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COMMISSION STAFF WORKING DOCUMENT

on the Application of the EU Charter of Fundamental Rights in 2012

Accompanying the document

**Report from the Commission to the European Parliament, the Council, the European
Economic and Social Committee and the Committee of the Regions**

2012 Report on the application of the EU Charter of Fundamental Rights

{COM(2013) 271 final}
{SWD(2013) 171 final}

2. Freedoms

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

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

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

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

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

Respect for private and family life

The EU Charter of Fundamental Rights guarantees the right of everyone to the respect of their private and family life. This is reflected in EU free movement rules, which recognise the right to family life for all EU citizens who move and reside in another Member State. The right of everyone to respect for their private and family life right is also granted under EU free movement rules to third-country nationals who are family members of an EU citizen. The Family Reunification Directive¹⁰ further obliges Member States to pay due regard to the best interests of children when examining an application for family reunification (Article 5 (5)). This provision mirrors the obligation of the Charter (Article 24 (2)) and in the UN Convention on the Rights of the Child (Article 3 (1)) that the child's best interest must be a primary consideration in all actions relating to children as well as the need, expressed in the Charter (Article 24 (3)) for a child to maintain on a regular basis a personal relationship with both parents.

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

The Commission proposed **new rules on the publication of information on all beneficiaries of European agricultural funds**¹². The new rules incorporate the CJEU jurisprudence¹³, which declared EU provisions on the publication of beneficiaries (natural persons) of EU agricultural subsidies invalid. The CJEU recognised that that in a democratic society, taxpayers have a right to be kept informed of the use made of public funds, but decided that the publication naming the beneficiaries who are natural persons, and indicating the precise amounts received by them, violates their right to respect for their private life and in particular to the protection of their personal data, as laid down in Articles 7 and 8 of the Charter.

The new rules proposed by the Commission are based on a revised detailed justification, centred on the need for public control of the use of European agricultural funds in order to protect the Union's financial interests. Moreover, they require more detailed information to be given on the nature and description of the measures for which the funds are disbursed. Furthermore, they include a minimum threshold below which the name of the beneficiary will not be published. This provision follows proportionality considerations, namely between the objective of the public control of the use of public funds, on the one hand, and the beneficiaries' right to respect for their private life in general and to protection of their personal data on the other hand.

The case law of the CJEU was also an important reference point when the Commission prepared its **proposal on European political parties**¹⁴. Through this initiative the Commission seeks to strengthen the ability of European political parties to form a truly European public sphere and express the will of EU citizens. This legislative proposal includes a comprehensive set of rules, including strict reporting and control requirements of party funding. European political parties would have to publish the names of donors contributing more than €1,000/year, while the annual limit on individual donations would rise from €12,000 to €25,000. A robust set of provisions on transparency and data protection ensures that the publication obligation, which is a substantial public interest, is in compliance with the principle of proportionality and in line with the CJEU's jurisprudence¹⁵. Under the proposed rules, the obligation

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

¹¹ The Commission received 121 replies to the public debate on the right to family reunification.

Available at: http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm

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

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

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

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

to publish the identity of natural persons should not apply to those members of a European political party who have not given their express consent for publication or to donations equal to or below EUR 1 000 per year and per donor. Also in compliance with the principle of proportionality, information on donations should be published annually, except during election campaigns to the European Parliament or for donations exceeding EUR 12 000 where publication should take place expeditiously.

Negotiations continued on the Commission-proposals on matrimonial property regimes¹⁶ and on property regimes for registered partnerships¹⁷. The regulations take into account the right to respect for private and family life and the right to marry and to found a family according to national laws. There is no differentiation introduced in the legislation on the basis of sexual orientation. At the request of the European Parliament, FRA delivered an opinion on the proposal on the property consequences of registered partnerships on 31 May 2012¹⁸. In its opinion, FRA finds that *"in order to restrict the choice of applicable law in the case of registered partnerships appropriate justifications would be required which cannot be derived from the reasons given in the draft legislation under consideration. Accordingly, the exclusion of any choice of law does not appear to be in line with the principle of equality (Article 20 of the Charter of Fundamental Rights) and generates potentially problematic effects with regard to the prohibition of discrimination (Article 21 of the Charter of Fundamental Rights)."*

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

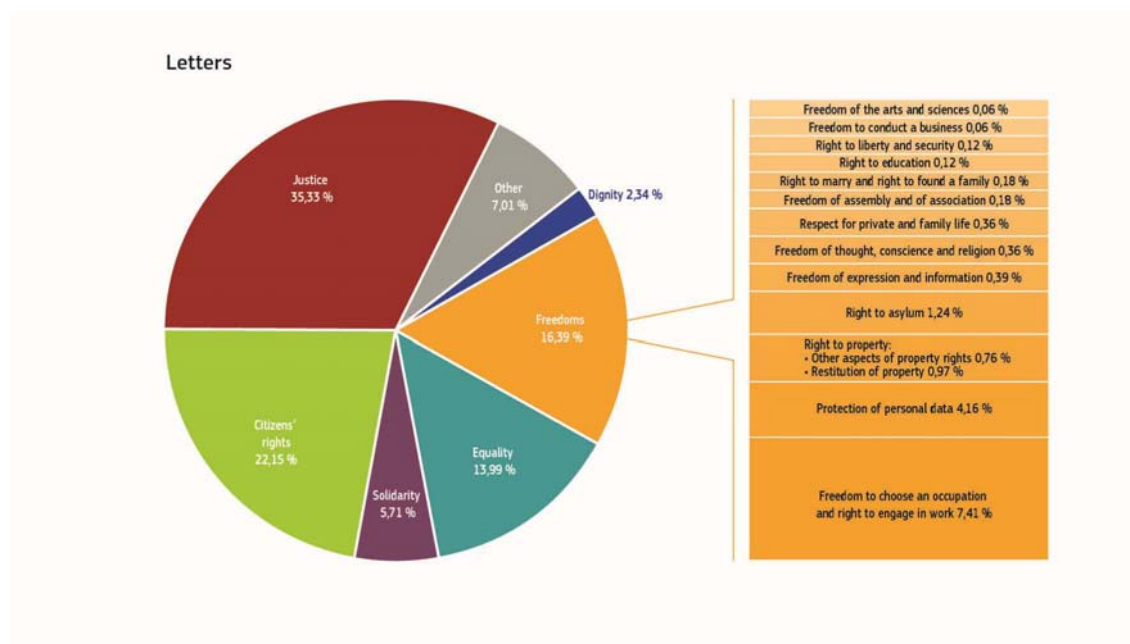
¹⁶ Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, COM/2011/0126 final. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0126:en:NOT>

¹⁷ Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, COM(2011) 127/2. Available at:

http://ec.europa.eu/justice/policies/civil/docs/com_2011_127_en.pdf

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



Ruling of the Constitutional Court of Slovenia¹⁹

The Constitutional Court annulled the decision of the Supreme Court to uphold the expulsion decision of a Lithuanian national from the Slovenian territory on grounds of public policy or public security; which is allowed upon respect of several conditions laid down under Directive 2004/38/EC²⁰ on the rights of EU citizens and their family members to free movement and residence. The applicant lodged a plea for extraordinary mitigation before the Supreme Court of Slovenia on the basis of the fact that his new-born child lived in Slovenia with his mother. The Supreme Court did not take into account this circumstance as a new fact of personal nature capable of modifying the decision to deport him to Lithuania. The Constitutional Court ascertained that the expulsion measure constituted interference in the applicant's right to respect for private and family life recognised by Article 7 of the Charter and Article 8 of the ECHR and that such measure did not comply with the principle of proportionality inasmuch the Supreme Court failed to take into account the circumstance that the applicant had strong family ties in Slovenia.

Ruling of the Austrian Supreme Administrative Court²¹ -

The Austrian Supreme Administrative Court considered that the decision rejecting residence permission for the purposes of family reunion of a third country national with his Austrian husband had to be repealed because no due consideration of the personal interest, i.e. the continuation of family life in Austria, had been taken into account. Referring to the jurisprudence of the CJEU²², the Court reminded that decisions had to be taken on a case by case basis and take into consideration the right to private and family life as protected by Article 7 of the Charter.

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

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

²¹ Austrian Supreme Administrative Court (Verwaltungsgerichtshof), case 2008/22/0223, decision of 13.12. 2011

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

Petitions

