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Commission



2013 Report on the **Application** of the **EU Charter** of **Fundamental** **Rights**

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The EU Charter of Fundamental Rights is more than a text. The European Commission is determined to use all the tools available to ensure that fundamental rights are a tangible reality for our more than 500 million EU citizens. This 2013 Annual Report takes stock of how the Charter is applied by European institutions and Member States when they enact EU law, serving as a basis for a dialogue on the implementation of the Charter.



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2013 Report
on the **application**
of the EU Charter of
Fundamental Rights

1. Introduction

The Charter of Fundamental Rights of the European Union (the Charter) is addressed, first and foremost, to the EU institutions. It complements national systems and does not replace them. Member States are subject to their own constitutional systems and to the fundamental rights set out in these. Member States need only have regard to the Charter when their national measures implement EU law, as stipulated in Article 51 of the Charter.

This report highlights the role of the Court of Justice of the European Union (the Court) in implementing the Charter, especially as regards the most recent development of its case-law on the Charter's applicability in Member States.

The report also gives an account of how the EU institutions have respected and promoted fundamental rights, under the scrutiny of the Court, in all their initiatives, including developing new legislation and policies, and enforcement actions.

Finally, the report draws attention to the importance of the European Convention on Human Rights (ECHR) and to the progress made on the EU's accession to this instrument.

Detailed information on the application of the Charter, illustrating concrete problems faced by individuals, is provided by the staff working document annexed to this report (Annex 1). Progress on implementing the 2010–15 Strategy for equality between women and men is presented in a separate annex (Annex 2).

2. Applicability of the Charter to the Member States

National judges are increasingly aware of the Charter's impact, and they seek guidance from the Court¹ on its application and interpretation under the preliminary rulings procedure².

To determine whether a situation falls within the scope of the Charter, as defined in its Article 51, the Court examines, in particular, whether the relevant national legislation is intended to implement a provision of EU law, the nature of the legislation, whether it pursues objectives other than those covered by EU law, and also whether there are specific rules of EU law on the matter or which may affect it³.

¹ For an overview of the applications for preliminary rulings submitted to the Court in 2013 which refer to the Charter, see appendix II.

² See Article 267 TFEU.

³ CJEU judgment of 18 December 1997 in Case C-309/96 *Annibaldi*, paragraphs 21 to 23, and of 8 November 2012 in Case C-40/11 *Iida*, paragraph 79.

Three recent cases are good examples of situations where the Court held that the Member States were **not implementing EU law**, and thus where the Charter did not apply.

First, in *Pringle*⁴, the Court held that when Member States established a permanent crisis resolution mechanism for the euro area countries, they were not implementing EU law. The treaties do not confer any specific competence on the EU to establish such a mechanism. Consequently, Member States were not implementing EU law within the meaning of Article 51, and the Charter did not apply.

Second, in *Fierro and Marmorale*⁵, the Court examined Italian legislation which requires a deed of sale of real estate to be annulled if the real estate was modified without regard to town planning laws. Such automatic annulment hampers the exercise of the right to property (Article 17⁶). The Court declared the case inadmissible as there was no link between national laws on town planning and EU law.

Third, in *Cholakova*⁷, the Court examined a situation where the Bulgarian police had arrested Mrs Cholakova because she had refused to present her identity card during a police check. The Court held that, as Mrs Cholakova had not shown an intention to leave Bulgarian territory, the case was of a purely national nature. The Court held that it was not competent to deal with the case and declared it inadmissible.

There are currently three situations in which it is **clear that the application of the Charter is triggered**.

First, 'implementing EU law' covers a Member State's **legislative activity and judicial and administrative practices when fulfilling obligations under EU law**. This is the case, for instance, when Member States ensure effective judicial protection for safeguarding rights which individuals derive from EU law, as they are obliged to do under Article 19(1) TEU. The free movement directive⁸ permits Member States to restrict the freedom of movement of EU citizens on grounds of public policy, public security or public health. The Court held in the ZZ case that the basis for such a refusal must be disclosed to the person concerned⁹. In this case, the grounds for a decision refusing entry into the UK were not disclosed for reasons of national security. The Court confirmed that a person has the right to be informed of the basis for a decision to refuse entry, as the protection of national security cannot deny the right to a fair hearing, rendering the right to redress ineffective (Article 47).

⁴ CJEU judgment of 27 November 2012 in Case C-370/12 *Pringle*.

⁵ CJEU order of 30 May 2013 in Case C-106/13 *Fierro and Marmorale*.

⁶ Subsequent articles referred to in brackets are Charter articles.

⁷ CJEU order of 6 June 2013 in Case C-14/13 *Cholakova*.

⁸ Directive 2004/38/EC, OJ 2004 L 158, p. 77.

⁹ CJEU judgment of 4 June 2013 in Case C-300/11 ZZ.

Second, the Court established that the Charter applies **when a Member State authority exercises a discretion that is vested in it by virtue of EU law**. In *Kaveh Puid*¹⁰ the Court confirmed its previously established case-law¹¹ and held that a Member State must not transfer an asylum seeker to the Member State initially identified as responsible if there are substantial grounds for believing that the applicant would face a real risk of being subjected to inhuman or degrading treatment, in violation of Article 4 of the Charter.

Finally, national measures linked to the disbursement of EU funds under shared management may constitute implementation of EU law. In *Soukupová*¹², the Court held that in implementing Council Regulation 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund, Member States are required to respect the principles of equal treatment and non-discrimination, enshrined in Articles 20, 21(1) and 23 of the Charter. When providing early retirement support for elderly farmers, Member States are required to ensure equal treatment between women and men, and to prohibit any discrimination on grounds of gender.

A much debated judgment in 2013 on the **applicability of the Charter** was the *Åkerberg Fransson judgment*¹³. This ruling is an important step in the ongoing process to clarify the interpretation of Article 51 of the Charter.

The Court was asked to clarify whether cases of national law which meet objectives laid down in EU law also amount to situations where EU law is being 'implemented' within the meaning of Article 51 of the Charter. The case was referred to the Court for a preliminary ruling by a district court in Sweden, which was uncertain whether criminal proceedings for tax evasion in the context of VAT declarations could be brought against a defendant if an administrative tax penalty had already been imposed upon him for the same act of providing false information. Such proceedings were to be examined in relation to the *ne bis in idem* principle (the principle that a person should not be punished twice for the same offence), enshrined in Article 50 of the Charter, even though the underlying national legislation for these administrative penalties and criminal proceedings had not been adopted to transpose EU law.

The Court pointed to the fact that under EU law the Member States have an obligation to ensure the collection of all the VAT due, to counter illegal activities affecting the financial interests of the EU, and to take the same measures to counter fraud affecting the financial interests of the EU as they take to counter fraud affecting their own interests¹⁴.

¹⁰ CJEU judgment of 14 November 2013 in Case C-4/11 *Puid*.

¹¹ CJEU judgment of 21 December 2011 in Joined Cases C-411/10 and C-493/10 *N.S. and Others*.

¹² CJEU judgment of 11 April 2013 in Case C-401/11 *Soukupová*.

¹³ CJEU judgment of 26 February 2013 in Case C-617/10 *Åkerberg Fransson*.

¹⁴ *Ibid.*, paragraph 26.

The EU's own resources include revenue from applying a uniform rate to the harmonised VAT assessment bases determined according to EU rules. There is therefore a direct link between the collection of VAT revenue in compliance with the relevant EU law, and the availability to the EU budget of the corresponding VAT resources. Any lacuna in the collection of VAT revenue at a national level potentially impacts on the EU budget. The Court held that, '[s]ince the fundamental rights guaranteed by the Charter must (...) be complied with where national legislation falls within the scope of European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter'¹⁵. According to the Court, the national law in this context was 'designed to penalise an infringement of [the] directive and [was] therefore intended to implement the obligation imposed on the Member States by the Treaty to impose effective penalties for a conduct prejudicial to the financial interests of the European Union.'¹⁶

As to the outcome of the case, the Court observed that the principle of preventing a person from being punished twice for the same offence does not preclude a Member State from imposing, for the same acts, a combination of tax penalties and criminal penalties, as long as the tax penalty is not criminal in nature.

3. Actions to promote the effective implementation of the Charter

Fundamental rights are promoted through all EU policies. Where the EU has competence to act, the Commission proposes EU legislation that gives concrete effect to the rights and principles enshrined in the Charter. The Commission also takes active measures to promote the Charter and enforces the respect of EU law through infringement procedures against Member States.

The respect of the Charter by the institutions themselves is scrutinised by the Court, which checks the compliance of EU acts with the Charter.

3.1. EU legislation

The Commission ensures and thoroughly checks that all **legislative proposals** respect and promote fundamental rights. It follows this approach throughout the legislative process, from the proposal itself, to its discussion during negotiations between the EU institutions and its final adoption.

¹⁵ Ibid., paragraph 21.

¹⁶ Ibid., paragraph 28.

3.1.1. Legislative proposals

In the field of criminal law, **the Commission proposed five legal measures to further promote the Procedural Rights Agenda** and strengthen the foundation for European criminal justice policy. These measures include three proposals for directives on:

- strengthening certain aspects of the presumption of innocence and of the right to be present at trial during criminal proceedings (Articles 48 and 47);
- special safeguards for children suspected or accused in criminal proceedings (Articles 24 and 49);
- provisional legal aid for suspects or people accused of crimes who have been deprived of liberty and legal aid in European arrest warrant proceedings (Article 47(3)).

The measures also include two recommendations, on procedural safeguards for vulnerable people suspected or accused in criminal proceedings and on the right to legal aid for suspects or people accused of a crime during criminal proceedings (Article 47)¹⁷.

The need for criminal law measures to be grounded in strong EU-wide standards for procedural rights and victims' rights, in line with the Charter, is central to strengthening the principle of mutual trust on which judicial cooperation is based.

The Commission has also ensured effective protection for professional legal privilege within the EU's money laundering legislation. The proposed **anti-money laundering directive** of February 2013 imposes an obligation to report suspicions of money laundering or terrorist financing to the authorities in a number of professional activities. However, considering the crucial importance of the right of defence (Article 48), the proposed directive requires Member States not to apply this obligation to lawyers under certain circumstances, for instance in relation to information received in the course of ascertaining the legal position of a client¹⁸.

Furthermore, the Commission has ensured a means of redress for **workers when exercising their right of free movement in the EU**. This legislative proposal¹⁹ aims, inter alia, to introduce a legal obligation for Member States to provide EU mobile workers with appropriate means of redress at national level (Article 47).

In September 2013, the Commission proposed a regulation on indices used as **benchmarks in financial instruments and financial contracts**²⁰. Thereby it aimed to subject benchmarks,

¹⁷ COM(2013) 821, 822 and 824, 27.11.2013 and COM(2013) 8178 and 8179, 27.11.2013.

¹⁸ CJEU judgment of 26 June 2007 in Case C-305/05 *Ordre des barreaux francophones et germanophone and Others*.

¹⁹ COM(2013) 236 final, 26.4.2013.

²⁰ COM(2013) 641 final, 18.9.2013.

provided by market players in the financial sector, to clearer standards and supervision. It envisaged giving competent authorities checking and enforcement powers, including access to data transfers upon request. The Commission assessed the impact of the proposal on several rights protected by the Charter: protection of personal data (Article 8), right to freedom of expression and information (Article 11) and freedom to conduct a business (Article 16).

In its proposal for a regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex²¹, adopted in April 2013, the Commission ensured that any measures taken during surveillance operations coordinated by Frontex must be in full respect of fundamental rights and the principle of *non-refoulement*, which entails that no refugee should be returned to any country where he or she is likely to face the death penalty, torture or other inhuman or degrading treatment or punishment (Article 19(2)). Before disembarkation in a third country, Member States must take into account the general situation in that country to ensure that it is not engaged in practices in violation of the principle of *non-refoulement*, the persons intercepted or rescued must be identified, and their personal circumstances must be assessed.

3.1.2. Interinstitutional negotiations with important fundamental rights aspects

2013 has been an important year for the right to protection of personal data. In light of this year's revelations about global surveillance programmes potentially monitoring all citizens' communication, the EU institutions needed to make progress on their negotiations on a new data protection standard²². In October 2013, the European Parliament's LIBE Committee supported the Commission's proposal²³. The aim of the reform is to put individuals back in control of their data by updating their rights (Article 8). Explicit consent, the right to be forgotten, the right to data portability and the right to be informed of personal data breaches are key elements. They will help to close the growing rift between citizens and the companies with which they share their data, willingly or otherwise.

In order to promote the freedom to conduct a business, enshrined in Article 16 of the Charter, the Commission made a proposal in 2012 to modernise the rules on **cross-border insolvency**²⁴. During the negotiations, which made real progress in 2013, the impact of this proposal on minority creditors' rights to an effective remedy (Article 47) and to property (Article 17) was thoroughly considered.

²¹ COM(2013) 197 final, 12.4.2013.

²² COM(2012) 11 final, 25.1.2012, and COM(2012) 10 final, 25.1.2012.

²³ European Parliament, Document No A7-0403/2013.

²⁴ COM(2012) 744 final, 12.12.2012.

3.1.3. Implementation of the Charter through measures adopted by the EU legislative and by the Commission

In the field of procedural rights, **the directive on the right of access to a lawyer** and the right to have a third party informed upon deprivation of liberty was adopted ²⁵. With this landmark legislation, all suspects are guaranteed the right to be advised by a lawyer from the earliest stages of proceedings until their conclusion (Articles 47 and 48).

The European Parliament and the Council adopted the recast **Dublin regulation** ²⁶ which guarantees effective remedy to applicants on appeals against transfer decisions, thus ensuring full effect of the right of an asylum seeker to remain on the territory and reducing the risk of ‘chain *refoulement*’ (Article 19(2)). It also incorporates the Court’s case-law providing for an asylum seeker not to be sent to a Member State where there is a serious risk of violation of his/her fundamental rights. In such a case, another Member State is to assume responsibility without delay, in order not to jeopardise the asylum seeker’s quick access to justice.

The European Parliament and the Council also adopted the **asylum procedures directive** ²⁷ and the **reception conditions directive** ²⁸. The former reinforces guarantees safeguarding the fundamental right to asylum, in particular, by strengthening the right to access asylum procedures (Articles 18 and 19), whereas the latter includes improved and clearer standards to more effectively safeguard the fundamental right to dignity, especially as regards vulnerable asylum seekers and further harmonises the rules on detention, laying down clear and restrictive grounds, conditions for detention, and guarantees for detainees (Articles 1, 4, 6, 7, 18, 21, 24, and 47).

As regards **victims’ rights, a regulation on mutual recognition of protection measures in civil matters** ²⁹ establishes a simple and rapid mechanism to recognise protection measures ordered in a Member State in civil matters. People protected by such measures (mostly women who have restraining orders against someone) can thus be assured that the order obtained in their home country will have the same standing wherever they are in the EU.

The 2014 **European elections** will be the first to be held under the Lisbon Treaty, which has strengthened the powers of the European Parliament. In its recommendation of March 2013 ³⁰, the Commission invited political parties to endorse a candidate for European Commission President in the next European elections, and to display their European political party affiliation. The recommendation aims to promote the right to vote, enshrined in Article 39 of the Charter, by

²⁵ Directive 2013/48/EU, OJ L 294.

²⁶ Regulation No 604/2013, OJ L 180, p. 31.

²⁷ Directive 2013/32/EU, OJ L 180.

²⁸ Directive 2013/33/EU, OJ L 180, 29.6.2013, p. 96.

²⁹ Regulation No 606/2013, OJ L 181.

³⁰ Recommendation 2013/142/EU, OJ L 79, p. 29.

informing voters about the issues at stake in these elections, encouraging a Europe-wide debate, and ultimately improving voter turnout.

3.2. Measures promoting fundamental rights

Large companies across the EU continue to be predominantly led by men. In order to achieve substantive equality between women and men on corporate boards, in accordance with Article 23 of the Charter, the Commission proposed a directive last year to improve the gender balance of non-executive directors of companies listed on stock exchanges³¹. The European Parliament passed its resolution on the proposed directive³² at first reading, in November 2013, confirming a broad consensus on increasing women's representation on corporate boards and largely endorsing the Commission's approach to redressing the current imbalance.

Another area where the EU continues to reinforce protection of equality rights and promote the adoption of positive measures is that of **Roma integration**. Major progress was achieved in 2013 on an EU-wide approach to tackle the exclusion of Roma. A Council recommendation³³ was adopted unanimously in December 2013. Member States committed to improving the economic and social integration of Roma communities. Throughout the process, Roma themselves were included in discussions at the highest decision-making levels.

3.3. EU enforcement action

The Commission exercised its role as guardian of the Treaties and took action to ensure that Member States enforce EU legislation that gives concrete effect to the Charter.

Following analysis of national implementation of the **Visa Code**³⁴ on the right to appeal against a visa refusal/annulment/revocation, the Commission raised a number of questions on the compatibility of national legislation with the provisions of the Visa Code and of the Charter. It concluded that the right to an effective remedy, enshrined in Article 47 of the Charter, requires that an appeal against a visa refusal, annulment or revocation, includes access to a judicial body, as only or last instance of appeal. Letters of formal notice were sent to several Member States.

In 2012³⁵ the Court ruled that the sudden, radical lowering of the retirement age for judges, prosecutors and notaries in Hungary did not comply with Directive 2000/78, which ensures that the principle of non-discrimination recognised in Article 21 of the Charter is fully respected in the

³¹ COM(2012) 614 final, 14.11.2012.

³² European Parliament, Document No A7-0340/2013.

³³ Council recommendation on effective Roma integration measures in the Member States, 9.12.2013.

³⁴ Regulation No 810/2009, OJ L 243.

³⁵ CJEU judgment of 6 November 2012 in Case C-286/12 *Commission v Hungary*.

field of employment. Following a fruitful dialogue with the Commission, Hungary adopted a law in March 2013, which provides solutions to all issues raised and correctly and completely implements the Court's judgment.

Finally, as regards **data protection**, the Commission monitored Austria's implementation of the Court's 2012 ruling³⁶ on the lack of independence of the data protection supervisory authority. Austria amended its data protection legislation and ensured that the member of the authority who manages its day-to-day business is only subject to supervision by its chair, and that the authority is no longer part of the Federal Chancellery but has its own budget and staff.

3.4. Control of the Court over the EU institutions

The EU institutions' regard to the Charter is scrutinised by the Court, which delivered several judgments to ensure that the EU institutions act in line with the Charter. These judgments also related to how well EU legislation and decisions addressed to individuals comply with the Charter.

The EU can issue penalties or restrictive measures which might impact on the fundamental rights of the person to whom these are issued. In the *Kadi II*³⁷ appeal judgment, the Court clarified certain procedural rights of persons suspected of association with terrorism, including the right to good administration, the right to an effective remedy and the right to a fair trial (Articles 41 and 47). The Court **ensured the protection of fundamental rights and freedoms whilst recognising the imperative need to combat international terrorism**. Mr Kadi's assets had been frozen by the Commission, implementing a decision by the UN Sanctions Committee, as part of a UN Security Council resolution. The Court stated that, since no information or evidence had been produced by the Commission to substantiate the allegations that Mr Kadi was involved in activities linked to international terrorism (allegations he strongly denied), those allegations did not justify the adoption, at EU level, of restrictive measures against him.

The EU institutions in a number of cases, irrespective of the existence of UN Security Council resolutions, have adopted decisions and regulations freezing the funds of persons and bodies who the EU institutions have identified as being involved in nuclear proliferation. Some of the persons and bodies concerned brought actions seeking to annul these decisions. In a series of judgments³⁸, the General Court annulled actions by the EU institutions towards several of the applicants. It found that the EU institutions had not produced enough evidence to justify the measures

³⁶ CJEU judgment of 16 October 2012 in Case C-614/10 *Commission v Austria*.

³⁷ CJEU judgment of 18 July 2013 in Case C-584/10 P *Commission and Others v Kadi* ('Kadi II'); appeal case against T-85/09 *Kadi v Commission* ('Kadi I').

³⁸ CJEU judgments of 6 September 2013 in Joined Cases T-35/10 and T-7/11 *Bank Melli Iran v Council*; in Case T-493/10 *Persia International Bank v Council*; in Joined Cases T-4/11 and T-5/11 *Export Development Bank of Iran v Council*; in Case T-12/11 *Iran Insurance Company v Council*; in Case T-13/11 *Post Bank Iran v Council*; in Case T-24/11 *Bank Refah Kargar v Council*; in Case T-434/11 *Europäisch-Iranische Handelsbank v Council*; in Joined Cases T-42/12 and T-181/12 *Bateni v Council*, and in Case T-57/12 *Good Luck Shipping v Council*; and order of 11 March 2013 in Case T-110/12 *Iranian Offshore Engineering & Construction v Council*.

taken, and that, in certain cases, the EU institutions had breached the obligation to give reasons and disclose evidence.

In *Besselink*³⁹, the General Court gave effect to the **right of access to documents**, enshrined in Article 42 of the Charter, and it annulled in part the Council decision refusing access to a document on the EU's accession to the ECHR. The Court held that the Council made an error of assessment in refusing access to one of the negotiating directives it had adopted. The position reflected in this document had already been communicated to the negotiating parties. Therefore its disclosure could not jeopardise the climate of confidence between the negotiating parties.

While these decisions were addressed to individuals, legislative acts of the EU addressed to the Member States are also scrutinised by the Court.

The Court reviewed **the compatibility of the framework decision on the European Arrest Warrant⁴⁰ (EAW) with Articles 47 and 48 of the Charter**. The Court was asked if a Member State could make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State, in order to avoid any adverse effects on the right to a fair trial and the rights of the defence as guaranteed by the constitution of the Member State surrendering the person in question⁴¹. The Court held that the framework decision on the EAW was fully compatible with the Charter. To make the surrender of a person subject to a condition not provided for under the framework decision would undermine the principles of mutual trust and recognition that that decision purports to uphold, and would compromise its effectiveness.

4. Role of the ECHR

The mere fact that the Charter only applies when Member States are implementing EU law does not mean that there is a gap in the protection of fundamental rights. Individuals have recourse to national remedies and, after having exhausted these, they can lodge an application to the European Court of Human Rights, in line with the ECHR, to which all EU Member States are a party.

The Treaty of Lisbon imposed an obligation on the EU to accede to the ECHR. In April 2013, the draft agreement on the EU's accession to the ECHR was finalised, which is a milestone in the accession process. As a next step, the Commission has asked the Court to give its opinion on the draft agreement.

³⁹ CJEU judgment of 12 September 2013 in Case T-331/11 *Besselink v Council*.

⁴⁰ Framework Decision 2002/584/JHA as amended by Framework Decision 2009/299/JHA, OJ 2009 L 81, p. 24.

⁴¹ CJEU judgment of 26 February 2013 in Case C-399/11 *Melloni*.

5. Conclusion

In 2013 the Court dealt with a large number of cases concerning the Charter's applicability at national level. This highlights the Charter's increasing interaction with national legal systems. In this context, the *Åkerberg Fransson* judgment plays an important role in further defining the Charter's application in the Member States by national judges, even though the case-law in this respect is still evolving and likely to be continuously refined.

National judges are key actors in giving concrete effect to the rights and freedoms enshrined in the Charter, as they directly ensure that individuals obtain full redress in cases where fundamental rights within the scope of EU law have not been respected.

EU institutions have made significant efforts to ensure the consistent application of the Charter's provisions since it gained legally binding force as primary EU law. Any impact on fundamental rights needs to be carefully considered during legislative procedures, especially at the stage of elaborating final compromise solutions. A strong interinstitutional commitment is required to achieve this goal.

EU legal acts can also be challenged before the Court for any infringements of fundamental rights. The Court's scrutiny extends to Member States as well, but only where they implement EU law. Outside that area, Member States apply their own national fundamental rights systems. This is a clear and deliberate choice made by the Member States when designing the Charter and the Treaty.

The EU institutions must go further than merely respecting the legal requirements following from the Charter. They must continue fulfilling the political task of promoting a fundamental rights culture for all, citizens, economic actors and public authorities alike. The fact that the Commission has received almost 4 000 letters from the general public regarding the respect of fundamental rights indicates that individuals are aware of their rights and demand respect for them. The Commission supports their endeavours.

Staff working document
on the **application**
of the **EU Charter** of
Fundamental Rights
in 2013

Introduction

After the entry into force of the **EU Charter of Fundamental Rights**¹ (**the Charter**), in December 2009, the European Commission adopted a **strategy on the effective implementation of the Charter**² setting as an objective that the EU is beyond reproach as regards the respect of fundamental rights, in particular when it legislates. The European Commission further committed to preparing annual reports to better inform citizens on the application of the Charter and to measure progress in its implementation. The reports are intended to serve as a factual basis for the continuing informed dialogue between all EU institutions and Member States on the implementation of the Charter.

This report covers the year 2013 and informs the public about situations in which they can rely on the Charter and on the role of the European Union in the field of fundamental rights. In covering the full range of Charter provisions on an annual basis, the annual report aims to track where progress is being made, where further efforts are still necessary and where new concerns are arising.

The annual report is based on the actions taken by the EU institutions, on the analysis of letters and petitions from the general public and questions from the European Parliament. In addition, the report covers key developments as regards the jurisprudence of the Court of Justice of the European Union (CJEU), and provides information on the case-law of national courts on the Charter, based on the contributions received from Member States and further analysis carried out by the EU Agency for Fundamental Rights (FRA).

Protection of fundamental rights in the EU

In the European Union, 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 actions taken by the EU institutions. The role of the European Commission is to ensure that all its acts respect the Charter. In fact, all EU institutions (including the European Parliament and the Council) must respect the Charter, in particular throughout the legislative process.

¹ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

² Available at: http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf

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 will depend on the situation in question. For example, a connecting factor exists: when national legislation transposes an EU directive in a way contrary to fundamental rights, when a public authority applies EU law in a manner contrary to fundamental rights, or when a final decision of a national court applies or interprets EU law in a way contrary to fundamental rights.

If a national authority (administration or court) violates fundamental rights set out in the Charter when implementing EU law, the European Commission can take the matter to the **CJEU** and start an infringement procedure against the Member State in question. The European Commission is not a judicial body or a court of appeal against the decisions of national or international courts. Nor does it, as a matter of principle, examine the merits of an individual case, except if this is relevant to carry out its task of ensuring that the Member States apply EU law correctly. In particular, if it detects a wider, e.g. structural, problem, the European Commission can contact the national authorities to have it solved, and ultimately it can take a Member State to 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 directly affecting them violates their fundamental rights as enshrined in the Charter, they can bring their case before the CJEU, which, subject to certain conditions, has the power to annul the act in question.

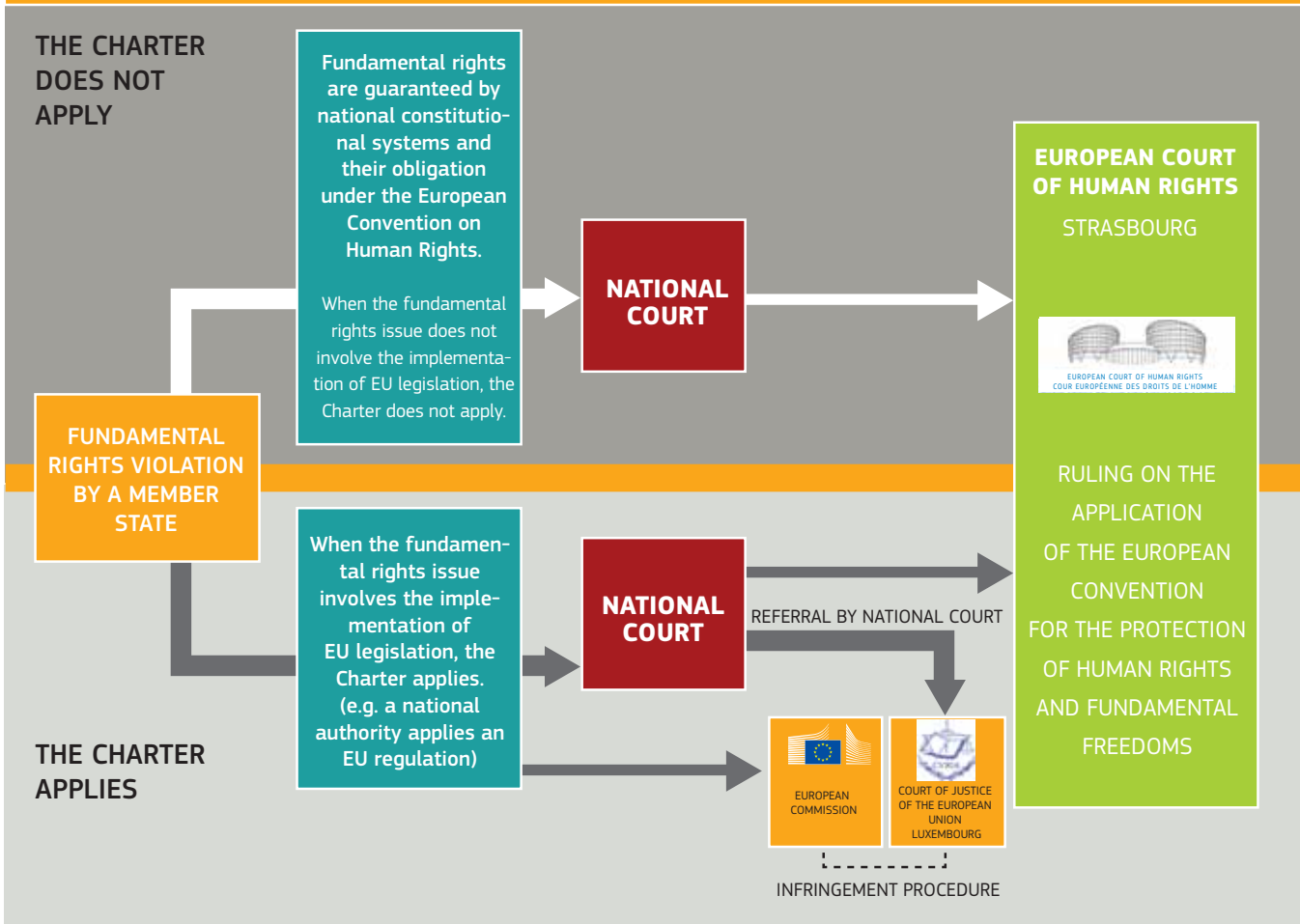
The European Commission cannot pursue complaints which concern matters outside the scope of EU Law. This does not necessarily mean that there has not been a violation of fundamental rights. If a situation does not relate to EU law, it is for the Member States alone to ensure that their obligations regarding fundamental rights are respected. Member States have extensive national rules on fundamental rights, which are guaranteed by national judges and constitutional courts. Accordingly, complaints in this context need to be directed to the national level.

In addition, all EU Member States are bound by the commitments they have made under **the European Convention on Human Rights** (ECHR), independent of their obligations under EU law. Therefore, as a last resort and after having exhausted all legal remedies available at national level, individuals may bring an action before the European Court of Human Rights in Strasbourg for a violation by a Member State of a right guaranteed by the ECHR. The European Court of Human Rights (ECtHR) has designed an admissibility checklist in order to help potential applicants work out for themselves whether there may be obstacles to their complaints being examined by the ECtHR ³.

³ Available at: <http://appform.echr.coe.int/echrappchecklist/default.aspx?lang=eng&cookieCheck=true>

EU CHARTER OF FUNDAMENTAL RIGHTS

When does it apply and where to go in case of violation?



The European Convention of Human Rights (ECHR)

Therefore, where the Charter is not applicable in certain situations within an EU Member State two other sources of protection for fundamental rights exist: Individuals may have recourse to national remedies and, after having exhausted them, they can lodge an application to the ECHR, in conformity with that convention.

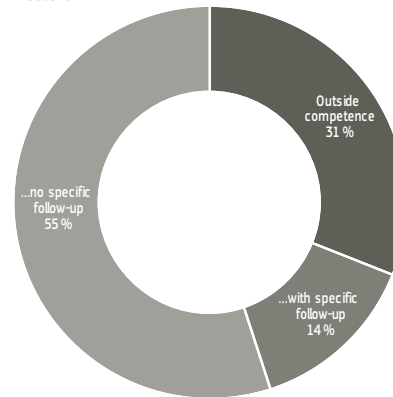
The Treaty of Lisbon has imposed an obligation on the EU to accede to the ECHR. In April 2013, the draft agreement on accession of the EU to the ECHR was finalised, which can be considered a milestone in the accession process. As a next step, the European Commission has asked the Court to give its opinion on the draft agreement.

Furthermore, any application of the Charter must comply with the ECHR as interpreted in the case-law of the ECtHR. The Charter itself contains an explicit reference to the ECHR in its Articles 52 and 53. Data collected by the EU Fundamental Rights Agency on references made to the Charter in national judgments in two thirds of the cases also show references to the ECHR. Thus, there is a certain degree of parallelism when referring to both the ECHR as well as the Charter in judgments handed down in the Member States.

Overview of the letters and questions to the European Commission on fundamental rights

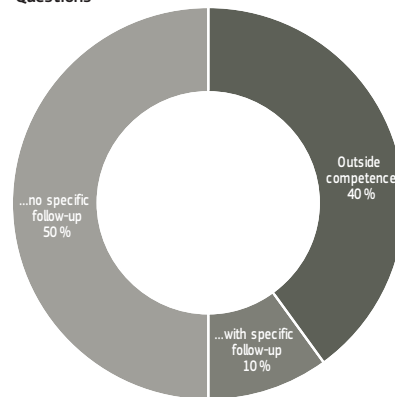
Among the **letters from the general public** on fundamental rights issues received by the European Commission in 2013, 69 % concerned situations where the Charter could apply. In a number of cases, the European Commission requested information from the Member States concerned or explained to the complainant the applicable EU rules. In other cases, the complaints should in fact have been addressed to the national authorities or to the ECtHR. Where possible, complainants were redirected to other bodies for more information (such as national data protection authorities).

Letters

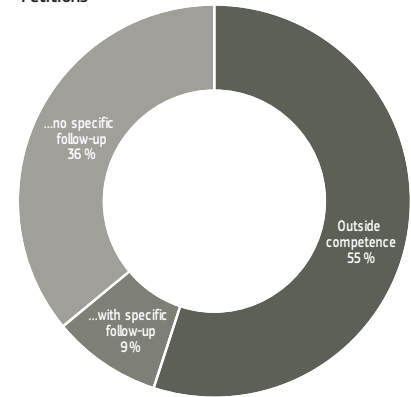


During 2013, the Commission received almost 4000 letters from the general public concerning fundamental rights issues as well as over 900 questions from the European Parliament and around 120 petitions. Among the **questions from the European Parliament 60 % concerned issues within EU competence whereas among its petitions 45 % concerned such issues**. In a number of cases, the European Commission contacted the Member States to obtain clarifications on alleged violations. The replies given by the European Commission explained or clarified the relevant policies and ongoing initiatives.

Questions



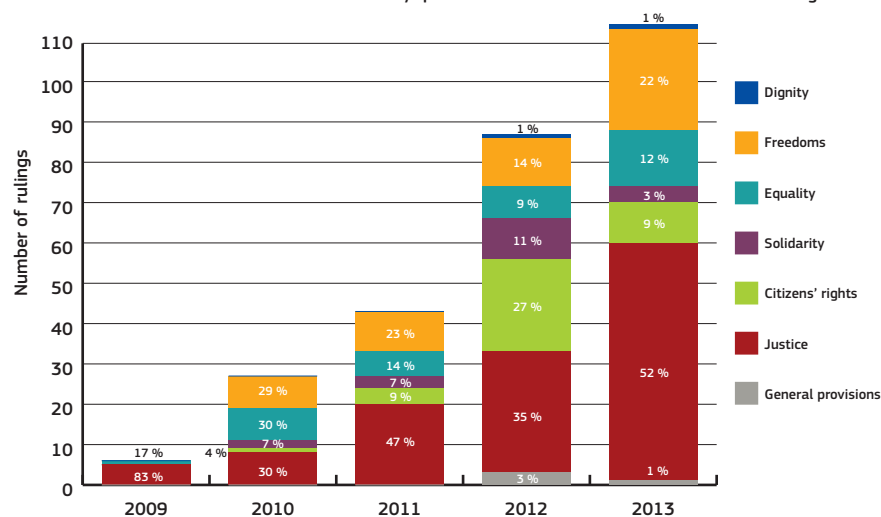
Petitions



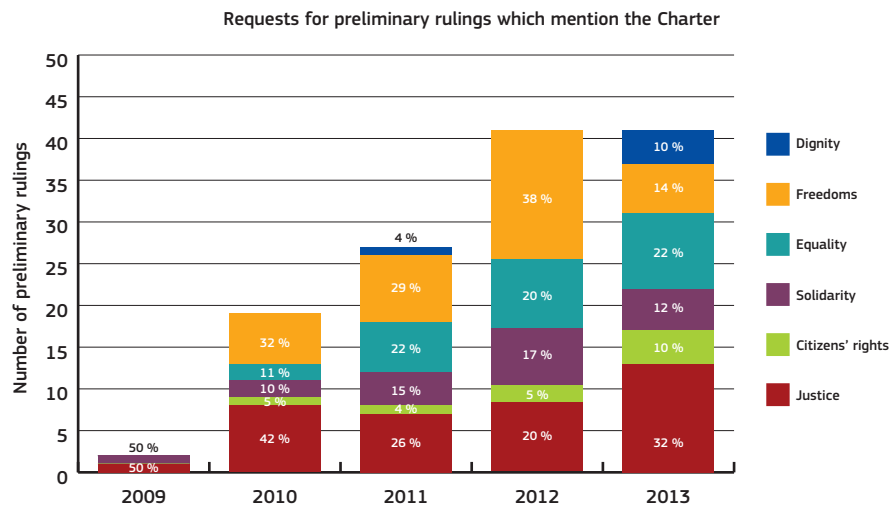
Overview of the decisions of the Court of Justice of the European Union (Court of Justice, General Court and Civil Service Tribunal) referring to the Charter

The European Union Courts have increasingly referred to the Charter in their decisions. The number of decisions of these Courts quoting the Charter in their reasoning developed from 43 in 2011 to 87 in 2012. In 2013, the number of these decisions quoting the Charter amounted to 114, which is almost a triple of the number of cases of 2011 (see Appendix I for an overview of all relevant rulings).

Overview of CJEU case-law which directly quotes the Charter or mentions it in its reasoning



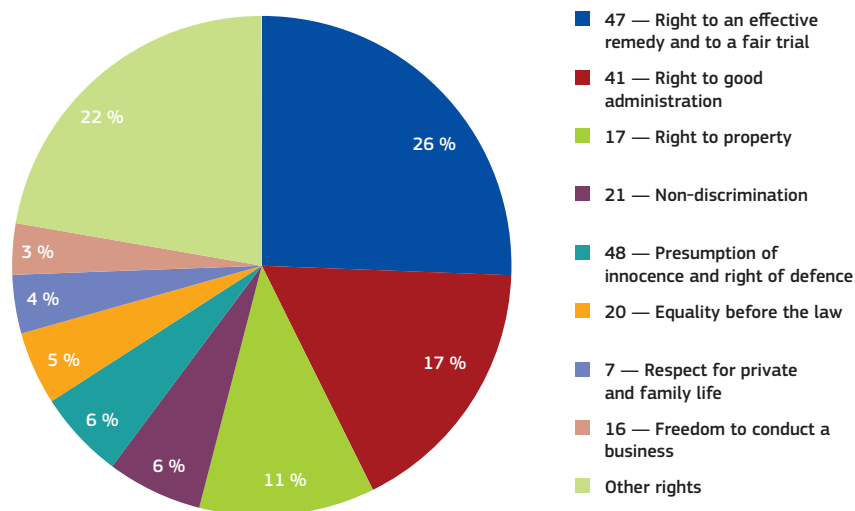
National courts when addressing questions to the CJEU (preliminary rulings) are often referring to the Charter. Regarding applications for preliminary rulings submitted by national judges to the CJEU in 2013, 41 of the requests submitted contained a reference to the Charter, which is exactly the same number as for 2012 (See Appendix II for an overview of the applications for preliminary rulings submitted in 2013 which refer to the Charter). This is a rise by 65 % as compared to 2011, when only 27 requests submitted contained a reference to the Charter.



References to Charter rights in decisions of the Court of Justice of the European Union and of national courts

When focusing on the different articles of the Charter referred to in cases before the EU Courts and before national courts the following articles featured prominently in both scenarios: the right to an effective remedy and to a fair trial, and the right to good administration. However, the right to property, the right not to be discriminated against, the presumption of innocence and the right of defence, and the right to equality before the law were more often referred to in the jurisprudence of the EU Courts, whereas the right to respect for private and family life and rights of the child played a more important role before national courts.

Percentage of references to particular rights of the Charter in decisions of the Court of Justice of the European Union 2013

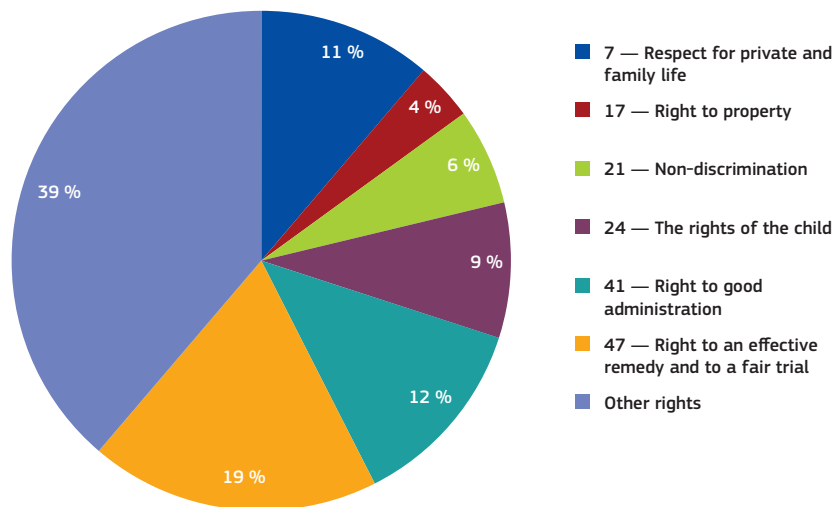


Source: European Commission.

NB: The basis for this pie chart is the case-law as referred to in Appendix I. In those cases where reference was made to both a Title VII (general provisions) article and an article contained in Title I-VI, only the latter was taken into account. Those cases which only referred to a Title VII article (C-276/12 *Sabou*) were not taken into account. The total number of judgments analysed therefore amounted to 113, and the total number of references to different Charter articles amounted to 212, as several judgments referred to more than one article. The percentages were calculated on the basis of these 211 references. The category 'Other rights' refers to all rights for which the percentage amounts to less than 3 %.

The rights mostly referred to in decisions of **national courts in 2013** were the right to an effective remedy and to a fair trial, the right to good administration, and the right to respect for private and family life. Please note that the chart below only takes into account those decisions where the Charter was referred to in the reasoning of the court.

Percentage of references to particular rights of the Charter in decisions of national courts



Source: European Union Agency for Fundamental Rights (FRA) ⁴

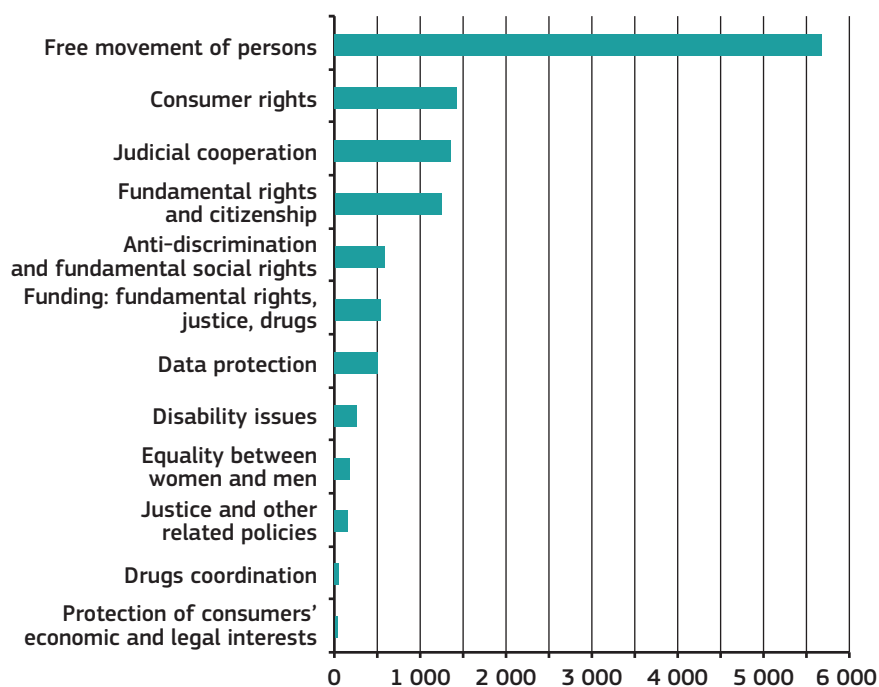
NB: Only decisions where the Charter was referred to in the reasoning of the courts were taken into account, and only up to five judgments per Member State were considered. Just as with the pie-chart on the EU Courts, references to articles in Title VII (general provisions) were not taken into account. The category 'Other Rights' refers to all rights for which the percentage amounts to less than 3 %.

Overview of enquiries with the Europe Direct Contact Centres

The figures collected by the **Europe Direct Contact Centres** (EDCC) confirm that there is a high degree of interest among citizens on justice, citizenship and fundamental rights. In 2013, the EDCC replied to 11 974 enquiries from citizens on topics such as free movement of persons (48 % of the total number of enquiries), consumer rights (12 %) and judicial cooperation (11 %).

⁴ For more information, see also the 2013 Annual Report of the European Union Agency for Fundamental Rights, which is expected to be adopted in June 2014, and which will be available on the FRA website under 'publications and resources': <http://fra.europa.eu/en/publications-and-resources>

Enquiries received by the Europe Direct Contact Centres on justice, fundamental rights and citizenship (2013)



Methodology and structure of the staff working document

The staff working document annexed to the annual report does not look at the Charter only as a legally binding source of law. It rather aims also to render account, from a broader perspective, of the different ways the Charter was invoked and contributed to the progress made in respecting and promoting fundamental rights in a number of areas during 2013. As a consequence, the staff working document refers to the Charter as a legally binding instrument as well as a policy objective depending on the areas concerned. Furthermore, accounts given under the different chapters of the report vary in breadth as well as depth.

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

— includes national court decisions which refer to the Charter, irrespective of whether EU law in those national cases was applicable or not.

Some measures and cases may have an impact on different articles of the Charter. Hence, while a measure and/or case are explained in a more detailed manner under one chapter (the heading of one article) it may be referred to under a different one as well.

The structure of the staff working document follows the six titles of the Charter itself: Dignity, Freedoms, Equality, Solidarity, Citizens' rights and Justice. Each of the six chapters of the staff working document contains the following information on the application of the Charter, where available and relevant:

- *Legislation:*
 - Examples of EU institutions (proposed or adopted) legislation promoting the Charter rights;
 - Examples of how the EU institutions and the Member States ensured compliance with and have applied the Charter in 2013 within other (proposed or adopted) legislation;
 - Follow-up: infringement procedures launched by the Commission against Member States for not or wrongly implementing relevant legislation;
- *Policies:*
 - Examples of how the EU institutions and the Member States ensured compliance with and have applied the Charter in 2013 within policy areas, e.g. through recommendations and guidelines and best practices;
- *Case-law:*
 - Relevant jurisprudence of the CJEU;
 - Case-law of national courts referring to the Charter (be it within or outside the scope of EU law);
- An **overview of questions and petitions** from the European Parliament, and letters from the general public received in 2013 focusing on main fundamental rights issues;
- Data gathered by **the EU Agency for Fundamental Rights** throughout 2013.

Human dignity

Right to life

Right to the integrity of the person

Prohibition of torture and inhuman or degrading
treatment or punishment

Prohibition of slavery and forced labour

1/

DIGNITY

Dignity

In 2013, The European Commission adopted its first **communication on female genital mutilation** demonstrating the commitment of the EU to address effectively one aspect of the issue of gender-based violence.

A **recast piece of legislation on asylum** (determination of Member States responsible for examining applications and reception of applicants) was adopted. It guarantees effective remedies to asylum applicants as regards appeals against transfer decisions in accordance with case-law of the CJEU. This ensures that asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights under the newly agreed rules. It also offers better protection to the most vulnerable asylum seekers, e.g. minors.

The European Commission presented a **proposal for a regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex** in response to the judgment of the CJEU, *European Parliament v Council of EU* (C-355/10). It aims at establishing clear rules for joint patrolling as regards interception, including on the high seas, search and rescue situations which arise during these surveillance operations and disembarkation. It emphasises also the obligation to respect the principle of *non-refoulement*.

The European Commission adopted the **EU Strategy towards the Eradication of Trafficking in Human Beings 2012–16 in June 2012**. One of its actions was the launch of **the European Civil Society Platform against Trafficking in Human Beings** in 2013 which brought together numerous civil society organisations from the EU Member States as well as neighbouring priority countries. The European Commission also established an **EU anti-trafficking website**. The **EU Anti-trafficking Day** conference in Vilnius explored the links between trafficking in human beings and the Internet; issues discussed included the problem of online recruitment of victims and facilitation of trafficking in human beings as well as online awareness-raising and investigation.

Article 1: Human dignity

Human dignity, as protected in 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 fellow citizens. It is not only a right in its own but also part of the very substance of each right. Thus it needs to be respected when any of these rights are restricted. All subsequent rights and freedoms under the title Dignity, such as the right to life, and the prohibition of torture and slavery add specific protection against infringements of dignity⁵. They must equally be respected in order to allow enjoyment of other rights and freedoms in the Charter, for example freedom of expression and freedom of association. None of the rights laid down in the Charter may be used to harm the dignity of another person.

Legislation

Human dignity issues arose in a few instances in 2013. Thus, the European Commission took the right to human dignity into account when preparing a legislative proposal⁶ for amendment of Regulation 1236/2005 concerning **trade in certain goods which could be used for capital punishment**, torture or other cruel, inhuman or degrading treatment or punishment, notably with a view to improving export controls on certain medicinal products to prevent the use of such products for capital punishment⁷.

Furthermore, when adopting a legislative package (notably Regulations 1141/2011, 1147/2011 and Decision 2011/8042)⁸ allowing the use of **security scanners** at EU airports the European Commission had considered the impact on fundamental rights, namely on human dignity. Subsequently, in 2013, the European Commission received a number of parliamentary written questions and letters from citizens on security scanners and their deployment at the airports of a Member State. The issues raised concerned the policy of not offering passengers alternative control methods ('opt-out') on request, as provided for in the regulation. Thus, the services of the European Commission investigated the compliance of such a policy with EU law. They came to the conclusion that the policy of the Member State in question risks constituting a breach of EU law. The European Commission informed this Member State of the assessment of their policy requesting it on 8 July 2013 to take corrective action. On 21 November the Member State issued

⁵ In similar form they are guaranteed by the European Convention of Human Rights.

⁶ Document COM(2014) 1 of 14 January 2014, Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; available under: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52014PC0001:EN:NOT>

⁷ See also European Commission Regulation No 1352/2011 of 20 December 2011.

⁸ European Commission Regulation No 1141/2011 amending Regulation No 272/2009 supplementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, Text with EEA relevance, OJ L 293, 11.11.2011, p. 22; European Commission Implementing Regulation No 1147/2011 amending Regulation No 185/2010 implementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports, Text with EEA relevance; European Commission Decision 2011/8042/EU of 14 November 2011 addressed to all Member States; OJ L 294, 12.11.2011, p. 7.

Ruling of the Supreme Court of the Czech Republic ¹⁰

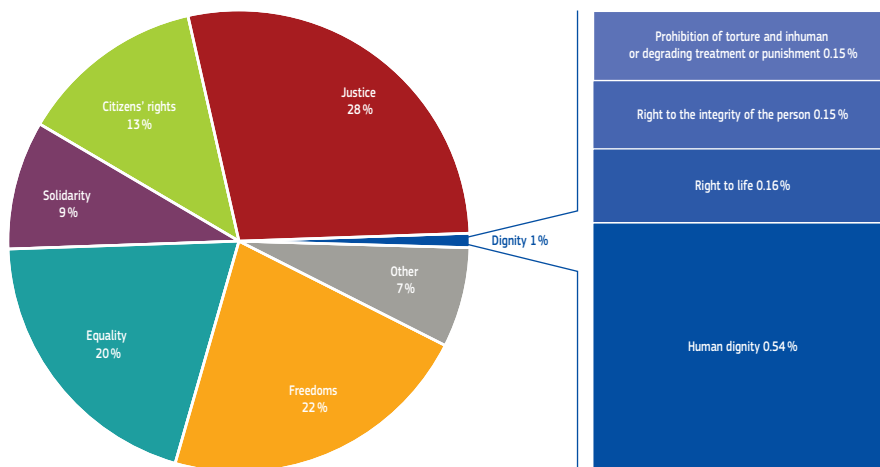
In a case where a patient in a psychiatric hospital was fastened to a toilet for 4 hours and found dead after insufficient supervision, the mother of the patient brought proceedings against the hospital claiming among others an infringement of the right to human dignity. The district court held that, even though the way the patient was treated restricted her right to human dignity, it was legitimate. The case went up to the Supreme Court. One of the legal questions raised before the Supreme Court was whether a person with a grave mental disorder can be treated in a less dignified manner than a healthy person. The Supreme Court determined that human dignity is protected by both national and international law, including the Charter of Fundamental Rights. The Supreme Court disagreed with the district court and concluded that the right to human dignity is absolute. The right to human dignity of a mentally disordered person cannot be any different from the protection of this right of any other person. Although the Charter was not directly applicable in this purely internal case it was used by the Supreme Court as point of reference to interpret the notion of human dignity.

a new measure. This new legal framework offers to passengers the possibility to opt out of being scanned by a security scanner.

Case-law

As regards minimum benefits for asylum seekers the CJEU had already decided in 2012 ⁹ that a Member State in receipt of an application for asylum is obliged to **grant the minimum conditions for reception of asylum seekers** laid down in Directive 2003/9 even to an asylum seeker in respect of whom it decides to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant. Subsequently, on 17 April 2013, the French *Conseil d'État* annulled internal guidelines which until then had excluded such asylum applicants from minimum benefits.

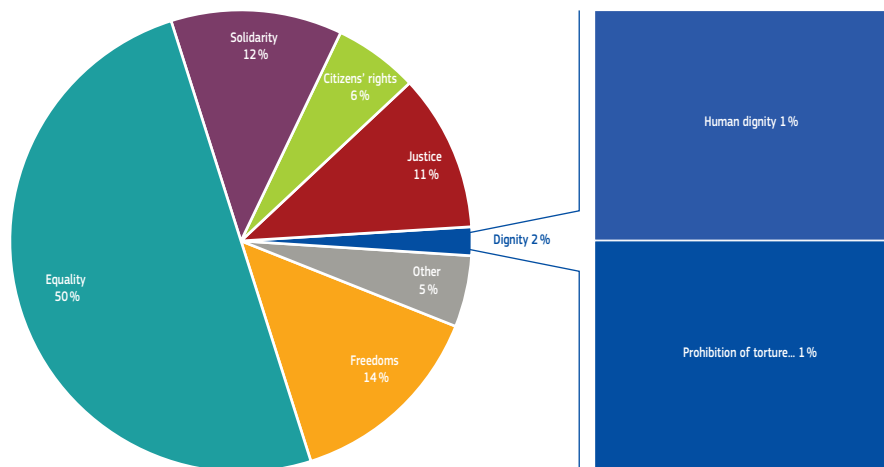
Letters



⁹ CJEU judgment of 27 September 2012 in Case C-179/11 *Cimade and GISTI*.

¹⁰ Supreme Court of the Czech Republic (Nejvyšší soud), case 30 Cdo 3223/2011, *J.M. v The psychiatric hospital in Bohnice*, 14.5.2013.

Petitions



Article 3: Right to the integrity of the person

The right to physical and mental integrity of the person (Article 3(1) of the Charter) on the one hand protects from infringements by public authorities. On the other hand it also puts them under an obligation to promote such protection, e.g. by concrete legislation.

Legislation

In this context attention is drawn to the **directive on combating the sexual abuse and sexual exploitation of children and child pornography**¹¹. The deadline for the Member States to transpose this directive into national law was 18 December 2013.

Article 3(2)(c) of the Charter prohibits making the human body as such a source of financial gain in the fields of medicine and biology. Hence, Article 20 of Directive 2002/98/EC¹² sets out principles **governing voluntary and unpaid donation of blood and blood components**. It states that Member States shall take the necessary measures to encourage voluntary and unpaid blood donations with a view to ensuring that blood and blood components are as far as possible provided by such donations. In accordance with Article 20(2) of the directive, Member States shall submit reports on the practice of voluntary and unpaid blood donation to the European Commission every 3 years. The European Commission prepared a new survey on the implementation of this principle in the Member States which was launched by the end of 2013.

¹¹ Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1.

¹² Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC, OJ L 33, 8.2.2003, p. 30.

Policy

The European Commission supports Member States in key policy areas, such as policies putting an end to gender-based violence. Gender-based violence constitutes a breach of the fundamental right to dignity and physical and mental integrity of a person, as well as the rights to life, liberty, security, equality between women and men, and non-discrimination¹³. In 2013, the European Commission adopted its first communication on female genital mutilation demonstrating the commitment of the EU to address the issue effectively. It also co-finances national awareness-raising campaigns against gender-based violence.

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

Article 4 of the Charter provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This was in particular taken into account by EU institutions in 2013 when dealing with provisions that concern border controls, immigration and asylum issues.

Legislation

On 12 April 2013, the European Commission presented a proposal for a **regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex**¹⁴ in response to the judgment of the CJEU in the case of *European Parliament v Council of EU*¹⁵. The aim of the proposal is to establish clear rules for joint patrolling as regards interception, including on the high seas, search and rescue situations which arise during these surveillance operations and disembarkation. The proposal takes into account recent legal and judicial developments, such as the amendments to the regulation establishing Frontex¹⁶ and the judgment of the European Court of Human Rights in *Hirsi Jamaa and Others v Italy*¹⁷, as well as the practical experiences of Member States and the agency when implementing the annulled Council decision. The European Commission proposal now provides that any measures taken during surveillance operations must be in full respect of fundamental rights and the principle of *non-refoulement*. Before disembarkation in a third country, Member States must take into account the general situation in that country to ensure that it is not

¹³ See: Council Conclusions on Combating Violence Against Women, and the Provision of Support Services for Victims of Domestic Violence adopted on 6 December 2012, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/134081.pdf

¹⁴ Proposal for a regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex (COM(2013) 197 final), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399453336385&uri=CELEX:52013PC0197>

¹⁵ CJEU judgment of 5 September 2012 in Case C-355/10 *Parliament v Council*.

¹⁶ Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25.11.2004, p. 1.

¹⁷ ECtHR, *Hirsi Jamaa and Others v Italy* [GC], No 27765/09, 23.2.2012.

engaged in practices in violation of the principle of *non-refoulement*. Furthermore, the persons intercepted or rescued must be identified and their personal circumstances must be assessed to the extent possible before disembarkation. They must be informed of the place of disembarkation in an appropriate way and they must be given an opportunity to express any reasons for believing that disembarkation in the proposed place would be in violation of the principle of *non-refoulement*. This guarantees that the migrants are informed about their situation and the proposed place of disembarkation thereby allowing them to express any objections.

Following another European Commission proposal, the co-legislator **adopted the recast Dublin regulation**¹⁸. Its provisions guarantee effective remedies to asylum applicants as regards appeals against transfer decisions, thus ensuring full effect of the right to remain on the territory and reducing the risk of ‘chain *refoulement*’. It provides for widened rules of reunification for unaccompanied minors, guarantees the right to a guardian, the right of all applicants to detailed information on the functioning of the Dublin system including, for minors, in a manner adequate for their understanding¹⁹. The regulation contains furthermore substantial provisions on detention, limiting it to cases of established risk of absconding, restricting it to a maximum of 3 months, and providing that the detention conditions and guarantees applicable to asylum seekers under this procedure are the ones foreseen by the **reception conditions directive**²⁰ (thus ensuring the same level of rights as for any other asylum applicant). The latter was adopted by the co-legislator following a European Commission proposal. It lays down improved and clearer standards to more effectively safeguard the fundamental right to dignity, especially as regards vulnerable asylum seekers. In **particular** it further harmonises the rules on detention, laying down clear and restrictive grounds, conditions for detention and guarantees for detainees.

The regulation also incorporates in an article the judgment of the CJEU in the case *NS v UK (case C-411/10)*²¹, whereby an asylum seeker cannot be sent to a Member State where there is a serious risk of violation of his/her fundamental rights, but instead another Member State is to assume responsibility on the basis of the Dublin criteria, within the shortest delay, in order not to jeopardise his/her quick access to procedure.

In a declaration annexed to the recast Dublin regulation, the European Parliament, the Council, and the European Commission declared to use their respective legislative powers for a revision of the provisions in the recast Dublin regulation, so as to ensure that the best interest of the child is safeguarded, once the CJEU has ruled on case C-648/11 *MA and Others v Secretary of State*

¹⁸ Regulation No 604/2013 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, OJ L 180, 29.6.2013, p. 31.

¹⁹ Thus, together with the directive on common procedures for granting and withdrawing international protection status (Recast) expressly mention the best interest of the child principle; for the rights of the child see also below Article 24.

²⁰ Directive 2013/33/EU laying down standards for the reception of applicants for international protection, OJ L 180, 29.6.2013, p. 96.

²¹ CJEU judgment of 21 December 2011 in Joined Cases C-411/10 and C-493/10 *N.S. and Others*.

for the Home Department²². This judgment was delivered on 6 June 2013, clarifying that in an abovementioned scenario the Member State in which that minor is present after having lodged an asylum application there is to be designated the ‘Member State responsible’²³.

Article 5: Prohibition of slavery and forced labour, including trafficking in human beings

Slavery violates human dignity. Trafficking in human beings is one form of slavery. The Charter explicitly prohibits trafficking in human beings in Article 5(3). Preventing and combating it is a priority for the Union and the Member States.

Legislation/policy

On 19 June 2012, the European Commission had presented a **communication on the ‘EU Strategy towards the Eradication of Trafficking in Human Beings 2012–16’**²⁴, which aims to address in a comprehensive, integrated and structured way the challenges for the next 5 years. It proposes a series of 40 concrete and time-bound actions emphasising the necessity to respect and promote fundamental rights in legislative and policy measures which address trafficking in human beings.

One of the latest actions delivered under the Strategy is the launch in May 2013 of an **EU Civil Society Platform** against Trafficking in Human Beings which aims at bringing together more than 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 third countries.

By prioritising prevention of the crime, prosecution of traffickers, the protection of the victims, as well as cooperation and coordination, the EU strategy complements **Directive 2011/36/EU**²⁵ on preventing and combating trafficking in human beings, which has a strong focus on victim protection, assistance and support. This directive adopts an integrated, holistic, and human rights-based approach in addressing trafficking in human beings, recognising the latter’s gender-specific nature. It also refers to the role of an EU Anti-Trafficking Coordinator providing the overall strategy policy orientation in the field of trafficking in human beings. He or she will improve coordination and coherence between EU institutions, EU agencies, Member States and international

²² CJEU judgment of 6 June 2013 in Case C-648/11 *MA and Others*.

²³ For a more extensive analysis of the case *MA and Others* and the obligation to interpret the provisions of the Dublin II regulation in conformity with Article 24 of the Charter on the Rights of the Child, see below Article 24 under the section ‘CJEU jurisprudence’.

²⁴ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0286:FIN:EN:PDF>

²⁵ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 271, 18.10.2011, p. 49.

actors. The directive should have been transposed into national law by 6 April 2013. As 13 Member States had not communicated by that deadline any measures transposing the directive, infringement procedures have been launched against them. Letters of formal notice (under Article 258 TFEU) were sent on 29 May 2013 to these 13 Member States. In November 2013, reasoned opinions on non-communication basis were sent to Cyprus, Italy, Spain and Luxembourg.

Furthermore, the **EU anti-trafficking website** launched by the European Commission serves as a one-stop shop, containing all relevant information on EU policy and legislation, national information pages on all Member States, European Commission-funded projects and publications by relevant stakeholders ²⁶.

Finally, the **EU Anti-Trafficking Day** was established by the European Commission in 2007, marked on 18 October every year, with the aim to raise awareness on trafficking in human beings and to increase the exchange of information and networking between the different actors working in the field of combating trafficking in human beings. For 2013, the Lithuanian Presidency and the European Commission organised a conference in Vilnius to mark the 7th EU Anti-Trafficking Day exploring the links between the Internet and combating Trafficking in Human Beings ('Cyberspace for Prevention, not Recruitment').

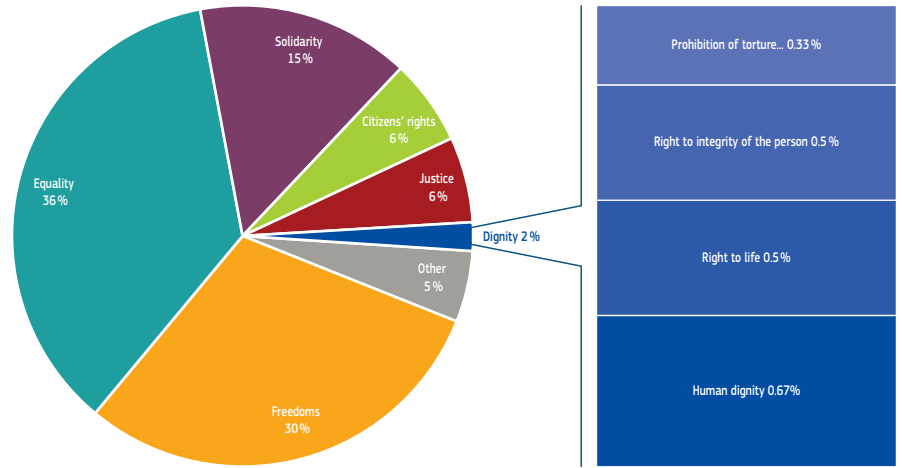
On 13 June 2013 the **Council** published its **revised draft conclusions** on an EU Framework for the Provision of Information on the Rights of Victims of Trafficking in Human Beings, wherein it invited Member States to promote the rights of victims, by rendering available the relevant information to them, among others on labour, social, victim and migrant rights that victims of trafficking in human beings have under EU law in their jurisdiction with special attention being given to child victims ²⁷. At the same time it asked the European Commission to support the Member States' efforts and allocate the necessary budget funding projects to implement the rights of victims ²⁸.

²⁶ The link to the website is: <http://ec.europa.eu/anti-trafficking>. The European Commission is funding many projects concerning trafficking in human beings. Addressing human trafficking in Europe is a priority under the financing programme 'Prevention of and Fight against Crime' — as part of the General Programme 'Security and Safeguarding Liberties' — (2007–13). A targeted call for projects was launched in the summer of 2013 with a deadline of 31 October.

²⁷ On the rights of the child, see below under Article 24.

²⁸ Available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209203%202013%20INIT>

Questions



Right to liberty and security
Respect for private and family life
Protection of personal data
Right to marry and right to found a family
Freedom of thought, conscience and religion
Freedom of expression and information
Freedom of assembly and of association
Freedom of the arts and sciences

Right to education
Freedom to choose an occupation and right to engage
in work
Freedom to conduct a business
Right to property
Right to asylum
Protection in the event of removal, expulsion or
extradition

21

FREEDOMS

Freedoms

As regards the reform of EU data protection law, the **Committee for Civil Liberties, Justice and Home Affairs (LIBE)** of the European Parliament **backed the European Commission's data protection proposal**.

Following last year's revelations about **mass surveillance programmes** the European Commission set out actions that need to be taken to restore trust in data flows between the **EU and the US**. These include ensuring that safeguards apply to EU citizens in US surveillance programmes as well as concluding negotiations concerning a EU-US umbrella agreement on data protection in the law enforcement sector. The agreement should include enforceable rights of judicial redress for citizens on both sides of the Atlantic. The European Commission also made 13 recommendations to improve the functioning of the Safe Harbour scheme. Remedies should be identified by summer 2014. The European Commission will then review the functioning of the scheme based on the implementation of these 13 recommendations.

In the framework of the **common agricultural policy (CAP)** and the common fisheries policy (CFP) post 2013, the European Commission proposal on the **publication of information about beneficiaries of funds specific to these policy fields** reflects the attention given to the protection of individuals' rights to privacy as well as personal data.

On 10 September 2013, the European Parliament adopted its resolutions on the European Commission proposals for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of **matrimonial property regimes** and for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.

In order to address the growing number of calls for the European Commission to intervene with regard to **media freedom and pluralism**, an independent expert group presented **30 recommendations addressed to the EU institutions, Member States and relevant stakeholders**. In public consultations on the report Member States and media organisations were reluctant to see increased European Commission intervention in media pluralism whereas citizen respondents were largely in favour of intervention.

As already mentioned above one of the most important developments in this area is the strengthening of the **Common European Asylum System** by adoption of the revised Dublin regulation, the Eurodac regulation, directives on the reception conditions and on the asylum procedures ²⁹.

Article 7: Respect for private and family life

Article 7 of the Charter guarantees the right of everyone to **respect of their private and family life as well as home and communications**.

The right to **private life** includes the protection of privacy in relation to any information about a person.

Legislation

This right as well as the right to protection of personal data of individuals (Article 8 of the Charter) naturally had to be considered and balanced against the taxpayer's right to be kept informed about the use made of public funds in the context of **beneficiaries of European agricultural funds** ³⁰. Thus, the proposals for the common agricultural policy (CAP) post 2013, confirmed by the political agreement of June 2013 ³¹, contained the European Commission proposal on the publication of information of CAP beneficiaries but on the other hand also reflects the attention given to the protection of individuals' rights to privacy as well as personal data. Provisions of

²⁹ **Dublin regulation:** Regulation (EU) No 604/2013 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, OJ L 180, 29.6.2013, p. 31. Article 33 of the Dublin regulation concerns 'A mechanism for early warning, preparedness and crisis management'; **reception conditions directive:** Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180, 29.6.2013, p. 96; **asylum procedures directive:** Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection OJ L 180, 29.6.2013, p. 60; **Eurodac regulation:** Regulation (EU) No 603/2013 of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180 29.6.2013, p. 1. The **asylum qualification directive** was already adopted in 2011: Directive 2011/95/EU 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 OJ L 337, 20.12.2011, p. 9.

³⁰ Following in particular the CJEU case-law: CJEU judgment of 9 November 2010 in Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke and Eifert*.

³¹ See EU European Commission website on 'the common agricultural policy after 2013', available at: <http://ec.europa.eu/agriculture/cap-post-2013/>; see also: Amendment to the European Commission proposal COM(2011) 628 final/2 for a Regulation on the financing, management and monitoring of the common agricultural policy, COM(2012) 551 final, http://ec.europa.eu/agriculture/funding/regulation/amendment-com-2012-551_en.pdf

general scope were added during the negotiation with the other two institutions. The main elements of the political agreement are:

- publication of the name of beneficiaries, with the exception of those receiving an amount of annual aid which does not exceed a certain threshold. The modalities for fixing the threshold are part of the new provisions and accommodate the principle of proportionality and non-discrimination;
- publication of details on the measures financed by the CAP funds under which the beneficiaries received the aid and also details on the obligations that the beneficiaries need to respect.

The first publication under the new rules should take place in 2015.

The proposed regulation on the European Maritime and Fisheries Fund (EMFF), which will replace the current European Fisheries Fund (EFF) and during the period of the next multiannual financial framework (2014–20) finance measures in the field of fisheries and maritime policies, constitutes a further case in which the EU had to balance the rights to respect for private life (Article 7 of the Charter) and to the protection of personal data (Article 8 of the Charter and Article 16 TFEU) of beneficiaries of funds with the principle of transparency (Articles 1 TEU and 10 TEU and Article 15 TFEU). Taking into account the CJEU's judgment in *Schecke and Eifert v Land Hessen*³², the European Commission addressed the topic in its amended proposal for the EMFF regulation of April 2013³³. The political agreement on the EMFF regulation reached by the EU legislators protects beneficiaries by foreseeing the publication of names of private persons only if such publication is in line with legislation of the respective Member State and by publishing detailed information on the financed operation, like a summary, key dates, and corresponding Union priorities³⁴.

Furthermore, in order to protect the right to privacy in a balanced manner the European Commission ensured an effective **protection of professional legal privilege** within the EU's money laundering legislation. The proposed anti-money laundering directive of February 2013 imposes an obligation to report suspicions of money laundering or terrorist financing to the authorities in a number of professional activities. However, considering the crucial importance of the right to defence in a democratic society, the proposed directive obliges Member States not to apply the reporting obligation to lawyers under certain circumstances, for instance when it

³² CJEU judgment of 9 November 2010 in Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke and Eifert*.

³³ Amended proposal for a Regulation of the European Parliament and the Council on the European Maritime and Fisheries Fund [repealing Council Regulation (EC) No 1198/2006 and Council Regulation (EC) No 861/2006 and Council Regulation No XXX/2011 on integrated maritime policy, COM(2013) 245 final.

³⁴ Council of the European Union, Amended proposal for a Regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund repealing Council Regulation (EC) No 1198/2006 and Council Regulation (EC) No 861/2006 and Council Regulation No XXX/2011 on integrated maritime policy — Approval of the final compromise text, Interinstitutional File: 2011/0380 (COD), 6152/14 ADD 1 REV 1, Brussels, 10 February 2014.

relates to information received in the course of ascertaining the legal position of a client or performing their task of defending or representing that client in, or concerning judicial proceedings³⁵. Furthermore, the Member States have the possibility to set in place a system of first instance reporting to a self-regulatory body which constitutes further safeguards to uphold the protection of fundamental rights with view to reporting obligations applicable to lawyers.

Of particular relevance to the right to respect of family life, including the right to marry and to found a family according to Article 9 of the Charter and national laws are the ongoing negotiations on the European Commission proposals on matrimonial property regimes³⁶ and on property regimes for registered partnerships³⁷. No differentiation is introduced in the legislation on the basis of sexual orientation³⁸. On 10 September 2013, the European Parliament adopted its resolutions on the European Commission proposals for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes³⁹ and for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships⁴⁰. The resolutions contained several amendments mentioning the Charter, such as:

- inserting a reference to Article 20 of the Charter, which guarantees the equality before the law and to Article 23 on the equality between women and men⁴¹); and
- stating that the competent authorities should not interpret the public policy exception in a way that is contrary to the Charter, and in particular Article 21 thereof, which prohibits all forms of discrimination⁴²).

³⁵ See CJEU judgment of 26 June 2007 in Case C-305/05 *Ordre des barreaux francophones et germanophone and Others*.

³⁶ Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, COM(2011) 126 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0126:en:NOT>

³⁷ Proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships, COM(2011) 127/2, available at: http://ec.europa.eu/justice/policies/civil/docs/com_2011_127_en.pdf

³⁸ See also below under Article 21 non-discrimination, and more specifically under the heading 'Fight against homophobia'.

³⁹ Draft European Parliament legislative resolution on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (COM(2011) 126 — C7-0093/2011 — 2011/0059(CNS)); available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0253&language=EN>

⁴⁰ European Parliament legislative resolution of 10 September 2013 on the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (COM(2011) 127 — C7-0094/2011 — 2011/0060(CNS)) available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-337>

⁴¹ Amendment 25 to Recital 32 of the Proposal on the Matrimonial Property Regimes; Amendment 29 to Recital 28 of the Proposal on the Property Consequences of Registered Partnerships.

⁴² Amendment 69 to Article 22 of the Proposal on the Matrimonial Property Regimes; Amendment 70 to Article 17 of the Proposal on the Property Consequences of Registered Partnerships.

Policy

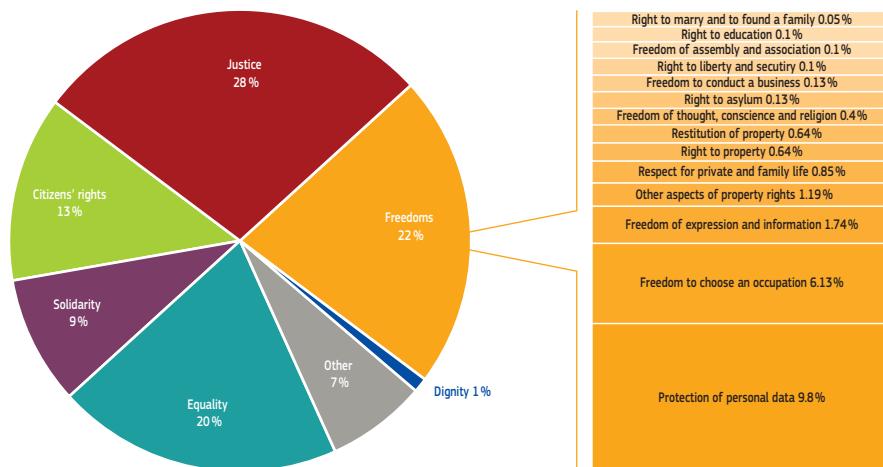
Furthermore, an increase in the number of **petitions** to the European Commission concerning the functioning of the **German Youth Welfare Offices (*Jugendämter*)** has to be mentioned in relation to the right to respect for family life. These petitions mainly concerned amongst others the following: alleged imposition of restrictions on access of non-German parents to their children; alleged discriminatory interventions of *Jugendämter* during the custody court proceedings, e.g. favouring the German parent when *Jugendämter* officials provide evidence in court; alleged violation of the right to be heard by the *Jugendämter*; alleged incorrect implementation of the best interests of the child principle — ‘*Kindeswohl*’ — which is allegedly used rather to protect the interests of the German state than the best interests of the children; alleged lack of complaint mechanisms and review procedures against the decisions of certain *Jugendämter*, or little awareness about these mechanisms. Vice-President Reding has contacted the German authorities on these issues.

Case-law

As regards case-law the important ruling in ***Deutsche Bahn v Commission***⁴³ on the right to private life by the General Court of 6 September 2013 has to be emphasised. Here the Court ruled that carrying out **inspections of undertakings or associations of undertakings on the basis of a European Commission decision** is not a violation of Article 7 of the Charter on respect for private and family life. It held that prior judicial authorisation of such inspections is not required, provided comprehensive judicial review is available after the inspection. By this ruling, the Court confirmed its established case-law on the European Commission’s powers of inspection of undertakings and associations of undertakings as laid down in Article 20 of Regulation 1/2003 (formerly Article 14 of Regulation No 17). It pointed to the safeguards provided by Regulation 1/2003, namely the obligation to state the reasons on which an inspection decision is based, the need to act within certain limits when carrying out inspections (respect of right to privacy, legal professional privilege, privilege against self-incrimination), the fact that the European Commission does not have the power to enforce its inspection powers by force, the fact that the European Commission must seek the assistance of national police or equivalent enforcement authorities to overcome resistance to an inspection, as well as the fact that the legality of the inspection decision may be challenged before the CJEU. It concluded that these safeguards had been duly respected in the case before it.

⁴³ CJEU judgment of 6 September 2013 in Joined Cases T-289/11, T-290/11 and T-521/11 *Deutsche Bahn and Others v Commission*.

Letters



Article 8: Protection of personal data

The fundamental right of everyone to the protection of personal data is now explicitly recognised by Article 8 of the Charter. It is also explicitly stated in Article 16 of the Treaty on the Functioning of the European Union. This gives the EU new responsibilities to protect personal data in all areas of EU law, including police and judicial cooperation. In view of this year's revelations about **worldwide surveillance programmes** potentially monitoring citizens' communication it was imperative for the EU institutions to progress in their negotiations about a new data protection level. The revelations have shown how technological progress and globalisation have profoundly changed the way personal data is collected, accessed and used. In addition, the 28 EU Member States have implemented the 1995 EU data protection directive ⁴⁴ differently, resulting in divergences in enforcement.

⁴⁴ Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

Legislation/policy

The European Commission has already proposed a **major reform of the EU's rules on the protection of personal data**⁴⁵. The proposals include a policy communication setting out the European Commission's objectives⁴⁶ and two legislative proposals: a regulation setting out a general EU framework for personal data protection⁴⁷ and a directive⁴⁸ on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities.

In October 2013 the **Committee for Civil Liberties, Justice and Home Affairs (LIBE)** of the European Parliament supported the European Commission's proposal. The aim of the reform is to put individuals back in control of their data by updating their rights, in order to fully respect Article 8 of the Charter. Explicit consent, the right to be forgotten, the right to data portability and the right to be informed of personal data breaches are important elements. They will help to close the growing rift between citizens and the companies with which they share their data, willingly or otherwise.

Recent revelations of **large-scale US intelligence collection programmes** have negatively affected the trust on which the transatlantic relationship is based. As Vice-President **Viviane Reding**, the EU's Justice Commissioner pointed out: 'Massive spying on our citizens, companies and leaders is unacceptable. Citizens on both sides of the Atlantic need to be reassured that their data is protected and companies need to know existing agreements are respected and enforced.'⁴⁹ Following these deep concerns the European Commission in 2013 set out actions that need to be taken to restore trust in data flows between the EU and the US⁵⁰. An EU-US

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- ⁴⁵ The European Commission's package also includes the following other documents:
Report from the European Commission based on Article 29(2) of the Council Framework Decision of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (including annex), COM(2012) 12 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0012:FIN:EN:PDF>
Impact assessment (including annexes) accompanying the proposed regulation and the proposed directive, SEC(2012) 72 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0011:FIN:FR:PDF>
Executive summary of the impact assessment, SEC(2012) 73 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2012:0073:FIN:FR:PDF>
- ⁴⁶ Communication on 'Safeguarding Privacy in a Connected World — A European Data Protection Framework for the 21st Century', COM(2012) 09 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0009:en:NOT>
- ⁴⁷ Proposal for a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)', COM(2012) 11 final, available at: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=52012PC0011
- ⁴⁸ Proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data', COM(2012) 10 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012PC0010:en:NOT>
- ⁴⁹ Press release IP/13/1166 of 27.11.2013, available at: http://europa.eu/rapid/press-release_IP-13-1166_en.htm
- ⁵⁰ Press release IP/13/1166 of 27.11.2013, available at: http://europa.eu/rapid/press-release_IP-13-1166_en.htm

working group was set up in July 2013, the findings of which were set out in a report of the EU Co-Chairs⁵¹. On this basis, the European Commission's response took the form of:

- **a strategy paper (a communication) on transatlantic data flows** setting out the challenges and risks following the revelations of US intelligence collection programmes, as well as the steps that need to be taken to address these concerns;
- **a report on the functioning of 'Safe Harbour'** which regulates data transfers for commercial purposes between the EU and US.

In particular the European Commission called for actions in several areas, such as:

- **The EU data protection reform:** The data protection reform proposed by the European Commission in January 2012⁵²) provides key responses, in particular as regards territorial scope, on international transfers, enforcement and sanctions, obligations and liabilities of data processors as well as with the establishment of comprehensive rules for the protection of personal data processed by competent authorities in the law enforcement sector in the Union.
- **Making Safe Harbour safer:** the European Commission made 13 recommendations to improve the functioning of the Safe Harbour scheme and after an analysis found the functioning of the scheme deficient in several respects. Remedies should be identified by summer 2014. The European Commission will then review the functioning of the scheme based on the implementation of these 13 recommendations.
- **Strengthening data protection safeguards in the law enforcement area:** the current negotiations on an 'umbrella agreement' for transfers and processing of data in the context of police and judicial cooperation should be concluded swiftly. An agreement must guarantee a high level of protection for citizens who should benefit from the same rights on both sides of the Atlantic. Notably, EU citizens not resident in the US should benefit from judicial redress mechanisms.
- **Using the existing Mutual Legal Assistance and Sectoral agreements to obtain data:** the US administration should commit to, as a general principle, making use of a legal framework like the mutual legal assistance and sectoral EU–US agreements such as the Passenger Name Records Agreement and Terrorist Financing Tracking Programme whenever transfers

⁵¹ See MEMO/13/1059 of 27.11.2013, available at: http://europa.eu/rapid/press-release_MEMO-13-1059_en.htm

⁵² COM(2012) 10 final: Proposal for a directive of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, Brussels, 25.1.2012, and COM(2012) 11 final: Proposal for a regulation of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

of data are required for law enforcement purposes. Asking the companies directly should only be possible under clearly defined situations.

- **Addressing European concerns in the ongoing US reform process:** US President Obama has announced a review of US national security authorities' activities. This process should also benefit EU citizens. The most important changes should be extending the safeguards available to US citizens also to EU citizens not resident in the US, ensuring the necessity and proportionality of the programmes, increased transparency and better oversight.

In August 2013 the **directive on attacks against information systems**⁵³ was adopted. It aims at dealing with the growing number of large-scale cyber-attacks against businesses and also government organisations. The directive addresses the penalisation of illegal access, system interference and data interference, and as such its implementation (by September 2015) will strengthen the protection of personal data by reducing the ability of cybercriminals to abuse victims' rights without impunity. The directive seeks to ensure full respect of the protection of personal data, the right to privacy, freedom of expression and information, the right to a fair trial, the presumption of innocence and the rights of the defence, as well as the principles of legality and proportionality of criminal offences and penalties⁵⁴.

Furthermore, in January 2013 the **European Cybercrime Centre** ('EC3') has been created within Europol to help protect European citizens, in particular their personal data and privacy, against threats from cybercriminals. The EC3 pools expertise and information, supports criminal investigations and promotes EU-wide solutions, while raising awareness of cybercrime issues across the Union. In February, a **cyber-security strategy** was presented that outlines the EU's comprehensive vision on how best to prevent and respond to cyber disruptions and attacks. The European Commission and Catherine Ashton, the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, have jointly adopted this strategy alongside a directive proposed by the European Commission on network and information security (NIS). Specific actions are aimed at enhancing the cyber resilience of information systems, reducing cybercrime and strengthening the EU's international cyber-security policy and cyber defence.

The European Commission routinely checks its legislative proposals and the acts it adopts to ensure that they are compatible with the Charter (sometimes called 'mainstreaming') such as in the following cases.

⁵³ Directive 2013/40 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, OJ L 218, 14.8.2013, p. 8.

⁵⁴ Recitals 29 and 30 of Directive 2013/40.

As a new major initiative in the field of EU border management, the European Commission in February 2013 adopted the **Smart Borders package**. The main objective of the initiative is twofold — the proposed regulation for the Entry Exit System shall secure by means of automated registration of external border crossings of the third-country nationals and subsequent calculation thereof the enforcement of the rule on short stay of in the EU whilst the regulation for the registered traveller programme would contribute to better management of the increasing travel flows and simplify the external borders' crossing of frequent and pre-screened and pre-vetted third-country travellers. Acknowledging the need to safeguard privacy and guarantee data protection, the European Commission has attached high importance to the principles of proportionality, necessity and purpose limitation as well as to fundamental rights. Accordingly, both proposals contain a specific chapter on rights of data subjects and supervision of data protection. Overall, a special attention has been paid to the rights of the data subject and data protection aspects and the supervision thereof. The proposals contain provisions on liability, rights of persons, remedies and supervision of the lawfulness of processing the data by both the national supervisory authorities as well as the European Data Protection Supervisor. In full transparency, a joint report of their activities will be sent to the European Parliament, the Council, the European Commission and the eu-LISA every 2 years.

On 11 December 2013, a new basic regulation on the **common fisheries policy** (CFP) was adopted which entered into force on 1 January 2014⁵⁵. It defines core elements of this policy, like its general and specific objectives, basic instruments, key actors, and procedures. The regulation covers the collection and management of various kinds of data, including biological, environmental, technical, and socioeconomic data necessary for fisheries management. Such data can also include personal data, like information collected for fishing fleet registers, information on individual catches by vessel owners, and on positions of vessels. The regulation, establishes certain basic principles for the 'collection, management and use of data', thereby requiring the EU institutions and the Member States to respect the rules on the protection of personal data, e.g. through safe storage and protection of collected data in computerised databases, and their public availability where appropriate, including at aggregated level, whilst ensuring confidentiality⁵⁶.

The right to data protection was furthermore taken into account during **legislative procedures** in a number of policy areas, such as:

- the European Commission proposal for a regulation on the financing, management and monitoring of the **common agricultural policy**, balancing the rights of beneficiaries of European

⁵⁵ Regulation (EU) No 1380/2013 on the common fisheries policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22. It will enter into force on 1.1.2014.

⁵⁶ Article 25 of Regulation 1380/2013.

agricultural funds to protection of personal data against the taxpayer's right to be kept informed about the use made of public funds ⁵⁷;

- the adoption of the recast Eurodac regulation in the field of asylum policy ⁵⁸;
- the European Commission proposal for a regulation on the European Maritime and Fisheries Fund (EMFF), in which the right to protection of personal data of beneficiaries under the EMFF was balanced against the principle of transparency ⁵⁹;
- a proposal for the revision of the third **anti-money laundering directive** and fund transfer regulation which purports to clarify the interaction between the AML rules and the protection of personal data by bringing clarification on how institutions need to apply anti-money laundering/terrorist financing requirements in a way which is compatible with a high level of protection of personal data;
- the European Commission's proposal to boost **Europol's** role as a law enforcement agency and a EU hub for information exchange which provides for a redesigned data processing structure entailing the strengthening of the rights of individuals affected by data processing and ensuring robust supervision of Europol's data processing by the European Data Protection Supervisor;
- a proposal for a regulation setting up the **European Public Prosecutor's Office (EPPO)** to improve Union-wide prosecution of criminals who defraud EU taxpayers defines a very important number of rights of the data subjects and also ensures supervision of the Office by the European Data Protection Supervisor;
- the reform for the **European Union's Agency for criminal justice cooperation (Eurojust)** which provides for its supervision by the European Data Protection Supervisor and ensures that persons whose data are being processed can truly exercise their rights.

Finally, following privacy and data protection issues raised by MEPs in connection with the development of **remotely piloted aircraft systems (RPAS)** applications, the European Commission is currently considering the preparation of a supportive and enabling policy framework for the civilian use RPAS. The policy framework may include safety regulation and other relevant topics like security, privacy and data protection and therefore should ensure a balance of promoting the new technologies and industries involved and providing the highest levels of safety, security and privacy for citizens. With regard to data protection in particular, the European Commission

⁵⁷ Articles 111–114 of Regulation (EU) No 1306/2013 of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20.12.2013, p. 549; see also section above: Right to respect for private and family life.

⁵⁸ For further information see below section on the right to asylum Article 18.

⁵⁹ See also section above: "Right to respect for private and family life".

is conducting a study to identify potential shortfalls in the current regulatory framework and ways to ensure drones comply with data protection rules and fundamental rights to privacy. The European Commission will also promote the adoption of relevant measures under national competence and ensure continuous monitoring of privacy and data protection issues.

International agreements

The modernisation of the Council of Europe's rules on data protection coincides with the comprehensive reform of the European Union's laws in this area. In order to respond to the rapid technological developments and globalisation trends that have brought new challenges for the protection of personal data, the Council of Europe has begun discussions on the modernisation of the **Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)**, which was the first legally binding international instrument in the field of data protection. In 2013 the European Commission was mandated by the Council to negotiate on this modernisation, in order to provide for a high level of protection of fundamental rights and freedoms with respect to processing of personal data, which reflects the EU's internal rules.

Furthermore as already pointed out above, the European Commission is currently negotiating an **'umbrella agreement' with the US** for transfers and processing of data in the context of police and judicial cooperation. The aim is to guarantee a high level of protection for citizens who should benefit from the same rights on both sides of the Atlantic, in particular, rights of judicial redress.

Case-law

In **2013 the CJEU issued several rulings relevant to the protection of data**. Thus, on the case of *Worten/ACT*⁶⁰ it held in a preliminary ruling that the **recording of working time** is covered by the guarantees in EU law on personal data. However, this does not preclude any national legislation which requires an employer to make the record of working time available to the national authorities responsible for the monitoring of working conditions.

Further, in another preliminary ruling, the case of Case C-291/12 *Schwarz*⁶¹, the court held that including fingerprints in passports was lawful. Although the taking and storing of **fingerprints in (biometric) passports** constitutes a restriction of the rights to respect for private life (Article 7 of the Charter) and the right to protection of personal data (Article 8 of the Charter), such measures are nonetheless justified for the purpose of preventing any fraudulent use of passports. The Court added, with a clear reference to the case-law of the ECtHR (*S. and Marper*)⁶², that the legislature must ensure that there are specific guarantees that the processing of such data will be effectively protected from misuse and abuse. In that respect, the Court noted that Article 4(3)

⁶⁰ CJEU judgment of 30 May 2013 in Case C-342/12 *Worten*.

⁶¹ CJEU judgment of 17 October 2013 in Case C-291/12 *Schwarz*.

⁶² ECtHR, *S. and Marper v the United Kingdom* [GC], Nos 30562/04 and 30566/04, 4.12.2008.

of the regulation on standards for security features and biometrics⁶³ explicitly states that fingerprints may be used only for verifying the authenticity of a passport and the identity of its holder. In addition, that regulation ensures protection against the risk of data including fingerprints being read by unauthorised persons. In that regard, Article 1(2) of that regulation makes it clear that such data are to be kept in a highly secure storage medium in the passport of the person concerned.

In a preliminary ruling, the CJEU in C-473/12 *IPI*⁶⁴ referred to its settled case-law stating that derogations and limitations in relation to the protection of personal data need to be applied only in so far as is strictly necessary in view of the fundamental right to privacy. Furthermore, the Court held that Member States have no obligation, but rather an option, to transpose into their national law one or more of the exceptions to the obligation to inform data subjects of the processing of their personal data as laid down in Article 13(1) of Directive 95/46/EC. It also concluded that the activity of a private detective acting for a professional body in order to investigate breaches of ethics of a regulated profession — the profession of an estate agent in the case at hand — is covered by the exception in Article 13(1)(d) of Directive 95/46. The Court also observed that it is open to the Member States to take the view that those professional bodies and the private detectives acting for them have sufficient means, notwithstanding the application of Articles 10 and 11 of Directive 95/46/EC, of detecting the breaches of ethics at issue. Thus, it is not necessary for that exception to be implemented in order for those bodies to be able to carry out their duty of ensuring compliance with the rules.

In case C-486/12 *X*⁶⁵, another preliminary ruling, the Court of Justice held that Article 12(a) of Directive 95/46/EC does not preclude the levying of fees in respect of the communication of personal data by a public authority. It has also clarified that in view of the importance of protecting privacy, emphasised in the case-law of the Court and enshrined in Article 8 of the Charter, the fees which may be levied under Article 12(a) may not be fixed at a level likely to constitute an obstacle to the exercise of the right of access guaranteed by that provision. Consequently, in order to ensure that fees levied when the right to access personal data is exercised are not excessive, the level of those fees must not exceed the cost of communicating such data. That upper limit does not prevent the Member States from fixing such fees at a lower level in order to ensure that all individuals retain an effective right to access such data.

In its judgment in T-214/11 *ClientEarth*⁶⁶ the General Court applied the case-law of the Court of Justice of the EU (notably C-28/08 P *European Commission v Bavarian Lager*) and held that where an application based on Regulation 1049/2001 seeks to obtain access to documents containing personal data, the provisions of Regulation 45/2001 become applicable in their entirety.

⁶³ Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

⁶⁴ CJEU judgment of 7 November 2013 in Case C-473/12 *IPI*.

⁶⁵ CJEU judgment of 12 December 2013 in Case C-486/12 *X*.

⁶⁶ CJEU judgment of 13 September 2013 in Case T-214/11 *ClientEarth and PAN Europe v EFSA*, currently under appeal.

The latter regulation has to be complied with by the European institutions when they receive an application for access to documents containing personal data. The Court went on to observe that that data may be transferred only if the applicant establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced, pursuant to Article 8(b) of Regulation No 45/2001. Where the recipient does not provide any express and legitimate justification or any convincing argument in order to demonstrate the necessity for that personal data to be transferred, the institution which has received the application is not able either to weigh up the various interests of the parties concerned or to verify that there is no reason to assume that the data subjects' legitimate interests might be prejudiced by the transfer of data and is therefore entitled to refuse the particular application for access.

Article 10: Freedom of thought, conscience and religion

The right guaranteed in paragraph 1 of Article 10 of the Charter corresponds to the right guaranteed in Article 9 of the ECHR. Besides the freedom of adhering to a chosen religious belief and practising it, the right protects actions of conscience such as for example those of conscientious objectors.

Policy

Within Member States there are several issues concerning freedom of religion and belief, as well as the freedom of conscience that are currently being discussed by stakeholders.

Thus, in the context of the dialogue with churches, religious associations or communities and philosophical and non-confessional organisations (Article 17 TEU) the concerns raised relate in particular to issues of religious expression in the public space and the work place, such as ritual slaughter in view of animal welfare, home schooling with a view to conscientious objection, e.g. in Germany and Sweden and the debate on circumcision following a German court case.

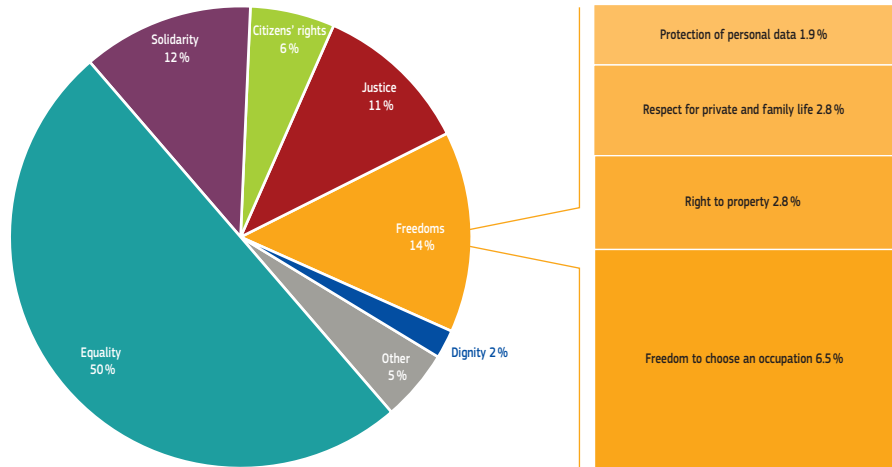
These dialogue partners were consulted during the drafting process of the EEAS guidelines on freedom of religion and belief, adopted in June 2013.

While some of the abovementioned issues do not fall within EU competence, a number of dialogue partners seem to feel that the issues relate to their fundamental rights of expressing their religion and belief and are of the strong opinion that given the Charter is part of the EU *acquis*, the EU should help to uphold them.

Ruling of the Federal Administrative Court of Germany ⁶⁷: limitation of the freedom of religion as an act of persecution

Applications of a Pakistani citizen for asylum in Germany had been dismissed. The applicant then claimed that EU Directive 2004/83/EG on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection (the asylum qualification directive) and the content of the protection granted had changed his legal situation: the extent of protection was broadened to cover also active proselytisation, which was the primary reason for the persecution in Pakistan. Both the Stuttgart Administrative Court and the Mannheim Higher Administrative Court ruled that the applicant should be recognised as a refugee. The Federal Administrative Court repealed the judgment. It referred to the freedom of religion as enshrined in Article 10(1) of the Charter and ruled that an interference with the right to freedom of religion comes within the scope of the asylum qualification directive, but only if the limitation of the freedom of religion is not provided by law as defined in Article 52(1) of the Charter, and the limitation of this right is severe, affecting the person concerned remarkably. The Court concluded that the seriousness of the actions and sanctions that are taken or may be taken towards the person concerned determines whether a violation of the right guaranteed in Article 10(1) of the Charter can be classified as an act of persecution as defined by Article 9(1) of the asylum qualification directive. The Federal Administrative Court held that this was not case for the Pakistani citizen.

Petitions



Article 11: Freedom of expression and information

The right to the **freedom of expression** for everyone is guaranteed in Article 11(1) of the Charter. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Article 11(2) ensures respect for freedom and pluralism of media.

Policy

In order to address the growing number of calls for the European Commission to intervene with regard to **media freedom and pluralism**, an independent expert group was tasked to explore challenges and make recommendations. In January 2013 this **High Level Group** on Media Freedom and Pluralism presented 30 recommendations addressed to the European Union institutions, Member States and relevant stakeholders. Subsequently, public consultations on the report were launched with a view to seek opinions of different stakeholders on the recommendations. Levels of support varied according to the topics, the type of respondent and their geographical origin. Generally, citizens showed more enthusiasm for stepping up activities by the European Union in support of media pluralism. Member States and media organisations were more reluctant ⁶⁸.

⁶⁷ Federal Administrative Court of Germany (Bundesverwaltungsgericht), case 10 C 23.12, 20.2.2013.

⁶⁸ <http://ec.europa.eu/digital-agenda/en/news/public-consultation-independent-report-hlg-media-freedom-and-pluralism-%E2%80%93-read-contributions>.

Furthermore, the feedback from a specific consultation on independence of audiovisual regulators very strongly supported the need for EU legislative action to ensure independence of the national regulators and formalisation of cooperation between audiovisual regulators.

The importance of media freedom and pluralism was recognised in the Council Conclusions⁶⁹ in November 2013. The European Commission is working on the follow up to the invitations addressed to it by the Council.

Case-law

The case C-283/11 *Sky Österreich v ORF*⁷⁰ concerned **compensation** available to holders of exclusive **broadcasting rights to events of high public interest** in those cases, where other broadcasters seek access to short extracts for news reporting purposes. The European Court of Justice found that the arrangement under review fairly balanced the competing interests of the holder of exclusive broadcasting rights against the general interests in receiving information and promoting pluralism of the media, as guaranteed by Article 11 of the Charter.

In a number of cases⁷¹ concerning broadcasting of **events of major interest to society, namely football matches**, the Court found that Article 14 of the relevant audio-visual media services directive⁷², appropriately restricted the right of property in the general interests of the freedom to receive information and ensuring wide public access to coverage of major events. Any necessity for the General Court to consider less invasive applications of that provision capable of attaining its objective (than the decisions having originally given rise to the proceedings before it), was held to exist only where the appellants had successfully established an excessive interference with their property rights.

The preliminary ruling in case C-234/12 *Sky Italia v AGCOM*⁷³ addressed the question of whether national rules laying down shorter **hourly advertising limits** for pay-TV broadcasters than those set for free-to-air broadcasters infringed the general principle of equality and the rules of the TFEU relating to the free movement of services. The Court held that the national legislature was able, without infringing the principle of equal treatment, to set such a rule. It is however for the referring court to assess whether that rule complies with the principle of proportionality.

⁶⁹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/139725.pdf

⁷⁰ CJEU judgment of 22 January 2013 in Case C-283/11 *Sky Österreich*.

⁷¹ CJEU judgments of 18 July 2013 in Case C-201/11 P *UEFA v Commission*, in Case C-204/11 P *FIFA v Commission*, and in Case C-205/11 P *FIFA v Commission*.

⁷² Directive 2010/13 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) OJ L 95, 15.4.2010, p. 1.

⁷³ CJEU judgment of 18 July 2013 in Case C-234/12 *Sky Italia*.

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

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

Legislation

To promote this right a directive modernising the professional qualifications directive was adopted on 20 November 2013 and has entered into force on 17 January 2014⁷⁴. The recast directive must be implemented by Member States within 2 years after entry into force, by 18 January 2016. It allows EU qualified citizens to obtain the recognition of their qualifications in order to establish and provide services in another Member State.

Furthermore, the European Commission requested Italy to allow third-country nationals who are **family members of EU citizens to access public employment** to promote the right to engage in work. As a result, Italy modified its legislation in accordance with EU law.

Article 16: Freedom to conduct a business

The Charter in Article 16 recognises the **freedom to conduct a business** in accordance with Union law and national laws and practices.

Legislation

To promote this freedom the European Commission had in 2012 made a proposal to modernise the current rules on **cross-border insolvency**⁷⁵. During the negotiations, which have made real progress in 2013, the impact on minority creditors in terms of right to an effective remedy and right to property had been thoroughly considered. Thus the proposal is aimed at striking a fair balance between promoting the right to conduct a business on the one hand and procedural rights of potential debtors on the other. The revision of the EU insolvency regulation will increase legal certainty, by providing clear rules to determine jurisdiction, and ensuring that when a debtor is faced with insolvency proceedings in several Member States, the courts handling the different proceedings work closely with one another. Information to creditors will be improved by obliging Member States to publish key decisions — about the opening of insolvency proceedings, for example, while strictly respecting the data protection rules.

⁷⁴ Directive 2013/55 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), OJ L 354, 28.12.2013, p. 132.

⁷⁵ COM(2012) 744 final, 12.12.2012.

Case-law

In the case of *Schaible*⁷⁶ the European Court of Justice decided in a preliminary ruling that an obligation to create individual electronic identification for sheep and goats did not infringe the right to conduct a business. Therefore, the relevant EU legislation establishing a system for the identification and registration of ovine and caprine animals was held to be valid. By adopting such identification measures which were intended to improve prevention of epizootic diseases, the legislature was held not to have infringed the freedom of animal keepers to conduct a business or the principle of equal treatment. In particular these measures were deemed proportional with view to their objective.

Article 17: Right to property

Article 17 of the Charter protects the right of everyone 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

In November 2013, the European Commission submitted a proposal for **a directive on the protection of undisclosed know-how and business information** (trade secrets) against their unlawful acquisition, use and disclosure⁷⁷. This proposal seeks to approximate national legislation to ensure that in case a trade secret is unlawfully acquired, used or disclosed by another person, the victim has access to a sufficient and comparable level of redress across the internal market. The European Commission paid special attention to fundamental rights in the preparation of the proposal, in particular the right to property, and also the right to the respect for private life (Article 7)⁷⁸.

Moreover, when preparing the proposal for a directive of the European Parliament and of the Council on the return of **cultural objects unlawfully removed** from the territory of a Member State⁷⁹, the right to property was taken into account accordingly.

The **European Account Preservation Order** strengthens the right to property and the procedural rights of potential debtors, such as the right to an effective remedy. In 2011 the European Commission had proposed a regulation on the subject. On 6 December 2013 the Council agreed

⁷⁶ CJEU judgment of 17 October 2013 in Case C-101/12 *Schaible*.

⁷⁷ COM(2013) 813 final.

⁷⁸ SWD(2013) 471 final, Annex 21.

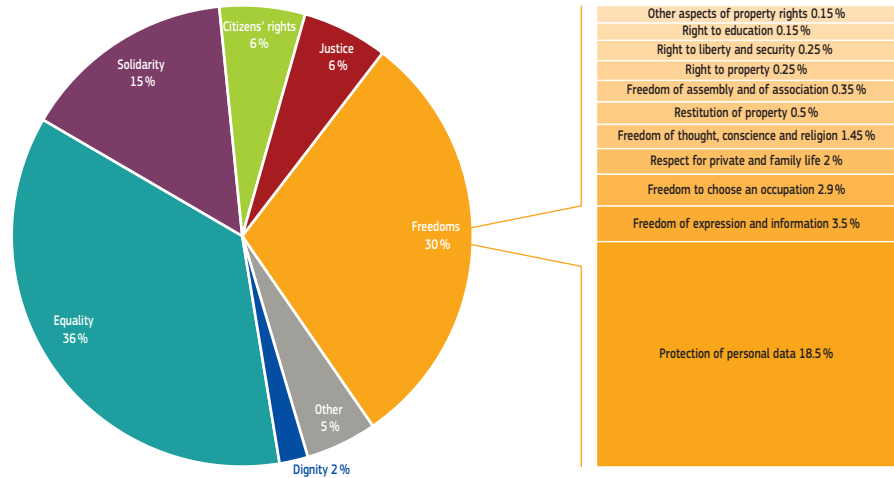
⁷⁹ COM(2013) 311; available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0311:FIN:EN:PDF>.

UK catch quota

Vessel owners or organisations representing vessel owners have at times challenged the allocation of fishing opportunities by individual Member States before national courts. A case in point is *UK Association of Fish Producer Organisations v Secretary of State for Environment, Food and Rural Affairs*, a case decided by a UK court in July 2013⁸². Importantly, the judgment concerned the redistribution of national UK catch quota and analysed in detail whether the decision by the English authorities on the re-distribution of quota was not only in conformity with national law, but also respected fundamental rights and principles of EU law. It analysed, in particular, the right to property, the principle of legitimate expectations, and the principle and right to non-discrimination. The ruling explicitly referred to the Charter. The judge deciding the case concluded that the relevant English authority had acted in conformity with the latter and EU law in general. (see also below under Article 21 for an analysis of the case from the angle of the right to non-discrimination)

on a general approach on the draft regulation creating a European Account Preservation Order⁸⁰. The aim of the proposed regulation⁸¹ is to facilitate cross-border debt recovery by creating a uniform European procedure leading to the issue of a European Account Preservation order ('Preservation Order'). This European procedure will be available only to citizens and businesses residing in the participating Member States as an alternative to national procedures, but will not replace national procedures. It will apply only to cross-border cases. By way of this new European procedure, a creditor would be able to obtain a preservation order which would block funds held by the debtor in a bank account in a Member State and thereby prevent the debtor from dissipating such funds with the aim of frustrating the creditor's efforts to recover his debt.

Questions



Article 18: Right to asylum

The right to **asylum** is guaranteed by Article 18 of the Charter.

⁸⁰ See press release, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139938.pdf

⁸¹ Proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters, COM(2011) 445, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/139938.pdf

⁸² *UK Association of Fish Producer Organisations v Secretary of State for Environment, Food and Rural Affairs*, Case No: CO/4796/2012, [2013] EWHC 1959 (Admin). The case also touches on issues of discrimination, see below under the heading of Article 21.

Legislation

As already mentioned above one of the most important developments in this area is the establishment of a **Common European Asylum System** by adoption of the **recast Dublin regulation** and the **reception conditions directive**⁸³. This was further supplemented by the adoption of the **asylum procedures directive**⁸⁴. The latter reinforces the guarantees safeguarding the fundamental right to asylum, in particular by strengthening the right to access to the asylum procedure, the right of asylum seekers to receive legal and procedural information free of charge already during the first instance procedure, and it reinforces the provisions on the fundamental right to an effective remedy, including the rules on the provision of free legal assistance.

Following a European Commission proposal, the co-legislator adopted a recast **Eurodac regulation**⁸⁵, touching upon issues of asylum procedures and the right to data protection. The regulation extends the scope permitting law enforcement access to the Eurodac database under strictly defined circumstances for the purposes of preventing, detecting or investigating serious crimes and terrorist offences. The use of Eurodac data for law enforcement purposes implies a change of purpose of access to the data processed and constitutes an 'interference' with the right to data protection. As stipulated by Article 52(1) of the Charter, any limitation to the right to the protection of personal data must be provided for by law, must respect the essence of the right, must be necessary to achieve an objective of general interest recognised by the Union or to protect the rights and freedoms of others, and must be proportionate, i.e. appropriate for attaining the objective pursued and not going beyond what is necessary to achieve it.

The regulation provides for a more effective and less intrusive measure for competent law enforcement authorities to determine if another Member State holds data on an asylum seeker. Under current rules, Member States' law enforcement authorities have to contact bilaterally all other Member States participating in Eurodac to determine if another Member State holds data on an asylum seeker. The current rules are inefficient and require that law enforcement authorities access more personal data or data on more persons than is necessary to establish whether relevant information exists. Therefore, the regulation provides for effective safeguards that mitigate the limitation of the right to the protection of personal data.

There are currently a number of ongoing **infringement procedures** concerning Member States that have not fully implemented the EU **asylum acquis**: in 2013 the European Commission has

⁸³ See above section 1 on Dignity.

⁸⁴ Directive 2013/32 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60.

⁸⁵ Regulation No 603/2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice. OJ L 180, 29.6.2013, p. 1.

Asylum and immigration as the most relevant policy fields for references to the Charter in national case-law

Out of the 69 national judgments analysed by FRA for the year 2013, the biggest group, namely 14 judgments, concerned the policy fields of immigration and asylum. This resembles the findings of last year's data collection: research into 240 national cases handed down in recent years revealed that half of them dealt with asylum and immigration issues.

launched infringement procedures against two Member States on the reception conditions directive (Directive 2003/9), asylum procedures directive (Directive 2005/85), the asylum qualification directive (Directive 2004/83) and the Charter. The European Commission is currently considering launching further infringement procedures.

Case-law

In the case *MA and Others v Secretary of State for the Home Department*⁸⁶ the CJEU interpreted the relevant provision of the Dublin regulation in such a way that it respects fundamental rights, in particular those guaranteed in Article 24(2) of the Charter, whereby in all actions relating to children, whether taken by public authorities or private institutions, **the child's best interests are to be a primary consideration**. In this specific case the CJEU interpreted the relevant provision to mean that where an unaccompanied minor with no member of his/her family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible'.

In the case *Bundesrepublik Deutschland v Kaveh Puid*⁸⁷, the CJEU interpreted Article 3(2) of the Dublin regulation and more precisely whether the duty of the Member States to exercise their right under the first sentence of Article 3(2) results in an enforceable personal right on the part of the asylum seeker to force a Member State to assume responsibility, in particular in light of Article 4 of the Charter. It ruled that where the Member States cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible in accordance with the criteria set out in Chapter III of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national provide substantial grounds for believing that the asylum seeker concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, which is a matter for the referring court to verify. The Member State which is determining the Member State responsible is required not to transfer the asylum seeker to the Member State initially identified as responsible and, subject to the exercise of the right itself to examine the application, to continue to examine the criteria set out in that chapter, in order to establish whether another Member State can be identified as responsible in accordance with one of those criteria or, if it cannot, under Article 13 of the regulation. Conversely, in such a situation, a finding that it is impossible to transfer an asylum seeker to the Member State initially identified as responsible does not in itself mean that the Member State which is determining the Member State responsible is required itself, under Article 3(2) of Regulation No 343/2003, to examine the application for asylum.

⁸⁶ CJEU judgment of 6 June 2013 in Case C-648/11 *MA and Others*.

⁸⁷ CJEU judgment of 14 November 2013 in Case C-4/11 *Puid*. For more on the *Puid* case from the angle of the applicability of the Charter, see the 2013 Report on the Application of the EU Charter of Fundamental Rights, under 2. Applicability of the Charter to the Member States.

In *Shamso Abdullahi v Bundesasylamt*⁸⁸, the CJEU ruled that Article 19(2) of Council Regulation (EC) No 343/2003 must be interpreted as meaning that, in circumstances where a Member State has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Article 10(1) of that regulation — namely, as the Member State of the first entry of the applicant for asylum into the European Union — the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

On 7 November 2013, the CJEU ruled on preliminary questions referred to it by the Dutch Council of State⁸⁹. The applicants in the three joined cases brought an appeal against the decision of the Minister for Asylum and Immigration in which their request for a residence permit was declined. The applicants claimed that they feared persecution in their countries of origin on account of their homosexuality. The national court asked the CJEU (1) if Article 10(1)(d) of Directive 2004/83/EC on asylum qualification must be interpreted as meaning that homosexuals may be regarded as being members of a particular social group, (2) whether Article 9(1)(a) of the directive, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the mere fact that homosexual acts are criminalised and accompanying that criminalisation with a term of imprisonment is an act of persecution and (3) whether a distinction must be made between homosexual acts which fall within the scope of the directive and those which do not. The CJEU decided that the existence of criminal laws, which specifically target homosexuals, supports the finding that those persons form a particular social group which is perceived by the surrounding society as being different. Furthermore the CJEU ruled that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied, must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution. The CJEU then stated that only homosexual acts which are criminal in accordance with the national law of the Member States are excluded from the scope of Directive 2004/83/EC.

Already before this judgment of the CJEU was issued, the German Higher Administrative Court of Baden-Württemberg decided on a similar case⁹⁰. It came to the same conclusion, stating that a homosexual belongs to a 'social group' for the purpose of the asylum qualification directive. It held that this sexual orientation is a part of a person's sphere of privacy which is protected under Article 8 ECHR and Article 7 of the Charter, both of which needed to be taken into account when interpreting the relevant EU directive and national law. Yet it held that in the particular case the country of origin did not practice a persecution of that group. Thus, it had to be decided on the

⁸⁸ CJEU judgment of 10 December 2013 in Case C-394/12 *Abdullahi*.

⁸⁹ CJEU judgment of 7 November 2013 in Joined Cases C-199/12 to C-201/12 *X and Others*.

⁹⁰ Higher Administrative Court of Baden-Württemberg (Verwaltungsgerichtshof Baden-Württemberg), case A 9 S 1872/12, 7.3.2013.

basis of the individual circumstance of the case if the applicant in the concrete case would face persecution in his country of origin if he were to be returned there. This the court answered in the affirmative.

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

The Charter in Article 19 **prohibits removal, expulsion or extradition** to a state where there is a serious risk that an individual would be subject to the death penalty, torture, or other inhuman or degrading treatment or punishment.

Legislation

Following the CJEU's annulment of Council Decision 2010/252/EU on surveillance of the sea external borders⁹¹, the European Commission presented a new proposal for a **regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex**⁹². As already indicated above⁹³, this European Commission proposal provides that any measures taken during surveillance operations must be in full respect of fundamental rights and the principle of *non-refoulement*.

Laws that **criminalise 'irregular entry and/or stay'**, in different forms exist in the majority of Member States. Neither the return directive nor any other EU legal instrument prevent Member States from considering irregular entry and/or stay as a criminal offence under their national criminal law. However, several ECJ judgments have limited and constrained Member States' ability to keep returnees in prison as a consequence of this⁹⁴. These rulings have resulted in a wide range of changes to national legislation in the countries examined and several Member States have recently changed their legislation as a consequence of this jurisprudence. The European Commission is following the situation closely and has already launched EU pilot procedures against certain Member States.

⁹¹ CJEU judgment of 5 September 2012 in Case C-355/10 *Parliament v Council*.

⁹² Proposal for a regulation establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex (COM(2013) 197 final), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0197:FIN:EN:PDF>

⁹³ See above section 1 on Dignity.

⁹⁴ CJEU judgment of 28 April 2011 in Case C-61/11 PPU *El Dridi* and of 6 December 2011 in Case C-329/11 *Achughbabian*. The Court had found that these rules preclude national law from imposing a prison term on an irregularly staying third-country national who does not comply with an order to leave the national territory. In a further case, the Court found that EU rules preclude national legislation imposing a prison sentence on an irregularly staying third-country national during the return procedure. However, the Court specified that such prison sentences could be applied to third-country nationals to whom the return procedure has been applied and staying irregularly with no justified grounds for non-return.

International agreements

Ensuring respect for human rights — including those enshrined in the Charter and the 1951 Geneva Convention in the implementation of **EU Readmission Agreements (EURA)** — is considered of utmost importance by the European Commission, as outlined in its Communication to the European Parliament and the Council on the Evaluation of EU Readmission Agreements⁹⁵. The return directive and the asylum procedures directive contain clear safeguards on access to the asylum procedure and the protection of the *non-refoulement* principle, and EURAs cannot be applied in violation of these guarantees. Without questioning the applicability of the current EU *acquis* and other relevant international instruments (which must always be observed during the implementation of EURAs), the European Commission has proposed several flanking measures which would further ensure the full respect of human rights of returnees. In response to the Stockholm programme, the European Commission proposed 15 recommendations addressing the implementation and negotiation of EURAs as well as the further strengthening of human rights guarantees of readmitted persons.

As a result, the latest EURAs contain new provisions, in particular the **Agreement with Armenia** — which was signed on 19 April 2013 and entered into force on 1 January 2014 — and the **Agreement with Azerbaijan**, which was signed on 28 February 2014. A new article was added on ‘fundamental principles’, which ensures respect for the human rights of persons in the readmission procedure, and safeguards the treatment of persons in accordance with relevant international obligations after their readmission. This provision also stipulates the priority that voluntary return should enjoy over forced return. A suspension clause has been added to the final provisions of these agreement that, although formulated neutrally, would allow for unilateral suspension of the agreement in case of a deterioration over a protracted period of the overall human rights situation in a third country. Finally, the European Commission has together with IOM and UNHCR developed a pilot project introducing a post-return monitoring mechanism in selected third countries (**Pakistan** and **Ukraine**), which has started operations to monitor the well-being of persons after being returned under an EURA (own nationals as well as third-country nationals and stateless persons).

Case-law

The CJEU in case *G and R*⁹⁶ expressly confirmed that the **rights of the defence** referred to in Article 41(2) of the Charter (the right to be heard and the right to have access to the file) must be observed when taking decisions under the return directive even where this directive does not expressly provide for such a procedural requirement. In this context the CJEU clarified that not

⁹⁵ COM(2011) 76 of 23 February 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF>

⁹⁶ CJEU judgment of 10 September 2013 in Case C-383/13 PPU *G. and R.*

Ruling of the Federal Administrative Court of Germany⁹⁷

In this case an Afghan citizen applied for asylum in Germany, because he feared discrimination in his home country. The Federal Administrative Court decided that the national relevant law, providing that a foreigner must not be deported to a state in which he is facing threat of torture, inhumane or humiliating treatment or punishment, must be interpreted in line with EU Directive 2011/95/EU (the asylum qualification directive), Article 3 of the ECHR and Article 19 of the Charter. The Federal Administrative Court repealed the judgment of the Mannheim Higher Administrative Court since it referred to the region of Kabul to determine whether there is an armed conflict at the destination of the applicant and did not refer to the native region of the applicant.

every irregularity in the observation of the rights of the defence brings about the annulment of the decision.

⁹⁷ Federal Administrative Court of Germany (Bundesverwaltungsgericht), case 10 C 15.12, 31.1.2013.

Equality before the law

Non-discrimination

Cultural, religious and linguistic diversity

Equality between women and men

The rights of the child

The rights of the elderly

Integration of persons with disabilities

3/

EQUALITY

Equality

As in the previous years, the year 2013 witnessed a number of serious **incidents of racism and xenophobia** in the EU, including racist and xenophobic hate speech and violence against Roma and immigrants. The majority of Member States have provisions penalising incitement to racist and xenophobic violence and hatred, but these do not always seem to fully transpose the offences covered by the Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

Data collected by the EU Fundamental Rights Agency (FRA) on **Jewish people's experiences and perceptions of hate crime** has revealed that one third of the respondents (33 %) experienced some form of anti-Semitic harassment in the 5 years before the survey, while one quarter (26 %) encountered such harassment in the 12 months before the survey, and that on average, minorities are victims of assault or threat more often than the majority population.

Regarding the **inclusion of the Roma**, the Council has adopted a recommendation on effective Roma integration measures in the Member States. It is the first ever EU-level legal instrument for Roma inclusion. It reinforces the EU Framework for national Roma integration strategies agreed by all Member States in 2011 and gives specific guidance to help Member States strengthen and accelerate their efforts in order to bridge the gaps between the Roma and the rest of the population.

Results of the FRA **LGBT survey** have provided valuable evidence of how LGBT persons in the EU and Croatia experience bias-motivated discrimination, violence and harassment in different areas of life, including employment, education, health care, housing and other services.

The European Commission launched an infringement procedure against Finland concerning inadequacies relating to the country's national equality body, which all Member States are required to set up under Directive 2000/43/EC (the racial equality directive).

The European Commission has proposed a directive on **procedural safeguards for children suspected or accused in criminal proceedings**, which is to ensure that children have mandatory access to a lawyer at all stages of criminal proceedings.

The Social Investment Package⁽⁹⁸⁾ and its accompanying **recommendation on investing in children: breaking the cycle of disadvantage** calls on Member States to step up early, preventative social investments targeting children to ensure that children are given the best start in life and to make sure that children are not locked into a life of disadvantage. To support its implementation, the European Commission has also created a European platform for investing in children which collects and disseminates evidence-based good practices in such areas as parental support, or early childhood education and care.

The European Commission engaged with all relevant stakeholders on how to **support integrated child protection systems through the implementation of the EU Agenda** during the 8th Forum on the rights of the child. It has also set up an **informal Member State expert group** as a further step towards enhanced cooperation and dialogue with stakeholders.

In the joined cases *Ring and Skouboe Werg*, the CJEU interpreted Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in the light of Article 1 UN Convention on the Rights of Persons with Disabilities and adopted a **broad interpretation of the concept of disability** provided in the directive.

In the *IBV* case, the CJEU held that the Charter and the principle of non-discrimination as enshrined in its Article 21 apply to a Belgian support scheme for renewable energy (biomass).

Article 21: Non-discrimination

The Charter **prohibits any discrimination** based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The Charter also prohibits discrimination on grounds of nationality, within the scope of application of the treaties and without prejudice to any of their specific provisions. Discrimination based on racial or ethnic origin is a violation of the principle of equal treatment and is prohibited in the workplace and outside the workplace. In the area of employment and occupation, EU legislation prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation.

Legislation

The Irish Presidency continued the discussions in the Council working group on the European Commission's Proposal for an **equal treatment directive, prohibiting discrimination on grounds of religion or belief, disability, age or sexual orientation also outside the area**

⁹⁸ Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014–2020 COM(2013) 83 final, available at: <http://ec.europa.eu/social/BlobServlet?docId=9761&langId=en>

of employment and occupation⁹⁹. Its work focused on the scope of the directive, providing a definition of the wording ‘access to’ in this context as opposed to the concept of ‘eligibility’ (as the setting of eligibility criteria in the area of education and social protection remains in exclusive Member State competence). The Presidency also worked on the definition of ‘reasonable accommodation’ for people with disabilities, discrimination ‘by association’, and preferential pricing for certain age groups. The aim is to improve the text at technical level, as long as no political compromise is in sight.

Negotiations for a directive on improving the **gender balance among non-executive directors of companies listed on the stock exchange** are ongoing¹⁰⁰. On 20 November 2013 the European Parliament adopted its first reading report on the proposed directive¹⁰¹ by a vast majority of its members, confirming a broad consensus on the objective of increasing women’s representation on corporate boards and largely endorsing the European Commission’s approach to redressing the current imbalance¹⁰². The European Commission also adopted on 13 April 2013 a proposal for a directive amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups. This proposal would oblige companies to disclose their diversity policies for their administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity, educational and professional background. It only applies to large companies listed on the stock exchange. A political compromise was reached by the European Parliament and Council on 26 February and the Parliament will likely adopt the measure in April 2014.

The European Commission also ensures that its legislative proposals under negotiation in 2013, such as the Proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and the proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships comply with the principle of equal treatment of same sex couples¹⁰³.

Furthermore, the European Commission continued monitoring the transposition and implementation of the **Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law**, which all Member States were obliged to transpose into their national legislation by 28 November 2010. By the end of 2013 all Member States had notified their national implementing measures to the European

⁹⁹ Proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, 2.7.2008; available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

¹⁰⁰ A European Commission proposal for a directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM(2012) 614 final, 14.11.2012.

¹⁰¹ Document No A7-0340/2013.

¹⁰² See also the 2013 Report on the Application of the EU Charter of Fundamental Rights under 3.2 Positive measures.

¹⁰³ For more details, see above under Article 7 Respect for private and family life.

Commission. The European Commission finalised its assessment of the notifications and prepared a report on Member States' compliance with the framework decision, which was adopted on 27 January 2014, honouring International Holocaust Remembrance Day.

The report concludes that a number of Member States have not transposed fully and/or correctly all the provisions of the framework decision, namely in relation to the offences of denying, condoning and grossly trivialising certain crimes. The majority of Member States have provisions on incitement to racist and xenophobic violence and hatred but these do not always seem to fully transpose the offences covered by the framework decision. Some gaps have also been observed in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction. The European Commission therefore considers that the full and correct legal transposition of the existing framework decision constitutes a first step towards effectively combating racism and xenophobia by means of criminal law in a coherent manner across the EU. Since infringement procedures for framework decisions are not possible before 1 December 2014, the European Commission will engage in bilateral dialogues with Member States during 2014 with a view to ensuring full and correct transposition of the framework decision, giving due consideration to the Charter.

The European Commission has also shown that it is strict and serious about the full and correct implementation of the provisions of Directive 2000/43/EC (the racial equality directive) relating to equality bodies and that it pays importance to the well-functioning of these equality bodies. It has issued a reasoned opinion to **Finland** in the second stage of the infringement procedure concerning inadequacies relating to the country's national equality body, which all Member States are required to set up under Directive 2000/43/EC. EU anti-discrimination rules make it obligatory for Member States to establish a national equality body tasked with providing independent assistance in pursuing complaints to victims of discrimination, as well as monitoring and reporting on discrimination. National equality bodies are crucial, in particular for the proper enforcement of the directive and to ensure protection for victims of discrimination. It is essential that the national equality bodies actually carry out all the tasks required by the directive. The European Commission considers that Finnish law currently fails to designate any equality body responsible for addressing cases of racial or ethnic discrimination in employment. The European Commission is therefore calling on Finland to bring its rules in line with EU requirements to ensure victims of discrimination can receive proper assistance.

A case of **discrimination in relation to the disbursement of rural development payments**, can be found in the provisions of Polish legislation, stipulating that farming spouses should be given one single identification number, regardless of whether the spouses co-own and jointly run farm holdings or not. As a result of this, only the spouse who has been registered in the system can apply for direct payments and rural developments payments. The European Commission considered that the Polish legislation is not in line with Article 40(2) TFEU concerning the equal treatment of agricultural producers. In addition, it considered the legislation to be contrary to Article 21 of the Charter, and to every active agricultural producer's right to receive payments according to Regulation (EC) No 73/2009 and the rights for farmers to receive rural development

subsidies according to Regulation (EC) No 1698/2005. The Polish authorities agreed to add a provision to the Act on the National Registration System, which will allow spouses owning a farm to be issued an identification number.

In November 2013, the European Commission has formally **closed the infringement procedures launched against Hungary** on 17 January 2012 over the country's forced early retirement of around 274 judges and public prosecutors¹⁰⁴. This had been caused by a sudden reduction in the mandatory retirement age for these professions from 70 to 62. Following the European Commission's legal action, the CJEU upheld the European Commission's assessment¹⁰⁵ that the change was incompatible with Directive 2000/78/EC which prohibits discrimination at the workplace on grounds of age. Following calls by the European Commission for Hungary to comply with the judgment as soon as possible, the country took the necessary measures and adopted changes to its law. The European Commission is now satisfied that Hungary has brought its legislation in line with EU law. A new law adopted by the Hungarian Parliament on 11 March 2013 lowers the retirement age for judges, prosecutors and notaries to 65 over a period of 10 years, rather than lowering it to 62 over 1 year, as before. This aligns it with the general retirement age of 65. The new law also provides for the right for all judges and prosecutors who had been forced to retire before to be reinstated in their posts, with no need to bring a case to court. Moreover, they will be compensated for remuneration lost during the period they were not working. The European Commission has closely monitored the correct implementation of the new legislation in practice.

Infringement procedures were initiated against **Italy** for **non-conformity with Directive 2006/54/EC** on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). Italian Law No 214 of 22 December 2011 implementing that directive establishes a different number of years of financial contributions after which men and women are entitled to an early retirement pension. Under Directive 2006/54/EC it is not allowed to set a different retirement age and different conditions for men and women in order to get an occupational pension. These infringement procedures against Italy are based on hundreds of individual complaints.

A letter of formal notice was sent to **Czech Republic** in a case concerning the **non-conformity of the Czech Employment Act with Directive 2000/78/EC** on Employment Equality, due to the prohibition on employment agencies from assigning disabled people to temporary work. The directive provides that there shall be no discrimination on grounds of disability. The European Commission was of the opinion that the prohibition in the Czech law effectively excludes all disabled people from a sector of the labour market irrespective of the type of activity and the nature

¹⁰⁴ For more information about the infringement proceedings, see the European Commission Press Release IP/12/24, 'European Commission launches accelerated infringement proceedings against Hungary over the independence of its central bank and data protection authorities as well as over measures affecting the judiciary', 17.1.2012, available at: http://europa.eu/rapid/press-release_IP-12-24_en.htm

¹⁰⁵ CJEU judgment of 6 November 2012 in C-286/12 *Commission v Hungary*. See also MEMO/12/832.

of the disability. Consequently, the Czech Employment Act was held to directly discriminate against disabled people and considered to be in breach of the directive.

Policy

The European Commission has supported work to promote equal rights for all groups at risk of discrimination through its PROGRESS funding programme. PROGRESS is the EU's employment and social solidarity programme. With regard to Justice policies, PROGRESS covers both gender equality and tackling discrimination themes ¹⁰⁶.

Manifestations of intolerance, racism and xenophobia in the EU

The year 2013, as in the previous year, witnessed a number of serious incidents of **racism and xenophobia in the EU**, including racist and xenophobic hate speech and violence against Roma and immigrants.

The European Commission received a considerable amount of **parliamentary questions on racism, xenophobia and anti-Semitism**, which underlines the need for the Member States to step up their efforts to tackle these problems. The issues brought to the attention of the European Commission included, in particular, alleged xenophobic violence against ethnic minorities and immigrants, racism and xenophobia against certain minorities as well as the statements and actions of certain extremist political parties and organisations. In reply to these concerns, the European Commission reaffirmed its commitment to fight against racism and xenophobia by all means available under the treaties and recalled the responsibility of the Member States' authorities to effectively implement the EU legislation prohibiting racist or xenophobic hate speech and hate crime based on a racist or xenophobic motivation.

This year's **fundamental rights conference**, organised by the FRA in cooperation with the Lithuanian Presidency gave participants the opportunity to look into the situation on the ground and to examine the effectiveness of existing legal and practical tools for fighting hate crime. The conference brought together around 400 participants from EU institutions and agencies, international organisations, national governments and parliaments, law enforcement, civil society and more. On 11 November 2013, FRA brought together 30 participants at a stakeholder meeting to discuss ways forward in combating anti-Semitism in the EU following its 8 November publication of its report on discrimination and hate crime against Jews in the EU Member States — experiences and perceptions of anti-Semitism. The European Commission actively participated in both events.

The 7th seminar between the European Commission and the State of Israel on the **Fight against Racism, Xenophobia and Anti-Semitism** was held in December 2013, together with the 6th

¹⁰⁶ More information on the PROGRESS funding programme can be found at http://ec.europa.eu/justice/grants/programmes/progress/index_en.htm

meeting of the Expert Group on Framework Decision 2008/913/JHA. The FRA presented the results of its survey on discrimination and hate crime against Jews in certain EU Member States, which shows worrisome figures on anti-Semitic incidents as perceived and experienced by victims. The Member States were reminded of the crucial importance of the correct implementation and application of the framework decision. The Israeli delegation reported on the outcome of the 4th Global Forum on the fight against anti-Semitism that took place in Jerusalem in May 2013. The main discussion focused on online hate speech and anti-Semitism, and human rights and Holocaust remembrance training were also discussed.

The data collected by the EU Agency for Fundamental Rights shows that racism, discrimination, extremism and intolerance currently pose a great challenge for the EU:

The **survey on Jewish people's experiences and perceptions of hate crime** has revealed that one third of the respondents (33 %) experienced some form of anti-Semitic harassment in the 5 years before the survey, while one quarter (26 %) encountered such harassment in the 12 months before the survey. Almost half (46 %) of the respondents worry about becoming the victim of an anti-Semitic verbal insult or harassment in the 12 months following the survey, while one third (33 %) fear a physical attack in the same period. Close to one quarter (23 %) of the respondents said that they at least occasionally avoid visiting Jewish events or sites because they would not feel safe there, or on the way there, as a Jew. Over one quarter of all respondents (27 %) avoid certain places in their local area or neighbourhood at least occasionally because they would not feel safe there as a Jew. Over half of all survey respondents (57 %) heard or saw someone claiming that the Holocaust was a myth or that it had been exaggerated in the 12 months before the survey. Notwithstanding these figures, almost two thirds (64 %) of those who experienced physical violence or threats of violence did not report the most serious incident to the police or to any other organisation. Three quarters (76 %) of the respondents who experienced anti-Semitic harassment in the past 5 years did not report the most serious incident. More than four in five (82 %) of those who said that they felt discriminated against in the 12 months before the survey because they are Jewish did not report the most serious incident. About half of the respondents, are not aware of the legislation that protects Jewish people from discrimination ¹⁰⁷.

The FRA has also examined **the responses of Greece and Hungary to racism, discrimination, extremism and intolerance** given the significant parliamentary presence of political parties standing for and promoting an extremist ideology that particularly targets irregular migrants (in Greece) and the Roma and Jews (in Hungary), and which are either themselves or have links to paramilitary organisations committing racially motivated acts of violence. These countries are also taken as case studies to demonstrate the need for more targeted and effective measures to combat these phenomena throughout the EU. According to the report, although the EU and its Member States already have strong legislation in place to fight racism, intolerance and

¹⁰⁷ FRA, Jewish people's experience of discrimination and hate crime in European Union Member States, November 2013.

extremism, greater efforts are needed to ensure effective implementation. In addition, more needs to be done, particularly at local level, to foster social cohesion and increase trust in the police and other law enforcement authorities ¹⁰⁸.

The FRA assessed the impact of Framework Decision 2008/913/JHA on the rights of the victims of crimes motivated by hatred and prejudice, including racism and xenophobia. The opinion illustrates how hate crime can vary from everyday acts committed by individuals on the street or on the Internet, to large-scale crimes carried out by extremist groups or totalitarian regimes ¹⁰⁹.

EU Framework for National Roma Integration Strategies

Major progress has been achieved in 2013 on making the common EU approach in tackling the exclusion of Roma from our societies operational.

In June 2013, the European Commission **assessed progress** made in the Member States on the five preconditions for a successful implementation of national Roma integration strategies and measures. These conclusions ¹¹⁰ have allowed formalising the shift of the European and national paradigm towards the local level, where major bottlenecks regarding Roma integration are situated.

This shift was reflected at the second meeting (on 7–8 March 2013) of the **national Roma contact points** where prominent attention was paid to the EU funding and coordination mechanisms that may support local and regional authorities when meeting the challenge of Roma integration. The third meeting (on 30 September and 1 October 2013) included a full session on exchanges on possible solutions to the challenges met by local and regional authorities when dealing, on the one hand, with Roma coming from other EU Member States and settling on their territory and, on the other hand, with native Roma and travellers (who have not experienced intra-EU migration). Representatives from local and regional authorities participated in both meetings.

The conclusions from the European Commission's assessment of progress also allowed to identify a number of issues needing a stronger commitment from the Council in order to ensure that the strategies are operational and are well implemented, based on the European Commission's recommendations on effective Roma integration measures in the Member States ¹¹¹.

¹⁰⁸ FRA, Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary, December 2013.

¹⁰⁹ FRA, Opinion on the framework decision on racism and xenophobia — with special attention to the rights of victims of crime, October 2013.

¹¹⁰ Steps forward in implementing national Roma integration strategies, COM(2013) 454 final, 26.6.2013.

¹¹¹ Proposal for a Council Recommendation on effective Roma integration measures in the Member States, COM(2013) 460, 26.6.2013.

The European Commission **strengthened its dialogue with civil society and the Roma themselves**, including at the highest decision-making levels (such as a meeting of Vice-President Reding and European Commissioner Andor with civil society representatives on 14 May 2013) and the Roma Platform on 26 June 2013 gave a prominent visibility and role to the Roma and their representatives.

Members of the European Parliament have maintained their strong involvement in the process. The European Commission has received several written questions all through the year concerning Roma integration and possible discrimination. The European Commission participated in the hearing organised in the European Parliament on the EU framework for national Roma integration strategies, but also in the debates regarding the possible adoption of a motion on gender aspects of the EU framework for national Roma integration strategies.

On 9 December 2013, with the adoption of the Council recommendation on effective Roma integration measures in the Member States¹¹², all 28 EU Member States committed to implementing a set of recommendations, proposed by the European Commission, to step up the economic and social integration of Roma communities. The Council recommendation is the first ever EU-level legal instrument¹¹³ for Roma inclusion and it gives specific guidance to help Member States strengthen and accelerate their efforts in order to bridge the gaps between the Roma and the rest of the population. It reinforces the EU framework for national Roma integration strategies agreed by all Member States in 2011. Based on European Commission reports on the situation of the Roma over recent years, the Council recommendation focuses on the four areas where EU leaders signed up to common goals for Roma integration under the EU framework for national Roma integration strategies: access to education¹¹⁴, employment, health care and housing. To put in place targeted actions, it asks Member States to allocate not only EU but also national funds to Roma inclusion.

Fight against homophobia

In light of a lack of comparable data on the respect, protection and fulfilment of the fundamental rights of lesbian, gay, bisexual and transgender (LGBT) persons, the FRA launched in 2012 its EU online **survey of LGBT persons' experiences of discrimination, violence and harassment**, of which the results were published in May 2013¹¹⁵. The survey results provide valuable evidence of how LGBT persons in the EU and Croatia experience bias-motivated discrimination, violence and harassment in different areas of life, including employment, education, health care,

¹¹² Council recommendation on effective Roma integration measures in the Member States, Brussels, 9 and 10 December 2013, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/139979.pdf

¹¹³ It should be noted, however, that a Council recommendation is not legally binding on the Member States.

¹¹⁴ Special attention is paid to the rights of Roma children, especially in the context of full and equal access to quality education of Roma children. In the part on substantive policy issues regarding access to education, COM(2013) 454 refers to a child's right to education as enshrined in Article 28 of the UN Convention on the Rights of the Child. The rights of the child are discussed below under Article 24.

¹¹⁵ FRA, 'EU LGBT Survey: European Union lesbian, gay, bisexual and transgender survey — Results at a glance', May 2013, available at http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf

housing and other services. The findings show that many hide their identity or avoid locations because of fear. Others experience discrimination and even violence for being LGBT. Most, however, do not report such incidents to the police or any other relevant authority. The report assisted the EU institutions and the Member States in identifying the fundamental rights challenges faced by LGBT people living in the EU and Croatia. Basing itself on the results of the survey, the European Commission brought together interested Member States to discuss existing best practices in those areas identified in the survey as most problematic and to discuss appropriate policy responses to address the needs of LGBT persons and ensure the protection of their fundamental rights.

The European Commission sponsored and provided policy support to the initiative of the French government to host the regional UN conference on LGBT rights for Europe, in March 2013. The event aimed at raising awareness at the highest level about the violations of fundamental rights of LGBT people, the need to fight discrimination and violence grounded in sexual orientation and the need to reinforce cooperation with civil society.

Questions were raised regarding the critical situation in Lithuania where the government **banned the Pride parade** in June 2013 and has tabled several legislative proposals which would impair the rights of LGBT persons. The European Commission is committed to combating homophobia and discrimination based on sexual orientation within the limits of the powers conferred on it by the Treaties.

Rights of persons belonging to minorities

The respect of the **rights of persons belonging to minorities** is one of the founding values of the EU and is explicitly mentioned in Article 2 of the Treaty on European Union. Articles 21 and 22 of the Charter prohibit discrimination based on membership of a national minority and provide for the respect by the Union of cultural, religious and linguistic diversity. However, the EU has no general powers as regards minorities, in particular, over matters concerning the definition of a national minority, the recognition of the status of minorities, their self-determination and autonomy, or the regime governing the use of regional or minority languages. It is therefore up to the Member States to use all legal instruments available to them in order to guarantee that fundamental rights of minorities living on their territories are effectively protected in accordance with their constitutional order and obligations under international law, including the relevant instruments of the Council of Europe. For instance, monitoring the application of the Framework Convention for the Protection of National Minorities¹¹⁶ as well as of the European Charter for Regional or Minority Languages¹¹⁷ by its States Parties, falls within the mandate of the Council of Europe.

¹¹⁶ Council of Europe Framework Convention for the Protection of National Minorities, Strasbourg, February 1995, available at [http://www.coe.int/t/dghl/monitoring/minorities/1_AtAGlance/PDF_H\(95\)10_FCNM_ExplanReport_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_AtAGlance/PDF_H(95)10_FCNM_ExplanReport_en.pdf)

¹¹⁷ Council of Europe European Charter for Regional or Minority Languages, Strasbourg, November 1992, available at <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=148&CM=1&CL=ENG>

At the same time, EU legislation addresses **certain difficulties affecting persons belonging to minorities**, such as discrimination and incitement to violence or hatred based on race or national or ethnic origin, via a number of programmes or legislative measures ¹¹⁸. Directive 2000/43/EC establishes a binding legislative framework prohibiting discrimination based on grounds of racial or ethnic origin in the areas of employment and training, education, social protection (including social security and health care), social advantages and access to goods and services (including housing). This directive has been transposed into the legal order of every Member State and the European Commission ensures proper implementation. In addition, the European Commission supports projects related to regional and minority languages through a variety of programmes, including in areas such as education and training, culture and youth support. In particular, the Lifelong Learning Programme finances projects to promote language learning and linguistic diversity, either through the different sub-programmes (Comenius, Erasmus, Leonardo da Vinci or Grundtvig) or through its transversal programme (key activity 2 'Languages').

Case-law

In the case of homophobic statements by the patron of a football club ¹¹⁹, ruling out the recruitment of a footballer presented as being homosexual, the CJEU held that the rules on sanctions put in place in order to transpose the provisions of Directive 2000/78/EC on equal treatment in employment and occupation into the national law of a Member State must ensure real and effective legal protection of the rights deriving from it. The severity of the sanctions must be commensurate to the seriousness of the breaches for which they are imposed, in particular by ensuring a genuinely dissuasive effect. A purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of Directive 2000/78/EC. Therefore the CJEU requested the referring court to ascertain the appropriateness of the sanction in the case at stake, which consisted in a simple warning only. The CJEU held that national rules are not in line with Directive 2000/78/EC if these national rules, in cases where there is a finding of discrimination on grounds of sexual orientation within the meaning of Directive 2000/78/EC, allow to impose a warning only, without sanctioning the discrimination under substantive and procedural conditions that render the sanction effective, proportionate and dissuasive.

In 2013, the CJEU has further developed its case-law on the **prohibition of discrimination on the ground of age**. The fact that the CJEU in its case-law on age discrimination explicitly refers to Article 21 of the Charter, which contains the prohibition of any discrimination on ground of age, is to be welcomed. In the case *HK Danmark v Experian A/S* ¹²⁰, a request for a preliminary ruling from a Danish court on the interpretation of Council Directive 2000/78/EC, the question of the lawfulness of the occupational pension scheme operated by Experian was at stake. Experian

¹¹⁸ 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, OJ L 328, 6.12.2008, p. 55; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22.

¹¹⁹ CJEU judgment of 25 April 2013 in Case C-81/12 *Asociația Accept*.

¹²⁰ CJEU judgment of 26 September 2013 in Case C-476/11 *HK Danmark* ('Kristensen').

had namely set up a pension scheme with different applicable rates according to different age categories, and argued that pension schemes are not covered by the prohibition of discrimination on the grounds of age, as laid down by the Danish anti-discrimination law. The CJEU held, however, that these pension schemes are covered by the said legislation. It concluded that the principle of non-discrimination on grounds of age, enshrined in Article 21 of the Charter and given specific expression by Directive 2000/78/EC, must be interpreted as allowing an occupational pension scheme under which an employer pays, as part of pay, pension contributions which increase with age, provided that the difference in treatment on grounds of age that arises therefrom is appropriate and necessary to achieve a legitimate aim, which it is for the national court to establish.

Another Danish age discrimination case *Toftgaard*¹²¹, is a case on the refusal to grant availability pay to civil servants who have reached the age of 65 and are entitled to a pension. The Danish Law on Civil Servants foresees a system of '*rådighedsløn*' (availability pay), under which a civil servant may, as special protection in the event of dismissal on grounds of redundancy, retain his current salary for 3 years and continue to be credited for years of pensionable service, provided he remains available for assignment to another suitable post. Mr Toftgaard was not granted availability pay as he had reached the age of 65 and was entitled to a pension. The CJEU held that Directive 2000/78/EC must be interpreted as precluding a national provision under which a civil servant who has reached the age at which he is able to receive a retirement pension is denied, solely for that reason, entitlement to availability pay intended for civil servants dismissed on grounds of redundancy.

Not only the Danish retirement scheme was under scrutiny by the CJEU regarding its compliance with the Charter, but also the Czech retirement scheme, and more particularly the **early retirement support in the agricultural sector**. In the *Soukupova* case¹²², a case referred to the CJEU by the Czech Supreme Administrative Court, the CJEU held that in implementing Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund ('EAGGF') Member States are required, pursuant to Article 51(1) of the Charter, to respect the principles of equal treatment and non-discrimination, enshrined in Articles 20, 21(1) and 23 of the Charter. Member States, when granting early retirement support in the agricultural sector, financed by the EAGGF, may not rely on the difference in treatment that they are authorised to retain when defining retirement age in the field of social security. On the contrary, in the context of early retirement support for elderly farmers, Member States are required to ensure equal treatment between women and men, and, thereto, to prohibit any discrimination on grounds of gender. In the present case, the difference in treatment by the Czech authorities, consisting in the determination, depending on the gender

¹²¹ CJEU judgment of 26 September 2013 in Case C-546/11 *Dansk Jurist- og Økonomforbund* ('Toftgaard').

¹²² CJEU judgment of 11 April 2013 in Case C-401/11 *Soukupová*.

Rulings on age discrimination in France and Germany

In France ¹²⁵ and Germany ¹²⁶ cases were brought to court regarding discrimination on the basis of age. The French case concerned a national law which provides that an agent of national electricity and gas industries from 65 to 67 years old can be retired at the initiative of the employer. The German case concerned a state regulation on authorised inspectors and official experts providing for an absolute age limit of 70 years. In both cases the national courts decided that the age limit constituted age discrimination according to Article 21 of the Charter, however, the differential treatment was justified under Article 52 of the Charter. Article 52 states that fundamental rights can only be limited if this is provided for by law with respect to the essence of those rights. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. The French High Administrative Court decided that the limitation was justified because the age limit is necessary to promote access to employment through better distribution between generations. The German Higher Administrative Court decided that the differential treatment was justified because of public security.

or number of children, of the age from which that support may no longer be claimed, could not be objectively justified and thus amounted to a violation of the Charter ¹²³.

In the case *Industrie du bois de Vielsalm & Cie (IBV) SA v Région wallonne* ¹²⁴ of 26 September 2013, the Belgian Constitutional Court had submitted a reference for a preliminary ruling on whether the granting of a larger number of green certificates to cogeneration plants processing principally forms of biomass other than wood or wood waste is in compliance with the principle of equal treatment and non-discrimination as enshrined in Articles 20 and 21 of the Charter. The possibility for setting up national support schemes for cogeneration and electricity production from renewable energy sources is foreseen in Article 7 of Directive 2004/8 and Article 4 of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market. The question arising in this context is whether the setting up of a grant scheme which gives preferential treatment to cogeneration plants processing principally forms of biomass, to the detriment of those processing wood or wood waste is in line with the principle of non-discrimination. The novelty of the judgment was in the fact that the CJEU for the first time declared that Member States are implementing EU law in the sense of Article 51(1) of the Charter when setting up and regulating these support schemes.

Regarding the outcome of the case, the CJEU held that, in the present state of European Union law, the principle of equal treatment and non-discrimination laid down in particular in Articles 20 and 21 of the Charter does not preclude the Member States from providing for an enhanced support measure capable of benefiting all cogeneration plants principally using biomass with the exclusion of cogeneration plants principally using wood and/or wood waste. The CJEU stressed the broad margin of discretion allowed to the Member States by Directives 2001/77 and 2004/8 for the adoption and implementation of support schemes intended to promote cogeneration and electricity production from renewable energy sources.

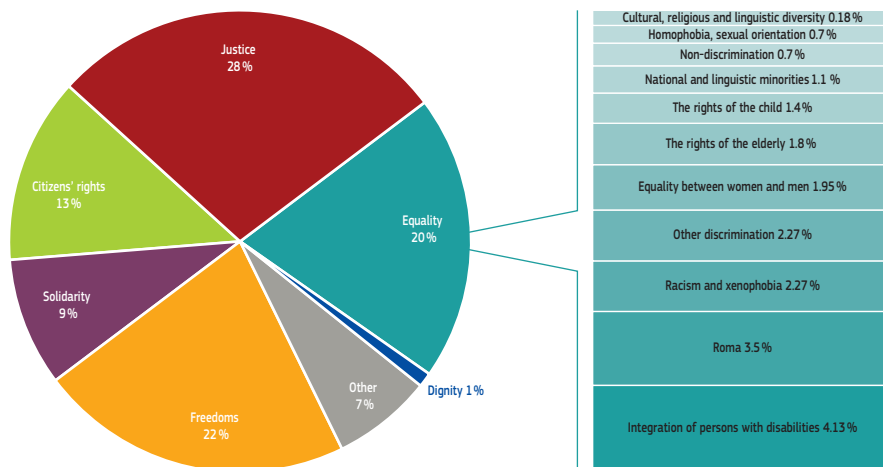
¹²³ See also the 2013 Report on the Application of the EU Charter of Fundamental Rights under 2. Applicability of the Charter to the Member States.

¹²⁴ CJEU judgment of 26 September 2013 in Case C-195/12 *IBV & Cie*.

¹²⁵ High Administrative Court of France (Conseil d'Etat), case No 352393 ECLI FR CESSR 2013 352393.20130313, *Mrs A v the State of France*, 13.3.2013.

¹²⁶ Hessian Higher Administrative Court (Hessischer Verwaltungsgerichtshof, 7. Senat), case 7 C 897/13.N, 7.8.2013.

Letters



Article 24: The rights of the child

With respect to Article 24 of the Charter on the rights of the child, progress was made in the completion of the actions¹²⁷ set out in the **EU agenda for the rights of the child**¹²⁸.

Legislation

The European Commission's proposal for a **directive on procedural safeguards for children suspected or accused in criminal proceedings**¹²⁹ will ensure that children have mandatory access to a lawyer at all stages. This means that children cannot waive their right to be assisted by a lawyer, to ensure that a lacking understanding of the consequence of their actions does not lead them to waive their rights. Children are also set to benefit from other safeguards such as being promptly informed about their rights, being assisted by their parents (or other appropriate

¹²⁷ On the state of play of the 11 actions taken to implement the EU Agenda for the Rights of the Child, see http://ec.europa.eu/justice/fundamental-rights/files/eu_agenda_state_of_play_2013_en.pdf

¹²⁸ European Commission Communication: An EU Agenda for the Rights of the Child, COM(2011) 60 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:en:NOT>

¹²⁹ Proposal for a directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, COM(2013) 822 final, available at http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2013/com_2013_0822_en.pdf

persons), not being questioned in public hearings, having the right to receive a medical examination and being kept separate from adult inmates if deprived of liberty¹³⁰.

In conjunction with Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime of 2012¹³¹, and the 2011 legislation on child sexual abuse and exploitation and trafficking in human beings, this proposal will contribute to creating a more child-friendly justice system for all children involved in judicial proceedings.

Technical amendments to the Schengen Borders Code were adopted by Regulation 610/2013¹³² which foresees, among others, that training curricula for the border guards shall include specialised training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking.

In December 2013, the deadline for the transposition of the **directive on combating the sexual abuse and sexual exploitation of children and child pornography**¹³³ had lapsed. To date five Member States (Luxembourg, Estonia, Croatia, France and Sweden) have notified full transposition and 10 Member States (Bulgaria, Czech Republic, Germany, Latvia, Lithuania, Austria, Poland, Slovenia, Slovakia and Finland) partial transposition. In January 2014, 11 infringement cases were launched for non-communication of the measures transposing Directive 2011/93/EU on sexual abuse and sexual exploitation of children. The letters of formal notice were sent to those Member States which did not communicate any measures of transposition.

Policy

The **8th European Forum on the rights of the child** focused on **supporting integrated child protection systems through the implementation of the EU agenda**¹³⁴. Representatives of a wide range of organisations involved in the national child protection systems from all Member

¹³⁰ See also the ongoing FRA research on forms of child participation in criminal and civil judicial proceedings. Practices of child participation in justice proceedings vary considerably across EU Member States. There are gaps in relation to clear, consistent standards and guidelines on how and when children should be involved. In 2011, the European Commission highlighted in the EU Agenda for the Rights of the Child that promoting child-friendly justice is at the centre of its actions. Therefore, in close cooperation with the European Commission, FRA is engaging in research to examine practices and procedures of child participation in justice proceedings which should conform to the Council of Europe's guidelines on child-friendly justice. More information on the research project is available at: <http://fra.europa.eu/en/project/2012/children-and-justice>

¹³¹ Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012.

¹³² Regulation No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council, OJ L 182, 29.6.2013.

¹³³ Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1.

¹³⁴ For more information on the 8th Forum of the Rights of the Child, see http://ec.europa.eu/justice/events/child-forum-2013/index_en.htm

States, including justice, social affairs, health and education authorities, as well as Members of the European Parliament, NGOs, experts and professionals working with and for children exchanged good practices and provided input for future European guidelines on child protection systems. The forum highlighted the importance of integrated child protection systems to effectively address the diverse protection needs of children in all circumstances. To achieve this, good cooperation among all actors and the need for multidisciplinary teams of specially trained professionals were seen as essential components of any child protection system, as well as the appropriate collection and sharing of data and information. While maintaining the need for a comprehensive approach to child protection, the forum featured specific sessions on ensuring the best interests of the child in cases of cross-border parental child abduction, meeting the needs of children on the move, protecting children from bullying and cyber bullying and protecting girls from female genital mutilation (FGM).

In January 2013, the European Commission established an informal **Member State expert group on the rights of the child**¹³⁵. This is a further step towards enhanced cooperation and dialogue with stakeholders, besides the annual European Forum on the rights of the child. Through the expert group, the European Commission seeks to continue to support Member States' efforts by promoting exchange of best practice, cooperation and communication with and among national authorities responsible for protecting and promoting the rights of the child. The group met three times in 2013 and the European Commission presented new legal instruments and policies connected to the rights of the child in areas such as justice, home affairs, employment and education. The wider international context was also discussed, including the United Nations Convention on the Rights of the Child third optional protocol¹³⁶ (allowing children to file individual complaints) and the Committee on the Rights of the Child — General comment No 14¹³⁷ (the right of the child to have his or her best interests taken as a primary consideration).

Regarding trafficking in human beings, in May 2013 an **EU Civil Society Platform against Trafficking in Human Beings** was launched, to bring together more than a hundred civil society organisations, including organisations promoting the rights of children from EU MS and third countries. This is one of the latest actions delivered under the '**EU Strategy towards the Eradication of Trafficking in Human Beings 2012–16**'¹³⁸ which complements **Directive 2011/36/EU on preventing and combating trafficking in human beings**. The directive adopts an integrated, holistic, and human rights-based approach, with special attention to the rights of the child¹³⁹.

¹³⁵ See also the Member State expert group on Early Childhood Education and Care, which is working on a proposal for an Early Childhood Education and Care European Quality Framework.

¹³⁶ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, available at https://treaties.un.org/doc/source/signature/2012/ctc_4-11d.pdf

¹³⁷ UN Committee on the Rights of the Children, General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), see http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

¹³⁸ European Commission Communication: The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–16, COM(2012) 286 final, 19.6.2012.

¹³⁹ On trafficking in human beings, see above under Article 5 on the Prohibition of slavery and forced labour.

In 2012, the European Commission adopted the **European Strategy Better Internet for Children**¹⁴⁰ setting out a plan to give children the digital skills and tools they need to use the Internet to their advantage, safely and responsibly. The strategy advocates for a multi-stakeholder approach. A range of industry players have been engaged throughout 2013 to make devices and services appropriate for children and youth in the CEO coalition to make the Internet a better place for kids. The European Commission aims to engage industry further, also aligning with existing initiatives as well as developing partnerships with industry and third party stakeholders. The Safer Internet Programme running between 2009 and 2013 has been the main instrument for implementing the Better Internet for Children strategy. Future actions will be funded under the Connecting Europe facility which will support the set up and operation of a Digital Services Infrastructure for Safer Internet Centres.

The European Commission published a large-scale **study on missing children in the EU**¹⁴¹ in December 2013. The study maps the situation of and responses to children going missing for the period 2009–12 in 27 EU Member States. It reveals a variety of definitions and procedures used by the Member States as well as greatly varying degrees of data available. It highlights the magnitude of the problem with a quarter of a million cases of missing children officially reported in 2011. The study concludes that there is a strong case for improving data collection, including using common definitions, reporting of cases and coordinating the actions taken by the different services in the national child protection systems. Furthermore, it makes recommendations to broaden the type of data recorded to understand underlying causes for disappearances, allow targeted prevention and adequate follow-up to the cases, and to raise awareness about the services available, including the 116 000 hotlines for missing children.

The European Commission stepped up its efforts to **support the setting up of the remaining 116 000 hotlines for missing children**. To this effect and to improve the quality of existing hotlines, the European Commission awarded a total of EUR 4.5 million through the Daphne III Programme to organisations in 18 Member States. After four new hotlines were launched in 2013, the hotline was available in 26 Member States at the end of the year¹⁴².

The **recommendation investing in children: breaking the cycle of disadvantage**¹⁴³ calls on Member States to step up social investment targeted towards children and explains how EU financial instruments can be better mobilised to ensure that children are given the best start in life and to make sure that children are not locked into a life of disadvantage. The recommendation is embedded in a rights-based approach, drawing on the founding values of fundamental

¹⁴⁰ Communication on a European Strategy Better Internet for Children, COM(2012) 196 final, available at: http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2013/com_2013_0822_en.pdf

¹⁴¹ The study on missing children in the EU is available at http://ec.europa.eu/justice/fundamental-rights/files/missing_children_study_2013_en.pdf

¹⁴² More information on the 116 000 hotlines is available at http://ec.europa.eu/justice/fundamental-rights/rights-child/hotline/index_en.htm

¹⁴³ European Commission Recommendation of 20 February 2013 Investing in Children: breaking the cycle of disadvantage, OJ L 59, p. 5, 2.3.2013.

rights of the European Union in its first article. It recommends Member States to address child poverty and social exclusion from a children's rights approach, to refer to the Charter and the UN Convention on the Rights of the Child, and to make sure that these rights are respected, protected and fulfilled. The recommendation is centred on three pillars, covering access to adequate resources (access to labour market for parents, income support), access to affordable quality services (such as childcare, education, health care, housing, social services) and the children's right to participate. The recommendation focuses on prevention measures, with a particular focus on children who are more at risk because they face multiple disadvantages, for example Roma children¹⁴⁴ or migrant children¹⁴⁵.

Children are placed at the centre of the EU's efforts to eliminate female genital mutilation (FGM). On 25 November, the European Commission announced through its **communication: 'Towards the elimination of female genital mutilation'**¹⁴⁶ a new push to eliminate female genital mutilation in the EU and beyond. The practice, internationally recognised as a violation of women's human rights and as a form of child abuse, is thought to have affected 500 000 victims in the EU alone, and more than 125 million worldwide. To fight female genital mutilation, the European Commission will make full use of future EU funding to help preventing the practice; improve support for victims; support health practitioners, as well as national enforcement of anti-FGM laws; and improve protection under EU asylum rules for women at risk. The European Commission and the European External Action Service have also committed to promoting worldwide elimination of FGM through bilateral and multilateral dialogue. Finally, the European Commission will encourage more research into the number of women and girls at risk. In order to exchange best practices the European Commission organised a specific session at the 8th Forum on the Rights of the Child focusing on the role of child protection systems in protecting children from female genital mutilation.

Case-law

In *MA and others v Secretary of State for the Home Department*¹⁴⁷, the CJEU held that, when interpreting the provisions of the Dublin II regulation¹⁴⁸ on the Member State which is responsible for examining an asylum application made in more than one Member State by an

¹⁴⁴ On Roma children see above under Article 21 non-discrimination, under 'EU Framework for National Roma Integration Strategies'.

¹⁴⁵ Please also note the references to children's rights in the other communications which are part of the Social Investment Package, such as the Communication from the European Commission: Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014–20, COM(2013) 83, which highlights the importance of targeting funds to invest in children, and the accompanying European Commission Staff Working Document Confronting Homelessness in the European Union, SWD(2013)42 which draws special attention to the situation of homeless children.

¹⁴⁶ European Commission Communication: Towards the elimination of female genital mutilation, COM(2013) 833, 25.11.2013, available at http://ec.europa.eu/justice/gender-equality/files/gender_based_violence/131125_fgm_communication_en.pdf

¹⁴⁷ CJEU judgment of 6 June 2013 in Case C-648/11 *MA and Others*.

¹⁴⁸ For an analysis of the adopted recast Dublin II regulation and the Dublin system from the angle of the prohibition of torture and inhuman or degrading treatment or punishment, see above under Article 4.

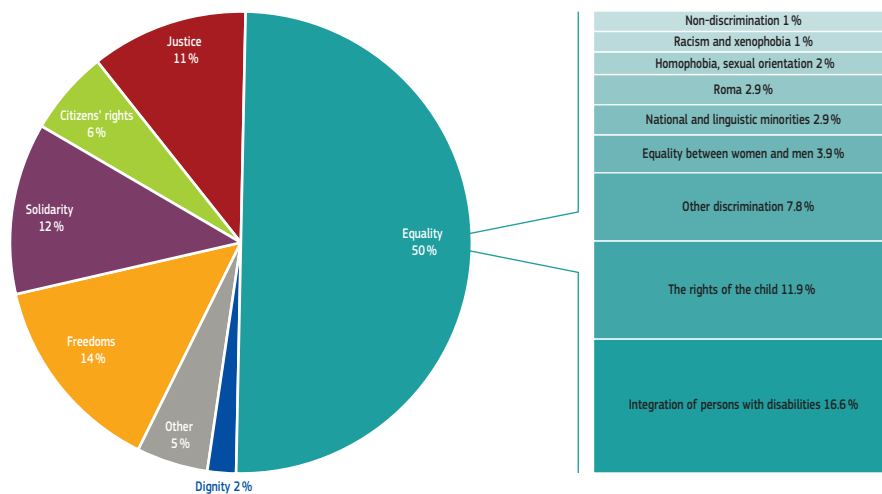
Ruling of the Supreme Court of the Czech Republic ¹⁴⁹

A Czech district court decided to deprive a father of his parental rights and responsibilities after he was found guilty of murder. This decision was confirmed by the appellate court. In appeal the father argued that the courts had not interrogated his daughter. The Supreme Court referred to CJEU case-law ¹⁵⁰ on Council Regulation No 2201/2003 and Article 24 of the Charter and concluded that although it is a right of every child to express opinions and to be heard, an interrogation cannot be compulsory in every case, but has to be considered with respect to the inherent interest of every child. The Supreme Court decided that the courts' decision not to interrogate the children, considering their age and the harmfulness to their mental health of the interrogation, was not contrary to Article 24 of the Charter.

unaccompanied minor, the responsible state should be the state in which the minor is present after having lodged an application there. The relevant provision of the Dublin II regulation merely states that the Member State responsible for examining the application is to be that where the minor has lodged his applications for asylum, but it does not specify whether that is the first application which the minor lodged in a Member State, or the most recent application lodged in another Member State. The CJEU in its judgment stresses that this provision has to be interpreted in the light of Article 24 of the Charter, which states that in all actions related to children, the child's best interests must be a primary consideration. As unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than it is strictly necessary the procedure for determining the Member State responsible, which means that unaccompanied minors should not be transferred to another Member State. The Charter-friendly interpretation of the said provision of the Dublin II regulation leads thus to the Member State in which the minor is present after having lodged an application there to be responsible for examining an asylum application, even if an earlier application was lodged in another Member State.

This judgment is a nice illustration of the obligation on both national judges and the CJEU to adopt a 'Charter-friendly' interpretation in cases where there are several possibilities to interpret EU law.

Petitions



¹⁴⁹ Supreme Court of Czech Republic (Nejvyšší soud), case 30 Cdo 1376/2012, *Municipality of Olomouc v Regional Attorney's Office*, 22.5.2013.

¹⁵⁰ CJEU judgment of 22 December 2010 in Case C-491/10 PPU *Aguirre Zarraga*.

Article 26: Integration of persons with disabilities

The Charter provides that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. The Charter in Article 53 on the level of protection relates it inter alia 'to international law and international agreements to which the Union or all the Member States are party'.

International agreements

The EU became a party to the **UN Convention on the Rights of Persons with Disabilities** ('the UN Convention') on 22 January 2011 by virtue of Council Decision 2010/48/EC. This implies that the rights enshrined therein need to be implemented and respected by the EU in its legislative actions as well as its policymaking, to the extent of its competences.

The UN Convention provides that its parties shall maintain, strengthen, designate or establish a framework including at least one independent mechanism to promote, protect and monitor the implementation of the UN Convention (Article 33.2). To that end, and in accordance with paragraph 13 of the Code of Conduct between the Council, the Member States and the European Commission setting out the intra-EU arrangement for the implementation of the UN Convention, the European Commission proposed in 2012 that the following five entities jointly form '**the EU Framework**':

- the European Parliament's Petitions Committee;
- the European Ombudsman;
- the EU Agency for Fundamental Rights;
- the European Disability Forum; and
- the European Commission.

The Council endorsed the European Commission's proposal on 29 October 2012 ¹⁵¹.

The EU framework's activities concern the implementation of the Convention:

¹⁵¹ Council of the European Union, Press Release, 3196th, Transport, Telecommunications and Energy, Transport Items, Luxembourg, 29 October 2012, 15491/12, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015491%202012%20INIT> — see p. 20 under 'foreign affairs' for rights of persons with disabilities — EU-level framework.

i) with respect to EU legislation and policy in those areas where the Member States have transferred competences to the EU; and

ii) within the EU institutions themselves as public administration, for example in relation to interaction with citizens and the public, and staff matters.

The EU framework complements the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UN Convention in the Member States.

During its initial meetings in 2013 (in January and May) the EU framework agreed on a number of organisational issues like the role of the Secretariat, of the Chairperson and the framework's working methods. The European Commission was appointed to perform the function of framework secretariat for a period of 2 years after which this appointment would be reviewed. For the same duration, the European Disability Forum will perform the role of Chair of the Framework's meetings. In 2013 the European Commission organised the **fourth work forum** on the implementation of the UN Convention with a focus on the reporting to and examination by the CRPD Committee, on the protection of the rights of persons with disabilities and the individual communication procedure under the Optional Protocol to the Convention, and on the complementarity and cooperation between the EU-level framework and frameworks established by the EU Member States.

In addition, Article 35 of the UN Convention provides that each (state) party shall submit to the Committee on the Rights of Persons with Disabilities a comprehensive **report on measures taken to give effect to its obligations under the Convention**, and on the progress made in that regard. The European Commission, as focal point for the implementation of the Convention by the EU, has been preparing the EU report in 2013. This will address matters governed by the Convention falling under EU competence. Focusing on EU competences, it will examine the use of EU legislation, policies and other measures and their impact on the realisation of the rights enshrined in the Convention. It will also identify challenges in the implementation process. The report is meant to be underpinned by available statistical data.

The European Commission also participated in the **6th Session of the UNCRPD Conference of state parties** which took place in New York in July 2013. The main theme of the conference was 'ensuring adequate standard of living: empowerment and participation of persons with disabilities within the framework of the CRPD'. At this occasion, the European Commission made a statement on behalf of the Union and stressed the importance of cooperation and coordination between the Union and the Member States in line with the duty of sincere cooperation.

Every year, the European Commission presents a **Disability High Level Group Report on the Implementation of the UNCRPD**. This report, prepared on the basis of submissions received from the 28 EU Member States, Norway and various EU-level civil society organisations and Data Protection Officers, gives an overview of progress made in ratifying and implementing the

Convention in the EU and its Member States. In 2013, the report also included a thematic chapter specifically dedicated to disability and development cooperation, providing detailed information on the implementation of Article 32 of the UN Convention¹⁵². The European Commission also hosted a European regional consultation meeting in preparation for the High Level Meeting of the UN General Assembly on Disability and Development that took place in New York on 23 September 2013. The report of the meeting contains very supportive suggestions to better take care of the needs of persons with disabilities in the post-2015 development agenda.

Legislation

As regards the Accessibility objective, the European Commission continued to explore the possibility of proposing a **European accessibility act**. Such a business-friendly initiative, addressed from an internal market perspective and dealing with issues of market fragmentation, would aim at improving the market of goods and services that are accessible for persons with disabilities and elderly persons, based on a 'design for all' approach.

The European Commission also followed up the development of the discussions on the proposal for a **web-accessibility directive** at the European Parliament and the Council. The proposal, which is based on an internal market legal basis, establishes a harmonised set of accessibility requirements for a set of public sector bodies' websites which would result in an increase in the overall accessibility of the public sector's websites across the EU. The European Commission also followed up the development of the discussions on the proposal for a web-accessibility directive¹⁵³ at the European Parliament and the Council. The proposal, which is based on an internal market legal basis, establishes a harmonised set of accessibility requirements for a set of public sector bodies' websites which would result in an increase in the overall accessibility of public sector's websites across the EU.

The European Commission invited Member States to provide information on the measures they undertook in order to ensure that disabled end-users enjoy tailored solutions for equal access to the emergency number 112, taking into account aspects such as speed, mobility, reliability, coverage or language handling. Article 26(4) of the **universal services directive**¹⁵⁴ includes measures in favour of persons with disability which are an expression of Article 26 of the Charter. The provision provides for the obligations on Member States to ensure that disabled end-users enjoy

Hungary: EU funds and the deinstitutionalisation process

In its concluding observations on the initial periodic report of Hungary, the **UN Committee on the Rights of Persons with Disabilities**, the body of independent experts which monitors implementation of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) by the States Parties, criticised the fact that Hungary uses **EU funds** to build large social institutions for persons with disabilities in community-based settings. This is not in line with the aim of deinstitutionalisation as stipulated in the UN CRPD. The UN Committee noted with concern that Hungary 'has set a 30-year time frame for its plan for deinstitutionalisation. It is furthermore concerned that the State party has dedicated disproportionately large resources, including regional European Union funds, to the reconstruction of large institutions, which will lead to continued segregation, in comparison with the resources allocated for setting up community-based support service networks.' The Committee is concerned 'that Hungary fails to provide sufficient and adequate support services in local communities to enable persons with disabilities to live independently outside a residential institutional setting.' The European Commission has received several complaints in 2013 from NGOs on the fact that Hungary uses EU funds to construct large institutions leading to segregation of the disabled. Actions are taken to ensure that Structural Funds support the deinstitutionalisation process in the best way possible under the next programming period 2014–2020.

¹⁵² The full report is available at: http://ec.europa.eu/justice/discrimination/document/index_en.htm#h2-5

¹⁵³ Proposal for a directive on the accessibility of public sector bodies' websites COM(2012) 721 final.

¹⁵⁴ Directive 2002/22/CE of 7 March 2002 on the authorisation of electronic communications networks and services, as amended by Directive 2009/139/EC, OJ L 108, 24.4.2002, p. 21.

equivalent access to 112. Out of the 27 replies received, 11 Member States mentioned the existence of alternative means to voice as a means to access emergency services ¹⁵⁵.

Policy

In 2013, the European Commission also pursued the implementation of the **European Disability Strategy** which covers the period from 2010 to 2020 ¹⁵⁶. This strategy aims to empower women and men with disabilities so they can enjoy their full rights and benefit fully from their participation in society and the economy on an equal basis with others. The strategy also aims to facilitate the implementation of the UN Convention at EU level and support the Member States in their implementation process. It includes a list of actions for 2010–15 in eight main areas: accessibility, participation, equality, employment, education and training, social protection, health and EU external action.

The European Parliament Committee on Civil Liberties, Justice and Home Affairs has commissioned a study in 2013 on Member States' policies for children ¹⁵⁷ with disabilities ¹⁵⁸. The study identified a broad recognition of the rights of children with disabilities under national legal systems either through general or specific legislation. However, their practical implementation revealed to be problematic in most Member States resulting in obstacles faced by children with disabilities in their day-to-day life.

Case-law

Worth noting is the new CJEU jurisprudence with regard to the **definition of disability**. In the joined cases *Ring and Skouboe Werg* ¹⁵⁹ the CJEU interpreted Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in the light of Article 1 UNCRPD and the concept of disability provided therein. In its judgment, the CJEU established that Council Directive 2000/78/EC precludes a national provision under which an employer is entitled to dismiss an employee with a shortened period of notice on account of absences due to sickness where such sickness is the result of a disability. Hereby the notion of

¹⁵⁵ In Denmark, Spain, Luxembourg, Austria, Sweden, Slovenia, the United Kingdom, France and Iceland 112 services can be contacted by means of SMSs. Finland will introduce 112 SMS in 2015. Germany, Spain (partially), Belgium, France and Luxembourg mentioned fax. In the following Member States, other means of access are available: Spain has chat; the Netherlands have real-time texting; the United Kingdom and the Czech Republic have text relay using appropriate terminals; Slovenia has WAP. France, Hungary and Austria provide non-voice access to emergency services to another number than 112. Seven Member States mentioned that there are either plans or ongoing trials to introduce in the near future alternative means for disabled end-users (such as SMS or video).

¹⁵⁶ Communication from the European Commission: European Disability Strategy 2010–20: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>

¹⁵⁷ On the rights of the child, see below under Article 24.

¹⁵⁸ European Parliament, Member States' Policies for Children with Disabilities, 2013, available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474416/IPOL-LIBE_ET\(2013\)474416_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474416/IPOL-LIBE_ET(2013)474416_EN.pdf)

¹⁵⁹ CJEU judgment of 11 April 2013 in Joined Cases C-335/11 and C-337/11 *HK Danmark* ('Ring and Skouboe Werge').

disability is interpreted in a broad way, covering a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life. The CJEU thus moved away from the restrictive definition of the previous *Chacón Navas* judgment¹⁶⁰. It clearly stated that an employee unable to work for a long period of time due to his or her disability cannot be dismissed without considering the possibility of providing reasonable accommodation for that employee and re-integrating the person in the workplace.

This jurisprudence was confirmed in a case regarding **infringement procedures against Italy** a few months later. The European Commission has brought an action for failure to fulfil obligations before the CJEU against Italy¹⁶¹, claiming that Italy has transposed Directive 2000/78 into its national law without ensuring that the guarantees and adjustments provided for regarding the treatment of persons with disabilities in the workplace are to apply to all persons with disabilities, all employers, and all aspects of the employment relationship. Furthermore, application of the Italian legislation on that subject is dependent on the adoption of further measures by the local authorities or the conclusion of special agreements between those authorities and employers and thus does not confer upon persons with disabilities rights which could be directly relied on before a court. In its judgment, the CJEU adopted the same broad definition of 'disability' as in the joined cases *Ring and Skouboe Werg*, referring to the concept of disability under the UN Convention. It also referred to UN Convention for the interpretation of the concept of 'reasonable accommodation', which are the adjustments to be made, where needed in a particular case, to ensure to a person with disabilities the enjoyment or exercise of all human rights and fundamental freedoms on an equal basis with other workers. In order to comply with the requirement of reasonable accommodation Member States must create an obligation for employers to adopt effective and practical measures (adapting premises, equipment, patterns of working time, the distribution of tasks), taking into account each individual situation, which will enable any person with a disability to have access to, participate in, or advance in employment, and to undergo training, without imposing a disproportionate burden on the employer. The CJEU emphasised that that obligation covers all employers. It is not sufficient for Member States to provide support and incentives: they must require all employers to adopt effective and practical measures, where needed in particular cases.

Upon examining the various measures adopted by Italy for the integration of persons with disabilities into the labour force, the CJEU found Italy had failed to fulfil its obligation, as those measures, even when assessed as a whole, did not require all employers to adopt effective and practical measures, where needed in particular cases, for all persons with disabilities, covering different aspects of work and enabling them to have access to, participate in, or advance in employment, and to undergo training.

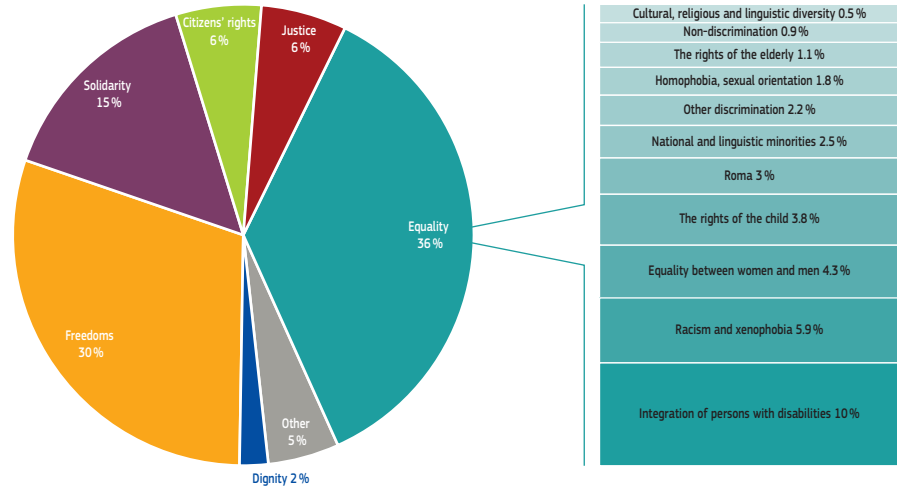
¹⁶⁰ CJEU judgment of 11 July 2006 in Case C-13/05 *Chacón Navas*.

¹⁶¹ CJEU judgment of 4 July 2013 in Case C-312/11 *Commission v Italy*.

A mutually recognised EU-model disability card scheme

The 2013 European Commission's citizenship report includes an action specifically dedicated to citizens with disabilities. This action (No 6) aims at facilitating the mobility of persons with disabilities within the EU. To that end, the European Commission will launch a pilot initiative, planned for the 3rd and 4th quarter of 2014, in view of developing a mutually recognised EU-model disability card scheme that will allow persons with disabilities who travel to other EU countries to be treated in the same way as nationals, when it comes to access to culture, tourism, transport and leisure.

Questions



Workers' right to information and consultation within the undertaking

Right of collective bargaining and action

Right of access to placement services

Protection in the event of unjustified dismissal

Fair and just working conditions

Prohibition of child labour and protection of young people at work

Family and professional life

Social security and social assistance

Health care

Access to services of general economic interest

Environmental protection

Consumer protection

4/

SOLIDARITY

Solidarity

The European Commission presented **proposals requiring Member States to establish collective redress mechanisms**. These proposals make it possible for consumers to bring to court similar claims with one legal action.

The **Market Surveillance and Product Safety Package** has been adopted by the European Commission. The package ensures a high level of human health and consumer protection by strengthening the means to tackle unsafe and non-compliant products.

In 2013 the deadline for the **transposition of the consumer rights directive** has lapsed. This means that all Member States must now have transposed the new rules into their national laws. The consumer rights directive protects consumers, especially those buying on the Internet. The directive guarantees, amongst others, the right to return goods within a period of 14 days.

The deadline for the transposition of Council Directive 2010/32/EU of 10 May 2010, implementing the framework agreement on **prevention from sharp injuries in the hospital and health care sector** concluded by HOSPEEM and EPSU, has also expired in 2013. The purpose of this directive is to implement the abovementioned framework agreement, aiming notably at preventing workers' injuries caused by all medical sharps (including needle-sticks).

The EU adopted a new directive to address the **protection of workers exposed to electromagnetic fields**¹⁶². The directive covers all known direct biophysical effects and other indirect effects caused by electromagnetic fields. Further to this directive, the employer shall notably eliminate or reduce to a minimum the risks that arise from electromagnetic fields at the workplace in line with the principles of the framework directive¹⁶³. Transposition into national law by all Member States is strived for by July 2016.

¹⁶² Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:179:0001:0021:EN:PDF>

¹⁶³ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1989:183:0001:0008:EN:PDF>

In the course of 2013, the EU Charter of Fundamental Rights was directly or indirectly invoked in a number of parliamentary questions enquiring about possible breaches of fundamental rights, notably economic and social rights, by austerity measures passed in response to the economic and financial crisis, in particular in Member States with an economic adjustment programme.

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

The Charter in Article 47 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 provided for by EU law and national laws and practices.

Legislation

The European Commission carried out an *ex post* evaluation of three directives in the area of employees' information and consultation at national company level. The evaluation aimed to identify excessive burdens, overlaps, gaps or inconsistencies which may have appeared since the adoption of the collective redundancies directive¹⁶⁴, the transfer of undertakings directive¹⁶⁵ and the information and consultation directive¹⁶⁶. The European Commission published the results of this so called 'fitness check' on 26 July 2013¹⁶⁷. The report finds that the three EU directives are generally relevant, effective, efficient, coherent and mutually reinforcing. The 'fitness check' brought also to light, however, a number of gaps and shortcomings. As a follow up, the European Commission announced that it would, among others, consider a possible consolidation of the three directives on information and consultation, subject to the results of a consultation of social partners¹⁶⁸.

¹⁶⁴ Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225, 12.8.1998, p. 16.

¹⁶⁵ Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, p. 16.

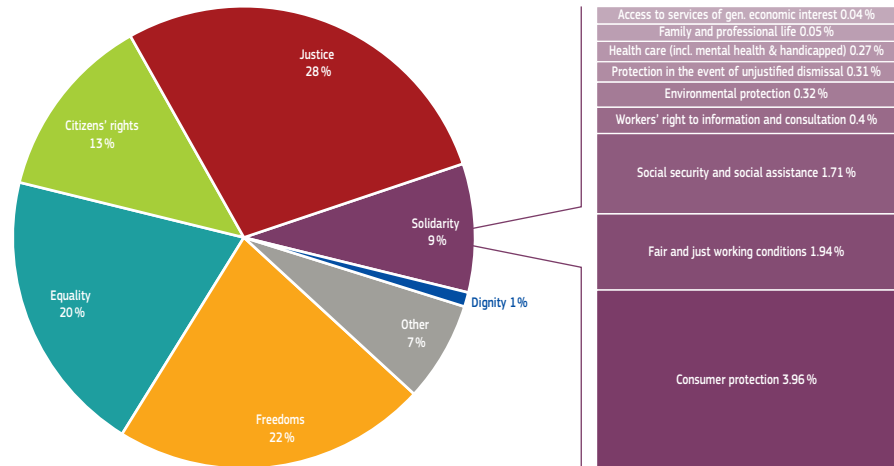
¹⁶⁶ Directive 2002/14/EC on the establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, p. 29.

¹⁶⁷ European Commission Staff Working Document 'Fitness check' on EU law in the area of Information and Consultation of Workers, SWD(2013) 293 final, available at: <http://ec.europa.eu/social/BlobServlet?docId=10415&langId=en>

¹⁶⁸ See European Commission communication on 'Regulatory Fitness and Performance (REFIT): Results and Next Steps' (COM(2013) 685 final).

The European Commission on 18 November 2013 presented a legislative proposal for a directive on seafarers¹⁶⁹ aiming to **lift the exclusion of seafaring workers from the personal scope of application of a number of EU labour law directives** (the works council directive¹⁷⁰, the insolvency directive¹⁷¹, the information and consultation directive, the transfer of undertakings directive and the collective redundancies directive mentioned above).

Letters



Article 28: Right of collective bargaining and action

Article 28 of the Charter provides that workers and employers, or their respective organisations, have, in accordance 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 level¹⁷². Member States remain, of course, bound by the provisions of the Charter, including the right to strike, in instances where they implement EU law.

¹⁶⁹ Proposal for a directive of the European Parliament and of the Council on seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC, COM(2013) 798 final, available at: <http://ec.europa.eu/social/BlobServlet?docId=11129&langId=en>

¹⁷⁰ Directive 2009/38/EC on the establishment of a European works council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 122, 16.5.2009, p. 28.

¹⁷¹ Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer, OJ L 283, 28.10.2008, p. 36.

¹⁷² Article 153(5) of the Treaty on the Functioning of the EU (TFEU) stipulates that it does not apply to the right to strike.

Legislation

The European Commission proposed in 2012 a number of specific rules and obligations in order to enhance the implementation, application and **enforcement of the posting of workers directive** ¹⁷³. The proposal for the enforcement directive ¹⁷⁴ contains provisions improving the effectiveness of controls and sanctions and possibilities given to posted workers to defend their rights better. Furthermore the proposal introduces solutions to effectively prevent abuses, circumvention or disrespect of law. In 2013 the proposal was extensively discussed in the Council, and discussions are still ongoing.

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.

Policy

On 4 December 2013 the European Commission presented a **proposal for a quality framework for traineeships** ¹⁷⁵. The quality framework sets out the main features of high quality traineeships in terms of protecting trainees' rights and helping them make the most of their working experience. The quality framework will enable young people to find quality work experience in another EU country under safe and fair conditions.

EURES provides information, advice and recruitment/placement (job-matching) services for the benefit of workers and employers as well as any citizen wishing to benefit from the principle of the free movement of persons. A **modernisation of EURES** should make it more suitable to the real needs of the labour market by enhancing job matching services. The European Commission will, in addition, launch a pilot initiative with some Member States to improve the EURES information exchange about traineeships and apprenticeships with a view to further facilitating the transition to work for young people.

¹⁷³ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, 21.1.1997, p. 1, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012PC0131&qid=1399451587762>

¹⁷⁴ Proposal for a directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, COM(2012) 131 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0131:FIN:EN:PDF>

¹⁷⁵ Proposal for a Council Recommendation on a Quality Framework for Traineeships, COM(2013) 857 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0495:FIN:EN:PDF>

Article 31: Fair and just working conditions

The Charter guarantees that every worker has the right to working conditions which respect their health, safety and dignity. Every worker has the right to a limitation of 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 concerning, in particular, health and safety at work¹⁷⁶.

Legislation

The EU adopted a new directive to address the **protection of workers exposed to electromagnetic fields**¹⁷⁷. The European Commission will publish practical guidelines to assist employers in meeting their obligations. Transposition into national law by all Member States is strived for by July 2016.

The European Commission presented a proposal for a Council decision authorising Member States to **ratify the International Labour Organisation 2011 Convention concerning decent work for domestic workers** (Convention No 189)¹⁷⁸. Member States ratifying the ILO Convention agree to ensure fair and decent conditions for domestic workers by protecting their fundamental labour-related rights, preventing abuse and violence and establishing safeguards for young domestic workers. The Convention contains provisions that ensure equal payment of domestic workers, decent living conditions and access to complaint mechanisms.

Following the failure of the negotiations between the social partners at the end of 2012 on the review of the **working time directive**¹⁷⁹, the European Commission is currently working on a detailed impact assessment. The European Commission is assessing a range of possible options before deciding on future action.

¹⁷⁶ The central piece is the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1, which lays down general principles on the protection of workers' health and safety. Several specific directives cover a number of specific risks, e.g. exposure of workers to biological and chemical agents at work, noise, work at the construction sites, manual handling of loads, etc. Another important piece of legislation covers working time and regulates issues such as minimum daily and weekly rest periods, breaks, maximum weekly working time, night work and annual leave.

¹⁷⁷ Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399451738647&uri=CELEX:32013L0035>

¹⁷⁸ Proposal for a Council Decision authorising Member States to ratify, in the interests of the European Union, the Convention concerning decent work for domestic workers, 2011, of the International Labour Organisation (Convention No 189), COM(2013) 152 final, available at: <http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:52013PC0152>

¹⁷⁹ 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, OJ L 299, 18.11.2003, p. 9.

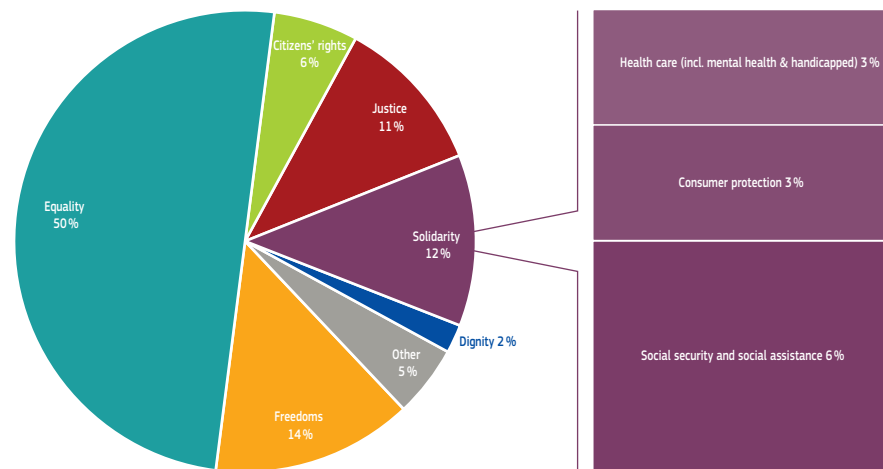
Policy

The European Commission has taken action to address, within the scope of its mandate, the social consequences of the economic crisis.

On 22 April 2013 the Council adopted the **Youth Guarantee Recommendation**¹⁸⁰. The Youth Guarantee aims to tackle youth unemployment by ensuring that all young people under 25 get a good quality, concrete offer for a job, apprenticeship, traineeship, or continued education within 4 months of them leaving formal education or becoming unemployed. The European Commission is helping Member States to develop a national Youth Guarantee Implementation Plan and set up the Youth Guarantee scheme. The European Commission also facilitates the sharing of best practices between governments.

The European Commission contributed to the debate on the deepening of the economic and monetary union and adopted a communication on **strengthening the social dimension** of the economic and monetary union¹⁸¹. In the European Commission's view surveillance of employment and social policies under the European Semester should be strengthened and national trade unions and employers' organisations should be more involved.

Petitions



Ruling of the Constitutional Court of Poland¹⁸²

When answering a legal question arising from a labour dispute, regarding an unjustified dismissal and the right to remuneration for the period of unemployment, the Constitutional Court of Poland referred to the Charter. The Constitutional Court was asked to judge on the constitutionality of Article 57 of the Polish Labour Code, which sets a ceiling for compensation in the event of unjustified dismissal and which prevents the application of the general rules contained in the Civil Code relating to compensation for a damage caused by improper performance of obligations. The applicant claimed that he had a right to continue to receive his wage during the entire period while waiting to take up his job again after the unjustified dismissal. The Constitutional Court cited article 30 of the Charter and determined that it is clear that the protection of the right to work also entails the fact that a person cannot be deprived of his work without a good reason or in violation of the law. It thus referred to the Charter to interpret the scope of the right to work in a broad way, also including protection in the event of unjustified dismissal. It held, however, that Article 57 of the Polish Labour Code was in line with the provisions of the Polish Constitution and that the provisions of the Labour Code and the Civil Code are different in nature and purpose.

¹⁸⁰ Council Recommendation of 22 April 2013 on establishing a Youth Guarantee, OJ C 120, 26.4.2013, p. 1, available at: <http://www.neets-conference2014.ro/documents/LexUriServ.pdf>

¹⁸¹ European Commission Communication: Strengthening the Social Dimension of the Economic and Monetary Union, COM(2013) 690, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399453028197&uri=CELEX:52013D0690>

¹⁸² Constitutional Court of Poland (Trybunał Konstytucyjny), case P 46/11, District Court in Gliwice, Parliament and the Prosecutor General, 22.5.2013.

Article 34: Social security and social assistance

Article 34 of the Charter recognises citizens' entitlement to social security benefits and social services providing protection in cases of maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices. Member States are free to determine the details of their social security systems, including which benefits shall be provided, the conditions of eligibility, how these benefits are calculated, as well as how much contribution should be paid, provided it complies with applicable EU law. European rules ensure that the application of the different national legislations respects the basic principles of equality of treatment and non-discrimination. They guarantee that migrant EU workers are treated in the same way as national workers and that the application of the different national legislations does not adversely affect them.

Legislation

The European Commission continued **negotiations on EU legislation on seasonal workers and intra-corporate transferees**. The extent of the rights that should be granted to the third-country nationals is an important element of the discussions in the Council and in the European Parliament. Upon suggestion by the European Commission the co-legislators agreed to strengthen the reference to the Charter in a recital of the **seasonal workers directive**¹⁸³. Moreover, agreement has been reached as regards the equal treatment of third-country national seasonal workers in respect of working conditions. Discussions on the **directive on intra-corporate transferees**¹⁸⁴ are ongoing, yet an explicit reference to the Charter has been included.

The 2013 **portability on pensions directive** safeguards the supplementary pension rights of employed and self-employed persons moving within the Community and sets out certain rights and obligations for members of supplementary pension schemes in order to safeguard their entitlements and help to ensure the adequacy of their retirement income.

Policy

In 2013 the European Commission adopted the **Social Investment Package**¹⁸⁵, which provides social policy guidance to Member States to address increasing levels of poverty and social

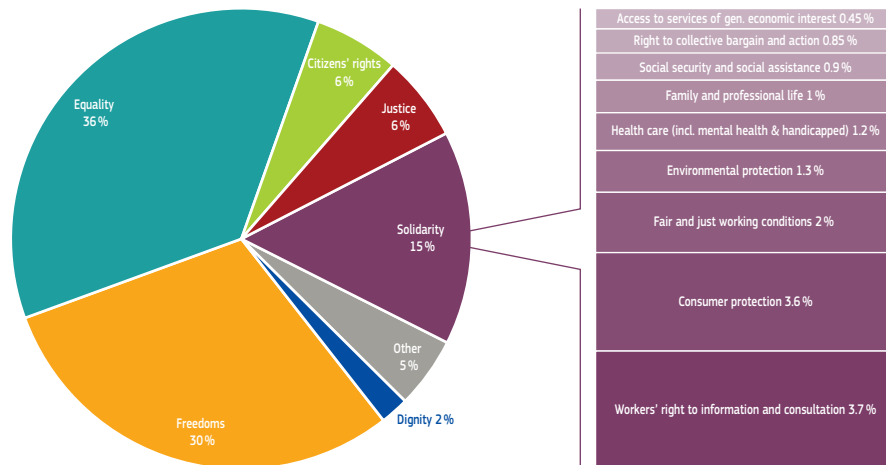
¹⁸³ Proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, COM(2010) 379 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399453202180&uri=CELEX:52010PC0379>

¹⁸⁴ Proposal for a directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM(2010) 378 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0378:FIN:EN:PDF>

¹⁸⁵ Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014–20 COM(2013) 83 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0083:FIN:EN:PDF>

exclusion. The package specifically stresses the importance of improving the adequacy of social assistance so that benefits better reflect the costs of living, and integrating benefits with quality social services and inclusive labour market measures. The package also includes several staff working documents on different thematic areas of social policy, including a **staff working document on confronting homelessness in the European Union**¹⁸⁶, encouraging Member States to implement integrated, preventative, long-term housing-led homeless strategies to reduce the number of people living in this extreme form of social exclusion. The staff working document emphasises that imposing penalties on homeless people seems inefficient, costly and stigmatising. It also highlights that having a basic bank account, an address, ID card and a passport are necessary preconditions for allowing homeless people to exercise certain fundamental rights. The package also provides policy advice on how to achieve efficiency gains in social protection systems whilst ensuring the adequacy of benefits and services. For instance, the package provides guidance on reducing administrative inefficiencies through streamlining benefits and services and creating 'one stop shops' to claim support, which can also make access easier and less time-consuming for beneficiaries. Further to this, the European Commission has worked together with Member States on a methodology to assess the efficiency and effectiveness of social policies. The concept is introduced in detail in the report on Employment and Social Developments in Europe 2013, published on 21 January 2014 (see IP/14/43). The methodology can spot key social challenges in the European Semester, the EU's yearly cycle for coordinating economic, employment and social policies.

Questions



¹⁸⁶ European Commission Staff Working Document Confronting Homelessness in the European Union SWD(2013) 42 final, available at: <http://ec.europa.eu/social/BlobServlet?docId=9770&langId=en>

Article 35: Health care

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

Legislation

After the adoption of the European Commission's proposal on **tobacco products directive**¹⁸⁷ at the end of 2012, negotiations have started in 2013. In its proposal the European Commission gives concrete effect to the obligation to guarantee a high level of human health protection and of consumer protection, while placing a proportionate restriction on other fundamental rights. Both the European Parliament and the Council have raised their concerns with regard to the European Commission's proposal to require a health warning covering 75 % of the package. The Parliament and Council have proposed to reduce this in order to strike a right balance between health protection and the right to property, freedom of expression and information and freedom to conduct business. The Committee of the Regions and the European Economic and Social Committee both adopted an opinion¹⁸⁸. They welcomed the European Commission's proposal and underlined the importance of a high level of human health protection.

In February 2013 the European Commission adopted the **Market Surveillance and Product Safety Package**¹⁸⁹. The package imposes a number of obligations on businesses and it

¹⁸⁷ 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 concerning the manufacture, presentation and sale of tobacco and related products, COM(2012) 788 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399453322711&uri=CELEX:52012PC0788>

¹⁸⁸ Opinion of the Committee of the Regions on Manufacture, presentation and sale of tobacco and related products, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:280:0057:0065:EN:PDF>; Opinion of the European Economic and Social Committee on the 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 concerning the manufacture, presentation and sale of tobacco and related products, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:327:0065:0081:EN:PDF>

¹⁸⁹ The package includes: Communication on More Product Safety and better Market Surveillance in the Single Market for Products, COM(2013) 74 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399453417089&uri=CELEX:52013PC0078>; Proposal for a Regulation on consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC, COM(2013) 78 final, available at: http://ec.europa.eu/consumers/safety/psmsp/docs/psmsp-act_en.pdf; Proposal for a regulation on market surveillance of products and amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC, 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council, COM(2013) 75 final, available at: http://ec.europa.eu/consumers/safety/psmsp/docs/psmsp-surveillance_en.pdf; Communication on 20 actions for safer and compliant products for Europe: a multi-annual action plan for the surveillance of products in the EU, COM(2013) 76 final, available at: http://ec.europa.eu/consumers/safety/psmsp/docs/psmsp-communication-actions_en.pdf; Report on the implementation of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, COM(2013) 77 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399453531754&uri=CELEX:52013DC0077>

provides market surveillance authorities with the possibility to take measures against unsafe or non-compliant products. The package seeks to ensure a high level of human health protection and consumer protection. The legislative process before the European Parliament and the Council is ongoing.

On 6 November 2013 the European Commission's **decision on serious cross-border threats to health**¹⁹⁰ entered into force. The decision improves preparedness across the EU and strengthens the capacity to coordinate response to health emergencies. It will help Member States prepare for and protect citizens against possible future pandemics and serious cross-border threats caused by communicable diseases, chemical, biological or environmental events.

Policy

An **EU action plan on drugs**¹⁹¹ has been adopted for the period 2013–16. The plan focuses on improving coordination and cooperation, contributing to a measurable reduction in the use of illicit drugs and their availability and supply and contributing to a better understanding of all aspects of the drugs phenomenon.

Article 37: Environmental protection

The Charter in Article 37 stipulates that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Legislation

The European Commission adopted a proposal for a **revised nuclear safety directive**¹⁹² which in the European Commission's view would have a potential beneficial impact on environmental protection, as well as fundamental rights related to fair and just working conditions and health care. In its proposal the European Commission introduces more stringent EU-wide safety rules. Primary responsibility for the safety of nuclear power plants lies with their operators who are supervised by national regulators. The revised nuclear safety directive strengthens the role and independence of these national regulators. The proposal also establishes a mechanism for

¹⁹⁰ European Commission Decision No 1082/2013/EU on serious cross-border threats to health and repealing Decision No 2119/98/EC, OJ L 293, 5.11.2013, p.1, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:293:0001:0015:EN:PDF>

¹⁹¹ EU Action Plan on Drugs 2013–16, available at: <http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&gc=true&sc=false&f=ST%209963%202013%20INIT>

¹⁹² Draft proposal for a Council Directive amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations, COM(2013) 343 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399454651899&uri=CELEX:52013PC0343>

Dropping of blocks in Algeciras Bay

MEPs have raised several questions concerning landfill practices in Gibraltar. MEPs pointed out that blocks have been dumped in Algeciras Bay by Gibraltar, which will have a major environmental impact. This matter was also brought to the attention of the European Commission by Spain. While the EU law on the common fisheries policy does not apply to Gibraltar¹⁹³, the European Commission has started assessing those parts of the claims that pertain to applicable EU law (i.e. environmental law).

developing EU-wide harmonised nuclear safety guidelines and includes new provisions for on-site emergency preparedness and response.

Article 38: Consumer protection

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

Legislation

13 December 2013 was the deadline for **transposing into national laws the consumer rights directive**¹⁹⁴. The new directive strengthens consumer protection in particular when buying on the Internet. The new rules will, amongst others, eliminate hidden charges and costs on the Internet and ban pre-ticked boxes that offer additional options. Furthermore, consumers can return goods within a period of 14 days and they have better refund rights. In the course of 2013, the European Commission continued assisting Member States in the transposition of the consumer rights directive. The European Commission also worked on guidance for the national enforcement authorities, which will be issued in 2014. The national measures will apply as from 13 June 2014, so that the European Commission will now check if all Member States have implemented the rules correctly.

National consumer law enforcement authorities continued to check, coordinated by the European Commission, if traders of websites selling digital content (i.e. games, e-books, videos and music), complied with EU consumer law. As of October 2013, 80 % of the 330 websites checked, which cover a large share of the market, were found to be in line with EU consumer law.

On 14 March 2013, the European Commission adopted a **report**¹⁹⁵ and a **communication**¹⁹⁶ on the functioning of the unfair commercial practices directive. This directive¹⁹⁷ provides the legal basis to tackle misleading and aggressive commercial practices across the EU, such as fake 'free' offers, 'bait' advertising for products which cannot be supplied, and direct targeting of children. It appears that the directive helps in restraining unfair business practices. However,

¹⁹³ Treaty of Accession of the United Kingdom to the European Communities.

¹⁹⁴ Directive 2011/83/EU on consumer rights, amending Council Directive 93/13/EEC, Directive 1999/44/EC 85/577/EEC and Directive 97/7/EC, OJ L 304, 22.11.2011, p. 64.

¹⁹⁵ First report on the application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, COM(2013) 139 final, available at: http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf

¹⁹⁶ Communication on the application of the Unfair Commercial Practices Directive, COM(2013) 138 final, available at: http://ec.europa.eu/justice/consumer-marketing/files/ucpd_communication_en.pdf

¹⁹⁷ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, OJ L 149, 11.6.2005, p. 22.

it also emerged that further enforcement efforts should be made, especially at cross-border level. The European Commission will take a more prominent role in this process. The European Commission continued a pre-infringement dialogue with 25 Member States regarding the correct transposition of the directive. Whilst a number of cases could be closed and/or the necessary legislative amendments were tabled by the Member State concerned, the European Commission also opened a number of infringement procedures for incorrect transposition.

The European Commission completed the **transposition conformity check of the timeshare directive**¹⁹⁸. It opened the pre-infringement dialogue with 19 Member States. The timeshare directive ensures consumer protection by imposing more stringent rules related to the information the trader has to provide to the consumer. It also safeguards the consumer's right to withdraw from a contract.

In 2013, the European Commission also worked actively to ensure full and correct implementation of other existing consumer protection directives.

Two new EU legislative acts, aiming to promote consumer rights, were adopted on 21 May 2013. The **directive on alternative dispute resolution for consumer disputes**¹⁹⁹ ensures that for resolving consumer disputes, consumers have access to alternative dispute resolution entities and procedures that respect a number of binding requirements. The **regulation on online dispute resolution for consumer disputes**²⁰⁰ provides for the establishment of a European online platform that facilitates the resolution of consumer disputes arising from online transactions.

On 9 July 2013 the European Commission adopted a **proposal to reform the package travel directive**²⁰¹. The reform proposal responds to changes in the travel market. The proposal extends the protection granted to traditional pre-arranged package holidays also for customised holidays. The reform further increases transparency and strengthens consumer protection in case something goes wrong.

The European Commission also presented a **legislative package on payment accounts**²⁰². Consumers will have to be provided with transparent and comparable information concerning financial products. In addition the proposal contains a specific provision on non-discrimination,

¹⁹⁸ Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange, OJ L 33, 3.2.2009, p. 10.

¹⁹⁹ Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.6.2013, p. 63.

²⁰⁰ Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.6.2013, p. 1.

²⁰¹ Proposal for a Directive on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 90/314/EEC, COM(2013) 512 final, available at: http://ec.europa.eu/justice/consumer-marketing/files/com_2013_512_en.pdf

²⁰² Proposal for a directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, COM(2013) 266 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399454803410&uri=CELEX:52013PC0266>

requiring Member States to ensure that consumers are not discriminated against when applying for or accessing a payment account. The package is currently under consideration by the European Parliament and the Council.

In September 2013, the European Commission adopted a proposal for a regulation on indices used as benchmarks in financial instruments and financial contracts²⁰³. The proposal aims to **subject benchmarks as provided by market players in the financial sector to clearer standards and supervision**. It envisaged giving competent authorities powers of control and enforcement, including e.g. access to data transfers upon request. The European Commission assessed the potential impact of the proposal on the right to the protection of personal data, the right to freedom of expression and information and the freedom to conduct a business²⁰⁴.

Negotiations on the **directive on credit agreements relating to residential immovable property**²⁰⁵ have continued in 2013. The level of consumer protection has been duly taken into consideration during the discussions with the Council and European Parliament, by for instance the introduction of a ban on tying practices.

Policy

Collective redress is one of the mechanisms that has been analysed for several years by the EU institutions as to its capacity to contribute to the development of the European area of justice to ensure a high level of consumer protection. On 11 June 2013 the European Commission adopted instruments²⁰⁶ inviting Member States to establish collective redress mechanisms in cases of infringements of rights granted under Union law. Collective redress allows similar legal claims to be bundled into a single court action. It is expected that consumers will be the main beneficiary group of the introduction of collective redress at national level.

²⁰³ Proposal for a regulation on indices used as benchmarks in financial instruments and financial contracts, COM(2013) 641 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0641:FIN:EN:PDF>

²⁰⁴ See 2013 Report on the Application of the Charter of Fundamental Rights, under 3.1.1 Legislative proposals as well as Chapter 2 of this report.

²⁰⁵ Proposal for a directive on credit agreements relating to residential property, COM(2011) 142 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0142:FIN:EN:PDF>

²⁰⁶ European Commission recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201, 26.7.2013, p. 60; European Commission Communication: 'Towards a European Horizontal Framework for Collective Redress', COM(2013) 401/2, available at: http://ec.europa.eu/justice/civil/files/com_2013_401_en.pdf

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

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

Right to good administration

Right of access to documents

European Ombudsman

Right to petition

Freedom of movement and of residence

Diplomatic and consular protection

5/

CITIZENS'
RIGHTS

Citizens' rights

The European Commission adopted its **2013 EU Citizenship Report** putting forward new actions in key areas to ensure that citizens can fully enjoy their EU rights in their everyday life.

In order to make it less burdensome for EU citizens to participate in the European elections, the procedure for EU citizens to **stand as candidates for the European Parliament** when residing in an EU Member State of which they are not nationals was simplified.

The European Commission made **recommendations to further enhance the transparency and efficiency of the European elections**, such as the recommendation that European and national political parties make known their preferred candidate for President of the European Commission and inform citizens about that candidate's programme.

The European Commission pursued a rigorous enforcement policy with a view to achieving the **full and correct transposition and application of the EU free movement rules** across the EU. Following the action announced in its 2010 EU Citizenship Report, the European Commission pursued a dialogue with several Member States to ensure that EU citizens can found and become members of political parties in the Member State in which they reside.

Article 39: Right to vote and stand as a candidate at elections

Article 39 of the Charter as well as Article 20(2)b of the Treaty on the Functioning of the European Union (TFEU) guarantee the right of every EU citizen to vote in the European elections in whichever Member State they reside. Both articles also provide for the right of EU citizens to vote and to stand as candidates at municipal elections in the Member State in which they reside.

Legislation

In January 2013 a directive²⁰⁷ adopted on a proposal by the European Commission entered into force. It simplifies the procedure for EU citizens to stand as candidates for the European Parliament when residing in an EU Member State of which they are not nationals and hence contributes to **mobilising citizens' participation in the democratic life of the EU**. The European Commission is following the transposition of this directive in the national legislation of the Member States for which the deadline is 28 January 2014.

Policy

On 12 March 2013, the European Commission adopted a **communication**²⁰⁸ and a **recommendation**²⁰⁹ for further **enhancing the democratic and efficient conduct of the European Parliament elections**. The European Commission called on national political parties, European political parties and the Member States to take measures to promote the transparency of the European Parliament elections and encourage genuine pan-European debates to help stimulate voter interest and ultimately reinforce the democratic legitimacy of the EU decision-making process.

The European Commission recommended notably that:

- voters are informed of the affiliation between national parties and European parties;
- European and national political parties make known their preferred candidate for President of the European Commission and inform citizens about that candidate's programme;

²⁰⁷ Directive 2013/1/EU amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. OJ L 26, 26.1.2013, p. 27.

²⁰⁸ European Commission Communication: 'Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct', COM(2013) 126 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399455032087&uri=CELEX:52013DC0126>.

²⁰⁹ European Commission Recommendation on enhancing the democratic and efficient conduct of the elections to the European Parliament, OJ L 79, 21.3.2013, p. 29.

Reform of the Bulgarian electoral legislation

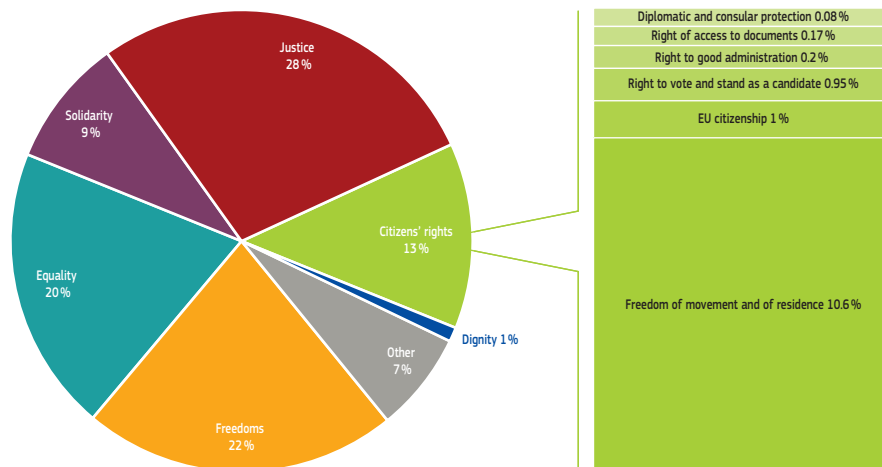
The Bulgarian legislation provided additional requirements on non-Bulgarian EU citizen asking them to submit the number of their residence certificate and date of registration as a condition for their inclusion on the electoral rolls or for standing as candidates.

The European Commission considered that such requirements went beyond what national authorities could require under EU law (Directive 94/80/EC on municipal elections and Directive 93/109/EC on European Parliament elections) and launched an infringement proceeding against Bulgaria. On 25 February 2013, the Bulgarian authorities announced that the Electoral Code had been amended to remove the additional requirements.

Following the action announced in its 2010 EU Citizenship Report (action 18), the European Commission pursued a dialogue with Member States to ensure that EU citizens can found and become members of political parties in the Member State in which they reside. Four cases were successfully clarified. Two Member States provided satisfactory explanations on the domestic legislation. Two further Member States modified their legislations by removing the restrictions identified by the European Commission. The European Commission launched infringement procedures against seven other Member States.

- Member States should agree on a common day for the European elections, with polling stations closing at the same time.

The European Commission will report on the implementation of these recommendations after the 2014 European elections.



Article 41: Right to good administration

Every person according to Article 41 of the Charter has the right to have his or her affairs handled impartially, fairly and within a reasonable timeframe by the institutions, bodies and agencies of the Union. It also includes the right to be heard and to receive a reply.

Policy

A huge number of **enquiries are addressed by citizens to the European Commission**, whether by phone, e-mail or correspondence. The European Commission commits itself to answering them in the most appropriate manner and as quickly as possible. The general rule applied in the European Commission is that every letter is registered and, with the exception of those that are unreasonable, repetitive or abusive, should receive a reply within 15 working days from the date of receipt of the letter. The European Commission also takes care that replies are sent in the language of the author of the correspondence, provided that it was written in one of the official language of the Union. For complaints and enquiries by citizens on the application of EU law, the European Commission uses an IT tool for registering and managing this specific kind of correspondence.

Article 42: Right of access to documents

The Charter in Article 42 guarantees that any EU citizen and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the EU institutions, bodies, offices and agencies. This right is subject to certain exceptions²¹¹. In particular, the institutions refuse access where disclosure would undermine the protection of the public interest and the lawful exercise of their duties.

In 2012, the European Commission registered 6 525 requests for access to documents, which is about 500 more than in 2012. As in the past, 4 out of 5 requests were granted at the initial stage. In 2013, the European Commission received 237 confirmatory applications, a slight increase compared to 2012. Such applications are reassessed by case handlers acting independently from the ones that handled the initial application. This review has led to wider access being granted in around half the cases. In 2013 the European Commission received by the European Ombudsman 21 cases concerning the fundamental right of access to documents, of which 15 cases were strictly related to access to documents, and in six cases access to documents was a subsidiary concern.

Case-law

In 2013, the CJEU delivered several interesting judgments concerning access to documents. In the first case²¹² concerning transparency and access to documents the CJEU confirmed the judgment of the General Court²¹³ which gave **access to a document of the Council including the identities of the Member States which had intervened during a meeting of a Council Working Group** concerning the proposal for a new regulation regarding public access to EP, Council and European Commission documents. The Council had justified its refusal to disclose the identities of those Member States on the ground that disclosure of those identities would have seriously undermined its decision-making process and there was no overriding public interest in such disclosure²¹⁴.

In another case concerning the right of access to **documents containing environmental information**, the Court²¹⁵ decided that a document where the information requested relates to

Ruling of the Spanish Supreme Court²¹⁰

In this case the Regional Council of Alava decided to recover an amount of tax benefits of the applicant, a company. The decision of the Regional Council of Alava implemented a decision of the European Commission (Decision 2002/820/EC) in which the European Commission declared the tax benefits to constitute unlawful and incompatible State aid. The Regional Council of Alava took its decision without the hearing of the applicant. The applicant brought the case to court and claimed that there had been a violation of its right to be heard. The Supreme Court determined that the provisions of the Charter are also addressed to the Member States while applying EU law and that this was the case at stake since Spain was implementing a European Commission Decision. The Supreme Court thus ruled that Article 41(2) of the Charter, which guarantees 'the right of every person to be heard, before any individual measure which would affect him or her adversely is taken', must be taken into account. Despite the principle of procedural autonomy and that European Commission Communication 2007/C272/05 states that Member States should use fast-track procedures where possible, these procedures must be in accordance with the fundamental rights laid down in the Charter. The Supreme Court decided that the procedure to recover unlawful State aid must always respect the right to be heard.

²¹⁰ Judgment 4968/2013 and Appeal 361/2012, *El Coto de Rioja, S.A. v Foral Diputation of Alava*, 14.10.2013, available at: www.poderjudicial.es/search/doAction?action=contentpdf&databasematch=TS&reference=6865959&links=%22361/2012%22&optimize=20131029&publicinterface=true

²¹¹ Under Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and European Commission documents, OJ L 145, 31.5.2001, p. 43.

²¹² CJEU judgment of 17 October 2013 in Case C-280/11 P *Council v Access Info Europe*.

²¹³ CJEU judgment of 22 March 2011 in Case T-233/09 *Access Info Europe v Council*.

²¹⁴ Exception provided for in the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and European Commission documents, OJ L 145, 31.5.2001, p. 43.

²¹⁵ CJEU judgment of 8 October 2013 in Case T-545/11 *Stichting Greenpeace Nederland and PAN Europe v Commission*.

emissions into the environment **must be disclosed, even if such disclosure is liable to undermine the protection of the commercial interests of a particular natural or legal person, including that person's intellectual property.** The Court added that this interpretation cannot be called into question under the pretext of an interpretation that is in conformity with Articles 16 and 17 of the Charter which enshrine, respectively, the freedom to conduct a business and the right to property.

Furthermore, the *Besselink* case ²¹⁶ needs to be pointed out, where the **General Court annulled in part the Council decision refusing access to a document concerning the accession of the EU to the ECHR.** The Court held that the Council made an error of assessment in refusing access to one of the negotiating directives it had adopted when authorising the European Commission to open the accession negotiations. The position reflected in this directive had already been communicated to the negotiating partners and therefore the disclosure of that document could not jeopardise the climate of confidence between the negotiating parties.

Article 43: European Ombudsman

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

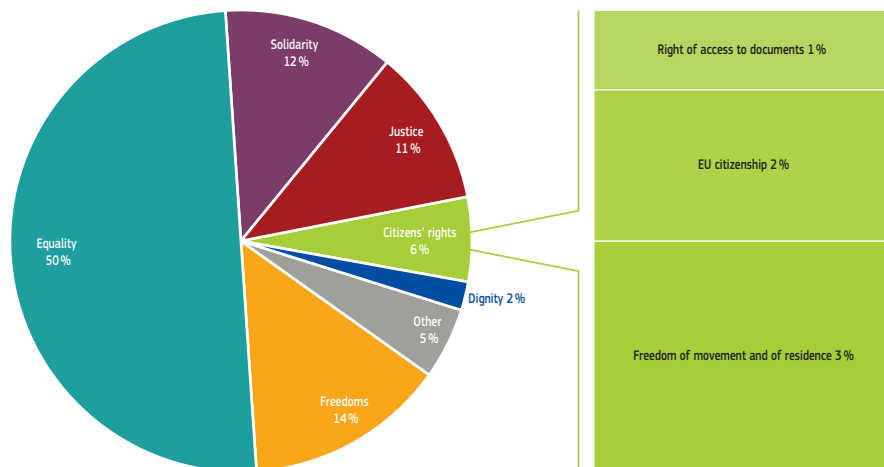
In 2013, the Ombudsman was able to help more than 23 000 citizens. This includes individuals who complained directly to the European Ombudsman (2 420 complaints), those who received a reply to their request for information (1 407) and those who obtained advice through the interactive guide on the European Ombudsman's website (19 418).

Over 60 % of the complaints were within the competence of a member of the European Network of Ombudsmen, and 31 % fell within the European Ombudsman's mandate ²¹⁷.

²¹⁶ CJEU judgment of 12 September 2013 in Case T-331/11 *Besselink v Council* — see 2013 Report on the Application of the Charter of Fundamental Rights, under 3.4 Control of the Court over the EU institutions.

²¹⁷ It is not possible to indicate how many users who were advised by the Interactive Guide to complain to the European Ombudsman actually did so, since the Interactive Guide does not require a login name and password in the way that the online complaint form does, and this for data protection reasons.

Petitions



Article 45: Freedom of movement and residence

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

Legislation

Concerning the freedom of movement of workers, the European Commission proposed **measures facilitating the exercise of rights conferred on workers**²¹⁸ by introducing a legal obligation for Member States to provide workers who consider they have suffered or are suffering from unjustified restrictions to their right to free movement or consider themselves wronged by failure to apply the principle of equal treatment to them, with appropriate means of redress at national level. The proposal covers both judicial and extra-judicial means of redress, including alternative dispute settlement mechanisms such as conciliation and mediation. Ombudsmen and equality bodies or other similar structures may also provide an alternative to the general courts, in accordance with Article 47 of the Charter which encourages Member States where only administrative procedures are provided to ensure that any administrative decision may be challenged before a tribunal.

²¹⁸ Proposal for a directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, COM(2013) 236 final, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399455645363&uri=CELEX:52013PC0236>

In 2005, the European Commission had submitted a proposal directive on **facilitating free movement through better conditions for the acquisition and preservation of supplementary pension rights**, and a revised proposal in 2007. The Council reached a general approach in June 2013. The trilogue concluded with a compromise agreement in November 2013, thus paving the way for the adoption of the directive before the 2014 European elections. The agreed proposal provides that workers' occupational pension rights should be granted no later than after 3 years of employment relationship and preserved after they leave the pension scheme. Under the compromise agreement, the directive would only apply to workers who move between Member States, however Member States may extend these standards also to workers who change jobs within a single country.

The European Commission also adopted a **proposal on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the EU**²¹⁹. This proposal promotes the application of the Charter in particular by addressing the indirect discrimination of nationals of other Member States in comparison with own nationals; by promoting the right to move and reside freely within the territory of the Member States, to seek employment, to exercise the right of establishment and to provide services or conduct business in other Member States (Articles 45, 15 and 16 of the Charter). The proposal also positively impacts on the right to respect for private and family life, the right to marry and found a family, the right to property as well as on the rights of the child (Articles 7, 9, 17 and 24 of the Charter).

In order to achieve correct transposition and application of EU free movement rules across the EU the European Commission had launched infringement procedures against 12 Member States in 2011, followed by reasoned opinions in seven instances in 2012. In the course of 2013, two Member States adopted the provisions necessary to fully transpose the EU free movement rules, hence solving all the issues raised by the European Commission. The European Commission is closely monitoring progress in the remaining Member States.

Based on numerous individual complaints and petitions received, the European Commission took action to ensure that nationals of other Member States residing in Malta are not **discriminated against on grounds of their nationality**. It raised in particular issues related to discriminatory treatment as regards access to reduced water and electricity tariffs and bus tariffs, treatment which creates an unacceptable obstacle to exercising the right to free movement and residence. The European Commission is also investigating other cases in which Maltese nationals have allegedly obtained preferential treatment in comparison with other EU citizens.

The European Commission requested Italy to allow third-country nationals who are family members of EU citizens to **access public employment**. As a result, Italy modified its legislation in accordance with EU law.

²¹⁹ Proposal of 24 April 2013 for a regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012, COM(2013) 228 final, available at: http://ec.europa.eu/justice/civil/files/com_2013_228_en.pdf

Within the scope of proceedings against Belgium aiming to ensure that children born in Belgium with one Belgian parent and one parent of another EU Member State can be registered with the **double surname** with which they are registered in the consulate of another EU Member State, Belgium has committed itself to amend its legislation. The European Commission is pursuing its dialogue with the Belgian authorities about the attribution of surnames to children born in Belgium where both parents are EU citizens from another Member State.

Spain promised to amend its legislation in response to the European Commission's request to ensure that **partners in a durable relationship** are able to enjoy their right of free movement.

After receiving numerous complaints from holders of **Swedish identity cards** prevented from travelling to an EU country outside the Schengen area on the basis of this document, the European Commission contacted the Swedish authorities who committed to amend their legislation to ensure that Swedish nationals can travel freely to any country within the EU with their national identity card.

Policy

In November 2013, the European Commission has adopted a communication on free movement ²²⁰, which underlines the joint responsibility of Member States and the EU institutions to uphold EU citizens' rights to live and work in another EU country and outlines concrete actions to support Member States efforts to do so while helping Member States to reap the positive benefits it brings. The policy paper clarifies EU citizens' rights to free movement and access to social benefits, and addresses the concerns raised by some Member States in relation to the challenges that mobility can represent for local authorities.

²²⁰ European Commission, European Commission upholds free movement of people, MEMO/13/1041, 25.11.2013, available at: http://europa.eu/rapid/press-release_MEMO-13-1041_en.htm

Actions 3 and 10 of the 2013 EU Citizenship Report — lifting obstacles to free movement of persons

Almost one in five of the respondents to the 2012 public consultation on EU citizenship who used their right to free movement experienced problems, often due to lengthy or unclear administrative procedures. Another problem was that local administrations were not always aware of citizens' free movement rights.

Q3. Have you ever faced problems while moving and residing within the European Union:

Q3a. Where the problems dueto one of the following reasons?



Source: 2012 Public consultation on EU citizenship — Base: Respondents who faced problems while moving or residing in another EU country.

The European Commission committed to further list obstacles to citizens' enjoyment of their rights to free movement and residence by developing an **e-training tool** enabling local administrations to fully comprehend free movement rights of EU citizens (action 10). It also announced solutions to remove obstacles faced by EU citizens and their family members in relation to **identity and residence documents** issued by Member States, including through optional uniform European documents for citizens, where applicable (action 3).

Article 46: Diplomatic and consular protection

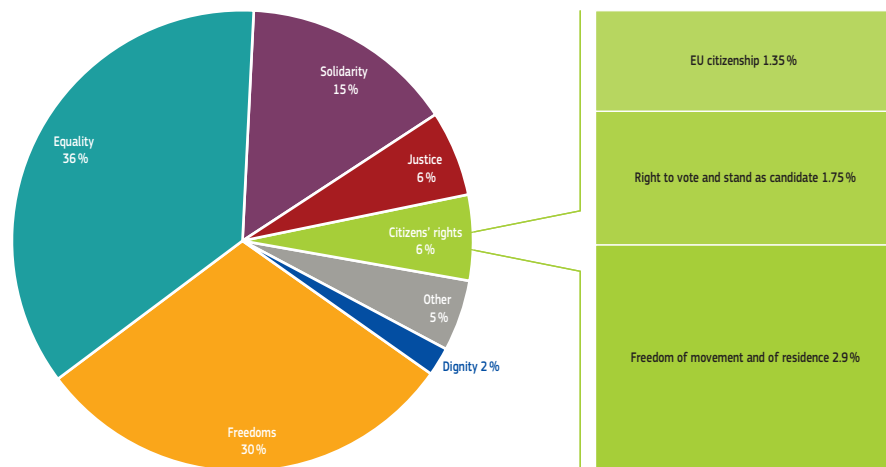
Article 46 of the Charter guarantees the right of unrepresented EU citizens to seek diplomatic or consular protection from embassies or consulates of other Member States in third countries under the same conditions as nationals. EU citizens must be able to rely effectively on this right when travelling abroad.

Legislation

The **right of unrepresented Union citizens to enjoy the protection of the diplomatic or consular authorities of any Member State under the same conditions as for the nationals of that Member State** is enshrined in the Treaty on the Functioning of the EU (Article 20(2) (c) and 23) and in the Charter (Article 46). The European Commission proposed on 14 December 2011 a set of clear and legally binding rules on cooperation and coordination between the

Member States' consular authorities, with a view to ensuring that Union citizens enjoy effective consular protection, regardless of their nationality. The discussions on this proposal are still ongoing in the Council.

Questions



Right to an effective remedy and to a fair trial

Presumption of innocence and right of defence

Principles of legality and proportionality of criminal offences and penalties

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

6/

JUSTICE

Justice

Following the analysis of the national implementation of the **Visa Code** on the right to appeal against a visa refusal, annulment, or revocation, the European Commission raised a number of questions on the compatibility of national legislations with the provisions of the Visa Code and of the Charter. It concluded that the right to an effective remedy and to a fair trial, as enshrined in Article 47 of the Charter, requires that the appeal against a visa refusal, annulment or revocation, includes, at the only or instance of final appeal, access to a judicial body. Letters of formal notice were sent to several Member States.

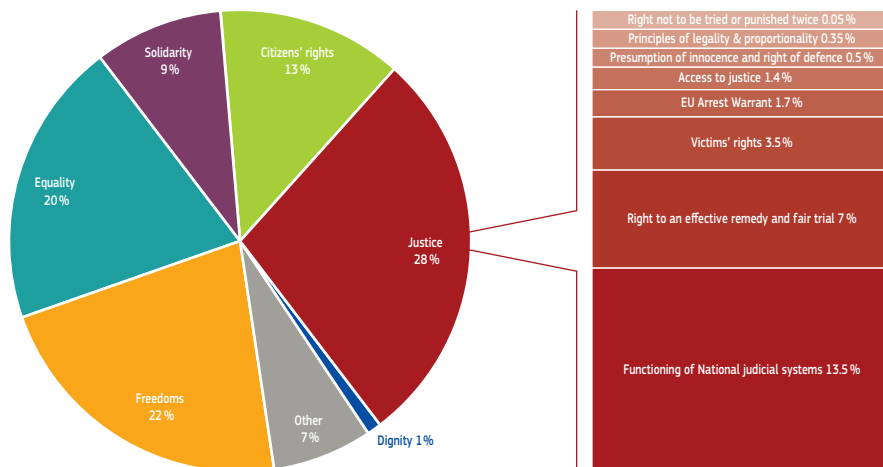
In November 2013, the European Commission has proposed a **procedural rights package** consisting of three directives and two recommendations. These **five legal measures** are intended to advance on the procedural rights agenda and to strengthen the foundation for the European area of criminal justice.

The European Commission has also adopted a proposal for a Council regulation on the establishment of a **European Public Prosecutor's Office (EPPO)**. The Charter constitutes the common basis for the protection of the rights of suspects in criminal proceedings during the pre-trial and trial phase. The activities of the European Public Prosecutor's Office should in all instances be carried out with the full observance of those rights.

The CJEU held in *Åkerberg Fransson* that the **right not to be tried or punished twice in criminal proceedings for the same offence** does not preclude a Member State from imposing, for the same acts, a combination of financial and criminal penalties.

In the *Melloni* case, the CJEU confirmed that the fundamental constitutional principle of **primacy of EU law** also applies to the relationship between the Charter, on the one hand, and the national constitutional provisions on fundamental rights, on the other. A Member State may thus **not invoke a provision of its constitution, even if it ensures a higher level of protection of a fundamental right than the Charter**, as a ground for not applying a clear provision of EU law.

Letters



The right to an effective remedy and to a fair trial as the Charter right most frequently referred to in national case-law

Data collected by FRA shows that the right to an effective remedy and a fair trial was the Charter right most frequently invoked before national courts, accounting for 14 % of all the references to the Charter which were analysed as part of 69 national judgments. This is in line with earlier findings, including the data collection by FRA of 2012.

Article 47: Right to an effective remedy and right to a fair trial

Article 47 of the Charter provides that when EU rules give rights to a person, they can go before a court in case this right is violated. This protection is called a **right to an effective remedy**, because it provides relief to individuals whenever national authorities apply EU law in an incorrect manner. The right to an effective remedy guarantees judicial protection against violations of any EU rule which bestows legal rights on individuals. It therefore plays a key role in ensuring the effectiveness of all EU law, ranging from social policy, to asylum legislation, competition, agriculture, and others.

Article 47 of the Charter does not only provide a right to an effective remedy and to a fair trial, but it also stipulates that **legal aid** shall 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 lacks sufficient resources to hire a lawyer.

Right to an effective remedy and to a fair trial

Legislation

The EU legal framework on victims' rights was significantly reinforced by the adoption, of **a regulation on mutual recognition of protection measures in civil matters** ²²¹. The regulation establishes a simple and rapid mechanism for the recognition of protection measures ordered in civil matters in any Member State. With this regulation, citizens (in most cases women who have obtained restraining orders) can be assured that the order obtained in their home country will have the same standing wherever they are in the EU.

The European Commission has launched infringement procedures against Poland on this matter as a result of which Poland has amended its Civil Procedural Code, and excluded the application of this notional service method in relation to addressees residing in other Member States. The amendment entered into force in August 2013.

After careful analysis of the information provided by Member States on the national implementation of the provisions of the **Visa Code** (Regulation (EC) No 810/2009) on the right to appeal against a visa refusal, annulment, or revocation, the European Commission raised a number of questions on the compatibility of the national legislation of several Member States with the provisions of the Visa Code and Article 47 of the Charter. The European Commission concluded that the right to an effective remedy and to a fair trial enshrined in Article 47 of the Charter requires that the appeal against a visa refusal, annulment or revocation, includes, at the only or instance of final appeal, access to a judicial body. The European Commission considered that six Member States were not compliant with Article 47 of the Charter combined with the relevant articles of the Visa Code, as these Member States did not provide access to a judicial body. Letters of formal notice were sent to these Member States in early 2013. In reply to the European Commission's letter of formal notice, the Hungarian authorities announced that they accept the European Commission's analysis and that they have decided to amend Hungarian law in order to introduce, as an instance of final appeal, access to a judicial body. The amending act introducing into Hungarian law the possibility of judicial review at an instance of final appeal against decisions to refuse/revoke/annul a Schengen visa has entered into force on 1 July 2013. Against this background, the European Commission decided to close the case. The initial replies from the five other Member States concerned stated their disagreement with the analysis made by the European Commission. These replies are currently under assessment.

The European Commission welcomed the adoption of the fifth amendment to Hungary's Fundamental Law which addressed the Commission's concerns as to the conformity of the fourth amendment with EU law. These concerns related in particular to the clause on European Court of Justice judgments entailing payment obligations and the clause giving powers to the President

²²¹ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181, 29.6.2013, p. 4).

of the National Office for the Judiciary to transfer cases from one court to another. The Commission was concerned that these clauses could affect the **effective application of Union law** in Hungary and the fundamental rights of citizens and businesses to an **effective remedy by an independent court in Union law cases**, as guaranteed by Article 47 of the EU Charter of Fundamental Rights. These clauses have now been removed.

Case law

The EU has the possibility to take sanctions or restrictive measures which might impact on the fundamental rights of the addressee of these measures. In the *Kadi II*²²² appeal judgment, the Court clarified certain procedural rights of persons suspected of being associated with terrorism, such as the right to good administration and the right to an effective remedy and to a fair trial (Articles 41 and 47 of the Charter). The Court **ensured the protection of fundamental rights and freedoms whilst recognising the imperative need to combat international terrorism**. The assets of Mr Kadi had been frozen by the European Commission in order to ensure the implementation of a decision of the UN Sanctions Committee established by a resolution of the UN Security Council. The Court stated that, since no information or evidence had been produced by the European Commission to substantiate the allegations of Mr Kadi being involved in activities linked to international terrorism, roundly refuted by him, those allegations did not justify the adoption, at EU level, of restrictive measures against him²²³.

In a preliminary ruling regarding **costs of national judicial proceedings in EU environmental matters**²²⁴, the CJEU clarified that the requirement under the EU directive that the cost should be 'not prohibitively expensive' also concerns the respect of the right to an effective remedy under Article 47 of the Charter. The Court explained that in its assessment of whether the national provisions (in this case UK law) ensure effective judicial protection in the field of environmental law without excessive cost, the national court should not only look at the claimant's financial situation (subjective analysis), but should also carry out an objective analysis of the amount of the costs of litigation before national courts. The cost of proceedings must neither exceed the financial resources of the person concerned, nor appear, in any event, to be objectively unreasonable. The national court may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime. The CJEU stated that the requirement under the EU directive that judicial proceedings should not be prohibitively expensive means that the persons covered by those provisions should not be prevented from seeking a review by the courts by reason of the financial burden that might arise as a result.

²²² CJEU judgment of 18 July 2013 in Case C-584/10 P *Commission and Others v Kadi* ('Kadi II'); appeal case against Case T-85/09 *Kadi v Commission* ('Kadi I').

²²³ See also the 2013 Report on the Application of the EU Charter of Fundamental Rights under 3.4 Control of the Court over the EU institutions.

²²⁴ CJEU judgment of 11 April 2013 in Case C-260/11 *Edwards and Pallikaropoulos*.

In a preliminary ruling concerning **national court jurisdiction for disputes regarding EU agricultural aid** ²²⁵, the CJEU examined whether national jurisdictional provisions conferring all the disputes relating to decisions of national authorities responsible for the payment of agricultural aid under the common agricultural policy to a single national court are in accordance with article 47 of the Charter. The CJEU looked into the length of proceedings before the specialised national court in Bulgaria and found that the average length of proceedings of 6 to 8 months, in principle, does not appear excessive in the context of the single area payment scheme. The CJEU clarified that the concentration of disputes before the referring court allows that court to acquire specific expertise by ruling on issues relating to agricultural aid, thereby limiting the average length of the proceedings. In addition, a centralised court, specialising in agricultural aid, seems likely to ensure uniform practice throughout the national territory, thereby contributing to legal certainty. The CJEU noted that that a farmer who is challenging a decision of the national administration on agricultural aid, is not obliged to appear in person before this specialised court but can be represented by a lawyer, a relative or other persons. The CJEU concluded that Article 47 of the Charter does not preclude a national provision conferring jurisdiction on a single court all disputes relating to EU agricultural aid, provided that court actions are not conducted in less advantageous conditions to those under national aid schemes, and that jurisdiction rule does not cause individuals procedural problems, e.g. regarding the duration of the proceedings, such as to render the exercise of the rights derived from EU law excessively difficult.

In June 2013, the Austrian Administrative Court 'Unabhängiger Verwaltungssenat' has lodged a request for a preliminary ruling to the CJEU ²²⁶ on the interaction between the **transparency principle** under the 'environmental information directive' 2003/4/EC and the **right to a fair trial** as stipulated in Article 47 of the Charter. The case is still pending.

In the *Alder* case ²²⁷ the CJEU held that a system for national domestic service of documents in cases where the party to be served resides in another Member State and has a known address there, is incompatible with the objective of protecting **the rights of the defence** envisaged in Regulation No 1393/2007. In this case, Polish procedural law required a representative in the forum Member State for purposes of serving judicial documents to parties residing in other Member States, and allowed the court to impose sanctions for non-compliance by way of a notional service method, according to which judicial documents addressed to that party were placed in the case file and were deemed to have been effectively served.

Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters foresees the recognition and enforcement of judgments in civil and commercial matters in other Member States without *exequatur*, which is the procedure for recognition and enforcement of a judgment in another Member State. The question which arises in this context is if **automatic enforcement of a judgment** rendered in another Member State

²²⁵ CJEU judgment of 27 June 2013 in Case C-93/12 *Agrokonsulting-04*.

²²⁶ CJEU, Case C-329/13 *Stefan*, pending.

²²⁷ CJEU judgment of 19 December 2012 in Case C-325/11 *Alder*.

also has to take place, when that judgment was rendered in clear **violation of the right to a fair trial**. In a case of a judgment rendered against it in the UK, the Trade Agency company submitted a cassation complaint to the Latvian Supreme Court ²²⁸ complaining about the lower instance Latvian courts which had recognised a judgment of the Supreme Court of the United Kingdom by default. The company claimed it did not receive the notification of the litigation process in the United Kingdom, which constituted a violation of the right to a fair trial. The Senate of the Supreme Court in Latvia referred two questions to the CJEU. It asked if the Latvian Court had a competence to review the evidence before recognising the judgment under the Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It also asked if the fact that the decision was given in default of appearance of the applicant was compatible with Article 47 of the Charter. The CJEU ²²⁹ ruled that Regulation 44/2001 shall be interpreted in a way which (1) allows the court of the Member State where the judgment shall be enforced to crosscheck the evidence and (2) does only allow refusal of the enforcement of the judgment if it is clear from the context of the case that there is a violation of fair trial rights enshrined in Article 47 of the Charter.

Right to legal aid

The main recurrent problem addressed by citizens in their letters to the European Commission in regard to the right to legal aid as enshrined in Article 47 of the Charter is the restriction of the scope of Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes ('the legal aid directive') to civil and commercial matters, excluding administrative matters. The provisions of this directive apply to 'cross-border' civil cases, in other words where the person requesting legal aid does not live in the Member State where the case will be heard or where the decision is to be enforced. In 2013, the European Commission has contacted 18 Member States via the EU pilot communication system regarding their implementation of the legal aid directive.

The European Commission's recommendation on the right to legal aid for suspects or accused persons in criminal proceedings, which forms part of the procedural rights package proposed in November 2013, is discussed below under Article 48 on the presumption of innocence and the right of defence.

Ruling of the Constitutional Court of the Slovak Republic ²³⁰

A Slovak Arbitration Court ruled on a case in which the applicant claimed insurance payments. The Arbitration Court ruled in favour of the applicant. The executor then asked the district court to issue an authorisation to launch distraint proceedings, which consist in the seizure of someone's property in order to obtain payment of a debt. When deciding on the case, the district court established the facts of the case anew, ignoring the case file of the Arbitration Court. Based on the gathered evidence, it refused to schedule a hearing and adjudicated without the applicant's participation, rejecting the executor's motion for the commencement of distraint procedures. The case was brought to the Constitutional Court, which made reference to Directive 93/13/EEC on unfair terms in consumer contracts and to case-law of the CJEU. The Constitutional Court pointed out that when implementing EU law the national court must respect the requirements of effective judicial protection of the rights that individuals derive from Union law, as guaranteed by Article 47 of the Charter. Among those requirements is the principle of *audi alteram partem*, which does not only confer on each party to proceedings the right to be apprised of the documents produced and observations made to the court by the other party and to discuss them, but it also confers a right on the parties to be apprised of pleas in law raised by the court of its own motion, on which it intends to base its decision, and to discuss them. The Constitutional Court thus confirmed the case-law of the CJEU and decided that the lower courts were bound to ensure the protection of the applicant's right to be present when his case was tried and his right to deliver opinions on all pieces of evidence.

²²⁸ Civil Cases Department of the Senate of the Supreme Court (Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta), Case No SKC-1/2013, 13.2.2013.

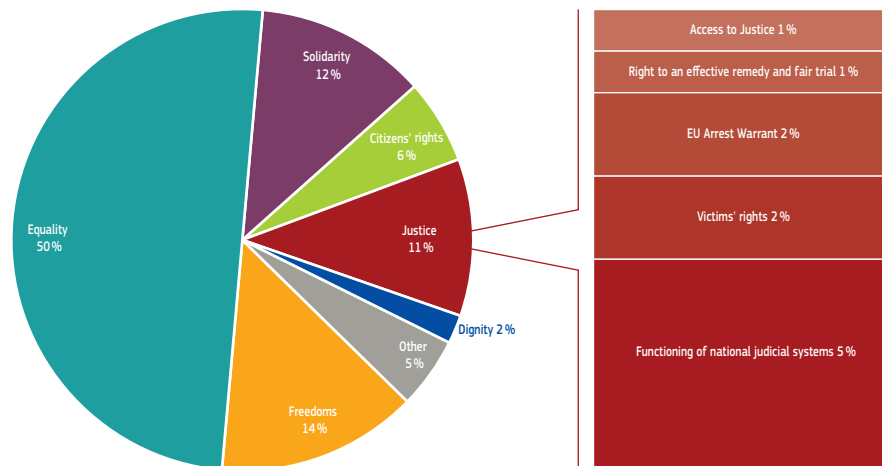
²²⁹ CJEU judgment of 6 September 2012 in Case C-619/10 *Trade Agency*.

²³⁰ Constitutional Court of the Slovak Republic (Ústavný súd Slovenskej republiky), case II. ÚS 499/2012-47, *Company R v Supreme Court of the Slovak Republic*, 10.6.2013.

Ruling of the Supreme Administrative Court of Poland ²³¹

In this case the applicant initiated an appeal before the Regional Administrative Court. The Regional Administrative Court pointed out that the cassation complaint brought by the applicant did not contain the applicant's personal signature, but only contained the electronic signature. The applicant was asked to rectify this formal shortcoming; as otherwise his cassation complaint would be rejected. The applicant refused, as he considered that he was authorized to use the electronic signature. When the case was brought before the Supreme Administrative Court it decided that the lack of procedural regulation for lodging pleadings signed with an electronic signature does not affect the right to access to a court under Article 47 of the Charter as neither this provision nor the CJEU provide for such procedural requirements. Although this is a purely internal matter and the Charter is not applicable, the Court used the Charter to check the legality of national law. The Supreme Administrative Court concluded that the adoption of appropriate procedural rules to allow enjoyment of the right to access to a court is left to the Member States, in accordance with the principle of procedural autonomy, and thus confirmed that the cassation complaint could be rejected due to formal shortcomings.

Petitions



Article 48: Presumption of innocence and right of defence

Article 48 of the Charter provides that everyone who has been charged with a criminal offence shall be presumed innocent until proven guilty according to the law. It further specifies that respect for the right to defence of anyone who has been charged shall be guaranteed.

Safeguarding **procedural rights of suspect and accused persons** remains a priority of the European Commission. Both the Charter (especially Articles 47 and 48) and the ECHR (especially Articles 5 and 6) constitute the common basis for the protection of the rights of suspected or accused persons in criminal proceedings in the pre-trial and in trial stages.

Legislation

Mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings. It presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. Mutual trust will be greatly enhanced if Member States are confident that their neighbours have a criminal justice system that guarantees fair trials.

²³¹ Supreme Administrative Court of Poland (Naczelny Sąd Administracyjny), case II OZ 327/13, *Minister of Economy, Labour and Social Policy v applicant P.S.*, 1.8.2013.

On 27 November 2013, the European Commission has proposed a **procedural rights package** consisting of three directives and two European Commission recommendations²³². These **five legal measures** are to make further progress on the Procedural Rights Agenda and to strengthen the foundation for the European area of criminal justice.

First, the European Commission is proposing a **directive on the presumption of innocence**, as it should always be for the prosecution to prove a suspect is guilty, and not for the suspect to prove he is innocent. A suspect cannot be considered guilty if he has never been given the chance to defend himself in trial by being present, and no one can infer guilt from a suspect's silence.

Second, the European Commission is proposing a **directive on special safeguards for children** involved in criminal proceedings. Children do not always understand the consequences of their actions. They should not be allowed to waive their right to a lawyer. Children should also benefit from a set of other safeguards such as prompt information about their rights, assistance by their parents or another appropriate adult, recording of interviews and specific protection in case of deprivation of liberty. All these measures should enable children to exercise their right to a fair trial, to prevent re-offending and foster their social reintegration. Through the European Commission **recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings**, the European Commission is asking **Member States to provide a set of similar safeguards to vulnerable suspects** such as persons with a disability or mental impairment.

Third, the European Commission is proposing a **directive on provisional legal aid** for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings, which will cover the early stages of proceedings, when suspects are deprived of liberty and thus in most need of help. The European Commission wants to make sure any suspect under a European Arrest Warrant has access to legal aid in both the country of issuance and the country of execution. The European Commission in its **recommendation on the right to legal aid** for suspects or accused persons in criminal proceedings is also recommending to Member States to take into account common objective criteria when assessing if a person is eligible for legal aid. The European Commission recommendation clarifies the case law and promotes convergence between the different legal systems with a view to strengthening mutual trust.

Another important step in safeguarding procedural rights in the EU was the adoption of the **directive on the right of access to a lawyer and to have a third party informed upon deprivation of liberty**²³³. With this landmark directive, all suspects are guaranteed the right to be advised by a lawyer (including confidential meetings and allowing the lawyer to play an active role) from the earliest stages of proceedings (including during police questioning) until their

²³² COM(2013) 821, 822 and 824, 27.11.2013, and COM(2013) 8178 and 8179, 27.11.2013.

²³³ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 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, OJ L 294, 6.11.2013, p. 1.

conclusion. Where a suspect is arrested, the directive also ensures that the person has the opportunity to communicate with the family. If they are outside their home country, citizens have the right to be in contact with their country's consulate.

The provisions of the Charter are taken into account in new legislation proposed by the European Commission, and during the revision processes of existing legislation. Examples of the mainstreaming of procedural rights as enshrined in the Charter are the proposal on the European Public Prosecutor's Office ²³⁴, the revised Eurojust regulation ²³⁵, the new OLAF regulation ²³⁶, and the negotiations on the confiscation and recovery of criminal assets ²³⁷.

On 17 July 2013 the European Commission adopted a proposal for a Council regulation on the establishment of a **European Public Prosecutor's Office (EPPO)**. Its exclusive task will be to investigate and prosecute and, where relevant, bring to trial — in the Member States' courts — crimes affecting the EU budget. The European Public Prosecutor's Office will be an independent institution, subject to democratic oversight. The proposal includes a robust and comprehensive set of procedural safeguards, which will ensure that the rights of suspects and other persons involved in the European Public Prosecutor's investigations will be protected both by existing EU legislation and by national defence rights. The proposal clarifies that the suspected person has all rights granted by EU legislation and the Charter. These rights are listed explicitly, and include the rights to:

- interpretation and translation;
- information and access to the case materials;
- access to a lawyer and to communicate with and have third persons informed in case of detention;
- remain silent and be presumed innocent;
- legal aid;
- present evidence, appoint experts and hear witnesses.

²³⁴ Proposal for a Council regulation on the establishment of the European Public Prosecutor's Office, COM(2013) 534.

²³⁵ Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), COM(2013) 535.

²³⁶ Regulation No 883/2013 of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, p. 1, 18.09.2013.

²³⁷ Proposal for a directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union, COM(2012) 85.

In addition, the suspected person has the defence rights granted by the national law governing the procedure. The Commission's proposal on the establishment of the EPPO contributes to the strengthening of the protection of the Union's financial interests and the further development of an area of justice, and to enhance the trust of EU businesses and citizens in the Union's institutions, while respecting all fundamental rights enshrined in the Charter. The Charter constitutes the common basis for the protection of rights of suspected persons in criminal proceedings during the pre-trial and trial phase. The activities of the European Public Prosecutor's Office should in all instances be carried out with the full observance of those rights. This basic principle is enshrined in Articles 11 and 32 of the Commission's proposal. Furthermore, the respect of the Charter is one of the key criteria for the admissibility of evidence collected by the EPPO, as reflected in Article 30 of the proposal.

The reform of **Eurojust**, which has taken the form of a draft regulation replacing the current Eurojust Council Decision, takes full account of the Charter. An explicit reference to the compliance with the Charter has been included in recital 8 of the proposal. Specific provisions have been included to deal with the processing of personal data, and the supervision over that processing has been entrusted to the European Data Protection Supervisor.

A new **Regulation 883/2013 concerning investigations conducted by OLAF** ²³⁸ has been adopted in September 2013 and entered into force in October 2013. It provides for specific procedural guarantees to the persons subject to OLAF investigations. Although OLAF conducts purely administrative investigations, a set of rights and guarantees for the person subject to investigations applies. These include: the presumption of innocence, the right to avoid self-incrimination, the right to be assisted by a person of his choice, the right to obtain a copy of the interview records, and to right to be given an opportunity to comment before conclusions of the investigation are drawn up.

The staff working document on the application of the Charter in 2012 has already highlighted that the European Commission conducted a thorough impact assessment and held extensive internal consultations in order to ensure that all provisions of the proposal for a **directive on the confiscation and recovery of criminal assets in the European Union** ²³⁹ fully respect fundamental rights. The directive aims at attacking the financial incentive which drives most serious and organised crime, at protecting the EU economy against infiltration by criminal groups, and at returning criminal assets to governments and citizens. It lays down minimum rules for Member States with respect to freezing and confiscation of criminal assets through direct confiscation, value confiscation, extended confiscation, non-conviction-based confiscation and third-party confiscation. Non-conviction-based confiscation procedures allow the freezing and confiscation of property irrespective of a prior conviction of its owner in a criminal court, and

Data Protection during computer forensic examination by the European Anti-Fraud Office OLAF

The European Data Protection Supervisor (EDPS) has received several complaints about the manner in which OLAF had conducted an investigation and an on-the-spot inspection, including a forensic examination of digital media, in an EU institution. The EDPS examined the matter and concluded that OLAF's execution of the digital forensic examination complied with data protection requirements.

²³⁸ Regulation No 883/2013 of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, p. 1, 18.9.2013.

²³⁹ Proposal for a directive on the confiscation and recovery of criminal assets in the European Union, COM(2012) 85 final, 12.3.2012.

third-party confiscation involves the confiscation of assets that have been transferred by an investigated or convicted person to a third party. In order for the presumption of innocence and the rights of defence of the person whose assets are confiscated to be respected, the introduction of harmonised non-conviction-based confiscation provisions is foreseen only for very limited circumstances, that is where the defendant cannot be prosecuted due to death, illness or flight. Extended confiscation is allowed only to the extent that a court finds, based on specific facts, that a person convicted of an offence is in possession of assets which are substantially more probable to be derived from other similar criminal activities than from non-criminal activities. The convicted person is given an effective possibility of rebutting such specific facts. Moreover, the extended powers of confiscation cannot be applied to the alleged proceeds of criminal activities for which the affected person has been acquitted in a previous trial, or in other cases where the *ne bis in idem* principle applies. Third party confiscation is allowed only under specific conditions, that is where the acquiring third party paid an amount lower than market value and should have suspected that the assets are proceeds of crime, and after an assessment showing that confiscation of assets directly from the person who transferred them is unlikely to succeed. Finally, specific safeguards and judicial remedies are included in the proposal in order to ensure an equal level of protection and respect for fundamental rights. These include the right to be informed about the proceedings, the right to be represented by a lawyer, the obligation to communicate any decision affecting property as soon as possible and to have an effective possibility to appeal against such decisions. These specific remedies are foreseen not only for accused or suspected persons but also for other persons in the context of third party confiscation. The proposal is currently being discussed in the European Parliament.

Policy

The **European Commission continues to provide financial support for the training of legal practitioners on fundamental rights**, following the ambitious targets set in 2011 for expanding training for legal practitioners in Europe on how to apply European law ²⁴⁰. During 2013, throughout the EU, training activities on EU fundamental rights were organised for legal practitioners (judges, prosecutors, lawyers, notaries, court staff, bailiffs, mediators). Around 9 % of all training activities on EU law topics had primarily tackled EU fundamental rights issues. It should be noted though that there are differences among the Member States: half of the activities reported to the European Commission were organised in only four Member States.

Case law

The EU institutions in a number of cases, irrespective of the existence of UN Security Council resolutions, have adopted decisions and regulations freezing the funds of persons and entities identified by the EU institutions as being involved in nuclear proliferation. Some of the persons and

²⁴⁰ European Commission Communication: Building trust in EU-wide justice, a new dimension to European judicial training, COM(2011) 551 final, available at: http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training_en.pdf

entities concerned brought actions for annulment. They considered that the EU institutions had not respected their rights of defence, as the reasons for the restrictive measures had not been revealed to them, so they could not refute the allegations. In a series of judgments ²⁴¹ the General Court annulled the acts of the EU institutions as regards several of the applicants. It found that the EU institutions had not produced enough evidence to justify the measures taken, and that in certain cases the EU institutions had breached the obligation to state reasons and disclose evidence ²⁴².

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

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 objectives of general interest recognised by the Union. Such justification is provided for in the proposal of the European Commission on the protection of the euro and other currencies by criminal law ²⁴³. In particular the right to liberty (Article 6), to respect for private and family life (Article 7), the freedom to choose an occupation and the right to engage in work (Article 15), the freedom to conduct a business (Article 16), the right to property (Article 17), the right to an effective remedy and a fair trial (Article 47), the presumption of innocence and the right of defence (Article 48), the principles of legality and proportionality of criminal offences (Article 49), the right not to be tried and punished twice (Article 50) were assessed by the European Commission in relation to the proposed criminal law measures. It was concluded that the proposed measures would affect these fundamental rights, but that these interferences are justified because they serve objectives of general interest recognised by the Union, in this specific case, to provide effective deterrent measures for the protection of currencies.

²⁴¹ CJEU judgments of 6 September 2013 in Joined Cases T-35/10 and T-7/11 *Bank Mellî Iran v Council*; in Case T-493/10 *Persia International Bank v Council*; in Joined Cases T-4/11 and T-5/11 *Export Development Bank of Iran v Council*; in Case T-12/11 *Iran Insurance v Council*; in Case T-13/11 *Post Bank Iran v Council*; in Case T-24/11 *Bank Refah Kargaran v Council*; in Case T-434/11 *Europäisch-Iranische Handelsbank v Council*; in Joined Cases T-42/12 and T-181/12 *Bateni v Council*, and in Case T-57/12 *Good Luck Shipping v Council*; and judgment of 11 March 2013 in Case T-110/12 *Iranian Offshore Engineering & Construction v Council*.

²⁴² See also the 2013 Report on the Application of the EU Charter of Fundamental Rights under 3.4 Control of the Court over the EU institutions.

²⁴³ Proposal for a directive on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA, COM(2013) 42 final, 5.2.2013.

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 shall be held liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted. Article 50 provides that criminal laws should respect this.

Legislation

The European Commission has advanced in negotiations on the proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law²⁴⁴. The Union's financial interests can be protected by both administrative and criminal sanctions. Both types of sanctions co-exist at EU level. Severe administrative sanctions may be considered punitive in nature. In that case, the imposition of such 'administrative' alongside criminal sanctions for the same offence upon the same offender violates the right not to be tried or punished twice for the same criminal offence under Article 50 of the Charter. The proposal clarifies the relationship between penalties under that directive and other relevant administrative measures under Union law and requires full respect for the right not to be punished twice.

Case law

In *Åkerberg Fransson*²⁴⁵, the Haparanda District Court in Sweden was uncertain as to whether criminal proceedings for tax evasion could be brought against a defendant where a tax penalty had already been imposed upon him for the same acts involving the provision of false information. It referred the question to the CJEU as to whether this practice is in line with the fundamental right not to be tried or punished in criminal proceedings twice for the same offence. The CJEU observed that with regard to the principle preventing a person from being punished twice, this principle does not preclude a Member State from imposing, for the same acts, a combination of financial and criminal penalties. It is only if the financial penalty is criminal in nature and has become final, that the principle preventing a person from being punished twice will preclude the bringing of criminal proceedings for the same acts. In the present case, the administrative penalties were held to be criminal in nature and therefore are not applied any more by Sweden in combination with criminal law sanctions when punishing the same act.

²⁴⁴ Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law, COM(2012) 363 final. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399455853456&uri=CELEX:52012PC0363>.

²⁴⁵ CJEU judgment of 26 February 2013 in Case C-617/10 *Åkerberg Fransson*. For a discussion on the applicability of the Charter in this case, see the 2013 Report on the Application of the Charter of Fundamental Rights, under 2. Applicability of the Charter to the Member States.

Whereas the CJEU in the present case pronounced itself on the compatibility with the Charter of the Swedish tax penalties and criminal proceedings for tax evasion in relation to the EU rules on indirect tax, notably VAT, the CJEU did not however rule on the legality of the parallel imposition of tax penalties and criminal proceedings as concerns direct tax, including income tax, since this is not regulated at Union level. In NJA 2013 s. 502, the Swedish Supreme Court has, in a case arising out of similar circumstances, extended the reasoning of the *Åkerberg Fransson* judgment to a case of imposition of tax penalties and criminal proceedings in the area of income tax. In this judgement, where the Court had to assess the obligation to respect the principle of *ne bis in idem* under the European Convention of Human Rights (ECHR) it was concluded that the meaning of Article 50 of the Charter and the corresponding rule in article 4 of the ECHR protocol 7, should be given the same interpretation and that, in any event, Article 4 of the protocol should not entail a lower level of protection than Article 50 of the Charter. It would thus appear that the Swedish Supreme Court referred to the CJEU interpretation of a Charter provision, in order to establish the level of protection of a corresponding provision in the ECHR.

Article 53: Level of Protection

Article 53 of the Charter stipulates that the Charter shall not be interpreted in such a way as to restrict human rights and fundamental freedoms as recognised in the Member States' constitutions, by Union law, by international law, and by international agreements to which the Union or all the Member States are a party. This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law.

Case law

In the *Melloni* case ²⁴⁶, the CJEU was asked if a Member State could make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State. Mr Melloni had been sentenced *in absentia* in Italy to 10 year's imprisonment for bankruptcy fraud. Following his arrest by the Spanish police, he opposed surrender to the Italian authorities. He contended that under Italian procedural law it is impossible to appeal against sentences imposed *in absentia*. He argued that the execution of the European arrest warrant issued against him should be made conditional upon Italy guaranteeing the possibility of appeal against the judgment. He based his argument on Art. 47 of the Charter, the right to an effective remedy and to a fair trial, and on Art. 53 of the Charter, arguing that the Charter should be interpreted in the light of the provisions of the Spanish constitution, which foresees the possibility of judicial review of convictions.

The CJEU held that the Framework Decision on the European arrest warrant reflects the consensus reached by all the Member States regarding the scope of the procedural rights enjoyed by persons convicted *in absentia* who are subject to the European arrest warrant. Although the right

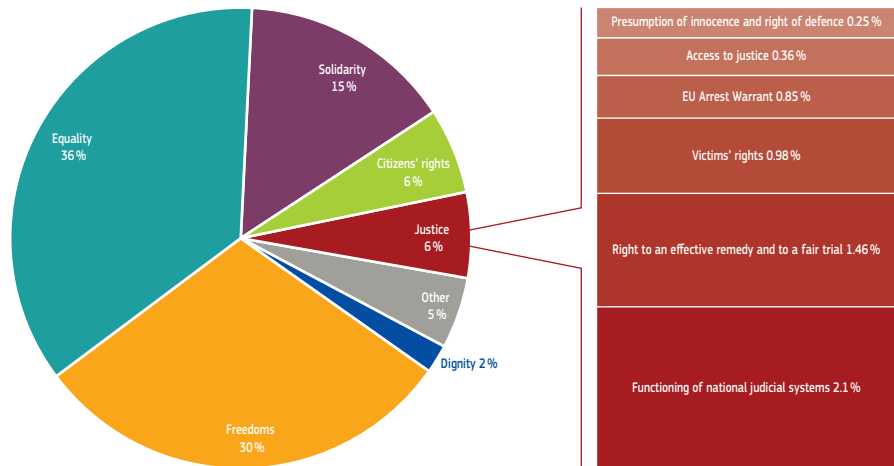
The Charter is both invoked by the parties as well as by the judge of his own motion in national proceedings

Data collected by FRA shows that in approximately half of the national cases where the Charter is mentioned (out of 69 national judgments analysed), the Charter was invoked by the parties in the proceedings. In the other half of the cases the Court raised the Charter as a legal argument of its own motion. This shows that the national courts are not only reacting to Charter related arguments brought forward by the parties but rather take a proactive approach by using the Charter as a legal source of their own motion.

²⁴⁶ CJEU judgment of 26 February 2013 in Case C-399/11 *Melloni*.

of the accused to appear in person at his trial is an essential component of the right to a fair trial, that right is not absolute. To make the surrender of a person subject to a condition not provided for under the Framework Decision would undermine the principles of mutual trust and recognition which that decision purports to uphold and would compromise its efficacy. The Court also confirmed that the fundamental constitutional principle of primacy of EU law also applies to the relationship between the Charter, on the one hand, and the national constitutional provisions on fundamental rights, on the other. A Member State may thus not invoke a provision of its constitution, even if it ensures a higher level of protection of a fundamental right than the Charter, as a ground for not applying a clear provision of EU law.

Questions



Appendix I

Overview of the 2013 CJEU case law which directly quotes the Charter or mentions it in its reasoning:

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Križan and Others	C-416/10	15-01-13	Environment	Freedoms	Right to property	Y
Lidl Stiftung v OHMI - Lactimilk (BELLRAM)	T-237/11	15-01-13	Intellectual Property	Citizens' rights	Right to good administration	N
Zakaria	C-23/12	17-01-13	Freedom of movement - third-country national	Justice	Right to an effective remedy and to a fair trial	N
Banif Plus Bank	C-472/11	21-02-13	Consumer protection	Justice	Right to an effective remedy and to a fair trial	N
Melloni	C-399/11	26-02-13	Arrest warrant	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence / Level of protection (Art. 53)	Y
Commission v Austria	C-555/10	28-02-13	Transport	Freedoms	Freedom to choose an occupation and right to engage in work	N
Sky Österreich	C-283/11	22-01-13	Media	Freedoms	Rights to property / Freedom to conduct a business / Freedom of expression and information	Y
Bank Mellat v Council	T-496/10	29-01-13	Common foreign and security policy - nuclear proliferation (appeal)	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Radu	C-396/11	29-01-13	Arrest warrant	Justice	Right to liberty and security / Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence	Y
Belov	C-394/11	31-01-13	Consumer protection - Energy	Solidarity	Consumer protection	N
McDonagh	C-12/11	31-01-13	Transport	Freedoms	Freedom to conduct a business / Right to property / Consumer protection	N
D. and A.	C-175/11	31-01-13	Asylum	Justice	Right to an effective remedy and to a fair trial	N
Bank Saderat Iran v Council	T-494/10	05-02-13	Common foreign and security policy - nuclear proliferation (appeal)	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Melli Bank v Council	T-492/10	20-02-13	Common foreign and security policy - nuclear proliferation	Justice	Right to an effective remedy and to a fair trial	N
Åkerberg Fransson	C-617/10	26-02-13	Tax fraud	Justice	Right not to be tried or punished twice in criminal proceedings for the same criminal offence	Y
Edwards and Pallikaropoulos	C-260/11	11-04-13	Environment	Justice	Right to an effective remedy and to a fair trial	N
Soukupová	C-401/11	11-04-13	Discrimination - Agriculture	Equality	Equality before the law / Non-discrimination / Equality between men and women	N
Jeltes and Others	C-443/11	11-04-13	Social security for migrant workers	Freedoms	Right to property / Freedom of movement / Applicability of the Charter (Art. 51)	N
Las	C-202/11	16-04-13	Employment	Equality	Respect for cultural, religious and linguistic diversity	Y
Irimie	C-565/11	18-04-13	Taxation	Freedoms	Right to property	N
BX v Commission	F-88/11	24-04-13	Employment - EPSO	Citizens' rights	Right to good administration	N
Gbagbo v Council	T-119/11	25-04-13	Common foreign and security policy - restrictive measures against individuals (appeal)	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Inuit Tapiriit Kanatami and Others v Commission	T-526/10	25-04-13	Trade	Freedoms	Freedom of thought, conscience and religion / Freedom of expression and information / Respect for private and family life / Right to property	N
Ymeraga and Ymeraga-Tafarshiku	C-87/12	08-05-13	Citizenship of the Union	Freedoms	Respect for private and family life / Non-discrimination / Rights of the child / Family and professional life	N
Eni v Commission	C-508/11 P	08-05-13	Competition (appeal)	Justice	Right to good administration / Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence / Principles of legality and proportionality of criminal offences and penalties	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Trelleborg Industrie v Commission	T-147/09 and T-148/09	17-05-13	Competition	Justice	Presumption of innocence and right of defence	N
MRI v Commission	T-154/09	17-05-13	Competition	Justice	Right to an effective remedy and to a fair trial / Principles of legality and proportionality of criminal offences and penalties	N
Trabelsi and Others v Council	T-187/11	28-05-13	Common foreign and security policy - restrictive measures against individuals	Freedoms	Right to property / Right to good administration	N
Chiboub v Council	T-188/11	28-05-13	Common foreign and security policy - restrictive measures against individuals	Citizens' rights	Right to good administration	N
Al Matri v Council	T-200/11	28-05-13	Common foreign and security policy - restrictive measures against individuals	Citizens' rights	Right to good administration	N
Abdulrahim v Council and Commission	C-239/12 P	28-05-13	Common foreign and security policy - terrorism (appeal)	Justice	Right to an effective remedy and to a fair trial / Respect for private and family life	Y
Commission v Sweden	C-270-11	30-05-13	Communication services	Freedoms	Respect for private and family life / Protection of personal data	N
F	C-168/13 PPU	30-05-13	Arrest warrant	Justice	Right to an effective remedy and to a fair trial	N
Halaf	C-528/11	30-05-13	Asylum	Freedoms	Right to asylum / Right to good administration / Right to an effective remedy and to a fair trial	N
ZZ	C-300/11	04-06-13	Citizenship of the Union - Fundamental rights	Justice	Right to an effective remedy and to a fair trial	Y
Ayadi v Commission	C-183/12 P	06-06-13	Common foreign and security policy - terrorism (appeal)	Justice	Right to an effective remedy and to a fair trial / Respect for private and family life	N
MA and Others	C-648/11	06-06-13	Asylum	Equality	Rights of the child / Right to asylum / Human dignity	N
Italy v Commission	T-267/07	07-06-13	Agriculture	Citizens' rights	Right to good administration	N
Hadj Ahmed	C-45/12	13-06-13	Discrimination - Social security	Equality	Equality before the law / Non-discrimination	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Agrokonsulting-04	C-93/12	27-06-13	Agriculture	Justice	Right to an effective remedy and to a fair trial	N
Di Donna	C-492/11	27-06-13	Compulsary mediation	Justice	Right to an effective remedy and to a fair trial	N
VG Wort and Others	C-457/11, C-458/11, C-459/11 and C-460/11	27-06-13	Intellectual Property	Equality	Equality before the law	N
Cytochroma Development v OHMI - Teva Pharmaceutical Industries (ALPHAREN)	T-106/12	03-07-13	Intellectual Property	Freedoms	Right to property	N
Gardella	C-233/12	04-07-13	Employment	Freedoms	Freedom to choose an occupation and right to engage in work	N
Ziegler v Commission	C-439/11 P	11-07-13	Employment (appeal)	Justice	Right to an effective remedy and to a fair trial / Right to good administration / Equality before the law / Non-discrimination	N
Team Relocations and Others v Commission	C-444/11 P	11-07-13	Competition (appeal)	Equality	Equality before the law / Non-discrimination	N
Commission v Stichting Administratiekantoor Portielje	C-440/11 P	11-07-13	Competition (appeal)	Justice	Right to an effective remedy and to a fair trial	N
Mark Alemo-Herron and Others v Parkwood Leisure Ltd.	C-426/11	18-07-13	Employment	Freedoms	Freedom to conduct a business	N
Schindler Holding and Others v Commission	C-501/11 P	18-07-13	Competition (appeal)	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence / Principles of legality and proportionality of criminal offences and penalties / Right to property	N
Sky Italia	C-234/12	18-07-13	Media	Freedoms	Freedom of expression and information / Equality before the law / Non-discrimination	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Commission and Others v Kadi	C-584/10 P, C-593/10 P and C-595/10 P	18-07-13	Common foreign and security policy - terrorism (appeal)	Justice	Right to good administration / Right to an effective remedy and to a fair trial	Y
Dow Chemical and Others v Commission	C-499/11 P	18-07-13	Competition	Justice	Right to an effective remedy and to a fair trial	N
UEFA v Commission	C-201/11 P	18-07-13	Media (appeal)	Freedoms	Right to property	N
Export Development Bank of Iran v Council	T-4/11 and T-5/11	06-09-13	Common foreign and security policy - nuclear proliferation	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Iran Insurance v Council	T-12/11	06-09-13	Common foreign and security policy - nuclear proliferation	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Post Bank Iran v Council	T-13/11	06-09-13	Common foreign and security policy - nuclear proliferation	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Bank Refah Kargaran v Council	T-24/11	06-09-13	Common foreign and security policy - nuclear proliferation	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Bank Melli Iran v Council	T-35/10 and T-7/11	06-09-13	Common foreign and security policy - nuclear proliferation	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Europäisch-Iranische Handelsbank v Council	T-434/11	06-09-13	Common foreign and security policy - nuclear proliferation	Freedoms	Freedom to conduct a business / Right to property / Right to an effective remedy and a fair trial	N
Persia International Bank v Council	T-493/10	06-09-13	Common foreign and security policy - nuclear proliferation	Justice	Right to an effective remedy and a fair trial	N
Deutsche Bahn and Others v Commission	T-289/11, T-290/11 and T-521/11	06-09-13	Competition	Freedoms	Respect for private and family life / Right to an effective remedy and a fair trial	N
Godrej Industries and VVF v Council	T-6/12	06-09-13	Anti-dumping	Citizens' rights	Right to good administration	N
G. and R.	C-383/13 PPU	10-09-13	Asylum	Citizens' rights	Right to good administration	N
Italy v Commission	T-126/09	12-09-13	Employment - EPSO	Equality	Non-discrimination / Cultural, religious and linguistic diversity	N
Italy v Commission	T-142/08	12-09-13	Employment - EPSO	Equality	Non-discrimination / Cultural, religious and linguistic diversity	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Italy v Commission	T-164/08	12-09-13	Employment - EPSO	Equality	Non-discrimination / Cultural, religious and linguistic diversity	N
Besselink v Council	T-331/11	12-09-13	Access to documents	Freedoms	Freedom of expression and information	N
Makhlouf v Council	T-383/11	13-09-13	Common foreign and security policy - restrictive measures against individuals	Justice	Right to an effective remedy and a fair trial / Right to good administration / Right to property / Respect for private and family life	N
Total SA v European Commission	T-548/08	13-09-13	Competition	Justice	Right to good administration / Right to an effective remedy and to a fair trial	N
Anbouba v Council	T-563/11	13-09-13	Common foreign and security policy - restrictive measures against individuals	Justice	Right to good administration	N
Anbouba v Council	T-592/11	13-09-13	Common foreign and security policy - restrictive measures against individuals	Justice	Right to good administration	N
Total Raffinage Marketing v Commission	T-566/08	13-09-13	Competition	Justice	Right to an effective remedy and to a fair trial	N
Bank Kargoshaei and Others v Council	T-8/11	16-09-13	Common foreign and security policy - nuclear proliferation	Justice	Right to property / Right to good administration / Right to an effective remedy and to a fair trial	N
Duravit and Others v Commission	T-364/10	16-09-13	Competition	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence / Right to good administration	N
Villeroy & Boch and Others v Commission	T-373/10, T-374/10, T-382/10 and T-402/10	16-09-13	Competition	Justice	Presumption of innocence and right of defence / Principles of legality and proportionality of criminal offences and penalties / Right to good administration	N
Wabco Europe and Others v Commission	T-380/10	16-09-13	Competition	Justice	Right to an effective remedy and to a fair trial / Principles of legality and proportionality of criminal offences and penalties	N
Keramag Keramische Werke and Others v Commission	T-379/10 and T-381/10	16-09-13	Competition	Equality	Equality before the law / Right to property / Right to good administration /	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Galp Energia España and Others v Commission	T-462/07	16-09-13	Competition	Citizens' rights	Right to good administration	N
De Nicola v EIB	T-418/11 P	16-09-13	Employment - EU Civil Service	Justice	Right to an effective remedy and to a fair trial	N
Commission v Guido Strack	C-579/12 RX II	19-09-13	Employment - EU Civil Service (review)	Solidarity	Fair and just working conditions	N
Dansk Jurist- og Økonomforbund v Indenrigs- og Sundhedsministeriet	C-546/11	26-09-13	Discrimination - Social security	Equality	Non-discrimination	N
HK Danmark v Experian A/S	C-476/11	26-09-13	Discrimination - Social security	Equality	Non-discrimination	N
IBV & Cie	C-195/12	26-09-13	Environment	Equality	Equality before the law / Non-discrimination	N
Texdata Software	C-418/11	26-09-13	Commerce	Justice	Right to an effective remedy and to a fair trial / Right not to be tried or punished twice in criminal proceedings for the same criminal offence	N
Alliance One International v Commission	C-679/11 P	26-09-13	Competition (appeal)	Justice	Presumption of innocence and right of defence / Principles of legality and proportionality of criminal offences and penalties	N
PPG and SNF v ECHA	C-625/11 P	26-09-13	Environment (appeal)	Justice	Right to an effective remedy and to a fair trial	N
BP v FRA	F-38/12	30-09-13	Employment - EU Civil Service	Citizens' rights	Right to good administration	N
Inuit Tapiriit Kanatami and Others v Parliament and Council	C-583/11 P	03-10-13	Trade (appeal)	Justice	Right to an effective remedy and to a fair trial	Y
Stichting Greenpeace Nederland and PAN Europe v Commission	T-545/11	08-10-13	Agriculture	Freedoms	Freedom to conduct a business / Right to property	N
Alokpa and Moudoulou	C-86/12	10-10-13	Asylum	Equality	Equality before the law / Non-discrimination / Rights of the child / Family and professional life / Social security and social assistance	N
Schaible	C-101/12	17-10-13	Agriculture	Freedoms	Freedom to conduct a business / Equality before the law	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Schwarz	C-291/12	17-10-13	Biometric passport	Freedoms	Respect for private and family life / Protection of personal data	N
Sabou	C-276/12	22-10-13	Taxation	VII - General provisions	Field of application	Y
Kone and Others v Commission	C-510/11 P	24-10-13	Competition (appeal)	Justice	Right to good administration / Right to an effective remedy and to a fair trial	N
Land Burgenland and Others v Commission	C-214/12 P, C-215/12 P and C-223/12 P	24-10-13	Competition - State aid (appeal)	Justice	Right to an effective remedy and to a fair trial	N
Stoilov i Ko	C-180/12	24-10-13	Customs union	Justice	Right to good administration / Right to an effective remedy and to a fair trial	N
X	C-199/12, C-200/12 and C-201/12	07-11-13	Asylum	Freedoms	Human dignity / Right to asylum	N
Giuseppa Romeo v Regione Siciliana	C-313/12	07-11-13	Social security	Citizens' rights	Right to good administration	N
Puid	C-4/11	14-11-13	Asylum	Dignity	Prohibition of torture and inhuman or degrading treatment or punishment	Y
Gascogne Sack Deutschland v Commission	C-40/12 P	26-11-13	Competition (appeal)	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence	Y
Kendrion v Commission	C-50/12 P	26-11-13	Competition (appeal)	Justice	Right to an effective remedy and to a fair trial	Y
Groupe Gascogne v Commission	C-58/12 P	26-11-13	Competition (appeal)	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence	Y
Council v Fulmen and Mahmoudian	C-280/12 P	28-11-13	Common foreign and security policy - nuclear proliferation (appeal)	Justice	Right to good administration / Right to an effective remedy and to a fair trial	N
Council v Manufacturing Support & Procurement Kala Naft	C-348/12 P	28-11-13	Common foreign and security policy - nuclear proliferation (appeal)	Justice	Freedom to conduct a business / Right to property / Right to an effective remedy and a fair trial / Right to good administration	N

Name of the parties	Case	Date	Subject matter	Charter Title	Charter right(s)	Grand Chamber
Venturini	C-159/12, C-160/12 and C-161/12	05-12-13	Trade	Solidarity	Right to health care	N
Asociación de Consumidores Independientes de Castilla y León	C-413/12	05-12-13	Consumer protection	Solidarity	Consumer protection	N
Abdullahi	C-394/12	10-12-13	Asylum	Justice	Right to an effective remedy and to a fair trial / Prohibition of torture and inhuman or degrading treatment or punishment / Right to asylum	N
X	C-486/12	12-12-13	Data protection	Freedoms	Protection of personal data	N
Dirextra Alta Formazione	C-523/12	12-12-13	Education	Freedoms	Freedom of expression and information / Right to education	N
Carratù	C-361/12	12-12-13	Employment	Justice	Diplomatic and consular protection / Right to an effective remedy and to a fair trial	N
Nabipour and Others v Council	T-58/12	12-12-13	Common foreign and security policy - nuclear proliferation	Justice	Right to good administration / Right to an effective remedy and to a fair trial	N
HSE v Commission	T-399/09	13-12-13	Competition	Justice	Presumption of innocence and right of defence	N
Siemens v Commission	C-239/11 P, C-489/11 P and C-498/11 P	19-12-13	Competition (appeal)	Justice	Right to an effective remedy and to a fair trial / Presumption of innocence and right of defence	N
Telefónica v Commission	C-274/12 P	19-12-13	Competition - State aid (appeal)	Justice	Right to an effective remedy and to a fair trial	Y

Appendix II

Overview of the applications for preliminary rulings submitted in 2013 which refer to the Charter:

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-3/13	03-01-13	Baltic Agro	20	Equality before the law	Equality	EE
C-14/13	10-01-13	Cholakova *	52 (1), 6, 45 (1)	Freedom of liberty / Freedom of movement	Citizens' rights	BG
C-19/13	15-01-13	Fastweb	21, 47	Non-discrimination / Right to an effective remedy	Justice	IT
C-34/13	23-01-13	Kušionová	38	Consumer protection	Solidarity	SK
C-46/13	28-01-13	H	8 (2)	Right of access to data	Freedoms	AT
C-56/13	04-02-13	Érsekcsanádi Mezőgazdasági	16, 17, 47	Freedom to conduct a business / Right to property	Freedoms	HU
C-61/13	07-02-13	Forni	46, 47, 52	Right to an effective remedy and fair trial	Justice	IT
C-62/13	07-02-13	Racca	46, 47, 52	Right to an effective remedy and fair trial	Justice	IT
C-73/13	11-02-13	T **	47 (3), 52 (3)	Right to an effective remedy and fair trial - Legal aid	Justice	IT
C-89/13	22-02-13	D'Aniello and Others	51, 47, 46, 52 (3)	Right to an effective remedy and fair trial	Justice	IT
C-101/13	28-02-13	U	7	Respect for private and family life	Freedoms	DE
C-106/13	04-03-13	Fierro and Marmorale ***	17, 52 (3)	Right to property	Freedoms	IT
C-112/13	08-03-13	A	47	Right to an effective remedy and fair trial	Justice	AT
C-148/13	25-03-13	A	3, 7	Right to the integrity of the person / Respect for private and family life	Dignity	NL
C-149/13	25-03-13	B	3, 7	Right to the integrity of the person / Respect for private and family life	Dignity	NL
C-150/13	25-03-13	C	3, 7	Right to the integrity of the person / Respect for private and family life	Dignity	NL
C-153/13	26-03-13	Pohotovost'	38, 47	Consumer protection	Solidarity	SK
C-175/13	28-03-13	Liivimaa Lihaveis	47 (1)	Right to an effective remedy and fair trial	Justice	EE
C-166/13	03-04-13	Mukarubega	41	Right to good administration	Citizens' rights	FR

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-198/13	16-04-13	Julián Hernández and Others	20	Equality before the law / Non-discrimination	Equality	ES
C-206/13	18-04-13	Siragusa	17 (1)	Right to property	Freedoms	IT
C-224/13	26-04-13	Lorrai ****	47 (2)	Right to an effective remedy and fair trial	Justice	IT
C-249/13	06-05-13	Boudjlida	41	Right to good administration	Citizens' rights	FR
C-258/13	13-05-13	Sociedade Agrícola e Imobiliária da Quinta de S. Paio *****	47	Right to an effective remedy and fair trial - Legal aid	Justice	PT
C-265/13	15-05-13	Torralbo Marcos	47	Right to an effective remedy and fair trial	Justice	ES
C-270/13	17-05-13	Haralambidis	15, 21 (2)	Freedom to choose an occupation and right to engage in work / Non - discrimination	Equality	IT
C-316/13	10-06-13	Fenoll	31	Fair and just working conditions	Solidarity	FR
C-329/13	17-06-13	Stefan	47 (2)	Right to an effective remedy and fair trial	Justice	AT
C-331/13	18-06-13	Nicula	17, 20, 21	Right to property / Non-discrimination	Freedoms	RO
C-332/13	19-06-13	Weigl	30, 51 (1)	Protection in the event of unjustified dismissal	Solidarity	HU
C-333/13	19-06-13	Dano	1, 20, 51	Non-discrimination	Equality	DE
C-383/13 PPU	05-07-13	G. and R.	41(2)	Right to good administration	Citizens' rights	NL
C-396/13	12-07-13	Sähköalojen ammattiliitto	47, 12	Right to an effective remedy and fair trial / Freedom of assembly and of association	Justice	FI
C-416/13	23-07-13	Vital Pérez	21 (1)	Non-discrimination	Equality	ES
C-417/13	23-07-13	Starjakob	21, 47	Non-discrimination	Equality	AT
C-437/13	02-08-13	Unitrading	47	Right to an effective remedy and fair trial	Justice	NL
C-459/13	19-08-2013	Široká	35, 33	Right of access to preventive health care	Solidarity	SK
C-505/13	23-09-13	Yumer	20, 21	Non-discrimination	Equality	BG
C-529/13	08-10-13	Felber	21, 52 (1)	Non-discrimination	Equality	AT
C-530/13	08-10-13	Schmitzer	21, 52 (1)	Non-discrimination	Equality	AT

Case	Date	Name of the parties	Articles of the Charter mentioned in the application	Charter subject	Relevant title of the Charter	Nationality of the referring court
C-562/13	31-10-13	Abdida	1, 2, 3, 4, 19 (2), 20, 21 and 47	Prohibition of torture and inhuman or degrading treatment or punishment / Protection in the event of removal, expulsion or extradition	Dignity	BE

- * order of the Court of 06/06/2013 holding its patent lack of jurisdiction
- ** order of the Court of 08/05/2013 holding its patent lack of jurisdiction
- *** order of the Court of 30/05/2013 holding its patent lack of jurisdiction
- **** order of the Court of 07/11/2013 holding its patent lack of jurisdiction
- ***** order of the Court of 28/11/2013 holding its patent lack of jurisdiction

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document:

Report on **Progress**
on **equality** between
women and **men**
in 2013

Progress on equality between women and men in 2013

Introduction

The European Union (EU) has promoted equality between women and men over the past five decades, and continued to do so in 2013. This report provides an overview of the main EU policy and legal developments on gender equality during the last year, as well as inspirational examples of policies and actions in Member States. It also analyses recent trends, on the basis of scientific evidence and key indicators that shape the debate on gender equality, and includes a statistical annex with more details on national performances.

The report is structured around the six priorities of the European Commission's *Strategy for equality between women and men 2010-15*¹, namely: equal economic independence; equal pay for equal work and work of equal value; equality in decision-making; dignity, integrity and ending gender-based violence, gender equality in external action policy, and horizontal issues.

There has been **progress in most areas, but achieved at an uneven pace**. At this rate of change, it will take almost 30 years to reach the EU's target of 75% of women in employment, over 70 years to make equal pay a reality, over 20 years to achieve parity in national parliaments (at least 40% of each gender), over 20 years to achieve gender balance on the boards of Europe's biggest companies and almost 40 years to ensure that housework is equally shared. In other words, if nothing changes, many of us won't live long enough to see equality between women and men achieved.

Although there were still gender gaps in 2013, they have significantly shrunk in recent years:

- **Women's employment rate stands at 63%, and that of men at 75%.** During the financial and economic crisis, women's participation in the economy and their contribution to family finances have increased, thereby decreasing the gender employment gap. In the meantime, women still bear the brunt of unpaid work within the household and family. **Women spend an average of 26 hours on care and household activities per week, compared with 9 hours for men.**
- **Boys are more likely to drop out of school** and women outperform men in higher education.

¹ COM(2010)491 final

- Despite their investment in education, **women are paid 16% less than men per hour of work**. In addition, they are more likely to work part-time and to interrupt their careers to care for others. **As a result, the gender gap in pensions stands at 39%**. Widows and single parents — mainly mothers — are a particularly vulnerable group, and **more than a third of single parents are poor**.
- Moreover, segregation is omnipresent in the labour market: only 16% of employed people work in mixed occupations. Women are still less likely to hold senior positions. They account for an average **of 17.8% of the members of boards of directors in the largest publicly-listed companies, 2.8% of the CEOs, 27% of senior government ministers, and 27% of members of national parliaments**.
- Research and Innovation are no exception – in the last decade the number of women PhD graduates increased faster than that of men. Nevertheless, women are still greatly under-represented in particular at the top level of academic careers; only 20% of top level academics are women and just one out of ten universities in the European Union has a female Rector.²
- **The results of the first EU wide survey on violence against women**, carried out by the European Union Agency for Fundamental Rights (FRA) and based on interviews with 42,000 women are alarming: **one in three women (33%) has experienced physical and/or sexual violence since the age of 15. One in 20 women (5%) has been raped. One in two women (55%) has been confronted with some form of sexual harassment**.

In light of these figures the EU has taken significant actions in 2013 to accelerate the progress towards genuine equality:

- In the framework of the Europe 2020 strategy for growth, country-specific **recommendations aimed at promoting female employment were addressed to 13 Member States**. To support Member States, significant co-funding possibilities will be offered through **the 2014-20 European Structural and Investment Funds**. In the previous 2007-13 period, an estimated EUR 3.2 billion from the Structural Funds was allocated to invest in childcare facilities and promote women's participation in the labour market, which had a significant leverage effect. Since 2007, the proportion of children cared for in formal childcare facilities significantly increased (from 26% in 2007 to 30% in 2011 for children under three years old, and from 81% to 86% for children between three and compulsory school age³).
- The European Commission increased its efforts to **make equal pay a reality**, by raising awareness about the remaining gender pay gap and monitoring the application of legislation on equal treatment of women and men.

² http://ec.europa.eu/research/science-society/document_library/pdf_06/she-figures-2012_en.pdf

³ Eurostat, EU-SILC

- In 2012, the Commission adopted a proposal for a Directive with **an objective of 40% for the under-represented sex among non-executive directors by 2020** and the European Parliament supported its objective and approach in 2013.
- In 2013, the **EU protected women and girls from gender-based violence** through legislation, practical measures on victims' rights and a comprehensive policy package against female-genital mutilation. It also co-funded 14 national governments campaigns against gender-based violence (with EUR 3.7 million), as well as projects led by non-governmental organisations (with EUR 11.4 million).
- The EU promoted gender equality in international fora, in its development and humanitarian plans and actions, and in its neighbourhood and enlargement policies.

The mid-term review of the Strategy for Equality between Women and Men, which was published in 2013, complements this report by providing detailed information about how each Commission service and the European External Action Service contribute to the strategy's implementation and to planned actions.

The report illustrates that well-designed policies can accelerate progress and contribute to closing gender gaps, so that gender equality is not a distant dream anymore. Focused actions at EU level, in the form of **legislation, recommendations, co-funding possibilities or awareness-raising activities, have contributed to close the gaps.**

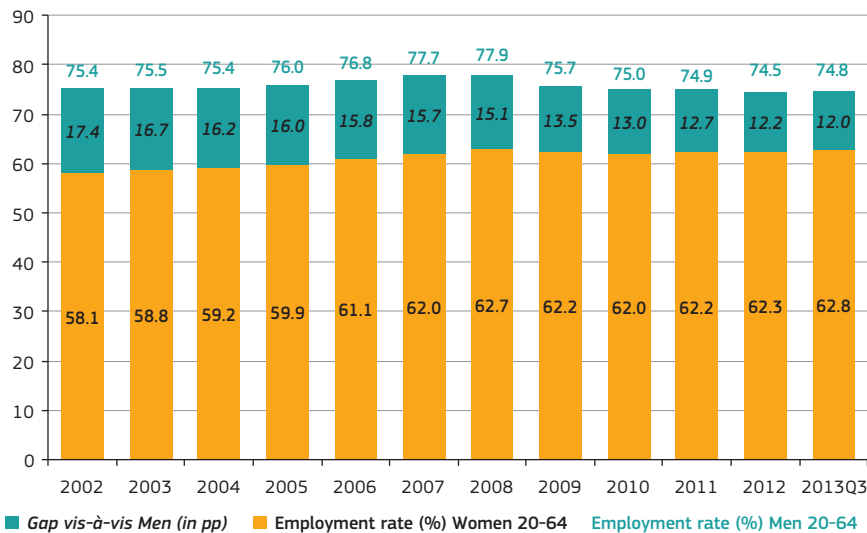
1. Equal economic independence

1.1. Progress towards equal economic independence

In the third quarter of 2013 in Europe as a whole, **the male employment stabilised just below 75%, while the female employment rate increased slightly for the third year running and reached 63%**. The gap between employment levels gradually shrank as a direct consequence of the financial and economic crisis, which has pushed back male employment to pre 2000 levels and led women to increase their participation in the economy. However, the female employment rate progressed much more rapidly before the crisis. From 2002 to 2008, the proportion of employed women increased by 4.5 points in the EU-28, while the proportion of employed men increased by 2.5 points. As a total, **the employment gap diminished by almost a third over the past 10 years.**⁴

⁴ See 'The impact of the crisis on the situation of women and men and on gender equality policies', report of the European Network of Experts on Gender equality (ENEGE), commissioned by the European Commission, December 2012.

Figure 1 - EU-28 male and female employment rate (%) and gender gap in employment rate, people aged 20-64, 2002-2013Q3



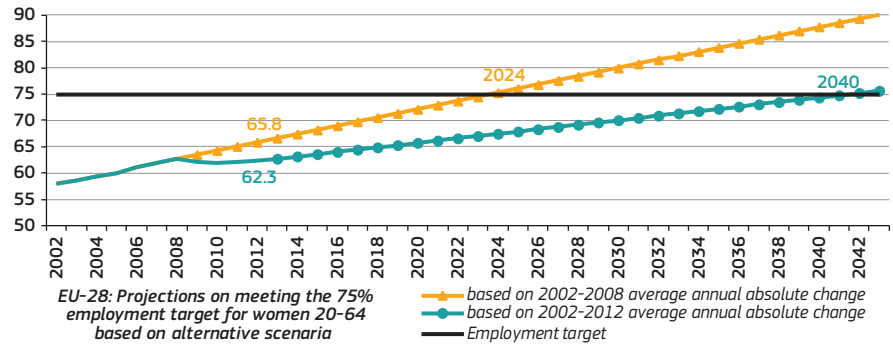
Source: Eurostat, LFS (Labour Force Survey), 2013Q3 means data of the third quarter of 2013

The EU's target employment rate is 75% for both women and men. The male employment rate is already close to this target. There are two questions that we must ask next:

- If current trends continue, when will parity be achieved?
- How has the crisis affected achieving the target?

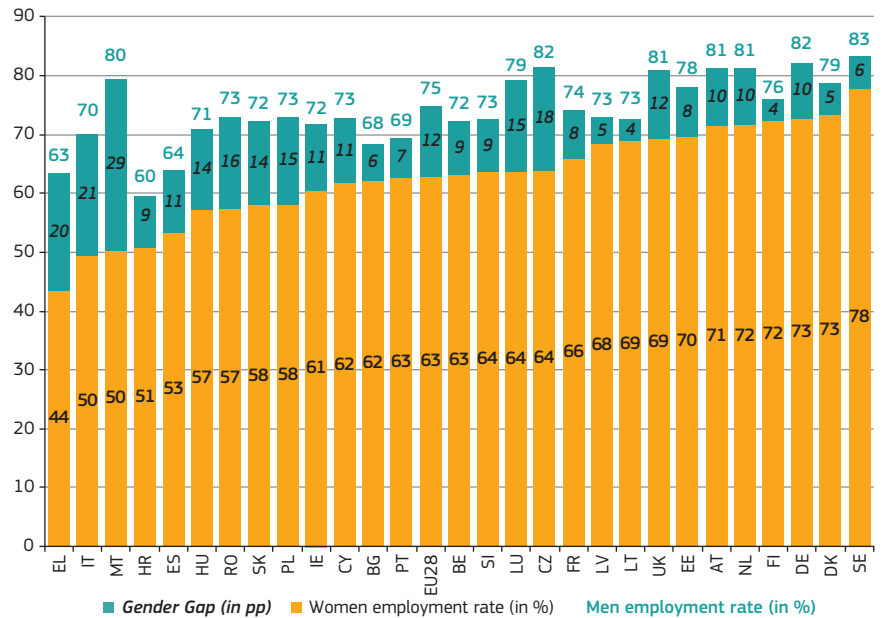
A basic answer assumes that trends are constantly linear, so we can take the annual growth in percentage points and see how many years it will take to reach the target. In the pre-crisis scenario, the target of 75% female employment would have been met by 2021. However, if the current macroeconomic and social trends were to continue, the target would be reached in 2038. (see Figure 2).

Figure 2: Projections on meeting the 75% employment target based on alternative scenarios



Note: the yellow line shows the projection based on the 2002-08 average growth rate. The blue line shows the projection based on the 2002-12 average growth rate. For 2008-12 the distance between the yellow and the blue line can be interpreted as the cost of the downturn on potential employment outcomes. It shows the distance between actual and potential (based on the pre-crisis rate) outcomes. Source: Eurostat, LFS

Figure 3 – Female and male employment rates (in %) and the gender gap in the employment rate, people aged 20-64, 2013Q3



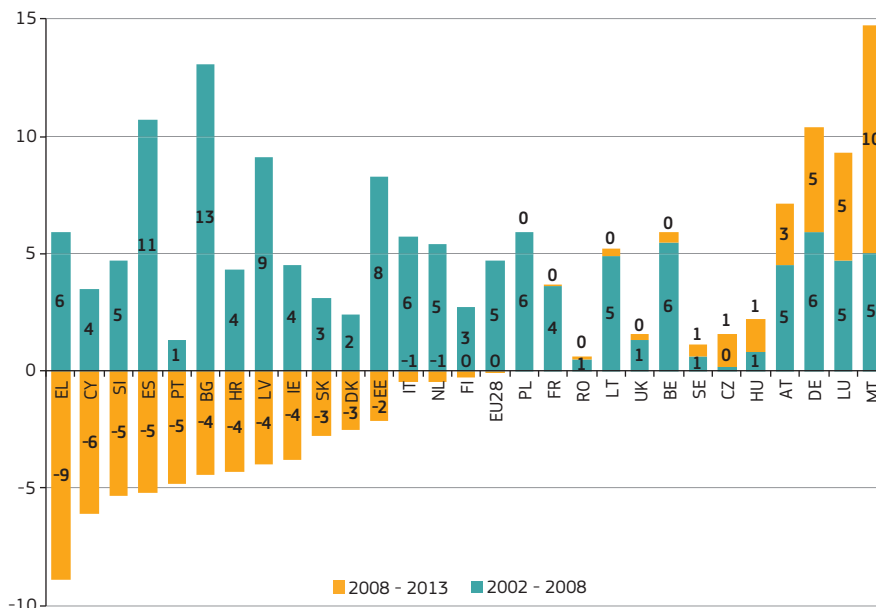
Source: Eurostat, LFS

The overall picture hides the diversity of experiences EU countries have had since 2002 (see Figures 3 and 4). Many countries with low female employment rates compared to the EU

average made significant progress, but their progress was interrupted by the crisis. The female employment levels returned to those seen in 2002 in the most-affected countries. However, the female employment rate in 15 countries stabilised or slightly increased between 2012 and the third quarter of 2013. Today, nine countries have a female employment rate below 60% (compared to 12 countries in 2002). Only one country, Sweden, has maintained a female employment rate above 75% in 2000-13.

In the third quarter of 2013, **unemployment reached historically high levels for both men and women**: Today in Europe 11.2 million women are unemployed compared to 13.3 million men. Southern Europe (Italy, Spain, Greece, Portugal, Cyprus, Malta) is particularly affected, with 5.1 million unemployed women and 5.8 million unemployed men.

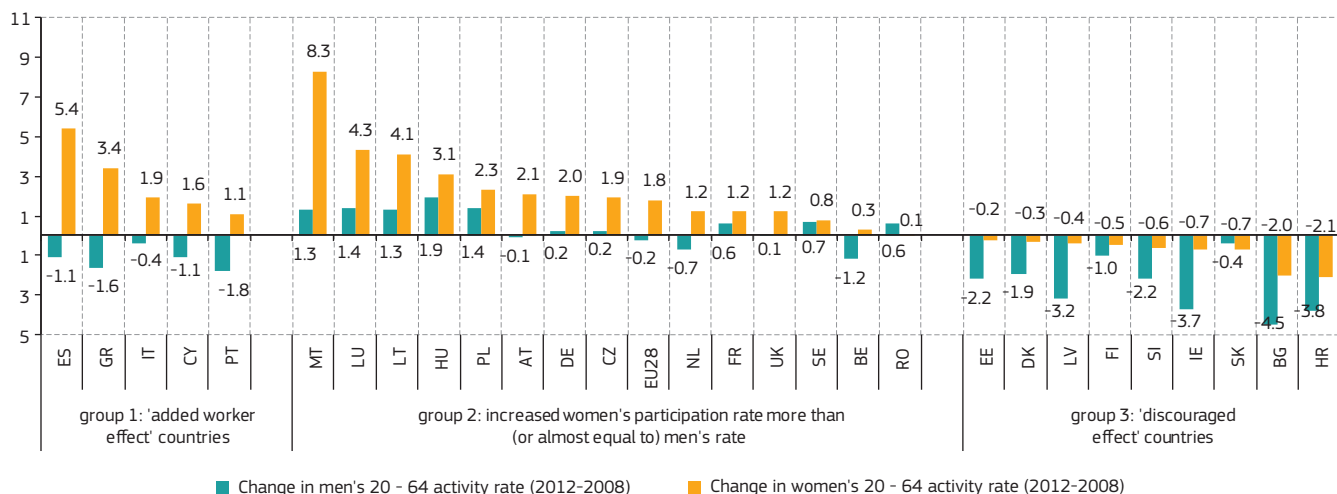
Figure 4 – Female employment rates: changes in percentage points between 2002-08 and 2008-13



Source: Eurostat, LFS

Some people who can't find a job may decide to stop looking and hence drop out of the labour force — what is known as *'the discouraged worker effect'*. Others may decide to supplement falling incomes by working more in order to compensate — *'the added worker effect'*. In this way, some individuals who were not on the labour market previously may *start* looking for a job. Figure 5 shows that **the 'discouraged worker effect' is overwhelmingly a male phenomenon, while 'added workers' are predominantly female**. In a majority of countries, women are more likely than men to increase their offer of labour during the crisis.

Figure 5 - Change in men's and women's participation rate: *The added worker effect versus the discouraged worker effects across Europe, 2008-12*



Source: Eurostat, LFS

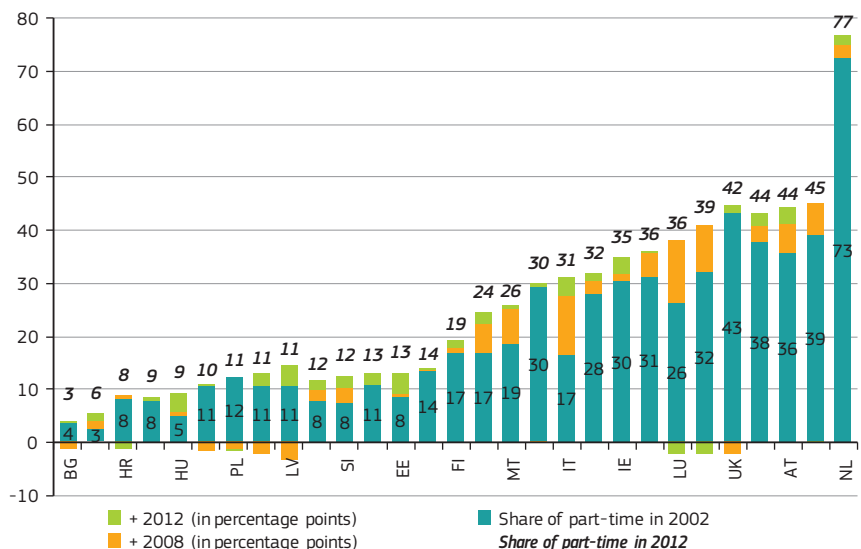
The developments in part-time work

Much of the pre-crisis increase in female employment related to part-time employment.

The crisis led to an almost equal increase in part-time employment for men and for women — of around one percentage point in 2008-12, from a low starting point for men.

Men still account for less than a quarter of part-time employees. The share of men working part-time is small (8.2%), whereas almost **a third of employed women across Europe work part-time (32%)**. This figure is above 40% in the UK, Germany, Austria, Belgium and the Netherlands (see figure 6). Consequently, if the same analysis is carried out using full-time equivalents, the female employment rate appears more modest (see annex).

Figure 6 –The share of part-time employment among women employees before and during the crisis



Source: Eurostat, LFS

Moreover, fewer women than men transition out of part-time into full-time work. The transition rate is particularly low for women in the Netherlands, Austria and Germany⁵. In other words, part-time status is more likely to be irreversible for women.

Gender imbalances in unpaid work

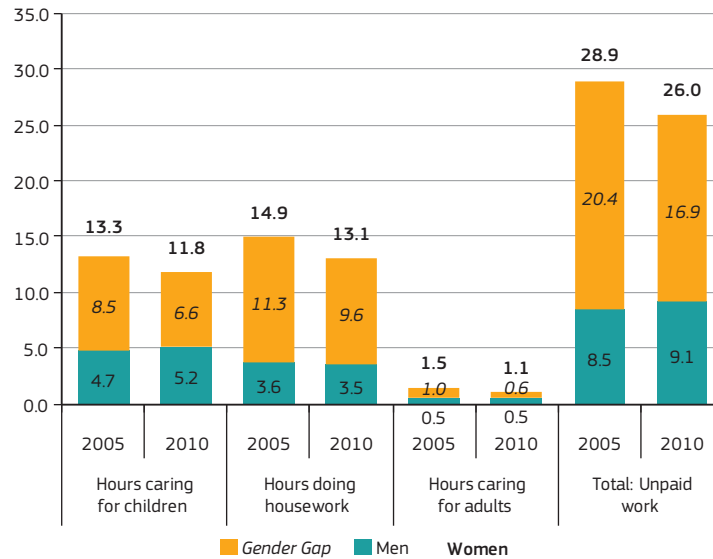
Women face such difficulties in paid employment because they shoulder the brunt of **essential yet unpaid work** in the context of the family (such as caring for children or adults and housework). According to a report released in 2013⁶ and based on 2010 data, **women still spend 26 hours a week in unpaid work, against nine hours for men**. In 2005-10 **the unpaid work gender gap among male and female workers shrank** (see Figure 7): in 2005, the average EU-28 female worker spent 20 hours more than the average male worker on unpaid work, while in 2010 this difference fell to 17 hours. However, this reduction is mainly due to the decline in hours female workers spend on unpaid work (children, housework, caring for adults). The time men spend on unpaid work increased by only half an hour per week.

⁵ See Employment and Social Developments in Europe 2013, for further analysis.

⁶ Eurofound, *Women, men and working conditions in Europe*, October 2013

In other words, men carried out 23% of unpaid work in 2005 and 26% in 2010. At this rate of change, it will take almost 40 years to achieve equality in unpaid work: the contribution of men is projected to reach 50% in 2050.

Figure 7 – EU-28 average time spent by male and female workers on unpaid work per week, and the gender gap



Sources: European Working Condition Survey 2005 & 2010, Eurofound

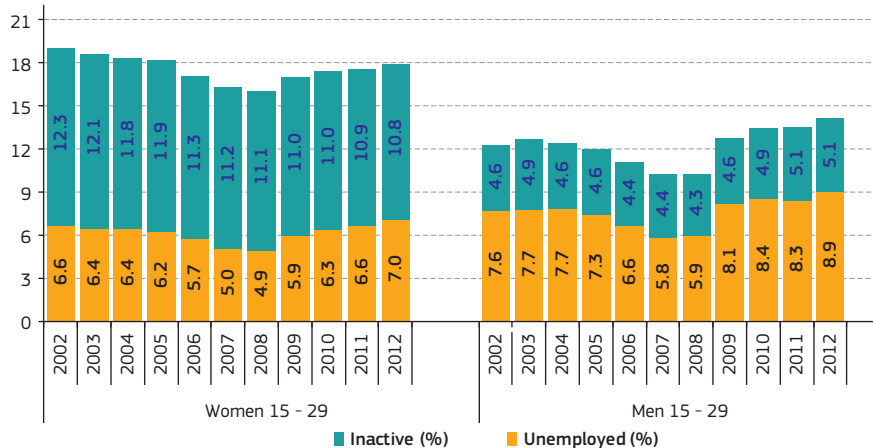
Young people's difficulties in finding a job

The EU economy's recovery potential depends largely on how it treats young people attempting to integrate into the adult world. A young person leaving compulsory education can continue in full time education, undertake training or find a job. Those who cannot participate in any of these three activities, called the 'Not in Education, Employment or Training' (NEET) ⁷, may feel cut off from the world of production and possibly even relegated to the margins of society.

Over the last ten years, the NEET rate has a familiar shape; it fell before 2008 and rose after. However, the **NEET rate is consistently higher for women**. In other words, young women find it harder than young men to enter the labour market. The proportion of completely inactive women, i.e. those far removed from the labour market, remains double that of men (see Figure 8).

⁷ The indicator captures the extent of this phenomenon more clearly than the rate of youth unemployment, which excludes the large number of young people still preparing to enter the labour force. Whereas the NEET rate is expressed as a proportion of the population in this age group, the unemployment rate limits the comparison to those in the labour force, possibly only a small proportion of young people.

Figure 8 - EU-28 NEET rate (%) by type and gender for youth aged 15-29, 2002-2012



Source: Eurostat, LFS

In order to halt and reverse the curve of the NEET rate, all Member States have put in place a **Youth Guarantee⁸ in 2013**, ensuring that **all young people under 25** get a good-quality offer within four months of leaving formal education or becoming unemployed. This Youth Guarantee should pay special attention to the gender and diversity of young people.

While we can expect women to play a more significant role in the economic recovery once this picks up, we must be cautious for three reasons. Firstly, the increase in women's offer of labour has not yet been translated into an increase in jobs — in many countries more women are looking for work, but are unable to find jobs. Secondly, gender inequalities still persist, including among the younger generation. Thirdly, in order to increase female employment a number of supportive policies need to be put in place to enable women to achieve their goal. It is to these public policies that we will now turn.

1.2. A comprehensive policy mix to promote female employment

A policy-mix comprising affordable and quality childcare, neutral tax and benefits systems, flexible working time arrangements and the provision of paid leave for both genders can support men and women in reconciling work and family and effectively promote female employment.

⁸ Council Recommendation of 22 April 2013 on establishing a Youth Guarantee, OJ C 120, 26.4.2013, p. 1–6

In its 2014 budget the **Maltese Government** announced the introduction of free and universal childcare, which will be available by April 2014, and which will be set up under public-private partnerships. Both parents must be in full- or part-time employment to benefit from the scheme.

An exchange of good practices was organised in November 2013 in **France**, which has succeeded in developing a diversified childcare supply that has expanded over the last 15 years. The French childcare system offers different choices for families (e.g. type, number of hours, location of childcare facilities, etc.). The provision and accessibility of information for the relevant parties has improved through the development of a dedicated website (*www.mon-enfant.fr*), as well as initiatives at the municipal level. ⁽¹²⁾

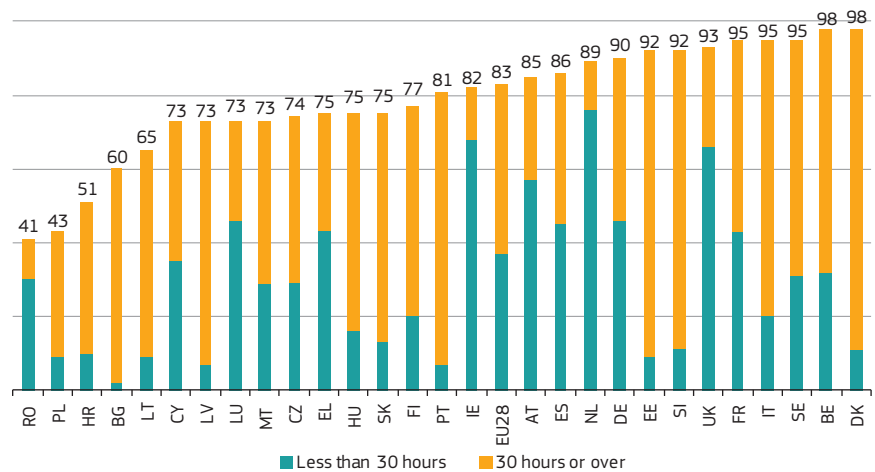
To boost development of childcare institutions, **Polish Ministry of Labour and Social Policy** has prepared amendments of *Act on care for children under three years of age*. New provisions which came into force in July 2013 reduces the commune's own contribution from 50% to 20% of the establishment and operational costs of childcare institutions, as well as expands the list of companies able to apply for funding from the state budget for the establishment of care institutions, it also extends the catalogue of entities that may hire daily carers. Parallel to the Act, the Ministry has launched "*Toddler Programme*" which goal is to encourage local self-governments to establish nurseries and kids clubs for children under 3 years old. By the end of 2013, around 3 thousand new childcare places, nurseries and children's clubs were created. This Programme also covers social security and health insurance contributions for nannies.

Childcare facilities: the Barcelona targets

Childcare remains overwhelmingly a women's responsibility. In 2010, 80% of parents who felt they had to reduce their working time to care for children were women. ⁹ The access to child care services plays a crucial role in women's decisions to take part in paid employment. The EU recognized this and set the '**Barcelona targets**' ¹⁰ for Member States in this area. In June 2013 the European Commission also released a detailed analysis of progress towards the Barcelona targets and the European Parliament organized a workshop on this topic in November. ¹¹

Across Europe, 83% of kindergarten-age children (three years old to mandatory school age) are in formal care facilities (see Figure 9). Many countries are still far away from the target for this group age (90%): Romania, Poland, Croatia, Bulgaria and Lithuania do not even reach 70%. Nevertheless, most countries showed considerable progress between 2005 and 2011, in some cases (Portugal) spectacularly so (see Figure 10).

Figure 9 - Percentage of children between the age of three and mandatory school age cared for in formal structures (and by weekly time spent in care), 2011



Source: Eurostat, EU-SILC

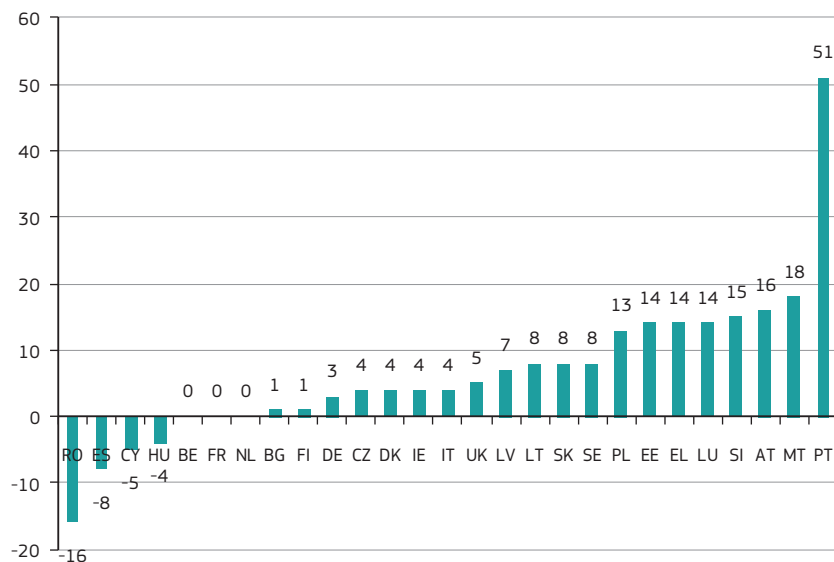
⁹ Eurostat; Labour Force Survey

¹⁰ According to these targets all member states have to strive to provide child care places for 33% of children under 3 years old and 90% for children between 3 and mandatory school age

¹¹ http://europa.eu/epic/news/2013/20130704-ec-progress-report-barcelona_en.htm

¹² See results of the exchange of good practices: http://ec.europa.eu/justice/gender-equality/other-institutions/good-practices/review-seminars/seminars_2013/reconciliation_en.htm

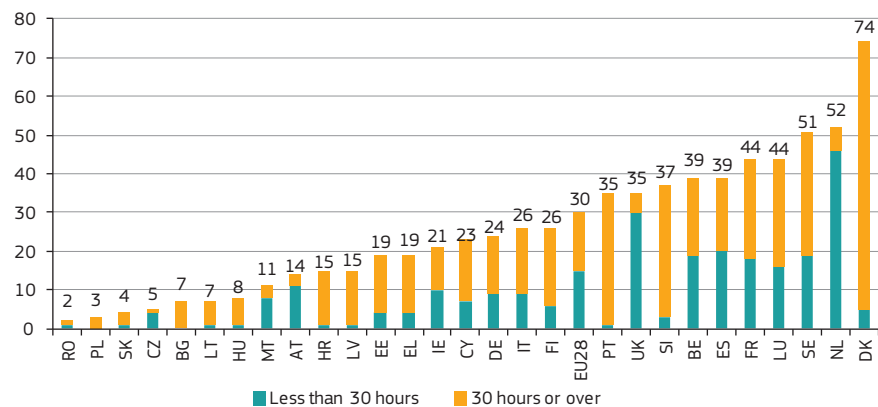
Figure 10 - Change in childcare provision for children between the age of three and mandatory school age (in percentage points), 2005-2011



Source: EU-SILC

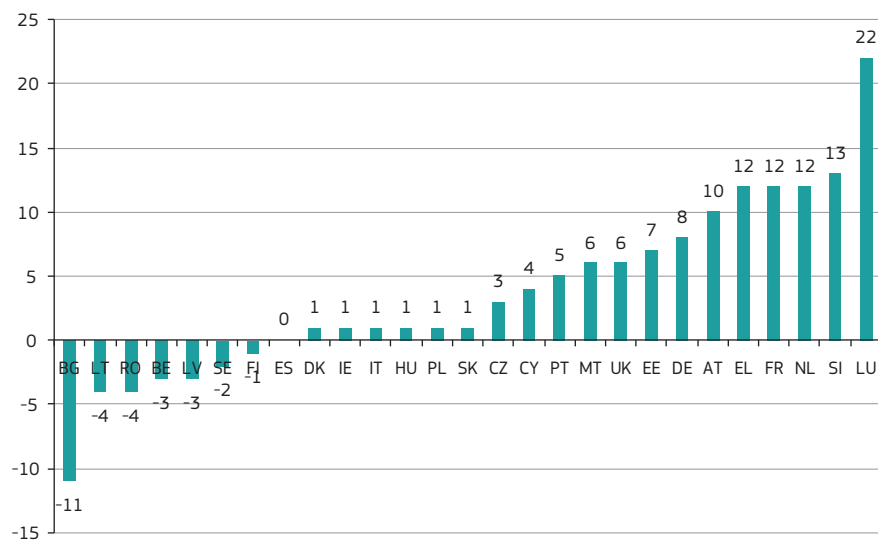
The situation is more varied for younger children. Some countries already meet the Barcelona target (i.e. 33% of children in formal childcare), while others have essentially not started working towards the target yet, reaching less than 5% in 2011 (Poland, Romania, Slovakia). Some countries have clearly embraced this as a key strategic target, showing impressive growth between 2005 and 2011 (France, Luxembourg, Slovenia, the Netherlands, which met the target, and Greece, Austria and Germany, which did not meet the target).

Figure 11 - Percentage of children under three years old cared for in formal structures (and by weekly time spent in care) in 2011



Source: Eurostat, EU-SILC

Figure 12 - Change in provision of childcare for children under three (in percentage points), 2005-11



Source: Eurostat, EU-SILC

To support Member States in developing childcare facilities and promoting female employment, significant funding possibilities (EUR 3.2 billion from the 2007-13 Structural Funds) were allocated. Significant steps towards increasing childcare availability and affordability and towards diversifying the care offered have also been taken in several Member States.

In some other Member States (Ireland, Spain) substantial spending cuts have affected the availability (closing down of childcare facilities), quality (understaffing) and affordability of childcare services.

Tax and benefit systems: disincentives for second earners – mainly women

During the crisis, women increase their contribution to the household income and the proportion of “male breadwinner” household decrease. **In most countries dual-earner couples with a secondary earner female¹³ are the largest group** (see annex). Dual-earner couples with a secondary earner male are much less common. Couples with roughly equal earnings make up around 1/5 of all couples.

Tax and benefits systems may create specific fiscal disincentives that trap secondary earners into their status. Joint and progressive tax systems are more likely to create disincentives, because any income adding up to that of the primary breadwinner tends to be taxed at a higher tax rate. In the early 1980s, the EU took a stance against joint taxation, which helped introduce individual taxation in most EU Member States. **Nevertheless several Member States still have joint taxation system.** In France, Luxembourg and Portugal couples are jointly assessed for tax purposes. Ireland and Germany have joint taxation, with an option for individual taxation; individual taxation is the default in Estonia, Spain, Poland, and Malta though a joint assessment option is available. Occasional elements of joint taxation remain in the Belgian, Bulgarian, Greek, Hungarian, Italian, Lithuanian, Latvian and the Dutch income tax codes, although the unit of taxation is the individual. Moreover, even if the tax code is individualised, the benefit system is often not, or at least not entirely. For example, child-related allowances and benefits are assessed against family income in most countries. Last but not least, several tax systems grant a ‘non working spouse allowance’ which is lost if the spouse in question takes up employment. Taking into account both tax and benefits, a recent study¹⁴ shows that, **in a number of countries (Belgium, Greece, France, Romania, Slovenia and Germany, Portugal and Belgium), the tax-benefit system penalizes dual-earner couples and does not encourage secondary earners to work more.**

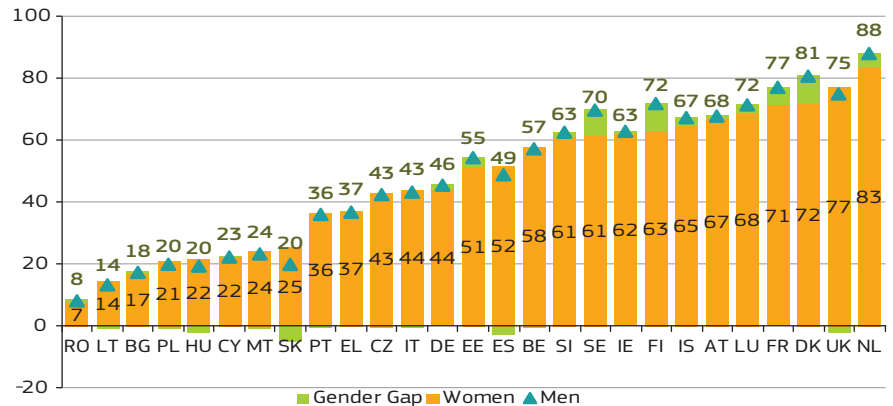
¹³ contributing less than 45% of the combined earnings of the couples

¹⁴ European Network of Experts on Gender Equality, *Female employment and tax-benefit systems*, to be published in 2014

Flexible working arrangements

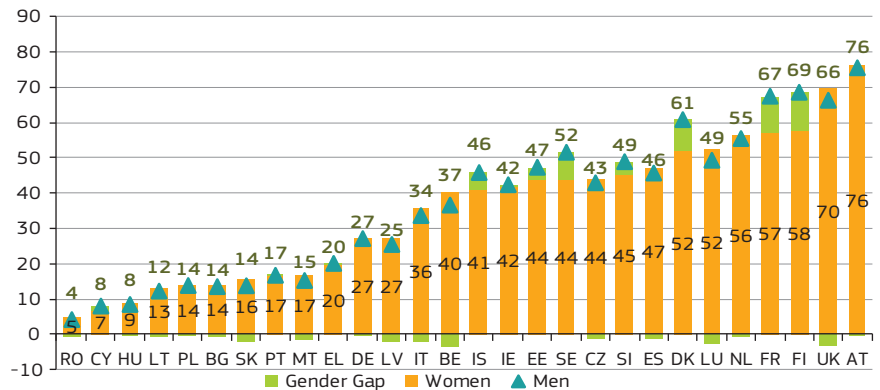
Flexible working arrangements enable employees to vary their working hours and adapt them to their personal and family needs, which makes a better work-life balance possible. According to recent data, **women reported less access to family-related work schedule flexibility than men** in most European countries. Moreover, the access to family-related work schedule flexibility differs across social groups and across countries. For instance the share of workers who can vary the start and/or end times of their working day for family reasons ranges from less than 10% in Romania to more than 80% in the Netherlands (see Figures 13 and 14).

Figure 13 – Percentage of employed people generally able to vary start/end times for family reasons, men and women, and gender gap (in percentage points)



Sources: EU-LFS AHM 2010 Forthcoming Short Statistical Report No 6 from Rand Europe "Family-related working schedule flexibility across Europe".

Figure 14 – Percentage of employed people generally able to take whole days off for family reasons, men and women, and gender gap (in percentage points)



Sources: EU-LFS AHM 2010 Forthcoming Short Statistical Report No 6 from Rand Europe "Family-related working schedule flexibility across Europe".

The provision of paid leave

Overall, leave schemes provide parents the opportunity to spend time off work around childbirth (or later) and thereby facilitate the combination of work and care activities. Moreover, the provision of sufficient paid leave has a positive effect on the employment rate of prime-age women as it encourages them to remain in the labour force after having children. For this to happen, a minimum length should be warranted.¹⁵ When the leave entitlement is too short, mothers may simply leave the labour market without using the return option provided by the leave scheme, whereas too lengthy leave durations increase the time out of the labour market and may thereby hamper the decision to return to employment.¹⁶

A balanced use of leave entitlements by both parents after childbirth has been shown to have positive effects in terms of distribution of household and care responsibilities and improved female labour market outcomes¹⁷. **Currently fathers' take-up of parental leave¹⁸ remains quite low in most Member States.** For instance, it is less than 5 % in the Czech Republic, Spain, Hungary, Poland and Slovakia, though more than 20% in Belgium, Denmark and Sweden.¹⁹

The **Directive on parental leave²⁰ gives each working parent the right to at least four months leave after the birth or adoption of a child** (previously up to three months). **At least one of the four months cannot be transferred to the other parent** — which means that it will be lost if not taken — giving fathers an incentive to take the leave. The Directive also provides for better protection against discrimination and a smoother return to work. Member States had to transpose it by 8 March 2013 at the latest. The Commission is currently checking if the national implementing measures are in conformity with the Directive.

Gender equality in Europe 2020 Strategy for growth and employment

It is clear that there is untapped potential in the supply of labour offered by women, which is likely to prove critical when the economy recovers. This potential is currently severely constrained by a low labour demand and by an inadequate policy-mix of poor childcare facilities, low access to flexible working time arrangements and fiscal disincentives in some countries. Unequal pensionable ages for women and men in some Member States also contribute to older women's

¹⁵ In 1992 the EU adopted directive 92/85/EEC on paid maternity leave, making 14 weeks of paid maternity leave the minimum in the EU Member States.

¹⁶ Thévenon O. and Solaz A. (2012), "Labour Market Effects of Parental Leave policies in OECD countries", OECD Social, Employment and Migration Working Papers 141, OECD Publishing and Akgündüz, Y.E. and Plantenga, J. (2013), "Labour market effects of parental leave", Cambridge Journal of Economics, 37, 845–862.

¹⁷ See, for instance Olivier Thévenon & Anne Solaz (2012), "Labour Market Effects of Parental Leave Policies in OECD Countries," OECD Social, Employment and Migration Working Papers 141, OECD Publishing.

¹⁸ Take-up rates for fathers refer to the percentage of the eligible population of fathers who took parental leave. It does not refer to the male/female ratio in the take-up (male and female take-up rates of parental leave do not add up to 100%).

¹⁹ "Study on the role of men in gender equality", Study commissioned by the European Commission, published in 2013

²⁰ Directive 2010/18/EU

lower labour-force participation, as well as lower pension entitlements and increased risk of poverty in old age. As a consequence, in the framework of the Europe 2020 Strategy for growth, the 2013 European Semester addressed country-specific recommendations to **thirteen Member States** and asked them to promote the participation of women in the labour market and gender equality²¹:

- Recommendations on **childcare availability, quality, inclusiveness and/or affordability** (in some cases also including all-day schools or out-of-school services) were addressed to ten Member States: Austria, Czech Republic, Germany, Hungary, Italy, Malta, Poland, Slovakia, the United Kingdom and Estonia (for the first time in 2013 for the latter country);
- Recommendations to **improve the provision of elderly care services** were addressed to two countries: Austria and Italy (for the first time in 2013 for the latter country);
- Recommendations **to tackle financial disincentives to work** were addressed to three Member States: Germany, the Netherlands and Italy (for the first time in 2013 for the latter country);
- Recommendation **to address the gender pay gap and the gender pension gap** was addressed to Austria;
- Recommendations **to harmonise pensionable ages and rights** were addressed to three Member States: Austria, Bulgaria and Romania. Romania received a recommendation in 2013 for the first time, and the recommendation to Slovenia was dropped in 2013 further to the implementation of the 2012 recommendation;
- A recommendation to **promote flexible working arrangements** was addressed to Malta for the first time in 2013.

Overall, there were more recommendations to promote the participation of women in the labour market, which is an acknowledgement of the problem and a clear signal that progress has been insufficient so far. In the Annual Growth Survey 2014²², which takes stock of the economic and social situation in Europe and sets out the EU's overall economic growth priorities, the European Commission calls on Member States to develop affordable care services and tackle the gender pay, activity and pensions gaps.

²¹ For the full set of recommendations, please see: http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm.

²² COM(2013)800 final http://ec.europa.eu/europe2020/pdf/2014/ags2014_en.pdf

1.3. Supporting female entrepreneurs

Women constitute only a third of the self-employed in the EU and a quarter of self-employed with paid employees (the “employers”).²³ They face more difficulties than men, mainly in access to finance, training and networking. In its “Entrepreneurship 2020 Action plan”²⁴, published in 2013, the Commission recognised that potential women entrepreneurs should be made aware of business support programmes and funding opportunities. It will therefore create a Europe-wide on-line mentoring, advisory, educational and business networking platform for women entrepreneurs that will bring the current national ambassadors and mentors networks on-line, deepen their offer and expand their reach and support female entrepreneurship at national and regional level by promoting the exchange of best practices between Member States.

2. Equal pay for equal work and work of equal value

One of the obstacles to equality for women on the labour market is the systematically lower pay they receive. This is attributed to direct and indirect discrimination, fewer career advancements because of absences due to care, but also to the concentration of women in low-paid jobs and pervasive segregation in the labour market, as well as gender imbalances in education, and the undervaluation and underuse of women’s skills.

2.1. The gender pay gap

Despite consistent efforts over decades, **women are paid on average 16% less than men per hour of work**. Figure 15 shows the trend of the unadjusted gender pay gap²⁵ from 2006 (when consistent comparable statistics were collected for the EU-27) to 2012, the latest available data. The gradually falling trend to 17.2% in 2009 shows a steep decrease to 16.2% in 2010. It therefore seems that the crisis changed the speed of convergence.

If current convergence speeds continue²⁶, it will take more than 70 years to close the gender pay gap (in 2087 assuming that recent trends persist).

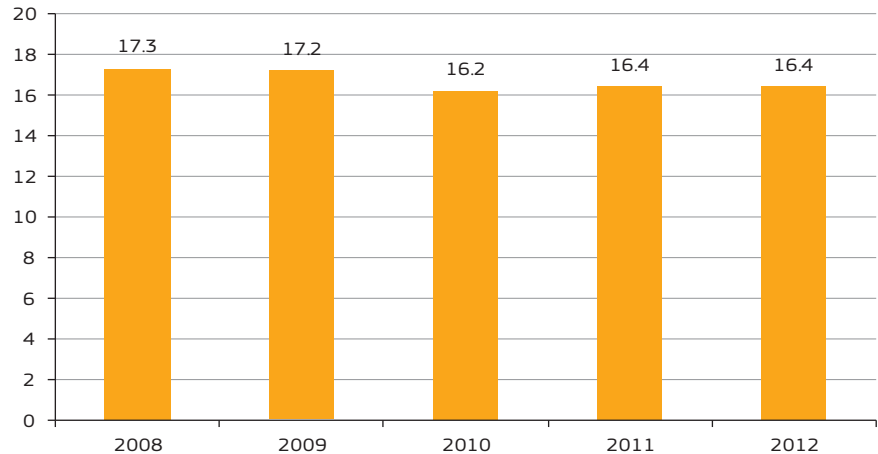
²³ OECD (2013), “Women entrepreneurs in the OECD”.

²⁴ COM(2012)795: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0795:FIN:EN:PDF>

²⁵ The unadjusted GPG represents the difference between average gross hourly earnings of male paid employees and female paid employees as a percentage of average gross hourly earnings of male paid employees.

²⁶ On the basis of an extrapolation of annual percentage growth. Linear trends are assumed.

Figure 15 – EU-28 gender pay gap in unadjusted form (%),2008-12



Source: Eurostat, Structure of Earning Survey, data without Croatia in 2008-10

While the gender pay gap has been shrinking in almost all EU countries, it is still more than 20% in Estonia, Austria, the Czech Republic, Germany, Slovakia and the United Kingdom (see Figure 16).

Tackling the gender pay gap at EU level

Equal pay has for a very long time been an EU commitment and priority, and efforts to tackle the gender pay gap have intensified in 2013.

The European Commission monitors the correct application and enforcement of the equal pay provisions of the Directive on equal treatment of men and women in employment and occupation²⁷ at national level. In 2013, it adopted a **Report on the application of this directive, with a focus on applying the provisions on equal pay in practice**²⁸. The Report includes an analysis of gender-neutral job evaluation and classification systems, a summary of equal pay case law of the Court of Justice, as well as examples of the national case-law on equal pay. It can support national authorities and national courts, social partners and other stakeholders in correctly enforcing and applying the existing rules.

In order to spread information about the remaining gaps, the European Commission organised the third **European Equal Pay Day** on **28 February 2013**. At the same time, it has upgraded

²⁷ 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), OJ L 204, 26.7.2006, p. 23-36.

²⁸ COM (2013)861 http://ec.europa.eu/justice/gender-equality/gender-pay-gap/131209_directive_en.pdf

its webpage²⁹, press material and brochure³⁰ and has been increasingly working with Member States and stakeholders to improve synergies between the European and national equal pay days. To support this, an **exchange of good practices on national equal pay days** was organised in Estonia in June 2013.

In 2012 and 2013 the Commission funded the **Equality Pays Off**³¹, which supported employers in their efforts to tackle the gender pay gap by organising training activities for companies in 34 European countries. As part of this project, a **Business Forum**³² was held on 21 March 2013 in Brussels. It enabled 165 representatives of companies, multiplier organisations and institutions to exchange knowledge and strategies on how best to foster gender equality. Moreover, the Commission adopted a non-legislative initiative in 2014 to promote and facilitate the practical application of the principle of equal pay.³³

All these initiatives aim to closing the gender pay gap and helping women to reap the benefits of their investment in education.

The gender gap in pensions

The hourly pay gap, the fewer hours worked plus more career interruptions lead to a greater gap in earnings throughout women's life, which leads in many cases to inequalities in pension entitlements. As Figure 16 shows, this is not always so — the country with the largest pay gap also has the smallest pension gap (Estonia). The pension system may intervene to equalise differences (e.g. through universal citizens' pensions, or widows' pensions). However the tendency towards reforms to favour closer linking of contributions to entitlements (e.g. through multipillar schemes) is likely to magnify pay-linked gaps over time. Indeed, pension gaps are much higher than pay gaps, reflecting an accumulation of disadvantages throughout women's lives. **Women receive pensions that are on average 39% lower than men's**³⁵ and more than a third of all older women have no pension at all in some Member States. In response to these worrying figures, the Advisory Committee on Equal Opportunities for Women and Men issued an Opinion on reducing the gender gap in pensions³⁶, and encouraging the EU to step up its effort, in following-up the White Paper entitled "An Agenda for Adequate, Safe and Sustainable Pensions".³⁷

In **France**, as a result of a 2012 decree on gender equality in companies³⁴, for the first time, four companies were condemned in 2013 for not complying with the legislation on equal pay. 500 companies received a reminder. More than 4000 companies have notified their plan on gender equality to the Ministry of Women's right. On 25 April 2013, the equal pay day, the minister of women's rights said that the three priorities to reduce the gender pay gap are: awareness and support, controls and sanctions, and negotiations between social partners.

²⁹ <http://ec.europa.eu/justice/gender-equality/gender-pay-gap>

³⁰ http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/130422_gpg_brochure_en.pdf

³¹ http://ec.europa.eu/justice/gender-equality/equality-pays-off/index_en.htm

³² <http://ec.europa.eu/justice/events/equality-pays-off-forum-2013/>

³³ Commission Work Programme 2014, available at http://ec.europa.eu/atwork/pdf/cwp_2014_annex_en.pdf.

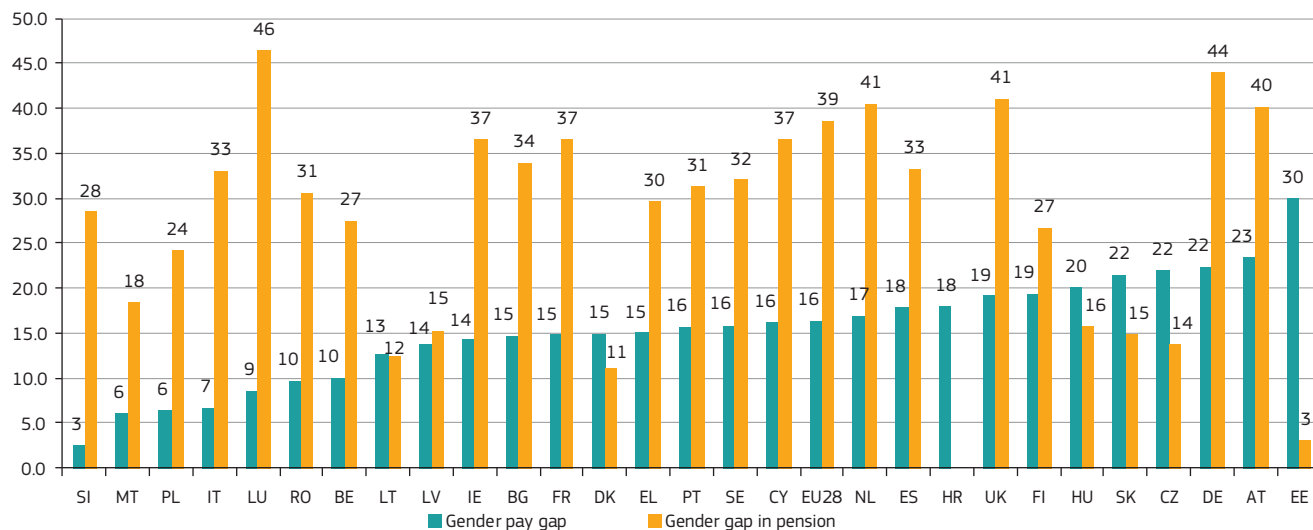
³⁴ Décret n° 2012-1408 du 18 décembre 2012, relatif à la mise en œuvre des obligations des entreprises pour l'égalité professionnelle entre les femmes et les hommes.

³⁵ ENEGE (2013), The gender gap in pensions in the EU.

³⁶ http://ec.europa.eu/justice/gender-equality/other-institutions/advisory-committee/index_en.htm

³⁷ COM(2012)55

Figure 16 - The gender pay gap vis-à-vis the gender gap in pension, across Europe



Source: Gender Pay Gap figures based on Eurostat's Structure of Earnings Database for 2012, except for Greece (2010). The gender gap in pension income is based on EU-SILC 2011 data, and calculated by the European Network of Experts on Gender Equality.

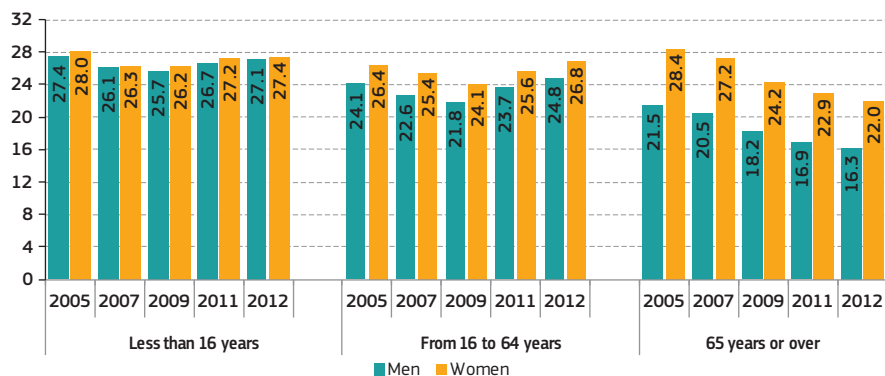
2.2. The risk of poverty or social exclusion

In the framework of the Europe 2020 Strategy, the EU monitors the risk of poverty or social exclusion faced by people who *either* have low income relative to what is socially acceptable in their country *or* lack at least three of a list of nine important amenities³⁸, *or* living in households with very low work intensity. To interpret the gender differences in the figures, we should bear in mind that it is assumed that these differences do not exist for couples, as if all household members equally share in income and amenities. Any differences that appear in the data mainly reflect the situation of single-member households.

Older women are much more at risk of poverty or social exclusion than older men (22% versus 16.3%). Over the last 5 years, the relative situation of older men and women improved, and the gender gap has shrunk. The impact of the crisis at this EU-level is more visible for the group of working age, where the rise in poverty or social exclusion appears to be associated with a closing of the gender gap: **26.9 % of women are poor and excluded, compared to 24.8% of men.**

³⁸ Strictly, income less than 60% of the income of the 'middle individual' in sample surveys; the nine amenities are: to pay rent or utility bills; to keep their home adequately warm; to pay unexpected expenses; to eat meat, fish or a protein equivalent every second day; a week holiday away from home; a car; a washing machine; a colour TV; or a telephone.

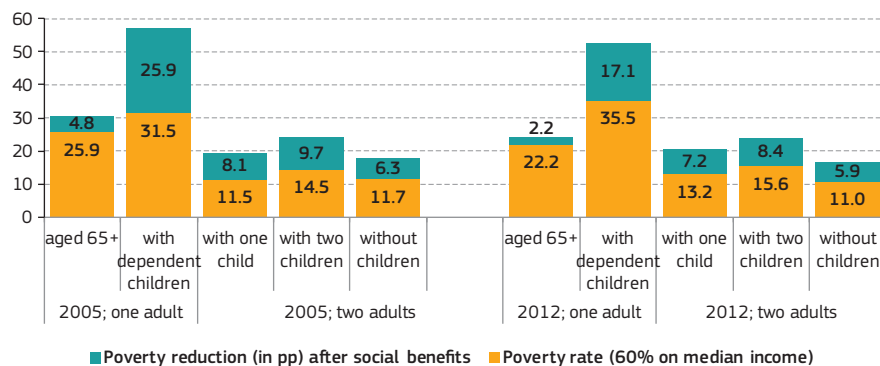
Figure 17 - EU-27 (%) people at risk of poverty or social exclusion by gender and age



Note: Eurostat, EU-SILC

Single parents — mainly mothers — are particularly vulnerable to poverty and exclusion, and 35.5% of them are at risk of poverty. This rate ranges from 26% in Slovenia to 66% in Greece (see Figure 19).

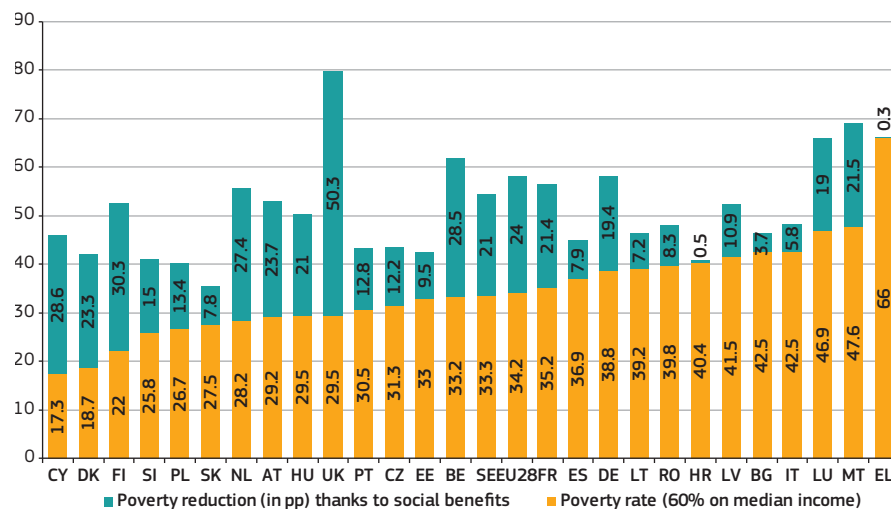
Figure 18 – Risk of poverty and poverty reduction after social benefits, by household type, EU27 2005 & 2012



Source: Eurostat, EU-SILC

Poverty is targeted by many social policies from various means tested benefits to explicit social safety net guarantees. Rather worryingly, the efficacy of social policy in reducing poverty was lower for all types of households in 2012, compared to 2005 (see Figure 18). **The fall in effectiveness of social policy is particularly high (almost 50%) for one-adult households, which include the majority of widows as well as single mothers.** The generosity of the welfare state towards this group also varies greatly between countries. Poverty was reduced by less than 6 pp in Greece, Bulgaria, Croatia and Italy, and by more than 25 pp in the Netherlands, Finland, Denmark, Cyprus (see Figure 19).

Figure 19 - Poverty risk and poverty reduction after social benefits, single parent households, 2012



Source: Eurostat, EU-SILC

In February 2013, the European Commission adopted the Social Investment Package³⁹, which provides Member States with social policy guidance to better address unemployment, poverty and social exclusion. Within the package, the importance of measures to remove barriers' to women's lower labour market participation is highlighted, such as affordable quality early childhood education and care and long-term care services for elderly dependents. It also underlines the various instruments available at EU-level to support Member States in tackling social challenges.

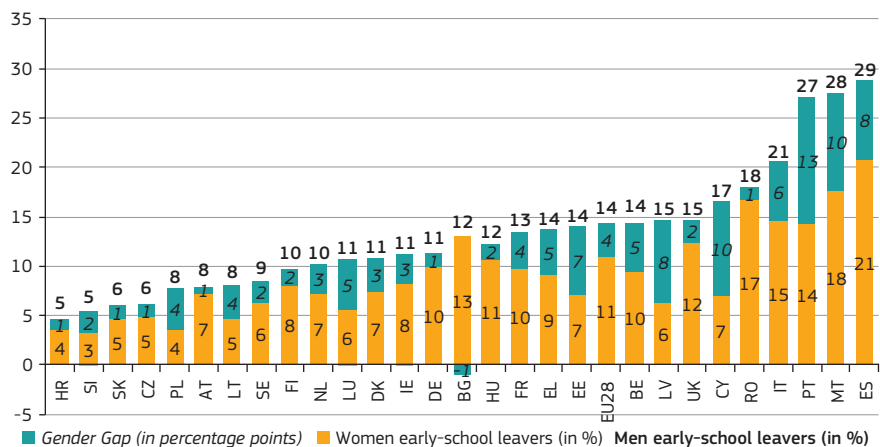
2.3. Education achievements, key skills and their use at work

Overall, the European 2020 Strategy's education and training indicators show that girls tend to do better. **Women are more likely to have completed higher education:** in 2012, 39.9% of all women and 31.5% of men between the ages of 30 and 34 had attained a tertiary education level. In the same vein, **girls were less likely to drop out of school** than boys in 2012 (10.9% compared 14.4%). These figures have led to increased attention given to the so-called "boys' crisis" in public policies and in research.⁴⁰

³⁹ Communication from the Commission "Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014 – 2020", COM (2013)83

⁴⁰ "Study on the role of men in gender equality", Study commissioned by the European Commission, published in 2013

Figure 20 –Proportion of early school-leavers (in %), in 2012, men, women and the gender gap (in percentage points)



Source: Eurostat, LFS

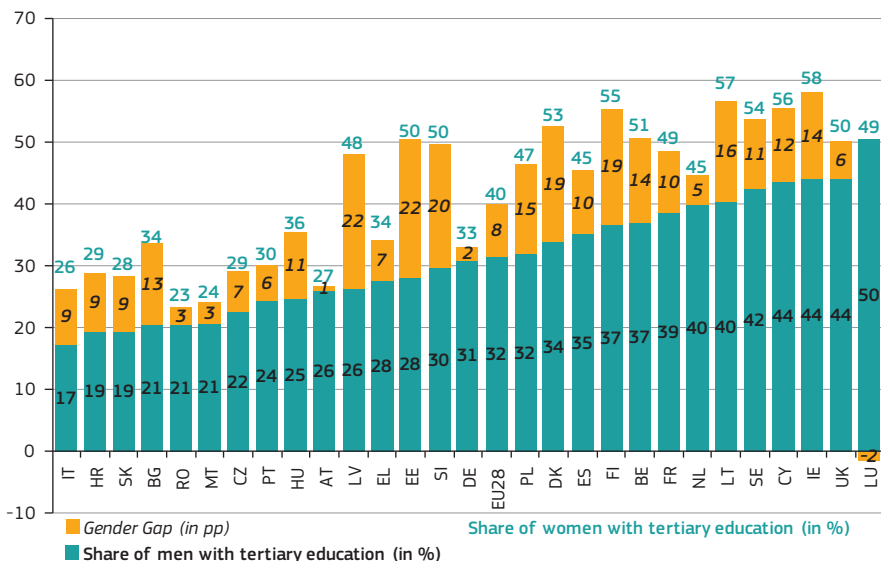
The OECD's PISA survey, the latest results of which were released in 2013, make it possible to analyse gender differences in the mastery of key competences, namely mathematics, science and reading among 15-years-old pupils.⁴¹

Gender differences in science subjects and mathematics performance are small and keep shrinking.

The share of low achieving students is similar among genders: 17.4% of boys and 15.7% of girls are low achievers in sciences, 21.2% of boys and 23% of girls are low achievers in mathematics. However, even when boys and girls have the same performance level, girls tend to be more anxious about mathematics, and less self-confident. The OECD concludes that improving the attitudes of boys and girls towards mathematics should be a key concern.

⁴¹ OECD (2013), What students know and can do: student performance in mathematics, reading and sciences – Volume I

Figure 21 – Percentage of the population aged 30-34 who have successfully completed university or university-like (tertiary-level) education, in 2012, men, women, and the gender gap in percentage points



Source: Eurostat, LFS

Girls significantly outperform boys in reading in every participating country, and this gender gap is large, equivalent to more than a year of schooling: 23.7% of boys are low achievers in reading, compared to 12% of girls. **This gap has widened** in nine EU Member States (Denmark, Belgium, Spain, France, Finland, Hungary, Sweden, Bulgaria and Greece). The new figures recall the urgency of engaging boys in schools and motivating them to read, changing reading material and introducing engaging male role models.

Unlike PISA, the **OECD Survey of Adult Skills (PIAAC)**, the first results of which were also released in 2013, shows **little differences between adult men and women**. On average, men have better results in numeracy and problem-solving skills. However the gap is small and doesn't exist for the younger generations. Moreover, in most countries, men and women have similar scores on the literacy scale.

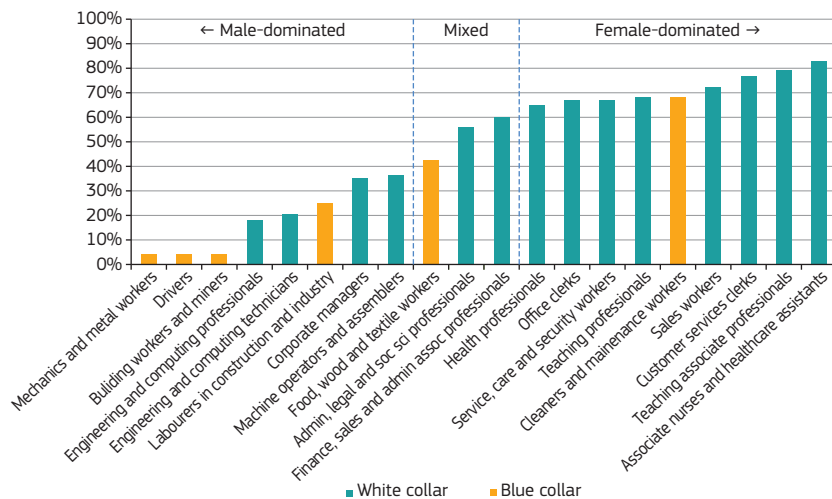
The PIAAC survey also makes it possible to analyse how skills are used in professional work. With only a few country exceptions, the survey shows that, on average, men use literacy, numeracy and problem-solving skills at work more frequently than women. Indeed, **women are more often employed in jobs in which these skills are not used as intensively**. These gender differences in using skills contribute to deepening the gender pay gap: countries facing the biggest gender pay gap are also the countries with the biggest gap in using skills (Estonia, Slovakia, the Czech Republic). It is therefore crucial to promote non-discriminatory gender roles in education

and employment, as recalled by the European Parliament Resolution of 12 March 2013 on eliminating gender stereotypes in the EU ⁴², and explained in a study on “The role of men in gender equality” published by the European Commission in 2013. ⁴³

2.4. Persistent gender segregation in the labour market

Gender segregation, or the tendency for men and women to take different jobs, is pervasive across Europe. **Only 16% of all employees work in mixed occupations** (i.e. where the proportions of men and women are between 40% and 60%). Figure 22 shows the proportion of men and women within the top 20 occupations ⁴⁵, which account for 94.3% of all employment across Europe. Women tend to be virtually shut out of certain occupations. Three occupations have a strikingly similar female proportion of 4%: metal, machinery and related trades, extraction and building trades and drivers and mobile plant operators. The three occupations with the lowest proportions of men are in the life science and health associate professionals (17%), teaching associate professionals (20%) and customer service clerks (23%).

Figure 22 - Proportion of women in the top 20 occupations in the EU 27, in 2010



Source: Eurostat, LFS

In **Latvia**, the Ministry of Welfare published a proposal on reducing gender segregation and integrating gender equality principles in education. The proposal contains a set of recommendations for each level of education.

In order to combat gender stereotypes in higher education in **Poland** social campaigns “Girls As Engineers!” and “Girls In STEM!” have been carried out by Perspektywy Educational Foundation and the Conference of Rectors of Polish Technical Universities. The main objective of these campaigns is to introduce technical and engineering studies to female high school students and to promote this educational path as interesting, attractive and very beneficial in the long run. In 2013 nineteen public technical universities took part in the campaign.

In **Estonia**, the Ministry of Social Affairs carried out an awareness raising campaign to tackle gender stereotypes and their influence on work and career choices. The main activities of the campaign were “career days” for boys and girls, a series of video clips and several communication initiatives. In the framework of career days boys and girls were introduced to occupations and jobs that are traditionally more common for the other gender (e.g. boys to professions like nurse, tailor, teacher and girls to professions like ground engineer, soldier, and miner). The feedback from participating young people was positive and although not many were considering afterwards choosing exactly the professions they have been introduced to, most of them said that they see their career choices more widely now. Video clips received a wide visibility. ⁴⁴

⁴² 2012/2116(INI)

⁴³ http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/130424_final_report_role_of_men_en.pdf

⁴⁴ and are available online in addition to Estonian also with Russian and English subtitles (www.stereotyp.ee).

⁴⁵ A new method for analysing gender segregation, which focuses on the twenty most common ISCO-08 2-digit occupations, was developed for the *Women, men and working conditions* report of the 2010 European Working Conditions Survey (Eurofound, 2013) and further implemented for the European Commission (ENECE, 2014). This new method bypasses many of the drawbacks of single indices.

In **Cyprus**, the ESF-funded programme to reduce the gender pay gap is now implementing measures that address vertical and horizontal occupational segregation. The partnership of academics and NGOs will provide specialised training programmes for careers advice professionals, primary and secondary education teachers, and parents.

Segregation is not always associated with disadvantage for women. Some male-dominated jobs are also associated with poor working conditions and low wages. Segregation, however, narrows employment choices for both men and women, and may limit access to higher-level jobs. Segregation also facilitates the undervaluation of women's work, and of skills and competences associated with women.

There has been little change in segregation patterns since 2005. The share of all employees working in mixed occupations was also remarkably consistent, increasing from 15.5% to 16.1%. However, there is some evidence that younger women, who have been relatively advantaged compared to men in their education, are making inroads into some of the higher-earning professional occupations that had been even more male-dominated in the past.

3. Equality in decision-making

Despite major progress across the EU in recent decades, men still largely outnumber women in senior positions, particularly at the highest levels, in business, politics and other fields. However, improving the gender balance in senior positions in politics and in the corporate sector more rapidly is critical to improving how our democracies and economies function.

3.1. Gender (im)balance on boards of large listed companies

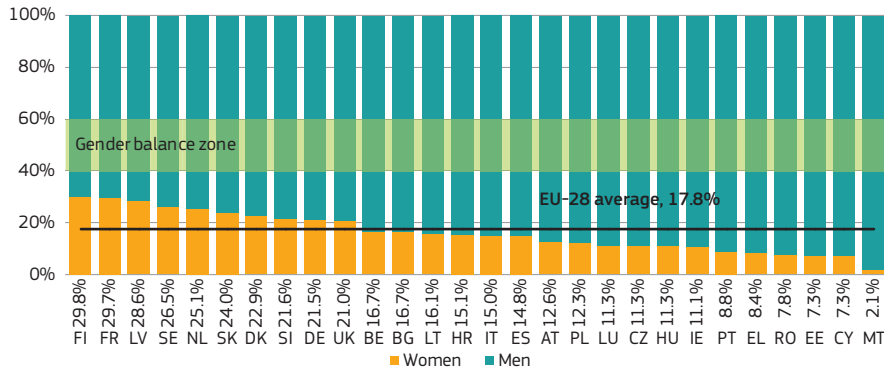
Large companies across the EU continue to be disproportionately led by men, despite the strong economic and business advantages of gender balance and the presence of qualified and talented women. Data collected by the European Commission in October 2013, show that **women account for an average of 17.8% of top-level board members in the largest publicly-listed companies** registered in each of the EU-28 Member States⁴⁶ (Figure 23). Moreover, there are very few women in the most influential positions: just 4.8% of the chairpersons of these companies and only 2.8% of CEOs are women.

There is considerable variation between Member States ranging from almost 30% of female board members in Finland to just over 2% in Malta. **Although no Member State has yet achieved gender balance in the boardroom there has been significant progress over the last decade thanks to intense debate and regulatory pressure.** In October 2003, only two of the current Member States (Romania and Slovenia) had governing boards made up of at least 20% female board members. Ten years on, ten Member States have surpassed this level and

⁴⁶ The companies covered are the nationally registered members (max. 50) of the primary index of the national stock exchange in each country, i.e. the largest companies by market capitalisation / market trades. The data cover all members of the highest decision-making body in each company (i.e. non-executive directors, senior executives and employee representatives, where present). This body is usually termed the supervisory board (in case of a two-tier governance system) or the board of directors (in a unitary system).

half of these have more than 25% female board members. However, there are still six Member States in which men still hold more than 90% of board positions (Figure 23).

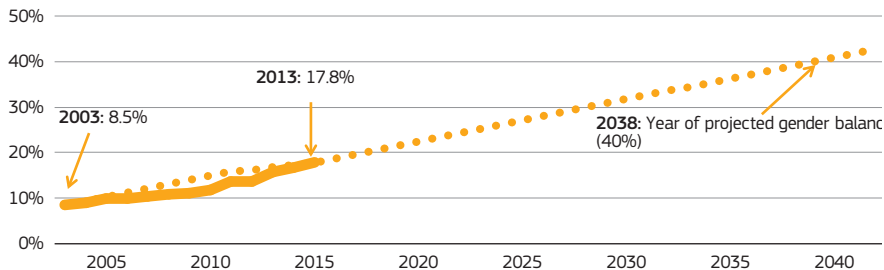
Figure 23 – Representation of women on boards of large publicly-listed companies in the EU, October 2013



Source: European Commission, Database on women and men in decision-making

Most of this improvement took place since 2010, when the European Commission first announced that it would consider targeted initiatives to improve gender diversity in companies, stimulating debate and action across Europe.⁴⁷ The rate of change for the EU as a whole has quadrupled from 0.5 percentage points per year to 2.0 pp/year (Figure 24). However, even this accelerated rate of progress is not enough to meet the target of 40% by 2020 set by the Commission in the proposed Directive⁴⁸ (see below).

Figure 24 – Representation of women and men on the top-level boards of large listed companies in the EU, October 2003 - October 2013



Source: European Commission, Database on women and men in decision-making

⁴⁷ Strategy for equality between men and women 2010-2015, European Commission, 2010: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0491:FIN:en:PDF>

⁴⁸ Proposal for a directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM(2012) 614 final: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF>

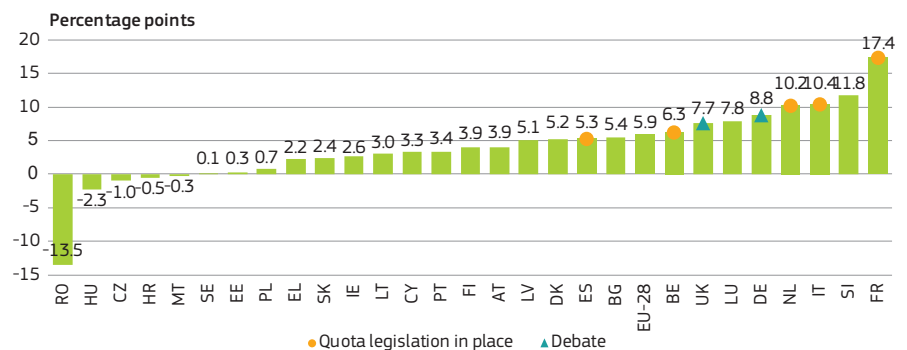
France leads the way in terms of recent progress. Since the introduction of a law in January 2011⁴⁹, under which companies have to ensure that members of each sex occupy at least 20% of non-executive director positions by 2014 and 40% by 2017, the proportion of women on the boards of companies on the CAC-40 index has more than doubled from 12.3% in October 2010 to 29.7% in October 2013. Moreover, the French government is continuing to focus attention on the issue. In October 2013 it published the first annual ranking of France's 120 most actively traded companies based on a composite measure of commitment to improving the presence of women in senior management and throughout the organisation⁵⁰.

In **Denmark**, an amendment to the Companies Act and the Financial Statements Act passed at the end of 2012 requires large companies to set targets and implement a policy for gender diversity from 1 April 2013 and to report on those targets from 2014⁵¹.

In **Poland**, on 7 March 2013, the Minister of State Treasury issued an executive ordinance which obliges state-owned companies to “choose adequately prepared members of supervisory boards, taking into account the balanced participation of women and men”⁵². The Code of good practices annexed to this ordinance put in place a target of 30% by 2015 and a priority rule for equally-qualified women. No sanctions were envisaged.

Moreover, recent progress has not been evenly spread across the EU and most of the significant improvements took place in countries that have taken or considered legislative action. Eight Member States have seen the proportion of women on boards increase to more than the EU average and have driven the overall change. Six of these have either introduced a legislative quota or target or had a government level debate about the possibility of doing so (Figure 25).

Figure 25 - Change in the proportion of women on boards, by country, October 2010 - October 2013



Source: European Commission, Database on women and men in decision-making

The Commission's proposal for a Directive at EU level

Notwithstanding efforts made by some governments and companies to improve the situation, the rate of change in most Member States has been slow, which shows that there is insufficient commitment and that self-regulation does not bring about substantial and rapid change. Hence, the European Commission — with the strong support of the European Parliament and a number of Member States — has decided to take legislative action. On 14 November 2012, it put forward a proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges⁵³. In 2013, the Council and the Parliament were involved in negotiating the Commission's proposal. On 20 November 2013 the European Parliament adopted its resolution at first reading on the proposed Directive⁵⁴ by a vast majority of its members, confirming a broad consensus on the objective of increasing women's representation on

⁴⁹ Loi n° 2011-103 du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle

⁵⁰ <http://femmes.gouv.fr/parite-dans-les-entreprises-un-palmares-pour-aller-vers-plus-de-transparence-et-cree-de-lemulation/>

⁵¹ See <http://xbma.org/forum/danish-update-new-rules-on-gender-quotas-in-boards-of-directors/>

⁵² See "Principles of corporate governance in companies in the Treasury" http://bjp.msp.gov.pl/portal/bjp/101/8163/Zarzadzenie_Nr_3_Ministra_Skarbu_Panstwa_z_dnia_28_stycznia_2013_r.html

⁵³ COM (2012) 614 final.

⁵⁴ Document no. A7-0340/2013.

corporate boards and largely endorsing the Commission's approach to redressing the current imbalance. Progress has also been made in negotiations in the Council, as outlined in the Irish Presidency's progress report discussed at the EPSCO Council on 20 June 2013⁵⁵ and the Lithuanian presidency's progress report discussed at the EPSCO Council on 9 December 2013.⁵⁶ The European Economic and Social Committee and the Committee of the Regions have also adopted opinions, on 13 February⁵⁷ and 30 May 2013⁵⁸ respectively, expressing clear support for the Commission proposal. The latter body confirmed that the proposal is in line with the principle of subsidiarity.

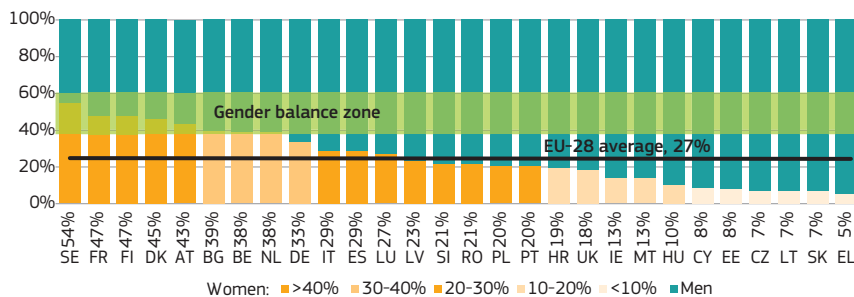
In **Germany** the coalition agreement between the governing parties provides for a quota law. The responsible ministers have announced their intention to prepare a draft law which would apply a quota of 30% to the supervisory board of 110 large listed companies. Sanctions will apply in case the quota is not achieved (the board seat will remain empty). There will also be a flexiquota for other listed companies. The law is supposed to apply as of 2015.

3.2. Women and men in political decision-making

National governments: women continue to be under-represented

On average, **women still account for 27% of senior government ministers**⁵⁹ across the EU. In five Member States (Sweden, France, Finland, Denmark and Austria), governments include at least 40% of each gender, and in four others, the percentage is close to 40% (Bulgaria, Belgium, the Netherlands and Germany). However, in six EU governments less than one in ten ministers are women (Greece, Slovakia, Lithuania, Czech Republic, Estonia and Cyprus). The average percentage of female ministers in the EU-28 countries has risen from 21% to 27% over the last decade. At this rate of change it will take more than 20 years to achieve balanced governments (at least 40% of each gender, Figure 26).

Figure 26 - Representation of women and men in national governments (senior ministers) by Member State, 2013 and 2004-13



Source: European Commission, Database on women and men in decision-making. Note: Trend figures show data for EU-27 from fourth quarter 2004 to 2007 and EU-28 thereafter.

⁵⁵ Council document no. 10422/1/13, of 13 June 2013.

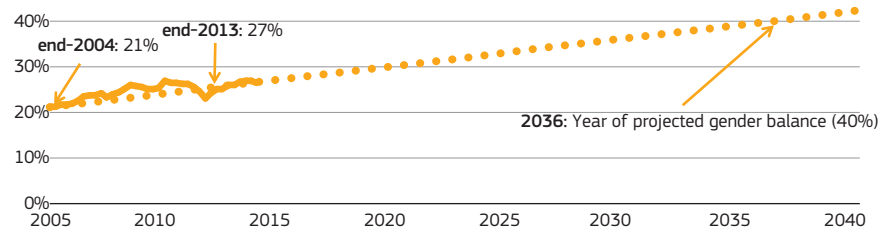
⁵⁶ Council document no. 16437/13, of 22 November 2013.

⁵⁷ Official Journal of the European Union C 133/68, 9 May 2013.

⁵⁸ ECOS-V/039.

⁵⁹ Senior ministers are those with a seat on the Cabinet or Council of Ministers. 2004 is the first point from which data are available for 27 Member States (except Croatia).

Figure 26 - Representation of women and men in national governments (senior ministers) by Member State, 2013 and 2004-13 (continued)



Source: European Commission, Database on women and men in decision-making. Note: Trend figures show data for EU-27 from fourth quarter 2004 to 2007 and EU-28 thereafter.

Many national parliaments fail to reflect the composition of their electorates

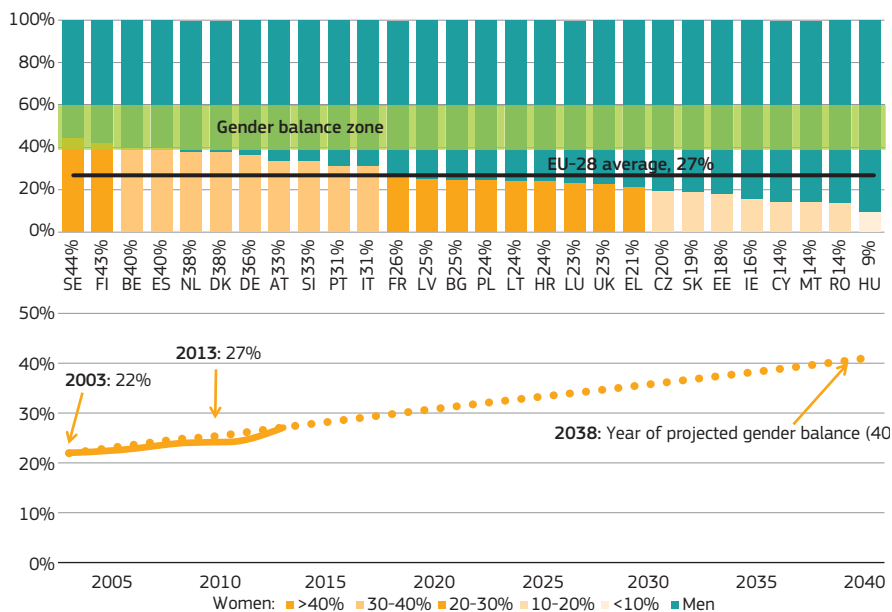
Ensuring that the composition of parliaments reflects the electorates they serve is a basic tenet of representative democracy. However the latest figures from the fourth quarter of 2013 show that women are outnumbered by men by an average of three to one in national parliaments across the EU. **Six Member States have reached or are close to reaching the threshold of 40% of each gender** (Sweden, Finland, Belgium, Spain, the Netherlands and Denmark), while in four others (Cyprus, Malta, Romania and Hungary) women account for one in seven or fewer members of parliament (Figure 27).

The average rate of progress towards equality in parliaments is similar to that in governments, with gender-balanced legislatures also predicted to be more than 20 years away (Figure 27). Legislative (or voluntary) quotas have in general significantly increased the rate of progress compared to no action.⁶⁰ Where legislative quotas have been adopted, e.g. in Belgium, Greece, Spain, France, Poland, Portugal and Slovenia⁶¹, the average improvement in the representation of women has been almost double the EU-28 average (i.e. +10.5 percentage points compared to +5.3 percentage points during the last decade).

⁶⁰ *Women and Men in leadership positions in the European Union, 2013*

⁶¹ Although Ireland has a legislative quota in place, since it was introduced in 2012 there have not been any elections; hence it is not included in the list of those showing progress.

Figure 27 - Representation of women and men in national parliaments (single/lower house), by Member States, 2013, and 2003*-2013



Source: European Commission, Database on women and men in decision-making. Note : Trend figures show data for EU-27 from fourth quarter 2004 to 2007 and EU-28 (i.e.including Croatia) thereafter. * 2003 figure is missing data for CZ, HR, LT, MT and PL.

Over one-third of the Members of European Parliament are female

The representation of women in the European Parliament (2010-2014 legislature) is significantly higher than in national parliaments. In 2013, 36% of MEPs were women and 64% were men. While the share of women varies between Member States, the majority have over 30% women and more than a third have over 40% (Finland, Croatia, Slovenia, Estonia, Malta, the Netherlands, Denmark, France, Sweden, Ireland, Portugal and Spain). At the opposite end of the spectrum, the highest levels of gender imbalance are found in Luxembourg and the Czech Republic, where fewer than one in five MEPs are women.

3.3. Women's under-representation in senior positions in media organisations

The Council of the European Union has been actively monitoring progress in the areas of concern identified by the UN Beijing Platform for Action⁶² since 1999. In 2013, the Irish Presidency invited

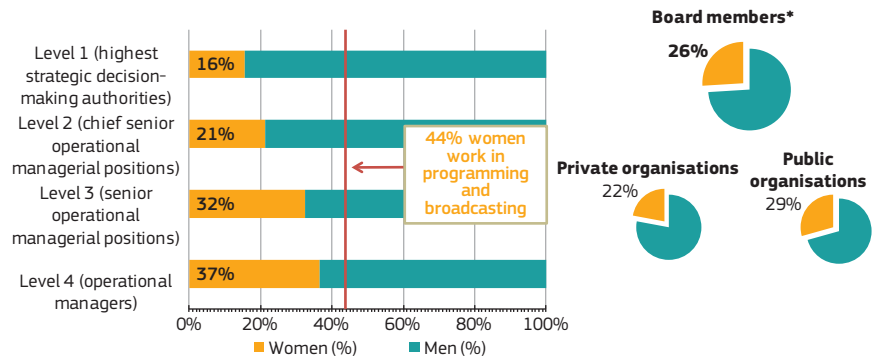
⁶² <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>

Some countries have introduced regulatory measures to promote gender equality in the media. In **Ireland**, for example, the Broadcasting Act (2009) states that for a board comprising 12 members “not less than five members of the board of a corporation shall be men and not less than five of them shall be women”⁶⁵.

the European Institute for Gender Equality (EIGE) to carry out research in the area of women and the media, resulting in a study of the gender balance in decision-making positions in EU media organisations⁶³. Indicators developed in the study have subsequently been integrated into conclusions of the Council on how to advance women in media, which call on Member States and the Commission to take action and monitor progress⁶⁴.

Women represent 65% of graduates from degree-level media courses and 44% of media workers. However, the EIGE study indicates that the representation of women decreases progressively as the level of responsibility rises: amongst managers in major media organisations, women account for 37% at the lowest level but only 21% at the most senior operational level and 16% amongst strategic decision-makers such as CEOs and presidents (Figure 28). **Women account for around a quarter (26%) of board members in the media companies** covered by the study but there is a notable difference between publicly-owned organisations, where women account for 30% of board members, and private companies where the figure is 22% (Figure 28).

Figure 28 – Representation of women and men in decision making positions in media organisations in the EU-28, 2012



Source: EIGE. Board member figures exclude CEOs-level 1. Data collected between July and September 2012 cover 99 media organisations in the EU-28, for each country, including the public-service broadcaster(s) and up to three private organisations.

⁶³ Advancing gender equality in decision-making in media organisations: Report, EIGE, 2013. <http://eige.europa.eu/content/document/advancing-gender-equality-in-decision-making-in-media-organisations-report>

⁶⁴ Council of the European Union conclusions - “Advancing Women’s Roles as Decision-makers in the Media”, Brussels, 20-21 June 2013 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/137546.pdf

⁶⁵ Broadcasting Authority of Ireland, Broadcasting Act, 2009; <http://www.bai.ie/wordpress/wp-content/uploads/Broadcasting-Act-2009.pdf>

3.4. Gender equality in sports organisations

Sports are important in the lives of both men and women.⁶⁶ However, the percentage of women in decision-making positions in sports organizations is far lower than the percentage of female active members. At the beginning of the 21st century, 38% of European sports federations did not have a single woman on their boards, 88% had fewer than 25% and only two had a female president. In the same vein, only three European National Olympic Committees (NOCs) had a female president, whereas the percentage of women on NOC Executive Committees was 14%. Today, the European Olympic Committee has no women on its executive board.⁶⁷ Women are also underrepresented in coaching both at the amateur and professional levels.

In light of these figures, the European Commission invited a group of experts to develop a **proposal for strategic and specific actions on gender equality in sports for the 2014-20 period**. The experts identified a number of priority areas: gender equality in decision-making, coaching, and media coverage and putting an end to gender-based violence in sports. These priorities were well received at a conference in December 2013 in Vilnius, which helped put the topic back on the political agenda of Member States and sports organisations. The initiative will be followed up at Council level under the Greek EU presidency (first semester of 2014) and through possible actions within the sports chapter of the EU's Erasmus+ funding programme.

4. Dignity, integrity and ending gender-based violence

Gender-based violence can take many forms: violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour' crimes. In 2013, the EU has made a breakthrough in how it collects evidence on gender-based violence. It has also taken a strong stance against female genital mutilation and it has stepped up its efforts to prevent violence and protect victims.

⁶⁶ According to the 2010 Eurobarometer on sport and physical activities, men in the EU play more sports than women. 43% of male respondents say they play sport at least once a week, as opposed to 37% of women.

⁶⁷ Pfister, G. (2009). Mapping Gender equality in European sport. Olympia-Equal opportunities via and within sport project; Loughborough University. (2010). Gender equality and leadership in Olympic bodies: Women, leadership and the Olympic movement 2010. Loughborough: International Olympic Committee and Centre for Olympic Studies & Research, Loughborough University.

4.1. First European Survey on Violence Against Women: building an Evidence Base

The first EU-wide survey on women's experiences of various forms of violence, carried out by the European Union Agency for Fundamental Rights (FRA) ⁶⁸ and based on interviews with 42,000 women, has shown that many women across the EU continue to suffer from gender-based violence, including physical and sexual violence, as well as domestic violence. **One in three women (33%) has experienced physical and/or sexual violence since the age of 15. That corresponds to 62 million women. One in 20 women (5%) has been raped since the age of 15. Domestic violence is widespread:** 22% of women have experienced physical and/or sexual violence by a partner. Among these victims, 67% did not report the most serious incident of partner violence to the police or any other organisation.

The survey also documented the extent, nature and consequences of stalking and sexual harassment, showing in particular that **cyber stalking and cyber (sexual) harassment disproportionately affect young women**. The survey also showed that **55% of women in the EU have been confronted with some form of sexual harassment since the age of 15**. ⁶⁹ Sexual harassment is still widespread: 21% of women experienced it in the 12 months prior to the survey. Overall, **32% of female sexual harassment victims said that the sexual harassment had occurred at the workplace**, which stresses the importance of effectively implementing existing EU legislation ⁷⁰ and policies in the area of employment. ⁷¹

In addition, the **European Institute for Gender equality** organised several events and meetings in 2013, paving the way to improving the collection of indicators and comparable data on gender-based violence.

4.2. Eliminating female genital mutilation

On the International Day against Violence against Women, the Commission and the European External Actions Service adopted their Communication **"Towards the Elimination of Female**

⁶⁸ The survey is based on face-to-face interviews with a random sample of 42000 women in the 28 EU's Member States.

⁶⁹ The short set includes the following six items: "Unwelcome touching, hugging or kissing", "Sexually suggestive comments or jokes that made you feel offended", "Somebody indecently exposing themselves to you", "Sexually explicit emails or SMS messages that offended you", "Sending or showing sexually explicit pictures, photos or gifts that made you feel offended", "Someone making you watch or look at pornographic material against your wishes". In addition to these, the survey asked whether women had experienced any of the following acts in a way that was unwanted and offensive: "Inappropriate invitations to go out on dates", "Intrusive questions about your private life that made you feel offended", "Intrusive comments about your physical appearance that made you feel offended", "Inappropriate staring or leering that made you feel intimidated", "Inappropriate advances that offended you on social networking websites such as Facebook, or in internet chat rooms". Taken altogether, the questions in the FRA survey covered eleven forms of sexual harassment.

⁷⁰ For example, the Gender Equality Directive (recast) – 2006/54/EC.

⁷¹ For example, the Framework Agreement on Harassment and Violence at Work (26 April 2007)

Genital Mutilation". This Communication builds on the results of a high-level round-table on female genital mutilation (FGM) hosted by Vice-President Reding in March 2013, a public consultation and an Opinion from the Commission's Advisory Committee on equal opportunities for women and men.⁷² It also takes into account a report of the **European Institute for Gender Equality** (EIGE) which maps the situation in the EU.⁷³ The report finds that there are victims, or potential victims, in at least 13 EU countries: Austria, Belgium, Denmark, Germany, Spain, Finland, France, Ireland, Italy, the Netherlands, Portugal, Sweden and the UK.

This Communication defines a list of measures that the Commission will take to push forward the elimination of this unacceptable form of violence against women and girls. It has a **strong focus on prevention**, and includes **both internal and external actions**. It :

- reiterates the need for **improving understanding of the issue** in the EU;
- emphasises that FGM is a deep-rooted social norm and that **sustainable social change is needed**;
- highlights the need for **multidisciplinary cooperation** to protect children at risk and support victims, and underlines the importance of civil society organisations in this regard;
- asks the European Institute for Gender Equality to develop a common methodology and indicators to measure the prevalence of FGM, to estimate the number of women and girls at risk of being mutilated and the number of women affected by FGM in the EU;
- calls for **protection of women and girls**, recalling that FGM needs to be recognized as grounds for asylum and that asylum procedures must be gender-sensitive;
- recalls that FGM is **prosecutable in all EU Member States**, even though prosecutions are rare; and
- acknowledges the significant **role of civil society organisations**.

4.3. Violence against women: prevention and protection

The European Protection Order⁷⁴, which applies to protection measures adopted in criminal matters, ensures that victims of violence can still rely on restraint or protection orders issued against the perpetrator in their home country if they travel or move abroad. These EU instruments do not harmonise protection measures in the Member States. They are based on the principle of mutual recognition: the measure of one Member State will be transmitted and recognised in another Member State. For example, women who have suffered domestic violence will be able to rely on a restraining order obtained in their home country wherever they are in the EU.

⁷² http://ec.europa.eu/justice/gender-equality/files/opinions_advisory_committee/131024_fgm_final_opinion_en.pdf

⁷³ http://eige.europa.eu/sites/default/files/EIGE-Report-FGM-in-the-EU-and-Croatia_0.pdf

⁷⁴ Regulation 606/13/EU on the Mutual Recognition of Civil Law Protection Measures adopted in June 2013 supplements Directive 2011/99/EU of 13 December 2011 on the European protection order

Spain has developed various ICT-based resources and services to improve the protection, safety, care and recovery of female victims of gender-based violence, as well as of their children. For example, to verify the compliance with a precautionary restraining order imposed by a court, a wristband worn by the perpetrator broadcasts a positioning signal and alerts the victim if the distance is not respected. Victims at high risk may also receive a mobile phone allowing permanent contact with a care centre and if needed, an immediate response to emergency situations, 24 hours a day, 365 days a year and regardless of the place in which they are situated.

Ireland has developed domestic violence perpetrator programmes that aim to reduce men's violent and controlling behaviour. Men complete the programme together with their current and/or future female partners and children. These programmes are built on a partnership approach between women's service providers (i.e. women's refuges and rape crisis centres) and those working with men, and offer a community alternative to prison.

Moreover, in all its activities related to the elimination of violence against women, the Commission called on the Member States to ratify individually the Council of Europe Convention on preventing and combating violence against women and domestic violence. In 2013, the process of national ratification had been concluded by three Member States: Austria, Portugal and Italy.

In 2013 the European Commission used **funding** to strengthen the fight against gender-based violence: 14 national campaigns against gender-based violence were co-funded through the PROGRESS programme (with EUR 3.7 million) and projects run by civil society organisations, regional or local authorities, or other public services were supported through the DAPHNE programme (with EUR 11.4 million). They raise awareness of violence against women, fight harmful practices (FGM, forced marriage and honour crimes), and support victims of violence.

Some groups of women are more vulnerable to some specific forms of gender-based violence, in particular because they are less likely to report it. The European Parliament resolution on "Gender Aspects of the European Framework of National Roma Inclusion Strategies"⁷⁵ and the **Council Recommendation on effective Roma integration** measures in the Member States⁷⁶ emphasises the need to "fight violence, including domestic violence, against women and girls, trafficking in human beings, underage and forced marriages (...)." Moreover, in its study on "Discrimination Generated by the Intersection of Gender and Disability"⁷⁷ and in a resolution⁷⁸, the **European Parliament underlines that women with disabilities are at a high risk of abuse**. The Commission has therefore given priority to funding projects that fight violence against women with disabilities, both through the Progress and Daphne programmes.

Trafficking in human beings occurs mainly for sexual exploitation purposes and affects mostly women. The Directive on preventing and combating trafficking in human beings and protecting its victims⁷⁹ acknowledges that trafficking in human beings is a gendered phenomenon and creates legal obligations for gender-specific measures for prevention and protection, as well as assistance and support, to victims. In April 2013 the deadline for transposition of the anti-trafficking Directive expired. As thirteen Member States had not communicated by that deadline any measures transposing the directive, infringement procedures have been launched against them⁸⁰.

⁷⁵ 2013/2066(INI))

⁷⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf

⁷⁷ Available at <http://bookshop.europa.eu/en/discrimination-generated-by-the-intersection-of-gender-and-disability-pbBA0313048/>

⁷⁸ 2013/2065(INI)

⁷⁹ 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, OJ L15.04.2011, L 101.

⁸⁰ Letters of formal notice (under Article 258 TFEU) were sent on 29 May 2013 to these thirteen Member States. In November 2013, Reasoned Opinions on non-communication basis were sent to four Member States.

5. Gender equality in external actions

The EU promotes gender equality and women's empowerment in candidate countries for EU Accession⁸¹, European Neighbourhood Policy partner countries⁸², and third countries. This chapter provides an overview of the most recent activities carried out at the international level.

In March 2013, the EU presented a common position to the **57th session of the Commission on the Status of Women**, the UN principal global policy-making body on gender equality and advancement of women, whose priority theme was the elimination and prevention of all forms of violence against women and girls. More than 600 million women live in countries where domestic violence is not considered a crime, and even where it is illegal, perpetrators often go unpunished.⁸³ **Together with the other UN partners, the EU successfully contributed to the adoption of Agreed Conclusions** in which all forms of violence against women and girls are condemned, without any exceptions based on culture, tradition, or religion.

While continuing to strive towards achieving the **Millennium Development Goals, the EU continued refining its position on the post-2015 agenda**. In its Communication entitled 'A Decent Life for All - Ending Poverty and Giving the World a Sustainable Future', published in February 2013⁸⁴, the Commission highlighted the role that women must play in the new post-2015 overarching framework and the need to remove all forms of barriers to equal participation. It stated that the framework should put "particular emphasis on moving towards a rights-based approach to development, on reducing inequalities, as well as on the promotion and protection of women's and girls' rights and gender equality". These principles were reaffirmed and reinforced in the Council Conclusions on "The overarching post-2015 agenda", adopted in June 2013⁸⁵ and setting out the EU's common position for negotiations on the post-2015 agenda. The EU identifies three concrete themes which would contribute to the common aim and which need to be emphasised in a post-2015 framework: 1. Women's economic and social empowerment which are central to gender equality and economic development. 2. Elimination and prevention of all forms of violence against women and girls, combining legislative and non-legislative measures. 3. Promotion of women's equal participation and representation in decision making processes at all levels, in all spheres, and elimination all forms of discrimination hindering them.

⁸¹ Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Iceland, Kosovo, Montenegro, Serbia and Turkey

⁸² ENP countries include Algeria, Morocco, Egypt, Israel, Jordan, Lebanon, Libya, the Palestinian Authority, Syria, Tunisia in the South, and Armenia, Azerbaijan and Belarus, Georgia, Moldova, Ukraine in the East

⁸³ <http://unfpa.org/public/home/news/events/CSW57>

⁸⁴ http://ec.europa.eu/europeaid/documents/2013-02-22_communication_a_decent_life_for_all_post_2015_en.pdf

⁸⁵ http://www.consilium.europa.eu/uedocs/cms_data/pressdata/EN/foraff/137606.pdf

While already endorsed by Environment and Development Ministers, the conclusions were approved by the General Affairs Council on 25 June 2013

In the context of the EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-15, a gender perspective is being integrated into every step of a water and sanitation project in **Chad**. In practice, this means that women are recruited among the project staff and are equally involved in the decision-making process about where drinkable water sources should be located and the price of water supply. Furthermore, a "gender team" was created in the ministry in charge of water and sanitation, and gender training is being provided to several stakeholders involved in the project's implementation.

The **EU Delegation in Guatemala** organises an annual Human Rights Defenders Forum that includes special sessions for women human rights defenders. A series of training sessions on gender concepts and the integration of gender into the project cycle have been provided to 24 civil society organisations. In **Madagascar**, the EU Delegation holds monthly meetings with NGOs funded through the European Instrument for Democracy and Human Rights (EIDHR). These meetings facilitate the exchange of information and discussion about a gender-related topic.

The **EU Plan of Action on Gender Equality and Women's Empowerment in Development 2010-15**⁸⁶ outlines the Commission's, the European External Action Service's and Member States' commitments to supporting developing countries' efforts to improve the situation of women regarding equal rights and empowerment. The third implementation report, published in 2013, concludes that **gender equality is increasingly mainstreamed in various fields** (e.g. infrastructure). Furthermore, the number of sectors that use sex-disaggregated indicators has increased this year, from 5 to 18, including sectors providing water and sanitation, agriculture and forestry, regional development, environment, and public finance. The report also explains that almost all EU Delegations maintain regular dialogue with civil society, in order to get their input for future programmes.

In fragile states, the EU continues to provide support for capacity building on the UN Security Council Resolutions 1325 and related resolutions, focusing on increasing the participation of women in all United Nations peace and security efforts and addressing sexual violence in conflict.⁸⁷ In this context, a cross-regional "**Women Connect across Conflicts**" programme⁸⁸, concluded in June 2013, aimed to enhance the capacity of women's human rights advocates to effectively and meaningfully engage, influence, and mobilise to dialogue on security and peace issues nationally and regionally, in South Asia (Afghanistan and Pakistan), the Southern Caucasus (Armenia, Azerbaijan and Georgia) and Central Asia / Fergana Valley (Kyrgyzstan, Tajikistan and Uzbekistan).

In its document **Gender in Humanitarian Aid: Different Needs, Adapted Assistance**⁸⁹, published in 2013, the European Commission outlined its approach to gender equality in humanitarian aid. It aims to improve the quality and effectiveness of humanitarian assistance by promoting actions that effectively respond to the specific needs of women, girls, boys and men. In order to support policy implementation and coherence, a gender-age marker was designed to foster and track gender- and age- sensitive programming and will be applied to all funded actions in 2014.

The 3rd Ministerial Conference on **Strengthening the Role of Women in Society in the Euro-Mediterranean region** was successfully concluded on 12 September 2013 with the adoption of a Ministerial Declaration. In addition to re-affirming commitments and obligations set at the Istanbul (2006) and Marrakesh (2009) conferences, the ministers have committed themselves to developing measures to achieve specific objectives in the following main areas: equal participation of women and men in political, economic and social areas of life; fighting against all forms of violence and discrimination against women and girls; changing attitudes towards

⁸⁶ http://ec.europa.eu/development/icenter/repository/SEC_2010_265_gender_action_plan_EN.pdf

⁸⁷ UN SCR 1325 on Women, Peace and Security and Security Council Resolution 1820 reinforces Resolution 1325 and highlights that sexual violence in conflict constitutes a war crime and demands parties to armed conflict to immediately take appropriate measures to protect civilians from sexual violence, including training troops and enforcing disciplinary measures.

⁸⁸ Women Connect across Conflicts": Building Accountability for Implementation of UNSCR 1325, 1820, 1888, 1889

⁸⁹ http://ec.europa.eu/echo/files/policies/sectoral/Gender_SWD_2013.pdf

women and challenging stereotypes. The ministers also agreed on a dedicated follow-up mechanism, which will involve regular stock-taking on progress made in implementing the measures.

The 2013 **European Neighbourhood Policy Package**⁹⁰, adopted in March, focused on progress made in implementing the partner countries' reform agenda, as well as on the EU's commitment to provide stronger political, financial, and economic support. The Communication states that there is much room for improvement in terms of gender equality in the East. Furthermore, cultural and social discrimination against women remains a problem in the South. In order to enhance sustainable democracy, it is crucial that the transition process and constitutional reform do not hinder progress on gender equality in the law and in society.

In its annual **Enlargement Package**, published in October 2013⁹¹, the European Commission indicates that **more needs to be done to improve the position of women and ensure gender equality in the pre-accession countries**. In terms of significant developments in the enlargement process, Croatia became a Member State on 1 July 2013, having fulfilled the accession requirements. In the context of accession negotiations with Montenegro, so-called screening meetings (explanation of the EU *acquis* to the candidate country) on chapter 19 "Social policy and employment", which covers inter alia gender equality, were carried out in spring 2013. In the context of accession negotiations on chapter 23 on "Judiciary and Fundamental rights", Montenegro adopted an action plan that includes measures in the area of gender equality.

6. Horizontal issues

Institutional mechanisms within Member States

Achieving gender equality requires strong governance and institutional mechanisms, including effective government structures, independent bodies for promoting equal treatment of women and men in accordance with EU law⁹², adequate resources, gender mainstreaming tools and the dissemination of sex-disaggregated data and information.

In 2013, the European Institute for Gender Equality published an overview of the institutional mechanisms for promoting gender equality in the EU and their evolution since 2006. **This review highlights some progress but also some challenges**. The resources allocated to gender equality (in terms of number of employees in national administrations) have decreased in 11 Member States, increased in another 11s and remained the same in three. Trends are therefore uneven. They are also ambivalent as regards gender mainstreaming: 15 Member States have made progress in developing gender mainstreaming, but the use of tools such as gender impact

⁹⁰ http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_comm_conjoint_en.pdf

⁹¹ http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/strategy_paper_2012_en.pdf

⁹² Directive 2002/73/EC

assessment and gender budgeting is still not very common. When it comes to independent bodies for promoting of equal treatment for women and men, the report documents a tendency to merge the gender equality body with bodies dealing with discrimination on other grounds (age, disability, religion or belief, sexual orientation, ethnic origin). In this context, the Council (EPSCO) adopted Conclusions on the “Effectiveness of institutional mechanisms for the advancement of women and gender equality” and **called to maintain strong institutional mechanisms for promoting gender equality**.

The *European Research Area* engages equally the Member States and research institutions in promoting gender equality through institutional changes. The aim is to **remove barriers that hinder women’s careers and limit the integration of the gender dimension in research content**. The Commission has established strong collaboration with funding agencies and research organisations, including universities, making significant steps ahead on their gender equality agenda in particular through Gender Equality Plans. However, the first ERA Progress report published in September 2013 revealed great disparities among Member States and clearly recommended Member States to implement comprehensive strategies of institutional change. An expert report on “Structural change in research institutions: enhancing excellence, gender equality and efficiency in research and innovation” identifies the remaining problems and the structural changes that are necessary to advance gender equality in research and innovation.⁹³

EU financial instruments supporting equality between women and men

The EU’s new Multi-Annual Financial Framework (MFF) covering 2014-20, which was adopted in 2013, reflects the EU’s commitment to promoting equality between women and men. A part of the new programme, **Rights, Equality and Citizenship Programme**⁹⁴, on which a political agreement was reached at the end of 2013, will be dedicated to equality between women and men. This Programme is the successor of three 2007-2013 programmes: the PROGRESS Programme (Gender Equality and Anti-discrimination strands), the Daphne Programme and the Fundamental Rights and Citizenship Programme.

The objectives of the REC Programme include the following:

- to promote equality between women and men and to advance gender mainstreaming;
- to prevent and combat all forms of violence against children, young people and women, as well as violence against other groups at risk, in particular groups at risk of violence in close relationships, and to protect victims of such violence.

The programme aims to achieve these objectives through financing the following types of actions: analytical activities; training activities; mutual learning, cooperation, awareness-raising

⁹³ http://ec.europa.eu/research/science-society/document_library/pdf_06/structural-changes-final-report_en.pdf

⁹⁴ <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:354:SOM:EN:HTML>

and dissemination activities; and support to key stakeholders. Throughout the implementation of the REC Programme, appropriate and fair distribution of funds between different areas shall be ensured. This distribution will take into account the level of funding allocated to different policy areas under the 2007-2013 programmes (ex-PROGRESS, ex-DAPHNE III, ex-Fundamental Rights and Citizenship Programme).

The **European Structural and Investment Funds (ESIF)** will **support Member States in promoting gender equality**. They will do this by providing funding for 'equality between men and women in all areas, including in access to employment, career progression, reconciliation of work and private life and promotion of equal pay for equal work', and through projects that are not under the specific gender investment priority but contribute to gender equality in a more transversal way. Moreover, the gender perspective will be included throughout the preparation and implementation phases of all programmes, including the monitoring, reporting and evaluation phase. In addition, under the new programming period, a 'dual approach' that includes gender mainstreaming and the programming of specific actions will be mandatory in all European Social Fund (ESF) ⁹⁵ programmes.

In Horizon 2020 ⁹⁶ - the new European Framework Programmes (FP) for **Research and Innovation** adopted in 2013 - gender will be addressed as a cross-cutting issue in order to correct deficiencies and promote gender equality along three objectives:

- Improving female scientists' careers,
- Ensuring gender balance in decision making and
- Integrating gender analysis in research content and programme ⁽⁹⁷⁾.

Gender equality should also be taken into account in the management of all EU financial instruments. In a Joint Declaration, the European Parliament, the Council and the Commission agreed that the annual budgetary procedures applied for the 2014-20 MFF will integrate, where appropriate, gender-responsive elements, and take into account the ways in which the EU's overall financial framework contributes to more gender equality (and ensures gender mainstreaming). ⁹⁸

Raising awareness of remaining gender gaps

The European Institute for Gender Equality (EIGE) released a gender equality index on 13 June 2013. ⁹⁹ This new tool is the first attempt to catch existing inequalities between women and

⁹⁵ <http://ec.europa.eu/social/main.jsp?catId=325&langId=en>

⁹⁶ Regulation (EU) n°1291/2013 of the EP and the Council of 11-12-2013 – JL 347 of 20-12-2013

⁹⁷ In this respect, an expert report was published in 2013 on "Gendered innovations: how gender analysis contributes to research": http://ec.europa.eu/research/science-society/document_library/pdf_06/gendered_innovations.pdf

⁹⁸ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0389&language=EN>.

⁹⁹ <http://eige.europa.eu/content/activities/gender-equality-index>

men at EU level in one single overview. It presents the current gaps between women and men in one single index composed of six core areas (work, money, knowledge, time, power, health) and two satellite areas (intersecting inequalities and violence). In addition to a country-by-country comparison this index will make it possible to assess the evolution of gender equality over time. EIGE plans to update the index every other year and is already working on its improvement in preparation for the next edition in 2015.

Statistical annex

Table 1: Employment rate of population aged 20-64 (as %) – men and women – in 2002, 2008 and 2013Q3, and the corresponding gender gap (in percentage points)

	Women			Men			Gender Gap		
	2002	2008	2013Q3	2002	2008	2013Q3	2002	2008	2013Q3
EU28	58.0	62.7	62.8	75.4	77.9	74.8	17.4	15.2	12.0
BE	55.8	61.3	63.1	74.0	74.7	72.2	18.2	13.4	9.1
BG	52.3	65.4	62.2	59.4	76.1	68.3	7.1	10.7	6.1
CZ	62.3	62.5	63.9	80.9	82.0	81.5	18.6	19.5	17.6
DK	73.1	75.5	73.4	82.3	83.9	78.7	9.2	8.4	5.3
DE	61.9	67.8	72.7	75.6	80.1	82.2	13.7	12.3	9.5
EE	64.5	72.8	69.6	74.5	81.7	78.0	10.0	8.9	8.4
IE	59.6	64.1	60.5	81.8	80.4	71.5	22.2	16.3	11.0
EL	46.6	52.5	43.5	78.7	80.4	63.4	32.1	27.9	19.9
ES	47.6	58.3	53.3	77.7	78.1	63.8	30.1	19.8	10.5
FR	61.9	65.5	65.9	75.6	75.5	74.1	13.7	10.0	8.2
HR	50.9	55.2	50.8	66.3	70.7	59.5	15.4	15.5	8.7
IT	44.9	50.6	49.5	74.0	75.4	70.1	29.1	24.8	20.6
CY	64.7	68.2	61.7	86.2	85.2	72.7	21.5	17.0	11.0
LV	63.0	72.1	68.3	71.4	79.7	72.9	8.4	7.6	4.6
LT	63.9	68.8	68.8	70.8	75.5	72.5	6.9	6.7	3.7
LU	55.4	60.1	63.7	80.8	77.2	79.1	25.4	17.1	15.4
HU	54.3	55.1	57.2	69.0	69.0	71.0	14.7	13.9	13.8
MT	34.4	39.4	50.4	81.0	78.2	79.5	46.6	38.8	29.1
NL	66.8	72.2	71.5	84.6	85.5	81.3	17.8	13.3	9.8
AT	64.1	68.6	71.3	79.6	81.7	81.3	15.5	13.1	10.0
PL	51.4	57.3	58.2	63.6	73.0	73.0	12.2	15.7	14.8
PT	65.7	67.0	62.7	81.8	79.4	69.4	16.1	12.4	6.7
RO	56.8	57.3	57.3	70.1	71.6	73.1	13.3	14.3	15.8
SI	63.8	68.5	63.6	74.1	77.4	72.5	10.3	8.9	8.9
SK	57.2	60.3	58.0	70.2	77.4	72.3	13.0	17.1	14.3
FI	70.4	73.1	72.2	74.8	78.4	76.0	4.4	5.3	3.8
SE	76.6	77.2	77.9	80.3	83.5	83.4	3.7	6.3	5.5
UK	67.5	68.8	69.3	81.6	81.8	81.0	14.1	13.0	11.7

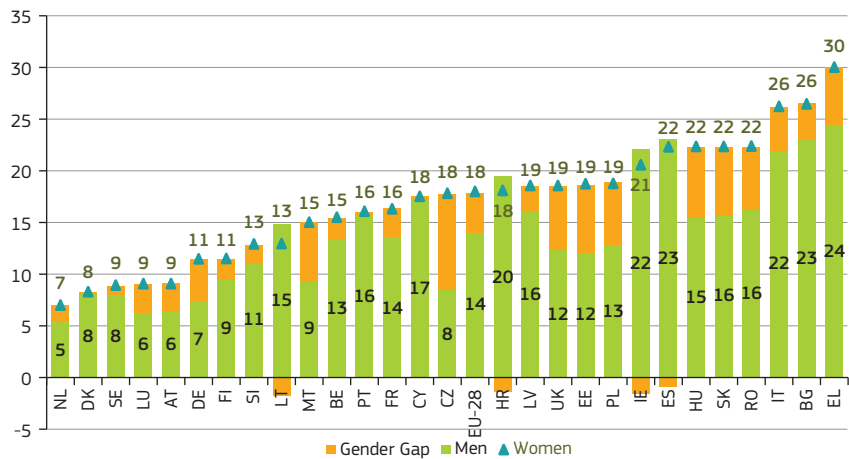
Source: LFS, Eurostat

Table 2: employment rate in full-time equivalent of population aged 20-64 (as %) – men and women – in 2002, 2008 and 2013Q3, and the corresponding gender gap (in percentage points)

	Women			Men			Gender Gap		
	2002	2008	2012	2002	2008	2012	2002	2008	2012
EU-27	50.8	54.3	53.6	74.5	76.3	72.4	23.7	22.0	18.8
AT	53.3	55.2	55.6	78.1	79.9	78.7	24.8	24.7	23.1
BE	46.5	51.5	51.5	72.7	73.2	70.9	26.2	21.7	19.3
BG	52.5	64.9	59.5	59.7	75.9	65.2	7.2	11.0	5.7
CY	61.8	65.0	60.6	87.1	85.2	74.1	25.3	20.2	13.5
CZ	60.9	60.7	60.5	81.1	81.9	79.9	20.2	21.2	19.4
DE	48.8	51.8	55.2	73.8	77.1	78.3	25.0	25.2	23.1
DK	66.6	68.4	64.3	81.2	81.2	75.0	14.6	12.8	10.8
EE	62.4	70.4	66.2	74.6	81.1	74.4	12.2	10.7	8.2
ES	43.4	52.5	47.7	77.5	77.4	62.8	34.0	24.9	15.2
FI	67.3	68.9	67.8	74.6	76.6	73.4	7.2	7.6	5.6
FR	55.3	58.8	58.2	75.0	74.1	72.1	19.7	15.3	13.9
GR	45.3	50.2	42.7	79.5	80.7	64.2	34.2	30.5	21.5
HR	48.9	53.1	48.5	65.4	70.0	59.6	16.5	16.8	11.1
HU	53.6	54.0	54.8	69.9	68.6	67.5	16.3	14.6	12.8
IE	51.4	55.0	50.0	80.7	79.2	64.5	29.3	24.2	14.5
IT	41.7	44.8	44.0	73.2	74.1	69.7	31.4	29.3	25.6
LT	63.2	67.8	66.2	71.7	75.4	68.5	8.5	7.6	2.3
LU	48.5	50.1	55.1	81.0	76.6	77.3	32.5	26.5	22.2
LV	62.7	71.9	64.7	70.9	80.1	69.2	8.2	8.2	4.4
MT	32.4	35.5	42.5	81.5	78.8	78.5	49.1	43.2	36.0
NL	44.4	48.7	48.1	79.6	79.9	76.1	35.2	31.2	28.0
PL	50.3	55.4	55.8	63.8	73.3	72.4	13.5	17.9	16.6
PT	62.9	63.4	58.8	82.9	79.7	67.8	19.9	16.3	9.0
RO	57.1	56.0	54.8	71.1	70.9	70.4	14.0	14.9	15.6
SE	69.4	68.7	69.1	79.1	81.1	79.5	9.7	12.4	10.4
SI	63.2	66.1	61.6	74.1	76.8	71.0	11.0	10.7	9.4
SK	56.4	59.4	56.0	69.5	77.2	71.9	13.1	17.7	15.9
UK	53.5	55.5	54.8	79.0	78.9	76.2	25.4	23.4	21.4

Source: LFS, Eurostat

Figure 29 - NEET rate (%) by type and gender; youth aged 15-29, by country, 2012



Source: Eurostat, LFS

Table 3: Gender pay gap in unadjusted form in %

	2007	2008	2009	2010	2011	2012
EU28		17.3	17.2	16.2	16.3	16.4
BE	10.1	10.2	10.1	10.2	10.2	10.0
BG	12.1	12.3	13.3	13.0	13.0	14.7
CZ	23.6	26.2	25.9	21.6	22.6	22.0
DK	17.7	17.1	16.8	15.9	16.3	14.9
DE	22.8	22.8	22.6	22.3	22.2	22.4
EE	30.9	27.6	26.6	27.7	27.3	30.0
IE	17.3	12.6	12.6	13.9	11.7	14.4
EL	21.5	22		15		
ES	18.1	16.1	16.7	16.2	17.8	17.8
FR	17.3	16.9	15.2	15.6	15	14.8
HR				15.5	17.6	18.0
IT	5.1	4.9	5.5	5.3	5.8	6.7
CY	22.0	19.5	17.8	16.8	16.4	16.2
LV	13.6	11.8	13.1	15.5	13.6	13.8
LT	22.6	21.6	15.3	14.6	11.9	12.6
LU	10.2	9.7	9.2	8.7	8.7	8.6
HU	16.3	17.5	17.1	17.6	18.0	20.1
MT	7.8	9.2	7.7	7.2	6.2	6.1
NL	19.3	18.9	18.5	17.8	17.9	16.9
AT	25.5	25.1	24.3	24.0	23.7	23.4
PL	14.9	11.4	8.0	4.5	5.5	6.4
PT	8.5	9.2	10.0	12.8	12.5	15.7
RO	12.5	8.5	7.4	8.8	11	9.7
SI	5.0	4.1	-0.9	0.9	2.3	2.5
SK	23.6	20.9	21.9	19.6	20.5	21.5
FI	20.2	20.5	20.8	20.3	19.6	19.4
SE	17.8	16.9	15.7	15.4	15.8	15.9
UK	20.8	21.4	20.6	19.5	20.1	19.1

Source: Structure of earnings survey, Eurostat, EU28 (including Croatia as of 2011)

Table 4: Percentage distribution of couples by share of female earnings, 2011 (income for 2010)

Five categories are distinguished:

- One-earner couples where a woman does not work;
- Dual-earner couples where a woman contributes less than 45% of the combined earnings;
- Dual-earner couples where both partners have roughly similar earnings (i.e. a woman earns between 45% and 55% of the combined earnings);
- Dual-earner couples where a woman contributes more than 55% of the combined earnings;
- One-earner couples where a man does not work.

Country	Woman has no earnings	Woman earns less than man	Roughly equal earnings*	Woman earns more than man	Woman is the only earner
AT	22.0	54.3	13.6	7.2	2.9
BE	17.7	46.3	20.9	9.2	5.9
BG	16.7	44.2	17.8	14.6	6.8
CH	16.6	61.8	12.8	7.0	1.9
CY	21.5	48.8	17.8	9.6	2.3
CZ	24.0	47.7	19.0	7.3	2.1
DE	20.4	53.2	11.8	9.3	5.3
DK	6.7	44.4	28.5	14.6	5.9
EE	19.4	45.1	16.7	12.9	5.9
EL	37.8	31.2	16.6	7.6	6.9
ES	32.4	33.5	15.4	9.5	9.2
FI	10.5	50.5	18.4	15.5	5.2
FR	12.8	50.1	20.5	13.5	3.2
HR	28.9	31.4	18.2	12.1	9.5
HU	24.9	37.0	21.2	13.3	3.6
IS	6.6	56.3	19.6	15.2	2.3
IT	38.4	37.5	13.7	6.8	3.6
LT	19.6	32.4	12.3	26.1	9.7
LU	25.1	46.9	15.8	8.9	3.4
LV	18.1	38.2	12.5	22.0	9.3
MT	49.4	29.8	11.2	7.9	1.8
NL	15.3	59.4	13.9	7.8	3.7
NO	6.1	60.7	20.1	10.4	2.7
PL	25.1	39.1	16.0	15.4	4.4
PT	21.8	41.0	18.6	11.6	7.0
RO	29.8	33.8	27.1	5.9	3.4
SE	7.1	53.2	22.8	13.1	3.9
SI	9.0	43.8	22.3	20.3	4.7
SK	16.8	46.1	22.5	10.4	4.2
UK	18.4	48.5	16.6	10.5	6.0

Note: * It is considered that a woman has roughly equal earnings with her partner if her share constitutes 45-55% of the combined earnings. The calculations are based on the annual employee cash or near cash income (PY010g). Sample size for each groups is reported in Table 1B in Annex 1.

Source: EU-SILC 2011, own calculations

Table 5 People at risk of poverty or social exclusion (in % of the total population), men and women

	Women					Men				
	2008	2009	2010	2011	2012	2008	2009	2010	2011	2012
EU28			24.8	25.4	25.8			22.6	23.2	23.8
BE	22.4	21.8	21.7	21.5	22.2	19.1	18.5	20.0	20.4	21.0
BG	46.4	48.1	50.9	50.5	50.9	43.0	44.1	47.3	47.7	47.6
CZ	17.2	15.7	16.0	16.9	16.9	13.3	12.3	12.7	13.7	13.7
DK	17.0	18.2	19.0	19.5	18.9	15.7	17.0	17.7	18.2	19.1
DE	21.6	21.2	20.9	21.3	21.1	18.5	18.8	18.6	18.5	18.1
EE	24.3	25.5	22.0	22.9	24.4	18.9	21.1	21.5	23.2	22.3
IE	24.7	26.4	28.1	29.8		22.7	25.0	26.5	29.0	
EL	29.8	29.0	29.3	32.3	35.2	26.3	26.1	26.0	29.6	33.9
ES	25.7	25.4	27.5	28.0	28.1	23.4	23.5	26.0	27.3	28.4
FR	19.7	19.7	19.9	19.9	19.6	17.3	17.1	18.4	18.6	18.4
HR			31.6	33.1	33.3			29.8	31.5	31.2
IT	27.2	26.4	26.3	29.9	31.7	23.2	22.8	22.6	26.4	28.0
CY	25.9	26.0	26.3	26.4	29.0	20.5	20.9	22.8	22.8	25.1
LV	36.6	39.4	38.6	40.3	36.8	31.4	36.0	37.6	39.9	35.5
LT	29.7	31.4	33.8	33.3	33.4	25.3	27.3	32.9	33.0	31.4
LU	16.7	19.6	17.7	18.0	19.4	14.2	16.0	16.5	15.6	17.3
HU	29.0	30.0	30.3	31.4	33.0	27.3	29.1	29.4	30.5	31.8
MT	21.0	21.4	21.2	22.2	23.2	18.2	19.0	19.4	20.6	21.2
NL	15.5	15.9	16.0	16.6	16.3	14.3	14.3	14.1	14.9	13.6
AT	20.3	18.9	18.4	18.5	19.6	16.8	15.0	14.7	15.2	17.3
PL	31.2	28.6	28.5	27.7	27.3	29.9	27.0	27.0	26.6	26.1
PT	26.8	25.8	25.8	25.1	25.9	25.0	24.0	24.8	23.8	24.6
RO	45.3	44.2	42.1	41.1	42.6	43.0	41.9	40.8	39.5	40.7
SI	20.3	19.1	20.1	21.1	20.8	16.6	15.1	16.5	17.4	18.3
SK	22.0	21.1	21.6	21.7	21.3	18.9	18.0	19.6	19.5	19.7
FI	18.9	17.9	17.7	18.5	17.4	15.9	15.8	16.0	17.3	17.0
SE	16.1	17.5	16.6	18.0	19.8	13.7	14.4	13.4	14.2	16.6
UK	24.7	22.8	24.2	24.1	24.8	21.7	21.1	22.1	21.4	23.4

Source: EU-SILC, Eurostat

Table 6 : Early leavers from education and training: % of the population aged 18-24 with at most lower secondary education and not in further education or training, by sex

	Women			Men			Gender Gap		
	2002	2008	2012	2002	2008	2012	2002	2008	2012
EU28	14.9	12.7	10.9	19	16.7	14.4	4.1	4	3.5
BE	11	10.6	9.5	17.1	13.4	14.4	6.1	2.8	4.9
BG	19.4	15.5	13	22	14.1	12.1	2.6	-1.4	-0.9
CZ	5.9	5.4	4.9	5.4	5.8	6.1	-0.5	0.4	1.2
DK	8.2	10	7.4	9.9	15	10.8	1.7	5	3.4
DE	12.5	11.2	9.9	12.5	12.4	11.3	0	1.2	1.4
EE	9.4	8.2	7.1	16.9	19.8	14	7.5	11.6	6.9
IE	11.2	8	8.2	18	14.5	11.2	6.8	6.5	3
EL	12.5	10.9	9.1	20.6	18.5	13.7	8.1	7.6	4.6
ES	24.2	25.7	20.8	36.8	38	28.8	12.6	12.3	8
FR	11.9	9.5	9.8	14.9	13.5	13.4	3	4	3.6
HR	6.9	3.3	3.6	9.2	4.1	4.6	2.3	0.8	1
IT	20.5	16.7	14.5	27.8	22.6	20.5	7.3	5.9	6
CY	11	9.5	7	22.3	19	16.5	11.3	9.5	9.5
LV	11	10.7	6.3	22.7	20.2	14.7	11.7	9.5	8.4
LT	11.4	4.7	4.6	15.4	10	8.1	4	5.3	3.5
LU	19.6	10.9	5.5	14.4	15.8	10.7	-5.2	4.9	5.2
HU	11.9	10.9	10.7	12.5	12.5	12.2	0.6	1.6	1.5
MT	49.7	25.7	17.6	56.5	32.6	27.5	6.8	6.9	9.9
NL	13.8	8.8	7.3	16.8	14	10.2	3	5.2	2.9
AT	10.2	9.8	7.3	8.7	10.4	7.9	-1.5	0.6	0.6
PL	5.6	3.9	3.5	8.9	6.1	7.8	3.3	2.2	4.3
PT	37.2	28.6	14.3	52.6	41.9	27.1	15.4	13.3	12.8
RO	22.1	16	16.7	23.9	15.9	18	1.8	-0.1	1.3
SI	3.2	2.6	3.2	6.8	7.2	5.4	3.6	4.6	2.2
SK	5.8	4.9	4.6	7.6	7.1	6	1.8	2.2	1.4
FI	7.6	7.7	8.1	11.8	12.1	9.8	4.2	4.4	1.7
SE	8.9	6.8	6.3	11	9	8.5	2.1	2.2	2.2
UK	17.1	15.6	12.4	18.1	18.3	14.7	1	2.7	2.3

Source: LFS, Eurostat

Table 7: Tertiary educational attainment by sex, age group 30-34

	Women			Men			Gender Gap		
	2002	2008	2012	2002	2008	2012	2002	2008	2012
EU28	24.4	34.2	39.9	22.5	27.8	31.5	-1.9	-6.4	-8.4
BE	39	48.6	50.7	31.5	37.4	37.1	-7.5	-11.2	-13.6
BG	28.8	34.5	33.6	17.7	19.7	20.5	-11.1	-14.8	-13.1
CZ	11.4	15.9	29.1	13.7	14.8	22.4	2.3	-1.1	-6.7
DK	39.4	41.8	52.6	28.7	36.8	33.7	-10.7	-5	-18.9
DE	21.4	27	32.9	26.8	28.3	31	5.4	1.3	-1.9
EE	33.6	39.6	50.4	22.5	28.6	28.1	-11.1	-11	-22.3
IE	33	52.5	57.9	30.9	39.8	44	-2.1	-12.7	-13.9
EL	24.8	27.9	34.2	21.9	23.4	27.6	-2.9	-4.5	-6.6
ES	35.8	44.7	45.3	31	35.3	35	-4.8	-9.4	-10.3
FR	34	45.2	48.6	29	37.1	38.5	-5	-8.1	-10.1
HR	17.6	21.4	28.8	14.8	15.8	19.4	-2.8	-5.6	-9.4
IT	14.2	23.5	26.3	12	14.9	17.2	-2.2	-8.6	-9.1
CY	36.1	52.9	55.5	35.9	41.3	43.6	-0.2	-11.6	-11.9
LV	22.1	34.9	48.1	12.4	19.3	26.2	-9.7	-15.6	-21.9
LT	29.6	48.6	56.7	17	31	40.3	-12.6	-17.6	-16.4
LU	21.5	42.7	48.9	25.6	36.9	50.4	4.1	-5.8	1.5
HU	16.1	26.3	35.5	12.8	18.6	24.7	-3.3	-7.7	-10.8
MT	8.2	21.5	24	10.3	20.7	20.7	2.1	-0.8	-3.3
NL	29.3	41.8	44.6	27.8	38.5	39.8	-1.5	-3.3	-4.8
AT		22.4	26.6		21.9	26		-0.5	-0.6
PL	16.7	35	46.5	12.2	24.4	31.9	-4.5	-10.6	-14.6
PT	16.9	26.4	30.1	9.1	17	24.3	-7.8	-9.4	-5.8
RO	9	17.1	23.2	9.1	14.9	20.5	0.1	-2.2	-2.7
SI	29.1	38.4	49.6	12.9	24.3	29.5	-16.2	-14.1	-20.1
SK	11.2	17.6	28.2	9.7	14	19.4	-1.5	-3.6	-8.8
FI	49.3	56.6	55.4	33.4	35	36.7	-15.9	-21.6	-18.7
SE	31.2	47.7	53.7	25.5	36.6	42.4	-5.7	-11.1	-11.3
UK	30.7	41	50.2	32.4	38.3	44	1.7	-2.7	-6.2

Source: LFS, Eurostat

Table 8: Formal childcare by age group - % over the population of each age group

	Below 3 years old					From 3 years to minimum compulsory age				
	2007	2008	2009	2010	2011	2007	2008	2009	2010	2011
EU28				28	30				84	83
BE	44	43	33	36	39	100	99	99	99	98
BG	8	11	8	7	7	59	67	55	54	60
CZ	2	1	3	2	5	69	69	64	71	74
DK	70	73	73	78	74	97	96	84	90	98
DE	17	19	19	20	24	86	90	88	92	90
EE	15	17	25	21	19	86	88	93	92	92
IE	24	24	20	29	21	86	85	87	90	82
EL	10	12	11	8	19	65	55	58	69	75
ES	40	38	36	38	39	92	95	94	95	86
FR	27	40	41	43	44	93	96	95	94	95
HR				8	15				42	51
IT	25	28	25	22	26	90	91	93	87	95
CY	18	26	22	24	23	80	78	81	81	73
LV	16	14	15	16	15	52	70	74	64	73
LT	20	9	10	13	7	59	62	55	67	65
LU	25	26	34	36	44	66	77	72	79	73
HU	8	7	7	9	8	80	75	74	79	75
MT	13	15	8	11	11	65	75	77	74	73
NL	43	47	49	50	52	91	89	87	91	89
AT	8	6	9	9	14	70	71	79	84	85
PL	2	3	2	2	3	31	35	39	42	43
PT	27	33	36	37	35	75	78	81	79	81
RO	6	8	5	7	2	57	54	63	66	41
SI	30	31	31	37	37	84	85	89	91	92
SK	2		3	3	4	75	60	76	72	75
FI	26	26	27	28	26	76	78	77	77	77
SE	47	49	63	51	51	91	95	94	94	95
UK	38	35	35	35	35	84	87	91	89	93

Source: EU-SILC, Eurostat

Table 9: Proportion of women in political and economic decision-making

	Senior Ministers			National parliaments Single/Lower House)			Board members of the largest publicly listed companies		
	2003	2010	2013	2003	2010	2013	2003	2010	2013
EU-28	24	26	27	22	24	27	9	12	18
AT	27	43	43	34	28	33	6	9	13
BE	36	33	38	36	40	40	6	10	17
BG	19	17	39	26	22	25	11	11	17
CY	9	17	8	11	13	14	6	4	7
CZ	:	0	7	:	22	20	:	12	11
DE	46	38	33	32	33	36	10	13	21
DK	28	47	45	38	38	38	13	18	23
EE	9	8	8	17	23	18	15	7	7
EL	6	17	5	9	17	21	8	6	8
ES	25	50	29	31	37	40	3	10	15
FI	44	55	47	37	40	43	12	26	30
FR	21	34	47	12	19	26	5	12	30
HR	17	16	19	23	25	24	:	16	15
HU	13	0	10	10	9	9	11	14	11
IE	14	20	13	13	14	16	7	8	11
IT	9	22	29	12	21	31	2	5	15
LT	:	13	7	:	19	24	:	13	16
LU	37	27	27	20	20	23	4	4	11
LV	25	21	23	20	19	25	17	23	29
MT	:	22	13	:	9	14	:	2	2
NL	31	25	38	38	41	38	8	15	25
PL	:	25	20	:	20	24	:	12	12
PT	17	29	20	21	30	31	4	5	9
RO	21	12	21	11	11	14	21	21	8
SE	52	46	54	45	46	44	18	26	26
SI	14	26	21	13	16	33	23	10	22
SK	0	14	7	19	16	19	8	22	24
UK	24	16	18	18	22	23	15	13	21

Source: European Commission, Database on women and men in decision-making (except 2003 figures for Croatia which were provided by the Croatian Office for Gender Equality).

Note: Data for senior ministers and parliaments are collected quarterly. Figures for 2003 refer to the third quarter, figures for 2010 and 2013 refer to the fourth quarter. Data for companies refer to the situation in October of each year.

Charter of
Fundamental Rights
of the **European Union**

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

Title I

Dignity

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - c) the prohibition on making the human body and its parts as such a source of financial gain;
 - d) the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Title II

Freedoms

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such 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. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. right of everyone to form and to join trade unions for the protection of his or her interests.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Title III

Equality

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground 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 shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

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

Title IV

Solidarity

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union 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.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to 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.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall 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.

Article 34

Social security and social assistance

1. The Union 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, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

Title V

Citizens' rights

Article 39

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

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

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, 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 of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Title VI

Justice

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held 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 shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

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

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Title VII

General provisions governing the interpretation and application of the Charter

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53 *Level of protection*

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54 *Prohibition of abuse of rights*

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Country codes

Code	Name
BE	Belgium
BG	Bulgaria
CZ	Czech Republic
DK	Denmark
DE	Germany
EE	Estonia
IE	Ireland
EL	Greece
ES	Spain
FR	France
IT	Italy
CY	Cyprus
LV	Latvia
LT	Lithuania
LU	Luxembourg
HU	Hungary
MT	Malta
NL	Netherlands
AT	Austria
PL	Poland
PT	Portugal
RO	Romania
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden
UK	United Kingdom

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The 2013 Report on the Application of the EU Charter of Fundamental Rights informs the public about situations in which citizens can rely on the EU Charter. It also explains the role of EU institutions and the Member States play in the area of fundamental rights. Finally, it highlights how fundamental rights as enshrined in the EU Charter are relevant across a range of policies for which the EU is responsible.

The Annual Report is intended to serve as a factual basis for a continuing and informed dialogue between all EU institutions and Member States on the implementation of the Charter. This Report covers the year 2013 giving an overview of instances where the European institutions promoted and took into account the Charter in their legislative and policy work. It also explains where Member States were required respecting it when they implemented the EU law. The Report puts particular emphasis on the applicability of the EU Charter in Member States on the basis of recent CJEU case law. In covering the full range of Charter provisions on an annual basis, the Annual Report aims to track where progress is being made, where further efforts are still necessary and where new concerns are arising.

