2017 report on the application of the EU Charter of Fundamental Rights
At the occasion of the 70th Anniversary of the UN Universal declaration of Human Rights, it is important to recall that fundamental rights, democracy and the rule of law are the three pillars that anchor the European Union. In 2017 the Commission showed its determination in promoting and protecting the EU Charter of Fundamental Rights and took action as guardian of the Treaties when necessary. It also proposed to the Council, for the first time, to adopt a decision under Article 7(1) of the Treaty on European Union.

The 2017 report gives a number of concrete examples that illustrate the Charter’s relevance in addressing the pressing challenges the EU is facing and in making fundamental rights a reality in people’s lives. These range from improved responses to hate crime, hate speech and violence against women to the promotion of social rights with the proclamation of the European Pillar of Social Rights.

The report also highlights the important role of a free and vibrant civil society and of independent courts in making the Charter a living instrument. They are key players in ensuring the effectiveness of fundamental rights on the ground.

The promotion and protection of the rights, principles and values enshrined in the Charter will continue to be at the heart of the Commission’s action. The Commission is dedicating its 2018 Colloquium on Fundamental Rights to “Democracy in the EU”. This will be an opportunity to reaffirm one of the EU’s key values in the run up to the European elections and identify avenues to foster a free and open democracy in the EU.
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2017 report on the application of the EU Charter of Fundamental Rights
1. Introduction

The European Union is a ‘Union of values’ as enshrined in Article 2 of the Treaty on European Union and emphasised by European Commission President Juncker in his State of the Union address on 13 September 2017(1). Three pillars anchor the European Union: fundamental rights, democracy, and the rule of law. The EU Charter of Fundamental Rights (‘the Charter’) must guide all EU action. It provides a modern set of fundamental rights to which EU institutions and Member States, when implementing EU law, are legally bound.

Fundamental rights apply to everyone. Respecting them is key to ensuring that the EU is a place where people can prosper, enjoy their freedoms and live their lives without discrimination.

This report shows that, in 2017, the structures and tools put in place to promote a culture of fundamental rights in the EU and ensure that the Charter is a reality in people’s lives have been relevant. The proclamation of the European Pillar of Social Rights in November 2017(2) was a further step towards more equality and less exclusion.

However, fundamental rights were also challenged in the EU in 2017. The independence of the judiciary, a key component of the rule of law and a pre-condition for the effective enforcement and enjoyment of fundamental rights, was threatened. This led the Commission to propose to the Council, for the first time, to adopt a decision under Article 7(1) of the Treaty on European Union(3). Furthermore, the work of civil society organisations active in the area of fundamental rights was questioned and made more difficult. Women’s rights were also under attack, as discussed at the 2017 annual colloquium on fundamental rights(4).

It has never been more important to highlight that respect for the EU Charter of Fundamental Rights is not an option but an obligation for EU institutions and Member States when implementing EU law.

2. Applying the Charter in and by the EU

2.1. Promoting and protecting fundamental rights

Promoting social rights and fairness in the EU

Building on the rights enshrined in the Charter, the European Pillar of Social Rights(5) was jointly signed and proclaimed by the European Parliament, the Council and the Commission on 17 November 2017. The Pillar sets out 20 key principles and rights to support fair and well-functioning labour markets and welfare systems. The ‘Social Scoreboard’(6) monitors the implementation of the Pillar and feeds into the European Semester, the EU’s yearly economic policy coordination cycle.

It is for the EU Member States to deliver on the Pillar, working with social partners and civil society. The Union’s institutions help set the frame. For instance, in 2017, the Commission put forward a proposal for a Directive on Transparent and Predictable Working Conditions in the European Union(7). This will complement existing obligations and create new minimum standards to give all workers, including those in precarious forms of employment, more predictability and clarity as regards their working conditions (Article 31 of the Charter).

Furthermore, on 26 April 2017 the Commission adopted an initiative to support work-life balance for working parents and carers(8). It includes legislative measures to ensure better work-life balance opportunities for men and women with caring responsibilities and a gender-balanced use of leave and flexible work arrangements. It also envisages policy measures to support Member States in providing accessible, affordable and quality formal care services and to address economic disincentives for women (Articles 21, 23, 24, 25, 26 and 33 of the Charter).

In the same vein, on 11 November 2017 the Commission adopted an action plan to combat the gender pay gap(9). It focuses on issues such as: improving the application of the equal pay principle; combating segregation; better valuing women’s skills, efforts and responsibilities; uncovering inequalities and stereotypes; raising awareness of the gender pay gap and building stronger partnerships to tackle it.

4. See focus section of this report.
The guidelines for Member States’ employment policies (10) were also revised to align with the Pillar. The employment guidelines are common priorities and targets for employment and social policies proposed by the Commission, agreed by national governments and adopted by the Council. They are the basis for the country assessments and country-specific recommendations under the European Semester. The revision put the focus on the Pillar principles related to minimum income, adequate unemployment benefits and active support for employment. In 2017, social policies continued to be a key area of focus for the European Semester. Promoting social rights is a key part of structural reforms that aim to foster social justice and equality. In 2017, the Commission closely monitored Member States’ efforts to improve and increase women’s labour market participation and to combat discrimination of disadvantaged groups such as Roma, fight school segregation, and promote inclusive education reform. This showed that certain Member States are still facing challenges in including Roma children in high-quality inclusive mainstream education and in integrating young Roma in the labour market. In particular, the Commission proposed that the Council address country-specific recommendations in this area to Bulgaria, Hungary, Romania and Slovakia. The Commission also closely monitored the Czech Republic’s work related to this area.

Furthermore, the Commission proposed to address country-specific recommendations to Ireland on improving quality childcare and social infrastructure, including social housing, and to Spain on improving family support and quality childcare.

In April 2017, the Commission adopted a Communication on the protection of children in migration (11), which sets out EU actions in this area and makes recommendations to Member States to ensure that children in the process of migration are better protected. As follow-ups, the Council adopted Conclusions on 8 June 2017 (12). The Communication addresses faster identification and immediate protection of children, quicker family tracing and status determination, implementation of procedural safeguards including effective guardianship for unaccompanied children, child-appropriate reception and effective integration. Guardianship is a key procedural safeguard for children’s best interests and wellbeing. The Commission took steps to establish a European Network on Guardianship to facilitate cooperation between relevant national authorities and exchange good practices on guardianship.

On 4 December 2017, the Commission also adopted a Communication on the follow-up to the EU strategy towards the eradication of trafficking in human beings (13), ensuring a fundamental rights based, gender specific and child sensitive approach.

Promoting democracy and fundamental rights through healthy public debate and a vibrant civil society

In 2017, the Commission launched an initiative on fake news and the spread of disinformation online, as announced by President Juncker (14). This initiative, which also follows-up on the European Parliament’s Resolution of 15 June 2017 (15), aims to identify appropriate ways of limiting the impact of the dissemination of fake content and to foster a healthy public debate. The Commission established a High Level Expert Group and launched wide-ranging consultations (16). In October 2017, the Council addressed these issues in its 3rd annual rule of law dialogue, which focused on media pluralism and the rule of law in the digital age (17).

The work of human rights defenders, including civil society organisations active in the field of fundamental rights and democracy, was made particularly difficult in 2017 (18). Their role is key in making fundamental rights and values a reality for everyone and they should be able to carry out their work in a safe and supportive environment. To further support rights defenders, in December 2017, as part of the EU Budget 2018, the European Parliament adopted a preparatory action on an EU Fund for financial support for litigating cases related to violation of democracy, rule of law and fundamental rights.

Promoting an EU free from racism, discrimination and violence

The second EU Minority and Discrimination Survey (EU-MIDIS II), published by the EU Agency for Fundamental Rights in December 2017, showed continued intolerance, violence and hatred across the EU (19). These concerns were at the centre of the work of the high-level group on combating racism, xenophobia and other forms of intolerance in 2017 (20).

Cooperation with IT companies, national authorities and civil society organisations was strengthened to ensure that online illegal hate speech is quickly identified and taken down. The monitoring of the implementation of the Code of conduct on countering illegal hate speech


(14) Available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?&item_id=51025


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online showed that IT companies had made remarkable progress in this area(25). On 28 September 2017, the Commission adopted a Communication on tackling illegal content online(26) to implement more good practices that prevent, detect, remove and disable access to illegal content. At the same time, it introduced safeguards to avoid over-removal, ensure transparency and protect the freedom of expression(27).

The high-level group also compiled guiding principles on hate crime for law enforcement and criminal justice authorities(28) and on access to justice, protection and support for victims of hate crime(29). It further developed guidance on improving the recording of hate crime by law enforcement authorities(30), which is now being tested in several Member States.

In May 2017, Muslim and Jewish organisations came together for a joint day of action against Antisemitism and anti-Muslim hatred and discrimination and addressed specific challenges, such as the security needs of Jewish communities and stereotypes of Muslims in the media(31). The Findings on Muslims published by the EU Agency for Fundamental Rights on 21 September(32) and its 2017 overview of Antisemitism showed that there are worrying and pressing concerns to be addressed(33).

On 30 August 2017(34), the Commission published a mid-term review of the EU Framework for national Roma integration strategies up to 2020. The review shows how European, legal, policy and funding instruments(35) have been mobilised to fight discrimination and promote Roma inclusion. There are signs of progress in education, although segregation is still present and in some cases has even increased. The rate of Roma youth not in education, employment or training increased as well. In 2017, the Commission launched an in-depth evaluation and public consultation on this Framework, to feed reflections on post-2020 policy options.

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In 2017, the Commission continued to implement the list of actions to advance LGBTI equality(39). Through the Rights, Equality and Citizenship programme, it supported projects that raise awareness and combat discrimination and intolerance against LGBTI people.

Promoting access to justice and effective remedy

Promoting access to justice and the right to effective redress under Article 47 of the Charter is a precondition for the effective enjoyment of all rights under EU law, including the Charter. The Commission helps Member States fulfil their obligation to ensure effective legal protection in the fields covered by EU law(40).

Following the adoption of the Communication on EU law: Better results through better accountability(41), in 2017, the Commission continued to implement the list of actions to advance LGBTI equality(39). Through the Rights, Equality and Citizenship programme, it supported projects that raise awareness and combat discrimination and intolerance against LGBTI people.

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2.2. Ensuring the respect of fundamental rights

EU institutions, bodies, offices and agencies must comply with the Charter in all their actions. Any case of non-compliance can be brought before the CJEU. The Commission is committed to ensuring that fundamental rights are fully respected in all its legislative and policy proposals.

On 12 December 2017, the Commission adopted proposals on a framework for interoperability between EU information systems[41] to close information gaps and better protect EU citizens. The aim is to improve the efficiency and effectiveness of EU-wide information-sharing tools by making it possible to raise a better way. Authorised users (such as police officers, migration officials and border guards) will have faster, seamless and more systematic access to the information they need to do their jobs, in full compliance with fundamental rights. The Commission’s overall evaluation of the instruments will include an examination of their impact on fundamental rights.

In March 2017, the Commission’s evaluation report[42] on the application of EU rules on countering migrant smuggling[43] addressed concerns about the criminalisation of actions carried out by civil society organisations or individuals providing humanitarian assistance to irregular migrants. This report reflects the views of a range of stakeholders and acknowledges that the optional nature of EU rules allowing Member States not to criminalise the facilitation of irregular migrants. The proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration) is available at: https://ec.europa.eu/transparency/regdoc/rep/10102/2017/EN/SWD-2017-120-F1-EN-MAIN-PART-1.pdf.

In its Opinion 1/15 on the Draft agreement between Canada and the European Union on the transfer of passenger name record data from the European Union to Canada, adopted on 26 July 2017, the CJEU found that several provisions of the proposed agreement were incompatible with the right to respect of private life (Article 7) and protection of personal data (Article 8). The Court expressed concerns as to the proportionality, clarity and precision of the rules set out in the agreement and the lack of justification for the transfer, processing and retention of sensitive data. The Commission is carefully assessing the most appropriate way to address the concerns raised by the Court, to ensure the security of EU citizens in full respect of fundamental rights, in particular the right to data protection[44].

In the Asha Muammer Mohamed El-Qaddafi v Council case[45], the General Court annulled the Council Decision[46] and concluded that the court’s ruling is so far as it maintained the name of Ms Muammer Mohamed El-Qaddafi on the list of people to whom restrictive measures applied in view of the

2.3. Raising awareness of the Charter

To fully enjoy their fundamental rights, people need to know what these are and who to turn to in the event of violations. As follow-up to the Commission’s 2016 Charter Report, the Council adopted conclusions on 12 October 2017[47] in which it underlined the need to increase awareness of the Charter and of digital tools such as e-Justice. The Commission improved the e-Justice Portal in 2017[48]. It will include a section on fundamental rights with user-friendly checklists and guidance on the Charter and its scope of application.

The Commission also continued to support training for legal professionals on the application of the Charter under the Justice Programme[49].

2.4. Court of Justice scrutiny of EU institutions

In its Opinion 1/15 on the Draft agreement between Canada and the European Union on the transfer of passenger name record data from the European Union to Canada, adopted on 26 July 2017, the CJEU found that several provisions of the proposed agreement were incompatible with the right to respect of private life (Article 7) and protection of personal data (Article 8). The Court expressed concerns as to the proportionality, clarity and precision of the rules set out in the agreement and the lack of justification for the transfer, processing and retention of sensitive data. The Commission is carefully assessing the most appropriate way to address the concerns raised by the Court, to ensure the security of EU citizens in full respect of fundamental rights, in particular the right to data protection[44].

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situations in Libya(50). The measures related to the ban on entry and transit on Libyan territory and provided that funds and financial assets owned or controlled by the people listed are to be frozen. The General Court ruled that it was not possible to conclude from the statement of reasons for the measures why the original grounds for having the applicant's name on the list remained relevant despite the evolution of the situation in Libya. Therefore, it found that the Council infringed its obligation to state the actual and specific reasons for maintaining such restrictive measures - a corollary to the respect for the applicant's right of defence, which also derives from Articles 41, 47 and 48(2) of the Charter.

3. Charter application in and by Member States

3.1. Developments in fundamental rights and the rule of law

In 2017, the Commission issued a reasoned opinion on the application by Hungary of EU asylum and migration law interpreted in light of several Charter provisions, including the right to asylum, the right to liberty and security, and the right to an effective remedy(51). It also referred to the CJEU three cases that raised issues on the respect of fundamental rights under the Charter. The first concerned the compatibility of reporting and transparency obligations for foreign-funded civil society organisations with the right to freedom of association, the right to respect for private life and the right to the protection of personal data(52). The second case touched upon the right of academic freedom, the right to education and the freedom to conduct a business, in relation to rules affecting higher education institutions to provide services and establish themselves anywhere in the EU and to the EU's legal obligations under international trade law(53). The third case concerned the compatibility of national rules governing the prolongation of derogations for public health reasons in particular with the obligation for Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law as provided by Article 19(1) of the Treaty on an EU(54). Both cases concerned the prohibition of wearing the Islamic headscarf in the private workplace. In the Achbita case, the Court held that an internal policy relating to the visible wearing of any political, philosophical or religious signs should be assessed having regard to the employer's freedom to conduct a business. Accordingly, a policy of political, philosophical and religious neutrality must constitute a legitimate objective that justifies different treatment, if the means of achieving the aim are appropriate and necessary, in line with relevant case law of the European Court of Human Rights(55). In the Bougnaoui case, the Court further clarified that, in the absence of such a policy, the willingness of an employer to take account of a customer's wish to no longer benefit from the employer's services provided by a worker wearing an Islamic headscarf may not be considered a genuine and determining occupational requirement that could rule out discrimination under the Employment Equality Directive (2000/78/EC).

3.2. Court of Justice guidance to Member States

In the Achbita(56) and Bougnaoui(57) cases, the CJEU clarified the interpretation of provisions under the Employment Equality Directive (2000/78/EC) in the light of the balance to be struck between the freedom of religion or belief (Article 10), the freedom to conduct a business (Article 16), and the principle of non-discrimination (Article 21). Both cases concerned the prohibition of wearing the Islamic headscarf in the private workplace. In the Achbita case, the Court held that an internal policy relating to the visible wearing of any political, philosophical, religious or religious signs should be assessed having regard to the employer's freedom to conduct a business. Accordingly, a policy of political, philosophical and religious neutrality must constitute a legitimate objective that justifies different treatment, if the means of achieving the aim are appropriate and necessary, in line with relevant case law of the European Court of Human Rights(55). In the Bougnaoui case, the Court further clarified that, in the absence of such a policy, the willingness of an employer to take account of a customer's wish to no longer benefit from the employer's services provided by a worker wearing an Islamic headscarf may not be considered a genuine and determining occupational requirement that could rule out discrimination within the meaning of the Employment Equality Directive.


(51) In 2014, the Commission introduced a framework aiming to address 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. Communication entitled A new EU Framework to Strengthen the Rule of Law (COM(2014)618 final).
(55) C-157/15.
(56) C-178/15.
(57) The Court of Justice referred, in particular, to the ECtHR judgment of 15 January 2013 in case 48420/10, 36516/10, 51571/10 et al., Elanda and Others v. the United Kingdom.
In the M.A.S. and M.B. cases(59), the Court provided further clarification on the obligation for national courts to apply national rules on limitation periods if these result in a situation where people charged with serious value added tax (VAT) fraud may escape conviction(60). The Court held that the obligation to combat fraud and any other illegal activities affecting the EU’s financial interests may never run counter to the Charter principle that offences and penalties must be defined by law, which requires that rules of criminal law are precisely determined and cannot be retroactive.

In the Soufiane El Hassani v. Minister Spraw Zagranicznych case(61), the Court held that Article 47 of the Charter (right to an effective remedy) requires the Member States to guarantee, at a certain stage of the proceedings, the possibility to bring the case concerning a final decision refusing a visa before a court.

3.3. National case law quoting the Charter

National judges play a key role in upholding fundamental rights and the rule of law. The EU Agency for Fundamental Rights found that national courts continued referring to the Charter for guidance and inspiration in 2017, even in a substantial number of cases that fell outside the scope of EU law(62).

The Charter for instance served as a parameter for assessing Member States’ legislation implementing EU law in two cases related to data protection. The Finnish Administrative Court assessed the compatibility of the Personal Data Act of 1999 with the Charter in a case concerning the storage of fingerprint data in the passport register. It found that it the restrictions of the right to respect for private life and to protection of personal data are precise and defined in sufficient detail and therefore not contrary to the Charter(63). The Higher Administrative Court in Germany assessed the compatibility of the German Telecommunication Act, implementing the e-Privacy Directive 2002/58/EC, with the Charter. The Court found that the limitation of the freedom to conduct a business (Article 16) was unjustified and hence incompatible with the Charter(64).

Outside the scope of the application of EU law, the courts used the Charter to strengthen the protection provided by national constitutions. In particular, the Constitutional Court of Croatia, in a case concerning the violation of the right to dignity (Article 1) of a twelve-year-old boy due to a body check performed by a security guard, clarified that by joining the European Union, the Republic of Croatia accepted the contents of the Charter, including chapter I on Dignity. Human dignity therefore became a component of the human rights catalogue of the Croatian Constitution(65). In Bulgaria, the Constitutional Court referred to the Charter in the context of a constitutional review of a provision in the Judiciary Act, which prohibits judges and prosecutors from resigning when a disciplinary proceeding is still pending. The Court concluded that the provision violated the Bulgarian Constitution, and also referred to Article 15 of the Charter on the right to engage in work ‘in accordance to which everyone has the right to engage in work and to pursue a freely chosen or accepted occupation’(66).

4. Focus section: 2017 Annual Colloquium on Fundamental Rights “Women’s rights under attack”

The Annual Colloquium is a unique space for dialogue between policy makers and civil society, aiming to strengthen cooperation and engagement for the protection and promotion of fundamental rights in the EU. The third Annual Colloquium held on 20–21 November 2017 explored the topic of women’s rights in turbulent times(67).

Participants discussed the risk of normalising misogyny in society and its impact on women’s fundamental rights in all spheres of life. They underlined that, although threats to women’s rights and to gender equality have been very visible in public discourse recently, so have responses (e.g. Women’s Marches and the #metoo movement online). The role of grassroots actors in defending women’s rights and the role of men in the women’s rights movement were also stressed.

A second area of discussion was the key obstacles to gender equality in economic empowerment and political participation. Participants highlighted the fact that gender stereotypes must be tackled from an early age to effectively address women’s underrepresentation in work, decision-making and politics. National and European political parties were asked to commit to consistently include women on party lists, for example through greater transparency in candidate selection and women’s caucuses. Participants also called for more pay transparency and for horizontal and vertical labour market segregation to be addressed.

Participants also considered the ‘culture of violence’ in society and the links between violence against women and other forms of violence, including in the context of populist and extremist movements. They emphasised the need to shift the fear and shame away from victims of violence.

(59) C-403/16.
(60) See judgment in Case C-105/14, Taricco.
(61) C-405/16.
(63) Finland, Supreme Administrative Court, case 3872/2017, 15 August 2017.
(64) Germany, Higher Administrative Court North Rhine-Westphalia, case 1 S 236/17, 22 June 2017.
(65) Bulgaria, Constitutional Court, case C-42/17.
(66) Available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=125277.
(68) Bulgaria, Constitutional Court, case C-106/2016, 1 January 2017.
(69) Available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=115277.
gender-based violence to perpetrators, and to bring about a cultural change, so that violence and harassment would be considered unacceptable.

The EU’s accession to the Council of Europe’s Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) was seen as a strong signal. Work is now being carried out to ensure swift EU ratification. By the end of 2017, all EU Member States had signed the Istanbul Convention and 17 Member States had ratified it.

Throughout the sessions, participants emphasised that different grounds for discrimination (such as gender, race, immigration status and disability) intersect, which should be considered by policy makers. The debate was informed by the results of a special Eurobarometer survey on gender equality.

Colloquium conclusions were published on 8 March 2018. The Commission committed to a number of actions ranging from putting women’s rights and gender equality on the agenda at the highest political level, for instance during every meeting of the Commission’s Project Team on Sustainable Development, to funding grassroots projects under the Rights, Equality and Citizenship programme.

5. Conclusion

This year, marking the 70th Anniversary of the UN Universal Declaration on Human Rights, the Commission will pursue efforts to protect and promote fundamental rights. It is determined, including in the context of the future financial framework for the Union, to further support common values.

It will focus its 2018 Fundamental Rights Colloquium on “Democracy”, an opportunity to reaffirm one of the EU’s key values in the run-up to the European elections. A broad participation and representation, sound and transparent information, including in the digital world, and a free and vibrant civil society are the key ingredients for inclusive and healthy democratic societies. These questions will be at the heart of the colloquium discussions.

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(67) Available at: https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000156008462e.
(68) BE, DK, DE, ES, FR, IT, CY, NL, AT, PT, RO, SI, FI, SE.
(69) Available at: http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetailTypeInstruments/SPECIAL/surveyKy/2154.

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Staff working document on the application of the EU Charter of Fundamental Rights in 2017
Introduction

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

This Staff Working Document accompanying the report for 2017, informs the public about situations in which they can rely on the Charter and on the role of the EU in fundamental rights. In covering all of the Charter provisions, the Commission’s annual reports aim to track where progress is being made, where further efforts are still needed and where new concerns are arising.

The Staff Working Document includes action taken by the EU institutions and analysis of letters and petitions from the public and questions from the European Parliament. In addition, it covers major developments on the jurisprudence of the Court of Justice of the European Union (‘the 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 EU, 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 depends on the situation in question. For example, a connecting factor exists where:

1. national legislation transposes an EU directive;
2. a public authority applies EU law; or
3. 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 neither a judicial body nor a court of appeal against the decisions of national courts. It does not as a matter of principle, examine the merits of an individual case, unless this is relevant to its role of ensuring that the Member States apply EU law correctly. In particular, if it detects a wider, e.g. structural, problem, it can first approach the national authorities in order to have them address the issue, or if it may start an infringement procedure and ultimately take a Member State before 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 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 that 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 fundamental rights obligations are respected. Member States have extensive national rules on fundamental rights, which are upheld by national, including in many Member States, constitutional courts. Accordingly, any 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:

1. have recourse to national remedies; and (after having exhausted them)
2. bring an application before the European Court of Human Rights (ECtHR) in Strasbourg for a violation of a right guaranteed by the Convention.
All Member States are bound by the commitments they have made under the Convention, independently of their obligations under EU law. The ECtHR has designed an admissibility checklist to help potential applicants assess for themselves whether there may be obstacles to it examining their applications. The interpretation of the rights laid down in the Charter which reflect the rights guaranteed by the Convention must correspond to the interpretation of the Convention by the ECtHR.

EU accession to the European Convention of Human Rights

The Treaty of Lisbon requires that the EU accede to the Convention. EU accession to the Convention remains a priority for the Commission. Accession 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, that 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. In its capacity as EU negotiator, the Commission continues to consult with the relevant Council working party on solutions to address the objections raised by the Court and is making good progress.

Overview of letters and questions to the Commission on fundamental rights

In 2017, the Commission received 1,935 letters from the public and 781 questions from the European Parliament on fundamental rights issues. Of the 411 petitions it received from the European Parliament, 61 concerned fundamental rights. Among the letters from the public, 781 concerned issues within EU competence.

Source: European Commission

Letters

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 the national data protection authorities).

Among the 61 petitions on fundamental rights, 30 concerned issues within EU competence. In a number of cases, the Commission contacted the Member States to obtain clarification on alleged violations. The Commission’s 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 increased from 43 in 2011 to 87 in 2012 and further to 113 in 2013 to 210 in 2014. Following a decrease to 167 in 2015, the number increased again to 221 in 2016, only to then fall slightly to 195 in 2017. Overall this reflects a tendency by the EU courts to quote the Charter in their decisions (see Appendix I for an overview of all relevant rulings).

When addressing questions to the CJEU (requests for preliminary rulings), national courts often refer to the Charter. Of those requests submitted by judges in 2017, 44 contained a reference to the Charter, as compared to 60 in 2016 (See Appendix II for an overview).
References to Charter rights in CJEU and national court decisions

Articles of the Charter referred to prominently in cases before the EU courts were those on the right to an effective remedy, the right to good administration, non-discrimination and the right to property.

Note: The basis for this pie chart is the case law referred to in Appendix I. The total number of judgments analysed was 195 and several of them mentioned more than one article of the Charter. For the purpose of the pie chart, for each judgment one most relevant article was chosen, and percentages were calculated on that basis. The category ‘Other rights’ refers to all rights for which the percentage amounts to less than 5%, i.e. fewer than 10 references.

On decisions by national courts in 2017, 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).
Overview of enquiries with the Europe Direct Contact Centres

The data collected by the Europe Direct Contact Centres (EDCCs) confirm a high degree of interest among citizens on justice, citizenship and fundamental rights. In 2017, the EDCCs replied to 7,761 enquiries from citizens. Most concerned topics such as the status of family members of EU citizens and their right of residence, protection of consumers economic and legal interests and free movement of persons.

Methodology and structure

The staff working document accompanying 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 2017. Consequently, it refers to the Charter as a legally binding instrument and/or a policy objective, depending on the policy areas concerned. The accounts given in the different chapters of the report vary depending on the progress made in specific policy areas, such as migration, asylum, digital single market, the European Energy Union, and reflect the 10 policy areas identified as priorities by Commission President Juncker in his opening statement to the European Parliament in 2014(7).

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 staff working document (in the margins of the page where relevant) includes national court decisions that refer to the Charter, irrespective of whether EU law is applicable to those national cases.

Some measures and cases may relate to different articles of the Charter. While a measure and/or case are explained in more detail under the heading of one article, it may also be referred to in another.

The structure of the staff working document reflects the six headings of the Charter itself: (i) Dignity, (ii) Freedoms, (iii) Equality, (iv) Solidarity, (v) Citizens’ rights and (vi) Justice. All six chapters contain the following information on the application of the Charter:

- **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 2017 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 2017 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 on infringement procedures launched by the Commission against Member States for failure to correctly implement relevant legislation;
  - questions and petitions from the European Parliament and letters from the public received in 2017 focusing on key fundamental rights issues; and
  - data gathered by the EU Agency for Fundamental Rights in 2017.

### 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**
Dignity

Effective protection of human dignity continues to be a major concern in particular in the area of migration. The Commission closely monitored during 2017 the creation of a complaint mechanism to monitor and ensure respect for fundamental rights in the activities carried out by the European Border and Coast Guard Agency. The Court of Justice of the EU ruled in the case C-578/16 C.K and others on whether a transfer of an asylum seeker to the Member State designated under the Dublin III Regulation as responsible to examine their application should be prevented when there is a risk of inhuman or degrading treatment for the applicant concerned by that transfer.

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, but also part of the essence of all other rights. Therefore it must be respected when any other rights are restricted. All subsequent rights and freedoms on dignity, such as the right to life and the prohibition of torture and slavery, add specific protection against violations of dignity. They must be equally upheld in order to protect other rights and freedoms in the Charter; for example the freedom of expression and the 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

The need to ensure effective protection of human dignity guided the Commission’s negotiations during 2017 on the status agreements with Serbia, Albania and the Former Yugoslav Republic of Macedonia for the deployment of European Border and Coast Guard (EBCG) teams with executive powers onto the territory of those third countries. The draft agreements include an explicit clause for the respect of fundamental rights and freedoms by EBCG teams in the performance of their tasks. This includes human dignity as well as other relevant fundamental rights such as the right to respect for private life and personal data. They also provide for a complaint mechanism to deal with allegations of fundamental rights breaches.

The process of creating a complaint mechanism to monitor and ensure the respect for fundamental rights in the activities carried out by the European Border and Coast Guard Agency was also monitored by the Commission during 2017.

Article 2 — Right to life

According to Article 2 of the Charter everyone has the right to life and no one should be condemned to the death penalty or executed. The European Court of Human Rights has ruled since 1989 that the exposure to the pervasive and growing fear of execution — the so called ‘death row phenomenon’ — was in violation of the European Convention on Human Rights. The ECtHR has also held that the implementation of the death penalty could be considered inhuman and degrading and therefore contrary to Article 3 of the European Convention on Human Rights.

Outside the scope of application of EU law, the Charter was used by national courts to strengthen protection provided by their national Constitutions. In particular, the Constitutional Court of Croatia clarified the implication of their accession to the EU on fundamental rights. In a case concerning the violation of the right to dignity (Article 1) where a twelve year old boy was searched by a security guard under suspicion of theft in a shop, the Constitutional Court went beyond referring to the scope of EU law by affirming that by joining the European Union, the Republic of Croatia has accepted the contents of the Charter, whose Chapter I is titled Dignity [...]. In this way, by committing to the contents of the Charter, human dignity becomes a component of the human rights catalogue of the Croatian Constitution.

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(6) The Agreement with Albania was concluded on 12 February 2018 (http://europa.eu/rapid/press-release_IP-18-742_en.htm) and the following ones are expected to be concluded during 2018.
(7) Those rights are discussed further under Articles 7 and 8.
(10) ECtHR, judgment of 2 March 2010 in case of Al-Saadoon & Mufdhi v. the United Kingdom, application no 61498/08.
Preventing loss of lives is also one of the main challenges of the EU in managing irregular migration.

**Policy**

Continued efforts have been made by the Commission to implement the actions taken under the European Agenda on Migration that was adopted in 2015. The Commission reported regularly on the action being undertaken during 2017(19), including in a mid-term review that was published on 27 September 2017(20). This includes actions taken on the protection of the right to life, in particular, support provided to the Italian and Greek rescue operations as well as the European Border and Coast Guard’s Triton and Poseidon operations and Operation Sophia, which contributed to saving more than 620,000 lives in the Mediterranean Sea. While every life lost remains one too many, an improvement in the situation was reported by the International Organisation for Migration, whose ‘Missing migrants’ project reported 3,116 deaths in the Mediterranean in 2017, the lowest figures for the last two years (compared to 3,785 in 2015 and 5,143 in 2016)(21).

Preventing the loss of lives also continued to be one of the main objectives in the implementation of the EU-Turkey Statement of 18 March 2016(22), which the Commission has been closely monitoring and regularly reporting on(23). This international agreement, as a temporary and extraordinary measure designed to put an end to the unsustainable humanitarian crisis created by the cycle of uncontrolled flows of migrants and to the human suffering exploited by the smugglers led, from the first weeks of its operation, to a sharp decrease of irregular arrivals and the loss of life, while at the same time opening up the legal channel of resettlement for those in need of protection.

The Commission also received a number of complaints alleging that smart metering systems promoted in EU legislation(24) were incompatible with the right to the integrity of the person. The Commission considered that smart metering systems do not present a risk to health linked to exposure to radio frequency electromagnetic radiation. The Commission pointed to evidence showing that low-energy radio frequency waves generated by smart meters (only for short distances and of the order of 20 meters) do not present a risk to human health(25).

The compatibility of the EU-Turkey Statement with fundamental rights, including the right to protection from refoulement(26), was raised before the Court in an action for annulment in case NF, NG and NM v European Council(27). The case was dismissed, however, because the international agreement was concluded by the Member States and not the EU(28).

**Article 3 — Right to the integrity of the person**

The right to physical and mental integrity protects people from infringements by public authorities and requires authorities to promote such protection, e.g. through specific legislation in medicine and biology, in particular the free and informed consent of the person concerned and the prohibition of eugenic practices, on making human body and its parts a source of financial gain and of the reproductive cloning of human beings must be respected.

**Application by Member States**

Issues on the respect and protection by law enforcement authorities of the right to the integrity of the person were the object of a number of parliamentary questions and complaints addressed to the Commission, which drew attention to put an end to the unsustainable humanitarian crisis created by the cycle of uncontrolled flows of migrants and to the human suffering exploited by the smugglers led, from the first weeks of its operation, to a sharp decrease of irregular arrivals and the loss of life, while at the same time opening up the legal channel of resettlement for those in need of protection.

The Commission recalled the obligation upon national authorities to investigate any such instances, in order to ensure respect for fundamental rights as enshrined in national constitu- tions and derive from international human rights instruments to which Member States are par- ties. National authorities are obliged to do this when exercising their exclusive competence to maintain law and order and safeguard internal security in their country in line with applicable national legislation (Article 72 of the Treaty for the Functioning of the European Union (TFEU)). The Commission also received a number of complaints alleging that smart metering systems promoted in EU legislation(29) were incompatible with the right to the integrity of the person.
periods each day to transmit information) would only make minor contributions to the total background radiation level inside a home which is negligible compared with accepted safety limits(24). The Commission also recalled that smart meter systems remain subject to strict national and EU product safety legislation, which require manufacturers to ensure the safety of all products they place on the market.

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

Article 4 of the Charter prohibits torture and inhuman or degrading treatment or punishment. Complying with Article 4 requires authorities to be particularly vigilant where border controls, immigration and asylum is concerned.

Policy

The Commission monitored and took stock during 2017 of the progress achieved and the work that still needed to be done to ensure that a fully operational and equipped European Border and Coast Guard Agency is in place. The Commission published five reports on the workings of the Agency(21), focusing on five main priority areas, including creating the complaint mechanism and ensuring the respect for fundamental rights in the activities carried out by the Agency(22).

Case Law

Of particular relevance is the ruling of the CJEU in the case C-96/20, Case law nism and ensuring the respect for fundamental rights in the activities carried out by the Agency(20) and Coast Guard Agency that still needed to be done to ensure that a fully operational and equipped European Border and Coast Guard Agency is in place. The Court held that Article 4 of the Charter must be interpreted as meaning that even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum lodged in one of the Member States by a third-country national or a stateless person, Member States and other stakeholders, adopted on 4 December 2017 a Communication on Reporting the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions(26). The priorities of the strategy are:

- to disrupt the business model and untangle the trafficking chain;

According to the Court, a transfer of an asylum seeker who has a serious mental or physical illness would constitute inhuman and degrading treatment if the transfer would result in a real and proven risk of significant and permanent deterioration in the state of their health. In such situation, the authorities of the transferring Member State, and if necessary its courts, need to take all the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If those precautions are not sufficient, the authorities of the Member States concerned should suspend the execution of the transfer of that person until their condition improves.

The Court further clarified that where the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of that person, the requesting Member State may conduct its own examination of that person's application by invoking the 'discretionary clause' laid down in Article 17(1) of the Dublin III Regulation.

Article 5 — Prohibition of slavery and forced labour


Policy

The Commission, responding to calls by civil society, the European Parliament, the Council, Member States and other stakeholders, adopted on 4 December 2017 a Communication on 'Reporting the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions’(26). The priorities of the strategy are:

- to disrupt the business model and untangle the trafficking chain;
to provide better access to and fulfill the rights for victims, and
to bolster a coordinated and consolidated response, both within and outside the EU.

In addition, collecting information and improving understanding of this complex issue needs to continue, as well as providing appropriate funding in support of anti-trafficking initiatives and projects. The Communication supports the implementation of the Anti-trafficking Directive and its integrated, holistic, human rights-based, gender specific and child sensitive approach in addressing trafficking in human beings.

The Communication was presented on 5 December 2017 to the Joint Session gathering the repre-
sentatives of the EU Network of National Rapporteurs or equivalent mechanisms and the EU Civil Society Platform against trafficking in human beings, organised with the Estonian Presidency (of the Council(31,32). The Commission has encouraged making use of the EU Civil Society Platform, which would enable better engagement with the Commission and exchange information on actions against trafficking in human beings(32).

On 17 January 2017 the final evaluation report on the Implementation of the Eurojust Action Plan against trafficking in human beings 2012-2016(33) was published. Following Europol’s Serious and Organised Crime Threat Assessment in the EU(34), the Council decided to continue the EU policy cycle for organised and serious international crime in 2018-2021(35), which iden-
tifies trafficking in human beings as a priority.

The Commission published in 2017 an overview on EU anti-trafficking actions for 2012-2016(36). On 18 October 2017, the EU Anti-trafficking day, European Commissioner Avramopoulos in charge of migration, home affairs and citizenship, called for stronger action to fight trafficking in human beings(37). The day was preceded by an exhibition as part of a campaign ‘Hear their voices. Act to protect’, at the European Economic and Social Committee in cooperation with the Civil Society Platform against trafficking in human beings, organised with the Estonian Presidency (of the Council(31,32). The Platform brings together around a hundred civil society organisations including human rights organisations, migrant organisations and those working on the rights of women and children from EU Member States and non-EU countries.

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In late 2015 and 2016 several reports emerged on cases of alleged abuses and forced labour of migrant fishers in the EU fishing industry. Following these reports various measures were adopted by the Member State concerned to rectify the situation, including the creation of a ded-
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sible in order to ensure compliance with applicable EU law, in particular, rules on trafficking in human beings and labour exploitation and continues to do so.

Application by Member States

In the context of the EU cohesion policy, a Member State was contacted by a Commission department on a possible violation of the prohibition of slavery and forced labour in a project co-financed by the European Structural and Investment Funds (ESI). National authorities were requested to investigate the alleged employment of forced workers from North Korea after sev-
eral companies, including those that had received co-financing from ESI Funds, were accused by the press of forcibly employing workers of North Korean origin. During 2017 national authorities provided information to the Commission according to which there had been no identified breach of EU labour law and the Charter in that case. That said, the National Labour Inspectorate was also conducting further checks on other companies that were beneficiaries of ESI funds.

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Letters

Source: European Commission

Questions

Source: European Commission

Petitions

Source: European Commission

Human dignity 2.7%

Right to life 3.3%

Right to the integrity of the person 0.5%

Prohibition of torture 0.5%

Prohibition of slavery and forced labour 0.0%

Justice 7%

Citizens' rights 15%

Other 7%

Dignity 7%

Freedoms 27%

Solidarity 6%

Equality 31%

Source: European Commission

Human dignity 0.8%

Right to life 0.13%

Right to the integrity of the person 0.0%

Prohibition of torture and inhuman or degrading treatment or punishment 0.0%

Prohibition of slavery and forced labour 0.0%

Justice 8%

Citizens' rights 30%

Solidarity 10%

Equality 2.1%

Freedoms 18%

Source: European Commission

Dignity 3%

Right to the integrity of the person 1.5%

Human Dignity 1.5%

Petitions

Source: European Commission

Letters

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
Following the adoption of the EU-US Privacy Shield Adequacy Decision in July 2016, the Commission conducted the first annual review of its application in 2017. The outcome of the review is contained in a Report to the European Parliament and the Council on the first annual review of the functioning of the EU-US Privacy Shield, which also proposes a number of specific recommendations to the U.S. authorities.

The proposal for a Regulation on a framework for the free flow of non-personal data in the EU, adopted by the Commission on 13 September 2017 aims at contributing to eliminating and preventing unjustified or disproportionate barriers to using and providing data services (such as cloud services and configuring in-house IT systems).

The Security of Gas Supply Regulation adopted on 25 October 2017 introduced for the first time a solidarity mechanism between Member States. This mechanism is designed to address extreme situations in which gas supply, as priority basic need, is at stake in a Member State.

The Commission adopted a Communication on Tackling Illegal Content Online on 28 September 2017. The Communication states that the fight against illegal content online must be carried out with proper and robust safeguards to ensure protection of the different fundamental rights at stake. In the last quarter of 2017, the Commission launched its initiative on fake news and the spread of disinformation online, as called for in a 15 June 2017 Resolution of the European Parliament and announced by President Juncker in his 13 September 2017 State of the Union address.

Policy and legislative developments were registered in 2017 in asylum and migration, including in the context of negotiations on the reform of the Common European Asylum System as well as the progress made in relocation and resettlement policy. The Court issued several judgments providing guidance to the Member States on the validity and interpretation of the EU asylum and migration acquis, in particular in detaining migrants.

Issues related to the respect of the right to freedom of association were also raised in 2017 including developments at national level touching on the role and functioning of civil society organisations.

Article 6 — Right to liberty and security

The rights of all to liberty and security correspond to those guaranteed in Article 5 of the Convention. They mean that a person’s liberty can be limited only under strict legal conditions.

Case Law

The CJEU issued a number of judgments on the detention of migrants. In K(36) the Court considered the right to liberty versus the administrative detention of an asylum seeker provided under the Reception Conditions Directive(37).

The question asked by the referring Dutch court concerned the detention of an asylum seeker in order to determine their identity or nationality, or in order to determine those elements on which the application for international protection is based and which could not be obtained in the absence of detention, in particular when there is a risk of abscondment(38).

The Court analysed the relevant provisions in light of the standards set in Article 6 of the Charter and in conjunction with Article 52(1) and (3)(39). It found no elements that would affect the validity of the relevant provisions of the Directive. According to the Court, these provisions struck a fair balance between the asylum seeker’s right to liberty and, the requirements on the identification of that asylum seeker or of their nationality, or to determine the elements on which their application is based.

According to the Court, the administrative detention of an asylum seeker based on these grounds serves to allow the assessment of whether the asylum seeker satisfies the conditions to qualify for such protection, which is necessary for the proper functioning of the Common European Asylum System – an objective of general interest recognised by the EU. At the same time, the Court stressed that all the conditions for applying such a measure and the guarantees set out in Articles 8 and 9 of the Directive must be respected and that national authorities must always determine, on a case-by-case basis, whether detention measures are proportionate to the aims pursued. This implies that administrative detention is used only as a last resort and for as short a period as possible.

In K(36) the Court clarified the relevant provisions of the Dublin II Regulation(40) on the maximum periods of detention pending the transfer of an asylum seeker. The Court held that

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(36) Judgment of 14 September 2017 in case C-16/16, K v Staatssecretaris van Veiligheid en Justitie.
(38) Articles 8(3)(a) and (b) of the Reception Conditions Directive.
(39) Permissible limitations on Charter rights.
(40) Judgment of 15 September 2017 in case C-533/16, Mohammad Khir Amayry v Migrationsverket.
(41) See further under Article 4.
national legislation may provide for detention of an asylum seeker for international protection for no longer than two months when the requested Member State has accepted to take charge of the request. In that situation, the duration of the detention must not go beyond what is necessary for the purposes of that transfer procedure. This is to be assessed on a case-by-case basis. Where applicable, the duration of the detention must not longer than six weeks from the date when the appeal or review ceases to have suspensive effect.

In Al Chodor(42), on the detention of an asylum seeker at significant risk of absconding under the Dublin III Regulation, the Court clarified that the objective criteria according to which a person subject to a Dublin transfer procedure is deemed to be at risk of absconding must be defined by the provisions of a binding act of general application. According to the Court, case law of competent courts and established administrative practice of the border police are not sufficient, and in the absence of such a definition ‘by law’ of such criteria, detention is to be regarded as unlawful.

Article 7 — Respect for private and family life

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

The right to private life includes the protection of privacy in relation to personal information. 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.

Legislation

On 12 December 2017, the Commission adopted legislative proposals(43) establishing a framework for interoperability between EU information systems, as a further step to improve information exchange to improve external border control and to enhance internal security in full compliance with fundamental rights. Interoperability has the potential of having an indirect positive impact on the right to private life, and in particular to the right of one's identity, as it can help to avoid incorrect identifications. Given the personal data involved, interoperability will have an impact on the right to the protection of personal data, which is closely linked to respect for private and family life enshrined by Article 7 of the Charter(44). The Commission will evaluate the instruments, including assessing the results against the objectives and their impact on fundamental rights.

Case law

In Chaveri Vohori(45) the CJEU further clarified its jurisprudence in the Zambrano(46) case. The case concerned the conditions linked to the right of residence in the EU of a non-EU national parent whose child is an EU citizen in a situation in which the child would otherwise be compelled to leave the EU and therefore be deprived of benefiting from the rights of EU citizenship.

The judgment explained the assessment that needs to be carried out to determine whether the child would be compelled to leave the EU and the factors that need to be taken into consideration in that assessment:

• which parent is the primary carer of the child,
• whether there is a relationship of dependency between the child and the non-EU national parent taking into account the age, and physical and emotional development of the child,
• the extent of the child’s emotional ties to each parent, and
• the risks that separation from the non-EU national parent might entail for the child’s equilibrium.

The Court stated that, as part of that assessment, competent authorities must take account of the right to respect for family life and the best interests of the child (Article 7 read in conjunction with Article 24(2) of the Charter).

Article 8 — Protection of personal data

The fundamental right of all to the protection of personal data is explicitly stated in Article 8 of the Charter and also enshrined in Article 16 of the Treaty on the Functioning of the EU (‘TFEU’). According to this right, personal 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.

The data protection reform package — which entered into force in May 2016 and will apply from May 2018 — will ensure that the rights of data subjects can be effectively protected in times of rapid technological developments.

(42) Judgment of 10 May 2017 in case C-7/15, H.C. Chavez Vohori v Raad van bestuur van de Sociale verzekeringsbank en Others, see section below on Article 49.
(43) Judgment of 12 October 2017 in case C-595/16, R.C.H. Chavez Vohori and Others v. Raad van bestuur van de Sociale verzekeringsbank en Others, see section below on Article 49.
(44) See further under Article 8 below.
(45) Judgment of 10 May 2017 in case C-133/15, H.C. Chavez Vohori and Others v. Raad van bestuur van de Sociale verzekeringsbank en Others, see section below on Article 49.

See further under Article 8 below.
The Commission is also supporting awareness-raising and compliance efforts at the national level by awarding grants that can be used to provide training to data protection authorities, public administrations, legal professions and data protection officers to familiarise them with the GDPR. The Commission also published a restricted call for proposals to support awareness-raising activities carried out by data protection authorities at national level and aimed at individuals and SMEs. The Commission set up a multi-stakeholder group on the GDPR to get the views of businesses and civil society, practitioners and academics on certain issues related to this legislation, in particular on how to achieve an appropriate level of awareness among stakeholders.

Along with the reinforced protection provided by the data protection reform package within the EU, the Commission also aims to ensure a high level of data protection at international level in the context of the global information society. Openness for international data flows and ensuring the highest level of protection for individuals need to go hand in hand to ensure trust.

The Communication on Exchanging and Protecting Personal Data in a Globalised World (21) published in 2016, of its work to set up a new EU body, the European Data Protection Board whose main task will be to ensure the consistent application of the GDPR.

As announced in the letter of intent following President Juncker’s State of the Union speech on 13 September 2017, the Commission prepared guidance to businesses and organisations (particularly targeted towards SMEs) processing personal data (22) and for individuals (23) to explain the new rules that would apply from May 2018. The guidance takes the form of a practical online toolkit and was published on 28 January 2018. It was promoted through an information campaign and dissemination activities in all Member States, targeting businesses and the public.

Over the past year, the Commission organised a number of events to reach out to stakeholders on the GDPR, in instance with representatives of the health sector and of SMEs.

The Article 29 Working Party (26) adopted guidelines for companies and other stakeholders on certain key provisions of the GDPR (27). In collaboration with the Commission, the Working Party also devoted much of its work to setting up a new EU body, the European Data Protection Board whose main task will be to ensure the consistent application of the GDPR.
States laws) between the EU and the US in police or judicial cooperation in criminal matters, entered into force on 1 February 2017(57).

The purpose of these international agreements is to provide a legal basis for the transfer of personal data between the respective competent authorities in the non-EU country, adding adequate safeguards for the protection of privacy and fundamental rights and freedoms of individuals(58).

On 13 September 2017, the Commission adopted a new cybersecurity package(59). Cybersecurity has an essential role in protecting the privacy and personal data of individuals; in case of cyber incidents, the privacy and the protection of our personal data are clearly exposed by the mere consultation to reinforce cybersecurity in the EU, the proposal complements legislation protecting the fundamental right to privacy and personal data.

In migration, the Schengen Borders Code(60) entered into force on 7 April 2017. Member States are obliged to carry out systematic checks against relevant databases on individuals enjoying the right of free movement when they cross the external border. The databases contain data on lost and stolen documents used to check that those individuals do not represent a threat to public order and internal security. Since the consultation of databases functions on a hit/no-hit basis, the mere consultation is neither registered nor further processed, thereby guaranteeing the right to respect private and family life and to the right to the protection of personal data.

On 20 December 2017, the Commission adopted eight Recommendations for a Council Decision authorising the opening of negotiations for agreements between the EU and the People’s Democratic Republic of Algeria, the Arab Republic of Egypt, the States of the Hashemite Kingdom of Jordan, the Lebanese Republic, the Kingdom of Morocco, Tunisia and the Republic of Turkey respectively on the exchange of personal data between the EU Agency for Law Enforcement Cooperation (Europol) and, respectively, the Algerian, Egyptian, Israeli, Jordanian, Lebanese, Moroccan, Tunisian and Turkish competent authorities for fighting serious crime and terrorism. The purpose of these international agreements is to provide a legal basis for the transfer of personal data between Europol and the respective competent authorities in the non-EU countries, adding adequate safeguards for the protection of privacy and fundamental rights and freedoms of individuals.

The previously mentioned(61) Commission proposals to establish a framework for interoperability between EU information systems are based on the principles of data protection by design and by default and include all appropriate provisions limiting data processing to what is necessary for the specific purpose, and granting data access only to those entities that ‘need to know’. Data retention periods are appropriate and limited and access to data is reserved exclusively for authorised staff of the Member State authorities or EU bodies that are competent for the specific purposes of each information system and limited to the extent that the data are required for the performance of tasks for these purposes.

In fisheries, three instruments have been adopted in 2017 in full compliance with the EU rules on the protection of personal data:

1) Implementing Regulation on the Union fishing fleet register(62);
2) Regulation on a Union framework for the collection, management and use of fisheries data(63); and

3) Regulation on the sustainable management of the external fishing fleet(64).

57) Recital 9 of the Recommendation for a Council Decision. The Agreement should respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to private and family life, as recognised in Article 7 of the Charter, the right to protection of personal data, as recognised in Article 8 of the Charter and the right to an effective remedy and a fair trial recognised by Article 47 of the Charter.

58) Article 7

59) Commission Implementing Regulation (EU) 2017/732 of 20 February 2017 on the Union fishing fleet register (OJ L 74, 21.3.2017, p. 1). It sets out obligations for the Commission as regards the Union register, and for Member States as regards the collection and validation of data in their national registers. The maintenance of these registers involves the processing of personal data, in particular data concerning owners and operators of vessels.


All of these instruments require that any data handling must be carried out in line with the EU legislation on the protection of personal data. Furthermore, in all relevant cases appropriate safeguards, such as a higher level of aggregation or anonymisation of data, should be put in place if data includes information relating to identified or identifiable natural persons, taking into consideration the purposes of processing, the nature of the data and the potential risks relating to the processing of personal data. To comply with the relevant EU rules on data protection, these three Regulations require that at all times and at all levels the obligations on personal data protection are respected.

In taxation, a political agreement was reached in the Council on 13 March 2018 to adopt the Commission’s proposal for a Council Directive for mandatory automatic exchange of information on reportable cross-border arrangements (66). The proposal provides that any processing of personal data carried out within the framework of the Directive must comply with the EU data protection legislation and with the principles recognised by the Charter. The proposal is in line with the principle of proportionality with regard to its purpose, in particular since it will be limited to schemes of a cross-border dimension that fulfil certain indications of aggressive tax planning (‘hallmarks’).

Another measure proposed by the Commission that could trigger new exchange and joint processing of existing VAT information, which could include personal data is the proposal for a Council Regulation as regards measures to strengthen administrative cooperation in the field of value added tax (67). Therefore data collection will be strictly targeted and restricted to operators allegedly involved in fraudulent transactions. The data will be stored only for the time needed for analysis and investigations by national tax authorities empowered to enforce VAT obligations. They will be used solely to identify suspected fraudsters at an early stage and to put an end to fraudulent networks whose purpose is to abuse the VAT system by perpetrating VAT fraud. They will be accessed and used only by authorised staff.

**Policy**

The protection of personal data has been central in several policies related to the digital environment.

The commitment of the Commission to guarantee data protection and privacy aspects of the field of value added tax (VAT) obligations. They will be used solely to identify suspected fraudsters at an early stage and to put an end to fraudulent networks whose purpose is to abuse the VAT system by perpetrating VAT fraud. They will be accessed and used only by authorised staff.

The protection of personal data continues in 2017. Since September 2012, the Commission has been working with industry to agree on a code of conduct for cloud service providers to support a uniform application of personal data protection rules. The code would provide users of cloud infrastructure, software or platform services with the assurance that their data are being protected in line with the GDPR (68).

The joint work with industry was carried out in the context of the Cloud Select Industry Group (C-SIG) (69). The C-SIG code has also been used as a model for a more specific code of conduct for cloud infrastructure providers (SCOPE) (70). Since then, the two codes have been discussed with data protection authorities (through the Article 29 Working Party), who made suggestions for improvements. At the C-SIG meeting in February 2017, the code of conduct (69) was handed over to a non-profit organisation (Scope Europe), where the code continues to be further developed and disseminated. SCOPE (Europe) (71) established governance rules and promotes the widespread adoption of the code by cloud service providers. Both codes of conduct need to be further developed and put in line with the feedback of the Article 29 Working Party and to make them fully compliant with GDPR requirements.

In the Internet of things, the recently proposed (cybersecurity Package) (72) mentioned under ‘legislation’ is putting forward the instruments that would enable the development of the internet of things certification and potential labels or marks. Moreover, in January 2017 the Communication on ‘Building a European Data Economy’ (73) assessed whether the current EU legal rules for product liability are fit for purpose, when damage occur in the context of the use of the Internet of things and autonomous systems. In May 2017 the Commission announced in the Digital Single Market mid-term review (74) that it will consider the possible need to adapt the current legal framework to take account of new technological developments, particularly from the angle of civil law liability and taking into account the results of the ongoing evaluation of the Product Liability Directive (75) and the Machinery Directive (76).

Under the Research and Innovation Programme Horizon 2020, several initiatives co-funded by the EU during 2017 are of particular relevance for the rights enshrined in Article 8 (and 7) of the Charter. In particular, six ongoing projects addressing privacy have been funded for a total

(66) The GDPR explicitly recognises and encourages codes of conduct, as they complement the implementation of the law by providing guidance and clarity to providers and users alike
(67) https://ec.europa.eu/cloud-single-market/cloud-select-industry-group-code-conduct
(69) https://issues-cloud.com
(71) https://ec.europa.eu/scopecoe/about-us
(73) https://ec.europa.eu/strategy/content/newbuilding-eu-data_economy.html
(74) https://ec.europa.eu/eurostat/infopages/content/eurostat_annual_database
EU contribution of EUR 19.5 million. They aim at empowering individuals in managing their privacy as a response to the need for privacy in a highly connected world where personal information becomes an increasingly valuable commodity.

To this end, the Privacy Flag (36) and Operando (37) projects are developing tools to enable individuals to check whether their rights as data subjects are being respected, and tools and services to help companies comply with personal data protection requirements.

The project VisiOn (38) will provide clear visualisation of privacy preferences, relevant threats and trust issues along with an insight into the economic value of user data.

The TYPES project (39) will provide tools that should enable the end user to configure the privacy settings so that only the information they consent to is collected by online advertising platforms and to detect information collection occurring without consent and to identify the offender.

The PANORAMIX project (40) will develop a European infrastructure for secure communications with the capability to delete meta-data information while at the same time having suitable accountability features.

And particularly in the context of the cloud, project SafeCloud (41) will ensure that data transmission, storage, and processing can be separated into multiple administrative domains that are unlikely to collide, so that sensitive data can be protected by design.

Under H2020 2020, the Commission called for more proposals addressing privacy and the protection of personal data (42), with a total estimated EU contribution of additional EUR 19.6 million. The new projects from this 2017 call are expected to start by April 2018.

Case-law

In the case of Mr Manni (43), the CJEU provided an important interpretation of the storage limitation principle (Article 6(1)(e) of the Directive 95/46/EC, also referred to in Article 5(1)(e) of the GDPR). According to this principle, personal data must be kept ‘(…) no longer than is necessary for the purposes for which the data were collected or for which they are further processed’. In this case, an individual brought an action before the Italian court seeking to erase, anonymise or block the personal data processed by a rating company linking him to the liquidation of a company. Mr Manni also requested the court grant him compensation for the damage he had suffered.

The Court considered that there is no ‘right to be forgotten’ for personal data in company registers. However, in exceptional cases, Member States may grant restricted access to such data by third parties once a sufficiently long period has passed following the dissolution of the company concerned. According to the Court, the mere fact that the properties did not sell because potential buyers had access to the personal data of Mr Manni held in the companies register could not justify a limitation of access by third parties to that data, given the legitimate interest of those buyers in obtaining that data.

Another important interpretation of the data protection legislation was provided by the CJEU following a preliminary ruling in the Novak case (44). The preliminary question related to the possibility to request access to exam papers based on the data protection legislation. The Court ruled that the written answers submitted by an exam candidate and any written comments made by an examiner constitute personal data, within the meaning of the data protection legislation. Therefore, the rights of data subjects, such as the right of access can be exercised in such cases.

In Tel2 (Netherlands) BV (45), the Court ruled that telephone subscriber’s consent to the publication of their personal data also covers its use in another EU Member State, since the highly harmonised EU regulatory framework makes it possible to ensure the same level of protection for subscribers’ personal data.

In its Opinion 1/15 of 26 July 2017, the Court concluded that the envisaged agreement between the EU and Canada on the transfer of passenger name record data (PNR) may not be concluded in its current form. While the Court stated that the systematic transfer, retention and use of all air passenger data may be justified to ensure public security in the context of the fight against terrorism offences and serious cross-border crime as an objective of general interest.

The Court also found that several provisions of the envisaged agreement were not in line with the fundamental rights to privacy and to personal data protection enshrined in the Charter, in particular in terms of their proportionality and the clarity and precision of the rules laid down and due to the lack of justification for the transfer, processing and retention of sensitive data. The Opinion also sets out detailed conditions which, if adequately fulfilled, would make the agreement compatible with the fundamental rights recognised by the EU. In particular, the Court considered that the agreement should exclude the transfer of sensitive data from the EU to Canada and the use and retention of that data. Moreover, the retention of PNR data after the air

(36) http://privacyflag.eu/
(37) https://www.operando.eu/
(38) http://www.vision-project.eu/
(39) http://www.types-project.eu/
(40) http://www.safecloud-project.eu/
(41) http://www.safecloud-project.eu/
(45) Judgment of 20 December 2017 in case C-434/16, Peter Nowak v Data Protection Commissioner.
passengers’ departure needs to be justified by the evidence of risks affecting public safety. It also makes the disclosure of data to non-EU authorities conditional to specific conditions. Finally, the oversight of the rules concerning the protection of air passengers’ personal data by an independent supervisory authority has to be guaranteed. The Commission will resume negotiations with Canada in accordance with a new mandate to meet the Court’s requirements.

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

Article 9 of the Charter is based on Article 12 of the European Convention on Human Rights, which states that:

‘Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercise 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 Convention, but its scope may be wider when national legislation allows.

Case law

An interesting reference for a preliminary ruling was submitted by the Constitutional Court of Romania to the CJEU on the free movement of persons (90). The question raised the issue of whether the same-sex spouse of an EU citizen having exercised his freedom of movement, must be granted a right of permanent residence as the ‘spouse’ of that EU citizen in a Member State which does not recognise same-sex marriage. Following the hearing in November 2017, the Advocate-General delivered his Opinion on 11 January 2018, where he clarified that the legal issue at the centre of the dispute is not that of the legalisation of same-sex marriage, but that of the free movement of EU citizens: while Member States are free to allow marriage between people of the same sex in their domestic legal system or not, they must fulfil their obligations under the freedom of movement of EU citizens.

The right guaranteed in Article 10 (1) of the Charter corresponds to the right guaranteed in Article 9 (2) of the European Convention on Human Rights, concerning the freedom of persons to manifest their religious beliefs in public, explicitly referring to the freedom of conscience and religion.

Article 10 — Freedom of thought, conscience and religion

The right to manifest 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. Article 10 (2) recognises the right to conscientious objection, in line with national laws.

Case law

In 2017 the CJEU issued two important judgments in the area of non-discrimination on the grounds of religion in employment, regarding two cases where Muslim women were dismissed by their employers because of their wish to wear an Islamic headscarf at work (91). In Achbita (92) and Bougnaoui (93) the Court clarified for the first time the interpretation of the relevant provisions of the Employment Equality Directive (94). It interpreted the notion of ‘religion’ covering also the freedom of persons to manifest their religious beliefs in public, explicitly referring to the Convention (Article 9) and the Charter (Article 10 (1)). The Court recognised that, under specific conditions, an internal rule of a private undertaking which prohibits the visible wearing of any political, philosophical or religious sign can be compatible with EU law.

Parliamentary questions

In 2017, several questions were raised by the Members of the European Parliament on the safety of Jews in Europe and what action the Commission was taking to combat antisemitism.

The Commission replied that it has boosted the political will to fight antisemitism through different means. A coordinator to combat antisemitism was appointed in 2015 to liaise with Member States and civil society and funding was made available to support civil society and Member States. In particular, funding has been provided for projects to increase awareness about our common history, particularly the Holocaust remembrance. The Fundamental Rights Agency also provides data and assists EU institutions and national governments in taking the necessary measures to ensure that the rights of Jews are fully respected and protected across the EU.

(90) Decision of 15 August 2017 by the Supreme Administrative Court of Finland; no 5872/2017.
(91) Germany, Higher Administrative Court North Rhine-Westphalia; case 13 B 238/17, 22 June 2017.
The right to freedom of expression is guaranteed by Article 11(1) of the Charter and includes the right to freedom to hold opinions and to receive and share information and ideas without interference by public authorities and regardless of frontiers. Article 11(2) ensures respect for freedom and must be fully respected.

Data gathered by the EU Agency for Fundamental Rights (FRA) in 2017 the Agency published the second report on EU Minorities and Discrimination Survey (EU-MIDIS II) Muslims). The report is based on data collected from a survey of around 26,000 people with immigrant or ethnic minority backgrounds living in the EU. It examines the experiences of more than 10,500 people surveyed who identified as Muslims in 15 EU Member States. In addition to discrimination— including police stops based on ethnic background — it explores issues ranging from citizenship, trust and tolerance, harassment, violence and hate crime, to rights awareness. It provides a unique insight into the experiences and perceptions of the EU’s second-largest religious group, representing about 4% of the EU’s total population. Through the survey findings and the recommendations can provide a good basis to support the effectiveness of a wide range of measures in integration and non-discrimination, as well as internal security policy.

Article 11 — Freedom of expression and information

The freedom to hold opinions and to receive and share information and ideas without interference by public authorities and regardless of frontiers. 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 ensuring this right is inspired by the case law of the European Court of Human Rights.

Legislation

Negotiations continued in the Council and the European Parliament during 2017 on the Commission legislative proposal amending the Audiovisual Media Services Directive (98) which aims at strengthening the provisions on independence of regulators and reinforces the role of the European Regulators Group for Audiovisual Media Services.
European Parliament(10) and announced by Commission President Juncker in his 13 September 2017 State of the Union letter(11). The Commission has carried out several multi-stakeholder consultations in support of the initiative including a multi-stakeholder conference and a Member States workshop aimed at obtaining input from the competent national authorities as well as the private-sector, including online platforms, media outlets, academics and civil society organisations. The initiative was also discussed in the Media Literacy Expert Group in its meeting on 14 December 2017(12). Views from other interested parties on the initiative were collected through a public consultation launched on 15 November 2017 and a High Level Expert Group has been convened to advise on policy initiatives(13)(14).

While it is primarily the responsibility of Member States to ensure media freedom and pluralism, the Commission is aware of challenges in the Member States and is taking a number of measures. To this end, the Commission funds — further to the initiative of the European Parliament — a number of independent projects in media freedom and pluralism, including the Index on Censorship, which monitors violations, threats and limitations to media freedom within the Mapping Media Freedom Project(15). Building on the crowd-sourced platform, it provides assistance to journalists and disseminates knowledge about media freedom in Europe.

Another EU-financed project is the Media Pluralism Monitor, which is designed to identify potential risks to media pluralism in Member States. It is run independently by the Centre for Media Pluralism and Media Freedom at the European University Institute. The results of the 2016 Media Pluralism Monitor (published in 2017) show that none of the featured countries are free from risks to media pluralism(16).

Article 12 — Freedom of assembly and of association

The right to freedom of peaceful assembly and to freedom of association at all levels in particular in political, trade union and civic matters is protected in Article 12 of the Charter and corresponds to Article 11 of the European Convention on Human Rights. Its scope, however, is wider since it applies to all European levels. Furthermore unlike Article 11 of the Convention, it specifically mentions the important contribution of political parties to the expressing the political will of the people. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

Application by Member States

Issues related to the respect of the right to freedom of association have been raised during 2017 on the reported pressure facing civil society organisations in a number of Member States, such as funding cuts, burdensome regulatory frameworks and smear campaigns affecting public perceptions on the credibility and legitimacy of civil society organisations(17). Against this background, the Commission has continuously stressed that civil society is the very fabric of democratic societies, empowering and invigorating communities and a prerequisite for healthy democracies and sound policy-making. In this context, the Commission has monitored developments at national level touching upon the role and functions of civil society organisations against Member States’ obligations under the Treaties and the Charter. This led to a decision by the Commission to refer Hungary to the CJEU on 7 December 2017(18) for adopting the law imposing reporting and transparency obligations for foreign-funded civil society organisations which the Commission found to be incompatible with the right to freedom of association, as well as the right to protection for private life and personal data(19), read in conjunction with treaty obligations on the free movement of capital.

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 restrictions of the former are not possible, but that they are only possible under the strict conditions provided in Article 11 of the Charter(20). The right to freedom of education is enshrined in Article 14 of the Charter and is also protected under the Treaty obligations on the free movement of capital(21).

Article 14 — Right to education

The right to education and access to vocational 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 No 1 to the European Convention on Human Rights.

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(10) European Parliament resolution of 15 June 2017 on online platforms and the digital single market (2016/2705(INI)).
(14) The Commission brought forward its Communication on tackling Disinformation on 25 April 2018, where it underlined the respect for the right of freedom of expression under Article 11 of the Charter, which includes the freedom to receive and impart information, as the key consideration in addressing the issue.
(15) https://mappingmediafreedom.org/
(16) http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/
(19) See further under Article 11 and 12.
(20) See further explanations under Article 52.

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In 2017, education remained high on the agenda as a means to combat inequalities and promote our common values based on the Paris Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education, adopted by EU Education Ministers and Commissioner Navracsics on 17 March 2015(118).

Legislation

The proposal for a Directive on copyright in the Digital Single Market and the proposal for a Regulation 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, adopted on 14 September 2016, were discussed with the Council and the European Parliament in 2017(119).

On 30 May, the Commission adopted the proposal for a Regulation of the European Parliament and of the Council laying down the legal framework of the European Solidarity Corps(120), which aims to enhance the engagement of young people (from the age of 17 upwards) and organisations in accessible and high quality solidarity activities as a means to contribute to strengthening cohesion and solidarity in Europe, supporting communities and responding to societal challenges.

On 5 October, the Commission adopted a proposal for a Council Recommendation on the European Framework for Quality and Effective Apprenticeships(121). This initiative is part of the New skills agenda for Europe and ties in with the European pillar of social rights(122), which envisages a right to quality and inclusive education, training and life-long learning. The Commission has identified 14 key criteria that Member States and stakeholders should use to develop quality apprenticeships that are meaningful. This initiative should help increase the employability and personal development of apprentices and contribute towards a highly skilled and qualified workforce responsive to labour market needs.

Policy

On 17 February 2017, the Council adopted conclusions on inclusion in diversity to achieve high quality education for all(123). These conclusions emphasised the need for inclusive high-quality education available and accessible to all learners of all ages, including those facing challenges and regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The conclusions call also on the Commission to build on the work of the Agency in promoting mutual respect, non-discrimination, fundamental freedoms and solidarity throughout the EU.

On 23 May 2017, the Council adopted conclusions on sport as a platform for social inclusion through volunteering(124). These conclusions stress the role volunteering in sport can play to create inclusive communities and to help integrate groups at risk of marginalisation including people with disabilities.

On 14 November 2017 the Commission adopted a Communication on ‘Strengthening European Identity through Education and Culture’(125) as a contribution to the informal EU summit in Gothenburg, Sweden, on 17 November which discussed the future of education and culture. The Commission outlined the potential of education and culture as drivers for job creation, economic growth and social fairness as well as a means to experience European identity in all its diversity. The Communication sets out the vision of a European Education Area, building on the New Skills Agenda for Europe and investing in Europe’s youth initiatives.

On 30 May 2017, the Commission presented its new strategy to support high quality, inclusive and future-oriented school and higher education(126). The initiatives outlined the EU’s support to help Member States and education providers take the steps needed to improve opportunities for all young people in Europe, helping to build fair and resilient societies. In the Communication on school development and excellent teaching for a great start in life(127) the Commission identifies areas where action is urgently needed and how EU support can help EU countries address the current challenges. Based on evidence from Member States, the Communication highlights three priority areas:

1. raising the quality and inclusiveness of schools;
2. supporting excellent teachers and school leaders; and
3. improving the governance of school education systems.

(119) See further under Article 11.
(121) COM(2017) 563 final
(123) COM(2017) 807 final
(124) COM(2017) 673 final
(125) On 23 May 2017, the Council adopted conclusions on sport as a platform for social inclusion through volunteering.
(126) On 14 November 2017 the Commission adopted a Communication on ‘Strengthening European Identity through Education and Culture’.
(127) Communication on school development and excellent teaching for a great start in life.”
The renewed EU agenda for higher education identifies four main goals for higher education in the EU:

1. making sure higher education equips graduates with the right skills for today’s economy;
2. building inclusive higher education systems;
3. bridging the innovation gap between higher education, research and business; and
4. ensuring different parts of higher education systems work together effectively and efficiently.

The Erasmus+ programme (2014-2020) focused on social inclusion of young people and the promotion of fundamental values through the funding of educational and youth activities, such as the European Solidarity Corps. The Erasmus Programme celebrated its 30th anniversary throughout 2017, marked with various events organised across Europe highlighting the substantial impact the Erasmus programme had on young Europeans.

Parliamentary questions

The Commission received a question from a Member of the European Parliament on whether a Spanish law establishing the unavailability of appropriations in the budget of the Autonomous Community of Catalonia for 2017, thus blocking the agriculture and fisheries programmes, is against the exercise of the fundamental right to vocational training in agriculture and fisheries, in accordance with the Charter. The Commission responded on 1 December 2017 by stating that it does not intervene on issues that fall under Member States’ authorities powers at national or regional level.

Application by Member States

The Commission launched an infringement proceeding against Hungary whose rules governing higher education institutions were found to be incompatible with the rights to education, academic freedom (Article 15), and the freedom to conduct a business (Article 16), read in conjunction with the freedom for higher education institutions to provide services and establish themselves anywhere in the EU and with the EU’s legal obligations under international trade law. Following a letter of formal notice and a reasoned opinion, the Commission found that its concerns were not sufficiently addressed and therefore referred the case to the CJEU in December 2017.(124)

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 26 July 2017, the Council agreed on the mandate for negotiations on a draft Directive covering entry and residence conditions for highly skilled non-EU country national workers (EU Blue Card Directive) adopted by the Commission in June 2016.(125) Based on this mandate, the Council Presidency started negotiations with the European Parliament. The Commission’s proposal for reviewing the EU Blue Card Directive aims at making working in the EU more attractive to highly skilled workers from non-EU countries. The proposal also aims to improve possibilities for move between jobs in the same Member State and between Member States. It would replace the existing EU Blue Card Directive, harmonising further conditions of entry and residence and improving the situation of highly skilled workers who come to the EU.

This initiative is consistent with the Charter in particular the right to respect for private and family life(126) — through provisions on family reunification for highly skilled workers — and the right to engage in work and to freely pursue an occupation. It is also consistent with the rights related to working conditions of non-EU nationals and the rights of workers laid down under Articles 27 to 36.

The Commission’s proposal aims at ensuring equal treatment for highly skilled workers on working conditions, access to social security, to education and vocational training as well access to goods and services. Compatibility with the right to an effective remedy and fair trial(127) is ensured as the current provisions in the EU Blue Card on the right to appeal in case the application is rejected, as well as to be notified the grounds for rejection, are maintained.

Article 16 — Freedom to conduct a business

Article 16 of the Charter recognises the freedom to conduct a business in accordance with EU law and national laws and practices. EU measures that could interfere with businesses economic activity are frequently assessed by the courts for their impact on this freedom.

(125) See Article 7.
(126) See Article 7.
(127) See Article 47.
Legislation

On 18 October 2017 the Commission adopted an Interpretative Communication on the acquisition of Farmland and EU law(128) which aims to provide guidance on how land sales markets can be regulated in compliance with EU law. The Communication refers to the possible impact of national legislation on acquiring, using or disposing of agricultural land on the fundamental freedoms protected by the Charter. It refers to the freedom to conduct a business, including the freedom of contract (Article 16), the right to property (Article 17) and the freedom to choose an occupation (Article 15).

The premise of the proposal for a Regulation on a framework for the free flow of non-personal data in the European Union, adopted by the Commission on 15 September 2017, are the free movement principles (freedom of establishment and free movement of services) and respect of fundamental rights and principles as recognised by the Charter. The impact assessment of the proposed Regulation concluded that it would have a positive effect on the freedom to conduct a business (Article 16) because it would contribute to eliminating and preventing unjustified or disproportionate barriers to the use and provision of data services (such as cloud services, as well as configuration of in-house IT systems). The proposed Regulation promotes and respects also the freedom to conduct a business by adopting a self-regulation approach on the issue of facilitating the change of service providers for professionals users.

Case law

In Achbita(129) the CJEU found that in examining the application of an internal rule of a private undertaking relating to the visible wearing of any political, philosophical or religious sign the employer’s freedom to conduct a business must be taken into account and balanced with other fundamental rights, in particular freedom of religion and the principle of non-discrimination. A policy of political, philosophical and religious neutrality may constitute a legitimate objective justifying differentiation of treatment, provided that the means of achieving that aim are appropriate and necessary, in line with relevant case law of the European Court of Human Rights(130). Such policy relates, according to the Court, to the freedom to conduct a business recognised in Article 16 of the Charter.

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

The Security of Gas Supply Regulation(131) introduced in its Article 13, for the first time, a solidarity mechanism between Member States. This mechanism is designed to address extreme situations in which gas supply, as an essential need is at stake in a Member State. The Regulation makes specific reference to the Charter as part of the framework within which Member States must implement the provisions on the solidarity mechanism. The fundamental rights component of the solidarity mechanism falls under the provisions of the Charter on the right to property but also social assistance(132), services of general economic interest(133) and consumer protection(134), as stated in Recital 23 and 45 of the Regulation.

In May 2017, the EU Firearms Directive was adopted(135). The Directive was proposed by the Commission following the terrorist attacks that took place in 2015. These 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 transformed into semi-automatic firearms and semi-automatic weapons fitted with high capacity magazines and loading devices. This measure introduces limitations on the right to property in line with Article 52 of the Charter. In particular, it has introduced stricter derogations for sport shooters and national defence reservists undertaking voluntary military training, as provided under Member State law. Defined group of licence holders — such as museums or collectors — will also be subject to stringent security and monitoring requirements.

The Commission’s proposal for the EU accession to the Geneva Act of the Liston Agreement on Apellations of Origin and Geographical Indications(136) is intended to provide protection of geographical indications for agricultural products, beverages and foodstuffs. Through the system provided for in this revised and modernised Agreement, the scope of its application refers not only to appellation of origin, but also to geographical indications both requiring a qualitative

(129) See Article 58.
(130) See Article 58.
(132) Proposal for a Council Decision authorising the opening of negotiations on the EU’s accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Achbita and Others v. the United Kingdom)
link between the product to which they refer and its place of origin. EU accession to the Lisbon Treaty would protect the intellectual property rights of the geographical indicators products of local farmers and food producers in the global market.

**Policy**

In preparing the Supplemental Memorandum of Understanding for the 2nd review of the Stability Programme for Greece under the European Stability Mechanism, the Commission has sought to ensure that the conditionality in the draft Memorandum of Understanding takes on board the implications of the Court ruling in the Ledra case. The ruling provided that the EU may be held liable for any damages caused by its institutions, if it signs a Memorandum of Understanding with policy conditionality that is not in line with the EU body of legislation and the Charter. In view of this, the Commission has ensured that its proposals, in particular on the Greek pension reform, are consistent with the Charter.

In Ledra, the Court recalled that the EU may incur non-contractual liability only if a number of conditions are fulfilled: namely,

(i) the unlawfulness of the conduct alleged against the EU institution;
(ii) the damage; and
(iii) the existence of a causal link between the conduct of the institution and the damage suffered.

As a result of this judgment, the Commission sought to ensure that the provisions on the reform of the pension system in Greece prepared under the Memorandum of Understanding are consistent with Article 17 of the Charter, which states that everyone has the right to own their law and have their possessions where it would result in a disproportionate reduction in the pension and fail to ensure an adequate standard of living.

**Legislation and policy**

Negotiations between the European Parliament and the Council on the Commission’s proposals for a reform of the Common European Asylum System are ongoing though at different stages of advancement. Good progress has been made on the proposal for a new European Union Agency for Asylum, on which the European Parliament and the Council reached a broad political agreement during 2017. They also started to discuss the proposals for the Eurodac and Asylum Qualification Regulations, the recast Reception Conditions Directive and the Union Resettlement Framework. They also continued to work on the Asylum Procedures Regulation. On the Dublin III Regulation, discussions focused on effective solidarity and are expected to continue at an intense pace. In December 2017, the European Council set a target to reach a position on an overall reform of the Common European Asylum System by June 2018.

On the progress made in relocation and resettlement on which the Commission regularly reported, collective EU resettlement efforts were given a further boost in September 2017 with the Commissioner’s call to Member States to resettle at least 50,000 additional people by the end of 2019. EUR 500 million were made available to assist Member States to resettle refugees from the Stability and Adjustment Programme for Greece under the European Stability Mechanism.

**Article 18 — Right to asylum**

The right to asylum is guaranteed by Article 18 of the Charter. Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection. Granting asylum is an international obligation, first recognised in the 1951 Geneva Convention on the protection of refugees. Since 1999, the EU has been working to create a common policy on asylum, subsidiary protection and temporary protection (the ‘Common European Asylum System’), in line with the Geneva Convention and related instruments, as required by the EU Treaties (Article 78 TFEU).

**Proposal for a Regulation of the European Parliament and of the Council concerning legal pathways for persons in need of international protection**

The Commission presented the Roadmap to a deal by June 2018 on the comprehensive migration package in its Communication ‘Commission contribution to the EU Leaders’ thematic debate on a way forward on the external and internal dimension of migration policy’, on which the Commission regularly reported. Collective EU resettlement efforts were given a further boost in September 2017 with the Commissioner’s call to Member States to resettle at least 50,000 additional people by the end of 2019. EUR 500 million were made available to assist Member States.


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(139) The Court Judgment (Grand Chamber) of 20 September 2016, Ledra Advertising Ltd (C-8/15 P), Andreas Eleftheriou (C-9/15 P), Eleni Eleftheriou (C-9/15 P), Lilia Papachristofi (C-9/15 P), Christos Theophilou (C-10/15 P), Eleni Theophilou (C-10/15 P) v European Commission, European Central Bank (Joined Cases C-8/15 P to C-10/15 P).


(141) See further under Article 4 and 6.


in their efforts. By the end of 2017 this call resulted in over 39 800 new resettlement pledges by 19 Member States. First resettlements under the scheme took place at the end of the year, including via the evacuation transit mechanism, which was launched with the United Nations Refugee Agency (UNHCR) to help the most vulnerable people in need of international protection to be evacuated from Libya to Niger in view of their onward resettlement. As of November 2017, over 52 000 people were also relocated as the Commission’s efforts were being directed to ensure relocation as a matter of priority of eligible applicants still present in Italy and Greece. The implementation of the EU-Turkey Statement of 18 March 2016 also contributed to resettlement efforts as Member States resettled in 2017 alone, 975 Syrians from Turkey. This exceeded their commitment under the Statement to resettle a Syrian from Turkey for every Syrian returned to Turkey from Greek islands, taking into account the UN vulnerability criteria.

The Commission also adopted guidance on the implementation of the hotspot approach, giving prominence to the obligation to respect fundamental rights over operations and performance of tasks in the hotspots.

Application by Member States

Issues related to the respect of the right to asylum and the treatment of asylum applicants during their stay in the Member States are regularly raised and brought to the attention of the Commission, including the situation of migrant children and in particular unaccompanied children, respect for the right to family life, the right to liberty, the right to an effective remedy as well as issues related to access to services and guarantees of a decent standard of living.

In 2017, the Commission has continued to monitor closely how Member States have implemented into national legislation the provisions of the various existing Common European Asylum System legislative instruments, in particular the amended Long-Term Residence Directive, the Asylum Qualification Directive, the Asylum Procedures Directive and the Reception Conditions Directive.

Applying the EU asylum and migration body of legislation as interpreted in light of several provisions of the Charter, including the right to asylum, the right to liberty and security and the right to an effective remedy has been the subject of a complementary letter of formal notice and a reasoned opinion in one case.

The Commission also decided to refer the Czech Republic, Hungary and Poland to the CJEU for non-compliance with their legal obligations under the EU relocation scheme.

Case law

In the judgment X and X v Bulgaria, the CJEU clarified that an application for a visa with limited territorial validity made on humanitarian grounds by a non-EU national at the representation of the Member State of destination in the territory of a non-EU country, with a view to lodging, immediately upon arrival in that Member State, an application for international protection, cannot be regarded as falling within the scope of application of the EU Visa Code. The reasoning being that a kind of long-term visa the issuing of which only falls within the scope of national law. The Court therefore concluded that no positive obligation to issue such a visa can be derived from EU law, including Article 18 and 4 of the Charter since the situation in question is not governed by EU law.

The Court also had the opportunity to confirm the validity of the EU provisional mechanism for the mandatory relocation of asylum seekers in the case of Slovakia and Hungary v Council, where it dismissed in their entirety the actions brought by Slovakia and Hungary against the mechanism. The Court maintained that the non-legislative act was legally adopted pursuant to Article 78(3) TFEU, and underlined the appropriateness of the act in contributing to achieving its objective as a crisis-management measure whose purpose is to take pressure off the Greek and Italian asylum systems by swiftly relocating a significant number of applicants to other Member States, in compliance with EU law. In particular the fundamental right to asylum, laid down in Article 18 of the Charter, can be exercised properly.

On the functioning of the ‘Dublin system’ in times of high influx of asylum applicants, in particular during 2015-2016, the Court clarified in case A.S. that the crossing of a border...
in breach of the conditions imposed by the rules applicable in the Member State concerned must be considered ‘irregular’ within the meaning of the Dublin III Regulation. Therefore, the Member States concerned must be regarded as responsible for examining applications for international protection submitted by people crossing their external border pursuant to the criteria contained in the Dublin III Regulation. According to the Court, this remains the case even in exceptional situations where, for example in Croatia during the 2015-2016 migration crisis, such crossing happened ‘en masse’ and the Member State concerned decided to admit into its territory non-EU nationals on humanitarian grounds, by way of derogation from the entry conditions generally imposed on non-EU nationals. Absolving the Member State concerned of its responsibility would, in the Court’s view, not be compatible with the Dublin rules. Although the taking charge of such non-EU nationals in those circumstances may be enabled by the use by other Member States, unilaterally or bilaterally in a spirit of solidarity, of the ‘sovereignty clause’, which enables them to decide to examine applications for international protection lodged with them, even if they are not required to carry out such an examination under the criteria laid down in the Regulation.

The Court also clarified the interpretation of EU rules on the exclusion for qualification for international protection, holding in Lounani(162) that an application for international protection may be rejected under those rules if it established that the applicant participated in the activities of a terrorist network, without it being necessary that the asylum seeker personally committed terrorist acts, or instigated such acts, or participated in their commission.

**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 No 4 to the Convention (prohibition of collective expulsion) and codifies requirements flowing from case-law on Article 3 of the Convention (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).

Guarantees deriving from this provision are relevant in asylum and migration matters and often constitute the object of inquiries and complaints under the EU legal framework.

**Parliamentary questions**

Cases of alleged abuses of Interpol’s Red Notices systems for political purposes by a number of non-EU countries were raised during 2017 in debates held in the European Parliament and a number of parliamentary questions were addressed to the Commission. The Commission stressed in this respect its determination to closely monitor the compliance by Member States with fundamental rights, including the principle of non-refoulement when they implement relevant EU provisions and to make use, where necessary, of the powers conferred to it under the EU Treaties to ensure their full respect.

**Case law**

The compatibility of the Turkey-Statement of 18 March 2016 with fundamental rights(163), including the right to protection from refoulement, was raised before the CJEU in an action for annulment in the case NF, NG and KM v European Council(164). The General Court ordered on 28 February 2017, however, that it lacked jurisdiction to hear and determine the actions brought by the applicants, as it found that the evidence, provided by the European Council and relating to the meetings on the migration crisis held successively in 2015 and 2016 between the Heads of State or Government of the Member States and their Turkish counterpart, showed that it was not the EU but its Member States, as actors under international law, that conducted negotiations with Turkey in that area, including on 18 March 2016. As neither the European Council nor any other EU institution decided to conclude an agreement with the Turkish Government on the migration crisis, there was no act of an EU institution to review under Article 265 TFEU and the Court had no jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States.

The Court was also called on to clarify how EU provisions concerning the status of non-EU nationals who are long-term residents(165) should be interpreted against the obligation to provide reinforced protection against expulsion. The Court held that EU provisions would preclude legislation of a Member State which does not provide for the application of the requirements of protection against the expulsion of a non-EU national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it. The Court also pointed out that the adoption of an expulsion measure may not be ordered automatically following a criminal conviction. In the case at hand, the expulsion was motivated by the fact that the long-term resident non-EU national had been sentenced to a term of imprisonment of more than one year. However, the court also noted that the assessment needs to be carried out on a case-by-case basis(166).

(162) See Article 2.


(164) Order of 28 February 2017 in cases T-192/16, T-195/16 and T-257/16, NF, NG and KM v European Council.


(166) Judgment of 7 December 2017 in case C-636/16, Wilber López Pastuzano v Delegación del Gobierno en Navarra.
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
Article 20 — Equality before the law

Article 20 of the Charter states 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 EU law.

Case-law

The CJEU examined the challenge brought to the General Court in the case of Dyson v Commission (167) concerning the alleged incompatibility of EU rules on energy labelling of vacuum cleaners (168) with the equal treatment principle. The applicant argued that the EU Regulation was discriminatory and in favour of bagged vacuum cleaners to the disadvantage of bagless vacuum cleaners or vacuum cleaners based on ‘cyclonic’ technology, as loss of suction due to clogging cannot be detected by pristine state testing. While the General Court concluded for the validity of the EU regulation that was being challenged as it considered that the testing method applied was accurate, reliable and reproducible, the Court held that a new examination of the evidence was deemed necessary, and sent the case back to the General Court.

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 EU 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, 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 EU Treaties and without prejudice to any of their specific provisions.

Discrimination based on sexual orientation or gender 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, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Equality

2017 marked a major progress on the legal framework to combat violence against women. On 13 June the EU signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) and Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality, dedicated the year 2017 to a Year of Focused Actions to Combat Violence against Women.

On 12 April 2017 the Commission adopted a Communication on the protection of children in migration which was followed by the Council Conclusions of 8 June 2017. These documents underline that the protection of children in migration is a priority and set out urgent EU actions and made recommendations to the Member States.

The Commission continued to pursue its efforts to improve the response of the EU and its Member States to the worrying increase in the incidence of hate speech and hate crime. The High Level Group on combating racism, xenophobia and other forms of intolerance compiled key guiding principles on hate crime training, on hate crime victims’ support and on the identification and recording of hate crimes by law enforcement authorities. Significant progress was also achieved on countering illegal hate speech online through the implementation of the code of conduct.

On 2 February 2017 the European Parliament adopted a Resolution on the implementation of the Erasmus+ programme, stressing the importance of sufficient funding and appropriate support to be given to people with disabilities to have barrier-free and non-discriminatory access to the programme.

The CJEU clarified in Jyske Finans the notion of discrimination on grounds of ethnic origin, and on the prohibition of discrimination based on racial or ethnic origin established by the Race Equality Directive. The Court also delivered two important judgments in the area of non-discrimination on the grounds of religion in employment, regarding two cases where Muslim women were dismissed by their employers because of their wish to wear an Islamic headscarf at work (Achbita and Bougnaoui).

The Commission launched in-depth evaluation of the EU Framework for National Roma Integration Strategies up to 2020 and as part of this process an online public consultation was open from July to October 2017.

On 2 February 2017 the Commission adopted a Progress report on the implementation of the European Disability Strategy 2010-2020 and on 23 February the Commission presented its first implementation report on the ‘List of actions to advance LGBTI equality’.

1. General non-discrimination issues

Legislation

The Commission’s proposal for a horizontal anti-discrimination Directive (169), 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 still being discussed in the Council. Commission President Juncker considers the adoption of the Directive as a priority for this Commission and the Council continues to push for the required unanimity in the Council.

Intense negotiations on the Commission’s proposal for a European Travel Information and Authorisation System (170) as well as two Commission’s proposals directed at improving the exchange of criminal records information on third country nationals convicted in the European Union (ECRIS-TCN) (171), resulted in an agreement on a general approach by the Council during 2017. These proposals, which are expected to be adopted in 2018, take account of the principle of non-discrimination.

The European Travel Information and Authorisation System, which is the new largely automated system 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, clarifies in particular that prior checks are to be conducted in full respect of fundamental rights, including the general principle of non-discrimination. This means that 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. Equality before the law and the general principle of non-discrimination. This means that 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. Equality before the law and the general principle of non-discrimination are also embedded in the rules proposed for the ECRIS-TCN central system.

The Geoblocking Regulation (EU) 2018/302 (172), adopted in February 2018, defines specific situations where there can be no justified reason for geo-blocking or other forms of discrimination based on nationality, residence or establishment in the sale of goods and provision of other specific services. While the freedom of traders to define their conditions is not impaired in line with the freedom to conduct their business under Article 16 (including the freedom to define where activities are directed, delivery can be provided, setting up of several national website interfaces) and languages, (the kind of payment means accepted, etc.); if the customer accepts the conditions as set out by the trader, they cannot be discriminated in view of their nationality/residence, in line with existing non-discrimination provisions under EU law.

Policy

The Commission supports diversity through a variety of actions and initiatives including targeted policies, awarding funding, promoting good practice and high-level discussions.

The High Level Group on Non-Discrimination, Diversity and Equality, consisting of national experts from the EU-28 and Norway, met twice in 2017 to exchange best practice and to discuss typical non-discrimination issues. Members of the High Level Group also agreed to intensify their work on equality data and to launch in 2018 a dedicated subgroup in order to develop specific guidelines on collection of equality data (173).

The Commission encourages also voluntary initiatives by businesses to promote diversity through an EU-level platform supporting the ‘Diversity Charters’ (174). A growing number of businesses and public authorities are engaged in and encouraging diversity issues in the EU. ‘Diversity Charters’ provide a recognised public trademark that demonstrates companies’ commitment to the promotion of equality and diversity. Already over 10 000 companies, covering 15 million employees have signed them. In 2017, a Diversity Charter was launched in Croatia and Slovenia, accounting now for 20 Charters in the EU.

The principle of non-discrimination featured prominently as a cross-cutting priority in the European Pillar of Social Rights (175), jointly signed and proclaimed by the European Parliament, the Council and the Commission on 17 November. The Sossal Rights pillar commits to enabling


equal opportunities of under-represented groups and reaffirms that ‘regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public’.

Non-discrimination also remains at the core of EU action in education. On 2 February the European Parliament adopted a Resolution on the implementation of the Erasmus+ programme, stressing the importance of sufficient funding and appropriate support to be given to people with disabilities to have barrier-free and non-discriminatory access to the programme, including sign language interpreters for the hearing impaired. The importance of inclusion and equality in this area is also reflected in the Council Conclusions on inclusion in diversity to achieve high quality education for all adopted on 17 February 2017, which emphasises the need for inclusive high-quality education to be made available and accessible to all learners of all ages, including those facing challenges, and regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council also called on the Commission to build on the work of the EU Agency for Fundamental Rights in promoting mutual respect, non-discrimination and solidarity throughout the EU. The Council adopted also Conclusions on sport as a platform for social inclusion through volunteer- ing, recognising, among others, people with disabilities.

In audiovisual services, focus is being put on issues concerning accessibility and the rights of people with disabilities.

Funding also remains a major part of the EU’s action in the fight against discrimination. That is why the Commission continues to support networks, NGOs and projects across the EU under the Rights, Equality and Citizenship programme.

Application by the Member States

The Commission in its role as guardian of the EU Treaties closely monitors compliance of Member States with the EU non-discrimination legislation.

Case-law

The Achbita and Bougnaoui rulings clarified the detailed rules for the application of non-discrimination in EU employment law while balancing the fundamental rights involved, in particular freedom of religion, freedom to conduct a business and the principle of non-discrimination. Individual situations may widely differ depending on the particular circumstances, the context and the relevant legal framework including the fundamental rights enshrined in the European Convention of Human Rights and the EU Charter of Fundamental Rights. In the Achbita case, the Court found that, while an internal rule of a private undertaking, invalid as it prohibits visible wearing of any political, philosophical or religious sign by all employees, would not constitute direct discrimination, it may constitute indirect discrimination towards persons adhering to a particular religion or belief within the meaning of the Employment Equality Directive. This would be acceptable only insofar as it was justified by a legitimate aim and the means of achieving that aim were appropriate and necessary — something which the Court left for the national court to assess.

Building on this finding, the Court further clarified in Bougnaoui that in the absence of such a rule, (which is for the national court to assess), the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf may not be considered a genuine and determining occupational requirement that could rule out discrimination within the meaning of the Employment Equality Directive.

The Court also clarified in Jyske Finance that the notion of discrimination on grounds of ethnic origin, and whether the prohibition of discrimination based on racial or ethnic origin established by the Race Equality Directive means that a credit institution cannot require a customer born outside the EU or EFTA to produce, in addition to the driving licence, also a passport or a residence permit. The Court held that ethnic origin cannot be determined on the basis of a single criterion but is based on a number of factors, some objective and others subjective. While a person’s country of birth might be included among the elements and criteria making up the concept of ‘ethnicity’, which has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origin and background, it cannot, in general and absolute terms, act as a substitute for all those criteria, being only one and not being decisive in that regard. As a consequence, a person’s country of birth cannot, in itself, justify a general presumption that that person is a member of a given ethnic group and not being decisive in that regard. If a presumption is to be made, it is to an ethnic group, provided on a case-by-case basis, for the national court to assess.

Achbita v Commissions des Affaires sociales, culturelles et environnementales, of 2 December 2015, see Article 10.

Bougnaoui v Microgate SA, see Article 16.

See Article 26.

http://ec.europa.eu/research/participants/data dazu symbol/h2020/Call-2016-1-INFOP TENDER/ H2020-INFOP TENDER/www/2016-06-14/OPPORTUNITIES/02_SubmittingProposal/01_TIP/ 01 الحالي (1).pdf

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See Article 10.

See Article 10.

See Article 10.

See Article 10.

See Article 10.

See Article 10.

See Article 10.

See Articles 10 and 11.

See Article 10.

See Article 10.

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two concepts. On this basis, the Court concluded that the practice at stake could not be regarded as a difference in treatment directly or indirectly based on ethnic origin, within the meaning of the Directive.

In the Fries judgment(185) the Court considered whether the EU measures by prohibiting holders of a pilot’s licence who have reached the age of 65 from acting as pilots of an aircraft engaged in commercial air transport infringed Article 15 or Article 21 of the Charter. The Court ruled that while that provision establishes a difference in treatment based on age, the provision is nevertheless compatible with Article 21(1) of the Charter in that it satisfies the criteria set out in Article 52(1) thereof. The Court found that that limitation meets an objective of general interest, within the meaning of Article 52(1) of the Charter, and that it observes the principle of proportionality within the meaning of that provision. The age limit of 65 applied is an appropriate means of maintaining an adequate level of civil aviation safety in Europe. This age limit is sufficient, frequently and reflects the international rules on the subject of international commercial air transport. For this reason this provision does not go beyond what is necessary for achieving the objective of general interest pursued.

In Binco Seafoods(186) the CJEU ruled that an EU Regulation which has the effect of preventing an undertaking from putting on the EU market organic Pangasius produced in the Mekong Delta (Vietnam), should be examined in the light of the undertaking’s right to non-discrimination, the principle of equal treatment(187), as well as the freedom to conduct a business(188).

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 its Member States to the increase in the incidence of hate speech and hate crime. This included enabling discussions, exchanging best practice and developing informal guidance through the High Level Group on combating racism, xenophobia and other forms of intolerance(190), launched in June 2016. The group’s work aimed at progressing and strengthening cooperation and links among national authorities, civil society and a range of other stakeholders, including relevant international organisations and bodies, and led in 2017 to the compilation of key guiding principles on “Hate crime training for law enforcement and criminal justice authorities”(191) and on “Ensuring justice, protection and support for victims of hate crime and hate speech”(192), aimed at providing informal guidance for Member States’ authorities and practitioners. Intensive expert discussions were also held and led by the Agency for Fundamental Rights, on how to improve national methodologies for recording and collecting data on hate crime. The first outcome was the compilation of key guiding principles on “Improving the recording of hate crime by law enforcement authorities”(193), whose testing and implementation is now being encouraged in several Member States through country workshops jointly led by the Agency and by Organization for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights(194), as well as through relevant initiatives at national level.

The group’s discussions also focused on the specificities of particular forms of intolerance, including hate crime against people with disabilities, anti-migrant hatred, homophobia and transphobia(195). The group was regularly informed about the work and initiatives of the Commission coordinator on combating antisemitism(196) and the Commission coordinator on combating anti-Muslim hatred(197), which focused on monitoring trends and developments at national level, preventing and countering hate speech and fostering education and youth empowerment. The group also held thematic discussions on afrophobia and on anti-gypsism(198) – two worrying trends which exemplify how important it is to develop a comprehensive approach made up of coherent but also diversified legislative and policy responses to discrimination, exclusion, prejudice, stereotyping and manifestations of intolerance, taking into account the specific challenges faced by different communities and groups. Discussions built on the findings of the second European Union Minorities and Discrimination Survey(199) conducted by the EU Agency for Fundamental Rights.

(185) Judgment of 5 July 2017 in Case C-180/16, Werner Fries v Luftfahrt-Überwachungs-GmbH.


(188) See Article 20.

(189) See Article 16.
Significant progress was also achieved on countering illegal hate speech online\(^1\), the regular monitoring of the implementation of the code of conduct\(^2\) carried out by the Commission in cooperation with civil society organisations show a trend of continuous progress, proving that this self-regulatory tool, agreed with major IT companies in May 2016, contributed to quickly achieve tangible results of a clear and steady increase in the removal of illegal hate speech content by the IT companies\(^3\).

The Commission also continued to support umbrella organisations as well as specific projects on preventing and combating racism, xenophobia and other forms of intolerance under the Rights, Equality and Citizenship programme\(^4\). In this context, the Commission made available in 2017 EUR 7 million to support projects in this area by national authorities and civil society and other stakeholders. The projects included mutual learning and exchange of best practice, training and capacity building, supporting victims, addressing underreporting of cases of racism, xenophobia and other forms of intolerance and building trust between communities and national authorities, monitoring, preventing and countering hate speech online including through the development of online balanced narratives, critical thinking by Internet users and tackling online hate speech against journalists\(^5\) as well as creating better understanding between communities including through interreligious and intercultural activities and projects focusing on coalition building.

Application by Member States

In line 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 CJEU the application of framework decisions including the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law\(^6\). On that basis, the Commission continued its dialogues with Member States where major transposition gaps remained, to ensure that the minimum standards set in the Framework Decision, which penalises racist and xenophobic hate speech notified to them — ethnic origin, sexual orientation and gender identity, anti-Muslim hatred and xenophobia being among the grounds of hate speech most commonly reported within the exercise. The monitoring also shows that all IT companies now meet the target of reviewing the majority of the notifications within 24 hours, reaching an average of more than 81 %. Building on the progress made, Google+ and Instagram also decided to join the Code of Conduct, which has now found its place as an industry standard. The Commission’s work is now aimed to consolidate regular monitoring of the legal responses to hate speech online.

On 30 August 2017 the Commission published the results of the ‘Midterm review of the EU framework for national Roma integration strategies’\(^7\) which shows how the situation of Roma has changed since 2011. The situation is slowly improving, for instance there is now greater participation of Roma in early childhood education and a declining rate of early school-leavers. On the other hand, the assessment also shows that as many as 80 % of Roma are still at risk of poverty although this figure is lower than in 2011.

In parallel, the Commission also launched an in-depth evaluation of the EU framework for national Roma integration strategies up to 2020 examining its effectiveness, efficiency, relevance and EU added value looking into use of available EU instruments promoting Roma integration (policy, legal, financial) as well as into national approaches in Member States and in

3. EU Framework for National Roma Integration Strategies

The Commission continues working together with Member States to ensure that all Roma people have fair and equal opportunities. It is done through various legal, policy and funding instruments, mainly through the EU Framework for National Roma Integration Strategies up to 2020.

The EU Framework sets the EU/Roma integration goals in four key areas: (i) education, (ii) employment, (iii) healthcare and (iv) housing. In order to meet these goals, Member States have adopted national Roma integration strategies or integrated sets of policy measures within their broader social inclusion measures tailored to the size and situation of Roma populations focusing on Roma integration in those four key areas.

Each year the Commission assesses the implementation of the national Roma integration strategies and reports to the European Parliament and the Council on progress made in integration of Roma population in Member States and achievement of goals in each area defined in the EU Framework.

On 20 March 2017 the European Commission published the results of the 2015 In-depth Evaluation of the EU Framework for national Roma integration strategies\(^8\) which shows how the situation of Roma has improved since 2014. The situation is slowly improving, for instance there is now greater participation of Roma in early childhood education and a declining rate of early school-leavers. On the other hand, the assessment also shows that as many as 75 % of Roma are still at risk of poverty although this figure is lower than in 2011.

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\(^{1}\) http://ec.europa.eu/newsroom/jup/item-detail.cfm?item_id=54303


\(^{3}\) According to a latest evaluation released on 30 January 2016, IT companies removed on average 70 % of illegal hate speech notified to them — ethnic origin, sexual orientation and gender identity, anti-Muslim hatred and xenophobia being among the grounds of hate speech most commonly reported within the exercise. The monitoring also shows that all IT companies now meet the target of reviewing the majority of the notifications within 24 hours, reaching an average of more than 81 %. Building on the progress made, Google+ and Instagram also decided to join the Code of Conduct, which has now found its place as an industry standard.

\(^{4}\) This is the 203rd meeting of the EU External Action Committee, which was held on 10-11 April 2013. It is also the 167th meeting of the EU External Action Committee, which was held on 10-11 April 2013.
enlargement countries. To this end, the online public consultation took place from July to October 2017(213). The final evaluation report is expected in the first half of 2018.

The Commission also continues to monitor the progress in Roma inclusion within its wider growth agenda. Europe 2020(214).

To promote mutual learning and cooperation, the Commission continues to facilitate and financially support the stakeholder’s dialogue through the Network of national Roma contact points(215), regular consultation meetings with the national Roma platforms as well as the European platform for Roma inclusion(216). This report seeks to highlight best practice and policy initiatives implemented by regional and municipal authorities in Europe to make their areas safer, more inclusive and attractive for LGBTI people.

4. Fight against homophobia

As requested in the Council Conclusions on LGBTI Equality adopted in June 2016(217), the Commission presented its first implementation report(218) on the ‘List of actions to advance LGBTI equality’(219).

The list of actions had been implemented for two years in 2017 and a number of them stood out to show the Commission’s commitment to advance LGBTI equality. These included a strong symbolic statement in favour of LGBTI equality made on the International Day Against Homophobia and Transphobia by highlighting for the first time the Commission’s headquarters in the colours of the rainbow flag.

As part of its efforts to further raise awareness on the discrimination and challenges that LGBTI people face, the Commission sponsored three videos which focused on a gay, an intersex, and a transgender person and their non-LGBTI allies and was released on the International Day Against Homophobia and Transphobia, the Intersex Awareness Day and the Transgender Day of Remembrance. Advancing LGBTI equality also remained a funding priority under the Rights, Equality and Citizenship programme. 17 project proposals specifically focusing on

preventing and countering discrimination, hatred and intolerance against LGBTI people were awarded for a total amount of financial support of EUR 4.7 million.

In the framework of the high level group on non-discrimination, equality and diversity the Commission, together with the Portuguese Government, organised a best practice exchange seminar focusing on policies to combat bullying based on sexual orientation, gender identity/expression or sex characteristics in education that took place in June 2017 in Lisbon. In addition, on 28 June on the occasion of the Human Rights Conference of the WorldPride Madrid 2017 the Commission published ‘The Business Case of diversity for cities and regions with focus on sexual orientation and gender identity’(220). The report seeks to highlight best practices and policy initiatives implemented by regional and municipal authorities in Europe to make their areas safer, more inclusive and attractive for LGBTI people.

At the same occasion the Commission also published the report ‘Data collection in relation to LGBTI people: analysis and comparative review of equality data collection practices in the European Union’(221). The report highlights that in comparison to some other discrimination grounds such as sex or age, sexual orientation and gender identity remain invisible in many social surveys, and that, moreover, any form of data collection on intersex people is still rare — clearly showing the need for equality data to better understand and hence tackle the discrimination and inequalities experienced by LGBTI people.

Article 22 — Cultural, religious and linguistic diversity

Article 22 of the Charter states that the EU must respect cultural, religious and linguistic diversity. It is based on Article 167(1) and (4) TFEU on culture. Respect for cultural and linguistic diversity is also laid down in Article 3(5) TEU. Article 22 is also inspired by Article 17 of the TFEU.

Policy

Article 17(5) TEU states that the EU must maintain an open, transparent and regular dialogue with churches, religious associations or communities and philosophical and non-confessional organisations. This dialogue takes place at various levels, in the form of written exchanges, meetings or specific events. Interlocutors are invited to contribute to the EU policy-making process through the various written consultation processes launched by the Commission. The dialogue contributes to the promotion of religious diversity.


The dialogue with religious and non-confessional organisations in 2017 took place in the context of the ongoing debate on the Future of Europe, based on the Commissioner's White Paper of 1 March. It provided an occasion to hold in-depth discussions on questions addressing issues of values and governance. The discussion on the future of Europe was about making Europe more united, stronger and more democratic. The dialogue partners also looked at the human dimension of Europe, in particular its social and environmental dimensions, and how Europe can be built on principles of solidarity, social justice and sustainability. The leaders present were invited to work with the Commission on the reflection process on the future of Europe. It was agreed that the dialogue should continue. This resulted in two high level meetings with religious leaders and with non-confessional organisations around the above theme, as well as a dialogue seminar which prepared the ground for the high level dialogue.

A meeting was also convened on ‘Engaging Muslim Young People in the Future of Europe Debate’. 29 Muslim university students and activists from 17 Member States discussed issues as diverse as social Europe, globalisation, workplace discrimination, identity, European citizenship, radicalisation, EU foreign policy, migration and integration in this one-day conference.

On 23 May the Council adopted Conclusions on the EU strategic approach to international cultural relations. The Council underlined that such an approach should be bottom-up, respecting the independence of the cultural sector. EU ministers recognised that international cultural relations can only develop by encouraging cultural diversity within the EU. It follows the strategy for international cultural relations adopted in 2016 by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. It focuses on three main objectives:

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

On 5 July 2017 the European Parliament adopted a Resolution ‘Towards an EU strategy for international cultural relations’.

The 2018 European Year of Cultural Heritage was inaugurated at the European Culture Forum in Milan. The event took place from 7 to 9 December 2017 and opened the much-anticipated celebrations and presented the key topics of this pan-European initiative. Meanings and values of Europe’s magnificent heritage were put in the spotlight through a series of speeches, debates, and presentations. Key topics included the potential of culture to tackle European and global challenges, the meanings of heritage for citizens, as well as the ways in which culture in cities and regions can help shape more cohesive and inclusive societies.

The Creative Europe programme (2014-2020) aims at fostering the importance and understanding of cultural diversity across Europe through initiatives such as European heritage label for sites that have shaped Europe’s history. The European Parliament Resolution of 2 March 2017 recognises the programme’s objectives of safeguarding and promoting European cultural and linguistic diversity, welcoming its growing intercultural dimension and hoping for more projects that boost cultural diversity and intercultural dialogue and promote multilingualism.

Article 23 — Equality between women and men

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

Legislation

In 2017 the Commission took a number of initiatives to promote gender equality. A key milestone was the proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers which refers to equality between men and women and to reconciling family and work life. The Commission also presented an action plan to combat the gender pay gap.

There has been major progress on the legal framework to combat violence against women. On 13 June the EU signed the Istanbul Convention. The EU’s accession to the Istanbul Convention will enable the EU and its Member States to develop a common framework to combat violence against women. By the end of 2017, all Member States signed the Istanbul Convention and 17 Member States have so far ratified it. The Commission is encouraging the remaining Member States to swiftly ratify the Istanbul Convention and is also supporting the work to agree on the text for the conclusion and ratification by the EU as soon as possible.

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See further under Article 23 and 54.


European Parliament resolution of 5 July 2017 ‘Towards an EU strategy for international cultural relations’.


See further under Article 23 and 54.


Under WTO the EU endorsed the Joint Declaration on Trade and Women’s Economic Empowerment on 12 December 2017, which is a collective initiative to increase the participation of women in trade. The EU’s recently negotiated trade agreements also contain commitments on women’s rights, equal pay and non-discrimination (ILO Conventions No 100 and No 111) and also other fundamental labour related provisions having a gender dimension, such as those on forced and child labour. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the 27 international conventions that countries need to ratify and implement in order to benefit from the EU’s Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+).

Policy

Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality, dedicated the year 2017 to a Year of Focused Actions to combat violence against women. Under the Rights, Equality and Citizenship and the Justice Programmes 15 million euros was made available to 12 national authorities and 32 grass roots projects addressing violence against women and victims support. Several European-wide actions were also carried out. For instance, a communication campaign ‘No Non. Nein. Say No Stop VAW’ was launched with a dedicated website. In addition the Commission with support of the European Parliament continued the development of an EU survey on gender-based violence, to be carried out by national statistical institutes and coordinated by Eurostat. Several events were also organised. For example, the Maltese Council Presidency conference in February 2017 focused on violence against women and included the launch of a web tool for professionals in contact with women affected by female genital mutilation: On 11 December a joint statement by the Organisation for Economic Cooperation and Development, the Council of Europe, the European Commission, and UN Women was published. The organisations reaffirmed their commitment to eliminating gender-based violence and discussed the way forward for coordinated action.

In 2017 the Commission’s Annual Colloquium on Fundamental Rights focused on ‘women’s rights in turbulent times’. The high-level Colloquium brought together over 400 politicians, national and EU policy-makers, representatives of international organisations, civil society leaders, academics, legal practitioners, activists, businesses and trade unions, media representatives and journalists. They explored the link between the fulfilment of fundamental rights for women as well as pluralism, tolerance and equality, and agreed to step up efforts to protect and promote women’s rights in the EU.

The Erasmus+ programme funded activities promoting gender equality both through formal education (learning to recognise and fight stereotypes) and non-formal education such as through sports and youth activities.

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 confers their right to participation, by emphasizing that children may express their views freely, and that such views are to be taken into consideration on matters that concern them according to their age and maturity. Article 24 also states that in all action affecting children, whether by public authorities or private institutions, the child’s best interests must be a primary consideration. It also enshrines every child’s right to maintain on a regular basis a personal relationship and direct contact with their parents, unless that is contrary to their interests. In line with Article 3(1) TEU, the rights of the child are a priority for the EU.

Policy

On 12 April 2017, the Commission’s Communication on the protection of children in migration was followed by the Council Conclusions of 8 June 2017. The Commission recommended that the Member States:

- address the root causes;
- ensure swift and comprehensive identification and protection;
- provide adequate reception in the EU;
- ensure swift and effective access to status determination procedures; and
- implement procedural safeguards;
- ensure durable solutions and cross-cutting actions.

The Communication also refers to cross-cutting actions at all migratory stages, such as making better use of EU financial support, improving data collection on children in migration and providing training to all those working with children in migration, and recalled that the principle of the best interests of the child must be a primary consideration in all actions or decisions on children.


The focus on children in migration was reflected in EU funding. For example under the Asylum, Migration and Integration Fund around 800 reception places for unaccompanied children in need of international protection were funded in Greece. Pending the establishment of a national guardianship system, the EU has allocated resources to the UN Refugee Agency to ensure the continuation of the guardianship network and foster care on mainland Greece and its islands. Spain prioritised capacity-building for professional volunteers responsible for unaccompanied children and in Bulgaria emergency funding was provided for psychosocial assistance to vulnerable migrants, especially unaccompanied migrant children. In Italy funding served to build first reception conditions for unaccompanied children and to provide services to them.

Under the rights, equality and citizenship programme eight projects were selected to build capacity in foster care and guardianship for unaccompanied children and a direct grant of EUR 956,000 was given to the UN Refugee Agency to promote child protection in some western European countries(230).

From 7-8 November 2017, the European Forum on the rights of the children deprived of liberty and alternatives to detention(231) brought together over 500 participants with representatives invited from the EU-28, Norway, Iceland, Liechtenstein and Switzerland, and the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia, and the former Yugoslav Republic of Macedonia). Participants represented national authorities, civil society, international organisations, and ombudspersons for children, academics, practitioners and EU institutions and agencies. Discussions focused on four areas:

1. children in conflict with the law;
2. children detained in the context of migration;
3. children in institutions;
4. children of parents in prison.

At the side event to the forum, participants discussed the vulnerabilities of children deprived of their liberty. Over the three days, about 70 speakers shared their expertise and experience including 10 children and young people who gave personal testimonies on their experience of having been deprived of their liberty.

On 27 February 2017, Council Conclusions on inclusion in diversity to achieve high quality education for all emphasised the need for inclusive high-quality education available and accessible to all learners of all ages, including those facing challenges and regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

On 23 May 2017, the European Parliament, the Council and the Commission jointly proclaimed the European pillar of social rights. principle 11 which states that children have the right to affordable early childhood education and care of good quality and the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities. In April 2017 the Commission published a staff working document on 'Taking stock of the 2013 investing in children recommendation: breaking the cycle of disadvantage'(232). In August 2017 the European Social Policy Network presented its latest report on 'Progress across Europe in the implementation of the 2013 EU Recommendation on 'Investing in children: breaking the cycle of disadvantage''(233). In line with this the Commission issued a number of country-specific recommendations to the Member States on children and families(234).

On 25 March 2017, Council Conclusions on sport as a platform for social inclusion through volunteering stressed the role volunteering in sport can play in creating inclusive communities and helping to integrate groups at risk of marginalisation including people with disabilities(235).

In August 2017, the Commission Communication on the mid-term review of the EU Framework for national Roma integration strategies focused on access to education and health services and discrimination against Roma children(236).

On 4 December 2017, the Commission adopted a Communication on ‘Reporting on the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions’(237) setting out EU priorities and actions complementing the Anti-trafficking Directive(238).

A number of reports and communications related to aspects of the rights, equality and citizenship programme, and the European pillar of social rights provided further information on the situation of children deprived of their liberty and alternatives to detention in different areas. In August 2017, the European Pillar of Social Rights Action Plan(239) included a focus on children deprived of liberty and alternatives to detention. The Directive on the protection ofomen involved in armed conflict(240) was given to the UN Refugee Agency to promote child protection in some western European countries.

The European Commission adopted the new Communication on ‘Taking stock of the 2013 investing in children recommendation: breaking the cycle of disadvantage’(241). In the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions(242), setting out EU priorities and actions complementing the Anti-trafficking Directive(243), the Commission issued a number of country-specific recommendations to the Member States on children and families(244).

See Articles 21 and 26.

(234) Available at the EPIC website cited in footnote 4.
(236) Available at the EPC website cited in footnote 4.
(237) They cover education and skills (15 MS), access to healthcare (15 MS), access to child care (14 MS), effectiveness of social protection (17 MS), Roma children (16 MS) and financial disincentives to enter the labour market (6 MS). See: http://ec.europa.eu/home-affairs/what-we-do/policies/trafficking-human-beings/commission-adopts-new-communication-and-commit-to-new-actions_en
(238) See Article 21, 26
(241) Available at the EPC website cited in footnote 4.
(242) Available at the EPC website cited in footnote 4.
Article 25 — The rights of the elderly

Article 25 of the Charter sets out one of the first legally binding human rights provisions addressing the rights of older people and provides that the EU recognises and respects the rights of the elderly to lead a life in dignity and independence and to participate in social and cultural life. Participation in social and cultural life also covers participation in political life.

An aging population is one of the greatest social and economic challenges facing the EU. Projections forecast a growing number and share of elderly people (65 years and over), with a particularly rapid increase in the number of very old people (85 years and over). These demographic developments are likely to have a considerable impact on a wide range of policy areas: mostly on the different health and care requirements of the elderly, but also on labour markets, social security and pension systems, economic fortunes, as well as government finances(1,2,3).

Recent years have seen increased calls for enhanced international thinking and action on the human rights of the elderly. Various stakeholders have called for more visibility and increased use of international human rights standards to address the situation of the elderly. Multiple discrimination emerges as an essential factor in any analysis, particularly given that age-related discrimination is often compounded by other grounds for discrimination, such as sex, socioeconomic status, ethnicity and health status.

Policy

In September 2017, the Lisbon Ministerial Declaration outlined the three policy goals until 2022 for Member States to work towards the recognition of the potential of the elderly, encouraging a longer working life and ensuring ageing with dignity.

The European pillar of social rights contains a number of key rights that are relevant for the elderly, namely:

- equal treatment and opportunities for employment, social protection, education, and access to goods and services available to the public (principle 3);
- the right to appropriate leave, flexible working arrangements and access to care services of people with caring responsibilities (principle 9);
- the right to old age income and pensions (principle 15);
- inclusion of people with disabilities in the labour market and in society (principle 17); and
- the right to affordable long-term care services of good quality, in particular home-care and community-based services (principle 18).

In addition to these rights, most of the rights and principles concern also the elderly. For instance life-long learning (principle 1), adequate minimum income benefits ensuring a life in dignity at all stages of life (principle 14), affordable, preventive and curative healthcare of good quality, access to social housing or housing assistance of good quality, and access to essential services of good quality.

The final conference of the European Network of National Human Rights Institutions(3) project on the human rights of older people and long-term care co-funded by the Commission took place on 28 November in Brussels. As well as summarising the key findings from the project, which ended in December 2017, the conference offered further guidance to policymakers, care providers and advocates for the elderly on implementing a human rights-based approach in the long-term care sector and protecting and promoting the rights of the elderly in (or seeking) care.

One of the main findings of the project was that care workers, providers and policymakers, were not always sure what their human rights obligations were towards care home residents and how to put them into practice.

Article 26 — Integration of persons with disabilities

The Charter provides that the EU recognises and respects the right of people 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 on the accessibility requirements for products and services (European Accessibility Act) will continue to be discussed by the Council and the European Parliament in 2017. Its adoption will contribute to the implementation of the UN Convention on the Rights of Persons with Disabilities and improve the access and enjoyment of rights for people with disabilities.


(3) People in the EU — statistics on an ageing society, Source: Eurostat (data extracted in November and December 2017).
The AudioVisual Media Service Directive encourages the accessibility of audiovisual media services for people with visual or hearing impairments. The accessibility of the services providing access to audiovisual media services is also a subject of the proposal for a European Accessibility Act. Efforts were also made during 2017 to implement the Web Accessibility Directive, which entered into force on 22 December 2016. It aims at helping people with disabilities to have better access to public sector bodies website and mobile applications providing information and services that are essential for citizens.

The Standardisation Mandate was adopted in March and preparatory work was ongoing for the drafting of the Implementing Acts, as a follow-up to the Directive: Developing solutions to improve media accessibility for all in the connected TV environment also remains a funding priority for the Commission through the project Hybrid Broadcast Broadcast for All, funded under the Competitiveness and Innovation Framework Programme.

On 27 September 2017, the Commission adopted a proposal for a revision of the Rail Passenger Rights Regulation which aims to improve the protection of rail passengers. The proposal will positively affect the integration of people with disabilities protected under Article 26 of the Charter: it will remove the possibility for Member States to exempt domestic services from certain provisions, notably related to the rights of people with disabilities or reduced mobility and will to enable them to use all rail services on an equal footing with other passengers.

Overall, the rights of people with disabilities or reduced mobility were updated in line with the UN Convention on the Rights of Persons with Disabilities, notably on training of staff providing assistance and the accessibility of information for people with disabilities or reduced mobility.

International agreements

The Convention on the Rights of Persons with Disabilities 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. It is also the first human rights treaty to which the EU is a party. The EU concluded the Convention on the Rights of Persons with Disabilities in 2010. All EU-28 have signed it and 27 have ratified it (Ireland is making progress towards ratification). The EU reported back to the UN Committee in January 2017 on its three main recommendations: (i) adoption of the European Accessibility Act, (ii) withdrawal of the Commission from the Independent Framework, and (iii) list of powers).

The EU Agency for Fundamental Rights reported on the developments in the implementation of the Convention on the Rights of Persons with Disabilities recalling that 10 years after the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities, the Convention continues to spur significant legal and policy changes in the EU and its Member States.

Principle 17 of the European pillar of social rights on the ‘Inclusion of People with Disabilities’ states that they have the right to income support that ensures a life in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs. In addition, disability concerns are mainstreamed into all principles of the pillar. In particular the ones related to education, training and long-life learning, equal opportunities, work-life balance, childcare and support to children, long-term care, housing and assistance for the homeless and access to essential services.

In February 2017 the Commission adopted a Progress report on the implementation of the European disability strategy 2010-2020. The report describes the main achievements in the eight areas covered by the strategy: (i) accessibility, (ii) participation, (iii) equality, (iv) employment, (v) education and training, (vi) social protection, (vii) health and (viii) external action, as well as on awareness training, funding and statistical data. The report contains also information on the internal implementation of the UN Convention on the Rights of Persons with Disabilities in the EU institutions.

Each year, the Commission raises awareness of disability issues through a conference celebrating the European Day of Persons with Disabilities, which it organises in cooperation with the European Disability Forum. The European Day of Persons with Disabilities conference in 2017 brought together a wide range of participants representing people with disabilities, organisations and representatives from different organisations.

(245) 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.


(251) 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.

(252) 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.


(254) 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.


(256) European Day of Persons with Disabilities


(258) European Day of Persons with Disabilities

(259) European Day of Persons with Disabilities

(260) European Day of Persons with Disabilities

(261) European Day of Persons with Disabilities

(262) European Day of Persons with Disabilities

(263) European Day of Persons with Disabilities

(264) European Day of Persons with Disabilities

(265) European Day of Persons with Disabilities

(266) European Day of Persons with Disabilities
The Supreme Administrative Court of Bulgaria in a case concerning a teacher who had refused a pupil with a disability to join a school excursion — an alleged violation of the Protection against Discrimination Act (Закон за защита от дискриминация) — confirmed the lower court’s decision and rejected the teacher’s appeal. To reinforce its argument, the Court referred to various rights under the Charter, including Article 1 of the Charter (human dignity), Article 24 (the rights of the child) and Article 26 (integration of people with disabilities)(254).

The Commission organised the 8th Access City Award(252) in partnership with the European Disability Forum. This Award promotes accessibility in the urban environment, especially for elderly and disabled people and also recognises improvements made in this area by cities across the continent.

Currently, there is no mutual recognition of disability status between Member States which may pose challenges for people with disabilities travelling to other EU countries. The EU is developing a system of voluntary mutual recognition based on an EU Disability Card.

Under the European Semester(253) the Commission continues to monitor the situation of people with disabilities in Member States notably in employment, poverty and social inclusion and education. In 2017 disability issues have gained more visibility across the Country Reports published by the Commission.

Source:
European Commission

(252) http://ec.europa.eu/social/main.jsp?langId=en&catId=1141&eventsId=12085&otherEvents=yes
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
Article 27 — Workers’ right to information and consultation within the undertaking

Article 27 of the Charter provides that workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions governed by EU law and national laws and practices.

Policy

Directive 2009/38 establishing European Works Councils (Recast Directive) was the subject of an evaluation in 2017. European Works Councils are bodies representing European employees within cross-border companies. Through them, employees are informed and consulted by management on the progress of the business and any significant decision at European level that could affect their employment or working conditions. As part of the coherence analysis, the evaluation concluded that the provisions of the Recast Directive are generally consistent with Article 27 of the Charter.

Article 28 — Right of collective bargaining and action

Article 28 of the Charter provides that workers and employers, or their respective organisations, have, in line with EU law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. There is no specific EU law regulating the conditions and consequences of the exercise of these rights at national level. Member States remain bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

Legislation

In its proposal for a Council Regulation on the establishment of the European Monetary Fund presented in December 2017, the Commission sought to ensure the respect of Article 28 of the Charter. By integrating the current European Stability Mechanism within the EU legal framework, the proposal aims at providing financial stability support to the Member States within the Eurozone. An explicit reference to Article 152 TFEU has been inserted in this proposal to ensure compliance with the right of collective bargaining and action stating that the proposed


(256) Article 153(5) TFEU stipulates that it does not apply to the right to strike

Article 29 — Right of access to placement services

According to Article 29 of the Charter every worker has the right to protection against unjustified dismissal, in line with EU law and national laws and practices. The Article draws on Article 24 of the revised Social Charter. It is given effect by Directive 2002/14/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 as amended by Directive 2002/74/EC.

Application by the Member States

A substantial number of fundamental rights issues raised by citizens in complaints addressed to the Commission in the area of labour law relate to protection against unjustified dismissals. The number and proportion of complaints in which the Charter has been quoted has been growing significantly. The Charter is now being invoked in most complaints on labour law, notably on individual dismissals. However, in nearly all these cases the Charter did not apply due to the fact that the issues raised by the complainants were not covered by EU law.

Article 30 — Protection in the event of unjustified dismissal

According to Article 30 of the Charter every worker has the right to protection against unjustified dismissal, in line with EU law and national laws and practices. The Article draws on Article 24 of the revised Social Charter. It is given effect by Directive 2002/14/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 as amended by Directive 2002/74/EC.

Article 31 — Fair and just working conditions

Article 31 of the Charter guarantees that every worker has the right to working conditions that respect their health, safety and dignity. Every worker has the right to a limit on maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. There is a substantial body of EU law in this area on health and safety at work.

Legislation

On 31 May 2017 the Commission adopted several proposals as part of the ‘Mobility package’ to ensure a better coherence and complementarity between the social and market rules applicable to road transport. In particular between the core road transport social rules on driving, working and resting times, the rules on posting of workers and the market rules on the access to occupation of road transport operator and access to haulage and passenger markets. The aim is to ensure a balance between the social protection rights of workers, the freedom to provide cross-border services and the freedom to conduct a business that is protected by the Charter. Furthermore, the Commission is supporting the dialogue between the social partners on the possibility to define and establish minimum rules on the social and security standards (social code) for mobile road transport workers.


(259) See Article 15 and 16.

(260) As highlighted in the White Paper on Transport Roadmap to a Single European Transport Area — Towards competition and efficient transport system (COM(2011) 144), where it makes clear that the creation of a Single European Transport Area should go together with a higher degree of convergence and enforcement of social rules. It adds that market opening needs to go hand in hand with quality jobs and working conditions.


The Maritime Labour Convention provides comprehensive rights and protection at work for all seafarers, regardless of their nationality or the ship’s flag. A number of amendments to the Convention were approved by the International Labour Conference in 2014 with the aim to establish an effective financial security system that protects seafarers’ rights in the event of abandonment and allows compensation for contractual claims for death or long-term disability of seafarers due to occupational injury, illness or hazard. These amendments aim at improving the existing system of protection for seafarers in line with Article 33 of Charter.

On 21 December 2017 the Commission adopted a proposal for a Directive on transparent and predictable working conditions in the European Union(265) as part of the follow-up to the European pillar of social rights. The Commission’s proposal complements and modernises existing obligations to inform each worker of their working conditions. In addition, the proposal creates new minimum standards to ensure that all workers, including those on atypical contracts, benefit from more predictability and clarity about their working conditions. The initiative builds on the Written Statement Directive(266), which requires updating in the light of changes in employment rules. The Commission’s REFIT evaluation of that Directive(267) showed that many workers in the EU, such as domestic workers and those who perform on-demand work, do not receive a written confirmation of their working conditions or do not receive all the information they need in a timely manner. The consultation on the European pillar of social rights also showed that more predictability should be provided to workers, in particular those in non-standard forms of employment, such as casual work.

The Commission has therefore put forward a proposal which will repeal the current Written Statement Directive. The new directive reinforces the rights provided for in the current rules and adds new common rights for all workers on their working conditions including on probation, work predictability, training and support to transition to more secure employment.

Policy

On 26 April the Commission adopted an interpretative communication on the Working Time Directive, providing guidance on how to interpret various aspects of this directive in line with a growing body of case law. This will help Member States implement the acquis correctly and avoid further infringements by Member States(268).

Case law

In the case of Conley King(268) the Court held that a worker must be able to carry over and accumulate unexercised rights to paid annual leave when an employer does not put that worker in a position in which he is able to exercise his right to paid annual leave which is expressly set out in Article 31(2) of the Charter and which Article 47(1) TEU recognises as having the same legal value as the EU Treaties. The right to an effective remedy, as guaranteed by Article 47 of the Charter, would not be guaranteed if, in a situation in which the employer grants only unpaid leave to the worker, the worker would not be able to rely, before the courts, on the right to take paid leave, but would be forced to take leave without pay and then bring an action to claim payment for it.

The Court found that such a result is incompatible with the right to an effective remedy and to paid annual leave. EU law therefore precludes a situation where the worker must take their leave before establishing whether they have the right to be paid in respect of that leave.

Article 32 — Prohibition of child labour and protection of young people at work

Article 32 of the Charter prohibits the employment of children. The minimum age of 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 25 of the Community Charter of the Fundamental Social Rights of Workers.

The EU was well represented in the IV Global Conference on the Sustainable Eradication of Child Labour held in November 2017 in Buenos Aires, Argentina. The conference focused on the eradication of child labour, forced labour and quality youth employment, and produced as outcome document the Buenos Aires Declaration, an instrument that will guide all efforts on the issues covered. During the conference the EU was present at the high level panel on ‘Supply Chains: Getting on top of complexity’ and further hosted a special session on EU-ILO partnership to eliminate child labour and forced labour in supply chains.


(267) http://ec.europa.eu/social/main.jsp?catId=1313&langId=en&moreDocuments=yes


Article 33 — Family and professional life

Article 33 of the Charter provides that the family must enjoy legal, economic and social protection. To reconcile family and professional life, everyone must 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.

Legislation and policy

On 26 April 2017, the Commission adopted an initiative to support work-life balance for working parents and carers(269). This initiative, being part of the European pillar of social rights, the Commission presented a list of legislative and non-legislative actions to modernise the existing EU legal and policy framework to better support work-life balance for men and women with caring responsibilities and a more equal use of leave and flexible work arrangements. This initiative aims at promoting a number of fundamental rights provided by the Charter(270).

A proposed Directive preserves and builds on existing rights, in particular under the Parental Leave Directive(271) and includes a number of new rights. In particular, the possibility for flexible uptake (piece-meal and part-time) of the four months entitlement to parental leave paid at sick pay level which can be taken up until the child reaches the age of 12 and cannot be transferred between parents. Other rights include an entitlement to 10 working days of paternity leave following the birth or adoption of a child.

Article 34 — Social security and social assistance

Article 34 of the Charter 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. Everyone residing and moving legally within the EU is entitled to social security benefits and social advantages in line with EU law and national laws and practices.

Legislation

The Security of Gas Supply Regulation adopted in October 2017, puts more emphasis on combating energy poverty and social exclusion(272). It recognises that ‘certain customers, including households and customers providing essential social services are particularly vulnerable and may need protection against the negative effects of disruption of gas supply’(273).

Policy

Under the European pillar of social rights, the Commission has reinforced EU labour mobility by ensuring that a modernisation of the social security coordination is properly implemented. On 3 July the Commission presented the new Information on Electronic Exchange of Social Security Information system(274), an IT platform to better support electronically around 15 000 social security institutions of the Member States plus Iceland, Liechtenstein, Norway and Switzerland. The new tool will benefit citizens who have lived and worked in several of the participating countries, and who will see their social security benefits calculated quicker and more efficiently.

In the 2017 State of the Union speech, the Commission proposed to create in 2018 a European Labour Authority to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations. The European Labour Authority should be an effective body supporting national administrations, businesses and mobile workers by improving cooperation at EU level on cross-border mobility and social security coordination matters, and improving access to information and transparency on rights and obligations in labour mobility and social security systems.

The European Fund for Strategic Investment in 2017 invested EUR 10 million into a social impact bond scheme that will support the integration of between 2 500 and 3 700 migrants and refugees into the Finnish labour market by providing training and job-matching assistance. In the European Fund for Strategic Investment 2.0 (the extension of the Fund(275)), social services have been added to the list of eligible sectors for this financing.

Article 35 — Healthcare

Article 35 of the Charter provides that everyone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national

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(269) See Article 17.
(270) Recital 25 of the Security of Gas Supply Regulation.
(271) See Article 21, 23, 24 and 34.
laws and practices. A high level of human health protection must be ensured in the definition and implementation of all the EU’s policies and activities.

**Policy**

During 2017 a significant number of actions and projects were funded under the EU 3rd Health programme (2014-2020)(282). The State of Health in the EU(283) — a package of actions developed by the Commission, the Organisation for Economic Cooperation and Development and the World Health Organization includes a report ‘Health at a Glance’ as well as country health profiles for the Member States and a Commission policy paper on the state of health in the EU. The aim of this initiative is to contribute to country-specific knowledge, to inform health policies at national and European level and to enable policy dialogue among Member States(284).

The EU Health Award is an initiative funded under the 3rd Health programme that aims at highlighting actions of non-governmental organisations which have made a significant contribution in promoting a higher level of public health in the EU. In 2017 three NGOs received the EU Health Award to reward their initiatives in promoting vaccinations in the EU(285).

The most important projects in 2017 focused on aiming to respond to the high influx of refugees in Europe, implementing the 2015 EU migration agenda and in particular the skills agenda on integration of non-EU nationals:

- **WHO Migration and Health Knowledge Management** project is an initiative of World Health Organization Europe which aims at raising awareness, sharing knowledge, and increasing the adoption of migrant-health good practices and evidence-based approaches across the EU(286).

- **Re-Health II** project implemented by the International Organisation for Migration aims at supporting the EU Member States in improving healthcare provision for migrants and integrating them into national healthcare systems(287).

- **Pilot specific training modules for health professionals, border guards and train**ers in migrants’ and refugees’ health (MIG-H-Training)(288) on mental health and post-traumatic stress detection and on screening for communicable diseases in migrants and refugees.

- **Mig-HealthCare** project that focuses on the effective community-based care models to improve physical and mental healthcare services, support the inclusion and participation of migrants and refugees in European communities and reduce health inequalities.

- **MyHealth** project that develops and implements models based on the knowledge of a European multidisciplinary network, to reach out to vulnerable migrants and refugees about their health — in particular women and unaccompanied minors.

- **The project Operational Refugee and Migrant Maternal Approach** project that develops an operational and strategic approach to promote safe motherhood, to improve access and delivery of maternal healthcare for refugees and migrant women and to improve maternal health equality within the EU.

The Commission continued to support the Member States’ actions aimed at improving mental health in line with the Convention on the Rights of Persons with Disabilities that covers the rights of people with mental health problems(289). EU actions were carried out under the EU Compass on Mental Health and Well-being(290). Priority areas were the improvement of mental health at work, mental health in schools and the prevention of suicide.

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<td><strong>WHO Migration and Health Knowledge Management</strong></td>
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(283) https://ec.europa.eu/health/state/summary_en


(286) Call for tender: https://tendering.tedчуевапсорпс.org février display/html/434/2050 contract awarded to Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ)


(288) https://www.mighealthcare.eu/

(289) http://healthonthemove.net/

(290) http://www.mighealthcare.eu/
Parliamentary questions

The Commission received a significant number of questions from Members of the European Parliament on issues related to healthcare and the Charter. The questions concerned issues related to the protection of victims of Toxic Oil Syndrome in Spain, grounds for euthanasia in the Netherlands, the measures preventing abortion in the amendments of the French Public Healthcare code and the pollution by installation of biogas in Germany.

In its replies, the Commission recalled its commitment to effectively monitor the correct implementation of the EU rules, underlining that it can intervene only if a violation of EU law is involved (in line with Article 51(1) of the Charter) and stressing that in the absence of EU law, the responsibility for healthcare remains the competence of the Member States.

Article 36 — Access to services of general economic interest

Article 36 of the Charter provides that the EU recognises and respects access to services of general economic interest as provided for in national laws and practices, in line with the EU Treaties, in order to promote the social and territorial cohesion of the EU.

Policy

In April 2017 the Commission adopted a Notice on access to justice in environmental matters(288) which clarifies how individuals and associations can challenge before national courts decisions, acts and omissions by public authorities in EU environmental law. The Notice provides the useful guidance to citizens by helping them to decide whether to bring a case before national courts. It also helps the national courts to identify all the Court’s jurisprudence that they should take into account when faced with questions related to access to justice. The Notice mentions the Charter as a key framework text and explains its specific relevance to legal aid.

Article 37 — Environmental protection

Article 37 of the Charter provides that a high level of environmental protection and improving the quality of the environment must be integrated into EU policies and ensured in line with the principle of sustainable development.

Legislation

On 4 July 2017 the new Energy Labelling Regulation(290) was adopted. The Regulation updates and clarifies the existing energy labelling framework taking into account the technological progress achieved in energy efficiency. In particular, energy labelling enables consumers to make informed choices and encourages improvements in the efficiency of energy-related products thus ultimately saving consumers money on energy bills.

The proposal for a revision of the Rail Passenger Rights Regulation(291) aims at improving the protection of rail passengers while taking account the burdens on the rail sector. The proposal will have an impact on consumer protection as guaranteed by Article 38 of the Charter. In particular, it improves the information that has to be provided to passengers by requiring the rail sector to better inform passengers on the type of ticket or travel contract they have bought and the rights and obligations linked to it.

Policy

In his 2017 State of the Union speech and the letter of intent of 13 September 2017, Commission President Juncker announced a ‘New Deal for Consumers’ package that aims at facilitating coordination and effective action by national consumer authorities at EU level and reinforcing public enforcement action and better protecting consumer rights.

Article 38 — Consumer protection

Article 38 of the Charter provides that EU policies must ensure a high level of consumer protection, giving guidance to the EU institutions when drafting and applying EU legislation.

Legislation

On 12 December 2017 the new Consumer Protection Cooperation Regulation(289) was adopted. Consequently, enforcement authorities are better equipped to work together, more swiftly and more efficiently, also enabling the Commission to launch and coordinate common actions against EU-wide sharp practices. Organisations with an interest in consumer protection are also involved in detecting market problems, signalling unlawful cross-border practices to national enforcement authorities and to the Commission.

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Policy

In his 2017 State of the Union speech and the letter of intent of 13 September 2017, Commission President Juncker announced a ‘New Deal for Consumers’ package that aims at facilitating coordination and effective action by national consumer authorities at EU level and reinforcing public enforcement action and better protecting consumer rights.

(291) See Article 26.
As part of the Commission’s 2018 work programme, the New Deal includes a targeted revision of EU consumer law directives following on the Fitness Check of consumer and marketing law(292) that was finalised in May 2017. The initiative aims to make enforcement action against breaches of consumer law by public and private bodies as well as redress for consumers more effective.

In order to restore citizens’ confidence and trust in the Single Market following claims by some Member States in Central and eastern Europe on differences in the quality of products sold across the EU, the Commission published on 26 September 2017 a set of Guidelines on the application of EU food and consumer law to dual quality products(293) which explains the practical steps to enable practical measures to be taken by the competent food and consumer authorities. The Joint Research Centre has started preparing a harmonised testing methodology which is a step towards comparable and authoritative tests across the EU. In addition, the Commission has made available EUR 3 million to develop Member States’ enforcement capacities.

On 13 December 2017, the Commission adopted its first Report on the functioning of the Online Dispute Resolution platform established under Regulation (EU) No 524/2013 on online dispute resolution for consumers(294) which explains its methodology which is a step towards comparable and authoritative tests across the EU. In addition, the Commission has made available EUR 3 million to develop Member States’ enforcement capacities.

Four infringement cases were closed following legislative changes in the Member States concerned on the incorrect transposition of the Unfair Commercial Practices Directive (2005/29/EC), whereas nine cases were still pending at the end of 2017. Two infringement procedures were closed following legislative changes in Italy and Lithuania on the Package Travel Directive (90/314/EEC), and one infringement case on full implementation of the relevant CJEU case law is still pending.

Case-law

In Banco Pirus(295) the CJEU further developed its case law on the ex officio examination of the unfairness of contract within the meaning of Directive 93/13/EEC on unfair terms in consumer contracts and clarified that the res judicata principle may not preclude an appeal from assessing ex officio, the unfairness of contract terms different from those which may have already been assessed by the first instance court.

In Air Berlin plc & Co KG(296) the Court clarified that Directive 93/13/EEC is also applicable to travel. The German consumer organisation argued that the flat-rate handling fee that was charged by the airline in cases where the passenger did not take the flight or cancelled their booking could be considered unfair. The Court stated that the principle of pricing freedom as envisaged in Article 22(1) of Regulation No 1008/2008 does not preclude the application of any consumer protection rule, therefore the terms of contracts of carriage by air are also subject to an assessment of their fairness.

In Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main(297) the Court clarified that the concept of ‘basic rate’ referred to in Article 21 of Directive 93/13/EEC on consumer rights means that charges for the use of a telephone helpline sponsored by the trader in order to contact them about a contract may not exceed the cost of a call to a standard geographic landline or mobile telephone line, regardless of whether the trader concerned makes or does not make a profit through that telephone helpline.

In Andricus and Others(298) the Court clarified that a contractual term in a loan agreement which imposes a foreign currency which specifies that the loan must be repaid in the same foreign currency relates to the definition of the ‘main subject matter of the contract’, meaning that national courts do not have to assess its unfairness if such term is drafted in plain language.


(296) Judgment of 6 July 2017 in case C-290/16, Air Berlin plc & Co Luftverkehrs KG v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

(297) Judgment of 2 March 2017 in case C-558/15, Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main v a person(s) contact.’

(298) Judgment of 20 September 2017 in case C-186/16, Consurer Authority for the Protection of the Consumer and the Trade, Branch Contact Centre, Russia v AXIS Bank Limited.

recently adopted Consumer Rights Directive (2011/83/EU), the first two letters of formal notice were sent in 2017. Two infringement procedures were closed following legislative changes in Italy and Lithuania on the Package Travel Directive (90/314/EEC). The Commission continued its work to ensure the full and correct application of the Unfair Contract Terms Directive (93/13/EEC) and one infringement case on full implementation of the relevant CJEU case law is still pending.

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In Andricus and Others the Court clarified that a contractual term in a loan agreement which imposes a foreign currency which specifies that the loan must be repaid in the same foreign currency relates to the definition of the ‘main subject matter of the contract’, meaning that national courts do not have to assess its unfairness if such term is drafted in plain language.
At the same time the Court, building on its previous case law, clarified that this transparency requirement implies that, in the case of loan agreements, financial institutions must provide borrowers with sufficient information to enable them to take prudent and well-informed decisions. This means that this term must be understood by the consumer also in terms of its real effects, so that the average consumer would be aware both of the possibility of a rise or fall in the value of the foreign currency in which the loan was taken out, and would also be able to assess the potentially significant economic consequences of such a term on their financial obligations.

Source: European Commission
Citizens' rights

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
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 European Parliament elections in the Member State where they reside.

Application by Member States

In 2017 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).

Two Member States amended their legislation to address issues raised by the Commission.

Article 40 — Right to vote and to stand as a candidate at municipal elections

Under Article 40 of the Charter, all EU citizens have the right to vote and to stand as a candidate in municipal elections in the Member State where they reside under the same conditions as nationals of that Member State.

Article 41 — Right to good administration

Under Article 41 of the Charter, every person has the right to have their affairs handled impartially, fairly and within a reasonable timeframe by the institutions, bodies and agencies of the EU. This also includes the right to be heard and to receive a reply.

Policy

‘Revolving doors’ phenomenon

The phenomenon of staff leaving the EU institutions to take up positions in the private sector, or staff joining the institutions from the private sector, often referred to as the ‘reversing doors’ phenomenon, may raise concerns due to the risk of conflicts of interest, thus undermining citizens’ trust in the independence and objectivity of EU institutions. Therefore, being transparent on ‘reversing doors’ contributes to better guaranteeing the right to good administration, as enshrined in Article 41 of the Charter.

Citizens’ rights

In 2017 the Commission adopted its 3rd report on EU citizenship entitled ‘EU Citizenship Report 2017: Strengthening Citizens’ Rights in a Union of Democratic Change’. The Report covers both EU citizenship rights and individuals’ rights to be protected from discrimination. It sets out the Commission’s four priorities for EU citizenship for the next three years:

1. promoting EU citizenship rights and EU common values;
2. promoting and enhancing citizens’ participation in the democratic life of the EU;
3. simplifying daily life for EU citizens and strengthening security; and
4. promoting equality.

The withdrawal of the United Kingdom from the EU continued to be a main concern of citizens. Safeguarding the status and rights derived from EU law at the date of withdrawal of EU citizens and UK nationals, and their families, is an essential objective of the ongoing negotiations with the United Kingdom. The December 2017 Joint report from the negotiators confirmed that both the EU and United Kingdom wish to guarantee in the Withdrawal Agreement that those who have exercised their right to move and reside freely in line with EU law in the host Member State on Brexit will be allowed to stay. The Commission published the draft Withdrawal Agreement on 28 February 2018.

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This issue was at the centre of an inquiry opened in 2014 where the EU Ombudsman made specific recommendations to the Commission aimed at strengthening its review processes for ‘revolving door’ cases. On the basis of the replies provided by the Commission and the publication by the Commission in December 2015 of names of senior officials who had left the Commission for new jobs, including positions in the private sector, the EU Ombudsman in September 2016 closed the inquiry, welcoming the cooperative approach taken by the Commission and making some suggestions for improvements.

In March 2017 the EU Ombudsman opened a follow-up inquiry. The new inquiry focuses on the systemic issues identified in the EU Ombudsman’s previous inquiry. As a first step, the EU Ombudsman asked the Commission to provide a list of cases dealt with by the Commission during 2015 and 2016, including cases of EU officials, temporary agents and contact agents with access to sensitive information who had left the Commission to take up an occupational activity, including leave on personal grounds. The Commission assisted the EU Ombudsman’s office in identifying the requested files during a series of inspection meetings held in November 2017. The inquiry is still ongoing.

Appointment of Special Advisers

In May 2016, the EU Ombudsman opened an own-initiative inquiry on the Commission’s rules and practices to prevent possible conflicts of interest in the Commission’s appointment of Special Advisers. The inquiry covered the scope of the examination conducted by the Commission before the appointment of Special Advisers, the assessment of conflict of interest issues during their mandate as well as public access to documents and information about the appointment procedure. In December 2016, the EU Ombudsman informed the Commission that while significant progress had been made by the Commission on certain aspects of the procedure, further improvements were needed.

The EU Ombudsman published its decision in June 2017, addressing a series of recommendations on the conflict of interest assessment, the application of mitigating measures, the duty of Special Advisers to notify changes of activities and making information available to citizens on the Internet. In its reply from November 2017, the Commission stated that it would endeavour to make further progress in line with the EU Ombudsman’s recommendations.

Code of conduct of Commissioners/Role of the Ad hoc Ethical Committee

In 2016, the EU Ombudsman received complaints on the Commission’s handling of issues to do with the post-mandate activities of former Commissioners, including former Commissioner President Barroso’s appointment with Goldman Sachs. The complaints raised issues also on the code of conduct for Commissioners and the role of the Ad Hoc Ethical Committee.

On that basis, the EU Ombudsman opened a joint inquiry to examine how the Commission had handled these cases and how the Ad Hoc Ethical Committee conducts its work. Before the EU Ombudsman drew its conclusions, the Commission, in November 2016, announced that it would propose to tighten the Code of conduct by extending the ‘cooling-off’ period from 18 months to two years for former Commissioners and to three years for the President of the Commission. This initiative was welcomed by the EU Ombudsman, although it noted that the Code of conduct should also be made more explicit and announced that it would also consider improvements to the role of the Ad Hoc Ethical Committee. In July 2017 the EU Ombudsman asked the Commission to reply to a series of questions on the functioning of the Ad Hoc Ethical Committee.

Following up on the announcement from November 2016, the Commission on 12 September 2017 approved in principle a new Code of conduct for Commissioners which significantly reinforced the existing Code. The new Code incorporates requests from the European Parliament, the EU Ombudsman and NGO’s, reinforcing many of the provisions contained in the current Code and covering new issues.

In November 2017 the Commission replied to the EU Ombudsman’s request from July 2017, explaining how the issues at stake were dealt with under the existing Code and highlighting relevant parts that had been tightened in the new Code.

On former Commissioner President Barroso’s appointment with Goldman Sachs, the reply recalled that Commission President Juncker had decided to request the Ad Hoc Ethical Committee’s opinion although the ‘cooling-off’ period had already expired. On the Commission’s handling of former Commissioners’ post-mandate activities and the functioning of the Ad Hoc Ethical Committee, the Commission explained how it had sought to ensure that former Commissioners’ activities abide by the rules enshrined in Article 245 TFEU and underlined the parts that had been tightened up in the new Code of Conduct.

Case law

In case E-Control v ACER(300), the applicant had sought the annulment of a decision of the Agency for the Cooperation of Energy Regulators Board of Appeal by arguing that the Board had infringed the obligation to state adequate reasons arising under Article 41(2) of the Charter. The Court addressed the right to a good administration and concluded that the reasons stated in the contested decision were sufficient.

On 9 March 2017 the Court delivered a judgment in Doux SA(301) on the question whether the requests for counter-analyses which are provided for by Regulation No 543/2008, on marketing
standards for poultry meat, in respect of the results of slaughterhouse checks can be extended to checks carried out at the stage of marketing of export products, under Article 41 of the Charter. The Court confirmed its previous case law (301) as it found that this provision, which is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the EU, was not relevant to the case in the main proceedings.

Article 42 — Right of access to documents

Article 42 of the Charter guarantees that all EU citizens, 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. This right is subject to certain exceptions (302). In particular, the institutions may refuse access where disclosure would undermine the protection of the public interest, or the right to privacy and integrity of the individual.

Policy

In 2017, the Commission registered more than 6 255 initial requests for access to documents. Full or partial access was granted in more than 82 % of cases. The Commission received around 300 applications asking for a review of the initial decision. This independent review led to wider access being granted in almost 50 % of cases.

In 2017, the Commission also honoured its commitment to ensure transparency in the Brexit negotiations. As from May 2017, the Commission's Taskforce on Article 50 negotiations with the United Kingdom has been publishing, on a regular basis, all agendas for and reports of negotiating rounds, EU position papers, joint reports, and technical notes on the EU and the UK positions.

The Commission also continued to publish information about lobbyists who meet its political leaders and senior officials, also applying the rule “not on the Transparency Register, no meeting.” By the end of December 2017, information had been published about more than 15 000 bilateral meetings between Commissioners, Cabinet members and Directors-General, and lobbyists. This allowed citizens and stakeholders to know who is meeting the Commission and on which subjects.

Legislation

The proposal of 6 December 2017 for a Council Regulation on the establishment of the European Monetary Fund (303) provides a reference to the right of access to documents (Article 42) in line with the rules enshrined in Regulation (EC) No 1049/2011. The European Monetary Fund should within a short period after the entry into force of the Regulation adopt internal measures to this end.

Under the Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 on the extension of the duration of the European Fund for Strategic Investments as well as introducing technical enhancements for that Fund and the European Investment Advisory Hub (304), the detailed minutes of the Steering Board will be made publicly available. The scoreboard, a tool for the Investment Committee in making its investment decisions, will from now on be made publicly available as soon as a project has been signed, excluding commercially sensitive information. Its publication will provide additional transparency in the selection of the EFIS projects against measurable criteria. Moreover, there will be more transparency on the financing decisions of the Investment Committee, who will be required to explain them and state the reasons for granting support under the EU guarantee for each operation.

Case law

In Saint-Gobain Glass Deutschland GmbH v Commission (305), the CJEU clarified the strict interpretation of the term ‘decision-making process’ in Article 4(3) of Regulation No 1049/2001 in the context of environmental information falling under the Aarhus Convention. The case concerned the right of access to documents held by EU institutions on the emissions trading system. The complainant had requested the disclosure of the files, while the Commission had refused access on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001 arguing that disclosure of the requested information would seriously undermine its decision-making process. The Court held that a strict interpretation of the first subparagraph of Article 4(3) of Regulation No 1049/2001 was compelling, as the respective documents contained environmental information. The Court based its decision on Regulation No 1367/2006 applying the provisions of the Aarhus Convention to the institutions and bodies of the EU.

Article 43 — EU Ombudsman

Article 43 of the Charter provides that all EU citizens and any natural or legal person residing or having its registered office in a Member State has the right to refer to the EU Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies, with the exception of the Court acting in its judicial role.

Every year, the EU Ombudsman presents an annual report on its activities before the European Parliament. The Committee on Petitions publishes an own-initiative report on the annual report, together with a motion for a resolution subject to a debate and vote in a plenary session, which provides an overview of the petitions received during the year and of its relations with other institutions(308).

In 2017, the EU Ombudsman received 15 872 citizens’ complaints. This includes individuals who complained directly to the EU Ombudsman (2,216 complaints), those who received a reply to their request for information (1,135), and those who obtained advice through the interactive guide on the EU Ombudsman’s website (112,523).

About 624 complaints fell within the competence of a member of the European Network of Ombudsmen, of which 566 fell within the competence of a national/regional ombudsman or similar body and 58 were referred to the European Parliament’s Committee on Petitions.

Article 44 — Right to petition

Article 44 of the Charter provides that all EU citizens, as well as 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 which come within the EU’s activity and which affect the petitioner directly.

Petitions addressed to the European Parliament are considered by the European Parliament’s Committee on Petitions. Each year, the Committee draws up a report on its activities which provides an overview of the petitions received during the year and of its relations with other institutions. This report is then debated during a plenary sitting of the Parliament which adopts a resolution(306).

Petitions can be addressed to the Parliament either in writing or electronically, using the Parliament’s web portal(307) which has been established to make easier the public’s interaction with the work of the Committee on Petitions. Petitioners have the right to attend the Committee meeting when their petition is being debated. Such meetings provide the Committee and representatives of the Commission, who are also invited to attend, the opportunity to hear directly from citizens who consider that their rights have not been respected.

Under the European 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.

In 2017 the Commission received a total of 411 petitions from the Committee on Petitions, 61 of which concerned fundamental rights. The Commission’s Directorate-General for Justice was responsible for addressing the petitioners concerns. Recurring fundamental rights issues raised by citizens in 2017 included freedom of movement and of residence (Article 45), right to an effective remedy and fair trial, functioning of National judicial systems, EU Arrest Warrant (Article 47), and non-discrimination (Article 21).

European citizens’ initiatives

Another instrument in the hands of EU citizens is the European Citizens’ Initiative. The European Citizens’ Initiative is a right enshrined in the TEU and allows citizens to participate directly in the development of EU policies by calling on the Commission, under its powers, to propose legislation on matters where the EU has competence to legislate for implementing the EU Treaties. A citizens’ initiative has to be backed by at least one million EU citizens, from at least seven out of the EU-28. A minimum number of signatures are required in each of those seven Member States. The organisers must collect all signatures within one year from the date of the registration of the citizens’ initiative.

In 2017, the Commission registered eight initiatives (an increase from three in 2016)(309):

- STOP TTIP
- Stop Extremism
- Let us reduce the wage and economic differences that tear the EU apart!
- Retaining European Citizenship
- Minority SafePack — one million signatures for diversity in Europe
- EU Citizenship for Europeans: United in Diversity in Spite of ius soli and ius sanguinis
- Ban glyphosate and protect people and the environment from toxic pesticides
- European Free Movement Instrument

(308) http://www.europa.eu/charter/index_en.htm
(310) Details on the initiatives are available on the ECI website: http://ec.europa.eu/citizens-initiative/public/welcome
The Commission Decision of 2014 refusing the registration of the proposed initiative entitled ‘Stop TTIP’ was annulled by the judgment of the General Court in Effler (310). Following the judgment, a new Commission Decision on the registration of the proposed citizens’ initiative was adopted on 4 July 2017 (311).

On 13 September 2017, the Commission adopted a proposal for a new Regulation of the European Parliament and of the Council on the European Citizens’ Initiative (312), with the policy objectives of making this instrument more accessible and citizen-friendly so that it reaches its full potential as an instrument for citizen participation at European level and helps bring the EU closer to its citizens.

### Article 45 — Freedom of movement and of residence

Article 45 of the Charter guarantees the right of all EU citizens to move and reside freely, while respecting certain conditions, within the territory of the Member States. This fundamental right is also included in the TFEU. Freedom of movement and residence may be granted, in line with the Treaties, to nationals of non-EU countries legally resident in the territory of a Member State.

### Legislation

The protection of fundamental rights, including the right to free movement, was taken into account in two proposals of 25 January 2017 and 2 May 2017 for Council Implementing Decisions setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk (313).

### Case-law

The CJEU clarified its Zambrano jurisprudence in Chavez Vilez, a case on the right of a non-EU country national, as a parent of a minor child who is an EU citizen, to rely on a derived right of residence in the EU (314).

### Application by Member States

The Commission continued its dialogue with a number of Member States on their transposition and implementation of the EU body of legislation on the free movement of EU citizens and their family members, including substantial and procedural safeguards (Articles 21, 41 and 45 of the Charter).

The Commission was assisted in its enforcement dialogue on obstacles to free movement as regards registration requirements and procedures for EU citizens and their family members by the European Parliament’s Petitions committee, which undertook a fact-finding visit, thereby encouraging one Member State to re-examine its legislation and practices. The Commission continues its dialogue in this particular case to ensure the rights provided by Article 45 in particular are respected.

The Commission held a dialogue with the authorities of one Member State about a refusal to recognise voluntary name change that took place in another Member State. The recent clarifications by the Court (315) raised concerns about the compatibility of certain national legislative provisions with the EU law. In 2017 the Member State amended its legislation on personal names, thus addressing the Commission concern.

### Article 46 — Diplomatic and consular protection

Article 46 of the Charter guarantees the right of EU citizens to seek diplomatic or consular protection from embassies or consulates of other Member States in third countries under the same conditions as nationals, when their own Member State of nationality is not represented. EU citizens must be able to rely on this right when travelling abroad.

With regard to Article 46 on consular protection, the Commission has assisted throughout the year Member States in their preparations for turning the Consular Protection Directive 2015/637 (due by 1 May 2018), which extends and clarifies the scope of consular protection for unrepresented EU citizens in non-EU countries. The Commission has equally been conducting awareness-raising activities during 2017 in relation to consular protection. Further activities are planned for 2018.

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5(314) See Article 7.
6(315) Judgment of 2 June 2016 in case C-436/14, Nabiel Peter Bogendorff von Wolffenden v Standesamt der Stadt Karlsruhe and Zentraler Juristischer Dienst der Stadt Karlsruhe and judgment of 8 June 2017 in Case C-541/15, Mireia Floran Freyagu.
Letters

- Equality 29%
- Freedoms 18%
- Solidarity 4%
- Justice 17%
- Citizens’ rights 20%
- Other 11%
- Dignity 1%
- EU citizenship in general 2%
- Right to good administration 0%
- Right to vote & stand as candidate (EP) 0%
- European Ombudsman 1%
- Right of access to documents 0%
- Right to petition 0%
- Freedom of movement and residence 17%
- Diplomatic and consular protection 0%

Source: European Commission

Questions

- Equality 21%
- Freedoms 18%
- Solidarity 10%
- Justice 8%
- Citizens’ rights 15%
- Other 7%
- Dignity 1%
- EU citizenship in general 1%
- Right to access to documents 1%
- Right to petition 0%
- European Ombudsman 0%
- Electoral rights (EP and local elections) 3%
- Freedom of movement and residence 10%

Source: European Commission

Petitions

- European citizens’ rights 30%
- Equality 21%
- Freedoms 18%
- Solidarity 10%
- Justice 8%
- Other 10%
- Dignity 3%
- EU citizenship in general 2%
- Right to good administration 2%
- Right to vote & stand as candidate (EP) 0%
- European Ombudsman 0%
- Right of access to documents 1%
- Right to petition 0%
- Freedom of movement and residence 23%

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
Justice

Improving the quality, independence and efficiency of national justice systems are among the key priorities of the European Semester — the EU annual cycle of economic policy coordination.

Initiatives in supporting judicial training also contributed to the promotion of the right to an effective remedy for the enjoyment of rights derived from EU law, including fundamental rights enshrined in the Charter. The 2017 call for proposals for action grants in European judicial training specifically mentioned fundamental rights as one of the priority topics on which the training projects should focus.

The Commission adopted, for the first time, a reasoned proposal under Article 7(1) TEU on a Member State, inviting the Council to determine the existence of a clear risk of a serious breach of the rule of law in particular in relation to the principle of judicial independence in Poland.

Various legislative proposals adopted in the course of 2017 directly promote the right to an effective remedy. The Directive on combating terrorism contains several provisions on support, assistance and protection of victims of terrorism. The Commission has been assisting the Member States in ensuring full and effective transposition of the Directive in line with the requirements of the Charter. The Directive on tax dispute resolution mechanisms gives taxpayers access to their national competent court at the dispute resolution stage. The Commission also provided guidance on the respect of the right to access to justice when implementing EU rules on environmental matters.

The European Public Prosecutor’s Office was established by the Council Regulation 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office. The European Public Prosecutor’s Office activities must be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the rights of defence.

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 court if a right granted under EU rules is violated. This ‘right to an effective remedy’ provides individuals with a legal solution decided by a court if an authority applies EU law incorrectly. It guarantees judicial protection against any such infringement 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 appoint a lawyer.

Article 47 also states 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 the right to an effective remedy and to a fair trial, as enshrined in the Charter. Every year, the Commission publishes its annual EU justice scoreboard to provide comparable data on the independence, quality, and efficiency of national justice systems and recommendations paving the way for a more investment, business and citizen-friendly environment. Improving the quality, independence and efficiency of national justice systems are also among the key priorities of the European Semester — the EU annual cycle of economic policy coordination, as expressed in the Communication from the Commission on the Annual Growth Survey for 2018.

The Commission closely follows justice reforms in Member States and the Council adopts each country-specific recommendations in this area on the basis of Commission proposals. In 2017, Croatia, Italy, Cyprus, Slovakia and Portugal received a Country Specific Recommendation to improve their justice system. The Commission has also closely monitored the efforts in this area in other Member States such as Belgium, Spain, Latvia, Malta, Poland, Romania and Slovenia.

Various legislative proposals were adopted in the course of 2017 which directly promote the right to an effective remedy. In October 2017, the Directive on tax dispute resolution mechanisms was adopted, which seeks to promote 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, while also taking into account the requirements of the freedom to conduct a business.

The new Directive on combating terrorism was also adopted in March 2017. The Directive contains several provisions on the specific needs of victims of terrorism. These provisions increase 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), by facilitating access to compensation (victims’ support services will be providing for assistance in claim compensation).

The right to an effective remedy, and in particular the right to access to a court, is also at the core of the Commission Notice on access to justice in environmental matters, which was adopted in April 2017. Building on the standards laid down in Article 47 of the Charter, the Notice provides extensive guidance on case law of the Court relevant to legal challenges brought by individuals and environmental NGOs against decisions, acts or omissions of public authorities on EU environmental law, including for legal aid.

Initiatives in supporting judicial training also contributed to the promotion of the right to an effective remedy for the enjoyment of rights derived from EU law, including fundamental rights enshrined in the Charter. The 2017 report on European judicial training, based on the results of a questionnaire sent in 2017 to Member States’ authorities, European networks of legal professionals and their members and the main training providers at European level on training of legal practitioners, showed that 5.8% of the training activities followed by legal practitioners on EU law or on the law of another Member States in 2016 dealt mainly or exclusively with fundamental rights.

The 2017 call for proposals for action grants in European judicial training specifically mentioned fundamental rights as one of the priority topics on which the training projects should focus. More specifically, the call included among its priorities the setting up or expanding of a network of contact points of training providers (or similar cooperation mechanisms) for lawyers, notaries, court staff, bailiffs, prison and probation staff with the aim of exchanging information also on implementation of sanctions in respect of fundamental rights and countering radicalisation.

Expected results of the call are an increased knowledge of fundamental rights instruments among legal practitioners, and an increased awareness on the added value and scope of application of the Charter among judges, public prosecutors, lawyers and practitioners to strengthen fundamental rights protection across the EU.

In the same vein, a preparatory action was adopted in 2017 by the European Parliament under the EU budget 2018, to explore possibilities for financial support for awareness rising and legal assistance to individuals and civil society organisations litigating democracy, rule of law and fundamental rights violations based on the outcome of a requested feasibility study.

Application by Member States

In 2017 the Commission initiated infringement proceedings against Poland alleging the violation of the principle of judicial independence as enshrined in Article 47 of the Charter read in conjunction with Article 1(1) TEU on account of national provisions on the organisation and functioning of ordinary courts providing, in particular, for a wide discretionary power assigned to the Minister of Justice to prolong the mandate of judges which have reached retirement age.

Another concern raised by the Commission in this context related to alleged discrimination on the basis of gender due to the introduction of a different retirement age for female judges.
(60 years) and male judges (65 years), which the Commission found to be contrary to Article 157 TFEU. The Commission also adopted, for the first time, a reasoned proposal in accordance with Article 7(1) TFEU on Poland, inviting the Council to determine the existence of a systemic threat to the rule of law. In this proposal the Commission set out the concerns on the basis of which it concluded that there is a systemic threat to the rule of law and that the measures adopted by Poland are insufficient to address these concerns, including the definitions of public servants, the protection of judges and the independence of the judiciary.

The Court also had the opportunity to reiterate its interpretation of the requirements provided for in Article 263 TFEU for bringing an action before the EU Courts, in a case concerning an annulment of a Commission Decision authorising aid in support of a nuclear power station for the purpose of bringing an action under Article 263 TFEU, taking to be regarded as being individually concerned by that measure for the purpose of bringing an action before the EU Courts, in a case concerning an annulment brought against a Commission Decision authorising aid in support of a hydro-electric project were not compatible with EU environmental law provisions, the Aarhus Convention and Article 47 of the Charter.

Building on previous jurisprudence, the Court found that restrictions in Austrian law on environmental matters were once again brought before the CJEU in the case Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd, referred to as Aarhus Convention and Article 47 of the Charter. The Court also had the opportunity to reiterate its interpretation of the requirements provided for in Article 263 TFEU for bringing an action before the EU Courts, in a case concerning an annulment brought against a Commission Decision authorising aid in support of a nuclear power station for the purpose of bringing an action before the EU Courts, in a case concerning an annulment brought against a Commission Decision authorising aid in support of a hydro-electric project were not compatible with EU environmental law provisions, the Aarhus Convention and Article 47 of the Charter.

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information sent by another Member State, having regard to EU rules on administrative cooperation in the field of taxation[341] read in light with Article 47 of the Charter.

The Court answered in the affirmative and established that a relevant person on whom a pecuniary penalty has been imposed for failure to comply with an administrative decision directing that person to provide information in the context of an exchange between national tax administrations pursuant to EU rules is entitled to challenge the legality of that decision. In this context, the national court must not only have jurisdiction to vary the penalty imposed but also to review the legality of that information order. The review must be limited to checking whether the information sought is not manifestly devoid of any foreseeable relevance to the tax investigation concerned. For that purpose, the court must have access to the request for information addressed to the requested Member State by the requesting Member State, and the relevant person must be in possession of the information sufficient to be given a full hearing of their case.

The right to access to a court and to a judicial appeal in case of a visa refusal were the object of a ruling delivered by the CJEU in El Hassani[342]. The Visa Code Regulation sets out the procedures and conditions for issuing visas for the purpose of short stays and airport transit. It establishes the obligation for Member States to provide for a right of appeal against a visa refusal/annullment/revocation. In addition, the EU Treaty obliges Member States to provide remedies sufficient to ensure an effective legal protection in the fields covered by EU law and the Charter grants individuals the right to an effective remedy before a tribunal, when rights and freedoms under Union law are violated.

In the El Hassani case, the Court concluded that Article 32(3) of the Visa Code, read in the light of Article 47 of the Charter, must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in line with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.

In King[343], the Court explored the requirements of Article 47 of the Charter in relation to remedies available to a worker to enforce his or her right to take paid leave under EU law[344]. The Court held that the right to an effective remedy would not be guaranteed if, in a situation in which the employer grants only unpaid leave to the worker, the worker would not be able to rely, before the courts, on the right to take paid leave, but would be forced to take leave without pay and then bring an action to claim payment for it.

The Court further held that EU law precludes national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his or her employment relationship, past leave rights not exercised in respect of any foreseeable relevance to the tax investigation concerned. For that purpose, the court must have access to the request for information addressed to the requested Member State by the requesting Member State, and the relevant person must be in possession of the information sufficient to be given a full hearing of their case.

The Court issued another judgment whereby it annulled a Council decision on restrictive measures under the common foreign and security policy[345]. The case concerned an action brought against the decision of 2014 by which the Council decided to maintain Ms Aisha Muammer Mohamed El-Qaddafi, a Libyan national daughter of former Libyan leader Muammar Qaddafi, in the list of individuals targeted by restrictive measures taken against Libya and against individuals and entities involved in serious human rights abuses in Libya, first adopted in 2011.

The Court found that the contested measures were to be considered invalid, as the acts mentioned no information, and even less individual, specific and concrete reasons, that would explain why the Council decided to retain the applicant's name on the lists at issue in June 2014, apart from the reasons that were put forward to justify the entry of her name on the relevant lists in February 2011.

The lack of reasons were, according to the Court, even more obvious given that it is common ground that the context in which the contested measures were adopted differed considerably from that when the original restrictive measures were first adopted in 2011.

**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 states that respect for such persons’ right to defence is to be guaranteed.

**Legislation**

2017 was marked by crucial progress in the establishment of the European Public Prosecutor’s Office, thanks to the entry into force of Council Regulation 2017/1939.
implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office. Following a build-up phase of three years, the European Public Prosecutor’s Office is envisaged to take up its investigative and prosecutorial functions by the end of 2020.

Pursuant to Article 41 of the Regulation, the European Public Prosecutor’s Office activities must be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the rights of defence.

The Commission has put in place a regular and constructive dialogue with the relevant European bar associations to ensure that defence practitioners are fully aware of the Regulation’s requirements.

**Application by Member States**

The EU has set an ambitious legislative programme on procedural rights for suspects and accused persons in criminal proceedings which directly contribute to the right to a fair trial, including notably the right to legal aid. Since 2009 considerable progress has been made with the adoption of six Directives on:

1. the right to interpretation and translation (2010)(346);
2. the right to information (2012)(347);
3. the right of access to a lawyer (2013)(348);
4. the presumption of innocence and the right to be present at the trial (2015)(349);
5. the procedural safeguards for children(350) and
6. legal aid(351).


(348) Directive 2010/64/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with that third party or with consular authorities while deprived of liberty, to be transposed by 27 November 2016.

(349) Directive (EU) 2016/345 on the strengthening of certain aspects of the presumption of innocence and the right to be present at the trial in criminal proceedings (to be transposed by 1 April 2017).

(350) Directive (EU) 2016/400 on procedural safeguards for children who are suspects and accused persons in criminal proceedings (to be transposed by 15 June 2017).


Recommendations were also issued by the Commission on safeguards for vulnerable people(352), and the right to legal aid for suspects or accused persons in criminal proceedings(353).

In 2017 the Commission launched infringement proceedings against nine Member States for not communicating their national measures turning the Directive on the right of access to a lawyer, and started in parallel its assessment of the completeness and correctness of the other Member States’ transposition of the Directive. In addition, the Commission organised several expert meetings in order to assist Member States with the turning the Directives on the presumption of innocence, on procedural safeguards for children and on legal aid which will enter into force in 2018 and 2019 respectively into national law.

**Case-law**

The judgment in Tronco and others(354), concerned the interpretation of the requirements of the Directive on the right to information in criminal proceedings and clarification of the consequences of the Court judgment(355) in cases where the non-resident accused person has no fixed place of residence. The CJEU ruled that the relevant provisions of the Directive(356) allow, under certain conditions, that the Member State’s rules require in some circumstances the non-resident accused person to appoint an agent in criminal proceedings.

In the case Sklepyński(357), the Court ruled that Article 3 of the Directive on the right to interpretation and translation in criminal proceedings must be interpreted as meaning that an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a ‘document which is essential’, within the meaning of that provision. Therefore a written translation must be provided to suspected or accused people who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus safeguarding the fairness of the proceedings.

In the case Zdroziewski(358), concerning the interpretation of relevant provisions of the European Arrest Warrant(359), the Court ruled that, while where the person concerned had not appeared in person the executing judicial authority may refuse to execute the European Arrest


(354) Judgment of 22 March 2017 in joined cases C-141/14, Criminal proceedings against Janne Tronco and Others, C-188/15, Ritter and C-215/15, Oprić.


(356) Article 2, Article 5(1)(a) and Article 6(1) and (5) thereof.

(357) Judgment of 12 October 2015 in case C-276/15, Criminal proceedings against Przemek Sklepyński.

(358) Judgment of 29 August 2013 in case C-193/13, Przemyśl County Prosecutor v Sławomir Andrzej Zdroziewski.

Article 49 — Principles of legality and proportionality of criminal offences and penalties

Article 49 of the Charter provides that no one is found guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law at the time when it was committed. Nor must a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

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 EU.

Legislation

The Directive on combating terrorism was adopted in March 2017. The Commission has been assisting the Member States in ensuring full and effective transposition of the Directive in line with the requirements of the Charter, and notably the principle of legality and proportionality of criminal offences and penalties enshrined in Article 49 of the Charter. To that end, the Commission has organised various transposition workshops shortly after the adoption of the Directive, bringing together Member States and representatives from civil society to discuss best practices and learn from each other’s experiences. The Commission also continues to engage with civil society to better understand their concerns as to developments in the field of counter-terrorism that may negatively impact fundamental rights. All of this will enable the Commission to submit an evaluation report to the European Parliament and to the Council, assessing the added value of the Directive with regard to combatting terrorism and examining the impact of the Directive on fundamental rights and freedoms, including non-discrimination, the rule of law, and the level of protection and assistance provided to victims of terrorism.

Case law

The principle of legality of criminal offences and penalties was the object of the CJEU ruling in MA S and MB. The case concerned the interpretation of the obligation to set aside provisions of national law laying down limitation periods liable to prevent the prosecution of infringements relating to VAT and thereby the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud liable to have an adverse effect on the financial interests of the EU, as derived from previous case law of the Court in Tonco.

The Court clarified that the obligation to ensure the effective collection of the EU’s resources, following from Article 325 TFEU, should not be applied as to run counter to the principle that offences and penalties must be defined by law and that of non-retroactivity of criminal law. Consequently, if a national court, in proceedings concerning persons accused of committing offences relating to VAT, considers that the obligation to apply the principles stated in the Tonco judgment conflicts with one of these principles, it is not required to comply with that obligation, even if compliance would allow a national situation incompatible with EU law to be remedied.

The Court also ruled in L'Ambroise that an implementation of EU rules on the harmonisation of certain social legislation relating to road transport, leading to a penalty provided for in national law imposed on lorry drivers who take their compulsory weekly rest period in their vehicle and not elsewhere, even in the absence of express EU rules to that effect, may not be regarded as incompatible with the principle of legality.

According to the Court, the legality of such a sanction rests in the prohibition on taking regular weekly rest periods in a vehicle contained in relevant EU provisions, which, while not imposing themselves any penalty, require Member States to provide for penalties for infringement of that obligation and to take all necessary steps to ensure that these penalties are applied, recognising them a certain discretion on the nature of the applicable penalties.

Warrant, EU rules, as amended, do not prevent that authority from taking account of all the circumstances characterising the case brought before it in order to ensure that the rights of the defence of the person concerned are respected during the relevant proceeding or proceedings.

The Court also clarified that the concept of ‘trial resulting in the decision’ object of the procedure must be interpreted as referring not only to the proceedings which gave rise to the decision on appeal, where that decision, after a fresh examination of the case on the merits, finally determined the guilt of the person concerned, but also to subsequent proceedings, at the end of which the decision that finally amended the level of the initial sentence was handed down, inasmuch as the authority that adopted the latter decision enjoyed a certain discretion in that regard.
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 offence for which he or she has already been finally acquitted or convicted (the double jeopardy principle). Article 50 provides that criminal laws should respect this.

Another example is a case decided by the Supreme Court of Croatia that was dealing with a Finnish citizen arrested in Croatia following a Turkish international arrest warrant. The person had belonged to a group of five who had thrown a homemade Molotov cocktail at the Turkish Embassy in Helsinki, causing fire and material damage. The Helsinki District Court convicted the defendant of criminal mischief in 2009. The question arose whether the Finnish final judgment can be considered equal to a domestic judgment in line with Croatian legislation.

The Court confirmed that the Dubrovnik county court had correctly concluded that the term ‘domestic court’ from Article 35, paragraph 1, point 5 of the Act on International Legal Assistance in Criminal Matters (Zakon o međunardom pravnom pomoću unutar okvira stranimi), in this case covers not only the courts of the Republic of Croatia, but also the Courts of other EU Member States. The provision has to be interpreted in light of Article 50 of the Charter according to which no one can be tried or punished twice in criminal proceedings for the same criminal offence. Croatia, Supreme Court, case II-8 Kr 317-4, 13 July 2017.
Field of application
Scope and interpretation of rights and principles
Level of protection
Prohibition of abuse of rights
General provisions governing the interpretation and application of the Charter

Article 51 — Field of application

The scope 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 EU Treaties.

Article 52 — Scope and interpretation of rights and principles

Article 52 of the Charter 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 European Convention on Human Rights, 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.

Article 53 — Level of protection

Article 53 of the Charter ensures that nothing in the Charter will be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by EU law, international law and international agreements to which the EU or all the Member States are party, including the European Convention on Human Rights. Its main aim is therefore 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 of the Charter 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 2017 CJEU case-law which directly quotes the Charter or mentions it in its reasoning

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(*) 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 185 mentioned the EU Charter of Fundamental Rights. This Appendix I thus contains 185 cases. Cases with a 2015 date of delivery which were published with delay in Cura as of March 2016 are not have been included.

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(*) 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.
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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.

Enshrinement 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 aimed 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
Freedom

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
Everyone has the right to protection of personal data concerning him or her and has the right to be informed under the conditions set out in the law.

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
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. The 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.
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, ethnicity 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.

Title IV

Solidarity

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 rights 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.
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 shall 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 paid 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 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 citizen 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.

Article 42
Right of access to documents
Any citizen of the Union, or 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, whichever 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 liable to be tried or punished again in criminal proceedings for the same criminal offence.
2. The severity of penalties must not be disproportionate to the gravity of the criminal offence.
3. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
4. No one shall be held guilty of any criminal offence on account of 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.

Title VII
General provisions governing the interpretation and application of the Charter

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.

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 limits defined by those 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.
3. 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.
4. In so far as this Charter contains rights which correspond to rights recognized in Member States' constitutions, 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 recognised only in the interpretation of such acts and in the ruling on their legality.

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 generally meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

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.

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.

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Open data from the EU
The EU Open Data Portal (http://data.europa.eu/euodp/en) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.
The 2017 report on the application of the EU Charter of Fundamental Rights (the Charter) informs about the situations in which one can rely on the EU Charter. It also explains the role EU institutions and Member States’ authorities play in making fundamental rights a reality in their lives. Finally, it highlights how the fundamental rights 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 an informed dialogue between all EU institutions and the Member States on the application of the Charter. The report covers the year 2017, giving an overview of instances where the European institutions promoted and took into account the Charter in their legislative and policy work. It further explains where Member States were required to respect it when they implemented EU law. The report also includes a focus section on women’s rights.

In covering the full range of Charter provisions on an annual basis, the annual report aims to track progress and identify areas where further efforts are still necessary and where new concerns are arising.