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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 8 May 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: 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 of the Regions
2012 Report on the application of the EU Charter of Fundamental Rights

Delegations will find attached Commission document SWD(2013) 172 final - Part 8.

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Brussels, 8.5.2013
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Part 8/9

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}

5. Citizens' rights

Right to vote and to stand as a candidate at elections to the European Parliament

The **Commission conducted a wide reaching public consultation** to gain a broader insight into the main obstacles citizens encounter when they move within the EU. More than 11.500 citizens contributed to this consultation. These results will feed into the debates during the European Year of Citizens and inform the 2013 European Citizenship Report.

Right to vote and to stand as a candidate at municipal elections

The EU adopted new rules **to make it easier for EU citizens to stand as candidates in the 2014 European Parliament elections.**

Right to good administration

Right of access to documents

The Commission assessed how **EU citizens' electoral rights are implemented at local level** and suggested that the Member States adopt targeted measures to stimulate citizens' participation and increase overall turnout.

European Ombudsman

Right to petition

The Commission followed a rigorous enforcement policy with a view to achieving the **full and correct transposition and application of the EU free movement rules** across the EU. As a result of this policy, a number of Member States amended their legislation or committed to adopt, within a set deadline, amendments aimed at ensuring full compliance with these rules. The Commission has pursued the infringement proceedings with Member States that have not yet complied with the above rules.

Freedom of movement and of residence

Diplomatic and consular protection

Right to vote and stand as a candidate at elections

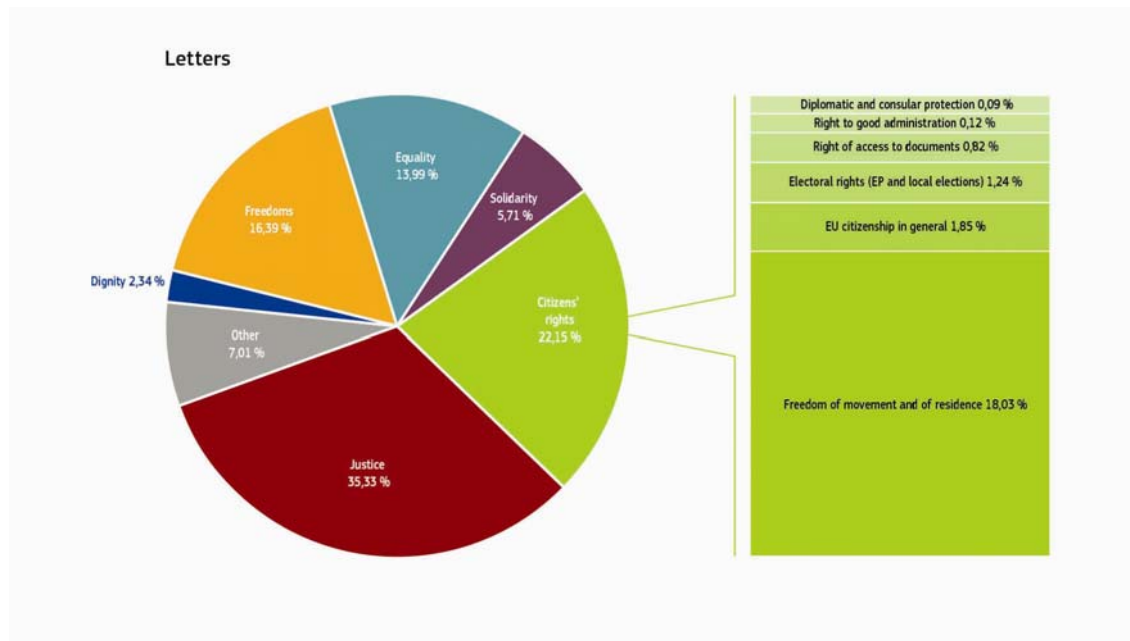
The Charter guarantees the right of every EU citizen to vote in the European elections in whatever Member State they reside. The Charter also provides for the right of EU citizens to vote and to stand as candidates at municipal elections in the Member State in which they reside.

On 20 December 2012, the EU adopted new rules **to make it easier for EU citizens to stand as candidates in the 2014 European Parliament elections**¹⁰⁶. EU citizens who wish to stand as candidates in the Member State where they reside without having the nationality of that Member State will only need to produce an identity document and a declaration stating that they fulfil the eligibility conditions. They will no longer need to travel back to their country of origin to obtain additional documents from their national administration.

In the **2012 Report on municipal elections**¹⁰⁷ the Commission assessed how EU citizens' electoral rights are implemented at local level and suggested that the Member States adopt targeted measures to stimulate citizens' participation and increase overall turnout. The Commission also used this opportunity to support non-national EU citizens' involvement in the political life of the municipality in which they reside. The new rule introduced in the Hungarian electoral system which gives non-national EU citizens the possibility to become mayor, and not only a local councillor, is a good example of how non-national EU citizens can become fully integrated in their new community and play an active part in its future.

Reform of the Lithuanian electoral legislation

The Lithuanian electoral legislation in force since 2006 required non-national EU citizens to have resided for at least five years in Lithuania in order to be entitled to vote and to stand as candidates in local elections. The Commission engaged in dialogue with the Lithuanian authorities on this issue, pointing out that under EU rules, EU citizens residing in Lithuania should have the right to vote and to stand as candidates in local elections under the same conditions as nationals. Further to this dialogue, the Lithuanian authorities repealed this legal requirement.



¹⁰⁶ Proposal for a Directive amending Directive 93/109/EC of 6 December 1993 on the right to participate in European elections for citizens of the Union residing in a Member State of which they are not nationals. Available at: <http://register.consilium.europa.eu/pdf/en/12/st17/st17198.en12.pdf>

¹⁰⁷ Report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections by citizens of the

Union residing in a Member State of which they are not nationals, COM(2012) 99 final.

Available at: http://ec.europa.eu/justice/citizen/files/com_2012_99_municipal_elections_en.pdf

Right to good administration

Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable timeframe by the Institutions, bodies and agencies of the Union. It also includes the right to be heard and to receive a reply.

A huge number of **enquiries are addressed by citizens to the Commission**, whether by phone, e-mail or correspondence. The Commission commits itself to answering them in the most appropriate manner and as quickly as possible. The general rule applied in the Commission is that every letter is registered and, with the exception of those that are unreasonable, repetitive or abusive, should receive a reply within 15 working days from the date of receipt of the letter. The Commission also takes care that replies are sent in the language of the author of the correspondence, provided that it was written in one of the official language of the Union. For complaints and enquiries by citizens on the application of EU law, the Commission uses an IT tool (called CHAP; "Complaint Handling – Accueil des Plaignants"), for registering and managing correspondence raising potential problems on the way how Member States implement EU law.

All Member States are now using **EU Pilot**. EU Pilot is a Commission initiative aimed at responding to questions and identifying solutions to problems related to the application of EU law. It is supported by an on-line data base and communication tool. EU Pilot provides the opportunity for Member States to resolve problems before the Commission enters into formal infringement procedures. Cases should, in principle, be dealt with within 20 weeks; thus EU Pilot dialogue facilitates speedy resolution of problems.¹⁰⁸

The right to good administration is relevant in different areas of EU law. One of them is **competition**. **DG Competition's Manual of Procedures was made publicly available** and serves as an internal working tool intended to give practical guidance to staff on how to conduct investigations.

Right of access to documents

The Charter guarantees that any EU citizen 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 EU institutions, bodies, offices and agencies.

In 2012, the Commission registered 6,011 **requests for access to documents**, which is slightly less than in 2011. As in the past, 4 out of 5 requests were granted at the initial stage. In 2012, the Commission received 227 confirmatory applications, a significant increase compared to 2011. Such applications are reassessed by case handlers acting independently from the ones that handled the initial application. This review has led to wider access being granted in around half the cases. In 2012, the European Ombudsman closed 20 inquiries into complaints for a refusal to grant access to documents. The Court of Justice handed down five judgments on appeals and the General Court adjudicated in 15 cases concerning the fundamental right of access to documents.

The General Court delivered an important judgment¹⁰⁹ on access to EU internal documents, including legal opinions. The Court pointed out that that disclosure of a document under EU rules on the public access to EU institutions documents would undermine individuals' privacy and integrity. Particular attention should be paid to Article 8 of Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies, which requires the recipient of a transfer of personal data to demonstrate the need for its disclosure and to its Article 18, giving the person concerned the possibility of objecting at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data affecting him or her.

Right to refer to the European Ombudsman

¹⁰⁸ More detailed information on EU Pilot is available in the Commission's most recent Annual Report on monitoring the application of EU law (point 2.1.3 in the Report, and the sections "Early resolution of infringements" in Annexes I and II). The Annual Report can be downloaded from the following link:

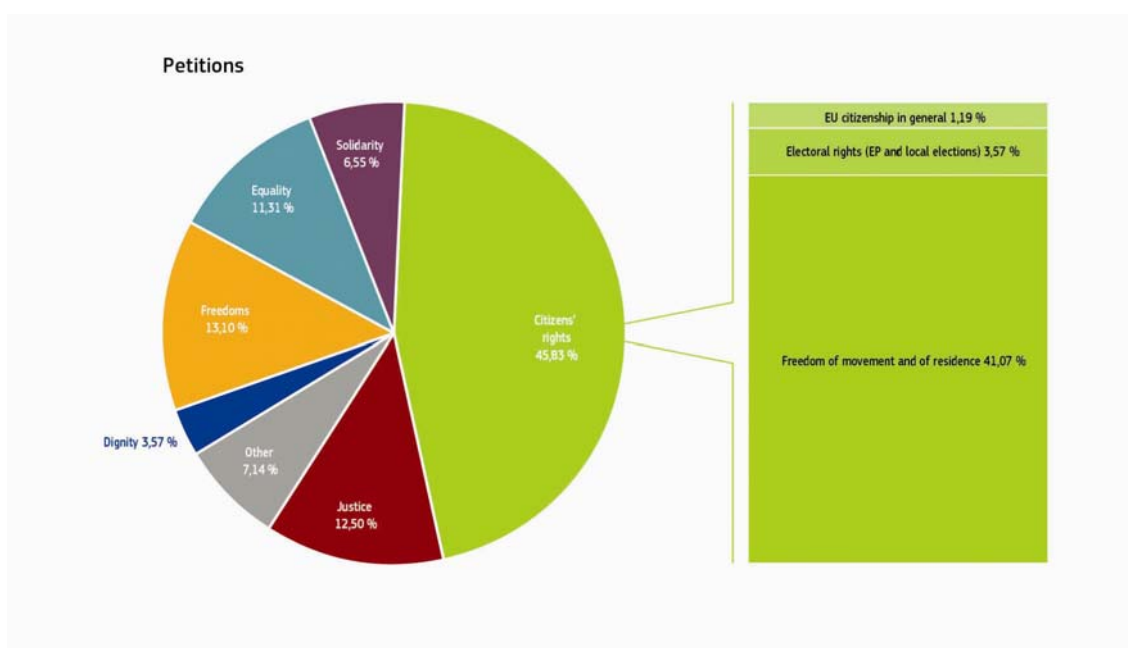
http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_29/sg_annual_report_monitoring_eu_law_121130.pdf

¹⁰⁹ GC, Case T-300/11, *Internationaler Hilfsfonds eV v. European Commission*, 22.05.2012

The Charter provides that any EU citizen 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 on cases of maladministration in the activities of the EU institutions, bodies, offices and agencies, with the exception of the Court of Justice acting in its judicial role.

As was the case in 2011, over 22 000 individuals were helped directly by the European Ombudsman in 2012. This includes individuals who complained directly to the European Ombudsman (2,442 complaints), those who received a reply to their request for information (1,211), and those who obtained advice through the interactive guide on the European Ombudsman's website (19,281).

Over 60% of the complaints (1 467) were within the competence of a member of the European Network of Ombudsmen, of which just over half (740 or 30% of the total) fell within the European Ombudsman's mandate.



Freedom of movement and residence

The Charter guarantees the right of every EU citizen to move and reside freely, whilst respecting certain conditions, within the territory of the Member States. This fundamental right is also included in the Treaty on the Functioning of the EU.

The Commission followed a rigorous enforcement policy with a view to achieving the **full and correct transposition and application of the EU free movement rules** across the European Union. As a result of this policy, and in particular of its infringement proceedings, an additional number of Member States, in contrast to 2011, amended their legislation or committed to adopt, within a set deadline, amendments aimed at ensuring full compliance with these rules. In 6 out of the 12 infringement proceedings that were launched in 2011, the Commission sent a reasoned opinion to the Member States concerned, the last step before bringing the matter before the Court of Justice of the EU.

The main outstanding issues raised in the abovementioned infringement proceedings included the **incorrect or incomplete transposition of provisions of EU law regarding the rights of entry and residence for family members of Union citizens**, including same-sex partners, the conditions for issuance of visas and residence cards for third-country national family members and the safeguards against expulsions. At the same time, the Commission pursued action with some Member States to ensure EU citizens' rights to non-discrimination and to dismantle obstacles to free movement, such as to allow for the registration of foreign double names or to ensure compatibility of Member States legislation on labour migration or expulsion with EU free movement law.

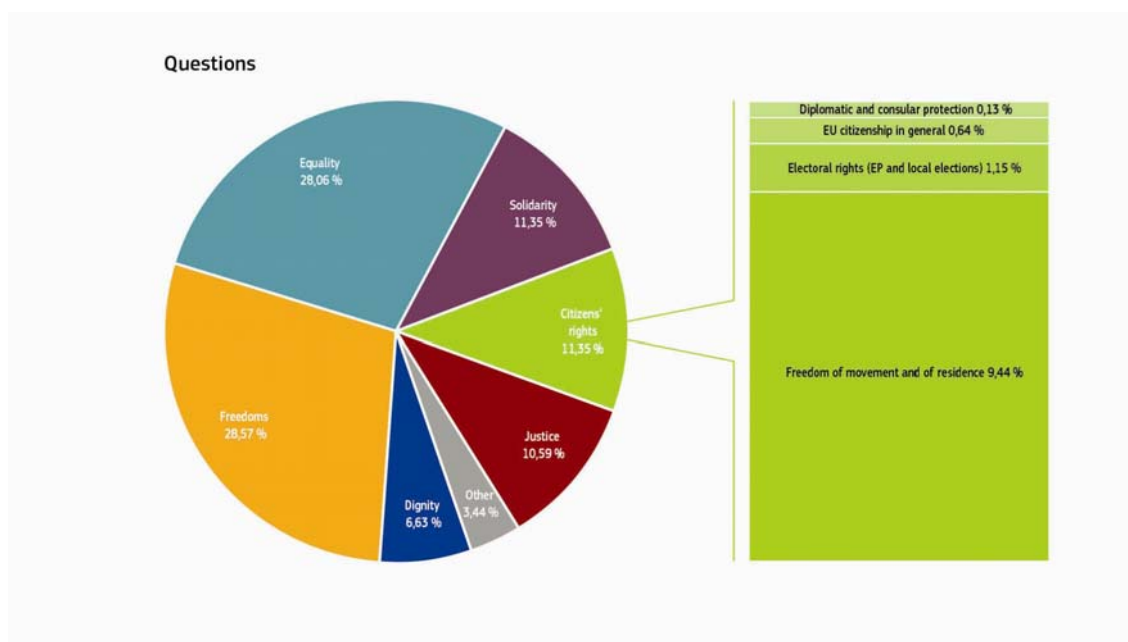
The Commission pursued its dialogue with the Dutch authorities regarding their plans announced in 2011 on labour migration. The Commission had raised a number of concerns

as to the compatibility of some of these planned measures with EU law on free movement of EU citizens and workers. Several exchanges allowed solving a significant number of issues in 2012. The Commission will pursue this dialogue with a view to ensuring that any measure put in place is compatible with EU law.

The Commission pursued its dialogue with the Danish authorities on amendments to the Danish Aliens Act which had entered into force in July 2011 and which aimed at introducing stricter rules on the expulsion of aliens, including EU citizens. The Commission was particularly concerned about the compatibility of the Danish rules on expulsion with the material and procedural safeguards laid down in the Free Movement Directive. Further to this dialogue, the Danish authorities committed to initiate amendments ensuring compatibility with EU law. They delivered, in the course of 2012, on some of these commitments, by means of a Bill amending the Aliens Act published on 18 June 2012.

Civil registration in Sweden and Belgium

Sweden amended its legislation to allow for the registration of foreign double surnames for Swedish nationals. As a result, Swedish children of double nationality now enjoy the right to have their full surname (double surname) registered in Sweden without having to go through a lengthy legal procedure, or having to pay an additional fee. The Commission also pursued its infringement proceedings against Belgium to safeguard this same right for children born in Belgium who have one Belgian parent and one parent of another EU Member State.



Diplomatic and consular protection

The Charter guarantees the right of unrepresented 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. EU citizens must be able to rely effectively on this right when travelling abroad.

The right of unrepresented Union citizens to enjoy the protection of the diplomatic or consular authorities of any Member State under the same conditions as for the nationals of that Member State is enshrined in the Treaty on the Functioning of the EU (Article 20 (2) c and 23) and in the EU Charter (Article 46). The Commission proposed on 14 December 2011¹¹⁰ clear and legally binding set of rules on cooperation and coordination between the Member States' consular authorities, with a view to ensuring that Union citizens enjoy effective consular protection, regardless of their nationality.

¹¹⁰ Proposal for a Council Directive on consular protection for citizens of the Union abroad, COM(2011) 881 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0881:FIN:EN:PDF>

This proposal is currently being discussed in the Council, and on the 25th of October 2012, the European Parliament adopted its Opinion on the Proposal of the Commission for a Council directive on consular protection for citizens of the Union abroad (ref. A7/0288/2012). The European Parliament called for a common approach of the Union and an increased support from the Union delegations.

Union citizenship

According to EU law, every person holding the nationality of a Member State is a citizen of the Union. Citizenship of the Union is additional to national citizenship and does not replace it. It is for the Member States to decide who their nationals are. They are solely competent to lay down the conditions for the acquisition and loss of their nationality.

EU citizens have a number of rights under EU law but they often do not know about them. Following a proposal made by the Commission in 2011, the European Parliament and Council decided on 21st December 2012¹¹¹, that **2013 would be the European Year of Citizens**. This would be an occasion to raise citizens' awareness about their EU rights and engage with them in a debate on the development of EU citizenship.

To have a better knowledge of the main obstacles citizens encounter when they move within the EU, the Commission launched a wide reaching public consultation (http://ec.europa.eu/justice/citizen/files/eu-citizen-brochure_en.pdf) to which over 11,500 citizens contributed. These results will feed the debates during the European Year of Citizens and inform the 2013 European Citizenship Report, which is to be adopted together with the Report on progress on implementation of Article 25 around 9 May 2013, which will detail the main developments on EU Citizenship rights since 2010.

¹¹¹ Decision No 1093/2012/EU of the European Parliament and of the Council of 21 November 2012 on the European Year of Citizens (2013), OJ L 325, p. 1