



Brussels, 2.12.2020
COM(2020) 711 final

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

Strategy to strengthen the application of the Charter of Fundamental Rights in the EU

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Introduction

Strengthening our EU bill of rights to address new challenges

Proclaimed 20 years ago and legally binding since 2009¹, the EU Charter of Fundamental Rights² ('the Charter') was a quantum leap for European integration. It reaffirmed, in a meaningful way, that the EU is built on fundamental rights, democracy and the rule of law³. These values are closely linked. Fundamental rights can only be effective in people's lives in a society where independent courts guarantee their protection and where an open and informed democratic debate can take place, with independent media and an active civil society.

The Charter applies to EU institutions in all their actions. The European Commission's 2010 strategy for the effective implementation of the Charter of Fundamental Rights by the European Union⁴ underlined the importance for the EU to be exemplary and set out how the Commission was going to ensure that it fully complies with the Charter. The Charter also applies to the Member States when implementing EU law and the strategy expressed the Commission's determination to use all the means at its disposal to ensure compliance.

Over the past decade, **the Charter has led to a greater promotion and protection of people's fundamental rights in the EU**. The Charter has triggered new EU legislation directly protecting and promoting certain key rights. The new rules on data protection, gender equality, protecting whistleblowers, fair trial and defence rights, and victims of crime are key examples⁵. The case-law of the Court of Justice of the EU ('the Court') invoking the Charter has developed significantly⁶ in a wide range of policy areas⁷. The EU Agency for Fundamental Rights has developed into a trusted EU body providing comparable data and

¹ Article 6 (1) of the Treaty on European Union. In addition, Article 6 (3) reaffirms that fundamental rights as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States are general principles of EU law.

² OJ C326, 26.10.2012, p.391. The Charter is an instrument of primary EU law that enshrines the fundamental rights people enjoy in the EU. It is a modern and comprehensive instrument protecting and promoting people's rights and freedoms in the light of changes in society, social progress and scientific and technological developments.

³ Article 2 of the Treaty on European Union: "*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*".

⁴ COM(2010)573.

⁵ See the Commission's annual reports on the application of the Charter: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter_en

⁶ The Charter is currently invoked in about 10% of all preliminary ruling procedures. Cases in which the Court refers to the Charter increased from 27 in 2010 to 371 in 2019. See the EU Agency for Fundamental Rights report on fundamental rights 2020 ('FRA fundamental rights report 2020'), focus section, p. 4: <https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020>

⁷ Koen Lenaerts, President of the Court, keynote speech at the conference 'Making the Charter of Fundamental Rights a reality for all' ('Charter event'): https://ec.europa.eu/info/events/2019-conference-eu-charter-fundamental-rights-2019-nov-12_en

analysis on fundamental rights to support the work of the EU institutions and the Member States⁸. The number of independent national human rights institutions and bodies has also risen significantly in the EU⁹, laying down solid foundations for the enforcement of individuals' rights in practice.

However, the protection of fundamental rights cannot be taken for granted. Ten years on, new challenges have emerged for instance in the areas of migration and security, and most recently, in the context of the COVID-19 crisis that brought about restrictions on a wide array of fundamental rights and freedoms¹⁰ and widened the inequality gap. The green transition¹¹ and digital transformation bring new opportunities to make fundamental rights more effective, but they also bring challenges. For example, while digital automation is an essential driver of progress, allowing for efficiency gains and new ways of processing information, it can also drive the spread of illegal hate speech, curb people's freedom of expression, increase surveillance, lead to severe discrimination¹², harm children and reinforce the vulnerability of certain groups¹³. Making fundamental rights effective is a pre-condition to fulfil the EU's commitment to leave no one behind.

These new challenges and developments call for **a renewed commitment** to ensure that the EU institutions and the Member States apply the Charter to its full potential.

Making the Charter a reality for all

This strategy proposes specific actions to **strengthen the application of the Charter, in particular in the Member States**. It focuses on four strands:

1. Ensuring the effective application of the Charter by the Member States.
2. Empowering civil society organisations, rights defenders and justice practitioners.
3. Fostering the use of the Charter as a compass for EU institutions.
4. Strengthening people's awareness of their rights under the Charter.

The strategy follows calls from the European Parliament for a stronger monitoring of the application of the Charter in the Member States¹⁴, Council Conclusions setting out ways to improve the application of the Charter¹⁵, and contributions by Member States¹⁶.

⁸ <https://fra.europa.eu/en/about-fra>

⁹ Focus section of the Commission's 2019 report on the application of the Charter, COM(2019)257.

¹⁰ Such as freedom of movement, freedom of assembly and freedom of religion, freedom to conduct a business, the right to data protection or freedom of expression. These challenges in the COVID-19 context have also affected the conduct of free and fair elections and an open democratic debate. The Commission is working with the Member States to exchange experience and practices in this area.

¹¹ Which includes climate action, environmental protection (provided in Article 37 of the Charter) and the objectives of the just transition, as reflected further by the European Green Deal Communication, COM(2019)640.

¹² Joint Research Centre (JRC) report on the influence of online media on citizens' behaviour: <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/technology-and-democracy>

¹³ Such as older people (see Council Conclusions of 9 October 2020: <https://data.consilium.europa.eu/doc/document/ST-11717-2020-REV-2/en/pdf>) and people with disabilities.

¹⁴ See Rapporteur Šimečka's Legislative report on the establishment of an EU mechanism to protect democracy, the rule of law and fundamental rights, 2020/2072(INL). See also the European Parliament's resolution of 26 November 2020 on the situation of Fundamental Rights in the European Union - Annual Report for the years 2018 -- 2019 (2019/2199(INI)).

The actions set out in this strategy will focus on **prevention, promotion, implementation and enforcement**.

Upholding EU fundamental rights and values is a shared responsibility and requires a collective effort from all concerned: EU institutions, bodies and agencies, national and local¹⁷ authorities, including law enforcement authorities, rights defenders¹⁸, legislators, judges and other legal practitioners, and civil society organisations active in fundamental rights. All these **key parties for the Charter's effective application** have a role to play in making the Charter a reality in people's lives.

In preparing this new strategy, the Commission has listened carefully to **stakeholders and the wider public**. In doing so, the Commission carried out a Eurobarometer survey¹⁹ on the public's awareness of the Charter, which showed that people do not know enough about their Charter rights but would like to have more information, including on where to turn to seek redress. Consultations²⁰ have shown the need to identify ways to support the parties involved in the Charter's enforcement to apply the Charter proficiently for the benefit of all.

The EU's commitment to promote EU values

This strategy complements the **European democracy action plan²¹ and the first rule of law report²²**, which together illustrate the Commission's comprehensive approach to promoting and protecting the fundamental values on which the EU is founded.

The strategy underlines the overarching nature of the Charter and **complements targeted efforts to make EU rights and values more tangible** in areas such as victims' rights and access to justice²³, equality and inclusion²⁴, anti-racism and pluralism²⁵, social rights and

¹⁵ Council Conclusions on the Charter of Fundamental rights after 10 years: State of play and future work, 7 December 2019 ('Council Charter Conclusions'). They followed the Commission's 2019 report on the application of the Charter, op.cit.

¹⁶ A consultation was organised through the Council working group for Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) between April and May 2020.

¹⁷ Reference to local authorities is to be understood as covering also regional authorities.

¹⁸ In this strategy rights defenders means independent authorities protecting rights such as national human rights institutions (NHRIs), equality bodies, Ombuds institutions, data protection authorities, etc. Since this strategy does not focus on specific rights but looks at how to boost the application of the Charter as a whole, focus will mainly be laid on authorities with a broad fundamental rights mandate such as NHRIs.

¹⁹ Special Eurobarometer 487b.

²⁰ The Commission consulted stakeholders through a dedicated Charter event: https://ec.europa.eu/info/events/2019-conference-eu-charter-fundamental-rights-2019-nov-12_en and targeted questionnaires, the outcomes of which were analysed by FRA ('stakeholder consultations analysis'): https://ec.europa.eu/info/files/analysis-targeted-consultations-commissions-new-charter-strategy_en

²¹ COM(2020)790.

²² COM(2020)580.

²³ The EU strategy on victims' rights, COM(2020)258; The Commission proposal to amend the Aarhus regulation, COM(2020)642; and the Communication on access to justice in environmental matters, COM(2020)643.

²⁴ The gender equality strategy, COM(2020)152; the Communication on a new ERA for research and innovation, COM(2020)628; the EU Roma strategic framework for equality, inclusion and participation, COM(2020)620 and the proposal for a Council Recommendation on Roma equality, inclusion and participation, COM(2020)621; the LGBTIQ equality strategy, COM(2020)698; and the forthcoming strategy on the rights of persons with disability, planned for 2021.

²⁵ The EU anti-racism action plan 2020-2025, COM(2020)565; and the forthcoming strategy on combating antisemitism, planned for 2021.

inclusive education and training²⁶, economic rights²⁷, rights of EU citizens²⁸ and rights of the child²⁹.

All these strands of work mutually reinforce each other for the effective protection of fundamental rights in the EU.

The Charter applies in conjunction with national and international fundamental rights protection systems, including the constitutional traditions and international obligations common to the Member States³⁰.

In this context the **EU's accession to the European Convention of Human Rights** remains a priority for the Commission. If the EU truly wants to strengthen fundamental rights, it must be open to outside scrutiny. The Commission has joined forces with the Council of Europe to achieve this objective, which will help to further develop the links between the two fundamental rights frameworks and their effective application on the ground.

The EU as a global actor in human rights

Promoting EU values and fundamental rights is also an important part of the **EU's work on the global scene**. The way the EU addresses fundamental rights issues internally is of great relevance to its relations with non-EU countries, at bilateral, regional and multilateral level. As pressure is increasing on democracy, the rule of law and human rights globally, the protection of human rights and support for democracy worldwide are key EU external action priorities³¹. The EU pursues a strong and coherent approach between its internal fundamental rights policies and how it embeds human rights in its work with external partners, as demonstrated by the new **Action plan on human rights and democracy**³² and the **Gender Action Plan III**³³, and in line with the **Sustainable Development Goals**³⁴. The EU also promotes the respect of human rights through its trade policy.

²⁶ The European Pillar of social rights: https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-booklet_en.pdf. An action plan on the Pillar will be presented in 2021; and the Commission Communication on achieving the European Education Area by 2025 and the digital education action plan, COM(2020)624.

²⁷ The investment protection and facilitation framework in the EU, planned for 2021.

²⁸ The Commission's EU citizenship Report 2020 'Empowering citizens and protecting their rights in challenging times', to be adopted before the end of the year.

²⁹ Strategy on the rights of the child and the European child guarantee, both planned for 2021.

³⁰ Such as the European Social Charter and the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

³¹ Article 21 of the Treaty on European Union.

³² <https://data.consilium.europa.eu/doc/document/ST-12848-2020-INIT/en/pdf>

³³ JOIN(2020)17.

³⁴ UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs): <https://www.un.org/sustainabledevelopment/>. See also the Commission's reflection paper on a sustainable Europe: https://ec.europa.eu/commission/sites/beta-political/files/rp_sustainable_europe_30-01_en_web.pdf

1 – Ensuring the effective application of the Charter by the Member States

1.1 Partnering with Member States for an effective application of the Charter

The Charter is a **legally binding instrument** addressed to the Member States “*only when they are implementing EU law*”³⁵. It is not meant to extend the scope of application of EU law³⁶. In fact, the scope of application of the Charter reflects the scope of EU law itself: “*the Charter is the ‘shadow’ of EU law. This means, in essence, that there can be no situation that is governed by EU law in which the Charter does not apply*”³⁷.

Given the growing body of EU law, **the Charter applies in an increasing number of cases and areas**. This is illustrated by the Court’s case law on the enforcement of the right to an effective remedy³⁸ developed in areas such as taxation, asylum and migration, the independence of the judiciary or equal treatment in employment³⁹. The Court also recently referred to the right to property⁴⁰ to reinforce the protection of foreign investors in the internal market⁴¹.

National and local administrations, the Member States’ parliaments and law enforcement authorities are central to promoting and protecting Charter rights. The Commission plans to work hand in hand with Member States’ national and local authorities to ensure the full application of the Charter and of EU laws that promote and protect the rights it enshrines.

Prevention - the Commission attaches great importance to its dialogue with Member States and is ready to support them in transposing and implementing EU law effectively⁴². Regular dialogue with Member States and law enforcement authorities⁴³ is essential to share practice and discuss concerns linked to the implementation and enforcement of the Charter and related EU law. This enables to resolve, at an early stage, any emerging issues of incompatibility.

Promotion and implementation - consultations⁴⁴ show that the use and awareness of the Charter in national and local administrations and in parliaments is low. To comply with their obligations under EU law, it is important that Member States promote the development of tools, monitoring mechanisms, training and strategies to ensure compliance with the Charter

³⁵ Article 51 (1). Judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105.

³⁶ Articles 5 (2) and 6 (1) of the Treaty on European Union and Article 51(2) of the Charter.

³⁷ Koen Lenaerts, keynote speech at the Charter event, op. cit.

³⁸ Article 47 of the Charter.

³⁹ See, for instance, judgments of 16 May 2017, *Berlioz*, C-682/15, EU:C:2017:373; of 13 December 2017, *El Hassani*, C-403/16, EU:C:2017:960; of 19 November 2019, *A.K.*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, and of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257.

⁴⁰ Article 17 of the Charter.

⁴¹ Judgement of 21 May 2019, *Commission v. Hungary*, C-235/17, EU:C:2019:432.

⁴² The Commission supports a network of national support centres (SOLVIT centres), which help Member States address problems of compliance with EU law. See Commission recommendation on the principles governing SOLVIT, C(2013)5869.

⁴³ Such as in the context of the High-Level Group on combatting racism, xenophobia and other forms of intolerance, the High-level group on non-discrimination, the expert group on the rights of the child and the national Roma contact point’s network. See also initiatives on fair policing in the EU anti-racism action plan 2020-2025, section 2.2, op.cit.

⁴⁴ Stakeholder consultations analysis, op.cit.

of initiatives within the scope of EU law⁴⁵. Member States should encourage mutual learning by sharing best practices on the use and awareness of the Charter, including at local level⁴⁶, on the dedicated webpage made available by the Commission on the **European e-Justice Portal**⁴⁷. The Council could also promote such exchanges in its working party for Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP), as per its 2019 Charter Conclusions⁴⁸.

Coordination - consultations also showed the importance of cooperation and communication between different levels of government, with the EU institutions and with rights defenders and civil society organisations. In this regard, the Commission encourages Member States to appoint a **Charter focal point** to ease the flow of information and best practice on the Charter and coordinate capacity building efforts in the country⁴⁹. The focal point could also pass information to and from the EU institutions.

✓ ***The Commission will:***

- *Strengthen its partnership with Member States to ensure an effective application of the Charter;*
- *Support sharing of best practices between local authorities on the use and awareness of the Charter including through the Network of Towns strand of the new Citizens, Equality, Rights and Values programme.*

✓ ***The Commission invites Member States to:***

- *Nominate a Charter focal point to ease coordination and cooperation;*
- *Use impact assessments and legislative scrutiny procedures to ensure that initiatives implementing EU law comply with the Charter and develop guidance and training for national and local administrations;*
- *Share best practices on the use and awareness of the Charter on the European e-Justice Portal.*

Enforcement - the Commission as **guardian of the Treaties** ensures that national legislation complies with EU law so that people can assert their rights, including their fundamental rights, and fully benefit from EU legislation. The Commission reaffirms its commitment to monitor the application of the Charter and related EU laws, strengthen its dialogue with Member States and launch infringements as appropriate where there is a breach of EU law. It

⁴⁵ Council call in its Charter Conclusions, op.cit., paragraphs 14 and 15. The Commission will update its guidance and make it available (see point 3.1). See also FRA handbook on applying the Charter in law and policy making at national level: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-charter-guidance_en.pdf

⁴⁶ EU law is also implemented at local level, including the disbursement of EU funds. To better address the challenges they face, some cities declared themselves ‘human rights cities’ and build on human rights principles to guide local policymaking: <https://humanrightscities.net/>. FRA is cooperating with cities, their networks, and partners such as the Council of Europe and the Office of the High Commissioner for Human Rights to develop a framework of commitments for human rights cities in the EU. The framework is to be released in 2021.

⁴⁷ Following a call by the Council in its Charter Conclusions, op.cit., paragraph 18.

⁴⁸ Council Charter Conclusions, op.cit., paragraph 12.

⁴⁹ FRA fundamental rights report 2020, Charter focus section, opinion 1.1.

will continue to closely monitor cases where a Member State is showing a systemic failure in applying the Charter⁵⁰ when implementing EU law.

From 2021, the Commission will present a **new annual report on the application of the Charter** in the EU, which, in contrast with the Commission's previous Charter reports, will look more closely at the Charter's application in the Member States and will provide further insight to the Commission for the assessment of compliance of national legislation with EU law. It will adopt a thematic approach, focusing on areas of strategic relevance governed by EU law. Together with the annual Rule of law report, the new annual Charter report will contribute to further upholding fundamental values in the EU.

The Commission will work in partnership with other EU institutions and with EU agencies, in particular the EU Agency for Fundamental Rights (FRA)⁵¹, to gather the information and data required for the report. It will draw on the work of existing Member States' expert groups⁵² and build on factual information made available through respected sources such as United Nations and Council of Europe bodies, judicial networks, civil society organisations, rights defenders and the new Charter focal points.

In 2021, the new Charter report will focus on **fundamental rights in the digital age**. The report should trigger a frank and open interinstitutional discussion with the European Parliament and the Council as well as discussions in the Member States, including in national parliaments. These discussions would support Member States' efforts to comply with the Charter when implementing EU law.

✓ ***The Commission will:***

- *From 2021, present an annual report on the application of the Charter, which will look at the Charter's impact on the situation in the Member States in particular policy areas;*
- *Ensure that Member States effectively apply the Charter when implementing EU law and launch infringements as appropriate where there is a breach of EU law.*

✓ ***The Commission invites:***

- *The European Parliament and the Council to organise a substantive discussion on the application of the Charter, to follow-up on the Commission's annual report. The Commission stands ready to assist;*
- *The European Parliament and national parliaments to develop interparliamentary cooperation on issues related to the application of the Charter, to which the Commission stands ready to contribute.*

⁵⁰ In line with its Communication 'EU law: Better results through better application', OJ C 18, 19.1.2017, p.10.

⁵¹ The Agency routinely collects information and data on the fundamental rights situation on the ground and annually publishes a report summarising key factual findings. The Agency recently launched a European Fundamental Rights Information System (EFRIS) bringing together data and information from existing human rights databases: <https://fra.europa.eu/en/databases/efris/>

⁵² Such as the High Level Group on combatting racism, xenophobia and other forms of intolerance, the High level group on non-discrimination, the expert group on the rights of the child and the national Roma contact point's network.

1.2 Ensuring the application of the Charter in EU funding

EU funding is key to supporting the implementation of EU policies in the Member States. Member States and the Commission must ensure that all EU-funded projects comply with EU law, including the Charter of Fundamental Rights, where applicable.

The Commission has recently taken steps to help Member States ensure that they implement EU funded programmes in compliance with the relevant provisions of Charter. In particular, its proposal for the Common Provisions Regulation (CPR)⁵³ setting out rules for the next EU budget for 2021-2027 contains an ‘enabling condition’⁵⁴ relating to the Charter. Concretely this means that for all programmes supported by the EU funds covered by the CPR⁵⁵ (‘CPR funds’) there must be effective mechanisms in place to ensure their compliance with the Charter, from their inception to their implementation⁵⁶.

The CPR⁵⁷ requires that Member States set-up the following:

- Arrangements to ensure that programmes supported by CPR funds and their implementation comply with the relevant provisions of the Charter. In those arrangements, Member States should, for example, set out the role and tasks of the different authorities and bodies involved in ensuring compliance of the programmes with the Charter and explain how compliance with the Charter will be checked throughout the implementation of the programmes.

- Arrangements to report to the monitoring committees⁵⁸ cases of non-compliance of operations supported by CPR funds with the Charter and complaints regarding the Charter. Member States should, for example, explain how and the frequency with which they will report on these two issues to the **monitoring committees**. The reporting should indicate which corrective measures have been taken, what will be done to prevent such cases in the future and what redress mechanisms are or have been put in place.

When preparing the programmes, Member States must communicate these arrangements to the Commission, which will assess the fulfilment of the ‘enabling condition’.

Under the rules applicable to the new programming period, monitoring committees should include fundamental rights bodies⁵⁹ to help assess compliance with the Charter. Given their

⁵³ COM(2018)375: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A375%3AFIN>

⁵⁴ The horizontal enabling condition ‘Effective application and implementation of the EU Charter of Fundamental Rights’ provided under Annex III of the CPR.

⁵⁵ The European Regional Development Fund, the Cohesion Fund, the just Transition Fund, the European Social Fund Plus, the European Maritime and Fisheries Fund, the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument. It is to be noted also that the Commission proposal on strategic plans to be drawn up by Member States under the Common agricultural policy (CAP strategic plans), COM(2018)392, recalls that Member States shall design the programmes supported by the CAP in compliance with the Charter. Member States shall ensure that the monitoring committee established to monitor the implementation of the CAP strategic plans includes representatives of bodies responsible for promoting social inclusion, fundamental rights, gender equality and non-discrimination.

⁵⁶ COM(2018)375, Article 11 (6).

⁵⁷ See Annex III of the CPR.

⁵⁸ The monitoring committees, in which the Commission participates in an advisory capacity, are established in the Member States to oversee the implementation of the programmes.

⁵⁹ As required under Articles 6 and 34 of the CPR.

independent status and expertise in monitoring and advising authorities, **national human rights institutions** (NHRIs) could play a role in ensuring that EU funded programmes are designed and implemented in compliance with the Charter⁶⁰.

Member States should, in cooperation with the Commission, support through technical assistance, national and local staff to design and implement programmes in a Charter compliant manner, based on the guidance developed to ensure the respect for the Charter in EU funding⁶¹. Member States are also encouraged to coordinate amongst themselves for a coherent implementation of the ‘enabling condition’ across the EU. A national contact point would make such cooperation and coordination easier⁶².

The Commission will, together with the Member States, monitor and ensure that complaints related to the Charter in the implementation of EU funding are duly addressed and receive follow-up in a systematic way.

- ✓ **The Commission will:**
- *Develop a training module and provide technical assistance to ensure a coherent and effective implementation of the Common Provisions Regulation ‘enabling condition’;*
 - *Assess the fulfilment of the ‘enabling condition’ on the Charter;*
 - *Monitor that EU funds are used in compliance with the Charter and take appropriate measures, such as possible interruption or suspension of EU funding, or financial corrections when irregular expenditure has not been corrected by the Member States, where justified.*
- ✓ **The Commission invites Member States to:**
- *Ensure that EU funds are used in compliance with the Charter and establish the arrangements provided in the Common Provisions Regulation;*
 - *Support national and local staff to design and implement programmes that comply with the Charter, in cooperation with the Commission;*
 - *Facilitate coordination and a coherent implementation of the ‘enabling condition’ and make the best use of available technical assistance;*
 - *Include fundamental rights bodies in the monitoring committees.*

⁶⁰ See point 2.1 below.

⁶¹ C/2016/4384, OJ C 269, 23.7.2016, p. 1–19: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016XC0723\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016XC0723(01))

⁶² It is for the Member States to decide if this role should be given to the Charter focal point referred to in section 1.1.

2 - Empowering civil society organisations, rights defenders and justice practitioners

2.1 Protecting and supporting civil society organisations and rights defenders

A supportive environment

Civil society organisations and rights defenders are vital for a healthy democracy and a society where people can enjoy their fundamental rights. They are key parties in the Charter's enforcement chain. They play an important role in promoting the use and awareness of the Charter and a culture of values, based on the rule of law, democracy and fundamental rights.

They are however facing an increasing number of challenges, which include **regulatory constraints and difficulties in accessing funding**⁶³. The Court⁶⁴, in a case concerning a law restricting the financing of civil society organisations from abroad, recognised that the right to freedom of association constitutes one of the essential foundations of a democratic and pluralist society, as it enables citizens to act collectively in areas of common interest and, in so doing, contributes to the proper functioning of public life. The Court held that civil society organisations “*must be able to pursue [their] activities and operate without unjustified interference by the State*”⁶⁵.

In some Member States, **smear campaigns** are negatively influencing public opinion and affecting the credibility and legitimacy of civil society. Civil society organisations and human rights activists in some EU countries face physical and verbal attacks, intimidation and harassment including abusive lawsuits (Strategic Lawsuits Against Public Participation – SLAPP)⁶⁶, violence and online and offline hate speech⁶⁷. Civil society organisations and rights defenders should be able to work without fear in a supportive environment.

- ✓ ***The Commission will:***
 - *Take action against measures that breach EU law, including the Charter, which affect civil society organisations;*
 - *Support an enabling environment for civil society organisations, in particular through the new Union values strand of the Citizens, Equality, Rights and Values programme.*

- ✓ ***The Commission invites Member States:***
 - *To promote a supportive and safe environment for civil society organisations and rights defenders in their country, including at local level.*

⁶³ Commission rule of law report 2020, op.cit. See also FRA Report “*Challenges facing civil society organisations working on human rights in the EU*”: <https://fra.europa.eu/en/publication/2018/challenges-facing-civil-society-organisations-working-human-rights-eu>.

⁶⁴ Judgment of 18 June 2020, *Commission v Hungary*, C-78/18, EU:C:2020:476.

⁶⁵ Ibid. paragraph 133.

⁶⁶ The Commission will propose measures to improve the safety of journalists and to protect them and civil society against SLAPPs, in the framework of the European Democracy Action Plan. As announced in its work programme for next year, the Commission will propose an initiative against abusive litigation targeting these actors end 2021.

⁶⁷ FRA Report “*Challenges facing civil society organisations working on human rights*”, op.cit. See also Global Alliance of National Human Rights Institutions (GANHRI), [SCA General Observations](#), 2018, p. 1.

Strong and independent national human rights institutions

Strong and effective national human rights institutions⁶⁸ ('NHRIs') are critical links between government and civil society insofar as they address the 'protection gap' between the rights of individuals and the responsibilities of the state. Their overarching function is to address discrimination in all its forms and to promote the protection of the full range of fundamental rights⁶⁹. NHRIs monitor the application, implementation and promotion of the Charter on the ground, provide information and support to victims of fundamental rights violations and cooperate with the national institutions to improve their use and awareness of the Charter.

Three Member States⁷⁰ do not have an NHRI, two do not have an accredited NHRI⁷¹ and six⁷² do not have a United Nations' Paris principles⁷³ compliant A-status NHRI⁷⁴.

The 2020 Rule of law report highlighted the importance of independent NHRIs as part of the national checks and balances⁷⁵. The European Network of National Human Rights Institutions (ENNHRI) can, with the support of the Commission, assist Member States in establishing and promoting Paris principles' complaint A-status NHRIs.

✓ ***The Commission invites:***

- *Those Member States that have not yet established an independent NHRI to do so;*
- *Member States in which NHRIs have been established, to ensure they are given the tools and means to comply with the Paris principles and refer to the Charter in their mandate.*

Capacity building to defend people's rights

Civil society organisations and rights defenders are instrumental in raising people's awareness about their Charter rights and helping them receive **effective judicial protection**. When other routes, such as prevention and dialogue, prove unsuccessful, effective judicial protection also includes strategic litigation, which contributes to a more coherent implementation and application of EU law and to the enforcement of people's rights. Following a European Parliament initiative, the Commission carried out consultations and commissioned a study⁷⁶ that show that capacity building is key to helping these 'Charter agents' better assist people in using their rights under the Charter. The study concluded that

⁶⁸ NHRIs are state-mandated bodies, independent of governments, with a broad constitutional or legal mandate to protect and promote human rights.

⁶⁹ <https://ganhri.org/nhri/>

⁷⁰ Czechia, Italy, Malta.

⁷¹ Estonia - up for accreditation end 2020 - and Romania.

⁷² Austria, Belgium, Cyprus, Slovakia, Slovenia and Sweden.

⁷³ <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>. The Council of Europe is also preparing Recommendations on the development and strengthening of effective, pluralist and independent National Human Rights Institutions.

⁷⁴ Being granted A-status means that the NHRI is fully compliant with the Paris principles, which are the international standards for NHRIs to promote and protect fundamental rights effectively and in an independent manner.

⁷⁵ COM(2020)580. The Council, in its Charter Conclusions of 2019, recalled that '*independent national human rights institutions [...] play a crucial role in the protection and promotion of fundamental rights and ensuring compliance with the Charter.*', op.cit., paragraph 22.

⁷⁶ Feasibility Study for financial support for litigating cases relating to violations of democracy, rule of law and fundamental rights, 28.08.2020: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/studies-related-charter_en

there is a need to increase “*knowledge of relevant EU law practice and procedures*” among litigators and to upgrade their capacity, “*with the expectable result that fundamental rights litigation will increase in Europe, and that Charter rights are promoted and protected more systematically.*”

European networks of rights defenders, such as the European Network of National Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (Equinet) and the European Network of Ombudsmen (ENO) can play an important role in coordinating capacity building and sharing practice on the Charter among their members. Staff trained in transnational training should act as multipliers and train colleagues in their national institutions⁷⁷. Networks should learn from each other to reach their objectives. For instance, **ENNHRI** collected practices from its members to show how NHRIs across Europe are working towards the national implementation of the Charter⁷⁸. The FRA has developed tools to support this work and stands ready to further support such capacity building efforts⁷⁹.

Other networks, catering for specific groups, such as the UN Convention on the Rights of Persons with Disabilities’ frameworks or the European network of Ombudspersons for children, could also play a key role in promoting the Charter amongst their members.

✓ ***The Commission will:***

- *Support, in particular under the Justice programme, capacity building on the Charter for rights defenders and civil society organisations, to ease access to justice for all.*

✓ ***The Commission invites networks of civil society organisations and rights defenders:***

- *To cooperate on Charter training and share practice, building on support and tools offered by the Commission and by the FRA.*

2.2 Supporting judges and other justice practitioners

Independent and qualified judges are key to making the Charter relevant in people’s lives. Even though national courts increasingly use the Charter and refer to the Court for assistance on its interpretation⁸⁰, **knowledge remains low** amongst national justice practitioners⁸¹. So far, less than one third of all professional groups consulted in the targeted consultation for judges, other justice practitioners and training institutions benefited from training on the Charter. Most of the judges and other justice practitioners who responded to the consultation

⁷⁷ “*Targeted group training should be a priority. Staff from national equality bodies should be targeted for transnational training on the use of the Charter.[...] Targeted group training should be followed by horizontal training at the national level that brings together relevant actors that previously received the targeted group training to identify interconnections and construct synergies on the use of the Charter.*” Equinet’s submission to the Commission’s Charter strategy, op. cit.

⁷⁸ <http://ennhri.org/wp-content/uploads/2019/11/Implementation-of-the-EU-Charter-of-Fundamental-Rights-Activities-of-NHRIs.pdf>. See also Poland’s best practice, stakeholder consultation analysis, page 15.

⁷⁹ <https://fra.europa.eu/en/eu-charter>. See also FRA fundamental rights report 2020.

⁸⁰ Between 2009 and 2019, national courts sent the Court 5038 requests for preliminary rulings. Of them, 576 (over 11 %) contained questions related to the Charter. See FRA fundamental rights report 2020.

⁸¹ Stakeholder consultations analysis, op. cit.; Commission 2019 Charter Report, op. cit.; FRA Fundamental Rights Report 2020; FRA Opinion- 4/2018 of 24 September 2018: https://fra.europa.eu/sites/default/files/fra_uploads/fra-opinion-04-2018_charter-implementation.pdf

would welcome training on the Charter, including joint training for judges and other legal practitioners to share experiences. They would also welcome strengthened exchanges between national and European Courts⁸².

The Commission adopted a **new European judicial training strategy** that emphasises the importance of training judges and other justice practitioners on the Charter to ensure its effective application⁸³. The relevance of cross professional training and sharing of best practice was also underlined. FRA will update its Charterpedia and its handbook on the application of the Charter for practitioners⁸⁴.

The COVID-19 pandemic created additional challenges for justice systems, but has also boosted the digitalisation of proceedings in a number of Member States⁸⁵. The **digitalisation of justice**, if carefully rolled out, would also have a positive effect on the capacity of courts to deal efficiently with fundamental rights issues, in particular in a context where human resources are scarce⁸⁶.

- ✓ ***The Commission will:***
- *Prioritise, under the EU's new Justice programme, Charter training opportunities for judges and other justice practitioners and support the development of a dedicated e-learning tool for judges;*
 - *Promote Charter related training activities and material on the new 'European training platform' of the European e-Justice Portal⁸⁷ through the use of EU funds.*
- ✓ ***The Commission invites networks of judges and other justice practitioners:***
- *To cooperate on training and sharing of practices on the application of the Charter, building on support and tools offered by the Commission, the European Judicial Training Network (EJTN) and FRA.*

⁸² The European Judicial Training Network, supported by the EU's Justice programme, organises exchanges between national and European courts: <http://www.ejtn.eu/Exchange-Programme/>

⁸³ COM(2020)713.

⁸⁴ <https://fra.europa.eu/en/publication/2018/applying-charter-fundamental-rights-european-union-law-and-policymaking-national>. All Charter related information will be made available on a Charter web space: <https://fra.europa.eu/en/eu-charter>

⁸⁵ Commission rule of law report 2020, op.cit.

⁸⁶ See Commission Communication on digitalisation of justice in the EU, COM(2020)710.

⁸⁷ https://e-justice.europa.eu/content_european_training_platform-37158-en.do

3 - Fostering the use of the Charter as a compass for EU institutions

3.1 Updating and developing tools within the Commission

EU institutions must comply with the Charter in all their actions, including when they act outside the EU legal framework⁸⁸ and outside the territory of the Member States⁸⁹.

Following its 2010 strategy on the application of the Charter by the EU, **the Commission** developed guidance⁹⁰ to ensure that each new initiative complies with the Charter and that, where certain rights are affected, justification is given on why the measure is necessary and proportionate and solutions are put in place to mitigate the measure's potential negative effects on people's rights. The Commission's new Taskforce on Equality will ensure that equality considerations are mainstreamed in the Commission's work.

Key Commission initiatives that could have a major impact on Charter rights will continue to be checked from the preparatory stage of the initiative and Charter compliance will remain a central concern for the Commission throughout the decision making process. For instance, Europe's digital strategy⁹¹ underlines the importance of respecting fundamental rights in the digital transformation. The forthcoming regulatory framework on artificial intelligence⁹² will introduce accountability, documentation and testing requirements to ensure the effective enforcement of fundamental rights. The upcoming proposal for a Digital Services Act will set out the responsibilities of online intermediaries, in particular online platforms, for all forms of illegal content online, to ensure that this is tackled while protecting lawful content by safeguarding fundamental rights, including the right of freedom of expression of the users of online services.

In preparing initiatives the Commission draws on input by key stakeholders⁹³. An open and constructive dialogue with civil society organisations supports the Commission's efforts to mainstream the Charter into all its policies and legislative proposals.

Upholding fundamental rights is a global endeavour and it is important that internal and external actions to promote and protect fundamental rights are coherent and mutually reinforce each other. The new 2020-2024 action plan on human rights and democracy⁹⁴ reaffirms the EU's commitment to promoting and protecting human rights and values

⁸⁸ Judgment of 20 September 2016, *Ledra Advertising v Commission and ECB*, C-8-10/15 P and C-10/15, EU:C:2016:701.

⁸⁹ Judgement of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P and C- 595/10 P, EU:C:2013:518.

⁹⁰ 2011 Commission operational guidance on taking account of fundamental rights in impact assessments and the 2015 better regulation package, which makes Charter mainstreaming an integral part of the impact assessment (Tool 28).

⁹¹ Adopted in February 2020: https://ec.europa.eu/info/publications/communication-shaping-europes-digital-future_en

⁹² White Paper on artificial intelligence: a European approach to excellence and trust, COM(2020)65.

⁹³ Consultations are launched to inform Commission initiatives under its Better Regulation rules. See <https://ec.europa.eu/info/law/better-regulation/have-your-say> and https://ec.europa.eu/info/consultations_en. The Commission also draws on the data provided by the EU Agency for Fundamental Rights, rights defenders such as NHRIs and equality bodies and information collected by international organisations such as the Council of Europe, the United Nations and the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe.

⁹⁴ <https://data.consilium.europa.eu/doc/document/ST-12848-2020-INIT/en/pdf>

worldwide. Human rights and democracy will be promoted consistently and coherently in all areas of EU external action, ensuring internal and external coherence in the promotion of the fundamental rights in line with the Charter.

The Commission, as an EU institution, will continue to take the Charter into account in the preparation and negotiation of EU Trade and investment agreements⁹⁵.

The Commission will further insist that countries seeking to join the EU ('enlargement countries') align with EU fundamental rights protection standards. The Commission will provide support and technical assistance to enlargement countries⁹⁶ and monitor progress through the annual enlargement package of country reports. Candidate countries and countries with which a stabilisation and association agreement has been concluded can ask to participate in the work of the EU Agency for Fundamental Rights as observers in order to ease their gradual alignment with EU law⁹⁷.

✓ **The Commission will:**

- Support the development of an e-learning tool on the Charter open to all;
- Update its 2011 guidance for its staff on applying the Charter in impact assessments and disseminate it as a source of information for policy makers at national and local level;
- Develop an equality mainstreaming toolbox and a training plan for all staff to ensure that equality considerations are a part of all Commission initiatives.

3.2 Developing the Charter mainstreaming throughout the 'European' legislative process

It is essential for the effective application of the Charter by the EU that **the European Parliament** and the **Council** focus on Charter compliance in the legislative process. The Commission stands ready to support them. Compliance with the Charter is a key element for the sustainability of EU legislation⁹⁸.

In 2015 the Council published guidance on fundamental rights compliance checks⁹⁹, which should be shared and explained regularly¹⁰⁰. The Council's Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) plays an instrumental role in this respect. The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) may submit opinions on the compliance of a legislative act with fundamental

⁹⁵ 2015 Guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives.

⁹⁶ The Instrument for Pre-Accession assistance (IPA) 2021-2027 will further support reforms to comply with EU values and fundamental rights and to progressively align to the EU's rules, standards and policies.

⁹⁷ The procedure is described in Article 28 of the FRA's founding regulation n°168/2007, OJ L 53, 27.2.2007, p. 1.

⁹⁸ EU legislation that does not comply with the Charter can be legally challenged.

⁹⁹ Council guidelines on fundamental rights compliance check, Doc. 5377/15 of 20 January 2015.

¹⁰⁰ In its Charter Conclusions (op.cit.) the Council reaffirmed "*its commitment to take into account the guidance on the application of the Charter, including the guidelines on methodological steps to be taken to check fundamental-rights compatibility at the Council preparatory bodies, and it expresses its readiness to explore ways to make more efficient use of that guidance in Council preparatory bodies, including through training*" (paragraph 10). The permanent representation of Finland organised, in cooperation with the Council Secretariat and the FRA, a training course on the application of the Charter open to all staff and recommended it to all working party chairs of the incoming Presidency.

rights¹⁰¹. Under the interinstitutional agreement on better law-making, the European Parliament and the Council can carry out impact assessments on their substantial amendments to a Commission's proposal. It provides that impact assessments should address fundamental rights issues¹⁰².

There are several recent examples of Charter mainstreaming in EU laws and many more can be found in the Commission's annual reports¹⁰³. The European Accessibility Act¹⁰⁴ seeks to ensure that persons with disabilities benefit from measures that ensure their independence, social and occupational integration and participation in the life of the community. The Regulation on the European Border and Coast Guard¹⁰⁵ makes fundamental rights an overarching part in the implementation of the European integrated border management.

✓ ***The Commission invites the European Parliament and the Council to use the tools at their disposal to ensure that the Charter is applied effectively in their work. The Commission stands ready to support them.***

¹⁰¹ European Parliament's rules of procedure – Rule 39.

¹⁰² OJ L 123, 12.5.2016, p. 12- 15.

¹⁰³ https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter_en

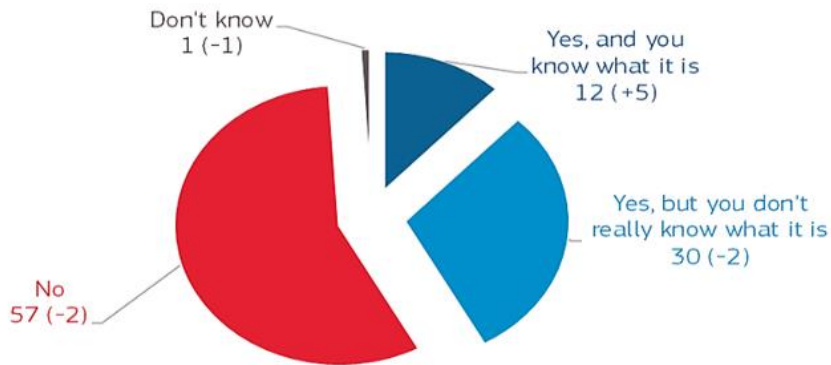
¹⁰⁴ Directive 2019/882.

¹⁰⁵ Regulation 2019/1896, OJ L 295, 14.11.2019, p. 1. A fundamental rights strategy and action plan will be developed to frame the European Border and Coast Guard Agency's (Frontex) obligation to comply with the Charter. A Fundamental Rights Officer was nominated to contribute to the strategy and monitor its implementation. Fundamental rights monitors will be recruited to assess the fundamental rights compliance of the Agency's operational activities. FRA supports Frontex in training the fundamental rights monitors.

4 - Strengthening peoples' awareness of their rights under the Charter

A recent Eurobarometer on Charter awareness shows that only 42% of respondents have heard about the Charter and only 12% really know what it is.

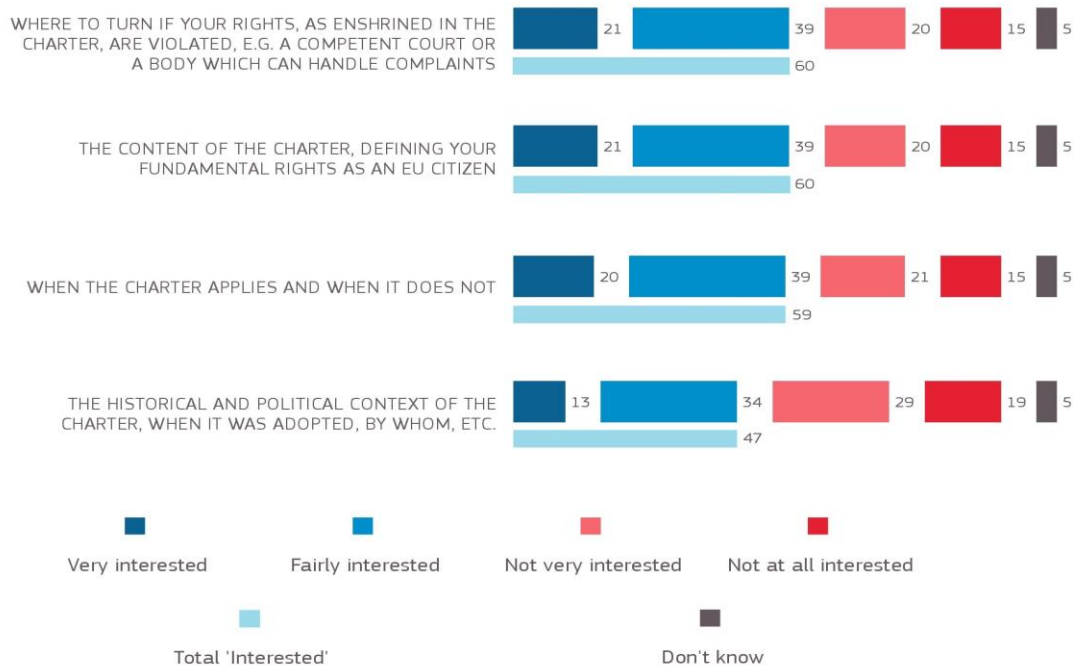
QB1 Have you ever heard of the Charter of Fundamental Rights of the EU?
(% - EU)



(March 2019 - June 2012)

Six out of ten respondents want to know more about their rights and where to turn to if their Charter rights are violated¹⁰⁶.

QB6 Would you be interested or not in having more information about the following aspects of the Charter?
(% - EU)



¹⁰⁶ Special Eurobarometer 487b.

Most (80%) civil society organisations report that people turn to them for information about their rights and an even higher proportion (85%) that they carry out awareness raising activities about rights¹⁰⁷. Local authorities are also well placed to raise awareness about people's rights and about what people can do if their rights are breached¹⁰⁸. The relevance of explaining rights and what they mean for people, through real life stories, is essential¹⁰⁹.

The FRA's 2021 Forum on fundamental rights¹¹⁰ is an opportunity to raise awareness on the Charter of fundamental rights and reflect on how to further develop a culture of values in the EU. The Conference on the Future of Europe will offer people the opportunity to discuss fundamental rights and EU values that are central to our Union and its future.

The Commission will work on an awareness raising campaign, aimed at better informing people about their Charter rights and where to turn when their rights are breached. It will be accessible to people with disabilities.

The Commission will also step up efforts to better communicate Charter rights to young people, making the best use of the Erasmus+ programme. It will in particular refer to information on the Charter in the Erasmus+ student Charter, which reaches all Erasmus+ students; include 'fundamental rights' as a key priority in the Jean Monnet action for Higher Education; encourage Higher Education Institutions to offer training or online courses on European civic engagement and promote the Charter of Fundamental Rights; and develop online resource for school teachers to raise awareness of fundamental rights in classrooms. It will engage with young people on fundamental values and global citizenship issues, including Sustainable Development Goals, through its development education and awareness raising programme (DEAR)¹¹¹. In its upcoming strategy on the rights of the child, the Commission will also explore ways to communicate in a child-friendly way on children's rights.

✓ ***The Commission will:***

- *Launch an information campaign to raise people's awareness of their Charter rights and how to use them, giving specific examples and cooperating with actors on the ground;*
- *Develop young people's awareness of their Charter rights through the Erasmus+ programme;*
- *Raise children's awareness of their rights as an outcome of its forthcoming strategy on the rights of the child.*

✓ ***The Commission invites Member States to develop initiatives to promote people's awareness of their Charter rights and of where to turn when their rights are breached, in particular by empowering local actors***¹¹².

¹⁰⁷ Stakeholder consultations analysis, p. 31.

¹⁰⁸ 14 out of 22 local authorities that responded to the targeted consultations say they raise awareness about rights, stakeholder consultations analysis, p. 42.

¹⁰⁹ See also FRA (2020) "What do fundamental rights mean for people in the EU", page 48: "To make informed decisions, people should have access to information about their rights as well as accessible procedures for making applications and complaints".

¹¹⁰ <https://fra.europa.eu/en/event/2020/fundamental-rights-forum-2021>

¹¹¹ COM(2018)5446: www.dearprogramme.eu

¹¹² See the Council's Charter conclusions, op.cit., paragraph 14.

Conclusion

The binding nature of the Charter has enabled the EU legal order to develop into a beacon of fundamental rights protection. It has turned out to be the embodiment of what EU rights and values mean - a symbol of European identity. It has led to a more coherent and comprehensive interpretation of fundamental rights across the EU.

EU institutions, Member States and the various actors in the Charter's enforcement chain have a duty to ensure that the Charter becomes a living instrument, protecting fundamental rights in Europe for the benefit of all.

The Commission will present an annual report on the application of the Charter, which should form the basis for an inter-institutional discussion. In 2025, the Commission will also report on the implementation of this strategy. In 2030, the Commission will launch a stock-taking exercise in cooperation with the key actors for the Charter's enforcement to evaluate progress in awareness and use of the Charter.

Given Member States' key role in the implementation of this strategy, the Commission invites the Council to prepare follow-up conclusions.