union action. This seventh annual report outlines the initiatives taken in 2016 by the EU to give substance to Charter rights for the benefit of people in the EU. Setting out how European institutions and Member States applied the Charter in 2016, it is meant to serve as a basis for a dialogue on the implementation of the Charter. The report also presents the conclusions of the second Annual Colloquium on Fundamental Rights, devoted in 2016 to the theme «Media pluralism and democracy», and announces the theme for the 2017 Colloquium, which will be focused on the promotion of women's rights and gender equality. The report thus allows us to take stock of progress accomplished whilst showing what remains to be done so that the rights enshrined in the Charter can become a reality for everyone across Europe.

Frans Timmermans

First Vice-President of the European Commission

Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights

Vera Jourová

Commissioner for Justice, Consumers and Gender Equality

CONTENTS

2016 Report on the Application of the EU Charter of Fundamental Rights (*) 5

Staff working document on the application of the EU Charter of Fundamental Rights in 2016 (**) 19

- Introduction 20
- Dignity 32
- Freedoms 46
- Equality 86
- Solidarity 124
- Citizens' rights 148
- Justice 160
- General provisions governing the interpretation and application of the Charter 174

Appendix I 178

Appendix II 199

Charter of Fundamental Rights of the European Union 205

(*) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2016 report on the application of the EU Charter of Fundamental rights, COM (2017) 239 final.

(**) Commission staff working document - 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 - 2016 report on the application of the EU Charter of Fundamental rights, COM (2017) 162 final.

2016 Report on the **Application** of the **EU Charter** of **Fundamental Rights**

1. Introduction

Fundamental rights and the values on which the European Union is founded were put to the test in 2016. Developments in the Member States showed that respect for the values and rights enshrined in the EU Charter for Fundamental Rights should not be taken for granted.

The EU faced multiple challenges: the consequences of an unprecedented arrival of refugees at its external borders, economic imbalances and a series of terrorist attacks. People hit by multiple crises are not confident that their children will be better off than themselves. They question whether institutions are still able to protect them from the challenges and threats of migration, financial turmoil and terrorism. In this context, nationalism, populism and intolerance find a fertile ground to prosper and to advocate exclusion and isolationism as the only way to overcome the current challenges.

In a context of rising intolerance, it is also important that the EU strongly reaffirms and promotes equal rights for all. The third Annual Colloquium on Fundamental Rights in 2017 will be devoted to the promotion of women's rights and gender equality. This will be an opportunity to address the economic and political empowerment of women, women's rights in public and private spheres of life and the fight against violence against women in all its forms, the latter being also the topic of focused actions throughout the year.

The overall landscape impacts on fundamental rights in the EU. The EU must make a determined effort to defend its common values of democracy, fundamental rights and the rule of law against the forces that seek to polarise our societies and jeopardise our model of openness and solidarity. European and national institutions must regain people's trust by showing that they are able to guarantee freedom, security and prosperity. Success in protecting and promoting people's fundamental rights and the EU's common values will be central in this endeavour and the EU Institutions should lead by example. The Charter is an invaluable tool in this respect and should be used to its full potential.

2. Application of the Charter of the EU

2.1. Promoting and protecting fundamental rights

Delivering fundamental rights for all in the European Union

In 2016, the EU took several initiatives to give substance to Charter rights for the benefit of people in the EU. A number of those aimed at ensuring fairness and social justice. The Commission engaged, for instance, in a public consultation for the development of a European **'pillar of**

social rights' ([1]). Drawing on the social rights under the Charter, the pillar will support well-functioning and fair labour markets and welfare systems. It will address issues of key importance for individuals such as equal opportunities and access to the labour market, fair working conditions and adequate and sustainable social protection.

Also, a European platform was set up to enhance cooperation in tackling undeclared work ([2]) and thus help ensure the respect of the **right to fair and just working conditions** (Article 31 of the Charter).

Steps were taken in 2016 to promote the **right to family life** (Article 7 of the Charter):

- The Commission proposed new rules under the Brussels IIa Regulation which, once adopted, will improve the protection of children in cross-border parental responsibility disputes related to custody ([3]);

- two new regulations were adopted to help international couples, whether in a marriage or a registered partnership, to manage their property on a daily basis and to divide it in the event of divorce or one of them dying ([4]).

The right to a fair trial (Articles 47 and 48 of the Charter) was given concrete effect through the adoption of a set of directives: on the presumption of innocence and the right to be present at the trial ([5]); on legal aid ([6]) and procedural safeguards for children ([7]). The latter, and the new Brussels IIa rules will also have a positive impact on the **rights of the child** (Article 24 of the Charter).

([1]) The results of the consultation, which took place between March and December 2016 are currently being reviewed and will feed into the Commission proposal on the European Pillar of Social Rights. Further information available at: *https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/towards-european-pillar-social-rights_en*.

([2]) Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work, OJ L 65, 11.3.2016, p. 12–20.

([3]) Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), COM/2016/0411 final, 30.06.2016.

([4]) Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, OJ L 183, 8.7.2016, p. 1–29; Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, OJ L 183, 8.7.2016, p. 30–56.

([5]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, p. 1–11.

([6]) Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, p. 1–8.

([7]) Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016, p. 1–20.

The Commission launched an online dispute resolution platform ([8]), which helps consumers resolve their disputes with EU traders about online purchases out-of-court, cheaply, simply, quickly and in any EU official language, thereby strengthening **consumer protection** (Article 38 of the Charter).

Protecting peoples' personal data in the EU and elsewhere

A further key area of focus in 2016 was **the protection of personal data** (Article 8 of the Charter). The adoption of the General Data Protection Regulation (GDPR) ([9]) and the Data Protection Directive for Police and Criminal Justice Authorities ([10]) was a big step forward in this respect.

The GDPR strengthens and modernises the existing rules: people will have easier access to their own personal data, a right to data portability, a clarified "right to be forgotten" and certain rights applicable in case of personal data breach. The GDPR also obliges companies and organisations to swiftly notify the national supervisory authority about serious data breaches, so that users can take appropriate measures. The GDPR, furthermore, as a single EU legal instrument establishes one single set of rules so that individuals will have the same protection, no matter where they are in the EU.

Directive (EU) 2016/680 aims to establish efficient information exchange between national enforcement authorities and ensure that the data of victims, witnesses, and suspects of crimes are duly protected in the context of a criminal investigation or a law enforcement action. All law enforcement processing in the EU will have to comply with the principles of necessity, proportionality and legality, and offer appropriate safeguards for the individuals.

Along this reinforced protection within the EU, the Commission also ensured adequate data protection outside the EU. In July 2016, it adopted the EU-US **Privacy Shield** adequacy decision, which ensures the free flow of personal data for commercial purposes between the EU and U.S. companies certified under the Privacy Shield, while securing the fundamental right to the protection of the data.

([8]) Available at: *https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage* .

([9]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88.

([10]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131.

Another milestone was the conclusion, in December, of the **Umbrella Agreement** ([11]) between the EU and the US, which provides for a high level of data protection for any transfer of personal data between the EU and the United States in the context of police or judicial cooperation in criminal matters.

Protecting the rights of the most vulnerable

In troubled times, it is often the most vulnerable that are hit the hardest. Addressing the migration situation, ensuring in particular the protection of the **right to asylum** (Article 18 of the Charter) and the respect of the **principle of non-refoulement** (Article 19 of the Charter) was another major area of focus for the EU in 2016. Following its Communication on a **reform of the Common European Asylum System (CEAS)** ([12]) in April 2016, the Commission proposed amendments to the existing rules aiming at:

(i) establishing a fairer and more sustainable system for allocating asylum applicants among Member States (proposal for recast Dublin Regulation) ([13]) and ensuring its effective implementation (proposal for recast Eurodac Regulation) ([14]);

(ii) greater harmonisation of asylum procedures and international protection standards to ensure high levels of protection and reception and adequate safeguards for asylum seekers throughout the EU and to reduce irregular secondary movements (proposal for an Asylum Procedures Regulation ([15]), a Qualification Regulation ([16]) and a recast Reception Conditions Directive ([17]));

(iii) facilitating a common approach to safe and legal arrival in the EU for people in need of international protection, in solidarity with countries hosting a large number of displaced persons (proposal for a regulation establishing the Union Resettlement Framework ([18]));

(iv) converting the European Asylum Support Office into a fully-fledged EU agency with an enhanced mandate to address any structural weaknesses of the EU's asylum system (proposal for a regulation on the European Union Agency for Asylum ([19])).

([11]) Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences; http://ec.europa.eu/justice/data-protection/files/dp-umbrella-agreement_en.pdf.

([12]) Communication from the Commission to the European Parliament and the Council towards a reform of the Common European Asylum System and enhancing legal avenues to Europe, COM(2016) 197 final, 6.4.2016.

([13]) COM(2016) 270.

([14]) *COM(2016) 272.*

([15]) *COM(2016) 467.*

([16]) *COM(2016) 466.*

([17]) COM(2016) 465.

([18]) COM(2016) 468.

([19]) COM(2016) 271.

The promotion and protection of the **rights of the child** (Article 24 of the Charter) were at the heart of this legislative action. Particular attention was given to unaccompanied children in key areas such as assessing the best interests of the child, the child's right to be heard in asylum procedures and ensuring adequate reception conditions and effective guardianship. ([20]) The Commission's comprehensive approach to protect all children in migration was the focus of the 10th Annual European Forum on the rights of the child in November ([21]). In December 2016, the Commission proposed that the Schengen Information System be reinforced ([22]), which will improve the ability of law enforcement officials and border guards to find missing children, including in the context of migration.

Promoting open and tolerant societies, free from racism

The current climate has led to an increase of **racism and intolerance against ethnic, religious and other minorities** across Europe. ([23]) This affects many fundamental rights under the Charter, including the right to non-discrimination (Article 21), the right to dignity (Article 1), the right to integrity of the person (Article 3) and the right to life (Article 2)

The Commission provided a platform for Member States, civil society, EU agencies and international organisations ([24]) to work on improved responses to hate crime and hate speech. The focus was put on

- recording and collecting data on hate-crime incidents in all Member States;
- strengthening support to victims; and
- countering illegal hate speech online.

([20]) An overview of the amended and proposed *child protection provisions in the legislative proposals cited above can be found at: http://ec.europa.eu/justice/fundamental-rights/files/rights_child/ceas_provision_on_children_table_updated.pdf* .

([21]) *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456. This work was followed up with the adoption of the Communication on "The protection of children in migration" on 12 April 2017 (COM(2017) 211 final).*

([22]) *http://europa.eu/rapid/press-release_IP-16-4402_en.htm* .

([23]) A 2013 survey carried out by the FRA revealed that in countries like Hungary, France and Belgium up to 48 % of respondents considered emigrating because they did no longer feel safe as Jews http://fra.europa.eu/en/publication/2013/discrimination-and-hate-crime-against-jews-eu-member-states-experiences-and. Mosques began to receive police protection in several Member States while a steep increase in anti-Muslim incidents was reported by civil society organisations in 2014 and 2015 in countries such as France, UK, Sweden and Belgium, including violent attacks on Muslim women wearing headscarves. Assaults and hate speech incidents targeting asylum seekers and migrants are on the rise, as are attacks and arson attempts against refugee shelters. Following the UK referendum in June 2016, a wave of hatred targeting individuals and groups on grounds of their national or ethnic origin was observed, while civil society organisations report increasing hostility against Roma and people of African descent in a number of Member States. In 2017, FRA will publish its EU MIDIS2 Survey which will allow comparing trends in the experiences of various minority groups.

([24]) EU High Level Group on Combating Racism, Xenophobia and other forms of intolerance; see: *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=51025.* .

Along this policy support, the Commission also continued bilateral dialogues with Member States on major gaps in their transposition of EU law ([25]). A number amended their criminal laws as a result.

To contain the spread of hate speech online and empower the new media actors, the Commission reached an agreement with Facebook, Twitter, YouTube and Microsoft on 31 May on a **code of conduct on countering illegal hate speech online** ([26]). The companies undertook, *inter alia*, to:

- review in less than 24 hours the majority of valid notifications received from citizens and civil society for removal of illegal content publicly inciting violence and hatred; and
- assess them also in the light of national criminal laws transposing EU law.

The Commission is closely monitoring progress in cooperation with civil society, Member States and IT companies and presented initial results in December. ([27])

Promoting media literacy, critical thinking and balanced narratives at grassroots level are further key actions the EU is supporting to counter intolerance off and online, alongside education (see section 4).

2.2. Ensuring the respect of fundamental rights

Union institutions, bodies, offices and agencies must comply with the Charter in all their actions; any case of non-compliance can be brought before the Court of Justice of the European Union (CJEU). The Commission puts a lot of effort into mainstreaming fundamental rights, i.e. ensuring that they are fully respected in all its legislative and policy proposals.

The new **Directive on combating terrorism**, on which the European Parliament and the Council reached an agreement in December 2016, ([28]) is a good example of this mainstreaming. It includes an explicit – first for its kind – fundamental rights clause whilst several fundamental rights aspects were taken into account in the drafting and negotiation process, including the necessity and proportionality of interferences with the rights to freedom of movement, data protection and freedom of expression (Articles 45, 8 and 11 of the Charter). Due account was also taken of the principles of legality and proportionality of criminal offences and penalties (Article

([25]) Council Framework Decision *2008/913/JHA* of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

([26]) Available at: *http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf* .

([27]) The first assessment of the new code of conduct is available at: *http://ec.europa.eu/information_society/newsroom/image/document/2016-50/factsheet-code-conduct-8_40573.pdf.*

([28]) Directive (EU) 2017/541 of 15 March 2017.

49 of the Charter) and the rights of victims, including the right to an effective remedy (Article 47 of the Charter). The *ex post* assessment of the Directive will also cover its impact on fundamental rights and freedoms.

A proposal to update the **EU Export Control Regulation** for sensitive (dual-use) items was adopted by the Commission in 2016 ([29]). The regulation provides a robust framework for controlling exports of cyber-surveillance technology where there is a risk that it will be misused in order to commit serious violations of human rights or of international humanitarian law. Moreover, on the basis of a Commission proposal, EU rules banning exports and imports of goods that could be used for capital punishment or torture in other countries were strengthened through the adoption in November of an amendment to the **Anti-Torture Regulation** ([30]).

Mainstreaming extends to other areas such as the use of EU funding. In 2016, the Commission adopted guidance on ensuring the respect for the Charter when Member States are implementing **the European Structural and Investment Funds** ([31]).

As regards **migration**, in the context of the joint inquiry by the European Ombudsman concerning a human rights impact assessment of the EU-Turkey Statement of 18 March 2016, the Commission stated that it would continue to closely monitor the implementation of the Statement, including as regards respect for human rights, both in the EU and in Turkey. ([32])

The EU's accession to the European Convention on Human Rights remains a priority for the Commission, not least in view of its legal obligation under the Treaty. Accession will reinforce our common values, improve effectiveness of EU law and enhance the coherence of fundamental rights protection in the EU. Yet, the CJEU's December 2014 opinion (declaring the 2013 draft Accession Agreement incompatible with the Treaties) raised a number of significant and complex questions which require re-negotiating the draft on a series of points. The Commission, in its capacity of EU negotiator, is exploring solutions to address the various issues raised by the Court in the relevant Council working party.

([29]) Proposal for a Regulation of the European Parliament and of the Council of 28 September 2016 setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items, COM(2016) 616 final.

([30]) Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) N° 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, OJ L 338, 13.12.2016, p.1.

([31]) OJ C 269 of 23.7.2016, p. 1.

([32]) In a judgment (28 February 2017) in Cases T-192/16, T-193/16 and T-257/16, the General Court held that 'the EU-Turkey Statement cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union' (para. 71).

2.3. Raising awareness of the Charter

In order to enjoy their fundamental rights to the full, citizens need to know what their fundamental rights are. They also need to know who to turn to when their rights are being violated. In October 2016, the Commission launched **the fundamental rights wizard** ([33]), an online tool that helps people in this respect.

At a conference organised by the Dutch Presidency in February 2016 on "The national policy application of the EU Charter of Fundamental Rights", a number of best practices and tools were put forward to help national authorities assess when and how to apply the Charter when developing national policies and legislation.

Furthermore, the Commission uses EU funding to support projects and networks analysing national case-law referring to the Charter and providing legal professionals with training on its application.

As a follow-up to the Commission's 2015 *Charter Report*, the Council adopted conclusions on the Charter's application in June ([34]) and the European Parliament adopted a resolution on the situation of fundamental rights in the European Union in December ([35]). Discussions in the Council and the European Parliament contributed to further awareness of fundamental rights development and challenges in the EU.

2.4. Court of Justice scrutiny of EU institutions

In joint cases ***Ledra Advertising*** and ***Mallis and Malli*** ([36]) the Court dismissed, on appeal, actions for annulment and compensation lodged by citizens and businesses against the value reduction of their deposits in two banks in Cyprus. This had been agreed under the 2013 memorandum of understanding between the Cypriot authorities and the European Stability Mechanism. The Court stressed that the Charter applies to the EU institutions even when they act outside the EU legal framework. It pointed out that the Commission must ensure that a memorandum of understanding is consistent with the fundamental rights under the Charter. The restriction on the right to property (Article 17 of the Charter) was justified in view of the objective pursued, i.e. ensuring the stability of the euro-area banking system as a whole, and the imminent risk of financial loss to which depositors would have been exposed if the two banks had

([33]) This tool, built on the "Clarity" tool developed by the EU Agency for Fundamental Rights, is now part of the e-justice portal,https://e-justice.europa.eu/content_where_to_turn_for_help-459-en.do.

([34]) Available at: *http://data.consilium.europa.eu/doc/document/ST-10005-2016-INIT/en/pdf.*

([35]) European Parliament resolution of 13 December 2016 on the situation of fundamental rights in the European Union in 2015 (2016/2009(INI)).

([36]) Cases C-8-10/15P and C-105-109/15P.

failed. It thus concluded that the Commission could not be considered as having contributed to a breach of the Charter.

3. Charter application in and by Member States

3.1. Fundamental rights and rule of law developments

The Charter applies to Member States only when they are implementing EU law. Infringement procedures against Member States regarding breaches of the Charter can therefore only be triggered when a sufficient link to EU law is established.

However, even when acting outside the implementation of the EU law, Member States are obliged to respect the values on which the Union is founded. In particular, the rule of law is a precondition for the protection of fundamental rights. In 2014, the Commission introduced a Framework aimed at addressing situations of emerging systemic threats to the rule of law which cannot be effectively tackled by safeguards at national level or existing instruments (in particular infringement procedures) at EU level ([37]).

Events in Poland concerning in particular the Constitutional Tribunal led the Commission to issue a Recommendation in July 2016 ([38]) and a complementary Recommendation in December 2016 ([39]) under this Framework. The fact that the legitimacy, integrity and proper functioning of the Constitutional Tribunal are adversely affected prevents an effective constitutional review. Addressing this situation is a matter of common interest. The very functioning of the Union is endangered if the rule of law is no longer respected in one of its Member States.

In October 2016, the European Parliament adopted a Resolution on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights ([40]). The Commission welcomed the overall objective of the resolution, which is to ensure that the EU common values are respected and enforced ([41]). The Commission considers however that the best possible use should be made of existing instruments, while avoiding duplication. A range of existing tools and actors

([37]) Communication "A new EU Framework to Strengthen the Rule of Law", COM(2014) 158 final, 19.3.2014. .

([38]) Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland; C/2016/570; OJ L 217, 12.8.2016, p. 53–68.

([39]) Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Commission Recommendation (EU) 2016/1374; C/2016/ 8950; OJ L 22, 27.1.2017, p. 65–81.

([40]) European Parliament Resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights.

([41]) European Parliament plenary debate of 25 October 2016.

already provide a set of complementary and effective means to promote and uphold common values. The Commission will continue to value and build upon these means. One of the Parliament's underlying ideas was to make the variety of existing data and reports on the situation of fundamental rights in the Member States more accessible and visible, also at national level. The Commission welcomed this, as numerous other actors -including the Council of Europe and its Venice Commission, the EU Agency for Fundamental Rights (FRA) and NGOs - collect information on the rule of law, democracy and fundamental rights in the Member States.

3.2. Court of Justice guidance to Member States

The CJEU continued (under the system of referrals for preliminary rulings) to give guidance to national judges on the Charter's applicability and interpretation.

In joint cases ***Tele2 Sverige AB*** ([42]) and ***Tom Watson e.a*** ([43]), the Court examined laws in two Member States that required general and indiscriminate retention of traffic and location data of all subscribers and registered users relating to all means of electronic communication. It found that these laws restricted the fundamental rights to private life and the protection of personal data (Articles 7 and 8 of the Charter). Given their broad range and limited safeguards, none of those restrictions were considered justified, even where the objective was to fight serious crime. However, such an objective may justify targeted retention of traffic and location data, provided that it is limited to what is strictly necessary in respect to the categories of data to be retained, the means of communication affected, the persons concerned and the retention period.

In ***GS Media BV*** ([44]) the Court ruled on the **posting of hyperlinks** in the context of the fundamental right to freedom of expression (Article 11 of the Charter). A media company had posted on its website a hyperlink directing viewers to websites where photos of a celebrity taken by *Playboy* magazine were made available. As the copyright holder had not authorised the publication of the photos on these websites, the magazine's editor claimed that the posting infringed copyrights. The media company continued to make available the hyperlinks or similar ones, where some of the former ones became unavailable. In the light of the applicable EU copyright Directive ([45]) the Court ruled that any communication to the public of any work had to be authorised by the copyright holder. It held that the distribution, without the copyright owner's authorisation, of hyperlinks to works on the websites in question did constitute "communication to the public". It conceded however that, in individual cases, it could be difficult for the person posting the link to assess whether there was an authorisation. In this context, a fair balance had to be struck between the copyright holder's right and the right to freedom of expression of the person

([42]) C-203/15.

([43]) C-698/15.

([44]) C-160/15.

([45]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, p. 10–19.

posting the link. However, where the latter was or should have been aware of the copyright infringements, as in the case at hand, its actions constituted 'communication to the public' without consent of the copyright holder.

The judgment in the joint cases ***Aranyosi*** and ***Caldararu*** ([46]) concerned the Member States' obligation to respect fundamental rights under the Charter, in particular the **prohibition of torture and inhuman or degrading treatment or punishment**, when executing a **European Arrest Warrant** (EAW). The Court ruled that, under Article 4 (which enshrines an absolute right), if the executing authorities have information pointing at a real risk of inhumane or degrading treatment because of the detention conditions in the issuing state, they must evaluate the risk with respect to the person in question when deciding whether to execute the EAW. Where the existence of risk is established in relation to that person, the execution of the EAW must be reported and may be abandoned if within a reasonable time it is still not possible to discount it. When assessing the risk, the authority responsible for the execution shall take due account of the person's fundamental **right to liberty** and the principle of **presumption of innocence** (Articles 6 and 48 of the Charter).

3.3. National case law quoting the Charter

National judges continue to play a key role in upholding fundamental rights and the rule of law. The EU Agency for Fundamental Rights ([47]) found that national courts continued referring to the Charter for guidance and inspiration in 2016, even in a substantial number of cases falling outside the scope of EU law.

The **rights of the child** (Article 24 of the Charter) were particularly central. A case before a UK tribunal ([48]) concerned a Nigerian national who had resided in the UK for 25 years. His daughters (aged 13 and 11) were British citizens. He appealed against a deportation order made on grounds of public policy. The tribunal reversed the decision of the first instance court, considering that it had failed to acknowledge the existence of the children's right to maintain on a regular basis a personal relationship and direct contact with both parents, unless that is contrary to their interests (Article 24). This Charter provision was interpreted as a 'self-standing right' in the context of immigration law.

In another case, a Swedish court used Article 24 of the Charter as the only legal source to interpret national criminal law in a child-friendly manner ([49]). The standard sentence for persons assisting any foreigner's entry into Sweden in return for payment amounts to three to four months

([46]) C-404/15, C-659/15.

([47]) FRA 2016 Annual Report, to be published in May 2017.

([48]) Upper Tribunal (Immigration and Asylum Chamber) *Adebayo Abdul v. Secretary of State for the Home Department*, [2016] UKUT 106 (IAC).

([49]) *Skåne and Blekinge*, Court of Appeal, case B 7426-15 decision of 5 December 2016.

in prison. However, in this case, the court acknowledged that the person concerned was motivated by the desire to help children. It imposed a solely conditional sentence, coupled with community service, in the light of Article 24 of the Charter and the obligation of state authorities to consider the child's best interest.

4. Focus section: 2016 Annual Colloquium on Fundamental rights "Media pluralism and democracy"

The Annual Colloquium on Fundamental Rights is a unique space for dialogue which fosters mutual cooperation and political engagement for the promotion and protection of fundamental rights in the EU. It is a chance to identify and deliver concrete policy actions on topical fundamental rights issues.

The second Annual Colloquium (17-18 November 2016) explored, from a fundamental rights perspective, the multiple links between a free and pluralistic media and democracy ([50]). National and EU policy makers, international and civil society organisations, editors-in-chief, journalists, national regulators, representatives of different journalists' and media associations and of IT companies, academics, judges and other legal practitioners came up with suggestions for key actions for all involved which were reflected in the Colloquium conclusions published by the Commission shortly after the event. ([51])

One topic was the protection of media freedom and independence from political and financial pressure. Participants underlined the importance of the independence of media regulators and called for swift adoption of the Commission's legislative proposal amending the Audiovisual Media Services Directive ([52]).

Another area for discussion was empowering journalists and protecting them from pressure, threats, physical violence and hate speech. Participants underlined the importance of combating the impunity for crimes and expressions of hatred against journalists, in particular women. Follow-up action includes EU funding for projects on media pluralism, protecting journalists and combating hate speech on line. In November 2016, the Commission launched an EU-wide

([50]) *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31198.*

([51]) *http://ec.europa.eu/information_society/newsroom/image/document/2016-50/2016-fundamental-colloquium-conclusions_40602.pdf.*

([52]) Proposal for a Directive of the European Parliament and the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM/2016/0287 final, 25.5.2016.

campaign and year of focused action to combat and prevent violence against women,[53] including those in the media.

Participants also looked at challenges and opportunities arising in the converged media environment. The role of ethical journalism and media literacy was discussed, as was the financial sustainability of quality press and investigative journalism. The impact that the use of algorithms or the dissemination of fake news can have on media pluralism and on an informed democratic debate was also covered. Follow up action includes funding for media literacy, supporting the identification of ethical good practices to promote quality information and the launch of a Commission impact assessment and a public consultation[54] on the protection of whistleblowers.

5. Conclusion

Recent developments in the EU and elsewhere pose serious threats to fundamental rights. The Commission remains vigilant and committed to a high level of protection of fundamental rights in the EU. It will step up its action to ensure that all EU legislative proposals and actions are fully compatible with the Charter. It intends to guarantee that all bodies bound by the Charter will continue to respect it.

The importance of the system of checks and balances in democratic societies, in particular the key role of supreme courts and constitutional courts in upholding the EU's common values cannot be overstated; this role needs to be supported, in full respect of the independence of the judiciary. External independent oversight (including under the European Convention on Human Rights) is essential in democratic societies. The key role of civil society organisations in renewing engagement for democracy, rule of law and fundamental rights should be cherished and preserved.

(53) *http://europa.eu/rapid/press-release_MEMO-16-3946_en.htm.*

(54) *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54254* .

Staff working document on the **application** of the **EU Charter** of **Fundamental Rights** in 2016

Introduction

After the entry into force of the **EU Charter of Fundamental Rights** ([1]) in December 2009, the European Commission adopted a **strategy on the effective implementation of the Charter**, ([2]) which sets as an objective that the EU should be beyond reproach in upholding fundamental rights, in particular when it legislates. The Commission also committed itself to preparing annual reports to inform citizens and measure progress on the implementation of the Charter. These are intended to serve as a factual basis for ongoing informed dialogue between all EU institutions and Member States.

This report, for 2016, informs the public about 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 Commission's reports aim to track where progress is being made, where further efforts are still necessary and where new concerns are arising.

The report contains an account of action taken by the EU institutions and analysis of letters and petitions from the general public and questions from the European Parliament. In addition, it covers key developments as regards the jurisprudence of the Court of Justice of the European Union (CJEU), and provides information on the case-law of national courts on the Charter, based on an analysis carried out by the EU Agency for Fundamental Rights (FRA).

Protection of fundamental rights in the EU

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

The Charter applies to all action taken by the EU institutions (including the European Parliament and the Council), which must respect the Charter, in particular throughout the legislative process.

The Charter applies to Member States only when they implement EU law. Hence it does not replace national fundamental rights systems, but complements them. 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 where:

([1]) *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF.*

([2]) *http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf.*

- national legislation transposes an EU directive;
- a public authority applies EU law; or
- a national court applies or interprets EU law.

If a national authority (administration or court) violates fundamental rights set out in the Charter when implementing EU law, the Commission can start an infringement procedure against the Member State in question and may take the matter to the **CJEU**. The Commission is not a judicial body or a court of appeal against the decisions of national courts. Nor does it, as a matter of principle, examine the merits of an individual case, unless this is relevant to its task of ensuring that the Member States apply EU law correctly. In particular, if it detects a wider, e.g. structural, problem, it can contact the national authorities to have it solved, and it may open an infringement procedure and ultimately take a Member State to the CJEU. The objective of these infringement procedures 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.

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

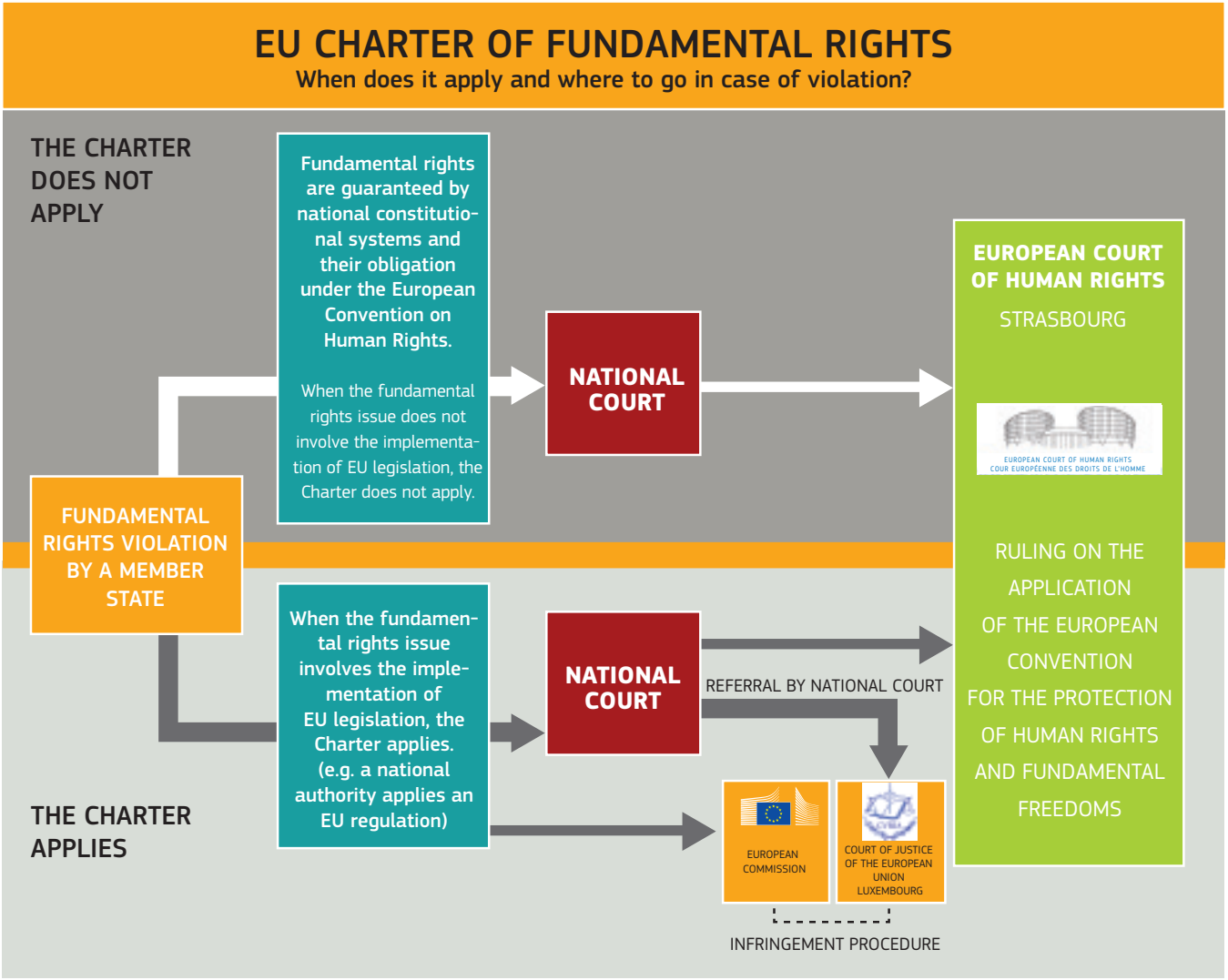
Matters outside the scope of EU law

The Commission cannot pursue complaints which concern matters outside the scope of EU law. This does not necessarily mean that fundamental rights have not been violated. 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 upheld by national including in many Member States, constitutional courts. Accordingly, complaints in this context need to be addressed at the national level.

Therefore, where the Charter is not applicable in certain situations within a Member State, individuals seeking to respond to a violation by a Member State of a right guaranteed by the **European Convention on Human Rights (ECHR)** may:

- have recourse to **national remedies**; and (after having exhausted them)
- bring an action before the European Court of Human Rights (ECtHR) in Strasbourg for a violation of a right guaranteed by the **European Convention on Human Rights (ECHR)**.

All Member States are bound by the commitments they have made under the ECHR, independently of their obligations under EU law. The ECtHR has designed an admissibility checklist to



help potential applicants work out for themselves whether there may be obstacles to it examining their complaints. ([3])

The interpretation of the Charter rights which correspond to rights guaranteed by the ECHR must correspond to the interpretation of the latter by the ECtHR.

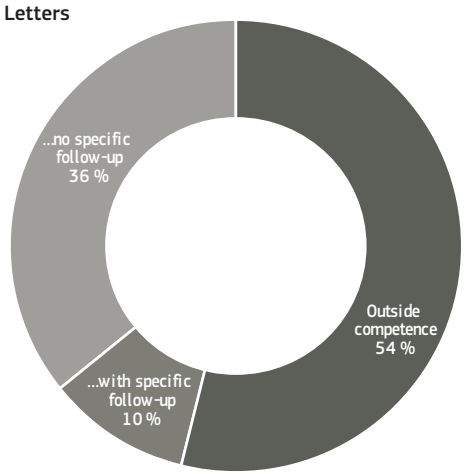
([3]) *http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/.*

EU accession to the European Convention of Human Rights

The Treaty of Lisbon imposed an obligation on the EU to accede to the ECHR. EU **accession to the Convention** remains a priority for the Commission,. It will improve the effectiveness of EU law and enhance the coherence of fundamental rights protection in Europe. However, the CJEU's opinion of December 2014, by which the Court declared the 2013 draft Accession Agreement incompatible with the Treaties, raised a number of significant and complex questions. As a result, the draft Accession Agreement will have to be re-negotiated on a series of points. In its capacity as EU negotiator, the Commission continues to consult with the relevant Council working party on solutions to address the various objections raised by the Court. This work is making good progress.

Overview of letters and questions to the Commission on fundamental rights

In 2016, the Commission received 3 347 letters from the general public and 809 questions from the European Parliament on fundamental rights issues. Of the 751 petitions it received from the European Parliament, 118 concerned fundamental rights. ([4])



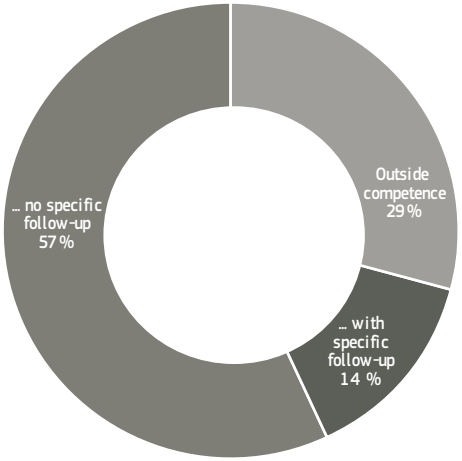
Source: European Commission

Among the letters from the general public, 1 543 concerned issues within EU competence.

([4]) See also section on Article 44 below.

In a number of cases, the Commission asked the Member States concerned for information or explained the applicable EU rules to the complainant. In other cases, the complaints should have been addressed to the national authorities or the ECtHR. Where possible, complainants were redirected to other bodies (such as national data protection authorities) for more information.

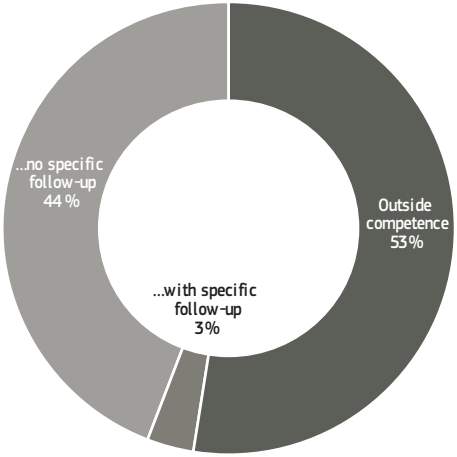
Questions



Source: European Commission

Among the questions from the European Parliament, 571 concerned issues within EU competence.

Petitions



Source: European Commission

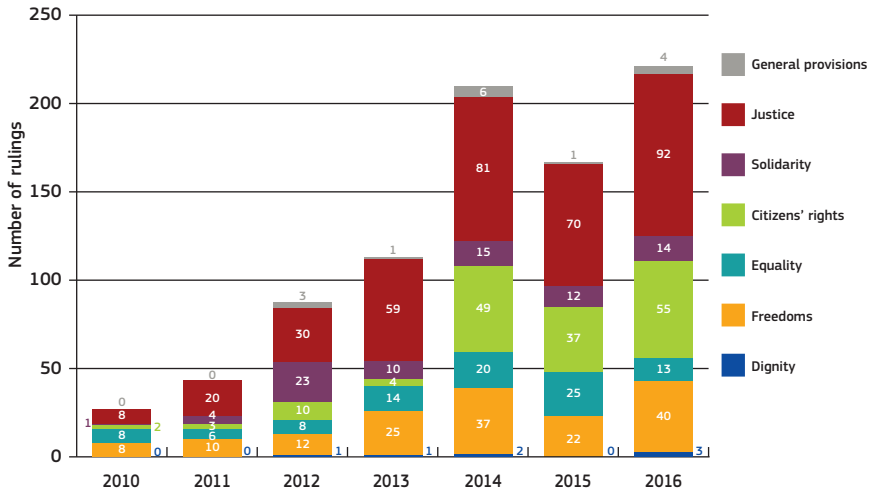
Among the 118 petitions relating to fundamental rights, 57 concerned issues within EU competence.

In a number of cases, the Commission contacted the Member States to obtain clarification on alleged violations. Its replies explained or clarified the relevant policies and ongoing initiatives.

Overview of CJEU (Court of Justice, General Court and Civil Service Tribunal) decisions referring to the Charter

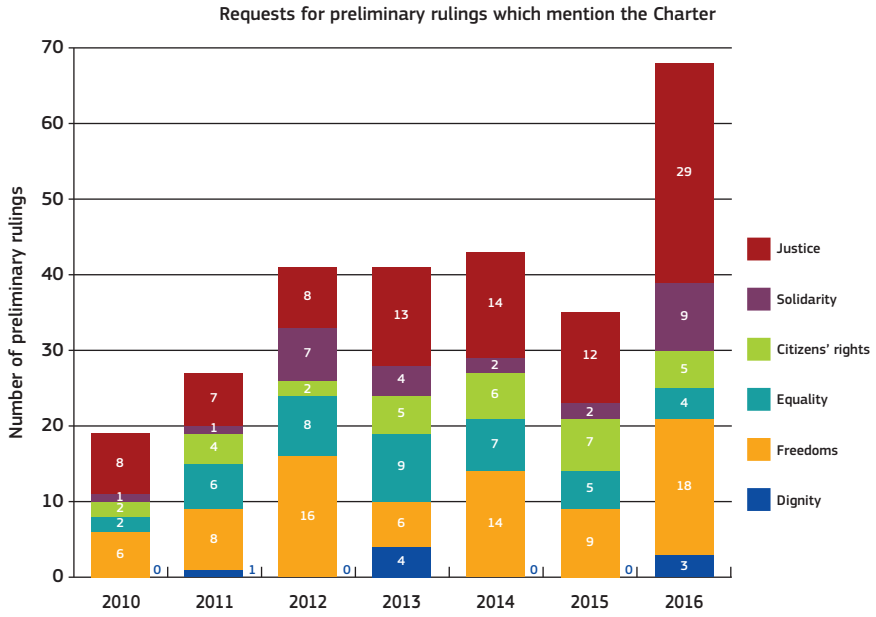
The EU courts have increasingly referred to the Charter in their decisions. The number of decisions quoting the Charter in their reasoning rose from 43 in 2011 to 87 in 2012 and then to 113 in 2013 and 210 in 2014. After a decrease to 167 in 2015, **it rose again to 221 in 2016.** Overall this reflects a general increase of decisions quoting the Charter (see Appendix I for an overview of all relevant rulings).

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



Source: European Commission

When addressing questions to the CJEU (requests for preliminary rulings), national courts often refer to the Charter. Of those requests submitted by judges in 2016, **60 contained a reference to the Charter**, as compared with 36 in 2015 (See Appendix II for an overview).

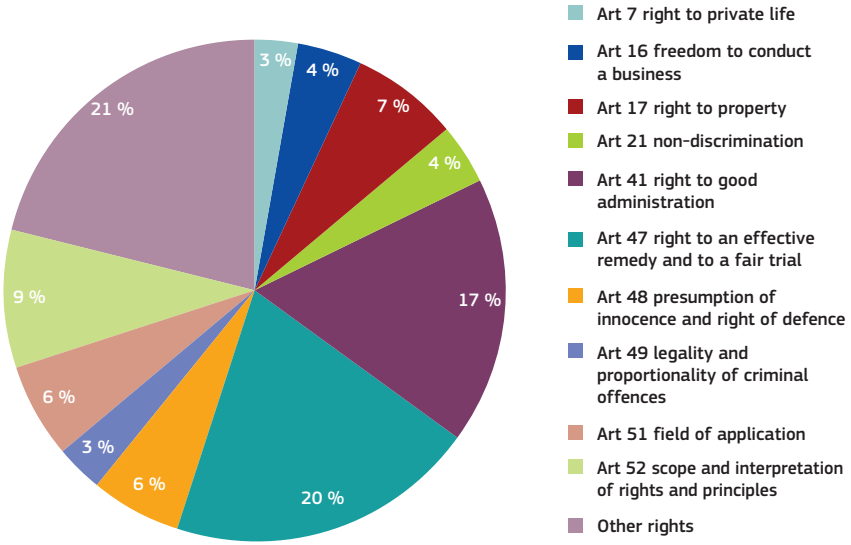


Source: European Commission

References to Charter rights in CJEU and national court decisions

Charter articles referred to prominently in cases before the EU courts were those on the right to an effective remedy, the right to good administration, the scope and interpretation of rights and the right to property.

Percentage of references to particular articles of the Charter in decisions of the Court of Justice of the European Union 2016

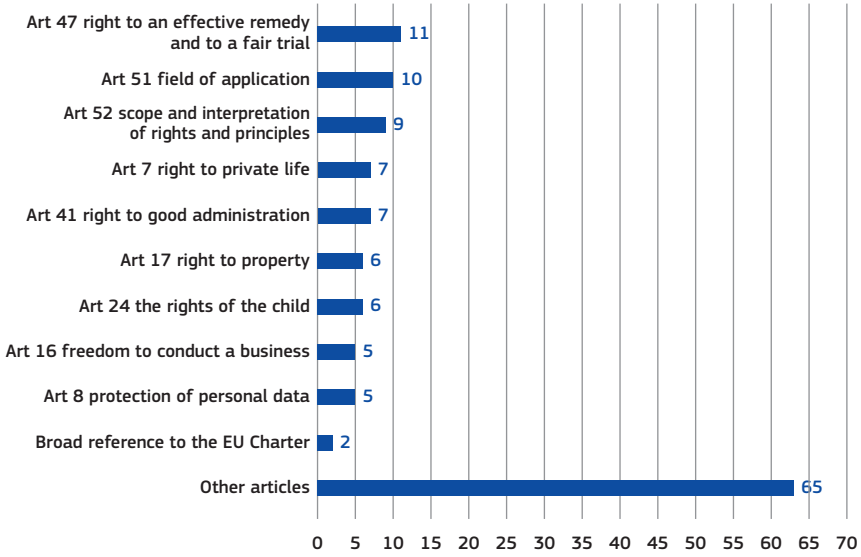


Source: European Commission

Note: The basis for this pie chart is the case-law referred to in Appendix I. The total number of judgments analysed was 221 and the total number of references to Charter articles was 441, as several judgments referred to more than one article. The percentages were calculated on the basis of these references. The category 'Other rights' refers to all rights for which the percentage amounts to less than 3 %, i.e. fewer than 14 references.

As regards decisions by **national courts in 2016**, the Charter provisions referred to most concerned the right to an effective remedy (Article 47), the field of application of the Charter (Article 51) and the scope of guaranteed rights (Article 52).

National courts: Number of references to Charter articles in selected high court decisions, 2016

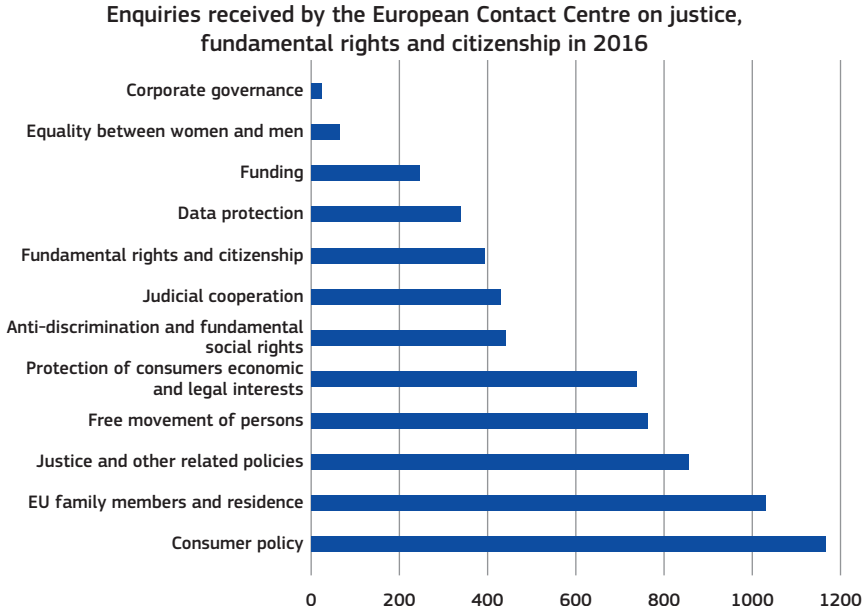


Source: European Union Agency for Fundamental Rights (FRA)

Note: The data for this graph is based on up to four court decisions per Member State where the Charter was used in the courts' reasoning. 70 court decisions from 27 Member States were analysed. No relevant case was identified for Malta. Decisions may refer to more than one Charter article.

Overview of enquiries with the Europe Direct Contact Centres

The figures collected by the Europe Direct Contact Centres (EDCCs) confirm a high degree of interest among citizens on justice, citizenship and fundamental rights. In 2016, the EDCCs replied to 6 491 enquiries from citizens. Most concerned topics such as consumer policy, EU family members and residence and justice and other related polices.



Source: European Commission

Methodology and structure of the staff working document

The staff working document attached to the annual report does not treat the Charter only as a legally binding source of law. It also aims to give an account, more broadly, of the various ways in which the Charter was invoked and contributed to progress on respecting and promoting fundamental rights in a number of areas in 2016. As a consequence, it refers to the Charter as a legally binding instrument and/or a policy objective, depending on the areas concerned. The accounts given in the different chapters of the report vary in breadth as well as depth, depending on the progress made in specific policy areas, such as migration, asylum, digital single market, the European Energy Union, reflecting the 10 policy areas identified as priorities by President Juncker in his opening statement to the European Parliament in 2014. ([5])

Hence, some chapters show how certain legislative measures are interacting with fundamental rights by promoting them or by striking the right balance in complying with them, including references to the relevant CJEU case-law. Others contain little of either and/or may concentrate on policy rather than legislative measures. To illustrate the growing impact of the Charter, the SWD

([5]) President Juncker's political guidelines, *A new start for Europe: my agenda for jobs, growth, fairness and democratic change – political guidelines for the next European Commission* (15 July 2014); . *https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en_0.pdf.*

(in the margins of the page where relevant) includes national court decisions which refer to the Charter, irrespective of whether EU law was applicable or not in those national cases.

Some measures and cases may relate to different articles of the Charter. Hence, while a measure and/or case are explained in a more detailed manner under one chapter (the heading of one article), it may also be referred to in another.

The structure of the SWD reflects the six headings of the Charter itself: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice. Each of the six chapters of the SWD contains the following information on the application of the Charter, where available and relevant:

- legislation:
    - examples of EU institutions' (proposed or adopted) legislation promoting the Charter rights; and
    - examples of how the EU institutions and the Member States ensured compliance with and applied the Charter in 2016 within other (proposed or adopted) legislation;
- policy:
    - examples of how the EU institutions and the Member States ensured compliance with and applied the Charter in 2016 within policy areas, e.g. through recommendations and guidelines and best practices;
- case-law:
    - relevant CJEU jurisprudence; and
    - national courts' case-law referring to the Charter (within or outside the scope of EU law);
- application by Member States:
    - follow-up: infringement procedures launched by the Commission against Member States for failure (correctly) to implement relevant legislation;
- questions and petitions from the European Parliament and letters from the general public received in 2016 focusing on main fundamental rights issues; and
- data gathered by the EU Agency for Fundamental Rights in 2016.

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

In September 2016, the European Parliament and the Council adopted **Regulation (EU) 2016/1624 on the European Border and Coast Guard** to ensure European integrated boder management at the external borders with a view to managing the crossing of the external borders efficiently.([6]) Given the stronger role and enhanced operational tasks of this Agency, the Regulation establishes a number of fundamental rights safeguards that aim to protect human dignity and the right to life and to prohibit torture and inhuman or degrading treatment or punishment.

In 2016, the Commission launched a year of focused **action to eradicate violence against women**, which aimed to draw attention to the issue, mobilise, connect and support all relevant stakeholders in combating the problem, and ensure the dissemination of good practices across the EU. In addition, it adopted **proposals for the EU's accession to the Council of Europe's Istanbul Convention** on combating and preventing violence against women and gender-based violence.

Following a Commission proposal in January 2014, the EU further strengthened the Union rules on exports of goods that could be used for capital punishment or torture, adopting (on 23 November 2016) an important **amendment to Council Regulation (EC) No 1236/2005** (the **Anti-Torture Regulation**).([7]) The aim of the Regulation is to prevent EU exports from contributing to human rights violations in other countries.

([6]) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1-76).

([7]) Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (OJ L 338, 13.12.2016, p. 1).

Article 1 — Human dignity

Human dignity, as protected under Article 1 of the Charter, 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 their fellow citizens. It is a right *per se*, but also part of the essence of all other rights. Thus it must be respected when any other rights are restricted. All subsequent rights and freedoms relating to dignity, such as the right to life and the prohibition of torture and slavery, add specific protection against infringements of dignity. They must equally be upheld in order to protect 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.

Legislation and policy

A number of legislative measures adopted or proposed in the course of 2016 in the area of migration are relevant for the protection of human dignity.

The European Parliament and the Council adopted the **Regulation on the European Border and Coast Guard** ([8]) on 14 September 2016. It establishes a European Border and Coast Guard bringing together the European Border and Coast Guard Agency consisting of Frontex and the Member States' border management authorities, including coastguards to the extent that they carry out border control tasks. Given the stronger role and enhanced operational tasks of the Agency, the Regulation establishes a number of fundamental rights safeguards that aim to ensure compliance with the Charter. ([9]) This includes an obligation on the Agency to develop various codes of conduct, including one on returns that will set out common standardised procedures to assure the return of migrants in full respect for fundamental rights, in particular the right to human dignity. ([10]) The Agency will also develop common core curricula for the training of border guards to provide EU-level training for instructors of Member States' border guards.

In the area of asylum, the **proposal for a recast Reception Conditions Directive** ([11]) needs to be pointed out.

([8]) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16.9.2016, p. 1–-76.

([9]) See sections below on Articles 2, 4, 8, 19 and 24.

([10]) Article 35 of Regulation (EU) 2016/1624.

([11]) Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM(2016) 465, 13.7.2016.

The Commission's proposal for an **Asylum Qualification Regulation** ([12]) contains a specific recital encouraging Member States to use methods to assess applicants' credibility when evaluating their application for international protection in a manner that respects their individual rights as guaranteed by the Charter, in particular the right to human dignity.

The **proposal on the revision of the Eurodac system**, ([13]) which the Commission put forward to support the practical implementation of the reformed Dublin Regulation, ([14]) reaffirms the obligation on Member States to ensure that procedures for taking fingerprints and a facial image are determined and applied in accordance with the safeguards laid down in the Charter. This includes full respect of the right to human dignity, in particular when the procedures concern minors. ([15])

The right to human dignity was also at the core of EU legislation and policy measures adopted in the field of humanitarian protection. In particular, the **Emergency Support Regulation** ([16]) adopted in 2016 provides a needs-based emergency response aimed at preserving life, preventing and alleviating human suffering, and maintaining human dignity wherever the need arises as a result of a disaster, in line with Article 1 of the Charter.

Emergency support was activated for a period of three years particularly for the management of the humanitarian impact of the refugee and migration crisis. On this basis, in Greece, the Commission funded access to primary health, psycho-social activities, non-formal education, child-friendly spaces, better accommodation, water and sanitation facilities, protection of the refugee population and cash transfers to cover basic needs.

Protection of human dignity was also one of the key elements reflected in the Commission's policy in the field of humanitarian action, as outlined in its May 2016 SWD on ***Humanitarian protection: improving protection outcomes to reduce risks for people in humanitarian***

([12]) Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (COM(2016) 466 final, 13.7.2016).

([13]) Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) (COM(2016) 272, 4.5.2016).

([14]) See sections below on Articles 6, 7, 18 and 24; .
Proposal for a Regulation of the European Parliament and of the Council 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 (recast) (COM(2016) 270 final, 4.5.2016).

([15]) See section below on Article 24.

([16]) Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union (OJ L 70, 16.3.2016, p. 1-6).

crises, ([17]) and in its **approach to forced displacement**, aimed at enabling forcibly displaced to live in dignity as an integral part of their host societies, as outlined in an April 2016 Communication on forced displacement and development. ([18])

Article 2 — Right to life

Under Article 2 of the Charter, everyone has the right to life and no-one may be condemned to the death penalty or executed.

The ECtHR has ruled since 1989 that exposure to the pervasive and growing fear of execution (the 'death row phenomenon') is in violation of the ECHR. It has also held that the death penalty could be considered inhuman and degrading, and thus contrary to Article 3 ECHR. ([19])

Legislation

Following a proposal made by the Commission in January 2014, the EU has further strengthened the Union rules on exports of goods that could be used for capital punishment or torture. It adopted on 23 November 2016 an important **amendment to Council Regulation (EC) No 1236/2005** (the "**Anti-Torture Regulation**") ([20]). See below, under Article 4.

One of the objectives of **Regulation (EU) 2016/1624 on the European Border and Coast Guard** ([21]) is to ensure full respect for the right to life, as protected under Article 2 of the Charter. The Agency will be required to assist persons in distress at sea and other persons in a particularly vulnerable situation. ([22])

In line with the **EU-Turkey Statement** ([23])**,** of 18 March 2016, all new irregular migrants and asylum applicants arriving from Turkey to the Greek islands whose applications for asylum have been declared unfounded or inadmissible or who have not applied for asylum should be returned

([17]) Commission staff working document, *Humanitarian protection: improving protection outcomes to reduce risks for people in humanitarian crises* (SWD(2016) 183 final, 23.5.2016).

([18]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Lives in dignity: from aid-dependence to self-reliance – forced displacement and development* (COM(2016) 234 final, 26.4.2016).

([19]) ECtHR judgment of 2 March 2010 in *Al-Saadoon & Mufdhi* v *the United Kingdom,* application no 61498/08.

([20]) Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) N° 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, OJ L 338, 13.12.2016, p. 1.

([21]) Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16.9.2016, p. 1–-76.

([22]) See sections on Article 1 above and Articles 4 and 24 below.

([23]) http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/.

to Turkey. This temporary and extraordinary measure is designed to protect the right to life and to end human suffering by showing clearly that there is no benefit in following the route offered by the smugglers. The Statement is to be implemented in accordance with EU law. This has been explicitly set out in the Statement, which makes clear that international protection safeguards will continue to be fully respected, with any application for international protection being processed individually by the Greek authorities with a right to appeal. Under the Statement, the EU Member States will resettle a Syrian from Turkey for every Syrian returned to Turkey from Greek islands, taking into account the UN Vulnerability Criteria.

Article 3 — Right to the integrity of the person

The right to physical and mental integrity (Article 3(1) of the Charter) protects people from infringements by public authorities and requires authorities to promote such protection, e.g. by concrete legislation.

Legislation

Gender-based violence, i.e. violence against women because they are women, is a serious breach of women's fundamental rights. ([24]) In 2016, the Commission launched a year of focused **action to eradicate violence against women**. ([25]) The aim was to draw attention to the issue, mobilise, connect and support all relevant stakeholders in combating the problem, and ensure the dissemination of good practices across the EU.

In addition, the Commission adopted **proposals for the EU's accession to the Council of Europe's Istanbul Convention on combating and preventing violence against women and gender-based violence**. ([26]) The proposals expressly mention the Charter, referring to rights stipulated in its Articles 1-5 and 23, i.e. the right to human dignity, the right to life, and the right to the integrity of the person, the prohibition of inhuman or degrading treatment and all forms of slavery and forced labour, and the principle of equality between men and women. ([27])

([24]) See section below on Article 23.

([25]) *http://europa.eu/rapid/press-release_STATEMENT-16-3945_en.htm* .

([26]) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016) 111); .
Proposal for a Council Decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016) 109).

([27]) See the explanatory memorandum and recital 4 of the proposals (COM(2016) 111 and COM(2016) 109).

Article 4 — Prohibition of torture and inhuman or degrading treatment or punishment

Article 4 of the Charter provides that no-one is to be subjected to torture or to inhuman or degrading treatment or punishment. The respect of Article 4 requires particular vigilance in the field of border controls, immigration and asylum issues.

Legislation

Following a Commission proposal in January 2014, the EU further strengthened the Union rules on exports of goods that could be used for capital punishment or torture. On 23 November 2016, it adopted an important **amendment to Council Regulation (EC) No 1236/2005** (the **Anti-Torture Regulation**). ([28]) The Anti-Torture Regulation adopted in 2005 bans the export and import of goods which can only be used to apply the death penalty or to inflict torture or other cruel, inhuman or degrading treatment and punishment. It also imposes an export authorisation requirement on goods that could be used for the purpose of torture or other ill-treatment. The aim is to prevent EU exports from contributing to human rights violations in other countries and to uphold the right to human dignity (in particular the prohibitions of the death penalty and of torture). The new text lays down a specific set of rules for export controls applied to prevent listed medicinal products from being used for capital punishment in other countries, including a general Union export authorisation. It also imposes new restrictions on supplying brokering services involving listed goods located in a non-EU country, supplying certain other services to non-EU countries and promoting certain goods in trade fairs in the Union.

As indicated above**, Regulation (EU) 2016/1624 on the European Border and Coast Guard** provides for the Agency to develop codes of conduct. ([29]) The code of conduct for returns is to set out common standardised procedures to assure return in full respect for fundamental rights, including the prohibition of torture and of inhuman or degrading treatment or punishment (Article 4). ([30])

([28]) Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) N° 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, OJ L 338, 13.12.2016, p.1.

([29]) Article 35 of Regulation (EU) 2016/1624.

([30]) Article 35(2) of Regulation (EU) 2016/1624.

Application by Member States

On 8 June 2016, the European Parliament adopted a **Resolution on the CIA's rendition and detention programme in Europe**.([31]) This was by way of follow-up to the Parliament's Resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA,([32]) which had called in particular on Member States to investigate the allegations that there were secret prisons on their territory where people were held under the CIA programme, and to prosecute those involved in these operations, taking into account all evidence that had come to light as a result of the report. In June 2016 the European Parliament reiterated the need to ensure full accountability of Member States participating and allowing torture and illegal investigation practises. It underlined that torture cannot be accepted under any circumstances and stressed the need to stand by European core values and defend them. In February 2016, the ECtHR held([33]) that one Member State had infringed a number of fundamental rights under the ECHR, including the prohibition of torture under Article 3 ECHR, when cooperating with the CIA's activities on that Member State's territory. The Commission has consistently stressed that all concerned Member States have to conduct in-depth, independent and impartial investigations to establish the facts in relation with the CIA programme.

Case-law

In the joint cases *Aranyosi* and *Căldăraru*,([34]) the CJEU held that the execution of a European arrest warrant must be deferred if there is a real risk of inhuman or degrading treatment due to the conditions of detention of the person concerned in the Member State where the warrant was issued. If the existence of that risk cannot be discounted within a reasonable period, on the basis of information provided by the issuing authority, the authority responsible for the execution of the warrant must decide whether the surrender procedure should be brought to an end.

In its judgment in *Sakir* v. *Greece*,([35]) the ECtHR found a violation of the procedural aspect of Article 3 ECHR. The case concerned a physical assault in the centre of Athens in 2009 on the

([31]) Resolution of 8 June 2016 on follow-up to the Resolution of 11 February 2015 on the US Senate report on the use of torture by the CIA (2016/2573(RSP)); . *http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0266+0+DOC+XML+V0//EN&language=EN* .

([32]) This Resolution was adopted following the release by the US Senate Select Committee on Intelligence in December 2014 of the *Study of the Central Intelligence Agency's detention and interrogation program*.

([33]) ECtHR judgment of 23 February 2016 in case *Nasr and Ghali v. Italy*, application no . 44883/09. The Court considered that the Member State's authorities were aware that the individual concerned had been a victim of an extraordinary rendition operation which that had begun with his abduction in that Member State and had continued with his transfer abroad. And that tThe executive had clearly applied the legitimate principle of "'State secrecy"' had clearly been applied by the executive in order to ensure that those responsible did not have to answer for their actions. The investigation and trial had not led to the punishment of those responsible, who had therefore ultimately been granted impunity.

([34]) CJEU judgment of 5 April 2016 in Joined Cases C-404/15 and C-659/15 PPU, *Pál Aranyosi* and *Robert Căldăraru*.

([35]) ECtHR judgment of 24 March 2016, *Sakir v. Greece*, application no 48475/09.

applicant, an Afghan national, who had left his country of origin for fear of persecution. The applicant complained that the Greek authorities had failed to comply with their obligation to carry out an effective investigation into the attack. The case is noteworthy because of the importance, in the Court's analysis, of the general context within which the attack on the applicant took place. The Court took into account reports from various international non-governmental organisations (NGOs) and from Greek institutions which referred to a phenomenon of racist violence in the centre of Athens since 2009. Although the assault bore the hallmarks of a racist attack, the Court found that the police had failed to consider the assault in the light of the above reports, but had instead treated it as an isolated incident. The Court reiterated that where there is suspicion that racist attitudes underlie a violent act it is particularly important for the official investigation to be pursued with vigour and impartiality, having regard to the need continuously to reassert society's condemnation of racism and ethnic hatred.

Article 5 — Prohibition of slavery and forced labour

Slavery violates human dignity. Trafficking in human beings is one form of slavery. Article 5(3) of the Charter explicitly prohibits trafficking in human beings. Slavery and forced labour are forms of exploitation covered by the definition of trafficking in human beings in Article 2 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (the Anti-trafficking Directive).([36]) Preventing and combating it is a priority for the Union and the Member States.

Legislation and policy

Based on a Commission proposal for a Council Directive (COM (2016)235), the Council adopted on 19 December 2016 Directive (EU) 2017/159, implementing the social partners' agreement on the Work in Fishing Convention of the International Labour Organisation (ILO). All aspects relating to working and living conditions on fishing vessels are regulated by this Directive. Its implementation also provides an opportunity to closely work with Member States in preventing further occurrences of forced labour in the fishing sector.

The Commission and the High Representative further committed to work with Member states and international partners to ensure the ratification and implementation of the ILO Work in Fishing Convention, considered as a key ocean governance instrument, in its Communication on « International ocean governance : an agenda for the future of our oceans » (JOIN (2016) 49 final).

([36]) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

In accordance with Council Decisions 2015/2037 and 2015/2071 authorising its ratification and providing that Member States should take the necessary steps to ratify it as soon as possible, four Member states ratified the Protocol of 2014 to the Forced Labour Convention 1930 of the International Labour Organisation in 2016 and three more in the first quarter of 2017. When ratifying this new core labour standard, countries commit: to prevent the use of forced labour, in particular in the context of trafficking in human beings; to improve the protection of victims; to provide access to compensation, and to enhance international cooperation in the fight against forced or compulsory labour.This process reinforces compliance with Article 5 of the EU Charter and enhances international cooperation in the fight against forced labour.

As part of the **EU's 2012-2016 strategy on eradicating trafficking in human beings**, ([37]) the Commission continued to facilitate the work of the EU Civil Society Platform against Trafficking in Human Beings, which brings together around 100 civil society organisations, including human rights organisations, migrant organisations and those working on the rights of women and children in Member States and non-EU countries. The Commission has also encouraged the use of the EU civil society e-platform against trafficking in human beings to improve its contacts with civil society and exchange information on action against trafficking in human beings.

On 19 May 2016, the Commission published the Report on the progress made in the fight against trafficking in human beings (2016) and its accompanying Commission Staff Working document, presenting trends and challenges in addressing trafficking in human beings, examining progress made and highlighting key challenges that the EU and its Member States need to address as a priority. ([38])

On 6 December 2016, in cooperation with the Slovak Council Presidency, the Commission organised a **joint session** gathering the representatives of the EU Network of National Rapporteurs or equivalent mechanisms and the EU civil society platform against trafficking in human beings. The conference focused on implementation of the EU's ambitious legal and policy framework to address trafficking in human beings, which is anchored in human rights, victim-centred, gender-specific and child-sensitive. The Commission presented two reports required under Article 23 of the Anti-trafficking Directive: the **'transposition report'** ([39]) and the **'users' report'**. ([40])

([37]) *https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf.*

([38]) Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Brussels, 19.5.2016 COM(2016) 267 final.

([39]) *https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_member_states_compliance_with_directive_2011-36_en.pdf.*

([40]) *http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_impact_of_national_legislation_related_to_thb_en.pdf.*

In line with the priorities of the framework, the Commission published a **study on the gender dimension of trafficking in human beings** (March 2016) ([41]) and a **comprehensive policy review of anti-trafficking projects** funded by the Commission, ([42]) which were presented ahead of the 10th EU Anti-trafficking Day (October 2016).

Application by Member States

In the context of **EU cohesion policy**, the Commission services made enquiries of the Polish authorities as regards a possible violation of the prohibition of slavery and forced labour (Article 5(2) of the Charter) in a project co-financed by structural funds. In particular, the national authorities were requested to investigate the alleged employment of forced workers from North Korea following press reports according to which several companies, including some companies that had received ESIF co-financing, would have employed North Korean forced workers. The investigation of the National Labour Inspectorate is currently ongoing.

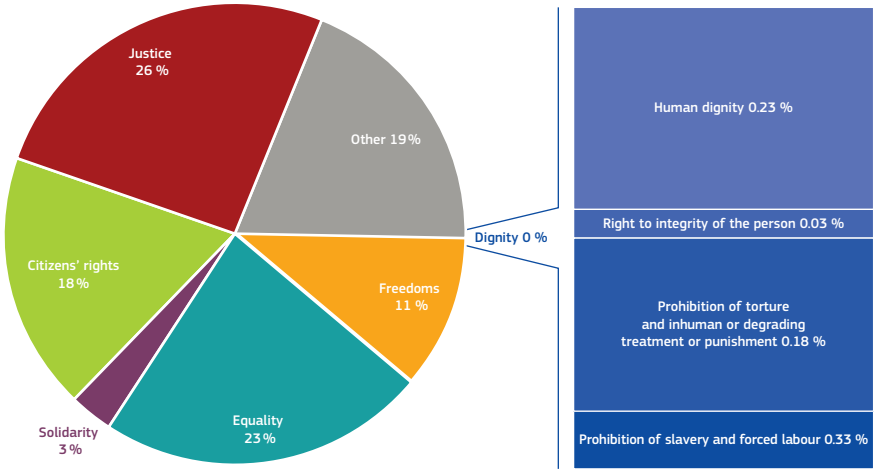
Alleged cases of slavery and forced labour in the **EU fishing industry** were reported to the Commission, relating, in particular, to third country nationals working aboard certain vessels. ([43]) Criminal investigations are ongoing in the concerned Member State. The Commission offered full support and cooperation to that Member State. It also recalled the existence of a strong legal and policy framework against trafficking in human beings in all its forms, including for the purpose of labour exploitation and Directive 2011/36/EU which requires Member States to take appropriate actions to address such criminal acts.

([41]) *https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings._final_report.pdf.*

([42]) *https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_comprehensive_policy_review.pdf.*

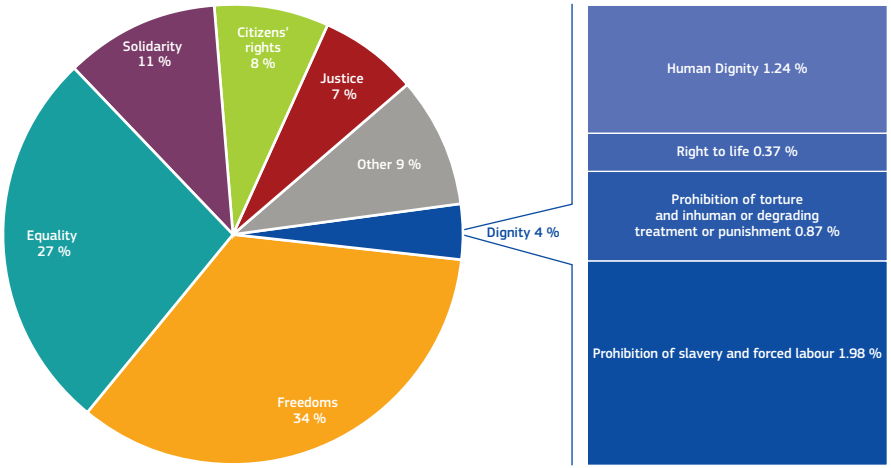
([43]) MEP question E-000937/2016.

Letters



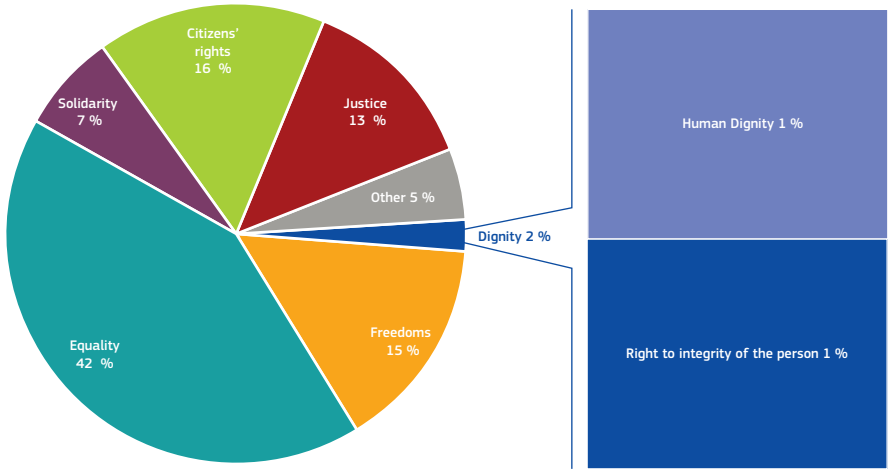
Source: European Commission

Questions



Source: European Commission

Petitions



Source: European Commission

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 adoption of the data reform package in 2016 was a key step towards ensuring a high degree of protection of personal data in the EU. It includes the **General Data Protection Regulation (GDPR)** and the **Data Protection Directive for Police and Criminal Justice Authorities**.

The adoption of the EU-US Privacy Shield adequacy decision and the EU-US data protection **Umbrella Agreement** ensured data protection at international level. The Commission adopted the former on 12 July; it replaces its 2000 Safe Harbour adequacy decision and ensures the free flow of personal data for commercial purposes between the EU and US companies certified under the Privacy Shield, while guaranteeing the fundamental right of protection of personal data in line with Article 8 of the Charter. The **Umbrella Agreement** will establish a high level of data protection for any transfer of personal data between the EU and the United States in the context of police or judicial cooperation in criminal matters.

In the joint ***Tele2 Sverige AB*** and ***Watson*** cases, the CJEU interpreted national laws on data retention in the light of Articles 7 and 8 of the Charter and applicable EU law on the protection of personal data. It found that laws requiring the general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication restricted the fundamental rights to private life and to the protection of personal data in Articles 7 and 8. The court clarified the requirements for justification of targeted retention of traffic and location data and for national competent authorities' access to such retained data.

In September, in line with the digital single market strategy adopted on 6 May 2015, the Commission adopted a set of **legislative proposals to modernise the EU's copyright rules**. The aim is to strike a balance between copyright and relevant public policy objectives, such as education, research, innovation and the needs of persons with disabilities.

To counter terrorism and cross-border crime more effectively, on 21 December the Commission proposed three amending regulations on the establishment, operation and use of the **Schengen Information System (SIS)** in the context of:

- border checks;
- police cooperation and judicial cooperation in criminal matters; and
- the return of illegally staying non-EU nationals.

Lastly, a number of measures adopted in 2016 for the **implementation of the European Agenda on Migration** are of direct relevance *inter alia* to respect for private and family life and the fundamental right to asylum. In particular, the Commission presented **two packages of legislative proposals** designed to bring about an extensive reform of **the common European asylum system** (CEAS).

Article 6 — Right to liberty and security

Article 6 of the Charter guarantees the rights of all to liberty and security of person. These rights correspond to those guaranteed in Article 5 ECHR. They mean in particular that a person's liberty can be limited only under strict legal conditions.

Legislation

The **proposal for a recast of the Dublin Regulation** ([44]) amends the EU rules determining which Member State is responsible for dealing with each asylum application. The proposed measures are geared to ensuring a sustainable sharing of responsibility across the EU and timely processing of applications, thereby facilitating access to international protection for those who are in need of it. ([45]) In order to create a fairer system based on solidarity, a corrective allocation mechanism will automatically establish when a Member State is handling a disproportionate number of asylum applications. All further new applicants in that Member State will be allocated, after an admissibility verification of their application, to other Member States until the number of applications is back below the reference level. The new system will speed up transfers of asylum applicants between Member States. The detention for the purpose of transfers is now limited to four weeks (it was previously six). This ensures that the restriction to the right to liberty and security as protected by Article 6 of the Charter is kept to a necessary minimum.

Case-law

Several CJEU cases relating to the application of European arrest warrants clarified the scope of the right to liberty and security.

In the *JZ* case, ([46]) the Court had to decide in the context of a European arrest warrant whether restrictions on liberty of movement constituted a deprivation of liberty so that the period in question could be credited to a custodial sentence. It referred to ECtHR case-law regarding Article 5 ECHR, which corresponds to Article 6 of the Charter. It distinguished between restrictions and

([44]) Proposal for a Regulation of Tthe European Parliament and of the Council 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 (recast) (COM(2016) 270 final, 4.5.2016).

([45]) See section below on Article 18.

([46]) CJEU judgment of 28 July 2016 in Case C-294/16 PPU, *JZ*.

deprivation of liberty and concluded that measures such as a nine-hour night-time curfew, in conjunction with the monitoring of the person concerned by means of an electronic tag, an obligation to report to a police station at fixed times on a daily basis or several times a week, and a ban on applying for foreign travel documents were not so restrictive as to give rise to a deprivation of liberty comparable to that arising from imprisonment.

In the *Bob-Dogi* Case, ([47]) the CJEU clarified another aspect of the Council Framework Decision on the European arrest warrant. ([48]) It ruled that a separate national arrest warrant must be issued before a European arrest warrant is issued and the person subject to proceedings must enjoy a dual level of protection for procedural rights and fundamental rights. Thus, in addition to the judicial protection provided when a European arrest warrant is issued, there must already be protection at the first level, at which a national arrest warrant is adopted.

The *J.N.* Case ([49]) concerned the detention of an asylum applicant for reasons of national security and public order. The Court reviewed the validity of Article 8(3)(e) of the Reception Conditions Directive ([50]) in view of Article 6 of the Charter and found no grounds for calling its validity into question; in the Court's opinion, its scope is sufficiently strictly circumscribed to meet the requirements of proportionality. The Court found that limits to the possible restriction of the right to liberty, as set out in Article 52(1) of the Charter, had been respected. It found that the detention measure provided for in the Directive genuinely met an objective of general interest recognised by the EU. It also considered that the EU legislation remained within the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued, striking a fair balance between an asylum seeker's right to liberty and requirements relating to the protection of national security and public order.

Article 7 — Respect for private and family life

Article 7 of the Charter guarantees the right of all to respect of their private and family life, and their home and communications.

The right to **private life** includes the protection of privacy in relation to any information about a person. Where legislation, policy or case-law refer to this right in connection with the protection of personal data, this report will refer to them under Article 8 below.

([47]) CJEU judgment of 1 June 2016 in Case C-241/15 *Niculaie Aurel Bob-Dogi*.

([48]) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1); corrigendum (OJ 2006 L 279, p. 30), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

([49]) CJEU judgment of 15 February 2016 in Case C-601/15 PPU, *J. N.* v *Staatssecretaris van Veiligheid en Justitie*.

([50]) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96-116).

Legislation

In the area of family law, two legislative projects adopted in 2016 had a particular impact on the right to family life:

- the 30 June **proposal for the recast of the Brussels IIa Regulation**, ([51]) notably regulating the relationship between parents and their children, which streamlined procedures for the cross-border enforcement of judgments, thereby enhancing the right to respect for private and family life; and

- the adoption on 24 June of **two Regulations** ([52]) aimed at **helping bi-national couples**, whether in a marriage or a registered partnership, to manage their property on a daily basis and to divide it in the event of divorce or of one of them dying. ([53]) The Regulations determine which Member State's courts are competent to deal with matters concerning such a couple's property (jurisdiction), which national law will apply to their property matters (applicable law) and how a decision on these matters issued in one Member State will be recognised and enforced in another. They will provide bi-national couples with legal certainty and reduce the costs of proceedings. As a couple's property must be divided in the event of divorce or death, the Regulations will also facilitate the application of Union rules on cross-border divorces and successions. Both Regulations will apply as from 29 January 2019.

Recent legislation in the field of asylum and migration has an impact on Article 7 of the Charter. As mentioned above, the **proposal for a recast of the Dublin Regulation** ([54]) will amend the EU rules for determining which Member State is responsible for dealing with each asylum application. In particular, the right to family unity of asylum applicants on EU territory (covered by the right to respect of family life under Article 7) is proposed to be strengthened. Its scope is proposed to be extended to include the applicant's siblings and families formed in transit countries. This reflects the reality of current migratory trends, according to which applicants often arrive in the territory of the Member States after a prolonged period of time in transit outside their country of origin.

([51]) Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (COM/2016/0411 final, 30.6.2016).

([52]) Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (OJ L 183, 8.7.2016, p. 1-29);.
Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (OJ L 183, 8.7.2016, p. 30-56).

([53]) See section below on Article 21.

([54]) Proposal for a Regulation of The European Parliament and of the Council 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 (recast), COM(2016) 270 final, 4.5.2016. .

The **proposal for a recast of the Eurodac Regulation** ([55]) lowers the age of taking fingerprints to 6 years old. ([56]) The proposal positively contributes to the protection of the rights of the child and to respect of the right to respect for family life. ([57]) Many applicants for international protection and non-EU nationals arriving irregularly in the EU travel with families, in many cases including very young children. Being able to identify and register these children is a key factor contributing to their protection. This will help identify children in cases where they are separated from their families and support a Member State's efforts to trace any family or links they may have with another Member State. Establishing family links is a key element in restoring family unity. It will also help strengthen the protection of unaccompanied children who do not always seek international protection and who abscond from care institutions or child social services under which their care has been assigned. Their registration in the Eurodac system can help keeping track of them and prevent them from ending up in scenarios of exploitation.

In June, the Commission adopted a **proposal to reform the 2009 Blue Card Directive**. ([58]) The proposal aims to enhance intra-EU mobility by facilitating the procedures and allowing for shorter business trips (up to 90 days) within the Member States that apply the blue card. It strengthens the rights of both the cardholders (allowing for quicker access to long-term residence status, immediate and more flexible labour-market access) and their family members (ensuring they can join the cardholder simultaneously). Accordingly, the initiative protects the right to respect for private and family life through facilitated provisions in relation to family reunification for highly skilled workers. ([59])

Case law

In *Bogendorff von Wolffersdorff*, ([60]) the CJEU held that refusal by the German authorities to recognise freely chosen forenames and surname legally acquired by a dual German-UK national in the UK on grounds of public policy, as they included several tokens of nobility, constituted a restriction on the freedom to move and reside across the EU. However, this may be considered justified if necessary to preserve the principle of equal treatment before the law (Article 20 of the Charter). More specifically, the Court recalled that a person's surname is a constituent element of his identity and of his private life, the protection of which is enshrined in Article 7 of the

([55]) Proposal for a Regulation of the European Parliament and of the Council on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 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] , for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States" law enforcement authorities and Europol for law enforcement purposes (recast) (COM(2016) 272 final, 4.5.2016).

([56]) See section below on Article 8.

([57]) See section below on Article 24.

([58]) Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (COM(2016) 378 final, 7.6.2016).

([59]) See section below on Article 15.

([60]) CJEU judgment of 2 June 2016 in Case C-438/14, *Bogendorff von Wolffersdorff*; see section below on Article 24.

Charter. However, this right could be balanced with other legitimate interests. In this case, the German authorities' refusal to recognise the name had been based on public policy grounds, namely the fact that titles of nobility had been abolished under German law. In the interest of equal treatment of all German nationals, the authorities refused to allow a reintroduction of such titles by use of the law of another Member State. The Court analysed this potential justification of restricting the freedom of movement (and thereby the restriction of Article 7) and accepted that the objective of observing the principle of equal treatment before the law in Germany is compatible with EU law, noting that the principle of equal treatment is enshrined in Article 20 of the Charter. Hence, it left it to the referring court to determine whether the restriction was necessary and proportionate in view of the public policy grounds that were cited.

On 13 September 2016, the CJEU delivered judgments in two similar cases:

- In the *CS* case,[61] the Court examined the expulsion to a non-EU country of a non-EU national who had been convicted of a criminal offence and who was the parent and primary carer of a young child holding citizenship of a Member State. The child was consequently an EU citizen and had also been resident in that Member State since birth. The Court held that the expulsion of the parent could deprive the child of the genuine enjoyment of the substance of his or her rights as an EU citizen, as he or she may *de facto* be compelled to go with the parent and therefore to leave EU territory. However, the Court also held that, in exceptional circumstances, a Member State may expel the person concerned on grounds of public policy or public security, even where this means that the child in question will have to leave EU territory, provided that such a decision is proportionate and takes account of the right to respect for private and family life (Article 7 of the Charter) and the obligation to take into consideration the child's best interests (Article 24(2)).

- In *Rendón Marín*,[62] the Court held that Article 20 TFEU does not permit a non-EU national who has sole care of EU citizens who are minors to be automatically refused a residence permit or to be expelled from EU territory on the sole ground that he has a criminal record, where that refusal has the consequence of requiring the children to leave EU territory. In its consideration, the Court pointed out that the assessment of the applicant's situation must take account of the right to respect for private and family life (Article 7 of the Charter), which must be read in conjunction with the obligation to take into consideration the child's best interests (Article 24(2)).

[61] CJEU judgment of 13 September 2016 in Case C-304/14, *CS*; see section below on Article 24.

[62] CJEU judgment of 13 September 2016 in Case C-165/14, *Rendón Marín*; see section below on Article 24.

Article 8 — Protection of personal data

The fundamental right of all to the protection of personal data is explicitly recognised in Article 8 of the Charter and also enshrined in Article 16 TFEU. It entails protecting individuals' freedom to decide how their own personal data are used. This right is gaining increasing importance in view of the explosion of the collection, use and distribution of personal data within our digital society.

Legislation

The year 2016 was pivotal for the promotion of the fundamental right to the protection of personal data and the related right to private life. The promotion and protection of both were at the centre of several EU legislative acts and international agreements. Strong data protection rules are necessary to rebuild the trust of individuals in how their personal data are being used.

The final adoption of the **data reform package** in 2016 constitutes a key element of ensuring a high standard for the protection of personal data in the European Union. It includes the **General Data Protection Regulation (GDPR)** ([63]) and the **Data Protection Directive for Police and Criminal Justice Authorities** ([64]).

The package constitutes a comprehensive reform of EU legislation to strengthen privacy rights. It is a key building block of the digital single market. It includes:

- the new **GDPR**, which modernises the principles of Directive 95/46/EC, ([65]) tailoring them for the digital age and harmonising data protection law in Europe. The GDPR, which entered into force on 24 May 2016 and will apply from 25 May 2018, will give citizens easier access to their own personal data, a right to data portability, a clarified 'right to be forgotten' and certain rights in the event of a personal data breach; and

- the **Data Protection Directive for Police and Criminal Justice Authorities**, which will allow Member States' enforcement authorities to exchange information necessary for investigations more efficiently and effectively. It also ensures strong protection of personal data

([63]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–-88.

([64]) Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–-131.

([65]) 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).

fully in line with the Charter. The Directive entered into force on 5 May 2016 and Member States have to transpose it into national law by 6 May 2018.

The consistent application of new legislation will be further strengthened by a new consistency mechanism.

Following the adoption of the data reform package, substantial efforts were made to ensure the smooth introduction of the new legislation. The existing Article 29 Working Party is already working to prepare for application of the new *acquis*; it has adopted **guidelines** on certain important issues and laid the ground for the creation of a new **European Data Protection Board**. ([66]) The Commission has also established an expert group of Member State representatives to exchange views and information on the implementation of the GDPR and the transposition of the Police and Criminal Justice Authorities Directive.

At international level, data protection was strengthened through the adoption of the Commission's EU-US Privacy Shield adequacy decision and the EU-US data protection 'Umbrella Agreement'. ([67])

The Commission took account of the fundamental rights to private life and protection of personal data in a number of other legislative proposals in 2016, particularly in the area of security:

- Full compliance with fundamental rights was the guiding principle in the Commission's proposal (adopted on 5 July) to amend the **Fourth Anti-money Laundering Directive**. ([68]) The proposed measures include provisions to respond adequately and reduce risks relating to financial crime, evolving terrorist threats and the need for increased transparency. While these measures are ultimately geared to protecting the financial system, they aim to offer all guarantees to balance the need for increased security with the need to protect fundamental rights, including the right to private life and the protection of personal data.

- The proposal for a **Council Directive amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities (DAC5)** ([69]) took into account potential interference with fundamental rights. The impact of increased access to beneficial

([66]) *http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2016/wp236_en.pdf*; *http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2016/wp235_en.pdf*.

([67]) Both are referred to in detail below in the subsection on agreements and other instruments affecting the international protection of fundamental rights.

([68]) Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC (COM(2016) 450 final, 5.7.2016).

([69]) Proposal for a Council Directive amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities (COM(2016) 452 final, 5.7.2016).

ownership information and the underlying customer due diligence procedures were analysed from the perspective of ensuring respect of Articles 7 (right to private and family life) and 8 (protection of personal data) of the Charter. The assessment concluded that, while the proposed measures could interfere with the fundamental rights to private life (including confidentiality of communications and the protection of privacy and of personal data), they are necessary and proportionate to ensure the proper functioning of the tax systems and the supervision of the proper fulfilment by all actors of their obligations.

- In January, the Commission presented a legislative proposal aiming to ensure that the **criminal records of non-EU nationals** ([70]) would become as easily available to competent authorities as the criminal records of EU nationals. It was considered that it is more difficult conclusively to identify non-EU nationals than EU citizens, so there was a need to establish an obligation to store and exchange fingerprints for their identification. In the preparation of the proposal, particular attention was paid to the respect of data protection aspects, as guaranteed by Article 8 of the Charter. Since the system would interfere with these rights, the necessity and proportionality of that interference were carefully checked.

- Finally, the EU also adopted the **EU Passenger Name Records Directive** ([71]) and the **Directive on Security of Network and Information Systems**. ([72]) In addition, the Commission presented proposals for a **European travel information and authorisation system** (ETIAS), ([73]) put forward an **EU PNR implementation plan** ([74]) and proposed an **action plan on the security of travel documents**. ([75]) Lastly, in order to enhance security at the external border, the Commission proposed an **EU entry/exit system**. ([76]) All of these

([70]) Proposal for a Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA (COM/2016/07 final, 19.1.2016).

([71]) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132-149).

([72]) Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1-30).

([73]) Proposal for a Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624 (COM(2016) 731 final, 16.11.2016).

([74]) Implementation Plan for Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (SWD(2016) 426 final, 28.11.2016).

([75]) Communication from the Commission to the European Parliament and the Council, *Action plan to strengthen the European response to travel document fraud* (COM(2016) 790 final, 8.12.2016).

([76]) Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011 (COM(2016) 194 final, 6.4.2016).

instruments were checked as to their compatibility with the fundamental right to the protection of personal data.

In the area of migration, a **European Border and Coast Guard** was established by Regulation (EU) 2016/1624 on 14 September 2016. When processing personal data, the Agency will apply Regulation (EC) No 45/2001, ([77]) which gives effect to the right to the protection of personal data. In addition, respect for fundamental rights will be guaranteed by the codes of conduct to be developed by the Agency, which will *inter alia* set common standardised procedures to assure return in a humane manner and in full respect of fundamental rights, ([78]) including the right to the protection of personal data.

To support the practical implementation of the reformed **Dublin System**, ([79]) the Commission also proposed adapting and reinforcing the Eurodac system. The proposal for a **recast Eurodac Regulation** will extend its scope to allow Member States to store and search data belonging to all three categories of data, i.e. also third country-nationals apprehended in connection with the irregular crossing of an external border and those found illegally staying in the EU, so that they can be identified for return and readmission purposes. Immigration authorities will also be able to ascertain whether an illegally staying third-country national in a Member State has claimed asylum, or has entered the EU illegally at the external border. It will also allow Member States to store more personal data in Eurodac, such as names, dates of birth, nationalities, nationalities type and number of identity or travel document, and facial images of individuals. The aim is to allow immigration and asylum authorities to identify irregular non-EU nationals or asylum applicants without having to request the information from another Member State separately, as is currently the case. The proposal has been checked for full compliance with data protection rules, in accordance with Article 8 of the Charter.

As regards the **control of external borders,** an agreement was reached in December on the proposal for a Regulation amending Regulation (EC) No 562/2006 , ([80]) which reinforces checks against relevant databases at external borders (Schengen Borders Code. Following its entry into force, Member States will be obliged, when persons enjoying the right of free movement under Union law cross the external border, to carry out systematic checks against databases on lost and stolen documents and in order to verify that the persons do not represent a threat to public order and internal security. As the databases are consulted on the basis of a hit/no-hit system, the consultation is neither registered nor further processed and so respects the rights to respect of private and family life (Article 7) and to the protection of personal data (Article 8).

([77]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 008, 12.1.2001, p. 1).

([78]) See sections above on Articles 1, 2, 4 and below on 19 and 24.

([79]) See section below on Article 18.

([80]) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the reinforcement of checks against relevant databases at external borders, COM(2015) 670 final.

On 21 December, the Commission adopted three proposals for **Regulations amending the legislative basis for the SIS**. ([81]) These involve technical and operational improvements to the SIS to address issues identified in the Commission's 2016 comprehensive evaluation of the system. ([82]) They develop and improve the existing system, building on the effective safeguards already in place. As the system continues to process personal data (and it will process further categories of sensitive biometric data), there are potential impacts on individuals' fundamental right to the protection of such data. Hence, additional safeguards have been put in place to limit the collection and further processing of data to what is strictly necessary and operationally required, and granting access to data only to those who have an operational need to process them. Clear data retention timeframes have been set out in the proposals and there is explicit recognition of and provision for individuals' rights to access and rectify data relating to them and to request erasure in line with their fundamental rights. In addition, the proposals set out requirements for an alert to be deleted and introduce a proportionality assessment if an alert is being extended. They also establish extensive and robust safeguards for the use of biometric identifiers to avoid innocent persons being inconvenienced. Lastly, they require the end-to-end security of the system, ensuring greater protection of the data stored in it.

Other legislative instruments adopted in 2016 which had an impact on Articles 7 and 8 of the Charter are connected to information systems in the field of customs, energy, transport or fishery policy.

The Commission took measures to implement Regulation (EU) 2015/1525. ([83]) The **Import, Export and Transit Directory (IET)** ([84]) collects information on movements of goods for customs purposes, including details of senders and recipients, which, although they usually refer to companies, may also help to identify natural persons. In its work on the IET, the Commission

([81]) Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU (COM(2016) 883 final, 21.12.2016);
Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 (COM(2016) 882 final, 21.12.2016);
Proposal for a Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third country nationals (COM(2016) 881 final, 21.12.2016).

([82]) Report from the Commission to the European Parliament and the Council on the evaluation of the second generation Schengen Information System (SIS II) in accordance with Articles 24(5), 43(3) and 50(5) of Regulation (EC) No 1987/2006 and Articles 59(3) and 66(5) of Decision 2007/533/JHA (COM(2016) 880 final, 21.12.2016).

([83]) Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 243, 18.9.2015, p. 1-12).

([84]) Set up under Article 18(d) of Regulation (EU) 2015/1525.

implemented specific and adequate data protection safeguards, which were acknowledged in a prior check by the European Data Protection Supervisor (EDPS). ([85])

In the road transport sector, the Commission adopted (on 18 March) new specifications for the **smart tachograph**, ([86]) making full use of advanced digital technologies such as the GALILEO and EGNOS satellite positioning systems in order to transmit data on driving time, speed and distance directly to road controllers when the vehicle is moving, thus avoiding unnecessary stops for hauliers and improving efficiency for controllers. The new smart tachograph is a breakthrough in the enforcement of road transport legislation. Data will be processed in accordance with EU legislation on the processing of personal data and the protection of privacy in the electronic communications sector.

In the field of energy, certain impacts on Article 7 and 8 of the Charter were acknowledged in the proposal for a **recast of the Electricity Directive**, ([87]) In particular, Article 20 of the recast Directive (smart metering functionalities) requires Member States to ensure the privacy and data protection of final customers. Article 23 (data management) sets out rules for entities that manage metering and consumption data and provides that access to such data should be possible only with the final customer's consent. Annex III to the proposal requires the highest level of cybersecurity and data protection for energy consumers equipped with smart metering systems. ([88])

The proposal for an amendment of the **Energy Efficiency Directive** ([89]) provides that energy meters should be remotely readable. This will avoid the need for meter readers to go into people's homes and so increase the respect of privacy.

The Commission balanced the Union's interests in guaranteeing transparency in the use of public money against the rights recognised by Article 8 of the Charter as regards the publishing of information about the recipients of **state aid to the fishery and aquaculture sector**. It decided that the requirement that Member States publish information about recipients on a

([85]) EDPS prior check opinions on processing operations of personal data contain a description of the proceedings, a summary of the facts, a legal analysis and conclusions. The legal analysis checks, systematically according to a pre-established list, all requirements necessary to comply with the data protection rules. The conclusions contain recommendations to ensure that those requirements are met;.
EDPS opinion of 7 December 2016 on the IET (Case 2016-0674 and 2013-1296): *https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Priorchecks/Opinions/2016/16-12-07_Import_Export_OLAF_EN.pdf* . .

([86]) Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ L 139, 26.5.2016, p. 1).

([87]) Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast) (COM(2016) 864 final, 30.11.2016).

([88]) Annexes to the Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (COM(2016) 864 final, 30.11.2016).

([89]) Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/27/EU on energy efficiency (COM/2016/0761 final, 30.11.2016).

comprehensive state aid website can be waived when individual aid awards do not exceed EUR 30 000. This threshold was included in the *Guidelines for the examination of state aid to the fishery and aquaculture sector* in 2015 ([90]) and the Commission also referred to it in the *Supplementary information sheet for state aid to the fishery and aquaculture sector* in the Annex to Commission Regulation (EU) 2016/2105, ([91]) which was adopted on 1 December 2016.

Agreements and other instruments affecting international protection of fundamental rights

After having reached a political agreement with the United States in February 2016, the Commission adopted the **EU-U.S. Privacy Shield** adequacy decision ([92]) with the support of the Member States in the Article 31 Committee, following an opinion of the Article 29 Working Party in July. ([93]) It replaces the Commission's 2000 Safe Harbour adequacy decision, which had been declared invalid by the CJEU in its ruling in the *Max Schrems* case in 2015. ([94]) The Commission took into account the requirements set out in that ruling.

The Privacy Shield framework became operational on 1 August 2016. It ensures the free flow of personal data for commercial purposes between the EU and US companies certified under the Privacy Shield, while ensuring the fundamental right to the protection of personal data as guaranteed by Article 8 of the Charter. It comprises a set of privacy principles and ensures oversight and enforcement of compliance by Privacy Shield companies, and redress in cases of individual complaints. As redress mechanism of last resort when other avenues (such as intervention by the EU data protection authorities, the US Department of Commerce or the Federal Trade Commission) have been exhausted, it provides for an arbitration mechanism that can be invoked by individuals. As regards possible access to personal data by the US authorities for national security purposes, the Commission relies on their explicit representations and assurances that there is no mass surveillance of Europeans and their data. Possible complaints will be handled by a new Ombudsperson, independent from the US intelligence services, a new mechanism specifically created for Privacy Shield. The Commission will monitor the proper functioning of the Privacy Shield and any legal developments in the United States. Relevant issues will be discussed with US officials on an *ad hoc* basis or as part of the annual joint review.

([90]) *Guidelines for the examination of state aid to the fishery and aquaculture sector* (OJ C 217, 2.7.2015, p. 1).

([91]) Commission Regulation (EU) 2016/2105 of 1 December 2016 amending Annex I to Regulation (EC) No 794/2004 as regards the form to be used for the notification of state aid to the fishery and aquaculture sector (OJ L 327, 2.12.2016, p. 19).

([92]) Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield, C/2016/4176 OJ L 207, 1.8.2016. .

([93]) Opinion 01/2016 of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established under Article 29 (13 April 2016) and European Parliament Resolution of 26 May 2016 on transatlantic data flows (2016/2727/(RSP).

([94]) CJEU judgment of 6 October 2015 in Case C-362/14 *Maximillian Schrems* v *Data Protection Commission.*

In the *Schrems* judgment, the CJEU also clarified that national supervisory authorities remain competent to oversee the transfer of personal data to a non-EU country which has been the subject of a Commission adequacy decision and that the Commission has no competence to restrict their powers under Article 28 of Directive 95/46/EC. ([95]) Accordingly, it invalidated the first subparagraph of Article 3(1) of the Safe Harbour Decision, which put restrictive conditions on the power of national supervisory authorities to suspend or ban data flows. As a consequence, the Commission adopted two 'omnibus' decisions ([96]) on 16 December to amend the existing adequacy decisions ([97]) and decisions on standard contractual clauses, ([98]) which contained comparable restrictive provisions. The latter are now replaced with provisions limited to information requirements between Member States and the Commission when a national supervisory authority suspends or bans transfers to a non-EU country. The omnibus decision amending the existing adequacy decisions also introduces a requirement for the Commission to monitor relevant developments in the non-EU country which is the subject of the Commission adequacy decision.

([95]) *Ibid.*, paragraphs 40 *et seq.*, 101 to 103.

([96]) Commission Implementing Decision (EU) 2016/2295 of 16 December 2016 amending Decisions 2000/518/EC, 2002/2/EC, 2003/490/EC, 2003/821/EC, 2004/411/EC, 2008/393/EC, 2010/146/EU, 2010/625/EU, 2011/61/EU and implementing Decisions 2012/484/EU, 2013/65/EU on the adequate protection of personal data by certain countries, pursuant to Article 25(6) of Directive 95/46/EC of the European Parliament and the Council (OJ L 344, 17.12.2016, p. 83); .
Commission implementing Decision (EU) 2016/2297 of 16 December 2016 amending Decisions 2001/497/EC and 2010/87/EU on standard contractual clauses for the transfer of personal data to third countries and to processors established in such countries, under Directive 95/46/EC of the European Parliament and the Council (OJ L 344, 17.12.2016, p. 100). .
The Commission took the decisions after consulting the EDPS, taking into account the opinion of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data and in accordance with the opinion of the Committee established under Article 31(1) of Directive 95/46/EC.

([97]) Commission Decision 2000/518/EC of 26 July 2000 on the adequate level of protection of personal data provided in Switzerland (OJ L 215, 25.8.2000, p. 1); Commission Decision 2002/2/EC of 20 December 2001 on the adequate level of protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act (OJ L 2, 4.1.2002, p. 13); Commission Decision 2003/490/EC of 30 June 2003 on the adequate protection of personal data in Argentina (OJ L 168, 5.7.2003, p. 19); .
Commission Decision 2003/821/EC of 21 November 2003 on the adequate protection of personal data in Guernsey (OJ L 308, 25.11.2003, p. 27); Commission Decision 2004/411/EC of 28 April 2004 on the adequate protection of personal data in the Isle of Man (OJ L 151, 30.4.2004, p. 48); Commission Decision 2008/393/EC of 8 May 2008 on the adequate protection of personal data in Jersey (OJ L 138, 28.5.2008, p. 21); Commission Decision 2010/146/EU of 5 March 2010 on the adequate protection provided by the Faeroese Act on processing of personal data (OJ L 58, 9.3.2010, p. 17); Commission Decision 2010/625/EU of 19 October 2010 on the adequate protection of personal data in Andorra (OJ L 277, 21.10.2010, p. 27); Commission Decision 2011/61/EU of 31 January 2011 on the adequate protection of personal data by the State of Israel with regard to automated processing of personal data (OJ L 27, 1.2.2011, p. 39); Commission Decision 2012/484/EU of 21 August 2012 on the adequate protection of personal data by the Eastern Republic of Uruguay with regard to automated processing of personal data (OJ L 227, 23.8.2012, p. 11); Commission Decision 2013/65/EU of 19 December 2012 on the adequate protection of personal data by New Zealand (OJ L 28, 30.1.2013, p. 12).

([98]) Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries, under Directive 95/46/EC (OJ L 181, 4.7.2001, p. 19) .
Decision 2010/87/EU on standard contractual clauses for the transfer of personal data to processors established in third countries, under Directive 95/46/EC (OJ L 39, 12.2.2010, p. 5).

On 2 June, the EU and the United States formally signed the **Umbrella Agreement** ([99]). Rather than providing itself a basis for data transfers, the Agreement ensures a high level of data protection for any transfer of personal data (based on international agreements or Member States' laws) between the EU and the USA in the context of police or judicial cooperation in criminal matters. President Obama signed a new law, the Judicial Redress Bill, to allow the Agreement to enter into force. The Bill extends to EU citizens the right to judicial redress in US courts. On 2 December, following consent from the European Parliament, the Council adopted the decision to conclude the Agreement. It entered into force on 1 February 2017.

Policy

Commission policy work touching on the right to the protection of personal data revolved mainly around new developments in the digital environment.

On 30 November, the Commission adopted a **European strategy on cooperative intelligent transport systems (C-ITS)**, ([100]) a milestone on the road to cooperative, connected and automated mobility. This Strategy outlines steps allowing for commercial deployment, as of 2019, of vehicles that communicate with each other and with the EU road infrastructure. The protection of personal data and privacy will be essential for the successful deployment of cooperative, connected and automated vehicles, and to public acceptance of the system. Hence, the C-ITS strategy proposes action to safeguard this right while facilitating the deployment of C-ITS.

EU spectrum policy enables citizens to access and distribute digital content and information of their choice. For example, policy initiatives to make available spectrum for wireless broadband services in recent years have led to the wider use of internet access, e.g. through smartphones and tablets. Legal safeguards set up by the Commission when it devised the architecture of the spectrum inventory take into consideration the right to the protection of personal data. The basic act contains clear protections for citizens against potential breaches of data privacy. ([101])

In the field of the **internet of things (IoT)**, the Commission adopted a set of comprehensive actions to strengthen the creation of a digital single market for IoT products and services. One of these relates to the creation of a trusted environment for IoT. One of the policy challenges to help the roll-out of IoT is to build end-users' trust, i.e. to strengthen security and end-to-end

([99]) Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses, available at: *http://ec.europa.eu/justice/data-protection/files/dp-umbrella-agreement_en.pdf*.

([100]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A European strategy on cooperative intelligent transport systems – a milestone towards cooperative, connected and automated mobility* (COM(2016) 766 final, 30.11.2016).

([101]) Commission Implementing Decision 2013/195/EU of 23 April 2013 defining the practical arrangements, uniform formats and a methodology in relation to the radio spectrum inventory established by Decision No 243/2012/EU of the European Parliament and of the Council establishing a multiannual radio spectrum policy programme (OJ L 113, 25.4.2013, p. 18).

personal data protection and privacy. One possible solution identified by the Commission in its ***Communication on ICT standardisation priorities for the digital single market*** ([102]) could be to develop a 'trusted IoT' label with information for consumers of IoT about the product's level of security and privacy.

The data protection and privacy aspects of the Charter must be covered in the context of **cloud computing** services through the application of data protection law. In 2016, the Commission supported the work of the Cloud Select Industry Group (C-SIG) to prepare a data protection code of conduct for cloud service providers, which is designed to provide users of cloud infrastructure, software or platform services with assurance that their data are being protected in accordance with the GDPR. The C-SIG code has also been used as a model for a more specific code of conduct for cloud infrastructure providers (CISPE). ([103])

Case-law

A number of CJEU cases produced further guidance on the right to the protection of personal data, sometimes in connection with the right to private life (as guaranteed in Article 7 of the Charter).

In the joint cases of *Tele2 Sverige AB/ Post-och telestyrelsen* ([104]) and *Secretary of State for the Home Department/Tom Watson e.a.*, ([105]) the CJEU interpreted national laws on data retention in the light of Articles 7 and 8 of the Charter and applicable EU law on the protection of personal data. Following earlier case-law, it examined national legislation in two Member States that required the general and indiscriminate retention of traffic and location data for all subscribers and registered users relating to all means of electronic communication. It considered that these laws breached the fundamental rights to a private life and protection of personal data as enshrined in Articles 7 and 8 of the Charter. Given their broad range and limited safeguards, it considered none of the restrictions to be justified, even where the objective was to fight serious crime. However, it pointed to the fact that such an objective may justify targeted retention of traffic and location data, provided that this is limited to what is strictly necessary with respect to the categories of data to be retained, the means of communication affected, the persons concerned and the retention period. It also clarified the requirements under which national competent authorities may access such retained data.

([102]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *ICT standardisation priorities for the digital single market* (COM(2016) 176 final, 19.4.2016).

([103]) *https://ec.europa.eu/digital-single-market/en/cloud-select-industry-group-code-conduct.*

([104]) CJEU judgment of 21 December 2016 in Case C-203/15, *Tele2 Sverige.*

([105]) CJEU judgment of 21 December 2016 in Case C-698/15, *Watson and Others.*

In *GS Media BV*, ([106]) the CJEU ruled on the posting of hyperlinks in the context of the fundamental right to freedom of expression as protected in Article 11 of the Charter. A media company had posted on its website a hyperlink directing viewers to various websites displaying photos of a Dutch celebrity taken by *Playboy* magazine. As the copyright holder had not authorised publication of the photos on these websites, the magazine's editor claimed that the posting infringed copyrights. Nevertheless, the media company continued to make the hyperlinks available, or similar ones when some of the original ones became unavailable. In the light of the EU Copyright Directive, ([107]) the Court ruled that any communication to the public of any work had to be authorised by the copyright holder. It held that the posting, without the copyright owner's authorisation, of hyperlinks to works published on the websites in question did constitute 'communication to the public'. It conceded that in individual cases it could be difficult for the person posting the link to assess whether there was an authorisation. In this context, a fair balance had to be struck between the copyright holder's right and the right to freedom of expression of the person posting the link. However, where the person posting hyperlinks was or should have been aware of the copyright infringements, as in the case at hand, such action constituted 'communication to the public' without the copyright holder's consent.

In the *Patrick Breyer* case, ([108]) the CJEU clarified the concept of personal data. A citizen had brought an action before the German courts seeking an injunction to prevent websites run by the federal German institutions that he consulted from registering and storing his IP addresses. According to the CJEU's preliminary ruling, dynamic IP addresses registered by the operator of a website may be considered as personal data where the operator has the legal means to obtain further information to identify the person using the IP address from the internet service provider. The Court also stated that Member State legislation may not prevent website operators from collecting and using a visitors' personal data without their consent for purposes other than facilitating and invoicing the specific use of services by that visitor. It pointed out that the processing of personal data is lawful, *inter alia*, if it is necessary to pursue a legitimate interest, such as preserving the general operability of a website. This includes protecting it against cyberattacks, provided that the interests or the fundamental rights and freedoms of the data subject do not override that objective.

In a preliminary ruling in *Verein für Konsumenteninformation* v *Amazon EU Sàrl*, ([109]) the CJEU clarified how jurisdiction on data protection is to be determined. The Austrian Consumers' Association brought a case against an electronic commerce company established in Luxembourg, which *inter alia* addressed Austrian consumers via a website with a '.de' domain name. The company had no registered office or establishment in Austria. The CJEU ruled that processing of personal data by such an undertaking may be governed by the law of the Member State to which it

([106]) CJEU judgment of 8 September 2016 in Case C-160/15, *GS Media*.

([107]) Directive of the European Parliament and Council 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, 22 May 2001, p. 10).

([108]) CJEU judgment of 19 October 2016 in Case C-582/14, *Breyer*.

([109]) CJEU judgment of 28 July 2016 in Case C-191/15, *Verein für Konsumenteninformation*.

directs its activities, if it is shown that it carries out the processing in the context of the activities of an establishment situated in that Member State.

In *Oikonomopoulos*,([110]) the General Court issued a judgment relating to the protection of personal data held by the European Anti-Fraud Office (OLAF). It confirmed that OLAF's procedures respected the fundamental right to the protection of personal data and the rights of defence.

Article 9 — Right to marry and right to found a family

Article 9 of the Charter is based on Article 12 ECHR, which reads as follows:

> *'Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right.'*

The wording has been updated to cover cases in which national legislation recognises arrangements other than marriage for founding a family. Article 9 neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Article 10 — Freedom of thought, conscience and religion

The right guaranteed in Article 10(1) of the Charter corresponds to that in Article 9 ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. It includes freedom to change religion or belief and freedom, either alone or in community with others and in public or private, to manifest religion or belief, in worship, teaching, practice and observance. The limitations must therefore respect Article 9(2) ECHR, which reads as follows:

> *'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'*

Article 10 (2) recognises the right to conscientious objection in accordance with national laws.

([110]) CJEU judgment of 20 July 2016 in Case T -483/13, *Oikonomopoulos v Commission.*

Parliamentary questions

In 2016, several parliamentary questions were raised on the killing of animals without prior stunning, on the Commission's policy on ritual slaughter and on whether the Commission intends to promote stunning before slaughter. The Commission confirmed that Council Directive 98/58/EC on the protection of animals kept for farming purposes ([111]) requires the Union to pay full regard to animal welfare requirements when formulating and implementing certain EU policies, while respecting, *inter alia*, religious rites. The Union also has to respect the freedom of religion and the right to practise it, as enshrined in Article 10 of the Charter. The Commission believes that the EU legislation properly reflects the balance between these two considerations.

Other parliamentary questions concerned the impact of national prohibitions on wearing a full-face veil in public places on the right to manifest religion freely. The Commission noted that the EU has no competence to legislate on this matter and it is for each Member State to ensure that it fulfils its obligations on fundamental rights, as resulting from international agreements, the ECHR and its national constitution.

Case-law

In the context of ritual slaughter, a Belgian court asked the CJEU for a preliminary ruling on whether Article 4(4) of Council Regulation (EC) No 1099/2009 ([112]) is compatible with the freedom of religion under Article 10 of the Charter. Article 4(4) contains an exception for animals subject to particular methods of slaughter prescribed by religious rites (without stunning the animals), provided that the slaughter takes place in a slaughterhouse. The referring court asked whether Article 4(4) was contrary to Article 9 ECHR and Article 10 of the Charter, insofar as they require religious slaughtering to take place only in a slaughterhouse, even if there is insufficient capacity in the Flemish Region to meet the annual demand for the ritual slaughter of unstunned animals on the occasion of the Islamic Festival of Sacrifice and converting temporary slaughter establishments into approved slaughterhouses would be too cumbersome. ([113])

Data gathered by the EU Agency for Fundamental Rights

In December 2016, FRA published a **report on Antisemitism, providing an overview of data available in the EU for 2005-2015**. ([114]) The report shows that a lack of progress in data collection impedes the fight against Antisemitism. Nevertheless, where comprehensive data exist,

([111]) Council Directive 98/58/EC of 20 July 1998 concerning protection of animals kept for farming purposes (OJ L 221, 8.8.1998, p. 23).

([112]) Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing (OJ L 303, 18.11.2009, p. 1).

([113]) CJEU application of 30 September 2016 in C-426/16, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, procedure pending.

([114]) *http://fra.europa.eu/en/publication/2013/discrimination-and-hate-crime-against-jews-eu-member-states-experiences-and* .

they show that Antisemitism remains a serious concern which demands decisive and targeted responses.

Article 11 — Freedom of expression and information

The right to freedom of expression is guaranteed by Article 11(1) of the Charter and includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of borders. Article 11(2) ensures respect for freedom and pluralism of the media. In line with Article 52(3) of the Charter, the EU's approach to this right and its limits takes inspiration from ECtHR case-law and is enshrined in the *EU human rights guidelines on freedom of expression online and offline*. ([115]) The guidelines address a host of issues including the safety of journalists, the promotion of media freedom and pluralism, defamation laws, blasphemy laws and laws addressing incitement to racial hatred and violence.

Legislation

On 25 May, the Commission adopted a proposal seeking to bring the **Audiovisual Media Services Directive (AVMSD)** ([116]) into line with changing market realities. It substantially strengthens the provisions on independence of regulators and reinforces the role of the European Regulators Group for Audiovisual Media Services (ERGA). It specifies requirements of independence on all national regulatory authorities for audiovisual media services, such as impartiality, adequate human and financial resources, adequate enforcement powers and transparent dismissal procedures.

In January and April, ERGA issued statements expressing concerns as to the state of regulatory independence and media pluralism in Poland, Greece and Croatia. ([117])

One of the objectives of the proposal for a **Directive on copyright in the digital single market** ([118]) is to foster a well-functioning copyright marketplace. The impact assessment concluded that the measures to protect press publications should have a positive impact on the freedom of expression and information as they are expected to foster the quality of journalistic content. The proposed rules on the use of protected content by services storing and giving access to user

([115]) *https://eeas.europa.eu/sites/eeas/files/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf* .

([116]) Proposal for a Directive of the European Parliament and the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (COM(2016) 287 final, 25.5.2016).

([117]) *https://ec.europa.eu/digital-single-market/en/audiovisual-regulators.*

([118]) Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016) 593, 14.9.2016).

uploaded content could have a negative impact on the freedom of expression, but this is expected to be mitigated by measures obliging the services to put in place complaint and redress mechanisms for users in the event of dispute over the application of the new rules.

Lastly, the proposal for a **Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes** ([119]) establishes mechanisms that will make it simpler and faster to clear rights for making television and radio programmes available online across borders and for retransmission of packages of channels via internet-based networks equivalent to cable. The proposal is expected to have a positive impact on the freedom of expression and information since it will increase the cross-border provision and receipt of TV and radio programmes that originate in other Member States.

Policy

In addition to its legislative proposals, the Commission adopted on 14 September a **Communication on *Promoting a fair, efficient and competitive European copyright-based economy in the digital single market***. ([120]) The Communication encourages *inter alia* the development of technical tools which will improve the dissemination of and access to protected content such as audiovisual works and of new models of financing, production and distribution of content in the single market. This is expected to have a positive impact on freedom of expression and cultural diversity.

Held in Brussels on 17-18 November, **the second Annual Colloquium on Fundamental Rights** ([121]) focused on 'media pluralism and democracy'. First Vice-President Timmermans, Commissioner Oettinger and Commissioner Jourová led discussions with a wide range of experts on the key role that free and pluralist media, in particular digital media, play in democratic societies. The conclusions, including a number of action points, were published in December. ([122])

On 25 May, the Commission adopted a **Communication on online platforms** ([123]) indicating that it will further encourage coordinated EU-wide self-regulatory efforts by online platforms

([119]) Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (COM(2016) 594, 14.9.2016).

([120]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Promoting a fair, efficient and competitive European copyright-based economy in the digital single market* (COM(2016) 592, 14.9.2016).

([121]) *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31198.*

([122]) *http://ec.europa.eu/information_society/newsroom/image/document/2016-50/2016-fundamental-colloquium-conclusions_40602.pdf.*

([123]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Online platforms and the digital single market – opportunities and challenges for Europe* (COM(2016) 288), 25.5.2016).

and regularly review the effectiveness and comprehensiveness of such voluntary efforts with a view to determining the possible need for additional measures and ensuring that the exercise of users' fundamental rights is not limited.

In May, the Commission selected projects following a call for proposals for a preparatory action in the field of violations of media freedom and pluralism, to be run or coordinated by the **European Centre for Press and Media Freedom (ECPMF)**. ([124]) The Mapping Media Freedom project identifies threats, violations and limitations faced by media workers in the EU's Member States, accession candidate countries and potential candidates for EU membership and neighbouring countries. Under this project, the International Press Institute (IPI) aims to address the threat that the abuse of defamation laws, and criminal defamation laws in particular, poses to the public's right to information in the EU and in candidate countries. The project thus strengthens media freedom and the free flow of news and of diverse viewpoints. The IPI's work under this project allows it to devote greater attention to studying and counteracting civil lawsuits intended primarily to intimidate journalists into silence rather than honestly defend against damage to legitimate reputation rights. The IPI is particularly active in Turkey and Greece, where it leads efforts to improve the skills of journalists and media lawyers in defending press freedom rights against legal abuse, and extensively documents defamation cases brought against journalists or media companies and the resultant impact on the public's right to be informed.

The annual meeting of the **EU Media Literacy Expert Group** ([125]) took place on 15 November in Brussels. The main discussion topics included coordination and synergies with other EU policies, bridges between the media industry and the education sector to develop and disseminate critical thinking tools, media literacy in the digital era and the European Audiovisual Observatory's mapping of media literacy practices in the EU.

Case-law

In Case C-547/14 *Philip Morris Brands SARL and Others*, ([126]) the CJEU was asked to rule on the interpretation and validity of the Tobacco Products Directive, ([127]) *inter alia* on the basis that the rules on the labelling of unit packets, on outside packaging, and on tobacco products themselves infringed Article 11 of the Charter and the principle of proportionality. While it found that the limitations did constitute interference with the right to freedom of expression, it also found that, given the interest of human health protection in an area characterised by the proven harmfulness of tobacco consumption, the Directive did not fail to strike a fair balance between the requirements to protect the freedom of expression and information and to protect human health.

([124]) *https://ec.europa.eu/digital-single-market/en/media-freedom-projects.*

([125]) *https://ec.europa.eu/digital-single-market/en/news/meetings-media-literacy-expert-group.*

([126]) CJEU judgment of 4 May 2016 in Case C-547/14, *Philip Morris Brands SARL and Others.*

([127]) Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1-38).

Article 12 — Freedom of assembly and of association

The right to freedom of peaceful assembly and to freedom of association at all levels, including political, trade union and civic matters, is protected in Article 12 of the Charter. It corresponds to Article 11 ECHR, but its scope is wider since it applies to all European levels. Also, unlike Article 11 ECHR, it specifically mentions the special contribution of political parties to expressing the citizens' political will.

This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

Article 13 — Freedom of the arts and sciences

Article 13 of the Charter ensures that arts and scientific research are free of constraint. This does not mean that they cannot be restricted, but restrictions are subject to the strict conditions of Article 52(1) of the Charter. ([128])

Policy

On 14 September, the Commission adopted a set of legislative proposals to update the EU's copyright rules, as set out in the digital single market strategy adopted on 6 May 2015. ([129]) Of relevance for Article 13 of the Charter is the **Proposal for a Directive on copyright in the digital single market**, which ([130]) contains various measures that have three different objectives:

- ensuring wider access to content across the EU and improving licensing practices;

([128]) For further explanations, see section below on Article 52.

([129]) **Proposal for a Directive of the European Parliament and of the Council on copyright in the digital single market (**COM(2016) 593, 14.9.2016);
Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (COM(2016) 594, 14.9.2016);
Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (COM(2016) 596, 14.9.2016);
Proposal for a Regulation of the European Parliament and of the Council on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled (COM(2016) 595, 14.9.2016).

([130]) Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM (2016)593, 14.9.2016.

- adapting exceptions and limitations to digital and cross-border environments; and
- fostering a well-functioning copyright marketplace.

With regard to the first aim, the Commission ensured that the measures proposed, while having a limited impact on copyright as a property right,([131]) will have a positive impact on cultural diversity, the freedom of arts and sciences, and the right to education (specifically in the context of the measures relating to out-of-commerce works, as it is expected that more creative and learning material will be accessible). As regards exceptions and limitations, the proposed measures are expected to have a limited impact on copyright (except the measure on the preservation of cultural heritage, which has no tangible impact on fundamental rights).

Through its research and innovation policy projects, the Commission furthers scientific research and ensures that other fundamental rights are respected in this context. In 2016, it continued to support the Fostering Human Rights Among European Policies (FRAME) large-scale collaborative research project funded under the EU's Seventh Framework Programme (FP7), which focuses on the contribution of the EU's internal and external policies to the promotion of human rights worldwide.([132])

Article 14 — Right to education

The right to education and access to vocational and continuing training is enshrined in Article 14 of the Charter. It is based on the common constitutional traditions of Member States and Article 2 of the Protocol to the ECHR.

In 2016, education was at the forefront of the Commission's response to the growing economic and social inequalities in the EU, the challenges brought about by the massive arrival of refugees and the problems linked to radicalisation in certain Member States.

Legislation

The right to education was mainstreamed in particular in the EU's response to the asylum crisis.

The Commission proposal for a **recast of the Reception Conditions Directive**, aimed at ensuring adequate reception standards for all asylum applicants throughout the Union, obliges Member States to treat applicants who have been granted access to the labour market in the

([131]) See section below on Article 17.

([132]) *http://www.fp7-frame.eu/* .

same way as their own nationals with regard *inter alia* to education and vocational training.([133])

Similarly, the Commission proposal for a revision of the Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (**blue card**)([134]) upholds highly skilled workers' rights to equal treatment, in particular as regards access to education and vocational training.

The **recast Students and Researchers Directive**([135]) was adopted in May 2016. It establishes the conditions of non-EU nationals' entry and residence for the purposes of research, study, training, voluntary service, pupil exchange schemes or educational projects, and au pairing. Member States have until 23 May 2018 to transpose the Directive into national law.

Another area in which the right to education was mainstreamed was the **digital agenda**. The Commission's proposal for a Directive of the European Parliament and of the Council on copyright in the digital single market([136]) aims to have a positive impact on the right to education, specifically in the context of measures relating to out-of-commerce works, as more creative and learning material will be accessible.

Policy

Education policies are instrumental in addressing inequalities, fostering inclusion and tolerance, and promoting the common values of democracy, fundamental rights and the rule of law.

In 2016, the **Erasmus+ programme** (2014-2020) focused on the promotion of fundamental values and the social inclusion of young people by funding educational and youth activities. It also provided support for mobility periods abroad and for language learning, thereby fostering multicultural skills.

In June, the Commission adopted a Communication on a "**New Skills Agenda for Europe**"([137]) which underlines the strategic importance of skills for sustaining jobs, growth and competitiveness. It covers areas such as skills development, mutual recognition of qualifications, support for vocational education and training and higher education, and ways of exploring the full potential of the digital economy, in order to promote lifelong investment in people. It inter alia also pro-

([133]) See sections above on Articles 1 and 10 and below on Articles 18 and 24.

([134]) Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, COM(2016) 378 final, 7.6.2016.

([135]) Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) (OJ L 132, 21.5.2016, p. 21-57).

([136]) Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM(2016)593, 14.9.2016. See sections above on Articles 8, 11 and 13 and below on Article 17.

([137]) COM(2016) 381 final, 10.06.2016 - *http://ec.europa.eu/social/main.jsp?catId=1223.*

poses a 'skills guarantee' to further combat exclusion and inequality. As a follow-up the Council adopted the **Upskilling Pathways** ([138]) initiative which helps adults acquire a minimum level of literacy, numeracy and digital skills, on 19 December. The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes a principle regarding skills, education and lifelong learning focused on the access to quality education and training throughout the life course and on the encouragement of skills upgrading.

In the European Semester exercise (the EU's annual cycle of economic policy coordination), the Commission made specific recommendations to four Member States (Austria, Bulgaria, the Czech Republic and Hungary) to improve social inclusion in education, hence promoting the right to education. A specific reference to the inclusion of the Roma in mainstream education was made for three Member States (the Czech Republic, Hungary and Slovakia).

In January, the European Parliament highlighted the **importance of education in fundamental values** in a Resolution on fostering mutual respect, integrity, cultural diversity, social inclusion and cohesion. It repeated this message in its 23 June Resolution on the **follow-up of the strategic framework for European cooperation in education and training** (ET 2020), ([139]) in which it called for greater inclusiveness.

These messages were echoed by the Council in its 24 February Resolution on **promoting socio-economic development and inclusiveness in the EU through education**, ([140]) which underlines that education and training should be a key element in a comprehensive European approach aimed at fostering 'upward social convergence' and inclusiveness.

As a follow-up to the **2016 Colloquium on Fundamental Rights on media pluralism and democracy**, ([141]) the Commission undertook to reinforce its policy action on media literacy so as to empower citizens to be more active and critical, in particular on online platforms. Funding will be made available with the support of the European Parliament.

On 7 June, in response to the challenges posed by migration, the Commission adopted **an EU action plan on the integration of third-country nationals**. ([142]) This provides a comprehensive framework to support Member States' efforts to develop and strengthen their integration policies, and sets out the concrete measures the Commission will be taking in this regard.

([138]) Council Recommendation of 19 December 2016 on *Upskilling pathways: new opportunities for adults* (OJ C 484, 24.12.2016, p. 1-6).

([139]) European Parliament Resolution on *Follow-up of the strategic framework for European cooperation in education and training (ET2020)* (2015/2281(INI).

([140]) Resolution of the Council and of the Representatives of the Governments of the Member States, meeting in the Council (24 February 2016), on *Promoting socio-economic development and inclusiveness in the EU through education: the contribution of education and training to the European Semester 2016*.

([141]) See section above on Article 11.

([142]) Communication from the Commission to the European Parliament, the Council, the Committee and the Committee of the Regions, *Action plan on the integration of third country nationals* (COM(2016) 377 final, 7.6.2016).

Education, including action to promote language training, the participation of migrant children in early childhood education and care, teacher training and civic education, features prominently.

In its efforts to respond to the wave of terrorist attacks in EU countries, the Commission adopted a Communication ([143]) underlining the **importance of education as the best safety net against social exclusion**, which for some can be a factor in radicalisation. One of the key actions was to channel EUR 400 million in 2016 through Erasmus+ to transnational partnerships to develop innovative policy approaches and practices at grass-roots level, prioritising the social inclusion of young people and the promotion of fundamental values through the funding of educational and youth activities.

As a follow-up, the **Council adopted conclusions** ([144]) in November agreeing that education and training represent powerful means of promoting common values, for example through human rights and citizenship education, educational programmes with a focus on learning from the past and an inclusive learning environment, fostering participation, social mobility and inclusion, thereby laying stronger foundations for society and democratic life.

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

Article 15(1) of the Charter protects the **right to engage in work** and to pursue a freely **chosen** or accepted **occupation.**

Legislation

On 22 November, the Commission adopted a **proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures**. ([145]) A key objective of the initiative is to ensure that viable businesses in financial difficulty can avoid insolvency and liquidation, and thus preserve their employees' jobs by staying in business. It is expected that a significant proportion of the 1.7 million jobs lost to insolvency every year will be saved. Also, it is estimated that offering a true second chance to entrepreneurs to restart business activities would create three million jobs across Europe. The proposal takes into account the fundamental rights set out in the Charter

([143]) Commission Communication, *Supporting the prevention of radicalisation leading to violent extremism* (COM(2016) 379 final, 14.6.2016).

([144]) *Prevention of radicalisation leading to violent extremism*, conclusions of the Council and of the Representatives of the Governments of the Member States, meeting in the Council (21 November 2016).

([145]) Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU (COM(2016) 723 final, 22.11.2016).

and takes up the policy options enhancing such rights. It will have a positive impact on rights under Article 15, in particular the right to engage in gainful employment.

In June, the Commission adopted a **proposal to reform the 2009 Blue Card Directive**.([146]) The proposal is aimed at improving the EU's ability to attract and retain highly skilled non-EU nationals, since demographic patterns suggest that, even with the more skilled EU workforce the new skills agenda aims to develop, there will still be a need to attract additional talent in the future. The proposal establishes a single EU-wide scheme, replacing parallel national schemes for the purpose of highly skilled employment to provide more clarity for applicants and employers, and make the scheme more visible and competitive. It is aimed at enhancing intra-EU mobility by facilitating procedures and allowing for shorter business trips (up to 90 days) within the Member States that apply the blue card. It allows for a lower salary threshold by creating a flexible range within which Member States can adjust the threshold to their labour markets and provides for more appropriate conditions for recent non-EU graduates and workers in areas with a labour shortage. Under the new blue card scheme, highly skilled beneficiaries of international protection will be able to apply for a card. The proposal strengthens the rights of both the cardholders (allowing for quicker access to long-term residence status, immediate and more flexible labour-market access) and their family members (ensuring they can accompany the cardholder). It should thus make the EU a more attractive destination for the highly skilled employees the EU economy needs.

This initiative is fully consistent with the Charter and enhances some of the rights enshrined in it. In particular, it contributes to delivering the right to engage in work and to pursue a freely chosen or accepted occupation (Article 15(1)). It is also fully consistent with the rights relating to working conditions (Article 15(3)) and the rights of workers (Articles 27 to 36), as it upholds the rights to equal treatment for highly skilled workers as regards working conditions and access to social security, education and vocational training, and goods and services.

Article 16 — Freedom to conduct a business

Article 16 of the Charter recognises the freedom to conduct a business in accordance with Union law and national laws and practices. EU action in policy areas where measures could interfere in operators' economic activity is frequently assessed for its impact on this freedom.

Legislation

The Commission's **proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and**

([146]) Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, COM(2016) 378 final, 7.6.2016.

discharge procedures ([147]) (see above) will have a positive impact on the freedom to conduct a business, since:

- the availability of an effective restructuring framework will allow viable companies to continue operating instead of being driven towards liquidation; and

- the second chance framework will allow honest over-indebted entrepreneurs to resume their business activities within a period of time considered optimal taking into account the creditors' right to property. ([148])

Case-law

In Case C-134/15, *Lidl GmbH & Co. KG* v *Freistaat Sachsen*, ([149]) the CJEU was asked whether Article 5(4)(b) of Commission Regulation (EC) No 543/2008 on marketing standards for poultry meat (which requires the indication of the total price and the price per weight unit on the pre-packaging or on a label for fresh poultry meat) was compatible with the freedom to conduct a business. While the Court found that the rules could limit the freedom to conduct a business, this limitation was justified and proportionate given that they ensured consumer information in the poultry meat sector so as to contribute to improving the quality of the meat and facilitating its sale in the interest of producers and traders.

In Case C-201/15 *AGET Iraklis*, ([150]) the CJEU decided that the mere fact that a Member State requires that collective redundancies be first notified to a national authority, which has the power to oppose them on the basis of the protection of workers and of employment, is an unjustified limitation of the freedom to conduct a business. If the authority's assessment was based on very general and imprecise criteria, such as the 'situation of the undertaking' and the 'conditions in the labour market' in the case at stake, without any reference in the law to the specific objective circumstances in which its powers are to be exercised, the legislation would fail to comply with the principle of proportionality laid down in Article 52(1) of the Charter and, therefore, with Article 16.

([147]) Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU, COM(2016) 723 final, 22.11.2016.

([148]) See section above on Article 15.

([149]) CJEU judgment of 30 June 2016 in Case C-134/15, *Lidl GmbH & Co. KG* v *Freistaat Sachsen*.

([150]) CJEU judgment of 21 December 2016 in Case C-201/15, *AGET Iraklis*.

Article 17 — Right to property

Article 17 of the Charter protects the right of all to **property**, which includes the right to own, use, and dispose of lawfully acquired possessions. The Charter also guarantees the protection of **intellectual property.**

Legislation

As mentioned above,([151]) on 24 June 2016 the Council adopted **two Regulations** aimed at **helping international couples**, whether in a marriage or a registered partnership, to manage their property on a daily basis and to divide it in the event of divorce or of one of them dying.([152]) The Regulations determine which Member State's courts are competent to deal with matters concerning the property of an international couple (jurisdiction), which national law will apply to the property matters of an international couple (applicable law) and how a decision on these matters issued in one Member State will be recognised and enforced in another. They will provide international couples with legal certainty and reduce the costs of proceedings.

The impact assessment accompanying the Commission's proposals for a Directive on copyright in the digital single market and a Regulation on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes looked in detail at their impact on fundamental rights.([153])

The **proposal for a Directive** contains various measures that have three different objectives:

- ensuring wider access to content across the EU and improving licensing practices;
- adapting exceptions and limitations to digital and cross-border environments; and
- fostering a well-functioning copyright marketplace.

With regard to the first aim, the Commission concluded in its impact assessment that the proposed measures will have a limited impact on copyright as a property right. A positive impact is expected on cultural diversity, the freedom of arts and sciences and the right to education.

The proposal for a **Regulation on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of**

([151]) See section above on Article 7.

([152]) See section below on Article 21.

([153]) See section above on Article 13.

television and radio programmes ([154]) establishes mechanisms that will make it simpler and faster to clear rights for making television and radio programmes available online across borders and for retransmission of packages of channels via internet-based networks equivalent to cable. According to the impact assessment, by establishing licensing arrangements applying to certain types of cross-border online transmission and digital retransmission over closed networks, the proposal is expected to have a limited impact on copyright as a property right and on the freedom to conduct a business. Given the increase in the cross-border provision and receipt of TV and radio programmes that originate in other Member States, the proposal will be particularly important for freedom of expression and information. ([155])

In the Commission's **proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures** (see above), creditors' rights to property and to an effective remedy (Articles 17 and 47 of the Charter) are upheld by a strong set of safeguards where limitations may arise, such as the limited duration of the stay of enforcement proceedings, the right to lift it if there is a possibility of unfair prejudice, or the guarantee of court intervention on every occasion their rights may be affected.

In November 2015, following the Paris, Copenhagen and *Thalys* train terror attacks that year, the Commission had tabled a proposal to amend the EU legislation on the acquisition and possession of firearms. ([156]) In December 2016, the co-legislators reached political agreement on the revision of the **EU Firearms Directive**. ([157]) The new rules will substantially reduce the likelihood of dangerous but legally held weapons falling into the hands of criminals and terrorists. The revised Directive broadens the range of prohibited weapons by banning automatic firearms converted into semi-automatic firearms and semi-automatic weapons fitted with high-capacity magazines and loading devices. This measure restricts the right to property in line with the conditions of Article 52 of the Charter. In particular, it involves stricter derogations for sport shooters and national defence reservists undertaking voluntary military training, as provided under Member State law. Defined groups of licence holders — such as museums or collectors — will also be subject to stringent security and monitoring requirements.

([154]) Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, COM(2016)594, 14.9.2016.

([155]) See section above on Article 11.

([156]) Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons (COM/2015/0750 final — 2015/0269 (COD), 18.11.2015).

([157]) *http://europa.eu/rapid/press-release_IP-16-4464_en.htm.*

Policy

The Commission's **Communication on *Promoting a fair, efficient and competitive European copyright-based economy in the digital single market*** ([158]) is part of an ambitious agenda that updates the EU copyright framework for the benefit of all stakeholders and supports the availability and visibility of European cultural and creative content, including across borders. The Communication encourages *inter alia* the development of technical tools which will improve the dissemination of and access to protected content, such as audiovisual works, and new models of financing, production and distribution of content in the single market. It therefore contributes to upholding copyright as a property right and has a positive impact on other fundamental rights such as freedom of expression and cultural diversity.

Case-law

In *McFadden*, ([159]) the CJEU ruled on the protection of fundamental rights in the framework of court **injunctions against online intermediaries, in the implementation of the e-Commerce Directive**. ([160]) It held that such injunctions, in so far as they require the communication network access provider in question to prevent the recurrence of an infringement of a right related to copyright, falls within the scope of the protection of the fundamental right to the protection of intellectual property laid down in Article 17(2) of the Charter. It also considered that such injunctions were liable to limit the freedom to conduct a business, protected under Article 16, and the right of others to freedom of information, which is protected under Article 11. Where several fundamental rights protected under EU law are at stake, it considered that it is for the national authorities or courts to ensure that a fair balance is struck between them. In view of the requirements deriving from the protection of fundamental rights, Article 12 of the e-Commerce Directive must be interpreted as not precluding injunctions which require internet providers to prevent copyright-protected work from becoming available to the general public from an online (peer-to-peer) exchange platform via an internet connection. The provider may choose which technical measures to take in order to comply with the injunction; this is for the referring court to determine.

In *Mamatas and others* v *Greece*, ([161]) the ECtHR addressed a case concerning 6 320 private individuals holding Greek state bonds who were forced to exchange the bonds for other debt instruments of lesser value, in order to reduce the Greek public debt. After a collective agreement was reached between the institutional investors and the state, the bonds were cancelled and replaced

([158]) See section on Article 11 above. .

([159]) CJEU judgment of 15 September 2016 in Case C-484/14, *Tobias Mc Fadden* v *Sony Music Entertainment Germany GmbH*.

([160]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) (OJ L 178, 17.7.2000, p. 1).

([161]) ECtHR judgment of 21 July 2016 in *Mamatas and others* v *Greece*, applications nos 63066/14, 64297/14 and 66106/14.

by new securities worth 53.5 % less in terms of nominal value. The aim was to preserve economic stability and national debt restructuring. The applicants complained about interference with their right to property under Article 1 of Protocol 1 ECHR. The Court considered that it was legitimate during the financial crisis for the national authorities to act to maintain economic stability and restructure the debt in the public interest of the community. The interference pursued a public-interest aim. The Court noted that the applicants could have exercised their rights as bond-holders and sold their bonds on the market. Indeed, collective action clauses were common practice on the international money markets. Consequently, the Court considered that the authorities had not imposed exceptional or excessive burden on the balance between the public interest and the protection of the applicants' property rights.

Article 18 — Right to asylum

The right to asylum is guaranteed by Article 18 of the Charter.

Policy and legislation

A number of measures adopted in 2016 for the **implementation of the European agenda on migration** ([162]) are of direct relevance to the enjoyment *inter alia* of the fundamental right to asylum as guaranteed by Article 18 of the Charter. ([163])

These included legislative proposals for an extensive reform of the CEAS. In particular, the Commission presented two packages of **legislative proposals** concerning:

- the criteria and mechanisms for determining the Member State responsible for examining applications for international protection (Dublin System);
- the further harmonisation of standards for the reception of applicants (Reception Conditions Directive);
- the harmonisation of the type and standards of international protection (Qualification Regulation); and
- the creation of a genuine common procedure for international protection, providing clear rights and procedural guarantees for the applicants throughout the entire procedure (Asylum Procedures Regulation). ([164])

([162]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A European agenda on migration* (COM(2015) 240 final, 13.5.2015).

([163]) See sections above on Articles 1, 2, 4 and 7 and below on Article 24.

([164]) Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM(2016) 467 final, 13.7.2016).

The reform packages also included proposals:

- to strengthen the European Asylum Support Office and turn it into a fully-fledged European Union Agency for Asylum; ([165]) and

- to establish a Union Resettlement Framework, ([166]) to facilitate a common approach to safe and legal arrival in the EU for people in need of international protection.

In order to resume transfers under the Dublin Regulation ([167]) to Greece, the Commission issued four detailed recommendations on the specific measures Greece needs to take in order to have a well-functioning asylum system. ([168])

The Commission continued to roll out the '**hotspot approach**', part of the immediate action to assist frontline Member States facing disproportionate migratory pressure at the EU's external borders, in Italy and Greece in 2016. Hotspot operating procedures were adopted in the course of the year and constant monitoring of the situation in the hotspots, notably in terms of respect for fundamental rights, was ensured by the presence on the ground of Commission staff, EU agencies, other Member States and international organisations such as UNHCR and IOM, including with a view to informing migrants and directing them to the relevant process, in due respect of the right to asylum.

The Commission reported regularly throughout the year on the implementation of the priority actions under the European agenda on migration, including the hotspots approach. ([169])

Furthermore, the Commission issued a number of **reports on relocation and resettlement**, ([170]) which keep track of the state of implementation of the two schemes, identify challenges and recommend solutions to address those challenges.

([165]) Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016) 271 final, 13.7.2016).

([166]) Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (COM(2016) 468 final, 13.7.2016).

([167]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 (OJ L 180, 29.6.2013, p. 31-59).

([168]) *http://europa.eu/rapid/press-release_MEMO-16-4253_en.htm.*

([169]) See in particular the following Commission Communications to the European Parliament and the Council:. The state of play on the implementation of the priority actions under the European agenda on migration (COM(2016) 85 final, 10.2.2016); Progress report on the implementation of the hotspots in Greece (COM(2016) 141 final, 4.3.2016); Eighth report on relocation and resettlement (COM(2016) 791 final, 8.12.2016).

([170]) The Commission reports on relocation and resettlement are available at: *https://ec.europa.eu/home- affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package_en* .

Case law

In its judgment in *Kreis Warendorf* v *Ibrahim Alo* and *Amira Osso* v *Region Hannover*, ([171]) the Court of Justice clarified the possible limits to the freedom of movement granted under the Asylum Qualifications Directive ([172]) to beneficiaries of international protection within the territory of the Member State that granted such status. It maintained in particular that a place-of-residence condition may be imposed on beneficiaries of subsidiary protection if they face greater integration difficulties than other non-EU citizens who are legally resident in the Member State in question, where it can be demonstrated that the limits are intended by the Member State concerned to facilitate integration.

In another judgment (*Danqua*), ([173]) the Court of Justice ruled on time limits to apply for subsidiary protection status, holding that the Asylum Procedures Directive, read in the light of the principle of effectiveness, precludes a national procedural rule which requires that an application for subsidiary protection status be made within 15 working days of notification of the rejection of the asylum claim. Given the difficulties that applicants for subsidiary protection may face because *inter alia* of the difficult human and material situation in which they may find themselves, it must be held that such a time limit is particularly short and does not ensure, in practice, that all applicants are afforded a genuine opportunity to submit their application and, where appropriate, to be granted subsidiary protection status. Such a time limit cannot reasonably be justified for the purposes of ensuring the proper conduct of the procedure for examining an application for that status, nor on grounds of the need to ensure the effectiveness of return procedures, since the time limit at issue in the main proceedings is not directly linked to the return procedure.

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

Article 19 of the Charter enshrines the same right as that afforded by Article 4 of Protocol 4 ECHR (prohibition of collective expulsions) and codifies requirements flowing from case-law on Article 3 ECHR (protection of individuals from being removed, expelled or extradited to a state where there is a serious risk of death penalty, torture or other inhuman or degrading treatment or punishment).

([171]) CJEU judgment of 1 March 2016 in Joined Cases C-443/14 and C-444/14, *Kreis Warendorf* v *Ibrahim Alo* and *Amira Osso* v *Region Hannover*.

([172]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

([173]) CJEU judgment of 20 October 2016 in Case C-429/15, *Evelyn Danqua* v *Minister for Justice and Equality and Others*.

Legislation and policy

The **Regulation on the European Border and Coast Guard** contains a number of fundamental rights safeguards that aim to ensure compliance with the Charter, including provisions aimed at promoting application of the principle of non-refoulement. In particular, the code of conduct for returns to be developed by the Agency should describe common standardised procedures to assure return in a humane manner and with full respect for fundamental rights, including the right to protection in the event of removal, expulsion or extradition. A code of conduct applicable to all border control operations coordinated by the Agency and all persons participating in its activities will lay down procedures intended to guarantee respect for fundamental rights, with a particular focus on vulnerable persons, including persons seeking international protection. ([174])

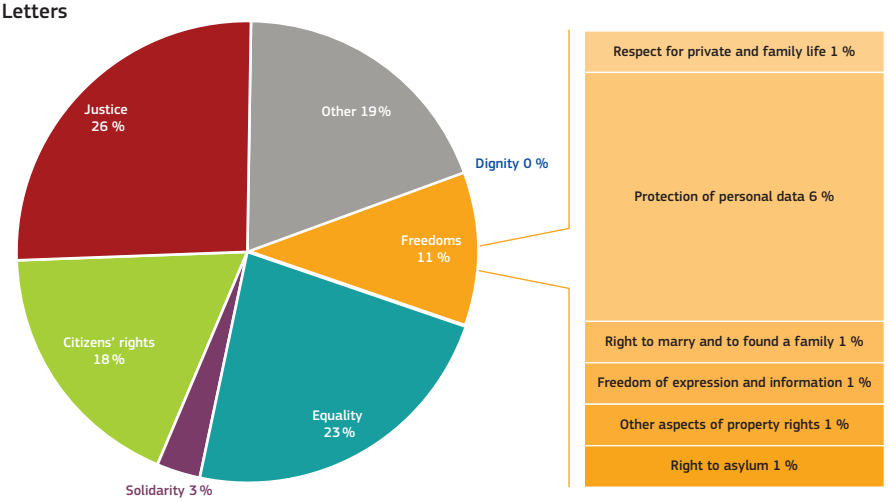
Case-law

In an important judgment in the *Petruhhin* case, ([175]) the CJEU examined the issue of whether, for the purposes of applying an extradition agreement between a Member State and a non-EU country, the nationals of another Member State should benefit, in the light of the principle of non-discrimination on grounds of nationality and the freedom of movement and of residence of Union citizens, from the rule prohibiting the first Member State from extraditing its own nationals, and the extent to which the obligations stemming from the Charter are relevant in this context. The CJEU ruled that, while a Member State is not required to grant every Union citizen who has moved to its territory the same protection against extradition as that granted to its own nationals, it must, before extraditing the citizen, give priority to the exchange of information with the Member State of origin and allow that Member State to request the citizen's surrender for the purposes of prosecution. The Court clarified that, in any event, when deciding on extradition, the authority concerned remains under the obligation to assess the existence of a real risk of inhuman or degrading treatment of individuals in the non-EU country in question, in order to ensure full respect of Article 19 of the Charter. To that effect, the competent authority must assess the existence of a real risk of inhuman or degrading treatment of individuals in the requesting third country, relying on information that is objective, reliable, specific and up to date. That information may be obtained, *inter alia*, from judgments of international courts, such as judgments of the ECtHR and of courts in the requesting third country, and decisions, reports and other documents produced by bodies of the Council of Europe or under the *aegis* of the United Nations.

([174]) See sections above on Articles 1, 2 and 4.

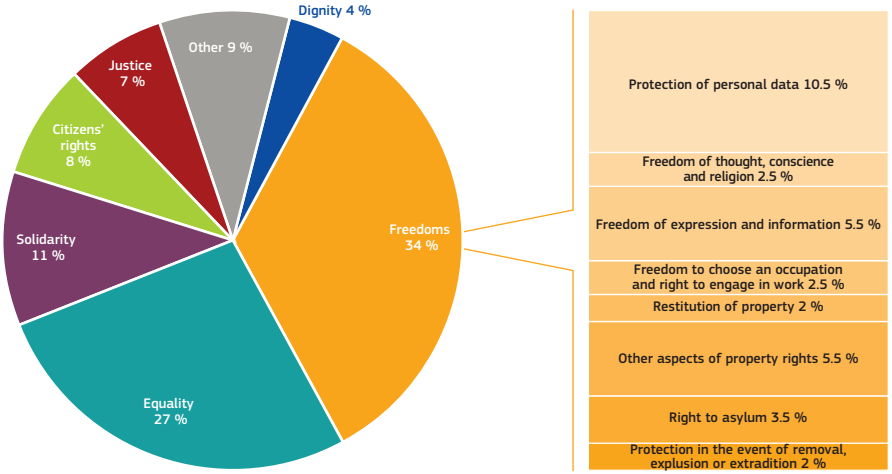
([175]) CJEU judgment of 6 September 2016 in Case C-182/15, *Aleksiej Petruhhin*.

Letters



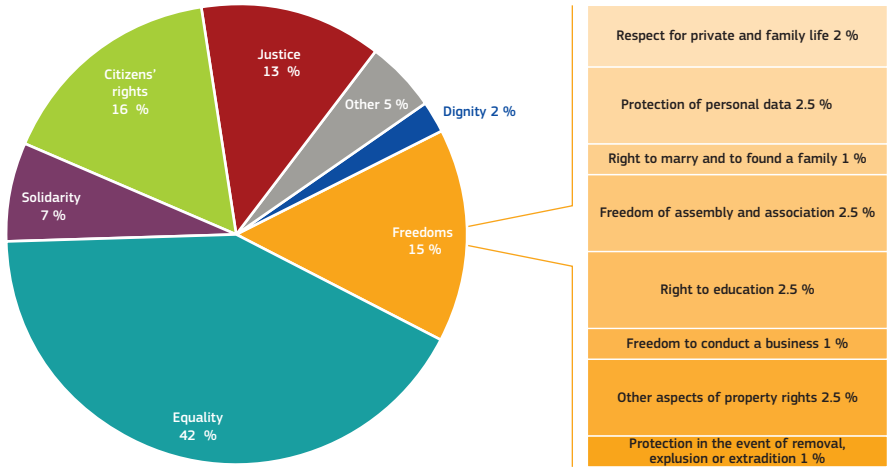
Source: European Commission

Questions



Source: European Commission

Petitions



Source: European Commission

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

31

EQUALITY

Equality

On 8 March 2016, the European Commission launched a public consultation on its preliminary outline of the **European Pillar of Social Rights** receiving more than 16.500 replies. This preliminary outline is divided in three Chapters: 1) equal opportunities and access to the labour market; 2) fair working conditions; 3) adequate and sustainable social protection. The pillar will be based on the social objectives and rights enshrined in EU primary law, i.e. the Treaty on European Union, the TFEU, the Charter, CJEU case-law, and on international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter and the relevant ILO Conventions and Recommendations.

The Commission's outline does not re-state or modify existing rights, which remain valid. It aims to complement them by detailing a number of essential principles which should become common to participating Member States for the conduct of their employment and social policy, with a specific focus on the needs and challenges confronting the euro area. Once established, the pillar should become a **reference framework to screen the employment and social performance of participating Member States**, to drive reforms at national level and, more specifically, to serve as a compass for renewed convergence within the euro area. The pillar is primarily conceived for the Member States of the euro area but applicable to all Member States that wish to be part of it.

In 2016, following the Commission's adoption on 7 December 2015 of a list of actions to advance LGBTI equality, the Council adopted **conclusions on LGBTI equality**, inviting the Member States (and others) to work with the Commission on the implementation of the list of actions, take action to combat discrimination on the grounds of sexual orientation and gender identity, and further discuss relevant issues and explore ways to accelerate progress.

November saw the launch of the Commission's 2017 campaign of focused **actions to eradicate violence against women and girls** in all its forms and to reduce gender inequality. The Commission is committed to reinforcing the EU framework for combating and preventing violence against women and to bringing about improvements in victims' situation. In 2016, the Commission **adopted proposals for the EU to become party to the Council of Europe's Istanbul Convention**, an international treaty on combating and preventing violence against women and domestic violence.

In its **Communication of 10 February 2016 on the state of play of the implementation of the priority actions under the European agenda on migration**, the Commission highlighted its comprehensive approach to protecting all children in migration, with a focus on strengthening integrated cross-border child-protection systems. The annex contains an overview of ongoing and planned EU action to protect children in migration. Accordingly, the 2016 Commission proposals to **reform the CEAS** contain a number of child-specific provisions.

On 29 and 30 November, the Commission hosted the **10th Annual European Forum on the rights of the child**, focusing on the **protection of children in migration** and involving discussions around four broad themes: identification and protection; reception; access to asylum procedures and procedural safeguards; and durable solutions.

Article 20 — Equality before the law

Article 20 of the Charter stipulates that everyone is equal before the law. It corresponds to a general principle of law included in all European constitutions and recognised by the CJEU as a basic principle of Union law.

Case-law

In *Bogendorff von Wolffersdorff* (C-438/14, 2 June 2016), the CJEU ruled on the **possibility to justify, on grounds of respect of the principle of equality before the law, potential obstacles to the free movement of EU citizens which may derive from a Member State's refusal to recognise a name** adopted by one of its nationals in another Member State.([176]) It held that the German authorities' refusal on grounds of public policy to recognise freely chosen forenames and a surname legally acquired by a dual German-UK national in the UK, as they included several tokens of nobility, constituted a restriction on the freedom to move and reside across the EU, even where it included several tokens of nobility. However, this may be considered justified if necessary to preserve the principle of equal treatment before the law (Article 20 of the Charter). The Court also recalled that a person's surname is a constituent element of his identity and his private life, the protection of which is enshrined in Article 7 of the Charter. However, such a right could be balanced with other legitimate interests. In this case, the authorities' refusal to recognise the name had been based on public policy grounds, namely the fact that titles of nobility had been abolished under German law. In the interest of equal treatment of all German nationals, the authorities refused to allow a reintroduction of such titles by use of the law of another Member State. The Court analysed this potential justification of restricting the freedom of movement (and thereby the restriction of Article 7) and accepted that the objective of observing the principle of equal treatment before the law in Germany is compatible with EU law, not-

([176]) See sections above on Article 7 and below on Article 45.

ing that the principle of equal treatment is enshrined in Article 20 of the Charter. Hence, it left it to the referring court to determine whether the restriction was necessary and proportionate in view of the public policy grounds cited.

Article 21 — Non-discrimination

The Charter **prohibits discrimination** 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. It 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 elsewhere. In the area of employment and occupation, EU legislation prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation.

1. General non-discrimination issues

Legislation

The Commission's **proposal for a horizontal anti-discrimination Directive**,([177]) which aims to extend protection against discrimination on grounds of religion or belief, disability, age and sexual orientation to areas outside employment (social protection, education and access to goods and services, including housing), is being discussed in the Council. President Juncker has deemed the adoption of the Directive a priority for this Commission and the Commission continues to push for the necessary unanimity in Council.

Two regulations([178]) adopted in June were aimed **at helping international couples**, **whether in a marriage or a registered partnership, to manage their property** on a daily basis and to divide it in the event of divorce or of one of them dying.([179]) The rules were presented as a package to ensure equal treatment between couples in a marriage and those in a registered partnership, and to promote *inter alia* respect of the general principle of non-discrimination. The regulations establish that the courts or other competent authorities cannot go against Article 21

([177]) 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).

([178]) Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (OJ L 183, 8.7.2016, p. 1-29);
Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (OJ L 183, 8.7.2016, p. 30-56).

([179]) See sections above on Articles 7 and 17.

of the Charter in applying the public policy exception in order to set aside the law of another state, or in particular refusing to recognise a judgment issued in another Member State.

The Commission's **proposal for a recast Regulation on the internal market for electricity** ([180]) explicitly makes the fundamental right to non-discrimination central in the regulation of balancing markets, capacity allocation mechanisms and network access charges, and for the establishment of network codes (also covered by the ACER Regulation). In particular, Article 3 of the recast Electricity Directive establishes the principle of a competitive, consumer-centred, flexible and non-discriminatory electricity market, which is reflected in all the specific rules introduced. Article 15 of the recast is aimed at ensuring a level playing-field for active customers (customers that consume, store or sell electricity generated on their premises and for whom electricity generation is not a primary commercial or professional activity) and protecting them from discrimination.

In the area of migration, the Commission took due account of the principle of non-discrimination in its proposal for a **European Travel Information and Authorisation System** (ETIAS). The new largely automated system, aimed at strengthening security checks on visa-free travellers, is designed to gather information on all those travelling visa-free to the EU in order to decide whether to issue or reject a request to travel to the EU. The proposal clarifies that prior checks are to be conducted in full respect of fundamental rights, including the general principle of non-discrimination; in particular, the screening rules and the criteria used for defining the specific risk indicators corresponding to previously identified security, irregular migration or public health risk, should in no circumstances be based on an applicant's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, sexual life or sexual orientation. Similarly, the processing of personal data within the system must not result in discrimination against non-EU nationals on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The principle of non-discrimination was also reinforced in the Commission's **proposal for a recast Reception Conditions Directive**. The proposal is aimed at further harmonising standards of reception of asylum applicants throughout the Union. In providing for more favourable conditions for applicants' access to the labour market, it obliges Member States to treat applicants who have been granted access to the labour market in the same way as their nationals with regard to working conditions, freedom of association and affiliation, education and vocational training, the recognition of professional qualifications and social security.

Policy

The Commission supports diversity in the workplace not only through legislation, but also by encouraging voluntary initiatives from businesses through an **EU-level platform to support 'diversity charters'**. In 2016, Portuguese and Hungarian diversity charters were launched and

([180]) Proposal for a Regulation on the internal market for electricity (recast) (COM(2016) 861 final, 30.11.2016).

joined the EU platform, bringing the overall number of charters up to 17. The EU platform organised a seminar to promote diversity in Central and Eastern Europe by bringing together business representatives and emerging and established charters from Slovakia, Slovenia, Romania, Bulgaria, Hungary, Latvia, Croatia, Greece, Cyprus, Poland, the Czech Republic, Estonia and France. In addition, the 7th Annual Forum of Diversity Charters (Dublin, 17 October) focused on 'selling diversity in a world of diversion', i.e. on the challenges and benefits of communicating diversity by business and the media. Businesses, academics and policymakers debated proposals and good practices as to how diversity can be implemented in the workplace and on better ways of measuring the impact of diversity policies.

As one of the follow-up actions announced in the conclusions of the first (2015) Colloquium on Fundamental Rights, the Commission presented its first **European Journalist Awards on Diversity**. The articles selected focused on 'promoting the social acceptance and diversity of all faiths and beliefs' and showcased examples of print and online journalism promoting diversity and combating discrimination.

The preliminary outline ([181]) of the European Pillar of Social Rights published in March 2016 proposes a principle on equal opportunities, focused on enhancing the labour market participation of under-represented groups and on ensuring equal treatiment in all areas.

Parliamentary questions

The Commission received a parliamentary question alleging a breach of the principle of non-discrimination of national and linguistic minorities in the implementation of European structural and investment (ESI) funds in the region of Catalonia, Spain. ([182]) The question concerned the rules published by the Catalan Regional Government governing the granting of aid from the European Regional Development Fund (ERDF) to companies running entrepreneurship projects, which provided that Catalan was the main language to be used for grant applications. Asked whether this constituted a form of discrimination on the grounds of language, the Commission replied that, while each Member State remains competent to determine language rules when managing ERDF funding, that competence should be exercised in line with the principle of non-discrimination as enshrined in Article 21 of the Charter. However, the Commission had no indication that applications in languages other than Catalan would not be treated fairly and that applicants for ERDF support were discriminated against for linguistic reasons. If any such instances of discriminations were identified, the Commission would investigate further.

([181]) See press release of 8 March 2016: *http://europa.eu/rapid/press-release_IP-16-544_en.htm* .

([182]) MEP question P-007264/2016.

Case-law

In *Ana De Diego Porras* v *Ministerio de Defensa*, ([183]) the Court delivered a landmark decision declaring Spanish legislation on severance compensation for temporary replacement contracts illegal, in that it breached Council Directive 1999/70/EC concerning the framework agreement on fixed-term work. Although the Charter is not specifically mentioned in the ruling, the Court found that Spanish legislation was in breach of the principle of non-discrimination enshrined in clause 4 of the framework agreement as it discriminated against temporary replacement workers by failing to provide any compensation upon termination of their contract, while granting such severance pay to comparable permanent workers. Another request for a preliminary ruling on a similar issue was lodged in November in the *Grupo Norte Facility, S.A.* v *Angel Manuel Moreira Gómez* case, ([184]) which specifically underlined the compatibility of Spanish legislation with Article 21 of the Charter.

In *Dansk Industri*, ([185]) the CJEU provided further clarification on the cross-cutting application of Article 21. The case concerned the application, in a dispute between private persons, of national legislation depriving employees of entitlement to a severance allowance where the employee is entitled to claim an old-age pension from the employer under a pension scheme which the employee joined before reaching the age of 50, regardless of whether the employee chooses to remain on the job market or take his retirement. In considering the merits, the Court clarified that the principle of non-discrimination on grounds of age, as enshrined in the Employment Equality Directive, ([186]) must be interpreted as precluding such national legislation. It further stated that neither the principles of legal certainty and the protection of legitimate expectations nor the fact that it is possible for the private person to bring proceedings to establish the liability of the Member State for breach of EU law can alter the national courts' obligation to interpret national provisions, when adjudicating in a dispute between private persons falling within the scope of the Directive, in such a way that they may be applied in a manner that is consistent with the Directive or, if such an interpretation is not possible, to disapply any provision of national law that is contrary to the general principle prohibiting discrimination on grounds of age.

([183]) CJEU judgment of 14 September 2016 in C-596/14 - *de Diego Porras*.

([184]) CJEU application of 14 November 2016 in Case C-574/16, *Grupo Norte Facility, S.A.* v *Angel Manuel Moreira Gómez*, pending judgment. .

([185]) CJEU judgment (Grand Chamber) of 19 April 2016 in Case C-441/14, *Dansk Industri (DI), acting on behalf of Ajos A/S* v *Estate of Karsten Eigil Rasmussen*.

([186]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16-22).

2. Manifestations of intolerance, racism and xenophobia in the EU

Policy

The Commission continued to pursue its efforts to improve the response of the EU and the Member States to the worrying increase in the incidence of hate speech and hate crime.

In June, following up on conclusions drawn at the 2015 Colloquium on Fundamental Rights, ([187]) the Commission launched a **new EU High-Level Group on combating racism, xenophobia and other forms of intolerance**. ([188]) The Group brings together Member States, civil society, EU agencies and, in particular, the Fundamental Rights Agency (FRA), and international organisations, including the UN, the OSCE and the Council of Europe, to foster discussion on the specificities of particular forms of intolerance and improving responses to combat these phenomena and the enforcement of existing rules, ([189]) including by more effective investigation and prosecution and better support for victims. It also aims to foster mutual trust and cooperation between national authorities and NGOs. The participation of a range of stakeholders will make it possible to pull together various forms of expertise, increasing coordination and efficiency and developing synergies where possible. Work on improving methodologies for recording and collecting data on hate-crime and hate-speech incidents will also continue in this context, with the assistance of the FRA.

In order to counter the proliferation of violence and hatred on the internet, the Commission reached agreement in May with Facebook, Twitter, YouTube and Microsoft on a **code of conduct on countering illegal hate speech online**. ([190]) The companies undertook, *inter alia*, to review in less than 24 hours the majority of valid notifications received from citizens and civil society for the removal of illegal hate speech and assess them in the light of national legislation transposing the EU Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. ([191]) The code of conduct recognises the important role of civil society and the ITcompanies undertook to support civil society organisations, to further develop cooperation with trusted reporters of the platforms, to enhance the development of

([187]) *http://ec.europa.eu/justice/events/colloquium-fundamental-rights-2015/files/fundamental_rights_colloquium_conclusions_en.pdf.*

([188]) *http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3425* .

([189]) Including Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55) and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 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. 57-73).

([190]) *http://europa.eu/rapid/press-release_IP-16-1937_en.htm.*

([191]) Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55).

counter-narratives and to work on improving transparency. In December, on the occasion of the second meeting of the High-Level Group, the Commission presented the first results of a monitoring exercise to assess the progress made by IT companies in implementing the code of conduct, in particular as regards their reactions on being notified of illegal hate speech. ([192]) This exercise, carried out on a voluntary basis by 12 civil society organisations, covered 600 notifications reporting alleged illegal hate speech content to IT companies. ([193]) The Commission announced a second monitoring exercise to be scheduled in the first half of 2017.

Lastly, the Commission continued to support **projects on preventing and combating racism, xenophobia and other forms of intolerance** under the Rights, Equality and Citizenship programme. In particular, it **made available EUR 6 million** to support national authorities' and civil society projects involving training and capacity building, fostering tolerance and encouraging better understanding between communities through interreligious and intercultural activities, exchanging best practices to effectively prevent and combat racism and xenophobia, including hate speech online, enhancing cooperation with civil society and supporting victims of hate crime and hate speech.

Application by Member States

In accordance with Protocol No 36 to the Lisbon Treaty, as from 1 December 2014, the Commission acquired the power to oversee, under the control of the Court of Justice, the application of framework decisions, including that on combating certain forms and expressions of racism and xenophobia by means of criminal law. ([194]) On that basis, the Commission continued throughout 2016 its bilateral dialogues with Member States on remaining gaps in their transposition and practical implementation of this legislation with a view to ensuring full and correct transposition and implementation of the Framework Decision. ([195])

Case-law

The ECtHR issued two rulings in 2016 condemning Member States for failing to ensure adequate investigations into racist assaults. In *Sakir* v *Greece*, ([196]) it held that the ineffective investigation into a racist assault on an Afghan national breached Article 3 of the Convention, including because the authorities had failed to assess the case in the particular context of the frequent

([192]) *http://ec.europa.eu/newsroom/just/item-detail.cfm?&item_id=50840*.

([193]) For further information on the monitoring exercise, see: *http://ec.europa.eu/information_society/newsroom/image/document/2016-50/factsheet-code-conduct-8_40573.pdf* .

([194]) Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55).

([195]) The Commission will continue this exercise with the remaining Member States throughout 2017 and may if necessary proceed to the initiation of infringement procedures.

([196]) ECtHR judgment of 24 March 2016, *Sakir* v *Greece*, application no 48475/09.

racist incidents in Athens targeting migrants and refugees. In *R.B.* v *Hungary*, ([197]) the Court found a violation of the right to respect for private and family life (Article 8 of the Convention) on account of the inadequate investigation into allegations of racially motivated verbal abuse by the applicant, a woman of Roma origin. In particular, it considered that the authorities had failed to take all reasonable steps to establish the role of racist motives and give due consideration to the fact that the insults and acts in question had taken place during an anti-Roma march and had come from a member of an extreme right-wing vigilante group.

3. EU Framework for National Roma Integration Strategies

Legislation and policy

In the context of the EU Framework for National Roma Integration Strategies up to 2020, ([198]) all Member States developed their own Roma integration strategies or integrated sets of policy measures tailored to the needs of the Roma population in their country.

In its **annual Communication to the European Parliament and to the Council on the implementation of the national Roma integration strategies**, ([199]) the Commission presented overall conclusions regarding progress in implementing the EU Framework. For the first time, the report reviewed measures taken under the 2013 Council Recommendation on effective Roma integration. ([200])

The Communication found only limited progress in advancing Roma integration, despite the financial, legal and policy instruments at both EU and Member State levels. The report indicates the need for progress in countering insufficient cooperation between stakeholders, a lack of commitment on the part of local authorities, ineffective use of available funds and continued discrimination against Roma. The area of education, as a crucial means of integration, received particular attention from Member States, since many are taking measures to improve inclusiveness in education and are investing in early childhood development and care. However, not enough was being done to tackle social exclusion from the workplace, forced evictions and discrimination against Roma.

([197]) ECtHR judgment of 12 April 2016, *R.B. v Hungary*, application no 64602/12.

([198]) *http://ec.europa.eu/justice/discrimination/roma/index_en.htm.*

([199]) *Communication assessing the implementation of the EU framework for national Roma integration strategies and the Council Recommendation on effective Roma integration measures in the Member States* (COM(2016) 424 final, 27.6.2016).

([200]) *http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32013H1224 %2801 %29.*

Progress was reported In the areas of funding and cooperation with all stakeholders involved in the process of Roma integration. Several Member States introduced a specific investment priority for the integration of marginalised communities, such as Roma, under the European Structural and Investment Fund (ESIF), which allows for explicit (not exclusive) targeting and better monitoring of results.

The ROMACT Programme continued to support the implementation of national Roma integration strategies at the local level by building the capacity of local authorities to design and implement strategies and policies which are inclusive of all, including Roma, and to use ESIF funds for that purpose. It already benefitted about 100 municipalities in Bulgaria, the Czech Republic, Hungary, Italy, Romania and Slovakia and also assisted local authorities in Belgium, France, Germany, Ireland, Sweden and the UK, in better integrating marginalised people, in particular non-nationals of Roma ethnicity. ([201])

In order to step up efforts by Member States, the Commission worked closely together with the Slovak Presidency, which tabled a set of conclusions following the Commission communication. The **Council Conclusions of 8 December 2016** urged Member States to renew their commitment to supporting and accelerating the process of Roma integration and to ensure that policy, legal and financial instruments at European and national level are used to their full extent to close the gap between Roma and non-Roma. The Conclusions include references to the role of Roma youth, antigypsyism and Roma genocide.

In the **2016 European Semester** exercise, five Member States received country-specific recommendations focusing on promoting the participation of Roma children in quality and inclusive mainstream education.

The Commission continued to support a dialogue among all national and European stakeholders. It supported the development of national Roma platforms in 15 Member States. These should play a crucial role in ensuring the transparent and inclusive involvement of all stakeholders in implementation, monitoring and reporting activities.

The **10th meeting of the European Platform for Roma Inclusion**, which gathers all stakeholders at European level, took place in Brussels between 29 October and 3 November. It aimed to provide all stakeholders with an opportunity to take stock five years after the launch of the EU Framework. The thematic focus ('the mutual accountability of all stakeholders') was decided upon after broad consultation with European civil society and the network of national Roma contact points (NRCPs).

The Commission continued its two-year transnational **awareness-raising campaign 'For Roma with Roma'** (launched in 2015) aimed at fighting anti-Roma stereotypes by working with the

([201]) Further information available at *http://coe-romact.org*.

media, promoting cultural understanding, organising school drawing competitions and supporting twinning projects between local authorities.

The Commission also strengthened the gender dimension of the Roma integration process by launching a joint programme with the Council of Europe on **Roma women's access to justice** (JUSTROM) and giving financial support to all participating countries. ([202])

Through the EaSI programme the Commission continued to promote the empowerment of Roma civil society, in particular through financial support for the European Roma Grass-roots Organisations Network (ERGO). EaSI support helped boost the capacity of ERGO and its members to participate in and influence decision-making and policy implementation at both EU and national levels.

Under the Rights, Equality and Citizenship programme, support was granted to eight local, national and transnational Roma integration projects covering 11 Member States and promoting activities such as good practice exchange, awareness-raising and training courses, in areas such as fighting discrimination, stereotyping and segregation, promoting early and inclusive education.

In the framework of the **International Holocaust Remembrance Day**, the Commission organised specific remembrance events dedicated to the Roma genocide during WWII (through the 2014-2020 Europe for Citizens programme). It supported the Roma Holocaust day on 2 August, through a joint press statement by First Vice-President Frans Timmermans and the Commissioner for Justice, Consumers and Gender Equality, Vera Jourova. ([203])

Application by Member States

The Commission stepped up its efforts to ensure correct **implementation of the anti-discrimination legislation** in respect of Roma, including at local level. In May, it launched an infringement procedure against a Member State for discrimination against Roma children, in breach of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

To facilitate dialogue among Member States in the NRCP network, the Commission made monitoring visits to Member States which involved in-depth discussions with national and local authorities, and civil society representatives, and visits to Roma communities.

([202]) *https://www.coe.int/de/web/portal/-/justrom-a-new-join-programme-of-the-council-of-europe-and-the-european-commission.*

([203]) *http://europa.eu/rapid/press-release_STATEMENT-15-5444_fr.htm.*

4. Fight against homophobia

Legislation and policy

On 7 December 2015, the Commission had presented a list of actions to advance LGBTI equality; 2016 was the first year of its implementation. ([204]) In June, the Council adopted its first ever **conclusions on LGBTI equality**, ([205]) inviting the Member States, among others, to work together with the Commission on the implementation of the list of actions, to take action to combat discrimination on the grounds of sexual orientation and gender identity, and to further discuss relevant issues and explore ways to accelerate progress, fully respecting the Member States' competences, national identities and constitutional traditions. The Commission will adopt a first report on the implementation of the list of actions in 2017.

Several actions demonstrated the Commission's efforts and commitment to advance LGBTI equality:

- on the occasion of the EuroPride event, in which the Commissioner for Justice, Consumers and Gender Equality participated, it launched the '**We all share the same dreams**' **campaign;**

- it published a report on the business case for **LGBTI inclusion in the workplace**; and

- issued a call for proposals to support national stakeholders' communication activities aimed at improving LGBTI social acceptance.

The Commission supports Member States' efforts to build capacity to improve enforcement of their criminal laws, their support for victims and their responses to hate crime and hate speech, including homophobic and transphobic speech and crime. It does so through the newly created **High-Level Group on racism, xenophobia and other forms of intolerance**, which met twice following its launch on 14 June. In addition, the code of conduct on countering illegal hate speech online that the Commission agreed with Facebook, Twitter, YouTube and Microsoft on 31 May is relevant to containing the spread of illegal hate speech online, including homophobic and transphobic speech when such offences are criminalised under national law. Preventing and countering homophobia and transphobia also remains a funding priority under the Rights, Equality and Citizenship programme, through which the Commission made EUR 6 million available in 2016.

As regards the mainstreaming of non-discrimination on grounds of sexual orientation and gender identity across EU policies, a pilot project funded by the European Parliament was launched

([204]) *http://www.consilium.europa.eu/en/press/press-releases/2016/06/16-epsco-conclusions-lgbti-equality/.*

([205]) *http://www.consilium.europa.eu/en/press/press-releases/2016/06/16-epsco-conclusions-lgbti-equality/.*

in the area of healthcare ('**reducing health inequalities experienced by LGBTI** people'). [206] The aim of the project is to better understand the specific health inequalities experienced by LGBTI people, focusing in particular on overlapping inequalities stemming from discrimination and unfair treatment on other grounds (e.g. age, disability, socioeconomic status, race and ethnicity) and the barriers faced by health professionals when providing care to those groups.

In the field of asylum, the Commission's proposal for an **Asylum Qualification Regulation** included a specific recital to encourage Member States, when assessing applications for international protection, to ensure that the individual assessment of the applicant's credibility as regards his or her sexual orientation is not based on stereotyped notions concerning homosexuals and that applicants are not subjected to detailed questioning or tests as to their sexual practices.

Case-law

In *M.C. and A.C.* v *Romania*, which concerned a physical attack on participants in the annual gay march in Bucharest on their way home from the march, the ECtHR condemned Romania for violation of Article 3 ECHR read together with the prohibition of discrimination (Article 14 ECHR). It found that the authorities had not taken reasonable steps to conduct a meaningful inquiry into the possibility that the attack may have been motivated by prejudice, which was indispensable given the hostility against the LGBTI community in Romania and in the light of the applicants' submissions that the assailants had uttered clearly homophobic hate speech during the incident. The Court stressed that the authorities should have conducted such an inquiry despite the fact that incitement to hate speech was not punishable at the time the incidents occurred, as the crimes could have been assigned a legal classification that would have allowed the proper administration of justice and ensured that prejudice-motivated crimes were treated differently from other cases.

Article 22 — Cultural, religious and linguistic diversity

Article 22 stipulates that the Union is to respect cultural, religious and linguistic diversity. It is based on Article 167(1) and (4) TFEU, concerning culture. Respect for cultural and linguistic diversity is also laid down in Article 3(3) TEU. Article 22 is also inspired by Article 17 TFEU.

[206] *https://ec.europa.eu/health/social_determinants/projects/ep_funded_projects_en#fragment2* .

Legislation

In 2016, the Commission adopted a proposal for a European Parliament and Council Decision on a **European Year of Cultural Heritage — 2018**,([207]) which aims to safeguard and promote cultural heritage in the EU.

The Commission also adopted a proposal to add Norway and Iceland to the **Capitals of Culture** action.([208]) Show-casing and promoting the richness of Europe's cultural diversity will thus be extended to more countries.

Policy

Article 17(3) TFEU stipulates that the Union is to maintain an open, transparent and regular dialogue with churches, religious associations or communities, and philosophical and non-confessional organisations.([209]) This dialogue takes place at various levels in the form of written exchanges, meetings and specific events. Interlocutors are invited to contribute to EU policymaking through written consultations launched by the Commission. The dialogue contributes to the promotion of religious diversity.

Following on from the 2015 theme ('living together and disagreeing well'), the dialogue with religious and non-confessional organisations was dominated by the refugee crisis and the terrorist attacks in Europe. As a result, the theme chosen in 2016 was '**migration, integration and European values: putting values into action**'. There were two high-level meetings on the theme with religious leaders and non-confessional organisations, and two seminars which prepared the ground for the high-level dialogue.([210]) These meetings provided a platform to discuss three main issues:

- how to improve integration policies;
- how to address the rise of populism and intolerance; and
- how to build more cohesive societies.

Discussion focused on addressing fears and increased polarisation in European societies, and the need to move beyond crisis mode when it comes to migration and think long-term. The need

([207]) Proposal for a Decision of the European Parliament and of the Council on a European Year of Cultural Heritage (COM(2016) 543 final, 30.8.2016).

([208]) Proposal for a Decision of the European Parliament and of the Council amending Decision No 445/2014/EU establishing a Union action for the European Capitals of Culture for the years 2020 to 2033 (COM(2016) 400 final, 17.6.2016).

([209]) See section above on Article 10.

([210]) *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50189* .

proactively to transmit values and cultural understanding was underlined, as well as the central role of education. It was agreed that this is a challenge for society at large and that concrete ways must be developed to convey values in practice. The role of the Commission to ensure that European values are embraced in the context of migration and integration was also discussed. The organisations present agreed to continue to work with the Commission to develop these ideas.

In November 2015, national Ministers for culture had agreed to create a **new policy working group on intercultural dialogue**, with a special focus on the integration of migrants and refugees in societies through the arts and culture. The working group continued to meet in 2016 under the open method of coordination.

The EU Work Plan for Culture (2015-2018), as agreed by culture ministers, involves action to protect and promote the diversity of cultural expression (in line with the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, to which the EU is a party) and to foster the contribution of culture to social inclusion. In 2016, the EU continued to work with UNESCO to implement the 2005 Convention in the EU and with partner countries.

The Commission adopted a ***Communication on supporting the prevention of radicalisation leading to violent extremism***.([211]) It puts a strong emphasis on promoting inclusive education and EU common values. As of 2016, priority is given to actions and projects that foster inclusion and promote fundamental values, echoing the objectives of the Paris Declaration. As a result, EUR 400 million was made available through Erasmus+ to transnational partnerships in order to develop innovative policies and practices, prioritising social inclusion, the promotion of common values and intercultural understanding.

On 8 June, the Commission and the High Representative for Foreign Affairs and Security Policy adopted a **strategy for international cultural relations**,([212]) which focuses on three main objectives:

- supporting culture as an engine for social and economic development;
- promoting intercultural dialogue and the role of culture for peaceful inter-community relations; and
- reinforcing cooperation on cultural heritage.

([211]) Commission Communication on supporting the prevention of radicalisation leading to violent extremism (COM(2016) 379 final, 14.6.2016).

([212]) Joint Communication to the European Parliament and the Council, *Towards an EU strategy for international cultural relations* (JOIN(2016) 29 final, 8.6.2016).

The European Parliament adopted a **Resolution on the role of intercultural dialogue, cultural diversity and education in promoting EU fundamental values**. ([213]) It argues that fostering an intercultural, interfaith and value-based approach in education promotes mutual respect, integrity, cultural diversity, social inclusion and cohesion. It also says that cultural dialogue and diversity should be a cross-cutting element of all EU policies that have an impact on shared EU fundamental values and rights. It further highlights the need to step up the exchange of good practices and promote a new structured dialogue with all stakeholders in intercultural and interfaith issues in the light of recent dramatic events, including with churches and non-confessional organisations). Lastly, the Resolution highlights the need to train and prepare future generations by giving them access to a genuine education in citizenship.

The **Creative Europe programme (2014-2020)** fosters the importance and understanding of cultural diversity across Europe through initiatives such as the European heritage label for sites that have shaped Europe's history. ([214]) This is a joint Commission and Council of Europe initiative aimed at providing concrete examples of how local communities can contribute to the European dimension of heritage and celebrate heritage as a shared European value. The theme for **European Heritage Days** in 2016 was 'heritage and communities'. Also, the **European Capitals of Culture** initiative brings a yearlong celebration of art and culture to two European cities each year. Another initiative is the **European Border Breakers**, an EU-supported music prize that goes to the best emerging talent from around Europe.

Article 23 — Equality between women and men

Under Article 23, equality between women and men is to be ensured in all areas, including employment, work and pay. The principle of equality does not preclude the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Legislation

Gender-based violence, i.e. violence committed against women because they are women, is a serious breach of women's fundamental rights. ([215]) The Commission is committed to strengthening the EU framework for combating and preventing violence against women and to improving victims' circumstances. In 2016, it **adopted proposals for the EU to become party to the Council of Europe's Istanbul Convention**, an international treaty on combating and

([213]) Resolution of 19 January 2016 on the role of intercultural dialogue, cultural diversity and education in promoting EU fundamental values (2015/2139(INI)).

([214]) *https://ec.europa.eu/programmes/creative-europe/.*

([215]) See section above on Article 3.

preventing violence against women and domestic violence. ([216]) As stated in recital 4 of the proposed Council Decisions, '[v]iolence against women is a violation of their human rights and an extreme form of discrimination, entrenched in gender inequalities and contributing to maintaining and reinforcing them'. ([217]) The proposals expressly mention Article 23 of the Charter, both in the explanatory memorandum and in recital 4, where equality between men and women is reaffirmed as a fundamental value and objective for the EU. The EU's accession to the Convention would strengthen its accountability for the promotion of fundamental rights within and beyond EU borders. The Commission's proposals are currently under negotiation in the Council.

The preliminary outline of the European Pillar of Social Rights published in March 2016 proposes a principle on gender equality and work-life balance ensuring equal treatment in all areas, including pay, and addressing barriers to women's participation and preventing occupational segregation.

Following its 2015 roadmap ([218]) setting out policy options to address the work-life balance challenges facing working families, the Commission worked on an **initiative to address the challenges of work-life balance** faced by working families. ([219]) It is aimed at increasing the participation of women in the labour market through better work-life reconciliation, appropriate protection and greater gender equality with regard to labour market opportunities and treatment at work. ([220]) The accompanying impact assessment looks at the impact of the possible measures to be proposed as regards the provisions of the Charter, including Articles 21 (prohibiting discrimination based on sex), 23 (equality between women and men), 24 (children's rights) and 33 (reconciliation of family and professional life). The Commission held a two-stage consultation with EU social partners. ([221]) The Advisory Committee on Equal Opportunities between Women and Men was also invited to provide an opinion on the initiative, and presented its views in a meeting on 8 December 2016.

([216]) Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016) 111, 4.3.2016); . Proposal for a Council Decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (COM(2016) 109, 4.3.2016).

([217]) See the explanatory memorandum and recital 4 of the proposals: COM(2016) 111 and COM(2016) 109.

([218]) *http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_xxx_maternity_leave.en.pdf.*

([219]) See sections above on Article 3 and below on Article 33.

([220]) *http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_012_new_initiative_replacing_maternity_leave_directive_en.pdf.*

([221]) *http://ec.europa.eu/justice/newsroom/gender-equality/opinion/1511_roadmap_reconciliation_en.htm* (public consultation); . *http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2582&furtherNews=yes* (social partners consultation).

Policy

In November, the Commission launched a 2017 campaign of focused **actions to eradicate violence against women and girls** in all its forms and to reduce gender inequality. ([222])

The Commission's **Communication on forced displacement and development** reiterated the need to put human dignity and non-discrimination at the core of its approach to forced displacement. ([223]) The Commission underlined that the specific protection needs of the forcibly displaced must be addressed in the design of interventions, on the basis of a number of criteria, such as gender. The approach promotes fair and equal treatment by seeking *inter alia* to remove barriers to participation in labour markets, facilitating access to social services, upgrading settlements and promoting the provision of long-term secure legal status.

In the field of humanitarian protection, the Commission adopted a **Staff Working Document in May**, **with the aim of promoting the risk approach** as a tool for identifying the aspects and considerations for humanitarian actions to be funded by the EU budget. One risk elements to be assessed are vulnerabilities, including discrimination based on physical or social characteristics (gender, disability, age, etc.) that makes primary stakeholders (e.g. individuals/households/community) less able to withstand adverse impact from external stressors. The Commission considers aspects of gender and age as being particularly interwoven with protection, as natural disasters and human-made crises have differing impacts on women, girls, men and boys.

In June, the European Parliament adopted a **Resolution on the follow-up of the strategic framework for European cooperation in education and training (ET 2020)**. It noted the important role of education and training in the empowerment of women in all spheres of life and the need to tackle gender gaps. The Parliament underlined that, as equality between men and women is one of the EU's founding values, all educational institutions should endorse and implement this principle among their students, with the aim of fostering tolerance, non-discrimination, active citizenship, social cohesion and intercultural dialogue.

In October, the Parliament adopted a **Resolution on the assessment of the EU's 2013-2015 Youth Strategy**, ([224]) emphasising the need to include specific gender-sensitive measures in youth policy on issues such as combating violence against women and girls, sex and relationship education, and education on gender equality. The Resolution stressed the importance of more and equal opportunities for all young people; furthering gender equality and fighting all forms of discrimination, including on grounds of gender.

([222]) *http://europa.eu/rapid/press-release_STATEMENT-16-3945_en.htm* .

([223]) See section above on Article 1.

([224]) Resolution of 27 October 2016 on the assessment of the EU Youth Strategy 2013-2015 (2015/2351(INI)).

The **Erasmus+ programme** (2014-2020) supports projects and partnerships between education institutions aimed at tackling discrimination based on gender. In the field of sport, between 2014 and 2016 the EU invested EUR 1.7 million in projects in Italy, Germany and the UK to help promote gender equality. In November, the Commission published a **study on gender-based violence in sport**, ([225]) which maps and provides an overview of Member States' legal and policy frameworks. It identifies several best practices in combating gender-based violence in sport and makes recommendations to the Commission, Member States and sport organisations for future action, including a recommendation that sports staff with a history of offences be prevented from taking up any roles in sporting environments in the EU.

The Commission **has made EUR 10 million available to support grassroots efforts to prevent gender-based violence and support its victims** in the EU. The aim is to raise awareness and provide information about violence against women, targeting the general public and professionals who can help change this situation, including police officers, teachers, doctors and judges.

The EU's research programme **(Horizon 2020)** promotes gender equality in the public research sector and the European research area in collaboration with Member States and research organisations. The main objectives in this area are:

- removing barriers to the recruitment, retention and career progression of female researchers;
- addressing gender imbalances in decision-making processes; and
- strengthening the gender dimension in research programmes.

The **Horizon 2020 work programme for 2016-2017** explicitly mentions that all applicants are invited to explore whether and how the gender dimension in research content is relevant to their research, including where appropriate specific studies and training. In addition, gender equality is promoted in all parts of Horizon 2020, including gender balance at all levels of personnel involved in projects. ([226])

Case-law

The ECtHR judgment in *Di Trizio* v *Switzerland* ([227]) concerned social allowances and their relevance for family and private life. Before giving birth to twins, the applicant had been forced to give up her full-time job due to back problems and was thereby entitled to an invalidity allowance. Following the birth, she informed the relevant authorities that she wished to go back to

([225]) *https://ec.europa.eu/sport/sites/sport/files/gender-based-violence-sport-study-2016_en.pdf.*

([226]) Commission Decision C(2016) 4614 of 25 July 2016; .
http://ec.europa.eu/research/participants/data/ref/h2020/wp/2016_2017/main/h2020-wp1617-intro_en.pdf .

([227]) ECtHR judgment of 2 February 2016 in *Trizio* v *Switzerland*, application no 7186/09.

work on a part-time basis for financial reasons; she therefore expected her invalidity allowance to be reduced by 50 %, but received no allowance at all. In their assessment, the authorities relied on the applicant's declaration that she wanted to work part-time only. The special method used to assess her entitlement, which was applied only to individuals working part-time, resulted in a decision to refuse the applicant any allowance, since she did not satisfy the minimum 40 % level of disability. The applicant complained that, while the same method of calculation was applied to both men and women, it operated to the disadvantage of women since, in the vast majority of cases, women, rather than men, worked part-time after the birth of children.

The Court held that there had been a violation of Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) ECHR. It found that the method of calculation indirectly discriminated against women, since it affected women almost exclusively (97 % of cases), and the Swiss Government had failed to adduce any reasonable justification for the difference in treatment. It observed that the applicant would probably have obtained an allowance had she declared to the authorities that it was her intention to work full-time or not to work at all.

Article 24 — The rights of the child

Article 24 of the Charter recognises that children are independent and autonomous holders of rights and provides that children have the right to protection and care necessary for their well-being. It codifies their right to participation, by emphasising that children may express their views freely, and that such views are to be taken into consideration on matters which concern them according to their age and maturity. Article 24 also stipulates that in all action affecting children, whether by public authorities or private institutions, the child's best interests must be a primary consideration. Lastly, it enshrines every child's right to maintain on a regular basis a personal relationship and direct contact with his or her parents, unless that is contrary to his or her interests. In line with Article 3(3) TEU, the rights of the child are a priority for the EU.

Legislation

On 30 June, the Commission proposed a **recast Brussels IIa Regulation**. The proposal strengthens the rights of the child through:

- enhanced measures relating to the right to be heard in all proceedings that concern them, in particular proceedings on custody and access, and on the return of children abducted by one of their parents;

- measures to enhance the efficiency of return proceedings in case of parental child abduction;

- improved cooperation between Member States' central authorities in handling cases concerning children; and
- greater integration of child welfare authorities in cross-border cooperation. ([228])

On 11 May, the Parliament and the Council adopted **Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings**. ([229]) It contains provisions on:

- (mandatory) assistance by a lawyer in specific circumstances (Article 6);
- a particular right to information for children (Article 4);
- a right to have the holder of parental responsibility informed (Article 5) and to be accompanied by the holder of parental responsibility (Article 15);
- a right to an individual assessment (Article 7);
- a right to a medical examination (Article 8);
- audiovisual recording of questioning (Article 9);
- safeguards in the event of deprivation of liberty and detention (Articles 10-12), e.g. limitation of deprivation of liberty;
- alternative measures and specific treatment in the event of deprivation of liberty, including separate detention of children from adults;
- a right to protection of privacy (Article 14);
- a right to appear in person at, and to participate in, trial (Article 16);
- a right to legal aid (Article 18); and
- provisions on training and costs (Articles 20 and 22).

The Commission's proposals to **reform the CEAS** contain a number of provisions that would strengthen the protection provided to children, including those who are unaccompanied, in key

([228]) *http://europa.eu/rapid/press-release_MEMO-16-2359_en.htm.*

([229]) Directive (EU) 2016/800 on procedural safeguards for children who are suspects and accused in criminal proceedings (OJ L 132, 21.5.2016, p. 1-20).

areas such as the assessment of the best interests of the child, the child's right to be heard in asylum procedures, ensuring adequate reception conditions and effective guardianship. ([230])

The proposal for a **recast Dublin Regulation** includes references to the rights of unaccompanied children, clarifying that the Member State where the child first lodged his or her application for international protection will be that responsible, unless it is demonstrated that this is not in the best interests of the child. Before transferring an unaccompanied child to another Member State, the transferring Member State must make sure that the receiving Member State will take the necessary measures to safeguard her/his rights without delay. The right to family unity of asylum applicants present on the EU territory will be strengthened and the scope will be extended to include applicants' siblings and families formed in transit, after leaving the country of origin but before arrival on the territory of the Member State.

The **recast Eurodac Regulation** provides that the fingerprints and facial images of children are to be registered as of age six. This provision is particularly important for the protection of the many migrant children who arrive irregularly in the EU, as it will help identify children in cases where they are separated from their families by allowing a Member State to follow up a line of inquiry where a fingerprint match indicates that they were present in another Member State. It will also strengthen the protection of unaccompanied children who do not always formally seek international protection or who go missing. The obligation to take fingerprints is to be implemented in full respect of the right to human dignity and the rights of the child. ([231])

In particular, the proposed **Asylum Procedures Regulation** ([232]) provides for safeguards for applicants with special procedural needs, including (in particular, unaccompanied) children. The best interests of the child continue to be a primary consideration in all procedures applicable to unaccompanied children. Several proposed measures are aimed at securing prompt and effective guardianship for unaccompanied children, including provisions on deadlines for appointment, workload for guardians and a monitoring system. The proposal also aims to ensure that those working with unaccompanied children are vetted and trained in child protection and safeguarding aspects. Special procedures, such as accelerated examination and border procedures, can be applied to unaccompanied children only in limited and justified circumstances.

([230]) The Commission prepared a publicly available document providing an overview of the amended and proposed provisions relevant for children: it contains, in particular, extracts of relevant child-specific provisions in the legislative proposals for the Dublin Regulation, the Eurodac Regulation, the Asylum Procedures Regulation, the Qualifications Regulation and the Reception Conditions Directive, available at: http://ec.europa.eu/justice/fundamental-rights/files/rights_child/ceas_provision_on_children_table_updated.pdf.

([231]) The proposal reaffirms Member States' obligation to ensure that the procedure for taking fingerprints and a facial image are determined and applied in accordance with the national practice of the Member State concerned and with the safeguards laid down in the Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Convention on the Rights of the Child.

([232]) Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM(2016) 467 final, 13.7.2016).

The proposed **recast Reception Conditions Directive** stipulates that reception conditions are to be adapted to the specific situation of children, whether unaccompanied or within families, with due regard to their security, physical and emotional care, and are provided in a manner that encourages their general development. The proposal does not change the fact that (under Article 37 of the United Nations Convention on the Rights of the Child), as a rule, children should not be detained. However, as is already the case under the current Reception Conditions Directive, hildren may be detained with their families and unaccompanied children, but only in exceptional circumstances for the shortest period of time and as a last resort. The proposal also includes enhanced guarantees in the area of guardianship, similar to those in the proposed Asylum Procedures Regulation.

The proposed **Qualification Regulation** also contains similar strengthened safeguards in the area of effective guardianship.

With regards to other relevant legislative developments, on 14 september 2016, **Regulation (EU) 2016/1624 on the European Border and Coast Guard** includes a number of references to the rights of the child and child protection. ([233]) A code of conduct applicable to all border control operations coordinated by the Agency and all persons participating in its activities lays down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights, with a particular focus on vulnerable persons, including children, unaccompanied children and other persons in a vulnerable situation. ([234]) In all its activities, the Agency must pay particular attention to children's rights and ensure that the best interests of the child are respected. It is obliged take into account the special needs of children, unaccompanied children and other persons in a particularly vulnerable situation.

Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (**Schengen Borders Code**), as adopted on 9 March, requires that border guards pay particular attention to children. ([235])

On 21 December, to improve the effectiveness of the **Schengen Information System** (SIS) in the fight against terrorism and cross-border crime, the Commission proposed amending Regulations on the establishment, operation and use of the SIS as regards border checks; ([236])

([233]) e.g. to the best interests of the child (Article 34(3)), non-discrimination (Article 21(4)), code of conduct (Article 35(1)), specific training in the protection of children (Article 36(1)), staff with expertise in child protection (recital 37, Articles 18(5), 29(2), 29(4), 30(2) and (4), and 31(2) and (4).

([234]) See sections above on Articles 1, 2, 4 and 19.

([235]) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1-52); see Article 20(1)(f) and point 6 of Annex VII.

([236]) Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 (COM(2016) 882 final, 21.12.2016).

police cooperation and judicial cooperation in criminal matters; ([237]) and the return of illegally staying third-country nationals. ([238]) They provide for changes allowing preventive alerts on missing persons where parental abduction is deemed a high risk and for more refined categorisation of missing person alerts (including 'unaccompanied child').

Parental abductions often take place in highly planned circumstances, with the intention of rapidly leaving the Member State where the custody arrangements were agreed. The changes address a potential gap in the current legislation whereby alerts for children cannot be issued until they are missing. This will allow authorities in Member States to indicate children at particular risk. Where there is a high risk of imminent parental abduction, border guards and law enforcement officials will be made aware of the risk and enabled to examine more closely the circumstances in which an at-risk child is travelling and take the child into protective custody if necessary. Supplementary information, including on the decision of the competent judicial authority that requested the alert, will be provided via the SIRENE Bureaux. The SIRENE Manual will be reviewed accordingly.

This alert will be subject to a decision of the judicial authorities granting custody to one of the parents only. A further condition will be that there is an imminent risk of abduction. The status of alerts on a missing child will automatically update to reflect their reaching adulthood, where applicable. Children are much less likely than adults to have usable unique identifiers, such as fingerprints or palm prints, available. As a result, the proposals make provision for the use of DNA profiles, including those based on parental or sibling DNA, to identify and locate missing children where fingerprints and palm prints are unavailable. This functionality will be accessible only to authorised users. Member States already exchange this 'supplementary information' with each other at an operational level. This proposal forms a regulatory framework around this practice, by inserting it into the substantive legislative basis for the operation and use of SIS and establishing clear processes regarding the circumstances in which such profiles may be used.

The Commission also published an evaluation report on the second-generation Schengen Information System (SIS II). ([239])

The proposals address how SIS can be used to protect children by means of: preventive alerts; and improved ability to identify missing children.

([237]) Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU (COM(2016) 883 final, 21.12.2016).

([238]) Proposal for a Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals (COM(2016) 881 final, 21.12.2016).

([239]) Report from the Commission to the European Parliament and the Council on the evaluation of the second generation Schengen Information System (SIS II) in accordance with Articles 24(5), 43(3) and 50(5) of Regulation (EC) No 1987/2006 and Articles 59(3) and 66(5) of Decision 2007/533/JHA (COM(2016) 880 final, 21.12.2016).

On 15 March, the **Emergency Support Regulation (EU) 2016/369** on the provision of emergency support in the event of an ongoing or potential natural or man-made disaster within the Union was adopted. In accordance with the Regulation, the Council activated the emergency support for a period of three years for the management of the humanitarian impact of the refugee and migration crisis. This emergency support instrument targets children (among other vulnerable groups) in its provision of lifesaving assistance in Greece and other Member States, including food, shelter, water, medicine, protection and other basic necessities. ([240])

The recitals of **Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data** refer to the need for information on the data subject under the Directive to be accessible, easy to understand and adapted to the needs of vulnerable persons such as children, and call on controllers to draw up and implement specific safeguards in respect of the treatment of personal data of vulnerable persons, such as children. ([241])

The **General Data Protection Regulation (GDPR)** makes specific reference to children in the context of processing for the purposes of legitimate interests pursued by the controller or by a third party, where such processing will be lawful only if such interests are not overridden by the interests of fundamental rights and freedoms of the data subject, particularly where the data subject is a child. ([242]) Article 8 concerns conditions applicable to a child's consent in relation to information society services. A number of other articles and recitals refer to specific needs as regards the protection of children's personal data. ([243])

The Commission's proposal for a Directive amending the **Audiovisual Media Services Directive (AVMSD**), aimed at simplifying the obligation to protect children against harmful content, provides that everything that 'may be harmful' should be restricted on all services. The most harmful content should be subject to the strictest measures, such as PIN codes and encryption. This will also apply to on-demand services. Member States are to ensure that audiovisual media service providers provide sufficient information to viewers about harmful content to children. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service. Video-sharing platforms (such as YouTube) will be included in the scope of the AVMSD only when it comes to the protection of children (and to combat hate speech).

([240]) Since April 2016, over EUR 198 million has been made available to address refugees' humanitarian needs in Greece, of which EUR 23 million has been allocated to child protection activities, including provision of psychosocial support, child-friendly spaces, non-formal education, case management systems, family tracing and emergency shelters for unaccompanied children.

([241]) Recitals 39, 50, 51 and 97 of Directive (EU) 2016/680.

([242]) Article 6(f) of the GDPR.

([243]) Articles 12(1), 40(2)(g) and 57(1)(b) and recitals 38, 58, 65, 71 and75 of the GDPR; see section above on Article 8.

Policy

The Commission's **Communication on the state of play of the implementation of the priority actions under the European Agenda on Migration** (10 February) highlighted its comprehensive approach to protecting all children in migration, with a focus on strengthening integrated cross-border child protection systems, and included an overview of ongoing and planned EU actions for the protection of children in migration.

On 29 and 30 November, the Commission hosted the 10th Annual European Forum on the rights of the child, which focused on the **protection of children in migration**. ([244]) The Forum brought together more than 300 experts in asylum and migration, and child protection and rights, from all Member States, Iceland and Norway. Participants represented national authorities, civil society, international organisations, ombudspersons for children, academics, practitioners and EU institutions and agencies. The discussions were informed by a general background paper setting out the challenges for children in migration and topic-specific papers for the four more in-depth parallel sessions, as well as the 10 principles for integrated child protection systems, around four broad themes:

- identification and protection;
- reception;
- access to asylum procedures and procedural safeguards; and
- durable solutions. ([245])

Before the Forum (28 and 29 November), a Commission-organised a side event on guardianship for unaccompanied children brought together 115 participants (practising guardians, guardianship institutions, national asylum and migration, and child protection authorities, ombudspersons for children, children's rights advocates, civil society, international organisations and EU institutions) to address challenges in effective guardianship and look ahead to the strengthening in EU law of guardianship provisions.

Targeted EU funding was allocated to projects in the context of the protection of children in migration. ([246])

([244]) *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456.*

([245]) For all relevant documents, see: *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456.*

([246]) See Forum background paper on EU funding for children in migration: *http://ec.europa.eu/newsroom/document.cfm?doc_id=19748.*

On 29 November, the FRA published an **opinion on fundamental rights in the hotspots set up in Greece and Italy** at the request of the European Parliament.([247]) It covers, *inter alia*, the rights of the child, the identification of vulnerabilities, safety in the hotspots and readmissions.

The reports on **relocation and resettlement**([248]) include information as regards the relocation of unaccompanied children(data on arrivals, profiles, number of unaccompanied children relocated, as well as actions to address challenges related to the relocation of vulnerable applicants, including unaccompanied children.

The **EU action plan on the integration of third-country nationals** (adopted on 7 June)([249]) stresses the right of children to education, regardless of their family or cultural background or gender. It sets out planned Commission action and recommendations for Member States, specifically for children in the area of education, language training, the participation of migrant children in early childhood education and care, teacher training and civic education.

Member State authorities responsible for the management of the Asylum, Migration and Integration Fund (AMIF)([250]) and the Internal Security Fund (ISF)([251]) discussed children in migration at the AMIF-ISF Committee meeting of 31 May. The information session was centred on the need for child protection and child safeguarding guarantees to be reflected in **EU-funded projects involving direct contact with children**, ensuring compliance with Article 24 of the Charter, and on the need to better reflect the proportion of children in migration in needs assessments and funding allocations.

([247]) *http://fra.europa.eu/en/opinion/2016/fra-opinion-fundamental-rights-hotspots-set-greece-and-italy* .

([248]) For the Commission's reports on relocation and resettlement, see: *https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package_en.*

([249]) Communication from the Commission to the European Parliament, the Council, the Committee and the Committee of the Regions, *Action plan on the integration of third country nationals* (COM(2016) 377 final, 7.6.2016).

([250]) The basic act establishing the Asylum, Migration and Integration Fund (AMIF) for the 2014-2020 programming period contains various provisions that refer to compliance with the Charter, e.g. recital 33 and Articles 3(1) and 19(2); see Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p. 168-194).

([251]) The basic act of the Internal Security Fund (ISF) for the 2014-2020 programming period contains various provisions that refer to compliance with the Charter, e.g. recital 23 and Article 3(4); see Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision 574/2007/EC. .
See also recital 20 and Article 3(5) of Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA (ISF Police Regulation) (OJ L 150, 20.5.2014, p. 93-111).

On 19 May, the Commission published a report (as required under Article 20 of the Anti-trafficking Directive) on the progress made in the fight against **trafficking in human beings**,([252]) stressing that Member States report child trafficking as one of the trends that is increasing most sharply in the EU.([253])

The Commission's staff working document, ***Humanitarian protection: improving protection outcomes to reduce risks for people in humanitarian crises***, includes a number of references to the rights of the child in general and to child protection actions, in particular, that can reduce risks, e.g. strengthening child protection systems, the registration and identification of children, case management, family tracing and reunification.([254])

In line with the **2013 Commission Recommendation on *Investing in children***, the Commission issued 23 Member States with country-specific recommendations relating to children, covering *inter alia* education and skills, poverty and social inclusion, access to healthcare and child care, and financial disincentives.([255]) Two Member States received a country-specific recommendation on a national anti-poverty strategy. In addition, nine were invited to step up income support for families, six received recommendations to improve childcare and social inclusion in education, four to make housing more affordable and another four to reduce financial disincentives to enter the labour market.([256])

On 16 June, **Council conclusions on *Combating poverty and social exclusion: an integrated approach***([257]) encouraged the Member States to address child poverty and promote children's well-being through multi-dimensional and integrated strategies, in line with the *Investing in children* Recommendation.

The Commission Communication on *Assessing the implementation of the EU framework for **national Roma integration strategies** and the Council Recommendation on effective Roma integration measures in the Member States — 2016*, as published on 27 June, includes

([252]) Report from the Commission to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (COM(2016) 267 final, 19.5.2016 and SWD(2016) 159 final, 19.5.2016).

([253]) See section above on Article 5.

([254]) See p. 20 of the SWD.

([255]) Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, *2016 European Semester: country-specific recommendations* (COM(2016) 321 final, 18.5.2016);
.
Communication from the Commission to the European Parliament, the Council, the European Central Bank and the Eurogroup, *2016 European Semester: assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011* (COM(2016) 95 final/2, 7.4.2016).

([256]) *http://ec.europa.eu/social/BlobServlet?docId=16170&langId=en.*

([257]) Council conclusions (16 June 2016), *Combating poverty and social exclusion: an integrated approach*; .
http://data.consilium.europa.eu/doc/document/ST-10434-2016-INIT/en/pdf.

Decision of the UK Upper Tribunal (Immigration and Asylum Chamber)

A case before a UK tribunal concerned a Nigerian national who had resided in the UK for 25 years. His daughters (aged 13 and 11) were British citizens. He appealed against a deportation order made on grounds of public policy. The tribunal reversed the decision of the first instance court, considering that it had failed to acknowledge the existence of the children's right to maintain on a regular basis a personal relationship and direct contact with both parents, unless that is contrary to their interests (Article 24 of the Charter). This Charter provision was interpreted as a 'self-standing right' in the context of immigration law. (Upper Tribunal (Immigration and Asylum Chamber) Adebayo Abdul v. Secretary of State for the Home Department, [2016] UKUT 106 (IAC))

numerous references to the rights of Roma children, *inter alia* in the area of education (fighting discrimination and segregation) and violence against children. ([258])

The European Parliament's **Resolution on the follow-up of the Strategic Framework for European cooperation in education and training (ET 2020**) calls for greater inclusiveness in education and training, putting special emphasis on young people suffering from socio-economic disadvantages and people with disabilities or with special needs. The ROMED programme, which is co-managed and co-financed by the Commission and the Council of Europe, is a training programme for Roma mediators in schools, culture and health. The objective is to improve the inclusion of Roma communities, especially with regard to access to and completion of school education (Articles 14, 21 and 24 of the Charter). Education also plays an important role in the Youth package of December. ([259]) The Commission stressed education as an important tool to improve opportunities for young people.

In its Communication on ***Online platforms and the digital single market, opportunities and challenges for Europe***, the Commission stresses that children are increasingly exposed to harmful content through video-sharing platforms, and refers to its proposed amendment to the AVMSD (see sub-section on *legislation* above*).*

On 6 June, the Commission published a *Final evaluation of the multi-annual EU programme on protecting children using the internet and other communication technologies (**Safer Internet**)*, which concludes that the 2009-2013 Safer Internet programme was successful in achieving its main goals and proposes continuation of the activities that have proven most effective. ([260])

The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes a principle on childcare including preventive and early approaches to address child poverty and the access to quality and affordable childcare services for all children.

Case-law

See accounts of the *CS* and *Rendón Marín* cases in the section on Article 7 above.

([258]) See section above on Article 21.

([259]) Press Release of 7 December 2016, Investing in Europe's youth: Commission launches European Solidarity Corps: *http://europa.eu/rapid/press-release_IP-16-4165_en.htm* .

([260]) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Final evaluation of the multi-annual EU programme on protecting children using the internet and other communication technologies (Safer Internet)* (COM(2016) 364 final, 6.6.2016).

Article 25 — The rights of the elderly

Article 25 of the Charter provides that the EU recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life. Participation in social and cultural life also covers participation in political life. Most of the policies directly affecting these rights are within the competences and responsibilities of individual Member States, but the EU is committed to respecting and promoting them in relevant EU law, policies and programmes.

Europe was the region with the biggest population of elderly people in 2010. It will continue to have the oldest population in the world, with the proportion of older persons projected to rise to 34 % (236 million) in 2050. ([261]) Recent years have seen significant advocacy efforts calling for enhanced international thinking and action on the human rights of older persons. Various stakeholders have called for more visibility and increased use of international human rights standards to address the situation of older persons. Multiple discrimination emerges as an essential factor in any analysis, particularly given that age-related discrimination is often compounded by other grounds of discrimination, such as sex, socio-economic status, ethnicity and health status.

Legislation

As indicated above (see sections on Articles 10 and 21), in order to cover equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation also outside the labour market, the Commission proposed an Equal Treatment Directive in 2008. ([262]) The proposal is still under discussion in the Council.

Policy

The preliminary outline of the European Pillar of Social Rights published in March 2016 proposes a principle on pensions, to ensure a decent standard of living at retirement age and addressing the gender pension gap and to encourage the participation of the self-employed in pension schemes.

The European Parliament adopted resolutions in December calling on the EU and its Member States to strengthen their international **commitment to the human rights of older persons**. One Resolution ([263]) calls for participation in the UN Open-Ended Working Group on Ageing in

Decision of the Swedish Court of appeal

In another case, a Swedish court used Article 24 of the Charter as the only legal source to interpret national criminal law in a child-friendly manner. The standard sentence for persons assisting any foreigner's entry into Sweden in return for payment amounts to three to four months in prison. However, in this case, the court acknowledged that the person concerned was motivated by the desire to help children. It imposed a solely conditional sentence, coupled with community service, in the light of Article 24 of the Charter and the obligation of state authorities to consider the child's best interest. (*Skåne and Blekinge*, Court of Appeal, case B 7426-15, decision of 5 December 2016)

([261]) Report of the United Nations High Commissioner for Human Rights (E/2012/51, 2012).

([262]) 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.

([263]) Resolution of 13 December 2016 on the situation of fundamental rights in the European Union in 2015 (2016/2009(INI)), para. 114-116.

order to protect the rights of older people. The other ([264]) invites Member States to sign up to the Madrid International Action Plan on Ageing (MIPAA), ([265]) which is under review in 2017.

The European Network of National Human Rights Institutions (ENNHRI) ([266]) project**,** funded by the Commission, on the ***human rights of older persons and long-term care*** is about to come to an end. The aim of the project has been to improve the human rights protection of older persons in long-term care, with particular emphasis on residential care. One of the key findings is the struggle that care providers face in respecting the dignity of the care recipients. Research indicated the lack of knowledge among staff of human rights and their obligations to their residents, and the lack of resources (staffing shortages; limited funding for the long-term care sector overall and shortcomings in the health system). As the most important steps governmental care institutions can take, it recommended:

- human rights training for care workers, managers and students (future workers); and
- investment in the care home and long-term care sector to allow for higher staff ratios and a better physical environment to facilitate privacy and protect residents' safety.

Another key recommendation was that the UN Committee on the Rights of Persons with Disabilities and state parties recognise the relevance of the Convention on the Rights of Persons with Disabilities (UNCRPD) and Article 19 for older persons with disabilities and greater investment by state parties in the development of high-quality community-based services.

Article 26 — 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.

Legislation

The proposed Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services

([264]) Resolution of 14 December 2016 on the 2015 annual report on human rights and democracy in the world and the European Union's policy on the matter (2016/2219(INI)), para. 121.

([265]) *http://www.un.org/esa/socdev/documents/ageing/MIPAA/political-declaration-en.pdf.*

([266]) *http://ennhri.org/.*

(**European Accessibility Act (EAA)**) ([267]) was discussed with the Council and the European Parliament in 2016. Although the Act particularly concerns the internal market and products/services, not specifically dealing with fundamental rights, its adoption would contribute to the implementation of the UNCRPD and greater recognition of the right of persons with disabilities to accessibility.

International agreements

The UNCRPD is the first international legally binding human rights instrument setting minimum standards for a range of civil, political, social, economic and cultural rights for people with disabilities around the world. ([268]) It is also the first human rights treaty to which the EU is a party. The EU concluded the UNCRPD in 2010. ([269]) All 28 Member States have signed it and 27 have ratified it (Ireland is making progress towards ratification).

In 2015, the UNCRPD Committee examined for the first time how the EU had been implementing the UNCRPD. In line with its concluding observations, adopted in October 2015, ([270]) the EU was to report on the implementation of recommendations regarding:

- adoption of the EAA (see above);
- the updating of the EU declaration of competences under the UNCRPD; and
- removing the Commission from the independent monitoring framework and ensuring that the framework has adequate resources to perform its functions.

The Committee also recommended that the EU should consider establishing an inter-institutional coordination mechanism and designating focal points in each EU institution, agency and body.

As a follow-up to the recommendations, the Commission adopted the proposal for the EAA, ([271]) which is currently under discussion by the Council and the European Parliament. In addition, it prepared its withdrawal from the EU monitoring framework and prepared an informal list of legal acts that relate to disability, updating the list in the EU declaration of competences annexed to the Council Decision for concluding the Convention.

([267]) Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (COM(2015) 615 final, 2.12.2015).

([268]) *http://www.un.org/disabilities/.*

([269]) Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, 2010/48/E (OJ L 23, 27.1.2010, p. 35).

([270]) UN, Concluding observations on the initial report of the European Union (CRPD/C/EU/CO/1, 2.10.2015).

([271]) See above under *Legislation*.

Policy

The overall framework for the implementation by the EU of its obligations under the UNCRPD is the **2010-2020 European Disability Strategy**.([272]) Its aim is to create a barrier-free Europe that allows for the full and equal participation of persons with disabilities in line with the UNCRPD and Article 26 of the Charter.

Each year, the Commission raises awareness of disability challenges through a conference celebrating the International Day of Persons with Disabilities, which it organises in cooperation with the **European Disability Forum**.([273]) The 2016 European Day of Persons with Disabilities conference took place on 29 and 30 November in Brussels. It celebrated the 10th anniversary of the UN Convention on the rights of persons with disabilities. The presentations and discussions focused in an interactive way on the progress that has been made in the EU on promoting the rights of persons with disabilities, based on the UNCRPD. The conference brought together a wide range of participants representing people with disabilities, organisations or groups of persons with disabilities (DPOs), policymakers from the Member States, social partners, disability and accessibility experts, academics and the European institutions.

In partnership with the European Disability Forum, the Commission organised the **seventh Access City Awards**,([274]) which promotes accessibility in the urban environment, especially for elderly and disabled citizens, and recognises improvements made in this area by cities across the continent. At the annual ceremony on 29 November, the British city of Chester was announced as the winner of the Access City Award. It was chosen out of 43 cities from 21 EU countries, because of its inclusive measures for persons with disabilities in various areas, in particular that of accessible tourism. Rotterdam (NL), Jurmala (LV), Lugo (ES), Skellefteå (SE), Alessandria (IT) and Funchal (PT) also received awards for improving accessibility for older people and persons with disabilities.

In 2013, as announced in the *2013 EU Citizenship Report*, the Commission launched a project working group with Member States and civil society organisations to develop a mutually recognised **EU model disability card** that would facilitate the freedom of movement in the EU of persons with disabilities, allowing those who travel to another EU country to be treated in the same way as nationals, in terms of access to culture, tourism, leisure, sports and transport. A **pilot was launched** in February 2016 to kick-start the card in a first group of eight Member States: Belgium, Cyprus, Estonia, Finland, Italy, Malta, Slovenia and Romania. The countries were selected following a 2015 call for proposals to support national projects on a mutually

([272]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *European Disability Strategy 2010-2020: a renewed commitment to a barrier-free Europe* (COM(2010) 636 final, 15.11.2010). *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF.*

([273]) *http://europa.eu/!Jw48fj.*

([274]) *http://ec.europa.eu/social/main.jsp?catId=1141.*

recognised European disability card and associated benefits. The card will be available only to nationals and residents of the Member States in which projects will be implemented. However, other Member States interested in participating in the scheme can inform the Commission whenever they choose and the Commission will facilitate coordination with existing national projects. The first results of the projects were presented at the European Day of Persons with Disabilities conference on 29 November.

The preliminary outline of the European Pillar of Social Rights published in March 2016 proposes a principle on disability, including the access to enabling services and basic income security and the avoidance of barriers to employment.

As part of the **European Semester** exercise, the Commission raised disability-related issues with Member States, most notably in the fields of social inclusion and social benefits, including unemployment benefits and/or minimum income, and healthcare and long-term care. A disability perspective was included in most country analyses for 2016-2017.

The **European Academic Network of European Disability experts (ANED)**, funded by the Commission, published:

- a synthesis report on the situation of persons with disabilities in the area of social protection, and country reports on social protection and Article 28 in all Member States;
- European Semester 2016/2017 country fiches on disability issues for all Member States; ([275]) and
- the *European comparative data on Europe 2020 & People with disabilities report*, including analysis and data on the situation of people with disabilities linked to the objective of the EU2020 Strategy. ([276])

Article 7 of the current AVMSD encourages the provision of accessibility services to people with visual or hearing disability. The Commission regularly monitors Member States' transposition and implementation of this Article and has encouraged them, and audiovisual regulatory authorities, to transpose and enforce it.

The Commission continued its cooperation with (and financial support for) the **European Agency for Special Needs and Inclusive Education**, which works closely with education ministries and supports policy reform with evidence and information about inclusive education across Europe, recommendations for policy and practice and tools to monitor progress.

([275]) *http://www.disability-europe.net/theme/health.*

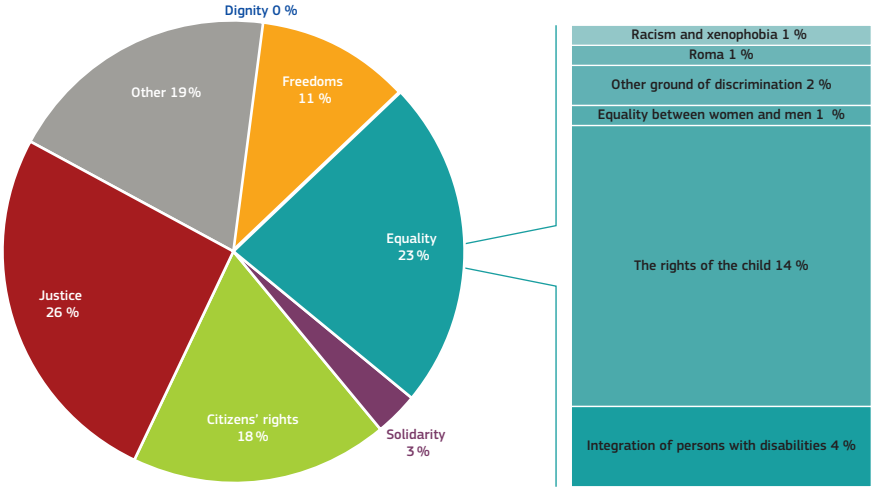
([276]) *http://www.disability-europe.net/theme/eu2020.*

The ***Erasmus+*** programme continued to make specific provision for the participation of disabled people in individual learning mobility activities. It also supported transnational collaborative projects aiming to improve aspects of inclusive education policy and practice.

Application in Member States

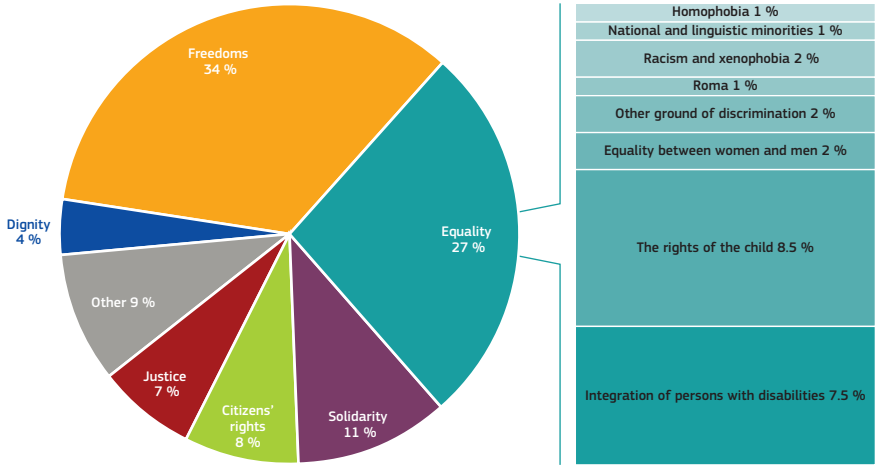
As regards the respect of the Charter by Member States in the implementation of **EU cohesion policy**, the Commission sent at its own initiative letters reminding two Member States of their obligation to respect the Charter in the area of the transition from institutional to community-based care.

Letters



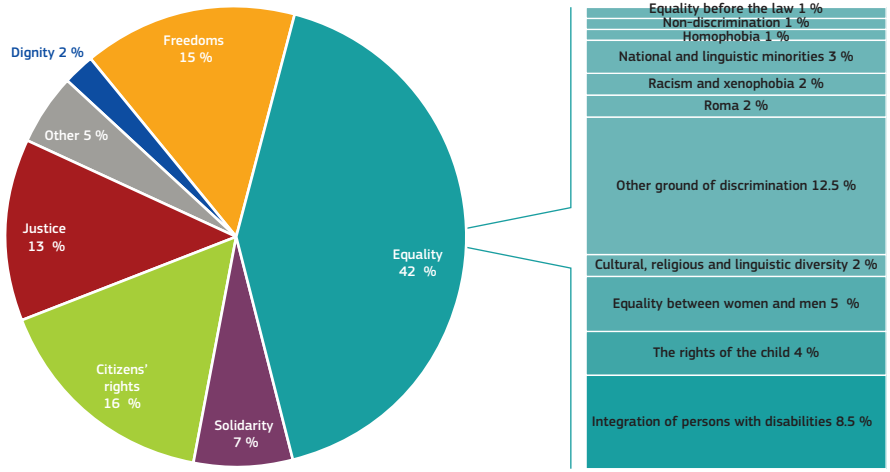
Source: European Commission

Questions



Source: European Commission

Petitions



Source: European Commission

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

Healthcare

Access to services of general economic interest

Environmental protection

Consumer protection

4/ SOLIDARITY

Solidarity

To ensure fair and just working conditions, the European Parliament and the Council adopted a **decision on establishing a European platform to enhance cooperation in tackling undeclared work**. The platform should contribute to more effective Union and national action to promote integration in the labour market and social inclusion, including better law enforcement in those fields, to the reduction of undeclared work and the creation of formal jobs. On 13 December, the Commission presented a **proposal to revise the EU legislation on social security coordination** with the aim of facilitating labour mobility and ensuring fairness for those who move and for taxpayers, enhancing the right to social security and social assistance.

The Commission is committed to strengthening the enforcement of European consumer laws to ensure swifter consumer protection. It proposed a revision of the **Consumer Protection Cooperation Regulation** to bring enforcement of European consumer laws and the protection of European consumers up to speed with online developments. In early 2016, it launched an **online dispute resolution (ODR) platform** under Regulation (EU) No 524/2013. This allows EU consumers to submit disputes with EU traders arising from online purchases in any official EU language, thus contributing to a high level of **consumer protection** in the EU.

The Commission adopted the **'clean energy for all Europeans' package** on 30 November. The package includes ambitious proposals for better functioning retail markets and more empowered customers, providing measures to benefit the environment and protect vulnerable customers.All recently concluded **EU trade and investment agreements contain comprehensive labour provisions and committements by the EU** and its partners on the respect of fundamental labour rights as enshrined in the eight fundamental Conventions of the International Labour Organization (ILO) on freedom of association and collective bargaining, abolition of child and forced labour as well as eradication of discrimination in employment. Throughout 2016 the Commission contributed through various negotiations and monitoring of the implementation of agreements in force to futher promote the fundamental labour rights.

An example of the Commission's mainstreaming fundamental rights in its external action is its monitoring of the respect by the beneficiaries of the **Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+)** with their international obligations, on, inter alia, human and labour rights. In this context, in 2016 the Commission continued its work with the Bangladeshi Government, the International Labour

Organisation, the US and Canada on a compact to improve labour rights and occupational health and safety in the Bangladeshi garment sector.

Article 27 — Workers' right to information and consultation within the undertaking

Article 27 of the Charter provides that workers or their representatives must be guaranteed information and consultation at the appropriate levels and in good time, in the cases and under the conditions provided for by EU law and national laws and practices.

Legislation

The Commission's **proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures** and amending Directive 2012/30/EU takes into account the fundamental rights in the Charter and gives precedence to the policy options enhancing such rights. ([277]) In particular, workers' fundamental rights (e.g. the rights to information and consultation in Article 27 of the Charter) and all rights under EU law are unaffected by the proposal. Throughout preventive restructuring procedures, workers will enjoy full labour law protection of their rights, as guaranteed by existing EU legislation. Where their claims and interests are affected by a restructuring plan, workers will have the right to vote on it. Also, where a restructuring plan entails decisions likely to lead to substantial changes in work organisation or in contractual relations, the workers' rights to information and consultation (as guaranteed by Directive 2002/14/EC on the information and consultation of employees) ([278]) remain untouched. Collective bargaining and collective action rights are also guaranteed by the Charter. Workers' outstanding claims, such as wages, are fully protected during restructuring. Workers are in principle exempted from the stay of enforcement. In this way, workers can continue to enforce their claims against the employer throughout the restructuring period.

Policy

The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes a principle on social dialogue and involvement of workers, including information and consultation information and consultation for all workers, in particular in the case of collective redundancies, transfer, restructuring and merger of undertakings.

([277]) See sections above on Articles 15 to 17.

([278]) Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ L 80, 23.3.2002, p. 29).

Citizens' letters

In the field of labour law, the Charter is currently being invoked in the vast majority of complaints related to collective rights, in particular **information and consultation of workers**, as well as collective bargaining and protection against unjustified dismissals. Nonetheless, in those cases reported to the Commission in 2016, the Charter did not apply as the issues raised by the complainants were not covered by EU law.

Article 28 — Right of collective bargaining and action

Article 28 of 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 conflict 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. ([279]) Member States remain bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

Policy

The preliminary outline of the European Pillar of Social Rights published in March 2016 proposes principles on social dialogue and involvement of workers, including information and consultation and the encouragement of social dialogue, collective agreements and the respect of social partners' autonomy and right to collective action.

Article 29 — Right of access to placement services

Under Article 29 of the Charter, everyone has the right of access to a free placement service. This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

([279]) Article 153(5) TFEU stipulates that it does not apply to the right to strike.

Policy

Council Recommendation of 15 February 2016 on the integration of the long-term unemployed into the labour market recommends that long-term unemployed persons are offered in-depth individual assessments and guidance and a job-integration agreement comprising an individual offer and the identification of a single point of contact at the very latest when they reach 18 months of unemployment. The European Network of Employment Services (EURES), re-established under Regulation (EU) 2016/589 ([280]), aims to improve the functioning, cohesion and integration of labour markers in the EU, including at cross-border level.

The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes principles on active support to employment and on unemployment benefits, setting out the support to young people and to long term unemployed persons, as well as active job search support for the unemployed.

Article 30 — Protection in the event of unjustified dismissal

Under Article 30, every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices. This Article draws on Article 24 of the revised Social Charter. It is given effect by means of Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer.

The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes a principle on conditions of employment, including on protection in the case of dismissal and on probation periods.

Article 31 — Fair and just working conditions

Article 31 guarantees that every worker has the right to working conditions that respect their health, safety and dignity. Every worker has the right to a limitation of maximum working hours, daily and weekly rest periods and 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.

([280]) Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013, OJ L 107, 22.4.2016, p. 1.

Legislation

In 2016, the European Parliament and the Council adopted a **Decision on establishing a European platform to enhance cooperation in tackling undeclared work**. ([281]) The platform should contribute to more effective Union and national action to improve working conditions, promote integration in the labour market and social inclusion, including better law enforcement in those fields, to the reduction of undeclared work and the creation of formal jobs, thereby avoiding the deterioration of the quality of work and of health and safety at work.

On 29 April, the Commission adopted a **proposal for a Directive implementing the EU social partners' agreement on the ILO Work in Fishing Convention, 2007**. ([282]) The Directive was adopted by the Council on 19 December and will enter into force on the date of entry into force of the ILO Convention (i.e. 16 November 2017). Member States will have to transpose the Directive in their national legislation by 16 November 2019.

In March, the Commission presented a **proposal for a Directive amending the Posting of Workers Directive**. ([283]) It aims to establish a level playing-field between cross-border and local service providers and improving the protection of posted workers. In particular, it provides that posted workers should be granted all the elements of remuneration that are mandatory for local workers, in accordance with the law or the relevant universally applicable collective agreement in the host Member State. On 13 May 2016 the Commission adopted a proposal for a Directive of the European Parliament and of the Council amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. The proposal is aiming to improve protection for workers from cancer-causing chemicals by revising or introducing exposure limit values for 13 cancer causing chemicals at the workplace. Subsequent amendments of Directive 2004/37/EC are foreseen also as regards other carcinogenic substances.

Policy

The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes principles on conditions of employment and on health and safety at work.

([281]) Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work (OJ L 65, 11.3.2016, p. 12-20).

([282]) Proposal for a Council Directive implementing the Agreement concluded between the General Confederation of Agricultural Cooperatives in the European Union (COGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises (EUROPÊCHE) of 21 May 2012, as amended on 8 May 2013 concerning the implementation of the 2007 Work in Fishing Convention of the International Labour Organisation (COM(2016) 235 final, 29.4.2016).

([283]) Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (COM(2016) 128 final).

The Commission completed an **evaluation of the social legislation in the area of road transport**. It also commissioned a study for the *ex post* evaluation of the social legislation in road transport ([284]) and held an open public consultation on this issue between September and December. On this basis, in 2017 it will prepare a SWD on the evaluation and launch an impact assessment with a view to preparing legislative proposals for a targeted revision of the current social rules applicable to road transport. ([285]) The evaluation study noted that the Charter provides for the right to fair and just working conditions and grants workers a right to daily and weekly rest periods and a limit on their working hours (Article 31). It is therefore of particular relevance for social legislation in the road transport sector. Article 52 of the Charter provides for the possibility of restricting these rights in specific circumstances (limitations must be necessary and meet the objectives of general interests or the need to protect the rights and freedoms of others). Derogations must therefore be strictly limited to what is necessary to meet the specific requirements of road transport.

Article 32 — Prohibition of child labour and protection of young people at work

Article 32 prohibits the employment of children. 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.

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

([284]) For further information on the final report, see: *https://ec.europa.eu/transport/sites/transport/files/facts-fundings/evaluations/doc/2016-ex-post-eval-road-transport-social-legislation-final-report.pdf*; . for executive summary (EN and FR), see: *http://ec.europa.eu/transport/facts-fundings/evaluations/reports-year_en*.

([285]) Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35); Regulation (EC) No 561/2006 of the European parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p.1); Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

Policy

On 20 June 2016, the Council adopted **conclusions on child labour** ([286]) reaffirming its strong commitment to ensuring that every child is protected from child labour including its worst forms. It stressed the importance of eradicating the recruitment and use of children in armed conflict including child soldiers.

The Commission conducted a **study on child and forced labour** in view of future action in the EU's international cooperation and development focusing on comprehensive intervention linked to global value chains. ([287]) The garment sector was specifically identified because many children work in various segments of the global value chains, from cotton field production to factories. The financing decision including this component, in the framework of promoting decent work, was adopted in December under the **Development Cooperation Instrument** for activities to start in 2017. ([288])

Article 33 — Family and professional life

Article 33 stipulates that families should enjoy legal, economic and social protection. To reconcile family and professional life, everyone should have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and parental leave following the birth or adoption of a child.

Policy

The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes a principle on gender equality and work-life balance, focused on equality of treatment in all areas, addressing barriers to women's participation and on adequate leave arrangements for children and aother dependent relatives and access to care services. The proposed principle also refers to an equal use of leave arrangments between sexes and to flexible working arrangmements.

([286]) *http://www.consilium.europa.eu/en/press/press-releases/2016/06/20-fac-child-labour/.*

([287]) The study will be published at *http://capacity4dev.ec.europa.eu/topic/children-youth. [to* check if published before the Report adoption].

([288]) Ref. DCI/HUM/2016/038-894; see: *https://ec.europa.eu/europeaid/commission-implementing-decision-annual-action-programme-2016-part-iv-and-annual-action-programme_en.*

Following its 2015 roadmap ([289]) setting out policy options to address the work-life balance challenges facing working families, the Commission pursued its **work on an initiative on work-life balance for parents and care-givers**. ([290])

Article 34 — Social security and social assistance

Article 34 of the Charter recognises citizens' entitlement to social security benefits and social services providing protection in cases of maternity, illness, industrial accidents, dependency, old age and loss of employment. Everyone residing and moving legally within the EU is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

Legislation

On 13 December, as part of the labour mobility package announced in October 2015, the Commission presented a **proposal to revise the EU legislation on social security coordination**. ([291]) This was part of its efforts to facilitate labour mobility, ensure fairness for those who move and for taxpayers, and provide better tools for cooperation between Member State authorities. The proposal updates the current rules to ensure that they are fair, clear and easier to enforce, enhances fundamental rights and observes the principles recognised in the Charter, including the right to social security and social assistance.

On 30 November (see section below on Article 38), the Commission issued draft legislative proposals on **electricity market design, renewables and energy efficiency**, putting increased emphasis on solutions to to help combating energy poverty and social exclusion in accordance with Article 34. In particular, Article 28 of the **recast Electricity Directive** maintains the Member States' obligation to ensure adequate safeguards to protect vulnerable customers. Article 29 requires Member States to set energy poverty criteria, continuously monitor the number of households in energy poverty and report on trends in energy poverty and measures taken to prevent it. The amended Article 7 of the **Energy Efficiency Directive** strengthens the existing provisions on energy poverty by requiring that energy obligation schemes include social aspects, including a requirement that a certain proportion of energy efficiency measures are implemented as a priority in households affected by energy poverty and in social housing. Article 7b requires Member States to take account of impacts on households affected by energy poverty when designing policy measures.

([289]) *http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_just_xxx_maternity_leave.en.pdf.*

([290]) See section above on Article 23.

([291]) Proposal for a Regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM(2016) 815 final, 13.12.2016).

The proposal to amend the **Energy Performance of Buildings Directive** ([292]) includes a requirement that Member States' long-term building renovation strategies contribute to alleviating energy poverty.

Policy

Throughout the year, the Commission engaged with social partners, citizens and Member State authorities in a broad public consultation on the development of the **European pillar of social rights**, in particular with a view to:

- making an assessment of the current social *acquis*;
- reflecting on new trends in work patterns and societies (i.e. what has been the impact of new technologies, demographic trends and other factors on our working lives and social conditions; and
- gathering views and feedback on the outline of the pillar itself.

The preliminary outline of the European Pillar of Social Rights published in March 2016 proposes principles on unemployment benefits, pensions, minimum income, disability, long-term care and childcare, housing as well as on the integration of social protection benefits and services.

Article 35 — Healthcare

Article 35 of the Charter provides that everyone has the right to access preventive healthcare and the right to benefit from medical treatment under the conditions established by national law and practices. A high level of human health protection is to be ensured in the formulation and implementation of the Union's policies and activities.

Legislation

The Directive on combating terrorism, ([293]) on which the European Parliament and the Council reached agreement in December, contains provisions strengthening the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions provided by national law for victims of terrorism. In particular, the provisions include **the right to receive medical treatment immediately** after an attack and for as long as necessary thereafter in the Member State where it took place. This right is without prejudice to the Member States' compe-

([292]) Proposal for a Directive of the European Parliament and the Council amending Directive 2010/31/EU on the energy performance of buildings (COM(2016) 765 final, 30.11.2016).

([293]) Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism (COM(2015) 625 final, 2.12.2015).

tence to organise and manage their healthcare systems. In addition, the Directive gives victims the right to **receive emotional and psychological support** from specially trained professionals immediately after an attack and for as long as necessary thereafter, including emotional assistance and trauma counselling. This aspect is particularly important in preventing serious health consequences for victims of terrorist attacks, such as post-traumatic stress disorder (PTSD).

Policy

The preliminary outline of the European Pillar of Social Rights published in March 2016 proposes a principle on healthcare and sickness benefits, including the access to good quality preventive and curative health care.

The 3rd **EU Health Programme** (2014-2020) ([294]) aims to complement, support and add value to Member States' policies to improve citizens' health and reduce health inequalities. It contributes to major EU priorities, including the application of the Charter and implementing the European agenda on migration. It has been supporting Member States' work to improve the healthcare services provided to migrants and other vulnerable groups in response to the humanitarian crisis faced by the EU with the high influx of refugees and migrants. The **2016 annual work programme** refers to the Charter, reiterating that action under the work programme is to respect and be implemented in compliance with the principle of non-discrimination and the right to healthcare, as enshrined in Articles 21 and 25 of the Charter. As regards action on migrants' and refugees' right to health, several projects and contracts were financed in 2016, aimed at promoting:

- **best practices in care provisions for vulnerable migrants and refugees**, aimed at supporting common and joint activities backing up Member States' efforts to integrate migrant populations in national healthcare systems. The project financed by a direct grant was awarded to the World Health Organisation;

- **training programmes for first-line health professionals**, border officers and officials working with migrants and refugees at local level. The training focuses on strengthening the skills and capabilities of first-line health professionals and promoting a holistic approach to the healthcare of migrants and refugees at first points of arrival in the receiving countries; and

- **specific pilot training modules for health professionals**, border guards and trainers that should lead to the design and development of a specific 'package' on issues relating to

([294]) Regulation (EU) No 282/2014 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme for the Union's action (2014-2020) and repealing Decision No 1350/2007/EC (OJ L 86, 21.3.2014, p. 1-13).

mental health and detecting PTSD and on the implementation of triage and screening for communicable diseases in migrants and refugees.

The Commission has also financed projects that are particularly relevant for the Roma community and other vulnerable groups. For instance, the 2013-2016 **Equi-Health project**, ([295]) co-financed by the International Organisation for Migration (IOM), aims to improve access to and quality of healthcare for migrants, Roma and other vulnerable minority groups. The 2008-2013 EU Health Programme is funding the development of training packages for health professionals to improve access to and quality of health services for migrants and ethnic minorities, including the Roma. ([296])

Lastly, a European Parliament pilot project on **reducing health inequalities experienced by LGBTI people**[228] is aimed at improving our understanding of these specific health inequalities, focusing on overlapping inequalities stemming from discrimination and unfair treatment on other grounds (e.g. age, disability, socioeconomic status, race and ethnicity) and the barriers faced by health professionals when providing care to those groups.

Case-law

The CJEU issued two judgments in cases concerning the implementation of the Tobacco Products Directive in conjunction with fundamental rights in the context of health protection:

- Case C-547/14 *Philip Morris Brands SARL and Others* – see the account of the case in the section on Article 11 above; and

- Case C-477/14 *Pillbox 38* ([297]) – responding to a question on the validity of Article 20 of the Directive, the CJEU noted that the EU was required to act pursuant to the precautionary principle in the second sentence of Article 35 of the Charter as soon as it became aware of serious scientific information indicating the existence of potential risks to human health to which a relatively new product on the market might give rise. In so far as the prohibition on commercial communications imposed by Article 20(5) of the Directive does not allow economic operators to promote their products, it constitutes an interference with the freedom of those operators to conduct a business. Nonetheless, in view of the criteria in Article 52(1) of the Charter, the limitation at issue was laid down by Article 20(5) of the Directive (i.e. by law) and does not affect the essence of the freedom to conduct a business. The Court did not find that the interference exceeded the limits of what is appropriate and necessary to achieve the legitimate objectives pursued by the Directive.

([295]) *http://equi-health.eea.iom.int/.*

([296]) *http://www.mem-tp.org/.*

([297]) CJEU judgment of 4 May 2016 in Case C-477/14 *Pillbox 38.*

Parliamentary questions

The Commission received numerous questions from MEPs on healthcare issues in conjunction with the provisions of the Charter, in particular noting the limits of EU action in the area of healthcare.

In response to a question on blood donation based on sexual orientation, the Commission referred to the CJEU's preliminary ruling in *Léger*, ([298]) in which the Court held that a permanent deferral from donating blood on men who have sex with other men may be a restriction of fundamental rights, particularly Article 21(1) protecting the right to non-discrimination on grounds of sexual orientation. It also reiterated that it is for Member States to justify any such restriction on public health grounds. ([299])

Article 36 — Access to services of general economic interest

Article 36 of the Charter provides that the Union recognises and respects access to services of general economic interest (SGEIs) 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.

SGEIs are also referred to in Articles 14 and 106 TFEU. Protocol No 26 TFEU refers to the broader notion of services of general interest. No definition is provided in the EU Treaties or in secondary EU law. In its Communication on *A quality framework for services of general interest in Europe*, ([300]) the Commission stated:

> *'SGEI are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention. The PSO [public service obligation] is imposed on the provider by way of an entrustment and on the basis of a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission.'*

([298]) CJEU judgment of 29 April 2015 in Case C-528/13 *Geoffrey Léger* v *Ministre des affaires sociales et de la santé* (blood donation).

([299]) MEP question E-005284/2016.

([300]) COM(2011) 900, 20.12.2011.

Legislation

The **recast Electricity Directive** concerns the field of energy supply, also in view of general public services. Article 5 sets out principles for Member States regulating the supply of electricity as an SGEI, in line with the requirements of the Charter, EU law and the Treaties. ([301])

Policy

The preliminary outline of the **European Pillar of Social Rights** published in March 2016 proposes a principle on affordable access to essential services including electronic communications, energy, transport, and financial services equal opportunities.

Case-law

In the *ANODE* case, ([302]) the CJEU considered that security of supply and territorial cohesion might be objectives in the general economic interest which may justify state intervention in fixing the price of natural gas for household customers. However, the Court confirmed, in line with its earlier case-law, that such state intervention in the setting of gas prices would be compatible with the Gas Directive only if strict requirements are met, including proportionality and non-discrimination.

Article 37 — Environmental protection

Article 37 of the Charter establishes that a high level of environmental protection and 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.

Legislation

On 30 November, the Commission released draft legislative proposals on electricity market design, renewables and energy efficiency. ([303]) The **recast Renewable Energy Directive** proposes a target of at least 27% of renewable energy, which will also deliver on the reduction of greenhouse gas emissions and will allow a reduction of fossil fuel consumption. ([304]) The proposed 30 % energy efficiency target for 2030 is estimated to reduce greenhouse gas emissions by 40 %. Also, Member States' long-term building renovation strategies, as required under the

([301]) See sections above on Article 34 and below on Article 38.

([302]) CJEU judgment of 7 September 2016 in Case C-121/15 *ANODE*.

([303]) See section below on Article 38. .

([304]) Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast) (COM(2016) 767 final, 30.11.2016).

proposal to amend the **Energy Efficiency of Buildings Directive**, must now include a roadmap with measures to deliver on the long-term 2050 goal of decarbonising the building stock.

The recitals of the **amended Energy Efficiency Directive** ([305]) took particular account of Article 37 of the Charter, reiterating that moderation of energy demand is one of the five dimensions of the Energy Union Strategy adopted on 25 February 2015 and stipulating that improving energy efficiency will benefit the environment and reduce greenhouse gas emissions. This is in line with the EU's commitments in the framework of the Energy Union and global climate agenda under the December 2015 Paris Agreement between the parties of the UN Framework Convention on Climate Change.

On 20 July, the Commission presented legislative proposals to accelerate the transition to a low-carbon economy in Europe. The proposal to **integrate greenhouse gas emissions and removals from land use, land-use change and forestry (LULUCF) into the 2030 climate and energy framework**. ([306]) sets a binding commitment for each Member State to ensure that accounted emissions from land use are entirely compensated by an equivalent removal of CO_2 from the atmosphere through action in the sector (the 'no debit' rule). The proposal **on binding greenhouse gas emission reductions for Member States (2021-2030)** ([307]) presents national targets for the sectors outside of the EU Emissions Trading System as contributors to EU climate action. The proposed legislation aims to achieve a high level of environmental protection.

Case-law

Several cases were raised in the framework of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (the Aarhus Convention), to which the EU and the Member States are party. The Aarhus Convention Compliance Committee (ACCC) monitors parties' compliance with the Convention.

In some ongoing cases concerning the EU, the Union has relied on the Charter in its defence:

([305]) Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/27/EU on energy efficiency (COM(2016) 761 final, 30.11.2016).

([306]) Proposal for a Regulation of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land-use change and forestry into the 2030 climate and energy framework and amending Regulation (EU) No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change (COM/2016/0479 final, 20.7.2016).

([307]) Proposal for a Regulation of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 for a resilient Energy Union and to meet commitments under the Paris Agreement and amending Regulation No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change, COM/2016/0482 final, 20.7.2016.

- Case ACCC/C/2008/32 concerns the EU's compliance in connection with access by members of the public to review procedures; ([308]) and

- Case ACCC/C/2014/123 deals with its transposition of the Convention's provisions on access to justice. ([309])

In both cases, the Commission referred, in its observations to the ACCC on behalf of the EU, to Article 47 of the Charter, recalling that the EU and its Member States are under an obligation to provide effective judicial protection of the rights conferred by EU law not only under the TEU, but also in accordance with Article 47 of the Charter. ([310])

In *Lesoochranárske zoskupenie VLK*, ([311]) the CJEU delivered a clarifying judgment to a request for a preliminary ruling referred by the Slovak Supreme Court in respect of environmental NGOs' access to justice and public participation in the context of the application of the Aarhus Convention and related EU legislation, in particular the Habitats Directive. ([312])

In *PAN Europe and others*, ([313]) concerning legal standing to challenge a Commission Implementing Regulation approving the active substance sulfoxaflor ([314]) (a neonicotinoid that the applicants alleged was harmful to bees), the General Court held that the applicants could not rely on Articles 37 and 47 of the Charter in order to challenge the interpretation of the criteria laid down in Article 263(4) TFEU on submitting an action for annulment and, in particular, the criterion of direct concern. Although the conditions of admissibility in Article 263(4) TFEU should be interpreted in the light of the fundamental right to effective judicial protection, such an interpretation could have the effect of setting aside the conditions expressly laid down in the Treaty. The Court therefore dismissed the action as inadmissible.

([308]) *https://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html.*

([309]) *http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envpppubcom/acccc2014123-european-union.html.*

([310]) See section below on Article 47.

([311]) CJEU judgment of 8 November 2016 in Case C-243/15 *Lesoochranárske zoskupenie VLK;* for further information see below Article 47.

([312]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7-50).

([313]) CJEU judgment of 28 September 2016 in Case T-600/15 *Pan Europe and others* v *European Commission*.

([314]) Commission Implementing Regulation (EU) 2015/1295 of 27 July 2015, approving the active substance sulfoxaflor, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ 2015 L 199, p. 8).

Article 38 — Consumer protection

Article 38 of the Charter provides that Union policies should ensure a high level of consumer protection, giving guidance to the EU institutions when drafting and applying EU legislation.

Legislation

More effective enforcement of European consumer laws will ensure swifter consumer protection. Consumers and traders need to be confident that the online market is free of illegal practices. European laws offer numerous consumer rights, but these are not always respected, especially by e-commerce traders. Around 70 % of complaints handled by European consumer centres in 2016 concerned the delivery, price or faultiness of products or services purchased online. As a result, the Commission proposed a revision of the **Consumer Protection Cooperation Regulation** ([315]) to bring enforcement of European consumer laws and protection of European consumers up to speed with online developments. Consumer authorities will have new powers to act faster against bad online practices involving scams, such as luring consumers into lengthy and costly subscription traps. In particular, new procedures triggered by the Commission at Union level will permit closer coordination of enforcement actions when harmful practices concern a large number of European consumers. More effective enforcement of consumer rights will contribute to ensuring a high level of consumer protection and fair commercial practices among operators.

In line with the New Deal for Energy Consumers, ([316]) the Commission adopted the **'clean energy for all Europeans' package** on 30 November. ([317]) The package includes ambitious proposals *inter alia* for better functioning retail markets and more empowered customers. Key topics addressed include energy poverty, clarity of billing, measures to encourage switching and build consumer trust in energy markets, the role of consumers in self-generation, improved information on the energy mix (energy sources), eco-design and energy labelling. Energy consumer rights will be significantly strengthened through the recast of several Directives and Regulations.

The **proposed recast Electricity Regulation** introduces the principle that 'market participation of consumers and small businesses shall be enabled […]'. In addition, the **recast Electricity Directive** requires more detailed rules on billing for electricity and maintains the Member States' obligation to ensure adequate safeguards to protect vulnerable customers. It requires Member States to set energy poverty criteria, continuously monitor the number of households in energy poverty and report on trends in energy poverty and measures taken to prevent it.

([315]) Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws, COM(2016) 283 final, 25.5.2016.

([316]) Communication from the Commission, *Delivering a new deal for energy consumers* (COM(2015) 339 final, 15.7.2015).

([317]) *http://europa.eu/rapid/press-release_IP-16-4009_en.htm; see section above on Article 34.*

The rules on metering and billing in the heating and cooling sector in the amended **Energy Efficiency Directive** also provide greater protection for consumers. The revised Article 7 of the Directive strengthens the existing provisions on energy poverty by requiring that energy obligation schemes include social aspects, including a requirement that a certain proportion of energy efficiency measures are implemented as a priority in households affected by energy poverty and in social housing. Member States are to take account of impacts on households affected by energy poverty when designing policy measures.

The proposal to amend the **Energy Performance of Buildings Directive** includes a requirement that Member States' long-term building renovation strategies contribute to alleviating energy poverty. The proposal also strengthens the provisions on the metering and billing of energy for consumers, which will help ensure a high level of consumer protection.

Following the 2015 public consultation on the current regulatory framework for Europe's audiovisual media landscape, on 25 May the Commission adopted a **proposal amending the AVSMD**. The proposed Directive ensures that consumers will be sufficiently protected in the on-demand and internet world. ([318]) The idea is to strike a balance between competitiveness and consumer protection.

Within the telecoms regulatory framework, on 30 September the Commission adopted a **proposal to update the current EU telecoms rules**. ([319]) The proposed measures are aimed at achieving higher levels of connectivity with an updated set of end-user protection rules. In turn, this will ensure non-discriminatory access to any contents and services, including public services, help promote freedom of expression and of business, and enable Member States to comply with the Charter at a much lower cost in the future.

In line with Article 38 of the Charter, the proposed Electronic Communications Code will provide stronger consumer protection in areas where general consumer protection rules do not address sector-specific needs. The provisions make it easier for consumers to switch suppliers when they are signed up to bundles (packages combining internet, phone, TV, mobile, etc.) and ensure that vulnerable groups (e.g. the elderly, the disabled and those receiving social assistance) have the right to affordable internet contracts. This will support the application of Article 11 of the Charter.

([318]) See also Article 8, 11 and 24.

([319]) *https://ec.europa.eu/unitedkingdom/news/proposals-reforms-eu-telecoms-rules-and-modernising-copyright-digital-age_en.*

Policy

Together with Directive 2013/11/EU, ([320]) the ODR platform ([321]) launched by the Commission in early 2016 will further enhance consumers' access to alternative dispute resolution and the enforcement of their consumer rights, thereby contributing to a high level of consumer protection within the Union.

Throughout 2016, the Commission worked on the **'fitness check' of EU consumer and marketing law** ([322]) to assess the effectiveness, efficiency, coherence and relevance of consumer law in line with market and technology developments, including the emerging digital single market. The exercise covers the Unfair Contract Terms Directive (93/13/EEC), ([323]) the Sales and Guarantees Directive (1999/44/EC), ([324]) the Unfair Commercial Practices Directive (2005/29/EC), ([325]) the Price Indication Directive (98/6/EC), ([326]) the Misleading and Comparative Advertising Directive (2006/114/EC) ([327]) and the Injunctions Directive (2009/22/EC). ([328]) The results from the parallel evaluation of the Consumer Rights Directive (2011/83/EU) ([329]) will be fed into the fitness check assessments. In the context of the fitness check, the Commission held a public online consultation from 12 May to 12 September ([330]) and set up a stakeholder consultation group, which met twice. The fitness check was also the focus of the annual European Consumer Summit, which attracted around 450 representatives of national authorities, European institutions, consumer organisations, businesses and academics.

([320]) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution *for* consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).

([321]) Available at: https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage.

([322]) *http://ec.europa.eu/consumers/consumer_rights/review/index_en.htm.*

([323]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29-34).

([324]) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12-16).

([325]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22-39).

([326]) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27-31).

([327]) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21-27).

([328]) Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (OJ L 110, 1.5.2009, p. 30-36).

([329]) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64-88).

([330]) *http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31689* .

In the field of transport, on 10 June the Commission adopted a set of **interpretative guidelines** ([331]) **on Regulation (EC) No 261/2004** establishing **common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights**. The guidelines seek to clarify existing rules and provide guidance to air carriers and national enforcement bodies on the implementation of the Regulation, notably in the light of several CJEU judgments that have affected the contents and scope of the legislation since its entry into force in 2005. They will help to protect citizens' rights and improve enforcement and handling of complaints, including on issues covered by the Charter, such as consumer protection or the rights of persons with disabilities.

Case-law

In *Wathelet*, ([332]) the CJEU clarified the application of consumer law to intermediaries. It ruled that, under the Consumer Sales Directive (1999/44/EC), the term 'seller' covers a trader acting as intermediary on behalf of a private individual if the trader has not duly informed the consumer of the fact that the owner of the goods being sold is a private individual.

In its ruling of 21 December in *Gutiérrez Naranjo*, ([333]) the CJEU clarified the implications of the principle that unfair contract terms are non-binding on consumers under Article 6(1) of Directive 93/13/EEC. The case concerned a 2013 decision by the Spanish Supreme Court that had found 'floor clauses' in loan contracts concluded by consumers to be unfair, but had ruled that this finding would have effect only from the date of its judgment, thereby excluding reimbursement claims by consumers for overpayments made in the past. The CJEU considered that the non-binding nature of unfair contract terms implies that national courts must purely and simply exclude the application of a contract term found to be unfair as if it had never existed, so that consumers are entitled to restitution of advantages wrongly obtained by the trader. It stressed that, while national law may lay down rules on *res iudicata* or reasonable limitation periods, only the CJEU may decide on a temporal limitation of the effects of an interpretation of a rule of EU law.

On the same day, the CJEU delivered an important ruling in *Biuro podróży 'Partner'* ([334]) regarding Directive 2009/22/EC on injunctions and Directive 93/13/EEC on unfair terms in consumer contracts, and the right to effective judicial protection under Article 47 of the Charter. It established that a public national register of standard contract terms that have been considered unfair by injunction court orders enhances consumer protection, provided that it is managed in a

([331]) Commission Notice — *Interpretative guidelines on Regulation (EC) No 261/2004 of the European Parliament and of the Council establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and on Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents, as amended by Regulation (EC) No 889/2002 of the European Parliament and of the Council* (C(2016) 3502, OJ C 214, 15.6.2016, p. 5-21).

([332]) CJEU judgment of 9 November 2016 in Case C-149/15 *Wathelet*.

([333]) CJEU judgment of 21 December 2016 in Joined Cases C-154/15, C-307/15 and C-308/15, *Gutiérrez Naranjo*.

([334]) CJEU judgment of 21 December 2016 in Case C-119/15, *Biuro podróży 'Partner'*.

transparent manner and kept up to date. Traders that have used terms that are materially identical to those in the register may be sanctioned by an administrative fine, provided that they have an effective judicial remedy against the decision declaring the terms to be equivalent, having regard in particular to their harmful effects for consumers, and against the decision fixing the amount of the fine imposed.

Application by Member States

The Commission worked actively to ensure the correct and effective implementation of various directives in the field of consumer law and thus contributed to ensuring a high level of consumer protection throughout the EU.

The Commission continued the transposition check of the **Consumer Rights Directive (2011/83/EU)**.([335]) A study on the application of the Directive is being carried out in connection with the Commission's report to the Council and the European Parliament in 2017.

In addition, the Commission continued its work on ensuring the correct transposition of the **Unfair Commercial Practices Directive (2005/29/EC)**. At the end of 2016, a total of 13 infringement procedures were pending and subject to further action in 2017. Several Member States made, or are in the process of making, changes to bring their legislation into line with the Directive. On 25 May, the Commission published a **new guidance document on the application of the Directive**([336]) with a view to improving compliance by businesses and enforcement in the Member States; this replaced the 2009 guidance document.

At the end of 2016, two infringement procedures were pending regarding Article 7 of the **Package Travel Directive (90/314/EEC)**,([337]) which requires package travel organisers and/or retailers to provide evidence of security for the payments they receive and to repatriate consumers in the event of their insolvency. The infringement procedures and the bilateral dialogues between the Commission and the Member States concerned led to legislative changes in five Member States.

([335]) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304, 22.11.2011, p. 64–-88.

([336]) *Commission guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices* (SWD(2016) 163 final, 25.5.2016).

([337]) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59-64).

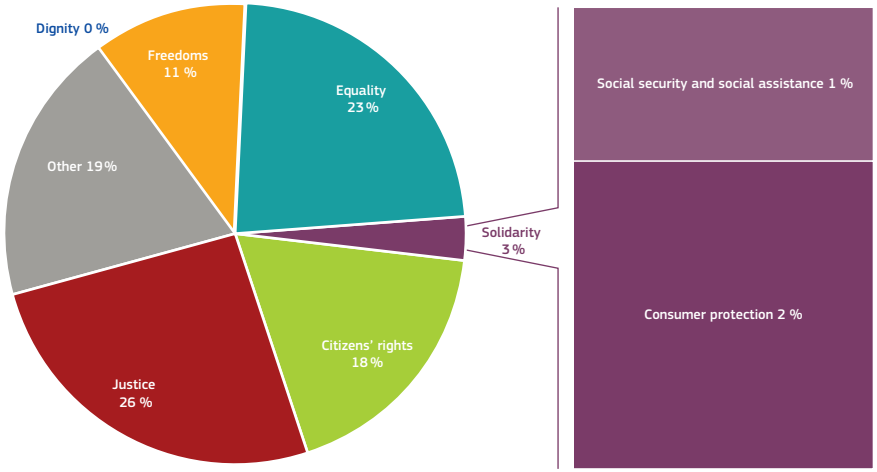
Decision of the Slovak Regional Court Prešov

In a **Slovakian** case, a telephone company took one of its clients to court because he did not pay his bills. The company argued, among other points, that, by affording specific protection to consumers, the Consumer Protection Act interfered with the principles of fair trial and equality of arms (both parties of a trial to have the same means available) set out in the Slovak Constitution and was hence unconstitutional. The court admitted that there is no specific right of consumer protection in the constitution and that thus the Charter provided a higher level of consumer protection than the Slovak Constitution. However, it found that, as the Charter is a part of the national legal order, Slovakia is bound by its provisions. The court also referred to the official records of the negotiations on the Consumer Protection Act, which show that the motivation for including the relevant provision in the act was to address problems found in practice and to ensure effective protection of consumers' rights, embodied in Article 169 TFEU and Article 38 of the Charter. (Slovakia, Regional Court Prešov, Case 17Co/286/2015, decision of 28 June 2016)

An infringement procedure was closed following legislative changes in connection with the **Timeshare Directive** (2008/122/EC).([338]) At the end of 2016, three infringement procedures and one EU-pilot case were still pending.

The Commission continued its work to ensure the full and correct application of **Directive 2013/11/EU on alternative dispute resolution for consumer disputes**. It issued reasoned opinions against three Member States for non-communication of national transposition measures. Of the 16 infringement procedures for non-communication launched in 2015, a total of 13 were closed in 2016. By the end of 2016, 26 Member States had notified complete transposition of the Directive. In all, 24 Member States had notified a total of about 250 ADR entities. The Commission continued to play an important role in ensuring that national authorities and stakeholders respect consumer safety rules and that they cooperate in order to keep unsafe products from reaching and harming consumers. The **Rapid Alert System** for dangerous non-food products ensured the exchange of information between European countries and the Commission on measures against dangerous products detected on the EU market and measures taken with respect to risks identified. Since 2004, over 23 000 alerts for dangerous consumer products have been circulated in Europe, of which 2 044 were in 2016 alone. Particular care is taken with child-related products and a quarter of all alerts sent by national authorities concerned safety issues with toys.

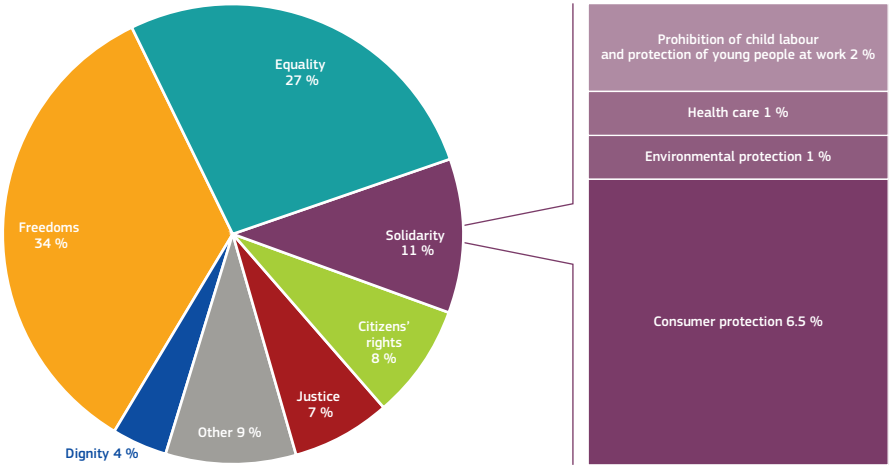
Letters



Source: European Commission

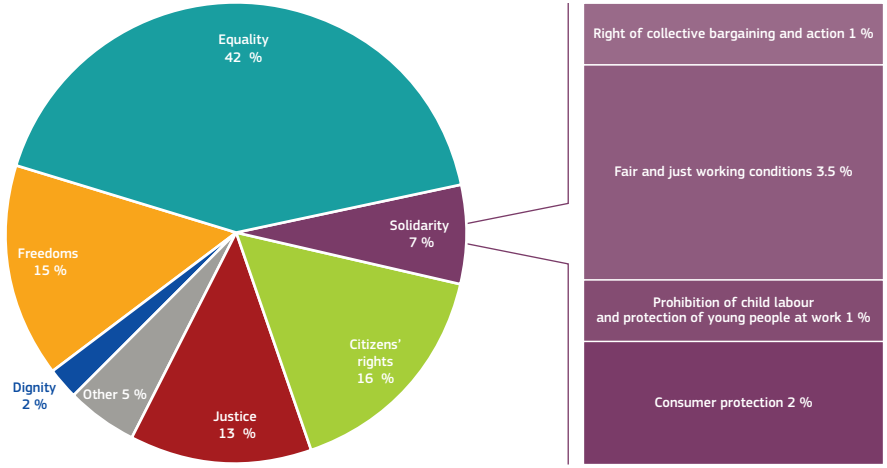
([338]) Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10-30).

Questions



Source: European Commission

Petitions



Source: European Commission

Right to vote and 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

In March, the Commission published the findings of a dedicated **public consultation and two Eurobarometer surveys on EU citizenship**, including one on electoral rights. It looked at people's experiences and views as to how their rights as EU citizens are protected and enjoyed, what could be done to promote democratic participation and common EU values further and how the EU could make their lives easier. This was fed into the preparation of the Commission's next *EU Citizenship Report* putting forward concrete proposals for promoting, protecting and strengthening EU citizenship rights.

Following the UK's referendum on its membership of the EU, there was considerable interest in the impact of the outcome on the rights protected under Chapter V of the Charter. Almost half of the 70+ petitions received on the referendum concerned citizenship and citizenship rights. Many of the 100+ questions from the European Parliament to the Commission on this subject also raised issues of citizenship. Following the referendum, the Commission received many hundreds of related enquiries and letters from citizens, covering a variety of subjects and views.

Article 39 — Right to vote and stand as a candidate at elections to the European Parliament

Article 39 of the Charter and Article 20(2)(b) TFEU guarantee the right of every EU citizen to vote in the European elections in whichever Member State they reside. Both articles also provide for the right of EU citizens to vote and to stand as candidates at elections to the European Parliament in the Member State in which they reside.

Application by Member States

The Commission continued its dialogue with a number of Member States on their implementation of European electoral law (Articles 39 and 40 of the Charter).

Article 40 — Right to vote and to stand as a candidate at municipal elections

Under Article 40, 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

Under Article 41 of the Charter, 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. This includes the right to be heard and to receive a reply.

Policy

The '**revolving doors**' phenomenon, whereby staff members join the EU institutions from the private sector, or *vice versa*, might raise concerns as to possible conflicts of interest, which could undermine citizens' trust in the independence and objectivity of the EU institutions. Transparency on such cases thus contributes to guaranteeing the right to good administration, as enshrined in Article 41.

This issue was at the centre of an investigation by the Ombudsman into two complaints in which the Commission was accused of not properly implementing rules on ex-officials taking up employment elsewhere. The inquiry revealed maladministration in the implementation of some

aspects of the Commission's approach to the 'revolving doors' phenomenon. In September 2014, the Ombudsman made specific recommendations to the Commission ([339]) aimed at strengthening its review processes in such cases.

In response, on 4 December 2015 the Commission had published ([340]) the names of certain senior officials leaving the Commission for new jobs, including positions in the private sector. It will also publish the details of the previous duties of the senior officials, their new role outside the Commission and its own assessment of possible conflicts of interest. A new report on the decisions adopted in 2015 was published on 22 December 2016. ([341])

The change, outlined in the Commission's reply ([342]) to the Ombudsman, is in line with her recommendations and the new (January 2014) EU staff regulations, which specify that all officials leaving EU employment must inform their institution of any proposed new employment during the two years after leaving.

In September, the Ombudsman closed the inquiry, ([343]) welcoming the Commission's cooperative approach and making suggestions for improvement reflecting her 2014 recommendations. She also announced that an own-initiative inquiry would be opened in 2017.

Administrative review by the Commission

The objective of Regulation (EC) No 1367/2006 ([344]) on the application of the provisions of the Aarhus Convention is to contribute to the implementation of the Aarhus Convention by providing for, *inter alia*, 'the right of public access to environmental information', 'public participation concerning plans and programmes relating to the environment' and 'access to justice in environmental matters'.

The Regulation provides that any NGO meeting certain criteria is entitled to make a request for internal review to the EU institution or body that has adopted an administrative act under environmental law.

([339]) *http://www.ombudsman.europa.eu/en/press/release.faces/en/56332/html.bookmark* .

([340]) Commission Communication, *The publication of information concerning occupational activities of senior officials after leaving the service (Article 16(3) and (4) of the Staff Regulations)* (COM(2015) 8473, 4.12.2015) *http://ec.europa.eu/civil_service/docs/c_2015_8473_f1_communication_from_commission_to_inst_en_v4_p1_834004.pdf.*

([341]) *http://ec.europa.eu/civil_service/docs/2016_annual_report_en.pdf.*

([342]) Commission follow-up to the Ombudsman's draft recommendation — two joined complaints by Corporate Europe Observatory, Greenpeace EU Unit, LobbyControl and Spinwatch (ref. 2077/2012/TN) and Friends of the Earth Europe (ref. 1853/2013/TN); *http://europa.eu/!tN76FR.*

([343]) *http://www.ombudsman.europa.eu/en/cases/decision.faces/en/71136/html.bookmark.*

([344]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13-19).

In this context, the Commission considered inter alia two requests for internal review of administrative acts adopted under the EU legislation on GMOs. its replies were based on a careful assessment of environmental impacts due to the release of GMOs into the environment. They duly took account of Article 41 of the Charter, which guarantees the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union, and Article 37, which provides that a high level of environmental protection must be integrated into the policies of the Union.

Article 42 — Right of access to documents

Article 42 of the Charter guarantees that any EU citizen, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the EU institutions, bodies, offices and agencies. In principle, all documents of the EU institutions, bodies, offices and agencies should be accessible to the public. However certain public and private interests may be protected by way of exceptions to the right of access ([345])

In 2016, the Commission registered 6,077 initial applications for access to documents. Full or partial access was granted in 81% of cases. It received 295 confirmatory applications. When assessing a confirmatory application for access to documents, the Secretariat-General of the Commission conducts an independent review of the reply given by the Commission department concerned at the initial stage. This review led to wider access being granted in 52% of cases.

Policy

The Commission continued to publish information on interest representatives who meet its political leaders and senior officials. By the end of December, information had been published on over 11.600 bilateral meetings between Commissioners, cabinet members and Directors-General, and interest representatives. In addition, the Commission applied the related rule 'not on the Transparency Register, no meeting'. This allowed citizens and stakeholders to know who is meeting the Commission and on which subjects, and triggered requests by the public for access to minutes of meetings or other related documents.

The Commission continued to honour its November 2014 commitment to inject more transparency into the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) with the United States. Since January 2015, it has regularly published and updated a list of TTIP documents and made public more negotiating texts and detailed reports of the negotiating rounds. ([346])

([345]) Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

([346]) *http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230* .

Article 43 — 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 CJEU acting in its judicial role.

In 2016, the Ombudsman was able to help 15 756 citizens. This includes individuals who complained directly (1 839 complaints), those who received a reply to their request for information (1 271) and those who obtained advice through the interactive guide on the Ombudsman's website (12 646).

About 470 complaints fell within the competence of a member of the European Network of Ombudsmen; of these, 429 fell within the competence of a national/regional ombudsman or similar body and 41 were referred to the European Parliament's Committee on Petitions.

Article 44 — Right to petition

All EU citizens, and any natural or legal person residing or having its registered office in a Member State, have the right to petition the European Parliament on matters within the Union's fields of activity that affect the petitioner directly.

Such petitions are considered by the Parliament's Committee on Petitions. Each year, the Committee draws up a report on its activities, which *inter alia* presents an analysis of the petitions received in the year in question and of relations with other institutions. The report is then debated in a plenary sitting of the Parliament, which adopts a resolution.

Petitions can be addressed to the Parliament either by post or electronically, using the Parliament's web portal (https://petiport.secure.europarl.europa.eu/petitions/en/home), which has been established to facilitate the public's interaction with the work of the Committee on Petitions. Petitioners may be invited to participate in meetings of the Committee if their petition is to be the subject of discussion. Such meetings provide the Committee and representatives of the Commission, who are also invited to attend, with an opportunity to hear directly from citizens who consider that their rights have not been respected.

In accordance with Parliament's rules of procedure, the Committee on Petitions may request assistance from the Commission in the form of information on the application of, or compliance with, Union law and information or documents relevant to the petition. As mentioned above, the Commission received a total of 751 petitions in 2016 from the Committee on Petitions, of which 118 concerned fundamental rights.

Citizens' initiatives

Another instrument available to EU citizens is the possibility of registering a citizens' initiative. An initiative allows EU citizens to participate directly in the development of EU policies by calling on the Commission, in the framework of its powers, to propose legislation on matters where the EU has competence to legislate for the purpose of implementing the Treaties. A citizens' initiative has to be backed by at least a million EU citizens from at least seven Member States. A minimum number of signatories is required in each of those Member States. The organisers must collect all signatures in one year from the formal registration of the proposed initiative.

In 2016, the Commission registered three initiatives:

- 'Let'sfly2Europe: enable safe and legal access to Europe for refugees!';
- 'People4Soil: sign the citizens' initiative to save the soils of Europe!'; and
- 'More than education — shaping active and responsible citizens'. ([347])

The General Court ruled on the refusal to register the following proposed initiatives:

- 'Right to lifelong care: leading a life of dignity and independence is a fundamental right!'; ([348]) and
- 'Cohesion policy for the equality of the regions and sustainability of the regional cultures'. ([349])

In both cases, the General Court confirmed the Commission's refusal decisions, since the initiatives did not meet the conditions for registration under Regulation (EU) No 211/2011. ([350])

([347]) European Citizens' Initiative official register: *http://ec.europa.eu/citizens-initiative/public/welcome* .

([348]) GCEU judgment of 19 April 2016 in Case T-44/14, *Bruno Costantini and Others* v *European Commission*.

([349]) GCEU judgment of 10 May 2016 in Case T-529/13 *Izsák and Dabis* v *Commission*, this judgement is under appeal before the Court of Justice.

([350]) Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ L 65, 11.3.2011, p. 1-22).

Article 45 — Freedom of movement and of 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 TFEU.

Case-law

In its judgment in *Bogendorff von Wolffersdorff* ([351]) the Court of Justice held that a refusal by the German authorities to recognise freely chosen forenames and a surname legally acquired in the UK by a dual German-UK national, but which include several tokens of nobility, constitutes a restriction on the freedom to move and reside across the EU. It noted that a person's surname is a constituent element of his identity and of his private life, the protection of which is enshrined in Article 7 of the Charter. At the same time, it accepted that the objective of observing the principle of equal treatment before the law (in Germany) is compatible with EU law, noting that the principle of equal treatment is enshrined in Article 20 of the Charter.

In its judgment in the *Petruhhin* ([352]) case, the Court held that, when a Member State to which an EU citizen has moved receives an extradition request from a third state, it must inform the Member State of which the citizen in question is a national. It should surrender the citizen to that Member State at its request, provided that Member State has jurisdiction to prosecute that person for offences committed outside its national territory. Where the Member State that has received the request intends to extradite a national of another Member State at the request of a third state, it must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter. On 13 September 2016 the Court delivered judgements in two similar cases already referred to under Article 7. In the case *CS* (C-304/14) ([353]) the Court held that the expulsion to a non-EU country of a non-EU national who has been convicted of a criminal offence and who is the parent and primary carer of a young child who is a citizen of a Member State (in which he has been residing since birth) and, consequently, an EU citizen, may deprive the child of the genuine enjoyment of the substance of his or her rights as an EU citizen, as he or she may be compelled, de facto, to go with the parent, and therefore to leave the territory of the EU as a whole. However, the Court held that, in exceptional circumstances, a Member State may expel the person concerned on grounds of public policy or public security, even where this means that the child in question will have to leave the territory of the EU, provided that such a decision is proportionate and take account of the right to respect for private and family life (Article 7 of the

([351]) CJEU, judgement of 2 June 2016 in Case C-438/14, see also above under Articles 7 and 20.

([352]) CJEU, judgement of 6 September 2016 in Case C-182/15 See also above under Article 19.

([353]) CJEU judgment of 13 September 2016 in Case C-304/14, *CS*.

Charter) and of the obligation to take into consideration the child's best interests (Article 24(2) of the Charter).

In the case *Rendón Marín* (C-165/14) ([354]) the Court held that Article 20 TFEU does not permit a non-EU national who has the sole care of EU citizens who are minors to be automatically refused a residence permit, or to be expelled from the territory of the EU, on the sole ground that he has a criminal record, where that refusal has the consequence of requiring those children to leave the territory of the EU. In its consideration the Court pointed out that the assessment of the applicant's situation must take account of the right to respect for private and family life (Article 7 of the Charter), which must be read in conjunction with the obligation to take into consideration the child's best interests (Article 24(2) of the Charter).

Application by Member States

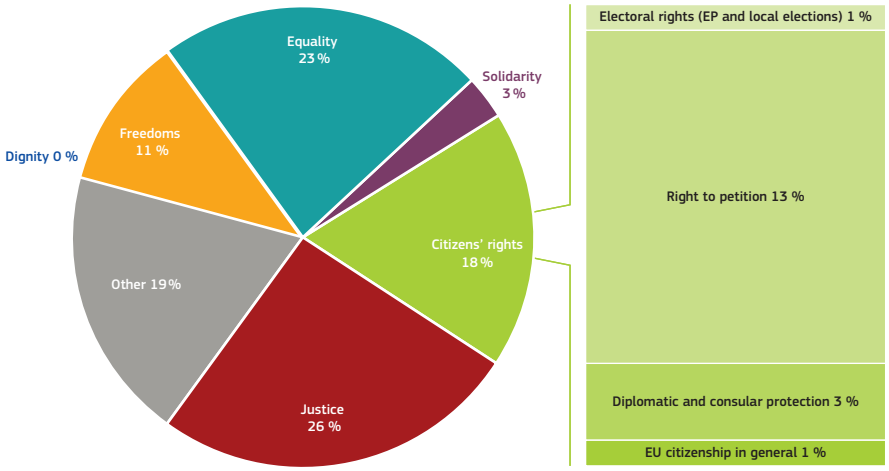
The Commission continued its dialogue with a number of Member States on their transposition and implementation of the EU *acquis* on the free movement of EU citizens and their family members, including substantial and procedural safeguards, including substantial and procedural safeguards (Articles 21, 41 and 45 of the Charter). For example, the cases concern obstacles to free movement in relation with registration requirements and procedures of EU citizens and their family members, restrictions of the right of residence of EU citizens and their family members and the delivery of orders to leave the territory, as well as the necessity to respect the right to be heard, and the obligation to have a legal representative in a Member State for legal proceedings before the national administrative courts in case of a non-resident applicant.

Article 46 — Diplomatic and consular protection

Article 46 of the Charter guarantees the right of unrepresented EU citizens to seek diplomatic or consular protection from embassies or consulates of other Member States in non-EU countries under the same conditions as the other Member States' nationals. EU citizens must be able to rely effectively on this right when travelling abroad.

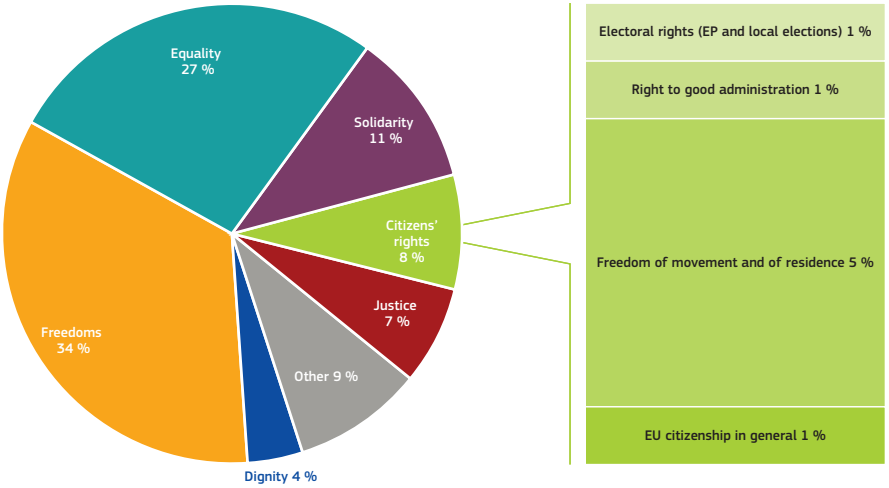
([354]) CJEU judgment of 13 September 2016 in Case C-165/14, *Rendón Marín*.

Letters



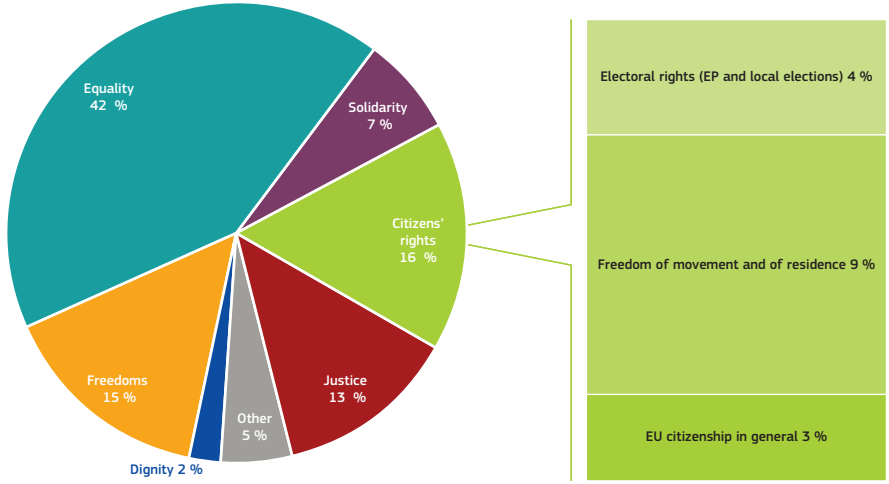
Source: European Commission

Questions



Source: European Commission

Petitions



Source: European Commission

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

A number of developments on legislative initiatives linked to the implementation of the right to an **effective remedy and to a fair trial** across several EU policies stood out in 2016.

Three new Directives were adopted, complementing the Commission's roadmap to strengthen procedural rights for suspects and accused persons in criminal proceedings; these concerned:

- **the presumption of innocence and the right to be present at the trial**;
- **procedural safeguards for children**; and
- **legal aid**.

In the area of **civil justice**, the proposal for a **recast of the Brussels IIa Regulation** enhances the right to an effective remedy by simplifying the procedure for the cross-border enforcement of judgments, abolishing the 'exequatur' procedure while maintaining appropriate procedural safeguards.

In the area of **migration**, the Regulation on the European Border and Coast Guard requires the Agency to set up a complaints mechanism to deal with possible violations of fundamental rights in the course of its operational activities.

The new **Directive on combating terrorism**, on which the European Parliament and the Council reached agreement in December, contains several provisions on support, assistance and protection for victims of terrorism, enhancing their access to justice in particular by strengthening access to legal aid and facilitating access to compensation.

As part of the **clean energy package**, the Commission adopted a proposal for a **recast Electricity Directive**, which requires that customers need to have access to simple, fair, transparent, independent, effective and efficient out-of-court dispute resolution mechanisms for the settlement of disputes concerning rights and obligations under the Directive.

The ODR platform launched by the Commission in early 2016 allows consumers to submit online disputes with EU traders arising from online purchases in any official EU languages, thus further enhancing consumers' access to alternative dispute resolution and the enforcement of consumer rights.

Article 47 — Right to an effective remedy and to a fair trial

Article 47 of the Charter provides that people have the right to an effective remedy before a tribunal if a right granted under EU rules is violated. This '**right to an effective remedy**' provides individuals with a legal solution decided by a tribunal if an authority applies EU law incorrectly. It guarantees judicial protection against any such violation and therefore plays a key role in ensuring the effectiveness of all EU provisions, ranging from social policy to asylum legislation, competition, agriculture, etc.

A closely related provision, also enshrined by Article 47, is that **legal aid** is to be made available to those who lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice. This means that the right to effective access to justice cannot be hampered by the fact that a person cannot afford to take a lawyer.

Article 47 also stipulates that, in all judicial proceedings which relate to the interpretation or the validity of EU rules, everyone should have the right to a **fair trial**. This encompasses:

- the right to a fair and public hearing;
- the right to have one's case adjudicated within a reasonable time;
- the principles of independence and impartiality of the tribunal; and
- the right to be advised, defended and represented.

Legislation and policy

An effective justice system is essential for guaranteeing the respect of Article 47 and all other rights enshrined in the Charter. As stated in the **Commission's Communication on the Annual Growth Survey for 2016**,([355]) improving the quality, independence and efficiency of national justice systems is among the key priorities of the European Semester. As part of the close monitoring of justice reforms in Member States, the Council adopted six country-specific recommendations to improve justice systems in the Member States concerned, on the basis of Commission proposals, and the Commission has also closely monitored other Member States' efforts in this area.

([355]) Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, *Annual Growth Survey 2016 — strengthening the recovery and fostering convergence* (COM(2015) 690 final, 26.11.2015).

Legislative measures or proposals linked to the implementation of the right to an effective remedy and to a fair trial were adopted across several EU policies:

- in the area of migration, the **Regulation on the European Border and Coast Guard**[6] requires the Agency to set up a complaints mechanism to deal with possible violations of fundamental rights in the course of its operational activities. Under this mechanism, any person who considers that their fundamental rights have been breached in the course of the Agency's activities, or any third-party intervener, may lodge a complaint with the Agency in any EU language or even in Arabic, Pashto, Urdu or Tigrinya;

- several provisions on support, assistance and protection for victims of terrorism were discussed in the negotiations on the **new Directive on combating terrorism** proposed by the Commission in December 2015. The provisions included in the final text agreed by the co-legislators ([356]) build on the Directive on the rights of victims of crime, ([357]) but address more directly the specific needs of victims of terrorism. They enhance access to justice for victims of terrorism, in particular by:

    - strengthening access to legal aid: Member States will have to take into account the gravity and circumstances of the offence when deciding on legal aid to victims of terrorism, unless this is contrary to their legal systems; and

    - facilitating access to compensation: victims' support services will provide assistance in claiming compensation;

- as part of the broader **clean energy package**, the Commission adopted a proposal for a recast Electricity Directive, which requires that customers:

    - have access to simple, fair, transparent, independent, effective and efficient out-of-court dispute resolution mechanisms for the settlement of disputes concerning rights and obligations under the Directive; and

    - are duly informed about the access to such mechanisms; and

- in the area of civil justice, the proposal for a **recast of the Brussels IIa Regulation** enhances the right to an effective remedy by simplifying the procedure for the cross-border enforcement of judgments. This is achieved through the abolition of the 'exequatur procedure' while maintaining appropriate procedural safeguards (grounds for non-recognition and for refusal of enforcement).

([356]) *http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52015PC0625* .

([357]) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 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. 57-73).

The Commission's proposal for a **Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures** will have a positive impact on creditors' right to an effective remedy, by putting in place a strong set of safeguards to protect them where limitations may arise, such as the limited duration of the stay of enforcement proceedings, the right to lift it if there is a possibility of unfair prejudice, and the guarantee of court intervention on every occasion their rights may be affected.

There were a number of developments as regards the regulation of and access to dispute resolution mechanisms:

- in the field of customs, the Commission adopted a **proposal for a Directive on double taxation resolution mechanisms**, ([358]) which promotes respect of the right to an effective remedy by giving taxpayers access to their national competent court at the dispute resolution stage in cases where access is denied or if the Member State fails to establish an advisory commission;

- the **ODR platform** will further enhance consumers' access to alternative dispute resolution and the enforcement of their consumer rights. ([359])

Case-law

In *Bensada Benallal* v *Belgium*, ([360]) a case concerning the application of EU rules on free movement, the Court clarified that, in accordance with the principle of equivalence, a plea alleging an infringement of **the right to be heard**, as guaranteed by EU law, raised for the first time before a national court hearing an appeal on points of law challenging the withdrawal of a residence authorisation, must be held to be admissible if that right satisfies the conditions required by national law for it to be classified as a plea based on public policy.

Two other cases, *Mehrdad Ghezelbash* v *Staatssecretaris van Veiligheid en Justitie* ([361]) and *George Karim* v *Migrationsverket* ([362]) concerned the interpretation of the **right to an effective remedy against a transfer decision issued under the Dublin II Regulation**, ([363]) also as regards, in particular, the scope of judicial review. Basing itself on the principles developed in the

([358]) COM(2016) 686 final, 25.10.2016.

([359]) See section above on Article 38.

([360]) CJEU judgment of 17 March 2016 in Case C-161/15, *Abdelhafid Bensada Benallal* v *État belge*.

([361]) CJEU judgment of 7 June 2016 in Case C-63/15, *Mehrdad Ghezelbash* v *Staatssecretaris van Veiligheid en Justitie*.

([362]) CJEU judgment of 7 June 2016 in Case C-155/15, *George Karim* v *Migrationsverket*.

([363]) Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 (OJ 2013 L 180, p. 31).

Abdullahi case,[364] the Court held that, while appeals are governed by national procedural rules, which also govern the intensity and outcome of the appeal or review process, the effectiveness of judicial review guaranteed by Article 47 of the Charter requires an assessment of the lawfulness of the grounds of the transfer decision, so that the asylum seeker, in an appeal against a transfer decision, is entitled to plead, *inter alia,* the incorrect application of one of the criteria laid down in the Dublin Regulation for determining responsibility, even where there are no systemic deficiencies in the asylum process or in the reception conditions for asylum applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.

The CJEU's ruling in *Alta Realitat S.L.*[365] provided guidance concerning the interpretation of Article 47 in relation to the **service of documents**. Interpreting the EU Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters,[366] which entitles the addressee to refuse the document if it has not been written in or translated into the appropriate language, the Court ruled that the objective of improving the efficiency and speed of judicial procedures cannot be attained by undermining in any way the rights of the defence of the addressee, which derive from the right to a fair hearing under Article 47 of the Charter. It is therefore important not only to ensure that addressees actually receives the document in question, but also that they are able to know and understand effectively and completely the meaning and scope of the action brought against them abroad, so as to be able effectively to assert their rights in the Member State of transmission.

In the **field of consumer protection**, the Court of Justice held in *Biuro podróży 'Partner'*[367] that a public national register of standard contract terms that have been considered unfair by injunction court orders enhances consumer protection if it is managed in a transparent manner and kept up to date, and provided that traders that have used terms that are materially identical to those in the register are provided with an effective judicial remedy against the decision declaring the terms to be equivalent.

Article 47 also came into play in a judgment concerning EU antitrust penalties in the *Air Canada* case,[368] where the General Court, referring to relevant ECtHR jurisprudence,[369] clarified that **EU antitrust penalties**, depending on the nature of the infringements in question and the nature and degree of severity of the ensuing penalties, may be regarded as pertaining to criminal mat-

---

[364] CJEU judgment of 10 December 2013 in Case C-394/12, *Abdullahi*.

[365] CJEU order of 28 April 2016 in Case C-384/14, *Alta Realitat SL* v *Erlock Film ApS and Ulrich Thomsen*.

[366] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

[367] See section above on Article 38.

[368] CJEU judgment of 16 December 2015 in Case T-9/11, *Air Canada* v *European Commission*.

[369] In particular, ECtHR judgment of 27 September 2011 in *A. Menarini Diagnostics S.R.L. v. Italy,* application no 43509/08.

ters for the purpose of Article 47. Accordingly, the person concerned must have an opportunity to challenge any decision made against him before a tribunal that offers the guarantees provided for in that provision, which in turns requires that the operative part of a Commission decision finding infringements of the competition rules must be particularly clear and precise and that the undertakings held liable and penalised must be in a position to understand and to contest that imputation of liability and the imposition of those penalties.

A number of judgments were delivered as regards the interpretation of the right to an effective remedy and to a fair trial in relation to **EU restrictive measures adopted within the EU's common foreign and security policy**:

- in two cases concerning restrictive measures against Iran, the Court of Justice confirmed a judgment of the General Court finding that fundamental rights as enshrined in the Charter, including Article 47, can also be invoked by legal persons who are emanations of states; ([370])

- in another case concerning the grounds for the listing of natural persons included in the UN Al Qaida list, the General Court confirmed that restrictive measures are preventive and not of a criminal character, and therefore the standard of proof required is not 'beyond reasonable doubt' but in terms of 'reasonable grounds for suspicion'; ([371])

- in a case concerning restrictive measures applied in relation to Ukraine, the General Court underlined that the imposition of restrictive measures on a person does not imply any view as to his culpability with respect to the acts of which he is accused in Ukraine. ([372])

The right to have one's **case adjudicated within a reasonable time** in the context of proceedings before the Court of Justice was dealt with in two judgments:

- in *Galp Energia*, ([373]) the CJEU found that a judicial procedure before the General Court which lasted 69 months, including a period of four years and one month without any procedural acts, could not be justified by the nature or complexity of the case or the context thereof; and

([370]) CJEU judgment of 18 February 2016 in Case C-176/13 P, *Council of the European Union* v *Bank Mellat* and CJEU judgment of 21 April 2016 in Case C-200/13 P, *Council of the European Union* v *Bank Saderat Iran.*

([371]) CJEU judgment of 13 December 2016 in Case T 248/13, *Mohammed Al-Ghabra* v *European Commission.*

([372]) General Court judgment of 15 September 2016 in Case T-340/14, *Andriy Klyuyev* v *Council.*

([373]) CJEU judgment of 21 January 2016 in Case C-603/13 P *Galp Energía España SA and Others* v *European Commission.*

- in *Gascogne Sack Deutschland and Gascogne* v *European Union*,([374]) the EU was ordered to pay damages to two companies as a result of the excessive length of the proceedings before the General Court.

A number of judgments relevant to the application of Article 47 were also rendered by the CJEU in the field of **EU environmental law**.

As regards access to justice, the General Court held in *PAN Europe and others* ([375]) that the applicants could not rely on Articles 37 and 47 of the Charter in order to challenge the interpretation of the criteria laid down in Article 263(4) TFEU on submitting an action for annulment, in particular the criterion of direct concern. Although the conditions of admissibility ought to be interpreted in the light of the fundamental right to effective judicial protection, such an interpretation could have the effect of setting aside the conditions expressly laid down in the Treaty. The Court therefore dismissed the action as inadmissible.

Another important case, *Lesoochranárske zoskupenie VLK* ([376]), concerned **environmental NGOs' access to justice and public participation in the context of the application of the Aarhus Convention** and related EU legislation, in particular the Habitats Directive. The case concerned an environmental NGO's request to be admitted as a party to the administrative procedure for the approval of a project on a Natura 2000 site. As the request was rejected, the NGO was prevented from asking the competent court for a review of the administrative decision to approve the project, since, under Slovak law, such an organisation should have taken legal action to claim the status of party to the administrative authorisation procedure in order to be able to rely, in legal proceedings, on rights derived from EU law in the environmental field. The Court held that, inasmuch as Article 47 of the Charter, read in conjunction with Article 9 of the Aarhus Convention, enshrines the right to effective judicial protection of the rights which an environmental organisation derives from EU law in line with the Convention, it overrides national rules such as those in question. The action against the decision refusing the NGO the status of party to the administrative procedure for authorisation of the project must be examined during the course of that procedure: if not, the procedure may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and the action would be automatically dismissed as soon as the project is authorised, thereby requiring the NGO to bring an action of another type in order to obtain that status and exercise their right to an effective remedy.

([374]) CJEU judgment of 10 January 2017 in Case T-577/14 *Gascogne Sack Deutschland and Gascogne* v *European Union*.

([375]) CJEU judgment of 28 September 2016 in Case T-600/15 *Pan Europe and others v European Commission*.

([376]) CJEU, judgment (Grand Chamber) of 8 November 2016 in Case C-253/15, Lesoochranárske zoskupenie VLK; see also above Article 37.

Lastly, the Aarhus Convention Compliance Committee (ACCC) opened two cases concerning the EU's compliance with the Convention as regards:

- access by members of the public to review procedures; ([377]) and
- the transposition of the provisions on access to justice. ([378])

In both cases, the Commission referred, in its observations to the ACCC on behalf of the EU, to Article 47 of the Charter, recalling that the EU and its Member States are under the obligation to provide effective judicial protection of the rights conferred by EU law not only under the TEU, but also in accordance with Article 47 of the Charter.

Application by Member States

In the field of employment policies, the deadline for transposition of the **Directive on the enforcement of workers' rights** ([379]) expired in 2016. The Commission initiated infringement procedures against several Member States for not having communicated their measures to transpose the Directive, which is aimed at achieving real and effective judicial protection of workers' rights within the meaning of Article 47 of the Charter.

The Commission continued its work to ensure the full and correct application of the **Directive on alternative dispute resolution for consumer disputes**. It issued reasoned opinions against three Member States for non-communication of implementing measures. Of the 16 infringement procedures for non-communication launched in 2015, a total of 13 were closed in 2016.

Finally, the CJEU ruled ([380]) on the infringement opened by the Commission against Italy on its alleged failure to fulfil its obligations under the **Directive on compensation to crime victims**, ([381]) confirming that Italy failed to adopt all the measures necessary to guarantee the existence, in cross-border situations, of a compensation scheme for victims of all intentional violent crimes committed on its territory, in accordance with the principle of non-discrimination.

Decision of the Austrian Constitutional Court

In a case concerning a Somali citizen who applied for international protection, the Federal Office for Immigration and Asylum denied the appellant asylum. Thereupon, the appellant submitted a complaint to the Federal Administrative Court, which rejected it without conducting a public hearing. According to the Constitutional Court, the Federal Administrative Court violated Article 47 (right to an effective remedy and a fair trial) by not conducting a public hearing. (Austria, Constitutional Court, *Case E2108/2015*, 10 June 2016)

([377]) *https://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html* .

([378]) *http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envpppubcom/acccc2014123-european-union.html* .

([379]) Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8-14).

([380]) CJEU judgment of 11 October 2016 in Case C-601/14, *European Commission* v *Italy*.

([381]) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15).

Decision of Romanian Court

A Romanian court set aside a national provision because its application was deemed in line with Article 49, para. 3, of the Charter ("the severity of the penalties must not be disproportionate to the criminal offence"). The case concerned a person who was charged with a total of 138 crimes for running an online scamming activity consisting of promising fake jobs and asking for money from people seeking jobs. According to the relevant provisions of the Criminal Code, the courts have to establish a sentence for each crime and then apply the harshest sentence, to which they need to add one third of the sum of all the other sentences, which for this case would mean applying in total a prison sentence of 26 years. The Court invoked Article 49 (principles of legality and proportionality of criminal offences and penalties) and ruled that the Charter overruled contrasting national law. As a result, it reduced the sentence to 10 years in prison. (Romania, Tribunalul Arad, *decision of 25 January 2016*)

Article 48 — Presumption of innocence and right of defence

Article 48 of the Charter provides that everyone who has been charged is to be presumed innocent until proven guilty according to the law. It further stipulates that respect for such persons' right to defence is to be guaranteed.

Legislation

The EU set itself an ambitious legislative programme on procedural rights for suspects and accused persons in criminal proceedings, which directly contributes to strengthen citizens' fundamental rights, notably the presumption of innocence and the right of defence as enshrined in Article 48 of the Charter. Three new directives were adopted, complementing the measures ([382]) set out in the 2009 roadmap to strengthen procedural rights of suspects and accused persons:

- the **Directive on the presumption of innocence and the right to be present at the trial**; ([383])
- the **Directive on procedural safeguards for children**; and
- the **Directive on legal aid**. ([384])

Case-law

A number of judgments related to the application of Article 48 of the Charter in the field of **EU competition rules**. Most related, in particular, to the presumption of innocence (Article 48(1)), which the Court of Justice referred to as a general principle of EU law applying to competition infringement procedures that may result in the imposition of fines or periodic penalty payments, considering the nature of the infringements in question and the nature and degree of severity of

([382]) Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1-7); .
Directive 2012/13/EU on the right to information (OJ L 142, 1.6.2012, p.1-10); .
Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings (OJ L 294, 6.11.2013, p.1-12).

([383]) Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1-11); to be transposed by 1 April 2018.

([384]) Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1-8); to be transposed by 25 May 2019.

the penalties that may ensue.([385]) In *Compañía Española de Petróleos SA*,([386]) the Court of Justice, referring to previous case-law,([387]) ruled that the infringement by the Commission of the principle of observance of a reasonable period for the administrative procedure may justify the annulment of a decision taken following an administrative procedure based on Article 101 or 102 TFEU, inasmuch as it also constitutes an infringement of the rights of defence of the undertaking concerned; such an infringement may not, on the other hand, lead to a reduction of the amount of the fine imposed.

In *Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali* v *Council of the European Union*,([388]) concerning in particular measures applied in relation to Tunisia, the General Court clarified the scope of application of Article 48 of the Charter in the field of EU **restrictive measures adopted under the EU's common foreign and security policy**. It held that the freezing of funds or economic resources does not fall within the remit of a criminal charge for the purpose of the right to an effective remedy and to a fair trial, and cannot therefore be examined in terms of possible breach of Article 48, as well as Articles 49 and 50, of the Charter.

Article 49 — 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.

Article 50 — 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 can be held liable to be tried or punished again in criminal proceedings for an

Decision of Czech Constitutional Court

In the **Czech Republic** the Charter was instrumental in a case concerning a German national who was arrested by the police and prosecuted for being a member of a criminal group that had been trafficking drugs from the Czech Republic to Germany. She had already been prosecuted, sentenced and punished in Germany for some of those acts. The Constitutional Court found her constitutional complaint justified and identified a breach of the legal principle *ne bis in idem*. The Court stressed the extended transnational protection of the *ne bis in idem* principle as laid down in the Charter, compared with the more limited scope of the corresponding constitutional provision. Consequently, the decisions of the authorities involved in the criminal proceedings were annulled. (Czech Republic, Constitutional Court, *Case II. ÚS 143/16*, 14 April 2016)

([385]) In particular, CJEU judgment of 8 September 2016 in Case T-472/13, *Lundbeck*, CJEU judgment of 28 June 2016 in Case T-216/13, *Telefónica* and CJEU judgment of 21 January 2016 in Case C-74/14 *Eturas*.

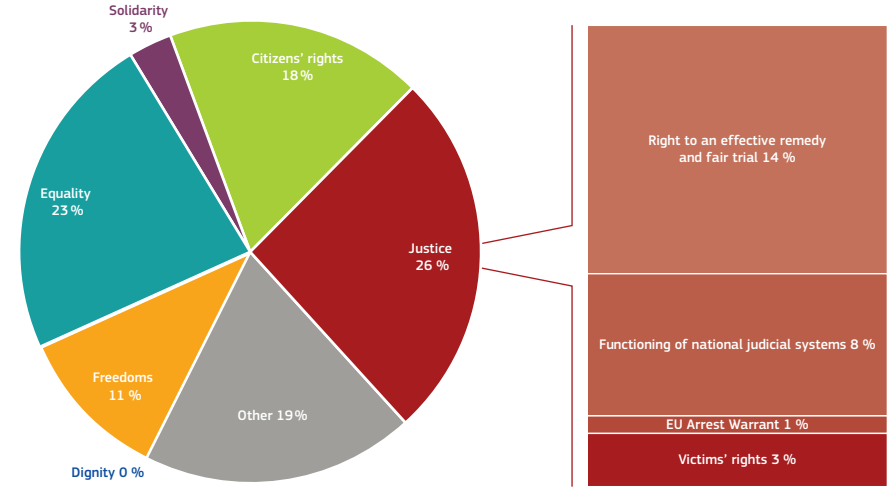
([386]) CJEU judgment of 9 June 2016 in Case C-608/13 P, *Compañía Española de Petróleos SA*.

([387]) In particular, CJEU judgment of 21 September 2006 in Case C-105/04 P, *Nederlandse Vereniging voor de Groothandel Federatieve op Elektrotechnisch Gebied* v *Commission*.

([388]) CJEU judgment of 14 April 2016 in Case T-200/14, *Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali* v *Council of the European Union*.

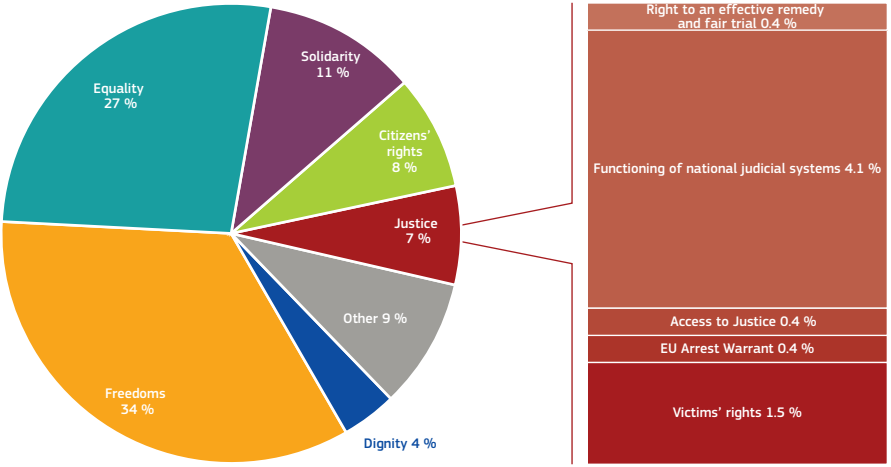
offence for which he or she has already been finally acquitted or convicted. Article 50 provides that criminal laws should respect this.

Letters



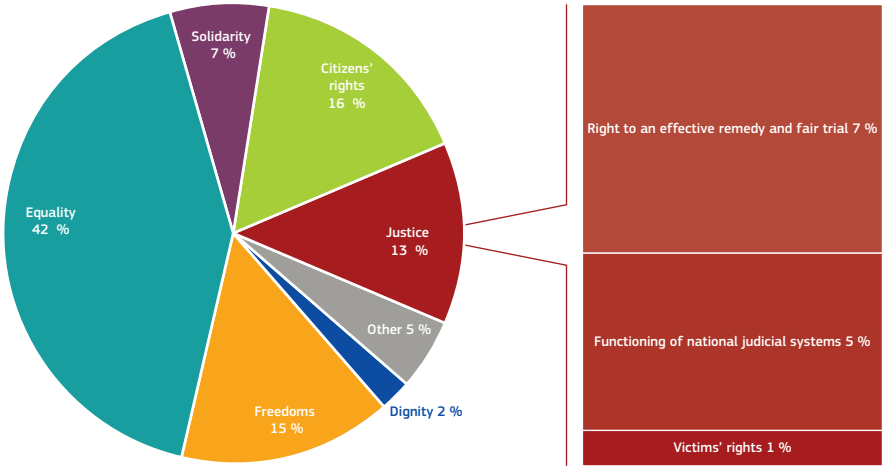
Source: European Commission

Questions



Source: European Commission

Petitions



Source: European Commission

Field of application

Scope and interpretation of rights and principles

Level of protection

Prohibition of abuse of rights

7

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

General provisions governing the interpretation and application of the Charter

In its 2016 case-law, the CJEU further clarified the scope of application of the Charter:

- in ***Ledra Advertising*** and ***Mallis and Malli***, it underlined that the Charter applies to the EU institutions, even when they are acting outside the EU legal framework;

- in ***Council v Front Polisario***, it elucidated the geographical scope of applicability of the Charter; and

- the examination of restrictions of a fundamental right in ***Philip Morris*** shows how the Court applies the safeguards of Article 52(1) of the Charter when testing such restrictions.

Article 51 — Field of application

The scope of applicability of the Charter is defined in Article 51, which clearly states that it applies to all EU institutions, bodies, offices and agencies, and to the Member States where they are implementing EU law. It further clarifies that the Charter cannot extend the field of application of EU law or any competences of the EU as defined in the Treaties.

Case-law

In the joint cases *Ledra Advertising* and *Mallis and Malli*, ([389]) the CJEU dismissed, on appeal, actions for annulment and compensation lodged by citizens and businesses against the value reduction of their deposits in two banks in Cyprus. This had been agreed under the 2013 memorandum of understanding between the Cypriot authorities and the European Stability Mechanism (ESM). The Court confirmed that the Member States do not implement EU law in the context of the ESM Treaty, so the Charter does not apply to them in that context. At the same time, the Charter applies to the EU institutions even when they act outside the EU legal framework. In the context of the adoption of a memorandum of understanding, the Commission must ensure that it is consistent with the fundamental rights under the Charter. The restriction on the right to property (Article 17) was justified in view of the objective pursued, i.e. ensuring the stability of the euro-area banking system as a whole, and the imminent risk of financial loss to which depositors would have been exposed if the two banks had failed. The Commission could thus not be considered to have contributed to a breach of the Charter.

The CJEU handed down its judgment in *Council* v *Front Polisario* ([390]) on appeal against the General Court judgment in Case T-512/12. The General Court had held that, while the Charter did not in itself prohibit the conclusion of an agreement with a non-EU country which may be applicable on a disputed territory, the protection of the fundamental rights of the population of such a territory is of particular importance and must be examined before the approval of such an agreement. ([391]) On appeal (C-104/16 P), the CJEU held that the General Court had erred in law when considering that the agreements between the EU and Morocco were legally applicable to the territory of Western Sahara. Considering Western Sahara as falling within the scope of the EU-Morocco Association Agreement was contrary to the international law principle of the relative effect of treaties. ([392])

([389]) CJEU judgment of 20 September 2016 in Joined Cases C-8-10/15P and C-105-109/15P, *Ledra Advertising* and *Mallis and Malli*.

([390]) CJEU judgment of 21 December 2016 in Case C-104/16 P, *Council of the European Union* v *Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)*.

([391]) CJEU judgment of 10 December 2015 in Case T-512/12, *Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)* v *Council of the European Union*, para. 227.

([392]) CJEU judgment of 21 December 2016 in Case C-104/16 P, *Council of the European Union v Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)*, paras. 107 and 125.

Article 52 — Scope and interpretation of rights and principles

Article 52 lays down general provisions on the scope and interpretation of rights and principles. In its first paragraph, it defines the strict conditions under which the rights of the Charter can be limited. It also explains how the Charter relates to the ECHR, the aim being to secure the highest possible level of protection for fundamental rights (paragraph 3). It also clarifies that the principles set out in the Charter may be implemented by the EU institutions in their legislative and executive acts — and similarly by the Member States where they implement EU law (paragraph 5). However, they can be invoked in court only in view of interpreting such acts. This means that the principles do not confer subjective rights on the individual.

Case-law

An example of how the CJEU tested restrictions of fundamental rights against the conditions in Article 52(1) of the Charter is the case of *Philip Morris*, which concerned a preliminary ruling on the interpretation and validity of the Tobacco Products Directive. The Directive was challenged on the ground that it infringed several Articles of the TFEU, but also Article 11 of the Charter. The Court found that the limitations on the right in Article 11 constituted interference with a business's freedom of expression and information. It then assessed the legitimacy of this interference in the light of Article 52(1) of the Charter. It concluded that:

- the interference had to be regarded as being provided for by law, given that it resulted from a provision adopted by the EU legislature;
- the Directive did not affect the essence of a business's freedom of expression and information inasmuch as its relevant provision merely controlled, in a very clearly defined area, the labelling of products by prohibiting only the inclusion of certain elements and features; and
- the interference met an objective of general interest recognised by the EU, i.e. the protection of health.

In assessing the proportionality of the interference, the Court referred to the second sentence of Article 35 of the Charter and Articles 9, 114(3) and 168(1) TFEU, which require a high level of human health protection. The protection of human health— in an area characterised by the proven harmfulness of tobacco consumption— outweighed the interests put forward by the claimants and the EU legislature had not failed to strike a fair balance between the requirements of protecting the freedom of expression and information and those of protecting human health.

Article 53 — Level of protection

Article 53 ensures that nothing in the Charter will be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by Union law, international law and international agreements to which the Union or all the Member States are party, including the ECHR. Its main aim is thus to provide the minimum standard of fundamental rights protection, allowing for wider protection under instruments other than the Charter where they are applicable.

Article 54 — Prohibition of abuse of rights

Article 54 provides a safeguard against abuse of the Charter rights. It states that nothing in the Charter can be interpreted as implying any right to engage in activities aimed at the destruction of rights or freedoms recognised in the Charter or at their limitation beyond the extent envisaged in the Charter.

Appendix I (*)

Overview of the 2016 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)	Charter Articles	Grand Chamber
Royal County of Berkshire Polo Club v OHIM	C-278/15 P	14-01-16	Trademarks	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Società per l'aeroporto civile di Bergamo-Orio al Serio (SACBO) SpA v European Commission and Innovation and Networks Executive Agency (INEA)	C-281/14 P	21-01-16	Transport	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
"Eturas" UAB and Others v Lietuvos Respublikos konkurencijos taryba	C-74/14	21-01-16	Competition	Justice	Presumption of innocence and right of defence	Art. 48(1)	N
Galp Energía España SA and Others v European Commission	C-603/13 P	21-01-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 48	N
Mohammad Makhlouf v Council of the European Union	T-443/13	21-01-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 7, 17, 41(2), **47**, 52(1)	N
Éditions Odile Jacob v European Commission	C-514/14 P	28-01-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Edward Stavytskyi v Council of the European Union	T-486/14	28-01-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Sergej Arbuzov v Council of the European Union	T-434/14	28-01-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 52(1)	N
Sergiy Klyuyev v Council of the European Union	T-341/14	28-01-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N

(*) This data has been generated on the basis of a search in the curia database of the CJEU on 25 February 2016. The search criteria were: a date of delivery between 1/1/2015 and 31/12/2015 and a reference to the Charter in the grounds of the judgments or the operative part. The search result generated **211 cases** of which **165** mentioned the EU Charter of Fundamental Rights. This Appendix I thus contains **165** cases. Cases with a 2015 date of delivery which were published with delay in Curia as of March 2016 on have not been included.

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Oleksii Mykolayovych Azarov v Council of the European Union	T-332/14	28-01-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Mykola Yanovych Azarov v Council of the European Union	T-331/14	28-01-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes - Isotis v European Commission	T-562/13	04-02-16	Research and technological development	Citizen's rights	Right to good administration	Art. 41(2)(c)	N
GV v European External Action Service	F-137/14	05-02-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 30, **41**, 51(1), 52(1)	N
Hilde Bulté and Tom Krempa v European Commission	F-96/14	05-02-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41	N
J. N. v Staatssecretaris van Veiligheid en Justitie	C-601/15 PPU	15-02-16	Asylum	Freedoms	Right to liberty and security	Art. **6**, 52	Y
InAccess Networks Integrated Systems - Applications Services for Telecommunication and Related Equipment Commercial and Industrial Co. SA v European Commission	T-82/15	15-02-16	Research and technological development	Citizen's rights	Right to good administration	Art. 41	N
KJ and KK v Executive Agency for Small and Medium-sized Enterprises (EASME)	T-376/15 AJ	17-02-16	Legal aid	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Ovidiu Rîpanu v Compania Națională « Loteria Română »	C-407/15	18-02-16	Field of application of the Charter	Justice	Right to an effective remedy and to a fair trial	Art. **47(2)**, 51	N
Finanmadrid EFC SA v Jesús Vicente Albán Zambrano and Others	C-49/14	18-02-16	Approximation of laws	Justice	Right to an effective remedy and to a fair trial	Art. 47	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Council of the European Union v Bank Mellat	C-176/13 P	18-02-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Francisca Garzón Ramos and José Javier Ramos Martín v Banco de Caja España de Inversiones, Salamanca y Soria SA and Intercotrans SL	C-380/15	23-02-16	Field of application of the Charter	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 51	N
Aiudapds v Agenzia Italiana del Farmaco (AIFA) and Ministero della Salute	C-520/15	25-02-16	Field of application of the Charter	Justice	Right to an effective remedy and to a fair trial	Art. **47(2)**, 51, 54	N
François Musso v European Parliament	T-589/14	25-02-16	Provisions governing the institutions	Citizen's rights	Right to good administration	Art. 41	N
Panalpina World Transport (Holding) Ltd and Others v European Commission	T-270/12	29-02-16	Competition	Justice	Principles of legality and proportionality of criminal offences and penalties	Art. 49(3)	N
Schenker v European Commission	T-265/12	29-02-16	Competition	Citizen's rights	Right to good administration	Art. **41,** 47, 48, 49(3)	N
Antonio Pujante Cuadrupani v European GNSS Agency (GSA)	F-83/15	01-03-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41(2)(a)	N
Jürgen Frieberger and Benjamin Vallin v European Commission	F-3/15	02-03-16	Employment - EU civil service	Solidarity	Workers' right to information and consultation within the undertaking	Art. **27**, 41(2)(c)	N
Safe Interenvios, SA v Liberbank, SA and Others	C-235/14	10-03-16	Data protection	Freedoms	Protection of personal data	Art. 8	N
Dextro Energy GmbH & Co. KG v European Commission	T-100/15	16-03-16	Consumer protection	Freedoms	Freedom to conduct a business	Art. **6**, 11, **16**	N
Zoofachhandel Züpke GmbH and Others v European Commission	T-817/14	17-03-16	Agriculture and Fisheries	Freedoms	Freedom to conduct a business	Art. 15, **16**, 17, 52	N
Diana Grazyte v European Commission	F-76/11 DEP	17-03-16	Employment - EU civil service	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 52(3)(7)	N
Petrus Kerstens v European Commission	F-23/15	18-03-16	Employment - EU civil service	Justice	Right to an effective remedy and to a fair trial	Art. 41(1), **47**	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Overseas Financial and Oaktree Finance	C-319/15	23-03-16	Common foreign and security policy - Restrictive measures	Freedoms	Right to property	Art. **17,** 47	N
Pál Aranyosi and Robert Căldăraru v General-staatsanwaltschaft Bremen	C-404/15 and C-659/15 PPU	05-04-16	Area of freedom, security and justice	Dignity	Prohibition of torture and inhuman or degrading treatment or punishment	Art. 1, **4**, 6, 48 (1), 51 (1), 52(1)	Y
Office national de l'emploi (ONEm) v M and M v Office national de l'emploi (ONEm) and Caisse auxiliaire de paiement des allocations de chômage (CAPAC)	C-284/15	07-04-16	Social security	Freedoms	Freedom to choose an occupation and right to engage in work	Art. **15(2)**, 52(2)	N
Central Bank of Iran v Council of the European Union	C-266/15 P	07-04-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 17, **47**	N
Tarif Akhras v Council of the European Union	C-193/15 P	07-04-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Antonio Tita et Alessandra Carlin et Piero Constantini contre Ministero dell'Economia e delle Finanze et Ministero della Giustizia et Presidenza del Consiglio die Ministri et Segretario Generale del Tribunale Regionale di Giustizia Amministrativa di Trento (TRGA)	C-495/14	07-04-16	Approximation of laws	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
CP v European Parliament	F-98/15	12-04-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 31, **41**	N
Andreea Corina Târșia v Statul român and Others	C-328/15	14-04-16	Social policy	Equality	Non-discrimination	Art. 20, **21(1),** 51, 52	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Polkomtel sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej	C-397/14	14-04-16	Approximation of laws	Freedoms	Freedom to conduct a business	Art. **16**, 38	N
Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali v Council of the European Union	T-200/14	14-04-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 2, 16, 17, 41, **47**, 48, 49, 50, 51, 52	N
Mimoun Khachab v Subdelegación del Gobierno en Álava	C-558/14	21-04-16	Immigration policy	Freedoms	Respect for private and family life	Art. 7	N
Council of the European Union v Bank Saderat Iran	C-200/13 P	21-04-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Inclusion Alliance for Europe GEIE v European Commission	T-539/13	21-04-16	Research and technological development	Citizen's rights	Right to good administration	Art. 41	N
European Union Copper Task Force v European Commission	T-310/15	27-04-16	Agriculture and Fisheries	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 51(1)	N
Österreichische Post v European Commission	T-463/14	27-04-16	European Union public contracts	Citizen's rights	Right to good administration	Art. 41	N
Alta Realitat SL v Erlock Film ApS and Ulrich Thomsen	C-384/14	28-04-16	Judicial cooperation in civil matters	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Borealis Polyolefine GmbH and Others v Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft and Others	C-191/14, C-192/14, C-295/14, C-389/14 and C-391/14 to C-393/14	28-04-16	Environment	Citizen's rights	Right to good administration	Art. 17, **41**	N
Sharif University of Technology v Council of the European Union	T-52/15	28-04-16	Common foreign and security policy - Restrictive measures	Freedoms	Right to education	Art. 11, **14**	N
FY v Council of the European Union	F-76/15	28-04-16	Employment - EU civil service	Solidarity	The rights of the child	Art. 24(2)	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Post Bank Iran v Council of the European Union	T-68/14	03-05-16	Common foreign and security policy - Restrictive measures	Freedoms	Right to property	Art. **17**, 21(1), 47, **52**	N
Iran Insurance Company v Council of the European Union	T-63/14	03-05-16	Common foreign and security policy - Restrictive measures	Freedoms	Right to property	Art. **17**, 21(1), 47, **52**	N
Pannonhalmi Főapátság v European Parliament	C-607/15 P	04-05-16	Provisions governing the institutions	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Philip Morris Brands SARL and Others v Secretary of State for Health	C-547/14	04-05-16	Freedom of establishment	Freedoms	Freedom of expression and information	Art. **11**, 35, 52(1)	N
Pillbox 38 (UK) Limited, trading as Totally Wicked v Secretary of State for Health	C-477/14	04-05-16	Freedom of establishment	Freedoms	Freedom to conduct a business	Art. **16**, 17, 35, 52(1)	N
Carlos Andres and Others v European Central Bank	T-129/14 P	04-05-16	Employment - EU civil service	Solidarity	Workers' right to information and consultation within the undertaking	Art. 27	N
Aliaksei Mikhalchanka v Council of the European Union	T-693/13	10-05-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 11(1), **47**	N
Balázs-Árpád Izsák and Attila Dabis v European Commission	T-529/13	10-05-16	Citizenship of the Union	Equality	Non-discrimination	Art. **21(1), 22**, 41(1), 51(1)	N
Ivo-Kermartin v EUIPO - Ergo Versicherungsgruppe (ELGO)	T-750/14	12-05-16	Trademarks	Citizen's rights	Right to good administration	Art. 41(2)(a)	N
FS v European Economic and Social Committee (EESC)	F-102/15	12-05-16	Access to documents	Citizen's rights	Right to good administration	Art. 7, **41**	N
Christian Guittet v European Commission	F-92/15	12-05-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Good Luck Shipping LLC v Council of the European Union	T-423/13 and T-64/14	24-05-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 41(2), **47**	N
Rudolfs Meroni v Recoletos Limited	C-559/14	25-05-16	Judicial cooperation in civil matters	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 51(1)	N
Syndial SpA - Attività Diversificate v European Commission	T-581/15	25-05-16	Access to documents	Citizen's rights	Right of access to documents	Art. 41, **42**	N
ZS "Ezernieki" v Lauku atbalsta dienests	C-273/15	26-05-16	Agriculture and Fisheries	Freedoms	Right to property	Art. **17**, 52	N
Invamed Group Ltd and Others v Commissioners for Her Majesty's Revenue & Customs	C-198/15	26-05-16	Free movement of goods	Freedoms	Non-discrimination	Art. 21	N
International Management Group v European Commission	T-110/15	26-05-16	Access to documents	Citizen's rights	Right of access to documents	Art. 41, **42**	N
Niculaie Aurel Bob-Dogi	C-241/15	01-06-16	Area of freedom, security and justice	General provisions governing the interpretation and application of the Charter	Field of application	Art. 51(1)	N
Grupo Bimbo v EUIPO (Forme d'une barre avec quatre cercles)	T-240/15	01-06-16	Trademarks	Citizen's rights	Right to good administration	Art. 41(2)(a)	N
Hungary v European Commission	T-662/14	01-06-16	Agriculture and Fisheries	Freedoms	Right to property	Art. 17	N
Halina Grodecka v Józef Konieczka and Others	C-50/16	02-06-16	Freedom of establishment	Freedoms	Right to property	Art. **17(1)**, 21, 51	N
C	C-122/15	02-06-16	Social policy	Equality	Non-discrimination	Art. **21(1)**, 51(1)	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Nabiel Peter Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe and Zentraler Juristischer Dienst der Stadt Karlsruhe	C-438/14	02-06-16	Citizenship of the Union	Freedoms	Equality before the law	Art. 7, **20**	N
HX v Council of the European Union	T-723/14	02-06-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Bermejo Garde v European Economic and Social Committee (EESC)	F-41/10 RENV	02-06-16	Employment - EU civil service	Solidarity	Fair and just working conditions	Art. **1, 31**, 41 (1)(2), 47	N
Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie	C-63/15	07-06-16	Asylum	Dignity	Prohibition of torture and inhuman or degrading treatment or punishment	Art. **4**, 47	Y
Giovanni Pesce and Others v Presidenza del Consiglio dei Ministri - Dipartimento della Protezione Civile and Others	C-78/16 and C-79/16	09-06-16	Agriculture and Fisheries	Citizen's rights	Right to good administration	Art. 17, **41**	N
Productos Asfálticos (PROAS), SA v European Commission	C-616/13 P	09-06-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Compañía Española de Petróleos (CEPSA), SA v European Commission	C-608/13 P	09-06-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 41(1) (4), **47**	N
Growth Energy and Renewable Fuels Association v Council of the European Union	T-276/13	09-06-16	Dumping	Citizen's rights	Right to good administration	Art. 41	N
Klymenko v Council of the European Union	T-494/14	10-06-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Viktor Pavlovych Pshonka v Council of the European Union	T-381/14	10-06-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Artem Viktorovych Pshonka v Council of the European Union	T-380/14	10-06-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
HI v European Commission	F-133/15	10-06-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41	N
Ledra Advertising v Commission and ECB	C-8/15 P and C-10/15 P	20-06-16	Economic and monetary policy	Freedoms	Right to property	Art. 17	Y
DK Recycling und Roheisen v European Commission	C-540/14 P	22-06-16	Environment	Freedoms	Freedom to choose an occupation and right to engage in work	Art. **15**, 16, 17	N
Portugal v European Commission	T-810/14	27-06-16	Provisions governing the institutions	Justice	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	Art. 50	N
Autorità Garante della Concorrenza e del Mercato v Italsempione - Spedizioni Internazionali SpA	C-450/15	28-06-16	Competition	Justice	Principles of legality and proportionality of criminal offences and penalties	Art. 49(3)	N
AF Steelcase, SA v European Union Intellectual Property Office	T-652/14	28-06-16	European Union public contracts	Citizen's rights	Right to good administration	Art. 41	N
Portugal Telecom SGPS, SA v European Commission	T-208/13	28-06-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Telefónica, SA v European Commission	T-216/13	28-06-16	Competition	Justice	Presumption of innocence and right of defence	Art. 48 (1)	N
Criminal proceedings against Piotr Kossowski	C-486/14	29-06-16	Area of freedom, security and justice	Justice	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	Art. **50**, 52(1)	Y
Direcția Generală Regională a Finanțelor Publice Brașov (DGRFP) v Vasile Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci	C-205/15	30-06-16	Principles, objectives and tasks of the Treaties	Justice	Right to an effective remedy and to a fair trial	Art. 20, 21, **47**, 51(1), 52(3)	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Alicja Sobczyszyn v Szkoła Podstawowa w Rzeplinie	C-178/15	30-06-16	Freedom of movement for workers	Solidarity	Fair and just working conditions	Art. 31(2)	N
Lidl	C-134/15	30-06-16	Agriculture and Fisheries	Freedoms	Freedom to conduct a business	Art. 15(1), **16**, 52(1) (7)	N
Secretary of State for the Home Department v NA	C-115/15	30-06-16	Citizenship of the Union	Freedoms	Respect for private and family life	Art. 7	N
Buzzi Unicem SpA and Others v Comitato nazionale per la gestione della Direttiva 2003/87/CE and Others	C-502/14	30-06-16	Environment	Citizen's rights	Right to good administration	Art. 41	N
Silvia Ciup v Administrația Județeană a Finanțelor Publice (AJFP) Timiș - Direcția Generală Regională a Finanțelor Publice (DGRFP) Timișoara	C-288/14	30-06-16	Principles, objectives and tasks of the Treaties	Freedoms	Right to property	Art. 17	N
Silvia Georgiana Câmpean v Serviciul Fiscal Municipal Mediaș, anciennement Administrația Finanțelor Publice a Municipiului Mediaș and Administrația Fondului pentru Mediu	C-200/14	30-06-16	Principles, objectives and tasks of the Treaties	Justice	Right to an effective remedy and to a fair trial	Art. 17, 20, 21(1), **47**	N
CW v Council of the European Union	T-224/14	30-06-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 15, 16, 17(1), **47**, 48(1), 49(1), 52(1)	N
CW v Council of the European Union	T-516/13	30-06-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 15, 16, 17(1), **47**, 48(1), 49(1), 52 (1)	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Fahed Mohamed Sakher Al Matri v Council of the European Union	T-545/13	30-06-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 41, **47**, 48(1), 49(1), 51(1), 52(2)	N
Jinan Meide Casting Co. Ltd v Council of the European Union	T-424/13	30-06-16	Dumping	Citizen's rights	Right to good administration	Art. 41(1) (2)	N
CB v European Commission	T-491/07 RENV	30-06-16	Competition	Citizen's rights	Right to good administration	Art. 41(1)	N
Banco Popular Español and PL Salvador	C-7/16	05-07-16	Consumer protection	Solidarity	Consumer protection	Art. **38**, 47	N
Criminal proceedings against Atanas Ognyanov	C-614/14	05-07-16	Principles, objectives and tasks of the Treaties	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 48 (1)	Y
European Medicines Agency v Emil Hristov	T-27/15 P	05-07-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41	N
LM v European Commission	T-560/15	06-07-16	Employment - EU civil service	Equality	The rights of the elderly	Art. 25	N
Westfälische Drahtindustrie and Others v European Commission	C-523/15 P	07-07-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 20, 21, **47**	N
HIT Groep v European Commission	C-514/15 P	07-07-16	Competition	Justice	Principles of legality and proportionality of criminal offences and penalties	Art. 49	N
Fapricela v European Commission	C-510/15 P	07-07-16	Freedom to provide services	Equality	Equality before the law and non-discrimination	Art. 20, 21	N
Ivo Muladi v Krajský úřad Moravskoslezského kraj	C-447/15	07-07-16	Transport	Freedoms	Freedom to choose an occupation and right to engage in work	Art. **15**, 52 (2)	N
Olga Stanislavivna Yanukovych v Council of the European Union	T-347/14	12-07-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 7, **47**	N
Commission v Thales développement and coopération	T-326/13	12-07-16	Research and technological development	Justice	Right to an effective remedy and to a fair trial	Art. 47	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
BASF SE v Bundesrepublik Deutschland	C-456/15	14-07-16	Environment	Citizen's rights	Right to good administration	Art. 41	N
Maria Cristina Elisabetta Ornano v Ministero della Giustizia, Direzione Generale dei Magistrati del Ministero	C-335/15	14-07-16	Social policy	Equality	Equality between men and women	Art. 23	N
Alcimos Consulting v ECB	T-368/15	14-07-16	Economic and monetary policy	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 52(7)	N
Germany v European Commission	T-143/12	14-07-16	State aid	Citizen's rights	Right to good administration	Art. 41	N
Daniele Possanzini v European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)	F-68/15	18-07-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41(2)(a)	N
Tadej Kotnik and Others v Državni zbor Republike Slovenije	C-526/14	19-07-16	State aid	Freedoms	Right to property	Art. 17	Y
H v Council of the European Union, European Commission and European Union Police Mission (EUPM) in Bosnia and Herzegovina	C-455/14 P	19-07-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	Y
Sonja Meyrl v European Parliament	F-147/15	19-07-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41(2)(a)	N
Luisa Opreana v European Commission	F-67/15	19-07-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41	N
Adolf Stips v European Commission	F-131/15	19-07-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41	N
Athanassios Oikonomopoulos v European Commission	T-483/13	20-07-16	Provisions governing the institutions	Citizen's rights	Right to good administration	Art. 41(1)	N
Martine Michel-Deberghes v European Commission	F-104/15	20-07-16	Employment - EU civil service	Equality	Equality before the law	Art. **20**, 21	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Samir Hassan v Council of the European Union	T-790/14	21-07-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 17(1), **47**, 48 (1)	N
John Arnold Bredenkamp and Others v Council of the European Union and European Commission	T-66/14	21-07-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 52(1)	N
HB v European Commission	F-125/15	21-07-16	Employment - EU civil service	Equality	Equality between men and women	Art. 23(1)	N
AV v European Commission	F-91/15	21-07-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. 41(1)	N
JZ	C-294/16 PPU	28-07-16	Area of freedom, security and justice	Freedoms	Right to liberty and security	Art. **6**, 49 and 52	N
United Video Properties Inc. v Telenet NV	C-57/15	28-07-16	Approximation of laws	Freedoms	Right to property	Art. 17(2)	N
Ordre des barreaux francophones and germanophone and Others	C-543/14	28-07-16	Taxation	Justice	Right to an effective remedy and to a fair trial	Art. 20, 21, **47**, 52(3)	N
Aleksei Petruhhin v Latvijas Republikas Ģenerāl prokuratūra	C-182/15	06-09-16	Citizenship of the Union	Freedoms	Protection in the event of removal, expulsion or extradition	Art. 4, **19**, 51(1)	Y
ANODE v Premier ministre and Others	C-121/15	07-09-16	Approximation of laws	Solidarity	Access to services of general economic interest	Art. 36	N
GS Media BV v Sanoma Media Netherlands BV and Others	C-160/15	08-09-16	Approximation of laws	Freedoms	Freedom of expression and information	Art. **11**, 17(2)	N
Goldfish and Others v Commission	T-54/14	08-09-16	Competition	Freedoms	Respect for private and family life	Art. **7**, 47, 52(3)(7)	N
H. Lundbeck A/S and Lundbeck Ltd v European Commission	T-472/13	08-09-16	Competition	Citizen's rights	Right to good administration	Art. **41(2)(a)**, 48, 49	N
Xellia Pharmaceuticals and Alpharma v Commission	T-471/13	08-09-16	Competition	Justice	Presumption of innocence and right of defence	Art. 48	N
Merck KGaA v European Commission	T-470/13	08-09-16	Competition	Justice	Principles of legality and proportionality of criminal offences and penalties	Art. 48, **49**	N
Generics (UK) Ltd v European Commission	T-469/13	08-09-16	Competition	Citizen's rights	Right to good administration	Art. **41(2)(a)**, 48	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Arrow Group ApS and Arrow Generics Ltd v European Commission	T-467/13	08-09-16	Competition	Justice	Presumption of innocence and right of defence	Art. 48	N
Sun Pharmaceutical Industries Ltd, formerly Ranbaxy Laboratories Ltd and Ranbaxy (UK) Ltd v European Commission	T-460/13	08-09-16	Competition	Justice	Presumption of innocence and right of defence	Art. 48	N
Puma v EUIPO - Gemma Group (Représentation d'un félin bondissant)	T-159/15	09-09-16	Trademarks	Citizen's rights	Right to good administration	Art. 41	N
Farahat v Council of the European Union	T-830/14	09-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Tri Ocean Energy v Council of the European Union	T-719/14	09-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Tri Ocean Trading v Council of the European Union	T-709/14	09-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Secretary of State for the Home Department v CS	C-304/14	13-09-16	Citizenship of the Union	Freedoms	Respect for private and family life	Art. **7**, 24(2)	Y
Alfredo Rendón Marín v Administración del Estado	C-165/14	13-09-16	Citizenship of the Union	Freedoms	Respect for private and family life	Art. **7**, 24(2)	Y
Ente nazionale per l'aviazione civile (ENAC) v Innovation and Networks Executive Agency (INEA)	T-695/13	13-09-16	Transport	Citizen's rights	Right to good administration	Art. 41(2) (c)	N
Trafilerie Meridionali v European Commission	C-519/15 P	14-09-16	Freedom of establishment	Justice	Right to an effective remedy and to a fair trial	Art. 47(2)	N
Ori Martin v European Commission	C-490/15 P and C-505/15 P	14-09-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 41, **47,** 48, 49(1)	N
POA v European Commission	T-584/15	14-09-16	Agriculture and Fisheries	Justice	Right to an effective remedy and to a fair trial	Art. 47	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
National Iranian Tanker Company v Council of the European Union	T-207/15	14-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Tobias Mc Fadden v Sony Music Entertainment Germany GmbH	C-484/14	15-09-16	Freedom to provide services	Freedoms	Freedom to conduct a business	Art. 11, **16**, 17(2)	N
SC Star Storage SA and Others v Institutul Național de Cercetare-Dezvoltare în Informatică (ICI) and Others	C-439/14	15-09-16	Approximation of laws	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 52(1)	N
Asociación Española para el Desarrollo de la Epidemiología Clínica (AEDEC) v European Commission	T-91/15	15-09-16	Research and technological development	Citizen's rights	Right to good administration	Art. 41(2)(a)	N
TAO-AFI and SFIEPE v Parliament and Council	T-456/14	15-09-16	Employment - EU civil service	Solidarity	Workers' right to information and consultation within the undertaking	Art. **27**, 28	N
Fih Holding A/S and Fih Erhvervsbank A/S v European Commission	T-386/14	15-09-16	State aid	Citizen's rights	Right to good administration	Art. 41(2)(c)	N
Italy v European Commission	T-353/14	15-09-16	Provisions governing the institutions	Equality	Cultural, religious and linguistic diversity	Art. 22	N
Oleksandr Viktorovych Yanukovych v Council of the European Union	T-348/14	15-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 41 (2)(a)(c), **47**	N
Viktor Fedorovych Yanukovych v Council of the European Union	T-346/14	15-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 41 (2)(a)(c), **47**	N
Andriy Klyuyev v Council of the European Union	T-340/14	15-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 41 (2)(a)(c), **47**	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Union pour l'unité (U4U) and Others v European Parliament and Council of the European Union	T-17/14	15-09-16	Employment - EU civil service	Solidarity	Workers' right to information and consultation within the undertaking	Art. 12, **27**, 28, 47, 52(7)	N
Bashir Saleh Bashir Alsharghawi v Council of the European Union	T-485/15	20-09-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 7, 17(1), 41(2)(a)(c), 45(2), **47**, 48(1)	N
Criminal proceedings against Etablissements Fr. Colruyt NV	C-221/15	21-09-16	Taxation	Equality	Non-discrimination	Art. 20, 21	N
Weissenfels v European Parliament	T-684/15 P	22-09-16	Employment - EU civil service	Justice	Right to an effective remedy and to a fair trial	Art. 8, **47**	N
Tose'e Ta'avon Bank v Council of the European Union	T-435/14	22-09-16	Common foreign and security policy - Restrictive measures	General provisions governing the interpretation and application of the Charter	Scope of guaranteed rights	Art. 52(1)	N
Pesticide Action Network Europe (PAN Europe) and Others v European Commission	T-600/15	28-09-16	Agriculture and Fisheries	Solidarity	Environmental protection	Art. **37**, **47**, 51 (1), 52(2)(5)(7)	N
Pinto Eliseu Baptista Lopes Canhoto v EUIPO - University College London (CITRUS SATURDAY)	T-400/15	28-09-16	Trademarks	Justice	Right to an effective remedy and to a fair trial	Art. 21, 41(1)**, 47**	N
Christoph Klein v European Commission	T-309/10 RENV	28-09-16	Public health	Citizen's rights	Right to good administration	Art. 41	N
Investigación y Desarrollo en Soluciones y Servicios IT v European Commission	C-102/14 P	29-09-16	Research and technological development	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 52(7)	N
F. Hoffmann-La Roche	C-572/15	05-10-16	Industrial and commercial property	Freedoms	Right to property	Art. 16, **17**	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
TMD Gesellschaft für transfusionsmedizinische Dienste mbH v Finanzamt Kassel II - Hofgeismar	C-412/15	05-10-16	Taxation	Dignity	Right to the integrity of the person	Art. 3(2)(c)	N
European Centre for Disease Prevention and Control (ECDC) v CJ	T-395/15 P	05-10-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. **41**, 47, 48	N
CJ v European Centre for Disease Prevention and Control (ECDC)	T-370/15 P	05-10-16	Employment - EU civil service	Citizen's rights	Right to good administration	Art. **41(2)(a)(b)**, 48	N
Gianpaolo Paoletti and Others v Procura della Repubblica	C-218/15	06-10-16	Immigration policy	Justice	Principles of legality and proportionality of criminal offences and penalties	Art. **49**, 51(1), 52(3)	N
Søndagsavisen A/S v European Commission	T-167/14	11-10-16	Competition	Freedoms	Freedom of expression and information	Art. 11	N
Prezes Urzędu Komunikacji Elektronicznej and Petrotel sp. z o.o. w Płocku v Polkomtel sp. z o.o.	C-231/15	13-10-16	Approximation of laws	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Sina Bank v Council of the European Union	T-418/14	18-10-16	Common foreign and security policy - Restrictive measures	Citizen's rights	Right to good administration	Art. 41(2)(a)	N
Czech Republic v European Commission	T-141/15	20-10-16	Agriculture and Fisheries	Citizen's rights	Right to good administration	Art. 41	N
Dr. August Wolff GmbH & Co. KG Arzneimittel and Remedia d.o.o. v European Commission	T-672/14	20-10-16	Public health	Citizen's rights	Right to good administration	Art. 41	N
VSM Geneesmiddelen v European Commission	C-637/15 P	25-10-16	Public health	Citizen's rights	Right to good administration	Art. 41	N
Siderúrgica Sevillana SA and Others v Administración del Estado	C-369/15 and C-372/15	26-10-16	Environment	Citizen's rights	Right to good administration	Art. 41	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Khaled Kaddour v Council of the European Union	T-155/15	26-10-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 16, 17, 41(2), **47**	N
Aiman Jaber v Council of the European Union	T-154/15	26-10-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 16, 17, 41(2), **47**	N
Mohamad Hamcho and Hamcho International v Council of the European Union	T-153/15	26-10-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 16, 17, 41(2), **47**	N
Uber Belgium BVBA v Taxi Radio Bruxellois NV	C-526/15	27-10-16	Freedom to provide services	Freedoms	Freedom to conduct a business	Art. 15, **16,** 17, 52	N
European Central Bank v Maria Concetta Cerafogli	T-787/14 P	27-10-16	Employment - EU civil service	Justice	Right to an effective remedy and to a fair trial	Art. **47**, 52 (3)	N
Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín	C-243/15	08-11-16	Environment	Justice	Right to an effective remedy and to a fair trial	Art. **47,** 51(1)	Y
Brouillard v Court of Justice of the European Union	C-590/15 P	10-11-16	European Union public contracts	Freedoms	Freedom to choose an occupation and right to engage in work	Art. 14, **15**, 16, 20, 21, 51, 52	N
'Private Equity Insurance Group' SIA v 'Swedbank' AS	C-156/15	10-11-16	Approximation of laws	Equality	Equality before the law	Art. 20	N
Pardue	C-321/16	10-11-16	Area of freedom, security and justice	General provisions governing the interpretation and application of the Charter	Field of application	Art. 6, 20, 41, 47, 48, **51**	N
European Commission v Stichting Greenpeace Nederland and PAN Europe	C-673/13 P	23-11-16	Access to documents	Citizen's rights	Right of access to documents	Art. 16, 17, **42**	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Ipatau v Council of the European Union	T-694/13 and T-2/15	23-11-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Chic Investments v EUIPO (eSMOKING WORLD)	T-617/15	29-11-16	Trademarks	Citizen's rights	Right to good administration	Art. 41(2) (c)	N
ANKO AE Antiprosopeion, Emporiou kai Viomichanias v Research Executive Agency (REA)	T-270/15	29-11-16	Research and technological development	Citizen's rights	Right to good administration	Art. 41(1)	N
T & L Sugars Ltd and Sidul Açúcares, Unipessoal Lda v European Commission	T-103/12	29-11-16	Agriculture and Fisheries	Citizen's rights	Right to good administration	Art. 41	N
T & L Sugars and Sidul Açúcares v Commission	T-279/11	29-11-16	Agriculture and Fisheries	Citizen's rights	Right to good administration	Art. 41	N
Arkady Romanovich Rotenberg v Council of the European Union	T-720/14	30-11-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 7, 16, 17, 41(2) (a), **47,** 52(1)	N
Mohamed Daouidi v Bootes Plus SL and Others	C-395/15	01-12-16	Social policy	Equality	Non-discrimination	Art. 3, 15, **21**, 30, 31, 34, 35, 51	N
EK/servicegroup eG v European Union Intellectual Property Office	T-775/15	01-12-16	Trademarks	Citizen's rights	Right to good administration	Art. 41 (2) (a)	N
Z v Court of Justice of the European Union	T-532/15 P	01-12-16	Employment - EU civil service	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Angel Marinkov v Predsedatel na Darzhavna agentsia za balgarite v chuzhbina	C-27/16	08-12-16	Social policy	Solidarity	Protection in the event of unjustified dismissal	Art. **30**, 47, 51, 52 (1)	N
Eurosaneamientos SL and Others v ArcelorMittal Zaragoza SA and Francesc de Bolós Pi v Urbaser SA	C-532/15 and C-538/15	08-12-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 47	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Criminal proceedings against Antonio Semeraro	C-484/16	13-12-16	Area of freedom, security and justice	Justice	Principles of legality and proportionality of criminal offences and penalties	Art. **49**, 51, 53, 54	N
Organisation des salariés auprès des institutions européennes et internationales en République fédérale d'Allemagne (IPSO) v European Central Bank	T-713/14	13-12-16	Provisions governing the institutions	Solidarity	Workers' right to information and consultation within the undertaking	Art. **27**, 41	N
Mohammed Al-Ghabra v European Commission	T-248/13	13-12-16	Common foreign and security policy - Restrictive measures	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Printeos and Others v Commission	T-95/15	13-12-16	Competition	Justice	Right to an effective remedy and to a fair trial	Art. 47	N
Noémie Depesme and Others v Ministre de l'Enseignement supérieur et de la recherche	C-401/15 and C-403/15	15-12-16	Freedom of movement for workers	Solidarity	Family and professional life	Art. 7, **33(1)**	N
Spain v European Commission	T-808/14	15-12-16	State aid	Freedoms	Freedom of expression and information	Art. 11	N
Koninklijke Philips NV and Philips France v European Commission	T-762/14	15-12-16	Competition	Citizen's rights	Right to good administration	Art. **41,** 48	N
Infineon Technologies v European Commission	T-758/14	15-12-16	Competition	Justice	Presumption of innocence and right of defence	Art. 48	N
Spain v European Commission	T-466/14	15-12-16	Free movement of goods	Citizen's rights	Right to good administration	Art. **41**, 47, 48	N
Council of the European Union v Front Polisario	C-104/16 P	21-12-16	Field of application of the Charter	General provisions governing the interpreta-tion and application of the Charter	Reference to Charter but not to articles	Art. 51	Y
Daniel Bowman v Pensions-versicherungsanstalt	C-539/15	21-12-16	Social policy	Equality	Non-discrimination	Art. **21**, 28	N

Name of the parties	Case	Date	Subject Matter	Charter Title	Charter Right(s)	Charter Articles	Grand Chamber
Associazione Italia Nostra Onlus v Comune di Venezia and Others	C-444/15	21-12-16	Environment	Solidarity	Environmental protection	Art. **37**, 52(2)	N
Tele2 Sverige AB v Post- och telestyrelsen and Secretary of State for the Home Department v Tom Watson and Others	C-203/15 and C-698/15	21-12-16	Data retention	Freedoms	Protection of personal data	Art. 7, **8**, 11, 52(1)	Y
AGET Iraklis v Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis	C-201/15	21-12-16	Freedom of establishment	Freedoms	Freedom to conduct a business	Art. **16**, 30, 51(1), 52(1)	Y
Club Hotel Loutraki and Others v European Commission	C-131/15 P	21-12-16	State aid	Justice	Right to an effective remedy and to a fair trial	Art. 41, **47**	N
Biuro podróży 'Partner' Sp. z o.o, Sp. komandytowa w Dąbrowie Górniczej v Prezes Urzędu Ochrony Konkurencji i Konsumentów	C-119/15	21-12-16	Consumer protection	Justice	Right to an effective remedy and to a fair trial	Art. 47	N

Appendix II (**)

Overview of the applications for preliminary rulings submitted in 2016 which refer to the Charter

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-585/16	18-11-16	Alheto	18, 19, 47	Right to asylum - Protection in the event of removal, expulsion or extradition - Right to an effective remedy and to a fair trial	(Freedoms)	BG
C-13/16	08-01-16	Rīgas satiksme	No Article mentioned, but questions concern Article 7 and 8	Respect for private and family life - Protection of personal data	Freedoms	LV
C-18/16	26-02-16	K.	6	Right to liberty and security	Freedoms	NL
C-46/16	11-03-16	LS Customs Service	41	Right to good administration	Citizen's Rights	LV
C-27/16	11-03-16	Marinkov	30, 47, 52 (1)	Protection in the event of unjustified dismissals - Right to an effective remedy and to a fair trial - Scope of guaranteed rights	(Solidarity)	BG
C-52/16	01-04-16	SEGRO	17, 47	Right to property - Right to an effective remedy and to a fair trial	Justice	HU
C-3/16	01-04-16	Aquino	47, 52(3)	Right to an effective remedy and to a fair trial - Scope of guaranteed rights	Justice	BE
C-96/16	08-04-16	Banco Santander	38	Consumer protection	Solidarity	ES
C-82/16	08-04-16	K.A. and Others	7, 24	Respect for private and family life - The rights of the child	Freedoms	BE
C-108/16 PPU	15-04-16	Dworzecki	No Article mentioned, but questions concern 47	Right to an effective remedy and to a fair trial	Justice	NL
C-78/16	15-04-16	Pesce and Others	41	Right to good administration	Citizen's Rights	IT

(**) This data has been generated on the basis of a search in the curia database of the CJEU on 25 February 2016. The search criteria were: a date of delivery between 1/1/2015 and 31/12/2015 and a reference to the Charter in the grounds of the judgments or the operative part. The search result generated 41 cases of which one case figured triple and one case figured double. This Appendix II thus contains 38 cases. Cases with a 2015 date of delivery which were published with delay in Curia as of March 2016 on have not been included.

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-79/16	15-04-16	Serinelli and Others	41	Right to good administration	Citizen's Rights	IT
C-92/16	15-04-16	Bankia	No Article mentioned, but questions concern 38 and 47	Consumer protection - Right to an effective remedy and to a fair trial	Justice	ES
C-64/16	15-04-16	Associação Sindical dos Juízes Portugueses	47	Right to an effective remedy and to a fair trial	Justice	PT
C-102/16	22-04-16	Vaditrans	49	Principles of legality and proportionality of criminal offences and penalties	Justice	BE
C-89/16	29-04-16	Szoja	34(1)(2)	Social security and social assistance	Solidarity	SK
C-181/16	13-05-16	Gnandi	47	Right to an effective remedy and to a fair trial	Justice	BE
C-167/16	20-05-16	Banco Bilbao Vizcaya Argentaria	No Article mentioned, but questions concern 38 and 47	Consumer protection - Right to an effective remedy and to a fair trial	Justice	ES
C-199/16	27-05-16	Nianga	47	Right to an effective remedy and to a fair trial	Justice	BE
C-207/16	24-06-16	Ministerio Fiscal	7, 8	Respect for private and family life - Protection of personal data	Freedoms	ES
C-76/16	08-07-16	INGSTEEL and Metrostav	47(1)(2)	Right to an effective remedy and to a fair trial	Justice	SK
C-269/16	15-07-16	Barba Giménez	47	Right to an effective remedy and to a fair trial	Justice	ES
C-243/16	15-07-16	Miravitlles Ciurana and Others	20, 21, 51	Equality before the law - Non-discrimination - Scope	Equality	ES
C-321/16	15-07-16	Pardue	Preamble and Articles 6, 20, 41, 47 and 48	Right to liberty and security - Equality before the law - Right to good administration - Right to an effective remedy and to a fair trial -Presumption of innocence and right of defence	(Justice)	IE
C-294/16 PPU	29-07-16	JZ	49(3)	Principles of legality and proportionality of criminal offences and penalties	Justice	PL
C-282/16	12-08-16	RMF Financial Holdings	17(1)	Right to property	Freedoms	AT

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-306/16	19-08-16	Maio Marques da Rosa	31	Fair and just working conditions	Solidarity	PT
C-50/16	19-08-16	Grodecka	17, 21, 51	Right to property - Non-discrimination - Scope	(Freedoms)	PL
C-277/16	26-08-16	Polkomtel	16	Freedom to conduct a business	Freedoms	PL
C-322/16	02-09-16	Global Starnet	16	Freedom to conduct a business	Freedoms	IT
C-7/16	02-09-16	Banco Popular Español and PL Salvador	38, 47	Consumer protection - Right to an effective remedy and to a fair trial	(Solidarity)	ES
C-366/16	02-09-16	H.	7	Respect for private and family life	Freedoms	BE
C-391/16	09-09-16	M	18	Right to asylum	Freedoms	CZ
C-354/16	09-09-16	Kleinsteuber	21	Non-discrimination	Equality	DE
C-439/16 - PPU	16-09-16	Milev	No Article mentioned, but questions concern 6 and 47	Right to liberty and security - Right to an effective remedy and to a fair trial	Justice	BG
C-453/16 PPU	30-09-16	Özçelik	No Article mentioned, but questions concern 6 and 47	Right to liberty and security - Right to an effective remedy and to a fair trial	(Justice)	NL
C-477/16 PPU	30-09-16	Kovalkovas	No Article mentioned, but questions concern 47	Right to an effective remedy and to a fair trial	Justice	NL
C-452/16 PPU	30-09-16	Poltorak	No Article mentioned, but questions concern Article 47	Right to an effective remedy and to a fair trial	Justice	NL
C-403/16	30-09-16	El Hassani	47	Right to an effective remedy and to a fair trial	Justice	PL
C-426/16	30-09-16	Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others	10	Freedom of thought, conscience and religion	Freedoms	BE
C-415/16	07-10-16	Leal da Fonseca	31	Fair and just working conditions	Solidarity	PT
C-473/16	28-10-16	F	1	Human dignity	Dignity	HU

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-483/16	28-10-16	Sziber	20, 21, 38, 47	Equality before the law - Non-discrimination - Consumer protection - Right to an effective remedy and to a fair trial	(Justice)	HU
C-484/16	04-11-16	Semeraro	49, 51, 53, 54	Principles of legality and proportionality of criminal offences and penalties - Scope - Level of protection - Prohibition of abuse of rights	(Justice)	IT
C-482/16	04-11-16	Stollwitzer	21	Non-discrimination	Equality	AT
C-475/16	04-11-16	K.	7, 8, 51(1), 52(1)	Respect for private and family life - Protection of personal data - Scope - Scope of guaranteed rights	Freedoms	EL
C-472/16	11-11-16	Colino Sigüenza	47	Right to an effective remedy and to a fair trial	Justice	ES
C-589/16	21-11-16	Filippi and Others	47	Right to an effective remedy and to a fair trial	Justice	AT
C-496/16	02-12-16	Aranyosi	4	Prohibition of torture and inhuman or degrading treatment or punishment	Dignity	DE
C-540/16	09-12-16	Spika and Others	16, 20	Freedom to conduct a business - Equality before the law	Freedoms	LT
C-638/16 PPU	12-12-16	X and X	4, 18	Prohibition of torture and inhuman or degrading treatment or punishment - Right to asylum	(Freedoms)	BE
C-390/16	09/09/2016	Lada	50	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	Justice	HU
C-143/16	20/05/2016	Abercrombie & Fitch Italia	21(1)	Non-discrimination	Equality	IT
C-73/16	22/04/2016	Puškár	7, 47	Respect for private and family life - Right to an effective remedy and to a fair trial	(Justice)	SK
C-358/16	26/08/2016	UBS and Alain Hondequin, Holzem, and consorts	41, 48	Right to good administration - Presumption of innocence and right of defence	(Citizen's Rights)	LU
C-557/16	04/11/2016	Astellas Pharma	47	Right to an effective remedy and to a fair trial	Justice	FI

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-578/16 PPU	17/11/2016	C. K. and Others	4, 19(2)	Prohibition of torture and inhuman or degrading treatment or punishment - Protection in the event of removal, expulsion or extradition	(Dignity)	SI
C-534/16	20/10/2016	BB construct	16, 21(1), 49(1)(3)	Freedom to conduct a business - Non-discrimination - Principles of legality and proportionality of criminal offences and penalties	(Freedoms)	SK
C-533/16	20/10/2016	Volkswagen	41	Right to good administration	Citizen's Rights	SK
C-537/16	24/11/2016	Garlsson Real Estate and Others	50	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	Justice	IT
C-684/16	27-12-16	Max-Planck-Gesellschaft zur Förderung der Wissenschaften	31(2)	Fair and just working conditions	Solidarity	DE
C-673/16	30-12-16	Coman and Others	7, 9, 21, 45	Respect for private and family life- Right to marry and right to found a family- Non-discrimination- Freedom of movemement	(Freedoms)	RO
C-597/16	23-11-16	Consob	50	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	Justice	IT
C-596/16	23-11-16	Di Puma	50	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	Justice	IT
C-570/16	10-11-16	Willmeroth	31(2)	Fair and just working conditions	Solidarity	DE
C-569/16	10-11-16	Bauer	31(2)	Fair and just working conditions	Solidarity	DE
C-533/16	26-09-16	Boudjellal	7, 8, 47	Respect for private and family life- protection of personal data- Right to a fair trial	(Justice)	BE
C-652/16	19-12-16	Ahmedbekova	7, 18, 47	Respect for private and family life - Right to asylum- Right to a fair trial	(Freedoms)	BG

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.

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.

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.

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy:
  via EU Bookshop (http://bookshop.europa.eu);
- more than one copy or posters/maps:
  from the European Union's representations (http://ec.europa.eu/represent_en.htm);
  from the delegations in non-EU countries (http://eeas.europa.eu/delegations/index_en.htm);
  by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm) or
  calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*).

  (*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (http://bookshop.europa.eu).

DS-AL-17-001-EN-N

The 2016 report on the application of the EU Charter of Fundamental Rights (the Charter) informs the public about situations in which citizens can rely on the EU Charter. It also explains the role EU institutions and the Member States play in the area of fundamental rights. Finally, it highlights how fundamental rights, as enshrined in the Charter, are relevant across a range of policies for which the EU is responsible.

This annual report is intended to serve as a factual basis for a continuing and informed dialogue between all EU institutions and Member States on the implementation of the Charter. The report covers the year 2016, giving an overview of instances where the European institutions promoted and took into account the Charter in their legislative and policy work. It also explains where Member States were required to respect it when they implemented EU law. The report puts particular emphasis on the applicability of the Charter in Member States on the basis of recent Court of Justice of the European Union (CJEU) case-law. It also includes a focus section on a topical fundamental rights-related issue, which is 'Media pluralism and democracy'.

In covering the full range of Charter provisions on an annual basis, the annual report aims to track where progress is being made, where further efforts are still necessary and where new concerns are arising.

Publications Office

ISBN 978-92-79-67948-3
doi:10.2838/275891