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**2011 Report on the Application of the EU Charter of Fundamental Rights**

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**2011 Report on the Application of the EU Charter of Fundamental Rights**

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# **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

## **2011 Report on the Application of the EU Charter of Fundamental Rights**

### **1. INTRODUCTION**

Two years after the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union<sup>1</sup> (the 'Charter') has become a point of reference commonly used in the development of EU policies.

This momentum has been triggered by the Lisbon Treaty. After its entry into force, the Commission adopted a Strategy on the effective implementation of the Charter ('Charter Strategy')<sup>2</sup> setting an objective that the EU sets a good example as regards the respect of fundamental rights when the Union legislates. The Commission further committed to preparing annual reports to better informing citizens on the application of the Charter and to measuring progress in its implementation. Both the Charter Strategy and the first Annual report on the application of the Charter have triggered discussions in the European Parliament, in the Council as well as in the Committee of Regions and in the European Economic and Social Committee.

The Charter is of great interest not only to EU institutions but also to the general public: according to a recent *Eurobarometer survey*<sup>3</sup> two-thirds of respondents across the EU are interested in learning more about their rights as enshrined by the Charter (66%), where to go if they feel that these rights have been violated (65%) and when the Charter applies and when it does not (60%).

This report aims to address this wish to be better informed about the Charter. It reviews progress in ensuring the effective implementation of the Charter and highlights important developments in 2011. The annexed document (I) provides detailed information on the application of the Charter by all EU institutions and Member States and illustrates concrete problems faced by individuals. Progress in the implementation of the Strategy for equality between women and men (2010-2015) is presented in a separate annex (II).

### **2. PROMOTING THE EFFECTIVE IMPLEMENTATION OF THE CHARTER**

Building on the findings of the 2010 Report, the Commission has taken a number of concrete steps to promote the effective implementation of the Charter.

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<sup>1</sup> Charter of Fundamental Rights of the European Union, OJ C 83, 30.3.2010, p. 389–403.

<sup>2</sup> Commission Communication: Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, available at: [http://ec.europa.eu/justice/news/intro/doc/com\\_2010\\_573\\_en.pdf](http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf)

<sup>3</sup> Flash Eurobarometer 340: "The Charter of Fundamental Rights of the European Union".

## 2.1. Fostering the fundamental rights culture in the EU

The Charter Strategy and the 2010 Report generated debates in all EU institutions on how to make the Charter effective for citizens and on how to ensure its respect throughout the legislative process. This momentum initiated by the Commission has already delivered first concrete results.

The **Commission** has reinforced the assessment of the impact on fundamental rights when it prepares legislative proposals. Prior to adopting proposals for new legislation, the Commission carries out impact assessments. The new *Guidance on Fundamental Rights in Impact Assessment*<sup>4</sup> clarifies through concrete examples how fundamental rights aspects should be taken into account by Commission services. The Commission established an interservice group on the implementation of the Charter to share knowledge and experience among all its departments.

The approach taken by the Commission in drawing up legislation on the use of *security scanners*<sup>5</sup> for detecting unsafe objects carried by passenger at EU airports is a concrete example of the positive effect of this policy. The preparatory phases leading to the adoption of this legislation took into account the impact of different policy options on fundamental rights so as to ensure that this legislation complies with the Charter. Member States and airports wishing to deploy security scanners must comply with minimum conditions set by the EU's new rules to safeguard fundamental rights. Most importantly, passengers will be entitled to opt out from the security scanner procedure and to be checked by alternative screening methods. Passengers must be informed of the possibility to opt out, of the scanner technology used and of the conditions associated with its use. In addition, detailed conditions are laid down to ensure that the right to the protection of personal data and private life is respected, for instance, the obligation that security scanners shall not store, retain, copy, print or retrieve images. As far as health considerations are concerned, only scanners that do not use ionising radiation are allowed as a method for screening persons.

The Commission evaluation report<sup>6</sup> on the *EU rules on Data Retention*<sup>7</sup> is another example of its reinforced assessment of the impact on fundamental rights. The Commission outlined the impact of these rules on economic operators and consumers as well as its implications on the protection of fundamental rights and freedoms, in particular the protection of personal data. The report concluded that, on the one hand, data retention is a valuable tool for law enforcement purposes. On the other hand, the report identified areas that need to be improved

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<sup>4</sup> Operational Guidance on taking account of fundamental rights in Commission Impact Assessments, SEC(2011) 567 final, 6.5.2011, available at:  
[http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/operational-guidance_en.pdf)

<sup>5</sup> Commission Regulation 1141/2011 supplementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L293, 11.11.2011, p. 22-23. Commission Implementing Regulation N° 1147/2011 implementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, OJ L294, 12.11.2011, p. 7-11.

<sup>6</sup> Report from the Commission: Evaluation report on the Data Retention Directive (Directive 2006/24/EC), COM(2011) 225 final, available at:  
[http://ec.europa.eu/commission\\_2010-2014/malmstrom/archive/20110418\\_data\\_retention\\_evaluation\\_en.pdf](http://ec.europa.eu/commission_2010-2014/malmstrom/archive/20110418_data_retention_evaluation_en.pdf)

<sup>7</sup> Data Retention Directive (2006/24/EC) requires Member States to oblige providers of publically available electronic communications services or of public communications networks to retain traffic and location data for a period of six months to two years for the purpose of the investigation, detection and prosecution of serious crime.

following the uneven transposition of the Directive on data retention by Member States. In particular, the Commission should ensure more harmonisation in specific areas, such as: the measures ensuring the respect for fundamental rights and freedoms, including the data retention periods, the purpose limitations, as well as the necessary safeguards to access retained data and protect personal data.

As explained in the Charter Strategy, the Commission not only guarantees that its proposals are compatible with the Charter, it also ensures that the Charter is respected when Member States implement EU law. According to Article 51 of the Charter, its provisions apply to Member States only when they are implementing EU law. It does not apply in situations where EU law is not involved.

Following the Commission's intervention on the Hungarian media law, using the full extent of its legal powers to enforce the *acquis*, the Hungarian government agreed to amend its national media law so that it complies with substantive EU law. A number of concerns have been expressed relating to other provisions of the media law which are not covered by EU legislation. In such situations, fundamental rights continue to be guaranteed at national level according to the national constitutional systems. It should be noted in that respect that this was illustrated by the Hungarian Constitutional Court ruling on 19 December that declared that certain provisions of the Hungarian media law unconstitutionally limited freedom of the written press<sup>8</sup>.

The Commission also paid particular attention, in 2011, to the developments related to the new *Hungarian Constitution and its implementation*, to the extent that it raises EU law issues. In the June plenary session of the European Parliament, the Commission underlined that the Constitution of every Member State should reflect and comply with the European values of freedom, democracy, equality, the rule of law, human dignity and the respect of human rights, including the rights of persons belonging to minorities, without discrimination, as laid down in Article 2 of the Treaty. In December, the Commission expressed its concerns regarding potential violations of EU law by certain provisions of the draft legislation<sup>9</sup>. The Hungarian authorities adopted the legislation in question without taking into account the Commission's legal concerns. As a result, the Commission, as guardian of the Treaties, decided to take action against a number of new provisions in Hungarian legislation, namely on the independence of the data protection authority and on the discriminatory impact of the mandatory retirement age for judges, prosecutors and notaries. The Commission also sent an administrative letter requesting further information on certain aspects of the new legislation which could affect the independence of the judiciary<sup>10</sup>.

The **European Parliament** played a key role in promoting the rights and freedoms enshrined in the Charter. The European Parliament paid particular attention to the situation in Hungary

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<sup>8</sup> Vice-President Kroes has expressed her concerns both in letters to the Hungarian authorities and in a bilateral meeting with the responsible Minister of Justice. Ruling of the Hungarian Constitutional Court, 19 December 2011, 1746/B/2010, available at: [www.mkab.hu/admin/data/file/1146\\_1746\\_10.pdf](http://www.mkab.hu/admin/data/file/1146_1746_10.pdf)

<sup>9</sup> Vice-President Reding sent a letter to the Hungarian Minister of Justice on 12 December. Vice-President Kroes and Vice-President Rehn also sent letters on media pluralism and on the independence of the Hungarian Central Bank respectively.

<sup>10</sup> Press release of 17 January 2012 (IP 12/24), available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/24&format=HTML&aged=0&language=EN&guiLanguage=fr>

in respect of media freedom and pluralism<sup>11</sup> as well as in relation to the new Hungarian Constitution and its implementation<sup>12</sup>. On 16 February 2012, it adopted a resolution<sup>13</sup> calling on the Hungarian government to comply with the recommendations, objections and demands of the European Commission, the Council of Europe and the Venice Commission and calling on the European Commission, the guardian of the Treaties, to monitor closely the possible amendments and the implementation of the said laws and their compliance with the letter and spirit of the European treaties.

When acting as co-legislator, it stressed the fundamental rights dimension of new proposals for EU law. For example, the European Parliament approved the Commission's proposal to amend the *Qualification Directive* which will enhance the rights granted to refugees and beneficiaries of subsidiary protection in the EU (Articles 18 and 19 of the Charter) and ensured the extension of social rights for migrant workers in the recently adopted Single Permit Directive<sup>14</sup>.

The **Council** made significant efforts to follow-up the Charter Strategy, in particular in respect of its role as co-legislator. The Council recognised that it had a key role in ensuring the effective implementation of the Charter and committed to ensuring that Member States proposing amendments to Commission legislative initiatives, or tabling own legislative initiatives, assess their impact on fundamental rights<sup>15</sup>. The Council reiterated that it is the responsibility of each institution to assess the impact of its proposals and amendments. In this respect, it committed, in line with the Inter-institutional agreement on better lawmaking<sup>16</sup>, to assess the impact of its substantive amendments on fundamental rights. This commitment is an encouraging change in Council practices which until now did not foresee any particular proceeding to ensure compliance with the Charter. To this end, following the example of the Commission, the Council established *Guidelines*<sup>17</sup> to identify and deal with fundamental rights issues arising in the discussion on proposals before the Council's preparatory bodies. Finally, the Council outlined its actions for the application of the Charter<sup>18</sup>.

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<sup>11</sup> European Parliament resolution of 10 March 2011 on media law in Hungary, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN>

<sup>12</sup> Resolution of 5 July 2011 on the Revised Hungarian Constitution, available at : <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0315+0+DOC+XML+V0//EN>

<sup>13</sup> Resolution of 16 February 2012 on the recent political developments in Hungary, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0053%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

<sup>14</sup> Directive 2011/98/EU on a single application procedure for a single permit for third country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p. 1 – 9.

<sup>15</sup> Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union, 25.2.2011, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/119464.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/119464.pdf)

<sup>16</sup> Inter-institutional Agreement on Better Lawmaking, OJ C 321, 31.12.2003, p. 1 – 5.

<sup>17</sup> Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies, 19.5.2001, available at: <http://register.consilium.europa.eu/pdf/en/11/st10/st10140.en11.pdf>

<sup>18</sup> Council conclusions on the Council's actions and initiatives for the implementation of the Charter of fundamental rights of the European Union, 23.5.2011, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/genaff/122181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/122181.pdf)

The impact of the Charter on the judiciary, both at national and at EU level, is already visible. The **Court of Justice of the European Union** has increasingly referred to the Charter in its decisions: the number of decisions quoting the Charter in its reasoning rose by more than 50% as compared to 2010, from 27 to 42. National courts when addressing questions to the Court of Justice (preliminary rulings) have also increasingly referred to the Charter: in 2011, such references rose by 50% as compared to 2010, from 18 to 27. Interesting questions have been referred to the Court of Justice by national courts, for instance on the impact of the right to an effective remedy and to a fair trial in expulsion proceedings against EU citizens that rely on security sensitive information that the public authorities do not want to reveal in a public hearing.<sup>19</sup> Another question touches on the important issue of the relationship between national fundamental rights and EU fundamental rights in a case concerning the application of the European Arrest Warrant<sup>20</sup>.

The Court of Justice issued a number of landmark rulings that include a reference to the Charter. For example, in the *Test-Achats* case, the Court invalidated a derogation in EU gender equality legislation that enables insurers to differentiate between men and women in individuals' premiums and benefits<sup>21</sup>. The derogation was found incompatible with the objective of unisex pricing contained in that legislation, and therefore with the Charter. Following the Court ruling, the Commission issued guidelines on the application of EU law on gender equality to insurance<sup>22</sup>.

At the end of 2011, the Court issued a landmark ruling on the implementation of the *Dublin Regulation* on determining the Member State responsible for the assessment of asylum application in the EU<sup>23</sup>. The Court stressed that Member States are under the obligation to respect the Charter when they establish the responsibility for examining an asylum application. Member States must not transfer an asylum seeker to another Member State if it is such that they cannot be unaware of systemic deficiencies in the asylum procedure and reception conditions amounting to substantial grounds for believing that person would face a real risk of being subjected to inhuman or degrading treatment. Annex I to this report presents a number of other important rulings such as the judgments clarifying the relationship - in an online environment - between the protection of intellectual property rights and other fundamental rights, such as the freedom to conduct business and the protection of personal data<sup>24</sup>, or referring to human dignity as regards the issue of the patentability of human embryos created through therapeutic cloning<sup>25</sup>, or analysing the principle of non-discrimination on grounds of age in light of the right to negotiate and conclude collective agreements<sup>26</sup>.

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<sup>19</sup> ECJ, Case C-300/11, *ZZ v Secretary of State for the Home Department*, 17.06.2011.

<sup>20</sup> ECJ, Case C-399/11, *Stefano Melloni*, 1.10.2011.

<sup>21</sup> ECJ, Case C-236/09, *Test-Achats*, 30.4.2011.

<sup>22</sup> Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (*Test-Achats*), OJ C 11, 13.1.2012, p. 1 – 11.

<sup>23</sup> ECJ, joined cases C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department and M.E. e.a. v Refugee Applications Commissioner*, 21.12.2011.

<sup>24</sup> ECJ, Case, C-70/10, *Scarlet v SABAM*, 24.11.2011.

<sup>25</sup> ECJ, C-34/10, *Brüstle v. Greenpeace*, 18.10.2011.

<sup>26</sup> Joined Cases, C-297/10 and C-298/10, *Hennings and Land Berlin*.

## 2.2. Promoting equality between women and men in the EU

Following the Commission's Strategy for equality between women and men (2010-2015)<sup>27</sup>, the **Council** adopted a *European Pact for gender equality*<sup>28</sup>. Establishing a firm link to the Europe 2020 process, the Pact reaffirms the EU's commitments to closing gender gaps in employment, education and social protection, ensuring equal pay for equal work, promoting the equal participation of women in decision-making and combating all forms of violence against women. It repeats the importance of integrating a gender perspective into all policies including external actions of the EU. It also underlines *reconciliation of work and family life* as a precondition for equal participation in the labour market: developing childcare services and fathers' take-up of parental leave have a positive bearing on the labour supply for main carers, who usually are women<sup>29</sup>.

In line with the commitments taken in its Strategy for equality between women and men to promote equality in decision making and in order to redress the gender imbalance in positions of leadership in private companies, the **Commission** called on all EU publicly listed companies to sign the '*Women on the Board Pledge for Europe*' and to develop their own means to get more women into top jobs<sup>30</sup>. The goal is to reach the target of 30% female board members in the major European publicly listed companies by 2015 and 40% by 2020.

The Commission adopted the legislative proposals for the next *EU Multiannual Financial Framework (2014-2020)*<sup>31</sup>. The Rights and Citizenship programme<sup>32</sup> will promote and protect the rights of persons including the principles of non-discrimination and equality between women and men. In addition, the new EU Programme for Social Change and Innovation<sup>33</sup>, established to support employment and social policies across the EU, will specifically target gender issues.

In the framework of the Europe 2020 Strategy, the Commission has issued *recommendations to Member States on the gender pay gap, on childcare and on fiscal disincentives for second earners* to strengthen women's position in the labour market and to meet the objectives of raising the employment rate of women and men aged 20-64 to 75% by 2020. Member States where fiscal treatment is more advantageous either for couples with very different earnings or for single income couples are not efficient from an economic point of view. They reinforce the household model where one person works full-time (traditionally the man) and the other

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<sup>27</sup> Communication from the Commission: Strategy for equality between women and men, 2010, COM(2010) 491 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0491:FIN:EN:PDF>

<sup>28</sup> Council conclusions on the European Pact for gender equality for the period 2011 – 2020, 7.3.2011, available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lisa/119628.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/119628.pdf)

<sup>29</sup> Council conclusions on the Reconciliation of work and family life in the context of demographic Change, 17.6.2011, available at:

[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lisa/122875.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/122875.pdf)

<sup>30</sup> Women on the Board Pledge for Europe, available at:

[http://ec.europa.eu/commission\\_2010-2014/redoing/pdf/p\\_en.pdf](http://ec.europa.eu/commission_2010-2014/redoing/pdf/p_en.pdf)

<sup>31</sup> Information on the EU financial framework for 2014-2020, available at:

[http://ec.europa.eu/budget/biblio/documents/fin\\_fw1420/fin\\_fw1420\\_en.cfm](http://ec.europa.eu/budget/biblio/documents/fin_fw1420/fin_fw1420_en.cfm)

<sup>32</sup> Proposal for a Regulation establishing for the period 2014 to 2020 the Rights and Citizenship Programme, COM (2011) 758 final, available at:

[http://ec.europa.eu/justice/newsroom/files/1\\_en\\_act\\_part1\\_v5\\_frc\\_en.pdf](http://ec.europa.eu/justice/newsroom/files/1_en_act_part1_v5_frc_en.pdf)

<sup>33</sup> Proposal for a Regulation of the European Parliament and of the Council on a European Union Programme for Social Change and Innovation, COM(2011) 609 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0609:EN:NOT>

part-time (traditionally the woman), leading to an underutilisation of human capital investments, in particular of women. Removing financial disincentives in tax and benefit systems and developing childcare and care for the elderly would increase the labour participation of women throughout their life-cycle and guarantees their economic independence.

### 2.3. Helping citizens exercise their rights

The Commission is convinced that informing citizens about when the Charter applies and where to go to when their rights are violated requires further effort. A recent Eurobarometer survey<sup>34</sup> revealed that although general awareness of the Charter is on the rise (64% in 2012 as compared to 48% in 2007), few citizens knew what the Charter actually was (11%) and when it applied (14%). **The greatest confusion lay around whether the Charter applied to all actions of Member States, including matters of national competence.** The Charter does not apply in all of these matters, but more than half of the respondents - 55% - thought that it applied. In addition, almost one quarter (24%) of respondents said that it was false that the Charter applied to Member States only when they implement EU law, further highlighting this confusion.

The survey also reveals that national courts are the first place respondents would turn to if their Charter rights were violated (21%) closely followed by Ombudsmen/independent bodies (20%), EU institutions (19%) and the local police (19%). This shows that EU institutions are perceived by many citizens **as having the same redress function as a national court or a national human rights body.**

Data collected by the Commission sheds further light on the frequent misunderstanding of citizens as regard the role of EU institutions in the area of fundamental rights. In 2011, citizens' letters to the Commission on fundamental rights in 55% of the cases concerned issues outside the remit of EU competences. The Charter does not give a general power to the EU to intervene in all cases of violations of fundamental rights by national authorities. The Charter applies to Member States only when they implement EU law. Member States have extensive national rules on fundamental rights, the respect of which is guaranteed by national courts<sup>35</sup>.

The Commission recalls that EU institutions and bodies (in particular the European Ombudsman) and Member States' national, regional and local authorities have a shared responsibility to better inform citizens on the Charter and on where to turn to obtain redress when they consider their rights violated. The Commission, in cooperation with Member States, published new Fundamental Rights pages on the **European e-Justice Portal**<sup>36</sup>. The portal provides information on where to complain when citizens consider that they have been subject to a violation of their fundamental rights. It provides information on national courts, and on bodies handling complaints on fundamental rights, such as the national Ombudspersons, National Human Rights Institutions and Equality bodies.

The Commission is determined to help citizens exercise their rights through a **multilevel cooperation with all actors involved at EU and at national level.** A closer dialogue is necessary among the many different institutions in Member States which, in addition to the key role of the judiciary in defending fundamental rights, are called upon to address

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<sup>34</sup> Flash Eurobarometer 340; "The Charter of Fundamental Rights of the European Union".

<sup>35</sup> In this respect, even the US Bill of Rights originally only applied to the Federal level.

<sup>36</sup> European e-Justice portal available at: <https://e-justice.europa.eu/home.do?action=home>

complaints from citizens who consider that their fundamental rights have been violated. On 6 October 2011 the Commission, for the first time, brought together equality bodies, ombudsman institutions, children's ombudsman institutions, European and national human rights institutions in a seminar organised jointly with the European Parliament Committee on Petitions. The seminar focussed on how such authorities handle complaints on fundamental rights in practice. This multilevel dialogue will continue with a view to sharing experience in implementing the Charter and on common challenges faced by these authorities in relation to their competence, independence and effectiveness. It will in particular examine how to encourage each body to establish citizen-friendly "**admissibility check lists**" enabling the complainant to determine whether their case can likely to be dealt with by the body concerned. Such systems have already proved to be very beneficial in the case of the **European Ombudsman** which set up an interactive guide on its website in all the 23 official EU languages to help citizens quickly identify the most appropriate body to turn to when they have complaint about maladministration. 80% of 22.000 enquiries received in 2011 could be responded to through this interactive guide. Cooperation with the EU Agency for Fundamental Rights (FRA) in establishing citizen-friendly "admissibility check lists" is important as the FRA has planned to set up user-friendly tools guiding citizens when they want to submit a complaint concerning a violation of their fundamental rights.

### 3. MOST IMPORTANT DEVELOPMENTS IN 2011

The Commission has pursued a vigorous policy of ensuring the effective implementation of the Charter in a wide variety of areas covered by EU law. The annex to this Report presents many examples of the application of the Charter involving the rights covered by the six titles of the Charter (Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice), including important steps to prepare the proposal for new EU rules on data protection to be presented in 2012.

Beyond the scope of this report, the promotion of human rights in third countries is also a priority of the EU. This was reaffirmed by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy in a joint Communication on "Human rights and democracy at the heart of the EU external action", adopted on 12 December 2011<sup>37</sup> as well as in two Communications on the EU's development policy<sup>38</sup>. The protection of human rights is also one of the key priorities for the EU enlargement process, and will be further strengthened during the accession negotiations.

EU Member States are bound by the Charter when they implement EU law. However, there is not yet enough information on the efforts made to ensure the effective implementation of the Charter. The Commission will seek in its forthcoming annual reports on the application of the Charter to document progress in that respect.

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<sup>37</sup> Joint Communication of European Commission and EU High Representative for Foreign Affairs and Security Policy: Human rights and democracy at the heart of EU external action – towards a more effective approach", 12.12.2011, COM(2011) 886 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>

<sup>38</sup> Communication from the Commission: Increasing the impact of EU development policy: an agenda for change, COM(2011) 637 final; Communication from the Commission: The future approach to EU budget support to third countries, COM(2011) 638 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0637:FIN:EN:PDF>;  
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### 3.1. A new momentum in the enforcement of citizens' right to free movement

Intra-EU mobility of persons is a key factor for economic growth in a Europe with a declining population and a significant imbalance between supply and demand on the labour market in different parts of the EU. At the same time, the free movement of students, tourists, workers and their families between Member States is a key European achievement, and a practical expression of mutual respect, openness and tolerance as core European Union values. For these reasons, the Commission pursued a **rigorous enforcement policy** with a view to achieving the full and correct transposition and application of EU free movement rules<sup>39</sup> across the European Union. As a result of this policy, the majority of Member States amended their legislation or announced their intention to do so. The Commission continued to work with the remaining countries to tackle outstanding issues including by launching infringement proceedings where needed.

At the same time, the Commission took a firm stance to ensure that the principle of **non-discrimination** and other safeguards anchored in EU rules on free movement for the benefit of all EU citizens are fully respected by Member States. In this respect, the Commission expressed its concerns regarding the plans on labour migration announced by the Dutch government and pursues its dialogue with relevant Member State authorities with a view to ensuring full compliance with EU law of any measure that may be put in place.

In March 2011, the French Constitutional Council took a decision concerning the issue of the evictions of unlawful group settlements<sup>40</sup>. This issue was not addressed by the Commission intervention in the summer 2010<sup>41</sup> as such evictions do not concern the expulsion of EU citizens from a Member State and therefore do not concern the right to free movement. The Court declared unconstitutional certain legal provisions enabling authorities to enforce evictions on an urgent basis at any time of the year, without taking into account the personal or family circumstances of the individuals. This decision confirms that where EU law does not come into play, fundamental rights continued to be enforced at national level, in particular, through the courts.

In May 2011, the Commission engaged in an intensive dialogue with the Danish government on its plans to introduce strengthened **intra-EU border control measures**. In October 2011, the Danish government announced that it would not go ahead with the plans and that customs controls would be implemented in line with EU rules on free movement and the Schengen acquis.

The Commission also contacted the Danish authorities regarding amendments to the Danish Aliens' Act that entered into force in July 2011. These aim at introducing stricter rules on the **expulsion of aliens**, including EU citizens, and raise serious concerns about their compatibility with the Free Movement Directive. The Commission will not hesitate to make use of the powers conferred to it by the Treaty should the Danish reply be deemed unsatisfactory.

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<sup>39</sup> Directive 2004/38/EC 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.

<sup>40</sup> French Constitutional Council, Decision n°. 2011-625 DC of 10 March 2011, available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2011625DCen2010625dc.pdf>

<sup>41</sup> See Commission 2010 Report on the application of the Charter, page 10, available at: [http://ec.europa.eu/justice/fundamental-rights/files/annual\\_report\\_2010\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/annual_report_2010_en.pdf)

### 3.2. Promoting the rights of the child

The Commission adopted the **EU Agenda for the Rights of the Child** in February 2011<sup>42</sup>. The EU Agenda aims to put in practice the rights of the child enshrined in the Charter and the UN Convention on the Rights of the Child through a comprehensive programme of actions for the period from 2011-2014. The EU Agenda identified 11 concrete actions which will contribute to the effective implementation and protection of the rights of the child. In the context of this comprehensive approach to children's rights, the Commission has prioritized efforts to ensure that the justice system is better adapted to children and more child-friendly. The Commission also fixed priorities for the protection of children when they are vulnerable and to safeguard the rights of the child in the EU's external action. The Commission further launched a single online entry point for children called the Kid's Corner<sup>43</sup> containing child-friendly texts, games and quizzes informing children about their rights, as part of this programme of actions.

The EU adopted new rules on **combating the sexual abuse and sexual exploitation of children and child pornography**<sup>44</sup> to make it easier to fight crimes against children by acting on different fronts. The new rules criminalise a wide range of situations of sexual abuse and exploitation, covering new phenomena helped by the Internet, such as child grooming, webcam abuse and web viewing of child abuse material.

The Commission continued to provide support for the establishment and operation of the tools designed to help missing or abducted children, namely the **116 000 hotlines** for missing children and child alert systems. Concerted efforts by some Member States<sup>45</sup> are necessary to have the hotline operational and widely known throughout the EU. The Commission will pursue its efforts to make this a reality.

The entry into force in Russia of the **Hague Convention on the Civil Aspects of International Child Abduction**<sup>46</sup> and the steps taken by Japan in view of its accession to the Convention are significant developments contributing to the protection of children in the EU in cases of abduction. The Commission submitted proposals to ensure consistency in the application of the Convention between the EU and the third States which have acceded to it in recent years<sup>47</sup>.

### 3.3. Reinforcing victims' rights and procedural rights

The Commission proposed a new set of instruments to guarantee that **victims are treated with respect and dignity**, receive protection and support for their physical integrity and their

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<sup>42</sup> 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>

<sup>43</sup> Available at: [http://europa.eu/kids-corner/index\\_en.htm](http://europa.eu/kids-corner/index_en.htm)

<sup>44</sup> Directive on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, available at: <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00051.en11.pdf>

<sup>45</sup> Austria, Bulgaria, Cyprus, Czech Republic, Finland, Ireland, Latvia, Lithuania, Luxembourg, and Sweden have yet to make the hotline operational.

<sup>46</sup> Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, available at: [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=24](http://www.hcch.net/index_en.php?act=conventions.text&cid=24)

<sup>47</sup> Albania, Andorra, Armenia, Gabon, Morocco, Russia, Seychelles and Singapore.

property, and have access to justice and compensation. The proposed new rules<sup>48</sup> pay due attention to victims with special needs, such as children. In addition, the Commission worked to protect victims of violence (such as domestic violence) from further harm inflicted on them by the offender when they travel within the EU<sup>49</sup>. The new rules also ensure that the right of defence is not harmed. The Directive on preventing and combating trafficking in human beings provides for a comprehensive range of rights for victims in criminal proceedings, including as regards victims' assistances and supports as well as for child victims of trafficking<sup>50</sup>.

Major progress has been achieved towards the adoption of the Commission proposals to **strengthen suspects' procedural rights**. The European Parliament and the Council adopted a new set of rules ensuring that the suspects of a criminal offence are informed about their rights in a language that they understand. Anyone arrested will have to be informed about their rights by a document called a Letter of Rights. The Commission also submitted a proposal for new rules securing amongst others access to a lawyer from the first stage of police questioning and throughout criminal proceedings<sup>51</sup>. The Commission launched a public consultation on detention issues in the EU, to explore the possibility of establishing similar standards of protection across the EU<sup>52</sup>.

### 3.4. Fight against xenophobic and racist hate speech

The European Parliament expressed its concern about the occurrence of xenophobic and racist hate speech and crimes in EU Member States on a number of occasions. According to the 2011 Annual Report of the EU Agency for Fundamental Rights, *"10 of the 12 Member States, which publish sufficient criminal justice data on racist crime to be able to undertake an analysis of trends, experienced an upward trend in recorded racist crime"*<sup>53</sup> during the period 2000-2009.

In reply to European Parliament concerns, the **Commission reiterated its firm rejection of all forms and manifestations of xenophobia and racism**. It recalled that public authorities must unequivocally condemn and actively fight against such behaviour. Any statement linking criminality with a certain nationality stigmatises that nationality and fuels xenophobia, and is therefore incompatible with the principles of human dignity, equality and respect for fundamental rights on which the EU is founded.

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<sup>48</sup> Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011) 275, available at:

[http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_275\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf)

Communication from the Commission: Strengthening victims' rights in the EU, COM(2011) 274 final, available at: [http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_274\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_274_en.pdf)

<sup>49</sup> Proposal for a Regulation on mutual recognition of protection measures in civil matters, COM(2011) 276, available at [http://ec.europa.eu/justice/policies/criminal/victims/docs/com\\_2011\\_276\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_276_en.pdf)

<sup>50</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.04.2011, p. 1-11.

<sup>51</sup> Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM(2011) 326, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0326:FIN:EN:PDF>

<sup>52</sup> Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327, available at: [http://ec.europa.eu/justice/policies/criminal/procedural/docs/com\\_2011\\_327\\_en.pdf](http://ec.europa.eu/justice/policies/criminal/procedural/docs/com_2011_327_en.pdf)

<sup>53</sup> EU Agency for Fundamental Rights, *'Fundamental Rights: Challenges and achievements in 2010'*, June 2011, p. 127. Available at: [http://fra.europa.eu/fraWebsite/attachments/annual-report-2011\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/annual-report-2011_EN.pdf)

The Commission is determined to ensure the conformity of national laws with **EU law prohibiting racist and xenophobic hate speech and crime**<sup>54</sup>. By the end of the year, 22 Member States had communicated to the Commission their national laws intended to penalise racist and xenophobic hate speech. The Commission did not receive any notifications of implementing measures from Belgium, Estonia, Greece, Spain and Poland. The Commission will assess notifications in 2012 in order to verify the compliance of national laws with EU law. It will work towards complementing this with a regular dialogue among Member States on monitoring organised propagation of racism and hate speech, for instance through racist websites, in order to strengthen the basis for joint analysis and reporting on such phenomena, in particular when they include a cross-border dimension.

**Discrimination based on racial or ethnic origin** is prohibited in EU law and the Commission is committed to ensuring that Member States comply with it. Proceedings against four Member States for non-compliance with these legal requirements were closed, as they brought their national laws into conformity. The Commission will pursue its efforts with three Member States for which proceedings are pending<sup>55</sup>.

The Commission reaffirmed the need for a positive attitude towards diversity and for equal treatment in the "European Agenda for the Integration of Third-Country Nationals"<sup>56</sup>. Efforts to fight against discrimination and to give migrants instruments to become acquainted with the fundamental values of the EU and its Member States should be strengthened.

The EU made a major step forward in **promoting the social and economic integration of Roma** with the Commission's communication on the "EU framework for national Roma integration strategies up to 2020"<sup>57</sup>. This EU Framework calls upon Member States to prepare or revise their national Roma integration strategies in the light of the EU goals defined in the framework, and to present them to the Commission by end of December 2011. The EU Framework was also endorsed by the European Council<sup>58</sup> and welcomed by the European Parliament.

The **EU gave financial support to civil society actions and national policies** to combat discrimination, promote equality and improve redress as regards racist speech and crime<sup>59</sup>. The Commission also supports the work of the **EU Agency for Fundamental Rights** in collecting data on the situation of fundamental rights, racism and discrimination in the Member States. The Agency published several studies and handbooks addressing for instance the role of Holocaust memorial sites in human rights education, the situation of Anti-semitism

<sup>54</sup> Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p. 55 – 58.

<sup>55</sup> Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22 - 26.

<sup>56</sup> Communication from the Commission: European Agenda for the Integration of Third-Country Nationals, COM(2011) 455 final, available at:

<sup>57</sup> [http://ec.europa.eu/home-affairs/news/intro/docs/110720/1\\_EN\\_ACT\\_part1\\_v10.pdf](http://ec.europa.eu/home-affairs/news/intro/docs/110720/1_EN_ACT_part1_v10.pdf)

Communication from the Commission: An EU Framework for National Roma Integration Strategies up to 2020, COM(2011) 173 final, available at:

<sup>58</sup> [http://ec.europa.eu/justice/policies/discrimination/docs/com\\_2011\\_173\\_en.pdf](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf)

European Council Conclusions, 24 June 2011, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/123075.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/123075.pdf).

<sup>59</sup> For instance, in 2011, over twenty projects addressing racism and xenophobia or promoting diversity and tolerance were supported through the Fundamental Rights and Citizenship Programme amounting to financial support of more than €9.5 million. Further information on this programme is available at: [http://ec.europa.eu/justice/grants/programmes/fundamental-citizenship/index\\_en.htm](http://ec.europa.eu/justice/grants/programmes/fundamental-citizenship/index_en.htm)

in the EU, European non-discrimination law, multiple- discrimination and the protection of minorities in the EU.

### 3.5. Contributing to EU competitiveness

The Charter served as a compass when shaping EU initiatives to promote growth. A number of EU measures have been assessed in the light of the **right to an effective remedy before a tribunal** (Article 47 of the Charter). This right is important for all citizens but also for the enforcement of EU economic law that contributes to growth. It ensures that enterprises can effectively uphold the rights granted in EU legislation and it provides a safeguard against the risk of unlawful action, and arbitrariness of authorities having supervisory powers. The Commission assessed a number of EU measures in the light of the right to an effective remedy before a tribunal. These measures included the proposed legislation related to markets in financial instruments, market abuse, transparency in financial markets, statutory audits, professional qualifications and consumer alternative dispute resolution.

In 2011, the right to an effective remedy was **the most quoted right in the decisions of the Court of Justice of the EU** referring to the Charter and it was mentioned in a third of all these decisions. The right to an effective remedy requires an independent, impartial and fully functioning judiciary.

The **freedom to conduct a business** (Article 16 of the Charter) is of particular relevance for EU competitiveness and the Commission duly took account of it in the preparation of new legislation on the market for financial instruments, insurance mediation, credit ratings agencies and on recording equipment for road transport (tachographs). Freedom to conduct a business was also a key consideration in the preparation of the Common European Sales Law proposal aimed at removing obstacles resulting from divergences between national contract laws<sup>60</sup>. The Court of Justice recognized the importance of the freedom to conduct a business in its landmark rulings in the *Scarlet*<sup>61</sup> and *Sabam* cases<sup>62</sup>. The Court declared that obliging an internet service or hosting provider to install a filtering system in order to prevent an infringement of intellectual property rights would infringe the freedom of the provider to conduct its business, as well as its customers' rights to the protection of their personal data and to receive or impart information. These rulings underline the importance of taking into account *all* the fundamental rights involved by a given measure and to ensure its compliance with *all* these rights.

In several initiatives, the Commission paid particular attention to the right to property (Article 17 of the Charter) which provides that **intellectual property shall be protected**. The Commission presented a Communication on 'A Single Market for Intellectual Property Rights'<sup>63</sup>, where it announced a number of initiatives, including a possible review of EU legislation on the enforcement of intellectual property rights in particular in the light of piracy

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<sup>60</sup> Proposal for a Regulation of the European Parliament and the Council on a common European sales law, COM (2011) 635 final, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>

<sup>61</sup> ECJ, Case C-70/10, *Scarlet v SABAM*, 24.11.2011.

<sup>62</sup> ECJ, Case C-360/10, *SABAM v. Netlog*, 16.2.2012.

<sup>63</sup> Communication from the Commission: A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, COM(2011) 287 final, available at:

[http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf)

over the internet. The Commission announced that such a review will require conducting an impact assessment, not only on the right to property, but also on the rights to private life, the protection of personal data, freedom of expression and information and the right to an effective remedy. As explained in the Charter Strategy, highlighting potential fundamental rights aspects upstream of the preparation of proposals encourage contributions that will feed into the impact assessment of the review.

### **3.6. Key steps for the EU accession to the European Convention on Human Rights**

The Commission took concrete steps to comply with the requirement enshrined in the Lisbon Treaty that the EU accedes to the European Convention on Human Rights. The Commission conducted technical negotiations on accession with experts from Member States of the Council of Europe as the current parties to the Convention. A draft accession agreement, elaborated in June 2011, is currently under scrutiny within the Council.

## **4. CONCLUSIONS**

In 2011, the EU took further concrete steps for the effective implementation of the Charter. These efforts served to help citizens enjoy their fundamental rights when EU law comes into play.

In particular, in times of economic crisis, a legally stable environment based on the rule of law and the respect of fundamental rights is the best guarantee for citizens' trust and the confidence of partners and investors. The Commission is convinced that all EU institutions, Member States and stakeholders must continue to work together to put the Charter into practice.