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**COMMUNICATION FROM THE COMMISSION**

**Strategy for the effective implementation of the Charter of Fundamental Rights by the  
European Union**

## COMMUNICATION FROM THE COMMISSION

### Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union

Decisive steps have been taken towards a Europe of fundamental rights. The Charter of Fundamental Rights of the European Union has become legally binding<sup>1</sup> and the Union is going to accede to the European Convention on Human Rights<sup>2</sup>. The European Parliament<sup>3</sup> and the European Council<sup>4</sup> have made promotion of fundamental rights in the Union one of their priorities for the future of the area of justice, freedom and security. There is now a member of the Commission with specific responsibility for the promotion of justice, fundamental rights and citizenship, and the members of the European Commission promised, in a solemn undertaking before the Court of Justice, to uphold the Charter<sup>5</sup>. More generally, the Lisbon Treaty is a major step forward in that it has extended the co-decision procedure, removed the pillar structure set up under the earlier Treaty, given the Court of Justice general responsibility in the field of freedom, security and justice, and confirmed the place of human rights at the heart of the Union's external action.

All the components of an ambitious fundamental rights policy are therefore present. Respect for fundamental rights has always been an obligation subject to scrutiny by the Court of Justice and an essential component in the construction of the Union, but the Charter's new status will give a boost to the Union's work in this area.

The purpose of this Communication is therefore to set out the Commission's strategy for the implementation of the Charter in the new legal environment existing since the entry into force of the Lisbon Treaty.

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<sup>1</sup> Article 6(1) of the Treaty on European Union (TEU). In addition, Article 6(3) reaffirms that fundamental rights as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States are general principles of EU law.

<sup>2</sup> Article 6(2) TEU.

<sup>3</sup> European Parliament resolution of 25 November 2009 on the Communication from the Commission – An area of freedom, security and justice serving the citizen – Stockholm programme, P7\_TA(2009)0090.

<sup>4</sup> Stockholm Programme, OJ C 115, 4.5.2010.

<sup>5</sup> Text of the solemn undertaking: *I solemnly undertake:*

- to respect the Treaties and the Charter of Fundamental Rights of the European Union in the fulfilment of all my duties;

- to be completely independent in carrying out my responsibilities, in the general interest of the Union;

- in the performance of my tasks, neither to seek nor to take instructions from any Government or from any other institution, body, office or entity;

- to refrain from any action incompatible with my duties or the performance of my tasks.

*I formally note the undertaking of each Member State to respect this principle and not to seek to influence Members of the Commission in the performance of their tasks.*

*I further undertake to respect, both during and after my term of office, the obligation arising therefrom, and in particular the duty to behave with integrity and discretion as regards the acceptance, after I have ceased to hold office, of certain appointments or benefits.*

## **Charter of Fundamental Rights of the European Union**

With the Charter, the Union has equipped itself with an array of fundamental rights, updated to keep abreast of changes in society and scientific and technological developments<sup>6</sup>.

The Charter is an innovative instrument because it brings together in one text all the fundamental rights protected in the Union, spelling them out in detail<sup>7</sup> and making them visible and predictable. The Lisbon Treaty, by recognising the rights, freedoms and principles set out in the Charter and giving the Charter the same binding legal force as the Treaties, has offered citizens more visible and legally secure rights.

The Charter applies primarily to the institutions and bodies of the Union (Article 51(1) of the Charter). It therefore concerns in particular the legislative and decision-making work of the Commission, Parliament and the Council, the legal acts of which must be in full conformity with the Charter.

Article 51(1) of the Charter also stipulates that the Charter applies to the Member States only when they are implementing Union law. It does not apply in situations where there is no link with Union law<sup>8</sup>. The binding legal force conferred on the Charter by the Lisbon Treaty has not changed this situation; the Treaty explicitly states that the provisions of the Charter do not extend the powers of the Union as defined in the Treaties<sup>9</sup>.

### **Accession to the European Convention on Human Rights**

The Union's accession to the European Convention on Human Rights was made obligatory by the Lisbon Treaty (Article 6(2) TEU) and will complement the system to protect fundamental rights by making the European Court of Human Rights competent to review Union acts. This external judicial review should further encourage the Union to follow an ambitious policy for fundamental rights: the more the Union tries to ensure that its measures are fully compliant with fundamental rights, the less likely it is to be censured by the European Court of Human Rights.

### **Objective of the strategy: the Union must be exemplary**

The objective of the Commission's policy following the entry into force of the Lisbon Treaty is to make the fundamental rights provided for in the Charter as effective as possible. The Union must be exemplary in this respect. The Charter is not a text setting out abstract values, it is an instrument to enable people to enjoy the rights enshrined within it when they are in a situation governed by Union law. This is why the Commission will focus its efforts on the effective implementation of the Charter.

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<sup>6</sup> The Charter was solemnly proclaimed by Parliament, the Council and the Commission in Nice on 7 December 2000. On 12 December 2007 the Presidents of Parliament, the Council and the European Commission signed and once again solemnly proclaimed the Charter. This second proclamation was necessary because the Charter proclaimed in 2000 had been amended to make it legally binding.

<sup>7</sup> The rights and principles enshrined in the Charter stem from the constitutional traditions and international conventions common to the Member States, the European Convention on Human Rights, the Social Charters adopted by the Community and the Council of Europe, and the case law of the Court of Justice of the Union and the European Court of Human Rights.

<sup>8</sup> See Section I.3.

<sup>9</sup> Article 51(2) of the Charter states that it 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.

The development of individual policies concerning certain specific fundamental rights on the basis of the Treaties will continue, examples being protection of personal data, children's rights, gender equality, non-discrimination, intellectual property and freedom of movement.

That the Union is exemplary is vital not only for people living in the Union but also for the development of the Union itself. Respect for fundamental rights within the EU will help to build mutual trust between the Member States and, more generally, public confidence in the Union's policies. A lack of confidence in the effectiveness of fundamental rights in the Member States when they implement Union law, and in the capacity of the Commission and the national authorities to enforce them, would hinder the operation and strengthening of cooperation machinery in the area of freedom, security and justice. Effective protection is also necessary to strengthen the credibility of the Union's efforts to promote human rights around the world.

The Union's work in the area of fundamental rights extends beyond its internal policies. The Charter also applies to its external action. In accordance with Article 21 TEU, the Union's action on the international scene is designed to advance in the wider world democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and the respect for the principles of the United Nations Charter and international law. Certain human rights standards of the United Nations have an internal and external dimension for the Union<sup>10</sup>. The Union has developed a dedicated policy to promote human rights and democratisation in non-member countries. Furthermore, Article 8 TEU provides that the Union shall develop a special relationship with neighbouring countries founded on the values of the Union. Finally, Article 49 TEU provides that any European country upholding the values on which the Union is based may ask to become member of the Union. The political criteria for accession laid down by the 1993 Copenhagen European Council require candidate countries to have stable institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities. The opening of the accession negotiations thus depends on whether the candidate country meets these criteria adequately. Issues concerning the fundamental rights are dealt with in detail during the accession negotiations.

## **1. THE UNION MUST BE EXEMPLARY**

The Union's action must be above reproach when it comes to fundamental rights. The Charter must serve as compass for the Union's policies and their implementation by the Member States.

### ***1.1. Strengthening the culture of fundamental rights in the Commission***

The Commission routinely checks its legislative proposals and the acts it adopts to ensure that they are compatible with the Charter. To reflect the new legal status of the Charter, this fundamental rights "reflex" must be reinforced within the Commission departments drawing up such proposals and acts. We have to promote a "fundamental rights culture" at all stages of the procedure, from the initial drafting of a proposal within the Commission to the impact analysis, and right up to the checks on the legality of the final text.

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<sup>10</sup> All the Member States have acceded to the main United Nations conventions on human rights, and the Council has adopted a decision on the conclusion by the European Community of the UN Convention on the Rights of Persons with Disabilities, OJ L 23, 27.1.10, p.35.

This fundamental rights culture is an essential underpinning of the detailed examination of the necessity for and proportionality of the proposals that the Commission puts forward. Indeed, apart from some rights that are absolute<sup>11</sup>, fundamental rights may, under certain conditions, be subject to limitations. These must be provided for in law, respect the essence of the said rights, observe the principle of proportionality, be necessary and effectively meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others<sup>12</sup>.

### **Fundamental Rights "Check-List"**

1. *What fundamental rights are affected?*
2. *Are the rights in question absolute rights (which may not be subject to limitations, examples being human dignity and the ban on torture)?*
3. *What is the impact of the various policy options under consideration on fundamental rights? Is the impact beneficial (promotion of fundamental rights) or negative (limitation of fundamental rights)?*
4. *Do the options have both a beneficial and a negative impact, depending on the fundamental rights concerned (for example, a negative impact on freedom of expression and beneficial one on intellectual property)?*
5. *Would any limitation of fundamental rights be formulated in a clear and predictable manner?*
6. *Would any limitation of fundamental rights:*
  - *be necessary to achieve an objective of general interest or to protect the rights and freedoms of others (which)?*
  - *be proportionate to the desired aim?*
  - *preserve the essence of the fundamental rights concerned?*

The Commission has already taken some internal organisational measures - "the methodology"<sup>13</sup> - in order to ensure that Commission departments are systematic and thorough in checking that all the fundamental rights concerned have been respected in all draft proposals. The evaluation report on this methodology<sup>14</sup> found that it was well suited to the objective but needed to be applied better in practice, namely in a more systematic, more detailed and more easily understandable manner. The report also underlines that the impact assessment is not a matter of procedure but of substance.

The Commission will step up internal training on fundamental rights to respond to the issues cited above and to reinforce and further promote a culture of respect for fundamental rights.

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<sup>11</sup> The ban on torture, for example.

<sup>12</sup> Article 52 (2) of the Charter.

<sup>13</sup> Commission communication – 'Compliance with the Charter of Fundamental Rights in Commission legislative proposals - Methodology for systematic and rigorous monitoring', COM(2005) 172 final of 27.4.2005.

<sup>14</sup> Report on the practical operation of the methodology for a systematic and rigorous monitoring of compliance with the Charter of fundamental rights, COM(2009) 205 final of 29.4.2009.

The methodology used by the Commission in drafting its proposals is described below, as are the measures taken to improve its application. These measures will contribute to the implementation of the "better regulation" policy. As underlined in the Stockholm programme, EU legislation that is clearly and comprehensibly drafted will help citizens to exercise their rights effectively. In line with the better regulation policy and the Stockholm programme, which stress the importance of evaluation, the Commission will also check that the Charter is taken into account in the *ex post* evaluation of Union instruments, in particular in the reports on the application of sensitive legislation and in the mutual evaluation process.

Non-legislative measures adopted by the Commission, such as decisions, are also subject to checks on their compatibility with the Charter during drafting, even if there is no impact assessment.

The Commission will pay particular attention to "sensitive" proposals and acts, that is all legislative proposals and implementing acts (Article 291 TFEU) and delegated acts (Article 290 TFEU) which raise specific issues of compatibility with the Charter or which are designed to promote a specific fundamental right under the Charter.

#### *1.1.1. Preparatory consultations*

Upstream of the preparation of proposals in the strict sense, namely when the Commission opens consultations (green papers, communications, working papers, etc.) with interested parties on issues which may lead to new sensitive proposals, it will highlight any potential fundamental rights aspects in order to encourage contributions that will feed into the impact assessment. It will also let it be known that any proposals will be subject to an impact assessment in accordance with methodology.

#### *1.1.2. Impact assessment*

The impact assessments that accompany Commission proposals examine the impact of the proposal on fundamental rights when such an assessment is relevant. The impact assessment guidelines<sup>15</sup>, as revised in 2009, stipulate that certain implementing acts (committee procedure) liable to have significant repercussions must also undergo an impact assessment. The impact assessment should be used to identify fundamental rights liable to be affected, the degree of interference with the right in question and the necessity and proportionality of the interference in terms of policy options and objectives. However, impact assessment does not include examination of the draft act's legal compliance with fundamental rights. This examination is carried out at a later date on the actual draft act. The impact assessment guidelines lay down how fundamental rights must be taken into account at each stage of the assessment. The Commission will maintain its general approach to the carrying-out of impact assessments, whilst reinforcing the assessment of impacts on fundamental rights<sup>16</sup>.

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<sup>15</sup> Impact Assessment Guidelines, SEC(2009) 92 of 15.1.2009.

<sup>16</sup> In its 'Communication on Smart Regulation in the European Union' (COM(2010) 543 final of 7.10.2010), the Commission stressed that in order to reflect the new status of the Charter it will reinforce the assessment of impacts on fundamental rights and develop operational guidelines on the matter.

### 1.1.2.1. Mainstreaming fundamental rights into the work of the Impact Assessment Steering Groups

The drawing-up of each impact assessment is headed by an *Impact Assessment Steering Group* bringing together the Commission departments concerned and which has a key role to play in all phases of the impact assessment. The relevant Commission departments will actively make available their fundamental rights expertise to these groups in order to ensure that any effects on such rights are systematically identified and analysed at an early stage of the policy formulation process. Any effects on fundamental rights that so justify will be given prominence in the impact assessment report. Giving them prominence will help to strengthen the culture of respect for fundamental rights during the preparation of the draft act.

### 1.1.2.2. Operational guidance on fundamental rights

In order to ensure the development of a truly mainstreamed approach to fundamental rights and provide guidance to Commission departments on how the impact of an initiative on fundamental rights should be assessed in practice, operational guidance is being prepared. This guidance will cover the questions set out in the fundamental rights "check-list" above.

### 1.1.2.3. Impact Assessment Board

The Impact Assessment Board exercises a central quality control and support function under the authority of the Commission President. It is independent of the departments drawing up policies. The Board examines and issues opinions on all the Commission's impact assessments and hence on the quality of the analysis underpinning the policy proposals the Commission puts forward. It systematically checks the fundamental rights aspects of draft impact assessments submitted to it and will issue an opinion on them where necessary.

## 1.1.3. *Drafting of draft acts*

### 1.1.3.1. Targeted recitals

After the impact assessment, when the draft legislative proposal (or delegated/implementing act) is prepared, the Commission will check its legality, and in particular its compatibility with the Charter.

Proposals that have a particular link with fundamental rights must include specific recitals that explain how the proposal complies with the Charter. The role of recitals is to explain the reasoning behind the adoption of the act in question and so enable and facilitate judicial review of its conformity with the Charter. This means that use of a standardised recital merely noting conformity with the Charter is to be avoided. The insertion of recitals is not a mere formality, it reflects the in-depth monitoring of the proposal's compliance with the Charter.

The recitals which set out the proposal's conformity with the Charter will be chosen to indicate exactly which fundamental rights the proposal in question will affect. More specific tailor-made recitals concerning certain fundamental rights will be inserted where necessary to explain the scope of a provision or the solutions incorporated in the proposal to ensure that the limitation on a fundamental right is justified under Article 52 of the Charter.

### 1.1.3.2. Summary of fundamental rights issues in the Explanatory Memorandum

When the legislative proposal has an impact on fundamental rights, as borne out by its recitals, the Explanatory Memorandum must contain a summary explaining how fundamental rights obligations have been met.

The Explanatory Memorandums accompanying sensitive proposals will be reinforced by a summary of all the fundamental rights aspects contained in the impact assessment and the legislative proposal. In particular, this section will explain why the Commission believes that limitations on fundamental rights are justified in terms of necessity and proportionality. Such a summary will help to better pinpoint the fundamental rights recitals for sensitive proposals. It will increase visibility by showing that impact and compatibility have indeed been examined in detail.

## 1.2. Taking the Charter into account in the legislative process

The methodology introduced by the Commission applies only at the preparatory stage of proposals. During the legislative process, the Commission's proposals may be amended by one of the co-legislators raising questions about fundamental rights, without any systematic review of their impact and compatibility with fundamental rights. This situation was identified by the European Council in the Stockholm Programme, which calls on the EU institutions and Member States to ensure that legal initiatives remain consistent with fundamental rights "*throughout the legislative process by way of strengthening the application of the methodology for a systematic and rigorous monitoring of compliance with the Convention and the rights set out in the Charter of Fundamental Rights*"<sup>17</sup>. In line with the objective of promoting a fundamental rights culture throughout the legislative process, the Commission is ready to help other institutions find an effective way to take into account the effects of their amendments on the implementation of the Charter, including through an examination of questions to be borne in mind (as mentioned in the fundamental rights "check-list" above).

### 1.2.1. Amendments

Co-legislators' amendments to Commission proposals must comply with the Charter. The Commission will strongly defend its position when it comes to the standards of fundamental rights protection contained in its proposal, and will notify co-legislators of its opposition if they seek to lower those standards. In such cases it will not hesitate to use all the means at its disposal, which may include requesting that the act be adopted unanimously or, where applicable, withdrawing its proposal or bringing an action for annulment of the provisions in question<sup>18</sup>.

### 1.2.2. Inter-institutional dialogue

The manner in which draft amendments which raise issues of compatibility with the Charter are dealt with, should be subject to a transparent inter-institutional dialogue, in particular to make sure that:

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<sup>17</sup> Article 2.1

<sup>18</sup> Point 3.4 of the report of 29.4.2009.

- the amendments in question are the subject of an appropriate assessment of their impact on fundamental rights and of their conformity with the Charter. The inter-institutional agreement *Common Approach to Impact Assessment*<sup>19</sup> has a general provision that Parliament and the Council are responsible for assessing the impact of their own "significant" amendments. No mention is made of taking into account fundamental rights aspects, nor of the fact that any amendment raising a fundamental rights issue should be considered 'significant';
- decisions on amendments are taken at the appropriate level and that, for example, in the case of the Council they are brought to the attention of ministers;
- the Legal Services of the three institutions are fully involved.

With a view to a forthcoming revision of the interinstitutional agreement *Common Approach to Impact Assessment*, the Commission will propose a provision that, in the exceptional cases where the Treaty allows such proposals<sup>20</sup>, the impact assessments that accompany Member States' proposals also include an assessment of their impact on fundamental rights. In addition, in taking its position on the Member States' proposals, the Commission will consider carefully the assessment of their impact on fundamental rights.

### **1.3. Ensuring that the Member States respect the Charter when implementing Union law**

The Charter is addressed to the Member States only "*when they implement Union law*" (Article 51(1)). The upholding of fundamental rights by Member States when they implement Union law is in the common interest of all the Member States because it is essential to the mutual confidence necessary for the operation of the Union. This principle is particularly important in view of the expansion of the EU *acquis* in areas where fundamental rights are especially relevant, such as the area of freedom, security and justice, non-discrimination, Union citizenship, the information society and the environment.

The Commission's efforts to enforce fundamental rights will be guided by the following principles:

#### *1.3.1. Prevention*

The Commission will step up its preventive approach by reminding in appropriate cases the authorities responsible for transposing legislation of the obligation to comply with the Charter in implementing the legislation concerned and by assisting them to do so, in particular within the committees of experts set up to facilitate the transposition of the directives. For example, the importance of compliance with the Charter, particularly in the area of children's rights, was highlighted in the expert group set up to monitor the transposition of Directive 2008/115/EC ("the return Directive") and within the Committee for Framework Decision 2008/919/JHA, which amends the Framework Decision on combating terrorism.

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<sup>19</sup> Council document 14901/05 of 24.11.2005.

<sup>20</sup> The areas of judicial cooperation in criminal matters and police and administrative cooperation in the area of freedom, security and justice (Article 76 TFEU).

### 1.3.2. *Infringement procedures*

When a Member State does not respect fundamental rights when implementing Union law, the Commission, as guardian of the Treaties, has powers of its own to try to put an end to the infringement and may, if necessary, take the matter to the Court of Justice (action for failure to fulfil an obligation). The Commission may only intervene if the situation in question relates to Union law. The factor connecting it with Union law will depend on the actual situation in question<sup>21</sup>.

The Commission is determined to use all the means at its disposal to ensure that the Charter is adhered to by the Member States when they implement Union law. Whenever necessary it will start infringement procedures against Member States for non-compliance with the Charter in implementing Union law. Those infringement proceedings which raise issues of principle or which have particularly far-reaching negative impact for citizens will be given priority.

### 1.3.3. *Situations outside the scope of the Charter*

The Charter does not apply where there are breaches of fundamental rights with no connection to Union law. Member States have their own systems to protect fundamental rights through their national courts and the Charter does not replace them. It is therefore up to the national courts to ensure compliance with fundamental rights and up to the Member States to take the necessary measures in accordance with their national laws and international obligations. In such situations, the Commission does not have the power to intervene as guardian of the Treaties.

Article 7 TEU provides for a mechanism enabling institutions of the Union to act when there is a *clear risk of a serious breach* or a *serious and persistent breach* by a Member State of the values referred to Article 2 TEU, which include respect for human rights. This is a political mechanism of last resort, intended for situations of an exceptional nature with a systemic, structural dimension<sup>22</sup>. Where there is a clear risk of a serious breach of these values this mechanism may be triggered by a reasoned proposal of a third of the Member States, of the European Parliament, or of the Commission.

## **2. BETTER INFORMING THE PUBLIC**

### **2.1. *Information needs***

For the rights enshrined in the Charter to be effective the public needs to be well informed about these rights and how to enforce them in practice when they are violated. Information on means of redress is particularly important in relation to:

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<sup>21</sup> For example, a connecting factor exists when national legislation transposes a Union Directive in a way contrary to fundamental rights, when a public authority applies Union law in a manner contrary to fundamental rights or when a final decision of a national court applies or interprets the Union law in a way contrary to the fundamental rights.

<sup>22</sup> The conditions for implementing this mechanism are explained in the Commission communication on Article 7 TEU on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based, COM(2003) 606 final of 15.10.2003.

- the rights of the child: for example, the problems most often cited by young people are that they do not know how defend their rights or who to turn to (80%)<sup>23</sup>. The Fundamental Rights Agency reported the same type of difficulties in connection with discrimination<sup>24</sup>;
- the difficulty of knowing which are the appropriate legal remedies and confusion about their roles may lead complainants to knock on the "wrong door". The Commission receives many letters about situations for which it has no competence under the Treaties because they are unrelated to Union law. On this point the Commission would point out that it is up to national authorities, including the courts, to rule on cases of alleged breaches of fundamental rights and that the Commission is not a court of appeal against the decisions of national or international courts;
- the lack of suitable information makes redress more difficult and amplifies the practical difficulties of taking action (language, awareness of the procedures, the cost of proceedings, situation of the complainant, and so on), and this may deter people whose fundamental rights have been breached from seeking redress ("invisible" complainants).

## 2.2. *Commission action*

Targeted communication measures tailored to various situations are needed to tackle these difficulties.

### 2.2.1. *Information on the Union's role in fundamental rights*

The Commission will step up its information activities concerning the Union's role and powers in the area of fundamental rights and the possibilities for intervention, and also ensure that the language needs of citizens and professionals are catered for:

- explanations will be made available to complainants and interested parties tailored to the audience addressed, for example in a child-friendly manner. In particular, the Commission's answers to individual complaints not within its area of competence will contain an explanatory annex in the form of *Frequently Asked Questions*;
- information and training for legal professionals and the judicial authorities, including judges, will be promoted through, in particular, the European Judicial Network in civil and commercial matters, the European Judicial Network in criminal matters and the European Forum for Justice.

### 2.2.2. *Information on existing legal remedies*

Individuals who believe themselves to be victims of a breach of their fundamental rights must have access to practical information on the legal remedies existing in the Member States to deal with allegations of breaches of fundamental rights. The Commission will take the following measures:

- it will ensure that in 2011 the **e-justice portal** provides the public with information about legal remedies in cases of alleged violations of fundamental rights;

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<sup>23</sup> When young people between 15 and 18 were asked which problems might be encountered by under 18s seeking to defend their rights; Flash Eurobarometer No 273, May 2009, 'The Rights of the Child'.

<sup>24</sup> EU-MIDIS European Union Minorities and Discrimination Survey.

- in liaison with the European Parliament's Committee on Petitions, national human rights institutions and national authorities, the registries of the Court of Justice and the European Court of Human Rights and with other bodies of the Council of Europe, it will launch a joint reflection on the information available on legal remedies in the area of fundamental rights.

### **3. ANNUAL REPORT ON THE APPLICATION OF THE CHARTER**

The Commission will present an Annual Report on application of the Charter which will have two objectives:

- to take stock of progress in a transparent, continuous and consistent manner. It will identify what has been done and what remains to be done for the effective application of the Charter;
- to offer an opportunity for an annual exchange of views with the European Parliament and the Council.

The Annual Report will provide a useful new way of throwing light on the implementation of the Charter of Fundamental Rights. The Commission will describe how it takes account of fundamental rights in drawing up its initiatives on the basis of the activities set out in this communication. It will also enable the Commission to explain before Parliament and the Council how the Charter was taken into account during the legislative process.

The Annual Report will cover all the rights contained in the Charter and how they are implemented within the Union's field of competence. Whilst having a separate scope, it will complement the annual report on human rights and democracy in the world which covers the Union's action in non-member countries<sup>25</sup>. The report will focus first and foremost on the activities of Union institutions, in particular those of the Commission. By covering all the rights set out in the Charter continuously, year after year, the report will enable us to monitor progress and the emergence of any new problems.

The Annual Report will look at the various matters brought to the attention of the Commission by citizens, members of the European Parliament and interested parties, and will identify issues of concern. By identifying the matters rightly notified to the Commission, and those which, in contrast, were the responsibility of other authorities, the report will also help to make members of the public better informed about the defence of their rights.

The Annual Report will describe what the Commission has done to ensure the effective application of the Charter, for instance through infringement proceedings and information activities. By increasing transparency and disseminating information about the Charter, the report may help the Member States to comply with the Charter when they implement Union law and thus reduce the need to resort to infringement proceedings.

In preparing its Annual Report the Commission will work in partnership with all institutions and stakeholders to gather the information and data required, including the fundamental rights

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<sup>25</sup> See, for example, 'Human rights and democracy in the world: report on EU action - July 2008 to December 2009'.

case-law of the Court of Justice and the European Court of Human Rights, plus that of national courts when it concerns Union law.

The **European Parliament**, particularly through its questions and petitions, is a crucial intermediary for finding out about the fundamental rights situation in Member States in areas within the Union's competence. The Commission will explore with Parliament the best way of cooperating and harnessing their efforts in the preparation of its annual report and within the mechanisms for cooperation between Parliament and national parliaments.

With the **Fundamental Rights Agency** the Union has equipped itself with a tool to help its institutions and the Member States implement Union law; its main activity will be to provide reliable and comparable data on fundamental rights. This information will be crucial for the annual report and the Commission will encourage the Agency to collect such data.

In drawing up its report the Commission will also take on board information provided by all stakeholders, including **national authorities**, such as Supreme Courts, independent national human rights bodies and the national authorities in charge of assessing the impact of domestic legislation on fundamental rights. The monitoring machinery of the **Council of Europe** and the **United Nations** may also be a source of relevant information for the Union and the Member States when implementing Union law. Information from **civil society** will also be taken into account, since NGOs are best placed to know what is happening on the ground.

The Annual Report will thus enable all stakeholders to make a contribution to the ongoing process of implementing the Charter and, by making this process visible and transparent, will promote a fundamental rights dynamic in the European Union. The Commission is currently preparing the first Annual Report, which will cover 2010, for publication in spring 2011.

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The strategy presented by the Commission is based on a clear objective: the Union must set an example to ensure that the fundamental rights provided for in the Charter become reality. The Commission has taken steps to achieve this objective, in particular by strengthening the assessment of the impact of its proposals on fundamental rights. It will also encourage other Union institutions to ensure the full respect of the Charter in their legislative processes. It will remind Member States where necessary of the importance of complying with the Charter when they implement Union law. It will develop communication actions targeted on the needs of the public.

This strategy will be effective if it is implemented in a continuous, determined and transparent manner and with the involvement of all the interested parties. The Commission has decided to submit an Annual Report on the application of the Charter each year in order to show the progress that has been made and steer the development of its policy. This undertaking testifies to the Commission's determination to put the Charter into practice.