1. INTRODUCTION

Fundamental rights afford basic legal protection for political, social, procedural rights to individuals and legal entities. They cover a wide range of issues from human integrity, property and privacy rights, rights to conduct business, to free movement, equal treatment, children's rights, rights of persons with disabilities, rights of citizens in their dealings with the EU institutions, procedural safeguards and much more. Respect for the Charter of Fundamental Rights of the European Union (the Charter) in Commission acts and initiatives, is a binding legal requirement. EU legal acts can be challenged before national courts as well as the European Court of Justice for failure to respect the Charter.

The need to ensure compliance and promotion of fundamental rights is not limited to legislative proposals but should be considered in all Commission acts and initiatives. To help in the implementation of this obligation, the Commission has developed an assessment methodology based on a Fundamental Rights Check-list which should be used by all Commission departments.

The fundamental rights analysis contributes to better policy definition and public acceptance of Commission initiatives and facilitates the legal analysis of compliance with the Charter of a subsequent draft legislative proposal.

This tool gives an overview of the most salient points to consider when assessing fundamental rights in impact assessments. It complements the operational guidance on taking account of Fundamental Rights in Commission IAs which explores these issues in greater depth and provides relevant examples.

When assessing the impacts of initiatives with effect outside of the EU, consideration would have to be given to international human rights instruments. An example is the impacts on Rights in an External Trade context for which further guidance exists on how to address human/fundamental rights in impact assessments supporting Trade agreements.

**Box 1. Fundamental Rights**


---

271 For pragmatic reasons, the impact assessment of initiatives with only an internal EU dimension should focus on the analysis of fundamental rights (guaranteed by the Charter of Fundamental Rights), while for initiatives with an external dimension the analysis should focus on human rights which may be different to the fundamental rights guaranteed by a partner country and which arise from international treaties and customs.

272 As expressed in the Charter of Fundamental Rights and other legal documents.


• The Charter rights are of relevance to all EU policies and the institutions.

• Some of the rights enshrined in the Charter are absolute and cannot be ‘limited’ or ‘restricted’ no matter how important the policy objective pursued would be. While the Charter itself does not explicitly list which rights are absolute, case law of the European Courts indicates that the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter) and the prohibition of slavery or servitude (Article 5 of the Charter) are protected in absolute terms.

• Other rights can be subject to limitations if necessary but only to the extent that such limitations respect the strict requirements set out in Article 52 of the Charter which reads: ‘Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.’

2. **Step by step assessment**

Aspects of fundamental rights may be of relevance in the problem definition. This may be the case in particular where the Union intends to act in order to protect individuals against interferences with fundamental rights.²⁷⁵

Depending on the nature of the problem and the policy context, respect for fundamental rights may be presented as one of the general or specific/operational objectives. This will ensure that at every step of the impact assessment, the relevant aspects will be consistently addressed from the perspective of these objectives (link between objectives and problem analysis, identification of policy options, assessment and comparison of options, future monitoring and evaluation activities).

In order to ensure an evidence-based assessment, questions on fundamental rights should be addressed during the early preparatory stage of any envisaged initiative, i.e. when the initial roadmap is being prepared. Stakeholder consultations and studies should include collection of data on any potential fundamental rights aspect. If an early screening suggests that any policy options may raise substantial questions about fundamental rights requiring further guidance, you should consult colleagues from SJ and DG JUSTICE (and DG EMPL as regards the rights of persons with disabilities²⁷⁶) who could also be invited to participate in the IA work of the interservice group. The EU Agency for Fundamental Rights²⁷⁷ (FRA) also provide a source of valuable information relating to fundamental rights, e.g. through providing relevant information or data or carrying out research, surveys and studies. The European Data Protection Supervisor (EDPS) can advise about ensuring compliance with rights to privacy and the protection of personal data.²⁷⁸

---

²⁷⁵ See Tool #14 on *How to analyse problems.*

²⁷⁶ EMPL-RIGHTS-DISABILITIES@ec.europa.eu

²⁷⁷ http://fra.europa.eu/en

²⁷⁸ https://edps.europa.eu/edps-homepage_en
2.1. **Policy options and analysis of impacts**

Since limitations to fundamental rights can only be justified if they meet with the requirement of necessity and proportionality, a simple cost/benefit analysis is not sufficient when assessing impacts on fundamental rights of a policy option.

In order to ensure that the correct methodology is used, all identified policy options should therefore be screened against the Fundamental Rights Check-list.

**Box 2. Fundamental Rights Check list**

- **What fundamental rights are affected?** (Screening the foreseen policy options against the Fundamental rights ‘key impact questions’ section in the **Tool on the identification and screening of impacts** provides a first indication as to which fundamental rights will be concerned.

- Are the rights in question absolute rights? (Examples being, the ban on torture and the prohibition of slavery or servitude).

- **If it is concluded that the examined policy option limits an absolute right - it should be discarded already at this stage and a further analysis under points 3-6 is not needed.**

- What is the impact of the various policy options under consideration on fundamental rights? This step aims at identifying, for all different stakeholders concerned any positive impacts (promotion of fundamental rights) or negative impacts (limitation of fundamental rights)?

- Do the options have both a beneficial and a negative impact, depending on the fundamental rights concerned (for example, a negative impact on freedom of expression and beneficial one on intellectual property)

- **Should the analysis reveal that the policy option would have no material impact on fundamental rights or only positive impacts on fundamental rights there is no need for further analysis under points 5 and 6.**

- **If by contrast you have identified possible limitations to fundamental rights, please consider the following for each individual limitation:**

  - Would the limitation of/negative impact on fundamental rights be provided for by law, in a clear and predictable manner?

  - Would any such limitation/negative impact:
    - Genuinely meet an objective of general interest of the Union or protect the rights and freedoms of others (this step should identify which objective of general interest or the rights and freedoms of others)?
    - Be necessary to achieve the desired aim? (This step should examine if the policy option is appropriate and effective for attaining the policy objective pursued without going beyond what is necessary to achieve it? Why is no equally effective but less intrusive measure available?)

---

279 The European Data Protection Supervisor has produced additional guidance materials for application in the fields of access to documents and data protection: [https://secure.edps.europa.eu/EDPSWEB/edps/EDPS/Publications/Papers](https://secure.edps.europa.eu/EDPSWEB/edps/EDPS/Publications/Papers)
– Be proportionate to the desired aim?;
– Preserve the essence of the fundamental rights concerned?

Finally, if the examination concludes that the need to attain the general interest objective would justify maintaining a policy option that would cause an interference to one or several fundamental rights, it should be considered which safeguards would be necessary to ensure that the negative impact would not amount to a violation of the fundamental right.

3. FURTHER INFORMATION

While the Charter itself, as well as its Explanations280 constitutes the main reference documents, there are also a number of other resources that can be used to identify the rights that could be affected by a particular initiative:

- **The Commission Charter Strategy**281 sets out the Commission’s approach to implementing the Charter of Fundamental Rights;

- The Commission staff working paper on *Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments*282 gives additional detail on how to apply the Fundamental Rights checklist;

- While not representing an official Commission position, the Fundamental Rights Agency’s *“Charterpedia”* can be a useful tool to obtain a quick and easy overview of the content of the various Charter rights as well as the relevant case-law283. To develop a deeper understanding of a certain fundamental right guaranteed by the Charter, you should consult the case law of the European Court of Justice, the European Court of Human Rights and when appropriate, the opinions and general comments of the UN human rights monitoring committees.

- **The European Convention on Human Rights** is also relevant for the interpretation of the Charter on Fundamental Rights.284

---

280 Charter of Fundamental Rights of the European Union
Explanations relating to the Charter


284 http://www.echr.coe.int/Pages/home.aspx?p=home