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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

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*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*

3. Equality

The year 2012 witnessed a number of serious **incidents of racism and xenophobia** in the EU, including racist and xenophobic hate speech and violence against Roma and immigrants. Data collected by the EU Fundamental Rights Agency indicated that on average, minorities are victims of assault or threat more often than the majority population.

The Commission assessed Member States' **National Roma Integration Strategies** and evaluated, in particular, the key areas of education, employment, healthcare and housing, and how specific requirements (cooperation with civil society, with regional and local authorities, monitoring, antidiscrimination and establishment of a national contact point) as well as funding for Roma integration are addressed.

The Commission launched infringement proceedings against Malta on the grounds of its failure to correctly implement into its national law the EU free movement rules and, more particularly, the right of same-sex spouses or registered partners to join EU citizens in Malta.

The Commission took steps for the implementation in Member States of the **116 000 hotline** (www.hotline116000.eu) which offers help and support for missing children and their families. At the end of the year, the hotline was available in 22 Member States.

In the **European Strategy Better Internet for Children**, the Commission has set out a plan to give children the digital skills and tools they need to use the Internet to their advantage, safely and responsibly.

The Council adopted the **EU framework to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities**.

Non-discrimination

The Charter **prohibits any discrimination** based 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. The Charter also prohibits discrimination on grounds of nationality, within the scope of application of the Treaties and without prejudice to any of their specific provisions. Discrimination based on racial or ethnic origin is a violation of the principle of equal treatment and is prohibited in the workplace and outside the workplace. In the area of employment and occupation, EU legislation prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation.

Discussions in the Council continued on the **Commission proposal for new rules on Equal Treatment**⁶³. During 2012, the Danish and Cypriot Presidency focused, inter alia, on the material scope of the Directive and the rules on age and financial services. The aim was to improve the text on a technical level, to clear the way for a future political compromise.

Manifestations of intolerance to pluralism in the EU

The year 2012 witnessed a number of serious incidents of **racism and xenophobia in the EU**, including racist and xenophobic hate speech and violence against Roma and immigrants. Data collected by the FRA indicates that on average, minorities are victims of assault or threat more often than the majority population. FRA's survey finds that *"Nearly every fifth Roma and every fifth Sub-Saharan African interviewed considered that they had been a victim of racially motivated in-person crime of assault or threat and serious harassment at least once in the last 12 months"*⁶⁴. Still, victims of crime are often unable or unwilling to seek redress against perpetrators. For this reason many crimes remain unreported and unprosecuted. This illustrates the need to build confidence among victims and witnesses of hate crime in the criminal justice system and law enforcement⁶⁵. FRA further points out that only four Member States (Finland, the Netherlands, Sweden and UK) collect comprehensive data on hate crime, including a range of bias motivations, types of crimes and characteristics of incidents, whereas in 14 Member States the data collection is limited and the data are not usually made publicly available.⁶⁶

The Special **Eurobarometer (393) on Discrimination in the EU in 2012**⁶⁷, undertaken at the request of the Commission, shows that discrimination on the grounds of ethnic origin continues to be regarded as the most widespread form of discrimination in the EU. It is notable that 56% of respondents reported it as 'widespread'. 39% reported that discrimination on the basis of religion or beliefs is widespread and 46% of respondents regard discrimination on grounds of sexual orientation to be widespread.

The Commission received many **letters and parliamentary questions on racism, xenophobia and antisemitism**, which underlined the need for the Member States to step up their efforts to tackle these problems. The issues brought to the attention of the Commission included, in particular, xenophobic violence against ethnic minorities and immigrants, racism and xenophobia against Roma and Jews, and citizens of certain Member States.

In response to these concerns, the Commission reaffirmed its commitment to fight against racism and xenophobia by all means available under the Treaties and recalled the responsibility of the Member States' authorities to effectively implement the EU legislation prohibiting racist or xenophobic hate speech and hate crime based on a racist or xenophobic motivation. This legislation obliges Member States to penalise racist or xenophobic hate speech and to ensure that racist or xenophobic motivation

⁶³ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, 2.7.2008.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:EN:NOT>

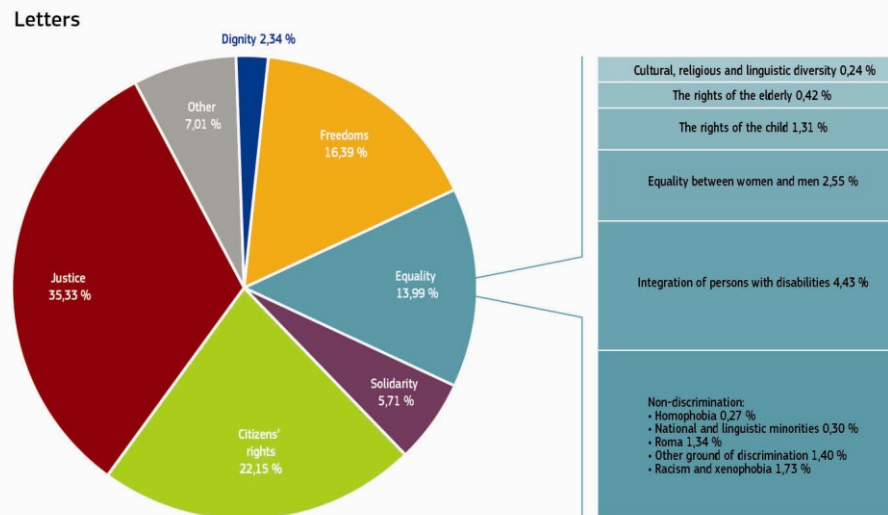
⁶⁴ FRA, EU-MIDIS Data in Focus Report 06 - Minorities as Victims of Crime, November 2012. Available at: http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6_0.pdf

⁶⁵ FRA, Making Hate Crimes Visible in the European Union: Acknowledging Victim's Rights, November 2012. Available at: <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>.

⁶⁶ Making hate crimes visible in the European Union: acknowledging victims' rights, November 2012; EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime, November 2012.

⁶⁷ Available at: http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm.

behind other offences is taken into account in the determination of applicable sentences. By the end of the year, all but two Member States had communicated to the Commission their national laws transposing this Framework Decision. The Commission will assess the compliance of those national laws in a report to be presented by the end of 2013.



The 6th seminar between the European Commission and the State of Israel on the Fight against Racism, Xenophobia and Antisemitism was held in June 2012 to exchange information and experiences on data and trends of racism and antisemitism in the EU, combating hate speech, access to justice as an effective redress against discrimination and hate crimes, as well as on the prevention of racism, xenophobia and antisemitism through education, training and Holocaust remembrance.

Websites targeted against citizens from Central and Eastern European Member States

Xenophobic and intolerant attitudes can target all citizens. In the Netherlands, the PVV Party created a website directed against citizens from certain Central and Eastern European Member States. In Belgium the Vlaams Belang party took a similar initiative. In reaction to these developments, the Commission stressed that it is unacceptable that EU citizens exercising their right to move should become victims of hate speech⁶⁸. The EP warned against destroying the very basis of the Union, namely pluralism, non-discrimination, tolerance, justice, solidarity and freedom of movement⁶⁹.

EU Framework for National Roma Integration Strategies

Action to support **Roma** lies first and foremost in the hands of Member States that have the primary responsibility and the competences to change the situation of a marginalised population. The Commission's assessment of the National Roma Integration Strategies submitted by the Member States⁷⁰ evaluated, in particular, the Member States' approaches to the four key areas of education, employment, healthcare and housing, and on how structural requirements (cooperation with civil society, with regional and local authorities, monitoring, antidiscrimination and establishment of a national contact point) as well as funding are addressed. The Commission concluded that Member States need stronger efforts to live up to their responsibilities, by adopting more concrete measures, explicit targets for measurable deliverables, clearly earmarked funding at national level and a sound national monitoring and evaluation system. In addition, attention should be devoted to anti-

⁶⁸ Vice President Reding's statement in the European Parliament on 13 March 2012, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20120313&secondRef=ITEM-012&language=EN>.

⁶⁹ Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0087+0+DOC+XML+V0//EN&language=EN>.

⁷⁰ Communication on National Roma Integration Strategies: a first step in the implementation of the EU framework, COM(2012) 226 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0226:FIN:EN:HTML>

discrimination and segregation measures and to a close dialogue with (Roma) civil society (alongside regional and local authorities) in the implementation and monitoring of national strategies.

Following the assessment of the National Roma Integration Strategies the Commission organised the first meeting of National Roma Contact Points on 2 -3 October 2012 in Brussels. This network is designed as a forum where Member States are enabled to exchange their good practices and adopt common approaches where appropriate. National Contact Points from all Member States and National Contact point from Croatia participated in the pilot session reflecting the importance of the topic.

Many Members of the European Parliament are also involved in the process. The European Commission received several written questions concerning Roma. The questions were mainly focused on policies of particular Member States pointing on possible discrepancies with the EU framework and some of them addressed particular aspects of Roma discrimination (e.g. dismantling of Roma camps in some member States).

In regard to the Roma and in the context of its multi-annual programming the FRA completed in 2011 and published in 2012 results of a major pilot household survey of Roma in 11 EU Member States working in parallel with a UNDP/World Bank survey commissioned by DG Regional Policy. In addition, the FRA conducted interviews with several local authorities in the Member States covered by the FRA's research. In 2012 the FRA expanded its research to cover the remaining EU Member States, as part of its multi-annual Roma Programme

Fight against homophobia

The **European Parliament** raised concerns on discrimination on the basis of sexual orientation in the internal market and called for the adoption of a Roadmap for equality without discrimination on grounds of sexual orientation or gender identity, in its resolution on the fight against homophobia adopted in May 2012⁷¹.

The **Commission launched, in 2012, infringement proceedings against Malta** on the grounds of its failure to correctly implement in its national law the EU free movement rules and more particularly the right of same-sex spouses or registered partners to join EU citizens in Malta and reside there with them. As a result of the Commission's action, the Maltese legislation was modified and is now compatible with EU rules on the rights of EU citizens to free movement and non-discrimination.

The Commission intervened in the context of the negotiations of a **Council of Europe recommendation on risk behaviours having an impact on blood donor management**. The Commission's intervention aimed at ensuring that the draft text would not discriminate donors based on sexual orientation. As a result, the Council of Europe committed to a project for further data collection which should allow for the eventual definition of donor deferral criteria that are based on objective recognised risks and their relevance to blood safety, irrespective of the sexual orientation of the potential donor.

Lithuania: amendment of the Law on the protection of minors

The new Lithuanian Law on the protection of minors is linked to the implementation of EU rules on Audiovisual Media Services and on E-commerce. The Commission explained in 2010 that some provisions included in the first draft of this law could violate the prohibition of discrimination and the freedom of expression enshrined in the Charter, because they restricted broadcasts on homosexuality. These provisions have been removed from the law that was adopted by the Parliament.

Rights of persons belonging to minorities

Safeguarding the rights of persons belonging to minorities is one of the founding values of the European Union. The respect of those rights is explicitly mentioned in article 2 of the Treaty on the European Union. In addition, any discrimination on the basis of membership of a national minority is explicitly prohibited in the Charter. However as the Commission has no general powers as regards minorities, in particular, over matters concerning the definition of what is a national minority, the recognition of the status of minorities, their self-determination and autonomy or the regime governing

⁷¹ European Parliament resolution of 24 May 2012 on the fight against homophobia in Europe. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0222&language=EN>

the use of regional or minority languages, it is up to the Member States to take decisions about minorities and the use of language on their respective territories.

A number of EU legislation and programmes **contribute to addressing certain difficulties which are likely to affect persons belonging to minorities**, such as discrimination and incitement to violence or hatred based on race or national or ethnic origin. The Commission also supports projects related to regional and minority languages through a variety of programmes, including in areas such as education and training, culture and youth support. In particular, the Lifelong Learning Programme finances projects to promote language learning and linguistic diversity, either through the different sub-programmes (Comenius, Erasmus, Leonardo da Vinci or Grundtvig) or through its transversal programme (key activity 2 'Languages'). The Youth in Action programme promotes mobility within and beyond the EU borders, non-formal learning and intercultural dialogue, and encourages the inclusion of all young people, regardless of their educational, social and cultural background. One of the permanent priorities of the programme is the inclusion of young people with fewer opportunities, notably migrants and Roma youth.

Discrimination on the ground of age

The CJEU ruled on a case where the compliance of a Swedish provision with the **age discrimination** rules contained in Directive 2000/78/EC establishing **equal treatment in employment**⁷² was called into question.⁷³ The provision allows employers to terminate employment contracts on the sole ground that the employee has reached the age of 67, without taking into account the amount of the retirement pension which the person concerned may ultimately receive. The Court stated that such a rule does not constitute discrimination on grounds of age if the use of a certain age as applicable criterion for the termination of contracts is objectively and reasonably justified by a legitimate aim, including objectives of employment and labour-market policies, and if the means of achieving that aim are appropriate and necessary. In this context, the Court pointed out that the prohibition of discrimination on grounds of age set out in the Directive must be read in the light of the right to engage in work recognised in Article 15 (1) of the Charter of Fundamental Rights of the European Union. The Court took the view that the Swedish provision fulfils the requirement of necessity, highlighting that the provision does not force the persons concerned to withdraw definitely from the labour market. After the termination of the employment contract due to the provision, the employer and former employee can freely agree on a fixed-term contract. Furthermore, persons who receive only a low earnings-related pension are entitled to a retirement pension in the form of basic coverage. Therefore the Court found that the Swedish provision does not constitute discrimination on grounds of age.

Another interesting case⁷⁴ involved a clause of the collective agreement applicable to cabin crew members of Tyrolean Airways, according to which the professional experience with another airline belonging to the same group of companies (Austrian Airlines) was not taken into account in determining pay grades. The compatibility of this provision with Directive 2000/78 and Article 21 of the Charter was challenged in so far as in the applicants' allegations, it constituted (indirect) discrimination on grounds of age. The Court, observing that the provision in question was based on a criterion which was neither inextricably nor indirectly linked to the age of employees, rejected a similar reasoning and concluded there was no discrimination on grounds of age.

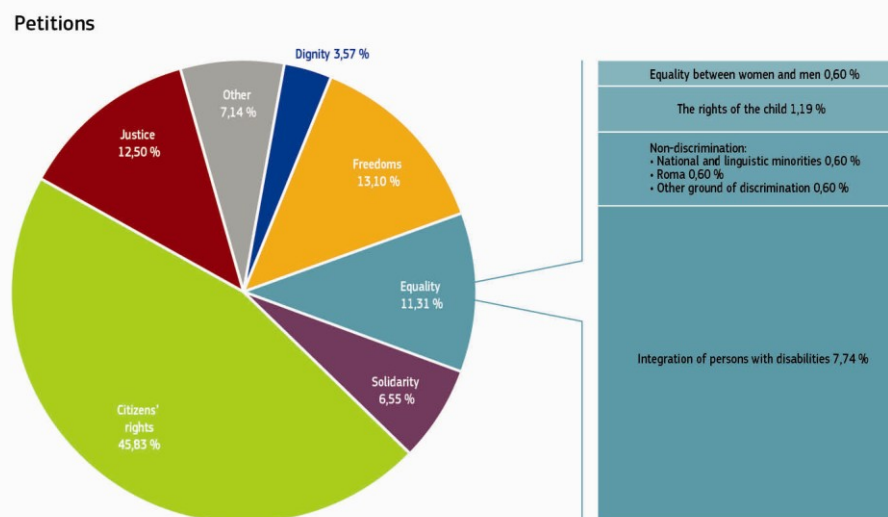
The Court confirmed the Commission's assessment that the lowering of the **mandatory retirement age for judges, prosecutors and notaries in Hungary**⁷⁵, introduced with a very short transitional period was incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law (see *Chapter 6. Justice*).

⁷² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 02.12.2000, p. 16 - 22

⁷³ CJEU, Case C-141/11, *Hörnfeldt v. Posten Meddelande AB*, 05.07.2012

⁷⁴ CJEU, Case C-132/11, *Tyrolean Airways*, 07.06.2012

⁷⁵ CJEU, Case C-286/12, *European Commission v. Hungary* 06.11.2012



Rights of the child

The Charter guarantees the right to such protection and care as is necessary for the well-being of children (Article 24 of the Charter). This Article is based on the United Nations Convention on the Rights of the Child, ratified by all 27 Member States. The Charter recognises children as bearers of autonomous rights, not just as subjects in need of protection. It recognises the need to protect children from abuse, neglect, violations of their rights and situations which endanger their well-being.

The Charter further provides that the **best interests of the child** must be a primary consideration in all actions relating to children. This principle applies to all actions concerning children. It includes the child's right to maintain contact with both parents in case of a divorce, the right to express their views freely and for their views to be taken into consideration on matters which concern them. An important principle of the Charter is that when decisions are being made on what is in the best interests of children, children should have the opportunity to express their views and these views should be taken into account.

The **EU Agenda for the Rights of the Child**⁷⁶, adopted in 2011, aims to put in practice the rights of the child enshrined in the Charter and in the United Nations Convention on the Rights of the Child through a comprehensive programme of actions for the years 2011-2014. The *7th Forum on the Rights of the Child* focused on supporting child protection systems through the implementation of the EU Agenda. National authorities responsible for protecting and promoting the rights of the child, NGO's active in the field, experts and professionals working with children and the EU exchanged best practices. The Forum highlighted the need to empower children and provide opportunities for their participation, to gather better data for informed policy-making, to foster better inter-agency co-operation and to increase efforts in training of professionals.

7th European Forum on the Rights of the Child

In the context of the 7th European Forum on the Rights of the Child held on 13-14 November 2012, the Commission organised a workshop on the involvement of child welfare authorities in cases relating to child custody with a cross-border dimension.

The discussion covered a wide range of Member States, and the discussion focused on the organisation of the supervision of custody rights. Participants noted that child welfare authorities have different powers depending on the Member State and all Member States strive to give primary consideration to the child's best interests whilst fostering, insofar as possible, arrival at amicable solutions to parental conflict. Participants discussed the structure

⁷⁶ Commission Communication: An EU Agenda for the Rights of the Child, COM(2011) 60 final.
Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:en:NOT>

and roles and responsibilities, capacity of the child welfare authority, and cooperation including cross-border cooperation. It emerged that Member States have very different systems in this area. Most of the interventions stressed that it is crucial to better inform children and parents coming from different Member States and to ensure appropriate training of social workers involved in cross-border situations. Participants also looked at how to foster better cooperation between local and central child welfare authorities, as well as cross-border cooperation.

The new **Directive establishing minimum standards on the rights, support and protection of victims of crime**⁷⁷ clearly states that the child's best interests should be a primary consideration in criminal proceedings. A child will benefit from this Directive whether he or she has directly suffered from a crime or suffered indirectly as the victim's child or sibling. The Directive requires all national actors to adopt a child-sensitive approach and to ensure that children can understand and be understood when they participate in police investigations and judicial proceedings. Special protection measures for children have been included in the Directive to protect children throughout criminal investigations and court proceedings. Child victims can suffer terrible psychological and physical harm. The Directive requires that child victims must have access to victim support, including specialised support targeted to their needs.

The Internet offers children new opportunities to be creative, to learn and to express themselves. In the **European Strategy Better Internet for Children**⁷⁸, the Commission set out a plan to give children the digital skills and tools they need to use the Internet to their advantage, safely and responsibly. Today, 75% of children use the Internet, and 4 out of every 10 children report having encountered risks online such as cyber-bullying, exposure to user-generated content promoting anorexia or self-harm or misuse of their personal data. The Commission outlined a range of measures, which will be implemented by different means including industry self-regulation. Cooperation through the Coalition to make the Internet a better place for kids, set up in December 2011, will be vital to this process. The measures aim to:

- Stimulate the production of creative and educational online content for children and develop platforms which give access to age-appropriate content
- Scale up awareness raising and teaching of online safety in all EU schools to develop children's digital and media literacy and self-responsibility online
- Create a safe environment for children where parents and children are given the tools necessary for ensuring their protection online – such as easy-to-use mechanisms to report harmful content and conduct online, transparent default age-appropriate privacy settings or user-friendly parental controls;
- Combat child sexual abuse material online by promoting innovative technical solutions by police investigations.

The Commission took steps towards the implementation in Member States of the 116 000 hotline⁷⁹ (www.hotline116000.eu), which offers help and support for missing children and their families⁸⁰. EU law requires that Member States make every effort⁸¹ to have the hotline operational and this is mandatory since 25 May 2011. To improve the quality of existing hotlines and encourage the setting up of new ones, the Commission made funding available (€3 Mio), through the DAPHNE III Programme. As the implementation process of the 116 000 hotline was lagging, the Commission reminded the Member States of their obligations in a joint letter sent on the occasion of the International Missing Children's Day. At the end of the year, the hotline was available in 22 Member States. To boost awareness and promote the use of the 116 000 hotline and helpline numbers a dedicated website⁸² was launched by the Commission providing information and links to the number operators in all Member States.

77 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012.

78 Communication on a European Strategy Better Internet for Children, COM(2012) 196 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0196:FIN:EN:PDF>

79 Commission Decision (2007/116/EC) on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value, OJ L 49, 17.2.2007, p. 30 – 33.

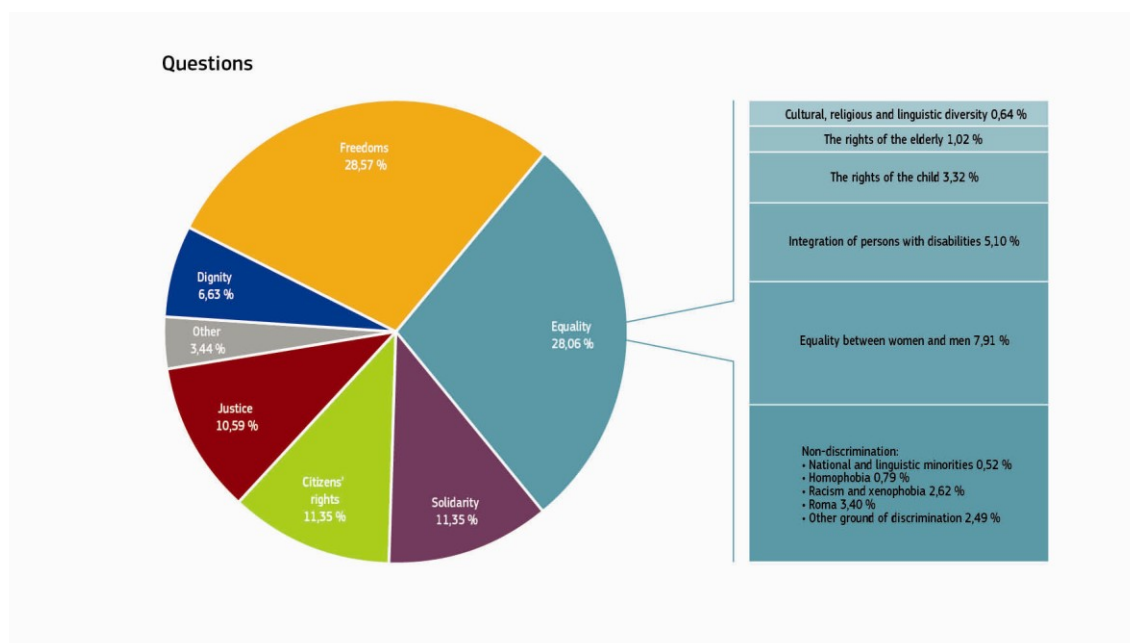
80 Commission Decision (2007/116/EC) on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value, OJ L 49, 17.2.2007, p. 30 – 33.

81 Article 27a of the Universal Service Directive (Directive 2009/136/EC amending Directive 2002/22/EC)

82 <http://www.hotline116000.eu>

The standards of the United Nations Convention on the Rights of the Child (UNCRC) and of the EU Charter of Fundamental Rights are at the heart of all **EU action concerning unaccompanied migrant children**. The Commission actions are based on three main strands of action: preventing unsafe migration and trafficking of children, while increasing protection capacities in non-EU countries; applying reception measures and providing procedural guarantees until a durable solution is found. Furthermore, these actions aim to ensure durable solutions by individually assessing on a case by case basis the return of children to their country of origin, granting them international protection or resettling them in an EU country. The Commission's assessment found that Member States still have to increase efforts as regards data gathering and funding or improving reception facilities.

Children are placed at the heart of the EU's efforts to address trafficking in human beings. The **Trafficking Strategy 2012-2016**, adopted in June 2012, puts a special emphasis on the support of child victims of trafficking to strengthen their identification, protection and assistance. The Strategy prioritises the prevention of crime, prosecution of traffickers, protection of the victims, cooperation and coordination and thus complements the Trafficking Directive (2011/36/EU). The Strategy stresses the importance of comprehensive and child-sensitive protection systems where the needs of diverse groups of children, including boys and girls who are victims of trafficking, can be met through interagency and multidisciplinary coordination. The Strategy calls on Member States to strengthen child protection systems for trafficking situations and ensure, where return is deemed to be the child's best interest, the safe and sustainable return of children to the country of origin, in and outside the EU, and prevent them from being re-trafficked.



Integration of persons with disabilities

The Charter provides that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

The EU is bound by the **UN Convention on the Rights of Persons with Disabilities** (UNCRPD) since 22 January 2011. This implies that the rights enshrined therein need to be implemented and respected by the EU in its legislative actions as well as its policy-making, to the extent of its competences. In addition to the EU, all member states have signed the Convention and 24 among them have ratified it.

After extensive discussion, the **Council adopted the Commission's proposal for an EU framework to promote, protect and monitor the implementation of the Convention as foreseen in Article 33 (2)**. In preparing its proposal the Commission has taken into account the requirements in terms of tasks to be performed and the independence in executing those tasks as well as the possible role of all relevant Union institutions, bodies, offices or agencies. It also consulted with persons with disabilities and their representative organisations through the European Disability Forum.

As a result of this analysis, the Commission has identified the following EU institutions and bodies to form together "the EU framework":

- the European Parliament (represented by the Petitions Committee);
- the European Ombudsman;
- the European Commission;
- the EU Agency for Fundamental Rights (FRA);
- the European Disability Forum (EDF), the main EU-level umbrella organisation of people with disabilities.

The EU framework's mandate covers areas of EU competence, and it is a complement to the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UNCRPD in the Member States. It also addresses the implementation of the UNCRPD by the EU institutions acting as Public Administration, for example, in relation to staff matters and interaction with citizens.

The Commission also organised the **third Work Forum on the implementation of the UN Convention in the EU**. This Forum provided a platform for mutual learning and exchange of good practice between the governance mechanisms set up by the Member States under Article 33 of the UNCRPD.

With the support of the Commission, the **Academic Network of European Disability Experts**, launched a comprehensive online database (DOTCOM⁸³) about laws, policies, strategies and initiatives put in place at EU-level and in the Member States to implement the UN Convention.

Progress was made in disability mainstreaming to ensure that **disability rights are reflected in legislative acts**. For example, measures in favour of persons with disabilities and with reduced mobility are included in the new Regulations on passenger rights covering maritime and inland waterways transport entering into force on 18 December 2012) and bus & coach transport (applying from 1 March 2013). The Commission published guidelines clarifying the rights of disabled passengers and people with reduced mobility when they travel by air to ensure the correct implementation of Regulation 1107/2006.

Constitutional Court of Romania⁸⁴

The constitutionality of a Romanian law obliging both public and private sectors' employers to recruit a certain number of persons with disabilities, or pay a special tax instead was challenged by a company providing security services. Even though the national legislation at stake was not adopted to implement any specific EU legal instrument the Court pinpointed the reasons justifying such positive obligation on employers by referring to Article 26 of the Charter, in addition to the corresponding provision of the Romanian Constitution, therefore concluding for the constitutionality of such legislation.

⁸³ <http://www.disability-europe.net/dotcom>

⁸⁴ Constitutional Court of Romania (Curtea Constituțională a României), S.C. "Elbama Star" S.R.L., decision no. 615 of 12.05.2011