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COMMISSION STAFF WORKING DOCUMENT

Staff Working Document on the Application of the EU Charter of Fundamental Rights in 2017

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

2017 Report on the Application of the EU Charter of Fundamental Rights

{COM(2018) 396 final}

Introduction

Following the entry into force of the **EU Charter of Fundamental Rights**[1] ('the Charter') in December 2009, the European Commission ('the Commission') adopted a **strategy on the effective implementation of the Charter**[2]. The strategy sets as an objective that the EU should be beyond reproach in upholding fundamental rights, in particular when it legislates. The Commission also undertook to preparing annual reports to inform citizens and measure progress on the implementation of the Charter. They are intended to serve as a factual basis for ongoing dialogue between all EU institutions and Member States.

This Staff Working Document accompanying the report for 2017, informs the public about situations in which they can rely on the Charter and on the role of the EU in fundamental rights. In covering all of the Charter provisions, the Commission's annual reports aim to track where progress is being made, where further efforts are still needed and where new concerns are arising.

The Staff Working Document includes action taken by the EU institutions and analysis of letters and petitions from the public and questions from the European Parliament. In addition, it covers major developments on the jurisprudence of the Court of Justice of the European Union ('the CJEU), and provides information on the case law of national courts on the Charter, based on an analysis carried out by the EU Agency for Fundamental Rights (FRA).

Protection of fundamental rights in the EU

In the EU, the protection of fundamental rights is guaranteed both at national level (by Member States' constitutional systems) and at EU level (by the Charter).

The Charter applies to all action taken by the EU institutions (including the European Parliament and the Council), which must respect the Charter, in particular throughout the legislative process.

The Charter applies to Member States only when they implement EU law. Hence it does not replace national fundamental rights systems, but complements them. The factor connecting an alleged violation of the Charter with EU law depends on the situation in question. For example, a connecting factor exists where:

- national legislation transposes an EU directive;
- a public authority applies EU law; or
- a national court applies or interprets EU law.

If a national authority (administration or court) violates fundamental rights set out in the Charter when implementing EU law, the Commission can start an infringement procedure against the Member State in question and may take the matter to the CJEU.

The Commission is neither a judicial body nor a court of appeal against the decisions of national courts. It does not as a matter of principle, examine the merits of an individual case, unless this is relevant to its role of ensuring that the Member States apply EU law correctly. In particular, if it detects a wider, e.g. structural, problem, it can first approach the national authorities in order to have them address the issue, or it may start an infringement procedure

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF
[2] http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf

and ultimately take a Member State before the CJEU. The objective of these infringement procedures is to ensure that the national law in question — or a practice by national administrations or courts — is aligned with the requirements of EU law.

Where individuals or businesses consider that an act of the EU institutions violates their fundamental rights as enshrined in the Charter, they can subject to certain conditions bring their case before the CJEU, which has the power to annul the act in question.

Matters outside the scope of EU law

The Commission cannot pursue complaints that concern matters outside the scope of EU law. This does not necessarily mean that fundamental rights have not been violated. If a situation does not relate to EU law, it is for the Member States alone to ensure that their fundamental rights obligations are respected. Member States have extensive national rules on fundamental rights, which are upheld by national, including in many Member States, constitutional courts. Accordingly, any complaints in this context need to be addressed at the national level.

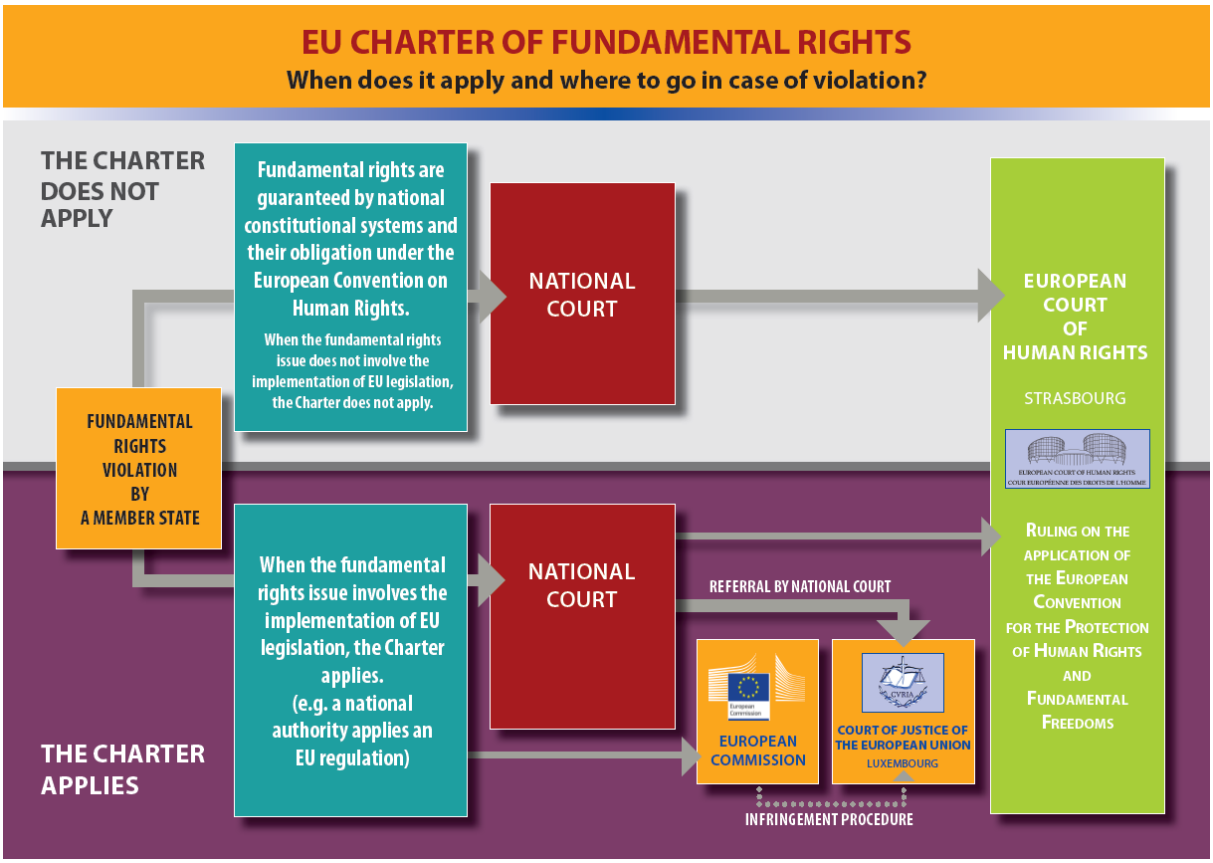
Therefore, where the Charter is not applicable in certain situations within a Member State, individuals seeking to respond to a violation by a Member State of a right guaranteed by the **European Convention on Human Rights (ECHR)** may:

- have recourse to **national remedies**; and (after having exhausted them)
- bring an application before the European Court of Human Rights (ECtHR) in Strasbourg for a violation of a right guaranteed by the **Convention**.

All Member States are bound by the commitments they have made under the Convention, independently of their obligations under EU law. The ECtHR has designed an admissibility checklist to help potential applicants assess for themselves whether there may be obstacles to it examining their applications[3].

The interpretation of the rights laid down in the Charter which reflect the rights guaranteed by the Convention must correspond to the interpretation of the Convention by the ECtHR.

[3] http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Checklist/



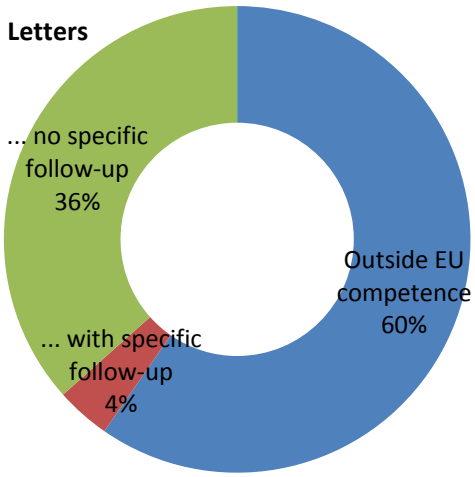
EU accession to the European Convention of Human Rights

The Treaty of Lisbon requires that the EU accede to the Convention. EU **accession to the Convention** remains a priority for the Commission. Accession will improve the effectiveness of EU law and enhance the coherence of fundamental rights protection in Europe. However, the CJEU's opinion of December 2014, that declared the 2013 draft Accession Agreement incompatible with the Treaties, raised a number of significant and complex questions. As a result, the draft Accession Agreement will have to be re-negotiated. In its capacity as EU negotiator, the Commission continues to consult with the relevant Council working party on solutions to address the objections raised by the Court and is making good progress.

Overview of letters and questions to the Commission on fundamental rights

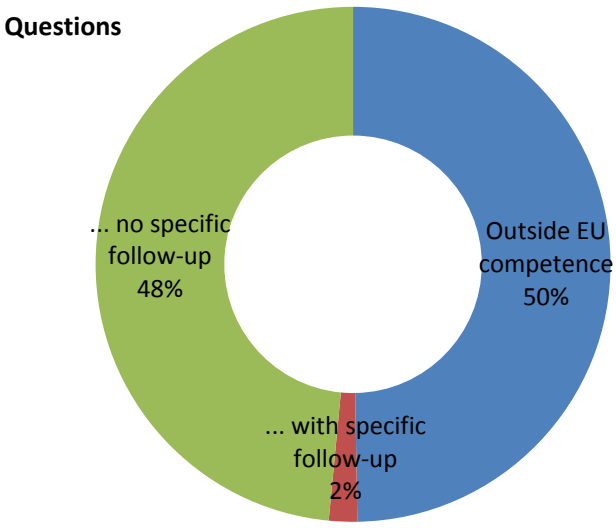
In 2017, the Commission received 1 935 letters from the public and 781 questions from the European Parliament on fundamental rights issues. Of the 411 petitions it received from the European Parliament, 61 concerned fundamental rights[4].

[4] See also Section on Article 44 below.

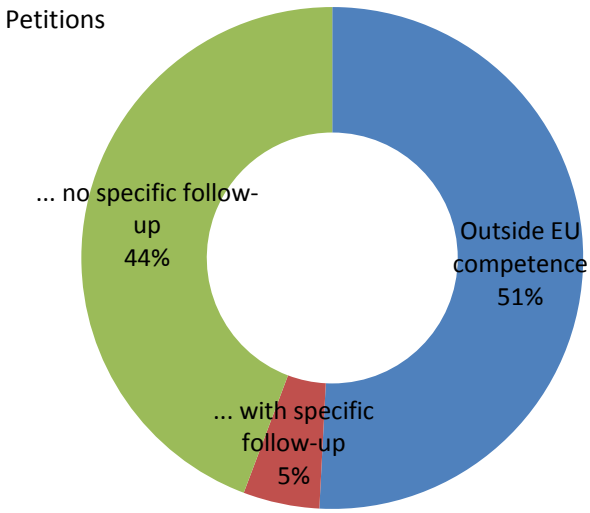


Among the letters from the public, 781 concerned issues within EU competence.

In a number of cases, the Commission asked the Member States concerned for information or explained the applicable EU rules to the complainant. In other cases, the complaints should have been addressed to the national authorities or the ECtHR. Where possible, complainants were redirected to other bodies (such as the national data protection authorities).



Among the questions from the European Parliament, 282 concerned issues within EU competence.

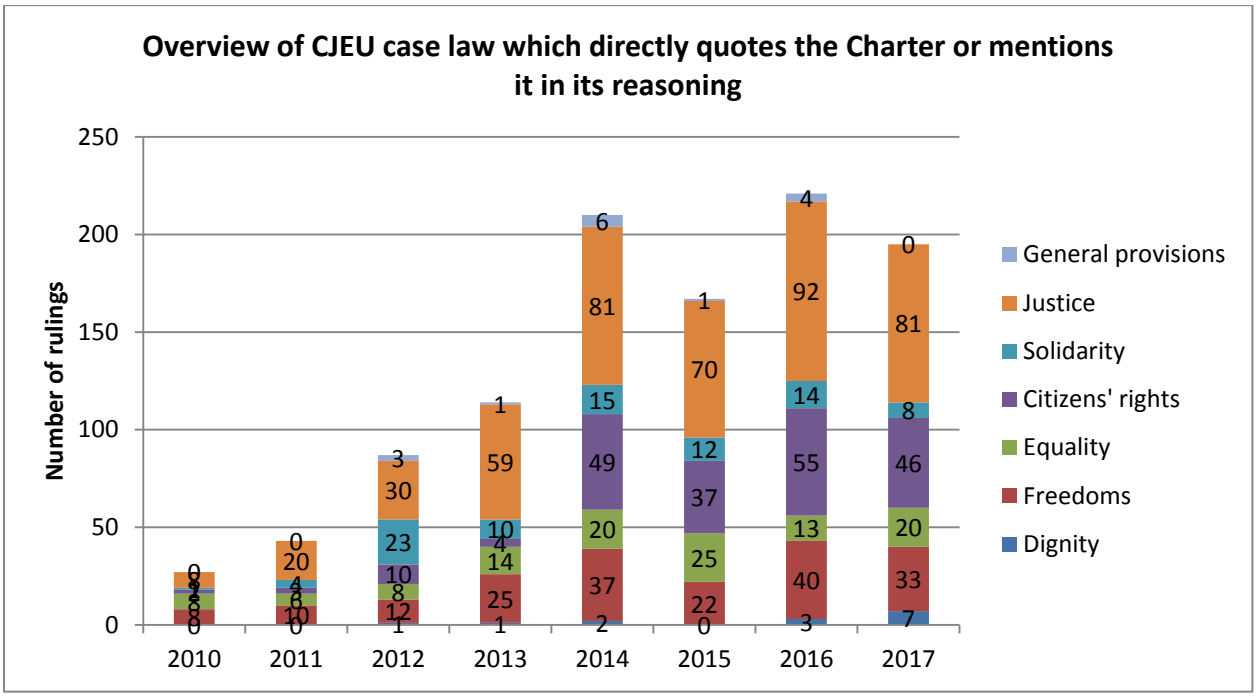


Among the 61 petitions on fundamental rights, 30 concerned issues within EU competence.

In a number of cases, the Commission contacted the Member States to obtain clarification on alleged violations. The Commission's replies explained or clarified the relevant policies and ongoing initiatives.

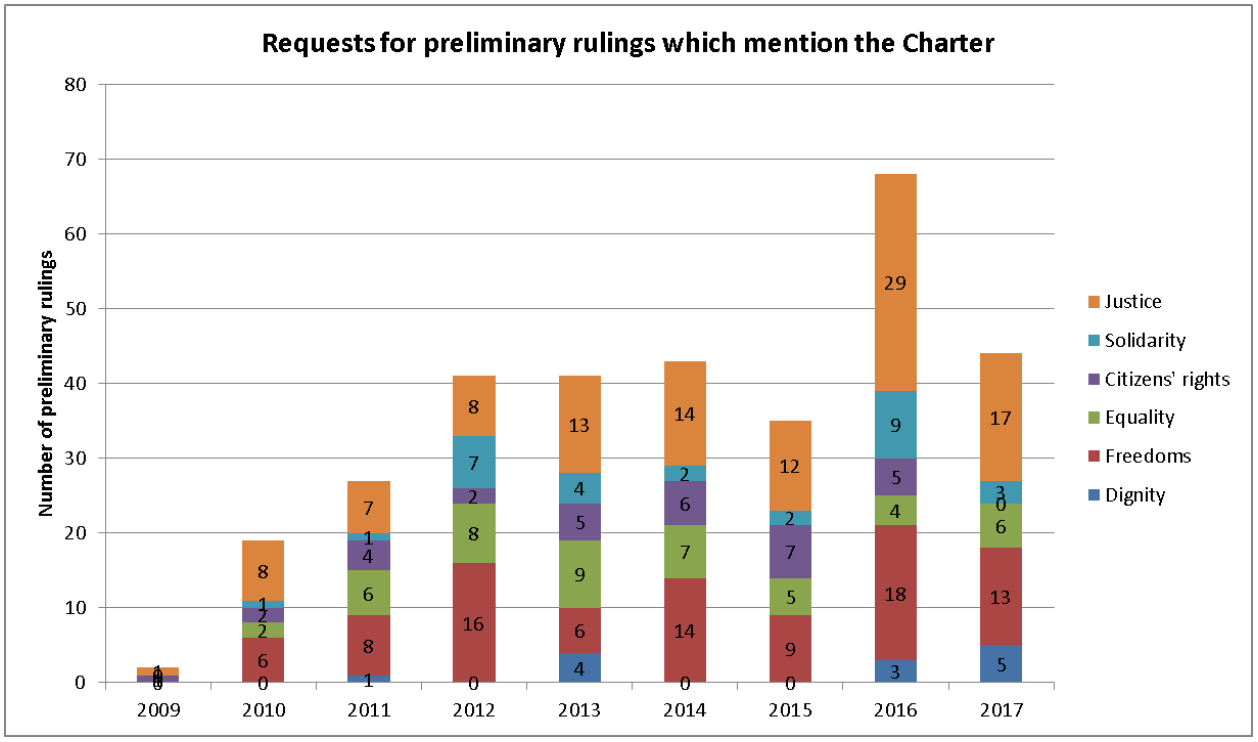
Overview of CJEU (Court of Justice, General Court and Civil Service Tribunal) decisions referring to the Charter

The EU courts have increasingly referred to the Charter in their decisions. The number of decisions quoting the Charter in their reasoning increased from 43 in 2011 to 87 in 2012 and further to 113 in 2013 to 210 in 2014. Following a decrease to 167 in 2015, the number increased again to 221 in 2016, only to then fall slightly to 195 in 2017. Overall this reflects a tendency by the EU courts to quote the Charter in their decisions (see Appendix I for an overview of all relevant rulings).



Source: European Commission

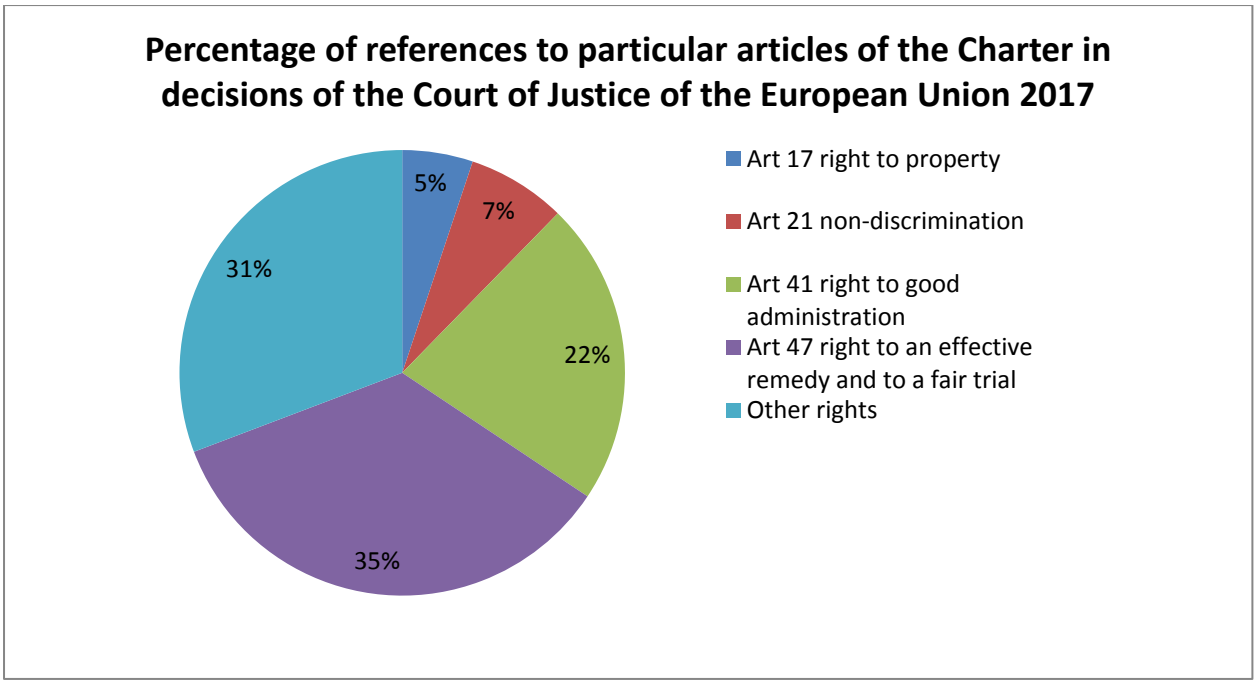
When addressing questions to the CJEU (requests for preliminary rulings), national courts often refer to the Charter. Of those requests submitted by judges in 2017**, 44 contained a reference to the Charter**, as compared to 60 in 2016 (See Appendix II for an overview).



Source: European Commission

References to the Charter in CJEU and national court decisions

Articles of the Charter referred to prominently in cases before the EU courts were those on the right to an effective remedy, the right to good administration, non-discrimination and the right to property.

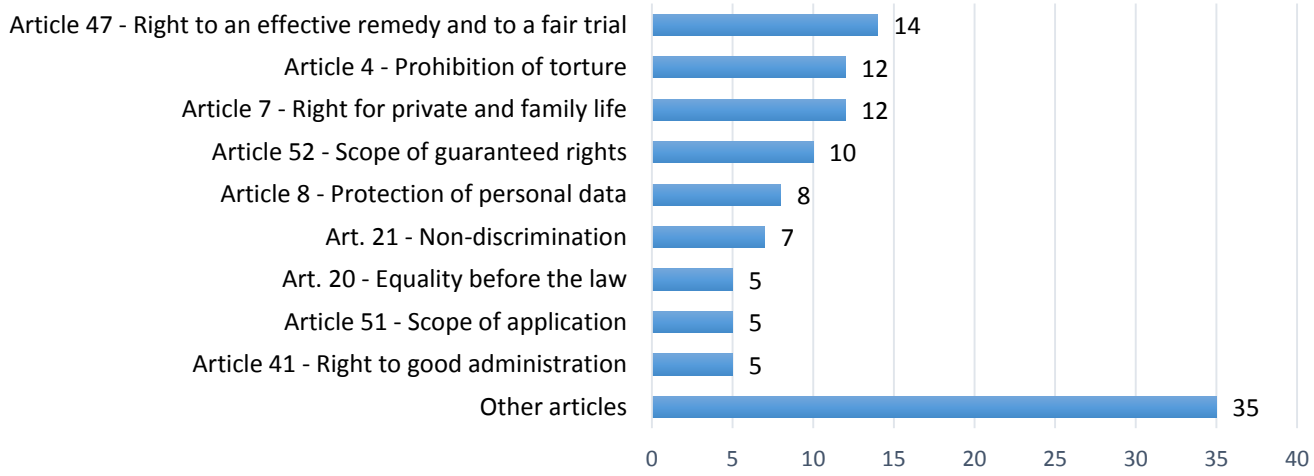


Source: European Commission

Note: The basis for this pie chart is the case law referred to in Appendix I. The total number of judgments analysed was 195 and several of them mentioned more than one article of the Charter. For the purpose of the pie chart, for each judgment one most relevant article was chosen, and percentages were calculated on that basis. The category 'Other rights' refers to all rights for which the percentage amounts to less than 5 %, i.e. fewer than 10 references.

On decisions by **national courts in 2017**, the Charter provisions referred to most concerned the right to an effective remedy (Article 47), the field of application of the Charter (Article 51) and the scope of guaranteed rights (Article 52).

National courts: Number of references to Charter articles in the analysed court decisions in 2017



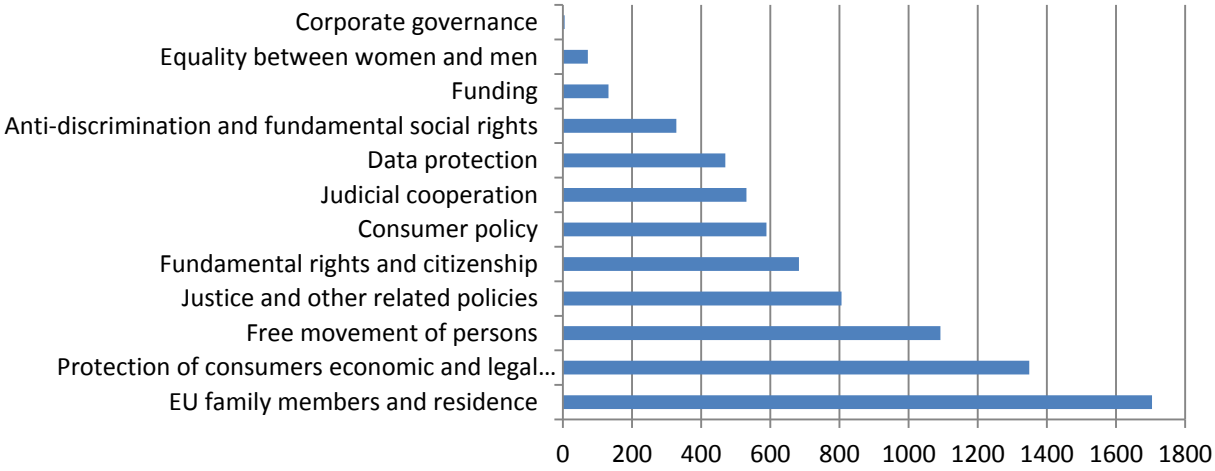
Note: Based on 68 court decisions analysed by the EU Agency for Fundamental Rights. These were issued in 27 Member States in 2017. Up to three decisions were reported per Member State; no decision was reported for Sweden. For every case only the predominant policy area was taken into account. The category 'Other policy areas' includes policy areas that were referred to in fewer than three court decisions. The categories used in the graph above are based on the subject matters used by EUR-Lex.

Source: FRA, 2017

Overview of enquiries with the Europe Direct Contact Centres

The data collected by the Europe Direct Contact Centres (EDCCs) confirm a high degree of interest among citizens on justice, citizenship and fundamental rights. In 2017, the EDCCs replied to 7 761 enquiries from citizens. Most concerned topics such as the status of family members of EU citizens and their right of residence, protection of consumers economic and legal interests and free movement of persons.

Enquiries received by the European Contact Centre on justice, fundamental rights and citizenship in 2017



Source: European Commission

Methodology and structure

The staff working document accompanying the annual report does not treat the Charter only as a legally binding source of law. It also aims to give an account, more broadly, of the various ways in which the Charter was invoked and contributed to progress on respecting and promoting fundamental rights in a number of areas in 2017. Consequently, it refers to the Charter as a legally binding instrument and/or a policy objective, depending on the policy areas concerned. The accounts given in the different chapters of the report vary depending on the progress made in specific policy areas, such as migration, asylum, digital single market, the European Energy Union, and reflect the 10 policy areas identified as priorities by Commission President Juncker in his opening statement to the European Parliament in 2014[5].

Hence, some chapters show how certain legislative measures are interacting with fundamental rights by promoting them or by striking the right balance in complying with them, including references to the relevant CJEU case law. Others contain little of either and/or may concentrate on policy rather than legislative measures. To illustrate the growing impact of the Charter, the staff working document (in the margins of the page where relevant) includes

[5] President Juncker's political guidelines, *A new start for Europe: my agenda for jobs, growth, fairness and democratic change — political guidelines for the next European Commission* (15 July 2014); https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en_0.pdf

national court decisions that refer to the Charter, irrespective of whether EU law is applicable to those national cases.

Some measures and cases may relate to different articles of the Charter. While a measure and/or case are explained in more detail under the heading of one article, it may also be referred to in another.

The structure of the staff working document reflects the six headings of the Charter itself: (i) Dignity, (ii) Freedoms, (iii) Equality, (iv) Solidarity, (v) Citizens' rights and (vi) Justice. All six chapters contains the following information on the application of the Charter:

- legislation:
    - examples of EU institutions' (proposed or adopted) legislation promoting the Charter rights; and
    - examples of how the EU institutions and the Member States ensured compliance with and applied the Charter in 2017 within other (proposed or adopted) legislation;
- policy:
    - examples of how the EU institutions and the Member States ensured compliance with and applied the Charter in 2017 within policy areas, e.g. through recommendations and guidelines and best practices;
- case law:
    - relevant CJEU jurisprudence; and
    - national courts' case law referring to the Charter (within or outside the scope of EU law);
- application by Member States:
    - follow-up on infringement procedures launched by the Commission against Member States for failure to correctly implement relevant legislation;
- questions and petitions from the European Parliament and letters from the public received in 2017 focusing on key fundamental rights issues; and
- data gathered by the EU Agency for Fundamental Rights in 2017.

Title I

Dignity

Effective protection of human dignity continues to be a major concern in particular in the area of migration. The Commission closely monitored during 2017 the creation of a **complaint mechanism** to monitor and ensure respect for fundamental rights in the activities carried out by the **European Border and Coast Guard Agency**. The Court of Justice of the EU ruled in the case C-578/16 *C.K and others* on whether a **transfer of an asylum seeker** to the Member State designated under the **Dublin III Regulation** as responsible to examine their application should be prevented when there is a **risk of inhuman or degrading treatment for the applicant concerned by that transfer**.

Article 1 — Human dignity

Human dignity, as protected under Article 1 of the Charter, is the basis of all fundamental rights. It guarantees the protection of human beings from being treated as mere objects by the state or by their fellow citizens. It is a right, but also part of the essence of all other rights. Therefore it must be respected when any other rights are restricted. All subsequent rights and freedoms on dignity, such as the **right to life** and the **prohibition of torture and slavery**, add specific protection against violations of dignity. They must be equally upheld in order to protect other rights and freedoms in the Charter, for example the freedom of expression and the freedom of association. None of the rights laid down in the Charter may be used to harm the dignity of another person.

Legislation and policy

The need to ensure effective protection of human dignity guided the Commission's negotiations during 2017 on the **status agreements with Serbia, Albania and the Former Yugoslav Republic of Macedonia** for the deployment of European Border and Coast Guard (EBCG) teams with executive powers onto the territory of those third countries[6]. The draft agreements include an explicit clause for the respect of fundamental rights and freedoms by EBCG teams in the performance of their tasks. This includes human dignity as well as other relevant fundamental rights such as the **right to respect for private life and personal data**[7]. They also provide for a complaint mechanism to deal with allegations of fundamental rights breaches.

The process of creating a complaint mechanism to monitor and ensure the respect for fundamental rights in the activities carried out by the **European Border and Coast Guard Agency** was also monitored by the Commission during 2017[8].

NATIONAL CASE LAW

Outside the scope of application of EU law, the Charter was used by national courts to strengthen protection provided by their national Constitutions. In particular, the Consitutional Court of Croatia clarified the implication of their accession to the EU on fundamental rights. In a case concerning the violation of the right to dignity (Article 1) where a twelve year old boy was searched by a security guard under suspicion of theft in a

[6] The Agreement with Albania was concluded on 12 February 2018 (http://europa.eu/rapid/press-release_IP-18-742_en.htm) and the following ones are expected to be concluded during 2018.
[7] Those rights are discussed further under Articles 7 and 8.
[8] https://ec.europa.eu/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents_en, see further under Article 4.

shop, the Constitutional Court went beyond referrring to the scope of EU law by affirming that 'by joining the European Union, the Republic of Croatia has accepted the contents of the Charter, whose Chapter I is titled Dignity […]. In this way, by committing to the contents of the Charter, human dignity becomes a component of the human rights catalogue of the Croatian Constitution'[9].

Article 2 — Right to life

According to Article 2 of the Charter everyone has the right to life and no one should be condemned to the death penalty or executed. The European Court of Human Rights has ruled since 1989 that the exposure to the pervasive and growing fear of execution — the so called 'death row phenomenon' — was in violation of the European Convention on Human Rights. The ECtHR has also held that the implementation of the death penalty could be considered inhuman and degrading and therefore contrary to Article 3 of the European Convention on Human Rights[10].

Preventing loss of lives is also one of the main challenges of the EU in managing irregular migration.

Policy

Continued efforts have been made by the Commission to implement the actions taken under the **European Agenda on Migration** that was adopted in 2015. The Commission reported regularly on the action being undertaken during 2017[11], including in a mid-term review that was published on 27 September 2017[12]. This includes actions taken on the protection of the right to life, in particular, support provided to the Italian and Greek rescue operations as well as the European Border and Coast Guard's Triton and Poseidon operations and Operation Sophia, which contributed to saving more than 620 000 lives in the Mediterranean Sea. While every life lost remains one too many, an improvement in the situation was reported by the International Organisation for Migration, whose 'Missing migrants' project reported 3 116 deaths in the Mediterranean in 2017, the lowest figures for the last two years (compared to 3 785 in 2015 and 5 143 in 2016)[13].

Preventing the loss of lives also continued to be one of the main objectives in the implementation of the **EU-Turkey Statement** of 18 March 2016[14], which the Commission has been closely monitoring and regularly reporting on[15]. This international agreement, as a temporary and extraordinary measure designed to put an end to the unsustainable humanitarian crisis created by the cycle of uncontrolled flows of migrants and to the human suffering exploited by the smugglers led, from the first weeks of its operation, to a sharp decrease of irregular arrivals and the loss of life, while at the same time opening up the legal channel of resettlement for those in need of protection.

Case law

[9] Croatia, Constitutional Court, case U-III-1095/2014, 21 September 2017.
[10] ECtHR, judgment of 2 March 2010 in case of *Al-Saadoon & Mufdhi v. the United Kingdom,* application no 61498/08.
[11] https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package_en
[12] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Delivery of the European Agenda on Migration (COM(2017) 558) and Staff Working Document — Progress report on the European Agenda on Migration of 15.11.2017 (Staff Working Document(2017) 372 final).
[13] http://missingmigrants.iom.int/
[14] http://europa.eu/rapid/press-release_STATEMENT-16-3945_en.htm
http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/
[15] See Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, of 6 September 2017, COM/2017/0470. Further reporting is included in the comprehensive progress reports on the implementation of the European Agenda on migration, notably COM(2017) 669 final of 15.11.2017 and COM(2018) 250 final of 14.3.2018.

The compatibility of the EU-Turkey Statement with fundamental rights, including the right to protection from *refoulement*[16], was raised before the Court in an action for annullment in case *NF, NG and NM v European Council*[17]. The case was dismissed, however, because the international agreement was concluded by the Member States and not the EU[18].

Article 3 — Right to the integrity of the person

The right to physical and mental integrity protects people from infringements by public authorities and requires authorities to promote such protection, e.g. through specific legislation. In medicine and biology, in particular the free and informed consent of the person concerned and the prohibition of eugenic practices, on making human body and its parts a source of financial gain and of the reproductive cloning of human beings must be respected.

Application by Member States

Issues on the **respect and protection by law enforcement authorities** of the right to the integrity of the person were the object of a number of parliamentary questions and complaints addressed to the Commission, which drew attention to allegations of violence exercised by the police in the Member States or the lack of protection by the police against violence and threats.

The Commission recalled the obligation upon national authorities to investigate any such instances, in order to ensure respect for fundamental rights as enshrined in national constitutions and derive from international human rights instruments to which Member States are parties. National authorities are obliged to do this when exercising their exclusive competence to maintain law and order and safeguard internal security in their country in line with applicable national legislation (Article 72 of the Treaty for the Functioning of the European Union (TFEU)).

The Commission also received a number of complaints alledging that **smart metering systems** promoted in EU legislation[19] was incompatible with the right to the integrity of the person. The Commission considered that smart metering systems do not present a risk to health linked to the exposure to radio frequency electromagnetic radiation. The Commission pointed to evidence showing that low-energy radio frequency waves generated by smart meters (only for short periods each day to transmit information) would only make minor contributions to the total background radiation level inside a home which is negligible compared with accepted safety limits[20]. The Commission also recalled that smart meter systems remain subject to strict national and EU product safety legislation, which require manufacturers to ensure the safety of all products they place on the market.

[16] The 1951 United Nations Convention relating to the Status of refugees in Article 33(1) provides that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
[17] Cases T-192/16, T-193/16 and T-257/16, *NF, NG and NM v Council.*
[18] See also Article 19.
[19] https://ec.europa.eu/energy/en/topics/markets-and-consumers/smart-grids-and-meters
[20] 'Final opinion on Potential health effects of exposure to electromagnetic fields (EMF)' Scientific Committee on Emerging and Newly Identified Health Risks (http://ec.europa.eu/health/scientific_committees/emerging/docs/scenihr_o_041.pdf; http://ec.europa.eu/dgs/health_food-safety/dyna/enews/enews.cfm?al_id=1581).

Article 4 — Prohibition of torture and inhuman or degrading treatment or punishment

Article 4 of the Charter prohibits torture and inhuman or degrading treatment or punishment. Complying with Article 4 requires authorities to be particularly vigilant where border controls, immigration and asylum is concerned.

Policy

The Commission monitored and took stock during 2017 of the progress achieved and the work that still needed to be done to ensure that a fully operational and equipped **European Border and Coast Guard Agency** is in place. The Commission published five reports on the workings of the Agency[21], focusing on five main priority areas, including creating the complaint mechanism and ensuring the respect for fundamental rights in the activities carried out by the Agency[22].

Case law

Of particular relevance is the ruling of the CJEU in the case *C.K and others*[23] on whether a **transfer of an asylum seeker** to the Member State designated under the Dublin III Regulation as responsible for examining their application[24] should be prevented when there is a **risk of inhuman or degrading treatment for the applicant concerned by that transfer**.

The Court held that Article 4 of the Charter must be interpreted as meaning that even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum under Article 3(2) of the Regulation, the transfer of an asylum seeker as provided by the Regulation can only take place if it is excluded that that transfer might cause a real and proven risk that the person concerned could suffer inhuman or degrading treatment.

According to the Court, a transfer of an asylum seeker who has a serious mental or physical illness would constitute inhuman and degrading treatment if the transfer would result in a real and proven risk of significant and permanent deterioration in the state of their health. In such situation, the authorities of the transferring Member State, and if necessary its courts, need to take all the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If those precautions are not sufficient, the authorities of the Member States concerned should suspend the execution of the transfer of that person until their condition improves.

The Court further clarified that where the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of that person, the requesting Member State may conduct its own examination of that person's application by invoking the 'discretionary clause' laid down in Article 17(1) of the Dublin III Regulation.

[21] http://europa.eu/rapid/press-release_IP-16-3281_en.htm
[22] https://ec.europa.eu/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents_en
[23] Judgment of 16 February 2017 in case C-578/16 PPU, *C.K. and Others v Republika Slovenija*.
[24] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

Article 5 — Prohibition of slavery and forced labour

Slavery violates human dignity. Article 5(3) of the Charter prohibits trafficking in human beings. Slavery and forced labour are also forms of exploitation covered by the definition of trafficking in human beings in Article 2 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (the 'Anti-trafficking Directive')[25].

Policy

The Commission, responding to calls by civil society, the European Parliament, the Council, Member States and other stakeholders, adopted on 4 December 2017 a Communication on *'Reporting on the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions'*[26]. The priorities of the strategy are:

- to disrupt the business model and untangle the trafficking chain;
- to provide better access to and fulfill the rights for victims; and
- to bolster a coordinated and consolidated response, both within and outside the EU.

In addition, collecting information and improving understanding of this complex issue needs to continue, as well as providing appropriate funding in support of anti-trafficking initiatives and projects. The Communication supports the implementation of the Anti-trafficking Directive and its integrated, holistic, human rights-based, gender specific and child sensitive approach in addressing trafficking in human beings.

The Communication was presented on 5 December 2017 to the Joint Session gathering the representatives of the EU Network of National Rapporteurs or equivalent mechanisms and the EU Civil Society Platform against trafficking in human beings, organised with the Estonian Presidency of the Council[27]. The Commission has encouraged making use of the EU Civil Society e-Platform, which would enable better engagement with the Commission and exchange information on actions against trafficking in human beings[28].

On 17 January 2017 the final evaluation report on the Implementation of the **Eurojust Action Plan against trafficking in human beings 2012-2016**[29] was published. Following Europol's Serious and Organised Crime Threat Assessment in the EU[30], the Council decided to continue the EU policy cycle for organised and serious international crime in 2018-2021[31], which identifies trafficking in human beings as a priority.

The Commission published in 2017 an overview on EU anti-trafficking actions for 2012-2016[32]. On 18 October 2017, the EU Anti-trafficking day, European Commissioner Avramopoulos in charge of migration, home affairs and

[25] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

[26] COM(2017) 728; 4.12.2017, available at: https://ec.europa.eu/home-affairs/news/trafficking-human-beings-commission-adopts-new-communication-and-commits-new-set-priorities_en

[27] The Platform brings together around a hundred civil society organisations including human rights organisations, migrant organisations and those working on the rights of women and children from EU Member States and non-EU countries.

[28] https://ec.europa.eu/anti-trafficking/media-outreach-els/eu-civil-society-e-platform_en

[29] http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/casework/Implementation%20of%20the%20Eurojust%20Action%20Plan%20against%20THB%202012-2016 %20-%20Final%20evaluation%20report%20(January%202017)/2017-01-31-THB-2012-2016_EN.pdf

[30] Europol, EU SOCTA (2017), Crime in the age of technology, https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017

[31] Council Conclusions on the continuation of the EU Policy Cycle for organised and serious international crime for the period 2018-2021 — Council conclusions (27 March 2017), 7093/17 Available at: http://data.consilium.europa.eu/doc/document/ST-7704-2017-INIT/en/pdf

[32] https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_anti-trafficking_action_2012-2016_at_a_glance.pdf

citizenship, called for stronger action to fight trafficking in human beings[33]. The day was preceded by an exhibition as part of a campaign 'Hear their voices. Act to protect', at the European Economic and Social Committee in cooperation with the United Nations Office on Drugs and Crime[34]. Addressing trafficking in human beings also continued to feature as a funding priority of the EU both in migration and security based on a victim-centred approach and taking into account the gender specific and child sensitive nature of the EU framework. Further in research financial support was earmarked for new methods to prevent, investigate and mitigate trafficking of human beings and child sexual exploitation and on the protection of victims under the Horizon 2020 work programme 2018-2020 priority 'Secure societies - protecting freedom and security of Europe and its citizens'[35].

Issues related to human trafficking continue to be raised, in particular with connection to migration (the Central Mediterranean route and the situation in non-EU countries such as Libya and Egypt) and the specific risks facing children (including unaccompanied) but also in connection to exploitation and abuse of both EU citizens and non-EU nationals. The Commission replied to the 19 written questions received on this issue from Members of the European Parliament.

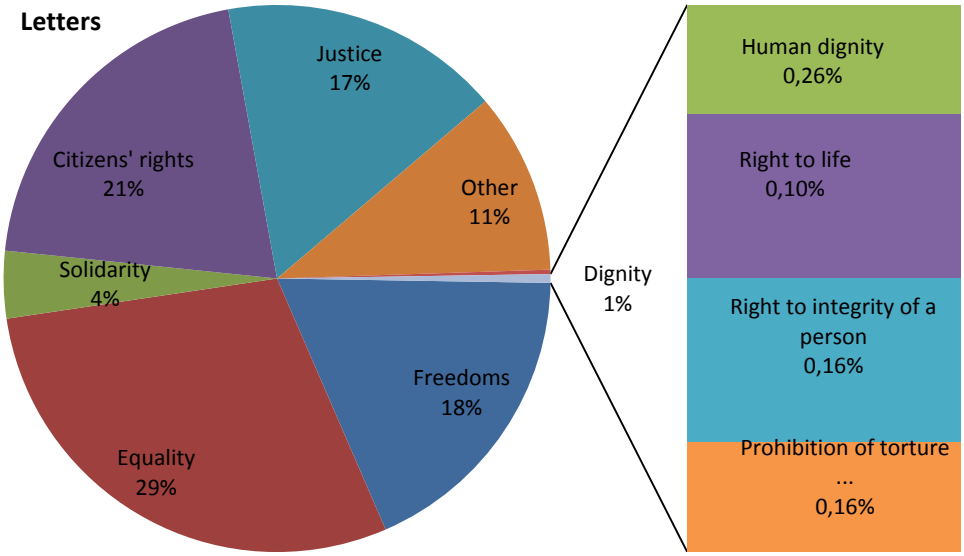
Application by Member States

In the context of the **EU cohesion policy**, a Member State was contacted by a Commission department on a possible violation of the prohibition of slavery and forced labour in a project co-financed by the European Structural and Investment Funds (ESI). National authorities were requested to investigate the alleged employment of forced workers from North Korea after several companies, including those that had received co-financing from ESI Funds, were accused by the press of forcibly employing workers of North Korean origin. During 2017 national authorities provided information to the Commision according to which there had been no identified breach of EU labour law and the Charter in that case. That said, the National Labour Inspectorate was also conducting further checks on other companies that were beneficiaries of ESI funds.

In late 2015 and 2016 several reports emerged on cases of alleged abuses and forced labour of migrant fishers in the EU fishing industry. Following these reports various measures were adopted by the Member State concerned to rectify the situation, including the creation of a dedicated task force and a new recruitment-scheme for non-EEA workers. Despite these efforts, various international and national public and private bodies, including the Council of Europe, have continued to find shortcomings in the protection of migrant workers in the fisheries sector throughout 2017.

The Commission has closely monitored developments since they first emerged. It has repeatedly called on the Member State concerned to solve the remaining problems as quickly as possible in order to ensure compliance with applicable EU law, in particular, rules on trafficking in human beings and labour exploitation and continues to do so.

[33] https://ec.europa.eu/anti-trafficking/eu-policy/eu-anti-trafficking-day-stronger-action-needed-fight-trafficking-human-beings_en
[34] https://ec.europa.eu/anti-trafficking/eu-policy/eu-anti-trafficking-day-stronger-action-needed-fight-trafficking-human-beings_en
[35] http://ec.europa.eu/research/participants/data/ref/h2020/wp/2018-2020/main/h2020-wp1820-security_en.pdf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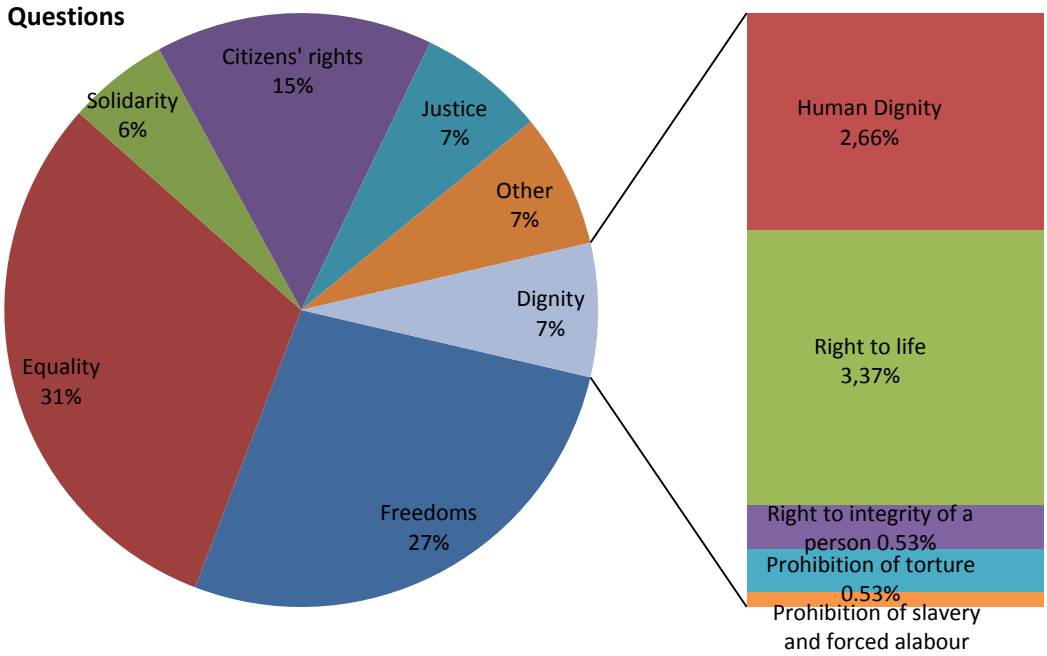
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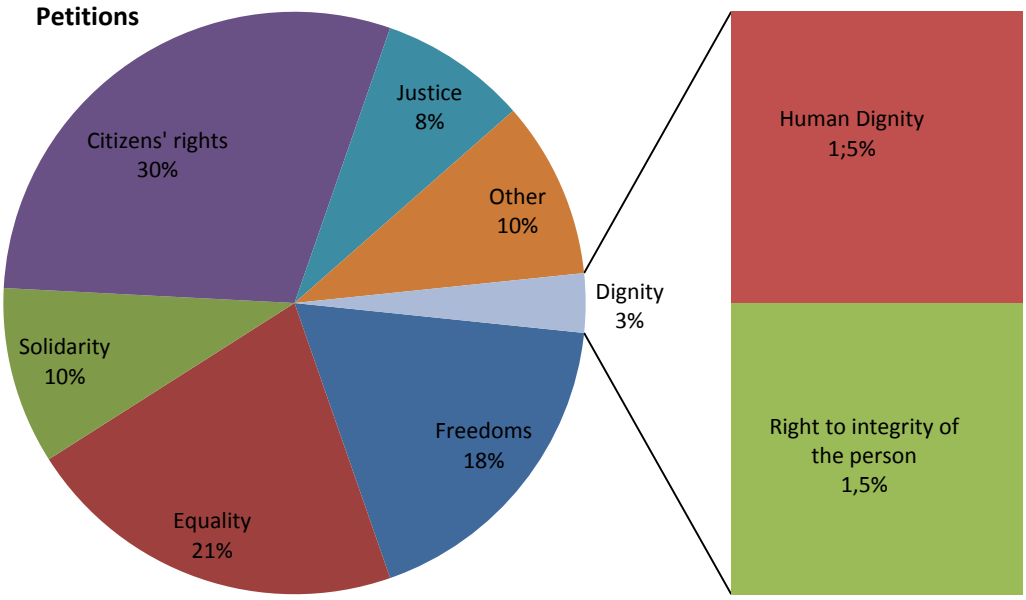
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Title II

Freedoms

Following the adoption of the **EU-US Privacy Shield Adequacy Decision** in July 2016, the Commission conducted the first annual review of its application in 2017. The outcome of the review is contained in a **Report to the European Parliament and the Council on the first annual review of the functioning of the EU-U.S. Privacy Shield**, which also proposes a number of specific recommendations to the U.S. authorities.

The proposal **for a Regulation on a framework for the free flow of non-personal data in the EU**, adopted by the Commission on 13 September 2017 aims at contributing to eliminating and preventing unjustified or disproportionate barriers to using and providing data services (such as cloud services and configuring in-house IT systems).

The **Security of Gas Supply Regulation** adopted on 25 October 2017 introduced for the first time a solidarity mechanism between Member States. This mechanism is designed to address extreme situations in which gas supply, as priority basic need, is at stake in a Member State.

The Commission adopted a **Communication on Tackling Illegal Content Online** on 28 September 2017. The Communication states that the fight against illegal content online must be carried out with proper and robust safeguards to ensure protection of the different fundamental rights at stake. In the last quarter of 2017, the Commission launched its **initiative on fake news and the spread of disinformation online,** as called for in a 15 June 2017 Resolution of the European Parliament and announced by President Juncker in his 13 September 2017 State of the Union address.

Policy and legislative developments were registered in 2017 in **asylum and migration**, including in the context of negotiations on the **reform of the Common European Asylum System** as well as the progress made in **relocation and resettlement policy**. The Court issued several judgments providing guidance to the Member States on the **validity and interpretation of the EU asylum and migration *acquis***, in particular in **detaining migrants**.

Issues related to the respect of the **right to freedom of association** were also raised in 2017 including developments at national level touching on the **role and functioning of civil society organisations**.

Article 6 — Right to liberty and security

The rights of all to liberty and security correspond to those guaranteed in Article 5 of the Convention. They mean that a person's liberty can be limited only under strict legal conditions.

Case law

The CJEU issued a number of judgments on the **detention of migrants**. In *K*[36]. the Court considered the right to liberty versus **the administrative detention of asylum seekers** provided under the Reception Conditions Directive[37].

The question asked by the referring Dutch court concerned the detention of an asylum seeker in order to determine their identity or nationality; or in order to determine those elements on which the application for international protection is based and which could not be obtained in the absence of detention, in particular when there is a risk of abscondment[38].

The Court analysed the relevant provisions in light of the standards set in Article 6 of the Charter read in conjunction with Article 52(1) and (3)[39]. It found no elements that would affect the validity of the relevant provisions of the Directive. According to the Court, these provisions struck a fair balance between the asylum seeker's right to liberty and, the requirements on the identification of that asylum seeker or of their nationality, or to determine the elements on which their application is based.

According to the Court, the administrative detention of an asylum seeker based on these grounds serves to allow the assessment of whether the asylum seeker satisfies the conditions to qualify for such protection, which is necessary for the proper functioning of the Common European Asylum System − an objective of general interest recognised by the EU. At the same time, the Court stressed that all the conditions for applying such a measure and the guarantees set out in Articles 8 and 9 of the Directive must be respected and that national authorities must always determine, on a case-by-case basis, whether detention measures are proportionate to the aims pursued. This implies that administrative detention is used only as a last resort and for as short a period as possible.

In *Khir*[40] the Court clarified the relevant provisions of the Dublin III Regulation[41] on the **maximum periods of detention pending the transfer of an asylum seeker**. The Court held that national legislation may provide for detention of an asylum seeker for international protection for no longer than two months when the requested Member State has accepted to take charge of the request. In that situation, the duration of the detention must not go beyond what is necessary for the purposes of that transfer procedure. This is to be assessed on a case-by-case basis. Where applicable, the duration of the detention must not to longer than six weeks from the date when the appeal or review ceases to have suspensive effect.

[36] Judgment of 14 September 2017 in case C-18/16, *K. v Staatssecretaris van Veiligheid en Justitie*.
[37] Article 8 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.
[38] Articles 8(3)(a) and (b) of the Reception Conditions Directive.
[39] permissible limitations on Charter rights.
[40] Judgment of 13 September 2017 in case C-60/16, *Mohammad Khir Amayry v Migrationsverket*.
[41] See further under Article 4.

In *Al Chodor*[42], on the **detention of an asylum seeker at significant risk of absconding** under the Dublin III Regulation, the Court clarified that the objective criteria according to which a person subject to a Dublin transfer procedure is deemed to be at risk of absconding must be defined by the provisions of a binding act of general application. According to the Court, case law of competent courts and established administrative practice of the border police are not sufficient, and in the absence of such a definition 'by law' of such criteria, detention is to be regarded as unlawful.

Article 7 — Respect for private and family life

Article 7 of the Charter guarantees the right of all to respect for private and family life, home and communications.

The right to **private life** includes the protection of privacy in relation to personal information. Where legislation, policy or case law refer to this right in connection with the protection of personal data, this report will refer to them under Article 8 below.

Legislation

On 12 December 2017, the Commission adopted legislative proposals[43] establishing a framework for **interoperability between EU information systems**, as a further step to improve information exchange to improve external border control and to enhance internal security in full compliance with fundamental rights. Interoperability has the potential of having an indirect positive impact on the right to private life, and in particular the right to one's identity, as it can help to avoid incorrect identifications. Given the personal data involved, interoperability will have an impact on the right to the protection of personal data, which is closely linked to respect for private and family life enshrined by Article 7 of the Charter[44]. The Commission will evaluate the instruments, including assessing the results against the objectives and their impact on fundamental rights.

Case law

In *Chavez Vilchez*[45] the CJEU further clarified its jurisprudence in the *Zambrano*[46] case. The case concerned the conditions linked to the right of residence in the EU of a non-EU national parent whose child is an EU citizen in a situation in which the child would otherwise be compelled to leave the EU and therefore be deprived of benefiting from the rights of EU citizenship.

The judgment explained the assessment that needs to be carried out to determine whether the child would be compelled to leave the EU and the factors that need to be taken into consideration in that assessement:

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[42] Judgment of 15 March 2017 in case C-528/15, *Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor and Others*.

[43] Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226, COM(2017) 793 final, 12.12.2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212_proposal_regulation_on_establishing_framework_for_interoperability_between_eu_information_systems_borders_and_visa_en.pdf and Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration), COM(2017) 794 final, https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-794-F1-EN-MAIN-PART-1.PDF.

[44] See further under Article 8 below.

[45] Judgment of 10 May 2017 in case C-133/15, *H.C. Chavez-Vilchez and Others v Raad van bestuur van de Sociale verzekeringsbank and Others,* see section below on Article 45.

[46] Judgment of 8 March 2011 in case C-34/09, *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm).*

- which parent is the primary carer of the child;
- whether there is a relationship of dependency between the child and the non-EU national parent taking into account the age, and physical and emotional development of the child;
- the extent of the child's emotional ties to each parent; and
- the risks that separation from the non-EU national parent might entail for the child's equilibrium.

The Court stated that, as part of that assessment, competent authorities must take account of the right to respect for family life and the best interests of the child (Article 7 read in conjunction with Article 24(2) of the Charter).

Article 8 — Protection of personal data

The fundamental right of all to the protection of personal data is explicitly stated in Article 8 of the Charter and also enshrined in Article 16 of the Treaty on the Functioning of the EU ('TFEU'). According to this right, personal data must be processed fairly, for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. The data protection reform package — which entered into force in May 2016 and will apply from May 2018 — will ensure that the rights of data subjects can be effectively protected in times of rapid technological developments.

Legislation

Following the adoption of the **data protection reform package** in 2016[47], the Commission worked closely in 2017 with the Member States to accompany them in the process of adapting or repealing their existing laws, as necessary, and to turn the new legislation into national law by May 2018.

The Commission set up an Expert Group with representatives from the Member States, which met regularly in 2017 to exchange views and information on the implementation of the General Data Protection Regulation ('GDPR') and on turning the Data Protection Directive for police and criminal justice authorities into national law. Moreover, the Commission **supported the work of the national data protection authorities**, which play a key role in ensuring the coherent interpretation and enforcement of the new rules.

The Article 29 Working Party[48] adopted **guidelines for companies and other stakeholders** on certain key provisions of the GDPR[49]. In collaboration with the Commission, the Working Party also devoted much of its work to setting up a new EU body: the **European Data Protection Board** whose main task will be to ensure the consistent application of the GDPR.

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[47] The package consists of:

- Regulation (EU) 2016/679 of 27 April 2016 (OJ L 119, 4.5.2016, p. 1–-88) known as a General Data Protection Regulation (GDPR) repealing Directive 95/46/EC. The GDPR modernises the principles of Directive 95/46/EC, tailoring them for the digital age and harmonising data protection law in Europe, will give citizens easier access to their own personal data, a right to data portability, a clarified 'right to be forgotten' and certain rights in the event of a personal data breach; and
- Directive (EU) 2016/680 of 27 April 2016 (OJ L 119, 4.5.2016, p. 89–-131), known as a Data Protection Directive for Police and Criminal Justice Authorities, repealing Council Framework Decision 2008/977/JHA. The Data Protection Directive for Police and Criminal Justice Authorities will allow Member States' enforcement authorities to exchange information necessary for more efficient and effective investigations. It also ensures strong protection of personal data fully in line with the Charter.

[48] The body that brings together the data protection authorities of the Member States, named after Article 29 of Directive 95/46/EC which established it.

[49] http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2016/wp236_en.pdf.

As announced in the letter of intent following President Juncker's State of the Union speech on 13 September 2017, the Commission prepared guidance to businesses and organisations (particularly targeted towards SMEs) processing personal data[50] and for individuals[51] to explain the new rules that would apply from May 2018. The guidance takes the form of a practical online toolkit and was published on 28 January 2018. It waspromoted through an information campaign and dissemination activities in all Member States, targeting businesses and the public.

Over the past year, the Commission organised a number of events to reach out to stakeholders on the GDPR, for instance with representatives of the health sector and of SMEs.

The Commission is also supporting awareness-raising and compliance efforts at national level by awarding grants that can be used to provide training to data protection authorities, public administrations, legal professions and data protection officers to familiarise them with the GDPR. The Commission also published a restricted call for proposals to support awareness-raising activities carried out by data protection authorities at national level and aimed at individuals and SMEs. The Commission set up a multi-stakeholder group on the GDPR to get the views of businesses and civil society, practitioners and academics on certain issues related to this legislation, in particular on how to achieve an appropriate level of awareness among stakeholders.

Along with the reinforced protection provided by the data protection reform package within the EU, the Commission also aims to ensure a high level of data protection at *international level* in the context of the global information society. Openness for **international data flows** and ensuring the highest level of protection for individuals need to go hand in hand to ensure trust.

The **Communication on Exchanging and Protecting Personal Data in a Globalised World**[52], published on 10 January 2017, sets out the Commission strategy to ensure that when the personal data of Europeans are transferred abroad, the level of protection ensured by the EU is also recognised by the country receiving the data'. Taking advantage of the new rules for cross-border data transfers provided by the data protection reform package, shapes the lines for future action that the Commission is going to take in seeking gradual global coming together of data protection principles and standards across the world.

Following the adoption of the **EU-US privacy shield adequacy decision**[53] in July 2016, the Commission conducted in September 2017 in Washington, D.C. the first annual review of its application. The positive outcome of the review[54] and specific recommendations to the US authorities to ensure the continued successful functioning of the Privacy Shield Framework were then considered in a **Report to the European Parliament and the Council on the first annual review of the functioning of the EU-US privacy shield**[55].

[50] https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations_en
[51] https://ec.europa.eu/info/law/law-topic/data-protection/reform/rights-citizens_en
[52] COM(2017) 7 final; 10.1.2017, available at: http://europa.eu/rapid/press-release_MEMO-17-15_en.htm
[53] Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield, C/2016/4176 OJ L 207, 1.8.2016. The Privacy Shield Framework ensures the free flow of personal data for commercial purposes between the EU and certified U.S. companies, while securing the fundamental right to the protection of the data.
[54] The Commission concludes that the United States continue to ensure an adequate level of protection for personal data transferred under the Privacy Shield from the Union to organisations in the United States.
[55] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=605619

The EU-US Data Protection 'Umbrella Agreement'[56], which ensures a high level of data protection for any transfer of personal data (based on international agreements or Member States laws) between the EU and the US in police or judicial cooperation in criminal matters, **entered into force on 1 February 2017**[57].

The Commission took account of the fundamental rights to private life and protection of personal data in a number of other policy areas in 2017.In the digital area, the new legislative proposal on the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC — **Regulation on Privacy and Electronic Communications** — was adopted on 10 January 2017. The proposal aims to increase the level of protection of privacy and personal data processed and make it more effective in relation to electronic communications in line with Articles 7 and 8 of the Charter and to ensure greater legal certainty. The proposal complements the GDPR. Effective protection of the confidentiality of communications is essential for exercising the freedom of expression and information and freedom of thought, conscience and religion [58].

On 13 September 2017, the Commission adopted a new cybersecurity package[59]. Cybersecurity has an essential role in protecting the privacy and personal data of individuals: in case of cyber incidents, the privacy and the protection of our personal data are clearly exposed. By aiming to reinforce cybersecurity in the EU, the proposal complements legislation protecting the fundamental right to privacy and personal data.

In migration, the **Schengen Borders Code**[60] entered into force on 7 April 2017. Member States are obliged to carry out systematic checks against relevant databases on individuals enjoying the right of free movement when they cross the external border. The databases contain data on lost and stolen documents used to check that those individuals do not represent a threat to public order and internal security. Since the consultation of databases functions on a hit/no-hit basis, the mere consultation is neither registered nor further processed, thereby guaranteeing the right to respect private and family life and to the right to the protection of personal data.

On 20 December 2017, the Commission adopted **eight Recommendations for a Council Decision authorising the opening of negotiations for agreements** between the EU and the People's Democratic Republic of Algeria, the Arab Republic of Egypt, the State of Israel, the Hashemite Kingdom of Jordan, the Lebanese Republic, the Kingdom of Morocco, Tunisia and the Republic of Turkey respectively **on the exchange of personal data between the EU Agency for Law Enforcement Cooperation (Europol) and, respectively, the Algerian, Egyptian, Israeli, Jordanian, Lebanese, Moroccan, Tunisian and Turkish competent authorities for fighting serious crime and terrorism.** The purpose of these international agreements is to provide a legal basis for the transfer of personal data between Europol and the respective competent authorities in the non-EU country, adducing adequate safeguards for the protection of privacy and fundamental rights and freedoms of individuals[61].

[56] Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses.
[57] OJ L 25, of 31.1.2017, p.1-2.
[58] See Articles 10 and 11.
[59] The package consist of a proposal for the Regulation on ENISA, the 'EU Cybersecurity Agency', and repealing Regulation (EU) 526/2013, and on Information and Communication Technology cybersecurity certification (''Cybersecurity Act'').
[60] Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders, OJ L 74, 18.3.2017, p. 1-7.
[61] Recital (4) of the Recommendations for a Council Decision reads, 'The Agreement should respect the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to private and family life, recognised in Article 7 of the Charter, the right to the protection of personal data, recognised in Article 8 of the Charter and the right to effective remedy and fair trial recognised by Article 47 of the Charter.'.

The previously mentioned[62] Commission proposals to establish a framework for **interoperability between EU information systems** are based on the principles of data protection by design and by default and include all appropriate provisions limiting data processing to what is necessary for the specific purpose, and granting data access only to those entities that 'need to know'. Data retention periods are appropriate and limited and access to data is reserved exclusively for authorised staff of the Member State authorities or EU bodies that are competent for the specific purposes of each information system and limited to the extent that the data are required for the performance of tasks for these purposes.

In fisheries, three instruments have been adopted in 2017 in full compliance with the EU rules on the protection of personal data:

1) Implementing Regulation on the Union fishing fleet register[63];

2) Regulation on a Union framework for the collection, management and use of fisheries data[64]; and

3) Regulation on the sustainable management of the external fishing fleet[65].

All of these instruments require that any data handling must be carried out in line with the EU legislation on the protection of personal data. Furthermore, in all relevant cases appropriate safeguards, such as a higher level of aggregation or anonymisation of data, should be put in place if data includes information relating to identified or identifiable natural persons, taking into consideration the purposes of processing, the nature of the data and the potential risks relating to the processing of personal data. To comply with the relevant EU rules on data protection, these three Regulations require that at all times and at all levels the obligations on personal data protection are respected.

In taxation, a political agreement was reached in the Council on 13 March 2018 to adopt the Commission's proposal **for a Council Directive for mandatory automatic exchange of information on reportable cross-border arrangements**[66]. The proposal provides that any processing of personal data carried out within the framework of the Directive must comply with the EU data protection legislation and with the principles recognised by the Charter. The proposal is in line with the principle of proportionality with regard to its purpose, in particular since it will be limited to schemes of a cross-border dimension that fulfil certain indications of aggressive tax planning ('hallmarks').

Another measure proposed by the Commission that could trigger new exchange and joint processing of existing VAT information, which could include personal data is the proposal **for a Council Regulation as regards measures to**

[62] See Article 7

[63] Commission Implementing Regulation (EU) 2017/218 of 6 February 2017 on the Union fishing fleet register (OJ L 34, 9.2.2017, p. 9). It sets out obligations for the Commission as regards the Union register, and for Member States as regards the collection and validation of data in their national registers. The maintenance of these registers involves the processing of personal data, in particular, data concerning owners and operators of vessels.

[64] Regulation (EU) 2017/1004 of the European Parliament and of the Council of 17 May 2017 on the establishment of a Union Framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy and repealing Council Regulation (EC) 199/2008 (OJ L 157, 20.6.2017, p. 1). It sets out the conditions for the collection, management and use of biological, environmental, technical and socio-economic data in the fisheries sector. It thereby also covers the processing of personal data.

[65] Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleet, and repealing Council Regulation (EC) 1006/2008 (OJ L 347, 28.12.2017, p. 81). It aims at ensuring compliance with international rules concerning the sustainable management and conservation of marine resources. The issuing and management of fishing authorisations under this Regulation involves the collection, storage, and exchange of a whole range of different data, including personal data of operators of vessels, which flow into the electronic Union fishing authorisation database.

[66] https://ec.europa.eu/taxation_customs/sites/taxation/files/intermediaries-proposal-2017_en.pdf

strengthen administrative cooperation in the field of value added tax[67]. Therefore data collection will be strictly targeted and restricted to operators alledgedly involved in fraudulent transactions. The data will be stored only for the time needed for analysis and investigations by national tax authorities empowered to enforce VAT obligations. They will be used solely to identify suspected fraudsters at an early stage and to put an end to fraudulent networks whose purpose is to abuse the VAT system by perpetrating VAT fraud. They will be accessed and used only by authorised staff.

Policy

The protection of personal data has been central in several policies related to the digital environment.

The commitment of the Commission to guarantee data protection and privacy aspects of the Charter in the context of **cloud computing services** through the application of data protection law continued in 2017. Since September 2012, the Commission has been working with industry to agree on a **code of conduct for cloud service providers** to support a uniform application of personal data protection rules. The code would provide users of cloud infrastructure, software or platform services with the assurance that their data are being protected in line with the GDPR[68].

The joint work with industry was carried out in the context of the Cloud Select Industry Group (C-SIG)[69]. The C-SIG code has also been used as a model for a more specific code of conduct for cloud infrastructure providers (CISPE)[70]. Since then, the two codes have been discussed with data arotection authorities (through the Article 29 Working Party), who made suggestions for improvements. At the C-SIG meeting in February 2017, the code of conduct[71] was handed over to a non-profit organisation (Scope Europe), where the code continues to be further developed and disseminated. SCOPE Europe[72] established governance rules and promotes the widespread adoption of the code by cloud service providers. Both codes of conduct need to be further developed in line with the feedback of the Article 29 Working Party and to make them fully compliant with GDPR requirements.

In the **Internet of things**, the recently proposed Cybersecurity Package[73] mentioned under 'legislation' is putting forward the instruments that would enable the development of the Internet of things certification and potential labels or marks.

Moreover, in January 2017 the **Communication on 'Building a European Data Economy'**[74] assessed whether the current EU legal rules for product liability are fit for purpose, when damages occur in the context of the use of the Inernet of things and autonomous systems. In May 2017 the Commission announced in the **Digital Single Market mid-term review**[75] that it will consider the possible need to adapt the current legal framework to take account of new technological developments, particularly from the angle of civil law liability and taking into account the results of the ongoing evaluation of the Product Liability Directive[76] and the Machinery Directive[77] .

[67] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017PC0706
[68] The GDPR explicitly recognises and encourages codes of conduct, as they complement the implementationof the law by providing guidance and clarity to providers and users alike.
[69] https://ec.europa.eu/digital-single-market/en/cloud-select-industry-group-code-conduct
[70] https://cispe.cloud/
[71] https://eucoc.cloud/fileadmin/cloud-coc/files/Feb15_Press_Release.pdf
[72] https://scope-europe.eu/en/about-us/
[73] https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-477_en
[74] http://eur-lex.europa.eu/content/news/building_EU_data_economy.html
[75] http://eur-lex.europa.eu/content/news/digital_market.html
[76] Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ L 210, 7.8.1985, p. 29-33.

Under the **Research and Innovation Programme Horizon 2020**, several initiatives co-funded by the EU during 2017 are of particular relevance for the rights enshrined in Article 8 (and 7) of the Charter. In particular, six ongoing projects addressing privacy have been funded for a total EU contribution of EUR 19.5 million. They aim at empowering individuals in managing their privacy as a response to the need for privacy in a highly connected world where personal information becomes an increasingly valuable commoditiy.

To this end, the **Privacy Flag**[78] and **Operando**[79] projects are developing tools to enable individuals to check whether their rights as data subjects are being respected, and tools and services to help companies comply with personal data protection requirements.

The project **VisiOn**[80] will provide clear visualisation of privacy preferences, relevant threats and trust issues along with an insight into the economic value of user data.

The **TYPES** project[81] will provide tools that should enable the end user to configure the privacy settings so that only the information they consent to is collected by online advertising platforms and to detect information collection occurring without consent and to identify the offender.

The **PANORAMIX** project[82] will develop a European infrastructure for secure communications with the capability to delete meta-data information while at the same time having suitable accountability features.

And particularly in the context of the cloud, project **SafeCloud**[83] will ensure that data transmission, storage, and processing can be separated into multiple administrative domains that are unlikely to collude, so that sensitive data can be protected by design.

Under Horizon 2020, the Commission called for more proposals addressing privacy and the protection of personal data[84], with a total estimated EU contribution of additional EUR 19.6 million. The new projects from this 2017 call are expected to start by April 2018.

Case law

In the case of *Mr Manni*[85], the CJEU provided an important interpretation of the storage limitation principle (Article 6(1)(e) of the Directive 95/46/EC, also referred to in Article 5(1)(e) of the GDPR). According to this principle, personal data must be '*kept (…) no longer than is necessary for the purposes for which the data were collected or for which they are further processed*'. In this case, an individual brought an action before the Italian court seeking to erase, anonymise or block the personal data processed by a rating company linking him to the liquidation of a company. Mr Manni also requested the court to grant him compensation for the damage he had suffered.

The Court considered that there is no 'right to be forgotten' for personal data in company registers. However, in exceptional cases, Member States may grant restricted access to such data by third parties once a sufficiently long

[77] Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast) (Text with EEA relevance), OJ L 157, 9.6.2006, p. 24-86.
[78] http://privacyflag.eu/
[79] https://www.operando.eu
[80] http://www.visioneuproject.eu/
[81] http://www.types-project.eu/
[82] https://panoramix-project.eu/
[83] http://www.safecloud-project.eu/
[84] H2020 topic DS-08-2017: 'Cybersecurity PPP: Privacy, Data Protection, Digital Identities'.
[85] Judgment of 9 March 2017 in case C-398/15, *Camera di Commercio, Industria, Artigianato e Agricoltura di Lecce v Salvatore Manni.*

period has passed following the dissolution of the company concerned. According to the Court, the mere fact that the properties did not sell because potential buyers had access to the personal data of Mr Manni held in the companies register could not justify a limitation of access by third parties to that data, given the legitimate interest of those buyers in obtaining that data.

Another important interpretation of the data protection legislation was provided by the CJEU following a preliminary ruling in the *Nowak* case[86]. The preliminary question related to the possibility to request access to exam papers based on the data protection legislation. The Court ruled that the written answers submitted by a exam candidate and any written comments made by an examiner constitute personal data, within the meaning of the data protection legislation. Therefore, the rights of data subjects, such as the right of access can be exercised in such cases.

In *Tele2 (Netherlands) BV*[87], the Court ruled that telephone subscriber's consent to the publication of their personal data also covers its use in another EU Member State, since the highly harmonised EU regulatory framework makes it possible to ensure the same level of protection for subscribers' personal data.

In its *Opinion 1/15* of 26 July 2017, the Court concluded that the envisaged agreement between the EU and *Canada on the transfer of passenger name record data* (PNR) may not be concluded in its current form. While the Court stated that the systematic transfer, retention and use of all air passenger data may be justified to ensure public security in the context of the fight against terrorist offences and serious cross-border crime as an objective of general interest.

The Court also found that several provisions of the envisaged agreement were not in line with the fundamental rights to privacy and to personal data protection enshrined in the Charter, in particular in terms of their proportionality and the clarity and precision of the rules laid down and due to the lack of justification for the transfer, processing and retention of sensitive data. The Opinion also sets out detailed conditions which, if adequately fulfilled, would make the agreement compatible with the fundamental rights recognised by the EU. In particular, the Court considered that the agreement should exclude the transfer of sensitive data from the EU to Canada and the use and retention of that data. Moreover, the retention of PNR data after the air passengers' departure needs to be justified by the existence of risks affecting public security. It also makes the disclosure of data to non-EU authorities conditional to specific conditions. Finally, the oversight of the rules concerning the protection of air passengers' personal data by an independent supervisory authority has to be guaranteed. The Commission will resume negotiations with Canada in accordance with a new mandate to meet the Court's requirements.

[86] Judgment of 20 December 2017 in case C-434/16, *Peter Nowak v Data Protection Commissioner*.
[87] Judgment of 15 March 2017 in case C-536/15, *Tele2 (Netherlands) BV and Others v Autoriteit Consument en Markt (ACM)*.

NATIONAL CASE LAW BOX

In checking the compliance of Member States' legislation implementing EU law, Article 8 of the Charter served as parameter in two cases related to the right of data protection.

The Supreme Administrative Court of Finland assessed the compatibility of the *Personal Data Act* of 1999 with the Charter and the European Convention on Human Rights in a case on the storage of fingerprints data in the passport register. The national court found that the restriction on the right to a private life and the protection of personal data are precise and defined in sufficient detail and therefore not contrary to the Charter[88].

The Higher Administrative Court in Germany checked the compatibility of the German *Telecommunication Act*, implementing the e-Privacy Directive 2002/58/EC with the Charter. In that case, the national court found the limitation on the freedom to conduct business (Article 16 of the Charter) was unjustified and therefore incompatible with the Charter[89].

Article 9 — Right to marry and right to found a family

Article 9 of the Charter is based on Article 12 of the European Convention on Human Rights, which states that:

> 'Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right.'

The wording has been updated to cover cases in which national legislation recognises arrangements other than marriage for founding a family. Article 9 neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the Convention, but its scope may be wider when national legislation allows.

Case law

An interesting reference for a preliminary ruling was submitted by the Constitutional Court of Romania to the CJEU on the **free movement of persons**[90]. The question raised the issue of whether the same-sex spouse of an EU citizen having exercised his freedom of movement, must be granted a right of permanent residence as the 'spouse' of that EU citizen in a Member State which does not recognise same-sex marriage. Following the hearing in November 2017, the Advocate-General delivered his Opinion on 11 January 2018, where he clarified that the legal issue at the centre of the dispute is not that of the legalisation of same-sex marriage, but that of the free movement of EU citizens: while Member States are free to allow marriage between people of the same sex in their domestic legal system or not, they must fulfil their obligations under the freedom of movement of EU citizens.

Article 10 — Freedom of thought, conscience and religion

The right guaranteed in Article 10 (1) of the Charter corresponds to the right guaranteed in Article 9 of the European Convention on Human Rights. The right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or private, to manifest religion or belief, in worship, teaching, practice and observance. Article 10 (2) recognises the right to conscientious objection, in line with national laws.

[88] Decision of 15 August 2017 by the Supreme Administrative Court of Finland, no 3872/2017.
[89] Germany, Higher Administrative Court North Rhine-Westphalia, case 13 B 238/17, 22 June 2017.
[90] Case C-673/16, *Coman and Others v Inspectoratul General pentru Imigrări and Others*, pending before the CJEU.

Case law

In 2017 the CJEU issued two important judgments in the area of non-discrimination on the grounds of religion in employment, regarding two cases where Muslim women were dismissed by their employers because of their wish to wear an Islamic headscarf at work[91]. In *Achbita*[92] and *Bougnaoui*[93] the Court clarified for the first time the interpretation of the relevant provisions under the Employment Equality Directive[94]. It interpreted the notion of 'religion' covering also the freedom of persons to manifest their religious beliefs in public, explicitly referring to the Convention (Article 9) and the Charter (Article 10 (1)). The Court recognised that, under specific conditions, an internal rule of a private undertaking which prohibits the visible wearing of any political, philosophical or religious sign can be compatible with EU law.

Parliamentary questions

In 2017, several questions were raised by the Members of the European Parliament on the safety of Jews in Europe and what action the Commission was taking to combat antisemitism.

The Commission replied that it has boosted the political will to fight antisemitism through different means. A coordinator to combat antisemitism was appointed in 2015 to liaise with Member States and civil society and funding was made available to support civil society and Member States. In particular, funding had been provided for projects to increase awareness about our common history, particularly the Holocaust remembrance. The Fundamental Rights Agency also provides data and assists EU institutions and national governments in taking the necessary measures to ensure that the rights of Jews are fully respected and protected across the EU. The annual EU-Israel seminar on combating racism, xenophobia and antisemitism also deepens international efforts to eradicate antismitism.

Data gathered by the EU Agency for Fundamental Rights (FRA)

In 2017 the Agency published the second report on EU Minorities and Discrimination Survey (EU-MIDIS II) Muslims[95]. The report is based on data collected from a survey of around 26 000 people with immigrant or ethnic minority backgrounds living in the EU. It examines the experiences of more than 10 500 people surveyed who identified as Muslims in 15 EU Member States. In addition to discrimination — including police stops based on ethnic background — it explores issues ranging from citizenship, trust and tolerance, harassment, violence and hate crime, to rights awareness. It provides a unique insight into the experiences and perceptions of the EU's second largest religious group, representing about 4 % of the EU's total population. Taken together, the survey findings and the recommendations can provide a good basis to support the effectiveness of a wide range of measures in integration and non-discrimination, as well as internal security policy.

Article 11 — Freedom of expression and information

The right to freedom of expression is guaranteed by Article 11(1) of the Charter and includes the freedom to hold opinions and to receive and share information and ideas without interference by public authorities and regardless of

[91] These cases are also discussed under Articles 16 and 21.
[92] Judgment of 14 March 2017 in case C-157/15, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions*.
[93] Judgment of 14 March 2017 in case C-188/15, *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole.*
[94] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
[95] http://fra.europa.eu/en/publication/2017/eumidis-ii-muslims-selected-findings.

frontiers. Article 11(2) ensures respect for freedom and pluralism of the media. In line with Article 52(3) of the Charter, the EU's approach to ensuring this right is inspired by the case law of the European Court of Human Rights.

Legislation

Negotiations continued in the Council and the European Parliament during 2017 on the Commission legislative proposal amending the **Audiovisual Media Services Directive**[96] which aims at strengthening the provisions on independence of regulators and reinforces the role of the European Regulators Group's for Audiovisual Media Services.

Negotiations also continued on the **Directive of the European Parliament and of the Council on copyright in the Digital Single Market**[97] which contains provisions on measures aiming at protecting press publications which are expected to have a positive impact on the freedom of expression and information as they are expected to foster the quality of journalistic content.

Discussions also continued in the Council and the European Parliament on the proposal for a **Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes**[98] which is expected to have a positive impact on the freedom of expression and information since it will increase the cross-border provision and receipt of TV and radio programmes which originate in other Member States.

Policy

The Commission adopted a **Communication on Tackling Illegal Content Online on 28 September 2017**[99]. It states that 'the fight against illegal online content must be carried out with proper and robust safeguards to ensure protection of the different fundamental rights at stake'. Prior to the adoption of this Communication, the Commission had carried out an extensive stakeholder consultation, including several workshops to gather information from digital platforms, civil rights organisations and academia[100]. One of the workshops which took place on 12 June 2017 was on digital platforms and fundamental rights.

The Commission has been involved as observers and followed-up closely the **Council of Europe recommendation on the roles and responsibilities of internet intermediaries**[101] to ensure policy coherence in this area. The Commission has consistently stressed that fundamental rights must be fully respected.

[96] Proposal for a Directive of the European Parliament and the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM(2016) 0287 final, 25.5.2016.

[97] Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, COM(2016) 593, 14.9.2016.

[98] Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, COM(2016) 594, 14.9.2016.

[99] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Tackling Illegal Content Online, COM(2017) 555 final, 28.9.2017, https://ec.europa.eu/digital-single-market/en/news/evidence-gathering-liability-online-intermediaries

[100] https://ec.europa.eu/digital-single-market/en/news/evidence-gathering-liability-online-intermediaries

[101] Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries.

In the last quarter of 2017, the Commission launched its **initiative on fake news and the spread of disinformation online[102],** as called for in a 15 June 2017 Resolution of the European Parliament[103] and announced by Commission President Juncker in his 13 September 2017 State of the Union letter[104]. The Commission has carried out several multi-stakeholder consultations in support of the initiative including a multi-stakeholder conference and a Member States workshop aimed at obtaining input from the competent national authorities as well as the private-sector, including online platforms, media outlets, academics and civil society organisations. The initiative was also discussed in the Media Literacy Expert Group in its meeting on 14 December 2017[105]. Views from other interested parties on the initiative were collected through a public consultation launched on 13 November 2017 and a **High Level Expert Group** has been convened to advise on policy initiatives[106] [107].

While it is primarily the responsibility of Member States to ensure media freedom and pluralism, the Commission is aware of challenges in the Member States and is taking a number of measures. To this end, the Commission funds — further to the initiative of the European Parliament — a number of independent projects in media freedom and pluralism, including the **Index on Censorship,** which monitors violations, threats and limitations to media freedom within the 'Mapping Media Freedom Project'[108]. Building on the crowd-sourced platform, it provides assistance to journalists and disseminates knowledge about media freedom in Europe.

Another EU-financed project is the **Media Pluralism Monitor**, which is designed to identify potential risks to media pluralism in Member States. It is run independently by the Centre for Media Pluralism and Media Freedom at the European University Institute. The results of the 2016 Media Pluralism Monitor (published in 2017) show that none of the featured countries are free from risks to media pluralism[109].

Article 12 — Freedom of assembly and of association

The right to freedom of peaceful assembly and to freedom of association at all levels in particular in political, trade union and civic matters is protected in Article 12 of the Charter and corresponds to Article 11 of the European Convention on Human Rights. Its scope, however, is wider since it applies to all European levels. Furthermore unlike Article 11 of the Convention, it specifically mentions the important contribution of political parties to the expressing the political will of the people. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

Application by Member States

Issues related to the respect of the right to freedom of association have been raised during 2017 on the reported **pressure facing civil society organisations in a number of Member States**, such as funding cuts, burdensome

[102] https://ec.europa.eu/digital-single-market/en/news/public-consultation-fake-news-and-online-disinformation
[103] European Parliament resolution of 15 June 2017 on online platforms and the digital single market (2016/2276(INI)).
[104] State of the Union Speech, 13 September 2017 — https://ec.europa.eu/commission/state-union-2017_en
[105] https://ec.europa.eu/digital-single-market/en/news/meeting-media-literacy-expert-group
[106] https://ec.europa.eu/digital-single-market/en/news/experts-appointed-high-level-group-fake-news-and-online-disinformation
[107] The Commission brought forward its Communication on tackling Disinformation on 25 April 2018, where it underlined the respect for the right of freedom of expression under Article 11 of the Charter, which includes the freedom to receive and impart information, as the key consideration in addressing the issue.
[108] https://mappingmediafreedom.org/
[109] http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/

regulatory frameworks and smear campaigns affecting public perceptions on the credibility and legitimacy of civil society organisations[110].

Against this background, the Commission has continuously stressed that civil society is the very fabric of democratic societies, empowering and invigorating communities and a prerequisite for healthy democracies and sound policy-making. In this context, the Commission has monitored developments at national level touching upon the role and functions of civil society organisations against Member States' obligations under the Treaties and the Charter. This led to a decision by the Commission to refer Hungary to the CJEU on 7 December 2017[111] for adopting the law imposing reporting and transparency obligations for foreign-funded civil society organisations which the Commission found to be incompatible with the right to freedom of association, as well as the right to protection for private life and personal data[112], read in conjunction with Treaty obligations on the free movement of capital.

Article 13 — Freedom of the arts and sciences

Article 13 of the Charter ensures that arts and scientific research are free of constraint. This does not mean that restrictions of the former are not possible, but that they are only possible under the strict conditions provided in Article 52 (1) of the Charter[113].

Article 14 — Right to education

The right to education and access to vocational training is enshrined in Article 14 of the Charter. It is based on the common constitutional traditions of Member States and Article 2 of the Protocol No 1 to the European Convention on Human Rights.

In 2017, education remained high on the agenda as a means to combat inequalities and promote our common values based on the Paris Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education, adopted by EU Education Ministers and Commissioner Navracsics on 17 March 2015[114].

Legislation

The proposal for a **Directive on copyright in the Digital Single Market** and the proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, adopted on 14 September 2016, were discussed with the Council and the European Parliament in 2017[115].

[110] See also in this respect the report by the EU Agency for Fundamental Rights '*Challenges facing civil society organisations working on human rights in the EU*', available at http://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-orgs-human-rights-eu

[111] See http://europa.eu/rapid/press-release_IP-17-5003_en.htm

[112] See further under Article 7 and 8.

[113] For further explanations see under Article 52.

[114] Declaration on Promoting citizenship and the common values of freedom, tolerance and non-discrimination through education of 17 March 2015 - https://eu2015.lv/images/notikumi/2015-3-10_Declaration_EN.pdf

[115] See further under Article 11.

On 30 May, the Commission adopted the proposal for a Regulation of the European Parliament and of the Council laying down the legal framework of the **European Solidarity Corps**[116], which aims to enhance the engagement of young people (from the age of 17 upwards) and organisations in accessible and high quality solidarity activities as a means to contribute to strengthening cohesion and solidarity in Europe, supporting communities and responding to societal challenges.

On 5 October, the Commission adopted a proposal for a Council Recommendation on the **European Framework for Quality and Effective Apprenticeships.** [117] This initiative is part of the New skills agenda for Europe and ties in with the European pillar of social rights[118], which envisages a right to quality and inclusive education, training and life-long learning. The Commission has identified 14 key criteria that Member States and stakeholders should use to develop quality apprenticeships that are meaningful. This initiative should help increase the employability and personal development of apprentices and contribute towards a highly skilled and qualified workforce responsive to labour market needs.

Policy

On 17 February 2017, the Council adopted **conclusions on inclusion in diversity to achieve high quality education for all**[119]**.** These conclusions emphasised the need for inclusive high-quality education available and accessible to all learners of all ages, including those facing challenges and regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The conclusions call also on the Commission to build on the work of the Agency in promoting mutual respect, non-discrimination, fundamental freedoms and solidarity throughout the EU.

On 23 May 2017, the Council adopted **conclusions on sport as a platform for social inclusion through volunteering**[120]. These conclusions stress the role volunteering in sport can play to create inclusive communities and to help integrate groups at risk of marginalisation including people with disabilities.

On **14 November** 2017 the Commission adopted a **Communication** on '**Strengthening European Identity through Education and Culture'**[121] as a contribution to the informal EU summit in Gothenburg, Sweden, on 17 November which discussed the future of education and culture. The Commission outlined the potential of education and culture as drivers for job creation, economic growth and social fairness as well as a means to experience European identity in all its diversity. The Communication sets out the vision of a **European Education Area**, building on the New Skills Agenda for Europe and investing in Europe's youth initiatives.

On **30 May 2017**, the Commission presented its **new strategy to support high quality, inclusive and future-oriented school and higher education**[122]. The initiatives outlined the EU's support to help Member States and education providers take the steps needed to improve opportunities for all young people in Europe, helping to build fair and

[116] Proposal for a Regulation of the European Parliament and of the Council laying down the legal framework of the European Solidarity Corps and amending Regulations (EU) No 1288/2013, (EU) No 1293/2013, (EU) No 1303/2013, (EU) No 1305/2013, (EU) No 1306/2013 and Decision No 1313/2013/EU, COM(2017) 262.
[117] COM(2017) 563 final.
[118] https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en
[119] Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on Inclusion in Diversity to achieve a High Quality Education For All (17 February 2017)
http://data.consilium.europa.eu/doc/document/ST-6356-2017-INIT/en/pdf
[120] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52017XG0615(04)
[121] COM(2017) 673 final.
[122] COM(2017) 247 final.

resilient societies. In the **Communication on school development and excellent teaching for a great start in life**[123] the Commission identifies areas where action is urgently needed and how EU support can help EU countries address the current challenges. Based on evidence from Member States, the communication highlights three priority areas:

1. raising the quality and inclusiveness of schools;
2. supporting excellent teachers and school leaders; and
3. improving the governance of school education systems.

The **renewed EU agenda for higher education** identifies four main goals for higher education in the EU:

1. making sure higher education equips graduates with the right skills for today's economy;
2. building inclusive higher education systems;
3. bridging the innovation gap between higher education, research and business; and
4. ensuring different parts of higher education systems work together effectively and efficiently.

The **Erasmus+ programme** (2014-2020) focused on social inclusion of young people and the promotion of fundamental values through the funding of educational and youth activities, such as the European Solidarity Corps. The Erasmus Programme celebrated its 30th anniversary throughout 2017, marked with various events organised across Europe highlighting the substantial impact the Erasmus programme had on young Europeans.

Parliamentary questions

The Commission received a question from a Member of the European Parliament on whether a Spanish law establishing the unavailability of appropriations in the budget of the Autonomous Community of Catalonia for 2017, thus blocking the agriculture and fisheries programmes, is against the exercise of the fundamental right to vocational training in agriculture and fisheries, in accordance with the Charter. The Commission responded on 1 December 2017 by stating that it does not intervene on issues that fall under Member States' authorities powers at national or regional level.

Application by Member States

The Commission launched an infringement proceeding against Hungary whose rules governing higher education institutions were found to be incompatible with the rights to education, academic freedom (Article 13) and the freedom to conduct a business (Article 16), read in conjunction with the freedom for higher education institutions to provide services and establish themselves anywhere in the EU and with the EU's legal obligations under international trade law. Following a letter of formal notice and a reasoned opinion, the Commission found that its concerns were not sufficiently addressed and therefore referred the case to the CJEU in December 2017[124].

Article 15 — Freedom to choose an occupation and right to engage in work

Article 15 (1) of the Charter protects the right to engage in work and to pursue a freely chosen or accepted occupation.

Legislation

On 26 July 2017, the Council agreed on the mandate for negotiations on a draft Directive covering entry and residence conditions for highly skilled non-EU country national workers (**EU Blue Card Directive**) adopted by the

[123] COM(2017) 248 final.
[124] http://europa.eu/rapid/press-release_IP-17-5004_en.htm

Commission in June 2016[125]. Based on this mandate, the Council Presidency started negotiations with the European Parliament. The Commission's proposal for reviewing the EU Blue Card Directive aims at making working in the EU more attractive to highly skilled workers from non-EU countries. The proposal also aims to improve possibilities for move between jobs in the same Member State and between Member States. It would replace the existing EU Blue Card Directive, harmonising further conditions of entry and residence and improving the situation of highly skilled workers who come to the EU.

This initiative is consistent with the Charter in particular the right to respect for private and family life[126] — through provisions on family reunification for highly skilled workers — and the right to engage in work and to freely pursue an occupation. It is also consistent with the rights related to working conditions of non-EU nationals and the rights of workers laid down under Articles 27 to 36.

The Commission's proposal aims at ensuring equal treatment for highly skilled workers on working conditions, access to social security, to education and vocational training as well access to goods and services. Compatibility with the right to an effective remedy and fair trial[127] is ensured as the current provisions in the EU Blue Card on the right to appeal in case the application is rejected, as well as to be notified the grounds for rejection, are maintained.

NATIONAL CASE LAW BOX

The Constitutional Court of Bulgaria referred to the Charter in the context of a constitutional review of a provision in the *Judiciary Act* which prohibits judges and prosecutors to be discharged from their duties by resigning when a disciplinary proceeding is still pending. The Constitutional Court not only concluded that the provision violated the Bulgarian Constitution, but referred to Article 15 of the Charter, which enshrines the right of freedom of work, 'in accordance to which everyone has the right to engage in work and to pursue a freely chosen or accepted occupation'[128].

Article 16 — Freedom to conduct a business

Article 16 of the Charter recognises the freedom to conduct a business in accordance with EU law and national laws and practices. EU measures that could interfere with businesses economic activity are frequently assessed by the courts for their impact on this freedom.

Legislation

On 18 October 2017 the Commission adopted an **Interpretative Communication on the acquisition of Farmland and EU law**[129]which aims to provide guidance on how land sales markets can be regulated in compliance with EU law. The Communication refers to the possible impact of national legislation on acquiring, using or disposing of agricultural land on the fundamental freedoms protected by the Charter. It refers to the freedom to conduct a business, including the freedom of contract (Article 16), the right to property (Article 17) and the freedom to choose an occupation (Article 15).

[125] Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, COM(2016) 378 final, 7.6.2016, 2016/0176 (COD).
[126] See Article 7.
[127] See Article 47.
[128] Bulgaria, Constitutional Court, case 6/2016, 31 January 2017.
[129] C/2017/6168, OJ C 350, 18.10.2017, p. 5-20.

The premise of the **p**roposal **for a Regulation on a framework for the free flow of non-personal data in the European Union**, adopted by the Commission on 13 September 2017, are the free movement principles (freedom of establishment and free movement of services) and respect of fundamental rights and principles as recognised by the Charter. The impact assessment of the proposed Regulation concluded that it would have a positive effect on the freedom to conduct a business (Article 16) because it would contribute to eliminating and preventing unjustified or disproportionate barriers to the use and provision of data services (such as cloud services, as well as configuration of in-house IT systems). The proposed Regulation promotes and respects also the freedom to conduct a business by adopting a self-regulation approach on the issue of facilitating the change of service providers for professional users.

Case law

In *Achbita*[130] the CJEU found that in examining the application of an **internal rule** of a private undertaking relating to the visible wearing of any political, philosophical or religious sign the employer's freedom to conduct a business must be taken into account and balanced with other fundamental rights, in particular freedom of religion and the principle of non-discrimination. A **policy of political, philosophical and religious neutrality may constitute a legitimate objective** justifying difference of treatment, provided that the means of achieving that aim are appropriate and necessary, in line with relevant case law of the European Court of Human Rights[131]. Such policy relates, according to the Court, to the freedom to conduct a business recognised in Article 16 of the Charter.

NATIONAL CASE LAW BOX

In Germany, the Federal Court of Justice ruled in a case concerning a woman who carried out an IVF treatment in the Czech Republic. She was charged around EUR 11 000 by the IVF centre and sought reimbursement from her German insurance company arguing that according to the general insurance conditions, treatments in other European countries are insured. She was refused reimbursement which she argued violated the freedom to provide services (Article 56 TFEU).

The Court, however, agreed with the insurance company that — since fertilisation by means of egg cell donation is prohibited under German law — there was no insurance cover for the treatment in the Czech Republic, although egg cell donation was permitted there. The Court did not find a violation of EU law in the general insurance conditions of the insurance company and said that, in any event, a possible restriction of the freedom to provide services in case of a dispute is to be considered justified by the freedom to conduct a business (Article 16 of the Charter) (Germany, Federal Court of Justice, case IV ZR 141/16, 14 June 2017).

Article 17 — Right to property

Article 17 of the Charter protects the right of all to **property**, which includes the right to own, use, and dispose of lawfully acquired possessions. The Charter also guarantees the protection of **intellectual property.**

Legislation

The **Security of Gas Supply Regulation**[132] introduced in its Article 13, for the first time, a solidarity mechanism between Member States. This mechanism is designed to address extreme situations in which gas supply, as an

[130] See further under Article 10 and Article 21.

[131] The CJEU referred, in particular, to the European Court of Human Rights' judgment of 15 January 2013 in the case of *Eweida and Others v. the United Kingdom*.

[132], Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, OJ L 280, 28.10.2017, p. 1.

essential need is at stake in a Member State. The Regulation makes specific reference to the Charter as part of the framework within which Member States must implement the provisions on the solidarity mechanism. The fundamental rights component of the solidarity mechanism falls under the provisions of the Charter on the right to property but also social assistance[133], services of general economic interest[134] and consumer protection[135], as stated in Recital 23 and 43 of the Regulation.

In May 2017, the **EU Firearms Directive** was adopted[136]. The Directive was proposed by the Commission following the terror attacks that took place in 2015. These new rules will substantially reduce the likelihood of dangerous but legally held weapons falling into the hands of criminals and terrorists. The revised Directive broadens the range of prohibited weapons by banning automatic firearms transformed into semi-automatic firearms and semi-automatic weapons fitted with high capacity magazines and loading devices. This measure introduces limitations on the right to property in line with Article 52 of the Charter. In particular, it has introduced stricter derogations for sport shooters and national defence reservists undertaking voluntary military training, as provided under Member State law. Defined group of licence holders — such as museums or collectors — will also be subject to stringent security and monitoring requirements.

The Commission's **p**roposal **for the EU accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications[137]** is intended to provide protection of geographical indications for agricultural products, beverages and foodstuffs. Through the system provided for in this revised and modernised Agreement, the scope of its application refers not only to appellation of origin, but also to geographical indicators both requiring a qualitative link between the product to which they refer and its place of origin. EU accession to the Lisbon system would protect the intellectual property rights of the geographical indicators products of local farmers and food producers in the global market.

Policy

In preparing the Supplemental Memorandum of Understanding for the 2nd review of the Stability programme for Greece under the European Stability Mechanism, the Commission has sought to ensure that the conditionality in the draft Memorandum of Understanding takes on board the implications of the Court ruling in the *Ledra* case[138]. The ruling provided that the EU may be held liable for any damages caused by its institutions, if it signs a Memorandum of Understanding with policy conditionality that is not in line with the EU body of legislation and the Charter. In view of this, the Commission has ensured that its proposals, in particular on the Greek pension reform, are consistent with the Charter.

In *Ledra*, the Court recalled that the EU may incur non-contractual liability only if a number of conditions are fulfilled, namely:

(i) the unlawfulness of the conduct alleged against the EU institution;

[133] See Article 34.
[134] See Article 36.
[135] See Article 38.
[136] Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons.
[137] Proposal for a Council Decision authorising the opening of negotiations on the EU's accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (Ares(2017)6308027).
[138] The Court Judgment (Grand Chamber) of 20 September 2016, Ledra Advertising Ltd (C-8/15 P), Andreas Eleftheriou (C-9/15 P), Eleni Eleftheriou (C-9/15 P), Lilia Papachristofi (C-9/15 P), Christos Theophilou (C-10/15 P), Eleni Theophilou (C-10/15 P) v European Commission, European Central Bank (Joined Cases C-8/15 P to C-10/15 P).

(ii) the damage; and

(iii) the existence of a causal link between the conduct of the institution and the damage suffered.

As a result of this judgment, the Commission sought to ensure that the provisions on the reform of the pension system in Greece proposed under the Memorandum of Understanding are consistent with Article 17 of the Charter, which states that everyone has the right to own their lawfully acquired possessions. The jurisprudence from the ECtHR provides that a pension claim can constitute a 'possession' within the meaning of Article 1 of Protocol No 1 to the ECHR[139] where it has a sufficient basis in national law and thus give rise to the 'legitimate expectation' that a pension results from the contribution to a pension scheme. In particular, if the amount of pensions is reduced or discontinued, as a result of a pension reform, this may constitute interference with possessions where it would result in a disproportionate reduction in the pension and fail to ensure an adequate standard of living[140].

Article 18 — Right to asylum

The right to asylum is guaranteed by Article 18 of the Charter. Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection. Granting asylum is an international obligation, first recognised in the 1951 Geneva Convention on the protection of refugees. Since 1999, the EU has been working to create a common policy on asylum, subsidiary protection and temporary protection (the 'Common European Asylum System'), in line with the Geneva Convention and related instruments, as required by the EU Treaties (Article 78 TFEU).

Legislation and policy

Negotiations between the European Parliament and the Council on the Commission's proposals for a **reform of the Common European Asylum System** are ongoing though at different stages of advancement. Good progress has been made on the proposal for a new European Union Agency for Asylum[141], on which the European Parliament and the Council reached a broad political agreement during 2017. They also started to discuss the proposals for the Eurodac and Asylum Qualification Regulations, the recast Reception Conditions Directive and the Union Resettlement Framework[142]. They also continued to work on the Asylum Procedures Regulation[143]. On the Dublin III Regulation[144], discussions focused on effective solidarity and are expected to continue at an intense pace. In December 2017, the European Council set a target to reach a position on an overall reform of the Common European Asylum System by June 2018. [145]

[139] The explanations relating to the Charter (OJ C 303/17, 14.12.2007) provide that Article 17 of the Charter is based on Article 1 of Protocol 1 ot the Convention.

[140] see *Stefanetti and Others v. Italy*, Applications Nos 21838/10, 21849/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10 and 21870/10 (15 April 2014), § 48-50, 62 and 64.

[141] Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016) 271 final, 13.7.2016).

[142] Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (COM(2016) 468 final, 13.7.2016).

[143] Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM(2016) 467 final, 13.7.2016).

[144] See further under Article 4 and 6.

[145] The Commission presented the Roadmap to a deal by June 2018 on the comprehensive migration package in its Communication 'Commission contribution to the EU Leaders' thematic debate on a way forward on the external and the internal dimension of migration policy' of 7 December 2017 (COM(2017) 820).

On the progress made in **relocation and resettlement** on which the Commission regularly reported[146], collective EU resettlement efforts were given a further boost in September 2017 with the Commission's call[147] to Member States to resettle at least 50 000 additional people by the end of October 2019. EUR 500 million were been made available to assist Member States in their efforts. By the end of 2017 this call resulted in over 39 800 new resettlement pledges by 19 Member States. First resettlements under the scheme took place by the end of the year, including via the evacuation transit mechanism, which was launched with the United Nations Refugee Agency (UNHCR) to help the most vulnerable people in need of international protection to be evacuated from Libya to Niger in view of their onward resettlement. As of November 2017, over 32 000 people were also relocated as the Commission's efforts were being directed to ensure relocation as a matter of priority of eligible applicants still present in Italy and Greece. The implementation of the EU-Turkey Statement of 18 March 2016 also contributed to resettlement efforts as Member States resettled in 2017 alone, 8 975 Syrians from Turkey. This exceeded their commitment under the Statement to resettle a Syrian from Turkey for every Syrian returned to Turkey from Greek islands, taking into account the UN vulnerability criteria.

The Commission also adopted guidance on the implementation of the **hotspot approach**, giving prominence to the obligation to respect fundamental rights over operations and performance of tasks in the hotspots[148].

Application by Member States

Issues related to the respect of the right to asylum and the treatment of asylum applicants during their stay in the Member States are regularly raised and brought to the attention of the Commission, including the situation of migrant children and in particular on unaccompanied children[149], respect for the right to family life[150], the right to liberty[151], the right to an effective remedy[152] as well as issues related to access to services and guarantees of a decent standard of living.

In 2017, the Commission has continued to monitor closely how Member States have implemented into national legislation the provisions of the various existing Common European Asylum System legislative instruments, in particular the amended Long-Term Residence Directive, the Asylum Qualification Directive, the Asylum Procedures Directive and the Reception Conditions Directive[153].

Applying the EU asylum and migration body of legislation as interpreted in light of several provisions of the Charter, including the right to asylum, but also the right to liberty and security and the right to an effective remedy has been the subject of a complementary letter of formal notice and a reasoned opinion in one case[154].

[146] See in particular the Fifteenth report on relocation and resettlement of 6 September 2017, COM/2017/0465.
[147] Commission Recommendation of 27.9.2017 on enhancing legal pathways for persons in need of international protection, C(2017) 6504.
[148] Commission Staff Working Document 'Best practices on the implementation of the hotspot approach' (COM(2017) 669).
[149] See Article 24.
[150] See Article 8.
[151] See Article 6.
[152] See Article 47.
[153] Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection Text with EEA relevance; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.
[154] See http://europa.eu/rapid/press-release_IP-17-5023_en.htm

The Commission also decided to refer the Czech Republic, Hungary and Poland to the CJEU for non-compliance with their legal obligations under the EU relocation scheme[155].

Case law

In the judgment *X and X v Belgium*[156], the CJEU clarified that an application for a visa with limited territorial validity made on humanitarian grounds by a non-EU national at the representation of the Member State of destination in the territory of a non-EU country, with a view to lodging, immediately upon arrival in that Member State, an application for international protection, cannot be regarded as falling within the scope of application of the EU Visa Code[157]. The reasoning being that a kind of long-term visa the issuing of which only falls within the scope of national law. The Court therefore concluded that no positive obligation to issue such a visa can be derived from EU law, including Article 18 and/or 4 of the Charter since the situation in question is not governed by EU law[158] .

The Court also had the opportunity to confirm the **validity of the EU provisional mechanism for the mandatory relocation of asylum seekers** in the case of *Slovakia and Hungary v Council*[159], where it dismissed in their entirety the actions brought by Slovakia and Hungary against the mechanism. The Court maintained that the non-legislative act was legally adopted pursuant to Article 78(3) TFEU, and underlined the appropriateness of the act in contributing to achieving its objective as a crisis-management measure whose purpose is to take pressure off the Greek and Italian asylum systems by swiftly relocating a significant number of applicants to other Member States, in compliance with EU law and the Charter, so that the fundamental right to asylum, laid down in Article 18 of the Charter, can be exercised properly.

On the **functioning of the 'Dublin system'[160] in times of high influx of asylum applicants**, in particular during 2015-2016, the Court clarified in case *A.S.* [161] that the crossing of a border in breach of the conditions imposed by the rules applicable in the Member State concerned must be considered 'irregular' within the meaning of the Dublin III Regulation. Therefore, the Member States concerned must be regarded as responsible for examining applications for international protection submitted by people crossing their external border pursuant to the criteria contained in the Dublin III Regulation. According to the Court, this remains the case even in exceptional situations where, for example in Croatia during the 2015-2016 migration crisis, such crossing happened *'en masse'* and the Member State concerned decided to admit into its territory non-EU nationals on humanitarian grounds, by way of derogation from the entry conditions generally imposed on non-EU nationals. Absolving the Member State concerned of its responsibility would, in the Court's view, not be compatible with the Dublin rules. Although the taking charge of such non-EU nationals in those circumstances may be enabled by the use by other Member States, unilaterally or bilaterally in a spirit of solidarity, of the 'sovereignty clause', which enables them to decide to examine applications for international protection lodged with them, even if they are not required to carry out such an examination under the criteria laid down in the Regulation.

The Court also clarified the interpretation of EU rules on the **exclusion from qualification for international protection**, holding in *Lounani*[162] that an application for international protection may be rejected under those rules if

[155] See http://europa.eu/rapid/press-release_IP-17-5002_en.htm
[156] Judgment of 7 March 2017 in case C-638/16 PPU, *X and X v État belge.*
[157] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.
[158] See further under Article 51.
[159] Judgment of 6 September 2017 in Joined cases C-643/15 and C- 647/15, *Slovakia and Hungary v Council*.
[160] Based on Regulation (EU) No 604/2013 see more under Articles 4.6 and 18 above.
[161] Judgments of 26 July 2017 in cases C-490/16, *A.S. v Republic of Slovenia and* C-646/16, *Khadija Jafari and Zainab Jafari.*
[162] Judgment of 31 January 2017 in case C-573/14, *Commissaire général aux réfugiés et aux apatrides v Mostafa Lounani*.

it established that **the applicant participated in the activities of a terrorist network**, without it being necessary that the asylum seeker personally committed terrorist acts, or instigated such acts, or participated in their commission.

Article 19 — Protection in the event of removal, expulsion or extradition

Article 19 of the Charter enshrines the same right as that afforded by Article 4 of Protocol No 4 to the European Convention on Human Rights (prohibition of collective expulsions) and codifies requirements flowing from case-law on Article 3 of the Convention (protection of individuals from being removed, expelled or extradited to a state where there is a serious risk of death penalty, torture or other inhuman or degrading treatment or punishment).

Guarantees deriving from this provision are relevant in asylum and migration matters and often constitute the object of inquiries and complaints under the EU legal framework.

Parliamentary questions

Cases of **alleged abuses of Interpol's Red Notices systems** for political purposes by a number of non-EU countries were raised during 2017 in debates held in the European Parliament and a number of parliamentary questions were addressed to the Commission. The Commission stressed in this respect its determination to closely monitor the compliance by Member States with fundamental rights, including the principle of non-refoulement when they implement relevant EU provisions and to make use, where necessary, of the powers conferred to it under the EU Treaties to ensure their full respect.

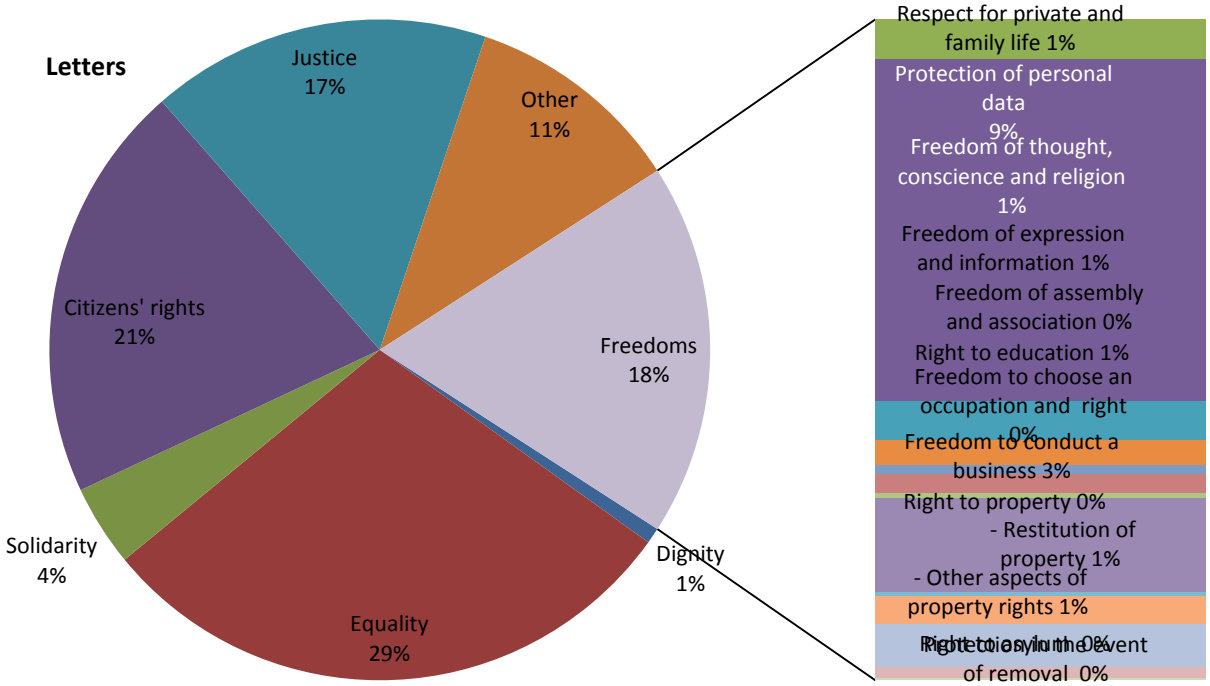
Case law

The **compatibility of the EU-Turkey Statement of 18 March 2016 with fundamental rights**[163], including the right to protection from *refoulement*, was raised before the CJEU in an action for annulment in the case *NF, NG and NM v European Council*[164]. The General Court ordered on 28 February 2017, however, that it **lacked jurisdiction to hear and determine the actions brought by the applicants**, as it found that the evidence, provided by the European Council and relating to the meetings on the migration crisis held successively in 2015 and 2016 between the Heads of State or Government of the Member States and their Turkish counterpart, showed that it was not the EU but its Member States, as actors under international law, that conducted negotiations with Turkey in that area, including on 18 March 2016. As neither the European Council nor any other EU institution decided to conclude an agreement with the Turkish Government on the migration crisis, there was no act of an EU institution to review under Article 263 TFEU and the Court had no jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States.

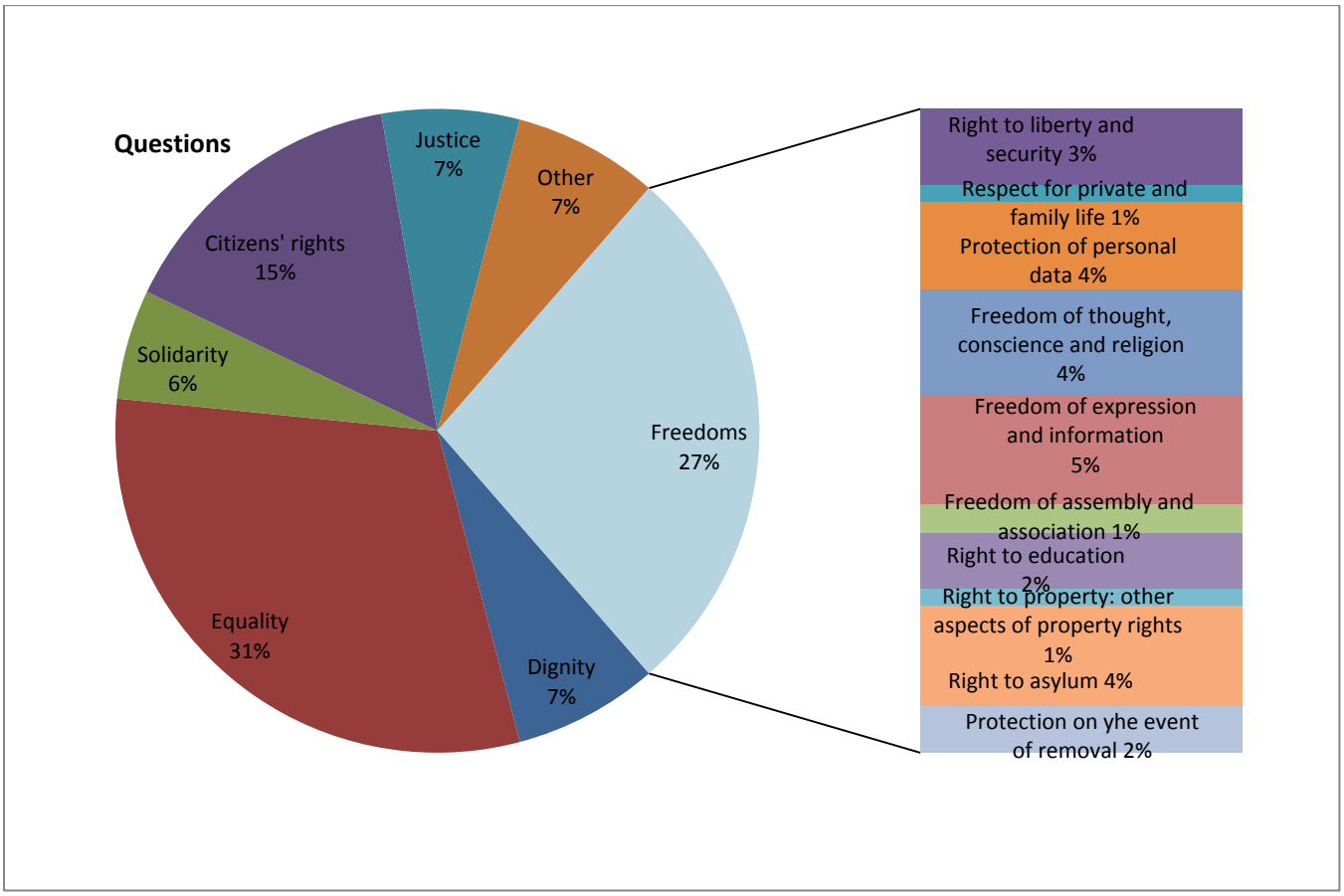
The Court was also called on to clarify how EU provisions concerning the status of non-EU **nationals who are long-term residents**[165] should be interpreted against the obligation to provide **reinforced protection against expulsion**. The Court held that EU provisions would preclude legislation of a Member State which does not provide for the application of the requirements of protection against the expulsion of a non-EU national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it. The Court also pointed out that the adoption of an expulsion measure may not be ordered automatically following a criminal conviction. In the case at hand, the expulsion was motivated by the fact that the

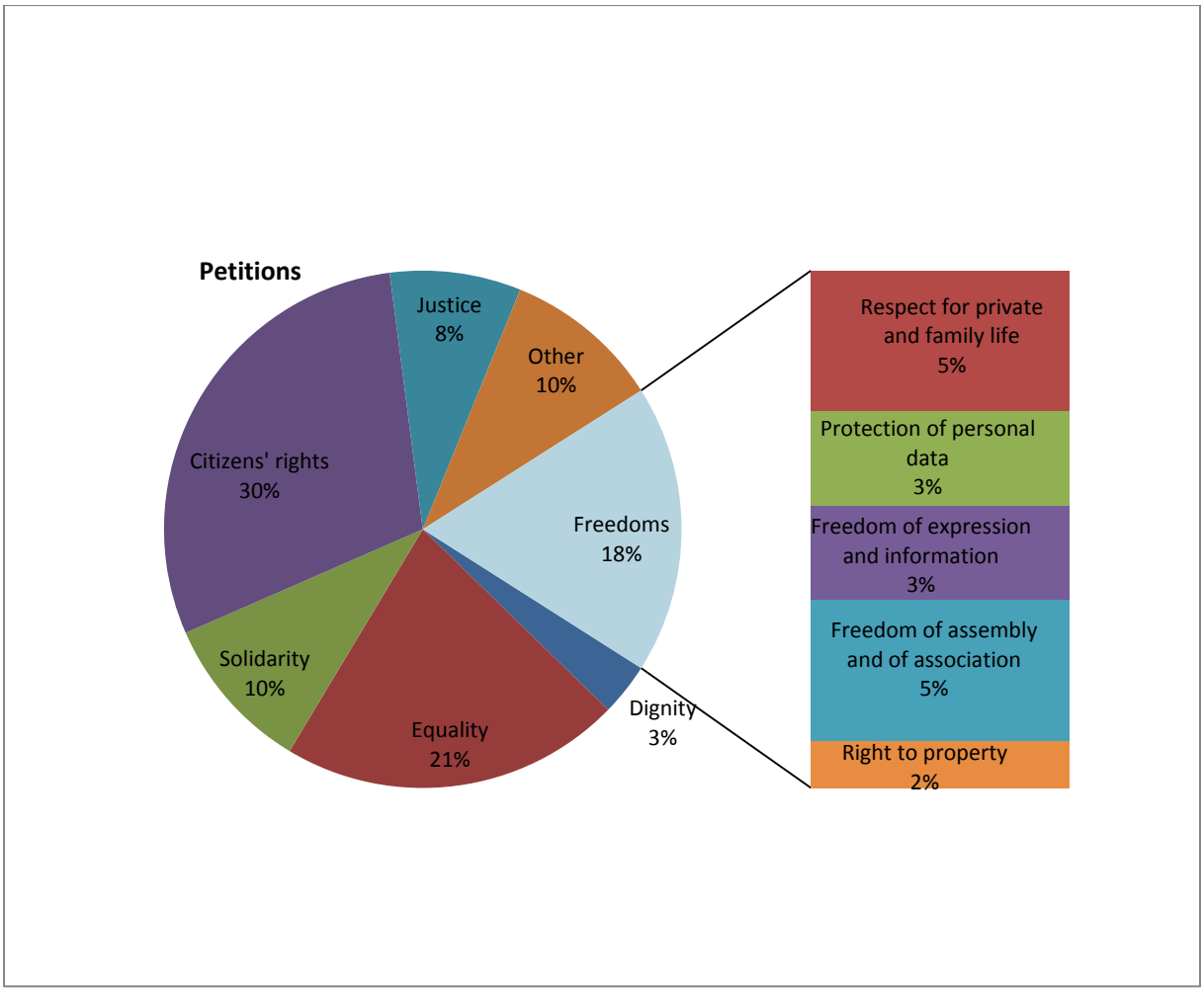
[163] See Article 2.
[164] Order of 28 February 2017 in cases T-192/16, T-193/16 and T-257/16, *NF, NG and NM v Council.*
[165] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

long-term resident non-EU national had been sentenced to a term of imprisonment of more than one year. However, the court also noted that the assessment needs to be carried out on a case-by-case basis[166].



[166] Judgment of 7 December 2017 in case C-636/16, *Wilber López Pastuzano v Delegación del Gobierno en Navarra*.


Questions
Justice 7%
Other 7%
Citizens' rights 15%
Solidarity 6%
Freedoms 27%
Equality 31%
Dignity 7%
Right to liberty and security 3%
Respect for private and family life 1%
Protection of personal data 4%
Freedom of thought, conscience and religion 4%
Freedom of expression and information 5%
Freedom of assembly and association 1%
Right to education 2%
Right to property: other aspects of property rights 1%
Right to asylum 4%
Protection on yhe event of removal 2%


Petitions
Justice 8%
Other 10%
Citizens' rights 30%
Freedoms 18%
Solidarity 10%
Equality 21%
Dignity 3%
Respect for private and family life 5%
Protection of personal data 3%
Freedom of expression and information 3%
Freedom of assembly and of association 5%
Right to property 2%

Title III

Equality

2017 marked a major progress on the legal framework to combat violence against women. On 13 June the EU signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the **Istanbul Convention)** and Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality, dedicated the year 2017 to a **Year of Focused Actions to Combat Violence against Women**.

On 12 April 2017 the **Commission** adopted a **Communication on the protection of children in migration** which was followed by the **Council Conclusions** of 8 June 2017**.** These documents underlined that the protection of children in migration is a priority and set out urgent EU actions and made recommendations to the Member States.

The Commission continued to pursue its efforts to improve the response of the EU and its Member States to the worrying increase in the incidence of hate speech and hate crime. The **High Level Group on combating racism, xenophobia and other forms of intolerance** compiled **key guiding principles** on hate crime training, on hate crime victims' support and on the identification and recording of hate crimes by law enforcement authorities. Significant progress was also achieved on **countering illegal hate speech online** through the implementation of the **code of conduct**.

On 2 February 2017 the European Parliament adopted a **Resolution on the implementation of the Erasmus+ programme**, stressing the importance of sufficient funding and appropriate support to be given to people with disabilities to have barrier-free and non-discriminatory access to the programme.

The CJEU clarified in *Jyske Finans* the **notion of discrimination on grounds of ethnic origin**, and on the prohibition of discrimination based on racial or ethnic origin established by the Race Equality Directive. The Court also delivered two important judgments in the area **of non-discrimination on the grounds of religion in employment**, regarding two cases where Muslim women were dismissed by their employers because of their wish to wear an Islamic headscarf at work (*Achbita* and *Bougnaoui*).

The Commission launched in-depth evaluation of the **EU Framework for National Roma Integration Strategies up to 2020** and as part of this process an online public consultation was open from July to October 2017.

On 2 February 2017 the Commission adopted a **Progress report on the implementation of the European Disability Strategy 2010-2020** and on 23 February the Commission presented its first **implementation report** on the **'List of actions to advance LGBTI equality'.**

Article 20 — Equality before the law

Article 20 of the Charter states that everyone is equal before the law. It corresponds to a general principle of law included in all European constitutions and recognised by the CJEU as a basic principle of EU law.

Case law

The CJEU examined the challenge brought to the General Court in the case of *Dyson v Commission*[167] concerning the alleged incompatibility of EU rules on energy labelling of vacuum cleaners[168] with the equal treatment principle. The applicant argued that the EU Regulation was discriminatory and in favour of bagged vacuum cleaners to the disadvantage of bagless vacuum cleaners or vacuum cleaners based on 'cyclonic' technology, as loss of suction due to clogging cannot be detected by pristine state testing. While the General Court concluded for the validity of the EU regulation that was being challenged as it considered that the testing method applied was accurate, reliable and reproducible, the Court held that a new examination of the evidence was deemed necessary, and sent the case back to the General Court.

Article 21 — Non-discrimination

The Charter **prohibits discrimination** 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. It also prohibits discrimination on grounds of nationality, within the scope of application of the EU 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 elsewhere. In the area of employment and occupation, EU legislation prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation.

1. General non-discrimination issues

Legislation

The Commission's **proposal for a horizontal anti-discrimination Directive**[169], which aims to extend protection against discrimination on grounds of religion or belief, disability, age and sexual orientation to areas outside employment (social protection, education and access to goods and services, including housing), is still being discussed in the Council. Commission President Juncker considers the adoption of the Directive as a priority for this Commission and the Commission continues to push for the required unanimity in the Council.

Intense negotiations on the Commission's proposal for a **European Travel Information and Authorisation System**[170] as well as two Commission's proposals directed at improving the **exchange of criminal records information on third country nationals convicted in the European Union (ECRIS-TCN)**[171], resulted in an agreement on a general approach by the Council during 2017. These proposals, which are expected to be adopted in 2018, take account of the principle of non-discrimination.

[167] Judgment of 11 November 2015 in case T-544/13 *Dyson Ltd v Commission*.

[168] Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners (OJ 2013 L 192, p. 1).

[169] 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).

[170] Proposal for a Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624.

[171] Proposal for a Regulation of the European Parliament and of the Council establishing a centralised system for the identification of Member States holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011 and Proposal for a Directive of the European Parliament and of the Council of amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA.

The European Travel Information and Authorisation System, which is the new largely automated system designed to gather information on all those travelling visa-free to the EU, in order to decide whether to issue or reject a request to travel to the EU, clarifies in particular that prior checks are to be conducted in full respect of fundamental rights, including the general principle of non-discrimination. This means that the screening rules and the criteria used for defining the specific risk indicators corresponding to previously identified security, irregular migration or public health risk should in no circumstances be based on an applicant's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, sexual life or sexual orientation. Similarly, the processing of personal data within the system must not result in discrimination against non-EU nationals on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Equality before the law and the general principle of non-discrimination are also embedded in the rules proposed for the ECRIS-TCN central system.

The **Geoblocking Regulation (EU) 2018/302**[172], adopted in February 2018, defines specific situations where there can be no justified reason for geo-blocking or other forms of discrimination based on nationality, residence or establishment in the sale of goods and provision of other specific services. While the freedom of traders to define their conditions is not impaired in line with the freedom to conduct their business under Article 16 (including the freedom to define areas where activities are directed, delivery can be provided, setting up of several national website interface(s) and language(s), the kind of payment means accepted, etc.…), if the customer accepts the conditions as set out by the trader, they cannot be discriminated in view of their nationality/residence, in line with existing non-discrimination provisions under EU law.

Policy

The Commission supports diversity through a variety of actions and initiatives including targeted policies, awarding funding, promoting good practice and high-level discussions.

The **High Level Group on Non-Discrimination, Diversity and Equality**, consisting of national experts from the EU-28 and Norway, met twice in 2017 to exchange best practice and to discuss topical non-discrimination issues. Members of the High Level Group also agreed to intensify their work on equality data and to launch in 2018 a **dedicated subgroup** in order **to develop specific guidelines on collection of equality data**[173].

The Commission encourages also voluntary initiatives by businesses to promote diversity through an EU-level platform supporting the '**Diversity Charters'**[174]. A growing number of businesses and public authorities are engaged in and encouraging diversity issues in the EU. 'Diversity Charters' provide a recognised public trademark that demonstrates company's commitment to the promotion of equality and diversity. Already over 10 000 companies, covering 15 million employees have signed them. In 2017, a Diversity Charter was launched in Croatia and Slovenia, accounting now for 20 Charters in the EU.

[172] Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (Text with EEA relevance.), OJ L 60I, 2.3.2018, p. 1.

[173] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612778&utm_source=just_newsroom&utm_medium=Website&utm_campaign=just&utm_content=Moving%20forward%20on%20equality%20data%20collection&utm_term=Tackling%20discrimination&lang=en

[174] https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/discrimination/tackling-discrimination/diversity-management/diversity-charters_en

The principle of non-discrimination featured prominently as a cross-cutting priority in the **European Pillar of Social Rights**[175] jointly signed and proclaimed by the European Parliament, the Council and the Commission on 17 November. The Social Rights pillar commits to enabling equal opportunities of under-represented groups and reaffirms that 'regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public'.

Non-discrimination also remains at the core of EU action in **education**. On 2 February the European Parliament adopted a **Resolution on the implementation of the Erasmus+ programme**, stressing the importance of sufficient funding and appropriate support to be given to people with disabilities to have **barrier-free and non-discriminatory access to the programme**, including sign language interpreters for the hearing impaired. The importance of inclusion and equality in this area is also reflected in the Council **Conclusions on inclusion in diversity to achieve high quality education for all** adopted on 17 February 2017, which emphasises the need for inclusive high-quality education to be made available and accessible to all learners of all ages, including those facing challenges, and regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council also called on the Commission to build on the work of the EU Agency for Fundamental Rights in promoting mutual respect, non-discrimination, fundamental freedoms and solidarity throughout the EU. The Council adopted also **Conclusions on sport as a platform for social inclusion through volunteering** concern, among others, people with disabilities[176].

In **audiovisual media services**, focus is being put on issues concerning **accessibility** and the **rights of people with disabilities**[177] .

Funding also remains a major part of the EU's action in the fight against discrimination. That is why the Commission continues to supports networks, NGOs and projects across the EU under the Rights, Equality and Citizenship programme[178].

Application by the Member States

The Commission in its role as guardian of the EU Treaties closely monitors compliance of Member States with the EU non-discrimination legislation.

Case law

The *Achbita* and *Bougnaoui* rulings clarified the detailed rules for the application of non-discrimination in EU employment law while balancing the fundamental rights involved, in particular freedom of religion, freedom to conduct a business and the principle of non-discrimination[179]. Individual situations may widely differ depending on the particular circumstances, the context and the relevant legal framework including the fundamental rights enshrined in the European Convention of Human Rights and the EU Charter of Fundamental Rights.

In the *Achbita* case, the Court found that, while an **internal rule of a private undertaking**, insofar as it prohibits visible wearing of any political, philosophical or religious sign by all employees, would not constitute direct discrimination, it **may constitute indirect discrimination** towards persons adhering to a particular religion or belief

[175] https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en
[176] See Article 14.
[177] See Article 26.
[178] http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/rec/index.html#c,calls=hasForthcomingTopics/t/true/1/1/0/default-group&hasOpenTopics/t/true/1/1/0/default-group&allClosedTopics/t/true/0/1/0/default-group&+PublicationDateLong/asc
[179] See Articles 10 and 16.

within the meaning of the Employment Equality Directive. This would be acceptable only insofar as it was justified by a legitimate aim and the means of achieving that aim were appropriate and necessary — something which the Court left for the national court to assess.

Building on this finding, the Court further clarified in *Bougnaoui*[180] that **in the absence of such a rule**, (which is for the national court to assess), the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf **may not be considered a genuine and determining occupational requirement** that could rule out discrimination within the meaning of the Employment Equality Directive[181].

The Court also clarified in *Jyske Finans*[182] the **notion of discrimination on grounds of ethnic origin**, and whether the prohibition of discrimination based on racial or ethnic origin established by the Race Equality Directive[183] means that a credit institution cannot requires a customer born outside the EU or EFTA to produce, in addition to the driving licence, also a passport or a residence permit. The Court held that ethnic origin cannot be determined on the basis of a single criterion but is based on a number of factors, some objective and others subjective. While a person's country of birth might be included among the elements and criteria making up the concept of 'ethnicity', which has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origin and background[184] it cannot, in general and absolute terms, act as a substitute for all those criteria, being only one of the specific factors which may justify the conclusion that a person is a member of an ethnic group and not being decisive in that regard. As a consequence, **a person's country of birth cannot, in itself, justify a general presumption that that person is a member of a given ethnic group** such as to establish the existence of a direct or inextricable link between those two concepts. On this basis, the Court concluded that the practice at stake could not be regarded as a difference in treatment directly or indirectly based on ethnic origin, within the meaning of the Directive.

In the *Fries* judgment[185] the Court considered whether the EU measures by prohibiting holders of a pilot's licence who have reached the age of 65 from acting as pilots of an aircraft engaged in commercial air transport infringed Article 15 or Article 21 of the Charter. The Court ruled that while that provision establishes a difference in treatment based on age, the provision is nevertheless compatible with Article 21(1) of the Charter in that it satisfies the criteria set out in Article 52(1) thereof. The Court found that that limitation meets an objective of general interest, within the meaning of Article 52(1) of the Charter, and that it observes the principle of proportionality within the meaning of that provision. The age limit of 65 applied is an appropriate means of maintaining an adequate level of civil aviation safety in Europe. This age limit is sufficiently high and reflects the international rules on the subject of international commercial air transport. For this reason this provision does not go beyond what is necessary for achieving the objective of general interest pursued.

In *Binca Seafood's*[186] the CJEU ruled that an **EU Regulation which has the effect of preventing an undertaking from putting on the EU market organic Pangasius produced in the Mekong Delta (Vietnam)** [187] should be examined in the

[180] C-188/15, *Bougnaoui v Micropole SA*, see further under Article 10.
[181] See Article 10.
[182] Judgment of 6 April 2017 in case C-668/15, *Jyske Finans A/S v Ligebehandlingsnævnet*.
[183] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, in particular Articles 2(2)(a) and (b).
[184] See also judgment of 16 July 2015 in case C‑83/14, *'CHEZ Razpredelenie Bulgaria' AD v Komisia za zashtita ot diskriminatsia*.
[185] Judgment of 5 July 2017 in Case, C-190/16, *Werner Fries v Lufthansa CityLine GmbH*.
[186] Judgment of 20 December 2017 in case C-286/16 P, *Binca Seafoods GmbH v Commission*.

light of the undertaking's right to non-discrimination, the principle of equal treatment[188] as well as the freedom to conduct a business[189].

2. Manifestations of intolerance, racism and xenophobia in the EU

Policy

The Commission continued to pursue its efforts to improve the response of the EU and its Member States to the increase in the incidence of hate speech and hate crime.

This included enabling discussions, exchanging best practice and developing informal guidance through the **High Level Group on combating racism, xenophobia and other forms of intolerance**[190], launched in June 2016. The groups work aimed at progressing and strengthening cooperation and links among national authorities, civil society and a range of other stakeholders including relevant international organisations and bodies, and led in 2017 to the compilation of **key guiding principles** on '***Hate crime training for law enforcement and criminal justice authorities***'[191] and on '***Ensuring justice, protection and support for victims of hate crime and hate speech***'[192], aimed at providing **informal guidance for Member States' authorities and practitioners**. Intense expert discussions were also held and led by the EU Agency for Fundamental Rights, on how to improve national methodologies for recording and collecting data on hate crime. The first outcome was the compilation of **key guiding principles** on '***Improving the recording of hate crime by law enforcement authorities***'[193], whose testing and implementation is now being encouraged in several Member States through country workshops jointly led by the Agency and by Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights[194], as well as through relevant initiatives at national level.

The group's discussions also focused on the **specificities of particular forms of intolerance**, including hate crime against people with disabilities, anti-migrant hatred, homophobia and transphobia[195]. The group was regularly informed about the work and initiatives of the **Commission coordinator on combating antisemitism**[196] and the **Commission coordinator on combating anti-Muslim hatred**[197], which focused on monitoring trends and developments at national level, preventing and countering hate speech and fostering education and youth empowerment. The group also held thematic discussions on **afrophobia** and on **antigypsyism**[198] – two worrying trends which exemplify how important it is to develop a comprehensive approach made up of coherent but also diversified legislative and policy responses to discrimination, exclusion, prejudice, stereotyping and manifestations of intolerance, taking into account the specific challenges faced by different communities and groups. Discussions built

[187] Commission Implementing Regulation (EU) 1358/2014 of 18 December 2014 amending Regulation (EC) 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) 834/2007 as regards the origin of organic aquaculture animals, aquaculture husbandry practices, feed for organic aquaculture animals and products and substances allowed for use in organic aquaculture (OJ L 365, 19.12.2014, p. 97).
[188] See Article 20.
[189] See Article 16.
[190] For more information, see http://ec.europa.eu/newsroom/just/item-detail.cfm?&item_id=51025
[191] http://ec.europa.eu/newsroom/document.cfm?doc_id=43050
[192] http://http//ec.europa.eu/newsroom/just/document.cfm?doc_id=48874
[193] http://fra.europa.eu/en/news/2017/improving-recording-hate-crime-law-enforcement-authorities
[194] http://fra.europa.eu/en/news/2017/improving-recording-hate-crime-law-enforcement-authorities
[195] On EU action to promote LGBTI equality see section 4 below.
[196] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50144
[197] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=50085
[198] On EU action to promote Roma integration see section 3 below.

on the findings of the **second European Union Minorities and Discrimination Survey**[199] conducted by the EU Agency for Fundamental Rights.

Significant progress was also achieved on **countering illegal hate speech online**[200]: the regular monitoring of the **implementation of the code of conduct**[201] carried out by the Commission in cooperation with civil society organisations show a trend of continuous progress, proving that this self-regulatory tool, agreed with major IT companies in May 2016, contributed to quickly achieve tangible results of a clear and steady increase in the removal of illegal hate speech content by the IT companies[202].

The Commission also continued to support **umbrella organisations** as well as specific projects on preventing and combating racism, xenophobia and other forms of intolerance under the **Rights, Equality and Citizenship programme**[203]. In this context, the Commission **made available in 2017 EUR 7 million** to support projects in this area by national authorities' and/or civil society and other stakeholders. The projects included mutual learning and exchange of best practice, training and capacity building, supporting victims, addressing underreporting of cases of racism, xenophobia and other forms of intolerance and building trust between communities and national authorities, monitoring, preventing and countering hate speech online including through the development of online balanced narratives, critical thinking by Internet users and tackling online hate speech against journalists[204] as well as creating better understanding between communities including through interreligious and intercultural activities and projects focusing on coalition building.

Application by Member States

In line with Protocol No. 36 to the Lisbon Treaty, as from 1 December 2014, the Commission acquired the power to oversee under the control of the CJEU the application of framework decisions including the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law[205]. On that basis, the Commission continued its **dialogues** with Member States where major transposition gaps remained, to ensure that the minimum standards set in the Framework Decision, which penalises racist and xenophobic hate speech and hate crime, are correctly turned into national law. Significant **progress on the concerns raised by the Commission** was achieved during 2017 in Italy and Portugal, bringing the number of Member States which introduced amendments to their laws on racist hate crime and hate speech since 2014 to nine. Legislative developments touching upon national provisions on hate crime and hate speech were also registered in in France, Germany, Cyprus and Latvia.

[199] http://fra.europa.eu/en/publication/2017/eumidis-ii-main-results
[200] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300
[201] http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf
[202] According to a latest evaluation released in January 2018, IT companies removed on average 70 % of illegal hate speech notified to them — ethnic origin, sexual orientation and gender identity, anti-Muslim hatred and xenophobia being among the grounds of hate speech most commonly reported within the exercise. The monitoring also shows that all IT companies now meet the target of reviewing the majority of the notifications within 24 hours, reaching an average of more than 81 %. Building on the progress made, Google+ and Instagram also decided to join the Code of Conduct, which has now found its place as an industry standard. The Commission's work is now aimed to consolidate and stabilise the progress achieved and ensure that it is sustainable over time and to assist Member States in overcoming challenges in their legal responses to hate speech online.
[203] http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/rec/index.html#c,calls=hasForthcomingTopics/t/true/1/1/0/default-group&hasOpenTopics/t/true/1/1/0/default-group&allClosedTopics/t/true/0/1/0/default-group&+PublicationDateLong/asc
[204] Also as a follow up to the 2016 Annual Colloquium on Fundamental Rights: see http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31198
[205] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

3. EU Framework for National Roma Integration Strategies

The Commission continues working together with Member States to ensure that all Roma people have fair and equal opportunities. It is done through various legal, policy and funding instruments, mainly through the **EU Framework for National Roma Integration Strategies** up to 2020.

The EU Framework sets the EU Roma integration goals in four key areas: (i) education, (ii) employment, (iii) healthcare and (iv) housing. In order to meet these goals, Member States have adopted national Roma integration strategies or integrated sets of policy measures within their broader social inclusion measures tailored to the size and situation of Roma populations focusing on Roma integration in those four key areas.

Each year the Commission assesses the implementation of the national Roma integration strategies and reports to the European Parliament and the Council on progress made in integration of Roma population in Member States and achievement of goals in each area defined in the EU Framework.

On 30 August 2017 the Commission published the results of the '***Midterm review of the EU framework for national Roma integration strategies***'[206] which shows how the situation of Roma has changed since 2011. The situation is slowly improving, for instance there is now greater participation of Roma in early childhood education and a declining rate of early school-leavers. On the other hand, the assessment also shows that as many as 80 % of Roma are still at risk of poverty although this figure is lower than in 2011.

In parallel, the Commission also launched **in-depth evaluation of the EU Framework for national Roma integration strategies up to 2020** examining its effectiveness, efficiency, relevance and EU added value looking into use of available EU instruments promoting Roma integration (policy, legal, financial) as well as into national approaches in Member States and in enlargement countries. To this end, the online public consultation took place from July to October 2017[207]. The final evaluation report is expected in the first half of 2018.

The Commission also continues to monitor the progress in Roma inclusion within its wider **growth agenda**, Europe 2020[208].

To promote mutual learning and cooperation, the Commission continues to facilitate and financially support the stakeholder's dialogue through the **Network of national Roma contact points**[209], regular consultation meetings with the national Roma platforms as well as the European platform for Roma inclusion. The thematic focus of the **2017 European Platform for Roma inclusion** was on the transition of Roma from education to employment[210]. Particular attention was paid to the situation and role of Roma youth, as already highlighted in the 2016 Council Conclusions on accelerating the process of Roma integration.

[206] http://europa.eu/rapid/press-release_IP-17-2961_en.htm
[207] https://ec.europa.eu/info/consultations/public-consultation-evaluation-eu-framework-national-roma-integration-strategies-2020_en
[208] https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/europe-2020-strategy_en
[209] https://ec.europa.eu/research/participants/portal/desktop/en/support/national_contact_points.html
[210] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607095

4. Fight against homophobia

As requested in the Council Conclusions on LGBTI Equality adopted in June 2016[211] the Commission presented its **first implementation report**[212] **on the 'List of actions to advance LGBTI equality'**[213]**.**

The list of actions had been implemented for two years in 2017 and a number of them stood out to show the Commission's commitment to advance LGBTI equality. These included a strong symbolic statement in favour of LGBTI equality made on the International Day Against Homophobia and Transphobia by highlighting for the first time the Commission's headquarters in the colours of the rainbow flag.

As part of its efforts to further **raise awareness on the discrimination and challenges that LGBTI people face**, the Commission sponsored three videos which focused on a gay, an intersex, and a transgender person and their non-LGBTI allies and was released on the International Day Against Homophobia and Transphobia, the Intersex Awareness Day and the Transgender Day of Remembrance. Advancing LGBTI equality also remained a **funding priority** under the Rights, Equality and Citizenship programme. 17 project proposals specifically focusing on preventing and countering discrimination, hatred and intolerance against LGBTI people were awarded for a total amount of financial support of EUR 4.7 million.

In the framework of the high level group on non-discrimination, equality and diversity the Commission, together with the Portuguese Government, organised a best **practice exchange seminar** focusing on **policies to combat bullying based on sexual orientation, gender identity/expression or sex characteristics in education** that took place in June 2017 in Lisbon. In addition, on 28 June on the occasion of the Human Rights Conference of the WorldPride Madrid 2017 the Commission published ***'The Business Case of diversity for cities and regions with focus on sexual orientation and gender identity'***[214]. This report seeks to highlight best practice and policy initiatives implemented by regional and municipal authorities in Europe to make their areas safer, more inclusive and attractive for LGBTI people.

At the same occasion the Commission also published the report ***'Data collection in relation to LGBTI people: analysis and comparative review of equality data collection practices in the European Union'***[215]. The report highlights that in comparison to some other discrimination grounds such as sex or age, sexual orientation and gender identity remain invisible in many social surveys, and that, moreover, any form of data collection on intersex people is still rare — clearly showing the need for equality data to better understand and hence tackle the discrimination and inequalities experienced by LGBTI people.

Article 22 — Cultural, religious and linguistic diversity

Article 22 of the Charter states that the EU must respect cultural, religious and linguistic diversity. It is based on Article 167(1) and (4) TFEU on culture. Respect for cultural and linguistic diversity is also laid down in Article 3(3) TEU. Article 22 is also inspired by Article 17 of the TFEU.

[211] http://www.consilium.europa.eu/en/press/press-releases/2016/06/16/epsco-conclusions-lgbti-equality/
[212] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54346
[213] http://ec.europa.eu/newsroom/document.cfm?doc_id=47638
[214] https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45604
[215] https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id

Policy

Article 17(3) TFEU states that the EU must maintain an open, transparent and regular **dialogue with churches, religious associations or communities and philosophical and non-confessional organisations**. This dialogue takes place at various levels in the form of written exchanges, meetings or specific events. Interlocutors are invited to contribute to the EU policymaking process through the various written consultation processes launched by the Commission. The dialogue contributes to the promotion of religious diversity.

The dialogue with religious and non-confessional organisations in 2017 took place in the context of the ongoing debate on the Future of Europe, based on the Commission's White Paper of 1 March. It provided an occasion to hold in-depth discussions on questions addressing issues of values and governance. The discussion on the future of Europe was about making Europe more united, stronger and more democratic. The dialogue partners also looked at the human dimension of Europe, in particular its social and environmental dimensions and how Europe can be built on principles of solidarity, social justice and sustainability. The leaders present were invited to work with the Commission on the reflection process on the future of Europe. It was agreed that the dialogue should continue. This resulted in two high level meetings with religious leaders and with non-confessional organisations around the above theme, as well as a dialogue seminar which prepared the ground for the high level dialogue.

A meeting was also convened on 'Engaging Muslim Young People in the Future of Europe Debate'. 29 Muslim university students and activists from 17 Member States discussed issues as diverse as social Europe, globalisation, workplace discrimination, identity, European citizenship, radicalisation, EU foreign policy, migration and integration in this one-day conference.

On 23 May the Council adopted **Conclusions on the EU strategic approach to international cultural relations**. The Council underlined that such an approach should be bottom-up, respecting the independence of the cultural sector. EU ministers recognised that international cultural relations can only develop by encouraging cultural diversity within the EU. It follows the strategy for international cultural relations adopted in 2016 by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. It focuses on three main objectives:

1) supporting culture as an engine for social and economic development;

2) promoting the role of culture for peaceful inter-community relations; and

3) reinforcing cooperation on cultural heritage.

On 5 July 2017 the European Parliament adopted a Resolution **'Towards an EU strategy for international cultural relations'**[216].

The **2018 European Year of Cultural Heritage** was inaugurated at the European Culture Forum in Milan. The event took place from 7 to 9 December 2017 and opened the much-anticipated celebrations and presented the key topics of this pan-European initiative. Meanings and values of Europe's magnificent heritage were put in the spotlight through a series of speeches, debates, and presentations. Key topics included the potential of culture to tackle European and global challenges, the meanings of heritage for citizens, as well as the ways in which culture in cities and regions can help shape more cohesive and inclusive societies.

[216] European Parliament Resolution of 5 July 2017 'Towards an EU strategy for international cultural relations'.

The **Creative Europe programme (2014-2020)** aims at fostering the importance and understanding of cultural diversity across Europe through initiatives such as European heritage label for sites that have shaped Europe's history[217]. The European Parliament Resolution of 2 March 2017 recognises the programme's objectives of safeguarding and promoting European cultural and linguistic diversity, welcoming its growing intercultural dimension and hoping for more projects that boost cultural diversity and intercultural dialogue and promote multilingualism[218].

Article 23 — Equality between women and men

Under Article 23 of the Charter, equality between women and men is to be ensured in all areas, including employment, work and pay. The principle of equality does not preclude maintaining or adopting measures that grant specific advantages in favour of the under-represented sex.

Legislation

In 2017 the Commission took a number of initiatives to promote gender equality. A key milestone was the proposal for a **Directive of the European Parliament and of the Council on work-life balance for parents and carers**[219] which refers to equality between men and women and to reconciling family and work life. The Commission also presented an **action plan to combat the gender pay gap**[220].

There has been major progress on the legal framework to combat violence against women. On 13 June the EU signed the **Istanbul Convention**[221]. The EU's accession to the Istanbul Convention will enable the EU and its Member States to develop a common framework to combat violence against women. By the end of 2017, all Member States signed the Istanbul Convention and 17 Member States[222] have so far ratified it. The Commission is encouraging the remaining Member States to swiftly ratify the Istanbul Convention and is also supporting the work to agree on the terms for the conclusion and ratification by the EU as soon as possible.

Under WTO the EU endorsed the Joint Declaration on Trade and Women's Economic Empowerment on 12 December 2017[223] which is a collective initiative to increase the participation of women in trade. The EU's recently negotiated trade agreements also contain commitments on women's rights, equal pay and non-discrimination (ILO Conventions No 100 and No 111) and also other fundamental labour related provisions having a gender dimension, such as those on forced and child labour. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the 27 international conventions that countries need to ratify and implement in order to benefit from the EU's Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+).

Policy

Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality, dedicated the year 2017 to a **Year of Focused Actions to combat violence against women**. Under the Rights, Equality and Citizenship and the

[217] European Commission proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1295/2013 establishing the Creative Europe Programme (2014-2020).
[218] European Parliament resolution of 2 March 2017 on the implementation of Council Regulation (EU) No 390/2014 of 14 April 2014 establishing the 'Europe for Citizens' programme for the period 2014-2020.
[219] See further under Article 33 and 34.
[220] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee 'EU Action Plan 2017-2019. Tackling the gender pay gap', 20 November 2017, COM(2017) 678 final.
[221] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence signed in Istanbul on 11 May 2011, https://rm.coe.int/168008482e.
[222] BE, DK, DE, EE, ES, FR, IT, CY, MT, NL, AT, PL, PT, RO, SI, FI, SE.
[223] https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf

Justice Programmes 15 million euros was made available to 12 national authorities and 32 grass roots projects addressing violence against women and victim support. Several European-wide actions were also carried out. For instance, a communication campaign 'No Non.Nein. Say No Stop VAW'[224] was launched with a dedicated website. In addition the Commission with support of the European Parliament continued the development of an **EU survey on gender-based violence**, to be carried out by national statistical institutes and coordinated by Eurostat. Several events were also organised. For example, the Maltese Council Presidency conference in February 2017 focused on violence against women and included the launch of a web tool for professionals in contact with women affected by female genital mutilation. On 11 December a joint statement by the Organisation for Economic Cooperation and Development, the Council of Europe, the European Commission, and UN Women was published[225]. The organisations reaffirmed their commitment to eliminating gender-based violence and discussed the way forward for coordinated action.

In 2017 the Commission's **Annual Colloquium on Fundamental Rights** focused on 'women's rights in turbulent times'[226]. The high-level Colloquium brought together over 400 politicians, national and EU policy-makers, representatives of international organisations, civil society leaders, academics, legal practitioners, activists, businesses and trade unions, media representatives and journalists. They explored the link between the fulfilment of fundamental rights for women as well as pluralism, tolerance and equality, and agreed to step up efforts to protect and promote women's rights in the EU.

The Erasmus+ programme funded activities promoting gender equality both through formal education (learning to recognise and fight stereotypes) and non-formal education such as through sports and youth activities.

Article 24 — The rights of the child

Article 24 of the Charter recognises that children are independent and autonomous holders of rights and provides that children have the right to protection and care necessary for their well-being. It codifies their right to participation, by emphasising that children may express their views freely, and that such views are to be taken into consideration on matters that concern them according to their age and maturity. Article 24 also states that in all action affecting children, whether by public authorities or private institutions, the child's best interests must be a primary consideration. It also enshrines every child's right to maintain on a regular basis a personal relationship and direct contact with their parents, unless that is contrary to their interests. In line with Article 3(3) TEU, the rights of the child are a priority for the EU.

Policy

On 12 April 2017, the **Commission's Communication on the protection of children in migration[227],** followed by the **Council Conclusions of 8 June 2017[228],** took note of the current situation and ongoing challenges, underlined that the protection of children in migration is a priority and set out urgent EU actions. The Commission recommended that the Member States:

[224] http://ec.europa.eu/justice/saynostopvaw/.
[225] http://europa.eu/rapid/press-release_STATEMENT-17-5243_en.htm
[226] http://europa.eu/!RN84wx
[227] Communication from the Commission to the European Parliament and the Council on the protection of children in migration, 12 April 2017, COM(2017) 211 final.
[228] Conclusions of the Council of the European Union and the representatives of the governments of the Member States on the protection of children in migration, Brussels, 8 June 2017, 10085/17 http://data.consilium.europa.eu/doc/document/ST-10085-2017-INIT/en/pdf

- address the root causes;
- ensure swift and comprehensive identification and protection;
- provide adequate reception in the EU;
- ensure swift and effective access to status determination procedures;
- implement procedural safeguards; and
- ensure durable solutions and cross-cutting actions.

The Communication also refers to cross-cutting actions at all migratory stages, such as making better use of EU financial support, improving data collection on children in migration and providing training to all those working with children in migration, and recalled that the principle of the best interests of the child must be a primary consideration in all actions or decisions on children.

The focus on children in migration was reflected in EU funding. For example under the Asylum, Migration and Integration Fund around 800 reception places for unaccompanied children in need of international protection were funded **in Greece**. Pending the establishment of a national guardianship system, the EU has allocated resources to the UN Refugee Agency to ensure the continuation of the guardianship network and foster care on mainland Greece and its islands. **Spain** prioritised capacity-building for professionals and volunteers responsible for unaccompanied children and in **Bulgaria** emergency funding was provided for psychosocial assistance to vulnerable migrants, especially unaccompanied migrant children. In Italy funding served to build first reception conditions for unaccompanied children and to provide services to them.

Under the rights, equality and citizenship programme eight projects were selected to build capacity in foster care and guardianship for unaccompanied children and a direct grant of EUR 956 000 was given to the UN Refugee Agency to promote child protection in some western European countries[229].

From 7-8 November 2017, the **European Forum on the rights of the children deprived of liberty and alternatives to detention**[230] brought together over 300 participants with representatives invited from the EU-28, Norway, Iceland, Liechtenstein and Switzerland, and the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia, and the Former Yugoslav Republic of Macedonia). Participants represented national authorities, civil society, international organisations, and ombudspersons for children, academics, practitioners and EU institutions and agencies. Discussions focused on four areas:

1) children in conflict with the law;

2) children detained in the context of migration;

3) children in institutions; and

4) children of parents in prison.

[229] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607382&utm_source=just_newsroom&utm_medium=Website&utm_campaign=just&utm_content=DG%20JUST%20awards%20grant%20to%20UNHCR%20for%20the%20protection%20of%20children%20in%20 migration&utm_term=Fundamental%20rights&lang=en

[230] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=128349

At the side event to the forum, participants discussed the vulnerabilities of children deprived of their liberty. Over the three days, about 70 speakers shared their expertise and experience including 10 children and young people who gave personal testimonies on their experience of having been deprived of their liberty.

On 17 February 2017, **Council Conclusions on inclusion in diversity to achieve high quality education for all** emphasised the need for inclusive high-quality education available and accessible to all learners of all ages, including those facing challenges and regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

On 23 May 2017, **Council conclusions on sport as a platform for social inclusion through volunteering** stressed the role volunteering in sport can play in creating inclusive communities and helping to integrate groups at risk of marginalisation including people with disabilities[231].

In August 2017, the **Commission Communication on the mid-term review of the EU framework for national Roma integration strategies** focused on access to education and health services and discrimination against Roma children[232].

On 4 December 2017, the Commission adopted a **Communication on 'Reporting on the follow-up to the EU strategy towards the eradication of trafficking in human beings and identifying further concrete actions'**[233] setting out EU priorities and actions complementing the Anti-trafficking Directive[234].

Based on a Commission proposal, the Parliament, the Council and the Commission jointly proclaimed **the European pillar of social rights**, principle 11 which states that children have the right to affordable early childhood education and care of good quality and the right to protection from poverty. Children from disadvantaged backgrounds have the right to specific measures to enhance equal opportunities.

In April 2017 the Commission published a staff working document on **'Taking stock of the 2013 investing in children recommendation: breaking the cycle of disadvantage'**[235]. In August 2017 the European Social Policy Network presented its latest report on 'Progress across Europe in the implementation of the 2013 EU Recommendation on 'Investing in children: breaking the cycle of disadvantage''[236]. In line with this the Commission issued a number of **country-specific recommendations** to the Member States on children and families[237].

Article 25 — The rights of the elderly

Article 25 of the Charter sets out one of the first legally binding human rights provisions addressing the rights of older people and provides that the EU recognises and respects the rights of the elderly to lead a life in dignity and

[231] See Articles 21 and 26.
[232] COM(2017) 458; 30.8.2017, available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=127519
[233] COM(2017) 728; 4.12.2017, available at: https://ec.europa.eu/home-affairs/news/trafficking-human-beings-commission-adopts-new-communication-and-commits-new-set-priorities_en
[234] Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims, OJ L 101, 15.4.2011, p. 1.
[235] Commission Staff Working Document on 'Taking stock of the 2013 Investing in children recommendation: breaking the cycle of disadvantage', Brussels, 26.4.2017 SWD(2017) 258 final.
[236] Available at the EPIC website cited in footnote 4.
[237] They cover inclusive education and skills (13 MS), poverty and social inclusion (3 MS), access to healthcare (7 MS), access to child care/ ECEC (9 MS), effectiveness of social protection (7 MS), Roma children (4 MS) and financial disincentives to enter the labour market (6 MS). See https://ec.europa.eu/info/publications/2017-european-semester-country-specific-recommendations-commission-recommendations_en

independence and to participate in social and cultural life. Participation in social and cultural life also covers participation in political life.

An aging population is one of the greatest social and economic challenges facing the EU. Projections forecast a growing number and share of elderly people (65 years and over), with a particularly rapid increase in the number of very old people (85 years and over). These demographic developments are likely to have a considerable impact on a wide range of policy areas: mostly on the different health and care requirements of the elderly, but also on labour markets, social security and pension systems, economic fortunes, as well as government finances[238].

Recent years have seen increased calls for enhanced international thinking and action on the human rights of the elderly. Various stakeholders have called for more visibility and increased use of international human rights standards to address the situation of the elderly. Multiple discrimination emerges as an essential factor in any analysis, particularly given that age-related discrimination is often compounded by other grounds for discrimination, such as sex, socioeconomic status, ethnicity and health status.

Policy

In September 2017, the **Lisbon Ministerial Declaration** outlined the three policy goals until 2022 for Member States to work towards the recognition of the potential of the elderly, encouraging a longer working life and ensuring ageing with dignity.

The **European pillar of social rights** contains a number of key rights that are relevant for the elderly, namely:

- equal treatment and opportunities on employment, social protection, education, and access to goods and services available to the public (principle 3);
- the right to appropriate leave, flexible working arrangements and access to care services of people with caring responsibilities (principle 9);
- the right to old age income and pensions (principle 15);
- inclusion of people with disabilities in the labour market and in society (principle 17); and
- the right to affordable long-term care services of good quality, in particular home-care and community-based services (principle 18).

In addition to these rights, most of the rights and principles concern also the elderly. For instance life-long learning (principle 1); adequate minimum income benefits ensuring a life in dignity at all stages of life (principle 14); affordable, preventive and curative healthcare of good quality, access to social housing or housing assistance of good quality, and access to essential services of good quality.

The final conference of the **European Network of National Human Rights Institutions'** project on the human rights of older people and long-term care co-funded by the Commission took place on 28 November in Brussels. As well as summarising the key findings from the project, which ended in December 2017, the conference offered further guidance to policymakers, care providers and advocates for the elderly on implementing a **human rights-based approach** in the long-term care sector and protecting and promoting the rights of the elderly in (or seeking) care.

[238] People in the EU — statistics on an ageing society, Source: Eurostat (data extracted in November and December 2017) http://ec.europa.eu/eurostat/statistics-explained/index.php/People_in_the_EU_%E2%80%93_statistics_on_an_ageing_society.
2 Human Rights Council (2016), *Report of the Independent Expert on the enjoyment of all human rights by older persons, Human Rights Council*, A/HRC/33/44, para. 126.

One of the main findings of the project was that care workers, providers and policymakers, were not always sure what their human rights obligations were towards care home residents and how to put them into practice.

Article 26 — Integration of persons with disabilities

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

Legislation

The proposed Directive on the approximation of the laws, regulations and administrative provisions of the Member States on the accessibility requirements for products and services (**European Accessibility Act**) [239] continued to be discussed by the Council and the European Parliament in 2017. Its adoption will contribute to the implementation of the UN Convention on the Rights of Persons with Disabilities and improve the access and enjoyment of rights for people with disabilities.

The **AudioVisual Media Service Directive encourages the accessibility of audiovisual media services for people with visual or hearing impairments**[240]. The accessibility of the services providing access to audiovisual media services is also a subject of the proposal for a **European Accessibility Act**[241]. Efforts were also made during 2017 to implement the **Web Accessibility Directive**, which entered into force on 22 December 2016[242]. It aims at helping people with disabilities to have better access to public sector bodies website and mobile applications providing information and services that are essential for citizens.

The **Standardisation Mandate** was adopted in March and preparatory work was ongoing for the drafting of the Implementing Acts, as a follow-up to the Directive. Developing solutions to improve media accessibility for all in the connected TV environment also remains a funding priority for the Commission through the project Hybrid Broadcast Broadband for All, funded under the Competitiveness and Innovation Framework Programme. [243]

On 27 September 2017, the Commission adopted a proposal[244] for a revision of the Rail Passenger Rights Regulation[245] which aims to improve the protection of rail passengers. The proposal will positively affect the integration of people with disabilities protected under Article 26 of the Charter. It will remove the possibility for Member States' to exempt domestic services from certain provisions, notably related to the rights of people with disabilities or reduced mobility and will to enable them to use all rail services on an equal footing with other passengers.

[239] Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (COM(2015) 615 final, 2.12.2015.
[240] Article 7 of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).
[241] Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services.
[242] Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, OJ L 327, 2.12.2016, p. 1-15.
[243] http://www.hbb4all.eu/
[244] 2017 (COM(2017) 548).
[245] Regulation (EC) 1371/2007 on rail passengers' rights and obligations, OJ L 315, 3.12.2007, p. 14.

Overall, the rights of people with disabilities or reduced mobility were updated in line with the UN Convention on the Rights of Persons with Disabilities, notably on training of staff providing assistance and the accessibility of information for people with disabilities or reduced mobility.

International Agreements

The Convention on the Rights of Persons with Disabilities is the first international legally binding human rights instrument setting minimum standards for a range of civil, political, social, economic and cultural rights for people with disabilities around the world[246]. It is also the first human rights treaty to which the EU is a party. The EU concluded the Convention on the Rights of Persons with Disabilities in 2010[247]. All EU-28 have signed it and 27 have ratified it (Ireland is making progress towards ratification). The EU reported back to the UN Committee in January 2017 on its three main recommendations ((i) adoption of the European Accessibility Act, (ii) withdrawal of the Commission from the Independent Framework, and (iii) list of powers) and presented the current situation regarding its activities and policies during the annual Convention on the Rights of Persons with Disabilities Conference in New York in June 2017.

Policy

The EU Agency for Fundamental Rights reported **on the developments in the implementation of the Convention on the Rights of Persons with Disabilities**[248] recalling that 10 years after the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities, the Convention continues to spur significant legal and policy changes in the EU and its Member States.

Principle 17 of the **European pillar of social rights** on the 'Inclusion of People with Disabilities' states that they have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs. In addition, disability concerns are mainstreamed into all principles of the pillar. In particular the ones related to education, training and long-life learning, equal opportunities, work-life balance, childcare and support to children, long-term care, housing and assistance for the homeless and access to essential services.

In February 2017 the Commission adopted a **Progress report on the implementation of the European disability strategy 2010-2020**[249]. The report describes the main achievements in the eight areas covered by the strategy: (i) accessibility, (ii) participation, (iii) equality, (iv) employment, (v) education and training, (vi) social protection, (vii) health and (viii) external action, as well as on awareness training, funding and statistical data. The report contains also information on the internal implementation of the UN Convention on the Rights of Persons with Disabilities in the EU institutions.

Each year, the Commission raises awareness of disability issues through a conference celebrating the **European Day of Persons with Disabilities**[250], which it organises in cooperation with the European Disability Forum. The **European Day of Persons with Disabilities** conference in 2017 brought together a wide range of participants representing

[246] http://www.un.org/disabilities/

[247] Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2010/48/EC).

[248] Fundamental Rights Report 2017, 9. Developments in the implementation of the Convention on the Rights of Persons with Disabilities http://fra.europa.eu/en/publications-and-resources/publications/annual-reports/fundamental-rights-2017#crpd

[249] Commission Staff Working Document 'Progress report on the implementation of the European Disability Strategy 2010-2020' of 2 February 2017, SWD (2017) 29.

[250] http://ec.europa.eu/social/main.jsp?langId=fr&catId=88&eventsId=1264&furtherEvents=yes

people with disabilities, organisations or groups of persons with disabilities, policymakers from the Member States, disability and accessibility experts, academics and the European institutions. The theme of the conference was citizenship. Citizenship is a great enabler, bringing with it many rights, but when trying to enjoy their rights many people with disabilities face constant barriers[251].

The Commission organised the 8th **Access City Award**[252] in partnership with the European Disability Forum. This Award promotes accessibility in the urban environment, especially for elderly and disabled people and also recognises improvements made in this area by cities across the continent.

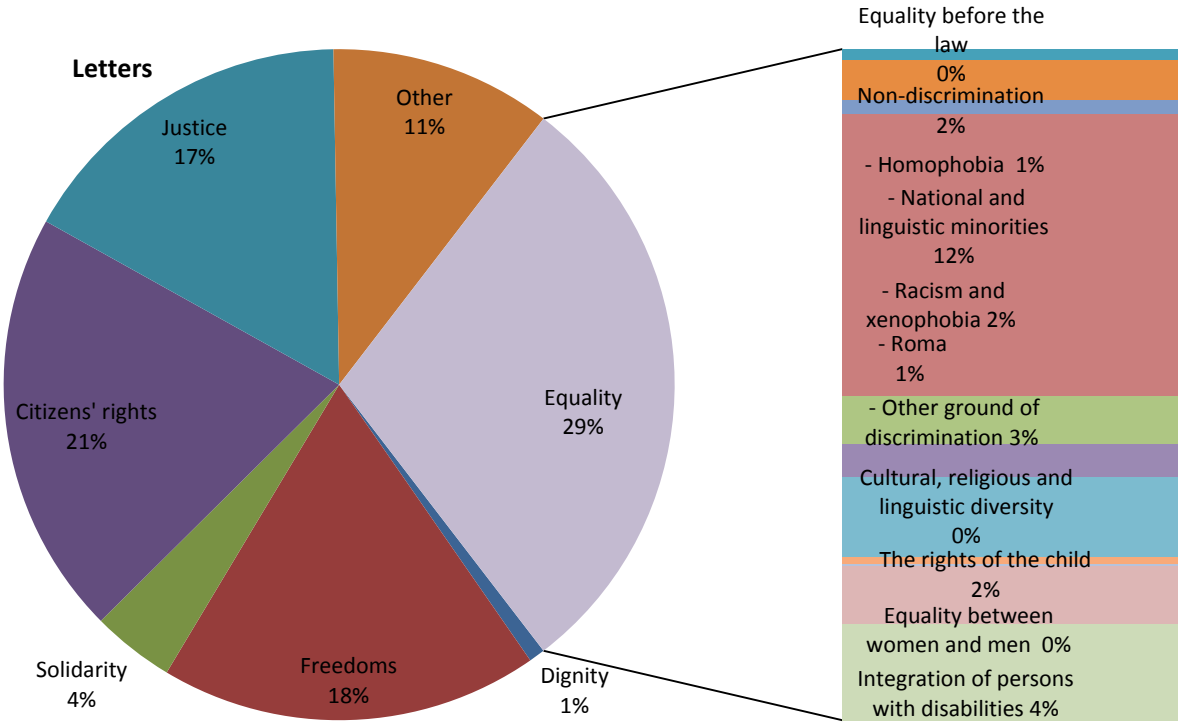
Currently, there is no mutual recognition of disability status between Member States which may pose challenges for people with disabilities travelling to other EU countries. The EU is developing a system of voluntary mutual recognition based on an **EU Disability Card**.

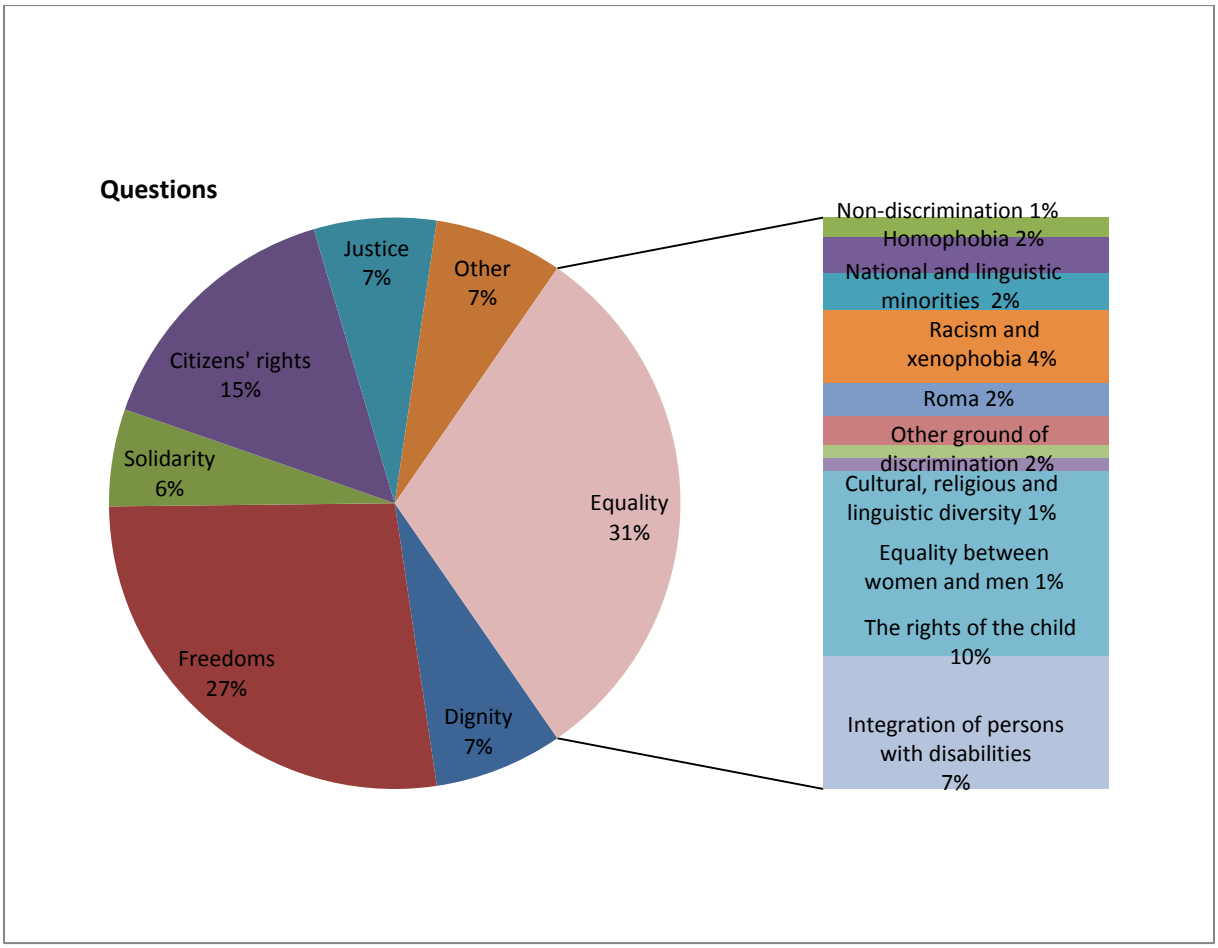
Under the **European Semester**[253] the Commission continues to monitor the situation of people with disabilities in Member States notably in employment, poverty and social inclusion and education. In 2017 disability issues have gained more visibility across the Country Reports published by the Commission.

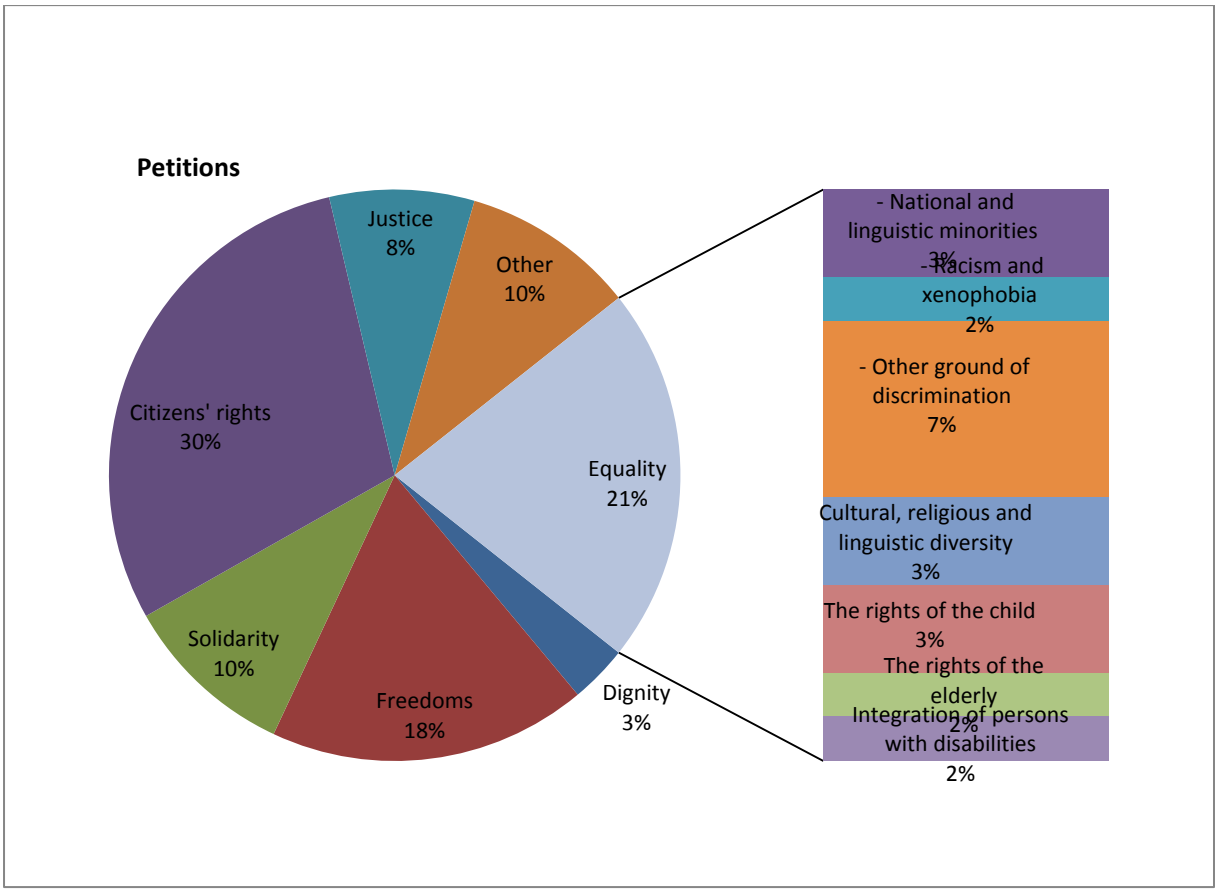
NATIONAL CASE LAW BOX

The Supreme Administrative Court of Bulgaria in a case concerning a teacher who had refused a pupil with a disability to join a school excursion — an alleged violation of the Protection against Discrimination Act (Закон за защита от дискриминация) — confirmed the lower court's decision and rejected the teacher's appeal. To reinforce its argument, the Court referred to various rights under the Charter, including Article 1 of the Charter (human dignity), Article 24 (the rights of the child) and Article 26 (integration of people with disabilities)[254].

[251] FRA http://fra.europa.eu/en/theme/people-disabilities
[252] http://ec.europa.eu/social/main.jsp?langId=en&catId=1141&eventsId=1208&furtherEvents=yes
[253] https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester_en
[254] Bulgaria, Supreme Administrative Court, case 10383/2015, 17 January 2017.


Letters
Other 11%
Justice 17%
Citizens' rights 21%
Equality 29%
Solidarity 4%
Freedoms 18%
Dignity 1%
Equality before the law 0%
Non-discrimination 2%
- Homophobia 1%
- National and linguistic minorities 12%
- Racism and xenophobia 2%
- Roma 1%
- Other ground of discrimination 3%
Cultural, religious and linguistic diversity 0%
The rights of the child 2%
Equality between women and men 0%
Integration of persons with disabilities 4%


Questions
Justice 7%
Other 7%
Citizens' rights 15%
Solidarity 6%
Equality 31%
Freedoms 27%
Dignity 7%
Non-discrimination 1%
Homophobia 2%
National and linguistic minorities 2%
Racism and xenophobia 4%
Roma 2%
Other ground of discrimination 2%
Cultural, religious and linguistic diversity 1%
Equality between women and men 1%
The rights of the child 10%
Integration of persons with disabilities 7%


Petitions
Justice 8%
Other 10%
Citizens' rights 30%
Equality 21%
Solidarity 10%
Freedoms 18%
Dignity 3%
- National and linguistic minorities 3%
- Racism and xenophobia 2%
- Other ground of discrimination 7%
Cultural, religious and linguistic diversity 3%
The rights of the child 3%
The rights of the elderly 2%
Integration of persons with disabilities 2%

Title IV

Solidarity

Drawing on the rights enshrined in the Charter, the **European pillar of social rights** was jointly signed and proclaimed by the European Parliament, the Council and the Commission on 17 November 2017. The pillar sets out 20 key principles and rights to support fair and well-functioning labour markets and welfare systems.

The Commission has put forward in 2017 a proposal for a **Directive on Transparent and Predictable Working Conditions in the European Union**. This instrument complements existing obligations and creates new minimum standards to give all workers, including those on precarious forms of employment, more predictability and clarity on their working conditions.

On 26 April 2017, the Commission adopted an **initiative to support work-life balance for working parents and carers** which includes measures to ensure better work-life balance opportunities for men and women with caring responsibilities and a gender-balanced use of leave and flexible work arrangements as well as an a**ction plan to combat the gender pay gap**. In the 2017 State of the Union speech the Commission proposed to create in 2018 a **European Labour Authority** to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations.

In April the Commission adopted a **Notice on access to justice in environmental matters**[255]**,** which clarifies how individuals and associations can challenge decisions, acts and omissions by public authorities related to EU environmental law before national courts.

The Commission is committed to strengthening the enforcement of European consumer laws to ensure the swifter enforcement of consumer protection laws. In his 2017 State of the Union speech and the letter of intent of 13 September 2017, President Juncker announced a '**New Deal for Consumers**' package, aiming to improve coordination and action by national consumer authorities at EU level and reinforcing public enforcement action and better protection of consumer rights. On 26 September 2017 the Commission published a set of **Guidelines on the application of EU food and consumer laws to dual quality food products** which explain the practical steps to enable measures to be taken by the competent food and consumer authorities.

Article 27 — Workers' right to information and consultation within the undertaking

Article 27 of the Charter provides that workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions governed by EU law and national laws and practices.

Policy

Directive 2009/38 establishing European Works Councils (**Recast Directive**) was the subject of an evaluation in 2017. European Works Councils are bodies representing European employees within cross-border companies. Through

[255] Communication from the Commission of 28.4.2017 'Commission Notice on Access to Justice in Environmental Matters', C(2017) 2616 final, http://ec.europa.eu/environment/aarhus/pdf/notice_accesstojustice.pdf.

them, employees are informed and consulted by management on the progress of the business and any significant decision at European level that could affect their employment or working conditions. As part of the coherence analysis, the evaluation concluded that the provisions of the Recast Directive are generally consistent with Article 27 of the Charter.

Article 28 — Right of collective bargaining and action

Article 28 of the Charter provides that workers and employers, or their respective organisations, have, in line with EU law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. There is no specific EU law regulating the conditions and consequences of the exercise of these rights at national level[256]. Member States remain bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

Legislation

In its proposal for a **Council Regulation on the establishment of the European Monetary Fund** presented in December 2017[257] the Commission sought to ensure the respect of Article 28 of the Charter. By integrating the current European Stability Mechanism within the EU legal framework, the proposal aims at providing financial stability support to the Member States within the Eurozone. An explicit reference to Article 152 TFEU has been inserted in this proposal to ensure compliance with the right of collective bargaining and action stating that the proposed European Monetary Fund Regulation does not impinge on the right to negotiate, conclude and enforce collective agreements or to take collective action in line with national law.

Article 29 — Right of access to placement services

According to Article 29 of the Charter everyone has the right of access to a free placement service. The Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30 — Protection in the event of unjustified dismissal

According to Article 30 of the Charter every worker has the right to protection against unjustified dismissal, in line with EU law and national laws and practices. The Article draws on Article 24 of the revised Social Charter[258]. It is given effect by Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer as amended by Directive 2002/74/EC.

Application by the Member States

A substantial number of **fundamental rights issues raised by citizens** in complaints addressed to the Commission in the area of labour law relate to **protection against unjustified dismissals**. The number and proportion of complaints

[256] Article 153(5) TFEU stipulates that it does not apply to the right to strike.
[257] Proposal for a Council Regulation on the establishment of the European Monetary Fund, COM(2017) 827final.
[258] European Social Charter (revised) ETS No 163.

in which the Charter is quoted has been growing significantly. The Charter is now being invoked in most complaints on labour law, notably on individual dismissals. However, in nearly all these cases the Charter did not apply due to the fact that the issues raised by the complainants were not covered by EU law.

Article 31 — Fair and just working conditions

Article 31 of the Charter guarantees that every worker has the right to working conditions that respects their health, safety and dignity. Every worker has the right to a limit on maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. There is a substantial body of EU law in this area on health and safety at work.

Legislation

On 31 May 2017 the Commission adopted several proposals[259] as part of the **'Mobility package'** to ensure a better coherence and complementarity between the social and market rules applicable to road transport. In particular between the core road transport social rules on driving, working and resting times, the rules on posting of workers and the market rules on the access to occupation of road transport operator and access to haulage and passenger markets. The aim is to ensure a balance between the social protection rights of workers, the freedom to provide cross-border services and the freedom to freedom to conduct a business[260] that is protected by the Charter[261]. Furthermore, the Commission is supporting the dialogue between the social partners on the possibility to define and establish minimum rules on the social and security standards (social code) for mobile road transport workers.

On 27 July the Commission adopted a proposal for a Council Directive amending Council Directive 2009/13/EC in line with the 2014 amendments to the Maritime Labour Convention[262]. Directive 2009/13/EC[263] incorporates into EU law the Convention adopted by the International Labour Organisation in 2006 with the objective to create a single, coherent instrument bringing together all up-to-date standards for international maritime labour.

The Maritime Labour Convention provides comprehensive rights and protection at work for all seafarers, regardless of their nationality or the ship's flag. A number of amendments to the Convention were approved by the International Labour Conference in 2014 with the aim to establish an effective financial security system that protects seafarers' rights in the event of abandonment and allows compensation for contractual claims for death or long-

[259] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 561/2006 as regards on minimum requirements on maximum daily and weekly driving times, minimum breaks and daily and weekly rest periods and Regulation (EU) 165/2014 as regards positioning by means of tachographs, COM(2017) 277 final; Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector, COM(2017) 278 final; Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1071/2009 and Regulation (EC) No 1072/2009 with a view to adapting them to developments in the sector, COM(2017) 281 final.

[260] See Article 15 and 16.

[261] As highlighted in the White Paper on Transport *Roadmap to a Single European Transport Area — Towards competitive and resource efficient transport system* (COM(2011) 144), where it makes clear that the creation of a Single European Transport Area should go together with a higher degree of convergence and enforcement of social rules. It adds that market opening needs to go hand in hand with quality jobs and working conditions.

[262] Proposal for a Council Directive implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Council Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006 as approved by the International Labour Conference on 11 June 2014, COM/2017/0406 final.

[263] Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30).

term disability of seafarers due to occupational injury, illness or hazard. These amendments aim at improving the existing system of protection for seafarers in line with Article 31 of Charter.

On 21 December 2017 the Commission adopted a proposal for a **Directive on transparent and predictable working conditions in the European Union**[264] as part of the follow-up to the European pillar of social rights. The Commission's proposal complements and modernises existing obligations to inform each worker of their working conditions. In addition, the proposal creates new minimum standards to ensure that all workers, including those on atypical contracts, benefit from more predictability and clarity about their working conditions. The initiative builds on the Written Statement Directive[265], which requires updating in the light of changes in employment rules. The Commission's REFIT evaluation of that Directive[266] showed that many workers in the EU, such as domestic workers and those who perform on-demand work, do not receive a written confirmation of their working conditions or do not receive all the information they need in a timely manner. The consultation on the European pillar of social rights also showed that more predictability should be provided to workers, in particular those in non-standard forms of employment, such as casual work.

The Commission has therefore put forward a proposal which will repeal the current Written Statement Directive. The new directive reinforces the rights provided for in the current rules and adds new common rights for all workers on their working conditions including on probation, work predictability, training and support to transition to more secure employment.

Policy

On 26 April the Commission adopted an interpretative communication on the **Working Time Directive**, providing guidance on how to interpret various aspects of this directive in line with a growing body of case law. This will help Member States implement the *acquis* correctly and avoid further infringements by Member States[267].

Case law

In the case of *Conley King*[268] the Court held that a worker must be able to carry over and accumulate unexercised rights to paid annual leave when an employer does not put that worker in a position in which he is able to exercise his right to paid annual leave which is expressly set out in Article 31(2) of the Charter and which Article 6(1) TEU recognises as having the same legal value as the EU Treaties. The right to an effective remedy, as guaranteed by Article 47 of the Charter, would not be guaranteed if, in a situation in which the employer grants only unpaid leave to the worker, the worker would not be able to rely, before the courts, on the right to take paid leave, but would be forced to take leave without pay and then bring an action to claim payment for it.

The Court found that such a result is incompatible with the right to an effective remedy and to paid annual leave. EU law therefore precludes a situation where the worker must take their leave before establishing whether they have the right to be paid in respect of that leave.

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[264] Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union, COM(2017) 0797 final.

[265] Council Directive 91/533/EC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

[266] http://ec.europa.eu/social/main.jsp?catId=1313&langId=en&moreDocuments=yes

[267] Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (2017/C 165/01).

[268] Judgment of 29 November 2017 in case C-214/16, *Conley King v The Sash Window Workshop Ltd and Richard Dollar*.

Article 32 — Prohibition of child labour and protection of young people at work

Article 32 of the Charter prohibits the employment of children. The minimum age of employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development, or to interfere with their education.

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

The EU was well represented in the IV Global Conference on the Sustainable Eradication of Child Labour held in November 2017 in Buenos Aires, Argentina. The conference focused on the eradication of child labour, forced labour and quality youth employment, and produced as outcome document the Buenos Aires Declaration, an instrument that will guide all efforts on the issues covered. During the conference the EU was present at the high level panel on 'Supply Chains: Getting on top of complexity' and further hosted a special session on EU-ILO partnership to eliminate child labour and forced labour in supply chains.

Article 33 — Family and professional life

Article 33 of the Charter provides that the family must enjoy legal, economic and social protection. To reconcile family and professional life, everyone must have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Legislation and policy

On 26 April 2017, the Commission adopted **an initiative to support work-life balance for working parents and carers**[269]. This initiative, being part of the European pillar of social rights, the Commission presented a set of legislative and non-legislative actions to modernise the existing EU legal and policy framework to better support work-life balance for men and women with caring responsibilities and a more equal use of leave and flexible work arrangements. This initiative aims at promoting a number of fundamental rights provided by the Charter[270].

A proposed **Directive** preserves and builds on existing rights, in particular under the Parental Leave Directive[271] and includes a **number of new rights**. In particular, the possibility for flexible uptake (piece-meal and part-time) of the four months entitlement to parental leave paid at sick pay level which can be taken up until the child reaches the age of 12 and cannot be transferred between parents. Other rights include an entitlement to 10 working days of paternity leave when a child is born paid at sick pay level, an entitlement to five days of leave paid at sick pay level per year per worker to take care of seriously ill or dependent relatives and a right to request flexible working arrangements for parents of children up to 12 years old and workers with caring responsibilities.

[269] Communication from the Commission, An Initiative to Support Work-Life Balance for Working Parents and Carers (COM(2017) 252 final, 26.4.2017).
[270] See Article 21, 23, 24 and 34.
[271] Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, COM/2017/0253 final.

Article 34 — Social security and social assistance

Article 34 of the Charter recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment. Everyone residing and moving legally within the EU is entitled to social security benefits and social advantages in line with EU law and national laws and practices.

Legislation

The **Security of Gas Supply Regulation** adopted in October 2017, puts more emphasis on combating energy poverty and social exclusion[272]. It recognises that '*certain customers, including households and customers providing essential social services are particularly vulnerable and may need protection against the negative effects of disruption of gas supply*'[273].

Policy

Under the **European pillar of social rights**, the Commission has reinforced EU labour mobility by ensuring that a modernisation of the social security coordination is properly implemented. On 3 July the Commission presented the new **Information on Electronic Exchange of Social Security Information system**[274], an IT platform that will connect electronically around 15 000 social security institutions of the Member States plus Iceland, Liechtenstein, Norway and Switzerland. The new tool will benefit citizens who have lived and worked in several of the participating countries, and who will see their social security benefits calculated quicker and more efficiently.

In the 2017 State of the Union speech, the Commission proposed to create **in 2018 a European Labour Authority** to strengthen cooperation between labour market authorities at all levels and better manage cross-border situations. The European Labour Authority should be an effective body supporting national administrations, businesses and mobile workers by improving cooperation at EU level on cross-border mobility and social security coordination matters, and improving access to information and transparency on rights and obligations in labour mobility and social security systems.

The European Fund for Strategic Investment in 2017 invested EUR 10 million into a social impact bond scheme that will support the integration of between 2 500 and 3 700 migrants and refugees into the Finnish labour market by providing training and job-matching assistance. In the European Fund for Strategic Investment 2.0 (the extension of the Fund[275]), social services have been added to the list of eligible sectors for this financing.

Article 35 — Healthcare

Article 35 of the Charter provides that everyone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection must be ensured in the definition and implementation of all the EU's policies and activities.

Policy

[272] See Article 17.
[273] Recital 23 of the Security of Gas Supply Regulation.
[274] https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/2017/05/30/Electronic+Exchange+of+Social+Security+Information.
[275] https://ec.europa.eu/commission/publications/whats-new-efsi-2_en

During 2017 a significant number of actions and projects were funded under the **EU 3rd Health programme** (2014-2020)[276]. 'The State of Health in the EU' — a package of actions developed by the Commission, the Organisation for Economic Cooperation and Development and the World Health Organization includes a report 'Health at a Glance' as well as country health profiles for the Member States and a Commission policy paper on the state of health in the EU. The aim of this initiative is to contribute to country-specific knowledge, to inform health policies at national and European level and to enable policy dialogues among Member States[277].

'The EU Health Award' is an initiative funded under the 3rd Health programme that aims at highlighting actions of non-governmental organisations which have made a significant contribution in promoting a higher level of public health in the EU. In 2017 three NGOs received the EU Health Award to reward their initiatives in promoting vaccinations in the EU[278].

The most important projects in 2017 focused on aiming to respond to the high influx of refugees in Europe, implementing the 2015 EU migration agenda and in particular the skills agenda on integration of non-EU nationals:

- **WHO Migration and Health Knowledge Management** project is an initiative of World Health Organization Europe which aims at raising awareness, sharing knowledge, and increasing the adoption of migrant-health good practices and evidence-based approaches across the EU[279].

- **Re-Health II** project implemented by the International Organisation for Migration aims at supporting the EU Member States in improving healthcare provision for migrants and integrating them into national healthcare systems[280].

- **Pilot specific training modules for health professionals, border guards and trainers in migrants' and refugees' health (MIG-H-Training)**[281] on mental health and post-traumatic stress detection and on screening for communicable diseases in migrants and refugees.

- **Provision of training for frontline health professionals and law enforcement officers working at local level with migrants and refugees, and training of trainers**[282] aimed at improving their skills, promoting understanding, positive attitudes and holistic approach in the work with migrants and refugees at first points of arrival, transit and destination countries.

Under **'Migrants' health: best practice in care for vulnerable migrants and refugees'**, major projects started in 2017:

[276] Regulation (EU) No 282/2014 of the European Parliament and of the Council of 11 March 2014 on the establishment of a third Programme for the Union's action in the field of health (2014-2020) and repealing Decision No 1350/2007/EC Text with EEA relevance, OJ L 86, 21.3.2014, p. 1.
[277] https://ec.europa.eu/health/state/summary_en
[278] https://ec.europa.eu/health/ngo_award/home_en
[279] http://www.euro.who.int/en/health-topics/health-determinants/knowledge-hub-on-health-and-migration/about/migration-health-knowledge-management-mihkma
[280] http://re-health.eea.iom.int/
[281] Call for tender https://etendering.ted.europa.eu/cft/cft-display.html?cftId=2049, contract awarded to Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ).
[282] https://etendering.ted.europa.eu/cft/cft-display.html?cftId=2050 contract awarded to Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ).

- **Mig-HealthCare**[283] project that focuses on the effective community-based care models to improve physical and mental healthcare services, support the inclusion and participation of migrants and refugees in European communities and reduce health inequalities.
- **MyHealth**[284] project that develops and implements models based on the know-how of a European multidisciplinary network, to reach out to vulnerable migrants and refugees about their health — in particular women and unaccompanied minors.
- The project Operational Refugee and Migrant Maternal Approach[285] that develops an operational and strategic approach to promote safe motherhood, to improve access and delivery of maternal healthcare for refugee and migrant women and to improve maternal health equality within the EU.

The Commission continued to support the Member States' actions aimed at improving mental health in line with the **Convention on the Rights of Persons with Disabilities** that covers the rights of people with mental health problems[286]. EU actions were carried out under the EU Compass on Mental Health and Well-being[287]. Priority areas were the improvement of mental health at work, mental health in schools and the prevention of suicide.

Parliamentary questions

The Commission received a significant number of questions from Members of the European Parliament on issues related to healthcare and the Charter. The questions concerned issues related to the protection of victims of Toxic Oil Syndrome in Spain, grounds for euthanasia in the Netherlands, the measures preventing abortion in the amendments of the French Public Healthcare code and the pollution by installation of biogas in Germany.

In its replies, the Commission recalled its commitment to effectively monitor the correct implementation of the EU rules, underlining that it can intervene only if a violation of EU law is involved [in line with Article 51(1) of the Charter] and stressing that in the absence of EU law, the responsibility for healthcare remains the competence of the Member States.

Article 36 — Access to services of general economic interest

Article 36 of the Charter provides that the EU recognises and respects access to services of general economic interest as provided for in national laws and practices, in line with the EU Treaties, in order to promote the social and territorial cohesion of the EU.

Article 37 — Environmental protection

Article 37 of the Charter provides that a high level of environmental protection and improving the quality of the environment must be integrated into EU policies and ensured in line with the principle of sustainable development.

Policy

[283] http://www.mighealthcare.eu/
[284] http://healthonthemove.net/
[285] https://oramma.eu/
[286] See Article 26.
[287] A mechanism financed under the 3rd Health Programme aimed at collecting, exchanging, analysing and disseminating information on policy and stakeholder activities in the area of mental health.

In April 2017 the Commission adopted a **Notice on access to justice in environmental matters**[288] which clarifies how individuals and associations can challenge before national courts decisions, acts and omissions by public authorities in EU environmental law. The Notice provides the useful guidance to citizens by helping them to decide whether to bring a case before national courts. It also helps the national courts to identify all the Court's jurisprudence that they should take into account when faced with questions related to access to justice. The Notice mentions the Charter as a key framework text and explains its specific relevance to legal aid.

Article 38 — Consumer protection

Article 38 of the Charter provides that EU policies must ensure a high level of consumer protection, giving guidance to the EU institutions when drafting and applying EU legislation.

Legislation

On 12 December 2017 the new **Consumer Protection Cooperation Regulation**[289] was adopted. Consequently, enforcement authorities are better equipped to work together, more swiftly and more efficiently, also enabling the Commission to launch and coordinate common actions against EU-wide sharp practices. Organisations with an interest in consumer protection are also involved in detecting market problems, signalling unlawful cross-borders practices to national enforcers and to the Commission.

On 4 July 2017 the new **Energy Labelling Regulation**[290] was adopted. The Regulation updates and clarifies the existing energy labelling framework taking into account the technological progress achieved in energy efficiency. In particular, energy labelling enables consumers to make informed choices and encourages improvements in the efficiency of energy-related products thus ultimately saving consumers money on energy bills.

The proposal for a revision of the Rail Passenger Rights Regulation[291] aims at improving the protection of rail passengers while taking account the burdens on the rail sector. The proposal will have an impact on consumer protection as guaranteed by Article 38 of the Charter. In particular, it improves the information that has to be provided to passengers by requiring the rail sector to better inform passengers on the type of ticket or travel contract they have bought and the rights and obligations linked to it.

Policy

In his 2017 State of the Union speech and the letter of intent of 13 September 2017, Commission President Juncker announced a **'New Deal for Consumers'** package that aims at facilitating coordination and effective action by national consumer authorities at EU level and reinforcing public enforcement action and better protecting consumer rights.

[288] Communication from the Commission of 28.4.2017 'Commission Notice on Access to Justice in Environmental Matters', C(2017) 2616 final, http://ec.europa.eu/environment/aarhus/pdf/notice_accesstojustice.pdf

[289] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, OJ L 345, 27 December 2017, p. 1-26.

[290] Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU, OJ L 198, 28 July 2017, p. 1.

[291] See Article 26.

As part of the Commission's 2018 work programme, the New Deal includes a targeted revision of EU consumer law directives following on the Fitness Check of consumer and marketing law[292] that was finalised in May 2017. The initiative aims to make enforcement action against breaches of consumer law by public and private bodies as well as redress for consumers more effective.

In order to restore citizens' confidence and trust in the Single Market following claims by some Member States in Central and eastern Europe on differences in the quality of food products sold across the EU, the Commission published on 26 September 2017 a set of **Guidelines on the application of EU food and consumer laws to dual quality food products[293]** which explains the practical steps to enable practical measures to be taken by the competent food and consumer authorities. The Joint Research Centre has started preparing a harmonised testing methodology which is a step towards comparable and authoritative tests across the EU. In addition, the Commission has made available EUR 1 million to develop Member States' enforcement capacities.

On 13 December 2017, the Commission adopted its first **Report on the functioning of the Online Dispute Resolution** platform[294]. The platform was launched in February 2016, and has since then helped consumers and traders to resolve their disputes online without going to court — by connecting them with alternative (*i.e.* out-of-court) dispute resolution bodies.

The **Rapid Alert System for dangerous non-food products** ensures the exchange of information between national authorities and the Commission on measures against dangerous products detected on the EU market and measures taken on risks that have been identified. Since 2004, over 25 000 alerts for dangerous consumer products have been circulated in Europe, of which 2 201 were in 2017 alone. Particular care is taken with child-related products and a quarter of all alerts sent by national authorities concerned safety issues with toys.

The Commission worked actively to ensure the correct and effective implementation of various consumer law directives which has contributed to ensuring a high level of consumer protection throughout the EU.

Four infringement cases were closed following legislative changes in the Member States concerned on the incorrect transposition of the Unfair Commercial Practices Directive (2005/29/EC), whereas nine cases were still pending at the end of 2017. On the incorrect transposition of the recently adopted Consumer Rights Directive (2011/83/EU), the first two letters of formal notice were sent in 2017. Two infringement procedures were closed following legislative changes in Italy and Lithuania on the Package Travel Directive (90/314/EEC). The Commission continued its work to ensure the full and correct application of the Unfair Contract Terms Directive (93/13/EEC) and one infringement case on full implementation of the relevant CJEU case law is still pending.

Case law

In *Banco Primus*[295] the CJEU further developed its case law on the *ex officio* examination of the unfairness of contract within the meaning of Directive 93/13/EEC on unfair terms in consumer contracts and clarified that the *res judicata*

[292] The exercise covered the *Unfair Commercial Practices Directive* (2005/29/EC), the *Unfair Contract Terms Directive* (93/13/EEC), the *Price Indication Directive* (98/6/EC), the *Consumer Sales and Guarantees Directive* (1999/44/EC), the *Injunctions Directive* (2009/22/EC), and the *Misleading and Comparative Advertising Directive* (2006/114/EC). In parallel, the *Consumer Rights Directive* (2011/83/EU) was subject to a separate evaluation.

[293] Commission Notice on the application of EU food and consumer protection law to issues of Dual Quality of products — The specific case of food, C/2017/6532, OJ C 327, 29.9.2017, p. 1-7.

[294] Report from the Commission to the European Parliament and the Council on the functioning of the European Online Dispute Resolution platform established under Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes, COM/2017/0744 final.

[295] Judgment of 26 January 2017 in case C-421/14, *Banco Primus SA v Jesús Gutiérrez García*.

principle may not preclude an appeal court from assessing, *ex officio*, the unfairness of contract terms different from those which may have already been assessed by the first instance court.

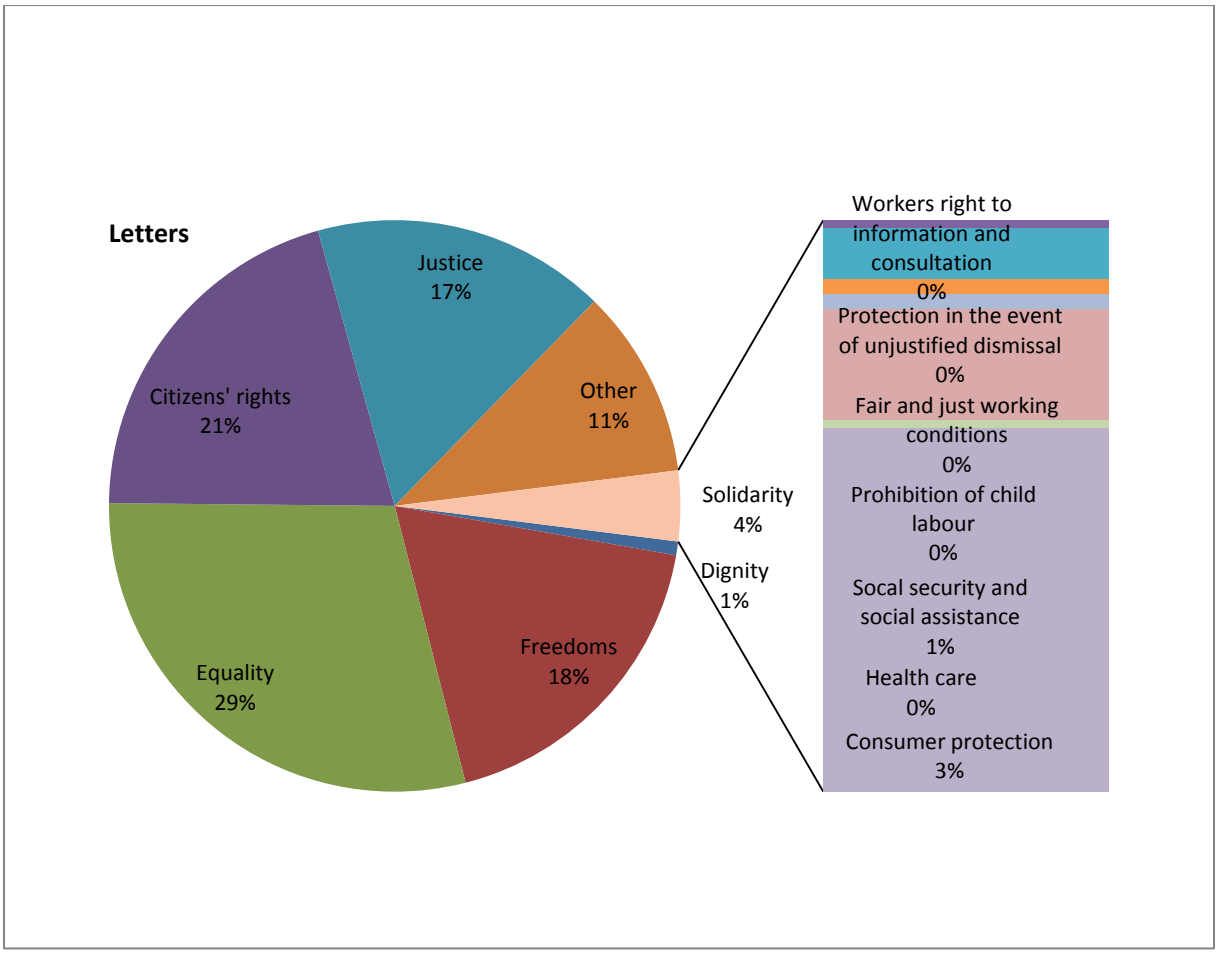
In *Air Berlin plc & Co*[296] the Court clarified that Directive 93/13/EEC is also applicable to travel. The German consumer organisation argued that the flat-rate handling fee that was charged by the airline in cases where the passenger did not take the flight or cancelled their booking could be considered unfair. The Court stated that the principle of pricing freedom as envisaged in Article 22(1) of Regulation No 1008/2008 does not preclude the application of any consumer protection rule; therefore the terms of contracts of carriage by air are also subject to an assessment of their fairness.

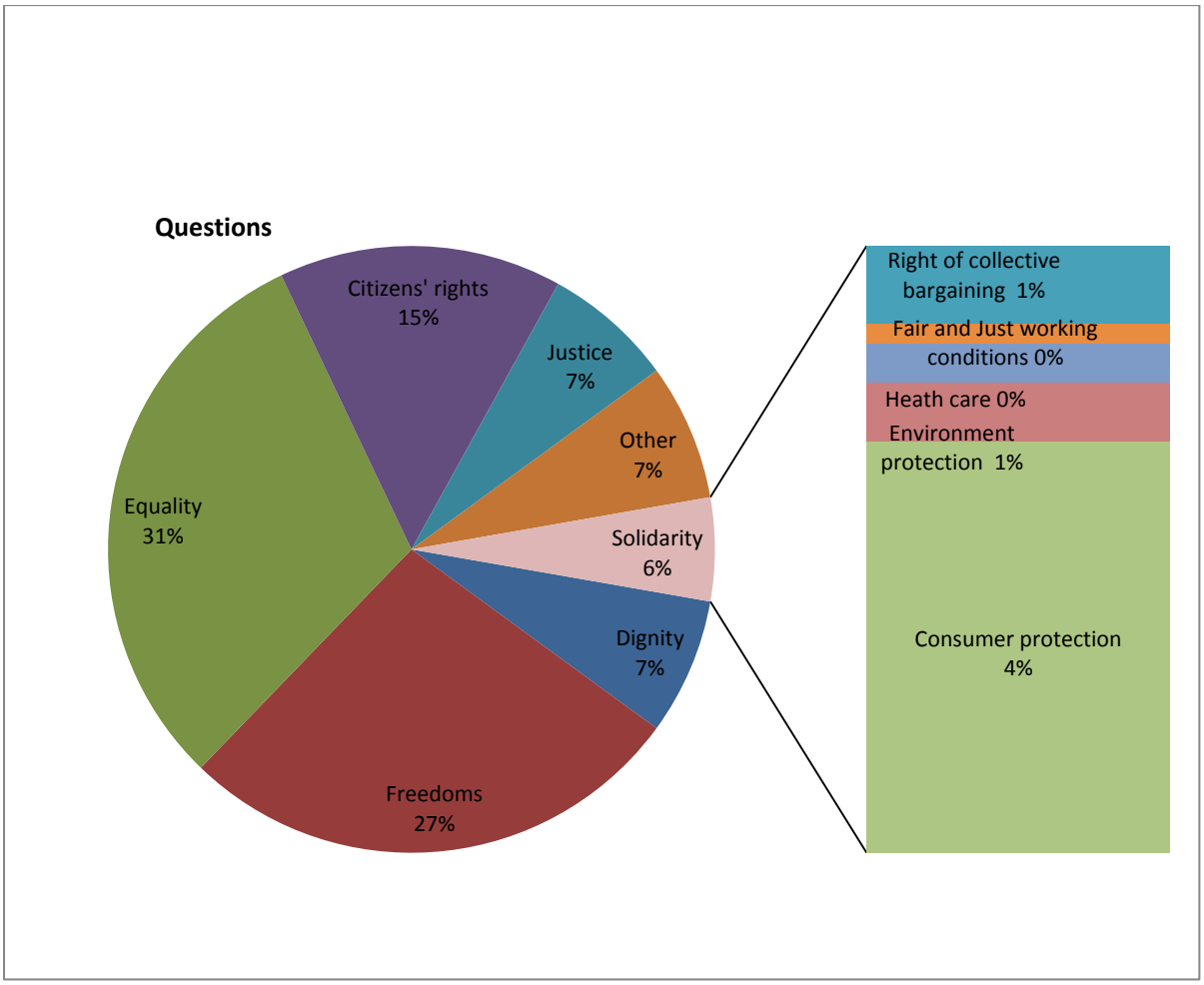
In *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main*[297] the Court clarified that the concept of 'basic rate' referred to in Article 21 of Directive 2011/83/EU on consumer rights means that charges for the use of a telephone helpline operated by the trader in order to contact them about a contract may not exceed the cost of a call to a standard geographic landline or mobile telephone line, regardless of whether the trader concerned makes or does not make a profit through that telephone helpline.

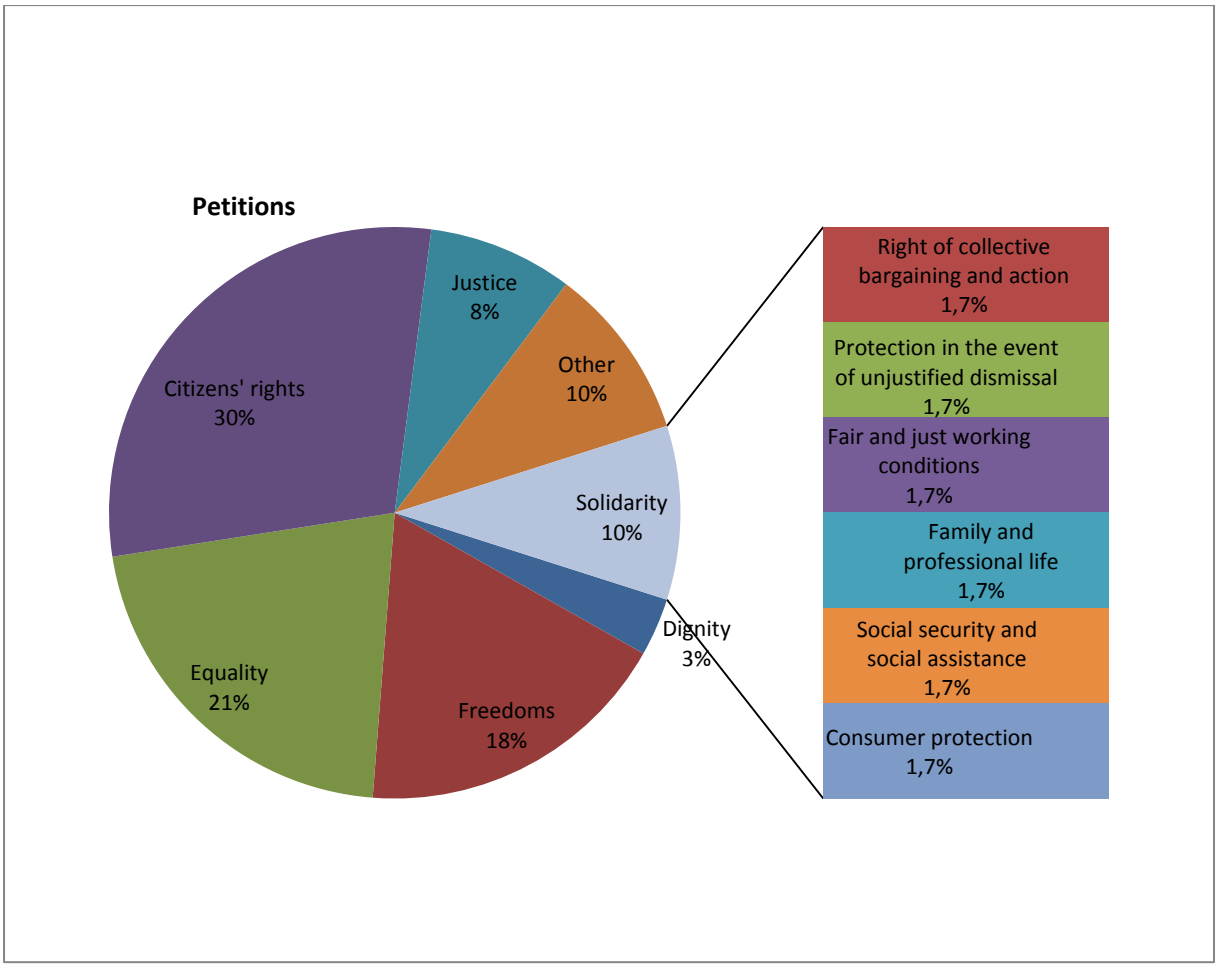
In *Andriciuc and Others*[298] the Court clarified that a contractual term in a loan agreement expressed in a foreign currency which specifies that the loan must be repaid in the same foreign currency relates to the definition of the 'main subject matter of the contract', meaning that national courts do not have to assess its unfairness if such term is drafted in plain language.

At the same time the Court, building on its previous case law, clarified that this transparency requirement implies that, in the case of loan agreements, financial institutions must provide borrowers with sufficient information to enable them to take prudent and well-informed decisions. This means that this term must be understood by the consumer also in terms of its real effects, so that the average consumer would be aware both of the possibility of a rise or fall in the value of the foreign currency in which the loan was taken out, and would also be able to assess the potentially significant economic consequences of such a term on their financial obligations.

296 Judgment of 6 July 2017 in case C-290/16, *Air Berlin plc & Co. Luftverkehrs KG v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V*.
297 Judgment of 2 March 2017 in case C-568/15, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV v comtech GmbH*.
298 Judgment of 20 September 2017 in case C-186/16, *Ruxandra Paula Andriciuc and Others v Banca Românească SA*.


Letters
Justice
17%
Other
11%
Citizens' rights
21%
Solidarity
4%
Dignity
1%
Freedoms
18%
Equality
29%
Workers right to information and consultation
0%
Protection in the event of unjustified dismissal
0%
Fair and just working conditions
0%
Prohibition of child labour
0%
Socal security and social assistance
1%
Health care
0%
Consumer protection
3%


Questions
Citizens' rights 15%
Justice 7%
Other 7%
Solidarity 6%
Dignity 7%
Freedoms 27%
Equality 31%
Right of collective bargaining 1%
Fair and Just working conditions 0%
Heath care 0%
Environment protection 1%
Consumer protection 4%


Petitions
Justice 8%
Other 10%
Citizens' rights 30%
Solidarity 10%
Dignity 3%
Equality 21%
Freedoms 18%
Right of collective bargaining and action 1,7%
Protection in the event of unjustified dismissal 1,7%
Fair and just working conditions 1,7%
Family and professional life 1,7%
Social security and social assistance 1,7%
Consumer protection 1,7%

Title V

Citizens' rights

In 2017 the Commission adopted its 3rd report on EU citizenship entitled '**EU Citizenship Report 2017: Strengthening Citizens' Rights in a Union of Democratic Change**'. The Report covers both EU citizenship rights and individuals' rights to be protected from discrimination. It sets out Commission's four priorities for EU citizenship for the next three years:

1) promoting EU citizenship rights and EU common values;

2) promoting and enhancing citizens' participation in the democratic life of the EU;

3) simplifying daily life for EU citizens and strengthening security; and

4) promoting equality.

The **withdrawal of the United Kingdom from the EU** continued to be a main concern of citizens. Safeguarding the status and rights derived from EU law at the date of withdrawal of EU citizens and UK nationals, and their families, is an essential objective of the ongoing negotiations with the United Kingdom. The December 2017 Joint report from the negotiators confirmed that both the EU and United Kingdom wish to guarantee in the Withdrawal Agreement that those who have exercised their right to move and reside freely in line with EU law in the host Member State on Brexit will be allowed to stay. The Commission published the draft Withdrawal Agreement on 28 February 2018.

Article 39 — Right to vote and stand as a candidate at elections to the European Parliament

Article 39 of the Charter and Article 20 (2) b TFEU guarantee the right of every EU citizen to vote in European Parliament elections in the Member State where they reside.

Application by Member States

In 2017 the Commission continued its dialogue with a number of Member States on their implementation of European electoral law (Articles 39 and 40 of the Charter).

Two Member States amended their legislation to address issues raised by the Commission.

Article 40 — Right to vote and to stand as a candidate at municipal elections

Under Article 40 of the Charter, all EU citizens have the right to vote and to stand as a candidate in municipal elections in the Member State where they reside under the same conditions as nationals of that Member State.

Article 41 — Right to good administration

Under Article 41 of the Charter, every person has the right to have their affairs handled impartially, fairly and within a reasonable timeframe by the Institutions, bodies and agencies of the EU. This also includes the right to be heard and to receive a reply.

Policy

'Revolving doors' phenomenon

The phenomenon of staff leaving the EU institutions to take up positions in the private sector, or staff joining the institutions from the private sector, often referred to as the 'revolving doors' phenomenon, may raise concerns due to the risk of conflicts of interest, thus undermining citizens' trust in the independence and objectivity of EU institutions. Therefore, being transparent on 'revolving doors' contributes to better guaranteeing the right to good administration, as enshrined in Article 41 of the Charter.

This issue was at the centre of an inquiry opened in 2014 where the EU Ombudsman made specific recommendations to the Commission aimed at strengthening its review processes for 'revolving door' cases. On the basis of the replies provided by the Commission and the publication by the Commission in December 2015 of names of senior officials who had left the Commission for new jobs, including positions in the private sector, the EU Ombudsman in September 2016 closed the inquiry, welcoming the cooperative approach taken by the Commission and making some suggestions for improvements.

In March 2017 the EU Ombudsman opened a follow-up inquiry. The new inquiry focuses on the systemic issues identified in the EU Ombudsman's previous inquiry. As a first step, the EU Ombudsman asked the Commission to provide a list of cases dealt with by the Commission during 2015 and 2016, including cases of EU officials, temporary agents and contract agents with access to sensitive information who had left the Commission to take up an occupational activity, including leave on personal grounds. The Commission assisted the EU Ombudsman's office in identifying the requested files during a series of inspection meetings held in November 2017. The inquiry is still ongoing.

Appointment of Special Advisers

In May 2016, the EU Ombudsman opened an own-initiative inquiry on the Commission's rules and practices to prevent possible conflicts of interest in the Commission's appointment of Special Advisers. The inquiry covered the scope of the examination conducted by the Commission before the appointment of Special Advisers, the assessment of conflict of interest issues during their mandate as well as public access to documents and information about the appointment procedure. In December 2016, the EU Ombudsman informed the Commission that while significant progress had been made by the Commission on certain aspects of the procedure, further improvements were needed.

The EU Ombudsman published its decision in June 2017, addressing a series of recommendations on the conflict of interest assessment; the application of mitigating measures; the duty of Special Advisers to notify changes of activities and making information available to citizens on the Internet. In its reply from November 2017, the Commission stated that it would endeavour to make further progress in line with the EU Ombudsman's recommendations.

Code of conduct of Commissioners/Role of the Ad hoc Ethical Committee

In 2016, the EU Ombudsman received complaints on the Commission's handling of issues to do with the post-mandate activities of former Commissioners, including former Commission President Barroso's appointment with

Goldman Sachs. The complaints raised issues also on the code of conduct for Commissioners and the role of the Ad Hoc Ethical Committee.

On that basis, the EU Ombudsman opened a joint inquiry to examine how the Commission had handled these cases and how the Ad Hoc Ethical Committee conducts its work. Before the EU Ombudsman drew its conclusions, the Commission, in November 2016, announced that it would propose to tighten the Code of conduct by extending the 'cooling-off' period from 18 months to two years for former Commissioners and to three years for the President of the Commission. This initiative was welcomed by the EU Ombudsman, although it noted that the Code of conduct should also be made more explicit and announced that it would also consider improvements to the role of the Ad Hoc Ethical Committee. In July 2017 the EU Ombudsman asked the Commission to reply to a series of questions on the functioning of the Ad Hoc Ethical Committee.

Following up on the announcement from November 2016, the Commission on 12 September 2017 approved in principle a new Code of conduct for Commissioners which significantly reinforces the existing Code. The new Code incorporates requests from the European Parliament, the EU Ombudsman and NGO's, reinforcing many of the provisions contained in the current Code and covering new issues.

In November 2017 the Commission replied to the EU Ombudsman's request from July 2017, explaining how the issues at stake were dealt with under the existing Code and highlighting relevant parts that had been tightened in the new Code.

On former Commission President Barroso's appointment with Goldman Sachs, the reply recalled that Commission President Juncker had decided to request the Ad Hoc Ethical Committee's opinion although the 'cooling-off' period had already expired. On the Commission's handling of former Commissioners' post-mandate activities and the functioning of the Ad Hoc Ethical Committee, the Commission explained how it had sought to ensure that former Commissioners' activities abide by the rules enshrined in Article 245 TFEU and underlined the parts that had been tightened up in the new Code of Conduct.

Case law

In case *E-Control v ACER*[299], the applicant had sought the annulment of a decision of the Agency for the Cooperation of Energy Regulators Board of Appeal by arguing that the Board had infringed the obligation to state adequate reasons arising under Article 41(2) of the Charter. The Court addressed the right to a good administration and concluded that the reasons stated in the contested decision were sufficient.

On 9 March 2017 the Court delivered a judgment in *Doux SA* [300] on the question whether the requests for counter-analyses which are provided for by Regulation No 543/2008, on marketing standards for poultry meat, in respect of the results of slaughterhouse checks can be extended to checks carried out at the stage of marketing of export products, under Article 41 of the Charter. The Court confirmed its previous case law[301] as it found that this provision,

[299] Judgment of 29 June in case T-63/16, *Energie-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control) v Agency for the Cooperation of Energy Regulators*.
[300] Judgment of 9 March 2017 in case C-141/15, *Doux SA, in administration v Établissement national des produits de l'agriculture et de la mer (FranceAgriMer).*
[301] Judgment of 17 December 2015 in case C‑419/14, *WebMindLicenses kft v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám*, paragraph 83.

which is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the EU, was not relevant to the case in the main proceedings.

Article 42 — Right of access to documents

Article 42 of the Charter guarantees that all EU citizens, 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 institutions, bodies, offices and agencies. This right is subject to certain exceptions[302]. In particular, the institutions may refuse access where disclosure would undermine the protection of the public interest, or the right to privacy and integrity of the individual.

Policy

In 2017, the Commission registered more than 6 255 initial requests for access to documents. Full or partial access was granted in more than 82 % of cases. The Commission received around 300 applications asking for a review of the initial decision. This independent review led to wider access being granted in almost 50 % of cases.

In 2017, the Commission also honoured its commitment to ensure transparency in the Brexit negotiations. As from May 2017, the Commission's Taskforce on Article 50 negotiations with the United Kingdom has been publishing, on a regular basis, all agendas for and reports of negotiating rounds, EU position papers, joint reports, and technical notes on the EU and the UK positions.

The Commission also continued to publish information about lobbyists who meet its political leaders and senior officials, also applying the rule ''not on the Transparency Register, no meeting.'' By the end of December 2017, information had been published about more than 15 000 bilateral meetings between Commissioners, Cabinet members and Directors-General, and lobbyists. This allowed citizens and stakeholders to know who is meeting the Commission and on which subjects.

Legislation

The proposal of 6 December 2017 for a **Council Regulation on the establishment of the European Monetary Fund**[303] provides a reference to the right of access to documents (Article 42) in line with the rules enshrined in Regulation (EC) No 1049/2011. The European Monetary Fund should within a short period after the entry into force of the Regulation adopt internal measures to this end.

Under the Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) 2015/1017 on the extension of the duration of the European Fund for Strategic Investments as well as introducing technical enhancements for that Fund and the European Investment Advisory Hub[304] ('EFSI 2.0'), the detailed minutes of the Steering Board will be made publicly available. The scoreboard, a tool for the Investment Committee in making its investment decisions, will from now on be made publicly available as soon as a project has been signed, excluding commercially sensitive information. Its publication will provide additional transparency in the selection of the EFSI projects against measurable criteria. Moreover, there will be more transparency on the

[302] Under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.
[303] COM(2017) 827final.
[304] COM(2016) 0597 — C8-0375/2016 - 2016/0276(COD).

financing decisions of the Investment Committee, who will be required to explain them and state the reasons for granting support under the EU guarantee for each operation.

Case law

In *Saint-Gobain Glass Deutschland GmbH v Commission*[305], the CJEU clarified the strict interpretation of the term 'decision-making process' in Article 4(3) of Regulation No 1049/2001 in the context of environmental information falling under the Aarhus Convention. The case concerned the right of access to documents held by EU institutions on the emissions trading system. The complainant had requested the disclosure of the files, while the Commission had refused access on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001 arguing that disclosure of the requested information would seriously undermine its decision-making process. The Court held that a strict interpretation of the first subparagraph of Article 4(3) of Regulation No 1049/2001 was compelling, as the respective documents contained environmental information. The Court based its decision on Regulation No 1367/2006 applying the provisions of the Aarhus Convention to the institutions and bodies of the EU.

Article 43 — EU Ombudsman

Article 43 of the Charter provides that all EU citizens and any natural or legal person residing or having its registered office in a Member State has the right to refer to the EU Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies, with the exception of the Court acting in its judicial role.

Every year, the EU Ombudsman presents an annual report on its activities before the European Parliament. The Committee on Petitions publishes an own-initiative report on the annual report, together with a motion for a resolution subject to a debate and vote in a plenary session, which provides an overview of the petitions received during the year and of its relations with other institutions[306].

In 2017, the EU Ombudsman received 15 872 citizens' complaints. This includes individuals who complained directly to the EU Ombudsman (2 216 complaints), those who received a reply to their request for information (1 135), and those who obtained advice through the interactive guide on the EU Ombudsman's website (12 521).

About 624 complaints fell within the competence of a member of the European Network of Ombudsmen, of which 566 fell within the competence of a national/regional ombudsman or similar body and 58 were referred to the European Parliament's Committee on Petitions.

Article 44 — Right to petition

Article 44 of the Charter provides that all EU citizens, as well as any natural or legal person residing or having its registered office in a Member State, have the right to petition the European Parliament on matters which come within the EU's activity and which affect the petitioner directly.

Petitions addressed to the European Parliament are considered by the European Parliament's Committee on Petitions. Each year, the Committee draws up a report on its activities which provide an overview of the petitions

[305] Judgment of 13 July 2017 in case C-60/15 P, *Saint-Gobain Glass Deutschland GmbH v Commission*.
[306] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2017-0328 %2b0 %2bDOC%2bPDF%2bV0 %2f%2fEN

received during the year under consideration and of relations with other institutions. This report is then debated during a plenary sitting of the Parliament which adopts a resolution[307].

Petitions can be addressed to the Parliament either in writing or electronically, using the Parliament's web portal[308] which has been established to make easier the public's interaction with the work of the Committee on Petitions. Petitioners have the right to attend the Committee meeting when their petition is being debated. Such meetings provide the Committee and representatives of the Commission, who are also invited to attend, the opportunity to hear directly from citizens who consider that their rights have not been respected.

Under the European Parliament's rules of procedure, the Committee on Petitions may request assistance from the Commission in the form of information on the application of, or compliance with, Union law and information or documents relevant to the petition.

In 2017 the Commission received a total of 411 petitions from the Committee on Petitions, 61 of which concerned fundamental rights. The Commission's Directorate-General for Justice was responsible for addressing the petitioners concerns. Recurring fundamental rights issues raised by citizens in 2017 included freedom of movement and of residence (Article 45); right to an effective remedy and fair trial, functioning of National judicial systems, EU Arrest Warrant (Article47); and non-discrimination (Article 21).

European citizens' initiatives

Another instrument in the hands of EU citizens is the European Citizens' Initiative. The European Citizens' Initiative is a right enshrined in the TEU and allows citizens to participate directly in the development of EU policies by calling on the Commission, under its powers, to propose legislation on matters where the EU has competence to legislate for implementing the EU Treaties. A citizens' initiative has to be backed by at least one million EU citizens, from at least seven out of the EU-28. A minimum number of signatories are required in each of those seven Member States. The organisers must collect all signatures within one year from the date of the registration of the citizens' initiative.

In 2017, the Commission registered eight initiatives (an increase from three in 2016)[309]:

- STOP TTIP
- Stop Extremism
- Let us reduce the wage and economic differences that tear the EU apart!
- Retaining European Citizenship
- Minority SafePack — one million signatures for diversity in Europe
- EU Citizenship for Europeans: United in Diversity in Spite of ius soli and ius sanguinis
- Ban glyphosate and protect people and the environment from toxic pesticides
- European Free Movement Instrument.

[307] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2017-0387 %2b0 %2bDOC%2bPDF%2bV0 %2f%2fEN

[308] https://petiport.secure.europarl.europa.eu/petitions/en/home

[309] Details on the initiatives are available on the ECI website: http://ec.europa.eu/citizens-initiative/public/welcome.

The Commission Decision of 2014 refusing the registration of the proposed initiative entitled 'Stop TTIP' was annulled by the judgment of the General Court in *Efler*[310] . Following the judgment, a new Commission Decision on the registration of the proposed citizens' initiative was adopted on 4 July 2017[311] .

On 13 September 2017, the Commission adopted **a proposal for a new Regulation of the European Parliament and of the Council on the European Citizens' Initiative**[312], with the policy objectives of making this instrument more accessible and citizen-friendly so that it reaches its full potential as an instrument for citizen participation at European level and helps bring the EU closer to its citizens.

Article 45 — Freedom of movement and of residence

Article 45 of the Charter guarantees the right of all EU citizens to move and reside freely, while respecting certain conditions, within the territory of the Member States. This fundamental right is also included in the TFEU. Freedom of movement and residence may be granted, in line with the Treaties, to nationals of non-EU countries legally resident in the territory of a Member State.

Legislation

The protection of fundamental rights, including the right to free movement, was taken into account in two proposals of 25 January 2017 and 2 May 2017 for Council Implementing Decisions setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk[313] .

Case law

The CJEU clarified its *Zambrano* jurisprudence in *Chavez Vilez*, a case on the right of a non-EU country national, as a parent of a minor child who is an EU citizen, to rely on a derived right of residence in the EU[314].

Application by Member States

The Commission continued its dialogue with a number of Member States on their transposition and implementation of the EU body of legislation on the free movement of EU citizens and their family members, including substantial and procedural safeguards (Articles 21, 41 and 45 of the Charter).

The Commission was assisted in its enforcement dialogue on obstacles to free movement as regards registration requirements and procedures for EU citizens and their family members by the European Parliament's Petitions committee, which undertook a fact-finding visit, thereby encouraging one Member State to re-examine its legislation and practices. The Commission continues its dialogue in this particular case to ensure the rights provided by Article 45 in particular are respected.

The Commission held a dialogue with the authorities of one Member State about a refusal to recognise voluntary name change that took place in another Member State. The recent clarifications by the Court[315] raised concerns

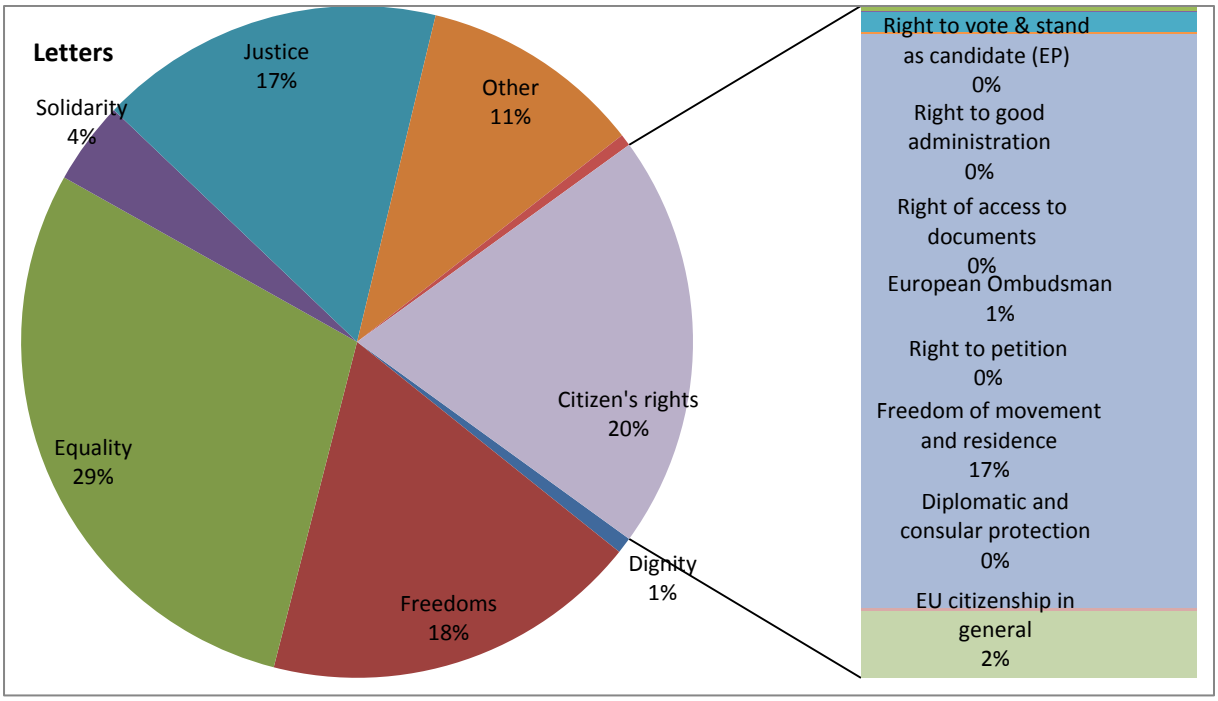
[310] Judgment of 10 May 2017 in case T-754/14 *Michael Efler and Others v European Commission.*
[311] Commission decision C(2017)4725 final on the registration of the initiative — also available in the ECI register website: http://ec.europa.eu/citizens-initiative/public/initiatives/open/details/2017/000008
[312] COM(2017) 482 final.
[313] COM(2017) 40 final and COM(2017) 226 final.
[314] See Article 7.

about the compatibility of certain national legislative provisions with the EU law. In 2017 the Member State amended its legislation on personal names, thus addressing the Commission concerns.

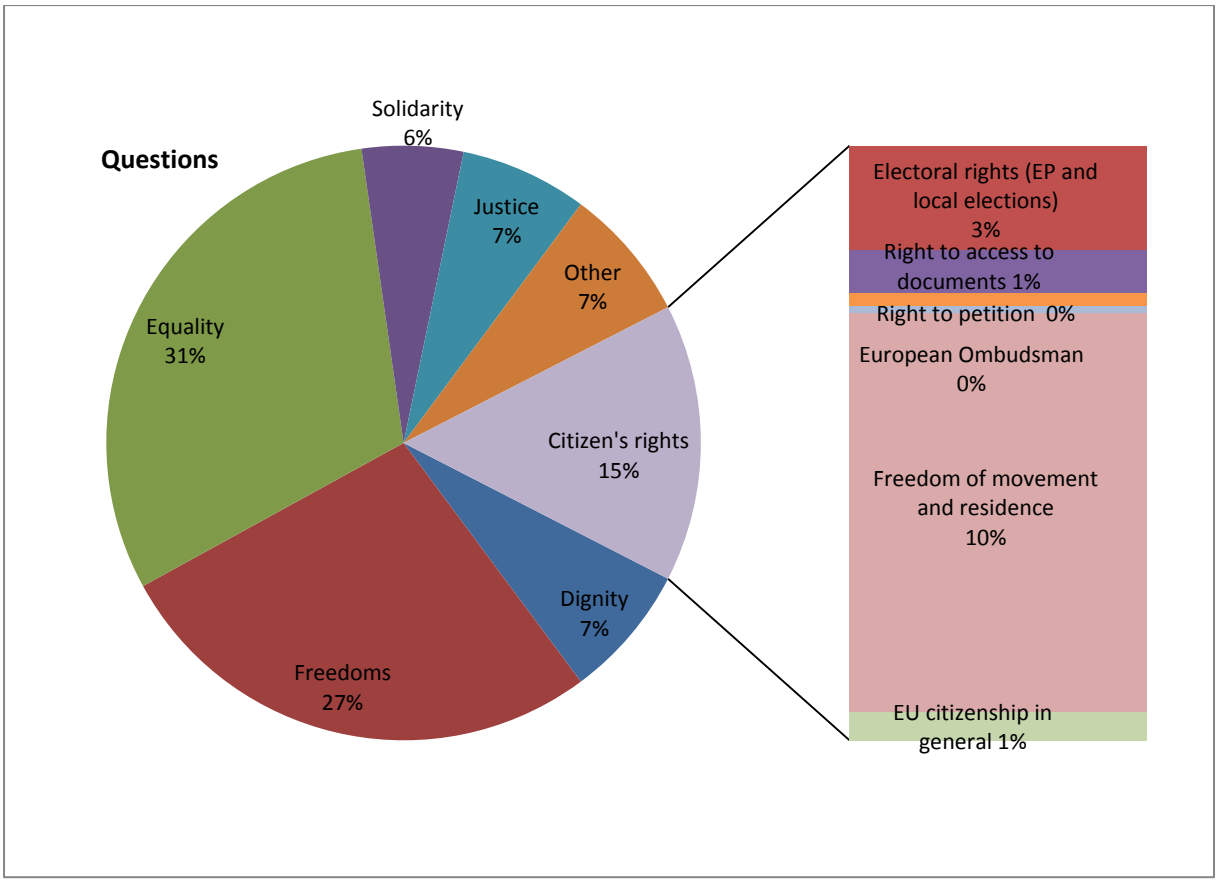
Article 46 — Diplomatic and consular protection

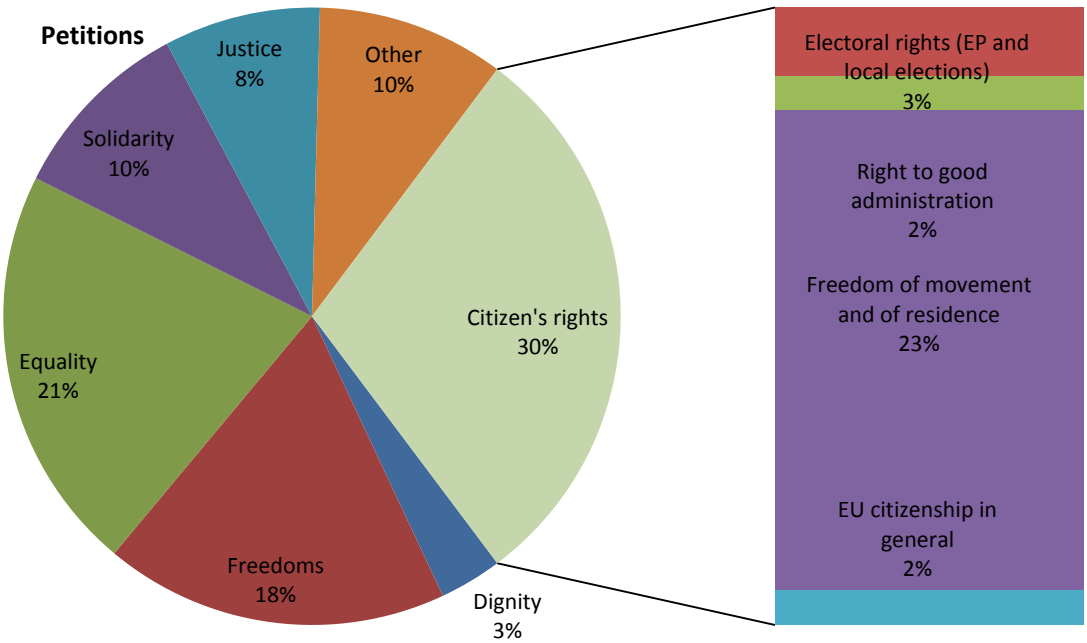
Article 46 of the Charter guarantees the right of EU citizens to seek diplomatic or consular protection from embassies or consulates of other Member States in third countries under the same conditions as nationals, when their own Member State of nationality is not represented. EU citizens must be able to rely on this right when travelling abroad.

With regard to Article 46 on consular protection, the Commission has assisted throughout the year Member States in their preparations for turning the Consular Protection Directive 2015/637 (due by 1 May 2018), which extends and clarifies the scope of consular protection for unrepresented EU citizens in non-EU countries. The Commission has equally been conducting awareness-raising activities during 2017 in relation to consular protection. Further activities are planned for 2018.



[315] Judgment of 2 June 2016 in case C-438/14, *Nabiel Peter Bogendorff von Wolffersdorff v Standesamt der Stadt Karlsruhe and Zentraler Juristischer Dienst der Stadt Karlsruhe* and judgment of 8 June 2017 in Case C-541/15, *Mircea Florian Freitag*.


Questions
Solidarity 6%
Justice 7%
Other 7%
Equality 31%
Citizen's rights 15%
Dignity 7%
Freedoms 27%
Electoral rights (EP and local elections) 3%
Right to access to documents 1%
Right to petition 0%
European Ombudsman 0%
Freedom of movement and residence 10%
EU citizenship in general 1%


Petitions
Justice 8%
Other 10%
Solidarity 10%
Citizen's rights 30%
Equality 21%
Freedoms 18%
Dignity 3%
Electoral rights (EP and local elections) 3%
Right to good administration 2%
Freedom of movement and of residence 23%
EU citizenship in general 2%

Title VI

Justice

Improving the quality, independence and efficiency of national justice systems are among the **key priorities of the European Semester** — the EU annual cycle of economic policy coordination.

Initiatives in **supporting judicial training** also contributed to the promotion of the right to an effective remedy for the enjoyment of rights derived from EU law, including fundamental rights enshrined in the Charter. The **2017 call for proposals for action grants in European judicial training** specifically mentioned fundamental rights as one of the priority topics on which the training projects should focus.

The Commission adopted, for the first time, a **reasoned proposal under Article 7(1) TEU** on a Member State, inviting the Council to determine the existence of a **clear risk of a serious breach of the rule of law** in particular in relation to the principle of **judicial independence in Poland**[316].

Various legislative proposals adopted in the course of 2017 directly promote the right to an effective remedy. The **Directive on combating terrorism** contains several provisions on **support, assistance and protection of victims of terrorism**. The Commission has been assisting the Member States in ensuring full and effective transposition of the Directive in line with the requirements of the Charter. The **Directive on tax dispute resolution mechanisms** gives taxpayers access to their national competent court at the dispute resolution stage. The Commission also provided guidance on the respect of the **right to access to justice** when implementing **EU rules on environmental matters**.

The **European Public Prosecutor's Office** was established by the Council Regulation 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office. The European Public Prosecutor's Office activities must be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the rights of defence.

Article 47 — Right to an effective remedy and to a fair trial

Article 47 of the Charter provides that people have the right to an effective remedy before a court if a right granted under EU rules is violated. This '**right to an effective remedy**' provides individuals with a legal solution decided by a court if an authority applies EU law incorrectly. It guarantees judicial protection against any such infringement and therefore plays a key role in ensuring the effectiveness of all EU provisions, ranging from social policy to asylum legislation, competition, agriculture, etc.

A closely related provision, also enshrined by Article 47, is that **legal aid** is to be made available to those who lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice. This means that the right to effective access to justice cannot be hampered by the fact that a person cannot afford to appoint a lawyer.

Article 47 also states that, in all judicial proceedings which relate to the interpretation or the validity of EU rules, everyone should have the right to a **fair trial**. This encompasses:

[316] http://europa.eu/rapid/press-release_IP-17-5367_en.htm

- the right to a fair and public hearing;
- the right to have one's case adjudicated within a reasonable time;
- the principles of independence and impartiality of the tribunal; and
- the right to be advised, defended and represented.

Legislation and policy

An **effective justice system** is essential for guaranteeing the respect of the right to an effective remedy and to a fair trial, as well as all other rights enshrined in the Charter. Every year, the Commission publishes its **annual EU justice scoreboard**, to provide comparable data on the independence, quality, and efficiency of national justice systems and recommendations paving the way for a more investment, business and citizen-friendly environment[317]. Improving the quality, independence and efficiency of national justice systems are also among the **key priorities of the European Semester** — the EU annual cycle of economic policy coordination, as expressed in the Communication from the Commission on the Annual Growth Survey for 2018[318].

The Commission closely follows justice reforms in Member States and the Council adopts each year **country-specific recommendations** in this area on the basis of Commission proposals. In 2017, Croatia, Italy, Cyprus, Slovakia and Portugal received a Country Specific Recommendation to improve their justice system[319]. The Commission has also closely monitored the efforts in this area in other Member States such as Belgium, Spain, Latvia, Malta, Poland, Romania and Slovenia.

Various legislative proposals were adopted in the course of 2017 which directly promote the right to an effective remedy. In October 2017, the **Directive on tax dispute resolution mechanisms**[320] was adopted, which seeks to promote the right to an effective remedy by giving taxpayers access to their national competent court at the dispute resolution stage in cases where access is denied or if the Member State fails to establish an advisory commission, while also taking into account the requirements of the freedom to conduct a business[321].

The new **Directive on combating terrorism**[322] was also adopted in March 2017. The Directive contains several provisions on **support, assistance and protection of victims of terrorism** which build upon the Victims' Rights Directive[323] to respond more directly to the specific needs of victims of terrorism. These provisions increase access to justice for victims of terrorism in particular by **strengthening access to legal aid** (Member States will have to take into account the gravity and circumstances of the offence when deciding on legal aid to victims of terrorism, if such approach is not contrary to their legal systems); and **facilitating access to compensation** (victims' support services will be providing for assistance in claiming compensation).

[317] https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/eu-justice-scoreboard_en
[318] https://ec.europa.eu/info/publications/2018-european-semester-annual-growth-survey_en
[319] Justice related CSR have been adopted for 5 Member States HR, IT, CY, SK and PT: https://ec.europa.eu/info/publications/2017-european-semester-country-specific-recommendations-commission-recommendations_en
[320] Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms.
[321] See Article 16.
[322] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.
[323] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

The right to an effective remedy, and in particular the right to access to a court, is also at the core of the **Commission Notice on access to justice in environmental matters**[324], which was adopted in April 2017. Building on the standards laid down in Article 47 of the Charter, the Notice provides extensive guidance on case law of the Court relevant to legal challenges brought by individuals and environmental NGOs against decisions, acts or omissions of public authorities on EU environmental law, including for legal aid.

Initiatives in **supporting judicial training** also contributed to the promotion of the right to an effective remedy for the enjoyment of rights derived from EU law, including fundamental rights enshrined in the Charter. The **2017 report on European judicial training**, based on the results of a questionnaire sent in 2017 to Member States' authorities, European networks of legal professionals and their members and the main training providers at European level on training of legal practitioners, showed that 5.8 % of the training activities followed by legal practitioners on EU law or on the law of another Member States in 2016 dealt mainly or exclusively with fundamental rights[325].

The **2017 call for proposals for action grants in European judicial training** specifically mentioned fundamental rights as one of the priority topics on which the training projects should focus. More specifically, the call included among its priorities the setting up or expanding of a network of contact points of training providers (or similar cooperation mechanisms) for lawyers, notaries, court staff/bailiffs, prison and probation staff with the aim of exchanging information also on implementation of sanctions in respect of fundamental rights and countering radicalisation.

Expected results of the call are an increased knowledge of fundamental rights instruments among legal practitioners, and an increased awareness on the added value and scope of application of the Charter among judges, public prosecutors, lawyers and practitioners to strengthen fundamental rights protection across the EU.

In the same vein, a preparatory action was adopted in 2017 by the European Parliament under the EU budget 2018, to **explore possibilities for financial support for awareness rising and legal assistance to individuals and civil society organisations litigating democracy, rule of law and fundamental rights violations** based on the outcome of a requested feasibility study[326].

Application by Member States

In 2017 the Commission initiated infringement proceedings against Poland alleging the violation of the principle of **judicial independence** as enshrined in Article 47 of the Charter read in conjunction with Article 19(1) TEU on account of national provisions on the **organisation and functioning of ordinary courts** providing. In particular, for a wide discretionary power assigned to the Minister of Justice to prolong the mandate of judges which have reached retirement age.

Another concern raised by the Commission in this context related to alleged discrimination on the basis of gender[327] due to the introduction of a different retirement age for female judges (60 years) and male judges (65 years), which the Commission found to be contrary to Article 157 TFEU and to relevant provisions of the Directive on gender

[324] Commission Communication of 28 April 2017, *Commission Notice on Access to Justice in Environmental Matters*.
[325] https://ec.europa.eu/info/sites/info/files/report_europeanjudicialtraining_2016.pdf
[326] For more information, see http://ec.europa.eu/budget/biblio/documents/2018/2018_en.cfm
[327] See Article 23.

equality in employment[328]. Having found the explanations provided by the national authorities insufficient to address its concerns, the Commission decided in December 2017 to refer the case to the Court[329].

The Commission also adopted, for the first time, a **reasoned proposal in accordance with Article 7(1) TEU** on Poland, inviting the Council to determine the existence of a **clear risk of a serious breach of the rule of law**. [330] In this proposal the Commission set out the concerns on the basis of which it concluded that there is a systemic threat to the rule of law to be addressed as a matter of urgency, which relate specifically to the lack of an independent and legitimate constitutional review and to judicial independence, recalling the several warnings and recommendations[331] taken under the rule of law framework[332].

Case law

The issue of the **legal standing of a NGOs against a national administrative decision in environmental matters** was once again brought before the CJEU in the case *Protect Natur-,Arten- und Landschaftsschutz Umweltorganisation*[333].

Building on previous jurisprudence, the Court found that restrictions in Austrian law on an environmental NGO's entitlement to bring a legal challenge against an administrative decision on a hydro-electric project were not compatible with EU environmental law provisions, the Aarhus Convention[334] and Article 47 of the Charter.

The Court also had the opportunity to reiterate its interpretation of the requirements provided for in Article 263 TFEU for bringing an action before the EU Courts, in a case concerning an **action for annulment brought against a Commission Decision authorising aid in support of a nuclear power station**, according to which, while the mere fact that the applicant was in a competitive relationship with the addressee of the contested measure cannot suffice for that undertaking to be regarded as being individually concerned by that measure for the purpose of bringing an action under Article 263 TFEU, **it is for the Member State concerned to establish a system of legal remedies and procedures which ensure respect for the fundamental right to an effective remedy**, in line with Article 19(1) TEU read in conjunction with Article 47 of the Charter[335].

The Court also delivered two judgments on the right to an effective remedy in **asylum matters**. The Court clarified in *Shiri*[336] that the right to effective remedy in 'Dublin' cases extends to **invoking by the applicant the shift of responsibility after the expiry of the deadline for transfer**.

According to the Court, relevant provisions of EU law[337], read in light of Article 47 of the Charter, must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available which enables him or her to rely on the expiry of the six-month period defined by EU law that occurred after the transfer decision was adopted.

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[328] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006. on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
[329] http://europa.eu/rapid/press-release_IP-17-2205_en.htm
[330] http://europa.eu/rapid/press-release_IP-17-5367_en.htm
[331] The Commission adopted four subsequent Recommendations regarding the Rule of Law in Poland, on 27 July 2016, 21 December 2016, 27 July 2017 and 20 December 2017.
[332] Communication 'A new EU Framework to Strengthen the Rule of Law', COM(2014) 158 final.
[333] C-664/15, *Protect Natur-,Arten- und Landschaftsschutz Umweltorganisation* v *Bezirkshauptmannschaft Gmünd,* see further under Article 37.
[334] The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998.
[335] Order of 10 October 2017 in case C-640/16 P, *Greenpeace Energy eG v Commission*.
[336] Judgment of 25 October 2017 in case C-201/16, *Majid auch Madzhdi Shiri v Bundesamt für Fremdenwesen und Asyl.*
[337] In particular Articles 27(1), 29(1) and (2) of the Dublin III Regulation.

The Court also clarified, in its ruling in *Sacko*[338], that subject to certain conditions, **a national court can decide appeals deemed to be manifestly unfounded without the need for a further hearing of the applicant**, in particular where it considers that the case does not raise any questions of fact or law that cannot be adequately resolved by referring to the file and the written submissions of the parties.

This is, according to the Court, fully in line with the requirements of Article 47 of the Charter, which does not impose an absolute obligation to hold a hearing in all proceedings, as well as with EU rules on asylum procedures[339], from which it can be derived that the obligation to grant the applicant a hearing has to be assessed in the light of the obligation to carry out a full and *ex nunc* examination of the appeal. On the contrary, the hearing of the applicant may never be dispensed with in order to speed the procedure, where the court considers that it is necessary in order to carry out the full and *ex nunc* examination required.

The **right to access to a court and the scope of the judicial review** were the object of the ruling issued by the CJEU in the *Berlioz Investment Fund case*[340] on a preliminary reference on **whether the courts of one Member State may review the legality of requests for tax information sent by another Member State**, having regard to EU rules on administrative cooperation in the field of taxation[341] read in light with Article 47 of the Charter.

The Court answered in the affirmative and established that a relevant person on whom a pecuniary penalty has been imposed for failure to comply with an administrative decision directing that person to provide information in the context of an exchange between national tax administrations pursuant to EU rules is entitled to challenge the legality of that decision. In this context, the national court must not only have jurisdiction to vary the penalty imposed but also to review the legality of that information order. The review must be limited to checking whether the information sought is not manifestly devoid of any foreseeable relevance to the tax investigation concerned. For that purpose, the court must have access to the request for information addressed to the requested Member State by the requesting Member State, and the relevant person must be in possession of the information sufficient to be given a full hearing of their case.

The right to access to a court and to a judicial appeal in case of a visa refusal were the object of a ruling delivered by the CJEU in *El Hassani*[342]. The Visa Code Regulation sets out the procedures and conditions for issuing visas for the purpose of short stays and airport transit. It establishes the obligation for Member States to provide for a right of appeal against a visa refusal/annulment/revocation. In addition, the EU Treaty obliges Member States to provide remedies sufficient to ensure an effective legal protection in the fields covered by EU law and the Charter grants individuals the right to an effective remedy before a tribunal, when rights and freedoms under Union law are violated.

In the *El Hassani case*, the Court concluded that Article 32(3) of the Visa Code, read in the light of Article 47 of the Charter, must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in line

[338] Judgment of 26 July 2017 in case C-348/16, *Moussa Sacko v Commissione Territoriale per il riconoscimento della Protezione internazionale di Milano*.
[339] Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
[340] Judgment of 16 May 2017 in case C-682/15, *Berlioz Investment Fund SA v Directeur de l'administration des contributions directes*.
[341] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.
[342] Judgment of 13 December 2017 in Case *C-403/16 Soufiane El Hassani v Minister Spraw Zagranicznych.*

with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.

In *King*[343], the Court explored the requirements of Article 47 of the Charter in relation to **remedies available to a worker to enforce his or her right to take paid leave under EU law**[344]. The Court held that the right to an effective remedy would not be guaranteed if, in a situation in which the employer grants only unpaid leave to the worker, the worker would not be able to rely, before the courts, on the right to take paid leave, but would be forced to take leave without pay and then bring an action to claim payment for it.

The Court further held that EU law precludes national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his or her employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods because the employer refused to pay that leave.

The Court issued another judgment whereby it **annulled a Council decision on restrictive measures under the common foreign and security policy**[345]. The case concerned an action brought against the decision of 2014 by which the Council decided to maintain Ms Aisha Muammer Mohamed El-Qaddafi, a Libyan national daughter of former Libyan leader Muammar Qadhafi, in the list of individuals targeted by restrictive measures taken against Libya and against individuals and entities involved in serious human rights abuses in Libya, first adopted in 2011.

The Court found that the contested measures were to be considered invalid, as the acts mentioned no information, and even less individual, specific and concrete reasons, that would explain why the Council decided to retain the applicant's name on the lists at issue in June 2014, apart from the reasons that were put forward to justify the entry of her name on the relevant lists in February 2011.

The lack of reasons were, according to the Court, even more obvious given that it is common ground that the context in which the contested measures were adopted differed considerably from that when the original restrictive measures were first adopted in 2011.

Article 48 — Presumption of innocence and right of defence

Article 48 of the Charter provides that everyone who has been charged is to be presumed innocent until proven guilty according to the law. It further states that respect for such persons' right to defence is to be guaranteed.

Legislation

2017 was marked by crucial progress in the establishment of the **European Public Prosecutor's Office**, thanks to the entry into force of Council Regulation 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office. Following a build-up phase of three years, the European Public Prosecutor's Office is envisaged to take up its investigative and prosecutorial functions by the end of 2020.

Pursuant to Article 41 of the Regulation, the European Public Prosecutor's Office activities must be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the rights of defence.

[343] C-214/16, *King*, see Article 31.
[344] Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.
[345] Judgment of 28 March 2017 in Case T 681/14, *Aisha Muammer Mohamed El-Qaddafi v Council of the European Union*.

The Commission has put in place a regular and constructive dialogue with the relevant European bar associations to ensure that defence practitioners are fully aware of the Regulation's requirements.

Application by Member States

The EU has set an ambitious legislative programme on **procedural rights for suspects and accused persons in criminal proceedings** which directly contribute to the right to a fair trial, including notably the rights enshrined in Article 48 of the Charter. Since 2009 considerable progress has been made with the adoption of six Directives on:

1) the right to interpretation and translation (2010)[346];

2) the right to information (2012)[347];

3) the right of access to a lawyer (2013)[348];

4) the presumption of innocence and the right to be present at the trial[349];

5) the procedural safeguards for children[350] and

6) legal aid[351].

Recommendations were also issued by the Commission on safeguards for vulnerable people[352] and the right to legal aid for suspects or accused people in criminal proceedings[353].

In 2017 the Commission launched **infringement proceedings** against nine Member States for not communicating their national measures turning the **Directive on the right of access to a lawyer**, and started in parallel its assessment of the completeness and correctness of the other Member States' transposition of the Directive. In addition, the Commission organised several expert meetings in order to assist Member States with the turning the **Directives on the presumption of innocence, on procedural safeguards for children and on legal aid** which will enter into force in 2018 and 2019 respectively into national law.

Case law

The judgment in *Tranca and others*[354] concerned the interpretation of the requirements of the **Directive on the right to information in criminal proceedings** and clarification of the consequences of the *Covaci* judgment[355] in cases **where the non-resident accused person has no fixed place of residence**. The CJEU ruled that the relevant

[346] Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, to be transposed by 27 October 2013.
[347] Directive 2012/13/EU on the right to information in criminal proceedings, to be transposed by 2 June 2014.
[348] Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, to be transposed by 27 November 2016.
[349] Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and the right to be present at the trial in criminal proceedings (to be transposed by 1 April 2018).
[350] Directive (EU) 2016/800 on procedural safeguards for children who are suspects and accused in criminal proceedings (to be transposed by 11 June 2019).
[351] Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (to be transposed by 25 May 2019).
[352] OJ C 378, 24.12.2013, p. 8.
[353] OJ C 378, 24.12.2013, p. 11.
[354] Judgment of 22 March 2017 in joined cases C-124/16, *Criminal proceedings against Ianos Tranca and Others*, C-188/16, *Reiter* and C-213/16, *Opria.*
[355] Judgment of 15 October 2015 in case C-216/14, *Criminal proceedings against Gavril Covaci*.

provisions of the Directive[356] allow, under certain conditions, that the Member State's rules require in some circumstances the non-resident accused person to appoint an agent in criminal proceedings.

In the case *Sleutjes*[357], the Court ruled that Article 3 of the **Directive on the right to interpretation and translation in criminal proceedings** must be interpreted as meaning that an **order provided for in national law for imposing sanctions in relation to minor offences** and delivered by a judge following a simplified unilateral procedure, constitutes a 'document which is essential', within the meaning of that provision. Therefore a written translation must be provided to suspected or accused people who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus safeguarding the fairness of the proceedings.

In the case *Zdziaszek*[358], concerning the interpretation of relevant provisions of the **European Arrest Warrant**[359], the Court ruled that, while **where the person concerned had not appeared in person** the executing judicial authority may refuse to execute the European Arrest Warrant, EU rules, as amended, do not prevent that authority from **taking account of all the circumstances characterising the case brought before it in order to ensure that the rights of the defence of the person concerned are respected** during the relevant proceeding or proceedings.

The Court also clarified that the **concept of 'trial resulting in the decision'** object of the procedure must be interpreted as referring not only to the proceedings which gave rise to the decision on appeal, where that decision, after a fresh examination of the case on the merits, finally determined the guilt of the person concerned, but also to subsequent proceedings, at the end of which the decision that finally amended the level of the initial sentence was handed down, inasmuch as the authority that adopted the latter decision enjoyed a certain discretion in that regard.

Article 49 — Principles of legality and proportionality of criminal offences and penalties

Article 49 of the Charter provides that no one is found guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor must a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

Some fundamental rights are guaranteed in absolute terms and cannot be subject to any restrictions. Interferences with other rights may be justified if, subject to the principle of proportionality, they are necessary and genuinely serve to meet objectives of general interest recognised by the EU.

Legislation

The **Directive on combating terrorism**[360] was adopted in March 2017. The Commission has been **assisting the Member States in ensuring full and effective transposition of the Directive in line with the requirements of the Charter**, and notably the principle of legality and proportionality of criminal offences and penalties enshrined in

[356] Article 2, Article 3(1)(c), and Article 6(1) and (3) thereof.
[357] Judgment of 12 October 2017 in case C-278/16, *Criminal proceedings against Franck Sleutjes.*
[358] Judgment of 10 August 2017 in case C-271/17 PPU, *Openbaar Ministerie v Slawomir Andrzej Zdziaszek.*
[359] Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.
[360] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

Article 49 of the Charter. To that end, the Commission has organised various transposition workshops shortly after the adoption of the Directive, bringing together Member States and representatives from civil society to discuss best practices and learn from each other's experiences. The Commission also continues to engage with civil society to better understand their concerns as to developments in the field of counter-terrorism that may negatively impact fundamental rights. All of this will enable the Commission to submit an evaluation report to the European Parliament and to the Council, assessing the added value of the Directive with regard to combating terrorism and examining the impact of the Directive on fundamental rights and freedoms, including non-discrimination, the rule of law, and the level of protection and assistance provided to victims of terrorism[361].

Case law

The principle of legality of criminal offences and penalties was the object of the CJEU ruling in *M.A.S. and M.B*[362]. The case concerned the interpretation of the **obligation to set aside provisions of national law laying down limitation periods liable to prevent the prosecution of infringements relating to VAT** and thereby the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud, liable to have an adverse effect on the financial interests of the EU, as derived from previous case law of the Court in *Taricco*[363].

The Court clarified that the obligation to ensure the effective collection of the EU's resources, following from Article 325 TFEU, should not be applied as to run counter to the principle that offences and penalties must be defined by law **and that of non-retroactivity of criminal law**. Consequently, if a national court, in proceedings concerning persons accused of committing offences relating to VAT, considers that the obligation to apply the principles stated in the *Taricco* judgment conflicts with one of these principles, it is not required to comply with that obligation, even if compliance would allow a national situation incompatible with EU law to be remedied.

The Court also ruled in *Vaditrans*[364] that an implementation of EU rules on the harmonisation of certain social legislation relating to road transport[365] leading to a **penalty provided for in national law imposed on lorry drivers who take their compulsory weekly rest period in their vehicle** and not elsewhere, **even in the absence of express EU rules to that effect, may not be regarded as incompatible with the principle of legality**.

According to the Court, the legality of such a sanction rests in the prohibition on taking regular weekly rest periods in a vehicle contained in relevant EU provisions, which, while not imposing themselves any penalty, require Member States to provide for penalties for infringement of that obligation and to take all necessary steps to ensure that those penalties are applied, recognising them a certain discretion on the nature of the applicable penalties.

Article 50 — Right not to be tried or punished twice in criminal proceedings for the same criminal offence

The *ne bis in idem* principle is one of the cornerstones of criminal law and is based on the principle that no-one can be held liable to be tried or punished again in criminal proceedings for an offence for which he or she has already

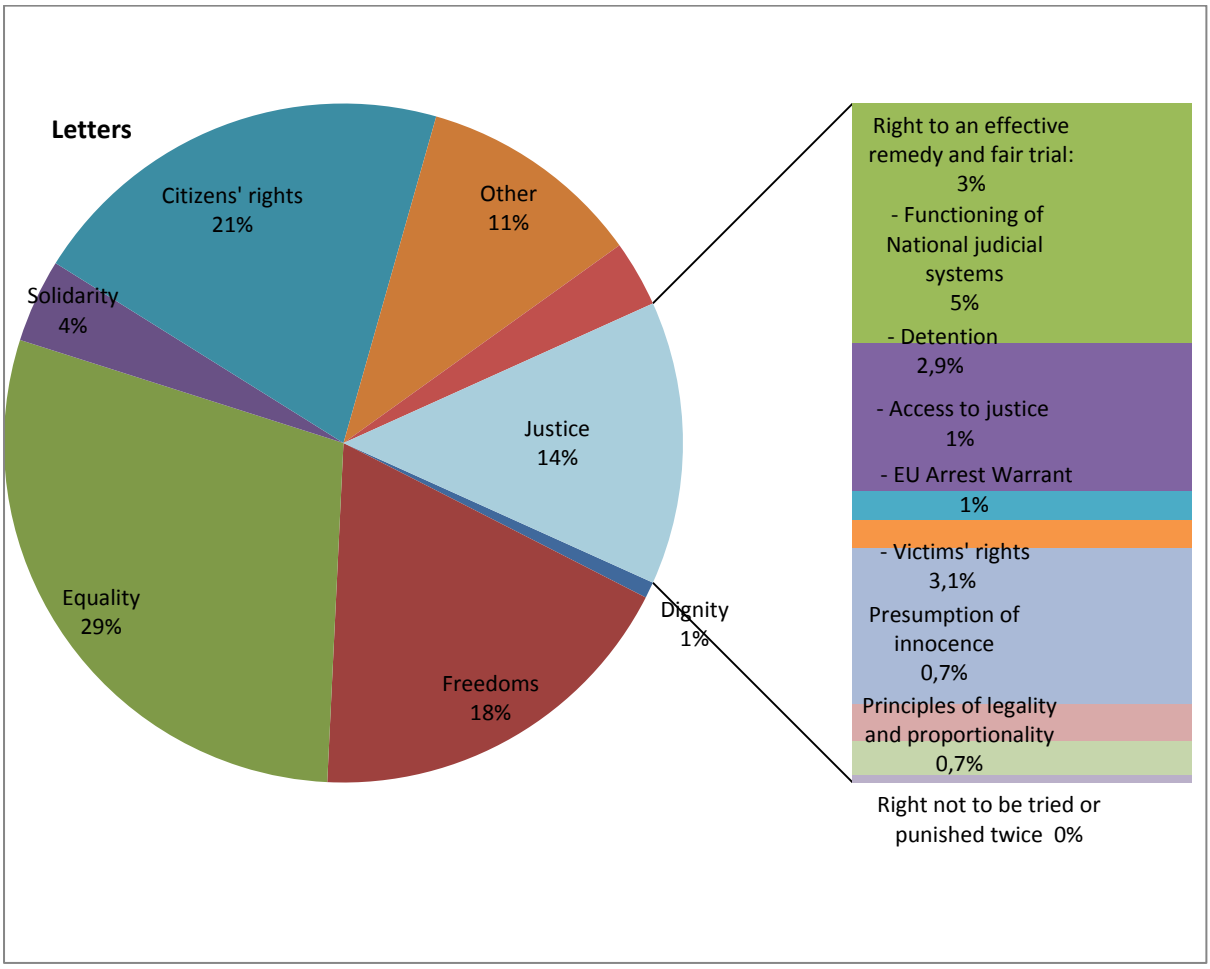
[361] As required by Article 29 of the Directive.
[362] Judgment of 5 December 2017 in case C-42/17, *Criminal proceedings against M.A.S. and M.B.*
[363] Judgment of 8 September 2015 in case C-105/14, *Criminal proceedings against Ivo Taricco and Others*.
[364] Judgment of 20 December 2017 in case C-102/16, *Vaditrans BVBA v Belgische Staat*.
[365] Regulation (EC) No 561/2006 of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85.

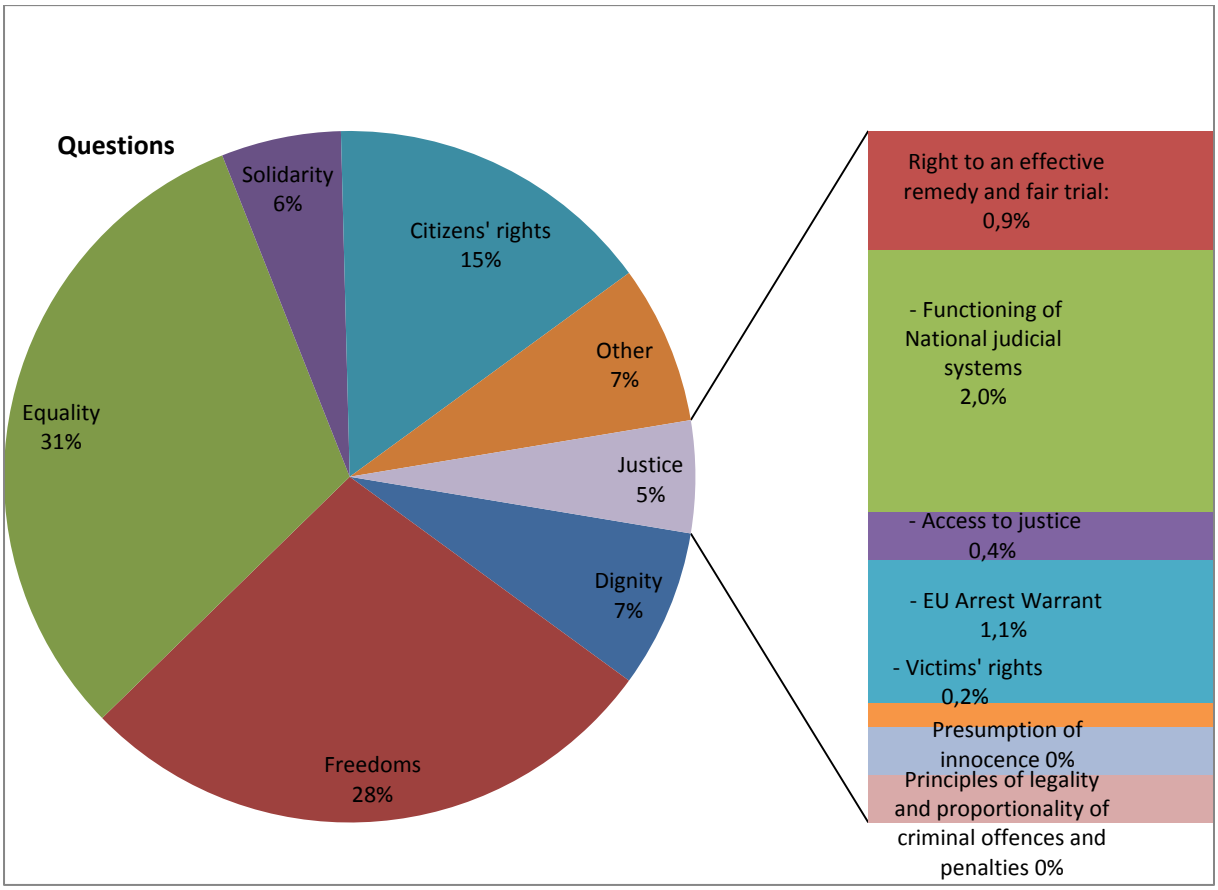
been finally acquitted or convicted (the double jeopardy principle). Article 50 provides that criminal laws should respect this.

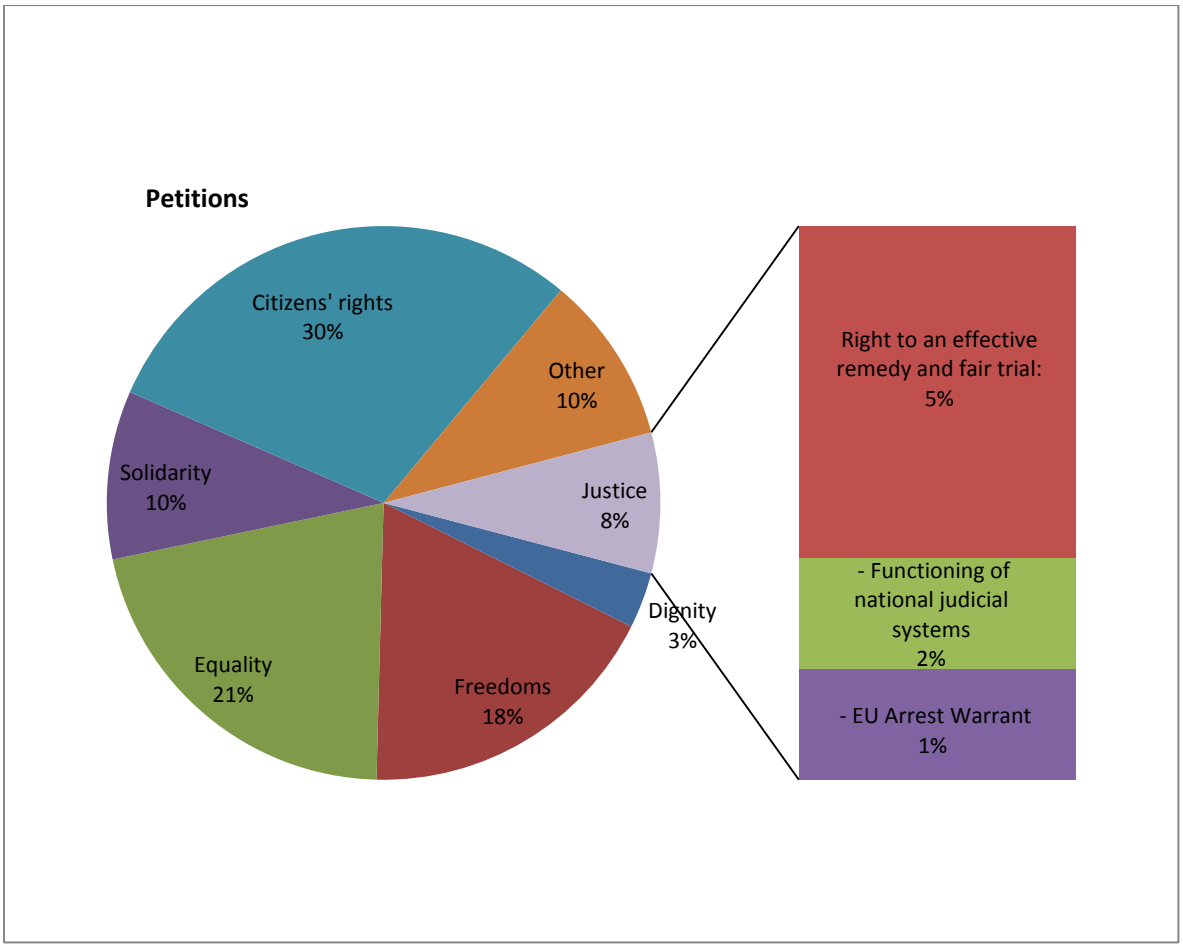
NATIONAL CASE LAW BOX

Another example is a case decided by the Supreme Court of Croatia that was dealing with a Finnish citizen arrested in Croatia following a Turkish international arrest warrant. The person had belonged to a group of five who had thrown a homemade Molotov cocktail at the Turkish Embassy in Helsinki, causing fire and material damage. The Helsinki District Court convicted the defendant of criminal mischief in 2009. The question arose whether the Finnish final judgment can be considered equal to a domestic judgment in line with Croatian legislation.

The Court confirmed that the Dubrovnik county court had correctly concluded that the term 'domestic court' from Article 35, paragraph 1, point 5 of the Act on International Legal Assistance in Criminal Matters (Zakon o međunardonoj pravnoj pomoći u kaznenim stvarima), in this case covers not only the courts of the Republic of Croatia, but also the Courts of other EU Member States. The provision has to be interpreted in light of Article 50 of the Charter according to which no one can be tried or punished twice in criminal proceedings for the same criminal offence. Croatia, Supreme Court, case II-8 Kr 3/17-4, 13 July 2017.




Questions
Solidarity 6%
Citizens' rights 15%
Other 7%
Equality 31%
Justice 5%
Dignity 7%
Freedoms 28%
Right to an effective remedy and fair trial: 0,9%
- Functioning of National judicial systems 2,0%
- Access to justice 0,4%
- EU Arrest Warrant 1,1%
- Victims' rights 0,2%
Presumption of innocence 0%
Principles of legality and proportionality of criminal offences and penalties 0%



Title VII

General provisions governing the interpretation and application of the Charter

Article 51 — Field of application

The scope of the Charter is defined in Article 51, which clearly states that it applies to all EU institutions, bodies, offices and agencies, and to the Member States where they are implementing EU law. It further clarifies that the Charter cannot extend the field of application of EU law or any competences of the EU as defined in the EU Treaties.

Article 52 — Scope and interpretation of rights and principles

Article 52 of the Charter lays down general provisions on the scope and interpretation of rights and principles. In its first paragraph, it defines the strict conditions under which the rights of the Charter can be limited. It also explains how the Charter relates to the European Convention on Human Rights, the aim being to secure the highest possible level of protection for fundamental rights (paragraph 3). It also clarifies that the principles set out in the Charter may be implemented by the EU institutions in their legislative and executive acts — and similarly by the Member States where they implement EU law (paragraph 5). However, they can be invoked in court only in view of interpreting such acts. This means that the principles do not confer subjective rights on the individual.

Article 53 — Level of protection

Article 53 of the Charter ensures that nothing in the Charter will be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by EU law, international law and international agreements to which the EU or all the Member States are party, including the European Convention on Human Rights . Its main aim is therefore to provide the minimum standard of fundamental rights protection, allowing for wider protection under instruments other than the Charter where they are applicable.

Article 54 — Prohibition of abuse of rights

Article 54 of the Charter provides a safeguard against abuse of the Charter rights. It states that nothing in the Charter can be interpreted as implying any right to engage in activities aimed at the destruction of rights or freedoms recognised in the Charter or at their limitation beyond the extent envisaged in the Charter.